

**Franz von Liszt Institute Working Paper 2019/01**

Katharina Peter, Teresa Schell

**Women's path into the legal profession**

A comparative analysis of Germany, the United States of America,  
and Turkey

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### **Comparative Legal Gender Studies-Network (CoLeGeS-Net): The Emilie Kempyn-Spyri of the past, present and future**

In January 2016, Prof. Dr. Thilo Maruhn, M. Phil. and Dr. Ayşe-Martina Böhringer launched a legal research project on women in the legal profession.

Over the project period of three years, a focal point of the project is the analysis of the role of law in women's career processes from university studies to the professional career. The project has a comparative approach analyzing the development and the current state of women in the legal profession in Germany, the United States of America and Turkey.

The project is supported by the Executive Board of Justus Liebig University Giessen (based upon an initiative launched by the Women's and Gender Equality Representative of Justus Liebig University Giessen).

Named after Emilie ("Emily") Kempyn-Spyri who, among others, opened the path to legal professions for women, the project aims at integrating women and gender issues into legal research and teaching at the Faculty of Law. In particular, the project seeks to raise awareness of gender issues in the legal profession among junior academics and students. It will identify career opportunities in academia and practice as well as related challenges by means of a comparative analysis. Making use of various dynamic and interpersonal means of communication, the project aims at establishing a network among a broad variety of actors.

The project contributes to the development of expertise in gender issues by identifying country-specific development stages and by demonstrating future options for governmental and non-governmental norm setting at the national as well as at the international level.

Seminars and colloquiums – as appropriate – are offered by visiting scholars and practitioners. Students and junior academics will benefit from frequent interaction with experts in the field of legal gender studies. Throughout the project, a broad spectrum of legal materials from selected countries – focusing upon Turkey, the United States of America and Germany – will be subject to comparative analysis.



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## Abstract

“Law needs [...] feminism because it is only through the flooding of legal spaces: the law firms, the courtrooms, the benches, the international tribunals with women [...] who by virtue of their experiences will ensure that women's narrative stories and phenomenology play a central role in our justice mechanisms, that we will see change”<sup>1</sup>. While in theory the law is not intended to differentiate between people and it cannot matter who applies and interprets the law, in practice the law leaves room for interpretation, which is being influenced by personal experiences and ideas. Therefore, to implement equality in our society, equality within legal professions is crucial. Because how can the law be able to ensure equality if there is not even equality among the people who apply the law? Although more and more women choose to enter the legal profession as lawyers, judges, prosecutors, and professors, they are more likely to face difficulties and barriers in entering the legal profession and advancing in a career compared to their male counterparts. This may be especially astounding with regard to the rising number of female law students.

The aim of this essay is to examine the past, present and possible future situation of women entering the legal profession – with the exception of women in politics<sup>2</sup> – in Germany, the United States of America and Turkey, and to answer some of the arising questions related to this topic. What possibilities and difficulties do women in law encounter? What has already been achieved and where is room for improvement? And what impact does the increasing number of women in legal professions have on the practice of law? Needless to say, each of these three countries have different backgrounds in terms of history, politics, legal rules, and social structures. It therefore provided good conditions for a comparative analysis.

The paper will first give a short overview of the legal history regarding women in legal professions (I.), then explore the circumstances nowadays (II.) and will conclude with an outlook on the possible developments (III.) in Germany, the United States of America, and Turkey. As these countries face different challenges, the focus varies regarding certain aspects.

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<sup>1</sup> Amanda Ghahremani, comments on *law needs feminism because*, <https://www.lawneedsfeminismbecause.ca/success-stories> (last accessed on 9 June 2019); *feminism* according to the Cambridge Dictionary is “the belief that women should be allowed the same rights, power, and opportunities as men and be treated in the same way, or the set of activities intended to achieve this state”.

<sup>2</sup> A current debate in Germany concerns parity legislation, see Antje von Ungern-Sternberg, *Parité-Gesetzgebung auf dem Prüfstand des Verfassungsrechts*, in: JZ 2019, p. 525-534.

## I. Legal History

At some point in every country's history, women – as the oppressed sex – began to fight for the possibility of admission to law schools and legal professions.

### 1. Germany

In Germany it took quite a long time until women gained access to judicial professions. Studying law at German Universities was not possible for women, even in the late 19th century. This led the first female lawyers to study law in the German speaking part of Switzerland, such as Emilie Kempin-Spyri – whom this project is named after – at the University of Zurich in 1884.<sup>3</sup> It was not until 1900, before at least some of the German states started to give women access to law studies.<sup>4</sup> But still, women were not able to practice law because they were not allowed to take the first state examination, which was and still is necessary to graduate and to gain access to the legal clerkship, which again is required to become a lawyer.<sup>5</sup> This general exclusion in Germany occurred as the permission to take the first state exam was a decision of the judiciary and not of the universities.<sup>6</sup> In 1912, Bavaria was the first state to give women the permission to successfully complete the first legal examination.<sup>7</sup> Even this did not mean that women were finally able to practice law as the second state examine was still a requirement, which women were not allowed to complete prior to the end of the First World War in 1919.<sup>8</sup> This can be linked to the year-long struggle for women's suffrage, which ended in 1918 with its universal recognition by the Declaration of the Council of People's Representatives<sup>9</sup> as the women's rights movement (which had formed for this purpose) also fought for more far-

<sup>3</sup> See for more information about her life, Eveline Hasler, *Die Wachsfügelndfrau, Geschichte der Emily Kempin-Spyri* (Zürich 1991).

<sup>4</sup> Ute Sacksofsky, *Die blinde Justitia: Gender in der Rechtswissenschaft*, in: Hadumod Bußmann/Renate Hof (eds.), *Genus- Geschlechterforschung/Gender Studies in den Kultur- und Sozialwissenschaften* (Stuttgart 2005), p. 404.

<sup>5</sup> *Ibid.*

<sup>6</sup> Ulrike Schultz/Anja Böning/Ilka Peppmeier/Silke Schröder, *De jure und de facto: Professorinnen in der Rechtswissenschaft. Geschlecht und Wissenschaftskarriere im Recht in Schriften zur Gleichstellung*, Vol. 45 (Baden-Baden 2018), p. 76.

<sup>7</sup> Ulrike Schultz, „I was noticed and I was asked...“. *Women's Careers in the Judiciary. Results of an empirical study for the Ministry of Justice in Northrhine-Westfalia, Germany*, in: Schultz, Ulrike Schultz/Gisela Shaw (eds.), *Gender and Judging* (Oxford 2013), p. 145, 148.

<sup>8</sup> Schultz/Böning/Peppmeier/Schröder, p. 77.

<sup>9</sup> Kerstin Wolff, *Der Kampf der Frauenbewegung um das Wahlrecht*, bpb, 12 November 2018, <http://www.bpb.de/geschichte/deutsche-geschichte/frauenwahlrecht/278701/der-kampf-der-frauenbewegung-um-das-frauenwahlrecht> (last accessed on 16 June 2019).



reaching rights for women. The admission of women to the state exam was accompanied by lengthy debates regarding the suitability of women for judicial office: women were still regarded as too emotional and subjective as well as too fragile for the hard and responsible work.<sup>10</sup> Even after the establishment of the democratic Weimar Republic it was highly controversial whether women should be allowed to work in the judiciary. For example, in 1921, a large majority in the German Association of Judges argued that women would not be suitable to become judges<sup>11</sup> and representatives of the states quoted that women would not be as resolute as men and therefore women in law would pose the danger of effeminacy of the criminal justice system<sup>12</sup>. On 11 July 1922, a law was released which allowed women to enter the judicature.<sup>13</sup> From that point on, more and more women started to enter the legal profession. But with the National Socialists taking over control in Germany, they impeded the enhancement of women in law, as according to their ideas there was a „male state“ and therefore the entrance for women into the legal profession was blocked by a Führer-decree.<sup>14</sup> After the end of the dictatorship the role of women in law changed only slowly.

In 1961, only 2.6% of the judges, less than 2% of lawyers and not one public prosecutor were female.<sup>15</sup> Since 1970 the amount of women in law studies strongly increased. In 1972, approximately 15% of law students were female, in 1980 about 30%, in 1990 about 40% and in 2003 the share of female first-year law students broke the 50% mark.<sup>16</sup>

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<sup>10</sup> Ulrike Schultz, „Wie männlich ist die Juristenschaft?“, in: Ulrich Battis/Ulrike Schultz (eds.), *Frauen im Recht* (Heidelberg 1990), p. 319-359.

<sup>11</sup> Sigrun von Hasseln, *Die Zulassung der Frau zum Richteramt- Thema des vierten Richtertages 1921*, in: *Deutsche Richterzeitung*, 1984, p. 12.

<sup>12</sup> Annette Ramelsberger, *Die neue Rechtsordnung* in: *Süddeutsche Zeitung Magazin*, Heft 40/2013, 7 October 2013, <https://sz-magazin.sueddeutsche.de/gesellschaft-leben/die-neue-rechtsordnung-79969> (last accessed on 19 May 2019).

<sup>13</sup> *Gesetz über die Zulassung der Frauen zu Ämtern und Berufen der Rechtspflege (RGG)*, p. 573.

<sup>14</sup> Sepp Dietrich, *Der Beruf der Frau zur Rechtsprechung*, in: *Deutsche Juristen-Zeitung*, 1933, p. 1255, 1256.

<sup>15</sup> According to official statistics from the Bundesjustizamt, [https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal\\_node.html](https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal_node.html) (last accessed on 19 May 2019).

<sup>16</sup> According to official statistics from the Statistisches Bundesamt, [https://www-gene-sis.destatis.de/genesis/online/data;sid=BD06A4BDE94E8AD1FD1D6B10ECF79CDE.GO\\_2\\_1?operation=abrufabelleBearbeiten&levelindex=1&levelid=1560949893414&auswahloperation=abrufabelleAuspraegungAuswaehlen&auswahlverzeichnis=ordnungsstruktur&ausw](https://www-gene-sis.destatis.de/genesis/online/data;sid=BD06A4BDE94E8AD1FD1D6B10ECF79CDE.GO_2_1?operation=abrufabelleBearbeiten&levelindex=1&levelid=1560949893414&auswahloperation=abrufabelleAuspraegungAuswaehlen&auswahlverzeichnis=ordnungsstruktur&ausw)

In the winter semester 2017/18, 64833 of the 116217 law students were female,<sup>17</sup> which amounts to about 56%.

Concurrently, the proportion of women in legal professions increased steadily. In 1971, 6% of judges, 5% of public prosecutors and 4.5% of attorneys were female. A decade later, women already represented 13% of all judges, 11% of all public prosecutors and 8% of all lawyers.<sup>18</sup> From 1977 on, women were no longer legally bound to get their husband's permission to work, i.e. they were legally free to choose their profession themselves. This may be one factor of the increasing share of women in the judiciary. The first women to become president of a Senate of a Higher Regional Court (OLG) was Lore Maria Peschel-Gutzeit in Hamburg in 1984.<sup>19</sup> In 1995, 26.3% of judges, 28.9% of prosecutors and 19.3% of attorneys were female<sup>20</sup> and in 2016 already 44.45% of all judges and 45.94% of all public prosecutors<sup>21</sup> and 33.87% of all attorneys<sup>22</sup>.

In contrast, the progress of women in the academic legal profession was much slower.<sup>23</sup> The first woman to habilitate was Magdalena Schoch in 1932 in Civil Law, followed by Anne-Eva Brauneck in Criminal Law in 1959 and Ilse Staff in Administrative Law in

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(last accessed on 19 May 2019).

<sup>17</sup> Statistisches Bundesamt, [https://www-genesis.destatis.de/genesis/online/data;sid=8F224CD7D9C95EE13739BDAB61D87664.GO\\_1\\_4?operation=ergebnistabelleUmfang&levelindex=2&levelid=1543416204810&downloadname=21311-0003](https://www-genesis.destatis.de/genesis/online/data;sid=8F224CD7D9C95EE13739BDAB61D87664.GO_1_4?operation=ergebnistabelleUmfang&levelindex=2&levelid=1543416204810&downloadname=21311-0003) (last accessed on 28 November 2018).

<sup>18</sup> Official Statistics from the Bundesjustizamt, [https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal\\_node.html](https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal_node.html) (last accessed on 19 June 2019).

<sup>19</sup> Annette Ramelsberger, Die neue Rechtsordnung in: Süddeutsche Zeitung Magazin, Heft 40/2013, 7 October 2013, <https://sz-magazin.sueddeutsche.de/gesellschaft-leben/die-neue-rechtsordnung-79969> (last accessed on 9 June 2019).

<sup>20</sup> Official Statistics from the Bundesjustizamt, [https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal\\_node.html](https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Personal/Personal_node.html) (last accessed on 19 May 2019).

<sup>21</sup> Bundesministerium für Justiz und Verbraucherschutz, Zahl der Richter, Richterinnen, Staatsanwälte, Staatsanwältinnen und Vertreter, Vertreterinnen des öffentlichen Interesses in der Rechtspflege der Bundesrepublik Deutschland am 31. Dezember 2016, [https://www.bmjv.de/DE/Service/Statistiken/Statistiken\\_node.html](https://www.bmjv.de/DE/Service/Statistiken/Statistiken_node.html) (last accessed on 5 May 2019).

<sup>22</sup> Bundesrechtsanwaltskammer, Statistik zum Anteil der Rechtsanwältinnen, [https://www.brak.de/w/files/04\\_fuer\\_journalisten/statistiken/2018/rainnen\\_statistik2018\\_absolut.pdf](https://www.brak.de/w/files/04_fuer_journalisten/statistiken/2018/rainnen_statistik2018_absolut.pdf) (last accessed on 12 May 2019).

<sup>23</sup> Sacksofsky, p. 405.

1969.<sup>24</sup> Even in 1970 only 8 women habilitated in law,<sup>25</sup> while in the meantime already about 5% of all law professors were female. The first female law professor was Gertrud Schubart-Fikentscher in 1948, the second one Anne-Eva Brauneck not until 1965.<sup>26</sup> Still in 2014, the amount of female professors in law accounts for only 15%.<sup>27</sup>

## 2. United States of America

To understand best how women in the United States of America gained admission to legal professions, it is helpful to bear in mind the time period of women's struggle for equal rights such as suffrage. The 'century of struggle' began in the late 1860s, when women were first allowed to attend university law schools as well as gained admission to state bars, and ended one hundred years later when established practices of gender discrimination during the admission process were eliminated by all American law schools.<sup>28</sup> Women practicing legal work, however, can be dated back to 1750, when women acted as 'attorneys-in-fact' during the colonial period.<sup>29</sup> In 1638, Margaret Brent became the first female lawyer after she was designated executor of a Maryland governor and her claim to act as his attorney was accepted.<sup>30</sup> At that time, women were admitted neither to law schools nor to state bar associations,<sup>31</sup> but formal admission to a state or territorial bar may not have been required to practice law on the county level<sup>32</sup>. A decision by a court in Iowa first acknowledged the eligibility of women to practice law<sup>33</sup> and led to the first successful application for formal admission to the bar by Arabella Babb Mansfield in 1869<sup>34</sup>. Concurrently, women were given the opportunity to formally apply to law schools<sup>35</sup> and in 1870, Ada Kepley was the first women to graduate from a law school in

<sup>24</sup> Elisabeth Boedeker/Maria Meyer-Plath, 50 Jahre Habilitation von Frauen in Deutschland. Eine Dokumentation über den Zeitraum von 1920-1970 (Göttingen 1974), p. 191.

<sup>25</sup> Ibid.

<sup>26</sup> Ute Sacksofsky/Carolin Stix, Daten und Fakten zur Repräsentanz von Frauen in der Rechtswissenschaft (Frankfurt 2018), p. 3.

<sup>27</sup> Schlussbericht JurPro, <http://www.fernuni-hagen.de/jurpro/downloads/schlussbericht.pdf> (last accessed on 10 May 2019), p. 2.

<sup>28</sup> Mary Jane Mossmann, *The First Women Lawyers* (Portland 2006), p. 23.

<sup>29</sup> Ibid., p. 24.

<sup>30</sup> Susan Ehrlich Martin/Nancy C. Jurik, *Doing Justice, Doing Gender* (Thousand Oaks 2007), p. 108; according to Mossmann, p. 25, colonists, who did not have any precedent for a woman who engaged in in such activities, frequently addressed her as 'Gentleman Margaret Brent'.

<sup>31</sup> Martin/Jurik, p. 109.

<sup>32</sup> Mossmann, p. 26.

<sup>33</sup> Martin/Jurik, p. 109.

<sup>34</sup> Mossmann, p. 26.

<sup>35</sup> Ibid., p. 27.

the US<sup>36</sup>. Following this accomplishment, lawsuits to gain admission to other state bars were initiated.<sup>37</sup> One of these lawsuits was carried out by Myra Bradwell in 1869, trying to seek admission to the Illinois bar, but could not succeed before the Illinois Supreme Court and her subsequent appeal to the Supreme Court of the U.S.<sup>38</sup> This case being the first of sex discrimination before the U.S. Supreme Court in the year of 1872, led to the first opportunity of the U.S. Supreme Court to decide about women's right to practice law, ruling that women's right to practice law can be denied.<sup>39</sup> In its decision the Court states that "the paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases."<sup>40</sup> Almost 25 years later, Lutie A. Lytle, an African American attorney, became the first female law professor at Central Tennessee College of Law.<sup>41</sup> With the adoption of the 19<sup>th</sup> amendment<sup>42</sup> – guaranteeing women the right to vote in federal elections – and Florence Allen as the first female judge,<sup>43</sup> 1920 marks an important year for women's rights and equality. However, not until Title VII of the Federal Civil Rights Act<sup>44</sup> in 1964, women were guaranteed equal opportunity in employment. From a European perspective, the

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<sup>36</sup> Ibid., p. 27.

<sup>37</sup> Ibid., p. 28.

<sup>38</sup> Martin/Jurik, p. 109, Mossmann, p. 42.

<sup>39</sup> Mossmann, p. 47.

<sup>40</sup> Bradwell v. Illinois, 83 U.S. 130, 141-42 (1872), <https://supreme.justia.com/cases/federal/us/83/130/> (last accessed on 2 May 2019).

<sup>41</sup> Paul Finkelmann, Not Only the Judges' Robes Were Black, in: Steve Sheppard (ed.), The history of legal education in the United States. Commentaries and primary sources, Volume 1 (Pasadena 1999), p. 915.

<sup>42</sup> Landmark Legislation: The Nineteenth Amendment to the Constitution, United States Senate, <https://www.senate.gov/artandhistory/history/common/generic/NineteenthAmendment.htm> (last accessed on 2 May 2019); "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.", [https://www.senate.gov/civics/constitution\\_item/constitution.htm](https://www.senate.gov/civics/constitution_item/constitution.htm) (last accessed on 2 May 2019).

<sup>43</sup> Florence Ellinwood Allen, The Supreme Court of Ohio & The Ohio Judicial System, <https://www.supremecourt.ohio.gov/SCO/formerjustices/bios/allen.asp> (last accessed on 2 May 2019).

<sup>44</sup> Constituting the statutory basis for equal opportunity and sex discrimination cases and sexual harassment cases, <https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg241.pdf> (last accessed on 2 May 2019), p. 253 ff.; Martin/Jurik, p. 6.

fact that the U.S. Constitution does not contain an equal rights amendment<sup>45</sup> may be surprising. The requirement for a constitutional amendment is inter alia the ratification of  $\frac{3}{4}$  of the federal states, which was not met after the Senate tried to pass the amendment in 1972.<sup>46</sup> Almost a decade later, Sandra Day O'Connor, was the first woman to be appointed to the U.S. Supreme Court.<sup>47</sup>

American woman lawyers evidently were the pioneers in entering the legal professions when gaining admission to numerous state bars almost three decades before women from other parts of the world.<sup>48</sup> They, however, also remained excluded from a number of law schools for more than six decades of the twentieth century,<sup>49</sup> a time, when women in other jurisdictions had achieved admission to law schools and the bar long before.<sup>50</sup> Paradoxically, women succeeded in becoming lawyers in several U.S. states long before national suffrage was finally achieved after World War I, but even women's entitlement to vote could not eliminate discriminatory admission pattern in some law schools until later in the twentieth century.<sup>51</sup>

### 3. Turkey

In Turkey the development of women in judicial professions is slightly different. First of all, it has to be pointed out that there are less accessible sources available, especially regarding the exact numbers and the promotion of the role of women in the legal profession. Therefore, the following text will focus on women's access to employment and vocational training in general as well as the development of the role of women in statutory law.<sup>52</sup> Before the rise of Islam in the early 600s A.D. a traditional, patriarchal society ex-

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<sup>45</sup> The 14<sup>th</sup> amendment merely guarantees the equal protection of the laws for all people, intended to prevent racial discrimination.

<sup>46</sup> Amendments to the Constitution: A brief legislative history, Washington 1985, <https://www.senate.gov/artandhistory/history/resources/pdf/SPrt99-87.pdf> (last accessed on 2 May 2019), p. 97.

<sup>47</sup> The female judges on the U.S. Supreme Court until today are Sandra Day O'Connor (1981), Ruth Bader-Ginsburg (1993), Sonia Sotomayor (2009), and Elena Kagan (2010), see Justices from 1789 to Present, Supreme Court of the United States, [https://www.supremecourt.gov/about/members\\_text.aspx](https://www.supremecourt.gov/about/members_text.aspx) (last accessed on 2 May 2019).

<sup>48</sup> Mossmann, p. 23.

<sup>49</sup> For instance, Columbia completely rejected applications from women until 1929, Mossmann, p. 28.

<sup>50</sup> Ibid., p. 23.

<sup>51</sup> Ibid., p. 24.

<sup>52</sup> For more information regarding the difficulties women face in political careers, see Yesim Arat, Obstacles to Political Career: Perceptions of Turkish Women, in: International Political Science Review, Vol. 6 No.3, 1985, p. 355-366.

isted. Female infanticide was common.<sup>53</sup> With the rise of Islam, the status of women did in fact improve as according to the Islam men and women had distinct, complementary roles. The husband's primary responsibility was to support and protect the family. The wife cared for and disciplined the children and maintained the home. Although Islamic law taught that husband and wife were equal before God, in fact women were subordinate to men. Nonetheless, women exercised considerable influence in family and social life.<sup>54</sup> During the period of the Ottoman Empire high schools and universities were opened to women. This marks the beginning of education for women and hence is so important, since their education enabled women to actually enforce their rights. But a huge problem during this period of time was the absence of a supportive legal and political structure which resulted in women being handicapped while making efforts to be active in the public area.<sup>55</sup> Additionally, the political frame in the Ottoman empire was still highly influenced by patriarchal norms which de facto hindered women to work.<sup>56</sup> In 1923, with the establishment of the Turkish Republic a number of political and legal reforms were undertaken. The judicial system was based on the Swiss Civil Law and Civil Procedure Law, the Italian Penal Code and the French Administrative Law.<sup>57</sup> This reform strengthened the rights of women in Turkey and changed their status in society. Women were granted crucial political and social rights long before their western counterparts, mainly as the new regime considered women as the window of the new and modernized nation.<sup>58</sup> For example the newly established Civil Code granted women equal rights in the matter of divorce. Additionally, they received the right to vote in 1930<sup>59</sup> which is quite

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<sup>53</sup> Women in Islamic Society, Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t243/e370> (last accessed on 14 June 2019).

<sup>54</sup> Ibid.

<sup>55</sup> Ipek Mercil/Osman Senemoglu, The Historical Grounds of the Turkish Women's Movement, in: Human and Social Studies, Vol. III, no. 1, 204, p.15.

<sup>56</sup> Women in Turkey, Turkish Cultural Foundation, <http://www.turkishculture.org/lifestyles/turkish-culture-portal/the-women/women-in-turkey-201.htm?type=1> (last accessed on 10 May 2019).

<sup>57</sup> Dilek Elveren, Women, Law, and Judicial Decision-Making in Turkey: Legal and Judicial Reform Movement and Gender Equality, in: Women, Law, and Judicial Decision-making in the Middle East and North Africa: Toward Gender Justice, p. 10, [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/gender\\_justice.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/gender_justice.pdf) (last accessed on 10 May 2019).

<sup>58</sup> Seda Kalem, Gender and what is made of it: Being a woman judge in Turkish judicial culture, Franz von Liszt Institute Working Paper 2017/01, [http://intlwg-jiessen.de/fileadmin/user\\_upload/bilder\\_und\\_dokumente/forschung/Gender/Paper-Kalem-online-final.pdf](http://intlwg-jiessen.de/fileadmin/user_upload/bilder_und_dokumente/forschung/Gender/Paper-Kalem-online-final.pdf) (last accessed on 21 July 2019), p. 5.

<sup>59</sup> Mercil/Senemoglu, p. 15.

similar to the average of the European states, with Finland in 1906 being the first one and Liechtenstein in 1984 being the last one.<sup>60</sup>

In Turkey, according to official documents the first woman judge was appointed in 1936, although some unofficial sources claim that a woman judge was appointed as early as 1922.<sup>61</sup> This occurred earlier than in some western European countries, which is a direct consequence of the westernization efforts of the new Republic that has paid particular attention to the modernization of women.<sup>62</sup> Since the beginning of this new judicial system, women were legally allowed to become judges and did not face legal barriers while entering law schools, legal professions or the judiciary.<sup>63</sup> Thus, the achievements from the beginning of the Turkish Republic are still the base for women's equal rights and their participation in the law.

## II. Women in legal professions today

The following section will take a deeper look into women in legal professions (advocacy, judiciary, female law professors) today and the different opportunities and obstacles they encounter while entering a career and climbing the career ladder.

### 1. Germany

Before examining the various legal professions, it is worth taking a look at the fundamental right of equality ensured in the German Basic Law to understand certain governmental measures aiming at equality by promotion of women in certain areas.

Beyond the right to equality guaranteed by Article 3 of the Basic Law, Article 3.2 sentence 2 of the Basic Law contains a mandate for the enforcement of gender equality as a constitutional objective.<sup>64</sup> By this, incentive measures can be taken, even if this conflicts with the prohibition of discrimination pursuant to Article 3.3 sentence 1 of the Basic Law.<sup>65</sup> But

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<sup>60</sup> See implementation dates for women's suffrage in 20 European countries, Einführungsdaten des Frauenwahlrechts in 20 Europäischen Ländern, Deutscher Bundestag, [https://www.bundestag.de/besuche/ausstellungen/parl\\_hist/frauenwahlrecht/einfuehrung-246998](https://www.bundestag.de/besuche/ausstellungen/parl_hist/frauenwahlrecht/einfuehrung-246998) (last accessed on 10 May 2019).

<sup>61</sup> Kalem, p. 5.

<sup>62</sup> Mercil/Senemoglu, p. 18.

<sup>63</sup> Kalem, p. 5.

<sup>64</sup> The details are highly controversial, Christine Langenfeld, Art. 3 Abs. 2 GG, in: Theodor Maunz/Günter Dürig (founders), Grundgesetz-Kommentar, 86. EL (München 2019), margin number 56; Werner Heun, Art. 3 GG, in: Horst Dreier (ed.), Grundgesetz Kommentar, 3rd Edition (Tübingen 2013), marginal number 98, 99; Antje von Ungern-Sternberg, Parité-Gesetzgebung auf dem Prüfstand des Verfassungsrechts, in: JZ 2019, p. 525, 532.

<sup>65</sup> According to Article 1.3 of the Basic Law, state bodies are bound to this prohibition of



in general, according to the *Nachtarbeit* decision by the German Constitutional Court, difference in treatment on the grounds of gender is prohibited, unless biological differences between men and women make this mandatory.<sup>66</sup> In addition, conflicting constitutional law – the principle of equal rights of Article 3.2 of the Basic Law<sup>67</sup> – can be considered as a justification for differentiation. This conflict situation is then subject to a constitutional review. One way of achieving the mandate to promote equality among men and women is for the legislature to take certain measures. For instance, a law on the quota of women for certain companies was passed in 2015 by the German federal legislature.<sup>68</sup> The constitutionality of this regulation, however, is highly controversial.<sup>69</sup>

Another example – also relevant for legal professions – for such a measure are the Federal Equality Act and the Equality Acts of the federal states.<sup>70</sup> These laws oblige to – under certain conditions and for certain positions – give preference to the woman when hiring new employees.

### **a. Advocacy and Judiciary**

In contrast to a professorial career, anyone who has successfully passed the two state exams (*Erstes und Zweites Staatsexamen*) and is registered with a bar association may practice as a lawyer. For the first time, in 2017, more women than men were admitted to the bar.<sup>71</sup> The overall percentage of women is currently 35%;<sup>72</sup> 42% of female lawyers

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differentiation, but private bodies must also consider the radiant effect of the fundamental rights within the framework of the *mittelbare Drittwirkung* (indirect effect between private parties).

<sup>66</sup> Judgement from 28 January 1992 (1 BvR 1025/84), NJW 1992, p. 964.

<sup>67</sup> This states that the legislator and the administration have the right to compensate for factual disadvantages that typically affect women through favourable regulations and to promote the equality of women, Michael Wrase/Alexander Klose, Gleichheit unter dem Grundgesetz, in: Lena Foljanty/Ulrike Lembke (eds.), Feministische Rechtswissenschaft, p. 93.

<sup>68</sup> According to the FüPoG, which entered into force on 1 May 2015, 30% of new supervisory board positions to be filled must be held by women, Ulrich Seibert, Frauenförderung durch Gesellschaftsrecht – Die Entstehung des Frauenförderungsgesetzes, in: NZG 2016, p. 16-20.

<sup>69</sup> For more on constitutional concerns see Tony Grobe, Die Geschlechterquote für Aufsichtsrat und Vorstand, in: AG 2015, p. 289-303.

<sup>70</sup> See § 8 Bundesgleichstellungsgesetz (BGleiG); in Hessen: Hessisches Gleichberechtigungsgesetz (HGIG).

<sup>71</sup> In fact 52%, see Jessika Kallenbach, Zukunft der Anwaltschaft ist weiblich – dennoch Benachteiligung von Frauen, Anwaltsblatt, 28 May 2019, <https://anwaltsblatt.anwaltverein.de/de/news/zukunft-der-anwaltschaft-ist-weiblich-dennoch-benachteiligung-von-frauen> (last accessed on 14 May 2019).



work part-time.<sup>73</sup> Concerning the *gender wage gap*, it can be noted that the hourly earnings of a female lawyer are almost ten euros less than men. This, however, can also be traced back to the unevenly profitable branches of law women and men tend to choose.<sup>74</sup> Most women pursue a *Fachanwalt* (specialist lawyer) in Family, Labour or Tenant Law.<sup>75</sup> But a *gender wage gap* is not uncommon within corporate law firms as well for the salary of first-year-associates is almost 10,000 euros less than of male young professionals.<sup>76</sup> Despite the goal of achieving a 25-30% “quota” of women in equity-partner positions,<sup>77</sup> the larger international law firms located in Germany have not yet succeeded in doing so.<sup>78</sup> On average, less than 15% of equity partners are female.<sup>79</sup> This is concerning since the number of men and women applying to international law firms is about the same. On the contrary, there are programs to promote women which law firms are already using. One of Germany's biggest partnership *Freshfield Bruckhaus Deringer*, for instance, recently began to offer a one-year career coaching program called “Anwältin sucht Referendarin”, in which the focus lies on the comprehensive mentoring by a female lawyer for

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<sup>72</sup> Anteil der Rechtsanwältinnen seit 1970, Bundesrechtsanwaltskammer, [https://www.brak.de/w/files/04\\_fuer\\_journalisten/statistiken/2019/anteil-rainnen-70-2019\\_zahlen.pdf](https://www.brak.de/w/files/04_fuer_journalisten/statistiken/2019/anteil-rainnen-70-2019_zahlen.pdf) (last accessed on 14 May 2019).

<sup>73</sup> The percentage of those with two or more children amounts to 62% compared to men with 16 or 21%, Uta Katharina Schmidt, The future is female! Empirische Forschung zum Anwaltsmarkt, *Anwaltsblatt*, 28 Mai 2019, <https://anwaltsblatt.anwaltverein.de/de/anwaeltinnen-anwaelte/vereinsarbeit/the-future-is-female-empirische-forschung-zum-anwaltsmarkt> (last accessed on 14 May 2019).

<sup>74</sup> Women predominantly work in labour and family law, whereas economic and commercial law is strongly influenced by male colleagues, *ibid.*

<sup>75</sup> Fachanwälte zum 01.01.2019, Bundesrechtsanwaltskammer, [https://www.brak.de/w/files/04\\_fuer\\_journalisten/statistiken/2019/fachanwaltstatistik\\_2019.pdf](https://www.brak.de/w/files/04_fuer_journalisten/statistiken/2019/fachanwaltstatistik_2019.pdf) (last accessed on 16 June 2019).

<sup>76</sup> These figures are not official and can only come from personal information, *Frauenförderung: Was den Erfolg von Anwältinnen verhindert*, JUVE, 1 March 2016, <https://www.juve.de/nachrichten/namenundnachrichten/2016/03/frauenfoerderung-was-den-erfolg-von-anwaeltinnen-verhindert> (last accessed on 16 June 2019).

<sup>77</sup> For example see *Frauenanteil: Linklaters und Ashurst setzen sich große Ziele*, JUVE, 10 June 2014, <https://www.juve.de/nachrichten/namenundnachrichten/2014/06/frauenanteil-linklaters-und-ashurst-setzen-sich-groese-ziele> (last accessed on 14 June 2019).

<sup>78</sup> *Frauenförderung: Was den Erfolg von Anwältinnen verhindert*, JUVE, 1 March 2016, <https://www.juve.de/nachrichten/namenundnachrichten/2016/03/frauenfoerderung-was-den-erfolg-von-anwaeltinnen-verhindert> (last accessed on 14 June 2019).

<sup>79</sup> An overview can be found in Anja Hall, *Dürfen sie nicht oder wollen sie nicht?*, 4 April 2018, LTO, <https://www.lto.de/recht/kanzleien-unternehmen/k/anwaeltinnen-equity-partnerschaft-grosskanzlei-frauen-foerderung/> (last accessed on 14 June 2019).

the benefit of a law student (during the *Referendariat*<sup>80</sup>).<sup>81</sup>

Compared to the proportion of women in the free market economy, more women seem to prefer the profession of judgeship or prosecution. In 2016, women represented almost half of all judges at federal as well as state level and prosecutors.<sup>82</sup> Provided that the exam grades meet the current requirements,<sup>83</sup> the path to the office of judge or prosecutor is possible without major obstacles. Particularly this profession appeals to many female law graduates due to its flexibility and possibility of part-time work. The advantages are diverse: a high status, a good income, and no pressure of producing enough publications.

## **b. Female Law Professors**

Even though today there are more female than male law students at German universities,<sup>84</sup> the percentage of female law professors remains far behind. A data collection from 2017 shows that of 892 professorial chairs – including junior professors – only 157 are occupied by women.<sup>85</sup> This also means that there are faculties with no or very few female law professors. Thus, a considerable number of law students do not come in contact with female teachers and lack role models.<sup>86</sup> Although there is a higher proportion of women in junior professorships, female junior professors are not automatically able to take over a full professorship. In order to someday become a „full“ professor, a habilitation<sup>87</sup> is still a must for advancing on the scientific career path. During this period, prospective professors are often employed at professorial chairs or research institutes as academic coun-

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<sup>80</sup> The traineeship consisting of stages in court, prosecution, administration, and law firms must be completed by every law student before taking the 2nd state exam.

<sup>81</sup> For more details see Freshfields, <https://ssl.freshfields.com/karriere/female-training-programme.html> (last accessed 14 June 2019).

<sup>82</sup> According to Richterstatistik 2016, Bundesamt für Justiz, Stand: 11. Dezember 2017, [https://www.bundesjustizamt.de/DE/SharedDocs/Publikationen/Justizstatistik/Richterstatistik\\_2016.pdf?\\_\\_blob=publicationFile&v=2](https://www.bundesjustizamt.de/DE/SharedDocs/Publikationen/Justizstatistik/Richterstatistik_2016.pdf?__blob=publicationFile&v=2) (last accessed on 24 June 2019), women account for 44.45% of all judges and 45.94% of prosecutors.

<sup>83</sup> The required grade point average differs in the federal states: in Hessen, applicants are expected to have finished both exams with 8,5 points but exceptions are possible if the sum of both exams results in 17 points, according to Hessisches Ministerium der Justiz, <https://justizministerium.hessen.de/karriere/berufe-der-rechtspflege/richter-richter/bewerbung-als-richter-in-richter> (last accessed on 14 June 2019).

<sup>84</sup> In 2017, 55.79% of law students were female, Sacksofsky/Stix, p. 7.

<sup>85</sup> Which equates to 17.6% of all law professors, *ibid.*, p. 8.

<sup>86</sup> Ulrike Schultz, Warum gibt es so wenige Professorinnen in der Rechtswissenschaft?, in: Journal Netzwerk Frauen- und Geschlechterforschung NRW Nr. 43/2018, p. 56.

<sup>87</sup> Usually a very extensive monograph.

sellors. For the final phase, habilitation scholarships are obtained, or financial help is provided by the family. The main factors diminishing the chances for women becoming law professors are the long qualification period, a relatively low income, subsequently a mandatory change of location; all during the rush hour of life, when families are being planned and alternatives in the judiciary may seem attractive. On average, the appeal occurs at the age between 35 and 40 years,<sup>88</sup> which is discouraging for someone with the desire to have children. Every university invests in equality work, but this is often viewed as costly and partly inefficient.

In addition, there are various programs for the enhancement of women in academia. For example, since 2018 certain positions have been funded by the *Leibniz-Professorinnen-Programm*,<sup>89</sup> which enables female professors to occupy a W2/W3 position (undated or with the option of a tenure track<sup>90</sup>) for 5 years.

## 2. United States of America

Unlike other countries such as Germany, the U.S. has not yet imposed any mandatory hiring quotas based on gender. Anti-discrimination laws and constitutional prohibitions against discrimination could otherwise be violated.<sup>91</sup> Still, California – as the first state to enact such legislature – passed a bill in 2018, requiring at least one female director on the board of each California-based public corporation.<sup>92</sup> It is yet unclear, how this will hold up in courts.

### a. Advocacy and Judiciary

Anyone who has graduated from a law school with a Juris Doctor and is registered with a (state) bar fulfils the requirements for becoming a lawyer. While women in the U.S. ac-

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<sup>88</sup> Schultz, Journal, p. 58.

<sup>89</sup> Ute Sacksofsky/Berit Völzmann, Frauenförderung in der Wissenschaft durch Professorinnenprogramme. Das Beispiel der Leibniz-Gemeinschaft, Band 46 (Baden-Baden 2018), p. 10.

<sup>90</sup> A junior professor receives a lifetime professorship after a limited probationary period, academics, August 2014, <https://www.academics.de/ratgeber/tenure-track> (last accessed on 16 June 2019).

<sup>91</sup> Philip M. Berkowitz, Gender, Diversity, European Quotas, and U.S. Law, Littler, 10 September 2015, <https://www.littler.com/publication-press/press/gender-diversity-european-quotas-and-us-law> (last accessed on 16 June 2019).

<sup>92</sup> California becomes first state to require women on company boards, The Guardian, 1 October 2018, <https://www.theguardian.com/us-news/2018/oct/01/max-benwell-maxbenwellguardiancouk-california-women-board-directors-companies-law-jerry-brown> (last accessed on 16 June 2019).

count for about 38% of attorneys<sup>93</sup> and are well represented on all associate levels, only 19% of the equity partners are female<sup>94</sup>. This may also be a result of the different expectations women embody. They do want promotion to the next level but they are less excited about making partner.<sup>95</sup> In law firms, the gender pay gap is much wider than in other industries.<sup>96</sup> Maybe not surprising is the perception of women concerning work-life balance, ergo the relationship between career success and their personal lives. Compared to 60% of male lawyers only 44% of women believe that both parts can be satisfied, which is the main reason for women not striving for partnership.<sup>97</sup>

Law firms in the U.S. have taken important steps to improve the experience of women. One of the measurements includes hiring strategies which are supposed to reduce bias in recruiting. Moreover, women can benefit from the option of working part time<sup>98</sup> and telecommuting. All these possibilities,<sup>99</sup> however, lead to the overall perception that this can have a negative impact on their career. A way to enable gender diversity could be realized through specific targets, which could then hold leaders accountable.

The numbers regarding women in the (federal) judiciary are in the same field. At Federal District Courts, 34% of all judges are women and at the U.S. Circuit Courts and the U.S. Supreme Court 33%.<sup>100</sup> The educational requirements to become a judge include a bachelor's degree in any field (usually history, business, political science, economics), a law degree (Juris Doctor) from a law school, which takes about 3 years to complete and the passing of the bar exam. Anyone who wishes to become a judge is also recommended to work as an attorney for a few years after completing law school. The office of judge

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<sup>93</sup> Jennifer Cheeseman Day, More Than 1 in 3 Lawyers Are Women, 8 May 2018, United States Census Bureau, <https://www.census.gov/library/stories/2018/05/women-lawyers.html> (last accessed on 13 June 2019).

<sup>94</sup> A Current Glance at Women in the Law, April 2019, American Bar Association (Chicago 2019), <https://www.americanbar.org/content/dam/aba/administrative/women/> (last accessed on 13 June 2019), p. 2.

<sup>95</sup> According to the survey by Marc Brodherson, Laura McGee, Mariana Pires dos Reis, Women in law firms, McKinsey & Company, October 2017, <https://www.mckinsey.com/~media/mckinsey/featured%20insights/gender%20equality/women%20in%20law%20firms/women-in-law-firms-final-103017.ashx> (last accessed on 18 May 2019), p. 5.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> However, there is need for improvement regarding on-site childcare.

<sup>99</sup> Including participating in part-time or reduced-schedule program or taking maternity or paternity leave.

<sup>100</sup> ABA, p. 5.

is attained by appointment through the government or election by the public<sup>101</sup>. Beyond that, some states require a certain age and residence of the person.<sup>102</sup>

### **b. Female Law Professors**

Similar to Germany, the majority of students enrolled in an US-American law school today are female.<sup>103</sup> In the United States 28 percent of all tenured law professors and 37 percent of full-time law faculty are women.<sup>104</sup> The paths to law teaching can be very different. The classical path usually includes an exceptional academic performance in law school, service on a law review, and a prestigious judicial clerkship. The ability to teach law can also be achieved by gaining a qualification such as a LLM/Post-Doc, some practical experience, a "Visiting Assistant Professor", and completing publishable scholarly work.<sup>105</sup> Indeed, the time between entering graduate school and attaining the rank of Full Professor in a university usually amounts to 17-20 years.<sup>106</sup> In order to teach law, however, the title is not as relevant.

## **3. Turkey**

Article 10 of the Turkish Constitution states that men and women have equal rights and that the state is obligated to fulfill this equality. Measures, which are taken to reach this

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<sup>101</sup> Michael Morales, I'll be the Judge of That!, Legal Career Path, <https://legalcareerpath.com/how-to-become-a-judge/> (last accessed on 16 June 2019).

<sup>102</sup> For instance, to become a judge at a Maryland Court, judges need to have resided in the state for five years and six months in the area and be at least 30 years old at the time of appointment, <https://mdcourts.gov/judgeselect/judqualifications> (last accessed on 16 June 2019).

<sup>103</sup> Data from 2018, 2018 1L Enrollment by Gender & Race/Ethnicity, ABA statistics, [https://www.americanbar.org/groups/legal\\_education/resources/statistics/](https://www.americanbar.org/groups/legal_education/resources/statistics/) (last accessed on 14 June 2019).

<sup>104</sup> This number is from 2007-2008, The American Bar Foundation, After Tenure: Post-Tenure Law Professors in the United States, 2011, [http://www.americanbarfoundation.org/uploads/cms/documents/after\\_tenure\\_report-\\_final-\\_abf\\_4.1.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/after_tenure_report-_final-_abf_4.1.pdf) (last accessed on 24 May 2019), p. 46.

<sup>105</sup> For more information see Brian Leiter, Paths to Law Teaching, University of Chicago. The Law School, last updated in November 2017, <https://www.law.uchicago.edu/careerservices/pathstolawteaching> (last accessed on 16 June 2019).

<sup>106</sup> USA, Academic Career Structure, <https://www.eui.eu/ProgrammesAndFellowships/AcademicCareersObservatory/AcademicCareersbyCountry/USA#RequirementsforPositions> (last accessed on 16 June 2019).

goal, must not be construed as a breach of the principle of equality.<sup>107</sup> In other words, men and women are equal before the law and it is no longer possible to reject the application of a woman for a post just because she is a woman. The state guarantees women equal work and pay opportunities, but there are still a lot of disadvantages caused by the remaining traditional value system.<sup>108</sup> The most important change concerns women and their work. The new Civil Code which entered into force in 2002 states that women are free to choose their own job and profession and ensures equality in the family,<sup>109</sup> e.g. the clause saying "The head of the family is husband" was changed into "spouses carry out the conjugal community together."<sup>110</sup> Additionally in 2005 the new penal code entered into force strengthening women's rights too.<sup>111</sup> In 2009 the Law for the Equal Opportunities Commission for Women and Men was adopted and a Commission was established shortly after, which analyzes legal proposals from a gender equality perspective.<sup>112</sup> This change in law significantly strengthens the position of women in society. But still surveys state that Turkish women are more eager to not work if their husband provides a „sufficient“ income. This shows that Turkish law may guarantee formal equality between men and women, but gender equality – especially in education – has not yet been achieved until today and women, especially in rural areas, lag behind men. For example, many women still lack equal access to school, education, and vocational training especially in rural areas.<sup>113</sup> That is why the Prime Ministry of the Republic of Turkey enforced the

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<sup>107</sup> See the Constitution of the Republic of Turkey,

[https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf) (last accessed on 18 July 2019).

<sup>108</sup> Dilek, p. 10, 11.

<sup>109</sup> Directorate-General for International Policies, Note on Gender Equality in Turkey, p.5, [http://www.europarl.europa.eu/RegData/etudes/note/2012/462428/IPOL-FEMM\\_NT\(2012\)462428\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/2012/462428/IPOL-FEMM_NT(2012)462428_EN.pdf) (last accessed on 6 November 2019).

<sup>110</sup> National Report of Turkey about the background of gender equality policies on the Beijing +15 questionnaire of the UNECE, p. 4, <https://www.unece.org/fileadmin/DAM/Gender/documents/Beijing%2B15/Turkey.pdf> (last access on 6 November 2019).

<sup>111</sup> Overview about basic amendments which were introduced in National Report of Turkey about the background of gender equality policies on the Beijing +15 questionnaire of the UNECE, p. 5, <https://www.unece.org/fileadmin/DAM/Gender/documents/Beijing%2B15/Turkey.pdf> (last access on 6 November 2019).

<sup>112</sup> Directorate-General for International Policies, Note on Gender Equality in Turkey, p. 6, [http://www.europarl.europa.eu/RegData/etudes/note/2012/462428/IPOL-FEMM\\_NT\(2012\)462428\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/2012/462428/IPOL-FEMM_NT(2012)462428_EN.pdf) (last accessed on 6 November 2019).

<sup>113</sup> Prime Ministry of Turkey, General Directorate on the Status and Problems of Women, Response of the Republic of Turkey to the Questionnaire on Implementation of the Beijing Platform for Action, Ankara April 2004,

Gender Equality National Action Plan in 2008 which had a duration of 5 years to strengthen women's rights. Unfortunately, there are no official data of the results available.

### **a. Advocacy and Judiciary**

In 2010, there were 63,429 lawyers in Turkey according to an estimation, 35% of them being women.<sup>114</sup> Regarding the amount of female practicing lawyers today, there are unfortunately no reliable statistics available; the last data from 2016 shows a percentage of female lawyers at 42.3%.<sup>115</sup> For 2015, a statistic exists which states that the share of female judges was 37% and the proportion of female prosecutors 7%, accounting for 27% of the whole judiciary in Turkey.<sup>116</sup> In 2019, according to figures of the Turkish Ministry of Justice out of a total of 20,777 judges and prosecutors on duty, 7,493 were female, which is an amount of 36.1%.<sup>117</sup> This is quite a high amount, especially compared to the number of working women in Turkey, which was just about 32.9% in 2018<sup>118</sup> (while the average of the OECD states is 60,9%<sup>119</sup>) and the amount of women still being illiterate, which is estimated to be as high as 7%<sup>120</sup>.

When looking at judges only, the last accessible detailed data is from 2016. In 2016 there has been a total of 42% of female judges in Turkey; in the category of first instance professional judges 42% of them were female, in the second instance 32% of them and in

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<https://www.un.org/womenwatch/daw/Review/responses/TURKEY-English.pdf> (last accessed on 9 June 2019).

<sup>114</sup> Ethan Michelson, Women in the Legal Profession, 1970-2010: A Study of the Global Supply of Lawyers, in: Indiana Journal of Global Legal Studies, Vol. 20, Issue 2, Indiana University Maurer School of Law, 2013, p. 1115,

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2193028](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2193028) (last accessed on 10 May 2019).

<sup>115</sup> According to data of the Justice Ministry General Directorate of Criminal Records and Statistics, <https://www.barobirlik.org.tr/Haberler/avukat-sayilari-31122016-75022> (last accessed on 17 July 2019).

<sup>116</sup> Kalem, p. 2.

<sup>117</sup> Number of female judges and prosecutors in Turkey at its highest, 5 June 2019, <http://www.hurriyetdailynews.com/number-of-female-judges-and-prosecutors-in-turkey-at-its-highest-143963> (last accessed on 25 June 2019).

<sup>118</sup> OECD statistics 2018, <https://data.oecd.org/emp/employment-rate.htm#indicator-chart> (last accessed on 25 May 2019).

<sup>119</sup> According to the OECD statistics from 2018, <https://data.oecd.org/emp/employment-rate.htm#indicator-chart> (last accessed on 25 May 2019).

<sup>120</sup> Hürcan Asli Aksoy, Die türkische Frauenrechtsbewegung, 2014, <http://www.bpb.de/internationales/europa/tuerkei/184972/frauenrechte> (last accessed on 10 May 2019).



the Supreme Court even 47% of the judges were female according to the European Commission for the Efficiency of Justice Studies.<sup>121</sup> This seems quite normal compared to the average proportion of female judges in the member states of the Council of Europe, which states percentages of 53% female judges, 57% female judges at courts of first instance, 50% female judges at courts of second instance and 37% female supreme court judges.<sup>122</sup> But when looking at the amount of female court presidents it shows that even though women as judges may be standard nowadays, women rather tend to not have a leading role in the law. Overall, only 14% of the Turkish court presidents were female in 2016.<sup>123</sup> Regarding the Superior Criminal Courts, which had 305 presiding judges in 2015, only 17 of them were female.<sup>124</sup> This is an amount of just about 5.6%. Regarding the courts in the second instance, the Court of Appeals, the situation is even worse since there was no presiding female judge at all in 2016<sup>125</sup> and furthermore, the Court of Appeals in civil cases has never been presided by a woman in its entire history<sup>126</sup>. The Supreme Court on the other hand had an amount of 33% female presiding judges in 2016.<sup>127</sup> This reveals that the amount of women in law may not be low, but still women are not equally represented compared to their male counterparts. Especially regarding the presence of women in higher positions in the professional hierarchy such as the court presidency shows the still existing high inequality. Seda Kalem addresses the problems faced by female judges in her working paper „Gender and what is made of it: Being a woman judge in Turkish judicial culture”.<sup>128</sup>

By looking at the prosecution a similar picture emerges. Only 32% of all prosecutors are female, 33% of the prosecutors in the first instance are women, while 10% female prosecutors work in the second instance and in the highest instance the share of female prose-

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<sup>121</sup> European Judicial Systems: Efficiency and Quality of Justice, CEPEJ Studies No. 26, 2018, <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c> (last accessed on 10 May 2019), p. 114, 115.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid, p. 116.

<sup>124</sup> Hâkimler ve Savcılar Yüksek Kurulu, 2015 Yılı Faaliyet Raporu, Strateji Geliştirme Bürosu, Şubat 2016, p. 120.

<sup>125</sup> European Commission for the Efficiency of Justice Systems, CEPEJ Studies No. 26, 2018, <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c> (last accessed on 25 May 2019), p. 116.

<sup>126</sup> Kalem, p. 4.

<sup>127</sup> European Commission for the Efficiency of Justice Systems, CEPEJ Studies No. 26, 2018, <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c> (last accessed on 25 May 2019), p. 116.

<sup>128</sup> Available on Franz von Liszt Institute Page, <http://intlwg-giessen.de/comparative-legal-gender-studies/publikationen/>.



cutors is 20%.<sup>129</sup> This is a very small number compared to other countries, since – on average – the distribution of female prosecutors is about 53% in the member states of the Council of Europe.<sup>130</sup> It seems even more extreme regarding the heads of prosecution offices with merely 2% of them being female (in the first instance). This is quite an underrepresentation compared to the average of 33% in the member states of the Council of Europe.<sup>131</sup>

## **b. Female Law Professors**

According to Turkish statistics, about 40% of professors at universities are female.<sup>132</sup> However, there is no statistic accessible, which states the number of female law professors in particular, but it seems to be quite similar. This is a very high amount compared to other countries in Europe.

## **III. Comparison and Outlook**

### **1. Comparison**

Germany, the United States and Turkey have slightly different issues regarding gender in legal professions, but they seem to have one thing in common: the higher the position, the less women are represented. In all examined countries there is a need for women to ease the possibilities of working in higher positions (e.g. as equity-partners) and allow more women to become law professors. This certainly demands a change in mindset and traditional structures.

The figure below shows that the percentage of female lawyers is slowly rising and considering the number of female law students, the percentage will most likely rise within the next decades.

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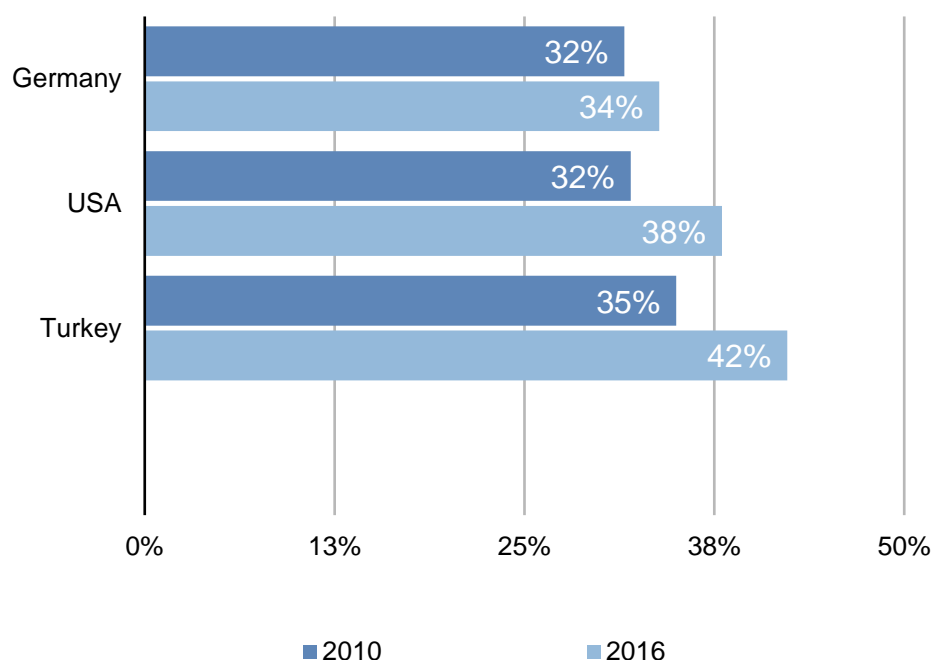
<sup>129</sup> European Commission for the Efficiency of Justice Systems, CEPEJ Studies No. 26, 2018, <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c> (last accessed on 25 May 2019), p. 144.

<sup>130</sup> European Commission for the Efficiency of Justice Systems, CEPEJ Studies No. 26, 2018, <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c> (last accessed on 10 May 2019), p. 145.

<sup>131</sup> *Ibid*, p. 147.

<sup>132</sup> Hürcan Asli Aksoy, *Die türkische Frauenrechtsbewegung*, 2014, <http://www.bpb.de/internationales/europa/tuerkei/184972/frauenrechte> (last accessed on 10 May 2019).

Fig.: Percentage of female lawyers<sup>133</sup>



## 2. Germany

Especially concerning the small number of female equity partners in big law firms, it is not enough for women to speak up and fight for more equality and support mechanisms. It is the male colleagues who are in demand. Gender quotas are of secondary importance. The aim should be to create conditions so that women can combine career and private life. This is also in the law firms' interest, because if well-trained female lawyers leave, they will contribute their knowledge elsewhere in the future. Apart from that, the developments suggest that the future for lawyers is female. An initiative by the Federal Council from 2018 for more flexibility during the *Referendariat* (extending it to 30 months when proving family reasons) failed.<sup>134</sup> But actions like this will be necessary in the future.

Regarding the professorial career path, Germany could learn from other countries. As long as the habilitation is a requirement for a full professorship, the number of female law professors will grow only slowly. Any *Professorinnen-Programme* will not be able to overcome this problem.

In Germany, there are already special mechanisms to promote parity in promotion procedures for non-judge staff, judges, enforcement agents and the public prosecutors, see § 8

<sup>133</sup> See footnotes 71, 92, 109, 110.

<sup>134</sup> Zakiya Mzee, Flexible Arbeitszeitmodelle, *Anwaltsblatt*, 4 January 2018, <https://anwaltsblatt.anwaltverein.de/de/news/referendariat-76206?full=1> (last accessed 16 May 2019).

BGleiG.<sup>135</sup> Moreover, there is the association of female lawyers (*Deutscher Juristinnenbund*), which has existed for more than 70 years now and aims to improve the situation for women in law, realize equal rights in the legal profession and overcome still existing burdens for female lawyers.<sup>136</sup> The topic of equality between men and women in law is a topic which is being discussed in German politics and especially the law studies. For example, a big German publishing house (*nomos*) for law studies started to release a special book series which solely deals with women in law, called "Schriften zur Gleichstellung" ("Publications on Gender Equality").<sup>137</sup> Also, there is a feminist law journal called „STREIT“ which deals with women's rights and women-related jurisprudence and therefore critically examines judicial decisions, existing standards and conditions regarding women in the law. Besides the ongoing social discourse there are political approaches to increase the number of female law professors by promoting female professors through establishing programs like the „Professorinnenprogramm“. Under this program more than 500 female professors have already been appointed.<sup>138</sup> But this general development doesn't seem to capture the legal studies, since the amount of female law professors nearly stagnated in the past few years.<sup>139</sup>

It can therefore be expected that the situation for women will in fact increase in the judiciary and there will be even more mechanisms undertaken to implement actual equality between men and women in the law, but in the legal academia no change can be expected in the near future as not the legal circumstances but the factual circumstances are the ones hindering actual equality. Such a change will take longer and requires a modification of the whole system of becoming a law professor.

### 3. United States of America

The situation is similar in the U.S. Women who wish to become equity-partners face the biggest obstacles. For instance, it is nearly impossible for a partner who works part-time to move up to the equity-partnership. Maybe the most important conclusion that can be drawn is that before there is no equality in power, there can be no gender equality.

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<sup>135</sup> Gesetz für die Gleichstellung von Frauen und Männern in der Bundesverwaltung und in den Unternehmen und Gerichten des Bundes (Bundesgleichstellungsgesetz - BGleiG).

<sup>136</sup> Weblink to their homepage: <https://www.djb.de>.

<sup>137</sup> For titles of the book series see *Schriften zur Gleichstellung* in *nomos* eLibrary, <https://www.nomos-elibrary.de/buchreihe/B001011400/schriften-zur-gleichstellung> (last accessed on 16 June 2019).

<sup>138</sup> Das Professorinnenprogramm wird fortgesetzt, Bundesministerium für Bildung und Forschung, 7 April 2017, <https://www.bmbf.de/de/professorinnenprogramm-wird-fortgesetzt-4068.html>.

<sup>139</sup> Ulrike Schultz, Interview mit Sabine Berghahn, Warum gibt es so wenig Juraprofessorinnen?, 2018, <https://www.dasgleichstellungswissen.de/warum-gibt-es-so-wenige-juraprofessorinnen%3F.html> (last accessed on 9 June 2019).

#### 4. Turkey

In Turkey, the situation regarding women in law is still complicated and it seems that the political will to empower women and to improve their current situation is still missing. This can be seen in the lack of new initiatives to strengthen the situation of working women and additionally in the status of ongoing projects that seem to be no longer in process. For example, the Gender Equality National Plan, which was released in 2008 by the Turkish government, had a duration of 5 years and therefore ended in 2013. Unfortunately, there are no results available yet. Another fact which may hinder the actual implementation of equality between men and women, which is formally stated, is the fact that still more women than men are illiterate.<sup>140</sup> It seems as if in the rural Turkish society patriarchal rules are still accepted and thus especially women from these regions have a factual burden to work in legal professions. As the women rights activist Hülya Gülbahar stated: Formally the important reforms to guarantee women and men equality have taken place and the rules to ensure gender equality exist, but they are not yet implemented.<sup>141</sup> Besides, according to interviews with female judges, even in marriages, in which both partners are judges, the sacrifices are always seen as striking the woman.<sup>142</sup>

Moreover, the future of women in law and judiciary is influenced by the difficulties women face in society nowadays. Still violence against women and girls is one of the most spread crimes. Women activists stated – which was confirmed by the Turkish ministry of justice in 2009 – that the amount of crimes against women and girls increased in the last 10 years by about 1400%, but both appeased that this shocking number may result by the society starting to be more aware about this problem and now rather tends to report this crimes.<sup>143</sup> As a consequence Turkey was the first state to ratify the „Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence“ in 2012. In a Strategic Paper on Judicial Reforms the Turkish Government stated that „The necessary steps are going to be taken in order to implement the mentioned Law effectively by conducting works in collaboration with the relevant ministries, authori-

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<sup>140</sup> World Economic Forum, The Global Gender Gap Report, [http://www3.weforum.org/docs/WEF\\_GGGR\\_2018.pdf](http://www3.weforum.org/docs/WEF_GGGR_2018.pdf) (last accessed on 25 May 2019), p. 277.

<sup>141</sup> Hürcan Asli Aksoy, Die türkische Frauenrechtsbewegung, 2014, <http://www.bpb.de/internationales/europa/tuerkei/184972/frauenrechte> (last accessed on 10 May 2019).

<sup>142</sup> Kalem, Seda: Gender and what is made of it: Being a woman judge in Turkish judicial culture, Franz von Liszt Institute Working Paper 2017/01; *ibid.*, Interview Judge #3.

<sup>143</sup> Hürcan Asli Aksoy, Die türkische Frauenrechtsbewegung, 2014, <http://www.bpb.de/internationales/europa/tuerkei/184972/frauenrechte> (last accessed on 10 May 2019).

ties, institutions and universities.<sup>144</sup> Furthermore the Turkish Government declared the Protection of women against domestic violence to one of its goals in the Judicial Reform Strategy Paper of 2015, which had a duration until 2019.<sup>145</sup> Equality between men and women in the law and judiciary requires women being recognized as equal members of the society. This requires the state to fulfill its obligations to protect their physical integrity. Only in this way can the basic conditions be created for women to enforce their rights, which is the prerequisite for future equality.

The absence of reliable data since 2016 is another problem that was apparent throughout the research for this paper. This points to the conclusion that the actual equality of women and men in the law has no priority level. Though, only recently there seems to be a positive development. According to figures of the Turkish Ministry of Justice, the number of female judges and prosecutors has reached its highest level in the past few years. Additionally, a new judicial reform strategy paper was unveiled in May 2019, which set the aim to maintain gender equality in personnel recruitment.<sup>146</sup> Unfortunately, this Strategy Document is not legally binding and considered to be only a framework for a National Action Plan, which still needs to be published. It remains to be seen whether the implementation of gender equality in the law will be one of the primary targets of the Action Plan, which sets concrete goals and measures to achieve these objectives.

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<sup>144</sup> Republic of Turkey, Ministry of Justice, Judicial Reform Strategy, April 2015, <http://www.judiciaryofturkey.gov.tr/pdf/strategy.pdf> (last accessed on 25 May 2019), p. 11.

<sup>145</sup> Ibid, p. 103.

<sup>146</sup> Oya Armutcu, Number of female judges and prosecutors in Turkey at its highest, Hurriyet Daily News, 5 June 2019, <http://www.hurriyetdailynews.com/number-of-female-judges-and-prosecutors-in-turkey-at-its-highest-143963> (last accessed on 9 June 2019).

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