

EQUAL RIGHTS—COMPATIBILITY OF FAMILY AND CAREER—LEGAL COMPARISON: EAST GERMANY (GDR) AND FEDERAL REPUBLIC OF GERMANY TODAY*

ANITA GRANDKE**

I. DEVELOPMENTS IN EAST GERMANY (THE GDR)

1. *Beginnings in the Post-War Period*

The complex of issues surrounding equal rights in East Germany began to evolve immediately after the end of the Second World War. Although National Socialism had been markedly hostile to women and was responsible for great setbacks to the women's movement, the war was a major stimulus to the employment of women. Women replaced men in almost all areas. They worked under the most difficult conditions, largely without any child care facilities, thus proving to themselves and others that they were capable of the same accomplishments as men.

After the war, neither the political forces influential in the Soviet Occupied Zone at the time, nor most of the women, were interested in reversing this development. Women were expressly encouraged to continue their work outside the home.¹ They were heavily involved in the work of clearing away the rubble and rebuilding all aspects of industry and manufacturing, as well as in land and school reform, in the newly formed local administrative bodies and later the central administration, and in the judiciary. As early as 1946, the right to equal pay for equal work for both

* Because of the large amount of material involved, the following piece should be seen as only a sketch of legal developments, the legal situation, and the problems connected with them. For a more detailed discussion from the East German perspective, written in East Germany, see *ZUR GESELLSCHAFTLICHEN STELLUNG DER FRAU IN DER DDR* (H. Kuhrig & W. Speigner eds., 1978); for a post-unification "all-German" view, see *5. Familienbericht* (Fifth Report on Families), BT-DRUCKS (Bundestag publication) 12/7560, 1994, which discusses the situation of the family, and especially women, in both German states.

** Doctorate in law, Humboldt University (East Berlin), 1960; professorial qualification (1964). Professor of civil and family law, Humboldt University, 1966-94. Family court lawyer, 1964-67. Founder and head of research group on women, GDR Academy of Sciences, until 1989.

¹ *DOKUMENTE ZUR GESCHICHTE DER DEUTSCHEN ARBEITERBEWEGUNG*, at 16 ff. and 26 ff. (vol. 1 part II, 1974) and *ZUR ROLLE DER FRAU IN DER GESCHICHTE DER DDR (1945-81)*, *EINE CHRONIK* (1987) (describes creation of women's committees in workplaces and local government after 1945, their goals and evolution, as well as the activities of women's organizations, discussions in parliament, and the like).

women and young people² was anchored in law. This legal progress, and the debate on its implementation, strengthened women's self-confidence. At the same time, however, it made them much more conscious of their entirely unsatisfactory legal status overall; the contradiction between the role they actually played, on the one hand, and their rights in the public sphere and in the family, on the other, became sharply apparent.

Thus recognition of legal equality between men and women was historically overdue. The concept had been included in the Weimar Constitution of 1919, but had remained little more than a declaration.³ When the German Democratic Republic (GDR) was established in October 1949, a great deal was therefore demanded, as well as expected, of the new state's constitution with regard to equal rights.

2. *The East German Constitution of 1949—Its Promises and Basic Political Aims*

The East German constitution⁴ included the general principle that all citizens were equal regardless of nationality, race—and sex.⁵ The applicability of this principle of equal rights to marriage and the family was also spelled out in the constitution's section on marriage and the family.⁶ This section further contained a prohibition on legal discrimination against unmarried parents and their children.⁷ These legal precepts became enforceable law when the constitution went into effect. In fact, they applied to the entire constitution,⁸ and were expressly reiterated in Art. 30, which required the nullification of any legal provisions "that interfere[d] with equality between men and women in the family"⁹ or discriminated against out-of-wedlock children and their parents.¹⁰ In addition, the constitution pronounced as a basic right the right to equal pay for equal work for men and women as well as adults and young people. In this regard, Art. 18 stated, "Women enjoy special

² Order no. 253 of the Soviet Military Administration (SMAD) from 17 Aug. 1946, published in *ZUR SOZIALPOLITIK* 1945-49 146 (1984).

³ *Verfassung des Deutschen Reiches* (German Reich Constitution) of 11 Aug. 1919 (Weimar Constitution), Arts. 109, 119 and 121. The Constitution's express call for equal rights was not implemented in any actual changes in law.

⁴ *Verfassung der Deutschen Demokratischen Republik* (Constitution of the German Democratic Republic) of 4 Oct. 1949.

⁵ *Id.* at Art. 7.

⁶ *Id.* at Art. 30.

⁷ *Id.* at Art. 33.

⁸ *Id.* at Art. 144.

⁹ *Id.* at Art. 30.

¹⁰ *Id.* at Art. 33.

protection in work settings. . . . Under the laws of the Republic, facilities will be set up that allow women to combine their responsibilities as citizens and workers with their duties as wives and mothers." Finally, a woman's right to special protection and care by the state during motherhood was established, and creation of facilities for mothers and children and passage of a "Mother Protection Law" mandated.¹¹

The approach taken by the 1949 constitution was complex and consistent. Especially important was the fact that laws changed immediately. Of course, there were some legal questions that were not immediately clarified, but even when viewed from today's perspective, this is far less relevant than the constitution's great achievement in vastly improving the legal position of women (as well as children born out of wedlock). An additional significant point was the express application of the equality principle to the family. The general precept of equality in Art. 7 could have been considered sufficient in itself. The fact that it was not was based on recognition of the particular role of the family in women's lives, and on historical experience.

Women had gained the right to vote and access to education long before being granted equal rights within the family. This may have had to do with the fact that rights in the family affect the everyday lives of every woman and every man. Thus it was especially important to overcome role ascriptions in law that kept women bound to the family, and thus dependent. To make sure this was achieved, a woman's right to a career and to affirmative action to promote this was included in the constitution. The mothers and fathers of the constitution took as their starting point the idea that working women were an inevitable phenomenon of modern industrial society, and that real equality was possible only if it were not limited to formal legal equality, but instead included all of women's opportunities for personal development. This meant that women, like men, had to be in a position to build careers, retain their independence, and gather their own experiences outside of the family.¹²

¹¹ *Id.* at Arts. 16 & 32.

¹² Here the traditions of the German workers' movement had an obvious effect on political developments; see especially F. Engels, *Der Ursprung der Familie, des Privateigentums und des Staates*, in 21 MARX & ENGELS, WERKE 27 (1962) and A. BEBEL, DIE FRAU UND DER SOZIALISMUS (1979). See also Otto Grotewohl, *Begründung des Gesetzes über den Mutter- und Kinderschutz und die Rechte der Frau im September 1950*, in II OTTO GROTEWOHL, REDEN UND AUFSÄTZE 188 ff. (1954) (explanation of laws on women by East German prime minister at the time).

The majority of women do not seek or need work experience as a replacement for family ties and duties, but hope instead to combine work with the demands of family. Often this is also an objective necessity. Thus the new society's basic tasks in improving women's status were clear. The constitution sought to face up to the challenge, making both promotion of women and the compatibility of family and motherhood into state responsibilities.

The constitution established parents' basic right to raise their children;¹³ at the same time, it assigned the state a shared responsibility for the next generation, both to ease the burdens on mothers¹⁴ and in the interests of the children. In the words of Art. 39, "[children's] education must not be dependent on their parents' social and economic status."¹⁵

3. *Concrete Legal Developments from 1949-72 and after 1972*

The East German constitution established the legal equality of men and women and eliminated legal discrimination against out-of-wedlock children and their parents. For example, § 1354 of the German Civil Code (BGB), under which only the husband had the right to decide all issues relating to marriage and family, was immediately voided, along with a provision that took away the parental rights of mothers of out-of-wedlock children and assigned guardians to those children.¹⁶ Women as well as men now had access to all areas of education and all vocations, and a woman's citizenship was no longer dependent on marriage. Certain consequences for family law were quickly clarified by legislation: for example, the right of married women to make their own decisions on education and career (a right men had always enjoyed) and establishment of sole parental custody for unmarried mothers.¹⁷ With regard to some legal issues, the constitution's effects were elaborated by the courts;¹⁸ a few remained undetermined pending adoption of a new

¹³ *Verfassung der Deutschen Demokratischen Republik*, *supra* note 4, at Art. 31.

¹⁴ *Id.* at Art. 19.

¹⁵ *Id.* at Art. 39.

¹⁶ Found in the Civil Code (BGB) from 1900 to 1969, § 1707.

¹⁷ See paras. 14 & 17 of the *Gesetz über den Mutter- und Kinderschutz und die Rechte der Frau* (Law on Protection of Mothers and Children and the Rights of Women) of 27 Feb. 1950, DDR Gbl. (GDR Legal Bulletin), at 1037.

¹⁸ For example, spouses' reciprocal duty of financial support was directly derived from the constitution, but it was also established that this duty could be fulfilled, by a decision of the spouses, through activities of legally equivalent value in or outside the home. See *Oberstes Gericht* (High Court) in *NEUE JUSTIZ* 580 (1952).

family law code, such as the rights connected with one's married name.¹⁹

Overall, it became clear that if the political will was present, legal equality was a relatively simple task that could be accomplished rapidly. But it is far more complicated to take actual advantage of equal rights—that is, to achieve *de facto* equality between men and women. This requires a long process that not only presents a challenge to women and their families, but is only capable of success—at least for women as a group—if specific rights are established and implemented that go beyond the guarantee of equal rights. Equal rights do not ultimately change the unequal conditions under which women live.

At first, it was particularly necessary to overcome women's lower levels of education and work experience, but this became less important as women largely overcame their educational deficits. What remained was the problem of combining family and career and the need to consider physiological differences in women that might, for example, call for special job protection.

Passed in 1950, the Law on Protection of Mothers and Children and the Rights of Women²⁰ incorporated these ideas, advocated in political and academic circles and by women's organizations, and heralded legislation that would be described as "measures to promote women."²¹ In particular, the law regulated state assistance for mothers and children with regard to counseling, medical care, and financial entitlements, and contained precise targets for the availability of nursery schools and day care. It provided special support for single mothers and families with many children.²² It devoted another section to the employment of women, requiring state-owned industries, government offices, and owners of private businesses to encourage women's professional

¹⁹ Thus the courts clarified the fact that once a woman had taken her husband's name through marriage, it became her own, and she was therefore also entitled to pass it on to children born after divorce (*Oberstes Gericht* (High Court), *NEUE JUSTIZ* 135 (1952)). But a new legal arrangement on names was not created until passage of the Family Law Code (FGB, para. 7), after an especially fierce debate during public discussion of the bill. Though the original draft of the Family Law Code would have allowed each spouse to keep his or her name, public opinion, as expressed in the public debate on the issue, supported a common name, and the code thus required choice of the husband's or wife's name as the family name.

²⁰ See *supra* note 17.

²¹ The German word for this, *Frauenförderung*, may also be loosely translated as "affirmative action." It has been so translated here on occasion, though affirmative action in Germany encompasses somewhat different measures than in the United States. In the European debate, the phrase "positive action" is also used.

²² In particular, it provided for preferred access to child-care facilities (para. 3 (3)), financial support (para. 2), and preference in hiring and housing.

development; in particular, it required them to open access to all occupations, ensure employment of women based on their qualifications, and support their efforts to train for better positions and their promotion to leadership positions.

These basic measures were maintained and expanded throughout the years of the GDR's existence. Thus all economic plans that established, among other things, the allocation of social funds²³—that is, the income from state-run enterprises spent on social programs—contained precise requirements for the creation of additional child care facilities, so that by the time East Germany ceased to exist, baby nurseries, day care centers and after-school care almost completely met the demand by parents for such care.²⁴

In addition to child care, the government ascribed a central role to supporting women in their careers. These efforts were renewed in the 1960s, after a 1962 resolution by the Council of Ministers²⁵ that reformulated and solidified them. It had become apparent that an actual change in women's status would be difficult; new problems requiring attention were constantly arising.²⁶ In addition, the ruling Socialist Unity Party (*Sozialistische Einheitspartei Deutschlands*, or SED) was particularly interested in rapid results because of its belief that achieving equality of the sexes could prove the socialist system's superiority over capitalism.²⁷

The Labor Code of 1961²⁸ required annual drafting and passage of an "affirmative action" plan for women; recommendations

²³ See, e.g., *Gesetz über den Volkswirtschaftsplan 1951* (Law on the Economic Plan 1951) of 14 Mar. 1951, DDR. Gbl. (GDR Legal Bulletin), at 187 ff.; *Volkskammer* (East German parliament) resolution on the 1961 Economic Plan of 25 Mar. 1961, Gbl. I, at 11 (especially Art. 10) and Five-Year Plan for the Development of the Economy 1986-90, Gbl. I.

²⁴ In 1989, the level of coverage for baby nurseries was 80.2%, for pre-school day care 95.1%, and for after school care 81.2%. See *Frauenreport 90*, at 141 ff. (G. Winkler ed., 1990).

²⁵ See *Beschluß des Ministerrats der DDR vom 19.4.1962 über die Aufgaben der Staatsorgane zur Förderung der Frauen und Mädchen* (Decision of the GDR Council of Ministers of 19 Apr. 1962 on the Responsibilities of Organs of the State in Promoting Women and Girls), Gbl. II, at 295.

²⁶ As women took advantage of higher education, they could be placed in higher positions, which was not always easy. Also, technological developments changed working conditions. For example, in agriculture a movement emerged to produce harvesting combines that could be operated by women (involving type of seats, cushioning, and discussions about this employment for women). Otherwise, a division of labor would have developed in which men operated the machines and the hard field work was left to the women.

²⁷ Thus referring to the status of women in the GDR, East German Head of State Walter Ulbricht said in 1967, "If socialism had achieved this goal alone, that would have been enough to prove its historical superiority." *BERICHT VON DER 7. TAGUNG DER VOLKSKAMMER DER DDR* (REPORT OF THE 7TH SESSION OF THE GDR CHAMBER OF DEPUTIES) 22 (1967). Erich Honecker spoke in a similar vein in *BERICHT AN DEN VIII. PARTEITAG DER SED* (REPORT TO THE VIII PARTY CONFERENCE OF THE SED) 62 (1971).

²⁸ *Gesetzbuch der Arbeit* (GbA) of 12 Apr. 1961, paras. 127 ff.

were made on this score to the agricultural collectives.²⁹ A special directive applied to training women for technical vocations and preparing them for leadership positions.³⁰ Further, certain obligations with regard to women were added to various laws—for example, in laws regarding correspondence courses and night school.³¹

The Family Law Code of 1965³² called upon spouses to organize their relationships so that the wife could combine career and motherhood. The decision whether to work outside the home, like general decisions on how to organize one's marriage, was left up to the couple itself. Under family law, career and work in the home were completely equal.³³ This orientation toward the independence of each spouse led, in divorce law, to the principle that alimony should continue for only a limited time; a marriage ending in divorce was not seen as a basis for support payments.³⁴

In 1968, the GDR's second constitution took effect.³⁵ Here, too, the constitutional principle of male-female equality was linked with the statement that "promotion of women, especially in vocational training, is the responsibility of state and society."³⁶ In addition, male-female equality was seen as the principal way of guaranteeing the basic rights of citizens to respect, protect and

²⁹ Decision of the Council of Ministers of 30 Mar. 1962, Gbl. II, at 212. Such affirmative action plans included agreements among enterprise union organizations and management on, for example, creation of facilities for children (day care) within the enterprise or participation by the enterprise in financing such facilities in the community; working hours for single mothers, leave for women to take part in training programs, systematic preparation of women for leadership positions, medical care, and the like.

³⁰ *Anordnung über die Aus- und Weiterbildung von Frauen für technische Berufe und ihren Einsatz in leitende Funktionen* (Directive on the Training of Women for Technical Occupations and their Employment in Leadership Positions) of 7 July 1966, Gbl., special edition no. 545.

³¹ *Anordnung Nr. 1 vom 15.6.1962 über das Teilstudium im Rahmen des Fern- und Abendstudiums an den Hoch- und Fachschulen* (Directive No. 1 of 15 June 1962 on Part-Time Studies in Correspondence and Night School at Colleges and Specialized Schools), Gbl. II, at 406. Correspondence and night courses were means of further education or for latecomers to an occupation. They were especially useful for women, though also for men, with families who could not or did not want to live near a college and wished to continue working for financial reasons.

³² Familiengesetzbuch (FGB) of 2 Dec. 1965, Gbl. I 1966, at 1 (effective 1 Apr. 1966).

³³ *Id.* at §§ 12, 13, 39.

³⁴ See paras. 29 ff FGB (this was already the case in para. 13 of the *Verordnung über Eheschliessung und Eheauflösung* (Regulations on Marriage and Divorce) of 24 Nov. 1955, Gbl. I, at 849). In conjunction with the expansion of child-care facilities and vocational training for women, these regulations, in themselves strict, were quickly accepted by women. In 1989, applications for alimony were made in less than 3% of all divorces.

³⁵ GDR Constitution of 6 Apr. 1968. A new version was adopted on 7 Oct. 1974, Gbl. I 1974, at 432, but it had no significance for women's issues. The reason for adoption of a second constitution was the assumption that the goal of German reunification written into the 1949 East German constitution would not be achieved in the foreseeable future; it established certain positions of power for the SED, the governing party.

³⁶ *Id.* at Art. 20 (2).

support the family.³⁷ The fundamental parental right to raise children was coupled with a parental right to enjoy input into educational bodies (Art. 38 (4)). The constitution no longer required special provisions on out-of-wedlock children, as neither they nor their mothers were still subject to discrimination. Instead, it included provisions for special measures to support single mothers and fathers—meaning the unmarried as well as the divorced and widowed—and families with many children (Art. 38 (2) (2)).

The year 1972 brought a conceptual change in East German policies toward women. The Law on the Interruption of Pregnancy introduced the so-called *Fristenlösung*,³⁸ a stipulated-period abortion model that allowed women to choose whether to terminate pregnancy until the end of the twelfth week. The law was the result of decades of demands, particularly from the vocal German workers' movement, and the discovery that any form of state interference in abortion decisions ultimately proved inadequate.³⁹ The law's intention was to establish a woman's freedom to choose. Because it was also hoped that its effect would be conscious choice of motherhood—a choice in favor of children—politicians were challenged to improve the conditions of childbearing and child care in order to make such a choice more attractive.⁴⁰ This was achieved through systematic expansion of measures supporting families and women, particularly mothers. Policies on women thus gained an unmistakable demographic component.⁴¹

The measures introduced during this period included marriage loans,⁴² state payments at the birth of each child,⁴³ and intro-

³⁷ *Id.* at Art. 38 (2)(1). The East German constitution guaranteed certain legally-enforceable subjective rights, such as the per-child bonus and a legally-determined number of paid days off from work when children were sick. In addition, it contained rights that laid out the tasks of enterprises and state offices; various mechanisms existed to check on implementation of these goals. One tool was the citizens' petition to the respective higher authority, which met with varying degrees of success. These types of rights included the right—derived from the basic right of family support—to sufficient living space, health care for children, and the like.

³⁸ *Gesetz über die Unterbrechung der Schwangerschaft vom 9.3.1972*, Gbl. I, at 89.

³⁹ See A. Grandke & I. Stolpe, *berlegungen zur Fristenlösung in der DDR*, KRITISCHE JUSTIZ 213 ff. (1992).

⁴⁰ W. SPEIGNER ET AL., *KIND UND GESELLSCHAFT* (1987).

⁴¹ Until 1972, policy on women dealt with existing children, particularly care of children of working mothers. Then policy began to deal with unborn life and ways of ensuring birth. In East Germany, the desire for children was fairly stable, despite the increasing number of working mothers. But the actual realization of this desire varied. Measures after 1972, based on the woman's right to choose whether to have a child, worked to make actualization of the desire for children easier.

⁴² *Verordnung über die Gewährung von Krediten zu vergünstigten Bedingungen an junge Eheleute* (Directive on Grants of Loans at Favorable Terms to Young Married Couples) of 10 May 1972, Gbl. I, at 316, extended by the Directive of 27 Apr. 1986, Gbl. I, at 244.

⁴³ *Verordnung über die Erhöhung der staatlichen Geburtenhilfe und die Verlängerung des Wochenurlaubs* (Directive on Increasing State Childbirth Assistance and Extending Mater-

duction of a general entitlement to government grants for all university students.⁴⁴ For mothers specifically, the so-called "baby year"⁴⁵ was gradually introduced,⁴⁶ along with reduced working hours that still counted as full-time work (for purposes of vacation, sick pay, pension and the like),⁴⁷ additional vacation time depending on number of children,⁴⁸ the right to paid days off when children were ill,⁴⁹ and the crediting of an additional period of time for each child in addition to working years for the purposes of calculating pensions.⁵⁰ The 1976 Labor Code incorporated this altered policy.⁵¹ It was also in this period that special aid was introduced for pregnant university students and apprentices in training, as well as for mothers studying at universities or enrolled

nity Leave) of 10 May 1972, Gbl. II, at 314. The childbirth grant was 1,000 marks per child. Maternity leave was raised from 8 to 12 weeks, and in 1976 to 20 weeks.

⁴⁴ *Verordnung über die Gewährung von Stipendien an Direktstudenten der Universitäten, Hoch- und Fachschulen* (Directive on Grants to Students at Universities, Colleges, and Specialized Schools) of 11 June 1981, Gbl. I, at 229.

⁴⁵ The "baby year" allowed the mother (and later the father) a voluntary paid leave of absence from work for one year. Payment was made on the same basis as for personal illness, and thus depended on income. The mother had the right to return to her job after the baby year. For the third child, 18 months could be taken.

⁴⁶ At first, paid leave for single mothers was established in cases where no places were available to them in day care (5. *Verordnung über die Verbesserung der Leistungen der Sozialversicherung* (5th Directive on Improvement of Social Benefits) of 10 May 1972, Gbl. II, at 307). Then the baby year was introduced for the second and each additional child, for married as well as unmarried mothers, through the *Verordnung über die Verlängerung des Wochenurlaubs und die Verbesserung der Leistungen bei Mutterschaft* (Directive on Extension of Maternity Leave Improvement of Maternity Benefits) of 27 May 1976, Gbl. I, at 269; finally, the baby year was made available after the birth of the first child (see *Verordnung über die weitere Verbesserung der Arbeits- und Lebensbedingungen der Familien mit Kindern* (Directive on Further Improvement in Working and Living Conditions for Families with Children) of 24 Apr. 1986, Gbl. I, at 241). Maternity leave was, and still is, leave for the first weeks following birth at full (average) pay. In East Germany this started at 8 weeks, increasing to 12 weeks in 1972 and 20 in 1976. It is now 6 weeks.

⁴⁷ *Verordnung über die weitere schrittweise Einführung der 40-Stunden-Arbeitswoche* (Directive on Continued Gradual Introduction of the 40 Hour Work Week) of 29 July 1976, Gbl. I, at 385.

⁴⁸ *Verordnung über den Erholungsurlaub* (Directive on Vacations) of 28 Sept. 1978, Gbl. I, at 365.

⁴⁹ See *Verordnung über die Verbesserung der Leistungen nach der Geburt des dritten und jedes weiteren Kindes und für verheiratete Mütter mit drei und mehr Kindern bei Pflege erkrankter Kinder* (Directive on Improvements in Benefits Following the Birth of the Third and Each Additional Child and for Married Mothers with Three or More Children Regarding Care of Sick Children) of 24 May 1984, Gbl. I, at 193; see also Directive on Further Improvement of Working and Living Conditions of Families with Children, *supra* note 46.

⁵⁰ Women's pension entitlements were calculated based upon the number of years they had worked, plus a period dependent upon the number of children they had raised, regardless of whether or not they had interrupted their careers because of these children. See para. 7 of the First Pension Law of 23 Nov. 1979, Gbl. I, at 401, and para. 4 of the Second Pension Law of 26 July 1984, Gbl. I, at 281.

⁵¹ *Arbeitsgesetzbuch* (AGB) of 16 June 1977, Gbl. I, at 185, ch. 12: *Besondere Rechte der werktätigen Frau und Mutter* (Special Rights of the Working Woman and Mother).

in vocational training programs.⁵² Finally, the right to a monthly paid "housekeeping day"⁵³ was established. The result of these measures was to grant mothers a special position under labor law, allowing them to combine career and motherhood. Measures to promote continued career training were simultaneously expanded⁵⁴ and child care facilities became more widely available.⁵⁵

4. *Practical Results and Problems and Assessments Immediately Following the Fall of the Wall*

The percentage of working women in East Germany rose rapidly,⁵⁶ ultimately reaching 91%. In education, women had largely caught up with men. Nearly all women had their own income and their own sickness and old age benefits.⁵⁷ Many women held lower- and middle-level leadership positions (many were mayors, for example).⁵⁸ They were heavily represented in parliaments, parties, unions, and the like.⁵⁹ The motherhood ratio was also very high; that is, nearly all women bore at least one child. More children were born, people married earlier and remarriages were more frequent than in developed countries with lower rates of female employment.⁶⁰ The percentage of births out of wedlock was

⁵² See *Verordnung über die Förderung und finanzielle Unterstützung von Müttern, die sich in Lehrverhältnis befinden* (Directive on the Encouragement and Financial Support for Mothers in Educational Situations) of 19 June 1972, Gbl. II, at 420; *Anordnung zur Förderung von Studentinnen mit Kind und werdenden Müttern, die sich im Studium befinden* (Directive on Support for Female Students with Children and Mothers-to-Be at the Universities) and *Anordnung über die finanzielle Unterstützung von Studentinnen mit Kind an den Hoch- und Fachschulen* (Directive on Financial Support for Female Students with Children at Colleges and Specialized Schools) of 10 May 1972, Gbl. I, at 320. Such aid was not only financial; it also included, for students, such benefits as individualized study plans, access to day care, and housing.

⁵³ See § 185 AGB, *supra* note 51.

⁵⁴ See especially *Anordnung über die Förderung von vollbeschäftigten werktätigen Frauen für die Ausbildung zu Produktionsfacharbeitern* (Directive on Promotion of Women Working Full-Time through Training as Production Technicians) of 12 Dec. 1972, Gbl. II, at 860, and the decision of the GDR Council of Ministers and the Free German Trade Unions organization of 23 May 1985 on Guidelines Governing Work with Enterprise Collective Contracts (Numeral 7), *Frauenförderungsplan* (Affirmative Action Plan), Gbl. I, at 173.

⁵⁵ See also *Verordnung über die Kindereinrichtungen der Vorschulerziehung* (Directive on Child-Care Facilities for Pre-School Education) of 22 Apr. 1976, Gbl. I, at 201, and *Verordnung über die Schüler- und Kinderspeisung* (Directive on School and Children's Meals) of 16 Oct. 1975, Gbl. I, at 713.

⁵⁶ For details, see FRAUENREPORT 90, *supra* note 24, at 63 ff.

⁵⁷ As could be expected, levels of education and income depended on age, see *id.* at 38 ff.

⁵⁸ *Id.* at 93 ff.

⁵⁹ See ZUR GESELLSCHAFTLICHEN STELLUNG DER FRAU IN DER DDR 42 ff. (Academic Council on Women in Socialist Society of the Academy of Sciences ed., 1978).

⁶⁰ See 5. Familienbericht (5th Family Report), presented on 15 June 1994, BT-DRUCKS 12/7560, at 34-36 and 47-57. This report was commissioned by the German government.

high; they generally occurred to parents who were unmarried but living together at the time of the birth.⁶¹

Overall, it was generally possible in East Germany to combine family and career, and women were no longer subject to the pressure to decide in favor of one over the other. This development was further assisted by a level of productivity that created great demand for a workforce, and the economic need for a second income for women and their families. Despite frequent claims to the contrary, there was no legal or other pressure to go to work. Women took advantage of the "baby year" and other means of easing their working life, but they were also eager to pursue their careers.⁶² Thus despite the abundance of child care facilities, demand was always slightly higher than supply, making the right of single mothers to preferential treatment in child care particularly significant.

Significant problems arose nevertheless in other areas. They were most apparent in the extremely limited presence of women in senior leadership positions. A variety of obstacles, some endemic to the system itself, contributed to this; they created reservations in women about participating in leadership processes and tasks, while allowing them to avoid these tasks more easily than men, using their familial duties as an excuse. The system also caused more immediate problems, in that its limited productive capacities required that a large amount of time be spent on housework and caring for the family.⁶³ This created the oft-mentioned double burden on working women, which called the government's policies themselves into question. As correct and necessary as it might have been to concentrate on mothers in the initial stages of the struggle to make family and career compatible, over the course of time this became a fundamental error. Assisting women because of their special duties in the family meant that these duties continued to be unfairly assigned to them, even in contravention of the law. The necessary transition from support for mothers to support for parents never took place.⁶⁴ One result of this was that women them-

⁶¹ At 13%, the percentage of out-of-wedlock births was already quite high in 1950; it later rose progressively to 33.6%, see FRAUENREPORT 90, *supra* note 24, at 29.

⁶² *Id.* at 63.

⁶³ The average length of time spent on housework for a four-person household held fairly steady at around 45 hours. *Id.* at 127.

⁶⁴ Beginning no later than 1976, demands that fathers be included in family assistance plans began to be raised frequently. Economic concerns probably led to the failure of such efforts, which were never publicly discussed or debated. It was feared by the leadership of the ruling party, the SED—largely older men—that men's higher average earnings (for work in male sectors) would have made higher benefits necessary than was the case if mothers alone were assisted.

selves to some extent restricted their working life—that is, they conformed.⁶⁵ The political system avoided the necessary debate on changing relations between the sexes and the roles of mothers and fathers, a debate that had become necessary given the economic independence of men and women from one another and the possibilities both now had for achievement outside the home. Nor was there any debate on the outmoded division of labor into male and female occupations, which led to one-sided pressure on so-called “women’s enterprises” to provide mother-support measures, and thus to a revival of job discrimination against women.⁶⁶ In particular, enterprises attempted to avoid hiring young, highly qualified women.

Despite these problems, the position and status of women underwent fundamental change and improvement as the GDR evolved. A woman’s right to a career, as well as compatibility of her career with the demands of the family, were established as basic values. This also explains the main thrust of the family law reform concluded by the first freely-elected East German parliament in 1990, following the fall of the Wall. It began with the rights of men and women, mothers and fathers, to career and professional development. Thus it established the demand for compatibility of family and parenthood as an obligation of both spouses, including fathers, with full responsibility for their children’s development (following divorce or where no marriage was involved), and it purposely maintained the principle of each spouse’s responsibility for him or herself following divorce—that is, it limited alimony in normal cases.⁶⁷

II. THE UNIFICATION TREATY

The Unification Treaty⁶⁸ that joined East and West Germany voided East German law from the day it went into effect, 3 October 1990, and substituted the laws of the Federal Republic of Germany

⁶⁵ This conformity manifested itself mainly in part-time work (some 28% of working women) and nonuse of qualifications in order to avoid greater difficulties, or because work in the neighborhood was preferred.

⁶⁶ It is sometimes argued that measures to promote women contributed to East Germany’s economic collapse. Such an absolute view, however, is questionable, as well as unproven. Nevertheless, these measures probably worsened the weaknesses already intrinsic to the system and were caught in its general deficiencies, which is why they never underwent necessary reforms.

⁶⁷ See §§ 10, 46 and 29 FGB in *1. Familienrechtsänderungsgesetz* (First Family Law Revision Act) of 20 July 1990, Gbl. I, at 1038, published in D. SCHWAB, FAMILIENRECHT UND DEUTSCHE EINIGUNG 19 ff. (1991).

⁶⁸ See *Einigungsvertragsgesetz* (Unification Treaty Law) of 23 Sept. 1990, BGBl. (Federal Legal Bulletin) II, pp. 885 ff.

(FRG) in the eastern German states. This was a complex process involving all areas of law. It was accompanied by a series of measures to structure the transition. Most of the deadlines set for completion of the transition have since passed. For example, paid maternity leave following the birth of a child, which was eight weeks in West Germany, was reduced from East Germany's twenty weeks for births after 1 January 1991.⁶⁹

As a result, large portions of East German law, particularly those relating to the status of women, were simply eliminated, because there were no corresponding West German laws. Among other things, this affected the labor-law provisions requiring affirmative action for women and those involving employers' duties to improve employees' working and living conditions;⁷⁰ the broad range of laws created to promote compatibility of education, especially university studies, and motherhood; and laws on the duty of local government bodies to assist families with children, especially families with three or more children and single parents, by ensuring suitable housing and other measures.

In family law, it was decided that relationships established under the East German regime would continue to be judged according to the East German Family Law Code; these included legal matters involving divorced couples if the divorce had been completed prior to 3 October 1990. All existing family situations from then on, like all other matters such as labor, insurance, and rental relationships, would be governed by FRG law. An exception was the law regarding state guardianship, that is, the legal limits on unmarried mothers' rights of parental custody. This legal arrangement was not imposed, allowing mothers in the eastern German states to continue to enjoy unlimited custody rights; thus in this area, German law is inconsistent.⁷¹

Some of the substituted West German laws that went into effect had once applied in East Germany, but had been replaced and

⁶⁹ See Appendix to Unification Treaty, Chap. X, sec. III, BGBl. II, at 1218.

⁷⁰ Under the Labor Code, enterprises were responsible for providing housing, especially for families with children (§ 232); creating and maintaining child-care facilities (§ 233); and providing vacation supervision for children (§ 234). Larger enterprises did succeed in achieving a great deal, though never enough; quality of housing was never high by West German standards, but there were many enterprise cooperatives for building workers' housing.

⁷¹ See Art. 230 EGBGB, added by Appendix I of the Unification Treaty, through which §§ 1706-1710 of the BGB (Federal Civil Code (West Germany)) was not applied to East Germany. See also, Sibylla Flügge, *On the History of Fathers' Rights and Mothers' Duty of Care*, 3 CARDOZO WOMEN'S L.J. 377 (1996). A draft law exists that would create legal consistency by replacing state guardianship with a non-mandatory legal representative. BT-DRUCKS. 12, 7011.

modernized by later legislation (for example, by the Labor Code, the Family Law Code, or the Civil Code). Thus, for example, the Marriage Law of 1946 (an Allied Control Council act enacted by the victorious powers after World War II) was revived, including its antiquated provisions on waiting periods before women could remarry.⁷² In general, older laws whose basic structures had been elaborated in the previous century were substituted.⁷³ It is true that these laws had undergone numerous changes and improvements in many small steps, creating a multitude of laws—as well as a complete lack of overall comprehensibility. Even the occasional more recent legal arrangements adopted in both east and west, such as state grants for children, were changed through this substitution of laws, from uncomplicated laws that were easy for families to use to complicated matters requiring a great deal of energy to understand and apply.

Because West German law was based on completely different social structures and conditions, its transposition onto eastern Germany led unavoidably to both many fundamental changes in law and a multitude of problems.⁷⁴ This was especially true of equal rights for women and men, and particularly for the problem of compatibility of career and family. There had been considerable differences in legal developments in the two countries, as well as in applicable law, social conditions, and prevailing views. Therefore, as the official commentary on the Unification Treaty expressly stated,⁷⁵ the Treaty assigned specific responsibilities to the new all-German legislature. Art. 31 required “legislation on equal rights for men and women” and “structuring the legal system with regard to the compatibility of family and career.” This was the first time that compatibility of family and work had been expressed as a legal obligation in the laws of the Federal Republic of Germany.

⁷² See § 8 of the *Ehegesetz* (Marriage Law) of 1946, under which “a woman (shall) not enter a new marriage before the passage of 10 months since the dissolution of the previous marriage, unless she has had a child in the meantime.” See also the prohibition of marriage in § 9 of the Marriage Law.

⁷³ The Civil Code (BGB) stems from 1900, the Civil Procedure Code (ZPO) from 1877, and the Law on Voluntary Jurisdiction (FGG) from 1898 (the latter involves a type of part-civil, part-administrative procedure for dispute resolution in cases that include limiting or revoking parental custody).

⁷⁴ This is true above all for property and building-use issues.

⁷⁵ See *Denkschrift zum Einigungsvertrag* (Commentary on Unification Treaty), BT-DRUCKS 600/90.

III. ON THE LEGAL SITUATION IN THE FEDERAL REPUBLIC OF GERMANY

1. *The Basic Law and the Main Steps in its Implementation*⁷⁶

The legal system transposed onto the eastern German states was the result of a very different legal development than the one that had taken place in the GDR, based on different social structures.

Following World War II, a rapid and obvious reversal in female employment took place in the western zones of occupation. Great efforts were made to anchor the principle of equal rights in the Basic Law (the West German constitution) in 1949;⁷⁷ it was formulated as a general principle (Art. 3 (2))—not, as in the Weimar Constitution, a principle applied expressly to marriage and the family. Laws incompatible with equal rights remained in force, and were only slowly replaced.⁷⁸ Thus, for example, the husband retained sole rights to make decisions in matters affecting the family, as well as control over the children. A woman required her husband's permission to work. She continued to be required to work in her husband's business without pay. The husband retained the right to manage his wife's property and use it for his own purposes. The Equal Rights Law of 1957,⁷⁹ essentially forced on the legislature through a decision of the Constitutional Court, expressly embodied a "housewife model" of law—that is, it directed women, by law, into housework and child-rearing.⁸⁰ It guaranteed parents the right to raise and care for children, but also entrusted this task to them alone (Art. 6 (2)). The role of the state consisted of watching over the parents' "activity."⁸¹ Youth assistance was oriented towards problem cases; that is, it was required only when families

⁷⁶ For details, see T. Ramm, *Wiedervereinigung und Familienrechtsreform*, EXPERTISE ZUM 5. FAMILIENRECHTSBERICHT 9 ff. (1994).

⁷⁷ See B. BÖTTGER, DAS RECHT AUF GLEICHHEIT UND DIFFERENZ-ELISABETH SELBERT UND DER KAMPF DER FRAUEN UM ART. 3 II GRUNDGESETZ (1990).

⁷⁸ Under Art. 117 of the Basic Law (GG), the deadline for continued validity of laws violating the principle of equal rights was 31 Mar. 1953.

⁷⁹ *Gleichberechtigungsgesetz vom 18.6.1957*, BGBl. I, at 609, which became law on 1 July 1958.

⁸⁰ The right to run an independent household was considered by the legislature to be a recognition of the woman's rights as a person. See Eisser, *Die Anerkennung der Persönlichkeit der Ehefrau im neuen Eherecht*, FAMILIENRECHTSZEITUNG [hereinafter FAMRZ] 177 ff. (1959).

⁸¹ Art. 6 (2): "Care and raising of children are the natural rights of parents and a duty primarily incumbent upon them. The state community watches over their activities." The idea of the "state as watcher" (*Wächteramt*) is derived from this, allowing the state to examine children's situation in their families. It justifies, for example, the idea of state guardianship for out-of-wedlock children, or the fact that in cases of divorce, even if the parents are in complete agreement and there is no evidence of problems with the children, the courts must assign custody and a report from the youth office is required. See *als Flügge*, *supra* note 71.

were unable to fulfill their obligations. For out-of-wedlock children, the Basic Law required legislation that ensured conditions for their physical and psychological development equal to those of children born to married parents. However, contradictory laws remained in force. In 1970 the legal position of out-of-wedlock children and their mothers was improved with the Out-of-Wedlock Law, but the law continues to be a focus of criticism.⁸²

Major advances in women's and girl's education and increasing employment of women and mothers, and—in part as a result of this—the strengthening of the women's movement in the 1960s and 70s increased society's sensitivity to the social and legal status of women. A reform law eliminated family law's "housewife model."⁸³ But the "housewife marriage," conditioned by tradition and public opinion as well as existing conditions (that is, the lack of child care facilities), was so widespread that family law was, in fact, especially structured to protect it. More than ever, it functioned to provide housewives with security in case of divorce.⁸⁴

Endless discussions took place on working women, particularly on the compatibility of family and career; the federal government issued reports on the subject,⁸⁵ but they had no concrete consequences. Then, in 1980, labor laws were changed to conform to European Community norms; a prohibition on employment discrimination against women was added to the Civil Code.⁸⁶ Though the law has had little practical effect,⁸⁷ it nevertheless was an important legislative gesture.

Gradually, the view took hold that the Basic Law's Art. 3 principle of equal rights also included a government duty actively to improve women's status.⁸⁸ The result was gradual expansion of all state structures; for example, the Ministry for Family, Youth and

⁸² A reform is long overdue, perhaps through a decision by the Constitutional Court. See *DAS NICHTHEHELICHE KIND UND SEINE ELTERN* (Coester & Zubke eds., 1991).

⁸³ See *Erstes Ehelieformgesetz* (First Marriage Reform Law) of 14 June 1976, BGBl. I, at 1421.

⁸⁴ In particular, spousal maintenance after divorce was expanded, and completely new legal institutions and a new divorce procedure were created with the *Versorgungsausgleich*—division among the spouses of (the husband's) vested rights to a pension (para. 1587).

⁸⁵ See, e.g., *Bericht der Bundesregierung über die Lage der Familien* (Federal Government Report on the State of Families) of 25 Jan. 1968, BT-DRUCKS V/2532, and of 20 Aug. 1970, BT-DRUCKS 8/3120, and the *Bericht der Enquetekommission über die Situation der Frau* (Report of the Commission on the Situation of Women) of 14 Sept. 1966, BT-DRUCKS V/909, and of 29 Aug. 1980, BT-DRUCKS 8/4461.

⁸⁶ See paras. 611 (a) and 611 (b) of the Civil Code, in the version of the *EG-Anpassungsgesetz* (EC Harmonization Law) of 13 Aug. 1980, BGBl. I, at 1308.

⁸⁷ This is so because the norm is only applied when a woman succeeds in proving that she was not hired because of her sex alone—something almost impossible to prove.

⁸⁸ See E. Benda, *Notwendigkeit und Möglichkeit positiver Aktionen zugunsten von Frauen in öffentlichen Dienst*, Legal Opinion (1986).

Health developed policies on women, and in the public sector, equal rights offices were opened and commissioners for women's issues appointed. A wide variety of such institutions now exists; they vary in description, equipment (finances, staff, etc.), responsibilities and powers, which generally do not include decision-making, and suffer, of course, from an equally wide variety of problems.⁸⁹ In the private sector, ensuring equality was left up to labor and management negotiators—that is, it depended on individual initiative and attitudes and was thus largely non-existent.⁹⁰

In 1974, medically insured employees were granted the right to take up to five working days a year of paid sick leave for each child up to 8 years of age.⁹¹ In 1978, the right to abortion began to be liberalized. Although a law passed by the *Bundestag* (West German parliament) allowing abortion in the first trimester was declared unconstitutional in court, and abortion remained basically illegal, "social welfare" grounds for abortion were legally accepted.⁹²

On 1 January 1986, the Federal Law on Child-Raising Payments went into effect. It guaranteed a child-raising payment of 600 marks for the first 6 months after the birth of a child,⁹³ or for the first year if the sum was not reduced or eliminated entirely because of the amount of the mother's or parents' income.⁹⁴ If the primary caretaker was employed before the birth, he or she had the right to a leave of absence from work for the child-raising year. The aims of the law had more to do with encouraging childbirth and discouraging abortion than helping women; still, the law has a place in the context of this article because it reflects the still-prevalent view of the relationship between a woman's familial responsibilities and her career interests. It is an extension of the phase model, according to which women leave employment in the inter-

⁸⁹ See *Unterrichtung durch die Bundesregierung, Bericht an den deutschen Bundestag über die Gleichstellungsstellen in Bund, Ländern und Gemeinden* (Advisement by the Federal Government, Report to the German Bundestag on Equal Rights Offices on the Federal, State and Local Level) of 28 June 1989, BT-DRUCKS 11/4893.

⁹⁰ See *MÜTTER UND VATER ZWISCHEN ERWERBSTÄTIGKEIT UND FAMILIE*, Proceedings of the International Congress on 2 Mar. 1990 (Ministry for Labor, Health, Family and Women of Baden-Württemberg ed., 1991).

⁹¹ Para. 185 (c) *Reichsversicherungsordnung* (Reich Insurance Law) [hereinafter RVO], BGBl. 1973, at 1925.

⁹² See Criminal Code, paras. 218-219 (d), in the version of the 15th Criminal Law Revision Act of 18 May 1976, BGBl. I, at 1213. On the abortion issue, see Rosemarie Will, *German Unification and the Reform of Abortion Law*, 3 CARDOZO WOMEN'S L.J. 399 (1996).

⁹³ *Bundeserziehungsgeldgesetz* (Federal Law on Child-Raising Payments) of 1985, version of 25 July 1989, BGBl. I, at 1550.

⁹⁴ For working mothers, child-raising payments begin after the child's ninth week, that is, when the mother's entitlement to maternity payments ends; otherwise, for non-working mothers, they begin at the child's birth.

ests of child care, possibly returning to work at a later date. An employed woman's decision to have a child and take care of it herself was also made easier, as the family was no longer forced to forego her income entirely, even for a short period.

Development of a new law to aid children and adolescents took many years, largely due to fierce debate as to whether the law could or should create a right to day care and nursery school access for pre-school age children. Shortly before German unification, a new Law on Aid to Children and Adolescents was passed, but did not include such a right.⁹⁵

2. *The Development of the Law after Unification*

In the Federal Republic, applicable law, whether it involves women's legal status or other areas, has essentially evolved according to the Basic Law. However, there have been changes as a result of the process of unification, and specifically of Art. 31 of the Unification Treaty.

The fiercest debates continue to rage over new abortion laws. The stipulated-period model, which legalized abortion in the first twelve weeks of pregnancy and had been the law in East Germany after 1972, was once again approved by the *Bundestag*⁹⁶ and once again declared unconstitutional by the Constitutional Court.⁹⁷ The present arrangement also contains a *de facto* stipulated-period model with a counseling requirement. However, if it is not justified on certain specified grounds, abortion is still illegal.⁹⁸ The main consequence of declaring abortion illegal in this way, aside from the stigma it places on women, is that it imposes the costs of abortion on the women themselves.

As part of its decision, the Constitutional Court called for a comprehensive package of measures to provide economic and other security in case of a decision to bear a child, but there is little chance that these measures will actually be implemented. A beginning was made in the Law on Aid to Pregnant Women and Families, which contains the new version of § 218 (the abortion law).

⁹⁵ See *Sozialgesetzbuch* (Social Welfare Code) VIII, *Kinder- und Jugendhilfsgesetz* (Law to Aid Children and Adolescents) [hereinafter KJHG] of 26 June 1990, BGBl. I, at 1163, here especially para. 24.

⁹⁶ See paras. 218-219 b in the version in the *Schwangeren- und Familienhilfsgesetz* (Law to Assist Pregnant Women and Families) of 27 Feb. 1992, BGBl. I, at 1398.

⁹⁷ See Decision of the Constitutional Court of 28 May 1993, BGBl. I, at 820, and *Das Urteil zum § 218 STGB - Wortlaut und Kommentar in 1 KRITISCHE VIERTELJAHRSSCHRIFT* 1993, which contains both discussions of the issue and the two dissenting votes.

⁹⁸ Sections 218 ff. StGB, *Schwangeren und Familienhilfsgesetz* (Law to Aid Pregnant Women and Families) of 21 Aug. 1995, BGBl. I, at 1050.

Even the 1992 version of the law contained the long-sought right of three to six year-old children to day care admission. This right was scheduled to take effect on 1 January 1996; however, it has been postponed to 1 January 1998.⁹⁹ It is highly controversial because, on the one hand, it does not precisely define what this right entails,¹⁰⁰ and on the other, because local governments charged with setting up such facilities are simply not in a position to do so. This is a problem only in the former West Germany; however, in East Germany, the concern is with preserving the existing level of day care availability.¹⁰¹

Despite these difficulties, the law is extremely important in the help it provides in ensuring compatibility of family and career, and represents a first step towards recognizing that society as a whole shares responsibility for raising and caring for pre-school children. For younger children, mainly those between two and three years of age, and for schoolchildren requiring after-school care, the legal arrangement continues to provide state assistance only "if necessary for the good of the child"—that is, if the family cannot take care of the child.¹⁰²

In connection with the entire issue of abortion, the legislature also took up the question of solidifying the Law on Promoting Work and Professional Training¹⁰³ to ease women's return to a career path after taking advantage of maternity and child-raising leave. Arrangements governing time off for care of sick children were redrawn in order to create unified laws for both parts of the country; thus these arrangements were expanded for the western German states.¹⁰⁴ In the same vein, child-raising leave and entitlements to child-raising payments were improved.¹⁰⁵

⁹⁹ *Id.* at Art. 5.

¹⁰⁰ At present, nursery schools in the western German states are generally available for four hours a day. In the eastern German states they are, as in the past, set up as all-day facilities with child care. Eastern German schools generally still offer school meals, though parents are paying more and more for them.

¹⁰¹ Here, dangers include the financial problems faced by local governments and parents, as well as a rapid drop in the birthrate that is already having a perceptible effect on day care facilities; existing facilities are no longer being fully utilized, leading to closures.

¹⁰² See para. 24 KJHG, new version, *supra* note 97, which however is far inferior to the situation still existing in the eastern states, where children of all ages have access to such facilities if their parents so desire.

¹⁰³ *Arbeitsförderungs- und Berufsbildungsgesetz*. See *supra* note 98 at Arts. 6 and 7.

¹⁰⁴ Until the child's twelfth year, parents now have a right to 10 days off with sick pay per parent and child per year. See para. 45 SGB V BGBl. 1992, at 2266.

¹⁰⁵ The *Bundeserziehungsgeldgesetz* (Federal Law on Child-Raising Payments) adopted on 1 Jan. 1992 now grants child-raising leave until the child's third birthday and child-raising payments until its second birthday. For the first sixth months, financial support amounts to 600 marks per month. After the sixth month, the payments are based on income and can be reduced or eliminated. This extension of leave reinforces the phase-model orientation of parents' careers.

In June 1994, the Second Equal Rights Law was passed.¹⁰⁶ Its first article contains laws regarding promotion of women in the public sector, requiring draft affirmative action plans for women, and containing regulations governing working hours, leaves of absence, discrimination, and commissioners for women's affairs. To the extent the law addresses the compatibility of family and career, assistance is not limited to women, but applies to all workers with familial duties.

Despite its almost nonexistent practical significance, Art. 7 of the law more precisely details the prohibition on discrimination governed by § 611 of the Civil Code. Art. 7 explains that there is no right to employment even in cases of proven discrimination; it also establishes the extent of possible compensation claims.¹⁰⁷ Art. 10 protects workers from sexual harassment on the job.

Extensive discussions about equal rights also took place within the context of the debate on constitutional reform that took place in conjunction with German unification. While the overall yield of the attempted reform was mediocre, in the area of women's rights it led to the addition of the following, widely-accepted text to Art. 3 (2) of the Basic Law: "The government promotes the actual implementation of equal rights for men and women and works to eliminate existing disadvantages."¹⁰⁸

3. *Summary Remarks*

The legal and actual position of women in eastern Germany worsened significantly in the wake of the changes following the fall of the Wall.¹⁰⁹ During this period of some seven years, it was possible to only a limited extent to link the status achieved by women in East Germany with democracy and the new market economy—to free this status from the burdens imposed by the previous system while maintaining it at its existing level. The price of the freedom to plan one's own life, desired and won by East German women, has been high—or perhaps the gain in freedom and self-determination has proven, in the long run, to be far less than expected.

¹⁰⁶ *Gesetz zur Durchsetzung der Gleichberechtigung der Frau (2. Gleichberechtigungsgesetz)* of 24 June 1994, BGBl. I, at 1406.

¹⁰⁷ Under para. 611(a) (2) of the new version, compensation of up to three months' income in the desired position may be demanded.

¹⁰⁸ See BT-DRUCKS 12/7109.

¹⁰⁹ The actual situation includes, in particular, high levels of unemployment, particularly among women; their exclusion from sectors in which they formerly predominated, such as banking, insurance and the post office; the rapid spread of prostitution; the generally more superficial, trivialized image of women, etc.

The legal changes following unification each improved the position of women in the western German states, while generally worsening that of women in the east. Nevertheless, women's status on the job, and the prerequisites for combining family and career, continue to be better in the eastern than in the western states for women overall.¹¹⁰

This change in circumstances is quite consciously perceived by East German men as well as women, as is clearly indicated by their assessments and behavior. While all earlier East German studies had shown family to rank highest in the hierarchy of values, or at least equal to career, for men and women as well as for boys and girls,¹¹¹ family has now fallen behind career overall.¹¹² There is no evidence whatsoever that women or mothers wish to return to the home and make it their life's work, despite widespread assumptions by politician, who originally saw this as the solution to many problems. In fact, they consider the particularly high level of unemployment among women to be an enormous problem. If they have work, they must often accept conditions that impose hardships on a scale far beyond any they had previously experienced.

This problem is especially apparent in the behavior of those still able to decide to begin, or increase the size of, a family. The eastern German states are experiencing a historically unprecedented drop in the rate of marriage, which has fallen to under 50%, and an even greater drop in birthrates. In 1988, the last "normal" year in East Germany, some 215,000 children were born; in 1993 the figure was 80,000.¹¹³ One must hope that this extraordinary reaction to changed conditions is only temporary. Of course it does not only reflect the status of women or their problems; it is also the result of the totality of circumstances which have allowed women room for new orientations and brought new opportunities.

¹¹⁰ Women in the east also retain their advantage in retirement, as they were generally employed for more years than women in western Germany and their work always included pension insurance. They are only now beginning to experience female employment of under 18 hours a week, without insurance.

¹¹¹ See *Familienleben in der DDR (Zum Alltag von Familie mit Kindern)* 69 ff. (J. Gysi ed., 1989).

¹¹² See *Sozialreport 1992* 84 ff. (G. Winkler ed., 1993). See also B. SALZMANN, *DEMOGRAFIE UND FAMILIALE ASPEKTE VON ARBEITSMARKT UND WOHNUNGSBAU, MATERIAL ZUM 5. FAMILIENBERICHT* (1994), especially at 65 ff. on eastern Germany.

¹¹³ See *SOZIALREPORT 1992*, *id.* at 46 ff.; *Die Frau in der Deutschen Demokratischen Republik, STATISTISCHE KENNZIFFERNSAMMLUNG* (1990); and *STATISTISCHES JAHRBUCH DER BUNDESREPUBLIK DEUTSCHLAND 1993*, at 85 ff.

Nevertheless, it is a radical change that should be taken as a very clear signal to the political system.¹¹⁴

The system faces great challenges in regard to women and family. Above all, it must develop and maintain a reliable division of labor between the family and institutions outside the family in raising and caring for children of all ages, with parents retaining basic overall responsibility for their children. It must support working parents in all sectors, not merely the public sector, in varying forms, and take measures targeted at making education and family compatible.¹¹⁵ Financial pressure must be taken off families with children, and, finally, policies are needed that make it possible for parents to obtain and keep affordable, suitable housing.

¹¹⁴ For current views on this issue, including an advisory opinion at the 60th German Jurists' Conference, see U. Köbl, *Welche Massnahmen empfehlen sich, um die Vereinbarkeit von Berufstätigkeit und Familie zu verbessern?* JURISTENZEITUNG 840 ff. (1994).

¹¹⁵ This was clearly called for in Germany for the first time in the 5. Familienbericht, *supra* note 60, at 67-68, 213, and 313.