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## *EI – Pan-European Structure – Request for information Violence against women – Information concerning of Germany –*

*On request of the Education International (EI) – Pan-European Structure the GEW collected information concerning the important topic of ‘Violence against women’ in Germany. This report describes the legal situation and asks to which extent there is an implementation in practice. In this respect it is particularly interesting to refer to the critical ‘Concluding observations’ the Committee on the Elimination of Discrimination against Women (CEDAW) published in February 2009.*

*The two main approaches to tackle the sometimes very difficult situation are based on the direct connection with safety and health at the workplace on the one side and anti-discrimination on the other side. They offer different possibilities in particular concerning all activities which are aimed at preventing such situations.*

*The report also describes examples of trade union activities, such as a GEW publication “Violence and gender at school” (available only in German) and the regularly published ‘Newsletter’ which also contains information about the subject..*

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Member of the Executive Board of  
Gewerkschaft Erziehung und Wissenschaft (GEW)

**EI – Pan-European Structure - Request for information**  
**Violence against women**  
**- Information concerning of Germany -**

Overview

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## General observations

In principle, ‘violence against women’ is considered to be an important topic in German politics in general and in the education sector in particular.

(a) Information referred to

Besides numerous articles, publications, reports etc available in German language, much information is also available in English contained in reports by the Government and also NGOs which have been provided to international/European organizations such as:

- 6<sup>th</sup> Report by the Government to the CEDAW<sup>1</sup> (2007),
- Council of Europe - Campaign against Violence against Women<sup>2</sup> (2008?),
- Response of the Government of the Federal Republic of Germany - UNECE Questionnaire on Implementation of the Beijing Declaration and the Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000)<sup>3</sup> (2009).

<sup>1</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/566/45/PDF/N0756645.pdf?OpenElement>.

<sup>2</sup> [http://www.coe.int/t/dg2/equality/domesticviolencecampaign/countryinformationpages/germany/NationalReport\\_en.asp#TopOfPage](http://www.coe.int/t/dg2/equality/domesticviolencecampaign/countryinformationpages/germany/NationalReport_en.asp#TopOfPage).

Some of the information referred to below is taken from these reports.

Moreover, GEW has already provided specific information during the ETUCE project Project on Violence at School: "Preventing and tackling violence in schools"<sup>4</sup> as well as the two 'Work-Related Stress' Projects<sup>5</sup>.

(b) Political perspective (Council of Europe's initiative)

For the EI-Pan-European Structure, supporting the work towards a Council of Europe's convention on preventing and combating violence against women and domestic violence appears to be an important step to improve the situation of women.<sup>6</sup> The draft text - still under debate - is available.<sup>7</sup>

(c) Definitions

"Violence" against women should not only be understood in the sense of physical violence. At least for the purposes of protecting women in their personal integrity, the harassment (as a sort of possible pre-step to violence) should also be taken into account. These two elements, as distinct as they might be in theory, often cannot be separated in practice because of their often overlapping character. Such a combined understanding appears necessary and has, indeed, also been used in several areas, such as the Framework agreement on harassment and violence at work<sup>8</sup> (and the following ETUCE project<sup>9</sup>).

## Information for providing an overview of developments across Europe

As requested by EI, the following information for an overview of developments across Europe contains three elements in respect of Germany:

### *1. Legislation on violence against women and its implementation*

German legislation covers a great variety of aspects concerning violence against women. But many provisions are of a more general nature not specifically addressing the gender aspect in the relevant wording. It is for the practice to make the provisions work effectively for the protection of women against violence. Implementation research is being done but not sufficiently (in particular in the education sector).

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<sup>3</sup> <http://www.unece.org/gender/documents/Beijing+15/Germany.pdf>, p. 5 seq.

<sup>4</sup> <http://teachersosh.homestead.com/Violence/project.html>.

<sup>5</sup> [http://teachersosh.homestead.com/Stress\\_I/project.html](http://teachersosh.homestead.com/Stress_I/project.html) and [http://teachersosh.homestead.com/Stress\\_II/project.html](http://teachersosh.homestead.com/Stress_II/project.html).

<sup>6</sup> See i.a. <http://assembly.coe.int/Documents/WorkingDocs/Doc08/EDOC11772.pdf>; see in respect of the actual state of play

[http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/Communication/Campaign/DomesticViolence/default\\_EN.asp](http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/Communication/Campaign/DomesticViolence/default_EN.asp) and [http://www.wave-network.org/images/doku/hilaryfisher\\_report\\_7th\\_cahvio\\_meeting.pdf](http://www.wave-network.org/images/doku/hilaryfisher_report_7th_cahvio_meeting.pdf); on EU level see also

Conference in Brussels on 25/26 November 2010 <http://www.ft.dk/samling/20101/almdel/sou/bilag/69/912477.pdf>.

<sup>7</sup> [http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO\\_2009\\_32\\_prov\\_en%20\\_2.pdf](http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO_2009_32_prov_en%20_2.pdf).

<sup>8</sup>

<http://www.tradeunionpress.eu/Agreement%20violence/Framework%20Agreement%20Harassment%20and%20Violence%20at%20Work2.pdf>.

<sup>9</sup> <http://teachersosh.homestead.com/Violence/project.html>.

## General framework

### Legislation

(a) The general framework defined by the criminal code contains different provisions on “Crimes against Bodily Integrity”<sup>10</sup> and “Crimes against Personal Freedom”<sup>11</sup>, but also on “Representation of Violence”<sup>12</sup> or “Insult” by means of violence<sup>13</sup>. Children below the age of fourteen cannot be prosecuted.<sup>14</sup>

(b) Since 2001 an Act on Civil-Law Protection against Acts of Violence and Stalking (Protection against Violence Act)<sup>15</sup> has been adopted. This Act protects the victims of domestic violence especially by giving them an opportunity to use the family home without having to share it with the perpetrator. Such restraining orders are handed down by the Civil Law Courts upon a motion by the victim. Violence as defined by the Protection against Violence Act includes all intentional and unlawful injuries to the physical well-being, health or freedom of another person irrespective of the fact that such acts are committed in or outside the joint household.

Proceedings before the Family Court under the Protection against Violence Act do not legally require representation by counsel. The required motions may be filed in writing by the applicant or filed for the record at the office responsible for legal motions of the Family Court which has jurisdiction.

The Court (Local Court/Family Court) may grant restraining orders against the perpetrator to protect the victim. Such protection orders may include the following prohibitions, for example:

- entering the apartment of the injured person;
- approaching the apartment of the victim up to a distance defined by the Court;
- frequenting places which are regularly frequented by the victim (these include the victim’s workplace, the kindergarten or the school of the victim’s children as well as leisure facilities used by the victim);
- attempting to establish contacts with the injured person (this applies to all types of contacts by telephone, fax, letter or e-mail);
- arranging encounters with the victim (if such encounters occur unplanned, the perpetrator has to leave immediately).

Like any ruling by a civil-law court, the assignment of the apartment or the restraining order may be subject to compulsory execution.

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<sup>10</sup> Chapter Seventeen of the Criminal Code including provisions on Bodily Injury (Section 223), Dangerous Bodily Injury (Section 224), Maltreatment of Wards (Section 225), Serious Bodily Injury (Section 226), Negligent Bodily Injury (Section 229).

<sup>11</sup> Chapter Eighteen, including i.a. Coercion (Section 240).

<sup>12</sup> Section 131.

<sup>13</sup> Section 185: Insult shall be punished with imprisonment for not more than one year or a fine and, if the insult is committed by means of violence, with imprisonment for not more than two years or a fine.

<sup>14</sup> Section 19 – A Child’s Lack of Capacity to be Adjudged Guilty –: Whoever upon commission of the act is under fourteen years of age lacks capacity to be adjudged guilty.

<sup>15</sup> Gewaltschutzgesetz 11.12.2001.

## Implementation

(a) Until 2007, the Federal Government has adopted two Action Plans. Building on the First Action Plan of the Federal Government to Combat Violence against Women (1999)<sup>16</sup> and based on the results of representative studies, the Federal Government under the lead of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) adopted the Second Action Plan to Combat Violence against Women in September 2007.<sup>17</sup>

The Second Action Plan describes some 130 measures, projects and activities. It covers specific areas: greater protection for women migrants who are victims of violence and greater consideration of the particular problems faced by disabled women who suffer violence. The healthcare professions, and particularly doctors, are to be activated to support patients who suffer as victims of violence. Prevention measures are to kick in earlier than has previously been the case and will ideally be coordinated and implemented jointly between youth, women's and healthcare organisations.

(b) Generally speaking, the follow-up of legislation is not systematically evaluated. Nevertheless, in the specific area of 'violence against women' some evaluation research has been undertaken. Indeed, in 2004, the Federal Government published an implementation report<sup>18</sup> in respect of the First Action Plan (including references to the legislation in force). An evaluation of intervention projects is also available.<sup>19</sup>

(b) Given the absence of a systematic evaluation approach by the German Government, evaluations by international supervisory bodies are becoming an even more important means to assess the implementation of legislation (and practice).

In this context, it is worth noting that in its last "Concluding observations"<sup>20</sup>, the Committee on the Elimination of Discrimination against Women - after having expressed concerns in different respects as to the problem of violence against women - called upon or urged the German Government i.a. to

- to ensure the effective implementation of the 2007 action plan on violence, to study and analyse all types of violence against women, particularly those that result in murders of women, and to continue implementing policies to prevent such violence, provide protection, support and services to the victims, and punish and rehabilitate offenders,
- to implement legislation requiring that convictions for acts of domestic violence be taken into account in child custody or visitation decisions,
- to ensure greater cooperation between the Federal Government, the Länder and the municipalities to monitor the provision of social services with a view to ensuring the availability of a sufficient number of shelters equipped to accommodate women with special needs, such as women with disabilities, throughout the territory of the State party and

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<sup>16</sup> <http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/actionplan-violence-against-women,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

<sup>17</sup> <http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/aktionsplan-ii-gewalt-gegen-frauen-englisch,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

<sup>18</sup> <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/gewalt-umsetzung-aktionsplan-gewalt-gegen-frauen,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

<sup>19</sup> <http://www.wibig.uni-osnabrueck.de/wibig1.htm> (short version in English, 2004).

<sup>20</sup> 12 February 2009 CEDAW/C/DEU/CO.

making sure that such shelters are adequately financed and open for all, regardless of the victim's financial resources,

- to establish a method of collecting comprehensive statistical data disaggregated by sex, age, type of violence and the relationship of the perpetrator to the victim. The Committee urges the State party to provide statistical information in its next periodic report on the number of cases of female genital mutilation on women and girls living in Germany.

### Violence at the (school) workplace

The legal framework concerning violence at the (school) workplace differs in respect of the competencies which lie for education ("cultural sovereignty") within the sub national/regional states ("Länder"). Therefore, each of the Länder has its own approach to the problem. Nevertheless, the legal framework for employment in general, including the education sector, is defined by national laws (in particular safety and health at the workplace and anti-discrimination legislation).

(a) Education: A report on "violence in schools" in Germany<sup>21</sup> described the legal framework as follows:

*"Article 1 of German constitutional law (Grundgesetz: GG) defines human dignity as inviolable; article 2, paragraph 2 guarantees physical soundness. According to compulsory schooling and laws for education the higher regional court in Saarland laid down, that teachers have the obligation to protect school children against damage "in health and fortune, and also from violation of other legally protected goods"<sup>22</sup>.*

*The German Federal Constitutional Court (Bundesverfassungsgericht), the court which is responsible for compliance with the constitution, sees national education in schools equal to the right of parental education (article 6 par. 2 GG)<sup>23</sup>. Thus, there is a passage in all school laws of the Lands, which imposes on every school, apart from the sheer teaching of knowledge, educational functions like teaching students for instance the ability to compromise and tolerant handling of differently minded people.*

*In some Lands there are regulations to the laws, which rule in detail e.g. conflict conciliation and order measures for schools regulations (e.g. in Brandenburg). The legal bases in the Federal Republic of Germany are so far unambiguous: Schools are to guarantee that "their" students are protected against psychological and physical violations and damage. ...*

*Nevertheless no clear statement can be made about the handling of violence in German schools despite the clear legal situation shown above. As a striking example of this the house regulations of schools can be taken. These regulate in detail, when, how and for how long the classrooms are to be aired between lessons and what has to be done with the garbage. Only a single, very general clause refers to "a good being together at school", that should be looked after. In principle, the handling of violence in German schools does not seem to be determined explicitly in a written form. Thus threatening sanctions are not comprehensible for all students and each case must be treated and discussed as individual case. Schools, which*

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<sup>21</sup> Schäfer, Mechthild/Korn, Stefan: Tackling Violence in Schools: A Report from Germany, 2001; <http://www.gold.ac.uk/connect/reportgermany.html>.

<sup>22</sup> OLG (Court of Appeal) Zweibrücken, judgment of 05.06.97, 6 U 1/97.

<sup>23</sup> Bundesverfassungsgericht (Federal Constitutional Court) in: BVerfGE 34, p. 165.

*execute explicit interventions against violence and which fix behavioural rules, are not yet the norm in Germany”.*

(b) Furthermore, concerning the safety and health at the workplace all risks for the health of teachers have to be identified, evaluated, prevented or at least reduced.<sup>24</sup> It is self-evident that ‘violence’ (against teachers) is a direct attack on their safety and health.

(c) It is important to note that anti-discrimination legislation in respect of employment does not contain a direct reference to violence but it is obvious that any violence would even more contribute to the “effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment”<sup>25</sup> than a “normal” harassment which is directly covered.

## *II. Activities in schools to prevent violence and raise awareness*

### **General framework**

From the outset, it should be noted that activities in schools to prevent violence and raise awareness have different objectives and are of different nature. Nevertheless, in all activities in this respect trade unions should be fully consulted and involved. Two main areas may be separated.

#### *Safety and health approaches*

In respect of safety and health issues in schools, there is the general obligation to establish ‘risk assessments’. Until recent times there has been given only very little (if any) attention to aspects of “violence at school” in risk assessment. This is all the more true if one takes into account that risk assessments do not form part of a well established practice in the education sector.

But due also to trade union activities, a certain shift in direction of more awareness for the necessity to take this aspect (together with harassment) serious and start to include this also in the demands for good risk assessments is to be noted.

#### *Anti-discrimination approaches*

Since violence against women is directly related to the female sex, it is obvious that anti-discrimination approaches are very much at stake. In the education sector they deal with mainly with **curriculum** – i.e. subjects learning to behave, citizenship/civic education, etc. as subjects taught in the schools, but on the other side also with **training** for school managers and teachers (initial and/or continuous professional development for teachers).

There are different directions in which these approaches should lead. Firstly, it is the prevention of violence against female pupils/students. But this is, secondly, directly followed by the necessity to prevent also violence against women teachers (also from persons outside the schools). Lastly, the direct link between domestic violence and pupils/students should be taken into account.

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<sup>24</sup> See Section 5 of the Protection of Safety and Health of Workers Act.

<sup>25</sup> See Section 3 (3) of the General Equal Treatment Act.

## Violence at the (school) workplace

Since the approach of the questions to be answered appears to be proactive the following references do not deal with the measures and activities in cases where prevention/awareness raising has failed and direct (perhaps emergency) action is needed because of acute violent situation in the school.<sup>26</sup>

In its Action Plan II<sup>27</sup>, the Federal Government refers to

- the **Federal Working Group against Domestic Violence** having commissioned a sub-committee with the development of corresponding **modules specifically for the schools**,
- the support of the **research project to accompany the Berlin model project “BIG Prevention Project, Cooperation between School and Youth Services in cases of Domestic Violence”** (*BIG Präventionsprojekt, Kooperation zwischen Schule und Jugendhilfe bei häuslicher Gewalt*).

The project tested methods of preventing domestic violence and supporting affected children and their parents on the interface between school and the youth services authorities. The results of this project, as well as of other pioneering prevention measures, have been presented at a **conference** staged by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.<sup>28</sup>

This project has been welcomed by the GEW.<sup>29</sup>

The problem of ‘violence at school’ is taken more seriously also in respect of safety and health at the workplace. For example, the risk assessment for schools should contain an evaluation of potential situations of violence.<sup>30</sup> Moreover, sometimes specific institutions or experts (such as school psychologists) are available.<sup>31</sup> But these approaches do not yet take account of the specific problems which female teachers are facing. Only a few projects directly deal with gender-related questions.<sup>32</sup>

Se same applies in principle to the activities aimed at awareness raising. Although there are many activities in the different Länder,<sup>33</sup> they rarely refer to the specific situation of female pupils or teachers.

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<sup>26</sup> See in this respect e.g. *Manfred Triebe and Klaus Will*, LOOKING AND ACTING - Crisis and emergency plans for Berlin schools.

<sup>27</sup> See footnote 17.

<sup>28</sup> Tagungsdokumentation "Präventionsmaßnahmen gegen häusliche Gewalt: Was kann Schule machen?" (23.12.2008), <http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen,did=118486.html>.

<sup>29</sup> GEW: „Schule muss bei Gewaltprävention Schule machen“ (25.11.2009), [http://www.gew.de/GEW\\_Schule\\_muss\\_bei\\_Gewaltpraevention\\_Schule\\_machen.html](http://www.gew.de/GEW_Schule_muss_bei_Gewaltpraevention_Schule_machen.html).

<sup>30</sup> [http://www.bgw-online.de/internet/generator/Inhalt/OnlineInhalt/Medientypen/bgw\\_check/TP-12GB-Gefahrungsbeurteilung-in-Schulen-und-Ausbildungsstaetten.property=pdfDownload.pdf](http://www.bgw-online.de/internet/generator/Inhalt/OnlineInhalt/Medientypen/bgw_check/TP-12GB-Gefahrungsbeurteilung-in-Schulen-und-Ausbildungsstaetten.property=pdfDownload.pdf), p. 25.

<sup>31</sup> Berlin, „Team Gewaltprävention und Krisenintervention im Schulpsychologischen Dienst“, [http://www.berlin.de/imperia/md/content/sen-bildung/hilfe\\_und\\_praevention/gewaltpraevention/team\\_schulpsychologie.pdf?start&ts=1284385818&file=team\\_schulpsychologie.pdf](http://www.berlin.de/imperia/md/content/sen-bildung/hilfe_und_praevention/gewaltpraevention/team_schulpsychologie.pdf?start&ts=1284385818&file=team_schulpsychologie.pdf).

<sup>32</sup> Ich bin ich - du bist du - und das sind wir! Projekt zur Prävention von sexueller Gewalt gegen Mädchen und Jungen, <http://www.gesundheit-nds.de/SUG/projektliste/ichbinichdubistduunddassindwir.html>; see also footnote 34, p. 46 seq.

<sup>33</sup> Given the variety and the quantity, it is not possible to describe them; indications may be found (in German) <http://www.gewalt-an-schulen.de/bildungsserver.html>.

### *III. Union activities and campaigns to prevent violence and raise awareness*

The GEW takes this problem serious. Different activities have been launched.

At first, it should be noted that a Working Group at the GEW's national level specifically deals with important aspects of this problem. In this context, most recently, a GEW publication "Violence and gender at school"<sup>34</sup> of nearly 80 pages was elaborated by two experts in order to raise awareness, stimulate the debate, offer important background information and give helpful advice how to solve problems. The theoretical parts examine the specific role of gender in relation to violence in schools. Yet the main part is devoted to the practical examples how to (start to) prevent situations of violence. Six examples are described in some detail and commented on. They are supplemented by questions to teachers which should enable them to better prepare themselves to cope with the challenges in critical situations (violence). This publication will be widely disseminated as a brochure and via internet.

Moreover, in the regularly published 'Newsletter' ('Women in the GEW', 'Frauen in der GEW') which is widely disseminated two recent issues deal with specific aspects in more details:

- Sexual violence in schools (May 2010)<sup>35</sup>,
- Domestic violence (March 2009)<sup>36</sup>.

Concerning the specific problem of 'Cyber harassment in schools'<sup>37</sup>, GEW has also launched different activities such as a study based on on-line questionnaires filled out by some 4,000 GEW members.<sup>38</sup>

Furthermore, the GEW has adopted a position paper in respect of sexual abuse in education institutions, a serious problem which has become an important issue in the public awareness and debate.<sup>39</sup>

Last but not least, the safety and health activities are directed to get the 'violence at school' problem integrated in the risk assessments.

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<sup>34</sup> Gewalt und Geschlecht in der Schule, - Analysen, Positionen, Praxishilfen – Herausgegeben von der Gewerkschaft Erziehung und Wissenschaft, Vorstandsbereich Frauenpolitik. Im Auftrag der Max-Traeger-Stiftung erstellt von Dr. Mirja Silkenbeumer, unter Mitarbeit von Raquel Vazquez Perez an der Leibniz Universität Hannover, November 2010.

<sup>35</sup> 1/10 Frauen in der GEW Sexuelle Gewalt in der Schule - Schule als Institution muss handeln (Mai 2010) [http://www.gew.de/Binaries/Binary64402/Frauen-1-10\\_Newsletter.pdf](http://www.gew.de/Binaries/Binary64402/Frauen-1-10_Newsletter.pdf).

<sup>36</sup> 1/09 Frauen in der GEW Häusliche Gewalt Prävention ist der beste Schutz (März 2009) [http://www.gew.de/Binaries/Binary64399/Frauen-1-09\\_Newsletter.pdf](http://www.gew.de/Binaries/Binary64399/Frauen-1-09_Newsletter.pdf).

<sup>37</sup> [http://teachersosh.homestead.com/Cyber\\_Harassment/project.html](http://teachersosh.homestead.com/Cyber_Harassment/project.html).

<sup>38</sup> [http://www.gew.de/GEW\\_stellt\\_Studie\\_zu\\_Cyber-Mobbing\\_vor.html](http://www.gew.de/GEW_stellt_Studie_zu_Cyber-Mobbing_vor.html).

<sup>39</sup> [http://www.gew-gewerkschaftstag.de/Gewerkschaftliche\\_Perspektive\\_GEW-Positionen.html?SID=d85e780b3e4d9d43f87063e3e5bce3dd](http://www.gew-gewerkschaftstag.de/Gewerkschaftliche_Perspektive_GEW-Positionen.html?SID=d85e780b3e4d9d43f87063e3e5bce3dd).

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