

# Marginalized in the Name of the Law

The Bavarian legal education system likes to see itself as one of the best in the country. However, it has shortcomings in one particular area: practice cases, written exams and casual – and less casual – remarks in the study groups testify to an astonishing view of women. A story of Gucci handbags and childlessness.

TEXT **DANIELA SCHWEIGLER**

**A**nd then I would like to make you aware of the most important date in your legal traineeship calendar: the soccer tournament. I want to encourage all of the men today to start training.” These are the words I heard at the beginning of my professional legal training. For supposedly the most important event of the traineeship, there was clearly only a place on the sidelines reserved for women, which would turn out to be symptomatic of the following two years.

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Over time, three constantly recurring basic patterns of discrimination emerged: First, women rarely even feature in the practice cases discussed in the study groups in preparation for the second state examination, or are heavily underrepresented compared to men. Second, where women do appear in the cases, they frequently occupy subordinate or evidently typical female roles. And finally, women are pretty

much openly made to appear ridiculous not only within the context of these cases, but also by the study group leaders.

In the teaching materials, examination papers and practice cases, women are marginalized both through the language used and through their sometimes flagrant underrepresentation. Without exception, all of the scripts and overviews handed out by my study group leaders used only the masculine form in German, for example, for the terms judge, public prosecutor, witness or attorney-at-law. The following example illustrates that women are not also taken into consideration, as is often claimed. In the course on the code of criminal procedure, we were given fictitious proceedings of a trial containing numerous procedural errors that had to be identified as an exercise on the right of review. A total of 23 people, predominantly men, were mentioned in this 21-page document: the presiding district court judge Dr. Schnell; public prosecutor Bär as the representative of the district attorney’s office; senior court secretary Moll as the authenticating officer; the jurors Obermeier and Zoll; the accused Hans Müller; his defense attorney Zorn; the expert witnesses Dr. Heinrich Hiller and Dr. Konrad Zart; the witnesses Helmut Effner, a bricklayer, Hans Müller, Sr., a pensioner; Dr. Erwin Klug, a district court judge; Franz Effner, a specialist worker; Gerhard Menzel, a preci-



» The accused was with his girlfriend, the **attractive hairdresser Simone Mühlberger**, at the swimming pool on Friedberger Strasse. While the accused and his girlfriend were chatting at the edge of the pool, the plaintiff and his companion let out an ear-piercing cry, chased one another around the pool and splashed each other with water. **Miss Mühlberger** was splashed twice in the face by the plaintiff with a large amount of water, **badly affecting her new hairdo**, which later **had to be redone.**«

sion engineer; Siegfried Wagner, a bank employee; Dr. Heinrich Meyer, a physician; Ernst Pfeleiderer, a managing director; Herbert Meister, a detective chief inspector; Ilja Mirkovic, an unskilled worker; Heinrich Ochs, a landlord; and Hugo Sauer, a waiter. The only women mentioned: the witnesses Maria Müller, a housewife, the spouse of the accused; and Senta Ludwig, a barmaid, fiancée of the accused.

Women are all too often taken into consideration only in relation to men, namely as their wives and – in this specific case – as a fiancée, which the accused additionally (!) had. This case study also reveals that this marginalization also concerns other groups of people, in particular those from immigrant backgrounds. It is noticeable here that only one person crops up who doesn't have a typically German name, Ilja Mirkovic, who is an "unskilled worker."

If women appear in practice cases and written exams, it is often as a mother, wife or housewife. Women primarily occupy the role of victim in criminal law. They are the victims of domestic violence or are helpless in some other way. The "43-year-old housewife Brigitte Mai [...] had no chance of defending herself," for example, when the perpetrator snatched her car keys from behind, which was the scenario in one written exam. When women appear as the perpetrator, which rarely occurs, the crime it-

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## The primary concern is about outward appearances – damage to hairstyles, handbags or shoes

self is, of course, stereotypical. It might concern the theft of perfume, for example. In contrast to their male counterparts, who work as farmers, bank employees or carpenters, female jurors and witnesses are almost always "housewives." The asymmetry is particularly evident in one written exam from 2013: Whereas the two young accused had "no qualifications" and lived "on welfare benefits," the personal circumstances of the witness were: "Hanna Haas, aged 18, housewife."

The roles are also clearly assigned in civil law. In a 2011 written exam, the "husband of the plaintiff purchased [...] the contested Rolls-Royce in June 2008 for 18,000 euros [...] and gifted, handed over and transferred ownership of it to his wife, the plaintiff, on New Year's Eve in the same year, telling her that she should "have her own private vehicle." One case discussed during the course concerned the consultation of two entrepreneurs when founding a company. It was of great importance to the two clients that "their wives should be provided for, as the respective family incomes had to date come primarily from equity interests."

"Of course, my wife and sister-in-law would have no interest in keeping the company going themselves or only assuming personal liability," was one of the reasons given. In a written exam on inheritance law, the client, an elderly woman, declared that her sons, Ulrich and Udo, had become "successful businessmen and both earned good salaries. However, neither of them had any children because their wives also worked."

Family law naturally stands out, in particular, for cementing conventional gender roles. In the family law course, the female lecturer failed to deviate from the traditional allocation of roles in any case study: Without exception, the mother looked after the children, earned either no income or significantly less than her husband, and was therefore dependent on his alimony payments. Even beyond the specific cases, the lecturer didn't miss the opportunity to emphasize at an opportune moment how damaging "third-party care" was for children and young people, referring to her previous position as a juvenile court judge.

The following case, covered when studying the equalization of matrimonial surplus, is also representative: The husband, a "hardworking businessman," had debts of 20,000 euros at the time of marriage and today has assets of 20,000 euros. "However, he fell for his secretary, Dolores, and gave her 10,000 euros. [...] In contrast to Dolores, the husband kept a tight rein on his wife's spending during the marriage. As she had entered the marriage with no assets and had been supportive of her husband and looked after the home, she had been unable to accrue any assets."

A number of gender-specific stereotypes are reinforced here in concise form: First, there is the wom-



an's financial dependence on the man. He clearly decides on the use of the family income and can keep his wife "on a tight rein." Moreover, the wife is also personally forced into the role of victim. She has shown the proverbial "devotion and support" to her husband all these years, only to now be swiftly replaced by the secretary.

In addition to the consolidation of gender stereotypes, not one single case of a registered civil partnership came up during the family law course, which means another marginalized group must be mentioned here. In the course on income tax law, which took place prior to the Federal Constitutional Court's decision on income splitting in 2013, the female lecturer also explained that registered civil partners could not be assigned to the income tax bracket III–V in Bavaria "because the computer will simply not process Mr. and Mr."

In the already-discussed written exams and practice cases, women are even made to look blatantly ridiculous on a continual basis, as in this example where claims for damages have to be evaluated: "The accused was with his girlfriend, the attractive hairdresser Simone Mühlberger, at the swimming pool on Friedberger Strasse. While the accused and his girlfriend were chatting at the edge of the pool, the plaintiff and his companion let out an ear-piercing cry, chased one another around the pool and splashed each other with water. Miss Mühlberger was splashed twice in the face by the plaintiff with a large amount of water, badly affecting her new hairdo, which later had to be redone."

The woman, or the "young lady," as she is referred to, is reduced to her appearance. Her horizons clearly do not extend beyond the condition of her hairdo. "Photos of the witness shortly after the incident" are presented as evidence of the "damage."

The following case also follows a similar pattern – the woman's only concern is of an external nature: "K is claiming damages against B, whose sharp-edged banisters caused damage to her Gucci handbag." In a particularly tasteless example from a family law practice paper, the female client, a victim of domestic violence, in addition to filing for divorce, transfer of parental custody and alimony, was also making a claim for damages against her husband for the destruction of her high heels. The complainant

first outlined how her spouse had beaten her, and then immediately afterwards, mentions "a pair of brown women's low shoes and a pair of leather boots." These had, in fact, "been cut up with a pair of scissors, and the heels had been sawn off in a fit of rage" by the husband.

In the 2011/I/2 written exam, the witness, Sabine Schopper from Starnberg, says: "I am the Christs' neighbor and, since early 2009, often travel to Munich with Mrs. Christ to go shopping. We always

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## Even female lecturers use teaching material containing stereotypical role models

drive with her car to Maximilianstrasse." Mrs. Schopper is well informed of the goings-on in the neighborhood because: "I often look out of the window, as I've got lots of time on my hands."

However, even beyond the cases highlighted here, women are continually – almost in passing – the subject of "snide comments" by the study group leaders: A judge once said, in relation to section 818, paragraph 3, of the German Civil Code, that women's "preferred means of becoming impoverished was through the purchase of shoes and handbags." Another judge poked fun at the "Alice Schwarzer mob," which supported gender-neutral language in legislation, such as "investigating persons" instead of "investigating [male] officers" in section 152 of the German Judicature Act, calling them a "Punch and Judy show."

Despite the fact that the presence of women is also increasing in legal training owing to the growing proportion of women working in the judicial system, the majority of study groups in Bavaria are led by men. This is especially true of study groups led by those in full-time positions. Older teaching material, mainly produced by men, is used all too often – by men and women – especially for past written exams, without them being revised to take account of the role models conveyed. The upshot is that the tra-



ditional stereotypes are constantly repeated and perpetuated by the instructors. There is clearly insufficient awareness of the issue. This makes it all the more necessary to institutionalize the level of sensitivity required at the Ministry of Justice level.

A refreshing example of the opposite is the training in administrative law for which, in Bavaria, the district authorities are responsible. The very first letter from the Upper Bavarian local authority made a positive impression with continual reference to the “training of male and female junior lawyers.” Since the 1990s, the Upper Bavarian authority has produced standardized training documents and written exams that are used by all study groups and that are sometimes also made available to other district authorities. As part of the standardization and revision process, the cases have been specifically examined and amended to take account of gender awareness. However, even in administrative law, the documents have yet to ensure adequate representation of other social groups.

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## There is clearly a sexism issue with underlying structural causes

This kind of concerted approach should also be adopted by the judicial system. The documents could also conceivably be made uniform for all study groups there. However, even if the organization of the teaching and, in particular, the selection of cases is left to the individual study group leaders, this doesn't prevent the ministry from stipulating a particular framework for the drafting of the documents. Although this may mean multiple references to both genders in German (the male and female forms of lecturer and judge, etc.), such provisions would not infringe upon their judicial independence. The legal training system is ultimately part of the judicial administration, which means that a right to issue instructions under administrative law exists within this framework in any case.



### THE AUTHOR

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Learning is about working from the bottom up. However, it is women, in particular, who find themselves at the very bottom of the pile in Bavarian legal traineeships. Legal training in Bavaria has a sexism issue that manifests itself in both the cases used for training and in the teaching itself. In order to address the underlying structural causes – especially the lack of awareness of the issue – an institutionalized procedure at ministerial level is both desirable and necessary. The Upper Bavarian authority is exemplary in this respect.

Finally, the fact that there are also some very positive initial signs shouldn't be overlooked. In the 2013/I written exam, the key persons from whose perspective the exam had to be completed were mainly women, including the presiding judge, the public prosecutor and the attorney-at-law. Whether this was coincidence or marks a change of trend remains to be seen. What is clear is that, as long as practice cases such as those outlined here are discussed in the study groups, the issue won't be changed fundamentally – reflecting badly on Bavarian legal training, which is highly regarded in the profession. ◀

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