



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Germany
<b>Title:</b>	Equal opportunity commissioners: females only!
<b>Date:</b>	19 February 2018
<b>Expert:</b>	Ulrike Lembke
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Court decision on equal opportunity commissioners
<b>Ground of discrimination:</b>	Sex/gender
<b>Source:</b>	Court decision
<b>Field:</b>	Employment
<b>Applicable law:</b>	Article 3(2) of the German Basic Law

### **Content**

**Case:** Within the civil services on federal and state level, equal opportunity commissioners are elected who work towards establishing, amongst others, more women in leading positions; a better work-life balance; combat sex discrimination and sexual harassment. Under the respective state laws, the equal opportunity commissioner is elected by all female employees working in the department and only female employees can run for this office. Some male employees consider this to be unjustified discrimination against men, and therefore filed a complaint.

**Decision of the Court:** On 10 October 2017, the State Constitutional Court of Mecklenburg-Western Pomerania decided that the restriction of the right to vote and stand for election as equal opportunity commissioner to female employees is in accordance with the German constitution. The court held that article 3(2) of the German Basic Law explicitly allows to compensate for disadvantages generally suffered by women, especially in working life. The lack of reconciliation of working and family life, the problem of sexual harassment at the workplace, the small number of women in leading positions are all signs of structural discrimination of women in the opinion of the court. As long as this structural discrimination was not effectively tackled, the legislator was authorized by the constitution to use any means appropriate and necessary to end this discrimination. Although this might change in a hopefully not too distant future, reserving voting and candidate rights to female employees is appropriate and necessary in the current situation and thus, in full compliance with the constitution.

**Key points of analysis:** Using the example of equal opportunity commissioners, the state constitutional court explained the idea of structural discrimination and the suitable means to tackle this kind of discrimination. The court showed that to reach gender equality as a goal, you cannot always use formal gender equality as means. Quite the opposite; the use of affirmative action or special measures is an essential tool to achieve substantial equality.

**Internet link source:** Decision of the State Constitutional Court of Mecklenburg-Western Pomerania of 10 October 2017:  
<http://www.landesverfassungsgericht-mv.de/presse/aktuelle/download/7%20-%2016%20Urteil%20anonym%2010.10.2017.pdf>