

Reform of social security coverage for women and survivors in the Federal Republic of Germany

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Introduction

A reform of survivors' benefits is about to take place in the Federal Republic of Germany. It was initiated by a decision of the Federal Constitutional Court, the country's Supreme Court, given on 12 March 1975. The Court took exception to the different entitlement conditions for widows' and widowers' pensions and demanded equal rights for men with regard to eligibility for survivors' pensions by the end of 1984.

The prime objective of this reform is therefore to establish equality of treatment for men in respect of survivors' pensions. The Federal Government, however, considers that a reform of the entire system of survivors' benefits and social security for women is also needed.

Equal rights for women in industry, employment and society are a constant subject of discussion in the Federal Republic of Germany, where women make a substantial contribution to economic and social life. The question is whether this contribution is matched by adequate social security for women and whether and how far equality of rights for men and women has been achieved. The discussions so far have revealed problems in the field of old-age pensions.

The system of old-age pensions and, in particular, of benefits to survivors is based on a concept of marriage in which the husband works while the wife keeps house and looks after the children. This concept no longer corresponds to social realities, since increasing numbers of women are gainfully employed outside the home.

The Federal Government and the legislature were thus faced with an extremely difficult task. There were various approaches which would have met the criticism of the Federal Constitutional Court, but each presented problems which had to be discussed in depth; the Federal Government therefore thought it useful to associate persons from many walks of life with the discussions so as to make sure that account was taken of all relevant

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aspects, and, in his government policy statement of 16 December 1976, Chancellor Helmut Schmidt announced to the German Parliament that a Commission of Experts was to be established with a view to working out a suitable basis for further discussions.

The formal government decision on the setting up of the Commission of Experts to Study the Social Security Status of Women and Survivors was taken on 17 August 1977. It stipulated that the Commission should comprise 17 members, i.e. five scientists (from the fields of social law, economics, social sciences, finance and administrative law), one representative of each of the three parliamentary parties, two representatives of Land governments and one representative each of the German Confederation of Trade Unions, the German Salaried Employees' Union, the Confederation of German Employers' Associations, the Catholic Church, the Protestant Church, the statutory pension insurance fund and the German Women's Council. The Commission had the mandate to advise the Federal Government on the preparation of the reform, and in particular to analyse the present social security status of women and survivors and submit proposals for its improvement. Of course the Commission had no authority to take binding decisions; this was exclusively reserved for the legislature. The Commission started work in October 1977 and presented its final report on 21 May 1979. This report was the basis for all further discussions about the reorganisation of survivors' benefits and the social security coverage of women and therefore merits detailed treatment in this article.

In order to understand the scope and impact of the reform it will be necessary to describe the existing social security scheme, those parts which will be affected by the reform, and the alternative proposals for reorganisation. Accordingly, the following sections will outline the main features of the present pension insurance scheme in the Federal Republic of Germany, the proposals of the Commission of Experts to Study the Social Security Status of Women and Survivors, the prospects for their implementation and the essential aspects of the reform.

The present pension insurance scheme¹

Social security for women in the Federal Republic of Germany is largely determined by their employment and marital status. This is reflected in two important elements of the pension insurance scheme, namely the wage-related pension, which is based on the principle of solidarity between insured persons and pensioners—the “contract between the generations”—and the widow's pension, which is designed to replace maintenance by the husband.

The pension an insured person eventually receives depends on the amount of income earned over his entire working life. Such a pension scheme tends to leave out those who are not gainfully employed; for example, compulsory coverage under statutory pension insurance does not extend to non-economically active women.

A comparison of the pensions of insured men and women shows that the pensions of men are very much higher than those of women, on average more than double. This is primarily a result of the fact that women have shorter periods of coverage and that their earnings are lower.

Women have on average ten years of coverage less than men, essentially because they have been occupied with family responsibilities for much of their lives. During these periods, and in particular when their children were young, they often acquired only insignificant pension rights or even no rights at all; their position has been further aggravated by the fact that until 1967 they had the possibility of applying for reimbursement of their pension insurance contributions when they got married.

Furthermore, women as a rule have generally earned less than men. The average annual earnings of women workers who were first awarded a pension in 1979 were 44 per cent lower than the average earnings of all insured persons. This can be attributed to the following reasons.

Previously, girls were brought up to fulfil a stereotype role of housewife and mother. The result was that little attention was paid to their school education and in particular their vocational training, so that they received lower wages and subsequently a lower pension. Although the situation appears to have changed as the training of girls has greatly improved, this development principally affects the younger generation of women; the older generations will still end up with only a small pension.

In addition, women were subject to wage discrimination until 1955. Simply on account of their sex they received lower wages or were placed in the "light wage" categories. Moreover, they often worked in branches where wages were below average, for example in domestic service, agriculture, the retail trade and the textile and leather industries.

Finally, the advancement of women into better-paid posts was impeded by the fact that they ceased to work for a certain period when they had children to look after.

After the death of her husband a wife will always receive a widow's pension regardless of whether she is gainfully employed or not. In cases where she draws a pension of her own, the widow's pension is paid on top of it. Even where this is the case, however, it does not follow that she receives an excessive benefit. On the contrary, the total benefit level of these women is on average still lower than the benefits of men who have only their own pension. For women, however, who draw a high pension of their own and have in addition a high widow's pension the total benefit level can be very high. A non-employed wife whose husband was insured receives upon his death a widow's pension derived from the husband's insurance. This pension, which amounts to 60 per cent of that of the deceased husband, is known as the "large" widow's pension and is payable if the widow is in a situation of need, i.e. if she has children to look after, if she is occupationally disabled or unemployable or if she is aged 45 or over. If the widow does not fulfil any of these requirements she receives the "small" widow's pension, which is

computed according to a different formula. As a rule the large pension is payable.

In its decision of 6 June 1978 the Federal Constitutional Court declared that the limitation of the widow's pension to 60 per cent of the husband's pension is compatible with the Constitution; it drew attention, in particular, to the fact that the insured person does not pay any special contributions for the widow's pension and that as long as the husband is alive the maintenance claim of the wife is limited to part of the pension. This should, however, not be taken to mean that the present scheme of survivors' benefits is always satisfactory. In a number of cases the widow's pension does not provide adequate financial support, particularly since the fixed costs of living do not decrease with the death of the husband.

The pension regulations lay down different conditions for the award of a survivor's pension depending on whether the survivor is the husband or the wife. The wife will in principle always receive a widow's pension if her husband was insured. The widower, however, is awarded a pension only if at the time of her death the wife had been the principal breadwinner of the family. In this respect these different entitlement conditions mean that legally the wife is in a better position than the husband. They were the result of the traditional concept of marriage in which such a maintenance replacement benefit for the surviving husband was not necessary since the death of the wife did not normally affect his livelihood; the payment of pensions to widowers could therefore be limited to exceptional cases.

In 1975 the Federal Constitutional Court was called upon to decide whether these different entitlement conditions were compatible with the Constitution and in particular with the principle of equal rights for men and women (section 3, subsection 2, of the Basic Law: "Men and women have equal rights"). The action had been brought by three widowers, whose deceased wives had drawn a pension—albeit a small one—from the statutory pension insurance fund. Since in all three cases the family had not been predominantly maintained by the wife, the pension insurance institution refused, on the basis of the relevant legal provisions, to pay the men widowers' pensions. The widowers, however, thought that these provisions were no longer compatible with the Constitution and took the matter to court. On 12 March 1975 the Federal Constitutional Court ruled that the different entitlement conditions for widows' and widowers' pensions could for the time being still be accepted under the Constitution, but at the same time requested the legislature to adopt by 1984 a regulation more in line with the Constitution than was the current legislation. Explaining the grounds for this ruling, the Federal Constitutional Court pointed primarily to the increased employment of married women and stated that the law in force had led to preferential treatment of widows which could not be justified much longer because a growing number of women had their own old-age pension plus a widow's pension whereas men had as a rule only their own pension and received a widower's pension in very rare cases. Thus it was the need to bring

about equality of treatment for men and women which started off the reform discussions.

For compelling constitutional reasons, therefore, it was clear that the survivors' benefits scheme had to be reorganised with a view to eliminating the differences in the entitlement conditions for widows' and widowers' pensions, so that in future men and women would be awarded survivors' pensions under the same conditions. This was the minimum objective which the reform had to achieve.

At the same time the Federal Government wants to extend and improve the social security coverage of women. It does not intend to introduce for all widowers a widower's pension similar to the widow's pension. Such a solution would merely benefit men and be of no advantage to women. The unconditional award of a widower's pension, which would be paid on top of the pension the husband receives of his own right, would only tend to increase the existing discrepancy between the pension amounts of men and those of women.

The efforts to improve the social security coverage of women should be seen in the context of certain measures which were taken in the past and which on the whole worked to the advantage of women. First of all, the abolition of the contribution reimbursements on marriage, which took effect on 1 January 1968, has to be mentioned. Until 1967 women could have their own contributions reimbursed when they married, which meant that they gave up the pension rights they had acquired. In addition mention must be made of the pension for minimum incomes which was introduced in 1972. This is an increase in the pension amount of those who have been insured for many years but have had low earnings; in concrete terms it means that periods of compulsory coverage before 1973 are counted as if the insured person had earned 75 per cent of the average earnings of all insured persons. Hence the pension for minimum incomes is a compensation for low earnings in the past. In over 80 per cent of the cases in which it has been paid the beneficiaries have been women. Moreover, pension insurance was made generally accessible, which means that everyone may make voluntary pension insurance contributions and thus establish a personal pension entitlement without having to fulfil special conditions.

Finally, the most important step previously taken in this direction was the introduction from 30 June 1977 of the splitting of pension entitlements. In cases where a couple obtain a divorce the pension entitlements acquired during the marriage (including any other old-age entitlements such as civil servants' pensions) are shared equally between husband and wife. Where the husband has acquired higher pension entitlements than the wife—which is generally the case—he has to make up the difference. This is done by transferring pension entitlements from the husband's record to that of the wife. Thus the wife will have a pension of her own in the event of occupational incapacity, unemployment or old age.

All these legislative measures were aimed at reducing the one-sided dependence of the wife in terms of social security and at strengthening and improving the social security status of women. Further improvements are to be achieved by the reform of survivors' pensions and in particular by the participation of the surviving spouse in the total pension rights acquired by both spouses.

Proposals for a reform of the social security status of women and survivors

The Commission of Experts to Study the Social Security Status of Women and Survivors unanimously proposed to the Federal Government and the legislature the adoption of the model of participation of both spouses in the total rights acquired. The application of this formula does not involve any changes in the present system as long as both spouses are alive. Thus each spouse receives the insured person's pension for which he/she fulfils the requirements. Only the benefits payable to the surviving spouse are modified. If one spouse dies, the surviving spouse is awarded a pension of his own by way of participation in the total pension rights acquired by both husband and wife. The widow or the widower is eligible for such a pension if she or he is occupationally disabled or unemployable or has reached the statutory retirement age. The participation will amount to a certain percentage of the pensions of both spouses, 70 per cent being at present the rate under discussion.

The Commission was agreed on the basic principle of the participation formula. The differences of opinion concerned the concrete form of such participation. There was disagreement as to whether the spouses should participate in all the pension rights or only in those acquired during the marriage and whether there should be a guarantee of an insured spouse's own pension. The model which gained acceptance in the political discussion was that of participation of the surviving spouse in all the pension rights acquired by both spouses with a full guarantee of the pension to which each may be entitled of his or her own right. To show how this model works in practice and to illustrate the problems involved I should like to give a concrete example and compare the benefits paid by applying the new formula with those granted under the present system.

A husband has a pension of DM 1,400, his wife a pension of DM 200; the total amount of the pensions is therefore DM 1,600 a month. If the wife dies, under the present scheme the husband receives his pension amounting to DM 1,400 provided that he has reached the retirement age; he does not receive a survivor's pension from his wife's insurance. If the husband dies, the wife receives her own pension of DM 200 plus a widow's pension amounting to 60 per cent of DM 1,400, a total of DM 1,040. Under the participation formula the surviving spouse would draw a pension of DM 1,120 (70 per cent of DM 1,600) if the standard of living guarantee were fixed at 70 per

cent—with a full guarantee of the pension acquired by the surviving spouse himself, i.e. DM 1,400 if the husband were the survivor.

In this case the surviving wife would receive a higher pension under the new participation model. In cases, however, where the wife's own pension was much higher, the pension under the participation model might be lower than the sum total of her own pension and 60 per cent of her husband's pension.

This example shows how important the guarantee of a spouse's own pension is. Without such a guarantee the husband would receive a pension amounting to 70 per cent of DM 1,600, i.e. DM 1,120. This would be DM 280 less than the pension he acquired of his own right. Such cases where the pension of the surviving spouse would fall short of the pension rights he himself had acquired are to be avoided by guaranteeing the payment of at least the amount of his own pension.

Apart from invalidity and the reaching of the statutory retirement age there might be other situations which require the social protection of the surviving spouse. The Commission of Experts considered that such special situations exist if the surviving spouse has the care of children or is over 45 but has not yet reached the statutory retirement age at the time of the death of the other spouse or at the time when the allowance paid for the upbringing of children is terminated. In such cases the majority of the Commission proposed that this surviving spouse should be granted a pension amounting to 70 per cent of the pension of the deceased spouse. In the opinion of the Commission other income should in part be counted against this pension paid on account of advanced age.

The Commission has proposed a transitional period of 25 years (i.e. up to the year 2010) for the gradual introduction of the new participation formula. Survivors' pensions becoming payable from the year 2010 onwards would be based on the new provisions only.

In the Commission's view the concept of participation in the total pension rights acquired has to include some specific supplementary measures to improve the independent social security coverage of women. The Commission above all called for periods of child care to be credited to the pension insurance record. This measure is designed to fill at least some of the gaps in the insurance records of women occasioned by the fact that they had to give up work to look after their children.

The Commission proposed crediting to the pension insurance record three years for the upbringing of each child born after the reform has become effective, i.e. after 1985. These years are to be considered periods of compulsory coverage and thus affect both entitlement and pension amounts. Women whose children were born before 1985 are to receive a flat-rate pension increment for each child. Those, however, who are already in receipt of a pension at the time the reform becomes effective are, according to the Commission's proposals, not to be granted such a pension increment. The Commission suggested that the cost accruing from the crediting of child-care

periods in pension insurance should be paid from federal funds, since the upbringing of children is in the interest of society as a whole.

The Commission of Experts considered not only the participation formula but also other formulas which were, however, rejected.

The first formula provided that, in the event of old age, unemployability or occupational incapacity or when having the care of children, the surviving spouse should be granted a pension of, for example, 70 per cent of the pension of the deceased spouse. This was to be reduced by the amount of any income the surviving spouse might have (including his or her own pension). The Commission rejected the basic concept of this formula because it maintained the derived social security status of women in all cases, including those of invalidity and old age, and did not strengthen their independent status.

Another formula provided that the pension entitlements acquired by both spouses in the course of the marriage should be split every year so that they were shared equally between them. The result would have been that both spouses would acquire equal pension entitlements during their marriage independently of the division of work they practised. The Commission rejected this formula mainly because its implementation would have been extremely complicated.

A last model provided that the working spouse would be obliged to pay pension insurance contributions for the spouse who keeps house. In the event of old age, unemployability or occupational incapacity the housekeeping spouse would be granted an individual pension calculated on the basis of these contributions. In the case of the death of one spouse, the surviving spouse would get a pension in the event of old age, unemployability or occupational incapacity based on the pension entitlements acquired by both spouses (as in the case of the participation formula). The Commission was of the opinion that this model had the disadvantage that it would lead to considerable extra costs in terms of contributions which would hardly be acceptable for young families and which might lead to excessive pension amounts in old age.

The political debate on the Commission's recommendations

After the Commission of Experts had submitted its report the political discussion concentrated on the concept of participation in the total rights acquired which the Commission had advocated. All three political parties represented in Parliament presented their ideas for a reform of the social security status of women and survivors in their platforms for the 1980 federal elections. All these ideas were based on the concept of participation in the total rights acquired with a guarantee of the survivor's own personal pension.

In the government policy statement of 24 November 1980 Chancellor Helmut Schmidt announced that the reform of the survivors' scheme would

be based on the concept of participation in the total rights acquired and that the personal pension of the surviving spouse would be guaranteed. At the same time it was pointed out that the details of the reform could be decided only after reliable cost estimates had been made. For this purpose the pension insurance funds carried out a comprehensive survey. First results show that the introduction of the participation model at the rate of 70 per cent and with a full guarantee of the survivor's own pension would lead to an increase of 0.3 per cent in the expenditure of the pension insurance funds in the year 2000.

One important aspect of the reform which still remains to be settled is the determination of the percentage rate of the pension payable under the participation model. It appears that pensions at a rate of 70 per cent, as advocated by the two government parties in the election campaign, could be financed provided that this was taken into account in the necessary amendments of other parts of the pension legislation.

Essential aspects of the reform

The concept of participation in the total pension rights acquired takes account of the Federal Constitutional Court decision of 12 March 1975. There will be no different entitlement conditions for the payment of widows' and widowers' pensions. In this respect the participation model establishes the formal equality of rights of men and women.

This participation concept, however, implies more than merely formal equality of rights. The pension entitlements of the surviving spouse are always the same, regardless of whether it is the husband or the wife who survives and whether the surviving spouse kept house or went to work. Gainful employment and household responsibilities and child care are considered to be of equal value in the relationship between the spouses. The participation formula is based on the idea that both spouses have jointly worked for the maintenance of the family and equally for their protection in old age. It is only where the provision for the guarantee of the surviving spouse's own pension is applicable that pension amounts for the two spouses differ. Thus a widow who mainly looked after the household and children will also have a pension entitlement of her own in the event of old age and invalidity. Contrary to the present legal situation the new formula is designed to ensure that widows who only kept house do not lose all of their widow's pension when they remarry; here, too, the underlying idea has been to improve the independent social security status of women. The situation should, however, be avoided where several successive marriages lead to an unacceptable cumulation of pensions. The details of this regulation are still being worked out.

As a result of the guarantee of the surviving spouse's own pension there may be cases where the spouse who is or was employed will receive a higher survivors' pension than the spouse who kept house. With the increasing rate

of employment of women, however, the importance of the guarantee will decrease. If the wife has acquired pension rights of her own, her pension as a survivor will in almost all cases be as high as that of the husband. The contributory pension is not a gift of the State, but a benefit which the insured person has earned through the continuous payment of contributions; it cannot be reduced—also for constitutional reasons—when the other spouse dies. To limit the payment of pensions to situations of need is in line with the objective of encouraging independent social security coverage of the surviving spouse. It does not seem socially justified to pay pensions to young widows who have no children and who are well able to, and in fact often do, earn their own living. Consideration should rather be given to providing such women with specific assistance to facilitate their reintegration into working life and, in particular, to improve their occupational qualifications.

Such an extensive reform of survivors' benefits is not possible without transitional provisions. Confidence in the scheme has to be maintained. During a transitional period after the entry into force of the reform, it seems desirable that widows should be able to choose between the old or the new legislation, according to which provides the more favourable pension. A proposal along these lines has been made by the Social Democratic Party, under which widows should for a period of ten years be able to opt for the application of either the old or the new system; any pensions payable after this period (i.e. from 1995 onwards) should be calculated on the basis of the new provisions only.

A major consideration in the envisaged reforms has been the crediting of child-care periods in the pension insurance record. The upbringing of children in the Federal Republic of Germany is a task which is still performed mainly by women. While the wife looks after the children and therefore does not acquire any pension rights, the husband is working and establishing his pension entitlements. Consequently women have gaps in their insurance records which should—at least partly—be closed. However, this must not involve an additional financial burden on the pension insurance fund. Such measures would have to be financed from federal funds within the framework of the equalisation of family burdens. But this will not be an easy matter in view of the present budgetary constraints.

The forthcoming reform of survivors' benefits will also introduce improvements regarding the pension for minimum incomes. The cut-off date of 31 December 1972 is to be dropped, which means that in future periods completed after that date will also be counted as if the insured person had then earned 75 per cent of the average earnings of all insured persons. Pensions for minimum incomes will cease to be a transitional arrangement and will become a permanent institution for all full-time workers. This is particularly significant for women.

Finally, there are certain periods, above all training periods and the first five years of employment, that are weighted differently for men and women, the weights for women being less favourable than those for men. This

discrimination, which the Federal Constitutional Court recently declared to be incompatible with the Constitution, will have to be removed.

Note

¹ An English translation of the Federal Insurance Code will be found in *Legislative Series* (Geneva, ILO), 1980 – Ger. F.R. 1.

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