

# **Die Neue Zeitung on the Public Discourse over the Problematic Issue of Equal Rights (January 13, 1949)**

## **Abstract**

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When the Basic Law was worked out in West Germany in 1949, gender equality was one of the contested issues. To be sure, the parties agreed that the law had to be adjusted to reflect the changed social reality, and it was clear that the inferior legal status of women in the Civil Code [*Bürgerlichen Gesetzbuch* or BGB] had to be abolished. But the opponents of an immediate implementation of legal equality argued on a practical level: simply abolishing the relevant sections of the BGB without replacing them was just as impossible as hastily revising them. Moreover, they argued that special protections deriving from the Civil Code had to be preserved.

## **Source**

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Of the problems that must be solved by the Parliamentary Council, there is probably hardly a question that is publicly debated with as much passion as that of the equality of women. The parliamentarians in Bonn are being inundated with letters in which protests of varying degrees of vehemence are being voiced about the fact that, in the first reading of the new Basic Law in the main session, the draft by Dr. Elisabeth Selbert (SPD) – which reads: “Men and women have equal rights!” – was rejected.

Instead, the [Council’s] main committee incorporated the following stipulation into the section on basic rights: “Men and women have the same civic rights and responsibilities. No one may be discriminated against or given preferential treatment . . . because of gender.” This formulation accords with the result at which the policy committee had arrived.

### *The lawyers are shaking their heads*

There is unanimous agreement among all the parties of the Parliamentary Council that the provisions especially of the Civil Code that contravene the equality of women must be eliminated. It is known in all circles that women, to a far greater extent than before, have become active collaborators with men, and in many cases lead their lives completely independently and accomplish tasks that were carried out exclusively by men in our fathers’ time.

For that reason, Bonn understands full well that women’s organizations are always eager to adopt the motion of Dr. Selbert. For example, the women’s organizations of Hamburg, united in the *Frauenring Hamburg e.V.*, decided the following in a meeting of their full board on January 8: “Men and women are equal. Contrary laws in the Civil Code are abrogated, changes to the Civil Code must be made by 1950.” The female representatives of the Hessian state assembly [*Landtag*] demanded in a joint motion: “Men and women are equal. . . all social regulations that conflict with the equality of women (Civil Code) are repealed.”

The lawyers in the Parliamentary Council are shaking their heads over these demands. They begin by pointing out that a complete vacuum would emerge in the moment that one simply abolished those provisions of the Civil Code that pertain to the status of women, and that from that vacuum legal chaos would arise. First and foremost, those provisions that were made to protect women would also be abrogated. Moreover, the lawyers are convinced that the open questions require thorough examination, and they regard it as practically impossible to replace the multitude of stipulations pertaining to the

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status of women with others in the space of a few weeks. They characterize the demand that the future legislature should implement the corresponding changes to the Civil Code by the year 1950 as unfeasible by pointing out that the federal organs, which could be established in May of that year, at the earliest, will find themselves confronted by an excessive number of legislative tasks, especially in the area of finance and economics. Thus, the editorial committee has suggested that the transitional regulations should include an article that stipulates that the provisions of the civil law on the status of women remain in force until they are adjusted to the provisions of the Basic Law concerning equality, though not later than March 31, 1953.

#### *Marital strife threatens constitutions*

In the case of complete equality, a number of questions arise: Who, for example, shall determine the marital place of residence? Both? – Who shall have parental authority over the child? If husband and wife are equal but have different opinions, who should decide? The guardianship judge cannot, for if he accords that right to either the husband or the wife, he violates the constitution, according to which both are equal. – Another question: If the wife receives a nursing allowance, does the husband, as well?

It is further pointed out that women are privileged in many social policy laws, and rightly so. One is reminded of the protection of mothers and pregnancy and of the prohibition against longer working hours. With the social progress that is generally expected over the next years and decades, one reckons that women, because of their biological difference from men, should receive more and more privileges. One could think, for example, of a prohibition against night work.

Equal rights would entail equal obligations. And here the question is: Are women ready to perform fire-fighting service or participate in dike works, for example? The fact that women were called upon for all kinds of work during the war does not seem to be a counterargument. For the question is whether the conditions that prevailed under the previous regime should be regarded as normal, and whether women wish for a repeat of what was asked of them back then.

In addition, marital property law is seen as a major problem. According to the provisions still in force, that law is definitely geared toward the “higher daughter” who brought into the marriage assets over which she could no longer dispose freely as a wife.

Here the question arises as to whether one wishes to introduce, as generally valid law, the separation of property in marriage, or whether one wants to arrive at a system of jointly acquired property. So, if a woman, through work and thriftiness, has acquired something in marriage, and if that marriage is dissolved through the fault of the husband, who is a spendthrift and a reckless person, then is the wife obligated to pay the husband half of what she has acquired? Custody rights for the children, the wife’s right to alimony, and the provisions of guardianship law contain further prerogatives for women, which would disappear if the demand for complete equality were realized.

#### *No immediate emancipation*

Those in Bonn therefore consider it impossible to introduce equality as immediately valid law. Rather, the intent is to impose upon the legislature the task and obligation to bring about the equality of women as intended while preserving the prerogatives to which she can lay claim. For that reason, Dr. Helene Weber (CDU) has made the following motion: “Men and women have the same rights and obligations. Legislation shall realize this in all areas of the law.” It is emphasized that this formulation represents a programmatic point to which the legislature is obligated to adhere. If it does not, it violates the constitution. There is a belief in Bonn that the oversight of the public will be strong enough in the new democracy to guarantee that the legislature will fulfill its obligation in this regard as well.

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