

East German Minister of Justice Hilde Benjamin: “Who Has the Say in the Family?” (February 1, 1958)

Abstract

The equality of men and women was stipulated in the constitution of the GDR, and the SED celebrated its realization as a great socio-political accomplishment. However, in this 1958 lecture, the East German Minister of Justice, Hilde Benjamin, conceded that the ideal of equality was not yet enshrined in people's consciousness everywhere. Still, in a number of important legal areas, such as family law, marital property law, and divorce law, the regulations of the old Civil Code had already been adjusted to the principle of equality in such a way that the economic dependence of women on their husbands had been eliminated and custody of the children was no longer automatically given to the father. The East German Code of Family Law announced by Hilde Benjamin was not enacted until the end of 1965.

Source

The reason why women's equality in the family is especially difficult to realize is because here the stubbornest bits that remain in our consciousness must be overcome. Men who have a thoroughly progressive relationship to their work, who participate in Socialist competition, and who are good members of Socialist work collectives still behave, within their own four walls, like the domestic tyrants into which man has been shaped by the exploitation society. Often it is the men who prevent their wives from working, who insist that women belong in the home, who are unwilling to accept any inconvenience resulting from their wives' gainful employment. In order to develop genuine equality, society still needs to engage in great educational efforts to help the Socialist consciousness achieve a breakthrough here as well.

We must not fail to recognize, however, that obstacles to the realization of equality also arise from the attitude of no small number of women who have not yet understood that their incorporation into production can ensure real equality. Many still see their ideal only in domestic work, and it still happens all too often that women stop working once they get married. However, a few numbers indicate that progress is occurring here as well, in the sense of an increase in the gainful employment of married women: in 1950, 14% of women who were running a household with a husband and children were gainfully employed; in 1956, that number rose to 18.3%.

The task of achieving further progress in the development of the Socialist consciousness in this area belongs – alongside general social education – above all to our laws. We still have no new family law. The Civil Code from the year 1900 has not been repealed in its entirety. The legal basis for women's equality in the family is provided by Article 30 of our constitution and by the Law on the Protection of Mothers and Children and the Rights of Women. Added to this is the Decree on Marriage and Divorce of November 1955.

The principles derived from these laws have replaced the still valid provisions of the Civil Code with respect to family law. Under the crucial influence of decisions made by our courts, in which female judges and female lay judges, in particular, also played a considerable role, this has given rise to a number of principles governing the legal status of women within the family, principles that already ensure that women's equality is fully guaranteed in the family law of the GDR. We are working on a family law code, which was already broadly discussed two years ago, and within which these principles, confirmed by our experience, will be brought together. The most important of these principles are as

follows:

All decisions regarding the shape of the shared family life shall be made by the husband and the wife together. Here, we operate under the assumption that the woman has the same right to pursue a vocation as the man; in fact, the possibility should be considered that, under certain circumstances, the wife, for the purpose of vocational training, may not be able to live with her husband for some time. The matters subject to joint decision also include the decision about where to live together. Therefore, it can no longer be the case that the wife is obligated to follow the husband to a place of residence he has chosen against her will. For example, a man who wants to change the family's place of residence without good cause, and against the will of the wife, can neither demand that the wife follow him, nor possibly derive grounds for divorce from the fact that she did not. Likewise, the principle of joint decision also applies to questions concerning purchases or larger expenses. [...]

The regulation of the family's livelihood shall also proceed on the basis of the principle of equality. Here, it is evident that the equal rights of the woman find their counterpart in equal obligations. The dominant status of the husband was expressed in civil laws also in the fact that he bore the chief responsibility for providing for the family. We hold that this responsibility should be divided equally between the spouses. Of course, the wife who is not gainfully employed cannot make monetary contributions to the family's livelihood; in this case, her contribution lies in running the household and caring for the children. However, if the wife is gainfully employed, she will also contribute the appropriate amounts of money.

One important area in which equality in marriage finds particular expression is the area of the so-called marital property law. The issue here is above all to regulate to whom the acquisitions and savings made during the course of the marriage belong, who can dispose over them, and what is to be done in the case of divorce. At this time, we are operating under the assumption that in principle all the possessions and assets brought into a marriage by a spouse remain his or her property, and that he or she alone can therefore dispose over them. Moreover, what each spouse acquires during the marriage from his or her means remains his or her sole property. But if acquisitions are made by both spouses jointly and each one contributes from his earnings, those things also become joint property.

This solution seems straightforward and convincing at first. Its difficulties, however, lie in the fact that during the transition period from capitalism to socialism in which we now find ourselves, families present a picture that is by no means uniform but in fact highly variegated. I stated that wives are gainfully employed in 18.3% of all families. What does the situation look like in the other 81.7% of all families?

There are marriages in which the husband or the wife thinks it is better if the wife stays "at home" and is not gainfully employed. – There are families with children in which the wife learned a vocation and worked until she got married, but cannot, for objective reasons, hold a job in addition to caring for her family. – Above all, there are also "old" marriages in which the wife either did not learn a vocation at all, or did not pursue it for decades following her marriage.

In all of these cases, only the man pursued gainful employment; he alone was able to make acquisitions from his means and, as the case may be, set aside savings. What is the status of the wife here?

If here, too, one were to hold to the principle that each person owns what was acquired by his or her means, then, in the case of divorce, all the existing assets would be the property of the man; the woman would get nothing. To avoid injustices in these cases, the decisions of the High Court have established the so-called equalization entitlement on the basis of the constitutional principle of equality. It holds that the wife has a claim to a part of the assets acquired by the husband during the marriage, the amount of which is to be determined by the court, and which can be up to half of these assets.

Even if the legal regulation of divorce is not directly a question of equality, there are important connections in this area as well. For as long as the wife is not economically independent, she is, in a divorce, generally affected much more severely than the husband both economically and, especially for older women, personally.

We are proceeding from the assumption that the Socialist state regards and appreciates marriage as the most basic and most important unit of society; one component of the developing Socialist consciousness is also a new marital ethics that rejects careless divorces. We can note that the divorce statistics in the GDR prove that marriage is becoming more solid. The number of divorces has been declining steadily since 1950. Precisely because Socialist society needs marriages that guarantee progressive development to the spouses themselves, but above all to the children, it permits the dissolution of a marriage only under one condition: namely, only if the marriage is so deeply and irreparably broken that it has lost any meaning and there is no hope that it will ever be able to again fulfill the tasks of a real marriage. If that is the case, the state is not longer interested in preserving the marriage; but then that dissolution should be a truly “clean divorce.”

However, such a “clean” divorce is only possible if the woman does not remain economically dependent after the divorce, but can earn her own living. We must also not ignore that a burden on the man, imposed by alimony claims from the divorced wife, can impair his interest in work and thus his active participation in the building of Socialism, especially if he has established a new family. Which means that from this perspective, as well, we must carefully examine the question of when and under what conditions a divorced wife shall be entitled to support from her former husband.

We have therefore established the following as a legal principle: with the divorce of a marriage, all material relationships between the spouses are also dissolved. Alimony can be required from the man for a period of two years, so that a woman who was not gainfully employed, either previously or during her marriage, can achieve economic independence – for example, by acquiring vocational training.

However, we must not ignore that this basic rule does not resolve all questions that arise under today’s conditions for divorce when it comes to support for a divorced wife. We must see the contradictions that are still present here, as well, and we must try to solve them through a flexible legal arrangement. Should the woman who has not previously had a profession, and who can also no longer learn or engage in a vocation, have a claim to support from her husband? This is closely connected to the question of the extent to which such a woman should share in the husband’s earnings. We have therefore allowed for an exception to this basic rule: where the woman, because of her age, her health, or because she has to care for small children, cannot become economically self-sufficient, the man is obligated to provide support beyond two years.

Here, I would also like to address a problem that has very much preoccupied women in our country. I am talking about the phenomenon that in a number of cases, men, after decades of marriage, demand a divorce from their elderly wives under spurious pretexts. They especially like to claim that the wife has not grown alongside them ideologically, that she is impeding the man’s development through her backwardness. This disrespect of the wife who stood by her husband’s side for decades, who used herself up in years of caring for the household and raising the children, who is no longer able to use the equality she has been given today and become an independent person, amounts to a serious violation of the principle of women’s equality. The High Court has expressed in a guideline that the preconditions under which such a long marriage should be dissolved must be examined especially rigorously, and that the general rule should be that such old marriages can be severed only if there are extraordinarily serious grounds.

If women’s equality in the family is illustrated by the fact that she has an equal say in all family matters, this is especially true for questions that are especially important to a woman, namely how the children

should be raised and cared for. We know that this was not always so; the Civil Code gave the final right of decision-making to the husband in these matters as well. The “parental power” over minor children mentioned in the Civil Code was in reality a paternal power. We have not only turned parental “power” into parental care, but have also, and above all, made the parent-child relationships – this parental “care” – into relationships in which both parental partners have truly equal rights.

This new legal status that the wife possesses vis-à-vis the children further exhibits itself very clearly when the husband dies or when the spouses are divorced. In case of the husband’s death or the wife’s remarriage, it was characteristic of the previous law that the woman lost the so-called parental power, that is to say, she was no longer the legal representative of the child, which had to be given to a guardian. But if the wife died and the husband married again, he naturally remained the legal representative.

The lesser status of women had an even more profound effect in civil law when the spouses were divorced. Although it was possible, especially with younger children, to transfer the care for the child to the mother, the father always remained the legal representative of the child. The work and care of the children was thus readily left to the woman; but if an important decision was to be made, say about the question of signing an apprentice contract for the child, the divorced husband stepped forward and had the final word.

By our law, the parent to whom the care for the child is transferred after the divorce becomes fully and solely responsible for the child.

In the German Democratic Republic, the state and the government, under the leadership of the Socialist Unity Party of Germany, not only give women the same rights as men in every area, but they also give women the possibility to utilize those rights.

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