

# A Persistent Pioneer of Equality: The Mastermind behind Article 3 (2) of the German Basic Law

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## Elisabeth Selbert

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*Dr. Elisabeth Selbert, who took her A levels in self-study and completed her law degree in six semesters, did her doctorate – ahead of her time – on the principle of irretrievable breakdown of marriage. As a member of the Parliamentary Council, she was one of the four ‘mothers’ of the German Constitution. The inclusion of ‘Men and women shall have equal rights’ in Art. 3 (2) of the Basic Law (‘Grundgesetz’) is her merit. On the occasion of the 75th anniversary of the ‘Grundgesetz’, this contribution aims to portray her life, achievements and impact in a short profile.*

## Early Years and Coming into Contact with the World of Politics

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Elisabeth Selbert, née Martha Elisabeth Rohde, was born in Kassel on 22 September 1896 and grew up as one of four sisters in a *petit* bourgeois and devout family.<sup>2)</sup> Due to her family’s financial constraints, young Elisabeth Rohde was not able to attend high school, which is why she joined the Trade and Commerce School of the Women’s Education Association in Kassel. Her dream of becoming a teacher failed also due to insufficient financial means to pay school fees for the necessary high school education. After losing her first job as a foreign correspondent of an import-export company following the outbreak of the First World War in 1914, she worked as a postal clerk trainee in the telegraph service of the ‘Reichspost’, the German Empire Post Office, a position she was given because of the war-related shortage of male workers.<sup>3)</sup>

At the time of the November Revolution leading to the proclamation of the Weimar Republic in 1918, she met Adam Selbert, her future husband, on the job. The skilled book printer Adam Selbert was the chairman of a local workers and soldiers’ council in Niedierzwehren, a

municipality in the district of Kassel, and introduced her to the world of politics.<sup>4)</sup> Later that year,<sup>5)</sup> she joined the German Social Democratic Party ('SPD') as an active member. Within a short time, in 1919, she successfully gained a seat in the Niedierzwehren municipal council. In the early days of the Weimar Republic, when women were allowed to vote for the first time in accord with Article 22 (1) of the Weimar Constitution, she expressed her views in speeches and contributions on the duty of women to be informed and politically engaged. Equal rights for women and men were a matter of great concern to her. At the Women's Conference of the Social Democratic Party in Kassel in 1920, she sharply criticized 'that although we have equal rights for our women today, these equal rights are still purely paper ones.'<sup>6)</sup> She therefore demanded: 'We must now work to ensure that equality is implemented in practice to the last consequence.'<sup>7)</sup>



*Photograph of Elisabeth Selbert (extracted and cropped) via Wikimedia – Hans Weingartz (6 March 2012) <[https://commons.wikimedia.org/wiki/File:Elisabeth\\_Selbert\\_\(cropped\).jpg](https://commons.wikimedia.org/wiki/File:Elisabeth_Selbert_(cropped).jpg)> accessed 7 May 2024.*

## **Curiosity and Need for Knowledge: Law Studies and Doctorate in Law**

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After getting married in 1920 and having two children (in 1921 and 1922), Elisabeth Selbert continued her work as telegraph service official. She also remained active in politics but felt that she lacked theoretical knowledge necessary for her engagement, e.g., in finance and tax law.<sup>8)</sup> She realized that 'work in political affairs required certain qualifications.'<sup>9)</sup> Having the support of her husband and both their families, she started preparing for her A levels ('Abitur') in self-study while her husband and grandparents were taking care of the children. In 1926, she obtained her 'Abitur' as the first female external student in Kassel. In the same year, Elisabeth Selbert began studying law, initially as the only female student at the University of Marburg, before transferring to the University of Göttingen, where she graduated after only six semesters in 1929. During the seventh semester, she did her PhD and earned her doctorate in law with a thesis on 'Marital breakdown as grounds for divorce' ('Ehezerrüttung als Scheidungsgrund') in 1930.<sup>10)</sup> In her work, she criticised the principle of fault ('Schuldprinzip') that virtually deprived women of their rights including alimony and provision for old age in divorce. Ahead of her time,<sup>11)</sup> she argued for the application of the principle of irrevocable breakdown of marriage ('Zerrüttungsprinzip').<sup>12)</sup> However, her proposals were not taken up and implemented, it took until the marriage and family law reform under the social democratic-liberal coalition entered into force in 1977 that finally abolished the principle of fault.

Due to his party affiliation, Adam Selbert was discharged as deputy mayor of Niederrhoden at the beginning of the National Socialist rule in 1933 and temporarily detained.<sup>13)</sup> From then on, the family upkeep rested exclusively on Elisabeth's shoulders. In 1934, after taking her second state examination and with the support of two senior judges of the Higher Regional Court, Elisabeth Selbert was admitted to the bar.<sup>14)</sup> This was an extraordinary success, as her admission took place against the will of the National Socialist President of the Higher Regional Court, the vote of the Bar Association and the decision of the Gauleiter. She then took over a Jewish law firm, whose previous owners had been forced to emigrate, and began her work as a lawyer. However, her law firm was destroyed during the Second World War wherefore the family was forced to move to Melsungen in 1944.<sup>15)</sup>

After the war, Elisabeth Selbert was able to resume her profession as a lawyer as well as her political commitment and worked also as a counsel before the military tribunal. Due to her professional skills, she was commissioned by the American military government to help rebuild the administration in Kassel.<sup>16)</sup> In 1946, she became member of the city council in Kassel and served as a deputy to the constitutional advisory state assembly of Greater Hesse ('Groß-Hessen'). In this context, Elisabeth Selbert campaigned inter alia for equal pay for women and men, but failed with her request.<sup>17)</sup> The Hessian Constitution of 1 December 1946, followed by the Bavarian Constitution of 8 December 1946, was the first constitution of a German state ('Bundesland') after the enforced conformity in 1933 and is the oldest state constitution in force in Germany today. Against some resistance, but with the support of Kurt Schumacher, the party leader of the Social Democratic Party at the time, Elisabeth Selbert was finally appointed to the Parliamentary Council that was tasked with drafting the new

Basic Law ('Grundgesetz') for the Federal Republic of Germany in 1948.<sup>18)</sup> She was one of only four women alongside Friederike 'Frieda' Nadig (Social Democratic Party), Helene Weber (Christian Democratic Union) and Helene Wessel (Centre) among 65 voting and 70 overall members.<sup>19)</sup>

## Elisabeth Selbert's Triumph in the Parliamentary Council: The 'Finest Hour' of Her Life

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At first, Elisabeth Selbert's primary focus was on the chapter of the judicature, while the women's issue was not on her list of priorities, partly because she assumed that traditional role patterns had finally been overcome:

'After two world wars, that is, after the experiences we women had in these decades, I had taken it for granted that equality would go through the political stage without a fight. A mistake, as it should turn out.'

However, when she realised that the original draft wording for Article 3 of the Basic Law, identical in wording to Article 109 of the Weimar Constitution, did not include the equal rights of women in relation to men, her mission began.<sup>21)</sup> She fought against alternative wordings which would have legalised arbitrariness and gender discrimination on the basis of supposedly natural differences such as 'The same must be treated equally, the unequal can be treated unequally'.<sup>22)</sup> In contrast, Elisabeth Selbert advocated for gender equality understood as an 'imperative mandate to the legislator' and therefore proposed the inclusion of a constitutional principle that reads as follows: 'Men and women shall have equal rights' ('Männer und Frauen sind gleichberechtigt').<sup>23)</sup> She later explained: 'Only Article 3 (2) of the Basic Law that had revolutionary character in the most profound sense would guarantee equal rights for women in the Federal Republic of Germany in all fields.'<sup>24)</sup> Notably, Elisabeth Selbert's proposal would require a revision of the German Civil Code ('Bürgerliches Gesetzbuch'), in particular with regard to marriage and family law provisions.<sup>25)</sup> This was one of the reasons why the proposal was met with almost unanimous rejection, also in the circles of her own party and even by the other three female delegates of the Parliamentary Council. In first reading her wording was rejected.<sup>26)</sup>

However, Elisabeth Selbert refused to give up and continued to pursue her goal undeterred by launching a high-profile campaign for the inclusion of her draft wording of Article 3 (2) of the Basic Law, involving women's associations, female trade unionists and politicians.<sup>27)</sup> She remembered: 'I did not think that in 1948/49 equality would even need to be discussed and considerable refusal would have to be overcome! But with the support of women's associations, I succeeded eventually. It was a tough fight as the protocols of the Parliamentary Council prove.'<sup>28)</sup> Elisabeth Selbert recalls that the Parliamentary Council received 'basketfuls' ('Körbeweise!') of protest letters as a result of her campaign.<sup>29)</sup> Finally,

on 18 January 1949, Article 3 (2) of the Basic Law was adopted in second reading without any opposition to the wording Elisabeth Selbert had proposed.<sup>30)</sup> In retrospect to this moment, she stated:

‘I had a wisp of power in my hand and made full use of it, in all the depth, in all the breadth that was rhetorically available to me. It was the finest hour of my life when the equality of the woman came to be accepted.’

Four months later and now already 75 years ago, the ‘Grundgesetz’ was adopted on 8 May 1949 and entered into force on 23 May 1949.<sup>32)</sup> In 1994, an amendment to Article 3 (2) of the Basic Law was adopted and entered into force on 15 November 1994, a second sentence that complements Elisabeth Selbert’s wording and reads: ‘The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.’<sup>33)</sup> As a memento of Elisabeth Selbert’s tough fight for women’s equality before the law in 1948/49, large baskets of petitions were handed over to the joint constitutional committee’s chairmen.<sup>34)</sup>

## Withdrawal from Political Commitment and Work as Attorney up Until Old Age

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After the historic success in 1949, it became fairly quiet around Elisabeth Selbert. She narrowly missed a seat in the German federal parliament (‘Bundestag’) in the 1949 election. In 1956, she was awarded the Order of Merit of the Federal Republic of Germany honouring her work in the Parliamentary Council. Two years later, in 1958, she failed in her bid to be nominated as the first female judge of the Federal Constitutional Court presumably since she was ‘politically too high-profile’ due to her stance on the role of judges in democracy in the Parliamentary Council.<sup>35)</sup> Until that year, she remained a member of the Hessian State Parliament (‘Hessischer Landtag’) but then turned her back on politics and was almost forgotten at first. She resumed her work as an attorney in Kassel and ran her own law firm specialised in family law up until old age. Finally, in 1978, she was awarded the Wilhelm Leuschner medal of the State of Hesse (‘Land Hessen’) for her services, a ‘subsequent recognition that pleased [her] a little, but [she] did not wait for it.’<sup>36)</sup> She was granted honorary citizenship (‘Ehrenbürgerrecht’) of her hometown Kassel on 23 May 1984, exactly 35 years after the ‘Grundgesetz’ entered into force. Elisabeth Selbert died in her hometown on 9 June 1986, only a few months before her 90th birthday.

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- ↑1 This contribution is an amplified version of the profile written by Verena Kahl, M.A., Ass. iur., for the digital version of the 2022 calendar of the project 'Outstanding Women of International, European and Constitutional Law' <<https://www.jura.uni-hamburg.de/forschung/institute-forschungsstellen-und-zentren/iaa/kooperationen-projekte/womencalendar.html>> accessed 3 May 2024.
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- ↑3 Cf. questions (Barbara Böttger) and answers (Elisabeth Selbert), as printed in: Barbara Böttger (n 2) 123-129.
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- ↑4 Cf. questions (Barbara Böttger) and answers (Elisabeth Selbert), as printed in: Barbara Böttger (n 2) 129-130.
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- ↑6 Speech delivered by Elisabeth Selbert at the Women's Conference of the Social Democratic Party in Kassel in 1920, as printed in: Questions (Barbara Böttger) and Answers (Elisabeth Selbert) (n 2) 131 (translated by the authors).
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- ↑8 Cf. questions (Barbara Böttger) and answers (Elisabeth Selbert), as printed in: Barbara Böttger (n 2) 133.
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- ↑9 Questions (Barbara Böttger) and answers (Elisabeth Selbert), as printed in: Barbara Böttger (n 2) 133 (translated by the authors).
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↑12 Cf. questions (Barbara Böttger) and answers (Elisabeth Selbert), as printed in: Barbara Böttger (n 2) 138.
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- ↑11 Heike Drummer and Jutta Zwilling (n 5) note that Elisabeth Selbert was certainly a 'forward thinker' as far as the principle of irretrievable breakdown of a marriage is concerned but also highlight that the issue of women's rights had already been debated prior to the adoption of the German Civil Code ('Bürgerliches Gesetzbuch').
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- ↑13 Cf. questions (Barbara Böttger) and answers (Elisabeth Selbert), as printed in: Barbara Böttger (n 2) 140-141.
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- ↑**17** See further Heike Drummer and Jutta Zwilling (n 5) 84-86.
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- ↑**23** Excerpts of recordings of Elisabeth Selbert, as printed in: Barbara Böttger (n 2) 164 (translated by the authors).
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- ↑**25** See further Jutta Limbach, 'Die Reform des Bürgerlichen Gesetzbuchs unter der Herrschaft des Gleichberechtigungsgrundsatzes' in Archiv der deutschen Frauenbewegung (ed.), Den Frauen ihr Recht – Zum 100. Geburtstag von Elisabeth Selbert (Ariadne No. 30, 1996) 36-39.
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- ↑**26** Cf. excerpts of recordings of Elisabeth Selbert, as printed in: Barbara Böttger (n 2) 164-165. See further Barbara Böttger (n 2) 183 et seqq.
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- ↑**27** See further Elke Schüller, "'Unserem Recht zu seinem Recht verhelfen' – Elisabeth Selberts Kampf um die Gleichberechtigung im Parlamentarischen Rat und seine außerparlamentarische Unterstützung' in Archiv der deutschen Frauenbewegung (ed.), Den Frauen ihr Recht – Zum 100. Geburtstag von Elisabeth Selbert (Ariadne No. 30, 1996) 24-28.
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- ↑**28**,  
↑**31** Excerpts of recordings of Elisabeth Selbert, as printed in: Barbara Böttger (n 2) 166 (translated by the authors).
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- ↑**30** See further Barbara Böttger (n 2) 215 et seqq., particularly 224.
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- ↑**32** Bundesgesetzblatt (BGBl.) I 1949, 1.
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- ↑**33** Bundesgesetzblatt (BGBl.) I 1994, 3146.
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- ↑**34** Cf. German Parliament (Bundestag), Minutes of plenary proceedings (Stenographischer Bericht) (209th session, 4 February 1994) 18122 <<https://dserver.bundestag.de/btd/18/002/1800293.pdf>> accessed 3 May 2024.
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- ↑**35** Cf. questions (Barbara Böttger) and answers (Elisabeth Selbert), as printed in: Barbara Böttger (n 2) 154 (translated by the authors).
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