The fight for equality during the spanish transition (1975-1981)[1]

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20th November 1975 is a significant date in Spanish contemporary history. The death of the dictator brought an end to a period marked by repression and lack of freedom. The greater part of the population received the news with concern; an uncertain future loomed over them, and they were afraid that the civil conflict that had devastated the country between 1936 and 1939 could be rekindled. Fortunately, these predictions were not fulfilled. Instead, a consensus prevailed among the main political forces who seized the opportunity to establish a democratic system, whereby citizens' fundamental rights would be guaranteed. What emerges at this juncture is the arduous task carried out to configure an egalitarian legal system which would leave behind discrimination against women in the public context as well as in the family or private environment. This research addresses the latter issue and explores the work by such prominent jurists as María Telo Núñez, who participated in two significant modifications of the Civil Code: the first was the amendment implemented in 1975, and the second involved the reestablishment of the institution of divorce in Spain.

I. Feminist demands: notes on a long and tortuous battle

Along with freedom, justice and legal pluralism, equality represents the highest value of the Spanish legal system[2]. These are the fundamental values of political life insofar as they constitute a criterion for judging actions, ensuring coexistence and establishing its purposes[3]. This is expressed in the 1978 Spanish Constitution. Article 14, for example,

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[2] Article I of the 1978 Constitution. Available online at: boe.es [Last accessed on: 16 August 2022].

[3] Antonio Enrique Pérez Luño, "Sobre la igualdad en la Constitución española", Anuario de filosofía del derecho, Nº. 4, 1987, p. 141. Rafael González-Tablas indicates that the term 'equality' constitutes one of the key words or significant descriptors of the constitutional text, appearing up to thirteen times, Rafael González-Tablas y Sastre, "Una propuesta de thesaurus informatizado de la Constitución española de 1978", Problemas actuales de la documentación y la informática jurídica: actas del coloquio internacio-

prohibits "discriminación alguna por razón de nacimiento, raza, sexo, religión, opinión o cualquier otra condición o circunstancia personal o social". Moreover, in order to prevent this mandate from remaining within the sphere of strict positivism, the Magna Carta requires public authorities to direct their activity towards ensuring real and effective equality among individuals[4]. By the same token, a fundamental right is established whereby citizens are able to apply to the courts to safeguard and protect them in the family, labour and public environments [5].

The endorsement of the above-mentioned principles implied undeniable progress for society, putting an end to Francoist oppression and opening the door to important legislative changes[6]. These achievements are largely due to the feminist fight for equality[7]. Although deeply rooted in the latter years of the 19th century, this fight would in fact reach its zenith in the 20th century, thanks to eminent women such as Carmen de Burgos, Concepción Arenal, Regina Lamo, María de Echarri, María Domínguez or Clara Campoamor[8]. Their demands for equality in the areas of work, education and law were con-

nal celebrado en la Universidad de Sevilla, 5 y 6 de marzo de 1986, 1987, pp. 231-236.

4 With respect to the difference between "formal equality" and "substantive equality", and its incorporation in the1978 constitution, Vid. Mª Ángeles Moraga García, "La igualdad entre mujeres y hombres en la Constitución Española de 1978", Feminismo/s, Nº. 8, 2006, p. 58 ff.

5 We refer specifically to articles 9.2, 23.2, 31, 39, 68.1, 69.2, 139.1, 140 and 149.1.1. The Constitutional Tribunal has highlighted this aspect of fundamental law in Sentence 49/1982, of 14 July. It says: "el artículo 14 de la Constitución, al establecer el principio general de que los españoles son iguales ante la ley, establece un derecho subjetivo a obtener un trato igual y, al mismo tiempo, limita el poder legislativo y los poderes de los órganos encargados de la aplicación de las normas jurídicas", cited in Patricia Gómez Cuenca, "Mujer y Constitución: los derechos de la mujer antes y después de la Constitución de 1978, Universitas. Revista de Filosofía, Derecho y Política", Nº. 8, 2008, p. 86.

6 However, as Lousada Arochena points out, this recognition suffered from the deficiencies typical of moderate patriarchal regulations, because gender stereotypes continued to exist in "male law", José Fernando Lousada Arochena, "Evolución de la igualdad desde la Constitución de 1978", iQual. Revista de género e igualdad, Nº. 5, 2022, pp. 1-27. A clear example of these loopholes can be found in the parliamentary discussion of the constitutional text. According to Mar Esquembre, despite the fervour of the feminist movement and the inclusion of their demands in the political agenda of political parties, they were not fully reflected in parliamentary interventions, Mar Esquembre, "La igualdad de género en la legislatura constituyente: Notas sobre la elaboración de la Constitución española de 1978 respecto de las cuestiones relacionadas con la situación de las mujeres", Cuestiones de género: de la igualdad y la diferencia, Nº. 8, 2013, p. 23. Despite this, the importance of the paradigm of gender equality is unquestionable, as revealed by Pamela Radcliff, it helped underpin the consensus that characterized the transition towards democracy. As a result, the specific needs of women as a group were undermined in the interests of "all Spanish people", Pamela Radcliff, "El debate sobre el género en la Constitución de 1978: orígenes y consecuencias del nuevo consenso sobre la igualdad", Ayer, Nº. 88, 2012, pp. 203-204.

7 In Pilar Toboso's opinion, it could be called "the women's revolution" if we understand it as a "proceso de transformación social, que afecta fundamentalmente a los oprimidos". However, the nuances of this should be understood because rather than a violent and short-term process, it is a pacific battle that started almost a century ago, which has suffered numerous advances and setbacks, and one which is not yet over, Pilar Toboso, "Las mujeres en la transición. Una perspectiva histórica: antecedentes y retos", El movimiento feminista en España en los años 70, Cátedra: Universidad de Valencia, 2009, pp. 71-98. A complete outline of the evolution of feminism in Spain can be found in "Cronología de mujeres españolas", available online at: https://www.cervantesvirtual.com, [Last accessed on: 26 September 2022]

8 These important female figures and the work they carried out have been the focus of numerous studies, among which the following are cited, the works by Julio Alarcón y Meléndez, Una celebridad desconocida: Concepción Arenal, Razón y Fe, Madrid, 1914; Mari Álvarez Lires, Clara Campoamor: homenaxe no

solidated to a certain extent by the advent of the Second Republic[9]. At that time, the provisional Government made a firm decision to draw up a legal system that would leave behind archaic conventionalisms, placing the country on a level with the most advanced societies of the time. To do so, a program of action was drawn up to solve the

75 aniversario da consecución do decreito ao voto femenino: 1 de octubre de 1931, II República, Concello de Pontevedra, Pontevedra, 2006; Bonnie S. Anderson & Judith P. Zinsser, Historia de las mujeres: una historia propia, Editorial Crítica, Barcelona, 1991; Judith Astelarra, Participación política de las mujeres, Centro de Investigaciones Sociológicas, Madrid 1990; Pilar Ballarín Domingo, La educación de las mujeres en la España contemporánea (siglos XIX-XX), Síntesis, Madrid, 2001; Juan Antonio Cabezas, Concepción Arenal o el sentido romántico de la justicia, Espasa-Calpe, 1942; Rosa María Capel Martínez, Mujer, Familia y Trabajo. Madrid 1850-1900, Universidad de Málaga, 2010 y Mujer y Sociedad en España, 1700-1975, Ministerio de Cultura, Instituto de la Mujer, Madrid, 1986; Mª Aurelia Capmany, El feminismo ibérico, Oikos ediciones, Barcelona, 1970; Manuel Casas Fernández, Concepción Arenal: su vida y su obra, Victoriano Suárez, 1936; Eduardo Cruz Casanova, Mujeres (con) mayúsculas: Homenaje a Clara Campoamor, 2012-2015, Concejalía de Igualdad del Ayuntamiento de Salobreña, 2016; María Cruz Del Amo, Mujer, Familia y Trabajo. Madrid 1850-1900, Universidad de Málaga, 2010; Pilar Díaz Sánchez, Clara Campoamor (1881-1972), Ediciones del Orto, 2006; Cristina Dupláa Fernández, Homenaje a Victoria Kent, Universidad de Málaga, 1989; Gloria Espigado Tocino, "Mujeres «Radicales»: utópicas, republicanas e internacionalistas en España (1848-1874)", Ayer, Nº. 60, 2005, pp. 15-43; Concepción Fagoaga Bartolomé, Clara Campoamor: la sufragista española, Dirección General de Juventud y Promoción Socio-Cultural, Subdirección General de la mujer, Madrid, 1981; Consuelo Flecha García, Las primeras universitarias en España: 1872-1910, Narcea, 1996; Esperanza García Méndez, La actuación de la mujer en las Cortes de la II República, Madrid, 1979; María Laffite, Concepción Arenal: 1820-1893: Estudio biográfico documental, Revista de Occidente, 1973; Isaías Lafuente, La mujer olvidada: Clara Campoamor y su lucha por el voto femenino, Temas de hoy, 2006; Victoria López Cordon & Monserrat Carbonell Esteller (Eds.), Historia de la mujer e Historia del matrimonio, Universidad de Murcia, 1997; Alicia López de los Mozos Díaz-Madroñero, "Igualdad de género en la Constitución de 1931: la obtención del voto femenino y otras medidas a favor de la igualdad", Constitución de 1931: estudios jurídicos sobre el momento republicano español, Marcial Pons, Madrid, 2017, pp. 349-362; África López Souto, Concepción Arenal, Baia Edicions, A Coruña, 2004; Francisco Márquez Hidalgo, Nueve mujeres en las Cortes de la II República. El perfil humano y político de las primeras diputadas españolas, Ediciones Áltera, 2015; Elvira Martín de Pubul, Concepción Arenal, Confederación Española de Gremios y Asociaciones de Libreros, 1994; Lluis Martín y Josep Berbois, Ignorada pero deseadas. La mujer política durante las elecciones de la Segunda República en Cataluña, Icaria, Barcelona, 2015; Remedios Morán Martín, "Cuestión social y liberación de la mujer. La propuesta de Rafael Mª de Labra en presencia de Concepción Arenal", Derechos humanos: problemas actuales, Ed. Universitas, Madrid, 2013, Vol. II, pp. 925-945; Sara Moreno Tejada, "Los albores del feminismo en España: la obra de Concepción Arenal", e-Legal History Review, Nº. 25, 2022, 26pp.; Mary Nash, Mujer y movimiento obrero en España, Editorial Fontamara, Barcelona, 1981; María Dolores Ramos, Victoria Kent (1892- 1987), Ediciones del Orto, 1999; Ana María Rivas, Concepción Arenal, Fundación Emmanuel Mounier, Madrid, 1999; Antonina Rodrigo, Mujeres para la historia. La España silenciada del siglo XX, Ediciones Carena, Barcelona, 2014; Juana Salas de Jiménez, Dª Concepción Arenal: sus ideas, sus obras y sus méritos, Salvador Hermanos, 1920; Maria del Carmen Sánchez Real, Concepción Arenal en su tiempo: estudio biográfico y doctrinal, Ayuntamiento de Vigo, 1999; Geraldine M. Scanlon, La polémica feminista en la España contemporánea, 1868-1974, Ediciones Akal, Madrid, 1986 y "El movimiento feminista en España, 1900-1985: logros y dificultades", Participación política de las mujeres, Madrid, 1990, pp. 83-100; Margarita Serna Vallejo, "Reivindicación de la igualdad entre mujeres y hombres en los siglos XVIII y XIX", Mujeres y derecho. Una perspectiva Histórico-Jurídica. Encuentro de historiadores del Derecho. Actas, Associació Catalana d'Història del Dret "Jaume Montjuïc", Barcelona, 2015; María Telo Núñez, Concepción Arenal y Victoria Kent: las prisiones, su vida, su obra, Instituto de la Mujer, 1993; Raquel Vázquez Ramil, Mujeres y educación en la España contemporánea. La Institución Libre de Enseñanza y la Residencia de Señoritas de Madrid, Akal Universitaria, Madrid, 2012; Víctor Vilardel Balasch, Clara Campoamor, la sufragista, El Rompecabezas, 2007; Miguel Ángel Villena, Victoria Kent: una pasión republicana, Debate, 2007.

9 An examination on the evolution of feminist legal historiography Sara Moreno Tejada, "Notas sobre la historiografía jurídica de la mujer en España", e-Legal History Review, Nº. 30, 2019, 31 pp.

Motherland`s traditional misfortunes [10]. Among these, the religious issue was a priority, and the church's influence on such relevant institutions as family was brought into question. In this sense, the 1931 Constitution eliminated the sacramental nature of marriage, establishing civil marriage as mandatory and granting both spouses the legal authority to dissolve this union[11]. Thus, for the first time in our country's history the principle of equality between both sexes was established[12]. This equality was not only evident in the private sphere but also in the public sphere. The cited fundamental text recognised the political and civil rights of women. In this respect, they were accorded the right to suffrage, protecting women's employment and maternity as well as allowing them access to public positions and offices under the same conditions as men[13].

These freedoms, however, were short-lived. As soon as the Francoist regime was established, the equal rights accorded by the Republic were repealed, reintroducing the religious nature of marital union and the prohibition of marital dissolution[14]. The establishment of the dictatorial State led to a violent regression in the legal condition of Spanish women. The new regulatory corpus cut them off from the public sphere, relegating them to the domestic household, where they were subjected entirely to their father or husband's authority[15]. In this sense, civil legislation minimized their capacity, establishing that they could not leave the paternal home until they reached twenty-five, unless it was to marry or to take holy orders[16]. Once married, a wife was subservient to her husband, who was named administrator of matrimonial assets and representative of the interests of his wife, who had to obey her spouse[17]. Hence, marital permission was introduced, which was

10 Máximo Castaño Penalva, "La iglesia católica ante la Ley del divorcio de 1932", Culturas políticas en la contemporaneidad. Discursos, prácticas y políticas desde los márgenes de las élites, Universitat de Valencia, 2015, p. 84.

11 Article 43 of the 1931 Spanish Constitution. Under this constitutional framework the laws of divorce and civil marriage would be enacted. With respect to this question, Vid. Sara Moreno Tejada, "La Ley del divorcio de 1932. Entre la culpabilidad y la causalidad", Anuario de Historia del Derecho Español, tomo XCI, 2001, pp. 381-408.

12 Articles 2 and 25 of the1931 Spanish Constitution.

13 Articles 36, 40 and 46 of the 1931 Spanish Constitution.

14 For divorce annulment, Vid. Sara Moreno Tejada, "La nulidad del divorcio. Un proceso especial del régimen franquista", Justicia y represión en los estados totalitarios. España, Alemania e Italia (1931-1945), Tirant Lo Blanch, Valencia, 2021, pp. 271-306.

15 This is another consequence of the political practices of a dictatorial State based on reactionary and androcentric ideological principles, where authority and hierarchy imply domination and subjection, Pilar Domínguez Prats & Mª Carmen García-Nieto París, "Historia de las mujeres en España", Historia de las mujeres: una historia propia, Editorial Crítica, Barcelona, 1991, Vol. 2, pp. 640-641.

16 Article 321 of the Civil Code, 1939 modification, available online at: https://www.boe.es/buscar/act.php?id=BOE-A-1889-4763&tn=1&p=19391009#art321 [Last accessed on: 26 September 2022].

17 Article 57 of the Civil Code, 1939 modification. For its part, article 60.1 stipulated that a woman could not appear in court without her husband's authorization except in cases where the opposing party was her husband. Available online at: https://www.boe.es/buscar/act.php?id=BOE-A-1889-4763&tn=1&p=19391009#art321 [Last accessed on: 26 September 2022]. In the same sense, the Civil Procedure Law stated that "el domicilio de las mujeres casadas, que no estén separadas legalmente de sus maridos, será el que estos tengan". Article 64 of the 1881 Civil Procedure Law, available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1881-813. Thus, the husband was granted ownership of the home, which meant when a woman applied for separation she was forced to leave her home and would

mandatory for buying and selling goods, opening a bank account, obtaining a passport, entering into contracts or even being employed and receiving payment for work[18]. In relation to parental authority, they were relegated to a secondary position, as established in article 154 of the Civil Code which states "el padre y, en su defecto la madre, tienen potestad sobre sus hijos legítimos no emancipados"[19]. It is easy to conclude, in this sense, that the legal system of the dictatorship did not contemplate Spanish women as legal subjects, but as beings that were bound by a specific social function[20]. According to the doctrine of the time, the grounds for this were based on the physical and psychological weakness of the female sex, fragilitas sexus, which required a masculine counterpart, essential for maintaining the unity of the household[21]. Consequently, they were excluded "de la plenitud del derecho", accorded exclusively to men[22].

Thus, a regulatory framework was articulated, which, in accordance with this conception, limited women's presence in the labour market. This was one of the main commitments of the Francoist regime, which used these terms in the "Fuero del Trabajo", de-

be "deposited" in the home of a relation with her spouse's prior knowledge. This is a clear example that the legal system considered female citizens as an object or merchandise and not as a person with the ability to act, Pilar Toboso, "Las mujeres en la transición...", op.cit., p. 75. This assessment is reinforced if we refer to Article 58 of the Civil Code, which establishes that it is a woman's duty to follow her consort wherever he establishes his residence. Further to this, Article 22 of the same text states that "la mujer casada sigue la condición y nacionalidad de su marido".

18 Articles 59 to 62 of the Civil Code, 1939 modification, available online at: https://www.boe.es/buscar/act.php?id=BOE-A-1889-4763&tn=1&p=19391009#art321 [Last accessed on: 26 September 2022]. Article 11.d) of the Employment Contract Law limits their capacity to enter into a contract of this type "Podrán concretar la prestación de sus servicios: d) La mujer casada con autorización de su marido, salvo el caso de separación de derecho o de hecho, en el que se reputará concedida por ministerio de la Ley para todos los efectos derivados del contrato, incluso el percibo de la remuneración". Available online at: https://www.boe.es/datos/pdfs/BOE//1944/055/A01627-01634.pdf [Last accessed on: 26 September 2022]. Emphasis added. About this regulation, Vid. Maria Jesús Espuny Tomás, "Aproximación histórica al principio de igualdad de sexos (IV): De la Ley de Contrato de Trabajo de 1944 a las últimas disposiciones franquistas", Iuslabor, Nº. 1, 2008, 22 pp.

19 Emphasis added.

20 Patricia Cuenca Gómez, "Mujer y Constitución. Los derechos de la mujer antes y después de la Constitución de 1978", Universitas. Revista de Filosofía, Derecho y Política, Nº. 8, 2008, p. 80. Likewise, Rosario Ruiz Franco, ¿Eternas menores?: las mujeres en el franquismo, Biblioteca Nueva, Madrid, 2007, p. 27.

21 According to Alfonso De Cossio y Corral, this marital authority was not merely a subjective right, but parental authority "exigida por la institución jurídico-moral que es la familia misma, y que determina un estado jurídico, que no es otro que el de marido y mujer. En este sentido se nos ofrece como fuente de derechos y obligaciones, inalterables por la autonomía privada y orientadas a una finalidad trascendente, que excede del personal interés de los mismos cónyuges", Alfonso De Cossio y Corral, "La potestad marital", Anuario de derecho civil, Vol. 1, Nº. 1, 1948, pp. 13-19. Matilde Alonso and Elies Furio extracted some examples of indoctrination that Francoism made efforts to instil in the population regarding women's status. Among other assertions, we have found the following, which is included here as a clear illustration of this: "las mujeres nunca descubren nada; les falta talento creador, reservado por Dios para inteligencias varoniles; nosotras no podemos hacer nada más que interpretar lo que los hombres nos dan hecho", Matilde Alonso & Elies Furio Blasco, "El papel de la mujer en la sociedad española", HAL SHS sciences humaines et sociales, 2007, p. 9. Available online at: https://halshs.archives-ouvertes.fr/halshs-00133674 [Last accessed on: 24 September 2022]

22 Patricia Cuenca Gómez, "Mujer y Constitución. Los derechos de la mujer antes y después de la Constitución de 1978", Universitas. Revista de Filosofía, Derecho y Política, Nº. 8, 2008, p. 80. Likewise, Rosario Ruiz Franco, ¿Eternas menores?: las mujeres en el franquismo, Biblioteca Nueva, Madrid, 2007, p. 27.

claring that the State proposed to free "a la (…) casada del taller y de la fábrica"[23]. The fundamental function of the female population was maternity, and for their protection, a forced inactive status was imposed when they married[24]. For this same purpose, the "Subsidio Familiar" and "Plus de Cargas Familiares" were introduced as salary supplements for those households that could only count on the man's wages[25]. In this respect, the legislation itself stipulated that this subsidy was aimed "(...) a reintegrar al hogar a las mujeres casadas que trabajan por cuenta ajena"[26]. However, exclusion was in reality far more extensive, preventing them from practising any of the liberal professions, except for teaching[27].

Fortunately, this situation would go through some subtle changes in the sixties. In this sense, the socio-political and economic changes that the regime experienced during these years determined that the legitimacy of certain feminist demands should gradually

23 Declaration II.1. of the Fuero del Trabajo. More specifically, declaration I included a definition of employment, considering it as "(...) la participación del hombre en la producción mediante el ejercicio voluntariamente prestado de sus facultades intelectuales y manuales, según la personal vocación, en orden al decoro y holgura de su vida y al mejor desarrollo de la economía nacional". Boletín Oficial del Estado (hereon BOE), Nº. 505, 10 March 1938, pp. 6179. Available online at: https://www.boe.es/datos/pdfs/BOE/1938/505/A06178-06181.pdf [Last accessed on: 26 September 2022]. Emphasis added.

24 Manuel Alonso Olea cites an example of this scenario stipulated in the Reglamentación Nacional del Trabajo en las Empresas de Seguros, approved by ministerial order of 28 June 1947, according to which "la mujer que contrae matrimonio pasa a la situación de excedencia forzosa, percibiendo como indemnización o dote tantas mensualidades como años lleve al servicio de la Empresa, con el tope de doce mensualidades si ha ingresado a partir del 1 de julio de 1959". Likewise, legislation was also passed in the iron and steel industry, the national Forestry Authority, or even in "Televisión Española". In the latter, it was even more restrictive because no compensation at all was provided. Manuel Alonso Olea, "La Ley de 24 de julio de 1961 sobre derechos políticos, profesionales y de trabajo de la mujer", Revista de administración pública, Nº. 36, 1961, p. 339.

25 Ley de Bases creando el Régimen Obligatorio de Subsidios Familiares, BOE, Nº. 19, 19 July 1938, pp. 272-275 and order of 29 March 1946 whereby the rules for the application of "Plus de Cargas Familiares" were unified. Article 10 of the latter provision established that: "Para que el trabajador pueda cobrar los puntos por razón de matrimonio es requisito indispensable que su esposa no trabaje (...) Cuando ambos cónyuges trabajen, percibirá el marido solamente los puntos que correspondan por los hijos que otorguen tal beneficio, salvo que en la actividad en que se ocupe el esposo no exista Plus (...)", BOE, Nº. 89, 30 March 1946, p. 2433.

26 Preliminary recitals of the order of 29 March 1946, whereby the rules for the application of the "Plus de Cargas Familiares" are unified, BOE, Nº. 89, 30 March 1946, p. 2433.

27 Within the framework of the "Fuero del Trabajo" a set of regulations were published aimed at preventing women's access to certain executive and leadership posts in the Public Administration. For example, the notarial Regulation of 2 June 1944 indicates that among the conditions for applicants is "ser español, varón y de estado seglar". Article 6, section 1. Available online at: https://www.boe.es/buscar/act.php?id=BOE-A-1944-6578 [Last accessed on: 26 September 2022]. Some years earlier, by the order of 27 September 1939, it was established that women could not hold the office of "Jefe de Administración (...) Delegado e Inspector provincial de Trabajo", order of 27 September 1939 indicating the offices that could not be performed by female civil servants, BOE, Nº. 276, p. 5539. Likewise, marital permission, recorded in public deed, was required in order to exercise any commercial profession and the authorization to do so could be revoked at any time. Articles 6 to 12 of the Code of Commerce, Gaceta de Madrid, Nº. 289, 16 October 1886, p. 169. In addition, they were refused access to posts as law officers of the State, customs officers, labour inspectors, public prosecutors, judges, magistrates or property registrars, Geraldine M. Scanlon, La polémica feminista en la España contemporánea. 1868-1974... op.cit., p. 321. Likewise, Rosario Ruiz Franco, "Nuevos horizontes para las mujeres de los años 60", Arenal, Nº. 2, 1995, p. 252.

become accepted, with the incorporation of some female citizens into the public sphere and production sector[28]. Nevertheless, the message that women should not compete with men in the labour market remained very present. Instead, employment had to be conceived as a subsidiary activity so that they could conserve their femininity and their maternal and family vocation[29].

In this context, a series of modifications were implemented in the Francoist legislation which moderately improved the legal situation of Spanish women. It should be noted here that among these changes are the reform of the Civil Code in 1958 and the enactment of the 1961 and 1962 laws, which allowed women to have access to employment and public positions as yet denied them. Given the special relevance of these legislative reforms, we should take time here to make a cursory examination of them. Our analysis will not just be limited to the final text of the enactment, but we will also look into the process involved in drawing it up. We consider the latter significant as it is an area that has scarcely been addressed in the historiography. Hence, it can be affirmed that this research addresses a historiographical gap, knowledge of which is fundamental to comprehending the historical feminist fight in Spain[30].

II. Timid steps towards freedom: the sixties.

Towards the end of April 1957, and in order to "acomodar nuestro ordenamiento al Concordato concertado el veintisiete de agosto de mil novecientos cincuenta y tres entre la Santa Sede y el Estado español", we witness one of the most extensive reforms of civil legislation, which mainly affected the matrimonial regime. To be exact, the legislative change addressed the problem of the legal capacity of women which was long overdue. For the legislator, "el sexo por si no debe dar lugar a diferencias y menos a desigualdades de trato jurídico civil (...)" although justifying "ciertas diferencias orgánicas derivadas de los cometidos que en ella incumben a sus componentes para el mejor logro de los fines morales y sociales que conforme al Derecho natural, está llamada a cumplir"[31]. In this

[28] Rosario Ruiz Franco enumerates the changes experienced in this period clearly, highlighting the Concordat of 1953, pacts with the United States and entry into international organizations, like UNESCO, ILO and the UN, which favoured the consolidation of the regime internally and internationally. In this sense, the arrival of technocrats in the government and the dismantling of autarchical policy allowed for a greater internationalization of the country, Rosario Ruiz Franco, "Nuevos horizontes para las mujeres de los años 60"... op.cit., p. 254.

[29] Geraldine M. Scanlon, La polémica feminista en la España contemporánea. 1868-1974... op.cit., p. 339.

[30] In this respect, María Telo points out "Toda reforma legal, como todo hecho humano, tiene una preparación más o menos larga, más o menos complicada, que es su gestación. Esta gestación generalmente se olvida, lo que a mi modo de ver es una falta no exenta de importancia, pues es en ella donde está la raíz y la savia que da vida a los textos legales.= Hay casos en los que la gestación resulta tan dura, tan penosa y al mismo tiempo tan trascendental desde el punto de vista jurídico, histórico y social, que el olvidarla o tergiversarla, me parece imperdonable, máxime cuando afecta tan directamente a la mujer, ser humano al que siempre se le hurtó su historia a lo largo de los siglos, precisamente por estar enclavada en la gestación de los hechos, más que en la recolección de finales triunfalistas (...)", María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer, Aranzadi Thomson Reuters, Navarra, 2009, p. 24.

[31] Preliminary recitals of the law of 24 April 1958 whereby determined articles of the Civil Code are modified. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1958-6677, [Last accessed on:

sense, the new legislative framework fully preserved the husband's authority, considering it invulnerable "por exigencias de la unidad matrimonial"[32]. In this respect, marital permission was maintained for the acceptance of guardianship responsibilities[33]. Likewise, women remained subordinate to men in everything related to parental authority, and fathers were reserved the right to authorize the marriage of legitimate children, which only corresponded to mothers in their absence[34]. Moreover, the precepts that established a clear discrimination between men and women were fully maintained. For example, while the former reached legal age at 21, the latter had to wait until they reached 25. Likewise, the precept according to which young people were forbidden to leave the paternal home before coming of age was also maintained, except for marriage or taking vows.

Despite the above mentioned, the legal status of women was modified in some aspects. The same legislation removed the archaic mandate, according to which a widow who subsequently married would automatically lose paternal authority[35]. Likewise, although men preserved the right to manage community assets, their wife's consent was required to dispose of and encumber them without these actions being at all detrimental to her[36]. It is also noteworthy to mention the alteration introduced in article 67. In accordance with this provision, women were allowed to apply for various provisional measures in separation procedures or marriage annulment. Among the most relevant are the possibility of being awarded custody of children who are minors of seven years old or of being allocated a home and the necessary financial aid, which would correspond to her spouse[37].

22 September 2022]

32 Ibídem.

33 Article 237 section 7 modified by the first of the law of 24 April 1958 whereby determined articles of the Civil Code are modified. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1958-6677, [Last accessed on: 22 September 2022]

34 Article 46 modified by the first of the law of 24 April 1958 whereby determined articles of the Civil Code are modified. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1958-6677, [Last accessed on: 22 September 2022]

35 Preliminary recitals of the law of 24 April 1958 whereby determined articles of the Civil Code are modified. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1958-6677, [Last accessed on: 22 September 2022]

36 Article 1413 modified by the first of the law of 24 April 1958 whereby determined articles of the Civil Code are modified. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1958-6677, [Last accessed on: 22 September 2022]

37 Article 67 modified by the first of the law of 24 April 1958 whereby determinded articles of the Civil Code are modified. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1958-6677, [Last accessed on: 22 September 2022]. This last measure is attributed to the action by Mercedes Formica, who denounced the injustice of the regulation in force. It is important to note here the comments published in the ABC newspaper regarding an episode of domestic violence. It declared: "Nuestro Código Civil, tan injusto con la mujer en la mayoría de sus instituciones, no podía hacer una excepción con la esposa, y la casada que se ve en el trance de pedir la separación; aun en aquellos supuestos en que su inocencia está comprobada, ha de pasar por el previo depósito, que en este caso habrá de ser realizado fuera del domicilio conyugal, y ya el proceso de separación en marcha, el juez le entregará, o no le entregará, los hijos, los bienes muebles, fijará una pensión alimenticia, pero lo que ningún magistrado sentenciará –entre otras razones por que carece de facultades para ello- es que sea la esposa la que permanezca en el domicilio común y sea el marido culpable el que lo abandone. (...) Los señores jueces deberían tener facultades para otorgar la titularidad del domicilio conyugal al cónyuge-inocente, en este caso a la

It is an interesting fact that the legislator uses the principle of non-discrimination at his whim to justify the modifications that are made in this period. For example, in law 56/1961 of 22 July about political professional and labour rights of women, where it is stated:

> *"El* principio de no discriminación *por razón de sexo ni estado en la titularidad y ejercicio por los españoles de los derechos políticos y profesionales y laborales* está terminantemente reconocido por el Fuero de los Españoles*: su artículo once declara que «todos los españoles podrán desempeñar cargos y funciones públicas según su mérito y capacidad» y el artículo veinticuatro establece «que todos los españoles tienen derecho al trabajo y el deber de ocuparse en alguna actividad socialmente útil». La presente Ley no tiene por objeto otra finalidad que la de desarrollar y dar aplicación efectiva a tales principios,* suprimiendo restricciones y discriminaciones basadas en situaciones sociológicas que pertenecen al pasado y que no se compaginan ni con la formación y capacidad de la mujer española ni con su promoción evidente a puestos y tareas de trabajo y de responsabilidad"[38].

Everything seemed to indicate that from the time this regulation came into force, Spanish women would regain the exercise of all sorts of political actvities, professionals and of jobs, and equal salary was even stipulated[39]. In this sense, the freedom of the female population was established so they could freely enter into an employment contract[40]. In addition, it permitted their appointment to certain public offices of the State, in the Local administration and other autonomous entities. It also enabled them to participate on equal terms in the systems that offer public posts[41]. Nevertheless, in the next line, the law presents a series of clarifications. They were forbidden access to Law enforcement forces and agencies if the service involved the use of weapons. Likewise, they were prevented from performing any office for the Merchant Navy related to medical functions[42]. Neit-

esposa, ya que, en definitiva, el domicilio conyugal es la casa de la familia y no "la casa del marido", como dice la Ley (...)", ABC, Nº. 14875, Madrid edition, 7 November 1953. Available online at: https://www.abc.es/archivo/periodicos/abc-madrid-19531107.html, [Last accessed on: 23 September 2022]

38 Law 56/1961, of 22 July, on the political professional and labour rights of women, BOE, Nº. 173, p. 11004. Emphasis added.

39 The first final provision indicated that the law would not come into force until 1 de 1962, Law 56/1961, of 22 July, on the political professional and labour rights of women, BOE, Nº. 173, p. 11005.

40 Article 4 of Law 56/1961, of 22 July, on the political professional and labour rights of women, BOE, Nº. 173, p. 11004.

41 Alonso Olea qualified this law as being for the "middle classes" because "en cuanto a los cargos políticos, según se ha visto, no introduce innovación sustancial importante, y en cuanto a la regulación de los contratos de trabajo, según se verá, y especialmente en la forma como se enfoca la autorización marital, sus disposiciones son en algún punto más restrictivas que las contenidas en la Ley de Contrato de Trabajo. En cambio, respecto de la mujer en posesión de títulos de enseñanza media o superior, que son los normalmente exigidos para el ingreso en los distintos cuerpos y carreras del Estado (y probablemente es la posesión de estos títulos el dato aislado más característico de pertenencia a la clase media en nuestro país), el avance que se da por la Ley de 22 de julio de 1961 es realmente trascendental", Manuel Alonso Olea, "La Ley de 24 de julio de 1961...", op. cit., p. 334.

42 Articles 2 and 3 of Law 56/1961, of 22 July, on the political professional and labour rights of women,

her could they occupy posts as magistrates, judges or prosecutors except for the minors and labour jurisdictions[43]. Finally, this extension of legal-public capacity was not applied to married women, who continued to be subject to prior marital authorization, whereby permission should be explicitly stated[44].

We should not be misled by the events presented so far. On several occasions, the historiography has pointed out how these reforms respond to a determined historical context. We cannot forget that they were promoted by individuals who embraced the Francoist ideology, and they were undoubtedly a response to their regime's need to acquire a certain international acceptance and recognition[45]. However, we cannot ignore that these legislative measures constituted a starting point, a first step towards becoming aware of the female situation. This would explain why, at this time, we witness a certain resurgence of feminist association movements, whose demands could no longer be silenced[46].

BOE, Nº. 173, p. 11004.

43 In Alonso Olea's opinion, the exception we refer to, according to which women could be labour court magistrates, is difficult to understand, "pues los procesos de trabajo tienen como una de sus características más señaladas el de la inmediatividad o presencia física directa del Juez y partes en los actos fundamentales del proceso, que puede generar situaciones que son las que posiblemente se hayan querido evitar a la mujer (...)". We can clearly infer from his words the continued existence of the paternalist nature the Francoist regime relied on to prevent Spanish women from having access to the labour world. Besides, it foresaw that in reality there would be few opportunities for women to have access to the Cuerpo de Magistrados de Trabajo, since "se ingresa por concurso restringido entre funcionarios de las carreras judicial o fiscal y sólo por oposición entre licenciados en Derecho mayores de veintitrés años, si no se pueden cubrir las plazas conforme al procedimiento anterior, lo que, según nuestras noticias, no ha ocurrido nunca, por lo que si a la mujer le está vedado el ingreso en aquellos Cuerpos, conforme al propio artículo 3º. 2 c), mal podrá desempeñar nunca el puesto de Magistrado de Trabajo", Manuel Alonso Olea, "La Ley de 24 de julio de 1961...", op.cit., p. 336.

44 Article 5 of Law 56/1961, 22 July, about women`s political, professionals and labour rights, BOE, Nº. 173, p. 11004. This point is highlighted by the doctrine. Among others, Manuel Alonso Olea pointed out that "el artículo 5.º, que es, por consiguiente, y por así decirlo, un artículo común a los cuatro anteriores y que se encarga de precisar la forma como la condición de casada puede influir y de hecho influye sobre el acceso y desempeño por la mujer de cargos políticos, puestos administrativos y prestaciones de servicios". Thus, according to the abovementioned labour lawyer, the declaration of article 1 referred to the elimination of restrictions by reason of sex, but not marital status, which continued to be in force, Ibídem, p. 329.

45 In this respect, Patricia Cuenca, "Mujer y Constitución: los derechos de la mujer antes y después de la Constitución española de 1978"..., op.cit., p. 81; Julio Igesias de Ussel & Juan Jose Ruiz Rico, "Mujer y Derecho", Liberación y Utopía, Madrid, Akal, 1982, pp. 143-168; or Rosario Ruiz Franco Rosario Ruiz Franco, "Nuevos horizontes para las mujeres de los años 60"... op.cit., p. 254.

46 As Maria Adelina Codina Canet points out, in the seventies the first feminists began to have access to posts in the Public Administration of the State. To be exact, Pilar de Yzaguirre, Suzel Bannel, María Corral, Mabel Pérez-Serrano, Rosa Posada, Anna Úbeda and María del Mar Vanaclocha formed part of the Ministry of Culture of the first democratic government, Maria Adelina Codina Canet, Archivo y memoria del feminismo español del siglo XX, Instituto de las Mujeres, Madrid, 2021, p. 25. In accordance with Celia Amorós, it is not until 1975 that a feminist movement can be talked of in stricto sensu, Celia Amorós, "Algunos aspectos de la evolución ideológica del feminismo en España", La mujer española: de la tradición a la modernidad (1960-1980), Tecnos, Madrid, 1986, pp. 48-51. Nevertheless, a process of awareness can be appreciated insofar as there is evidence of female militants linked to the left-wing fight against the dictatorship and a series of associations that were tolerated by the regime as they considered them innocuous, José Manuel Cabrera Díaz, "Derechos humanos y derechos de las mujeres en la democracia española (1975-2000)", Historia de las Mujeres en España. Siglo XX, Instituto de la Mujer, Tomo III, 2003, p. 125.

In this sense, from the mid-sixties, we find women who, be it as individuals or through organizations, demonstrated an explicit non-conformity and called for equality using the scarce resources afforded them[47]. Several emblematic jurists stand out in the field of law, such as Mercedes Formica, María Telo, Pilar Jaraiz, Lidia Falcón o Cristina Alberdi stand out[48]. Less known in the historiography is Ana Justa Vicente Tornero. As head of the 'Departamento Femenino de la Mujer' and lawyer of the Ilustre Colegio de Barcelona, she used her position to demand equality in the public and private spheres. In this respect, her interventions in the press of the time are very illustrative, among which we highlight an interview published at the end of May 1966 in the section "Mano a Mano" of the newspaper *La Vanguardia*. It said:

> *"Por la Ley de 22 de julio de 1961 se estableció el derecho de equiparación de la mujer al varón a todos los efectos, a excepción del servicio de las armas, cuerpo de fiscales y la administración de justicia. Si bien se reservó la posibilidad de poder ejercer la magistratura del trabajo y la de menores.* Hoy no hay ningún magistrado de trabajo, ni juez de menores, y mucho menos fiscales, ni jueces de tribunales del sexo femenino. *Pero en las Cortes se ha presentado un* proyecto de Ley en el que se pide se suprima el apartado C) del artículo tercero de la Ley de 22 de julio de 1961*(...) Desde 1960 la abogada Ana Justa Vicente Tornero lucha por que la mujer pueda desarrollar los mismos trabajos que el hombre en el campo del Derecho"*[49].

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47 Pilar Toboso, "Las mujeres en la transición...", op.cit., p. 84. About the feminist movement in the Spanish transition, without going into detail, Vid. Anna Aguado (ed.), Mujeres, regulación de conflictos sociales y cultura de la paz, Universitat de Valencia, Valencia, 1999; Maria Adelina Codina Canet, Archivo y memoria del feminismo español del siglo XX... op.cit.; Pilar Escario, Inés Alberdi & Ana Inés López-Accotto, Lo personal es político: el movimiento feminista en la transición, Instituto de la Mujer, Madrid, 1996; María Ángeles Larumbe, Una inmensa minoría: influencia y feminismo en la transición, Prensa Universitaria de Zaragoza, Zaragoza, 2002 and Las que dijeron no. Palabra y acción del feminismo en la transición, Prensa Universitaria de Zaragoza, Zaragoza, 2004; Carmen Martínez Ten, Purificación Gutiérrez López & Pilar González Ruiz (eds.) El movimiento feminista en España en los años 70, Cátedra, Universitat de Valencia, 2009; Mónica Moreno Seco, "Feministas y ciudadanas. Las aportaciones del feminismo español a la construcción del Estado democrático", Alcores, Nº. 13, 2012, pp. 85-100 and "Revolución, democracia y feminismo: las mujeres de la extrema izquierda en la transición", Caminos de democracia: ciudadanías y culturas democráticas en el siglo XX, Comares, 2014, pp. 133-148; Mary Nash & Gemma Torres (eds.), Feminismos en la transición, Grup de Recerca consolidat Multiculturalisme i Genere- Universitat de Barcelona, Sociedad Estatal de Conmemoraciones Culturales, 2009; Gloria Nielfa Cristóbal, "El debate feminista durante el franquismo", Mujeres y hombres en la España franquista: Sociedad, economía, política, cultura, Editorial Complutense, Madrid, 2003, pp. 243-268; Julia Sevilla Merino, Asunción Ventura Franch, Mª del Mar Esquembre Valdés, Margarita Soler Sánchez & Mª Fernanda Del Rincón García, Las mujeres parlamentarias en la legislatura constituyente, Cortes Generales, Ministerio de la Presidencia, Madrid, 2006; or Asunción Ventura Franch, Las mujeres y la Constitución Española de 1978, Instituto de la Mujer, Madrid, 1999.

48 Julián Gómez de Maya carries out a review on the training and subsequent professional activity of these jurists. Vid. Julián Gómez de Maya, "Femenino singular: algunas juristas españolas en primera persona", Las mujeres y las profesiones jurídicas, Dykinson S.L., Madrid, 2020, pp. 231-247. Likewise, for the testimony of other important female victims of repression, the following work should be consulted Antonina Rodrigo, Mujeres para la historia... op.cit.

49 La Vanguardia Española, Barcelona edition, N.º 31098, 31 May 1966, p. 33. Emphasis added.

In this publication, Manuel del Arco asked Ana Justa Vicente what we believe to be a relevant question. While reflecting on the mentality of Spanish society of earlier times he asked about the reasons that led women to "(...) complicarse la vida, como nosotros, y no se quedan en casa para cuidarnos". The lawyer's response was robust:

> *"Porque no todas las mujeres españolas tienen posibilidad de contraer matrimonio, debido, al parecer, a que existen tres millones más de hombres, en edad de casarse. Y por otra parte, porque creo que la mujer española tiene perfecto derecho a proyectar su vida en la actividad profesional a la que se sienta llamada.* Y además, porque es preciso dar reconocimiento legal a un principio establecido en nuestras leyes fundamentales de que todos los españoles somos iguales ante la ley"[50].

The legislative proposal the newspaper referred to was finally approved in the Parliament with the approval of the 'Comisión de Leyes Fundamentales y Presidencia del Gobierno'[51]. Based on its enactment, Spanish women could have access to offices as magistrates, judges and prosecutors. Despite everything, the Preamble of the law insisted on the idea that the annulment of this prohibition responded to the protection of female sentiments before "determinadas actuaciones que el cumplimiento del deber haría ineludibles", while the cited regulation continued, these reasons were understood to have been overcome by a social reality whose transformation was now undeniable[52].

Another important player in the fight for women's rights was María Telo Núñez, founder of the "Asociación Española de Mujeres Juristas"[53]. Among her numerous accom-

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50 Ibídem. Emphasis added.

51 The Committee appointed to study it was formed by Tomás Allende y García-Báxter, Jesús Fontán Lobé and Rafael García-Valiño Marcent, Boletín Oficial de las Cortes Españolas, Nº. 936, 11 November 1966, p. 20095. The person in charge of defending the project was Pilar Primo de Rivera. Her intervention was brief, but we consider it especially interesting as it clearly reflects on certain aspects of the reality that female citizens experienced. She said: "(...) la supresión de estas limitaciones se justifica en cuanto que, transcurridos más de cinco años desde la promulgación de la Ley anterior y tal como va el mundo, se considera a la mujer española con madurez suficiente para afrontar incluso los trabajos más penosos, si siente vocación hacia ellos.= El haber establecido la Ley anterior estas limitaciones, que se referían concretamente a prohibir el acceso de la mujer a los puestos de la Administración de Justicia, tales como magistrados, jueces y fiscales, salvo en las jurisdicciones Tutelar de Menores y Laboral, era en razón de considerar estas profesiones, en algunos casos, como demasiado duras y desagradables para la mujer. Pero como quiera que el acceder a ellas es elección absolutamente voluntaria, la mujer que no se sienta capaz de afrontar sus riesgos no los elegirá en modo alguno, pero no parecía justo, ni en todo caso lógico, privar, aunque sólo fuera a una mujer, de este ejercicio de su vocación.= Bien sabemos que los que a esto se oponían lo hacían con razones muy estimables y con el limpio deseo de proteger a la mujer –eso tenemos que agradecerles-, pero quedaba la Ley como coja, como insuficiente, como desordenada, siendo así que el orden es uno de los principios del equilibrio". Among the foundations on which she based the abovementioned proposal, the following stands out: "(...) la aparición masiva en el mundo entero de la mujer en los puestos de trabajo. A esta realidad, con sus ventajas y sus inconvenientes, no puede sustraerse España, menos en unos momentos en los cuales el esfuerzo de todos los españoles, hombres y mujeres, es necesario para el desarrollo político y económico que nuestra Patria necesita (...) Por este camino va el mundo y ésta es, me parece, la política del Gobierno, la idea del Caudillo (...)", Boletín Oficial de las Cortes Españolas, Nº. 945, 27 December 1966, pp. 20326-20327.

52 BOE, Nº. 311, 29 December 1966, p. 16392.

53 The founding charter of the Association names the members of the Directors Board as María Telo Núñez,

plishments is her role in the Comisión General de Codificación, where she intervened actively in drawing up different proposals, such as the modification of the Civil Code, the draft of legal equality for spouses or the divorce law[54]. The following pages are dedicated to the study of these proposals.

III. Two important alterations to Family Law

In 1972, *a Special Section* was created within the Codification Comission *to study the impact that social changes could have had on Family Law and, where appropriate, formulate the corresponding proposals.* This commission was made up of nine men and four women, namely: Belén Landáburu González, Carmen Salinas Alfonso, Concha Sierra Ordóñez and María Telo Núñez[55]. Undoubtedly, the female presence in this high level institution of the State constituted a real advance for their emancipation. For the first time since the establishment of the dictatorship, female citizens could actively participate in

president; Sofía Cascajo Tajadura and Ascensión de Gregorio Sedeño as first and second vice-presidents; Elena castro Abad-Conde, secretary; Dorita Finalé Sosa, treasurer; and Amalia Franco Granado, Ángeles Álvarez Rubio, Carmen Martín García and Pilar Borragán Pastor, first to fourth board members, María Telo Núñez, Mi lucha por la Igualdad... op.cit., p. 63. María Telo Núñez's bibiography can be consulted in the Real Academia de la Historia, available online: https://dbe.rah.es/biografias/17776/maria-telo-nunez [Last accessed on: 24 September 2022]; also, Vid. Rosario Ruiz Franco, "Maria Telo y la participación de mujeres juristas en la Comisión General de Codificación (1973-1975)", Asparkia, Nº. 17, 2006, pp. 165-180.

54 Entry into this body was not an easy task. The appointment was not a Government initiative. To the contrary, our jurist had to present an application for this purpose, appealing the provisions established in the decree of 23 October 1953 which empowered the minister of Justice to name members. The petition was initially denied. Nevertheless, this lawyer was not disposed to abandon her aim. In this sense, she sent a letter to this Ministry in which she made them see the injustice of making such a rigorous application of the law, excluding women for not having enough professional merits. In María Telo's opinion this was a scandalous matter, taking into account that until a very short time ago she had been forbidden to enter the magistracy and other high level professions, her words were very clear: "Excmo. Sr.= María Telo Núñez, abogado del Ilustre Colegio de Madrid, como Presidente de la AEMJ (asociación Española de Mujeres Juristas) (...) ante V.E. comparece y respetuosamente.= Expone.= Que ha tenido entrada en esta asociación, contestación de V.E. al escrito que en 18 de marzo último le elevamos en solicitud de que fuesen designados miembros de la Comisión de Codificación, un número de mujeres juristas tal que su voz y voto se hiciese sentir en las decisiones de tan alto Organismo, especialmente cuando se estudiasen en él leyes que afecten a la mujer o a la familia (...) Excmo. Sr nosotras somos las primeras en lamentar – por ser las más afectadas directamente. El que ninguna mujer jurista pueda haber tenido la oportunidad de acceder a los puestos que para ser vocal nato de dicha Comisión de Codificación se requiere, a causa de estar prohibido en España hace 5 años en magistratura y 10 años en otras profesiones el ingreso de la mujer (...) También lamentamos se lleve la interpretación de las disposiciones antes citadas con una rigurosidad tal, que se considere no existe en España ni en la Cátedra ni en el Foro, ni en el Consejo Nacional, ni en las profesionales que ejercen actividades jurídicas al servicio del Estado, etc. ninguna mujer jurista con méritos suficientes para ser designada vocal permanente de la repetida Comisión de Codificación, en ninguna de sus secciones", Archivo Histórico Nacional (hereon, AHN), Diversos-General, 604, Nº.10, pp.1-3, available online at: pares.mcu.es [Last access on: 15 August 2022]. As we know, and despite the obstacles which she came up against. Her insistence was effective. María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer..., op.cit. p. 74.

55 The members were: Francisco Bonet Ramón, Beltrán Heredia Castaño, Pío Cabanillas Gallas, José Mª Castán Vázquez, Luis Díez-Picazo y Ponce de León, Francisco Escribá de Romaní, Amadeo Fuenmayor Champin, Pablo Jordán de Urries, Santiago Pelayo Hore, and Antonio Reverte Moreno, Ibídem, p. 78.

drawing up and discussing legislative projects that affected the family, and by extension, the citizens in general [56]. Surprisingly, this news was treated with indifference by the media. In our opinion, the reason for this lack of interest lies in the archaic values that continued to dominate society of the time. Despite the above-mentioned transformations, the truth is that there still remained a long path ahead to be able to talk of a true awareness of equality in the Spanish population. In any case, as we will observe, it is unquestionable that these women left their mark. Undoubtedly, the female jurists of that time "abrieron cauces, derribaron tabúes, mostraron la injusticia del Derecho de Familia, logrando su democratización, antes, incluso, de que finalizase el régimen dictatorial". Without their laudable work, said Telo Núñez, "se hubiese retrasado en años el grado de independencia y desarrollo que hoy la mujer tiene"[57].

Numerous transformations were made during the period covered by this study. We refer specifically to two that are of importance: on the one hand, the reforms of the precepts of the Civil Code and the Commercial Code in 1975; and on the other, the introduction of divorce in 1981.

1. The legal changes of 1975

The anachronistic legal situation that the female population had been subjected to for centuries had its days numbered in Spain. The work carried out by María Telo Núñez in this sense is commendable. Her efforts date back to 1969, when she made a petition to the Minister of Justice, Antonio María Oriol y Urquijo, and to the director general of the same area, Acisclo Fernández Carriedo, for a change in the regulation in Family law[58]. Unfortunately, the proposal fell on deaf ears, as she herself relates. The above-mentioned authorities alleged "que las discriminaciones jurídicas desventajosas para la mujer, que se apreciaban en las conclusiones, estaban tomadas en un plano de Derecho Comparado, y que por fortuna no se daban íntegramente en el Derecho Español y otras estaban en vías de desaparición"[59].

Despite everything, this negative response was not enough to slow down the spirits and determination of our jurist from Cáceres. To the contrary, her perseverance led to a meeting with the head of state, even though the matter was not considered to be of primary importance by the Government, and she had to wait until the mid-sixties for the above-mentioned legal modification to be executed[60].

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56 For María Telo Núñez, the importance of this State body is obvious. Here she studied the draft laws, which, after being approved by the Consejo de Ministros, were passed on to the Francoist Cortes to be debated. In this sense, although the state lawyers in the Parliament could present amendments, as she points out, as a rule, they did not disagree too much with the studies made by the Commission, María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., pp-79-80.

57 María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., p. 25.

58 It should be clarified that she took this initiative as president of the Legal Studies Comission, which functioned until the creation of the Asociación Española de Mujeres Juristas, María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., pp. 58-59.

59 María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., pp. 57-58.

60 According to what María Telo Núñez herself relates, after presenting her memorandum, where she made

Adversities did not affect this distinguished lawyer's determination, and during that time, she presented a new project for reform, sponsored by the 'Asociación Española de Mujeres Juristas'. The proposal pursued a partial transformation of the legislation, limited to certain areas that required urgent alteration[61]. To be exact, it asked for: the elimination of marital permission, including the aspects affecting paraphernal property; a reserve of assets on behalf of the wife within the community property regime; and granting validity to marriage settlements, whether entered into before or after marriage[62]. The urgency surrounding this reform was justified by

> *"(...) abarcar materias que afectan profundamente al equilibrio de la familia, y el afrontarlas resolvería gran número de problemas matrimoniales y situaciones injustas, nacidas del desfase que la marcha del tiempo produce entre la caducidad de las Leyes y el avance social"*[63].

Out of all the reforms presented, undoubtedly, the elimination of marital permission was the most urgent. It was necessary to eradicate any limitation on married women's legal capacity to act, allowing them to appear in court by themselves, accept inheritances and give their consent to any kind of contract, without needing any authorization[64]. The modification of article 22 was framed within this proposal, according to which women had equal nationality as their husbands, proposing that female citizens in this situation could acquire double nationality, and thereby avoid the loss of Spanish nationality. This proposal aimed to put an end to the numerous problems that this clause caused women, on not being able to "utilizar los Títulos y Diplomas que con tanto esfuerzo obtuvo en el tiempo que duró su educación, ello por ser considerada extranjera, aunque nunca haya pisado el pais de su marido; ni tampoco los puede utilizar en dicho pais, por no haber sido allí expedidos"[65]. Another significant change consisted in removing the duty of obedience and protection that was imposed on spouses, substituting them with the "responsabilidad de ambos ante la familia"[66]. On the other hand, it aimed to grant greater freedom to both parties, allowing them to enter into marriage settlements and "(...) adaptarlas a las distintas etapas de su vida (...)" in common[67]. In the same sense, it advocated granting both spouses full control of family wealth on equal footing. In any case, a

it evident that there was a need to review the Family law in force due to its lack of connection with the social reality of the time, the Caudillo answered "Os lo habéis ganado", María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer...op. cit., p. 59.

61 Ibídem, pp. 93-94.

62 The proposal can be consulted in AHN, Diversos-General, 607, Nº. 1, pp. 1-40, available online: pares.mcu.es [Last accessed on: 15 August 2022].

63 AHN, Diversos-General, 607, Nº. 1, p. 1, available online at: pares.mcu.es [Last accessed on: 15 August 2022].

64 María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., p. 97.

65 AHN, Diversos-General, 607, Nº. 1, p. 5, available online at: pares.mcu.es [Last accessed on: 15 August 2022].

66 Ibídem.

67 In relation to this point, the creation of a special register was proposed where these pacts could be published and available to interested third parties, Ibídem.

"reserve of assets" was established on behalf of the wife, who would be granted the free administration of her income and assets[68].

Even though this project came to nothing, it is certainly of undeniable importance. On the one hand, it was the basis for the reform that would be executed later. On the other hand, it served as a clear driving force for the rest of the members of the Commission, who decided to modify the legal framework in force urgently. In this sense, they drew up another proposal, whose purpose, they said, was to address

> *"a las corrientes de opinión sentidas en nuestros días en el ámbito del Derecho Privado, como a los cambios que en la sociedad se han producido por la mayor intervención de la mujer como sujeto activo en la misma"*[69].

For this purpose, three necessary points were addressed to acknowledge "a la mujer un ámbito de libertad y capacidad laboral en el orden jurídico que resultan consustanciales con la dignidad que en sentido jurídico y total programan las Leyes Fundamentales"[70]. That is to say, in the first place, the discretion of a flexible system in relation to the citizenship of a married woman

> *"de tal manera que no sea inexcusable seguir la nacionalidad del cónyuge cuando ello implique disminución de las posibilidades de la mujer para desempeñar puestos de trabajo, cargos o empleos en país distinto al de su nacionalidad inexcusable"*[71].

Secondly, the reform of the legal regime of employment capacity, including "la diferencia teórica (...) entre el consentimiento para actos y negocios jurídicos de carácter común y la licencia para actos o derechos privativos"[72]. This point also contemplated

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68 The reasons Telo Núñez used to defend this point are eloquent. She said: "Insisto en que hoy la mujer trabaja fuera del hogar y hay que reconocerle este derecho como ser humano, que tiene garantizado en el Fuero de los españoles y en la Ley de Derechos Políticos, Profesionales y de Trabajo de la Mujer, lo que como consecuencia lógica, produce el que esta mujer pueda administrar lo que ella gana, en beneficio de la familia, al igual que el esposo.= Pero tampoco podemos olvidar que es muy elevado el número de mujeres que se dedican al cuidado del hogar, exclusivamente, durante toda su vida; y aquellas que trabajan, tampoco pueden librarse de esta obligación, lo que se traduce en una sobrecarga de trabajo y en un fuerte freno para su promoción profesional.= Por ello considero justo que la mayoría casi absoluta de las legislaciones extranjeras, aún considerando a la mujer obligada a sostener a la familia y educación de los hijos en proporción a sus ingresos, dicha exigencia ocupe un segundo plano, haciendo pesar la carga de esta obligación sobre el marido. En Cataluña, donde rige la separación absoluta de bienes, es también el marido quien la lleva. En este proyecto que presento, se ha seguido el mismo sistema; por ello, el marido está obligado a facilitar a su mujer las cantidades necesarias para el sostenimiento del hogar y la educación de los hijos, de acuerdo con el nivel económico que ostente", AHN, Diversos-General, 607, Nº. 1, pp. 6-7, available online at: pares.mcu.es [Last accessed on: 15 August 2022], p. 7.

69 AHN, Diversos-General, 607, Nº. 1, p. 41, available online: pares.mcu.es [Last accessed on: 15 August 2022].

70 Ibídem. Article 21 of the draft law indicated: "El matrimonio por si sólo no modifica la nacionalidad de los cónyuges, ni, en general, limita o condiciona su adquisición, pérdida o recuperación, por cualquiera de ellos con independencia del otro". This was complemented by the following precept, indicating: "La mujer por razón de matrimonio con extranjero sólo perderá su nacionalidad española, si adquiere por su voluntad la del marido", Ibídem, pp. 47-48.

71 Ibídem, p. 42.

72 Ibídem.

the possibility of granting marriage settlements, modifying "el régimen económico matrimonial por voluntad de ambos cónyuges en cualquier momento de la vida en común" [73]. Finally, Spanish women were accorded free administration of assets corresponding to the conjugal community and the articles of the Commercial Code were amended, granting them independence in the commercial sphere[74].

The preliminary draft was the subject of intense debate in the Special division of the Codification Comission which María Telo belonged to. We cannot dwell on the debates that were generated, although it should be noted that this jurist worked hard to eliminate articles 57 and 58 of the Civil Code, related to women's obedience to their husband and the obligation to follow the latter wherever he established his residence[75]. Such is the case, that these discriminations soon disappeared permanently within the Parliament, thanks to the initiative of the abovementioned lawyer[76].

The final text was enacted on 2nd May 1975, coinciding with "International Women's Year" proclaimed by the UN[77]. The memorandum recognised that the restrictions on women's capacity to act had lost all its substance, and it was only fair that they should have a greater sphere of freedom in the legal order inherent to a person's dignity. Thus, the proposal that María Telo had drawn up previously regarding nationality was accepted, establishing that marriage alone did not imply its loss. In this sense, it was affirmed:

> *"(...) la multiplicación de las relaciones internacionales, tanto a escala de los Estados como de las personas, y el decidido tránsito hacia comunidades más amplias que las nacionales, hacen que aquellas premisas se hayan alterado, de manera tal que no se ve ya razón suficiente para que una misma familia no pueda estar compuesta por personas de diferentes nacionalidades (...)"*[78].

Likewise, articles 57 to 65 were modified, whereby the duty of a woman's obedience to her husband was eliminated, establishing a mutual obligation of respect and protection. At last, the long-awaited parity between both spouses was achieved. In this sense, it was indicated that marriage would not be a restriction regarding the spouses' capacity to act; the traditional legal representation of the husband over his wife was eliminated, permitting her to dispose freely of matrimonial assets. From this moment, she would be able

73 AHN, Diversos-General, 607, Nº. 1, p. 41, available online: pares.mcu.es [Last accessed on: 15. August 2022].

74 Ibídem.

75 María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., pp. 108-110.

76 Telo Núñez relates that she addressed the state lawyers in writing, sending them a set of amendments that could be presented for articles 57, 58, 225, 1389, 1391 and 1443 of the Civil Code. These proposals were accepted by a significant number of the members of the Parliament, who offered to support them s, Ibídem, pp. 113-115.

77 Law 14/1975, of 2 May, on the reform of determined articles of the Civil Code and the Commercial code regarding the legal situation of married women and the rights and obligations of spouses, BOE, Nº. 107, 5 May 1975, pp. 91413-9419. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1975-9245 [Last accessed on: 18 August 2022].

78 Ibídem.

to administrate movable and immovable assets belonging to the community property, as well as paraphernal property, under equal conditions[79]. In addition, the family household was no longer presumed to be the residence where the husband resided, and it was stated that the family household should be established by mutual agreement. Lastly, in the case of legally finalized separation, it was determined that both ex-spouses would acquire full ownership of those assets that had been allocated to each as a result of the liquidation[80]. In the same act, the Commercial Code was altered, excluding marital permission and in its place the so-called "conjugal authorization" was established for cases bound by joint property[81].

In our opinion, the transformation verified in this year represented a tremendous advance for the legal capacity of Spanish women. Undoubtedly, María Telo Núñez was the leading defender and worked tirelessly to achieve the transformation of Family Law. From this moment, the female population achieved equality in the home, acquiring complete independence. Consequently, at least with respect to legislation, the precepts that imposed marital authority became a thing of the past[82]. Another hurdle had been overcome, breaking taboos and preparing petitions for more extensive and new changes.

2. Dissolution of marriage

The death of the Caudillo led to the necessary push towards a complete review of the Spanish legal system. The new legal-political context permitted the establishment of legal institutions, which a short time ago were the subject of extreme rejection. A clear example of this can be found in divorce. While in 1975 its introduction would have been almost impossible, only two years later, it was included as an electoral promise, integrated in the political program of the main left-wing parties[83]. Its endorsement became effective

79 Articles 1387 and 1444 modified by 2 of Law 14/1975, of 2 May on the reform of determined articles of the Civil Code and the Commercial Code regarding the legal situation of married women and the rights and obligations of spouses, BOE, Nº. 107, 5 May 1975, pp. 91413-9419. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1975-9245 [Last accessed on: 18 August 2022].

80 Article 73 modified by 2 of Law 14/1975, 2 May, on the reform of determined articles of the Civil Code and the Commercial Code regarding the legal situation of married women and the rights and obligations of spouses, BOE, Nº. 107, 5 May 1975, pp. 91413-9419. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1975-9245 [Last accessed on: 18 August 2022].

81 Articles 6 to 9 of the Commercial Code modified by article 5 of Law 14/1975, of 2 May, on the reform of determined articles of the Civil Code and the Commercial Code regarding the legal situation of married women and the rights and duties of spouses, BOE, Nº. 107, 5 May 1975, pp. 91413-9419. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1975-9245 [Last accessed on: 18 August 2022]. Specifically, articles 6 to 9 of the Commercial Code were modified.

82 Day to day reality, however, would take a while to change. María Telo herself tells us how there was a sad and constant tendency to forget that the 1975 Law existed. She herself was a witness to how two ladies were advised in a Notary "(...) para que dejasen de entorpecer la labor de sus maridos con sus observaciones sobre la venta de bienes parafernales, diciéndoles que ellos sabían de estas cuestiones mucho más que ellas", María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., p. 144.

83 Pablo Martín de Santa Olalla Saludes, "La ley del divorcio de junio de 1981 en perspectiva histórica", Espacio, Tiempo y Forma, Serie V, Historia Contemporánea, Nº. 14, 2001, p. 520. In May 1979, the Communist party presented a proposal for a divorce law to the Congress of Deputies, the basis of which was "(...) no tanto la determinación de una culpa imputable a uno u otro cónyuge, sino la ruptura irreversible

in article 32 of the 1978 Constitution which referred to a law for establishing the grounds for separation and dissolution, and the resulting consequences. As had already occurred during the Second Republic, the introduction of this legal concept in the Spanish legal system was not a trouble free issue[84]. Fernández Ordóñez criticised this when he stated:

> *"No es posible desconocer las diversas reacciones que la introducción del divorcio ha suscitado en España.* A veces parece que el divorcio es para los españoles el problema de los problemas, como si no hubiera en nuestra convivencia decenas de temas de mayor gravedad o de urgencia más vital, como si fuera el punto que concentra la mayor densidad de apasionamiento o el que se ve rodeado de mayor expectación. *Y, sin embargo, este es un hecho absolutamente normal, porque el legislador no trabaja en una sala de estudio ni en un laboratorio, porque las leyes no son monumentos de piedra, sino que nacen como un ser vivo y se aplican en una sociedad determinada. Lo que sucede es que en ocasiones y desgraciadamente, los protagonistas de la historia ignoran su propia perspectiva"*[85].

The Minister of Justice was not far wrong. The social and political debate about divorce was a patent reality. In this respect, the press gives a good picture of what the proposal provoked at the centre of the political party Unión de Centro Democrático. On 23 June 1981, the editorial of the newspaper *El País* became aware of these disagreements. It said:

> *"El Pleno del Congreso de los Diputados aprobó ayer el proyecto de ley de Divorcio, sin aceptar prácticamente ninguna de las modificaciones importantes introducidas por el Senado. La ley ha quedado, pues, con un marcado carácter progresista, por el que* UCD ha tenido que pagar el precio de sus discrepancias internas, rozando en ocasiones con la ruptura, y que cul-

–según una previsión racional- de la relación conyugal o la existencia de conductas unilaterales que hagan virtualmente imposible el pacífico mantenimiento de tal relación". In this sense, the following were contemplated as legitimate grounds: voluntary and involuntary cessation of conjugal life for whatever reasons during the two years immediately prior to divorce; a serious breach of matrimonial duties; illness of either of the spouses which seriously affects their life together: infidelity and ill-treatment, abuse and serious offences to the integrity, dignity and freedom of a spouse or to the children, attributable to the other spouse; and finally the impossibility of spouses' normal cohabitation because of incompatible characters, Boletín Oficial de las Cortes Generales, Congress of Deputies, Serie B: Law proposals, Nº. 20-I, 25 May 1979, in AHN, Diversos-General, 609, Nº. 46, pp. 5 and 6. A month later, another proposal was presented on the same issue, on this occasion by the Socialist Parliamentary Group, which contemplated a much more extensive list of grounds for divorce, alternating objective reasons and reasons of guilt. In our opinion, in this regard, the proposal had the same spirit as the one that inspired the Law of March 1932. In this sense, the foundations of this legal solution were claimed to be a mutually agreed separation de facto and in a different residence; reasons of a sexual nature, such as non-consummation and denial of right to procreate or the marital act, or sterility; disruptive behaviour of one of the spouses, non-consensual and unforgiven breach of fidelity, bigamy, alcoholism or drug addiction, abuse, neglect, abandonment and disappearance. Boletín Oficial de las Cortes Generales, Congress of Deputies, Series B: Law proposals, Nº. 34-I, 13 June 1979, in AHN, Diversos-General, 609, Nº. 45, p. 2.

84 Martín de Santa Olalla Saludes relates the different onslaughts unleashed by the Catholic hierarchy, Martín de Santa Olalla Saludes "La ley del divorcio de junio de 1981 en perspectiva histórica"... op.cit., pp. 521ff.

85 Diary of Sessions of the Congress of Deputies, Nº. 150, 17 March 1981, pp. 9393. Emphasis added.

> minó ayer con la exigencia de dimisión del ministro de Justicia Francisco Fernández Ordóñez, por parte del líder democristiano Oscar Alzaga. *(...) decenas de diputados centristas han tenido que aliarse a la hora de las votaciones con socialistas y comunistas, hecho éste que ha provocado los momentos más tensos vividos en el interior del partido del Gobierno (...)*"[86]

In spite of the above, society demanded legalization for this legal institution. In this sense, in her writings María Telo denounced the high number of marriages that were in an anomalous situation, outside the law[87]. Doubtless, children were the ones most harmed by the irregularities resulting from these illegitimate unions, which as the abovementioned jurist points out, were formed as a result of there not being an effective legal mechanism to put an end to unions that in reality were already dissolved[88].

The response to this aspiration came from Law 30/1981, of 7 July. According to this regulation, the dissolution of marriage occurred in two different circumstances: death or declaration of death of one of the spouses, or divorce[89]. To be exact, the regulation of the latter institution was included in five provisions, included in chapter VIII.

Among the reasons for opting for this judicial solution are mutual agreement, an attempt against the life of the other spouse, their ascendants or descendants, and finally 'effective cessation' of matrimonial cohabitation. For the latter case to be verified, spouses were required to faithfully prove that they had been in this situation for a period of between twelve and sixty months[90]. Specifically, when a separation arose from a previous claim, agreed by both spouses, at least one year should have lapsed since the termination of cohabitation. The same requirement was imposed when the action was based on grounds established in article 82. These were specifically: abandonment, infidelity, abusive and offensive behaviour, serious infringement of marital or parental obligations, convicted to serve a custodial sentence for longer than six years, alcoholism, drug addiction,

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86 El País, Nº. 1596, 23 June 1981, pp. 18 and 19. Available online at: https://elpais.com/diario/1981/06/23/portada/362095202_850215.html [Last accessed on: 28 September 2022]. Emphasis added.

87 María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., p. 201.

88 Ibídem. This point was also sustained by Fernández Ordóñez (previously cited), on pointing out: "Ni el Estado puede imponer a todos los miembros de la colectividad unas exigencias morales o religiosas que sólo afectan a la conciencia de una parte de ella, aunque sea mayoritaria, ni puede quebrarse la unidad del ordenamiento jurídico por razones de estas creencias. No tiene, por tanto, sentido la negativa del divorcio basada en la defensa de la familia. A la familia la ha deshecho mucho antes el desamor, el abandono, el adulterio, el desamparo. Como consecuencia de esta ignorancia y de una filosofía antidivorcista, ha florecido en España una situación gravísima de alegalidad, de situaciones de hecho, de anomia. Miles de personas no van a reconstruir su matrimonio porque lo diga la ley, pero sí pueden regularizar un segundo matrimonio si una ley de divorcio lo permite. No podemos impedir que los matrimonios se rompan, pero sí podemos disminuir el sufrimiento de los matrimonios rotos. (...)", Diary of Sessions of the Congress of Deputies, Nº. 150, 17 March 1981, pp. 9393.

89 Article 85 of Law 30/1981, of 7 July, whereby the regulation of marriage is modified in the Civil Code and the procedure to be followed is determined for cases of nullity, separation, and divorce. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1981-16216 [Last accessed on: 28 September 2022].

90 Article 86 of Law 30/1981, of 7 July, whereby the regulation of marriage is modified in the Civil Code and the procedure to be followed is determined for cases of nullity, separation, and divorce. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1981-16216 [Last accessed on: 28 September 2022].

or mental disorders. On the other hand, the term we refer to was increased to two years in cases where a dissolution was filed by only one of the spouses and provided it could be proven that the other spouse had incurred one of the abovementioned situations, even though separation had not been filed before the courts. Finally, the simple petition by one of the spouses, without proof of any of the grounds we have referred to, required that they wait for a period of five years from the time their life in common ended.

In addition, the law required the petition for separation to be accompanied by a regulatory agreement which established such relevant points as: who will have custody of the children under the parental authority of both, visitation rights, communication, and time with the parent who does not live with them; allocation of the use of the home and household goods, food and, if appropriate, maintenance for the spouse who is in a worse situation; or liquidation of common assets. In this sense, judges were authorized to adopt measures that they esteemed the fairest, provided the spouses had not been able to reach an agreement, or if the one they had was not fair[91]. The legislation added a clarification regarding the use of the matrimonial home. Specifically, it indicated that should there be no agreement, it would be allocated to the children and the parent in whose custody they remained. In the case of a marriage with no children, the use of this asset would be temporally allocated to the spouse who is not title holder if their interests are in greater need of protection[92].

In conclusion, in line with the provisions established in the republican legislation of 1932, the 1981 law conserved a double conception of this institution. It was either a solution, when marriage was understood to have broken down, or a sanction, in cases where matrimonial obligations were infringed. Likewise, it should be noted that this regulation seriously limited the free will of spouses insofar as they were unable to have immediate access to this legal solution, even though they were in agreement with it. Instead, a previous separation period was imposed for a minimum of one year, and only once this term was completed could they put an end to their relationship[93]. This was a subject of criticism by some parliamentarians like Pi-Suñer Cuberta, who understood it as a deficiency in the law, a waste of time and a factor in making the process more costly[94].

[91] Articles 90 to 97 of Law 30/1981, of 7 July, whereby the regulation of marriage is modified in the Civil Code and the procedure to be followed is determined for cases of nullity, separation, and divorce. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1981-16216 [Last accessed on: 28 September 2022].

[92] Article 95 of law 30/1981, of 7 July , whereby the regulation of marriage is modified in the Civil Code and the procedure to be followed is determined for cases of nullity, separation, and divorce. Available online at: https://www.boe.es/buscar/doc.php?id=BOE-A-1981-16216 [Last accessed on: 28 September 2022].

[93] In the same sense, Ángel Sánchez Hernández, "La modificación del Código Civil en materia de Separación y Divorcio por la Ley 15/2005, de 8 de julio", Anales de Derecho, Nº. 23, 2005, pp. 129-130.

[94] The member of parliament for the Mixed Parliamentary Group stated: "(...) el proyecto que llega hoy a la Cámara adolece de notorios defectos y, probablemente, no es el instrumento jurídico más adecuado para solucionar el grave problema que tiene planteado una parte de la sociedad española, que debe hacer frente y buscar una salida a los graves problemas que existen en los matrimonios truncados y ya prácticamente inexistentes (...) La ley que discutimos no se configura como una auténtica ley de divorcio. En algún modo es cierto que permite llegar a él, pero después de andaduras difíciles y de tener que superar muchos obstáculos con la consiguiente pérdida de tiempo y encareciendo el procedimiento",

It is also important to note the restrained, almost reserved, nature of matrimonial dissolution. Its reinstatement in the Spanish legal system was made by introducing five articles into the Civil Code, since a specific law was not considered necessary for its regulation. In this respect, María Telo affirmed:

> *"(...) apareció como si ya existiese con anterioridad, camuflada entre normas de procedimiento, lo que refleja el temor que los legisladores tenían a la palabra "divorcio", como si al no pronunciarla o hacerlo de forma poco destacada, fuese a entrar en la sociedad de forma inadvertida y no como una novedad con protagonismo, petición un tanto ingenua después de venir dicha Ley precedida de fuertes rechazos y acaloradas opiniones favorables, recogidas y divulgadas por los medios de comunicación"*[95]

Pi-Suñer Cuberta's words during the parliamentary debate were even more eloquent. He said:

> *"En su planteamiento general se ha intentado disimular que lo que se está discutiendo en realidad es una ley de divorcio, en base a unas simples modificaciones de distintos artículos del Código Civil sobre aspectos del derecho matrimonial. A nuestro entender, el Gobierno tenía que haber presentado a las Cortes una simple ley de divorcio, sin perjuicio de modificar también los artículos del Código Civil que fuere preciso y adaptarlos en lo menester al espíritu de dicha ley"*[96].

In our epilogue, we would like to compile the achievements that women made in Spain during the political Transition thanks to the feminist fight. Towards the end of the sixties, Spanish women stood up against masculine authority, they broke their silence and denounced their legal incapacity. During this time, they spoke out, demanding equality of sexes in both the family and public environments. In this sense, thanks to the 1961 and 1966 provisions such important citizens as María Telo Núñez gradually gained access to key offices in the State Administration, promoting reforms which became significant in the area of family law. As a result of these modifications their legal capacity and ability to act gradually grew; the duty of obedience to husbands was eliminated, and by extension the vilified and archaic matrimonial permission. In addition to this, as from 1975, they acquired full disposal and administration of their assets, as well as the freedom to enter into any type of contract.

The political Transition meant the permanent overthrow of the Francoist legal system, modelled on archaic principles based on androcentrism. This new political, legal and social juncture led to great advances being carried out in the rights and freedoms of women. In this context, the approval of the long-awaited divorce law of 1981 constituted a major legal milestone. This measure enabled the legalization of anomalous family situations caused by the lack of regulation, and at the same time important steps were made

Diary of Sessions of the Congress of Deputies, Nº. 150, 17 March 1981, pp. 9399.

95 María Telo Núñez, Mi lucha por la Igualdad Jurídica de la Mujer... op.cit., p. 212.

96 Diary of Sessions of the Comgress of Deputies, Nº150, 17 March 1981, pp. 9399.

towards achieving parity between spouses, since both could opt for this solution without any distinction. However, we should not forget that this regulation was marked by a clear conservatism. The legislator conceived it as a mechanism for providing a solution for marriages that had completely broken down. Yet, there is no explanation as to why it fixed a minimum term, starting from the moment cohabitation had ceased, before any legal action could be taken. In turn, the traditional conception of matrimonial dissolution as a sanction was maintained for those who had not been able to respect marital obligations. A clear example of this is that it prescribed the grounds to file for divorce as being those based on guilt. It was undoubtedly a great advance, but the feminist fight still had a long road ahead.

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