

1. Cases – Wife as Plaintiff
2. Case studies – Wife as defendant

What options were available to the wives if maintenance was not paid or only partially paid? As the following examples from the middle of the 17<sup>th</sup> century show, they were free to file a claim against their husbands at the consistory for payment of the provisional maintenance. As the examples also show, wives used this option especially when they wanted to have their husbands' wages or salary garnished or to have him arrested. To do this, they had to ask the consistorial councils for approval of letters of administrative assistance to the husbands' employers. Usually it took several applications and hearings before the consistorial councils agreed to send a letter of administrative assistance to the husbands' employers.

## 1. CASES - WIFE AS PLAINTIFF

Starting in April 1659, every two weeks **Maria Veronica Scheurinigin** requested the consistory to issue a letter to the royal Bohemian court chancellery so that she could in future receive the weekly maintenance that had been awarded to her directly from her husband's salary. As described in the sub-item "qualitative results", in March 1659 the consistorial councils had awarded her a provisional maintenance of 182 guilders, which the husband refused to pay. In a first step, the consistorial councils invited both parties to a negotiation before the consistory. At the hearing on 29 April 1659, Johann Scheuring justified why he was not willing to pay the provisional maintenance: First, he had filed an appeal against the judgement. Second, he had a salary of only 230 guilders, but the maintenance set by the consistory corresponded to what it would be "if he earned 1500 guilders a year". Maria Veronica argued that she was able to prove that he had further assets. After Johann Scheuring only partially paid the provisional maintenance, in September 1659 the consistorial councils finally sent the garnishment letter, which Maria Veronica had repeatedly requested, to the royal Bohemian court chancellery.

How did the consistory argue its request for administrative assistance? Initially, the consistorial councils stated that it was "known by almost everyone in the town" that the couple was in a "disgraceful" marriage dispute. Although the husband had been obliged to pay his wife 3 guilders and 30 kreuzers per week since March 1659, he had so far paid her

only 30 guilders. Johann Scheuring intended to simply ignore the orders of the consistory, although up to the judgment in marriage proceedings every husband

“owed his wife the amount needed to live on, and the litigation expenses, as one cannot leave the “wives without their rights, nor to perish”. (DAW WP 20\_625)

The consistory had therefore approved the wife’s application and asked for the salary not to be paid to the husband until he had paid the maintenance owed. At the same time, the consistory also requested that in the future the Bohemian court chancellery should pay 3 guilders and 30 kreuzers from his wages directly to the wife:

“we deign to request them to pay none of said Mr. Scheuring’s already accrued salary or his future salary and other means until he had reached an agreement concerning the owed maintenance with his wife and he had paid the outstanding maintenance. Until a further ordinance has been applied, we ask you to put 3 guilders and 30 kreuzers a week from the said salary aside to be issued to Mrs. Scheuring with a receipt. This occurs in subsidium juris et iustitiae [in compliance with law and justice] fairly and in full compliance with the law on both sides; in the divine omnipotence we trust. Ex consistorio [from the consistory] 12 September 1659.” (DAW WP 20\_625)

We do not know whether the Bohemian court chancellery complied with the consistory’s request. Veronica died on 29 September 1659 at the age of 39. No cause of death is entered into the death inspection protocol.

In June 1670, the consistory also approved **Rosina Weissin**’s request for a letter of administrative assistance. In her case it was a circular letter to all secular and clerical authorities requesting that Georg Weiss, surgeon for eyes and hernias, be arrested. Rosina had been awarded provisional maintenance of 52 guilders per year by the consistory in January 1670. She had requested the separation of bed and board on the grounds of adultery and physical violence and had been given the right to produce evidence. Contrary to the condition that he was not to leave Vienna, the husband had apparently gone to Bavaria,

where he was arrested – possibly because of the open circular letter. As later entries on this couple show, the couple came to a settlement agreement before the Bavarian consistory. This settlement is not detailed in the minutes of the Vienna consistory.

Also wives to whom the consistorial councils had granted a maintenance title during the proceedings but had described the amount only vaguely as “decent” or “due” turned to the consistory with their applications for enforcement. After several complaints from **Sabina Contartin** that her husband was not meeting his maintenance obligations, the consistorial councils approved an official letter to the Obersthofmarschall (Lord Chamberlain of the Viennese Court) in April 1657. Sabina was awarded a maintenance title in March 1657, which obliged her husband, the imperial chair bearer Dominik Contartin, to provide her with “due maintenance” during the trial. In her complaint from February 1657, she demanded that her husband either resume married life or return the dowry to her. In her case, the consistory asked the Obersthofmarschall to see to it that the husband “should give his wife, Sabina, the proper and rightly owed maintenance.”

We do not know whether and how the Obersthofmarschall complied with this request. At the meeting in August 1657, the couple agreed to resume married life under the following conditions:

“After some mediation they settled as follows: The husband promised the venerable consistory that he would treat her well, she promised to be duly obedient, they shook hands and were then dismissed.” (DAW WP 20\_199)

**Magdalena Humblin** received a letter of administrative assistance directed to the commander of the Stadguardia (city guards) in November 1658. In October 1658 she had sued her husband, the Stadguardia soldier Magnus Humbl. Due to ongoing violence she had demanded that they be separated from bed and board. Magdalena had also been awarded “due maintenance” during the evidence proceedings. After Magnus Humbl repeatedly refused to pay his wife the provisional maintenance, the consistory asked the commander of the Stadguardia

“not to give the defendant Magnus Humbl his weekly food provisions and monthly salary and in this way to seriously urge him to immediately give the plaintiff wife clothing and bed linens and to provide her with the necessary maintenance until further regulation was settled upon.”

**Apollonia Vicedombin, née Millnerin, widowed Lindthueberin** found the support of the consistorial councils with her request to ask the imperial court chamber to block the salary of her husband, an accountant in the Lower Austrian bookkeeping department. In March 1657, she was also awarded provisional maintenance for the duration of the main proceedings. In February 1657 Apollonia had sued Caspar Vicedomb, with whom she had been married since November 1655. She did not want separation or divorce, but rather asked the consistorial councils to set conditions for further marital coexistence. After Caspar Vicedomb refused to accept conditions for a future non-violent coexistence at the hearing in March 1657, the consistorial councils decided that the couple should either live peacefully together or that one spouse should submit evidence in due process as to why he or she should not be obliged to live together. For the duration of any possible proceedings, the consistory councils granted Apollonia provisional maintenance. In her case too, we do not know the amount of maintenance because the consistory requested from the Imperial Court Chamber in April 1657:

“that the suppliant should be given the due maintenance from the previously mentioned Vicedomb’s salary, for as long as the proceedings take place, and that only after this Vicedomb is to be paid.” (DAW WP 20\_148)

Just one month later, after Caspar Vicedomb had submitted a total of 19 statements to the consistory and Apollonia had replied to them at length, the couple also agreed upon a cohabitation agreement, which is also entered in the consistory’s minutes: Under the title “Points about which Caspar Vicedomb has settled with his wife Apollonia at the consistory on 4 May 1657” the couple agreed upon the following settlement:

"Vicedomb agreed to reach a settlement with Mr. Schmid concerning the debts his wife owes to Mr. Schmid.

2. Both parties' consent to the drawing up of a marriage settlement.

3. Both sides should avoid contact with suspicious persons, [...] foul mistrust and jealousy, as well as all physical and verbal abuse, and cohabit with one another in unity and honesty, as is appropriate for married people.

4. She, Apollonia, promises to bring home everything that she took with her, and the husband should do the same.

5. The mother should urge the children to honour and to be obedient to the stepfather, as is due, while he also wishes to treat them as is appropriate.

6. If one or the other party should violate these points, the other party should be allowed to continue the lawsuit or litigation at the standpoint at which these proceedings were closed.

Both parties came together, shook hands and were dismissed; both promised to the consistory that they would fulfil requirements of the settlement and went home together." (DAW WP 20\_157-158)

In the cited settlement, Caspar Vicedomb promised that he would pay the debts that Apollonia had incurred during the proceedings and that he would treat his stepchildren appropriately in the future. In return, Apollonia promised to urge her children to honour and obey the stepfather and to return the items she had removed from the marital home. Both parties agreed further to conclude a marriage contract, to refrain from "suspicious" contact as well as physical and verbal violence and to live together in unity and honesty. Under point six, the settlement stated that if one party violated this agreement, the other party had the right to reinstitute proceedings.

In November 1657, only a few months after this settlement was agreed upon, the consistorial protocols noted that Caspar Vicedomb had complained about physical violence and Apollonia had been instructed "to abstain from all violence and improper treatment. With the entry from 22 December 1657, where the couple was once again summoned to a hearing on 4 January 1658, the traces of the couple in the logbooks are lost. On 10 May 1658, their son Georg was baptized in the parish of St. Stephan, and the husband is registered as the father.

In addition to the letters of support, the woman repeatedly urged consistory councils to keep the husbands under church arrest until they agreed to pay the outstanding maintenance. The next case study shows that they met these requirements at times. In June 1681 the civil and military lawyer **Johann Nicolaus Flamitzer** spent at least 12 days under church arrest. On June 25 1681 he was released after having sworn under oath that he would, first, pay the maintenance payments amounting to 106 Gulden to his wife and the court costs by 24 August, and secondly, that he would not leave Vienna and would be willing to present himself to the consistory at any time:

“I, Johann Nicolaus Flamitzer, hereby swear an oath to God and all the saints that I will pay all outstanding maintenance payments which until the 27th of June sum up to 106 Gulden as well as the court costs Catharina Flamitzerin has to right to claim. Due to lack of money or other resources I can neither pay nor present a guarantor at the moment, [I will pay] Catharina Flamitzer as soon as possible, at the latest by the next Bartholemew’s Day (=24 August), in the meantime I will not leave Vienna, but rather I will respond to any citation or request made by the court without delay and without exception, apart from God’s will, and will appear before the venerable Passau Consistory.”

At this time the married couple had been living in separation for almost 10 years. In January 1670, after barely 4 years of marriage, Johann Nicolaus Flamitzer, still a law student at that time, petitioned for a divorce from his wife Catharina, widowed Hözingerin, because she had forcefully refused “conjugal intercourse” for the third time. He told the consistory that he would be willing to join the clergy if the consistorial council would be willing to grant him a divorce. The consistorial council did not divorce the marriage, but rather ordered him to maintain cohabitation.

Nearly two years later, on 23 December 1671, Catharina Flamitzerin asked the consistory to force her husband, who had left her “pregnant”, “to reassume cohabitation upon threat of punishment.” At the hearing on 10 February 1672 Johann Nicolaus Flamitzer, now referred to as Master (Magister), denied the claim made by his wife, and demanded that she bring forth proof that he was the father of the unborn child. The consistorial council decided in his favour

and demanded that Catharina Flamitzerin should submit this evidence. For the duration of the evidence proceedings the council awarded her provisional maintenance. They specifically determined that Johann Nicolaus Flamitzer was required to pay his wife three Gulden, starting from the day of the hearing until six weeks after the birth of the child, and afterwards one Gulden per week.

As many entries in the consistorial records document, Johann Nicolaus Flamitzer usually paid the maintenance only after the consistory not only threatened arrest, but also ordered it. So he paid 20 Gulden to the consistory on 28 February 1674. Starting in September 1673 Catharina Flamitzerin repeatedly requested his arrest because he “hadn’t paid the weekly gulden” since August of 1673.

On 30 May 1674 Catharina Flamitzer once again requested his arrest, which the consistory granted, providing that “no payment had been made”, in other words, if the husband hadn’t paid in the meantime. After Johann Nicolaus Flamitzer ignored this demand for payment Catharina Flamitzerin obtained an administrative assistance letter requesting that the city council of St. Pölten place her husband under arrest and deliver him to the consistory. Johann Nikolaus Flamitzer continued to refuse to pay the maintenance owed and decided to move to a new place of residence as a precaution. On 17 August 1674 the city council of St. Pölten reported that it could not place Johann Nicolaus Flamitzer under arrest because he “had moved away” from St. Pölten, and therewith no longer lived in its area of jurisdiction.

From the entry on 11 August 1677 we discover that Johann Nicolaus Flamitzer, who in the meantime was employed by the Passau regiment as a judge, had not only paid his wife’s lawyer the maintenance owed, but had also pre-paid the maintenance until 3 June 1678 “in cash”. He asked the consistory for a hearing for the exact calculation of the maintenance payments and court costs to which he, however, even after having been summoned repeatedly, did not appear.

On 4 June 1681 Catharina Flamitzerin informed the consistory that her husband had, already for a long period of time,

“disappeared and fled, and hereby left her and the son living with her in great need”.

Since he was in Vienna once again she asked the consistory to arrest him with the help of the Viennese police and to bring him to the Passau court. At the hearing on 13 June 1681 Johann Nicolaus Flamitzer demanded a verdict in the evidence proceedings (in regard to the paternity suit) which his wife had been pursuing for almost 10 years. It is impossible to determine from the short entries made in the records from the hearing if he at this time was already under consistorial arrest or if he was arrested at the hearing. The consistorial council ordered Catharina Flamitzerin to resume action in her evidence proceedings within the following 30 days. On 18 June 1681 Johann Nicolaus Flamitzer requested to be released from arrest on bail, against which the wife and her lawyer protested. On 25 June he was released after having made the oath cited at the beginning of the case study.

## 2. CASE STUDIES - WIFE AS DEFENDANT

As the last case study shows, the consistorial councils approved the letters of administrative assistance to the secular authorities even in cases in which it was not the husbands but the wives who were the defendants in the main proceedings. As stated in the sub-item “qualitative results”, Martin Ziegler applied for a divorce from Regina in February 1660 and justified his claim with adultery. In October 1660, the Zieglers agreed on 78 guilders per year for maintenance and Martin Ziegler promised to make the maintenance payments from his annual salary of 200 guilders quarterly in advance. After several enforcement requests for the outstanding provisional maintenance, the consistorial councillors sent a letter for administrative assistance in December 1663, in this case to the Hofkammerdirektion (Office of the Court Chamber). The consistory asked the Hofkammerdirektion to pay 24 guilders from Martin Ziegler’s annual salary to his wife. At the same time, the consistory also had a vested interest. It asked the Hofkammerdirektion to pay the consistory 50 guilders and 11 kreuzers for owed chancellery fees, which

“from 1661 until present [had] increased to a combined sum of 50 guilders and 11



kreuzers." (DAW WP 22\_317v)

A request of the consistory for administrative assistance to the secular authorities did not always mean that the secular authorities complied with the request, as can be deduced from another garnishing letter, this time addressed to the Obersthofmarschall. The consistory reported to the Obersthofmarschall that Martin Ziegler's wife had complained several times that Martin Ziegler had left Vienna without paying his maintenance debts. Also, despite the letter of application from the Hofkammerdirektion, the Salzamt had not paid her even one kreuzer from her husband's salary. Regina Zieglerin therefore did not know how to make ends meet. The consistorial councils therefore asked the Obersthofmarschall to keep Martin Ziegler under personal arrest until he had paid his wife the outstanding maintenance and presented a guarantee for future maintenance. In addition, they asked the Obersthofmarschall to seize as many "effects" from Martin Ziegler's locked quarters as would cover his

"arrears and what he would owe for the next quarter year, which would amount to around thirty guilders." (DAW WP 22\_330v)

Whether the garnishment was carried out is not recorded. However, from further entries relating to the wife's motions for enforcement, we learn that the Obersthofmarschallische Gericht (Lord Chamberlain's Office) had seized the husband's salary. On 18 May 1665, after Martin Ziegler had handed her 30 guilders in cash, deposited 10 guilders at the office and promised to pay the agreed weekly payments in Reichstaler in advance on Saturdays, Regina Zieglerin announced that she would lift the "lock" on his salary at the paying office, the Salzamt. He also did not keep this promise for long, as further enforcement motions on the part of the wife show. On 17 January 1667, Regina Zieglerin once again demanded that her husband should be arrested for maintenance debts. Half a year later, in August 1677, the consistory came to a decision in divorce proceedings. The consistorial councils considered Regina Zieglerin's adultery to be proven. They divorced the marriage from bed and board and "released" Martin Ziegler from his maintenance obligations.

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**Next: Secular Jurisdiction (1783-1850)**

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