

OF “TEMPORARY” AND “LIFE-LONG” SEPARATIONS

The separation from bed and board is approved for as long it takes for the plaintiff to feel that he or she can reassume marital cohabitation without fear of harm for their temporal or eternal well-being.

The quoted formulation of a verdict in a divorce proceeding stands for many verdicts passed by the Viennese archiepiscopal marriage court in the 1860s. The marriage court granted the married couple a temporary separation from bed and board and makes the length of the separation dependent upon how long the plaintiff feels that his or her temporal and eternal “well-being” is in danger. This excerpt from the verdict does not indicate who the perpetrator of the danger was. In most cases the danger originated from the husband, from his propensity to violence and/or his alcohol or gambling addiction.

While between 1783 and 1856 – when in Vienna and other parts of the Habsburg monarchy the state courts had jurisdiction over matrimonial affairs – separations from bed and board were always pronounced and approved as indefinite, the archiepiscopal marriage court usually allowed only “temporary” separations from bed and board and counted on a possible reconciliation and therewith also a reuniting of the married couple. It was only in rare cases (usually in the case of proven or admitted adultery) that the councilors granted a “life-long divorce from bed and board”. With this restrictive legal practice, the councils aligned with the jurisprudence of the church courts before 1783.

DIVORCE RATES IN VIENNA BETWEEN 1857 AND 1865

In 1867 Karl Dworzak wrote an experience report based on his long term serving as a councilor of the archiepiscopal marriage court in Vienna. His statistical data regarding the divorce figures in Vienna is of particular interest. In the first eight years of the church court’s jurisdiction Dworak counted 2,100 petitions for divorce. It is interesting that he did not differentiate between the verdicts in which a life-long divorce was granted and those in which only a temporary separation was approved:

From 1 January 1857 until the end of 1865 more than 2,100 petitions for divorce from bed and board were submitted to the archiepiscopal marriage court.

From these 1,760 proceedings were decided with a verdict, 230 with reconciliation of the opponents, 122 with rejection without examination and 5 cases do to the death of one of the disputing parties.

From 100 marital disputes settled with a verdict an average of 66 verdicts granted a divorce, while 34 were rejected.

From 100 approved divorces 58 were granted on terms of the sole fault of the husband, 24 on the sole fault of the wife and 18 on joint fault of both married parties.

From 100 approved divorces the reason for the divorce was: in 17 cases the adultery of the husband, in nine cases the adultery of the wife, in 68 cases mistreatment or dangerous threat, in 72 cases severe mortification, in 6 cases malicious abandonment, in 13 cases infectious disease, in 9 cases a prison sentence and in 16 cases wastefulness. In approximately 300 verdicts there was only one case in which enticement to vice was approved as the reason for divorce. Of course, in most verdicts several reasons for divorces were provided. There was only one case where the reason for the divorce was a successful attempted poisoning by the husband, who was punished with several years in prison.

It also appears to be worth mentioning that from 100 married couples who stood before the marriage court 35 to 40 % were living in marriages without children.

From 100 verdicts there were 28 appeals; from 100 appealed verdicts 8 were repealed or partially amended in the courts of higher instance.

From: Karl Dworzak: *Aus den Erfahrungen eines Untersuchungs-Richters in Ehestreitsachen*

(From the experience of an investigating judge of marital litigation), Vienna 1867, 166f.

NOTA BENE / MIND YOU

In the divorce dossiers of the archiepiscopal marriage court of Vienna from the year 1867 explanatory notes with the abbreviation “N.B.” (=Nota bene) reappear, something which we missed in the sources from the Civil Court of the Vienna Magistrate’s Office from between 1783 and 1850. The reason why we missed them was because the comments, usually written on the left margin of the pages, provided (often unique) insights into perceptions or happenings beyond the actual administrative practices.

Karl Dworzak, the referent of the church court, who was responsible for the divorce proceedings of the couple August and Anna Dirnböck, for example, added the following comment, in which his personal perception of the defendant wife can clearly be seen, in the assessment he wrote in December 1867:

N.B. Defendant perfect comedian. Declaimer [= elocutionist]

“THINK ABOUT IT, IF WE GET DIVORCED ...”

One case of divorce proceedings from 1867/68 provided us with more than the usual amount of extant documents. Throughout the course of the proceedings the young couple, which had been married only half a year before the litigation started, very avidly exchanged letters. The letters were submitted as evidence and were enclosed with the trial records. Mainly it was the husband, who was interested in a reconciliation, and who, in his letters, reflected on how life would be after a possible divorce from bed and board:

Think about it, if we get divorced, we are both basically dead for the rest of our lives, we wouldn't be allowed to get married again, and living in sin is horrible [...]

Andrea Griesebner/Georg Tschannett, translation Jennifer Blaak, 2016

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