

1. Claims | Main Proceedings
2. Verdicts | | Main Proceedings
3. Appeal Proceedings
4. Enforcement Proceedings
5. Follow-up Proceedings

1. CLAIMS | MAIN PROCEEDINGS

As explained in the section “data collection”, the wives and husbands approached the courts for many different reasons. In order to be able to reflect on these various interests for quantitative inquiries we differentiated between eight distinctive main proceedings, in the sources often referred to as *causa principalis*. In the case of the additional proceedings, aimed to regulate the consequences of a separation or a divorce, we draw a distinction between those carried out simultaneously with and those carried out after the main proceedings. We also used distinct encodings for appeal and revision proceedings, subsequent proceedings, execution proceedings, and proceedings the ecclesiastical courts ordered *ex offio*, primarily based on reports made by priests. The differentiation as well as the naming of the individual types of proceedings and their categories were developed mainly through close reading of the sources. These are important results of both research projects.

Written records and certificates submitted for the matrimonial proceedings up to 1783 no longer exist, although matrimonial proceedings were usually conducted “in both written and oral” form, as we explain in the section “data collection”. The often rather short protocol entries made assigning them to the “proper” proceedings challenging. The dates of the entries were not always useful points of reference, since the married parties often carried out additional proceedings simultaneous to the main proceedings. Furthermore, the correlation was particularly difficult for periods of investigation when the consistorial records contained only limited information on the submitted applications and their respective court notifications but did not include records of the minutes from the hearings or the verdicts.

The reconstruction of the various matrimonial proceedings, as well as the correlation of the individual entries required not only a complete understanding of the civil process order and its various procedural phases, but also a close reading of all the information available on a

married couple. While deciphering court notes we often had to decide whether the entries were part of the main proceedings or if they belonged to one of the additional proceedings. The assignment of protocol entries to different proceedings and their respective categories is therefore always also a matter of interpretation. Without using a relational database these tasks would not have been feasible. Based on the ultimate aims of the litigation initiated by the spouses, we divided the main proceedings into eight categories:

- **Order of cohabitation:** The plaintiff requested that their spouse, who often had been living separated for months or even years, be ordered to reassume marital cohabitation.
- **Conditions of cohabitation:** The plaintiff appealed to the court to negotiate the conditions assigned to the continued cohabitation.
- **Annulment:** The plaintiff petitioned the court to annul the marriage or to declare it null and void.
- **Divorce from bed and board:** The plaintiff requested the court to divorce the marriage from bed and board.
- **Separation from bed and board:** The plaintiff petitioned the court to be allowed to live separated from bed and board for a certain period of time.
- **Re-marriage:** The plaintiff petitioned the court to give him/her the right to marry his or her “de facto” partner in the church without being able to produce evidence that the former husband or wife was deceased.
- **Approval:** The plaintiff petitioned the court to receive a tolerance certification for his or her “de facto” marriage without being able to produce evidence that the former husband or wife was deceased.
- **Unknown:** It was not possible to place into a particular category with the information available.

THE PRIEST’S REPORT

As explained in the menu item “norms”, the initiation of proceedings required formal legal complaints from either the wife or the husband. The only exception was to be found in the case of the crime of bigamy, which the consistory could persecute ex officio. In practice, however, priests reported couples to the ecclesiastical courts. We differentiated these complaints in three categories:

- **Unauthorized separation:** Priests informed ecclesiastical courts about couples in his parish who were living separated from each other without authorization.
- **Married couple living in discord:** Priest informed ecclesiastical courts about couples living in discord, frequently indicating domestic violence.
- **Bigamy:** Priests reported couples to the ecclesiastical court when a spouse was allegedly married to another person.

Usually the consistory ordered the reported couples to come to a hearing. When the couple had to answer to accusations of “unauthorized separation” or “living in discord”, and neither of the spouses filed a lawsuit, the consistory could do nothing but pass a sentence demanding “peaceful cohabitation”. Most of these verdicts included conditions defining what the spouses had to do or refrain from doing in the future. When one of the spouses litigated, he or she initiated main proceedings.

When the couple had to answer to accusations of “suspected bigamy”, the consistorial councilors either initiated proceedings for annulment of the marriage *ex officio*, or one spouse filed for the annulment of the marriage.

If there was evidence that one or both spouses were also married to other people, the ecclesiastical court annulled the subsequent marriage(s) and ordered the bigamist(s) to resume living in the legally valid marriage. The non-bigamist was permitted to contract a new marriage under the condition that she or he could prove to the councilors that she or he had not known that the spouse was already married at the time of the wedding.

INTERPRETATION

The reconstruction of the various matrimonial proceedings as well as the assignment of the individual entries required not only a precise knowledge of the canon procedure law and its different procedural steps, but also a close reading of all available information on the couples. In many cases we had to decide based on short court notes if the entry belonged to the main proceedings or to one of sometimes several additional proceedings.

It was not possible in all cases to uncontestably clarify the meaning of the terms *divortium* or *separation*, which were used in the minutes of proceedings. These terms

could denote a temporary or unlimited divorce from bed and board, but also the divorce of the marital bonds, e.g. the annulment of the marriage. Cases in which the plaintiff requested the consistory to either divorce the marriage from bed and board or, should the consistorial councilors consider the arguments submitted as being insufficient, at least grant him or her a temporary separation from bed and board were also a challenge for coding. The same applies to the 16th century petitions. Husbands and wives who entered into a new partnership without having evidence of their spouse's death requested the consistory to grant either permission for a church marriage or at least the tolerance (approval) of the new partnership.

Since double classifications would have made the already not particularly easy analysis considerably more complicated, we decided that in case of doubt, matrimonial proceedings would be placed in the respectively lower-threshold proceedings category. If it was not possible to deduce from the context that the requested divorce was made in reference to the bond of marriage, we assigned these matrimonial proceedings to the category "divorce from bed and board". If a divorce or separation was requested, the category "separation from bed and board" was chosen. If the separation or at least conditions for further cohabitation were requested, we chose the category "conditions of cohabitation". If the married couple asked for approval to remarry or for approval of the "de facto" marriage, we assigned the proceedings to the lower-threshold category "approval".

2. VERDICTS | MAIN PROCEEDINGS

As mentioned in the menu item data collection wives and husbands used the consistories to reach for divergent goals. The verdicts in the main proceedings also differed. We divided these into twelve categories:

- **Peaceful cohabitation:** The councilors ordered the couple to cohabit peacefully in the future. Most of these verdicts included conditions regarding requests which the spouses had to comply with or actions which they were required to refrain from.
- **Remains valid:** The councilors rejected the claims requesting re-marriage, annulment or acceptance of a new partner.
- **Annulment:** The councilors declared the marriage for null and void. Usually the innocent spouse was permitted to remarry.

- **Tolerance unlimited:** The councilors divorced the marriage from bed and board but prohibited remarriage until the death of the spouse.
- **Tolerance limited until ...:** The councilors granted the plaintiff, sometimes also the defendant, permission to live separated from the spouse until the spouse had complied with certain conditions. These conditions ranged from proving that they could provide a “decent” residence to the ending of a legal dispute at the secular court to the recovery from illness.
- **Tolerance > 12 months:** The councilors granted the plaintiff, sometimes also the defendant, permission to live separated from the spouse for a time period longer than one year.
- **Tolerance 12 months:** The councilors granted the plaintiff, sometimes also the defendant, permission to live separated from the spouse for one year
- **Tolerance <= 6 months:** The councilors granted the plaintiff, sometimes also the defendant, permission to live up to six months separated from the spouse.
- **Approval:** The councilors granted the plaintiff permission to live with a new partner, even though she or he could not prove that the former spouse was dead. Most of these verdicts included the precondition that he or she had to respect the first marriage and immediately resume living with the first spouse if the legal spouse should return.
- **Re-marriage:** The councilors considered the submitted proof for the death of the spouse to be sufficient and allowed the plaintiff to contract a new marriage.
- **Complaint rejected:** The councilors rejected the claim because it did not meet formal requirements, or the court lacked the jurisdiction.
- **Not recorded:** The verdict is not recorded. This does not mean that there was a verdict which we could not reconstruct. Marriage proceedings also ended without a verdict if neither of the parties actively pursued the litigation: Be it because the couple had settled out-of-court, one or both parties could no longer afford the legal costs, or one party died during the proceedings.

3. APPEAL PROCEEDINGS

Appeals can be lodged against interlocutory judgments and against verdicts. The appeal had to be made within two week deadline and had to be approved by the consistory. The right to appeal was afforded to both the plaintiff and the defendant. The papal nunciature at Vienna

functioned as the second instance.

We included appeal proceedings in our database only if the appeal was not only approved by the consistory but also actually carried out. We also investigated only appeal proceedings which were connected to a “final verdict”. Appeals to interlocutory judgements are therefore not included in the corpus of sources.

4. ENFORCEMENT PROCEEDINGS

If one spouse refused to obey the judgment in the main proceedings, the other could sue for enforcement of the judgment at the consistory. According to the interest in the lawsuit, we divided the enforcement proceedings into two categories:

- **Enforcement of Cohabitation:** The plaintiff requests coercive means to force a marital spouse to reassume cohabitation.
- **Enforcement of Maintenance:** The plaintiff requests the execution of unpaid maintenance.

5. FOLLOW-UP PROCEEDINGS

If the plaintiff wished to have the final verdict in the main proceedings modified through amendments, we categorised this matrimonial proceeding as a follow-up proceedings in order to be able to differentiate between them and the main proceedings. Based on the verdict to which the plaintiff made reference as the starting point, we distinguished between two main categories: follow-up proceedings in which the plaintiff referred to a tolerance verdict, and follow-up proceedings in which the married couple had been sentenced to peaceful cohabitation.

We divided proceedings following a Tolerance Verdict into four categories:

- **Tolerance Conditions:** The plaintiff requests that the opposing party leave him or her

undisturbed for the duration of the separation.

- **Extension of Tolerance:** The plaintiff requests an extension of the tolerance in order to continue to live separated from the wife or husband with the authorisation of the court.
- **Resumption of Cohabitation:** The plaintiff requests, either already during the tolerance period, but usually after the “tolerance period” has expired, that the court order the spouse to resume marital cohabitation.
- **Reunification:** One of the married parties asks the court to order the divorced spouse to resume marital cohabitation or or both parties inform the court that they have returned to their life as a married couple.

Follow-up proceedings following a verdict of peaceful cohabitation but still did not constitute new main proceedings we divided also the into four categories:

- **Requirements for Cohabitation:** The plaintiff requests the court to apply conditions to which the defendant must comply in order to be able to carry out the verdict, which ordered peaceful cohabitation. Usually the plaintiff also requests maintenance for the intervening period.
- **To award maintenance:** The plaintiff requests that the defendant either cohabits, as he/she was obligated to do in the verdict, or to pay him/her and any children involved maintenance until cohabitation is resumed.
- **To deny maintenance:** The plaintiff requests that he/she not be required to pay maintenance as long as the defendant refuses to honour the ordered cohabitation.
- **To alter maintenance:** The plaintiff requests a decrease in the amount of maintenance for as long as the defendant declines to honour the order of cohabitation.

Andrea Griesebner, June 2018, translation Jennifer Blaak

Last update: Andrea Griesebner, April 2021

Next sub-item: Evidence Proceedings

Citation: Andrea Griesebner, Method » Start » Matrimonial Proceedings » Ecclesiastical Jurisdiction (1558–1783), in: Webportal. Marriage at Court 3.0, 2024, <http://ehenvorgericht.univie.ac.at/?page_id=10369&lang=en&pdf=10369>. [Date of

access: 2024-07-27]