1. Marriage Property Regime
2. Regulation of “worldly matters”

MARRIAGE PROPERTY REGIME

See explanation in the menu item Divorce Consequences_Norms_Secular Jurisdiction (1783–1850).

REGULATION OF “WORLDLY MATTERS”

LAW ON THE MARRIAGE OF CATHOLICS IN THE EMPIRE OF AUSTRIA (1856)

As stated in the menu item “Matrimonial Proceedings | Norms”, uncontested divorces were no longer possible once the Concordat came into force, the ABGB (General Civil Law Code) of 1811 no longer applied to the divorce proceedings. Once again the matrimonial law of the church or, more specifically, the “Law on the marriage of Catholics in the Empire of Austria”, which was the first appendix to the Imperial Patent and was published on 8 October 1856 came into force. However, according to paragraph 31, the ABGB (General Civil Law Code) of 1811 remained in force for the regulation of the secular consequences of divorce from bed and board:

> “the civil legal consequences arising from the marriage […] [are] to be assessed according to the general civil code, insofar as this law [should] not contain special provisions”. (§ 31)

Regarding the approval of a separate place of residence and a provisional one for the duration of the divorce proceedings, it was stipulated that the ecclesiastical marriage courts could approve or reject these matters. If the ecclesiastical marriage courts approved provisional maintenance, the amount of the provisional maintenance was to be determined

by the competent secular court. If the wives chose to apply to the secular courts for a separate place of residence or provisional maintenance, section 60 obliged the secular courts to inform the ecclesiastical courts of any such permits. (§ 60)

For the purpose of determining a possible maintenance or widow's pension claim, paragraph 61 required the episcopal marriage courts to always state in the divorce judgements "whether and to what extent both spouses, or just one of them are guilty". The background to this was that a guilty divorced wife could be denied decent maintenance or a widow's pension by the secular courts under section 1264 of the ABGB (General Civil Law Code) of 1811.

Paragraph 63 instructed the ecclesiastical court judges to persuade the divorced spouses to accept a divorce settlement in which they regulated the worldly effects:

> "After deciding to divorce the marriage, the judge should try to reach a settlement in disputes that arise concerning the division of property, the custody of the children, or other claims." (§ 63)

Paragraph 64 granted the ecclesiastical marriage courts the right to act as an "arbitration tribunal" for divorce settlements. Paragraph 64 also stated that the divorce settlement, which was to be drawn up in writing, could not be unilaterally changed. If a spouse was still a minor, the divorce settlement had to be approved by the father, guardian or guardianship authority.

If the couple was not prepared to use the ecclesiastical marriage court as an "arbitration tribunal", they had to apply to the secular courts to regulate the consequences of the divorce. If the wife was already entitled to receive provisional maintenance, the marriage courts were responsible for extending the provisional maintenance until the secular courts came to a decision. If the wife had not yet been given a provisional maintenance title, the judges of the ecclesiastical court could award the wife and any children the "decent maintenance" until the secular court passed down its judgement.

> "If the parties cannot be induced to settle, the court must instruct them to follow due process and, in the meantime, determine the decent amount of maintenance for the wife and children or extend the already determined amount until the end of the legal dispute." (§. 63)

INSTRUCTIONS FOR THE ECCLESIASTICAL COURTS OF THE EMPIRE OF AUSTRIA (1856)

In the second appendix, with the title "Instructions for the ecclesiastical courts of the Empire of Austria in relation to matrimonial matters", paragraph 244 is given a more concrete form: The ecclesiastical marriage courts function as "arbitration courts" only if both parties "unanimously request this". Furthermore, it is stipulated once again that a certificate must be issued once the divorce settlement had been reached and, in the case of underaged spouses, the signature of the father or guardian was required for the divorce settlement to be considered legally valid. In addition, it is stated that the ecclesiastical marriage courts are obliged to "use Austrian laws as a guideline when reaching a verdict".

Regarding the regulation of custody, it was only in paragraph 238 of the instruction that is was stipulated that the content of the divorce decision should also include information as to whether one of the spouses was unsuitable for children rearing.

> "[…] If it comes to light in the negotiations that the father or mother, due to moral deficiencies, is incapable of rearing the children as would be in the interest of their welfare, then this fact must be included in the judgment." (§ 238)

While paragraph 244 was not used by the married couples of the source sample, paragraph 238 of the Instruction was used in a few of the proceedings, as we show in the next sub-item.

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Next sub-item: Results

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