

1. Litigations and requests
2. Verdicts and notes

1. LITIGATIONS AND REQUESTS

The litigations negotiated at the secular courts could be reconstructed primarily by using file dossiers of the proceedings. Although the file dossiers facilitate the reconstruction tremendously, in most of the dossiers the files are not sorted by individual proceedings. Files regarding the regulation of the consequences of a divorce are mixed with those pertaining to the main proceedings. In comparison to the sources of the ecclesiastical courts the distinction of the different proceedings was much easier. This was due to the fact that the magistrates and the local courts were no longer being used to negotiate the conditions cohabitation. In addition to this we did not need to differentiate between separation and divorce proceedings. The magistrates and the local courts could no longer restrict the duration of the separation to a specific time period. Apart from isolated proceedings aimed to force cohabitation, the magistrates and local courts functioned as mere divorce courts which also decided on the consequences of the divorce.

As explained in the section “**norms**”, the Marriage Patent of 1783 initially allowed only uncontested divorces.

The Court Patent of 10 November 1791 (JGS, No. 219) gave married couples who wished to divorce and those who in principle agreed on the separation, but were unable to reach a property settlement out of court, the possibility of having “the division of property connected with the separation of bed and board” negotiated through due process. In order to differentiate these two variants of divorce, we have divided them into the following categories:

- **Uncontested divorce A:** The married couple asked the court to approve or record the out-of-court divorce settlement.
- **Uncontested divorce B:** The married couple informed the court of their agreement to live divorced from bed and bed and asked for a court decision on the consequences of the divorce.

As also stated in the section on “norms”, the possibility of divorce against the will of the spouse was reintroduced in the General Civil Law Code of 1811. In 1786 a Royal Decree readmitted divorce claims against the will of the other spouse, but only in cases where “one party or the other did not consent to the divorce simply for the sake of malice.”

Until 1786 the magistrates and local courts also had the right to annul the marriage. We divided the main proceedings into three categories based upon the aims of the petitioning spouses:

- **Annulment:** The plaintiff petitioned the court to annul the marriage or to declare it invalid.
- **Order of cohabitation:** The plaintiff requested their spouse, who had often had been living separated for months or even years, to be ordered to reassume marital cohabitation.
- **Contested divorce:** The plaintiff petitioned the court to divorce the marriage from bed and board

2. VERDICTS AND NOTES

In the case of uncontested divorces, the court did not decide by judgment, but gave their consent to the divorce.

- **Uncontested divorce A:** The court approved the uncontested divorce.
- **Uncontested divorce B:** After the couple had reached an agreement on the consequences of the divorce in court, the court approved the uncontested divorce.

As was explained in the description of the main proceedings, the magistrates and the local courts functioned primarily as divorce courts. Therefore, the verdicts they issued vary less than those of the consistories. We divided the verdicts in the main proceedings into seven categories.

- **Annulment:** Until 1786 the magistrate and local courts had the right to declare the marriage for null and void. Generally, this verdict offered the innocent spouse the

option to enter into a new marriage.

- **Divorce from bed and board:** Magistrate and local courts divorced the marriage from bed and board but prohibited remarriage before the death of the former spouse.
- **Peaceful cohabitation:** Magistrate and local courts did not accept the arguments put forward or evidence presented as being sufficient and refused the divorce. They ordered the couple to cohabit peacefully in the future. The petitioning wife had to resume cohabitation if she did not want to provide the husband with grounds for divorce.
- **Divorce via settlement agreement:** After a usually lengthy contested divorce proceeding the couple agreed on a divorce settlement. The divorce settlement was approved by the magistrate and local courts.
- **Complaint rejected:** Magistrate and local courts rejected the claim because it either 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 came to an end if none of the parties actively pursued the litigation: Be it because the couple settled out of court, one or both parties could no longer afford the legal costs, or one party died during the proceedings.

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Next sub-item: Evidence Proceedings

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