

## Family Law in the SOZ/GDR I: Stalinism

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### **Abstract:**

Family Law in the SOZ/GDR during the Stalinistic Period is characterized by a legislation that initially realizes Weimarian reform postulates, for example a new family procedural law or the law on women's rights. Since 1952, the reforms follow the Soviet model: A new court constitution is established, based on the Soviet judicial system and a new marriage regulation also comes into force. The Supreme Court uses family law as a lever for the reorganization of society in accordance with constitutional postulates and political ideas.

### **Keywords:**

family law; marriage law; divorce procedure; German Democratic Republic; Stalinism; Hilde Benjamin; women's rights

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Family Law in the SOZ/GDR from 1946 to 1953 is characterized by a jurisdiction that ideologized at an early stage and anticipates the division of Germany – in contrast to the still rather pluralistic case law of the Western zones during that time. Legislation in the SOZ/GDR is initially characterized by the realisation of Weimarian reform postulates; however, the protagonists of this course quickly lose influence. The judicial reform of 1952 follows the Soviet model; the Supreme Court uses family law (regardless of provenance) as a lever for the reorganization of society. The most influential personality not only in this phase of GDR legal history is Hilde Benjamin.<sup>1</sup> In the field of family law the “New Course” after the Revolution of 1953 leads to a “Keep it up!” garnished with new phrases.

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<sup>1</sup> *Ad personam* cf. BRENTZEL, M. *Die Machtfrau: Hilde Benjamin 1902–1989*. Berlin: publishing house Ch. Links, 1997; FETH, A. *Hilde Benjamin: Eine Biographie*. Berlin: publishing house Spitz, 1995.

## First Step: Implementation of a New Family Procedural Law of the SOZ

The regulation of the German judicial administration of the Soviet Occupation Zone (SOZ) of 12 December 1948 on the transfer of marriage law to the jurisdiction of the local courts<sup>2</sup> (*Amtsgerichte*) initiated new procedures for family law even before the founding of the German Democratic Republic (GDR). Access to substantive matrimonial law was ruled out for the German legislator; the Allied Marriage Act of 1946<sup>3</sup> decided that was not within the competence of the German legal system. The new regulation, however, allowed a more efficient divorce procedure that only required one judge, instead of three. All legal consequences of divorce could be decided upon request (a common practice after the new laws). The procedures were divided into an initial hearing that attempted reconciliation and, if this was unsuccessful, a litigious hearing.

At the 35th German Legal Congress (*Deutscher Juristentag*) in 1928 Eugen Schiffer (a liberal lawyer and politician<sup>4</sup>) had already proposed this model for divorce procedures. In July 1945 Schiffer became head of the German Administration of Justice (*DJV*) in the SOZ and in this capacity paved the way for the reform before he resigned in 1948 in protest at the ideological transformation of the judiciary and, in 1950, moved to West-Berlin. The realisation of reform plans that failed in the Weimar Republic is a signum of politics in the SOZ/GDR at the end of the 1940s as well as the withdrawal of protagonists of the Weimar reform debate from leading positions.<sup>5</sup> A regulation from 9 November 1951<sup>6</sup> also transferred the jurisdiction of laws regarding children to the local courts.

## Second Step: Substantive Family Law – The Law on the Protection of Mother and Child and on Woman's Rights

The first change in substantive family law in the SOZ<sup>7</sup> covered adoption, a state benefit that depended on private individuals; transforming it from a process that existed to procure substitute children to one that provided substitute parents, required because of deaths caused by the war. Due to consequences of war throughout Germany, § 1741 *BGB*, which only permitted adoption by childless couples, was repealed.

Additionally, at the end of the 1940s leading jurists of the SOZ were already reflecting on a complete reform of family law.<sup>8</sup> Passage of a new family law in accordance with the GDR constitution and in fulfilment of this constitutions' family law (i.e. particularly, the enactment

<sup>2</sup> Zentralverordnungsblatt (ZVOBl.) 1948 p. 588.

<sup>3</sup> Kontrollratsgesetz (KRG) No 16, Amtsblatt des Alliierten Kontrollrats (ABl. AK) 1946, pp. 77, 294.

<sup>4</sup> *Ad personam* cf. FRÖLICH, J. Ein Nationalliberaler unter „Demokraten“: Eugen Schiffer und der organisierte Liberalismus vom Kaiserreich bis nach dem Zweiten Weltkrieg. In: *Jahrbuch zur Liberalismus-Forschung*. 18th revised edition. Baden-Baden: publishing house Nomos, 2006, pp. 153 ss.

<sup>5</sup> Cf. AMOS, H. Kommunistische Personalpolitik in der Justizverwaltung der SBZ/DDR (1945–1953): Vom liberalen Justizfachmann Eugen Schiffer über den Parteifunktionär Max Fechner zur kommunistischen Juristin Hilde Benjamin. In: BENDER, G. (ed.). *Recht im Sozialismus. Analysen zur Normdurchsetzung in osteuropäischen Nachkriegsgesellschaften (1944/45–1989)*. Frankfurt/Main: Klostermann, 1999, pp. 109 ss.

<sup>6</sup> Gesetzblatt der Deutschen Demokratischen Republik (GBl. DDR) 1951, p. 1038.

<sup>7</sup> Thüringen: Gesetz zur Erleichterung der Annahme an Kindes Statt vom 4. 5. 1948 Gesetzblatt (GBl.) Thüringen 1948, p. 69; Sachsen: Gesetz über die Erleichterung der Adoption vom 28. 5. 1948 Gesetzblatt (GBl.) Sachsen 1948, p. 326.

<sup>8</sup> Cf. NATHAN, H. Überlegungen zu den Thesen für ein neues Eherecht. *Neue Justiz (NJ)*, 1949, pp. 102 ss., 103; cf. also MELSHEIMER, E. – NATHAN, H. – WEISS, W. Neue Rechtsprinzipien als Ausdruck der neuen demokratischen Ordnung. In: FECHNER, M. (ed.). *Beiträge zur Demokratisierung der Justiz*.

of a Maternity Protection Act within one year, Art. 32) was considered.<sup>9</sup> The family law regulations of the GDR constitution were strongly based on the Weimarian Constitution.<sup>10</sup> However, they should be more efficacious than 30 years before: non-constitutional law opposing gender equality ceased to apply immediately (rather than after a transitional period as regulated by the West German constitution). There are no discernible similarities to the Soviet Constitution of 1947, which contains no special regulations for families. However, the colonial ruler had more effective instruments to enforce his interests; and an orientation towards Weimar just looked better.

The SOZ did not create a Family Code, but on 27 September 1950 the Law on the Protection of Mother and Child and on Woman's Rights was passed,<sup>11</sup> which demanded to draft a Family Code by the Ministry of Justice by the end of the year. This draft was not submitted until 1954. The Law on the Protection of Mother and Child and on Woman's Rights did, however, support the development of reforms to the current family law which had already been raised by the Weimarian Constitution without any consequences; the early GDR legislation (as was the early NS legislation) is Janus-faced. This law also had to fill the vacuum that had been created by the abolition of laws that were incompatible with legislation on equality (by the way: this did not work any better based on the four year period of Art. 117 of the West German Constitution, as a similar vacuum existed in the Federal Republic from 1953 to 1957<sup>12</sup>).<sup>13</sup> The law provided "Governmental Assistance for Mother and Child": financial benefits for families with many children, 40 000 new places in day nurseries and 160 000 in kindergartens, 15 infant polyclinics, recreation homes for pregnant women, maternity hospitals in industrial centres and large cities, 190 mother and children information centres. A mother's claim to paid leave from 5 weeks before childbirth until 6 weeks after it had already been established by the Labour Code of April 1950.<sup>14</sup> Numerous regulations promoting employment of women beyond traditionally female professions were added; managers had to prefer single mothers upon recruitment. On the other hand, the possibilities of artificial interruption of a pregnancy were reduced again compared to the legal situation created by the federal states after the end of the war: The social indication was omitted.

The Law regarded "a healthy family" as a "cornerstone of a democratic society. Its consolidation is an important task of the Government of the German Democratic Republic", § 12. Further programme clauses stated: "Equality of man and woman in society

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Berlin: Dietz Verlag, 1948, pp. 97 ss., 109; BENJAMIN, H. *Vorschläge zum neuen Deutschen Familienrecht*. Berlin: Deutscher Frauen Verlag, 1949.

<sup>9</sup> NATHAN, *Überlegungen zu den Thesen für ein neues Eherecht*, pp. 102 ss., 103.

<sup>10</sup> Cf. DI FABIO, U. *Die Weimarer Verfassung – Aufbruch und Scheitern: Eine verfassungshistorische Analyse*. München: C. H. Beck, 2018.

<sup>11</sup> GBl. DDR 1950, p. 1037.

<sup>12</sup> Cf. FRANZIUS, C. *Bonner Grundgesetz und Familienrecht: Die Diskussion um die Gleichberechtigung von Mann und Frau in der westdeutschen Zivilrechtslehre der Nachkriegszeit (1945–1957)*. Frankfurt/Main: Klostermann, 2005.

<sup>13</sup> Cf. ETZOLD, R. *Gleichberechtigung in erster Instanz: Deutsche Scheidungsurteile der 1950er Jahre im Ost-/West-Vergleich*. Tübingen: Mohr Siebeck, 2019.

<sup>14</sup> Gesetz der Arbeit zur Förderung und Pflege der Arbeitskräfte, zur Steigerung der Arbeitsproduktivität und zur weiteren Verbesserung der materiellen und kulturellen Lage der Arbeiter und Angestellten, GBl. DDR 1950, pp. 349 ss.

determine their equality in family law”, § 13, and “Marriage does not restrict or diminish a woman’s rights”, § 14. On that basis, the Law regulated numerous questions outside the scope of the Allied Marriage Act, with the aim of eliminating the patriarchal family model of the *BGB* which proved to be very resistant in West Germany. § 14 also abolished the husband’s right of sole decision and a joint decision-making authority established in the choice of residence and domicile, fundamental questions of housekeeping and parenting. In deviation from § 1354 *BGB* the wife may “not be prevented from pursuing a career or from her social and political activities even if this results in a temporary separation of the spouses” – here, aspects of equal rights and activation of female labour intertwine. § 16 concerned “joint parental care” and contained two innovations compared to the *BGB*: firstly, the term “parental authority” was replaced by “parental care” (this change did not occur in West Germany until 1979), and entitled both parents to custody. Furthermore, a single mother was fully entitled to custody, too, § 17. On the other hand, a child’s claim of maintenance depended “on the economic situation of both parents”, § 17, and not only his or her father’s economic situation.

### **Substantive Family Law: Legislation through Case Law**

The scope of the Marriage Act (*EheG*) was (initially<sup>15</sup>) excluded from the legislative activity of the GDR. However, especially divorce law and the consequences of it could be influenced in accordance with constitutional postulates (and political ideas) by means of judicial activity, which was controlled by the key decisions of the Supreme Court of the GDR. This finding did not only apply to the GDR – the establishment of such different courses of jurisdiction in the two German states, even if in the different occupation zones, based on the identical Allied Marriage Act of 1946 (a meagrely adjusted version of the Great German Marriage Act of 1938<sup>16</sup>), is remarkable.<sup>17</sup> On the basis of the divorce for irretrievably breakdown of marriage on request of one spouse, implemented in § 55 Marriage Act 1938 = § 48 Marriage Act 1946, with the possibility of objection by the other spouse, that again did not have to be considered under certain conditions, the ideologically desired results could be achieved on both sides of the Iron Curtain. That’s why in 1949 Hilde Benjamin<sup>18</sup> said unsurprisingly, § 48 *EheG* „is legislatively a quite progressive solution“ – so the missing legislative access could be overcome.

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<sup>15</sup> See part Forecast: New Course and Blocked De-Stalinization.

<sup>16</sup> Gesetz zur Vereinheitlichung des Rechts der Eheschließung und der Ehescheidung im Lande Österreich und im übrigen Reichsgebiet vom 6. 7. 1938, Reichsgesetzblatt (RGBl.) 1938 I, p. 807.

<sup>17</sup> Cf. LÖHNIG, M. *Neue Zeiten – Altes Recht: Die Anwendung von NS-Gesetzen durch deutsche Gerichte nach 1945*. Berlin: De Gruyter Oldenbourg, 2017; LÖHNIG, M. Breaking with bourgeois rules and traditions: The divorce files of Eastern German courts in the late 1940s. *Tijdschrift voor Rechtsgeschiedenis*, 2015, vol. 83, pp. 538 ss; LÖHNIG, M. Re-Education by jurisdiction: On enforcing a Christian-occidental understanding of marriage in Western Germany after 1945. *HSE (Historia Social y de la Educación)*, 2014, vol. 3, pp. 133 ss.; BIRNDORFER, F. *Der erstinstanzliche Prozessalltag 1938 bis 1949 anhand der Ehescheidungsakten des Landgerichts Amberg*. Regenstauf: Gietl, 2013; STROHMAIER, K. *Der erstinstanzliche Prozessalltag in der Zeit von 1938 bis 1950 anhand der Ehescheidungsakten des LG Ravensburg zu §§ 55 EheG 1938 und § 48 EheG 1946*. Regensburg: Förderverein Europäische Rechtskultur e.V., 2018.

<sup>18</sup> BENJAMIN, H. Die Ehe als Versorgungsanstalt. *NJ*, 1949, pp. 209 ss.

On the 1 December 1950 the First Civil Chamber of the Supreme Court of the GDR, chaired by Benjamin, made a key decision.<sup>19</sup> § 48 *EheG* is an example of how a law with the same wording can produce different content, depending on which system of government was using it. According to Benjamin, it was the task of the Supreme Court to determine the content of the law. While doing this, judges must observe Art. 30 of the constitution of the GDR. This article put marriage and family, as the foundation of community life, under the protection of the state. The Supreme Court said it would be the „perfect solution for the divorce problem“, if all the human and economic interests of husband and wife and the community interest were taken into account as far as possible. But, Benjamin said, the court was bound by the Allied Control Council’s marriage law that had to be applied in accordance with an antifascist, democratic order. Therefore, the first key statement of the ruling was: When § 48 of the Marriage act is applied, the substance of marriage in the antifascist, democratic order of the new state must be respected.

First of all, the court submitted, according to Art. 30 of the constitution of the GDR, marriage is not just „an individual matter of the married couple“, but rather „has to support social goals and social ideals“: joy of working, constant pursuit of further personal development, and enjoyment of the family. These goals were considered unachievable in a broken marriage; consequences of it were the destruction of the joy of life and the inhibition of work enthusiasm. For this reason, the perpetuation of a desperate broken marriage could not be morally justified. The result was the key statement number 4: In general, a broken marriage should be dissolved. In a later judgement on 29 June 1953<sup>20</sup> the court specified its position: „According to Art. 30 of the constitution of the GDR, marriage and family is the foundation of community life. But because an irreparably broken marriage cannot be the foundation of community life anymore, such a marriage must be dissolved on principle and a veto against the divorce only must be considered, if there are very special reasons, which must be proved.” This was necessary because a district court considered the veto of the defendant wife, although the court appealed the above-mentioned key decision, because the claimant’s opinion about marriage would be admitted if the marriage will be divorced, deserves no protection.

Regarding postmarital maintenance the Supreme Court claimed that everybody except for older, divorced women, has to provide his or her manpower to the composition and fulfilment of the economic plan. Every human has to pursue a career and, if necessary, do vocational training.<sup>21</sup> In contrast, the allied marriage act said that the innocent divorced wife has a maintenance claim – so the court pushed the law aside. This was frequently done by accords between wife and husband, inspired by the district court that included payments for a transitional period. Maintenance would be paid for the period in which the wife updated her skills and looked for a „job, according to her abilities that would be a long-term, satisfying and profitable employment”.<sup>22</sup> According to the Supreme Court, it would be against the wife’s human dignity to be funded by the husband after the divorce. So, the constitutional right to work quickly became a duty and lots of women were pushed into human dignity – and poverty. Neue Justiz stated in 1953: „Women seemed to be provided

<sup>19</sup> Cf. Entscheidungen des Obersten Gerichts, vol. 1, pp. 72 ss.

<sup>20</sup> Entscheidungen des Obersten Gerichts, vol. 2, pp. 187 ss.

<sup>21</sup> Oberstes Gericht. *NJ*, 1951, pp. 128 ss., 129.

<sup>22</sup> Oberstes Gericht. *NJ*, 1952, p. 176.

for a lifetime in a capitalist marriage. But the truth is that they depended economically and socially on their husbands. Now they achieved full independence in our new social order. She enjoys equal rights with the man, without any bonds.”<sup>23</sup> Gainful work and family duties were definitely not equated, although a paper of the legal committee of the German national council 1949 included such a statement.<sup>24</sup>

Regarding the matrimonial property law, the vacuum of regulation was filled by the jurisdiction. Based on the assumption that there was no matrimonial property law, since the property law of the *BGB* was annulled by the constitution, they established the separation of goods as standard matrimonial property regime. This was to the detriment of women that looked after their families, because their participation in the man’s capital gain during the marriage was lost. Jurisdiction helped these women by giving them a claim for compensation. The claim’s details were derived from the constitution:<sup>25</sup> in general, marriage savings ought to be split in equal parts between the spouses. There were many disputes, which were only solved when the family code came into force in 1965.

### The Judiciary Acts of 1952

The judiciary acts of 1952 marked a break in the relevant legislation of the GDR: so far, the legislation in family law and family procedure was characterised by the realisation of failed reform projects of the Weimarian era. The law of the Soviet colonial power did not matter as much. The judiciary acts of 1952, especially the new Court Constitution Act of 2 October 1952 (*GVG*),<sup>26</sup> were, in contrast, based on the Soviet judicial system.<sup>27</sup> The aim was to stabilise the new order. The jurisdiction should become a “lever of the democratically development of our state”.<sup>28</sup> In addition, the court structure had to be adapted to the administrative division of the now centrally organised GDR which emerged after the abolition of the *Länder*.

Instead of the traditional courts (*Amtsgerichte*; *Landgerichte*) new courts (*Kreisgerichte* [district courts], *Bezirksgerichte* [county courts]) were established; the former Higher Regional Courts (*Oberlandesgericht*) were abolished. The power of cassation of the supreme court, which was not an appellate court, in contrast to the *Reichsgericht* or the Federal Supreme Court, was extended: not just the supreme prosecuting attorney of the GDR, but also the President of the supreme court were now authorized to file an application, § 55 Abs. 2 Nr. 3 *GVG*. In addition, the Supreme Court had the power to issue binding directives on the application of the law. In this way the Supreme Court became a tool of the political control of justice, based on the model of the Soviet Union.<sup>29</sup>

There was another innovation: the courts got the duty to give legal advice to the citizens. This institution established itself quickly and so it supported one of the probable legislative aims, the marginalisation of the lawyers. The judiciary acts also changed the

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<sup>23</sup> HEINRICH, W. – KLAR, H. Die Rechtsprechung des OG auf dem Gebiete des Familienrechts. *NJ*, 1953, p. 537 ss., 538.

<sup>24</sup> NATHAN, *op. cit.*, pp. 102 ss., 103; Cf. also MELSHEIMER – NATHAN – WEISS, *op. cit.*, pp. 97 ss., 112.

<sup>25</sup> Cf. Kammergericht (Ost-Berlin). *NJ*, 1951, p. 330.

<sup>26</sup> GBl. DDR, p. 983.

<sup>27</sup> Cf. only BENJAMIN, H. *Deutsche Juristen in der Sowjetunion*. *NJ*, 1952, pp. 345 ss.

<sup>28</sup> BENJAMIN, H. *Das Gerichtsverfassungsgesetz*. *NJ*, 1952, p. 434.

<sup>29</sup> BENJAMIN, *Deutsche Juristen in der Sowjetunion*, pp. 345 ss.

composition of the chambers of the Court: all proceedings of first instance were tried and decided by one judge and two jurors, § 43 *GVG*. The lay participation was seen as an instrument of the democratisation of justice since pre-March (*Vormärz*) so the legislator fulfilled a very old postulate. Furthermore, the jurors, perfect socialistic citizens, cf. § 27 *GVG*, should be law educators of their comrades and in this way support the role of justice as an educator. The courts should educate by their jurisdiction: all citizens to act responsible in their professional and personal life and to respect the laws conscientiously – the family courts took this task very serious for years.<sup>30</sup>

The regulation removed the voluntary jurisdiction. The tasks of the voluntary jurisdiction were partially given to the newly created state notary, the administrative body and the ordinary courts. H. Benjamin praised the Soviet model, in which the courts “do not have to do any administrative tasks masked as judicial activity” as it is in Germany “task of the courts, as so called voluntary jurisdiction”.<sup>31</sup> After the guardianship courts were removed, the cases of full aged wards were given to the state notary; cases of underaged wards were given to the authorities of the district (*Rat des Kreises*). These authorities could decide parental care after divorce, § 74 *EheG*, if the decision was not part of the divorce proceeding. They also watched the exercise of parental care by parents or legal guardians. Furthermore, the district authorities could decide cases about foster children, adoptions, guardianships and paternity. In 1953 all these tasks were transferred to the *Jugendhilfe* (youth care) of the respective district. So, they got effective tools to intervene on parental care,<sup>32</sup> because they took the place of the guardianship courts, in substantive law and procedural law, as well.

### **Forecast: New Course and Blocked De-Stalinization**

When Stalin died, the GDR was in a tense economic situation. This created the “New Course” (*Neuer Kurs*<sup>33</sup>) of the government of the GDR. But it is difficult to describe what this meant in family law. After the revolution was crushed Benjamin stated “the way of strengthening legalism in the interest of protecting the citizens, which we have been going since 1945, will be continued with greater energy than before.”<sup>34</sup> Other jurists knew: “an important part of the new course is the further strengthening of the democratic order and the strict adherence of the democratic legality”. They emphasized the duty of every single citizen, especially women, which “have to provide their manpower to the fulfilment of the economic plan”. Jurisdiction “tends to limit the rights of the women”, but this was a “necessary consequence of the enforcement of equal rights in social life”.<sup>35</sup> The authors hid the devastating social results of the “equal rights”-policy.<sup>36</sup> So they are as far from the

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<sup>30</sup> See MARKOVITS, I. *Gerechtigkeit in Lüritz: Eine ostdeutsche Rechtsgeschichte*. 2nd revised edition. München: Beck, 2014.

<sup>31</sup> BENJAMIN, *Deutsche Juristen in der Sowjetunion*, pp. 345 ss., 346.

<sup>32</sup> Cf. RIEGE, I. *Jugendhilfe in der DDR*. Berlin, 2019.

<sup>33</sup> Cf. HEGEDÜS, A. B. – WILKE, M. (eds.). *Satelliten nach Stalins Tod: Der „Neue Kurs“ – 17. Juni 1953 in der DDR – Ungarische Revolution 1956*. München: De Gruyter Akademie Forschung, 2000.

<sup>34</sup> BENJAMIN, H. *Neue Justiz – ein wirksames Instrument bei der Durchführung des neuen Kurses*. NJ, 1953, p. 477.

<sup>35</sup> HEINRICH – KLAR, *op. cit.*, pp. 537 ss.

<sup>36</sup> Cf. GROSSEKATHÖFER, D. „*Es ist ja jetzt Gleichberechtigung*“: *Die Stellung der Frau im nahehelichen Unterhaltsrecht der DDR*. Köln: Bohlau Verlag, 2003.

misery of the population as other officials who have been raising the goals of economic plans to the detriment of the workers (one of the triggers of the revolution 1953<sup>37</sup>). If the people protested, there were different tools of repression and the *ultima ratio*, the tanks of the colonial power. So, they did not learn anything, the “new course” – not only in family law – was just the old course in different words.

In 1954 a draft family code<sup>38</sup> was published, by which family law based on the Soviet model was separated from the *BGB*. Hilde Benjamin assumed that this draft would “overcome the systematics, the design of the institutes and the wording of the *BGB*”.<sup>39</sup> In § 1 the draft mentions the objectives of “family development and consolidation” as well as the education of children “in the spirit of democracy, socialism, patriotism and international friendship”. The contentual guiding principles of the draft also include equal rights for women and equality of illegitimate children, which had already played a central role in the previous legislation and jurisprudence of the SOZ/GDR.<sup>40</sup> Similar to the discontinued preparatory work on the 1953 Civil Code of the GDR, this draft shows the continued effect of bourgeois legal thinking and the intention to implement reform postulates, cherished in the interwar period. In addition – and this is how the Soviet influence manifests itself – there was an endeavour to instrumentalize families as part of the new social system and to educate the population.

The draft never came into force, but in two respects it was very significant. On the one hand it marks a stage on the long way to the 1965 family code of the GDR, on the other hand, and this is in the present context of interest, parts of its matrimonial law provisions – some in a modified form – were accepted in the 1955 marriage regulation (*Eheverordnung, EheVO*).<sup>41</sup> This marriage regulation had become necessary as the allied 1946 matrimonial law of the GDR expired in autumn 1955 after the signing of the Moscow Treaties, the subject of which was the “full equality, mutual respect for sovereignty and the non-interference in internal affairs”. The basic lines of the *EheVO* – together with those of the 1956 marital rules of procedure (*Eheverfahrensordnung, EheVerfO*),<sup>42</sup> which consolidated procedure law in matrimonial matters after they were transferred to the competent jurisdiction of the local courts – coined the marriage law of the GDR until 1990.

A significant innovation of the *EheVO* was caused by the introduction of divorce on the basis of irrevocably break down of a marriage (*Zerrüttungsprinzip*) within the divorce law. Thus, the regulation met a demand frequently made in the years of the Weimar Republic, the fulfilment of which had always failed because of the opposition of the Catholic Party (*Zentrumspartei*) and became partly possible only in the marriage law of 1938 – albeit under completely different circumstances and with a different politically motivated goal. § 8 Abs. 1 *EheVO* provides: “A marriage can only be divorced if there are serious reasons

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<sup>37</sup> Cf. KNABE, H. 17. Juni 1953: *Ein deutscher Aufstand*. München: publishing house Propyläen, 2003; KOWALCZUK, I.-S. 17. Juni 1953: *Volksaufstand in der DDR: Ursachen – Abläufe – Folgen*. Bremen: Edition Temmen, 2003.

<sup>38</sup> *Entwurf eines Familiengesetzbuches der Deutschen Demokratischen Republik*. NJ, 1954, pp. 377 ss.

<sup>39</sup> BENJAMIN, H. *Einige Bemerkungen zum Entwurf eines Familiengesetzbuches*. NJ, 1954, p. 349.

<sup>40</sup> Cf. KLOSE, B. *Das Verblässen eines Makels. Das Nichteheleichenrecht der DDR als Teil einer gesamtdeutschen Entwicklung*. Frankfurt am Main: Peter Lang Verlag, 2013, pp. 89 ss.

<sup>41</sup> Verordnung über Eheschließung und Eheaufhebung (*EheVO*), GBl. I, p. 849.

<sup>42</sup> *Eheverfahrensordnung (EheVerfO)* vom 7. 2. 1956, GBl. I, p. 145.



for doing so and if the court has determined through an in-depth investigation that the marriage became meaningless for the spouses, children and society.” In doing so the court had to examine in particular whether the consequences of divorce mean undue hardship for the other part and whether the welfare of underage children is in conflict with a divorce. Accordingly, each spouse could apply for divorce, regardless of his or her guilt in making the marriage meaningless. This regulation is almost literally based on a decision of the Supreme Court<sup>43</sup> which had already applied these criteria on the basis of the marriage law (*Ehegesetz, EheG*) of 1946; this suggests a strong influence of Hilde Benjamin.

However, while the divorce of an irretrievably broken down marriage (*Zerrüttungsscheidung*) according to the drafts of the Weimar years<sup>44</sup> (and also according to § 55 *EheG* 1938, § 48 *EheG* 1946) required a certain time of separation in order to verify a break down, the statement of serious reasons for the divorce request and their assessment by the court were laid down in § 8 Abs. 1 *EheVO*. This regulation, which does not find a role model in the family laws of other socialist countries, seems to be fuelled more by Protestant than by socialist ideas. The aim of the scheme was the preservation of marriage, which was referred to in the preamble of the *EheVO* as a “closed community for life”. A “frivolous behaviour towards marriage [...] would contradict the moral views of the working people”. As already indicated by the jurisdiction of the Supreme Court (*Oberster Gerichtshof*), there could obviously also be a state interest in the divorce of marriages. Given the request of a spouse, the state (and not the consent of the spouses<sup>45</sup> or the will of the applicant) ultimately decided according to socio-political standards about the continuation of a marriage.

The competent district courts (*Kreisgerichte*) were, of course, exposed to completely new requirements,<sup>46</sup> because they were expected to influence the society with their jurisdiction. They had to judge on maintaining marriage or divorce, because they were responsible for affirming or denying the existence of serious reasons (*ernstliche Gründe*, § 8 Abs. 1 *EheVO*). Even though the individual fault of the spouses was irrelevant, the reasons for (or against) the divorce nonetheless had to be stated in the judgment. Reasons for the decision which were focused on the spouses’ conduct with regard to the continued existence of the marriage (which should not be jeopardized by frivolous behaviour) or to honour the founding of a new marriage by those involved. The *EheVO* did not protect the privacy of the spouses during such a divorce, but made them more than ever subject to a (public!) divorce proceeding.

In addition, the sense of marriage (*Sinn der Ehe*), in more bourgeois words the essence of marriage for spouses, children and society (§ 8 Abs. 1 *EheVO*) had to be examined crucially without a precise understanding of the term resulting from prevailing political conditions. Even the Supreme Court gave no orientation; although the question of the seriousness (*Ernstlichkeit*) of reasons allowed a consideration of all marital and socio-political concerns, so if there were any serious reasons everything would probably speak for

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<sup>43</sup> Oberste Gericht. *NJ*, 1953, p. 51.

<sup>44</sup> Cf. SCHOLZ LÖHNIG, C. Weimarer Eherechtsreform. In: LÖHNIG, M. (ed.). *Eherecht nach dem großen Krieg*. Tübingen, 2019.

<sup>45</sup> Cf. NATHAN, H. Die Gesetzgebung der Deutschen Demokratischen Republik, IV. Quartal 1955. *NJ*, 1956, p. 145.

<sup>46</sup> Cf. NATHAN, H. Eheschließung, persönliche Rechte und Pflichten der Ehegatten, Beendigung der Ehe. *NJ*, 1954, p. 362.

the futility of a marriage. In any case, due to the open phrases of seriousness and futility, the courts were given a double opportunity to influence divorce in the light of the prevailing socio-political premises.<sup>47</sup> Ultimately, in each individual case an only hard to solve tension between the principle of marital stability and the state interest in the dissolution of disintegrating marriages, both based on socialist ideas, existed.<sup>48</sup>

The divorce proceeding was – as it had been since 1948 – a quickly carried out, uniform proceeding in which one judge decides on the divorce as well as on its legal consequences (*Verbundverfahren*), cf. § 9 ff. *EheVO*, § 13 *EheVerfO*. Through the divorce – after considering child welfare – one parent was granted custody of children, § 9 *EheVO* (the other parent had the right to access, § 11 *EheVO*), which had to be mentioned in the divorce decree, § 13 *EheVerfO*. The same applied for child maintenance according to § 1601 ff. *BGB* of 1900. This link between divorce and its legal consequences (*Verbund*) also included the post-marital maintenance, which in principle was limited to a maximum of two years' time from legal force of divorce and could only be asserted in the divorce proceedings, § 13 *EheVO* (in contrast the maintenance during the liquidation phase, during which spouses are not yet divorced but legally separated, was to still be granted in accordance with the *BGB* of 1900). Thus, wives were urged to take up employment even if they were happily married, which led to significant changes in family structures, especially childcare. Material home and household goods may also have been subject to the “*Verbund*”, but could still be asserted in an isolated manner after a divorce. Also, the *EheVerfO* illustrates very clearly the stabilizing objective of the legislation in matrimonial matters, by establishing a two-part procedure. The implementation of a “preparatory negotiation, which served the reconciliation and education of the parties with the aim of strengthening both marriage and family”, § 3 *EheVerfO*, was always mandatory. According to § 10 *EheVerfO*, only after a period of reflection, from two days to two weeks § 10 *EheVerfO*, the controversial hearing was held, in which the principle of public prosecution (*Offizialmaxime*) was valid and the court was not bound by the presentation of the parties and their evidence.

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<sup>47</sup> SCHNEIDER, U. *Hausväteridylle oder sozialistische Utopie? Die Familie im Recht der DDR*. Köln: Böhlau, 2004, p. 243.

<sup>48</sup> Cf. HILLEBRAND, C. *Die familienrechtlichen Richtlinien des Obersten Gerichts der DDR*. Hamburg: publishing house Dr. Kovač, 2003, pp. 101 s.