

# Reforming the Marriage and Family Code (July 9, 1971)

## Abstract

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Gerhard Jahn, Federal Minister of Justice, describes the basic principles of the new divorce law, which created equality between spouses and introduced the concept of “irreconcilable differences” in place of assigning blame to one party or the other. Various issues, including alimony, remained controversial for quite some time. A new family law was not passed until 1976 and first came into effect on January 1, 1977.

## Source

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### Draft of the First Law for Reforming the Marriage and Family Code before the Bundesrat

[...]

A family code in keeping with today's interpretation of the law can no longer assume the superiority of the husband and a one-sided, pre-determined “woman's role.” The draft thus provides for the same rights and obligations for both spouses with respect to family responsibilities and gainful employment. An especially visible expression of this for the marital partnership can be found in the recommendations for the new regulations pertaining to names. The intention here is not just to fulfill the minimum of equal treatment. Rather, by allowing spouses to assume a double name, the federal government draft aims to make partnership in marriage outwardly visible. Requiring the engaged couple to submit, upon marriage, a statement on their future common name serves to assure in any case that they are aware of the legal options.

### Restructuring the Divorce Law

In the future, in the interest of those involved in an irreparably damaged marriage, divorce should be possible in principle, without a guilty party being sought out. In addition, the federal government also expects the introduction of a marriage breakdown principle to make divorce proceedings more objective and to reestablish truthfulness in them. In order to better achieve this goal, besides establishing the basic fact of the “failure of the marriage,” two further elements need to apply: the failure of a marriage is legally presumed after a couple has [either] been living apart for one year or—in the case of a contested divorce—three years. A hardship clause shall allow the judge in exceptional cases to deny the severing of a failed marriage for as long as the divorce would hit the opposing respondent especially hard.

### Alimony after the Divorce

The right to alimony shall also be decided independent of the question of responsibility for the failure of the marriage. It shall be supported strictly by economic and social considerations in order to eliminate grave injustices of the valid law. The spouse who, after the divorce, cannot support him- or herself because of child-rearing, age, or illness shall be entitled to alimony. In any case, interim maintenance is provided until one spouse finds appropriate gainful employment after the divorce.

Educational opportunities that were not taken advantage of in connection with the marriage should be balanced out in the future through entitlement to alimony for the duration of the training.

The new law is based on the idea that alimony should serve as much as possible to help the socially

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weaker spouse establish an independent economic livelihood in keeping with his or her personality and to eliminate professional disadvantages that were assumed by one spouse for the sake of marriage and family. On the other hand, a divorced spouse should remain assured of the social status attained in the marriage, the acquisition of which he or she actively and regularly participated in. The gainful employment that can be considered reasonable for a divorced spouse is therefore also oriented toward living standards during the marriage. For the same reason, the level of maintenance shall also be based on marital living conditions.

Giving priority to the alimony claims of the divorced spouse is designed to preclude his or her claim from being curtailed through the remarriage of the liable party. This regulation makes it superfluous for the hardship clause to apply to economic disadvantages of the divorce.

### **Pension Rights Adjustment**

The new approach to pension rights adjustment shall guarantee the equal participation of divorced spouses in rights to old age and disability pensions that were accrued during the marriage. The principles of surplus equalization that have proven successful since 1958 and which correspond to a marriage partnership are expanded in the government draft to include the pension expectancy of the spouses. This should raise the social security of the spouse who gives up his or her own professional development, and the accompanying old age and related disability pensions, in order to devote time to the family.

The present bill constitutes the first part of a cohesive reform package, which, in addition to the material marriage and family code, also encompasses the procedures in marriage cases and changes in the social security law. All parts shall enter into force at the same time. The changes in the procedural law and social insurance law that are still outstanding shall soon be introduced in separate drafts. I myself regret that it was unfortunately not possible to submit them to the legislative bodies together with the bill to be discussed today. It would have otherwise threatened the plans of the federal government to implement the reform during this legislative period.

In the Federal Ministry of Justice, a bill on the procedural law is about to be completed. It should be sent to the justice administrations of the federal states shortly and will be discussed with them. The bill is based on the following principles:

1. One and the same court—the family court—is responsible for the divorce judgment and the regulation of the divorce outcomes. The family court shall be formed as a special department of the municipal court.
2. The petition for divorce and the regulation of the outcomes shall be negotiated together and decided at the same time. A separation of the outcomes to be handled separately shall be possible only under narrow prerequisites.

Regulations of the outcomes to be decided by the family court shall include the following, in particular:

the assignment of parental custody for common children,  
ruling on visitation rights,  
children's maintenance,  
alimony for the divorced spouse,  
adjudication of a pension rights adjustment,  
the division of the household.

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Source: Entwurf eines Ersten Gesetzes zur Reform des Ehe- und Familienrechts vor dem Bundesrat, July 9, 1971; reprinted in Arnold Harttung, et al., ed., *Willy Brandt, Zum sozialen Rechtsstaat. Reden und Dokumente*. Berlin, 1983, pp. 176–78.

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