

## Poland

# DIVORCE LAW IN POLAND: A NEW REGIME NEEDED?

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### Résumé

En Pologne comme dans d'autres pays, le nombre de divorce a tendance à augmenter. Néanmoins, le mariage demeure une institution populaire et familiale et est l'une des valeurs les plus importantes de la vie polonaise. Ces observations contradictoires ont inspiré cet article. Il est évident, et peut-être même cliché, que la loi devrait tenir compte des changements sociétaux. Mais que cela signifie-t-il pour la loi relative au divorce? Est-ce que cela signifie que les divorces devraient être rapides et faciles? Ou bien est-ce que cela implique que la société doit protéger la famille et, en dépit des statistiques actuelles, maintenir une inflexibilité de la loi relative au le divorce?

La loi polonaise est un exemple d'une approche plutôt démodée de divorce. Toutefois, en raison de cette caractéristique, elle fournit une bonne étude de cas sur le droit du divorce. Cet article se déroule en trois parties. La première partie examine l'actuelle loi polonaise sur le divorce. La deuxième partie analyse les inconvénients de cette loi, tandis que la troisième partie décrit ses avantages. La conclusion tente d'apporter des réponses aux questions formulées au début de l'article.

## I INTRODUCTION

A trend in Poland, as in other countries,<sup>1</sup> is the growth in the number of divorces.<sup>2</sup> Nonetheless, marriage remains a popular institution and family is

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<sup>1</sup> In Germany in 2009, there were 185,817 divorces. This number is stable, with a previous peak of more than 187,000 divorces in 2010 and 2011.

<sup>2</sup> Between 2001 and 2010, there were 593,900 divorces in Poland. Approximately 83% of them were of spouses who lived in cities and towns rather than in the countryside. From 2001 to 2005, the number of divorces grew from 45,300 divorces in 2001 to 67,600 divorces in 2005. In

one of the most important values in Polish life.<sup>3</sup> These contradictory observations have provided the inspiration for this chapter.

It is obvious and perhaps even a cliché that the law should reflect societal changes. But what does this mean in the law on divorce? Does it mean that divorces should be quick and easy? Or does it mean that society should protect family and, despite current demographic statistics, make divorce law more inflexible?

Polish law is an example of a rather old-fashioned approach to divorce. However, because of this characteristic, it provides a good case study for divorce law. Therefore, in studying Polish divorce law, this chapter proceeds in three parts. Part II will review the present Polish divorce law.<sup>4</sup> Part III will analyse the disadvantages of the present law, while Part IV describes its advantages. The final part will conclude and offer answers to the questions formed at the beginning of this chapter.

## II DIVORCE IN POLAND

Only judges may grant divorces in Poland. The courts of first instance in divorce cases are regional courts, while the courts of appeal are available as higher courts.<sup>5</sup>

The main source of law for divorce in Poland is the Family and Guardianship Code of 25 February 1964 (KRO),<sup>6</sup> which came into force on 1 January 1965. According to KRO, art 56(1), the basic prerequisite for divorce is an irretrievable and total breakdown of matrimonial life between the spouses. This standard provides discretion to the judge, who takes into account all of the circumstances of the case to determine whether to grant a divorce.<sup>7</sup>

According to the case-law, a total breakdown of marriage means a lack of any spiritual, physical and economic bonds between the spouses.<sup>8</sup> These bonds are

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2010, there were 61,300 divorces, which was less than in 2009 (65,300 divorces). See [www.stat.gov.pl/cps/rde/xbcr/gus/p\\_population\\_size\\_structure\\_31\\_12\\_2012.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/p_population_size_structure_31_12_2012.pdf) (accessed May 2013).

<sup>3</sup> See e.g. <http://gu.us.edu.pl/node/227861> (accessed May 2013).

<sup>4</sup> Conflicts of law and procedure are outside the scope of this chapter. However, the shape of the regulations in these areas can influence the answers to the questions formed at the beginning of the chapter because the law as a whole provides a clear picture of national regulation. Nonetheless, some simplifications are necessary in each analysis and this chapter will focus on substantive law.

<sup>5</sup> The regional courts are on the second level in the judiciary structure and they are both the courts of the second instance for the majority of cases and the courts of the first instance for the cases mentioned in the Code of Civil Procedure.

<sup>6</sup> *Kodeks rodzinny i opiekuńczy*.

<sup>7</sup> See Tadeusz Smoczyński *Prawo rodzinne i opiekuńcze* (Warszawa: CH Beck, 2009) 140–141.

<sup>8</sup> Jacek Ignaczewski in Adam Bodnar, Urszula Dąbrowska, Jacek Ignaczewski, Joanna Maciejowska, Andrzej Stempniak and Anna Sledzińska-Simon *Rozwód i separacja* (Warszawa: CH Beck, 2010) 38–39.

important because spouses are obliged to live together, assist each other and remain faithful, and work together for the good of the family their marriage has created. An irretrievable breakdown takes place if the bonds between the spouses ceased so long ago<sup>9</sup> that, according to the principles of life experience, a return to matrimonial life will not happen.<sup>10</sup> Although a couple's separation can be evidence of an irretrievable breakdown of the marriage,<sup>11</sup> separation is insufficient to establish the irretrievable breakdown of the marriage.<sup>12</sup>

There are no presumptions regarding the total and irretrievable breakdown of marriage. The court uses the general rules of civil proceedings, taking into account the uniqueness of divorce proceedings. For example, the court is obliged to hear the testimony of both parties. The court's decision cannot be based on the acknowledgement of the claim or facts made by the defendant. If the defendant does make an acknowledgement, the evidence proceedings can be limited to the testimony of the spouses only if the spouses do not have common minor children.

Even if there is an irretrievable and total breakdown of marriage, according to KRO, art 56(2) divorce is not permitted if it would be detrimental to the welfare of the minor children of both spouses, or if there are other reasons why the decision to divorce is contrary to the principles of social coexistence. For example, the claim for divorce can be contrary to these principles if the wife is expecting the couple's child<sup>13</sup> or if one spouse is seriously ill.<sup>14</sup>

The consent of a spouse is also significant in divorce proceedings. According to KRO, art 56(3), divorce is not permitted if it has been requested by the spouse who is solely guilty for the breakdown of marriage unless the other spouse consents to the divorce, or the refusal to consent to the divorce, under the circumstances, is contrary to the principles of social coexistence. This requires that the court determine the motives of the consenting spouse. The court should also examine whether the consent was freely given, without pressure or threats by the other spouse.<sup>15</sup>

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<sup>9</sup> The period of separation can differ in each case. In one of its decisions, the Supreme Court stated that even a 3-year separation of spouses who are 70 years old and have been married for 38 years does not automatically mean that there is a total and irretrievable breakdown of marriage. See decision of 17 October 2000, I CKN 831/98.

<sup>10</sup> Decision of the Appellate Court of Katowice of 12 March 2010, I ACa 51/10, LEX no 1120376.

<sup>11</sup> See decision of the Supreme Court of 12 December 1955, I CR 1889/54, OSN 1957, position 44.

<sup>12</sup> Eg separation can result from a change in employment that forces one spouse to leave the family to get a job. Compare this to the situation wherein neither spouse is able to buy or rent a house separately, forcing the spouses to live together despite not behaving as a husband and wife.

<sup>13</sup> Bronisław Czech in Kazimierz Piasecki (ed) *Kodeks rodzinny i opiekuńczy. Komentarz* (Warszwa: LexisNexis, 2006) 329.

<sup>14</sup> Decision of the Supreme Court of 18 September 1952, C 1283/52, OSN 1953, position 84.

<sup>15</sup> Decision of the Supreme Court of 14 May 1956, I CR 746/55, OSN 1956, position 120.

Although the current divorce law dates back to the 1960s, it nonetheless reflects a modern approach in certain ways. For example, there is no special provision in the law stating a minimum duration of the marriage for divorce.<sup>16</sup> Of course, in practice, if the marriage lasted only a few months or years, judges are more cautious in examining whether there has been a total and irretrievable breakdown of the marriage, but judges still have leeway in this aspect. If both spouses want a divorce, there is a simplified divorce process available.<sup>17</sup> However, the court is always obliged to establish whether there is a total and irretrievable breakdown of marriage.

In a divorce ruling, the court decides whether there is fault and which spouse is at fault for the breakdown of the marriage.<sup>18</sup> Upon joint motion of the spouses, the court may waive a ruling on fault and then neither of the spouses is considered to be at fault. If there is a lack of joint motion by the spouses in this regard, the court is obliged to make a decision on fault.

The court has three possible options regarding guilt:<sup>19</sup> sole guilt can be attributed to one spouse, both spouses could be found guilty, or neither of the spouses can be deemed guilty.<sup>20</sup> Establishing guilt is important for the grant of divorce, as well as for the existence and scope of the duty to pay maintenance. The basis for establishing fault is the behaviour of each spouse.<sup>21</sup> If the court comes to the conclusion that the behaviour of a spouse affected the total and irretrievable breakdown of the marriage, that spouse is at fault and it is irrelevant that the fault of the other spouse is greater.<sup>22</sup> The differing extent of each spouse's guilt is not an obstacle to finding them both at fault.<sup>23</sup>

There are a few elements to each divorce ruling. These elements can be divided into three groups: (1) elements put into the ruling *ex officio* without any motion by the spouses; (2) elements introduced to the ruling because of a motion by at least one of the spouses; and (3) elements introduced to the ruling on the joint motion of the spouses.<sup>24</sup> The first group includes fault in the breakdown of

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<sup>16</sup> Such a period was demanded according to the decree Matrimonial Law of 25 September 1945 (Dz U 1945, no 48, position 270), which allowed divorce upon a unanimous motion of the spouses. There was one crucial prerequisite for such a divorce – the marriage must have lasted at least 3 years.

<sup>17</sup> If the defendant admits the claim and the spouses have no common minor children, the court may limit the evidence to the testimony of the parties.

<sup>18</sup> See KRO, art 57.

<sup>19</sup> Also known as 'fault' in the United States.

<sup>20</sup> See Jan Winiarz in Krzysztof Pietrzykowski (ed) *Kodeks rodzinny i opiekuńczy. Komentarz* (Warszawa: CH Beck, 2010) 547.

<sup>21</sup> Eg a new relationship of one spouse that started before the divorce and after a total and irretrievable breakdown of matrimonial life is not a basis to say that this spouse is at fault (decision of the Supreme Court of 28 September 2000, IV CKN 112/00, OSN 2011, position 41).

<sup>22</sup> There is no 'smaller' or 'greater' guilt. See eg decision of the Appellate Court of Poznań of 10 February 2004, I ACa 1422/03, Wokanda 2005, no 2.

<sup>23</sup> See eg the decision of the Supreme Court of 29 June 2000, V CKN 323/00; the decision of the Supreme Court of 22 September 1997, II CKN 329/97.

<sup>24</sup> See Tadeusz Smoczyński *Prawo rodzinne i opiekuńcze*, (Warszawa: CH Beck, 2009) 147.

marriage, parental responsibility (authority), the maintenance obligation towards children and the temporary use of shared accommodations. The second group includes an eviction from shared accommodation, division of common property and maintenance between spouses. Finally, the third group includes the division of the common home, ie a home belonging to the common property of the spouses.<sup>25</sup>

In its ruling on divorce, apart from its decision on the dissolution of marriage, the court should rule on parental responsibility. On this issue, the court takes into account the agreement of the spouses on how to exercise parental responsibility insofar as it is compatible with the welfare of the child.<sup>26</sup> It is also important that siblings should be brought up together, unless the welfare of the child requires otherwise.

The judge has several options on this issue, as well. The judge may leave parental responsibility with both parents on their joint motion if they present such an agreement and it is reasonable to expect that they will co-operate in matters concerning the child. The judge may also ask parents to modify their agreement. If there is no agreement between the spouses or if the agreement is incompatible with the welfare of the child, the court may give the power to exercise parental responsibility to one parent and limit the parental responsibility of the other parent to specific rights and duties.

By motion of either spouse, the court may also divide the joint property in the ruling on divorce, as long as carrying out the division does not cause undue delay to the proceedings. In practice, the distribution of property does not often occur, either because no suitable motion is made or because the spouses are not unanimous in determining the common property and its division. In the latter case, it is possible to divide common property in divorce proceedings only if evidentiary proceedings are not time-consuming. If they are, the court decides to not address the motion for division because the division would cause undue delay.

The maintenance issue between ex-spouses can also be subject to a ruling on divorce. Alternatively, request for maintenance can be made subsequently. The scope and time of the maintenance obligation depends on guilt.<sup>27</sup>

There are two general rules regarding guilt in maintenance. First, a divorced spouse who has not been found exclusively guilty for the breakdown of the marriage and who is found without means may demand that the other spouse provide the means for upkeep as appropriate in light of the needs of the

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<sup>25</sup> See Bronisław Czech in Kazimierz Piasecki (ed) *Kodeks rodzinny i opiekuńczy. Komentarz* (Warszawa: LexisNexis, 2006) 396.

<sup>26</sup> This agreement has become important since the amendment of the Family and Guardianship Code in 2009 (Statute of 6 November 2008 – Dz U no 200, position 1431).

<sup>27</sup> See Jacek Ignaczewski and Urszula Dąbrowska in Adam Bodnar, Urszula Dąbrowska, Jacek Ignaczewski, Joanna Maciejowska, Andrzej Stempniak and Anna Sledzińska-Simon *Rozwód i separacja* (Warszawa: CH Beck, 2010) 418.

entitled spouse and the earning capacity and assets of the obliged spouse. This is the so-called ordinary maintenance obligation.<sup>28</sup>

According to the second rule, if one spouse has been exclusively guilty for the breakdown of the marriage and the divorce results in a significant deterioration in the standard of living of the innocent spouse, at the motion of the innocent spouse, the court may decide that the guilty spouse is obliged to contribute as appropriate to satisfy the needs of the innocent spouse, even if the innocent spouse is not destitute. This is the so-called extraordinary (extended) maintenance obligation.<sup>29</sup>

There is no time-limit for initiating an action in regards to the maintenance obligation between former spouses. However, the obligation to provide maintenance for an ex-spouse ceases if the entitled ex-spouse remarries; cohabitation is not treated in the same way as remarriage.<sup>30</sup> The obligation also ceases 5 years after the ruling on divorce if the obliged spouse was found not exclusively guilty of the breakdown of the marriage, unless extended by the court at the request of the entitled spouse due to exceptional circumstances.

If the spouses share an accommodation such as a family home, the court also rules on the use of that residence for as long as the divorced spouses share the accommodation. In exceptional cases, when one spouse's blameworthy behaviour makes such cohabitation impossible, the court may order an eviction on the suitable motion of the other spouse.

A marriage is dissolved at the moment the court's judgment becomes final and cannot be appealed. Within 3 months after the ruling on divorce becomes final, a divorced spouse who changed a surname as a consequence of the marriage may submit a statement before the head of the registry office to revert back to the previous surname.<sup>31</sup>

### III DISADVANTAGES OF THE PRESENT REGULATION

The main disadvantage of Polish law is its significant level of formalism. Notably, there is no divorce by mutual consent. Even if the spouses are certain that there is an irretrievable and total breakdown of marriage, they must undertake time-consuming divorce proceedings before the court that will examine whether the prerequisites of divorce are fulfilled.<sup>32</sup> Simplified proceedings by mutual consent could therefore be useful for spouses, especially

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<sup>28</sup> Ibid, 421–423.

<sup>29</sup> Ibid, 424–429.

<sup>30</sup> See decision of the Supreme Court of 10 July 1998, I CKN 788/97, LEX no 34443.

<sup>31</sup> KRO, art 59.

<sup>32</sup> For example, in the Regional Court of Gdansk, one has to wait for the first session of the court at least 3 months, and additional court sessions are necessary in cases where the spouses have not made a common motion to omit a decision on fault. In more complicated cases,

if they do not have any children or are in a new relationship with newborn children. It could also spare them an unnecessary analysis of the difficult moments in their matrimonial life.

These formalities can also cause conflicts to develop and deepen between the spouses during the divorce proceedings, which can have further negative implications. Even if the spouses were ready for agreement in certain aspects, after a court appearance they may lose agreement and become adversarial. Therefore, the introduction of a less formal form of divorce proceedings could be a good alternative for spouses who are not interested in continuing their marriage and want to stop the escalation of negative emotions.

The second controversial issue is the maintenance obligation between ex-spouses. Notably, it is possible to start a lawsuit for maintenance even a few years after divorce. This may occur when spouses are not willing to start an independent life or when they act passively. The claimant spouse is not encouraged by the legal regulations to be active and make efforts to become independent, which results in an obstacle for the other spouse to begin a brand new life.

Another controversial matter concerning the maintenance obligation is the time-limit on the obligation of a guilty ex-spouse to pay a non-guilty ex-spouse. The only definite termination of the obligation is the marriage of the non-guilty ex-spouse. Given the increasing numbers of long-term informal relationships,<sup>33</sup> there is a risk that the non-guilty spouse will not be motivated – mainly due to economic reasons – to transform his or her permanent but informal relationship into a marriage. This could be unfair to the ex-spouse obliged to provide the maintenance, and it is therefore worth considering whether to permit the termination of a maintenance obligation upon the entitled ex-spouse's residence with a long-term romantic partner.<sup>34</sup> The courts could in such cases assess the facts and establish the character of the relationship existing between the non-guilty ex-spouse and his or her new life partner. If the relationship could be assessed as a stable and long-term one, the maintenance obligation should be declared as ceased.

Another disadvantage of the present regulation is the lack of gradation of the guilt of the spouses. This can be unfair for a spouse whose fault is minimal and whose behaviour was in fact a reaction to the behaviour of the other spouse. It seems necessary to give the judge the discretion to evaluate the level of the fault and to declare only one spouse as the guilty party in such exceptional cases, especially when there is a great difference in the individual faults of the spouses.

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where spouses do not have a common opinion on parental authority or contact with children, there are a few court sessions required and the ruling on divorce is made after a year or two, not counting the appellate proceedings.

<sup>33</sup> These relationships often create marriage-like bounds on the economic activities of the partners.

<sup>34</sup> Compare s 1579(2) of the German Civil Code (*Bürgerliches Gesetzbuch*).

Providing the judge with such discretion could eliminate some possibly unjust decisions which – apart from pure ethics – would affect the existence and scope of the duty to pay maintenance.

#### **IV ADVANTAGES OF THE PRESENT REGULATION**

One of the main advantages of the present divorce regulation is the protection against rushed and ill-considered decisions of spouses to divorce. Especially in the first few years of marriage, even minor quarrels can end with a petition for divorce. The formalities and the proceedings before a court provide the opportunity for spouses to reconsider their decision to divorce. Not only are the proceedings time-consuming, but also the judge endeavours to convince the spouses to reconcile at each stage of the proceedings. If the spouses have doubts regarding their divorce, this can prevent a quick ruling on divorce and make the spouses work on their relationship and improve the quality of their common life. However, a question arises whether the state should decide the durability of marriage. An argument for such a policy can be derived from the Constitution of the Republic of Poland. According to art 18, marriage shall be placed under the protection and care of the Republic of Poland.

Nonetheless, the prerequisites for divorce are rather flexible and judges have a large margin of discretion. There is no minimal time of marriage as a condition for starting divorce proceedings, so even spouses after a short period of marriage can file for divorce.<sup>35</sup> On the other hand, there are limitations on divorce that include the welfare of common minor children and the principles of social coexistence. These rules create the balance between the will of a spouse to be divorced and the need to protect the minor children of the spouses if the divorce is ethically unacceptable.

Another advantage of the present regulation is the division of the elements of the divorce ruling.<sup>36</sup> There is a clear indication which elements should be obligatory and included in the divorce ruling, and which ones are only optional and dependent on the spouses' initiative and the court decision.<sup>37</sup> Such an approach permits focus on the most important aspects of the divorce proceedings and reduces the risk of undue delay. It should be emphasised that the parties have the right to conduct separate proceedings regarding the issues raised but omitted in the divorce ruling, such as the division of common property or division of the common home.

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<sup>35</sup> The majority of divorces in Poland concerned marriages that lasted between 5 and 9 years. The next group of divorces was of those couples who were together between 10 and 14 years. See [www.stat.gov.pl/cps/rde/xbcr/gus/p\\_population\\_size\\_structure\\_31\\_12\\_2012.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/p_population_size_structure_31_12_2012.pdf) (accessed May 2013).

<sup>36</sup> Eg elements put into the ruling *ex officio* without any motion by the spouses, elements introduced to the ruling because of a motion by at least one spouse and elements introduced to the ruling on the joint motion of the spouses – see KRO, art 58.

<sup>37</sup> Ruling on the division of common property and the common home.



## V CONCLUSION

According to the Polish Constitution, marriage, being a union of a man and a woman, as well as family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.<sup>38</sup> This is a general duty, which is developed by different laws. The question is whether this constitutional protection means a strict law on divorce.

It is debatable whether strict divorce law actually protects family, especially today. For example, many children are born in extramarital relationships. If a married man without marital children has children from an extramarital relationship, the question is whether the law should enable him a quick divorce in order to protect his new family. In such situations, there would exist a conflict between the two protected institutions: marriage and family, which always should be solved ad casum.

The institution of marriage in most cases should be protected more than any informal relationship, even if it can be treated as a family under the Polish Constitution. The reasons are both juridical and ethical ones. The law should protect its own formal institutions to a greater extent than any informal relationships. In most cases, there should be no special preference for the relationship that is the reason for the divorce. In court practice, marital treason is treated as a break from moral rules and a manifestation of gross disloyalty to the other spouse. The spouse committing treason is in most cases found guilty of the breakdown of marriage.<sup>39</sup> It seems that the only exception that could justify a quick divorce in such a case would be a stable extramarital relationship with minor children as opposed to a marriage not having minor children.

It is important to note that the common trend in European countries is to permit divorce by mutual consent.<sup>40</sup> According to principle 1:4 of the Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses:<sup>41</sup>

‘divorce should be permitted upon basis of the spouses’ mutual consent. No period of factual separation should be required. Mutual consent is to be understood as an agreement between the spouses that their marriage should be dissolved. This agreement may be expressed either by a joint application of the spouses or by an application by one spouse with the acceptance of the other spouse.’

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<sup>38</sup> Article 18. The English translation of the Constitution of the Republic of Poland is available at [www.sejm.gov.pl/prawo/konst/angielski/kon1.htm](http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm) (accessed May 2013).

<sup>39</sup> See e.g. decision of the Supreme Court of 6 May 1997, I CKN 86/97.

<sup>40</sup> See Katharina Boele-Woelki, Frédérique Ferrand, Cristina González Beilfuss, Maarit Jänterä-Jareborg, Nigel Lowe, Dieter Martiny and Walter Pintens *Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses* (Antwerp: Intersentia 2004) 27–32.

<sup>41</sup> Principles prepared by the Commission of European Family Law available at <http://ceflonline.net/> (accessed May 2013).

Divorce by mutual consent could also be implemented in Polish law. If both spouses accept their decision on divorce, there may be no reason for the law to ignore their will. Nonetheless, even in such situations, it seems that limitations should remain on divorce, such as the welfare of common minor children. This is because the law should protect the weakest members of the family, and the needs and protection of children should be one of the most important values.

The protection of the welfare of children is the first and most important value for family law. It is based on the assumption that the child is a weaker person and therefore needs protection.<sup>42</sup> This is not mentioned explicitly in the Constitution, but it is suggested by a careful analysis of the Constitution, and particularly art 72(1), which states that the Republic of Poland shall ensure protection of the rights of the child and everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions that undermine their moral sense.

The current demographic statistics<sup>43</sup> suggest that Poland should develop a system of family protection. Regulations should be implemented that would encourage people to establish families and have more children. Otherwise, the negative demographic trends such as lower fertility, emigration and population ageing will create a population in which the number of people in the productive age group will be lower than in the non-productive age group. This will likely result in economic and social issues, and suggests that the institution of marriage is part of a system of not only family protection, but also demographic policy. These trends and factors should be viewed as one complex system.

Flexibility in divorce law, such as divorce by mutual consent, could also be particularly appropriate for married couples who do not have children. On the other hand, such flexibility should not be implemented in marriages with children, especially minor ones. The law should prefer stable, law-sanctioned relationships and promote values such as loyalty, maturity and responsibility.

These issues are also relevant to the institution of opposite-sex registered partnerships. The growing number of divorces is parallel to the growing number of long-term relationships. Although the institution of the registered partnership (sometimes called civil partnership) exists as a formal institution in certain European countries,<sup>44</sup> Polish law does not regulate or create such an institution despite giving certain rights to people living in such relationships.<sup>45</sup> There is a question of whether such an institution would be in accordance with

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<sup>42</sup> Tadeusz Smoczyński *Prawo rodzinne i opiekuńcze* (Warszawa: CH Beck, 2009) 18–19.

<sup>43</sup> As observed there is a growing number of divorces – see above n 2. The population projection for Poland 2008–2035 shows that the size of the population is going to decrease by about 5% until the year 2035. See [www.stat.gov.pl/cps/rde/xbcr/gus/L\\_progniza\\_ludnosci\\_na\\_lata2008\\_2035.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/L_progniza_ludnosci_na_lata2008_2035.pdf) (accessed May 2013).

<sup>44</sup> For example, in France and the Netherlands.

<sup>45</sup> Such rights regard the right to refuse to testify against a partner and a right to inherit the lease of a house.

the Polish Constitution, which protects the institution of marriage.<sup>46</sup> It seems that there should be additional legal rules implemented for people living in informal relationships, but it does not seem necessary to create an additional legal institution of 'quasi-marriage' or a kind of 'more flexible' marriage. Non-marital relationships are permitted and tolerated by the legislators but they do not enjoy special protections from the state. This model of non-regulation of cohabitation has proponents among representatives of the doctrine that considers the complex regulation of cohabitation unnecessary, claiming that only a few aspects of cohabitation should be regulated.<sup>47</sup>

Partnership between same-sex partners is another issue, but is beyond the scope of this chapter. It should only be mentioned that Polish law neither regulates nor recognises such relationships. In January 2013, significant public debates occurred regarding the introduction of same-sex relationships into Polish law. The Polish Sejm (the lower house of the legislature) rejected all drafts of such regulation for these couples after the first reading and, in the near future, this issue will not be regulated because the legislative process takes time.

The disadvantages of the present Polish divorce law, as summarised, show that it requires certain changes. However, the nature of the disadvantages also suggests that no revolution in the divorce law is required. Instead, the current divorce law is rather stable and relatively flexible. It also creates a high level of protection for family, although the current demographic trends in Poland may require implementation of some additional measures. Therefore, this issue should be the subject of a long-term policy plan of the Polish state.

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<sup>46</sup> See art 18 of the Polish Constitution.

<sup>47</sup> See Tadeusz Smyczyński 'Czy potrzebna jest regulacja prawna pożycia konkubenckiego (heteroseksualnego i homoseksualnego)?' in Piotr Kasprzyk (ed) *Prawo rodzinne w Polsce i w Europie* (Lublin: Towarzystwo Naukowe KUL, 2005) 461–467.

