

Kancelaria Adwokacka
Adwokat dr Piotr Sobański LL.M.
Plac Pocztowy 6/4
65-062 Zielona Góra
piotr.sobanski@adwokatura.pl
ORCID: 0000-0001-8303-1125

Divorce in Poland. Selected aspects

In the Polish legal system, divorce proceedings fall within the exclusive jurisdiction of the civil court; there is no legal basis for resolving a marriage through the agreement of the spouses or through administrative procedures.

Article 56 of the Polish Family and Guardianship Code outlines the circumstances under which a marriage can be terminated legally. Article 56 reads as follow:

§ 1. If there is a complete and permanent breakdown in the relationship between spouses, each spouse may request that the court dissolve the marriage through divorce.

§ 2. However, despite the complete and permanent breakdown of the relationship, divorce is not permissible if it would harm the well-being of the couple's minor children or if, for other reasons, granting a divorce would contradict the principles of social coexistence.

§ 3. Divorce is also not permissible if it is requested solely by the spouse at fault for the breakdown of the marriage, unless the other spouse consents to the divorce or the refusal of their consent in the given circumstances contradicts the principles of social coexistence.

The breakdown of marital life belongs to the category of legal concepts for which it must be assumed from the outset that a strict statutory definition is not possible. The task of defining this concept falls to case law and legal literature. All attempts to define this concept start with defining the concept of shared marital life.

Shared life, as understood in Article 23 of the Family and Guardianship Code, consists of the spiritual, physical, and economic bond between spouses, which is the purpose of marriage and enables the fulfillment of its basic tasks.

The positive condition for divorce is fulfilled when the breakdown of marital relations is permanent and complete.

Pursuant to the judgment of the Supreme Court of 4 February 1998, II CKN 582/97: "The only condition for the dissolution of a marriage through divorce, according to Article 56 § 1 of the Family and Guardianship Code, is a complete and permanent breakdown of the

marital relationship." In the Judgment of 5 May 1999, III CKN 863/98, the Supreme Court stated as follows: "The breakdown of the marriage between the parties is characterized by both durability and completeness."

The durability and completeness of the breakdown are positive conditions for divorce that are interrelated.

According to the judgment of the Supreme Court of 22 October 1999: "Common cohabitation within the meaning of Article 23 of the Code of Family and Guardianship Law consists of the spiritual, physical, and economic bond of spouses, which is the purpose of marriage and enables the realization of its fundamental tasks. The breakdown of cohabitation is complete only when all the above-mentioned bonds connecting spouses have been severed. The mentioned breakdown is a process extended in time, not a one-time event."

Also significant is the judgment of the Supreme Court which was issued in case II CKN 54/96. The Supreme Court stated as follows: "Generally, when assessing the permanence of the breakdown of the spouses' relationship, which is the decisive condition for divorce, the long-lasting nature of the breakdown is taken into account. However, the circumstances of the case may provide other justification for determining that the breakdown of the relationship is permanent and that there is no basis to expect the spouses to reconcile."

According to the judgment of the Supreme Court of 8 December 1998, I CKN 817/97: "The durability and completeness of the breakdown are positive conditions for divorce that are related to each other. The lack of completeness of the breakdown means it cannot be classified as lasting."

Divorce cannot be treated by spouses as a way to solve their marital problems. Therefore, the court cannot grant a divorce as long as it does not find the disappearance of marital relations showing characteristics of completeness and permanence.

However, a divorce judgment is not allowed - despite the existence of a complete and lasting breakdown - in three cases:

- 1) if the well-being of the common minor children would be harmed as a result of the divorce;
- 2) if, for other reasons, the divorce would contradict the principles of social coexistence;
- 3) if one of the spouses, who is exclusively at fault for the breakdown of the relationship, demands a divorce, while the other spouse does not consent to the divorce, and the refusal of consent does not contradict the principles of social coexistence.

These cases are referred to as negative divorce prerequisites.

According to the judgment of the Supreme Court of 20 February 2002, V CKN 757/00: "It cannot be assumed that the conduct of a spouse contributed to the permanent breakdown of the marital relationship before establishing that such a (permanent) breakdown exists."

Determining the causes of the breakdown of marital relations is necessary for determining which spouse is at fault for the breakdown of the marriage. According to the judgment of the Supreme Court of 4 October 2001, I CKN 871/00: "The determination of the spouse's fault in the breakdown of the marriage in the divorce judgment is not a consequence of a specific assessment of evidence, but a legal conclusion drawn from established facts, expressing at the same time a negative assessment of the spouse's conduct that led to the breakdown."

The inadmissibility of divorce when requested solely by the spouse at fault for the breakdown of the marriage (Article 56 § 3 of the Family and Guardianship Code) is possible only if the court determines that there is a breakdown of marital relations.

In the Judgment of 26 February 2002, I CKN 305/01, the Supreme Court stated as follows: "It is presumed that those exercising their rights do so in accordance with the principles of social coexistence. Refusing consent to divorce by the innocent spouse is their right, and therefore it is presumed that by exercising this right, they do so in accordance with the principles of social coexistence. Only the existence of exceptional circumstances can rebut this presumption." The burden of proof rests on the spouse solely guilty to demonstrate that the other spouse, by refusing consent to divorce, violates the principles of social coexistence, i.e., behaves in a way that, when applying an objective criterion, can be deemed morally reprehensible.

According to the judgment of the Supreme Court of 4 October 2001, I CKN 871/00: "The assessment of whether the spouse's refusal to consent to divorce constitutes an abuse of rights should also take into account the living conditions of both spouses resulting from the breakdown of the marital relationship." Pursuant to the judgment of the Supreme Court of 21 November 2002, III CKN 665/00: "Refusal to consent to divorce, which serves only the desire to assert dominance over the spouse seeking divorce and hinder their personal life (Article 56 § 3 of the Family and Guardianship Code), does not deserve approval."

Very significant is the judgment of the Supreme Court which was issued in case I CKN 569/98. The Supreme Court stated as follows: "It is inadmissible for granting a divorce to result in the sanctioning of particularly blameworthy conduct of the spouse solely responsible for the breakdown of the relationship". However, according to the judgment of the Supreme Court of 28 February 2002, III CKN 545/00: "The refusal to express consent to divorce should also be evaluated from the perspective of the social harm caused by

maintaining formal marital relationships that have no chance of functioning, while concurrently having extramarital relationships deserving legalization."

References:

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