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The role of the public policy clause in the Polish legal system on the example of cases concerning the conclusion and dissolution of marriage

Abstract: The article aims to demonstrate the role of the public policy clause in the Polish legal system in the context of matrimonial relations, with a particular emphasis on the institution of the conclusion and dissolution of marriage. As a part of the discussion, the analysis reconstructs the essence of the public policy clause, while demonstrating the most important principles of family law and conflict-of-law rules concerning matrimonial matters. The author examines the relationship between the public policy clause and family law by emphasising differences in legal systems amongst different nations and specifying the authorised and prohibited implementation of the public policy clause regarding marriage conclusion and dissolution. It is also pointed out that child marriage, polygamy, and divorce through unilateral declaration of will, cannot be reconciled with Polish public order; and attention is drawn to the inadmissibility of establishing restrictions on the freedom to marry on the basis of racial, religious and social criteria. The author's evaluation utilises case law, academic literature, and opinions from doctrinal representatives on this issue. The conclusion emphasises the significance of the public policy clause in preserving the consistency and uniformity of the Polish legal system as a tool to fight discrimination and gender inequality.

Keywords: public policy clause, conflict-of-law rules, international family law, family law, marriage, conclusion of marriage, dissolution of marriage

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Introducion

The International Private Law Act² became effective on 4th February 2011. While reviewing the IPL, it is noteworthy that the conflict-of-law rules outlined therein pertain not only to private law relations but also serve as guidepost indicating the required course of action for state judicial authorities and the administration.³ It is the IPL which is the definitive source for determining which State's law should form the basis for resolving a particular case.⁴

Amongst the other national regulations in the realm of private international law, the IPL undoubtedly merits the title of the most all-encompassing legislation, not solely due to its sheer volume, but also thanks to its provisions that bear a general character. This primarily applies to the provisions numbered 1 to 10 of the Act, which constitute principles relating to the entirety of national private international law provisions. However, amongst these general rules, Article 7 of the IPL states: "If applying foreign law would run contrary to the fundamental legal principles of the Republic of Poland, it shall not be applied".

The above-mentioned article comprises a public policy clause, which constitutes a perpetually and extensively used element of the conflict of laws system, aimed at safeguarding the fundamental principles of the national legal framework. Scientific studies on the public policy clause frequently make allusions to family law cases as instances of its application, specifically regarding the institution of marriage conclusion and dissolution.⁵ This is a matter touching upon sensitive topics, related to cultural, social, and political factors which, as is well-known, differ across countries around the globe. Therefore, the distinctions between the legal systems of countries in the realm of marriage laws

2 Hereinafter: IPL (Polish: Ustawa z dnia 4 lutego 2011 r. – Prawo prywatne międzynarodowe. Journal of Laws of 2011, no. 80, item 432).

3 Jerzy Poczobut, "Art. 1" in *Prawo prywatne międzynarodowe. Komentarz*, ed. J. Poczobut. Warszawa, 2017, LEX/el.

4 Maksymilian Pazdan, *Prawo prywatne międzynarodowe*. Warszawa, 2017, 23.

5 Ewa Kamarad, "Zastosowanie klauzuli porządku publicznego w sprawach dotyczących zawarcia małżeństwa – wybrane zagadnienia", *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* 10. 2012: 106.

are incontrovertible and perceptible even to an individual unacquainted with this field.

In light of the above, it is on the example of cases related to the institution of marriage that the importance of the public policy clause and its role in preventing institutions that conflict with the moral principles of the legal system from operating is exemplified. Therefore, the objective of this investigation is to examine the relationship between the public policy clause and the family law of Poland, while emphasising the disparities that arise in the legal frameworks of various countries and the extent to which the public policy clause applies to cases relating to the conclusion and dissolution of marriage.

Public Policy Clause – The Most Important Issues

The primary purpose of the public policy clause is to safeguard the legal system of a state from the detrimental and unacceptable effects of implementing foreign law, according to the legal order of the forum state (*lex fori*). This is done by excluding the provisions of foreign law designated by the conflict rule as applicable if the application would result in consequences that contradict public policy.⁶ Similarly, the clause may also be a basis for rejecting the recognition or enforcement of a foreign judgment if it would not be acceptable in the point of view of the relevant state's interests.⁷ In the Polish legal system, the public policy clause serves a dual objective, and it is possible to refer to it as both a conflict-of-laws clause and a procedural public policy clause.⁸ However, it is worth keeping in mind that the public policy clause is aimed at opposing foreign substantive law that claims to be the applicable law but never at foreign conflict-of-law rules.⁹

6 Witalis Ludwiczak, *Międzynarodowe prawo prywatne*. Warszawa, 1990, 74.

7 Małgorzata Gocek, "Podstawowe zagadnienia zastosowania klauzuli porządku publicznego w orzecznictwie Sądu Najwyższego", *Rejent*, no. 6. 2005: 57.

8 Ewa Przyśliwska, "Kolizyjna i procesowa klauzula porządku publicznego", *Metryka*, no. 1. 2017: 69.

9 Pazdan, 77.

Thus, Article 7 of the IPL serves as a “safety valve” against the consequences of using foreign law in a scenario that would violate the essential principles of the domestic legal system.¹⁰ The final determination of the aforementioned inconsistency is the responsibility of the court, which identifies and applies the appropriate law in a specific case. The concept of public policy is comprehensive, pliable, and simultaneously variable term in both space and time. M. Sośniak has observed that the public policy clause is as elusive as the atmosphere and that, to some, it eludes any attempt at doctrinal clarifications.¹¹ Furthermore, the inconsistency in question does not indicate non-compliance with any laws of the deciding jurisdiction, but rather conflicts with its most fundamental ones. Public policy, when understood in this manner, must always be viewed dynamically. Therefore, the analysis or effect of applying foreign law must be based on the fundamental principles of the legal order in effect at the time of the court decision.¹² However, the Polish doctrine maintains that the instrument in question should be used wisely, and courts may resort to it exceptionally, without exceeding the boundaries of essential needs.¹³

It is worth emphasising that a mere statement regarding the differing regulation of a given issue by foreign law is insufficient to invoke the public policy clause.¹⁴ This is because despite the differences in wording or formulation of provisions, the application of the foreign law may still result in equivalent or similar outcomes to that of Polish law. According to the Supreme Court’s ruling on 11 October 2013: “the mere disparity of foreign law, even far reaching or blatant, is inadequate grounds to reject its application or to deny its effectiveness or the enforceability of a judgement based on it, invoking the public policy

10 Aurelia Nowicka, “Art. 7” in *Prawo prywatne międzynarodowe. Komentarz*, ed. J. Poczobut. Warszawa, 2017, LEX/el.

11 Mieczysław Sośniak, *Klauzula porządku publicznego w prawie międzynarodowym prywatnym*. Warszawa, 1961, 77–80, 133.

12 Mieczysław Sośniak, and Bronisław Walaszek, *Międzynarodowe prawo prywatne. Część ogólna*. Kraków, 1965, 119.

13 Pazdan, 106.

14 Sośniak, and Walaszek, 114–115.

clause. What is required is a contradiction as an obvious, blatant incompatibility of the application of that law or the recognition of the effectiveness or enforceability of a foreign judgement with the fundamental principles of the legal order of the state applying the law or the state of recognition or enforcement.”¹⁵

Concerning the outcomes of the public policy clause application, they may be described considering both the legal status of the party involved in the relationship and the legal systems implicated.¹⁶

Regarding the parties’ perspective, the court’s invocation of the public policy clause and the simultaneous inapplicability of the relevant foreign law can have permissive as well as prohibitive effect. A permissive effect of the clause arises when excluding the application of foreign law results in an improvement of the party’s position compared to the application of the relevant provision of foreign law.¹⁷ The prohibitory effect arises when – as a result of not applying the foreign law – the party’s situation worsens, for example, due to the exclusion of provisions providing certain privileges for the party.¹⁸

The second approach, regarding the impact of the public policy clause’s application from the point of view of the legal systems involved, identifies the norms that can replace the excluded provision. In this regard, a differentiation is drawn between the negative effect of simply excluding the application of a foreign law provision and the positive effect of filling the resulting gap by substituting a corresponding foreign law provision other than the one excluded or a provision from its own legal system (*legis fori*).¹⁹

Thus, the application of a public policy clause does not necessarily result in the determination of the jurisdiction of its own law, leading to complete exclusion of the applicable law under the IPL. The doctrine unanimously accepts

15 Decision of the Supreme Court of the Republic of Poland of 11 October 2013, I CSK 697/12, LEX/el.

16 Katarzyna Bagan-Kurluta, *Prawo prywatne międzynarodowe*. Warszawa, 2021, 146–148.

17 Przyśliwska, 76.

18 Mieczysław Sośniak, “Skutki zastosowania klauzuli porządku publicznego w prawie międzynarodowym prywatnym”, *Studia Cywilistyczne*, no. 1. 1961: 196.

19 Nowicka, Art. 7.

that by invoking Article 7 of the IPL, the adjudicating court should contemplate the possibility of limiting the clause's effects to negative consequences. In the event when a satisfactory solution cannot be achieved through this approach, it is permissible to resort to Poland's own substantive law.

Principles of Family Law as a Part of Public Policy

In the light of the above, invoking of the public policy clause can only be justified when the application of foreign law would be inconsistent.²⁰ This raises the question of which principles of family law fall under public policy. Unfortunately, the Family and Guardianship Code²¹ does not offer a straightforward response to this question. This arises from the fact that the principles of family law belonging to the public policy have not been expressly stated in the provisions, and for this reason, they need to be reconstructed by referring to the *ratio legis* that guided the legislator when creating specific regulations concerning the institution of marriage.²² The legal doctrine sets out several principles of this kind, with particular focus on monogamy in marriage, the social value of marriage, spouse equality, marital stability, and freedom of marriage.

Initially, the assessment of the capacity of foreign nationals to acknowledge or enter into marriage from a different jurisdiction is required, through the lens of the principle of monogamy prevailing in Poland. The prohibition of entering into marriage by a person who is already in a marital relationship arises from Article 13 of the FGC. The impediment of bigamy itself is absolute in nature and represents one of the earliest impediments to marriage in Poland.²³

20 Kamarad, Zastosowanie klauzuli porządku publicznego w sprawach dotyczących zawarcia małżeństwa – wybrane zagadnienia, 109.

21 Hereinafter: FGC (Polish: Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy. Journal of Laws of 2021, no. 9, item 59).

22 Mieczysław Sośniak, Bronisław Walaszek, and Eustachy Wierzbowski, *Międzynarodowe prawo rodzinne*. Wrocław, Warszawa, Kraków, 1969, 32.

23 Anna Stawarska-Rippel, "Art. 13" in *Kodeks rodzinny i opiekuńczy. Komentarz*, eds. M. Frasz, and M. Habdas. Warszawa, 2021, LEX/el.

The principle of the social importance of marriage comprises necessary conditions for prospective spouses to meet, alongside with impediments to avoid in order for a marriage to be valid.²⁴ Within the Polish legal framework, there exist requirements detailing the potential age of each prospective spouse (Article 10 FGC), prohibiting close familial ties between them (Articles 14 and 15 FGC), and specifying illnesses and impairments considered as impediments to marriage (Article 12 FGC).

The principle expressed in Article 23 FGC, which ensures equality of rights and obligations for spouses, coincides with the marriage protection outlined in Articles 18 and 71 of the Constitution of the Republic of Poland.²⁵ The duties and conduct of spouses outlined in Article 23 of the FGC express the fundamental essence of the marriage model adopted by Polish law, according to which neither of the spouses holds the authority to act in a dominant or autonomous manner towards the other.

In my assessment, attention should be given to the principles of family law that, although not directly arising from any provision of the FGC, are pointed out by legal scholars in all studies regarding that matter²⁶ and have their origins in the Constitution of the Republic of Poland or binding international legal acts applicable to Poland. One of these principles is the permanence of marriage, which indirectly stems from the formality of entering into a marital union, the manner of regulating Polish family maintenance and inheritance law, and the definition of negative grounds for divorcing spouses.²⁷

Undoubtedly, a fundamental but implicitly expressed principle forming part of the public policy shall also be the right to enter into marriage, which

24 Jacek Ignaczewski, *Kodeks rodzinny i opiekuńczy. Komentarz*. Warszawa, 2010, 75–76.

25 Hereinafter: CRPD (Polish: Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. Journal of Laws of 1997, no. 78, item 483).

26 In this regard, the following have commented: Marek Andrzejewski, *Prawo rodzinne i opiekuńcze*. Warszawa, 2010, 96 et seq.; Jerzy Ignatowicz, and Mirosław Nazar, *Prawo rodzinne*. Warszawa, 2010, 85 and Tadeusz Smyczyński, *Prawo rodzinne i opiekuńcze*. Warszawa, 2009, 25–26.

27 Małgorzata Łączkowska, “Zasada trwałości małżeństwa w polskim prawie rodzinnym – aspekty materialne i procesowe”, *Studia Prawnoustrojowe* 24. 2014: 66–70.

the Polish law essentially grants to all individuals, regardless of their gender, race, religion, or social background. This emerges indirectly from Article 151 FGC, which amongst the grounds for nullifying marriage, identifies the statement of intent to marry being made under duress or in a jurisdiction that does not allow a conscious expression of free will. Moreover, this principle is reflected in Article 47 CRPD, which states that “everyone has the right to decide about their personal life”, including the decision to enter into marriage. It is worth emphasising that the principle of freedom of marriage has been frequently invoked in international instruments, such as Article 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms²⁸ or Article 9 of the Charter of Fundamental Rights,²⁹ both of which Poland has ratified.

Rules on Conflict of Laws Regarding the Conclusion and Dissolution of Marriages

Since marriage requires both material prerequisites, concerning the ability to marry, and formal prerequisites, related to the ability to conclude a marriage, separate conflict-of-law regulations have been enacted for both issues (Articles 48 and 49 of the IPL).³⁰ According to Article 48 of the IPL, the ability to conclude a marriage is determined by each party’s national law at the time of the marriage. Therefore, for a Polish citizen’s ability to enter into marriage (even if they are also a citizen of a foreign country – as stated in Article 2(1) of the Polish People’s Republic), Polish law will be decisive. However, if an individual intending to marry in Poland is a foreign national, the ability to enter into marriage is determined by their national law, which is the law of the country of which they are a citizen. On the other hand, the ability for an individual whose citizenship is uncertain or who is stateless to enter into marriage

28 Journal of Laws of 1993, no. 61, item 284.

29 Official Journal of the European Communities of 18 December 2000, C 364/1.

30 Filip Nowak, “Kolizyjnoprawna problematyka zawarcia małżeństwa”, *Metryka*, no. 1. 2019: 19–32.

in Poland is evaluated in accordance with the laws of the country where they have their place of residence. In the absence of it, the laws of the country of habitual residence shall apply.³¹

This is exemplified through the following illustration. If a Polish citizen marries a German citizen in Poland, their ability to marry will be evaluated according to Polish law for the Polish spouse and German law for the German spouse.³²

Additionally, the term “ability to conclude a marriage”, as mentioned in the aforementioned provision, refers to all the prerequisites that potential spouses must fulfil (e.g., attaining a specific age) and the disqualifying factors that neither party can meet (e.g., mental illness). In addition, legal capacity must be assessed separately for each of the prospective spouses according to their national law. In the course of this assessment, it must be determined – for each prospective spouse separately – whether he or she can enter into marriage with a specific other prospective spouse.³³

As for the form of marriage, Article 49 of the IPL states that it is primarily subject to the law of the country where it is formally concluded. Consequently, if a marriage is concluded in Poland, Polish law oversees the marriage’s form. Therefore, the principle of *legis loci celebrationis* expertise is applicable.³⁴ In contrast, if a marriage is conducted outside of Poland, it will suffice to abide by the formality prerequisites mandated by the respective native laws of the married couple or the customary law of their place of residence or habitual residence at the time of marriage conclusion. Nevertheless, the term “form of marriage”, as mentioned in Article 49 IPL, should be interpreted expansively. Among other things, this covers questions of how state authorities take part in receiving declarations of intent, the involvement of witnesses, the specific ways in which the prospective spouses declare their intent and the necessary documentation.

31 Krzysztof Pietrzykowski, “Art. 48” in *Prawo prywatne międzynarodowe. Komentarz*, ed. J. Poczobut. Warszawa, 2017, LEX/el.

32 Pazdan, 235.

33 Sośniak, Wąlaszek, and Wierzbowski, 13 et seq.

34 Pazdan, 237.

Article 54(1) and (2) of the IPL regulates the dissolution of marriage, stating that it will be governed by the domestic law of the couple at the time of the dissolution request. In the absence of a shared domestic law between spouses, the law of the state where both reside at present shall apply. However, if the spouses are not domiciled in the same state, then the law of the state where they last had their common habitual residence shall be applicable if one of them still resides in that state. Only in the absence of circumstances determining the competence of law as per the above regulations, does Polish law govern the process of marriage dissolution (Article 54, § 3 of the IPL).

The term “dissolution of marriage” utilised by the legislator is noteworthy. In the Polish legal system, under Article 56 § 1 FGC, “divorce” refers to a constitutive court verdict that leads to the dissolution of marriage, and this expression is similarly comprehended in many other legal systems. However, there are also systems that permit the jurisdiction of a state authority other than a court, or even a non-state authority operating solely under state authority, in this regard. Additionally, certain states authorise the dissolution of marriage through a unilateral or bilateral legal act performed by the spouses themselves, for instance, through repudiation in Islamic law.³⁵ Therefore, to draw attention to the fact that the conflict-of-law rule extends beyond divorce under Polish law to include other forms of marriage dissolution, the legislator defined the scope of this provision using the term “dissolution of marriage.”³⁶

The Permissive Direction of the Public Policy Clause in Matters Concerning Marriage

In cases concerning marriage, the permissive effect of the public policy clause occurs when the party, by invoking the clause, achieves more than they would have if the appropriate foreign law had been applied. The clause disregards any

³⁵ Mirosław Sadowski, “Rozwód według procedury *khula* w prawie egipskim”, *Acta Universitatis Wratislaviensis*, no. 3978. 2020: 502.

³⁶ Pazdan, 242.

restrictions and thus grants the foreigner, for instance, the capacity to marry. The permissive direction of the public policy clause is primarily associated with the principle of the freedom to marry, classified as one of the principles of family law public order. This principle is most commonly applied when a law, which is deemed applicable for assessing a foreign national's capacity to marry, imposes restrictions that violate the Polish public order, contrary to the principle outlined.³⁷

A restriction on the freedom to marry that validates the use of the public policy clause arises when the foreign national's domestic legislation prohibits marriage based on race, social status, nationality, or religion.³⁸

While legal systems that differentiate subjective rights based on social origin are now rare, they persist in some countries, such as the caste system in India.³⁹ Restrictions on marrying based on race are now relegated to history. If, however, a restriction pertains to religious criteria, an issue arises when the national law of the prospective spouse does not permit concluding a marriage with individuals of other religions or only allows marriage in a particular religious ceremony.⁴⁰ For example, according to Islamic law, a Muslim man is not permitted to marry a woman who is not Muslim, unless she is Jewish or Christian and considered as belonging to the "people of the Book". Similarly, a Muslim woman is prohibited from marrying a man who is not Muslim.⁴¹

Restrictions on marrying a foreign national that are present in some legal systems may be handled similarly, as cautiously indicated by the Supreme Court's resolution from the panel of seven judges dated 20th January 1983, reference number ref. III CZP 37/82 which states that "the prohibition on marriage with foreign nationals, as stated in the applicant's national law, does not

37 Kamarad, Zastosowanie klauzuli porządku publicznego w sprawach dotyczących zawarcia małżeństwa – wybrane zagadnienia, 112.

38 Sośniak, Walaszek, and Wierzbowski, 33.

39 Roman Tokarczyk, *Współczesne kultury prawne*. Warszawa, 2008, 218–219.

40 Kamarad, 113.

41 Mateusz Tubisz, "Prawne aspekty instytucji małżeństwa w islamie" in *Prawo małżeńskie i jego relacje z innymi gałęziami prawa*. Olsztyn, 2017, 115.

necessarily impede the court's exemption from submitting evidence of their capacity to marry under that law to the head of the registry office."⁴²

Additionally, it is worth noting that there exist other marriage institutions not recognized by Polish law that are nonetheless not in violation with the Polish public order. These include the "widow's interval", which prohibits women from marrying within a certain time after the end of their previous marriage, impediments to marriage of individuals who were ordained as priests or took religious vows in the past, and the requirement for parental or guardianship consent for marriage. There is no justification for regarding posthumous marriage, which is permitted in France only by virtue of Article 171 of the Code Civil (French Civil Code), as conflicting with the fundamental tenets of our legal system.⁴³

Direction Prohibiting the Public Policy Clause in Marriage Cases

The prohibiting impact of the public policy clause involves imposing a limitation which is not recognized in the foreign governing law, and this simply disadvantages one of the parties involved. If a foreign law provides a party with certain privileges or institutions detrimental to the public policy of Poland, it will be excluded from application.

Polygamy, recognized as legal in many Middle Eastern countries, some Asian countries, and in the majority of African countries, whether based on statutory law or customary law, is irreconcilable with the Polish public order.⁴⁴ Thus, if a Polish citizen intends to marry an Iranian who is already in another marriage, they will not be able to do so in Poland. Furthermore, if they decide

42 Mączyński, "Działanie klauzuli porządku publicznego w sprawach dotyczących zawarcia małżeństwa z cudzoziemcem" in *Proces i prawo. Rozprawy prawnicze. Księga pamiątkowa ku czci profesora Jerzego Jodłowskiego*, ed. E. Łętowska. Wrocław, Warszawa, Kraków, Gdańsk, Łódź, 1989, 161 et seq.

43 Pazdan, 240.

44 Kamrad, 114–115.

to marry in a state that permits polygamy, the foreign marriage certificate will not be transcribed. On the other hand, there is no basis for refusing to authorise the marriage if the foreigner's national law allows polygamy, provided that the person is unmarried.

The topic of "child marriage" and its alignment with the principle of the social value of marriage, which is part of the fundamental principles catalogue, is extensively debated in the doctrine. Defining the prerequisites for the prospective spouse and identifying impediments to ensure a successful marriage serve as means to uphold this principle. In the present day, the majority of European nations establish a minimum age for an individual to attain entitlement for marriage. Furthermore, it is necessary to establish a minimum age for prospective spouses due to the New York Convention of 10 December 1962 on the consent to marry, the lowest age for marriage and the registration of marriages, which has been adopted by Poland. In accordance with Article 2 of the Convention "States parties to the present Convention shall take legislative action to specify a minimum age for marriage". In accordance with Polish law, Article 10 of FGC sets the minimum age limit for marriage at 18 years, with exceptions allowing for a lower limit of 16 years for women. The mere difference in defining the minimum age for marriage in the legal systems of the prospective spouse's state of origin and the state in which the marriage is to be concluded, is not sufficient to invoke the public policy clause.⁴⁵ There is indeed scientific evidence that physical and mental maturity for marriage varies according to race and latitude.⁴⁶ Intervention of the public order clause will be justified when the application of foreign law would result in the conclusion of a marriage by a person who, according to Polish law, has not reached the minimum age required to engage in intimate relationships, like a person under 15 years of age. In addition, if the foreign law does not establish any age limits for the future spouses, which would enable the marriage of children, Article 7

⁴⁵ Kamarad, 116.

⁴⁶ Ewa Wiśniowska, *Znaczenie wieku przy zawarciu małżeństwa według kodeksu rodzinnego i opiekuńczego*. Wrocław, 1986, 42–43.

of the IPL will be invoked.⁴⁷ However, “child marriage” violates not only the principle of the social importance of marriage but also the principle of freedom to marry, which grants each person the right to decide whether to enter into marriage, including the choice of the spouse.

Controversies have also been stirring for years regarding same-sex marriages and their permissibility under Polish law. In making determinations in this matter, one must consider Article 1 FGC and Article 18 CRPD. These provisions specifically define marriage as a union between a woman and a man, thereby establishing the principle that only heterosexual unions are to be recognized as marriages in Poland.⁴⁸ The necessity of the prospective spouses being heterosexual is undoubtedly a substantive prerequisite of marriage. The permissibility, according to the domestic law of only one of the parties, of the absence of a gender distinction can be treated either as a kind of mutual hindrance or, perhaps more appropriately, can potentially trigger the application of a public policy provision to the party whose domestic law does not mandate a gender distinction.⁴⁹ Undoubtedly, both the Constitution of the Republic of Poland and the Family and Guardianship Code present obstacles to the introduction of same-sex marriage into Polish law. Given this, the intervention of the public policy clause, in the event of applying foreign substantive rules concerning such unions, is at least highly probable.

The public policy clause may not only apply to cases involving marriage, but also to the cases regarding its dissolution. Dissolution of marriage through the husband’s unilateral declaration (known as dissolution of marriage by rejection – “talaq”) is recognized by the laws of Muslim countries, but widely viewed as incompatible with the legal culture of the West.⁵⁰ The

47 Ewa Kamarad, “Kolizyjnoprawne aspekty małżeństw dzieci”, *Problemy Prawa Prywatnego Międzynarodowego* 24. 2019: 77–80.

48 Judgment of the Supreme Administrative Court of the Republic of Poland of 25 February 2020, II OSK 1059/18, LEX no. 3022170.

49 Mateusz Pilich, “Związki quasi-małżeńskie w polskim prawie prywatnym międzynarodowym”, *Państwo i Prawo*, no. 2. 2011: 84–94.

50 Sadowski, 502.

use of the “*talaq*” method of marriage dissolution is contrary to the principle of equal rights for spouses, as it can only be invoked by the man, thus discriminating against women. Essentially, “*talaq*” is a unilateral decision made predominantly at the husband’s discretion. The woman has either no right at all to resist such a divorce or her rights are severely limited. Furthermore, the unilateral and unrestricted nature of divorce by rejection and its extrajudicial nature are also questionable.

The sole published judgement of a Polish court addressing the issue of recognising a one-sided divorce carried out under Islamic law within Poland pertains to the court decision delivered by the Court of Appeal in Katowice on the 20th of August 2009.⁵¹ Based on the facts of the case, a Moroccan-Polish individual has submitted an application for the recognition of a notarized certificate of unilateral divorce issued by a notary of the Office of Personal Affairs Notarial Bureau in Egypt, confirming the dissolution of his marriage to a French citizen, who has also been a citizen of Poland since 2007. The Court of Appeal pointed out three factors that, in its opinion, justify the refusal to recognize the divorce certificate presented by the man in Poland. The most relevant factor, considering the deliberations conducted here, was the inconsistency of its recognition with the public policy clause. The court unequivocally stated that the dissolution of marriage through the unilateral declaration of the husband without consideration of the wife’s position contradicts the principles of the permanence of marriage and the equality of spouses, protected constitutionally in Article 18 CRPD. The “*talaq*” divorce, as a method exclusively available to men, is offensive due to its discriminatory nature, and the ease of its implementation undermines the principle of the permanence of marriage.⁵²

51 Maciej Zachariasiewicz, “Odmowa uznania w Polsce rozvodu *talaq* na tle prawno-porównawczym”, *Problemy Prawa Prywatnego Międzynarodowego* 27. 2020: 21–30.

52 Mieczysław Sośniak, “Zasada równorzędności płci w zakresie zawarcia, unieważnienia i rozwiązania małżeństwa w socjalistycznych systemach prawa międzynarodowego prywatnego ze szczególnym uwzględnieniem prawa polskiego”, *Studia Prawnicze*, no. 3(57). 1978: 22 et seq.

Summary

The public policy clause is, in my opinion, a unique and an essential conflict rule that protects the coherence and uniformity of the Polish legal system. Its primary objective is to prohibit institutions that fundamentally oppose the axiological principles of our legal system from operating within the Polish legal framework. The public policy clause is an all-encompassing term, and its normative content is to be determined by the adjudicating authority. Ascertaining what constitutes a breach of public policy is solely at the discretion of the court, and therefore the implementation of the clause is never automatic or guaranteed. It is not feasible to create or organise a directory of public policy principles. Moreover, it would not be advisable, considering the changes in society. One should acknowledge that the meaning of a clause is influenced by the time and place, which supports this argument.

The connection between the public policy clause and international family law has always been specifically close. It is the interconnection of this matter with cultural, social, sociological, and political factors that influences the significant differences in the legal systems of various countries within the marriage law field. Moreover, legal systems and underlying principles contain contradictions so significant as to warrant the application of Article 7 of the IPL. Nevertheless, it should be noted that the permissibility of safeguarding one's own public order constitutes an exception to the principle of equal treatment of legal systems of all states. The clause is invoked exceptionally, only in specific circumstances, where the intention is to safeguard principles that are indisputably recognised as public policy principles.

To summarise, based on my own conclusions, I consider it legitimate to invoke the public policy clause in situations that impede marriages that contravene the fundamental principles of family law. Child marriages under the age of 15 or polygamous marriages cannot meet the necessary requirements. Moreover, it would be inconsistent with the legal framework in Poland to acknowledge unilateral 'talaq' divorce, particularly since it constitutes a clear

instance of discrimination towards women. I can acknowledge the beneficial effects of the enabling operation of the clause, as this allows for the disregard of harmful and discriminatory limitations, ultimately granting foreigners the ability to marry someone of a different religion or nationality.

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