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THE PROPER UNDERSTANDING OF THE PRINCIPLE OF EQUAL RIGHTS OF HUSBAND AND WIFE*

Abstract

Article 23 sentence 1 of the Polish Family and Guardianship Code (the FGC) of 1964 emphasises that spouses have equal rights and obligations in marriage. This regulation is commonly understood as establishing the principle of equality between a wife and a husband in Polish family law. That principle has its foundations in international law, including the Universal Declaration of Human Rights, which provides that men and women are entitled to equal rights as to marriage, during marriage, and at its dissolution. After the enactment of the Polish Constitution of 1997, the principle of equality between a husband and a wife derives directly from Article 32(1) and Article 33(1). It constitutes a basic element of the institutional guarantee of marriage which cannot be altered by ordinary legislation.

The aim of this article is to discuss how the principle of equality of spouses ought to be understood and correctly applied under Polish family law. It should also be considered whether Polish law on marriage provides exceptions from the rule of equality between spouses and, if so, whether they are justified. Furthermore, it can be argued that Article 23 sentence 1 of the Family and Guardianship Code stipulates not only the fundamental principle of Polish law, but also grants each of the spouses a subjective right to be treated

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equally in the relationship by the other person. It should be analysed what exactly this right entails. There is no doubt that one spouse has neither more rights nor responsibilities in the marriage than the other. However, a properly understood right to equal treatment should also mean that one spouse cannot demand the other to perform specific functions and roles.

KEYWORDS

equality of spouses, rights and obligations of spouses, family law, matrimonial law, minimum age for marriage, child's surname

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równouprawnienie małżonków, prawa i obowiązki małżonków, prawo rodzinne, prawo małżeńskie, minimalny wiek na zawarcie małżeństwa, nazwisko dziecka

INTRODUCTION

Marriage equality has been a significant issue and an object of interdisciplinary studies. It might be analysed from a great number of perspectives, including social, philosophical, religious, economic and legal ones. Nonetheless, this complex issue continues to attract attention from the point of view of the doctrine and practice of family law. In all countries that can be identified as grounded in the Western culture, the equality of spouses has been in force already for some time. It is recognised as the “common core” of marriage laws in Europe.¹ However, each legal system provides narrower or wider exceptions to this rule. Furthermore, applicable social norms and domestic practices do not always coincide with the ideals enshrined in the written law, which in turn leads to a question of whether this issue should be subject to any additional regulations or if perhaps it might be sufficient to interpret the existing legal provisions differently.

The aim of the article is to familiarise the foreign reader with the principle of equality of spouses under Polish family law. The article examines how this principle should be understood and applied correctly. The exceptions to this rule and the consequences of its breach also warrant attention. Not all aspects of this issue have been exhaustively analysed in the Polish legal literature so far. In particular, it is worth considering whether the equality of spouses should be treated only as

¹ J.M. Scherpe, *The Present and Future of European Family Law. European Family Law. Volume IV*, Cheltenham 2016, p. 5, 57-58. See also R. Gaffney-Rhys, *The International Concept of Marriage*, “International Family Law” 2005, Vol. 2, pp. 94-95.

the legal principle implemented by the legislator in individual provisions making up the matrimonial law or whether it also provides a spouse with a mutual right and obligation to be treated equally in the relationship by the other party. And if so, it ought to be examined what this right and obligation exactly entails. However, any more detailed analysis of this complex issue should be preceded by an overview of its international and constitutional framework.

THE INTERNATIONAL AND CONSTITUTIONAL FRAMEWORK

The principle of equal rights of wife and husband has its foundations in international law. Most international instruments that contain references to marriage provide that spouses should be treated equally.² The Universal Declaration of Human Rights (“UDHR”), proclaimed by the United Nations General Assembly (“UN”) on 10 December 1948,³ played an important role in promoting this principle. The Declaration was drafted by representatives of different legal and cultural backgrounds from all regions of the world. It set universal standards for marriage and inspired many jurisdictions to change their law on marriage. Article 16(1) of the UDHR clearly states that men and women have not only the right to marry and to found a family, but also “they are entitled to equal rights as to marriage, during marriage and at its dissolution”. In 1966, this was confirmed by the UN International Covenant on Civil and Political Rights (“ICCPR”).⁴ Its Article 23(4) imposed on the state parties to the ICCPR the obligation “to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”.

In Europe, a very similar regulation was provided in 1984 by Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”).⁵ Article 5 of that Protocol is entitled “Equality between Spouses”. It states that spouses should enjoy equality of rights and responsibilities of a private law nature between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This regulation does not

² R. Gaffney-Rhys, *supra* note 1, pp. 94-95.

³ Adopted in Paris by the UN General Assembly resolution 217A. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 28 March 2023).

⁴ Adopted in New York by the UN General Assembly resolution 2200A (XXI) of 16 December 1966. It came into force in Poland on 18 June 1977 (Polish Journal of Laws of 1977, No. 38, item 167). Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf> (accessed 28 March 2023).

⁵ This Protocol was adopted on 22 November 1984 in Strasbourg (European Treaty Series – No. 117). It came into force in Poland on 1 March 2003 (Polish Journal of Laws from 2003, No. 42, item 364). Available at: <https://rm.coe.int/168007a082> (accessed 28 March 2023).

prevent states parties to the Protocol from taking such measures as necessary in the interests of children. It is also worth noting that Article 23 of the Charter of Fundamental Rights of the European Union (“EU”)⁶ leaves no doubt that “equality between women and men must be ensured in all areas, including employment, work and pay”. This includes the law on marriage.

Special attention should be paid to the UN Convention on Elimination of All Forms of Discrimination Against Women (“CEDAW”) of 18 December 1979.⁷ Article 16(1) of that Convention obliges state parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”. In particular, the State Parties should ensure that women and men, based on equality, have the same right to enter into marriage and the same rights and responsibilities during marriage and at its dissolution. It has been rightly noticed in the literature on this matter that, unlike many other international instruments, this Convention actually lists the matters in relation to which women are to have the same rights as men and includes relations with children and property.⁸ Accordingly, in § 8 of the General Comment No. 19 adopted by the UN Human Rights Committee on 27 July 1990 concerning Article 23 of the ICCPR,⁹ it was emphasised that equality between spouses “extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets”. Nevertheless, the above-mentioned international law instruments primarily address their state parties and do not expressly grant rights or impose any obligations on the parties to the marriage in their mutual relations.

The constitutional framework of the discussed issue must include Article 18 of the Polish Constitution of 1997.¹⁰ It states that “marriage, being a union of a man and a woman, as well as the family, motherhood, and parenthood, shall be placed under the protection and care of the Republic of Poland”.¹¹ This regulation sets out the goals and tasks of public authorities obligated to protect and care for marriage as a union of a woman and a man.¹² First and foremost, it includes the

⁶ EU Official Journal C 326, 26 October 2012, pp. 391–407. It was proclaimed on 7 December 2000 by the European Parliament, the Council of Ministers and the European Commission. Available at: https://eur-lex.europa.eu/eli/treaty/char_2012/oj (accessed 28 March 2023).

⁷ Adopted in New York by the UN General Assembly. It came into force in Poland on 3 September 1981 (Polish Journal of Laws of 1982, No. 10, item 71). Available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> (accessed 28 March 2023).

⁸ R. Gaffney-Rhys, *supra* note 1, p. 94.

⁹ Available at: https://ccprcentre.org/page/view/general_comments/27789 (accessed 28 March 2023).

¹⁰ The Constitution of the Republic of Poland of 2.4.1997 (Polish Journal of Laws 1997, No. 78, item 483, as amended).

¹¹ The English translation of the Polish Constitution is available at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (accessed 28 March 2023).

¹² See, e.g., judgments of the Polish Constitutional Tribunal of 11 May 2011, Case ref. no. SK 11/09 (OTK-A [Case law of the Constitutional Tribunal, Series A] of 2011, No. 4, item 32), para

obligation to form the institution of marriage in the legal system, which constitutes the so-called institutional guarantee of marriage.¹³

It can certainly be inferred from both, the Polish Constitution and international law¹⁴ that a marriage should be a relationship freely entered into with a chosen person¹⁵ and ought to be based on the principle of equality between men and women.¹⁶ Article 33(1) of the Constitution points out that men and women have equal rights in family, political, social, and economic life, which in turn results in the principle of equal rights of a wife and a husband constituting a basic element of the institutional guarantee of marriage. It cannot be altered by ordinary legislation. It is also worth bearing in mind that nowadays when most of the EU and the Council of Europe member states allow same-sex couples to enter into marriage or register civil partnerships, in these countries the principle of equal rights is applied to the parties of a formal relationship regardless of their sex (gender).¹⁷ However, this is not the case under Polish law where marriage may only be contracted by people of different sexes,¹⁸ and no other adult relationships have been institutionalised.¹⁹

III.3.4, and of 3 December 2013, Case ref. no. P 40/12 (OTK-A of 2013, No. 9, item 133), para III.10.1. See also L. Garlicki, (in:) L. Garlicki, M. Zubik (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz, Tom I*, Warszawa 2016, p. 491, 504-505.

¹³ See, e.g., Z. Radwański, *Konstytucyjna ochrona małżeństwa, macierzyństwa i rodziny*, (in:) S. Wójcik (ed.), *Prace cywilistyczne*, Warszawa 1990, p. 240; J. Pawliczak, *Zarejestrowany związek partnerski a małżeństwo*, Warszawa 2014, pp. 338-340; W. Borysiak, (in:) M. Safjan, L. Bosek (eds.), *Konstytucja RP. Tom I. Komentarz do Art. 1–86*, Warszawa 2016, p. 466.

¹⁴ R. Gaffney-Rhys, *supra* note 1, p. 97.

¹⁵ See Articles 30, 31 and 47 of the Polish Constitution.

¹⁶ See Articles 32(1) and 33(1) of the Polish Constitution. See also the judgment of the Polish Constitutional Tribunal of 25 July 2013, Case ref. no. P 56/11 (OTK-A from 2013, No. 6, item 85), para III.5.2.1 and W. Borysiak, *supra* note 13, pp. 480-481.

¹⁷ F. Banda, J. Eekelaar, *International Conceptions of the Family*, "International & Comparative Law Quarterly" 2017, Vol. 4, p. 838; J. Pawliczak, *supra* note 13, pp. 316–317. In some jurisdictions differences in regulation of rights of registered partners in comparison to the rights of spouses are the subject of heated debates. See H. Fenwick, A. Hayward, *Rejecting asymmetry of access to formal relationship statuses for same and different-sex couples at Strasbourg and domestically*, "European Human Rights Law Review" 2017, Vol. 6, pp. 555-563; R. Gaffney-Rhys, *Same-sex marriage but not mixed-sex partnerships: should the Civil Partnership Act 2004 be extended to opposite sex couples?*, "Child and Family Law Quarterly" 2014, Vol. 2, pp. 179-191.

¹⁸ See Article 1(1)-(2) of the Act of 25 February 1964 – the Family and Guardianship Code ("FGC"), Polish Journal of Laws 2020, item 1359, as amended. See also, e.g., the judgment of the Polish Constitutional Tribunal of 11 May 2005, Case ref. no. K 18/04 (OTK-A of 2015, No. 5, item 49), para III.16.6, and the judgment of the Polish Supreme Administrative Court of 28 February 2018, Case ref. no. II OSK 1112/16 (available in Polish at: <https://orzeczenia.nsa.gov.pl/doc/8A-E25DE4B1>, accessed 28 March 2023).

¹⁹ For more, see in English: A. Bodnar, A. Śledzińska-Simon, *Between Recognition and Homophobia: Same-Sex Couples in Eastern Europe*, (in:) D. Gallo et al. (eds.), *Same-Sex Couples before National, Supranational and International Jurisdictions*, Berlin 2014, pp. 211-247; B. Ba-

THE CODIFICATION AND MEANING OF THE PRINCIPLE OF EQUALITY UNDER POLISH FAMILY LAW

The principle of equality of spouses was adopted by the Polish family law before the proclamation of the UDHR and many years before the adoption of the present Constitution. It also happened in Poland earlier than in many other European countries.²⁰ After Poland regained independence in 1918 and in spite of the advanced legislative works, the Parliament did not manage to unify and codify family law before the outbreak of the Second World War.²¹ After the war, four decrees were adopted that made up the Polish family law.²² Two of them were focused on marriage and treated the spouses equally. The Decree of 25 September 1945 on the Matrimonial Law²³ and the Decree of 29 May 1946 on the Matrimonial Property Law²⁴ did not, as a rule, distinguish the situation of spouses based on their sex.²⁵ These acts used equivalents of English words “spouses” or “a spouse”. However, the principle of equality of spouses was clearly expressed for the first time in a separate legal provision in the Family Code of 27 June 1950.²⁶ Its Article 14 sentence 1 stated that: “husband and wife have equal rights and obligations in marriage”. The remaining provisions of that Code also followed this principle.²⁷ Article 14 sentence 1 of the Family Code was transposed almost verbatim into Article 23 sentence 1 of the Family and Guardianship Code (“FGC”) of

naskiewicz, *The New Wave of Interest in Marriage in Constitutional Law: Reflections on the Central European Experience*, Warszawa 2016, pp. 38-51.

²⁰ See C. Sörgjerd, *Marriage in a European Perspective*, (in:) J. M. Scherpe (ed.), *European Family Law. Volume III. Family Law in a European Perspective*, Cheltenham 2016, pp. 8-12; J.S. Piąkowski, (in:) J.S. Piąkowski (ed.), *System prawa rodzinnego i opiekuńczego*, Warszawa 1985, pp. 220-222.

²¹ See P. Fiedorczyk, *Polish Matrimonial Law 1918-1939: Regulations, Attempts to unify and codify*, (in:) M. Löhnig (ed.), *Kulturkampf um die Ehe: Reform des europäischen Eherechts nach dem Grossen Krieg*, Tübingen 2021, pp. 147-165.

²² For more, see P. Fiedorczyk, *Unifikacja i kodyfikacja prawa rodzinnego w Polsce (1945-1964)*, Białystok 2014, pp. 39-67.

²³ Polish Journal of Laws of 1945, No. 48, item 270. The main exception was provided by Article 17 of the Decree. It established the rule that the wife should assume the husband's surname after the marriage.

²⁴ Polish Journal of Laws of 1946, No. 31, item 196.

²⁵ See S. Szer, *Prawo rodzinne*, Warszawa 1966, p. 77; T. Smoczyński, (in:) T. Smoczyński (ed.), *System Prawa Prywatnego. Tom II. Prawo rodzinne i opiekuńcze*, Warszawa 2014, p. 216.

²⁶ Polish Journal of Laws of 1950, No. 34, item 308. This Code repealed four decrees previously regulating the family law.

²⁷ Once again the main exception was established by the regulation concerning the wife's surname. Article 16 of that Code provided that: “The wife assumes the surname of her husband. However, she may keep the surname she had before entering into marriage, adding to it the surname of her husband, if she makes a relevant declaration in the marriage certificate”.

25 February 1965 currently in effect. From the very beginning to date the article specifies that “spouses have equal rights and obligations in marriage”.

Article 23 sentence 1 of the FGC is most often understood as establishing the main principle of Polish matrimonial law.²⁸ All provisions relating to marriage should be interpreted and applied in the context of this principle.²⁹ This understanding of the function of Article 23 was confirmed in the case law of the Polish Supreme Court. In the resolution of the Full Bench of the Civil Division of the Supreme Court of 9 June 1976³⁰ it was emphasised that “equality of spouses is one of the basic tenets of Polish family law and constitutes an element of a greater problem of equalising the social position and rights of women and men”. The Supreme Court noted in the same resolution that “the case law of lower courts, as a rule, does not show any fluctuations or failures in this area”. Even earlier, in 1966, the Polish literature on the subject emphasised that the principle of equal rights and obligations of spouses allows for respecting the individuality (autonomy) of both spouses.³¹ Moreover, the equality of spouses is recognised as one of the fundamental principles of the Polish public order. The Court of Appeal in Katowice in the judgment of 20 August 2009³² ruled that it would be contrary to this principle to recognise in Poland the divorce certificate registered in Egypt according to the religious law as it was issued on the basis of a unilateral declaration of will of one of the spouses and without the presence and taking into account the position of the other spouse.

Article 23 sentence 1 is included within the provisions of the Family and Guardianship Code on mutual rights and obligations of spouses during the marriage.³³ However, there is no doubt that the principle of equality applies to all personal and property relations between spouses, including those related to entering into marriage, matrimonial property regimes, divorce, financial settlement and support after marriage. The principle of equality of spouses is implemented by regulations of the FGC which grant them specific rights and impose obligations.³⁴ For instance, in light of Article 24 of the FGC, spouses decide jointly on all

²⁸ See, e.g. S. Breyer, S. Gross, (in:) B. Dobrzański, J. Ignatowicz (eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 1975, p. 75; W. Borysiak, (in:) J. Wierciński (ed.), *Kodeks rodziny i opiekuńczy. Komentarz*, Warszawa 2014, p. 221; J. Pawliczak, (in:) K. Osajda (ed.), *Komentarze Prawa Prywatnego. Tom V. Kodeks rodzinny i opiekuńczy. Komentarz. Przepisy wprowadzające KRO*, Warszawa 2017, pp. 205-206.

²⁹ W. Borysiak, *supra* note 28, p. 221.

³⁰ Case ref. no. III CZP 46/75, OSNCP (Rulings of the Supreme Court, Civil Chamber, Chamber of Labour and Social Insurance) 1976, No. 9, item 184.

³¹ See S. Szer, *supra* note 25, p. 77.

³² Case ref. no. I ACa 410/09, OSA/Kat. (Case law of Appellate Courts / Katowice) of 2009, No. 4, item 6.

³³ This regulation is included in Title I (“Marriage”) of the FGC and opens its Section II entitled “Rights and obligations of spouses”.

³⁴ For more, see e.g. Z. Radwański, *Uwagi ogólne o zasadzie równości płci w świetle prawa polskiego*, “Studia Prawnicze” 1978, Vol. 3, pp. 10-11.

important issues regarding their family. Consequently, one spouse cannot impose his or her will on the other in these matters. According to Article 25 § 3 of the FGC, if no declaration is made about the surname of a spouse while entering into the marriage, he or she retains his or her surname after concluding the marriage. The rule stipulating that in the event of no declaration, the wife shall assume her husband's surname was abolished by the Act of 24 July 1998.³⁵ Furthermore, Article 27 sentence 2 of the FGC points out that personal efforts to raise children and work in the common household are considered as fulfilling the obligation to support the needs of the family. This applies equally to the efforts of the wife and the husband. Moreover, Article 43 § 1 of the FGC establishes the rule that both spouses have an equal share in common matrimonial property.

Under Polish law, the legal consequences of entering into marriage are the same for the husband and the wife in terms of their mutual relations, their relations with their children and with any third parties.³⁶ The Polish family law, in referring to spouses and granting them rights, does not distinguish their gender. It uses the equivalents of the English words “spouses” and “a spouse”. While analysing this problem, it should also be assessed whether Polish law on marriage provides exceptions to that rule and if so, whether they are justified. It might be surprising to find that, save for the provisions on determining the parentage of a child,³⁷ there are only two regulations of the FGC that treat men and women differently. Both of these exceptions seem, at least at first sight, to be established in favour of a wife.

THE MINIMUM AGE FOR MARRIAGE

The first regulation of the FGC which treats women and men differently to some extent relates to the minimum legal age to enter into marriage. Article 10 § 1 of the FGC provides that one should be 18 years or older to enter into marriage.³⁸ However, the guardianship court may allow to marry a woman who has

³⁵ Polish Journal of Laws of 1998, No. 117, item 757.

³⁶ T. Smyczyński, *supra* note 25, p. 217.

³⁷ Articles 61⁹ – 86 of the FGC. Under Polish law, a traditional (different sex) model of parentage is recognised. The child is to only have a mother (a woman who gave birth to the child) and a father (as a rule, a man genetically related to a child). Other models of parentage, including those established abroad according to any foreign law, are not recognised by courts – see the resolution of the Polish Supreme Administrative Court (issued in the panel of 7 judges) of 2 December 2019, Case ref. no. II OPS 1/19 (available in Polish at: <https://orzeczenia.nsa.gov.pl/doc/0CB4DBF3D4>, accessed 28 March 2023).

³⁸ Article 10 § 1 of the FGC has received the current wording in accordance with the Act of 24 July 1998 (Polish Journal of Laws from 1998, No. 117, item 757). Originally, the FGC provided for a rule that a man must be 21 years old and a woman 18 years of age to enter into marriage.

reached sixteen years of age. This is possible only for valid reasons if the circumstances suggest that the conclusion of the marriage will serve for the welfare of the established family. On the other hand, a man of this age cannot validly enter into a marriage.

This regulation is widely criticised for two reasons. Firstly, from men's perspective, it determines a different minimum legal age for marriage based on the sex of a spouse-to-be without any sufficiently valid reason.³⁹ There are no conclusions of any modern legal or social research which would show that entering into marriage by a 16 or 17-year-old woman may be beneficial to the established family whereas entering into marriage by a man of the same age is never beneficial.⁴⁰ Secondly, said regulation has been criticised by some scholars and feminist organizations due to the manner of its application. In practice, this exception is evoked almost only by teenage pregnant women or those who gave birth to a child.⁴¹ The results of the examination of court case files indicate that in these situations courts in the vast majority of cases allow applicants to marry without carrying out a detailed examination of the case.⁴² Meanwhile, pregnant underage women often apply to the court under pressure from a traditional family and there is a greater risk that a marriage so contracted may end in divorce.⁴³ Moreover, an underage pregnant woman may be interested in contracting the marriage in order to be treated as an adult⁴⁴ and consequently, have parental responsibility over the

³⁹ See K. Pietrzykowski, (in:) K. Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2021, p. 201, who points out that in this respect Article 10 § 1 of the FGC is inconsistent with Article 33(2) of the Polish Constitution. Cf J. Gajda, (in:) T. Smoczyński (ed.), *System Prawa Prywatnego. Tom 11. Prawo rodzinne i opiekuńcze*, Warszawa 2014, p. 154; M. Domański, *Względne zakazy małżeńskie*, Warszawa 2013, pp. 141-144.

⁴⁰ See also A. Stawarska-Rippel, (in:) M. Fras, M. Habdas (eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2021, pp. 87-88. Cf. the older research cited in the opinion of the Polish Supreme Court of 16 June 2016 – *Opinia Sądu Najwyższego do projektu ustawy o zmianie ustawy – Kodeks rodzinny i opiekuńczy oraz ustawy – Kodeks postępowania cywilnego* (IX kadencja, druk senacki nr 187), Document No. BSAI-021-231/16, 2-3. Available at: https://www.senat.gov.pl/download/gfx/senat/pl/senatiniacijawypliki/124/4/187_sn.pdf (accessed 28 March 2023).

⁴¹ See M. Domański, *supra* note 39, pp. 151-157; M. Domański, *Orzekanie o zezwoleniu na zawarcie małżeństwa kobiecie, która nie ukończyła 18 lat*, (in:) A. Siemaszko (ed.), *Stosowanie prawa. Księga jubileuszowa z okazji XX-lecia Instytutu Wymiaru Sprawiedliwości*, Warszawa 2011, pp. 339-340.

⁴² M. Domański, *supra* note 39, pp. 190-205; M. Domański, *supra* note 41, pp. 342-354. See also the opinion of the Polish Supreme Court of 16 June 2016, *supra* note 40, pp. 6-9.

⁴³ See, e.g., M. Kuciarska-Ciesielska, (in:) M. Kuciarska-Ciesielska, G. Marciniak, J. Paradysz (eds.), *Rozpad małżeństw w Polsce – przyczyny i skutki*, Warszawa 1993, p. 124; W. Stojanowska, *Ochrona dziecka przed negatywnymi skutkami konfliktu między jego rodzicami*, Warszawa 1997, p. 52.

⁴⁴ Article 10 § 2 sentence 1 of the Act of 23 April 1964 – the Civil Code (Polish Journal of Laws of 2022, item 1360, as amended) provides that a minor becomes adult on marriage.

child.⁴⁵ Nevertheless, other regulations, such as emancipation,⁴⁶ unknown in Polish law or a change in the law on parental responsibility, should provide for this effect in the justified circumstances without the necessity for an underage woman to get married.

The criticism of this exception is supported, *inter alia*, by Article 16(1) of the CEDAW. As discrimination against women must be eliminated in all matters relating to marriage, this includes the minimum age for marriage.⁴⁷ The CEDAW Committee in General Recommendation 21 (“Equality in Marriage and Family Relations”) of 1994⁴⁸ stated that the minimum age for marriage should be 18 years for both, men and women. The Committee pointed out that according to the World Health Organization, “when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted”. The same reasoning was presented in § 23 of the General Comment No. 28⁴⁹ adopted by the UN Human Rights Committee on 29 March 2000. It stated, in relation to Article 3 of the ICCPR, that the minimum age for marriage should be set “on the basis of equal criteria for men and women. These criteria should ensure women’s capacity to make an informed and uncoerced decision”. The practice of several jurisdictions that allow girls to marry earlier than boys has been expressly criticised by the UN Committee on the Rights of the Child.⁵⁰

In 2003, an amendment of Article 10 § 1 of the FGC was proposed to the Polish Parliament by the government on the initiative of the Government Plenipotentiary for Equal Status of Women and Men.⁵¹ The proposed law stipulated that the said exception should be applied regardless of the sex of the spouse-to-be provided that the other spouse is over 18 years old. However, that bill did not become the law. A similar bill, presented by a group of senators (members

⁴⁵ According to Polish law, a minor doesn’t have a parental responsibility, as he or she doesn’t have the full capacity for legal acts (Article 94 § 1 of the FGC). However, Article 96 § 2 of the FGC states that an underage parent participates in the ongoing care over the child and his or her upbringing, unless the court decides otherwise taking into consideration the best interests of the child. For other reasons for contracting the marriage by underage women see M. Domański, *supra* note 41, pp. 347-349.

⁴⁶ Cf. Articles 413-2 – 413-8 of the French Civil Code of 1804 (as amended).

⁴⁷ See also R. Gaffney-Rhys, *supra* note 1, p. 93; F. Banda. J. Eekelaar, *supra* note 17, pp. 854-855.

⁴⁸ Para. 36. Available at: <https://www.refworld.org/docid/48abd52c0.html> (accessed 28 March 2023).

⁴⁹ Available at: https://ccprcentre.org/page/view/general_comments/27762 (accessed 28 March 2023).

⁵⁰ For more, see: R. Gaffney-Rhys, *supra* note 1, pp. 94-95.

⁵¹ Bill of 23 April 2003 on the Amendment of the Act – Family and Guardianship Code and Certain Other Acts, print no. 1566, Polish Sejm of 4th turn.

of the Upper House of the Polish Parliament) on 24 May 2016⁵² was also not adopted. In 2015, the Polish Commissioner for Human Rights (the Ombudsman) made an attempt to convince the Minister of Justice to change this regulation,⁵³ but it was again unsuccessful. The Ombudsman rightly pointed out that the analysed regulation can be assessed as discriminatory on the basis of sex and infringing on the right of men to the respect for their private and family life. This regulation, in fact, determines different ages of marriage for women and men. The Ombudsman also pointed out that, according to Article 2 of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1964,⁵⁴ the State may, for justified reasons and in the interest of prospective spouses, grant a dispensation regarding the obligation to reach a marital age. However, bearing in mind the principle of non-discrimination, it seems that this exemption, if applied, should regard both, women and men equally.

For these reasons, the said exception to the minimum age for marriage is not justified in the current form. It should apply equally to men and women or the exception should be abolished. The latter option has been chosen by many European countries in recent years.⁵⁵ Furthermore, the exception, if kept in the code, should direct the court's attention first to the welfare of the individual – the underage prospective spouse,⁵⁶ and not, as is the case now, to the “welfare of the established family”,⁵⁷ which is a rather ambiguous concept, especially if a couple is not in a steady relationship. It should be noted that the previous Polish regulations – the Decree on the Matrimonial Law of 1945 and the Family Code of 1950 – did not differentiate between the positions of men and women in this regard.

⁵² See print no. 187, Polish Senate of 9th turn. This document proposed to apply said exception to the minimum age for marriage regardless of the sex of the spouse-to-be, even if the other spouse was also under 18 years and both spouses would require the permission of the court to enter into marriage.

⁵³ See the letter of 1 December 2015 (document No. IV.501.12.2015.MK). Available at: https://bip.brpo.gov.pl/sites/default/files/Do_MS_ws_zroznicowanego_wieku_uprawnijacego_do_zawarcia_malzenstwa.pdf (accessed 28 March 2023).

⁵⁴ Adopted in New York by the UN General Assembly resolution 1763 A (XVII) of 7 November 1962. It came into force in Poland on 8 January 1965 (Polish Journal of Laws from 1965, No. 9, item 53). Available at: <https://www.ohchr.org/en/professionalinterest/pages/minimumageformarriage.aspx> (accessed 28 March 2023).

⁵⁵ See E. Kamarad, *Kolizyjnoprawne aspekty małżeństw dzieci*, “Problemy Prawa Prywatnego Międzynarodowego” 2019, Vol. 24, pp. 80-81, 105-106.

⁵⁶ See likewise M. Domański, *supra* note 39, p. 151.

⁵⁷ Cf. the understanding of this notion presented by J. Gajda, *supra* note 39, pp. 155-156.

SURNAME OF A CHILD

Another regulation of the Family and Guardianship Code which to some extent treats men and women differently concerns the surname of the child. Polish law stipulates that in the absence of an agreement between parents regarding the surname of their child, the child shall bear a double surname. It consists of the wife's (mother's) surname followed by the husband's (father's) surname.⁵⁸ Conversely, if parents come to an agreement, they can decide whose surname is to be placed first and whose surname is to follow.

In comparison, since 2013, the French law has stipulated that in a similar situation, the child's double surname shall consist of his or her parents' surnames sequenced alphabetically in order to implement the principle of equality of parents to its fullest extent.⁵⁹ The French solution might not be entirely ideal as it opens up a possibility of arguing for discrimination against those whose surname begins with one of the last letters of the alphabet (e.g. "y" or "z"). However, the first letter of the surname, in contrast to sex (or gender), is not a suspicious ground for discrimination. Due to the fundamental principle of equal rights of spouses and parents, the current Polish regulation on the surname of the child should be the subject of further research. The French model may be considered as a possible amendment option.

A MUTUAL RIGHT AND OBLIGATION TO EQUAL TREATMENT

In the Polish Family and Guardianship Code, there is no general part. In other words, there are no general rules stipulated at the beginning of that Act which would explain how to understand marriage and family and what the basic principles of family law are. The lack of the general part of the FGC may be treated as

⁵⁸ Article 88 § 2 sentence 2 of the FGC states that "If the spouses did not make joint declarations about the child's surname, the child has a surname that consists of the mother's surname followed by the father's surname". Similar regulation concerns the surname of a child whose parents are not married (Article 89 § 1 sentence 3 of the FGC). See further: J. Słyk, (in:) K. Osajda (ed.), *Komentarze Prawa Prywatnego. Tom V. Kodeks rodzinny i opiekuńczy. Komentarz. Przepisy wprowadzające KRO*, Warszawa 2017, p. 1181, 1185.

⁵⁹ Article 311-21 of the French Code Civil from 1804, as amended by Loi No. 2013-404 of 17 May 2013 (Journal officiel de la République française No. 0114 of 18 May 2013), states that "En cas de désaccord entre les parents, signalé par l'un d'eux à l'officier de l'état civil, au plus tard au jour de la déclaration de naissance ou après la naissance, lors de l'établissement simultané de la filiation, l'enfant prend leurs deux noms, dans la limite du premier nom de famille pour chacun d'eux, accolés selon l'ordre alphabétique (...)". For more, see e.g. A. Batteur, L. Mauger-Vielpeau, *Droit des personnes, des familles et des majeurs protégés*, Paris 2021, pp. 55-60.

one of the reasons why its regulation stating that spouses have equal rights and obligations in marriage (Article 23 sentence 1) is included within the provisions on mutual rights and obligations of spouses. However, even without the general part, such a fundamental regulation could be placed at the very beginning of the code or at least be codified in a separate article. Meanwhile, Article 23 of the FGC consists of two sentences that should not be interpreted entirely separately. The first one states that spouses have equal rights and obligations in marriage, whereas the second one provides that spouses “are obliged to live together, help each other, remain faithful, and collaborate for the benefit of the family they created by entering into a relationship”. Hence, it might be argued that the legislator intended to treat said provision on equality not only as a principle, but also as an important part of the regulation of the mutual rights and obligations of spouses.

Entering into marriage creates a family legal relationship between the spouses which is a type of civil-law relationship. This legal relationship includes the rights and obligations of the spouses.⁶⁰ The FGC, and in particular its Article 23, emphasises the responsibilities of the spouses. However, the obligation of one spouse corresponds to the right of the other to be treated in line with this obligation.⁶¹ In other words, each spouse, while required to behave in a specific way towards the other party (e.g. to be faithful and to collaborate for the benefit of the family), is also entitled to expect the same treatment from the other.⁶² The spouses’ rights are essentially of civil subjective rights’ nature.⁶³ Therefore, it might be argued that Article 23 sentence 1 of the FGC not only establishes a legal principle, but also codifies the mutual right and obligation of spouses to treat each other equally in the relationship.⁶⁴ The exact content and effect of said right and obligation should be further analysed.

Undoubtedly, no spouse has more rights or responsibilities in marriage than the other.⁶⁵ It was rightly noticed in the Polish legal literature already some time ago that the principle of equal rights and obligations should not lead to a situation where a full-time working wife is simultaneously burdened with all or most

⁶⁰ See, e.g., H. Haak, *Zawarcie małżeństwa. Komentarz*, Toruń 1999, p. 197; T. Smoczyński, *supra* note 25, p. 215; M. Goettel, *Koncepcja podstawowych praw i obowiązków małżonków w kodeksie rodzinnym i opiekuńczym*, (in:) T. Płoski, J. Krzywkowska (eds.), *Matrimonium spes mundi. Małżeństwo i rodzina w prawie kanonicznym, polskim i międzynarodowym. Księga pamiątkowa dedykowana ks. prof. Ryszardowi Sztuchmillerowi*, Olsztyn 2008, p. 343.

⁶¹ M. Goettel, *supra* note 60, p. 352; W. Borysiak, *supra* note 28, p. 219.

⁶² J.S. Piąkowski, *supra* note 20, p. 217; M. Jadcak-Żebrowska, *Prawa i obowiązki małżonków*, Warszawa 2017, pp. 51-52.

⁶³ See J. Ignatowicz, M. Nazar, *Prawo rodzinne*, Warszawa 2016, p. 220; J. Pawliczak, *supra* note 28, p. 229. Cf T. Smoczyński, *supra* note 25, p. 215; M. Jadcak-Żebrowska, *supra* note 62, pp. 52-54; J.M. Łukasiewicz, R. Łukasiewicz, *Prawo rodzinne*, Warszawa 2021, pp. 145-146.

⁶⁴ See J. Pawliczak, *supra* note 28, pp. 206-207.

⁶⁵ H. Haak, *supra* note 60, p. 198.

domestic duties, which is not that uncommon at all.⁶⁶ Nonetheless, this applies equally to the situation of a husband.

Furthermore, Article 23 sentence 1, especially when read together with Article 24 of the FGC, does not allow either spouse to claim to be the head of the family.⁶⁷ This is in accordance, *inter alia*, with the Council of Europe Resolution of 1978 on Equality of Spouses in Civil Law.⁶⁸ Its Article 1 recommends that governments of the Member States take all necessary steps to ensure that the civil law must not contain provisions “whereby a spouse is put in a more advantageous position than the other spouse, in particular by being designated to act as the head of the family”.

It is worth noting that recently, the issue of the dominance of one of the spouses was addressed by the Polish Supreme Court (Extraordinary Control and Public Affairs Chamber) as a result of filing the extraordinary complaint⁶⁹ by the General Prosecutor. This complaint concerned the decision issued in child abduction proceedings carried out under the 1980 Hague Child Abduction Convention⁷⁰ in which the Polish court had ordered the return of the child to the jurisdiction where the father of the child lived. The court issued that decision in spite of clear indications of the child’s mother being abused by the father. The Supreme Court in the decision of 14 April 2021⁷¹ ordered re-examination of the already legally binding decision. The Supreme Court held that: “observing both, the sole acts of violence and its effects on the mother, in light of life experience, has serious repercussions on the development and the attitude of the child. It may lead to his or her corruption or at least to the perpetuation of – unacceptable in the Polish constitutional order, the axiological core of which is the guarantee of equal human dignity – the “norm” of the superiority of one of the spouses”.

⁶⁶ J.S. Piąkowski, *supra* note 20, p. 226.

⁶⁷ See, e.g. S. Breyer, S. Gross, *supra* note 28, p. 75; W. Borysiak, *supra* note 28, p. 221; M. Jadcak-Żebrowska, *supra* note 62, p. 63.

⁶⁸ Resolution (78) 37 adopted by the Committee of Ministers on 27 September 1978. Available at: <https://rm.coe.int/09000016804e8e9e> (accessed 28 March 2023).

⁶⁹ This extraordinary means of challenge has been available since 3 April 2018. It allows selected public bodies to challenge final court judgments, issued no later than 5 years before lodging the complaint, if they were decided with violation of the constitutional principle stating that Poland is a democratic state of law implementing the principles of social justice (Article 2 of the Polish Constitution). See further T. Zembruski, *Extraordinary Complaint in Civil Proceedings under the Polish Law*, “Access to Justice in Eastern Europe” 2019, Vol. 1, pp. 31-44.

⁷⁰ Convention on the Civil Aspects of International Child Abduction adopted on 25 October 1980 in The Hague. It came into force in Poland on 1 November 1992 (Polish Journal of Laws of 1995, No. 108, item 528). Available at <https://assets.hech.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf> (accessed 28 March 2023).

⁷¹ Cases ref. no. I NSNc 36/21, available in Polish at: <http://www.sn.pl/sites/orzecznictwo/orzeczenia3/i%20nsnc%2036-21.pdf> (accessed 28 March 2023).

Moreover, it is derived from Article 23 sentence 1 of the FGC that spouses do not have any prescribed functions or roles in marriage.⁷² A properly understood obligation to treat the other party equally means that one spouse cannot demand of the other to perform specific functions and roles (either ‘traditional’ or ‘modern’).⁷³ For example, neither spouse can require the other to play a predominant (and not equal) role in carrying out the household duties or raising a child. Simultaneously, one spouse cannot unilaterally rule out the will and right of the other to participate equally in the care of the child and the duty to support the family. As one spouse cannot claim to be the head of the family, he or she cannot unilaterally decide to be “the dominant parent” or “the primary caregiver”.

It is essential to notice that while working on the 1964 Family and Guardianship Code, the Polish legislator did not accept the proposition that different roles performed in the majority of families by wives (raising children) and husbands (earning money) should be recognised by the law. The rejected proposition was based on the assumption that spouses should have rights and obligations that are “completely equal, but not entirely the same” (in Polish “*zupełnie równe, ale niezupełnie jednakie*”), because they perform different functions in the relationship.⁷⁴ Therefore, this is not an effective law in Poland. However, neither the principle of equality nor the mutual right and obligation to equal treatment must be understood as obligating spouses to have identical roles in all aspects of the relationship.⁷⁵ It all depends on their agreement and the physical and mental predispositions, qualifications, skills, interests, and earning capacities of each of the spouses.⁷⁶ The division of roles in the relationship is possible and may also change over time. Nevertheless, in the event of a spousal disagreement, the starting point for settling this issue is, from the legal perspective, the equal distribution of all rights and responsibilities in the relationship.⁷⁷

For these reasons, Article 23 sentence 1 of the FGC cannot be treated as a legal basis for the argument, present also in the Polish modern legal literature, that in interpreting the principle of equality, one should take into account the

⁷² See, e.g., J.S. Piąkowski, *supra* note 20, pp. 224-226.

⁷³ J. Pawliczak, *supra* note 28, pp. 207.

⁷⁴ See J. Gwiazdomorski, *Równouprawnienie kobiety w rodzinie jako problem kodyfikacyjny*, “Państwo i Prawo” 1959, Vol. 11, p. 765. For more, see P. Fiedorczyk, *supra* note 22, pp. 334-338.

⁷⁵ See, e.g. J. S. Piąkowski, *supra* note 20, p. 225; M. Dobrowolski, *Status prawny rodziny w świetle nowej Konstytucji Rzeczypospolitej Polskiej*, “Przegląd Sejmowy” 1999, Vol. 4, p. 30; J. Ignatowicz, M. Nazar, *supra* note 63, p. 221.

⁷⁶ See also J.S. Piąkowski, *supra* note 20, p. 225; M. Jadcak-Żebrowska, *supra* note 62, pp. 63-64.

⁷⁷ See S. Grzybowski, *Prawo rodzinne – zarys wykładu*, Warszawa 1980, p. 69, who pointed out that Article 23 sentence 1 of the FGC provides for settling all dubious situation in accordance with the principle of full legal equality of a husband and a wife. See likewise J. Winiarz, *Prawo rodzinne*, Warszawa 1983, pp. 79-80.

“irreplaceable role” of women in raising small children.⁷⁸ This point of view may lead to the incorrect conclusion that functions related to bringing up children in the earliest stage of their development should be exercised primarily by the wife.⁷⁹ Accordingly, there is no rule that the husband should be primarily responsible for raising children, although fathers (and husbands) may and should play the same role in this respect as mothers, and for the child, this role is also “irreplaceable”. Similar objections may be raised with regard to the view that a correctly understood principle of equality determines that the wife is required to do professional work only to an extent that can be reconciled with her functions in raising children and doing household duties.⁸⁰ The principle of equality leaves no doubt that the wife and the husband are in the same position in this regard. Nevertheless, in matters concerning children the principle of the best interests of the child prevails over the principle of equality of their parents.⁸¹ In some situations, one of the parents might be required to take on more care over the child due to objective reasons (e.g. in the case of seriously insufficient caring competences of the other parent). However, this should be treated as the exception, since the Polish law also emphasises the importance of the right of the child to be brought up by both parents.⁸²

CONSEQUENCES OF A VIOLATION OF THE RIGHT AND OBLIGATION TO EQUAL TREATMENT

The final issue to discuss is whether Polish family law provides for any consequences or sanctions if one spouse does not treat the other equally, claims more rights or takes less responsibilities than the other.

⁷⁸ See, e.g., M. Dobrowolski, *supra* note 75, p. 30; T. Smyczyński, *supra* note 25, pp. 216-217; M. Jadczyk-Żebrowska, *supra* note 62, p. 64. In the case law concerning exercising parental responsibility after a divorce, many years ago the basis for this view was the ruling of the Polish Supreme Court of 21 November 1952, Case ref. no. C 1814/52 (OSNCK [Rulings of the Supreme Court, Civil Chamber and Criminal Chamber] of 1953, No. 3, item 92).

⁷⁹ W. Borysiak, *supra* note 28, p. 221.

⁸⁰ See, e.g. J. S. Piąkowski, *supra* note 20, pp. 224-226; J. Gajda, (in:) K. Pietrzykowski (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2021, p. 278.

⁸¹ The Polish Supreme Court emphasises that in each situation regarding the child his or her best interest should be a primary and prevailing value. See, e.g. the resolution of the Panel of 7 judges of the Supreme Court of 12 June 1992, Case ref. no. III CZP 48/92 (OSNCP [Rulings of the Supreme Court, Civil Chamber, Chamber of Labour and Social Insurance] 1992, No. 10, item 179) and the resolution of the Supreme Court of 22 November 2017, Case ref. no. III CZP 78/17 (OSNC [Rulings of the Supreme Court, Civil Chamber] 2018 No. 5, item 51). See also above-mentioned Article 5 of Protocol No. 7 to the ECHR.

⁸² See Articles 58 § 1a and 107 § 2 of the FGC.

First, it should be noted that Article 23 sentence 1 of the FGC is a mandatory regulation. It constitutes a part of the “*régime primaire*” of marriage which cannot be excluded or significantly altered by the agreement of the spouses.⁸³ As a result, the provisions of contracts between spouses, including matrimonial property agreements, which are contrary to the principle of equal rights of spouses are invalid⁸⁴ under Article 58 § 1 of the Polish Civil Code.⁸⁵ In the legal literature, an example of such a contractual provision is a clause stipulating that all rights (or any rights of a specific type) acquired by only one of the spouses are excluded from the matrimonial community regime.⁸⁶

Second, the rights of spouses which have a proprietary nature can be claimed in court proceedings. For example, when one spouse refuses to contribute equally to the support of the family, the other may ask the court to order payment of the maintenance (Articles 27 and 28 of the FGC).

Third, the Polish family law remains one of the few in the world, and probably the only one in the European Union,⁸⁷ which sets forth the rule that while adjudicating on the dissolution of marriage, the court is required to determine which of the spouses is guilty of the breakdown of the relationship (Article 57 § 1 of the FGC).⁸⁸ According to Polish law, the guilty spouse may, among other things, be required to pay more alimony and for a longer period than the not-guilty one after divorce.⁸⁹ A spouse might be found guilty, *inter alia*, if he or she did not treat the other party equally, and for that reason, the marriage has broken down. Nevertheless, so far such a reasoning has rarely appeared in case law.

⁸³ See, e.g., T. Smyczyński, *supra* note 25, pp. 213-214; J. Ignatowicz, M. Nazar, *supra* note 63, p. 226; J. Gajda, *supra* note 80, pp. 274-275. See also the judgment of the Court of Appeal in Gdańsk of 15 April 2016, Case ref. no. III AUa 1730/15, available in Polish at: [http://orzeczenia.ms.gov.pl/details/\\$N/151000000001521_III_AUa_001730_2015_Uz_2016-04-15_001__](http://orzeczenia.ms.gov.pl/details/$N/151000000001521_III_AUa_001730_2015_Uz_2016-04-15_001__) (accessed 28 March 2023).

⁸⁴ See S. Breyer, S. Gross, *supra* note 28, p. 73.

⁸⁵ This Article states that act in law which is contrary to the statutory law or is designed to circumvent the statutory law shall be null and void unless the appropriate provision stipulates a different effect.

⁸⁶ J. S. Piątkowski, *supra* note 20, p. 515.

⁸⁷ See M. Antokolskaia, *Divorce law in a European Perspective*, (in:) J. M. Scherpe (ed.), *European Family Law. Volume III. Family Law in a European Perspective*, Cheltenham 2016, pp. 68-80; J. Pawliczak, *Rozwiązanie małżeństwa na podstawie prawa obcego a orzekanie o winie rozkładu pożycia*, “Kwartalnik Prawa Prywatnego” 2017, Vol. 4, pp. 855-858.

⁸⁸ However, Article 57 § 2 of the FGC provides that, upon a joint request of both spouses, the court resigns from ruling on the fault.

⁸⁹ See Article 60 of the FGC.

CONCLUSIONS

The Polish legal system attaches great importance to the equality of spouses. It constitutes one of the fundamental rules of the Polish public order as well as the main principle of family law. The equality of spouses is consistently implemented in domestic matrimonial law with minor exceptions which should be re-examined. Article 23 of the FGC also provides a normative basis for recognition of the mutual right and obligation of spouses to treat each other equally in the relationship. This aspect of equality of spouses warrants special attention and should be developed in both, the legal doctrine and the case law. It proves that the issue of equality of husband and wife is still of great relevance and deserves further research.

Furthermore, Polish law which focuses on the determination of the guilty party in divorce proceedings, provides for a specific type of sanction, if a violation of the right and obligation to equal treatment results in the irretrievable breakdown of marriage. Whereas in other jurisdictions, at least in the case of the Member States of the Council of Europe, the no-fault divorce is a rule. In these countries, the rights and obligations of spouses of a personal nature (e.g. to be faithful, collaborate for the benefit of the family) are not safeguarded by any court-enforced sanction. Nonetheless, since the fault-based divorce law has many more disadvantages than advantages, this particular piece of Polish legislation is hardly a good model for implementing the principle of equality of a husband and wife.⁹⁰

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⁹⁰ See likewise E. R. Melnick, *Reaffirming No-Fault Divorce: Supplementing Formal Equality with Substantive Change*, "Indiana Law Journal" 2000, Vol. 75, pp. 711-729.

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