

**Abstract of the doctoral thesis**

**The principle of recrimination in the Polish family and guardianship law system**

The choice of the topic of the work was made after a thorough query of the collected materials related to the issue of recrimination. Unfortunately, so far this area has not been fully independently or, if possible, comprehensively studied. We were also prompted to undertake a more detailed research analysis by a very small number of publications - articles, monographs, dissertations - devoted to this issue. Even if some already exist, they treat this type of subject in very general terms, doing so mainly when discussing other grounds for divorce. The study undertaken by us aims to characterize the legal structure and the manner of applying Art. 56 § 3 of the Family and Guardianship Code, which the legislator made a divorce ban, referred to as the principle of recrimination. The possibly complete study of recrimination in Polish family and guardianship law in functional terms will be presented against the background of historical and legal considerations, comparative law and civil law institutions coupled with it.

The work contains four chapters. An important supplementary role was assigned to historical issues and the premise of guilt, which are directly related to the topic of the dissertation.

In the first chapter, entitled *The historical development of the principle of recrimination*, we attempt to search for historical sources that could determine the manner in which the principle of recrimination, known in its contemporary substantive legal form, was shaped. This chapter, constructed based on the historical and legal method, has two fundamental assumptions. The first is the most accurate possible study of historically distant premises that will allow to indicate the existence of quasi-recriminatory norms in early legal systems. The purpose of this assumption is to make it clear that the principle of recrimination is not just a product of modern legislative action. Nor is it the result of more or less accurate political and social solutions with an emphasis on the correct moral way of functioning of a specific group of people. The historical and legal analysis shows that the so-called the original recrimination

norms from which the modern principle of recrimination is derived go back much farther in the historical development of law than one might have imagined. We will try to outline the beginnings of the shaping of the principle of recrimination, not necessarily understood then as a prohibition of divorce. Nevertheless, the analysis of the sources will allow us to determine that the recriminatory norms, from the very beginning, were associated with the so-called equalizing justice for harm caused by a party to a specific legal relationship. At the appropriate stage of their development, these norms will be related to the institution of marriage and some of its legal consequences (breakdown of the marriage, culpable action, departure of the spouse, fair compensation of the joint property of the spouses). The second assumption of this chapter will be to present the historical presence of the principle of recrimination in the Polish family law system. We will show the emerging seeds of this institution in the dispersed partition law. For the first time, regulations will be developed which will start to include in their content the premise of guilt that may occur on the part of one of the spouses or will define norms shaping the basis for the protection of an innocent spouse. The evolution of the family law system finally allowed for the introduction of Art. 30 k.r. the principle of recrimination understood as a negative premise for divorce. This standard, after changes, will later be transferred to the current legal status.

The second chapter of the dissertation entitled *The breakdown of marital life as a positive premise for adjudicating divorce in the context of the spouse's culpable actions* is a theoretical and legal prolegomenon for the last two parts of our dissertation. Discussing the topic of permanent and complete breakdown of marriage, while defining the individual structural parts of this premise, is important to us if in the context of the divorce ban, for its correct application, the court must assess the existence of statutory elements specified in Art. 56 § 1 k.r.o. This means that for the possibility of applying Art. 56 § 3 of the Family and Guardianship Code, the court must first indicate that the marriage has broken down and that the breakdown is permanent and complete. Nevertheless, a detailed analysis of the positive grounds for adjudicating a divorce will not be the purpose of this chapter. Such an action would go beyond the thematic scope of the dissertation. Therefore, in the context of Art. 56 § 1 k.r.o. we will focus only on the breakdown of the marriage in the aspect of the spouse's culpable conduct. Since the basic element shaping the principle of recrimination is the sole fault of the spouse requesting a divorce, the discussion of the culpable causes of the breakdown of the marriage will become essential for a correct later understanding of the issue of the spouse solely to blame for the breakdown of the marriage and the sole fault.

The issue of guilt is undoubtedly an important topic for the entire dissertation. Especially that it is strongly correlated with the recriminatory ban on divorce, constituting its basic component. In the third part of the dissertation, which is entitled *The issue of guilt in Polish family law*, we undertake an analysis of the premise of guilt based on Polish family law, especially in the context of divorce regulations. For a better understanding of the seriousness of the subject under consideration, we have internally divided this chapter into three parts. The first part deals with general issues related to the concept of guilt developed based on civil law. We will also indicate to what extent this institution has been adapted and adopted to the order of family and guardianship law, which by its nature assumes the existence of completely different legal relations than the civil law order. In the second part, we will allow ourselves to trace the historical presence of the premise of guilt in Polish family law. We will point out its presence in the earlier regulations of divorce law, which are important for our considerations. Finally, in the third part of the chapter, we will focus on the premise of guilt in the applicable family and guardianship code. We will analyze the concept of the spouse's culpable action, especially in the context of the subjective and objective element of guilt. We will indicate the relationship that occurs between the guilt of fulfilling marital duties and define the role and importance of the fault of the breakdown of the marriage. By the way, we will also devote space to the analysis of the issue of forgiveness. Even though it belongs mainly to the institution of inheritance law, it naturally also appears in the context of the breakdown of marital life, reconciliation of the parties and maintenance of further life. Forgiveness, which is related to the culpable behavior of the spouse, can be an expression of continuing marital life. Consequently, it can be quite important information for the divorce court, also in the circumstances of applying the principle of recrimination and determining the sole fault of the spouse.

Finally, in the chapter entitled *The principle of recrimination as a negative premise excluding the admissibility of divorce*, we will make a detailed analysis of the principle of recrimination set out in Art. 56 § 3 k.r.o. We will indicate its normative construction and interpretation problems that may arise from it, and which in fact have become the reason for a number of discrepancies appearing in the doctrine and jurisprudence. We will define the proper role and place of the principle of recrimination and the functions it should fulfill in the divorce law system. We will show that the principle of recrimination can be discussed only when the breakdown of the marriage was caused by the fault of the spouse requesting the divorce and there are no other reasons that could lead to the breakdown of the marriage. It will become obvious that the divorce ban will not be applied when both spouses are to blame for the breakdown of the marriage, or when it occurred due to the so-called reasons not at fault. In the

divorce guidelines of 1968, the Supreme Court emphasized that it was mainly social and educational considerations that prompted the prohibition of adjudicating a divorce at the request of the solely guilty spouse. For a divorce pursuant to Art. 56 § 3 k.r.o. the concept of guilt will be crucial. Therefore, in this chapter we will also refer to the issue of the spouse guilty of the breakdown of the marriage and the sole fault, defining the fault of the breakdown of the marriage as a violation of the obligations arising from the contracted marriage. We will pay attention to how the divorce court applies Art. 56 § 3 of the Family and Guardianship Code, and to specify the conditions that must be met for the possibility of excluding the admissibility of a divorce. Considering the fact that the principle of recrimination is not an absolute prerequisite for divorce, it has circumstances established by the legislator that will allow it to be excluded. Firstly, the court may order a divorce when requested by the spouse who is solely to blame for the breakdown of the marriage if the other spouse consents to it. In this situation, the effectiveness of the consent will be assessed considering all the conditions and circumstances of both the parties and individual persons related to the spouses. Secondly, the court grants a divorce if the refusal to consent to the divorce of the innocent spouse is contrary to the principles of social coexistence. We will point out that it is the spouse solely to blame for the breakdown of the marriage who is obliged to prove that the lack of consent to divorce is morally reprehensible and caused by motives that do not deserve social approval, using the measure of objective assessment made from the outside (I ACa 85/16). Nevertheless, an innocent spouse, exercising the statutory right to refuse consent to divorce, will not necessarily act in contradiction to the principles of social coexistence.

The prohibition of divorce is a topic rarely discussed in the doctrine and marginalized in contemporary divorce jurisprudence. Unfortunately, the current trends in divorce, which give the possibility of an easy and quick dissolution of marriage, rather do not focus the attention of either the parties or the court on the culpable behavior and the resulting benefits that one of the parties to the proceedings may derive. In our work, we will engage in polemics with some of the proposed solutions appearing in the literature and doctrine. A number of these concepts raise some doubts and controversies to this day. Therefore, in individual parts of our dissertation, we allowed ourselves to take a position and take sides in the discussion. The point summing up our research will be the final conclusions *de lege lata* and theoretical, technical, and legal postulates *de lege ferenda*.