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INSTYTUCJA SEPARACJI MAŁEJ SKIEJ NA GRUNCIE PRAWA KANONICZNEGO I POLSKIEGO PRAWA CYWILNEGO

THE INSTITUTION OF MARITAL SEPARATION UNDER CANON LAW AND POLISH CIVIL LAW

Streszczenie

Separacja pochodzi od łacińskiego terminu *separatio*, co oznacza oddzielenie, odłączenie i izolację. W polskim prawie cywilnym polega na zniesieniu wspólności małżeńskiej i oddzieleniu od wspólnoty domowej (stołu i łóżka). Powstaje jako skutek poważnego kryzysu separacja nie powoduje rozwiązania istniejącego między stronami stosunku prawnego. Nie upoważnia również do ponownego zawarcia związku małżeńskiego. Ustawodawca zwalnia strony z obowiązku wspólnego pożycia, ale nie daje im pełnej swobody. Również Kościół katolicki daje możliwość małżonkom, którzy chcą się definitywnie rozstać z sankcją separacji. Jest to jednak wyjście, które ma łagodzić wyjście z trudnych sytuacji życiowych. Przepis ten, wypracowany z prawa kanonicznego, został wprowadzony do polskiego porządku prawnego niedawno, bo w 1999 roku, jako realizacja postanowień Konstytucji RP i Konkordatu. Poniżej elaborat przybliża instytucję separacji, jej sens, cel i funkcje. Przedstawia pojawiające się podobieństwa między tymi dwoma systemami prawa w zakresie przesłanek, nakazów i skutków. W ten sposób ukazano użyteczne i publiczne znaczenie separacji.

Słowa kluczowe: separacja, prawo kanoniczne małżeńskiej, wspólność małżeńska, wspólnota domowa

Abstract

Separation leads out from the Latin term *separatio*, which means separation, disconnection and isolation. In Polish civil law it depends on canceling the matrimonial community and separation from the community of Home (table and bed). Arising as an effect of serious crisis separation doesn't cause a solution of the legal relationship existing between parties. It also doesn't authorize them to get married again. The legislator releases parties only from obligation to the common life, but does not give them full freedom. Also Catholic Church gives possibility for spouses who want to certainly part from each other with sanction of separation. But it's an exception which is supposed to mitigate the way out of hard life situations. This regulation, lead out from the canonic law, was introduced into the Polish statutory recently in 1999, as a realization of the Constitution and Concordat. Below elaborate approximates institution of separation, its sense, aim and functions. It presents appearing similarities between these two systems of law in the fields of premises, orders and effects. This way it shows useful and public meaning of separation.

Keywords: separation, canon law of marriage, marital community, domestic community

Introduction

The institution of separation, originating from canon law, remains relatively unknown in the current Polish civil law. It was reintroduced into the legislative framework in 1999 through a reform of the Family and Guardianship Code¹. The introduction of this institution into Polish law sparked significant interest and widespread discussion, which continues to surface periodically. The previous absence of such an institution posed serious socio-legal challenges, while its reinstatement provided a distinct alternative for resolving legal situations without completely severing the marital bond, not only for religious individuals. Separated spouses now also have a simpler path to reconciliation.

Although the marriage of baptized individuals is considered indissoluble from the perspective of canon law, the preservation of marital unity is not absolute, and exceptions are allowed, such as the so-called Pauline privilege. This stance reflects early Christian views, which evolved into the modern canonical form, including the institution of separation.

Therefore, both in canon law and secular law, this institution cannot be viewed as an intermediate stage or a means leading to divorce. Its reintroduction into Polish law should not be considered from a denominational perspective but, above all, from its protective and restorative character. This approach aligns with the provisions of the Polish Constitution² and

¹ 1. Art. 611–616 of the Act of February 25, 1964, Family and Guardianship Code, Journal of Laws 1964, No. 9, item 59, as amended (hereinafter "Family and Guardianship Code" or KRO); art. 1 of the Act of May 21, 1999, on the amendment of the Family and Guardianship Code, the Civil Code, the Code of Civil Procedure, and certain other acts, Journal of Laws 1999, No. 52, item 532.

² Art. 18 of the Constitution of the Republic of Poland of April 2, 1997, Journal of Laws 1997, No. 78, item 483, as amended.

the Concordat³ ratified in 1998, which affirm the protection of marriage and family. On this basis, both legal systems should complement each other and cooperate to achieve the intended goal.

1. The Concept of Marital Separation

The term "separation" in Polish has a broad semantic range. Therefore, to avoid terminological misunderstandings resulting from the interchangeable use of certain terms in discussions of separation, it is necessary to define the concept central to this analysis. We can speak of separation in a broad sense, then further distinguish factual separation, legal (or formal) separation, and finally separation as an institution of both canon law and Polish civil law in the strictest sense.

The meaning of separation can be traced back to the Latin *separatio*, which denotes detachment, disconnection, isolation, and segregation⁴. This term is commonly associated with *divortium semiplenum*, or the separation of spouses, depriving the guilty party of rights to shared bed, table, and residence. This is called incomplete or partial separation, which does not dissolve the marriage. In contrast, complete separation, or *separatio vinculum* or *divortium perfectum*, refers to divorce. In the former case, some rights and duties arising from the marriage are suspended, but the legal relationship between the spouses remains intact, and they are not entitled to remarry⁵.

³ Art. 10–11 of the Concordat between the Holy See and the Republic of Poland, signed in Warsaw on July 28, 1993, Journal of Laws 1998, No. 51, item 318.

⁴ *Słownik łaci sko-polski*, vol. 5, ed. Marian Plezia (Warszawa: Wydawnictwo PWN, 1999), 112; *Słownik współczesnego języka polskiego*, vol. 2, ed. Bogusław Dunaj (Warszawa: Wydawnictwo Wilga, 2000), 303.

⁵ Piotr Kasprzyk, *Separacja prawna mał onków* (Lublin: Wydawnictwo KUL, 2003), 29–30, 33–34; Piotr Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku* (Lublin–Sandomierz: 1999), 14–15; Piotr Kasprzyk, "Separacja mał onków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym," *Ius Matrimoniale* 8 (2003): 89–90; Piotr Kasprzyk, "Separacja prawna w wietle znowelizowanego kodeksu rodzinnego i opieku czego," *Roczniki Nauk Prawnych* 1 (2000): 211–212; Piotr Kasprzyk, "Separacja – rozwój instytucji w prawie polskim," in *Ko cielne Prawo procesowe. Materiały i studia*, vol. 3, ed. Andrzej Dzi ga, Mirosław Wróbel (Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2003), 26; Wojciech Góralski, "Instytucja separacji a prawo polskie," in *Mał e stwo w prawie wieckim i w prawie kanonicznym. Materiały Ogólnopolskiej Konferencji Naukowej zorganizowanej w dniach 12 i 13 maja 1994 r. w Katowicach*, ed. Bronisława Czech (Katowice: Instytut Wymiaru Sprawiedliwości. O rodek Terenowy przy S dzie Wojewódzkim, 1996), 239–240; Tadeusz Smyczka, "Separacja mał onków," *Studia Prawnicze* 1–2 (2000): 151–152; Sylwester Kasprzak, *Wybrane zagadnienia z prawa ko cielnego* (Lublin–Sandomierz: KUL – Wydawnictwo Diecezjalne, 2000), 738; Tadeusz Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Prawo mał e skie*, vol. 3 (Olsztyn: Warmi skie Wydawnictwo Diecezjalne, 1996), 226; Brockhaus Enzyklopädie in zwanzig Bänden, vol. 18, ed. K.E.H. Liedtke (Wiesbaden: F.A. Brockhaus, 1968), 838; Carol Crowdy, *Family Law in a nutshell* (London: Sweet & Maxwell, 1992), 14.

Etymologically, the word "separation" is composed of two parts. The prefix *se-* implies detachment or separation, while *pars*, or *paris*, refers to one of the spouses⁶.

From this analysis of the term, it is evident that for such a rift to occur, there must have been some previous misunderstanding or dispute. This crisis is experienced by many couples at different stages of their marital life. It may stem from a breakdown in life plans or a loss of trust in the spouse. In most cases, couples manage to resolve such issues and continue their relationship. However, in cases of significant crises, the result is a temporary or permanent separation, which may occur without judicial involvement. This situation is referred to as factual separation, where spouses act according to their discretion without external interference from the court.

It should be noted that, according to Church doctrine, the marriage between baptized individuals is indissoluble⁷. Despite this assumption, this indissolubility is not viewed as an absolute compulsion. The Catholic Church allows for the possibility of a separation if the spouses, in an insurmountable way, wish to part, thereby sanctioning their decision through the institution of separation. However, this should not be considered a normal state but is tolerated because the spouses do not wish for a definitive dissolution of the marital bond before God and in the eyes of canon law. Thus, it serves as a means to alleviate difficult life situations.

Legal separation refers to a state resulting from a court ruling made according to applicable law. The court sanctions this situation at the request of the eligible party or parties, after examining the circumstances and reasons for separation. It then dissolves the marital community, but neither spouse is permitted to remarry⁸. The court also resolves the legal consequences of the separation, lifting the obligation to live together without violating the marital bond. This formal separation also establishes the rights and duties of the separated spouses.

Finally, both of the aforementioned terms should be clearly distinguished from the concept of separation as an institution of both canon and Polish civil law. In these legal frameworks, the legislator has established legal norms regulating the causes, prerequisites, procedure, and consequences of marital separation. Applications for such separation are submitted independently in both ecclesiastical and civil forums.

⁶ *Słownik łaci sko-polski*, 112.

⁷ Gen 2:24; Matt 5:32; Matt 19:3–9; Mark 10:7–12; Luke 16:18; Rom 7:2–3; 1 Cor 7:10–11, in *The Holy Bible: Old and New Testaments, The Millennium Bible* (Pozna : Pallottinum, 2000).

⁸ *Słownik j zyka polskiego*, vol. 3, ed. Mieczysław Szymczak (Warszawa: Wydawnictwo PWN, 1981), 198.

For a comprehensive understanding of the terminology of separation, it is also necessary to consider how the term is understood within the canonical framework. It originates from Latin and has two meanings. First, it is understood as the dissolution of the marital bond (*de dissolutione vinculi*)⁹, or as separation while the bond remains (*de separatione manente vinculo*)¹⁰. In this understanding, only a legally defined cause can release the spouses from living together. This *causa legitima* can lead to an eternal separation, *separatio perpetua*, if it is to last for life, or to a temporary separation, *separatio ad tempus*, if it is imposed for a limited time¹¹.

Furthermore, in order to further distinguish, it should be added that in the case of conflicting demands of the parties in Polish civil law, we encounter what is referred to as an "incompatible separation," where one party advocates for separation, and the other for divorce. Similarly, if only one spouse files a petition for the decree of separation, while the other remains passive, the case will still proceed in a procedural manner. It is, however, important to remember that, in accordance with the codified regulation, the court will always lean toward the more advanced claim. Therefore, if one party demands separation while the other seeks a divorce, the court, upon rejecting the petition for separation, will decree a divorce if the latter is justified¹².

2. The Purpose and Functions of Marital Separation

⁹ Canon 1141 et seq., *Codex Iuris Canonici Auctoritate Joannis Pauli PP II Promulgatus, Acta Apostolicae Sedis* 75 (1983) part II. Promulgated on January 25, 1983, it came into effect on the first day of Advent 1983 (hereinafter CIC 1983).

¹⁰ Canon 1151 et seq. CIC 1983.

¹¹ Kasprzyk, *Separacja prawna mał onków*, 29–34; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 14–15; Kasprzyk, "Separacja mał onków – instytucja funkcjonuj ca w polskim prawie rodzinnym i prawie kanonicznym," 89–90; Kasprzyk, "Separacja prawna w wietle znowelizowanego kodeksu rodzinnego i opieku czego," 211–213; Kasprzyk, "Separacja – rozwój instytucji w prawie polskim," 26; Kasprzak, *Wybrane zagadnienia z prawa ko cielnego*, 738–739; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Prawo mał e skie*, vol. 3, 226; Tadeusz Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Doczesne dobra Ko ciota. Sankcje w Ko cie. Procesy*, vol. 4 (Olsztyn: Warmi skie Wydawnictwo Diecezjalne, 1990), 331; Piotr Gajda, *Prawo mał e skie Ko ciota katolickiego* (Tarnów: Biblos, 2000), 235–236; Edward Szafrowski, *Podr cznik prawa kanonicznego*, vol. 4 (Warszawa: Wydawnictwo ATK, 1986), 168; Janusz Gajda, *Kodeks rodzinny i opieku czy: Akty stanu cywilnego, komentarz* (Warszawa: C.H. Beck, 2002), 274–276; *Prawo rodzinne*, ed. Jan Winiarz, Janusz Gajda (Warszawa: LexisNexis, 2001), 149–150; *Prawo rodzinne*, ed. Jerzy Ignatowicz, Mirosław Nazar (Warszawa: Wolters Kulwer, 2006), 118; Norbert Ruf, *Das Recht der Katholischen Kirche* (Freiburg–Basel–Wien: St. Benno-Verlag GmbH Leipzig, 1984), 287–290; *The Code of Canon Law: A Text and Commentary*, ed. James Cordien, Thomas Green, Donald Heintschel (New York/Mahwah: Paulist Press, 1985), 811–822.

¹² Art. 612 §1 KRO, in conjunction with Art. 439 of the Act of February 17, 1964, Civil Procedure Code, Dz.U. 1964 no. 43, item 296, as amended (hereinafter KPC); Kasprzyk, *Separacja prawna mał onków*, 206–207; Zdzisław Krzemi ski, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism* (Kraków: Wolters Kluwer, 2006), 39–40 and 89; El bieta Holewi ska-Łapi ska, "Separacja (projekty nowelizacji kodeksu rodzinnego i opieku czego)," *Jurysta* 2–3 (1999): 13; Smyczy ski, "Separacja mał onków," 154.

In the literature on the subject, it is rare to find a precisely defined and thoroughly discussed list of functions of the institution of legal separation between spouses. Most encountered classifications lack a comprehensive, strict, and exhaustive treatment and naming of these functions. Nevertheless, for the purposes of this work, such a categorization seems important¹³. Before attempting to precisely define each of the functions, it is crucial to assert that the fundamental purpose of separation, linking both canon law and civil law, is the function of preserving and maintaining the marital bond. It seems that, despite many controversies in both doctrinal discussions and parliamentary debates, this objective raises the least doubts.

The significance of this issue is further highlighted by the intense discussion during the period when the codified regulation of separation was reinstated. It was argued that a separation, serving merely as a substitute for divorce for Catholics, would neither be necessary nor appropriate. Its perceived lack of usefulness was forecasted, considering the overlap of grounds for separation with those for divorce. Additionally, it was argued that believers could use existing legal solutions to regulate their marital matters, as their situation would change only slightly after a separation. Clearly, all the above arguments should be dismissed. Separation cannot be considered a precursor to divorce, even though it requires similar grounds. It is not, either, a proposal for a "Catholic divorce," designed to eliminate divorce for this particular group of society. It has been regulated in such a way as to serve the needs of a broader audience. Although originating from canon law, it does not exclusively aim to protect the religious convictions of a specific segment of society. Furthermore, equating separation with divorce is fundamentally erroneous, as it is not a form of divorce but a means of avoiding it. Thus, it is created to protect a different kind of good and serve different purposes. Despite the ongoing crisis in the marriage, it aims to alleviate it and preserve the bond. It addresses family issues from a legal perspective, comprehensively regulating all associated rights and obligations¹⁴.

In the Catholic Church's view, marriage is intended to be permanent. From its teachings, it can be inferred that spouses should trust and support each other. The structure and durability

¹³ The introduced nomenclature of separation functions is the author's invention solely for the purposes of this work, without counterparts in the doctrine and literature on the subject. Jan Halberda, "Separacja – wybrane zagadnienia materialnoprawne (przesłanki, skutki)," *Rejent* 11 (2001): 88–95.

¹⁴ Smyczy ski, "Separacja mał onków," 151–152; Tadeusz Smyczy ski, *Prawo rodzinne i opieku cze* (Warsaw: C.H. Beck, 2005), 147–148; Janina Panowicz-Lipska, "Instytucja separacji w polskim prawie rodzinnym," *Pa stwo i Prawo* 10 (1999): 13–14; Kasprzyk, *Separacja prawna mał onków*, 37.

of the union will then be based on their individual attitudes. The Church also encourages reconciliation despite all adversity and difficulties. Therefore, separation primarily serves a conciliatory purpose. This especially applies to the earlier described temporary separation. However, despite this assumption, the majority of functions and purposes can be considered overlapping in both compared legal systems, which will be discussed jointly below¹⁵.

A natural manifestation can be seen in the behavior of one of the spouses, who, in the midst of a crisis, chooses to distance themselves from the other, with whom they no longer wish or are unable to live due to the dangers arising from this situation. The purpose of separation is to make the spouses aware in such cases that there is a means allowing for a rather radical decision, without thereby destroying the marriage itself. Therefore, the purpose of such a separation could be to foster reconciliation, either in the short or long term. It also provides an opportunity for reflection and behavioral change, and consequently gives the spouse a chance to restore the marital union. The institution of separation does not condone irrevocable actions.

Legal separation does not, in itself, cause the dissolution of the marital bond but rather serves as a confirmation of such a state. It simultaneously protects the innocent party, aligning with them. This sanction is not, in any way, an approval or indulgence of the misconduct of the guilty spouse, but rather a form of imposed penalty. However, with the decree of separation, the legislature does not grant the spouses unlimited freedom; it merely relieves them of the duty to live together. This function of separation can be defined as protective¹⁶. It is not solely about the civil-legal situation but also about its potential use as a means of protecting one's religious convictions, which may have caused the family crisis.

The reflective function of separation can be identified as the opportunity for deep reflection and contemplation over the decisions made and the possible alternative of divorce. It also provides a sense of security for the whole family and offers a chance for the positive psychological development of children, which in the case of divorce might be disrupted or even hindered.

The decree of separation will certainly not resolve all the problems existing within the family, but it may alleviate the tensions in their daily life. Despite the dissolution of the marital community, it is not as drastic a measure as divorce, and it does not create a sense of a

¹⁵ Kasprzyk, „Separacja – rozwój instytucji w prawie polskim”, 45; Kasprzyk, *Separacja prawna mał onków*, 36; Kasprzak, *Wybrane zagadnienia z prawa ko celnego*, 740.

¹⁶ Some authors propose the term "substitutive function." Halberda, "Separacja – wybrane zagadnienia materialnoprawne (przesłanki, skutki)," 88 and 91–94.

complete ending. A disrupted relationship is easier to re-establish during separation than after a divorce, when the bond has been legally dissolved. In these terms, separation can be assigned a restorative function¹⁷. However, for its effectiveness, the spouses themselves must take specific actions.

Certainly, this institution should not be assigned the task of deepening the crisis or dismantling unions. While the separation of spouses will likely weaken the emotional bonds and contact between them, thus developing difficulties and reducing the chances of reconciliation, treating separation as a step toward divorce completely distorts its purpose. Unfortunately, this is the intention of many married couples, particularly under legal systems that reflect the last two models of separation regulations presented earlier.

Additionally, the institution of separation can be viewed as an instrument for the regulation of all kinds of family matters from a formal-legal perspective. This applies both to the sanctioning of the current situation, which may contribute to alleviating the crisis, and to securing the future areas of common life and governance. The regulatory function is further emphasized by the possibility of handling multiple matters in a single proceeding. The decree of separation allows, among other things, for the regulation of relations with children and the exercise of parental authority, the dissolution of marital property co-ownership, changes in the management of common property, as well as the establishment or denial of paternity¹⁸.

In summary, the goal that a decree of separation is intended to achieve is to provide conflicted spouses with an opportunity for reconciliation and to ease their dispute. Furthermore, by its nature, it is meant to facilitate the organization of their personal, family, and legal-property affairs. It thus constitutes a sanctioning of the situation of factual separation, regardless of whether one is a believer or not. The introduction of separation alongside the institution of divorce enriches the range of available codified measures, also providing certain temporary and partial solutions.

3. Grounds for Decreeing Separation

¹⁷ Prof. T. Smoczyński uses the term “palliative function”. Tadeusz Smoczyński, "Kierunki reform kodeksu rodzinnego i opiekuńczego," *Kwartalnik Prawa Prywatnego* 2 (1999): 309.

¹⁸ Kasprzyk, *Separacja prawna małonków*, 34–40; Kasprzyk, „Separacja małonków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym”, 115–117; Panowicz-Lipska, "Instytucja separacji w polskim prawie rodzinnym," 14–15; *Rozwód, separacja, podział majątku: podręcznik z wzorami pism procesowych*, ed. Teresa Dyrka, Paweł Baranowski (Zielona Góra: Zachodnie Centrum Organizacji, 2000), 52–54.

As a rule, marriage is a lifelong union entered into between a man and a woman. In the context of canonical law, it is additionally referred to as a covenant, thereby elevating its rank and significance. However, both ecclesiastical and secular legislators have provided for certain circumstances that give spouses the right to “suspend” this union. This paper will not focus on the possibilities of completely dissolving the marital bond provided for in Polish civil law but will instead direct its attention to the causes of interrupting marital life without the possibility of dissolving the marital bond, that is, to the causes of separation.

The Polish legislator has assumed that the existence of legal separation is not an absolute ground for a divorce decree. Therefore, its decree is not a transitional stage but an indication of the deep crisis of marital life in which the spouses find themselves. The grounds for its decree have been divided under Polish family law into positive and negative grounds. For a clearer comparison of the legal systems discussed, the same division is applied to the grounds of canonical law in this paper.

3.1. Positive Grounds

The reintroduction of the institution of separation into Polish civil law provides individuals in marital crisis with a greater range of subjective rights to choose from. However, to benefit from this regulation, certain conditions must be met, after which both ecclesiastical and secular courts may decree separation¹⁹.

Under civil law provisions, legal separation may be established in the case of a complete breakdown of marital life between spouses. This clause represents the only positive ground under family law. There is no codified, enumerative list of absolute separation grounds that would constitute a violation of marital duties²⁰. The legislator specifies only that this

¹⁹ In the Polish legal system, there are no absolute grounds for divorce or separation, which means that courts must rely more on their own experience. It should be noted that, currently, an absolute system of divorce grounds does not exist in its pure form in virtually any European country. For example, in England, Italy, and Germany, there is a mixed system, while in Belgium and France, a multi-system approach is applied. Kasprzyk, *Separacja prawna mał onków*, 180–181.

²⁰ Such a catalogue was formulated in the Marriage Law Draft of 1929, which adopted a mixed system for cases of marital separation. This draft, approved by the Codification Commission on May 28, 1929, was never enacted. Article 58 of the draft listed in detail the grounds for separation, which included: adultery, attempts on the life of the spouse or their child, serious insult, defamation or slander, deprivation of parental authority, refusal to provide family maintenance, abandonment of the common residence, conviction to a prison sentence of over 5 years, committing a disgraceful crime, profligate or immoral life, urging the spouse or children to live immorally, engaging in disgraceful occupation, alcoholism or drug addiction, contagious venereal disease, ongoing mental illness for 3 years, sexual incapacity before 10 years of marriage; error at the time of marriage regarding the spouse’s identity, marital status, citizenship, religion, or any significant attributes that constitute a legal impediment to marriage, or those that threaten the health of the plaintiff and their future offspring, or those

breakdown should be characterized by completeness in three areas: economic, spiritual, and physical. Upon determining by the court that the marriage is not functioning properly, the rights and obligations resulting from being in this union are suspended.

Unlike in the case of divorce, the legislator does not require the ground of marital breakdown to be permanent²¹. This reflects a concern for spouses in crisis and highlights the previously described restorative function of separation. Nonetheless, the clause of complete marital breakdown regarding separation is defined in the statute in the same way as for divorce. For this reason, when decreeing separation, the findings of the Supreme Court concerning the nature of this breakdown are helpful²². It is a continuous legal event, a state rather than an event occurring at one moment. Moreover, the breakdown of the marital bond should already be present at the time of filing for separation. It must also be distinguished from the ordinary breakdown of interpersonal bonds²³.

Doctrinal opinion is not as unequivocal as the Supreme Court's stance. It distinguishes between a complete breakdown of marital life, in which bonds in all three dimensions have ceased, and a disintegration in which not all of them have ceased but are so minimal that this breakdown can be considered complete. In the latter case, the breakdown of marital life occurs despite preserved economic bonds imposed by the circumstances of cohabitation²⁴.

The assessment of whether this positive ground for separation has been met falls exclusively within the court's competence, which, in the course of evidentiary proceedings, determines the extent of the breakdown. The court is obliged in these proceedings to identify as many circumstances as possible that have influenced the marital crisis. It is essential that the complete breakdown of the marriage exists at the moment the case is closed, as otherwise, to protect the social interest, separation cannot be decreed. The judge would have an easier task in a system of absolute grounds established by the legislator. Meanwhile, the breakdown

commonly regarded as dishonorable; forced marriage; refusal to fulfill the church ceremony in violation of the promise made during the marriage act. The decision to grant separation also depended on the fulfillment of two conditions: no harm to the best interests of minor children and the permanent breakdown of the marital relationship.

²¹ It should be noted, however, that it is also possible to decree separation in the case of a permanent breakdown of the marital relationship, as spouses then have the right to choose between the institution of separation and divorce. Kasprzyk, *Separacja prawna mał onków*, 182.

²² Resolution of the Supreme Court of May 28, 1955, case file no. I CO 5/55, *OSN* 1955, no. 3, item 4.

²³ Kasprzyk, *Separacja prawna mał onków*, 180–183; Kasprzyk, “Separacja – rozwój instytucji w prawie polskim”, 42; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 66–67; Smyczy ski, *Prawo rodzinne i opieku cze*, 149; Smyczy ski, “Separacja mał onków”, 153; Panowicz-Lipska, “Instytucja separacji w polskim prawie rodzinnym”, 16–17; Gajda, *Kodeks rodzinny i opieku czy: akty stanu cywilnego, komentarz*, 277; Haak, “Separacji”, *Monitor Prawniczy* 4 (2000): 214–215; *Prawo rodzinne*, eds. Jerzy Ignatowicz, Mirosław Nazar, 121; Halberda, “Separacja – wybrane zagadnienia materialnoprawne (przesłanki, skutki)”, 95–97.

²⁴ Kasprzyk, *Separacja prawna mał onków*, 184.

of marital life is usually not the result of a single strong ground but a compilation of several causes. In such cases, difficulties arise in assessing the situation. It is easier to assess when there is conflict between the spouses or when the behavior of one of them indicates adultery, alcoholism, or abuse of family members²⁵.

In determining the reasons for the marital crisis, it is also necessary to examine whether the fault for the marital breakdown lies with the husband, the wife, or both. The catalog of such fault-based causes includes, among others: failure to maintain marital fidelity, a reprehensible attitude towards the spouse's family, aggression, neglect of the family, refusal to provide mutual assistance, gambling, prostitution, conviction for a crime, unethical behavior, alcoholism, drug addiction, concealment of physical or mental illness. Non-fault circumstances, on the other hand, include, among others: differences in character, impotence, infertility, defects in the declaration of intent, age differences, worldview differences, the spouse's departure abroad, or consent to interference by the mother-in-law in the spouses' matters. This is not a closed catalog, but all these circumstances, as well as new ones indicated outside this collection, must have a significant impact on the breakdown of the marriage²⁶.

Recently, one of the most common causes of marital separation, alongside differences in personality, is alcoholism. It should be noted that alcoholism itself does not justify a demand for separation; rather, it is the effects of this illness that form the basis for such a claim. Due to alcoholism, a spouse may shift their personal values, which often leads to the breakdown of family life. Alcoholism can also result in the mistreatment of family members, which serves as a grounds for ordering a separation.

Similarly, marital infidelity significantly influences the legitimacy of a separation. Both secular and ecclesiastical lawmakers require spouses to remain faithful, defining fidelity as essential for a properly functioning family. Thus, marital infidelity is viewed as a symptom of the dissolution of emotional bonds. Marriage, as a union between one man and one woman,

²⁵ Kasprzyk, *Separacja prawna mał onków*, 184–186; Kasprzyk, *Institucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 68.

²⁶ Art. 58 Projektu Prawa mał e skiego, adopted by the Codification Commission on May 28, 1929, Warsaw, Codification Commission 1931 No. 12, item 31; Kasprzyk, *Separacja prawna mał onków*, 187–188 and 192–193; Kasprzyk, “Separacja – rozwój instytucji w prawie polskim”, 42–43; Kasprzyk, *Institucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 67–68; Kasprzyk, “Separacja prawna w wietle znowelizowanego kodeksu rodzinnego i opieku czego”, 221; Kazimierz Piasecki, *Separacja w prawie polskim* (Warsaw: Wydawnictwo Prawnicze, 2000), 16–18; Krzeminski, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism*, 18–32.

obliges both parties to uphold complete fidelity, extending beyond the sexual sphere. This fidelity manifests in providing spiritual support and in the joint upbringing of children²⁷.

When arguing for a separation, one may certainly cite grounds other than those mentioned above, provided that these result in the total breakdown of marital life. Additionally, in civil court, it is permissible to invoke grounds for separation that are recognized under canonical law. The list provided in canonical law appears to be more systematic and clear. According to these norms, the marital community does not constitute an essential attribute of marriage, although it remains a right and duty of the spouses. The ecclesiastical legislator explicitly states that, for a valid and just cause, the parties may waive this duty. However, this is an exception that cannot be interpreted expansively²⁸.

Circumstances encountered in daily life that lead to marital breakdown are often challenging to overcome with ordinary pastoral means. Hence, canonical law establishes legal causes that justify and authorize spouses to refrain from the duty of cohabitation. Therefore, separation is an extraordinary measure that serves to protect the dignity of the innocent spouse, who is not obligated to separate but is permitted to do so. The Church authorities advocate encouraging the innocent spouse to forgive and to avoid prolonging the separation²⁹.

In formulating the list of reasons for separation, the ecclesiastical legislator enumerates five grounds³⁰, thus being more specific than secular law. However, this is not a closed list³¹, as the final provision includes a general clause that suggests other potential reasons for separation may be considered.

The primary and fundamental positive ground in canonical law is adultery, viewed as a violation of the exclusive right to the spouse's body, which undermines the marital community. Marital infidelity is depicted here with greater emphasis and detail than in secular legislation. It is highlighted that if the innocent spouse has not explicitly or implicitly forgiven the infidelity, they may terminate cohabitation. Christian forgiveness toward the adulterous

²⁷ Kasprzyk, *Separacja prawna mał onków*, 188–191.

²⁸ Can. 1135 CIC 1983; Kasprzyk, *Separacja prawna mał onków*, 188; Kasprzyk, “Separacja mał onków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym”, 98; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 68.

²⁹ Kasprzyk, *Separacja prawna mał onków*, 66–67; Ginter Dzier on, “Separacja stała podczas trwania w zła mał e skiego,” *Ius Matrimoniale* 11, 5 (2000): 151–168, DOI: 10.21697/im.2000.5(11).08; Góralski, “Instytucja separacji a prawo polskie,” 240.

³⁰ Can. 1152 and 1153 CIC 1983.

³¹ In the CCEO, unlike in the 1983 CIC, the legislator explicitly states that the particular law of the Church may establish other causes due to the customs of the people and the circumstances of the place. This provision is absent in the 1983 CIC; however, both codes regulate the institution of separation in the same way. The 1917 CIC, on the other hand, formulates the grounds for separation differently, listing them in detail and lacking a blanket provision. In this regard, there has been an evolution in canonical law. Can. 863 and 864 CCEO.

spouse, for the family's sake, is advised, although the innocent spouse is not strictly obliged to forgive.

Adultery as a cause of separation involves physical intimacy with a third party, which is understood as a morally certain act, performed knowingly and voluntarily. No distinction is made here between men and women, nor does it matter whether the infidelity occurred in a heterosexual or homosexual context. However, the act must be free and voluntary, thus excluding forced sexual acts, such as rape, as a grounds for separation. Likewise, behaviors such as kissing or exchanging love letters do not meet the legal requirements.

Once this ground is established and separation is ordered, the spouses are freed from the duty and right of cohabitation, yet they remain obligated to marital fidelity since, under canonical law, their marriage is still valid.

It is essential to note that within the context of adultery, four negative grounds can be interpreted, which will be discussed below. These arise when the innocent spouse consented to the infidelity, caused it, committed adultery themselves (thus precluding them from claiming separation due to the principle of redressing harm), or failed to act within the six-month period required to revoke the fault³².

The second positive ground involves a serious threat to the health and life of one of the spouses. In such cases, one party must be recognized as posing a significant risk to the physical or spiritual well-being of the other party or to their children³³. Such behavior may also render cohabitation excessively challenging, providing grounds for a separation order. Causes include violence, brutality, abuse, mutual conflicts—any situation that endangers the innocent party's health or life, provided they do not provoke these behaviors.

The third standardized positive ground is a threat to the spouse's spiritual welfare. This may include the adoption of a non-Catholic faith, joining a sect, converting to a church not in unity with the Catholic Church, urging the spouse toward grave sins, or encouraging crimes, among others.

³² Can. 1152 CIC 1983; Kasprzyk, *Separacja prawna mał onków*, 67; Kasprzyk, "Separacja mał onków – instytucja funkcjonuj ca w polskim prawie rodzinnym i prawie kanonicznym", 98–99; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 28–29; Dzier on, "Separacja stała podczas trwania w zła mał e skiego", 160–163; Kasprzak, *Wybrane zagadnienia z prawa ko cielnego*, 740–741; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Doczesne dobra Ko ciota. Sankcje w Ko cie.* *Procesy*, vol. 4, 331.

³³ In the case where such danger is immediate, the spouse has the standing to independently decide on separation with their own authority, but this decision must be ratified by the competent authority within six months. Can. 1152 §3 CIC 1983.

Specifying the fourth ground, namely a serious danger to the minor children of the marriage, includes cases of incest, child abuse, incitement to criminal activity, or irresponsible behavior toward the children.

In specifying the positive grounds for separation, the ecclesiastical legislator has defined their scope with considerable precision. However, this list is not exhaustive, as a fifth ground allows for a general clause on other circumstances that render marital community impossible. This includes, for instance, the spouse's criminal lifestyle, which may expose the family to embarrassment or defamation, disrespect from family, extreme vulgarity, inadequate concern for family support (shifting this burden solely to the other spouse), or promoting demoralizing views. This use of the general clause permits the inclusion of reasons for separation not specifically listed, provided that they present a serious danger to the physical or spiritual well-being of the other spouse or otherwise render cohabitation overly burdensome. This provision thus responds to contemporary needs and allows for an interpretation of whether a particular ground fits within the scope of the canon in specific circumstances³⁴.

3.2. Negative Grounds for Separation

The decree of separation is, however, inadmissible even if one or all of the positive prerequisites are met, if at the same time one of the negative prerequisites exists. In Polish civil law, at least two such cases have been distinguished, namely if the welfare of the couple's minor children would suffer as a result, or if for other reasons, the decree of separation would be contrary to the principles of social coexistence. It is also worth noting that in the provisions regarding separation, there is no so-called principle of recrimination, i.e., a prohibition on decreeing separation based solely on the request of the spouse responsible for the breakdown of the marriage, which would be the equivalent of a divorce prohibition. The adoption of such a prerequisite could lead to exacerbating the conflict rather than saving the marriage³⁵.

³⁴ Can. 1153 §1 CIC 1983; Kasprzyk, *Separacja prawna mał onków*, 68–69; Kasprzyk, „Separacja mał onków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym”, 99–100; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 28–29; Kasprzak, *Wybrane zagadnienia z prawa ko cielnego*, 741–742; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Doczesne dobra Ko cioła. Sankcje w Ko cie. Procesy*, vol. 4, 331.

³⁵ Art. 611 §1 i 2 KRO; Panowicz-Lipska, „Instytucja separacji w polskim prawie rodzinnym”, 17; Kasprzyk, „Separacja – rozwój instytucji w prawie polskim”, 43; Kasprzyk, *Separacja prawna mał onków*, 194 i 201; Kasprzyk, „Separacja prawna w wietle znowelizowanego kodeksu rodzinnego i opieku czego”, 221–222; Smyczy ski, „Separacja mał onków”, 153; Smyczy ski, *Prawo rodzinne i opieku cze*, 149–150; Gajda, *Kodeks*

In the case of the first of the negative prerequisites mentioned, a problem arises in the doctrine with formulating a clear definition of the child's welfare³⁶. Nonetheless, it must be acknowledged that this is one of the guiding principles the court follows when making decisions in separation cases. There is no doubt that for a child's proper development, they should feel a bond with both parents. After all, the family is the first and primary educational environment, so it should be intact and function well. Conversely, a broken family influences the development of negative feelings and attitudes. Therefore, in the case of separation, the issue is not whether the child's welfare will suffer at all, as this is an undisputed fact, but whether the decree of separation itself will endanger and undermine that welfare.

This prerequisite is defined by the legislator in the same way for both divorce and separation, but it may turn out that, under certain circumstances, the decree of separation will result in a lesser threat. For a proper assessment of this situation, the court should define and compare the children's circumstances after the decree of separation and in the case where the separation does not take place. When applying this negative prerequisite, the court should also take into account the child's previous contact with the parents, their health, age, and level of sensitivity. Considering all these circumstances often requires expert testimony.

Furthermore, when analyzing this prerequisite, the designates of the term "joint minor children of the spouses" must be defined. According to the currently applicable civil law, these include:

- children born from the marriage or from one spouse and adopted by the other spouse;
- children adopted by both spouses;
- extramarital children acknowledged by the spouse, and whose paternity has been established by the court³⁷.

The aforementioned prohibition on decreeing separation related to this prerequisite has been formulated in an unequivocal manner, which allows no exceptions or deviations. It does not, however, apply to adult children of the spouses, even if there is a need for assistance due to poor health or education. Similarly, it does not apply to minor children of only one spouse,

rodzinny i opieku czy: akty stanu cywilnego, komentarz, 277; Prawo rodzinne, ed. Jerzy Ignatowicz, Mirosław Nazar, 121.

³⁶ For the purposes of this work, the definition provided by W. Stojanowska has been adopted, according to which it is a complex of values, both immaterial and material, necessary to ensure the proper physical and spiritual development of the child and adequate preparation for work, according to its abilities. Kasprzyk, *Separacja prawna mał onków*, 194.

³⁷ Art. 27, 62, 114, 115 §3 KRO.

even if the parties have raised them together, nor does it apply to a child conceived but unborn³⁸.

These last two cases are linked to the second negative prerequisite because, due to their nature, it seems that the court could consider their inadmissibility in terms of the principles of social coexistence. The circumstances fulfilling this prerequisite also occur when, according to these principles, a severe injustice threatens the spouse who opposes the separation. Similarly, this applies when the request for separation is opposed due to social and educational reasons, sanctioning the effect of malicious and harmful treatment of the spouse or children, as well as in the case of disregard for the institution of marriage or family duties.

According to the doctrine, the term "clause of social coexistence principles" refers to the appeal to universally recognized values in social culture, which are both a heritage and a component of European culture, and are consistent with the principles of a democratic rule of law. Some of its proponents argue that it should be understood directly as principles of ethical conduct interpreted from the Christian value system, which would bring them closer to prerequisites derived from canon law.

The civil legislator, when referring to this negative prerequisite, invokes specific situations in which separation should not be decreed, even in the case of marital breakdown and the absence of other negative prerequisites, such as in the case of one spouse's physical illness, when their condition requires the caring attention of the other spouse, including both spiritual and material assistance. The court should also refuse to decree separation in the case of less severe physical disabilities or bodily imperfections. A request for separation cannot be based on the mutual consent of spouses who are jointly raising adult children with permanent disabilities requiring constant care³⁹.

This prerequisite also includes four situations sanctioned by the norms of canon law, which are in conflict with the principles of social coexistence, despite the lack of a clear statement of this fact by ecclesiastical legislators.

The first of these is the consent of one spouse to the infidelity of the other. Such consent to adultery can be explicit, made through words or signs, or tacit, resulting from behavior. This approval must meet all the requirements concerning a legal act. However, the

³⁸ Kasprzyk, *Separacja prawna mał onków*, 194–197; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 68–69; *Prawo rodzinne*, ed. Jan Winiarz, Janusz Gajda, 152; Krzemi ski, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism*, 33–36.

³⁹ Kasprzyk, *Separacja prawna mał onków*, 197–200; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 69–70; *Prawo rodzinne*, ed. Jan Winiarz, Janusz Gajda, 152–153; Krzemi ski, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism*, 35–37.

motivations of the consenting spouse are irrelevant in this situation. It should be noted that such consent may only apply to future actions, not past ones.

The second situation occurs when one spouse encourages, assists, or persuades the other to commit adultery. However, legal significance cannot be attributed to distant or indirect schemes. For this provocation to be accepted, there must also be a causal link between one spouse's immoral behavior and the adultery committed by the other.

In the third situation, we are dealing with the compensation of adultery that bears the characteristics of neutralizing guilt. This occurs when the innocent spouse, aware of the other spouse's infidelity, commits a similar betrayal. However, this situation is in conflict with the two previous ones because both approval of adultery and its provocation exclude the possibility of future compensation⁴⁰.

The fourth situation is a specific case related to forgiveness, which is fundamental to Christian life, and assumes the innocent spouse's awareness of the betrayal. The forgiveness of sin can take place in three forms: explicitly, expressed in words or signs; tacitly, through the voluntary engagement in marital relations despite the awareness of the betrayal; or presumptively, when forgiveness is assumed after maintaining marital unity for six months, although this presumption is rebuttable⁴¹.

The ecclesiastical legislator also stipulates that one spouse may be the cause of adultery if they unjustifiably expel the other from the shared residence, throw out their belongings, or refuse to fulfill marital duties. In such cases, in accordance with the principles of social coexistence, such a spouse cannot request a decree of separation⁴².

The secular legislator also states that raising separation demands solely aimed at regulating disputed property matters is incompatible with the discussed negative prerequisite. The inadmissibility of such actions is based on the fact that spouses can utilize other legal institutions intended to resolve these aspects of life⁴³.

4. Adjudication in Separation Cases

⁴⁰ Can. 1152 §1 CIC 1983; can. 1129 §1 CIC 1917.

⁴¹ Can. 1152 §2–3 CIC 1983; can. 1129 §2 and 1130 CIC 1917.

⁴² Dzierżon, "Separacja stała podczas trwania w zła mał e skiego," 164–167; Kasprzyk, *Separacja prawna mał onków*, 67; Gajda, *Prawo mał e skie Ko ciola katolickiego*, 236–237; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Prawo mał e skie*, vol. 3, 226; Szafranski, *Podr cznik prawa kanonicznego*, vol. 4, 169; Grólikowski, *Czy w Ko cielem rozwody* (Włocławek: Włocławskie Towarzystwo Diecezjalne, 2001), 56–57; Góralski, *Kanoniczne prawo mał e skie* (Warszawa: Polskie Wydawnictwo Prawnicze, 2000), 165–166.

⁴³ Kasprzyk, *Separacja prawna mał onków*, 201; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 70–71.

Civil law norms regarding separation proceedings grant active standing to submit procedural documents exclusively to the spouses, as it is between them that the proceedings are conducted. This right is not granted to the prosecutor, nor to other individuals whose participation as parties is inadmissible. In all cases, district courts are competent to adjudicate separation matters⁴⁴. The subject-matter jurisdiction of these courts applies to both cases of separation by mutual consent of the spouses and cases of separation annulment. Territorial jurisdiction is established according to the last common residence of the spouses, or, in the absence of such a basis, the court of their last shared place of residence. If the spouses have no common place of residence or stay, the application should be filed with the court competent for one of the spouses, in accordance with special provisions similar to those for divorce proceedings⁴⁵. Each spouse may request this court to issue a separation decree if there has been a complete (but, in contrast to divorce, not permanent) breakdown of marital life. If only one spouse demands separation, they must file a petition with the court, which will examine the case in contentious proceedings according to separate procedural regulations. However, in the case of a mutual request for a separation decree by both parties, they submit an application to the court, which is reviewed in non-contentious proceedings. A decree of separation obliges the court to rule on whether and which spouse bears the blame for the breakdown of marital life. In such cases, the fault of one or both spouses is established, while the ruling on fault can only be waived at the mutual request of the parties.

In canonical law, the definition of the parties to the proceedings is similarly structured, as separation cannot be established *ex officio*, and differences stem from the nature of proceedings under canonical norms. Marriage is perceived as a public institution, thus an intervention modifying its coexistence demands ecclesiastical authority. Accordingly, the bishop of the diocese where the spouses reside, intending to remain there for at least three months, holds the competence to conduct the separation, as does the diocesan court after conducting an oral contentious process, and the spouses themselves if a serious cause exists. However, in this latter case, the factual separation should be legally formalized within six months of its occurrence⁴⁶.

⁴⁴ Kasprzyk, *Separacja prawna mał onków*, 204–205; Kasprzyk, „Separacja – rozwój instytucji w prawie polskim”, 43; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 71; Kasprzyk, „Separacja prawna w wietle znowelizowanego kodeksu rodzinnego i opieku czego”, 222; Krzemi ski, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism*, 37.

⁴⁵ Art. 5671 in conjunction with Art. 508 §1–3 of the Polish Code of Civil Procedure (KPC).

⁴⁶ Kasprzyk, *Separacja prawna mał onków*, 72; Kasprzyk, „Separacja mał onków – instytucja funkcjonuj ca w polskim prawie rodzinnym i prawie kanonicznym”, 100–101; Kasprzyk, *Instytucja separacji mał e skiej w wietle ustawy z dnia 21 maja 1999 roku*, 30; Dzier on, „Separacja stała podczas trwania w zła mał e skiego”,

It should be noted that in canonical law, the purpose of separation proceedings is to determine the canonical cause of separation and to indicate the party at fault for the breakdown of marital life. Nevertheless, a pastoral aspect is also evident in this legal order, as the ecclesiastical judge is obliged to encourage the parties to amicably resolve the crisis before accepting the case for adjudication. Strong emphasis is placed on pastoral counseling aimed at restoring equilibrium in the marital relationship.

In cases where the diocesan court's decree does not produce civil effects, or if a civil court judgment would not violate canonical law, the diocesan bishop, competent for the place of residence of the spouses, may agree to have the separation case adjudicated solely by the civil court. This is an exception not to be broadly extended and is applied due to particular circumstances influencing the interrelation of the two legal orders as they concern Catholics. The bishop's described decision will sanction the civil judgment, granting it canonical effects. The ecclesiastical judge, having certainty that the case pertains solely to the civil effects of marriage, should even strive for it to be submitted from the outset to the civil court⁴⁷.

It is worth emphasizing that the civil court, upon commencing proceedings, is also obliged to attempt a reconciliation of the spouses by scheduling a reconciliation hearing. This represents another similarity between the two discussed legal orders⁴⁸.

The scope of the separation decree is extensive: the court mandatorily legally sanctions the separation of the spouses, additionally ruling on the blame for the breakdown of marital life if there was no mutual request from the spouses on this matter; establishes parental authority over the minor child of the marriage, as well as the share of each parent in covering the costs of the child's maintenance and upbringing. Its ruling is not contingent on the parties' motions in this matter. Additionally, at the request of a spouse, the court may

167; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Doczesne dobra Kościoła. Sankcje w Kościele. Procesy*, vol 4, 331–332; Gajda, *Prawo małżeńskie Kościoła katolickiego*, 237; Góralski, *Kanoniczne prawo małżeńskie*, 166–167.

⁴⁷ Can. 1692 CIC 1983; Kasprzyk, *Separacja prawna małonków*, 74–77; Kasprzyk, „Separacja małonków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym”, 102–103; Kasprzyk, *Instytucja separacji małżeńskich w świetle ustawy z dnia 21 maja 1999 roku*, 31–33; Góralski, „Instytucja separacji a prawo polskie”, 240–241; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Doczesne dobra Kościoła. Sankcje w Kościele. Procesy*, vol. 4, 332; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Prawo małżeńskie*, vol 3, 227; Szafranski, *Podręcznik prawa kanonicznego*, vol. 4, 404–405; Gajda, *Prawo małżeńskie Kościoła katolickiego*, 239–240; Gralikowski, *Czy w Kościele są rozwody*, 60.

⁴⁸ Gralikowski, *Czy w Kościele są rozwody*, 61; Smyczyński, „Separacja małonków”, 154–155; Smyczyński, *Prawo rodzinne i opiekuńcze*, 151; Panowicz-Lipska, „Instytucja separacji w polskim prawie rodzinnym”, 19–21; Kasprzyk, „Separacja małonków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym”, 109; Kasprzyk, *Separacja prawna małonków*, 207–208; Kasprzyk, *Instytucja separacji małżeńskich w świetle ustawy z dnia 21 maja 1999 roku*, 71–72; Haak, „Separacja”, 216; *Prawo rodzinne*, ed. Jan Winiarz, Janusz Gajda, 153; Krzemiński, *Separacja. Praktyczny komentarz. Orzecznictwo. Piętno. Wzory pism*, 39–40.

order the eviction of the other spouse or specify the use of the shared residence. In the judgment, the court may also divide the joint property or order maintenance for an adult spouse upon the request of one of the parties. The mentioned regulations may, in accordance with the filed request, apply to the period after the decree of separation as well as the duration of the process⁴⁹.

5. Dissolution of Separation

Proceedings for the dissolution of separation represent one among several methods for ending this form of marital separation. Both canon law and civil law recognize additional factors that may lead to its termination. Polish legislators identify such factors, including the death of a spouse, which leads to the complete termination of marriage, a subsequent divorce decree, an annulment of marriage, and the judicial act of dissolving the separation. Canon law, however, presents a closed catalog of conditions for ending separation. Like in civil law, the death of a spouse is included, but other causes differ. The next three reasons place more emphasis on restoring marriage rather than terminating it, as found in civil regulation: forgiveness of the offending spouse, cessation of the cause and object of separation, and the conclusion of the period of temporary separation. In all these cases, the spouses are expected to resume cohabitation after the cause of separation ceases, unless otherwise directed by ecclesiastical authority⁵⁰.

In civil law, spouses may request the dissolution of separation at any time. However, the court will only consider such a request upon receiving a mutually agreed application from both parties. There is no time limit for submitting such an application, but it must be upheld until the close of the trial. It is inadmissible to commence such proceedings upon the request of only one spouse.

Such mutual consent by both parties obliges the court, regardless of whether their claims of overcoming the crisis or resuming cohabitation are truthful. Moreover, in the case of

⁴⁹ Kasprzyk, *Separacja prawna małonków*, 218–222; Kasprzyk, „Separacja małonków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym”, 111; Krzemiński, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism*, 44–65.

⁵⁰ Can. 1153 §2 CIC 1983; Kasprzyk, *Separacja prawna małonków*, 77 and 224; Kasprzyk, „Separacja małonków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym”, 105; Kasprzyk, *Instytucja separacji małonków w świetle ustawy z dnia 21 maja 1999 roku*, 33; Panowicz-Lipska, „Instytucja separacji w polskim prawie rodzinnym”, 25; Pawluk, *Prawo kanoniczne według kodeksu Jana Pawła II. Prawo małonków*, vol. 3, 227; Szafronowski, *Podręcznik prawa kanonicznego*, vol. 4, 169; Gralikowski, *Czy w Kościele rozwody*, 59; Góralski, *Kanoniczne prawo małonków*, 167; Krzemiński, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism*, 65–66.

a mutual request, the court is obligated to apply significant procedural simplifications to preserve the marriage. However, it seems justifiable that to ensure legal certainty and prevent abuses, the legislator does not allow overly extensive simplifications that might lead to the dissolution of separation simply due to the resumption of cohabitation⁵¹.

A court's final judgment dissolving separation results in the revival of rights and duties arising from marriage and the marital community. However, spouses do not automatically return to the legal situation that existed prior to the separation decree. While there is a certain automaticity in non-property matters, the situation is more complex regarding property issues. Certain aspects, such as the exercise of parental authority over a common minor child and the maintenance of property separation between spouses, require a court ruling if requested by both spouses⁵².

In canon law, the issue of separation is linked to pastoral efforts aimed at preventing marital breakdown. Therefore, the Church should provide assistance to spouses in crisis through moral and spiritual support. Canon law commends the reconciliation of the offending spouse and the renunciation of the right to separation as acts of virtue. In seeking to save the marriage, pastors should make spouses aware that they may apply for a separation decree to restore equilibrium rather than dissolve their marital community. In this context, the objective of separation is achieved after its dissolution, provided the spouses' good will. A similar position is found in certain civil doctrine, which sees separation as a conciliatory measure to reduce marital conflicts⁵³.

Since the reintroduction of the institution of separation in Polish family law, the call for increased access to family counseling has emerged. The collaboration of both legal systems could better facilitate the preservation of Catholic and civil marriages, preventing their total dissolution.

Regarding other effects, it is worth noting that after a court's decree dissolving separation, spouses may inherit from each other once again. The obligations of cohabitation

⁵¹ This situation is reversed in the CIC 1983, where in *favorem matrimonii* such a solution is allowed, in which the actual return of spouses to marital cohabitation results in the formal cessation of the separation. However, it is important to remember the differences that exist between these legal systems.

⁵² Art. 47, 49, 54, and 616 KRO; Smyczyński, *Prawo rodzinne i opiekuńcze*, 157–158; Smyczyński, "Separacja mał onków," 159–160; Kasprzyk, *Separacja prawna mał onków*, 246–248; Panowicz-Lipska, "Instytucja separacji w polskim prawie rodzinnym," 27; *Prawo rodzinne*, ed. Jan Winiarz, Janusz Gajda, 158; Haak, "Separacja," 218; Krzemiński, *Separacja. Praktyczny komentarz. Orzecznictwo. Pi miennictwo. Wzory pism*, 65–66.

⁵³ Kasprzyk, *Separacja prawna mał onków*, 77–78; Kasprzyk, "Separacja mał onków – instytucja funkcjonująca w polskim prawie rodzinnym i prawie kanonicznym", 105; Panowicz-Lipska, "Instytucja separacji w polskim prawie rodzinnym", 26; Gajda, *Prawo mał e skie Ko ciota katolickiego*, 239.

and fidelity are revived, and any child born shortly after the dissolution is presumed to be the husband's. Such a decision also warrants an additional note in the marriage record⁵⁴.

Conclusion

Marriage, in both canon law and secular law, is fundamentally a lasting union. However, the realization of this permanence depends solely on the spouses, who are expected to build a lifelong partnership through fidelity and mutual support.

It is also undeniable that difficult moments leading to crises may arise in marriage. Both legal frameworks allow for the separation of spouses by suspending their community of bed and board. Civil law and the more conservative canon law alike perceive such situations as socially undesirable. To protect the innocent spouse, particularly in cases where the health or life of either spouse or their minor children is at risk, separation is permitted as a preferable alternative to enduring mistreatment. In such cases, the institution, formed due to a complete but non-permanent breakdown of conjugal life, may fulfill its intended objectives, enabling crisis resolution and protecting the parties' interests.

Legal separation should not be viewed as a means of ending a marriage. It merely suspends the obligation of cohabitation without granting the spouses full autonomy. Reintroduced in 1999 into Polish law, separation has become an appealing alternative to the prevailing trend of divorce, which contradicts the state's pro-family policy. It offers spouses an effective legal instrument to overcome family crises. Viewing separation as merely a transitional stage toward divorce would distort its purpose.

The objections to its reintroduction, based on religious arguments, should also be refuted. The institution, which does not allow finality, serves all citizens, not only Catholics, by aiming to restore the natural order of the family. Although it has its roots in canon law, this does not justify its exclusion from the legal system. Otherwise, several institutions with canonical or Roman law origins would also have to be removed from Polish law.

This paper has examined the purpose of legal separation as a substantive legal issue, analyzing two independent legal frameworks relevant to Polish citizens. The principles and similarities of these systems were compared, beginning with the definition of separation, followed by an exploration of its objectives and functions, identification of the necessary

⁵⁴ Art. 62 §1 KRO; Kasprzyk, *Separacja prawna mał onków*, 248; Kasprzyk, „Separacja prawna w wietle znowelizowanego kodeksu rodzinnego i opieku czego”, 227; *Prawo rodzinne*, ed. Jan Winiarz, Janusz Gajda, 158.

grounds, and methods for decreeing and dissolving it. An attempt has been made to provide a comprehensive civil-canonical perspective, illustrating that an open catalog of regulations and the mutual influence of legal frameworks may significantly expand the opportunities for spouses to benefit meaningfully from separation. It has been shown that the theoretical foundations of canon law, despite not being universally binding, do not undermine the validity of separation. Properly applied by adjudicating authorities, even without explicit referrals, these foundations can enhance its social significance.

This legal interrelationship, as well as the role and importance of separation in protecting the marital bond and family, has been acknowledged by Polish lawmakers. The regulations on separation reflect constitutional norms and the terms of the Concordat. Furthermore, the institution's introduction complements the possibility of entering into concordat marriages, underscoring respect for citizens' rights regardless of religious affiliation.

To comprehensively consider this issue, it would be worthwhile *de lege ferenda* to mandate reconciliation proceedings in cases where spouses jointly request separation. This would emphasize the restorative nature of separation. Canonical experience should also be considered, where pastors and family counselors, by educating parties on the severity of the crisis, successfully preserve marriages on the brink of collapse.

Additionally, reforms in regulations on the dissolution of separation are advisable. The suggestion that this be done by a civil registry official could simplify the overly burdensome current process, alleviating the workload of the already crowded district courts and reducing the waiting period for a full marital reunion. However, the risk of contesting declarations made in this manner should be acknowledged. Nonetheless, there is no doubt that this part of the process should be modified so that spouses seeking reconciliation are not disadvantaged compared to divorced persons who can remarry with ease at the civil registry office.

On the ecclesiastical side, the possibility of the local diocesan bishop's approval of separation decreed by a civil court could be considered, provided the ruling does not contradict canon law. Separation, being less severe than divorce, could allow spouses to continue sacramental life without the need for canonical proceedings, while still preserving the marital bond.

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