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Dissertation abstract

**Adjudication of fault for the breakdown of marriage in
the process of divorce**

The doctoral dissertation focuses on issues related to the institution of adjudication (apportionment) of fault for the breakdown of marriage in divorce proceedings. The main purpose of this dissertation is to present and analyse the role of the principle of fault in the Polish divorce process and to evaluate judicial decisions in the cases discussed. The first research question is whether the concept of fault, referred to by the legislator in the provisions of the family law, requires a statutory definition on the grounds of family law or whether it is sufficient to refer to the concepts developed on the grounds of civil law. The corresponding research hypothesis assumes that the concept of fault, based on family law literature as well as Supreme Court case-law, is constantly evolving, adapting to the operating moral norms, and therefore no statutory definition is necessary. The second research question is whether the substantive provisions relating to the concept of fault, which have been in operation for several decades in the Polish Family and Guardianship Code and which have been used by the legislator in three provisions relating to divorce (Articles 56, 57 and 60 of the Polish Family and Guardianship Code), need to be amended and adapted to modern times, or whether it is reasonable to leave these provisions in their present form. The corresponding research hypothesis assumes that a modification of these provisions, despite some inconsistency of the legislator with regard to the use of the concept of fault and sole fault, is not necessary and a potential change of these provisions will only lead to greater difficulties in the application of the concept of fault for the breakdown of marriage and will adversely affect divorce proceedings. The last research question is whether it is necessary to modify the provisions of the procedural law governing divorce proceedings and thus to change the

approach to adjudication in divorce cases. The corresponding research hypothesis assumes that the current procedure in divorce cases, on the one hand, favours the conduct of proceedings in which evidence is limited so as to lead to a quick judgment, preferably at the first hearing. On the other hand, it leads to excessively protracted divorce proceedings in the absence of a compulsory use of amicable settlement methods.

The analysis of the research space thus delineated has allowed an attempt to find a way of increasing the efficiency of Polish courts adjudicating in divorce cases, while preserving the fundamental principles of family law, i.e. the principle of family protection and child welfare, and procedural guarantees, including above all the right to a fair trial. This dissertation was prepared on the basis of numerous scientific studies by Polish and foreign authors, referring to the issues related to the divorce process in Polish and Western European legal systems. The authors also made use of extensive case-law of the Supreme Court and law courts' decision.

The research employed legal research methods, including most importantly the dogmatic and legal method as regards the analysis of Polish and foreign legal acts, judicial decisions and the position of the doctrine pertaining to the examined issues. This method was supplemented by the historical, legal and comparative method as regards the analysis of legislation in Poland and in selected Western European countries. The thesis is also research-oriented. In order to carry out this dissertation, an empirical (file) research was conducted on the basis of a research tool developed for this purpose in the form of a questionnaire for the examination of court records. The results of this research are discussed in the penultimate chapter of this thesis.

The publication consists of seven chapters, supplemented by an introduction and a conclusion. The considerations in question have been organised into three thematic parts.

The first part presents a historical outline of the development of the institution of divorce on Polish lands. It also includes a comparative legal analysis of regulations existing within the Polish divorce law system and those in force in selected Western European countries, as well as countries with different cultural backgrounds.

The second part - the most extensive - consists of chapters from second to sixth and focuses on the theoretical aspect of the title subject of consideration. It covers the following specific issues: grounds for divorce under Polish law (Chapter II), the concept of fault, with particular focus on divorce law and the category of the so-called sole fault for the breakdown of marriage (Chapter III), causes of the breakdown of marriage (Chapter IV), the taking of evidence pertaining to the apportionment of fault (Chapter V) and the consequence of divorce on the grounds of fault (Chapter VI).

The third part focuses on research - it contains a presentation and analysis of the results of own research on files, verification of research hypotheses and conclusions resulting from the research. The third part focuses on research - it contains a presentation and analysis of the results of own research on files, verification of research hypotheses and conclusions resulting from the research. This part of the study plays a special role, as it is in fact a practical verification of how the courts apply the normative solutions adopted by the legislator in the area of fault for the breakdown of marriage.

The comprehensive analysis of the institution of adjudication of fault for the breakdown of marriage in the process of divorce has made it possible to formulate postulates *de lege ferenda*. These postulates concern procedural changes in terms of streamlining the process of assigning fault in divorce proceedings. They include current topics related to the introduction of compulsory mediation sessions in divorce cases, which are in line with the subject of actions aimed, on the one hand, at promoting the stability and permanence of marriages

and the protection of minor children and, on the other hand, encompassing a set of actions aimed at increasing the effectiveness of court rulings in divorce cases.