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Prerequisites for Divorce in Poland – General Issues

The divorce judgement fundamentally shapes the legal situation of the parties in the future. In the Polish legal system, divorce proceedings fall within the exclusive jurisdiction of the civil court; there is no legal basis for resolving a marriage through the agreement of the spouses or through administrative procedures.

Article 56 of the Polish Family and Guardianship Code outlines the circumstances under which a marriage can be terminated legally. Article 56 reads as follow:

§ 1. If there is a complete and permanent breakdown in the relationship between spouses, each spouse may request that the court dissolve the marriage through divorce.

§ 2. However, despite the complete and permanent breakdown of the relationship, divorce is not permissible if it would harm the well-being of the couple's minor children or if, for other reasons, granting a divorce would contradict the principles of social coexistence.

§ 3. Divorce is also not permissible if it is requested solely by the spouse at fault for the breakdown of the marriage, unless the other spouse consents to the divorce or the refusal of their consent in the given circumstances contradicts the principles of social coexistence.

In the current state of law, the absolute and positive prerequisite for divorce is a complete and lasting breakdown of the marital relationship.

However, a divorce judgement is not allowed - despite the existence of a complete and lasting breakdown - in three cases:

- 1) if the well-being of the common minor children would be harmed as a result of the divorce;
- 2) if, for other reasons, the divorce would contradict the principles of social coexistence;
- 3) if one of the spouses, who is exclusively at fault for the breakdown of the relationship, demands a divorce, while the other spouse does not consent to the divorce, and the refusal of consent does not contradict the principles of social coexistence.

These cases are referred to as negative divorce prerequisites.

Divorce cannot be treated by spouses as a way to solve their marital problems. Therefore, the court cannot grant a divorce as long as it does not find the disappearance of marital relations showing characteristics of completeness and permanence.

The lack of completeness of the breakdown means that it cannot be classified as permanent. The breakdown is complete when physical, spiritual, and economic bonds between spouses have ceased. Maintaining at least one of these ties, such as economic, means that there is no basis for granting a divorce. Similarly, the existence of a physical bond, despite the absence of spiritual and economic ties, indicates that the breakdown of the relationship is not complete.

According to the judgement of the Supreme Court of 22 October 1999: "Common cohabitation within the meaning of Article 23 of the Code of Family and Guardianship Law consists of the spiritual, physical, and economic bond of spouses, which is the purpose of marriage and enables the realization of its fundamental tasks. The breakdown of cohabitation is complete only when all the above-mentioned bonds connecting spouses have been severed. The mentioned breakdown is a process extended in time, not a one-time event."

Also significant is the judgement of the Supreme Court which was issued in case II CKN 54/96. The Supreme Court stated as follows: "Generally, when assessing the permanence of the breakdown of the spouses' relationship, which is the decisive condition for divorce, the long-lasting nature of the breakdown is taken into account. However, the circumstances of the case may provide other justification for determining that the breakdown of the relationship is permanent and that there is no basis to expect the spouses to reconcile."

References:

Supreme Court, Judgement, 10 January 1997, II CKN 54/96.

Supreme Court, Judgement, 22 October 1999, III CKN 386/98.

Jędrejek G. (2019). Kodeks rodzinny i opiekuńczy. Komentarz aktualizowany, LEX.

Wartenberg-Kempka B. (2021). Kodeks rodzinny i opiekuńczy. Komentarz, LEX.