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Request for divorce by the exclusively guilty spouse in Poland

The finding that the marital breakdown has reached a state allowing it to be described as permanent and complete is a necessary condition for a divorce judgment (Article 56 § 1 of the Polish Family and Guardianship Code). The durability and completeness of the breakdown are positive conditions for divorce that are interrelated.

However, according to Article 56 § 3 of the Family and Guardianship Code, even in the case of a complete and permanent breakdown of the marital relationship, divorce is 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.

Determining the causes of the breakdown of marital relations is necessary for determining which spouse is at fault for the breakdown of the marriage. According to the judgment of the Supreme Court of 4 October 2001, I CKN 871/00: "The determination of the spouse's fault in the breakdown of the marriage in the divorce judgment is not a consequence of a specific assessment of evidence, but a legal conclusion drawn from established facts, expressing at the same time a negative assessment of the spouse's conduct that led to the breakdown."

The inadmissibility of divorce when requested solely by the spouse at fault for the breakdown of the marriage (Article 56 § 3 of the Family and Guardianship Code) is possible only if the court determines that there is a breakdown of marital relations. According to the judgment of the Supreme Court of 20 February 2002, V CKN 757/00: "It cannot be assumed that the conduct of a spouse contributed to the permanent breakdown of the marital relationship before establishing that such a (permanent) breakdown exists."

In the Judgment of 26 February 2002, I CKN 305/01, the Supreme Court stated as follows: "It is presumed that those exercising their rights do so in accordance with the principles of social coexistence. Refusing consent to divorce by the innocent spouse is their right, and

therefore it is presumed that by exercising this right, they do so in accordance with the principles of social coexistence. Only the existence of exceptional circumstances can rebut this presumption." The burden of proof rests on the spouse solely guilty to demonstrate that the other spouse, by refusing consent to divorce, violates the principles of social coexistence, i.e., behaves in a way that, when applying an objective criterion, can be deemed morally reprehensible.

According to the judgment of the Supreme Court of 4 October 2001, I CKN 871/00: "The assessment of whether the spouse's refusal to consent to divorce constitutes an abuse of rights should also take into account the living conditions of both spouses resulting from the breakdown of the marital relationship." Pursuant to the judgment of the Supreme Court of 21 November 2002, III CKN 665/00: "Refusal to consent to divorce, which serves only the desire to assert dominance over the spouse seeking divorce and hinder their personal life (Article 56 § 3 of the Family and Guardianship Code), does not deserve approval."

Very significant is the judgment of the Supreme Court which was issued in case I CKN 569/98. The Supreme Court stated as follows: "It is inadmissible for granting a divorce to result in the sanctioning of particularly blameworthy conduct of the spouse solely responsible for the breakdown of the relationship". However, according to the judgment of the Supreme Court of 28 February 2002, III CKN 545/00: "The refusal to express consent to divorce should also be evaluated from the perspective of the social harm caused by maintaining formal marital relationships that have no chance of functioning, while concurrently having extramarital relationships deserving legalization."

References:

Supreme Court, Judgment, 1 June 2000, I CKN 569/98.

Supreme Court, Judgment, 4 October 2001, I CKN 871/00.

Supreme Court, Judgment, 20 February 2002, V CKN 757/00.

Supreme Court, Judgment, 26 February 2002, I CKN 305/01.

Supreme Court, Judgment, 28 February 2002, III CKN 545/00.

Supreme Court, Judgment, 21 November 2002, III CKN 665/00.

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