

DIFFERENCES BETWEEN CZECH AND POLISH FAMILY LAW – COMPERATIVE ANALYSIS

RADOSŁAW WOJTECZEK

The Faculty of Law, Canon Law and Administration, The John Paul II Catholic University of
Lublin

MILANA HRUŠÁKOVÁ

Key words: marriage, registered partnership, divorce, fault, separation, Ombudsman for Children, parental responsibility, period of time.

Resume

This article deals with differences between Czech and Polish Family Law. The aim of this paper is to show the important differences and to compare them. Basic sources of law: (Czech) Family Code and (Polish) Family and Guardianship Code were used the most.

Regulation connected with marriage (being a union of a man and a woman) is similar in Czech and Polish law, but there is no legal recognition for same-sex partners in Poland. In the Czech Republic there is Registered Partnership Act (Zákon ze dne 26. ledna 2006 o registrovaném partnerství a o změně některých souvisejících zákonů), which granted homosexuals the long awaited rights (for example inheritance and health care, alimony rights). In my opinion this is the first step to legalize same – sex marriages in the Czech Republic (besides there is – in general - a global lobby to legalize it and other same - sex relationship). Marriage links not only men with woman, but also parents with children, and legalizing same – sex marriages will drain marriage of the social meaning it has nowadays. In Poland there are a lot of voices saying that same – sex relationships should be allowed, but they are not (fortunately).

The differences we can also find in divorce (first - in definition because according to FGC disintegration matrimonial life must not be only irretrievable but also complete – well it is connected with each other but this record in FGC exists).

In Poland, a court – deciding on a divorce - is obliged to establish whether one of the spouses - and if so which one – is to be blamed for breakdown of the marriage, and it is also important because of some reasons (maintenance duty of the spouse who is found to be exclusively responsible for the breakdown of the marriage, for moral reasons). Both spouses or none of them can also be deemed to be guilty.

FC does not mention about fault in divorce, but protects a spouse who "did not predominantly take part in breakdown of the marriage through violation of marriage duties", so in reality it means that he/she is "innocent". A very interesting is also regulation connected with a "uncontested/agreed divorce".

A big difference is also in fact that in the Czech Republic there is no legal separation (situation in which the partners in a married couple live apart), but in Poland there is (and it is "easier" to go through a separation process than a divorce, and the separation has almost the same consequences like divorce). This situation is in some way difficult for spouses, because they cannot marry again during separation (it does not terminate the marriage), but on the other hand there is still a chance that spouses will change their opinion and will decide to start all over again. Regulation connected with separation is - in my opinion - the advantage of Polish law.

The Czech law does not know the institution of Ombudsman for Children. Ombudsman for Children (Rzecznik Praw Dziecka) in Poland was established by the Law on the Ombudsman for Children. He guards the rights of the child defined in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other rules of law. Ombudsman for Children undertakes his actions to protect that rights (in particular the rights: to life and health protection, to be brought up in the family, to decent social conditions, to education) and to protect the child against violence, cruelty, exploitation, depravity, neglect and any other evil treatment. In exercising his powers he takes into consideration the fact that the family is the natural milieu for the full and harmonious child's development.

That function is another instrument for protecting children's rights, making it more visible - so this is the advantage of Polish family law.

Quite important differences are also connected with court's jurisdiction. According to Czech law a petition for a divorce is submitted to the District Court for the district in which the couple had its last place of cohabitation in the Czech Republic, provided

at least one of the spouses lives in the district, but in Poland divorce cases are examined by the regional court (sąd okręgowy) with jurisdiction for the most recent place of joint residence of the spouses.

In Poland district courts (sądy rejonowe)- family and juvenile cases divisions (guardianship courts - sądy opiekuńcze) competent on the grounds of a child's domicile - are competent to decide in cases relating to parental responsibility, but in the Czech Republic it is the District Court (sąd okręgowy) which is pertinent to the district where the child is resident.

Court's jurisdiction in each particular	The Czech Republic	Poland
Divorce	the District Court	the regional court
Parental responsibility	the District Court	the district court – the guardianship court

Table 1: Differences in the court's jurisdiction in each particular

There are also many differences - more or less important in period of time in each particular.

Differences in period of time	The Czech Republic	Poland
The authority of the church or religious society must deliver the report of marriage to the relevant office within:	3 days	5 days
Time to change the name after divorce:	1 month	3 months
The father of the child of an unmarried mother is obliged to provide an adequate contribution for mother to coverage of living for:	2 years	3 months, more on mother's demand
Time to give the court a final statement about the management of the child's property after the end of guardianship	2 months	3 months

Table 2: Differences in period of time in each particular

The Czech and Polish Family Law is very similar. Of course there are differences, but it is typical to the legal system in every country. But in my opinion Polish regulation is better,

because of institutions: separation, Ombudsman for Children, and because of fact that same - sex relationships are not allowed.

Contact – email:

kedar@student.kul.lublin.pl