

Małgorzata Anna Dziemianowicz
Regional Court in Białystok

INTERPRETATION OF NEGATIVE PREREQUISITES FOR DISSOLVING MARRIAGE BY DIVORCE – COMMENTS IN THE LIGHT OF DIRECTIVES OF THE SUPREME COURT

Abstract. The issues discussed in the following article focus on the interpretation of negative prerequisites for dissolving marriage by divorce. In Poland, special protection of the family stems both from the Constitution and the Family and Guardianship Code of 1964. The obstacles which seem to counteract the independent breaking of the marriage knot are the regulated positive and negative divorce prerequisites. In the area of divorce prerequisites in question, the Family and Guardianship Code functions in the unchanged form. As provided by the Family and Guardianship Code one of the negative divorce prerequisites was the welfare of minor children who could suffer as a result of granting a divorce. It is interesting for the contemporary judicial practice and the interpretation of law made in court judgments whether and in what scope it is possible to use the contemporary achievements of the Supreme Court as regards the guidelines. It seems that in the situation where the directives lost their binding force, it is not purposeful to refer to them as a source of law interpretation. The practice of judicial decisions seems to oppose this idea. Moreover, the guidelines of the Supreme Court passed at the time when they were a commonly binding interpretation of the law will undoubtedly be useful for creating the judicial law now and in the future.

1. Introductory remarks

Starting from the Konstytucja Rzeczypospolitej Polskiej (Dz. U. z 1997 Nr 78, poz. 483) – hereinafter as the Constitution, and finishing with minor legislation,¹ the Polish law safeguards the marriage and family. Therefore, it appreciates the incontestable values which a properly functioning marriage and family contribute to the society, and it sees the durability of these instruments as a guarantee of the sustainable social development in all its aspects.

The Polish legislation does not allow for the possibility that the spouses untie the marriage knot by way of an independent decision or declaration of will. It does not treat marriage as a civil-law agreement in its strict sense whose existence is conditional on the will of the very spouses (Piasecki, 2009, p. 370.), being the parties to it. An obstacle which seems to counteract the independent breaking of the marriage knot are the regulated positive and negative divorce prerequisites. In their essence the positive prerequisites impose on the court the obligation to determine, by way of the conducted evidence proceedings, that they emerged in a specific factual state, being an unrepeatable set of circumstances and facts from a marriage life. The durable character of marriage is safeguarded not only by the requirement of positive prerequisites to be fulfilled. In order to commence the action for a dissolution of marriage by divorce, it is also necessary to show that there were no negative prerequisites, that is those hampering the possibility of granting a divorce and whose effect is dismissing a claim lodged.

Despite the fact that it was already known in ancient legislature, the instrument of divorce has not always functioned in the Polish family law and has not always had a secular character as it is the case now. Among the post-Partition, sector legal systems, it was only the German civil code from 1896, binding in the territories of the western Rzeczpospolita that was based on the principle of the secular character of marriage. The remaining legislative authorities being heritage of the Russian and Austrian partitions tended to favour the religious law in all or most cases.

Divorce was introduced into the Polish legal order by the dekret z dnia 25 września 1945 r. Prawo małżeńskie (Dz. U. z 1945, Nr 48, poz. 270) which came into force on 1 January, 1946 and bore the title “Marriage Law”. This decree commenced the process of secularization of marriage law. The procedure of declaring the sacrament of matrimony null and void so far implemented in the course of religious proceeding so far was replaced by a secular mode of contracting marriage and dissolving it by a court granting a divorce. In the first place it meant interference and participation of state in reference to the very act of contracting marriage (before an official of the Registry Office) and entering it in proper registers, regulated by substantive law implications of an effective contracting, duration and cessation of marriage as well as entrusting the independent state courts with the exclusive jurisdiction in the cases related to divorce and annulment of marriage, with an absolute ignoring of ecclesiastical (consistory) courts (Gawrońska-Wasilkowska, 1966, p. 12).

Art. 24 of the decree states that “at the request of one of the spouses the court grants a divorce upon deciding that the consideration of the welfare

of minor children is not an obstacle to that and upon declaring a permanent disintegration of matrimonial life...". In the further part of the provision the law-maker enumerated, by way of example, reasons for this disintegration, from those most frequent and typical, such as adultery, to the most serious marital misconducts, such as "an infectious venereal disease posing a hazard to the spouse or offspring". As it emerges from the above, the law-maker saw the positive prerequisite for granting a divorce in the "permanent disintegration of matrimonial life". Considering the welfare of minor children the court found granting a divorce inadmissible and treated it as a negative divorce prerequisite.

It was at that time that the judicial decisions, based on the provision in question, apart from the decree prerequisites, shaped the principle of recrimination which was refusing a divorce to a spouse who was a sole guilty party of the disintegration of matrimonial life, admitting the possibility of granting a divorce through the fault of both spouse's. (Wa G 126/48). What is more, the principle did not arise from the literal reading of the provision, but owed its existence exclusively to the judicial decisions of courts.

The pace of works aimed to unify the marriage law after the Second World War affected its content, enforcing a prompt activity by the codifying commission. The effect of its works was the *ustawa z dnia 27 czerwca 1950 r. Kodeks rodzinny* (Dz. U. z 1950 Nr 34, poz. 308) – Family Code which came into force on 1 October, 1950.

The new Family Code adopted two positive and two negative prerequisites as basis for the divorce proceedings. Thus, divorce could be granted only if there was a "complete and permanent disintegration of matrimonial life evoked by serious reasons". (Dz. U. z 1950 Nr 34, poz. 308). Contrary to the Marriage Law the Code did not enumerate, even by way of example, these serious reasons, leaving it to the courts to decide in this scope. Despite the complete and permanent disintegration of marital life, divorce could not be granted if it was contrary to the welfare of minor children, and if it was sought by the sole guilty party in the disintegration of matrimonial life. There were two exceptions to the latter prerequisite, namely divorce could be granted if the innocent spouse expressed their consent thereto or if the spouses remained in the long-lasting separation and there were important social reasons for granting a divorce (Dobrzański, Ignatowicz, 1975, p. 265).

This kind of legislative solution functioned until 1 January, 1965, that is until the *ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy* – Family and Guardianship Code – came into force which, amended on numerous occasions, is still binding. (Dz. U. z 1964, Nr 9, poz. 59).

2. Negative prerequisites for dissolving marriage by divorce governed by the provisions of the Family and Guardianship Code according to the directives of the Supreme Court

In the area of divorce prerequisites in question, the Family and Guardianship Code functions in the unchanged form. It seems that the adopted legal regulations pertaining to the divorce prerequisites suit the social needs, having a clear and transparent character.

The provision of Art. 56 of the Family and Guardianship Code allows for the possibility of dissolving marriage by divorce if a permanent and complete disintegration of matrimonial life occurred between the spouses. These are two positive divorce prerequisites. In contrast to the Family Code from 1950 the prerequisite of “serious reasons for the disintegration of matrimonial life” was abandoned, and in relation to the Marriage Law, there was no enumeration of circumstances which could be regarded as an “important reason”.

As provided by the Family and Guardianship Code one of the negative divorce prerequisites was the welfare of minor children who could suffer as a result of granting a divorce, and thus it introduced a so far unknown prerequisite in the current Code regulations, namely a conflict of granting of a divorce with the principles of social co-existence. Unlike in the Family Code, the Family and Guardianship Code formed an exception to the rule of inadmissibility of divorce request by the spouse who is a sole guilty party of the disintegration of matrimonial life. Compliant to Art. 56 § 3 of the Family and Guardianship Code the divorce requested by the spouse who is a sole guilty party of the breakdown of marriage is admissible if “the other spouse has expressed their consent to that, or the refusal of such consent to divorce is contrary to the principles of social co-existence”.

“The best welfare of minor children” as a negative divorce prerequisite occurred in each codified solution presented above. It gave rise to a number of discrepancies and misunderstandings in the judicial practice at the time the Family Code was in force. At that time two different interpretive approaches were shaped. (Gawrońska-Wasilewska, 1966, p. 92).

According to the first one, the welfare of minor children was always an obstacle to the granting of divorce since children are best raised in marriage.

Another view holds that divorce only sanctions the prior state of marriage breakdown, not changing anything in it. Therefore, it does not have any influence on the welfare of children.

Both views, on account of their radical character, were not to be accepted by the judicial practice. The first one would entail the prohibition

on the granting of divorce in relation to the spouses with minor children, which viewpoint was strongly opposed by the Sąd Najwyższy – hereinafter as Supreme Court (C 184/51), and the second one would effect the rejection of a provision of law and assumption that the provision will not be applicable in practice.

Undoubtedly, the need arose to make an interpretation of the provisions of law and taking a position which would be a result of both approaches. In the period of the Second Polish Republic until the second half of 1948 the Supreme Court was primarily a court of cassation for the judgements of common courts of law and functioned in compliance with the pre-war legislation, amended deliberately and of a small scope. The political crisis in the communist party started the worst period of Stalin's rule whose essence was adjusting all institutions and solutions as well as the law to fit the Soviet models. The Supreme Court was no exception. (Garlicki, Resich, Rybicki, Włodyka, 1983, p. 135). On 27 November 1948, the General Assembly of the Supreme Court declared that the pre-war judicial decisions and principles, if not compliant with the current system of government, were only of historical significance. It was later (12 February, 1955) extended in its ambiguous formula to the pre-war statutes by the Supreme Court. A situation occurred where the Supreme Court was given a task to construe the provisions of the newly-created law, show the principles of its application and mode of resolving disputes concerning its interpretation. In order to facilitate the implementation of this task the judicature and judicial procedures required significant changes. It took place in the years 1949–1950. A lot of the adopted legislative solutions in the system of courts and in the court proceedings applied by them survived, in full or in part, until the end of communist regime in Poland. (Lityński, 2010, p. 61). On the wave of reforms of this period both court procedures were changed in the way that the pre-war three-level character of procedure was changed, with the instruments of cassation and appeal being cancelled, and the two-level review system modelled on the Soviet one was introduced.

Since 1951 the Supreme Court became a second-level court for judicial decisions made by provincial courts. In the course of taking cognizance of cases involving ordinary means of appeal (judicial review), it has jurisdiction over the lower courts. Within the framework of this jurisdiction the Court has inherent powers of extraordinary review, of passing directives for the judicature and judicial practice, responding to legal queries posed by provincial courts as second-level courts. In view of rejecting the achievements of pre-war judicial decisions, the Court had an incontestable role in the scope of law interpretation. The aim was to unify the judicial practice of

lower courts and eliminate discrepancies in court judgments. The Supreme Court achieved this by applying the instruments typical of the legal system and corresponding to the Soviet solutions, namely by:

A) the directives of the judicature and judiciary according to ustawa z dnia 27 kwietnia 1949 r. o zmianie prawa o ustroju sądów powszechnych (Dz. U. z 1949 Nr 32, poz. 237) – in the beginning, since 1949 they have been called the directives of the judicature and judiciary, and since 1984 – the directives on the interpretation of law and judicial practice. These were the resolutions of the Supreme Court which aimed to ensure cohesion of judgments of all courts in the People's Republic of Poland in civil and criminal cases as well as their “compliance with the principles of people's law and order”. By making the interpretation of law and establishing the meaning of legislative norm, the Supreme Court pointed to the mode of its implementation by courts. It was binding to all courts in Poland;

B) the resolutions of the Supreme Court explaining dubious legal provisions the application of which evoked discrepancies in court judgements (binding on all panels of the Supreme Court provided that they were entered into the book of legal principles);

C) legal principles adopted by the Supreme Court in a specific case and binding upon all courts in the subject matter as well as the responses of the Supreme Court to the queries of lower courts, adjudicating as second-level courts and binding on courts in a given matter.

Among the above-mentioned instruments the directives of the judicature and judiciary were incontestably of greatest significance, emerging from the fact that they were passed at the General Assembly of the Supreme Court composed of the whole chamber or combined chambers as well as because of the range and scope of binding decision (all courts in Poland), and the effect of infringement (independent basis for appeal). They were equal to the provisions of law. (Siedlecki, 1986, p. 207). The interpretive solutions adopted in the directives were binding directly on all courts and in a fast and effective way guaranteed the cohesion of judgements, thus limiting free interpretation of courts. The purpose of directives specified in the ustawa z dnia 27 kwietnia 1949 r. o zmianie prawa o ustroju sądów powszechnych (Dz. U. z 1949 Nr 32, poz. 237) aimed at the “specific tasks of the judicature and ways of implementing them in conformity with the social, economic and political conditions” caused that the issue of law interpretation remained marginal, and the expectations related to the policies of law and its implementation in congruence with the social and economic conditions came to the fore. This conclusion seems apt even more on observation that in practice the essence of directives was worked out outside the

Supreme Court by the political authorities and the “editing of text and its justification” lay with the Supreme Court”. (Lityński, 2010, p. 63).

The political changes at the end of the eighties and the beginning of the nineties of the twentieth century gave rise to a new law on the Supreme Court. (Dz. U. z 1984, Nr 45, poz. 241). It defined the Supreme Court as the safeguard of the political, social and economic system, and ultimately of the citizens’ rights. This hierarchy of tasks and goals set for the Supreme Court did not raise any doubts as to the political use of judgements passed by this Court, with the marginalising of and giving secondary priority to law and order. As the main court, the Supreme Court kept supervision over the activity of all other courts in relation to the passing of judgements. The functions of ensuring coherent judicial interpretation and court practice were realized, just like in the previous period, by recognizing means of appeal, passing directives in the scope of law and judicial practice, construing legal provisions and resolving dubious legal issues. This form of the Supreme Court survived until 20 December, 1989 (Dz. U. z 1989 Nr 73, poz. 436), when the instrument of directives was cancelled and the Supreme Court by its resolution of the combined chambers adjudicated upon the loss of binding force of all the previously passed directives.

When considering the problem of directives of the Supreme Court, the date 26 April, 1952 should be pointed to when the uchwała Sądu Najwyższego Izba Cywilna z dnia 26 kwietnia 1952 r. (Civil Chamber of the Supreme Court) passed a resolution (C 798/51) on establishing directives for the judicature and judiciary regarding the application of Art. 30 of the Family Code established by the Law of 22 August, 1950. (Dz. U. z 1950 Nr 34, poz. 308). For many years, that is until the Family and Guardianship Code came into force, which took place on 1 January, 1965, it shaped the interpretation of law pertaining to the judgements in divorce cases. According to the Supreme Court the fundamental principle was that with regard to the safeguarding and strengthening of family, whose basis was in turn marriage. It rejected the principle of formal indissolubility of the marriage knot, and it had in mind the social harm done by the so-called dead relationships. In the further part the guidelines gave explanation concerning the meaning attributed to the consent to divorce and differences between the consent and granting a divorce as well as the application of principles of restricting the evidence proceeding to the hearing of parties. The Supreme Court recommended cautiousness in applying this instrument, having in mind the purpose of counteracting rash decisions of divorce which, with the lack of alertness on the part of the court could lead to a divorce despite the lack of necessary prerequisites.

In the directives the Supreme Court reaffirmed its position regarding the inadmissibility of granting a divorce at the request of the sole guilty spouse, although it indicated that this principle should not be binding without any exceptions. The first exception concerns the cases when the other spouse has expressed their consent to a divorce. According to the Supreme Court it is this position of the guilty spouse that “the law takes into account and it is this position that in view of the complete and permanent disintegration of matrimonial life evoked by important reasons decides about the fact that divorce can be granted unless it is detrimental to the welfare of minor children”. (C 798/51 – thesis III). Beside the consent given by the defendant, another exception to the above rule is contained in Art. 30 § 2 of the Family Code saying that the court, having in mind the social interest may grant a divorce at the request of the sole guilty spouse, but this can be done exclusively in exceptional cases when the spouses have remained separate for many years.

When analysing the specific elements of the normative act quoted above, the Supreme Court concluded that the period of separation of spouses which allows for defining it as long-lasting “should be based upon the evaluation of specific circumstances, in particular those concerning the time of matrimonial life of the spouses, their lifestyle, age, etc. Life experience shows in principle that the idea of a five-year period is fully justified. This term should be treated as approximate one, allowing for its potential extension, depending on the result of evidence proceeding”. (C 798/51 – thesis V).

The subsequent directives of the Supreme Court of 18 March, 1968 (III CZP 70/66) concerning the judicature and judiciary pertaining to the application of provisions of Art. 56 and 58 of the Family and Guardianship code refer to the current achievements of the judicature based on Art. 30 of the Family Code. They clearly indicate that despite the fact that the time interval from the moment of cessation of matrimonial life is not a condition indispensable for divorce at the request of the spouse who is solely guilty of the disintegration, it may constitute auxiliary circumstances to establish if the refusal of consent to a divorce was in a specific case contradictory to the principles of social co-existence. “The result of this evaluation may especially be influenced by the long-lasting lack of manifestations of actual bonds between the spouses, even when not accompanied by the fact of establishing a new family by the spouse who is the sole guilty party”. (III CZP 70/66 – thesis IV).

The Supreme Court expressed the view that a longer period of time causes so important changes in the life of both spouses that although difficult

to specify they result in the assessment that the refusal of granting a divorce is contrary to the principles of social co-existence. The life experience of judges adjudicating in divorce cases allows for a generalization that the period of separation between the spouses often leads to a creation of new cohabitation relationships of each of the spouses, establishing new families of which offspring is born as well as the need for independence of spouses in the economic and professional sphere.

It is interesting for the contemporary judicial practice and the interpretation of law made in court judgements whether and in what scope it is possible to use the contemporary achievements of the Supreme Court as regards the guidelines. Is it advisable and purposeful to refer to their content in completely different (in relation to the time they were passed in) social, political and economic conditions, and also to what extent, if any, the directives of the Supreme Court affect the judicial independence. It seems that in the situation where the directives lost their binding force, it is not purposeful to refer to them as a source of law interpretation. The practice of judicial decisions seems to oppose this idea.

The currently-binding ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych (Dz. U z 2001 Nr 98, poz. 1070 z późn. zm.) grants the Supreme Court the right of supervision over the activity of courts in relation to judicial decisions (Art. 7). This provision of law, being a repetition of Art. 183 section 1 of the Constitution (Dz. U. z 1997 Nr 78, poz. 483), makes into law the principle of judiciary control of the Supreme Court over the judicial decisions of common courts of law. The purpose is to eliminate mistakes and imperfections affecting negatively the accuracy of judicial decisions. Apart from the judicial control concerning the cassation, adjudicating on legal issues raising serious doubts as regards judicial decisions, the Supreme Court adopts by virtue of Art. 59 the so-called resolutions of a specific character and the so-called abstract resolutions as prescribed in Art. 60. The resolutions of the Supreme Court adopted pursuant to Art. 59 are always connected with a specific case since the need to consider it, "as a result of serious doubts over the law interpretation", is created when taking cognizance of cassation or other means of appeal. Their impact and binding force are connected with a specific case in relation to which the need to adopt them emerged. In turn, the abstract resolutions concern the interpretive discrepancies in court judgements. (III CZP 25/04; I KZP 33/04). They have an influence on the common courts of law only based on arguments and authority of the Supreme Court, and do not have a binding force upon all courts in Poland as it was the case in the past period.

Undoubtedly, the contemporary guarantees of judicial independence regulated in the Constitution and Act on the Organization of Common Courts of Law, such as impossibility to remove a judge from office, judicial immunity, lack of political affiliations, being subject solely to the Constitution and statutes, allow the judiciary to use freely the achievements of the Supreme Court as regards the directives. The independent interpretation of the content of a legal provision, resolving doubts as to the understanding and correct application of evaluative concepts in a specific case as well as resolving issues related to the value and force of presented evidence all point to the judicial independence (Dz. U. z 2001 Nr 98, poz. 1070), but does not mean entirely free choices on the part of a judge. They act within the confines of the obligation to apply generally binding principles, law-making judgements of other courts as well as a binding judicial interpretation, or the interpretation contained in the grounds of the appellate court or the Supreme Court passing a case for a repeated cognizance, and the interpretation of law, which in a specific case constitutes a response to a legal issue presented by a second-level court to the Supreme Court to resolve. This kind of interpretation is called an operative interpretation. (Morawski, 2008, p. 138).

In reference to the cases for a dissolution of marriage by divorce the current legal status resulting from the change in the civil proceeding provisions as regards cassation made by way of the law of 22 December, 2004 (Dz. U. z 2005 Nr 13, poz. 98) caused that the cassation in the Supreme Court in divorce matters became inadmissible. The lack of current judgements of the Supreme Court which would be created under the judicial supervision results in acknowledging the directives as a valuable source of the law interpretation, but used creatively by courts and the judiciary. Also nowadays, both regional courts as first-level courts in the cases for a dissolution of marriage by divorce and appellate courts, being second-level courts for the judgments of regional courts in divorce cases, (Dz. U. z 1964 Nr 43, poz. 296 z późn. zm.) refer to the directives of the Supreme Court in the grounds to their judgements. It means that a lot of guidelines of the Supreme Court regarding the interpretation of the law contained in the directives are of universal value, in particular those conveying a very general message relating to the permanent character of family, understanding of the welfare of the minor child in the family of divorcing spouses, conflict with the principles of social co-existence and refusal of consent to divorce by the innocent spouse. The critical approach to the directives of the Supreme Court and adjusting the guidelines contained in them to the current situation, with the possibility to ignore ideological, “socialist” element, allows for a consideration of

the directives passed in divorce matters when creating the judicial law, or the “internal law of the judiciary”. (Wróblewski, 1988, p. 371 and next).

The circumstances relating to the fact that the current interpretation made by the Supreme Court is not commonly binding in character does not mean at all that it is ignored by courts. (SK 22/99). The level-structure of court proceeding and control over the judgments of appellate courts call for giving consideration to the judgments of higher level courts despite the fact that they are not formally binding. It should be remembered that the significance of operative interpretation made by legal practitioners grows when it represents a congruent, or at least prevailing or coherent opinion in a given case, and diminishes when judgements are not uniform and stable. Currently, there is an assumption of correct interpretation of the law made by higher-level courts. The weight of this interpretation undoubtedly depends on the position of court in the hierarchy of bodies of the judicature, character of decision and way of publishing it. (W. 9/94).

3. Conclusions

It may be concluded that the guidelines of the Supreme Court passed at the time when they were a commonly binding interpretation of the law will undoubtedly be useful for creating the judicial law now and in the future. The non-binding character of resolutions by the Supreme Court from the period before 1989 allows for a free and creative use of ideas contained in these resolutions. Depriving the resolutions of their binding force resulted in the lack of institutional guarantee, whose purpose was to ensure the coherent judgements of the courts and bodies subject to it. Nowadays the same effect can be achieved through the judicial control of higher-level courts over first-level courts and the operative interpretation applied during this control. It should be remembered that the earlier regulatory provisions limited the freedom of the judge as to the choice of purpose and mode of interpretation, thus having an impact upon the restricting of judicial independence. It should serve the purpose of development of law, evolution of opinions and court judgements in dubious, contentious and ambiguous issues. Judicial independence means, on the one hand, the belief and awareness of the judge that when making decisions they are subject solely to statutes, and on the other hand a number of formal and substantive guarantees, which are granted by the state, and concern both the position of the judge in general and their position in a proceeding. These guarantees can be found in the Constitution, the Act on the Organization of Common Courts of Law as

well as in the statutes providing for specific procedures (criminal, civil and administrative). The apolitical character of the judiciary, impossibility of removal from office, remuneration guarantees, professional stability or a ban on joining a political party as well as secret court sessions, possibility of issuing a *votum separatum*, the instrument of excluding a judge, all constitute the example foundations of judicial independence. In order to be a firm support for judges they cannot be restricted by the executive or legislative powers, especially on the part of politicians. Beyond question, the judicial independence is also the independence of the whole judicature.

N O T E S

¹ for instance: Art. 1, 24, 28, 39 ustawy z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy (Dz. U. z 2012 Nr 788 j.t.); art. 2 ustawy z dnia 28 listopada 2003 r. o świadczeniach rodzinnych (Dz. U. z 2006, Nr 139, poz. 992 j.t.); art. 3 ustawy z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej (Dz. U. z 2011, Nr 149, poz. 887).

R E F E R E N C E S

- (Ed.) Siedlecki, W. (1986). *System prawa procesowego cywilnego*, Volume III. Wrocław: Ossolineum, 207.
- (Eds.) Dobrzański, B., Ignatowicz J. (1975). *Kodeks rodzinny i opiekuńczy. Komentarz*. Warszawa: Wydawnictwo Prawnicze, 265.
- Garlicki, L., Resich Z., Rybicki M. & Włodyka S. (1983). *Sąd Najwyższy w PRL*. Wrocław: Zakład Narodowy im. Ossolińskich, 135.
- Gawrońska-Wasilkowska, Z. (1966). *Małżeństwo. Istota – Trwałość – Rozwód*. Warszawa: Wydawnictwo Prawnicze, 12.
- Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. z 1997 Nr 78, poz. 483).
- Lityński, A. (2010). *Historia prawa Polski Ludowej*. Warszawa: Lexis Nexis, 61.
- Morawski, L. (2008). *Wstęp do prawoznawstwa*. Toruń: Wydawnictwo Dom Organizatora, 138.
- Orzeczenie Sądu Najwyższego z dnia 28.V.1948 r. Wa G 126/48, OSN 1948, nr 3, poz. 128.
- Orzeczenie Sądu Najwyższego z dnia 8 maja 1951 r., C 184/51, OSN 1952, Nr 1, poz. 21.
- Piasecki, K. (2009). *Kodeks rodzinny i opiekuńczy. Komentarz. Edition 4*. Warszawa: Wolters Kluwer Polska, 370.
- Postanowienie Sądu Najwyższego z dnia 25 lutego 2005 r., I KZP 33/04, LEX 142537.

Interpretation of Negative Prerequisites for Dissolving Marriage by Divorce

- Postanowienie składu siedmiu sędziów Sądu Najwyższego z dnia 22 września 2004 r., III CZP 25/04, OSNIC 2005, nr 7–8, poz. 146.
- Postanowienie składu siedmiu sędziów Sądu Najwyższego z dnia 22 września 2004 r., III CZP 25/04, OSNC 2005, nr 7–8, poz. 146.
- Uchwała Sądu Najwyższego (pełny skład SN) z dnia 5 maja 1992 r., KwPr. 5/92, LEX 20558.
- Uchwała Sądu Najwyższego Izba Cywilna z dnia 18 marca 1968 r., III CZP 70/66, OSNC 1968, nr 5, poz. 77.
- Uchwała Sądu Najwyższego Izba Cywilna z dnia 26 kwietnia 1952 r., C 798/51, OSN(C) 1952, Nr 1, poz. 1.
- Uchwała Trybunału Konstytucyjnego z dnia 7 marca 1995 r., W 9/94, OTK 1995, nr 1, poz. 20.
- Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Dz. U. z 1964 Nr 43, poz. 296).
- Ustawa z dnia 20 grudnia 1989 r. o zmianie ustaw – Prawo o ustroju sądów powszechnych, o Sądzie Najwyższym, o Naczelnym Sądzie Administracyjnym, o Trybunale Konstytucyjnym, o ustroju sądów wojskowych i Prawo o notariacie (Dz. U. z 1989 Nr 73, poz. 436).
- Ustawa z dnia 20 września 1984 r. o Sądzie Najwyższym (Dz. U. z 1984, Nr 45, poz. 241).
- Ustawa z dnia 22 grudnia 2004 r. o zmianie ustawy – Kodeks postępowania cywilnego oraz ustawy – Prawo o ustroju sądów powszechnych (Dz. U. z 2005 Nr 13, poz. 98).
- Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy (Dz. U. z 2012 Nr 788 j.t.)
- Ustawa z dnia 27 czerwca 1950 r. Kodeks rodzinny (Dz. U. z 1950 Nr 34, poz. 308).
- Ustawa z dnia 27 kwietnia 1949 r. o zmianie prawa o ustroju sądów powszechnych (Dz. U. z 1949, Nr 32, poz. 237).
- Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych Dz. U. z 2001 Nr 98, poz. 1070 z późn. zm.).
- Ustawa z dnia z dnia 28 listopada 2003 r. o świadczeniach rodzinnych (Dz. U. z 2006, Nr 139, poz. 992 j.t.).
- Ustawy z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej (Dz. U. z 2011, Nr 149, poz. 887).
- Wróblewski, J. (1988). *Sądowe stosowanie prawa*. Warszawa: Wydawnictwo PWN, 371 and next.
- Wyrok Trybunału Konstytucyjnego z dnia 8 maja 2000 r., SK 22/99, OTK 2000, Nr 4, poz. 107.