oppose the royal power, were simply forgotten. Savalskii belongs to the last who at the beginning of his scientific search became the main researcher and critic of neokantianism studies. While working in the Warsaw university he investigated the problems of the state and law. The most attention was devoted to the theory of natural law. The scientist came to a conclusion that the oldest school in the science of law is the school of natural law. The supporters of this school were in all historical epochs. The opposite side is positivism. The natural law must be perceived as an idea of law, as a transcendental idea of law experience. According to the idealism, the essence of the law is not the force, not the power, not the interests, not the compulsion, but the freedom. In accordance to V. A. Savalski the law is not the part and continuation of nature, but it is the part of culture, social phenomenon.

Key words: philosophy of law, history of state and law, theory of the natural law, constitutionalism, Russia.

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A Mental Illness and Mental Retardation as Marriage Impediments in Polish Family Law

The paper analyzes – in light of the Polish family law – the questions of the possibility of entering into marriage and its permanence in cases of a mental illness or mental retardation of one of the prospective spouses. The paper discusses in particular the conditions for the conclusion of a marriage by a mentally ill or retarded person, the grounds for the annulment of such a marriage and its validation.

Key words: mental illness, mental retardation, discrimination, conclusion of marriage, annulment of marriage, validation of marriage.

Formulation of Scientific Problem and its Meaning. The Polish law explicitly stipulates that «No one who is suffering from a mental illness or mental retardation can marry» (Art. 12 § 1, the first sentence, FGC). However, if the psychological or physical state of the person does not endanger the marriage or the health of any future offspring, and if the person is not totally incapacitated, the court may authorize the marriage (Art. 12 § 1 the second sentence, FGC). What is crucial here is the court's decision and on these grounds a marriage with a mentally ill person can be authorized.

The present-day worldwide psychiatric classifications (DSM-5 and ICD-10) no longer use the term «mental illness» yet it is still present both in the texts of legal acts and in medical literature – both in Poland and in other countries. A mental illness (psychosis) is traditionally defined as a mental disorder in which there are delusions, hallucinations, consciousness disorders, acute emotional disorders and mood changes concurrent with disorders of thinking and complex activity [11, p. 526]. The typical and at the same time most frequent diseases include: schizophrenia, affective disorders (formerly: manic-depressive illness or cyclophrenia) as well as various delusional disorders (formerly: paranoia) and hallucinoses. In contrast, non-psychotic mental disorders comprise – apart from mental retardation (according to contemporary classifications: intellectual disability) – neuroses and other neurotic disorders (e.g. adaptation reactions), a part of psychosomatic disorders, the majority of organic syndromes, personality disorders, dependence on alcohol and other substances, and some psychosexual disorders [11, p. 526]. Disorders of this kind, except mental retardation, do not constitute a marriage impediment.

The Basic Material and Justification of the Results of the Study. According to the above-cited provisions, the impediment of mental illness or mental retardation (like the impediments of age or affinity) is a relative marriage impediment, i.e. one that can be removed by dispensation or permission by the court [9, p. 214-215]. The condition for issuance of such authorization in the case in question is the assessment that the physical state (health condition) of the mentally ill person or the psychological state of the mentally retarded person does not endanger two values: a) marriage b) the health of any future offspring.

The doctrine assumes that a mental illness or mental retardation endanger marriage «if they prevent the fulfillment of the roles and functions by the spouses that characterize socially average marriages, and in particular they prevent the development of a lasting spiritual, physical or economic bond». Of significant importance from the standpoint of this condition is also the personality of the other prospective spouse,

especially his/her attitude to the mentally ill or mentally retarded prospective spouse. «Special insight is required when assessing the situation in which both prospective spouses are mentally ill or mentally retarded» [8, p. 90; 10, p. 215].

The term «the health of future offspring» lege non distinguente refers both to the state of mental and physical health [8, p. 90]. The Supreme Court (hereafter SC) expressed a view that the phrase «endanger the health of any future offspring» should be interpreted not only from the standpoint of the possibility of passing on a mental illness to any future offspring but also from the standpoint of whether the psychological state (mental condition) of a particular person does not prevent the correct upbringing of children in accordance with the accepted rules, and the exercise of parental authority in general (the SC decision of 29 December 1978, II CR 475/78, OSP 1980, no. 7-8, item 141). This interpretation of the wording «endanger the health of any future offspring» does not appear to be accurate because, in view of the genetic determinants of mental illnesses, it effectively prevents the court's authorization of the marriage granted to a mentally ill person since there is always a possibility of passing on a mental illness to any future offspring. For example, the risk of falling ill with schizophrenia in the lifetime of relatives within the first degree of consanguinity ranges from 3% to 17% (with a ca. 1% risk of falling ill in the general population) [4, p. 45].

The doctrine emphasizes that neither the birth of the child in a relationship between persons one of whom is suffering from a mental illness or mental retardation, nor the woman's pregnancy resulting from this relationship, nor the de facto permanent relationship existing between the parties for a long time can be an argument for the court to grant marriage permission to a mentally ill or retarded person [9, p. 182]. It is also difficult to concur with this view. The foregoing circumstances should unquestionably be taken into consideration, particularly pregnancy or the birth of a child. These circumstances make it entirely pointless to investigate the possibilities of passing on a mental illness to the offspring (because the offspring has already been born anyway), and with the absence of other threat to the health of the offspring they (circumstances) may and should counterbalance the threat to the marriage as the circumstance preventing issuance of authorization to enter into marriage. The de facto permanent long-lasting relationship between the parties is testimony to the formation of lasting ties, at least spiritual and physical, and thereby to the absence of threat to the marriage, stemming from a mental illness or mental retardation.

To assess whether at the moment of entry into marriage the person concluding the marriage is suffering from a mental disease in the meaning of Art. 12, FGC, his/her overall state of mental health is what matters rather than his/her condition at the time of entering into marriage (cf. the SC decision of 18 July 1967, I CR 43/67, OSN 1968, no. 2, item 28). Mental diseases have their dynamism manifesting in the alternating periods of exacerbation and remission. The remission condition does not mean the absence of illness, and consequently, of a marriage impediment, even if no disease symptoms are found. On the other hand, the fact of falling ill with a mental illness in the past is not tantamount to the existence of a marriage impediment for life and the necessity to obtain the court's permission. The assessment of whether the person who suffers from a mental illness but has no disease symptoms at the moment should be regarded as ill in the meaning of Art. 12, FGC, depends on the circumstances of a particular case [10, p. 213; 6, p. 80]. If the person suffering from a mental illness has recovered to the extent that his/her behavior or mind does not diverge from the mind and behavior of an average person, and furthermore, if there are grounds to conclude that this state will not change (either at all or at least in the near future), then it cannot be assumed that there is a marriage impediment specified in Art. 12, FGC and that court authorization to marry is necessary (cf. the SC decision of 2 February 1968, I CR 650/67, OSN 1968, no. 10, item. 172).

It should be emphasized that the authorization of a marriage is not required for the person who suffers from mental disorders other than a mental illness or mental retardation (this position was taken by the SC in the judgment of 13 March 1974, II CR 42/74, OSN 1975, no. 1, item 14; and a different one – in the grounds for the resolution by seven SC justices of 9 May 2002 , III CZP 7/02, OSN 2003, no. 1, item 1). A different view – presented inter alia by K. Piasecki [8, p. 89-90] and J. Winiarz [9, p. 179] – would mean the adoption of the intensive interpretation of Art 12, FGC, which would be in evident conflict with the rules of favor matrimonii and exceptiones non sunt extendendae [10, p. 211].

If a mentally ill or mentally retarded person is completely incapacitated, he/she cannot seek court authorization to marry. Total incapacitation is an absolute marriage impediment which cannot be removed by way of dispensation. (Art. 11 § 1, FGC). However, partial incapacitation is not in itself a marriage impediment, and if its cause was other than a mental illness or mental retardation (alcoholism or drug addiction), it is not necessary for the prospective spouse to seek court authorization to marry [10, s. 214].

The authorization to enter into marriage by a mentally ill or mentally retarded person is decided by the court at the request of this person in a non-litigious procedure (Art. 561 § 2, CCP). Before giving decision the court is obliged to seek the opinion of an expert physician, if possible a psychiatrist. Moreover,

the court is obliged to hear the petitioner and the person with whom the marriage is to be concluded, and, should the need arise, the family and friends of the persons intending to marry (Art. 561 § 3, the second and third sentences, CCP). The court may also order the court custodian to conduct a community interview in order to determine the living conditions of the persons seeking authorization to marry (Art. 561-1, CCP). In the decision to authorize the marriage the court specifies the person with whom the marriage will be concluded (Art. 561 § 3, the first sentence, CCP).

The existing legal solutions are differently assessed by those studying the problem. Elżbieta Radziszewska (physician and Member of Parliament of the Sejm of the 3rd, 4th, 5th, 6th and 7th terms; between 2008 and 2011 secretary of state at the Prime Minister's Chancellery and Equal Opportunities Ombudsman; since 2014 Vice Marshal of the 7th-term Sejm) criticizes them, contending that they result in «the heads of the registry offices, rather than doctors, assessing the state of health of citizens with the full sanction of the law». She cites the example of abuses of authority in practice by registry office employees and recommends that the provisions in force should be amended: «Katarzyna is suffering from infantile cerebral palsy. In March she wanted to conclude a marriage with her fiancé. The employee at the Registry Office in Warsaw's Praga district refused to marry her to the man. Paresis of the hands, confinement to a wheelchair, and indistinct speech as well as the information in the medical certificate that she suffered from depression after the death of her parents were regarded by the registrar as symptoms of a mental illness! One which prevents the conclusion of a marriage. Although not a psychiatrist, she made a medical diagnosis – erroneous and damaging. But this action of the registry office employee was connected with outdated and discriminatory provisions of the Family and Guardianship Code (FGC).

Since 1964 the Code stipulates (Art. 12) that anyone suffering from «a mental illness» or «mental retardation» can not marry. They court may authorize this person to enter into marriage only if his/her «psychological or physical state does not endanger the marriage or the health of any future offspring», and the person «is not totally incapacitated».

The FGC has been amended many times since the 1960s yet this provision has not been altered. In practice, therefore, a decision whether a person who «is suffering from a mental illness or mental retardation» can marry is taken by the registry office employees. The ultimate decision obviously rests with the court but this takes time and the persons specified in the law are exposed to stress and stigmatization. Ms. Kasia Barszczewska, while not suffering from a mental illness or mental retardation, was authoritatively pronounced to be so.

At the same time, great progress has been made in psychiatry and psychology over the last fifty years. Experts emphasize that – in light of present-day knowledge – the meaning of the term «mental health» is vague, fluid, and ambiguous. Today it means something entirely different from what it used to denote. Many healthy people have so-called psychiatric episodes. Many of them also have to contend with greater or lesser psychological problems in different periods of their lives. Consequently, it is often difficult to ascertain if a condition is chronic. The term «mental retardation» is likewise out of tune with the twenty-first-century medical reality.

Not all Polish experts of the Civil Law Codification Commission are convinced by these arguments, however. I found this out painfully when over the last two years I tried, as the Equal Opportunities Ombudsman, to make them amend this unfortunate provision in the FGC. The lawyers are still intransigent in their position, which should not be surprising since the Law Codification Commissions in Poland have not consulted their decisions with psychiatrists since 1932! That is probably why our lawyers tell me that «mental retardation» in any form means the lack of legal capacity to marry, whereas our Constitution explicitly stipulates that the family, maternity and paternity are under legal protection of the Republic of Poland…

In Poland it is not obligatory (fortunately) to have pre-wedding examinations. It is not the heads of the registry offices who should certify someone's «psychological state or mental retardation» based on someone's external appearance or behavior (they do not usually have any other grounds at their disposal.) Although they should ask the court to decide when in doubt, yet, as the case of Ms. Barszczewska has regrettably demonstrated, officials are not particularly prone to interpret doubts in favor of the future spouses in such situations.

I have repeatedly consulted representatives of the medical profession, and of the organizations that take care of the intellectually handicapped about the question of amending this unfortunate provision in the FGC. In their opinion, the current wording of this provision should be immediately altered so that it would not be discriminatory because it directly affects human dignity and civil rights. Moreover, this provision raises serious doubts about its constitutionality. I hope that after the conference «Marriage not for all?» the arguments presented by eminent psychiatrists, clinical psychologists and by representatives of non-

governmental organizations dealing with these issues will finally convince the legal circles to amend this provision. I'd like to believe it will happen soon!" [13].

E. Radziszewska tried to have the provision of Art. 12 § 1, FGC, amended for several years. In late 2009, the Ministry of Justice, to which she made a request, decided, however, that the request was not sufficiently justified. In April 2011 she requested several institutions, inter alia the Commissioner for Civil Rights, to examine the provision. On 8 June 2011, E. Radziszewska organized in Warsaw the advertised conference «Marriage not for all?» – The Family and Guardianship Code wrongs persons «suffering from a mental illness or mental retardation» – as stipulated by Art. 12, FGC». It was attended inter alia by state secretaries, medicine, psychology, and law professors as well as by representatives of non-governmental organizations for the protection of human rights in general and of disabled persons [14].

In the opinion of the National Consultant in Psychiatry, Prof. Marek Jarema, the FGC provision in question «stigmatizes and excludes a certain group of persons». He emphasized that «this is groundless from the medical standpoint» [15].

A similar opinion was expressed by President of the Polish Psychiatric Association, Prof. Janusz Heitzman: «The law like that does not serve the people; it does not take into account the progress in medicine over the last sixty years (…) The use of the term «mental illness» causes lawyers to apply any interpretations. (…) This is unconstitutional and discriminates the ill persons» [15].

In contrast, the Minister of Justice's Civil Law Codification Commission secretary Robert Zegadło estimated that «complete relinquishing of the control of whether persons suffering from mental illnesses can marry would be too hasty». In his opinion, «to consent to the conclusion of a marriage that would be subsequently annulled would be even worse than control thereof». He emphasized that at present the registry office employees can request the court to investigate whether disabled persons can marry; this authorization can be also requested by the interested parties. [15]

President of the Friends of Integration Association, Piotr Pawłowski in turn pointed out the diversity of situations. «How should a Down patient behave?», he asked. «These persons are unable to cope with the burden associated with marriage» [15].

A view entirely opposed to that of E. Radziszewska is advanced by A. Zielonacki, who, like the Equal Opportunities Commissioner, criticizes the current regulation in force, whose consequences are that «in practice, whether a person suffering from a mental illness or mental retardation can marry will be decided by the head of the registry office, i.e. a person hardly ever having medical education». This state of affairs, in combination with the fact that the terms «mental illness» and «mental retardation» are vague, and, consequently, it is «not always (…) easy to ascertain whether a person's psychological state deviating from the normal is already a mental illness» – leads A. Zielonacki to entirely different conclusions, however. He demands obligatory premarital examinations for every one! «Because medical pre-wedding examinations are not obligatory, he argues, the evaluation by the head of the registry office whether a person intending to enter into marriage is suffering from a mental illness or mental retardation may be wrong. Art. 5, in turn, obligates the head of the registry office to turn to the court, only if there are any doubts, to decide whether the marriage can be concluded. There are many cases when it is difficult to ascertain, based on a person's external appearance or behavior, that s/he is mentally ill or mentally retarded. In all these cases the person suffering from a mental illness or mental retardation will be able to marry without any hindrance. The only rational solution, therefore, with this prohibition being maintained, would be to impose the duty to have pre-wedding examinations. It appears that the elimination of this prohibition will not adversely affect the significance of marriage and the good of the family, including the good of the children. The function of this prohibition would be exercised by provisions prohibiting entry into marriage by totally incapacitated persons, and by provisions on defective declarations of intent when concluding the marriage (with respect to the conscious declaration of intent to enter into marital union)» [5, p. 64-65].

In practice, the person suffering from a mental illness will request the court to authorize the conclusion of the marriage only when s/he is partly incapacitated or when the head of the registry office refused to accept his/her statement on entering into marital union (Art. 5, FGC) [10, p. 216; 6, p. 81]. There are thus frequent cases of solemnizing the marriage of a mentally ill person without a required court authorization since the fact of the prospective spouse suffering from a mental illness, unlike the fact of suffering from mental retardation, is not always easy to diagnose (especially by a non-physician); consequently, the marrying authority may not suspect that there is a marriage impediment, and will solemnize the marriage.

Entering into marriage by a mentally ill or mentally retarded person without court authorization provides grounds for its annulment.

Either of the spouses may claim the annulment of a marriage on the grounds of a mental illness or the mental retardation of one of the spouses (Art. 12 § 2, FGC), an action for an annulment may be also brought on general principles by a prosecutor (Art. 22, FGC). The time when the health condition of the spouse should be assessed is the time of conclusion of the marriage. If the spouse was healthy at that time and fell ill with a mental disease during the marriage, it is not possible to annul such a marriage.

A mental illness cannot also be claimed when the parties, with the court's consent, enter into the marriage despite the spouse's illness. It is also not possible to annul a marriage after the illness of the spouse has ceased (Art. 12 § 3 FGC). Therefore, even if at the time of concluding the marriage one of the spouses suffered from a mental illness, and the court did not consent to his/her marriage, the court will not annul the marriage if, when the case is decided in court (when the decision is pronounced), the spouse no longer suffers from the illness. The opinions of expert physicians will be of crucial significance in deciding these problems.

It should be emphasized that even a continuing mental illness does not always result in the annulment of a marriage. Even if the illness has not ceased, the court does not have to comply with the claim if it finds that the psychological or physical state of the spouse does not endanger the marriage or the health of any future offspring. Admittedly, the provisions stipulate that this evidence constitutes the grounds for obtaining the court's permission before concluding a marriage. Judicial practice has shown that these circumstances are also taken into account in the marriage annulment proceedings . The court will dismiss an annulment action, especially when the mental illness has not impeded the correct functioning of the marriage for many years, and a medical opinion will confirm that the defendant is able to perform parental functions. Furthermore, the court will also take the health of the future offspring into account: it will consider whether there is a risk of passing on the mental illness to any possible offspring, and also whether the defendant is able to exercise parental authority. The mental illness has to be confirmed by an expert psychiatrist [16].

The court, when ruling in the proceedings to annul a marriage on the grounds of the impediment of a mental illness or mental retardation, is bound by a valid court decision issued in the non-litigious proceedings to authorize a marriage to be entered into by a person suffering from a mental illness or mental retardation [8, p. 91].

When annulling a marriage, the court also decides whether and which of the spouses entered into marriage in bad faith. A spouse, who at the time of the marriage was aware of the circumstances leading to the annulment, is considered in bad faith [16].

As has been said above, mental disorders other than a mental illness and mental retardation cannot in themselves constitute the grounds for the annulment of a marriage. They may, however, lead to the annulment of a marriage under Art. 11, FGC, if they were the cause of a judgment on total legal incapacitation. Under the circumstances of a specific case, they may also lead to the situation in which a person was unable to consciously express his/her intention under Art. 15^1 § 11, FGC, which also constitutes the grounds for the annulment of a marriage [10, s. 211].

A marriage entered into by a mentally ill person without court authorization can be validated. [12, p. 67] In this case, validation means the impossibility of annulling a marriage. The circumstances validating a marriage concluded against the provision of Art. 12 § 1, the second sentence, FGC, is the cessation of the illness. This means that despite ascertainment of a mental illness at the time of marriage and the absence of the court's consent to the conclusion of a marriage, it cannot be annulled when the illness has ceased after the wedding.

In contrast, a marriage entered into by a mentally retarded person cannot be validated because mental retardation is by nature a permanent condition that never ceases [10, p. 219].

The subject of doctrinal controversies and divergences in judicial decisions was the question of validation of a void marriage by obtaining (in non-litigious proceedings) the court's authorization to conclude a marriage ex post, i.e. after it has already been concluded. Four different stances were taken on this issue:

1) authorization to conclude a marriage ex post in non-litigious proceedings is possible at any time;

2) authorization to conclude a marriage ex post is admissible, but after a marriage annulment action has been instituted, non-litigious proceedings concerning the authorization are no longer available (in such cases the procedural court decides by itself whether there were grounds for the authorization of marriage);

3) authorization to conclude a marriage ex post is inadmissible; however, when a marriage annulment action has been instituted, the court examining the claim should decide whether there were grounds for authorization of the marriage, and, if they are confirmed, should dismiss the action;

4) it is not admissible either to authorize a marriage ex post in non-litigious proceedings or to decide whether there were grounds for the authorization during the proceedings in marriage annulment cases. [10, p. 217-218]

Authorization to conclude a marriage ex post in non-litigious proceedings should be regarded as inadmissible because it is contradicted by both grammatical and functional interpretations [6, p. 83]. It would be pointless for the court to decide, in non-litigious proceedings, on the authorization to conclude a marriage after it has already been concluded; the consent to the conclusion of a marriage which has already been concluded cannot be given [10, p. 218]. Moreover, the subsequent authorization is not necessary if the spouses do not intend to claim the annulment of the marriage [6, p. 84]. With respect to deciding in the marriage annulment proceedings on whether there are conditions for the authorization to conclude a marriage, the Supreme Court found this possible and advisable (the resolution by seven SC justices of 9 May 2002, III CZP 7/02, OSN 2003, no. 1, item 1) which means that the third of the foregoing stances is worthy of approval.

This position also concurs with the systemic and teleological interpretation: «If, pursuant to Art. 12 § 3, FGC, a marriage cannot be annulled on the grounds of the mental illness of one of the spouses after it has ceased, it is even more inadmissible to annul it when it has been concluded without authorization but at the time of entering into the marriage this illness did not endanger the marriage or the health of any future offspring. The annulment of a marriage is not a sanction for an unlawful act consisting in entering into the marriage with authorization required by law but it is a consequence of concluding it despite the existence of a statutory impediment» [6, p. 84]. The court will therefore not comply with a marriage annulment claim and will dismiss this action if it finds that there were no circumstances that would prevent the authorization to marry.

The doctrine emphasizes that the fact that the court confirms that there were conditions for the authorization to conclude a marriage during the proceedings concerning the annulment of a marriage does not mean the validation of a marriage but only the ascertainment of this marriage being correctly concluded. The validation of a marriage means that despite the fact that there are grounds for the annulment of this marriage, it cannot be annulled by the court in case there are circumstances specified by law (i.e. the cessation of an illness). The positive evaluation of the possibility of authorizing marriage conclusion, made ex post, means, however, that there was no marriage impediment at all [10, p. 220]. Consequently, «(…) the decision dismissing the marriage annulment action cannot be treated as the court's consent granted ex post, because the court declares in this decision that the marriage was validly concluded because the health condition of the spouse suffering from a mental disease or mental retardation at the time of entering into marriage did not endanger the marriage or the health of any future offspring» [6, p. 85].

Art. 5 of the Civil Code may also constitute the grounds for dismissing a marriage annulment suit due to a mental illness of one of the spouses. In its decision of 4 February 1985 (IV CR 557/84, LEX no. 3092) the Supreme Court found that: «In exceptional cases, when there are special circumstances (e.g. the long-lasting and right functioning of the marriage, and healthy adult children from the marriage), the principles of community life may indicate that the marriage annulment suit on the grounds of a mental illness should be dismissed (Art. 5, CC)». According to G. Jędrejek, it should be assumed that under Art. 5, CC, the court should dismiss an action if the spouse suffering from a mental illness at the time of entering into marriage performed his/her obligations specified in Art 23, FGC, et seq. Moreover, according to the same author, Art. 5, CC, may apply when the spouse claiming the annulment of the marriage was aware of the illness of the defendant spouse, for example visited him/her in hospital, assisted in treatment, etc. The justification for this last view is, according to its author, a paremia known in Roman law: «volenti non fit iniuria» [7, p. 85].

Conclusions and the Prospects for the Further Researches. A mentally ill or mentally retarded person can contract marriage in Poland only with the court's consent. However, if a mentally ill or mentally retarded person is completely incapacitated, he/she cannot seek court authorization to marry. The assessment of whether the person who suffers from a mental illness but has no disease symptoms at the moment should be regarded as ill in the meaning of Art. 12, FGC, depends on the circumstances of a particular case.

The authorization of a marriage is not required for the person who suffers from mental disorders other than a mental illness or mental retardation.

Entering into marriage by a mentally ill or mentally retarded person without court authorization provides grounds for its annulment. A marriage can be annulled on the grounds of a mental illness only when the illness was found on the date of entering into marriage. The emergence of a mental illness after the marriage has already been concluded does not justify its annulment. It may, however, be a ground for divorce if there has been an irretrievable and complete breakdown of marriage (Art. 56 § 1, FGC).

A marriage entered into by a mentally ill person without court authorization can be validated. The circumstances validating a marriage concluded against the provision of Art. 12 § 1, the second sentence, FGC, is the cessation of the illness. This means that despite ascertainment of a mental illness at the time of marriage and the absence of the court's consent to the conclusion of a marriage, it cannot be annulled when the illness has ceased after the wedding. In contrast, a marriage entered into by a mentally retarded person cannot be validated because mental retardation is by nature a permanent condition that never ceases.

Expressing an opinion on the main issue, it should be said that to grant the court the right to decide the admissibility of the conclusion of a marriage by persons with, after all, full legal capacity appears to be a bad solution. When in doubt about the psychological state of one of the prospective spouses, the registry office employee should be only empowered to make the solemnization of marriage subject to meeting two conditions by the interested parties: a) submission of a psychiatrist's opinion by the person about whom the employee has doubts, and presentation of this opinion to the other prospective spouse, or b) the statement of intent to enter into marital union made by the other prospective spouse regardless of the psychological state of the person about whom the registry office employee has doubts.

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Кмечік З. Р. Психічна хвороба і розумова відсталість як перешкоди до укладення шлюбу в польському сімейному праві. Стаття аналізує – в світлі польського сімейного права – питання можливості вступу в шлюб і його збереження в разі психічної хвороби або розумової відсталості одного з подружжя. У початковій частині статті обговорюються умови вступу в шлюб, передбачені для психічно хворих та розумово відсталих осіб. Автор пояснює при цьому, як потрібно розуміти терміни «психічна хвороба» і «розумова відсталість» у контексті цього дослідження. Потім представлені аргументи як критиків чинних положень (як таких, що дискримінують психічно хворих та розумово відсталих), так і їх прихильників, а також позицію автора статті. Розмежовано ситуації, коли психічна хвороба одного з подружжя може бути основою оголошення шлюбу недійсним, а також коли ми маємо справу з валідацією (процедурою підтвердження дійсності) такого шлюбу, яка виключає можливість його анулювання. Автор торкнувся також двох інших питань, важливих з точки зору дійсності шлюбу: виникнення психічної хвороби після укладення шлюбу і одужання після психічної хвороби.

Ключові слова: психічна хвороба, розумова відсталість, дискримінація, укладення шлюбу, оголошення шлюбу недійсним, валідація шлюбу.

Кмечик З. Р. Психическая болезнь и умственная отсталость как препятствия к заключению брака в польском семейном праве. Статья анализирует – в свете польского семейного права – вопрос возможности вступления в брак и его сохранение в случае психической болезни или умственной отсталости одного из супругов. В начальной части статьи обсуждаются условия вступления в брак, предусмотренные для психически больных и умственно отсталых лиц. Автор объясняет при этом, как нужно понимать термины «психическая болезнь» и «умственная отсталость» в контексте этого исследования. Затем представлены аргументы как критиков действующих положений (как дискриминирующих психически больных и умственно отсталых лиц), так и их сторонников, а также позицию автора статьи. Разграничены ситуации, когда психическая болезнь одного из супругов может быть основанием для объявления брака недействительным, а также когда мы имеем дело с валидацией (процедурой подтверждения действительности) такого брака, исключающей возможность его аннулирования. Автор затронул также два других вопроса, важных с точки зрения действительности брака: возникновение психической болезни после заключения брака и выздоровление после психической болезни.

Ключевые слова: психическая болезнь, умственная отсталость, дискриминация, заключения брака, объявление брака недействительным, валидация брака.

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Evolution of Participation Forms of Social Organizations in the Polish Administrative Proceeding

The issue of forms of participation by social organizations in the Polish administrative proceedings is an interesting subject of research. Especially important seems to be a demonstration of the evolution process of this field. Occurring changes undoubtedly arise from the needs to adapt the legal rules to the changing reality. Reflections on this subject are important from the point of view of both entities, those administrating and administered ones.

Key words: administrative proceeding, social organization, forms of participation in the administrative proceedings, the participants of the administrative proceeding.

Presentation of the scientific problem and its significance. According to the existing provisions of the Polish Administrative Proceedings Code, participation of social organizations in administrative proceedings can take different forms, namely participation in a role of authority conducting the proceeding, as a party to the proceeding, a participant with the rights of the party and the other participant to the proceeding. Research is to demonstrate that the current state of the binding law in this regard is the result of a noticeable evolution in forms of participation by social organizations in administrative proceedings. Indicated scientific problem is essential both for administrative bodies, as well as participants in the administrative proceedings.

Main content and justification of the study results. According to Art. 1 para. 2 of the Code of Administrative Procedure [28] social (community) organization bodies are empowered to conduct administrative proceedings. The basis for the exercise of this function will provide either direct provision of universally binding law, or allowed by such a provision agreement between a public authority and «the other entity». The case law indicates numerous cases of conducting administrative proceedings by the social organizations [1, 2, 3]. It should be stressed that the procedural position of authority conducting administrative proceedings binds with possessing competences by a specified entity to arbitrate individual cases by an administrative decision. At the same participation of the social organization body as the authority conducting the administrative proceeding is not indifferent to the realm of administrative litigation, namely in accordance with Art. 32 of the Law on proceedings before administrative courts [4] in the administrative proceeding parties are the applicant and the authority whose action or inaction is the subject of the complaint. In this case, the litigation against the action or inaction of the social organization body takes the process effect. At the same time it is related to the occurrence of a number of procedural rights and obligations on the side of the social organization body.

Social organization may be involved in administrative proceedings as a party to the proceeding. In accordance with Art. 28 of the CAP party to the administrative proceedings is anyone whose legal interest [5, 6] or responsibilities are the object of the proceedings or who requires the intervention of a body in respect of their legal interests or responsibilities. This article thus contains two distinct legal provisions. These