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Divorce Requested by Spouse, Exclusively at Fault – the Family and Guardianship Code (Remarks on the Principle of Recrimination)

For over half a century, the application, structure and scope of the prohibition of granting a divorce, sought by the spouse who is exclusively at fault for the irretrievable break-down of marriage, known as the principle of recrimination[1], has been a recurring and serious topic discussed by family law scholars. The key points of dispute presented in literature and jurisprudence of the Supreme Court relate to the different interpretations of the concept of "exclusive fault" within the meaning of Article 56 §3 of the Family and Guardianship Code (FGC), February 25th 1964. This specifically refers to the subjectification or objectification of the criteria that justify the denial of consent of the innocent spouse.[2] Without limiting oneself to, as Szpunar put it, "casting a vote in this legal survey",[3] one needs to attempt analysing Article 56 §3 FGC from the sole perspective of its structure, which may facilitate addressing more specific problems.

According to the principle of recrimination, despite the existence of the positive prerequisite for a divorce (the irretrievable break-down of marriage) and the absence of negative prerequisites (a divorce being contrary to the best interests of the common minor children of the spouses or to the principles of public policy), a court may refuse to award a divorce that is requested by the spouse who is exclusively at fault for the irretrievable break-down of marriage. In this case, the legislator forbids a divorce irrespective of the fact that the bonds of marriage are irretrievably broken and there are no prospects for resuming married life, or exceptional circumstances that would justify the preservation of this, now long since defunct, marriage.

The rule which established a negative prerequisite for a divorce, in cases where the spouse requesting a divorce is solely at fault for the irretrievable break-down of

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1 The concept of recrimination originates from the common law tradition and was introduced to Polish family law by Górecki (J. Górecki, *Rozwód. Studium socjologiczno – prawne*, Warsaw 1965, p. 219). Despite objections expressed by some of the contemporary legal scholars (see A. Szpunar, *Rozwód na żądanie małżonka wyłącznie winnego rozkładu* [in:] B. Kordasiewicz, E. Łętowska (Eds.), *Prace z prawa cywilnego wydane dla uczczenia pracy naukowej Profesora Józefa Stanisława Piątowskiego*, Ossolineum 1985, p. 329) the term "principle of recrimination" (Polish: *zasada rekryminacji*) is commonly used.

2 See W. Stojanowska [in:] T. Smyczyński (Ed.), *System Prawa Prywatnego. Tom 11. Prawo rodzinne i opiekuńcze*, Warsaw 2014, p. 69.

3 As to the possibility of granting *ex post* consent to the conclusion of a marriage, see A. Szpunar, *Glosa do wyroku SN z dnia 4 lutego 1985 r. (IV CR 557/84)*, NP 6/1986, p. 87.

marriage, was based on a moral principle.[4] It was designed to oppose arbitrary cessations of marriage and deter individuals from not performing marital obligations.[5] Consequently, the principle of recrimination was supposed to serve a preventative role[6] and was designed to avoid the improper performance of marital obligations and attempt to avert individuals from benefiting from their blameworthy conduct. Had this norm been absent, a spouse could have caused the break-down of married life and later would have been able to take advantage of such break-down through effectively seeking the dissolution of the marriage. Some legal scholars consider that Article 56 § 3FGC implements the legal maxim *nemo turpitudinem suam allegans audiatur.* This approach emphasises the repressive aspects of the discussed regulation: if a person is to be blamed for the break-down of marriage, they will be "punished" by the absence of granting a divorce.[7]

More recent works on the subject also underline that the rationale behind Article 56 §3 is to provide protection to the innocent spouse. As a rule, the principle of recrimination can be waived (which permits a court to grant a divorce) by the innocent spouse, who may consent to the divorce.[8] This protection is however also of a moral nature, as the bonds of marriage have already been irretrievably broken. Accordingly, the only real consequence of granting such protection is, preventing the spouse exclusively at fault for the irretrievable break-down of marriage, from concluding another marriage.

The principle of recrimination is understood to be a legal remedy being the exception to the rule that the break-down of marriage is a prerequisite for a divorce.[9] This is because the legislator, as a rule, accepts that inert and defunct marriages are undesirable phenomena.[10] In these circumstances, the ability to start a new family that properly performs its social role is recognised as a greater value than the persistence of marriage purely on paper. On the other hand, in the case of a divorce sought by the spouse who is exclusively at fault for the existing situation, the legislator decided to acknowledge the primacy of "prevention" and the need to protect the innocent spouse.

The above justification, which originally guided the introduction of the principle of recrimination to Polish family law, has remained unchanged. There have however been subsequent changes made to the legal structure of an exception to the rule as embodied in this principle.

Pursuant to Article 30 § 2 of the Family Code (FC), a court was prohibited from granting a divorce if a divorce was requested by the spouse who was exclusively at fault for the irretrievable break-down of marriage, unless the other spouse

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[4] This reasoning was given, for instance, in the resolution of the Supreme Court of 26 April 1952, case no. C 798/51.

[5] J. Gwiazdomorski, M. Grudziński, S. Kaleta, A. Wolter, *Założenia prawa rodzinnego w świetle Konstytucji Polskiej Rzeczypospolitej Ludowej* [in:] *Zagadnienia prawne Konstytucji Polskiej Rzeczypospolitej Ludowej. Materiały Sesji Naukowej PAN 4–9 lipca 1953 r. Tom III*, Warsaw 1954, p. 66.

[6] A. Olejniczak, *Materialnoprawne przesłanki orzeczenia rozwodu*, Poznań 1980, p. 99, W. Stojanowska [in:] System..., p. 688.

[7] J. Górecki, ibid., p. 246.

[8] A. Olejniczak, ibid., p. 99; Olejniczak, *System preferencji społecznych a prawo rozwodowe*, RPEiS 2/1977, p. 65.

[9] J. Górecki considers this principle as an exception towards the fault principle: Górecki, *Wina rozwodu a moralność. Z rozważań nad zasadą rekryminacji*, 1/1965, p. 27.

[10] J. Ignatowicz, M. Nazar, *Prawo rodzinne*, Warsaw 2012, p. 104; A. Olejniczak, *System preferencji*..., p. 60.

consented to the divorce. Article 30 § 2 also provided that a court was permitted to grant a divorce in the absence of such consent, however only in extraordinary circumstances and provided that the spouses had been separated from each other for a prolonged period of time. This rationale accepted that such an exception would apply if social interest justified a divorce in the given circumstance.[11]

As a rule, the consent of the innocent spouse was a necessary requirement for granting the relief sought in an action for divorce. Only in exceptional circumstances was a court able to disregard the absence of consent: this was possible in situations in which an overarching value – social interest – justified the granting of divorce.

This structural concept evolved upon the entry into force of the Family and Guardianship Code. The legislator's intention was to abolish the use of social interest as grounds for granting a divorce. The explanatory notes to the Family and Guardianship Code emphasised "the argument that a divorce requested by the spouse, who is exclusively responsible for the break-down of marriage, should be granted because social interest demands so, is sufficiently far-fetched to be considered utterly unreasonable".[12] Since it was not considered in line with social interest to grant a divorce at the request of the spouse exclusively at fault, it was prohibited. It is therefore clear to see the problematic nature of using this justification as grounds for a divorce granted in the absence of consent of the innocent spouse.[13] It is therefore evident that the change in law was driven by axiological arguments.

According to the model applied in the FGC, the waiver of the principle of recrimination was also made subject to consent given by the innocent spouse. The other exception to the basic rule, has however, been designed in a different way. A divorce may be granted if the refusal of consent to the divorce is assessed as being contrary to the principles of public policy.[14]

The difference between Article 30 § 2 FC and Article 56 § 3 FGC has profound consequences. Presently, a court may not declare a divorce in the absence of the innocent spouse's consent, even if granting a divorce would be justified from the perspective of social interest. This is due to the fact that, granting a divorce, is only possible if the behaviour of the innocent spouse, who fails to give consent to the divorce, is considered contrary to the principles of public policy.

[11] A. Olejniczak, *Materialnoprawne przesłanki*..., p. 107; Z. Wiszniewski [in:] M. Grudziński, J. Ignatowicz (Eds.), *Kodeks rodzinny. Komentarz*, Warsaw 1955, p. 145; resolution of the Supreme Court, case no. C 798/51.

[12] *Uzasadnienie kodeksu rodzinnego i opiekuńczego*, Warsaw 1962, p. 47.

[13] A. Olejniczak, ibid.

[14] Notably, Article 30 §2 FC enabled the option of granting a divorce "despite the absence of consent". Article 56 §3 FGC, on its part, applies to the situation in which "a refusal of consent" is "contrary to the principles of public policy". "Refusal of consent" is a narrower term than "absence of consent" since the absence of consent includes both a refusal of consent (an action) and the non-existence of consent, understood as a consequence of a spouse's failure to express his/her position (an inaction). Grammatical interpretation of the said Article would lead to the conclusion that if the innocent respondent spouse remains inactive (neither exercises his/her option to give consent nor refuses the same), a divorce may not be granted because the inactive spouse's conduct does not involve a refusal of consent, which, if granted, may be assessed as contrary to the principles of public policy. In such a situation, the recrimination principle would apply without any exceptions. Literal interpretation would effectively dismantle the whole framework of exceptions to the principle of recrimination: it would exceptionally allow a divorce based on the innocent spouse's declaration of dissent and absolutely prohibit a divorce in the situation which the same spouse fails to express consent or dissent. In accordance to the above reasoning, a literal interpretation should be rejected, and the absence of consent should be understood as equal to the refusal.

The waiver of the principle of recrimination, when based on the assessment of the absence of the innocent spouse's consent, is frequently associated with the abuse of a legal right concept. In a decision of 7 December 1965, the Supreme Court held that "The innocent spouse may refuse his/her consent as a matter of right and exercising this right may not, as a rule, be considered contrary to the principles of public policy. A specific behaviour may only be considered an abuse of a legal right, if exceptional circumstances appear".[15] This argument was also advanced by certain strands of legal scholarship.[16] The Supreme Court referred to the abuse of a legal right concept in its subsequent rulings. The decision of 26 February 2002 explicitly stated that the interpretation of Article 56 § 3 FGC "corresponds with the interpretation of Article 5 of the Civil Code (CC) with respect to the prerequisite that a legal right application should conform with the principles of public policy". [17]

It is disputable whether there is an actual link between Article 56 § 3 FGC and an abuse of a legal right. According to the dominant, narrow understanding of the abuse of a legal right concept, the applicability of Article 5 CC depends on two elements: the existence of a substantive legal right and the exercising of such a right.[18] Under the above doctrine, Article 5 CC does not apply to the assessment of behaviour, which is not a manifestation of the exercising of a legal right. In order to assume that Article 56 § 3 FGC is an example of the abuse of a legal right, one would need to accept that the absence of the innocent spouse's consent for a divorce is his/her exercising of the legal right to withhold consent to divorce. It seems impossible to create the right to give consent, since if such a right was created, it would be difficult to argue that a passive behaviour (a failure to exercise the legal right) is, in fact, an abuse of this right.

Considering the above, it seems unnecessary and not logically sound to use, in the context as discussed, the concept of a substantive legal right, namely the right to deny consent to a divorce, which would be available to the innocent spouse. A normative form of this right is hardly identifiable, as is a legal relation that may serve as its basis (it seems unnatural to construe the right to deny consent to a divorce as a consequence of the legal relationship of marriage). The nature of the obligation representing a correlation of such a right would be obscure, given the fact that the declaration in question is given to a court and its consequences appear only in the divorce proceedings (enabling a court to enter the judgment dissolving

[15] Case no. CR 278/65, OSNC 7–8/1966, item 130; earlier, the Supreme Court arrived at a similar conclusion in the decision of 18 August 1965, case no. III CR 147/65.

[16] Z. Wiszniewski [in:] M. Grudziński, J. Ignatowicz (Eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Warsaw 1966, p. 260; S. Szer in a commentary to the Supreme Court's decision of 18 August 1965, case no. III CR 147/65, OSPiKA 4/1966, p. 184; A. Olejniczak, *Materialnoprawne przesłanki*..., p. 108.

[17] Case no. I CKN 305/01. The Supreme Court ruled in a similar fashion in the decision of 26 October 2000, case no. II CKN 956/99, published in OSP 2003/3/35 with a commentary by T. Smyczyński.

[18] M. Pyziak-Szafnicka [in:] M. Safjan (Ed.), *System Prawa Prywatnego. Tom 1. Prawo cywilne – część ogólna*, Warsaw 2012, p. 887; T. Justyński, *Nadużycie prawa podmiotowego w polskim prawie cywilnym*, Crakow 2000, p. 66; according to further assessments, similar conclusions were found to be presented in the following literature: A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warsaw 2001, p. 152; Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warsaw 2015, p. 106; T. Sokołowski [in:] A. Kidyba (Ed.), *Kodeks cywilny. Komentarz. Tom I, Część ogólna*, Warsaw 2012; S. Dmowski, R. Trzaskowski [in:] J. Gudowski (Ed.), *Kodeks cywilny. Komentarz*, Warsaw 2014; A. Zbiegień-Turzańska [in:] K. Osajda (Ed.), *Kodeks cywilny. Komentarz*, Warsaw 2016; M. Gutowski [in:] M. Gutowski (Ed.), *Kodeks cywilny. Komentarz, Art. 1–449[11]*, Warsaw 2016.

a marriage). Another argument in opposition to the linking of Article 56 § 3 FGC with Article 5 CC, is directly the regulation of the Family and Guardianship Code. If it was assumed that such a case truly involves the abuse of a legal right, it would make Article 56 §3 FGC redundant.

The rule laid down in Article 56 § 3 FGC is simple: the innocent spouse may, under law, give consent to a divorce, and thereby waive the principle of recrimination. The spouse may however, according to his/her discretion, refrain from making such a declaration (by way of either explicitly refusing consent or not expressing any decision at all), in the same way as they may refrain from making a declaration regarding, for example, their entry into a marriage, acceptance of an inheritance, or approval for a decision concerning the management of joint marital property taken by the other spouse. A decision to refuse consent to divorce, must however be assessed against the background of public policy principles; the same assessment is performed in respect to a behaviour preventing the fulfilment or non-fulfilment of a condition under Article 93 CC. If one disassociates abuse of a legal right from Article 56 § 3 FGC, this means that the rules governing the use of Article 5 CC, developed by jurisprudence, may only be applied to Article 56 § 3 FGC through cautious analogy and in a way that factors in specific features of the abuse of a legal right concept.

The interpretation of Article 56 § 3 FGC leads to the conclusion that the objective of eliminating "public interest" as a justification for granting a divorce (as indicated in explanatory notes to the Family and Guardianship Code) has not been attained.[19] If drafters of the Family and Guardianship Code decided that – in certain situations – a refusal of consent to a divorce is contrary to the principles of public policy, they thereby accepted a scenario in which a failure to waive the principle of recrimination is also contrary to the principles of public policy; this, in turn, means that the principles of public policy (indirectly) justify the granting of a divorce. The accepted mechanism not only fails to achieve the desired goal but also is significantly more complicated and disputable.

The current solution features the key problem, that arguably is, a source of the interpretation of ambiguities, that have been troubling scholarship and courts since the Family and Guardianship Code entered into force. If the absence of an innocent spouse's consent to divorce (which, according to the accepted interpretation, may take the form of either refusing consent or passively refraining from expressing any decision) may be considered, in certain circumstances, contrary to the principles of public policy, then (according to a dominant view) this means that a failure to give consent will be classified as illegal conduct.[20]

Since the absence of the innocent spouse's consent to a divorce may be illegal, an expression of such consent should be considered legal. By deciding that a refusal of consent is illegal (which means that the absence of consent may be "revoked" and a divorce granted), the legislator creates the duty to give consent to a divorce,

[19] This was noted by A. Olejniczak in Olejniczak, *Materialnoprawne przesłanki*..., p. 113.

[20] W. Czachórski [in:] Z. Radwański (Ed.), *System prawa cywilnego, t. 3, cz. I, Prawo zobowiązań – część ogólna*, Ossolineum 1981, p. 533; Z. Banaszczyk [in:] K. Pietrzykowski (Ed.), *Kodeks cywilny. Komentarz*, Warsaw 2015; Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warsaw 2014, p. 202; P. Machnikowski [in:] A. Olejniczak (Ed.), *System Prawa Prywatnego. Tom 6. Prawo zobowiązań – część ogólna*, Warsaw 2014, p. 391 et seq.; M. Kaliński, *Szkoda na mieniu i jej naprawienie*, Warsaw 2014, p. 107.

stemming from the principles of public policy[21] (if a norm stipulates that, in certain circumstances, a refusal of consent to a divorce is prohibited, then, in such circumstances, a grant of consent should be considered obligatory)[22].

The conclusion that Article 56 § 3 FGC obliges the innocent spouse to express consent to a divorce is a fundamental weakness of this provision. The innocent spouse cannot be *required* to give his/her consent to the divorce and thereby "actively" enable the other spouse (who is exclusively at fault) to e.g. start a new family, even in the case of a long-lasting break-down of marriage, a mutual conflict and extreme animosity between the spouses. Understandably, such behaviour should be desired, and a spouse may allow the divorce. The court's exercising of its discretion does raise concerns, in so far as the "penalisation" of a failure to exercise this option, even in the situation in which a divorce should objectively be granted.

The above structural defects seem to be the source of the interpretation ambiguities that have been long present in scholarship and jurisprudence. The practical guidelines regarding the judicial interpretation of Article 56 § 3 FGC were given in the resolution of the Supreme Court of 18 March 1968.[23] The resolution reads that "a negative moral assessment of the spouse who refuses his/her consent does not have to (and usually will not) involve the recognition of a refusal of consent to a divorce, as contrary to the principles of public policy", while "a refusal of consent to a divorce, should be disregarded as contrary to the principles of public policy, whenever, in given circumstances, there are no considerations that guided the legislator to introduce the prohibition of a divorce requested by the spouse exclusively at fault. This could be the case, if there are no grounds to assume that the granting of a divorce may cause unwanted social and behavioural consequences affecting the integrity of family relations. The effectiveness of a refusal of consent to divorce in the light of the public policy principles, should be assessed not only on the basis of a thorough explanation and examination of the circumstances of the innocent spouse, but also should be based on the assessment of the situation of children born in the marriage and children of the spouse requesting the divorce (including their living conditions), as well as the situation of a person with *de facto* bond with his/her spouse." It is evident from the above that the Supreme Court has adopted the objective concept of the assessment of refusal of consent to a divorce, based on the objective nature of the principles of public policy.

In many respects, the position expressed by the Supreme Court, should be deemed reasonable. Any conflict between a refusal of consent and the principles of public policy may only be objective in nature. No fault needs to be attributed to an actor, for the act to be considered illegal. A contravention of the principles of public policy, involves objective illegality, and the element of culpability is not required to consider a refusal of consent, contrary to the principles of public policy. This certainly does not mean that subjective factors, such as motives behind the refusal, are immaterial, however, the negative assessment of such factors is not required in

[21] The emergence of this duty was noticed by A. Stelmachowski, p. 256.
[22] For a theoretical interpretation of modal expressions, see A. Malinowski [in:] A. Malinowski (Ed.), *Logika dla prawników*, Warsaw 2010, p. 239.
[23] *Wytyczne wymiaru sprawiedliwości i praktyki sądowej w zakresie stosowania przepisów art. 56 oraz art. 58 k.r.o.*, III CZP 70/1966, OSNC 5/1068, item 77.

order to consider a refusal of consent contrary to the principles of public policy.

The line of argument, presented above, does not solve the presented dilemma. The objectification of a refusal of consent, which needs to factor in the social context of a whole situation (which is suggested by the expression "in given circumstances"), does not change the fact that the behaviour of the spouse denying consent is assessed negatively. Even if the refusing spouse's intentions are innocent, a court will consider that – in the given circumstances – absence of consent was illegal, being contrary to the principles of public policy. By doing so, a court confirms that in such circumstances the spouse was obliged to express consent to the divorce. This will happen in each and every case when a divorce is granted, at the request of the spouse, who is exclusively responsible for the break-down of marriage and when the innocent spouse does not consent to the divorce.

The presented consequences of the grant of a divorce seem to be an attempt at finding concepts that would enable subjectification of an assessment of the absence of consent of the innocent spouse.[24] There have been arguments, expressed both in legal scholarship and jurisprudence of the Supreme Court, for limiting the applicability of the above-discussed concept, solely to situations in which improper conduct can be attributed to the innocent spouse. Aleksander Wolter predicted that "a divorce will be available if both parties have conducted themselves in a morally reprehensible way. This juxtaposition also suggests that only serious allegations may be presented against the innocent spouse, who is not responsible for having caused the break-down of marriage: this is because the statement of reasons to a divorce judgment will in a way condemn also this spouse. Given the above, here it is not sufficient that a refusal objectively contravenes the principles of public policy; a subjective element is also needed..."[25]. If one accepted that the absence of consent may be considered contrary to the principles of public policy, only if subjective elements *also* appear on the innocent spouse's part, this would provide a better argument in support of the illegality of the innocent spouse's behaviour and would make it easier to accept its key consequence, namely the existence of a duty to give consent in certain circumstances.

As far as the sense of justice is concerned, this consequence can be accepted more readily. It does however not change the fact, that even in circumstances that justify condemning the motive behind a refusal of consent, the innocent spouse is still required to perform an act, that in time will enable the spouse exclusively at fault to, e.g., enter into a legally recognised relationship with the person, with whom the "guilty" spouse had committed adultery. The subjective concept therefore only limits the scope, in which the exception to the recrimination principle may be applied and consequently, the number of situations in which divorce courts find themselves thrown into the above-presented confusion.

In summary, repeating arguments in support of the objective or subjective approach to the assessment of a refusal of consent to a divorce does not lead to any actionable resolution. The reason for this is the problem that is present in the

[24] Such attempts were made by the Supreme Court, for example in the decisions III CR 147/65, III CR 278/65, as per A. Stelmachowski, *Wina a zasady współżycia społecznego w procesie rozwodowym,* SP 26–27/1970, p. 246.

[25] A. Wolter, *Glosa do orzeczenia SN z dnia 18 sierpnia 1965 r., III CR 147/65*, OSPiKA 1966/4/93, p. 183.

structural core of Article 56 § 3 FGC. Considering the above, one must admit that the solution accepted in Article 30 § 2 FC was free from the deficiencies shown above. This is because Article 30 § 2 FC enabled a grant of a divorce, whenever objective reasons (social interest) justified doing so, without expressing any negative assessment of the innocent spouse's behaviour, that would inadvertently be associated with all the described consequences.

Notably, any possible alteration to Article 56 § 3 FGC, should be preceded by a multi-faceted review of the usability and purpose of maintaining the principle of recrimination, in contemporary social conditions. A re-writing of this principle is advisable, only as the next step that follows such a review. Moreover, an argument should be made that both the substantive and procedural aspects of divorce in the Polish law, need a more general revision.

Słowa kluczowe: *rozwód, wina rozkładu pożycia, zasada rekryminacji, małżeństwo, prawo rodzinne.*

Streszczenie

Maciej Domański – *Rozwód na żądanie małżonka wyłącznie winnego w kodeksie rodzinnym i opiekuńczym (uwagi o zasadzie rekryminacji)*

W opracowaniu analizie poddany został problem konstrukcji zakazu orzekana rozwodu na żądanie małżonka, który ponosi wyłączną winę rozkładu pożycia – zasady rekryminacji (art. 56 § 3 k.r.o.). Przedstawione zostały różnice konstrukcyjne tej negatywnej przesłanki rozwodowej pomiędzy art. 30 § 2 kodeksu rodzinnego z 1950 r. a obowiązującym obecnie rozwiązaniem. Wskazano, że dokonana w 1964 r. zmiana miała niezwykle doniosłe konsekwencje. Uznanie, że w pewnych sytuacjach odmowa zgody na rozwód przez małżonka niewinnego może być sprzeczna z zasadami współżycia społecznego oznacza akceptację dla kwalifikacji takiego zachowania jako bezprawnego. Bezprawność odmowy wyrażenia zgody na rozwód przez małżonka niewinnego implikuje przyjęcie, że zachowaniem zgodnym z prawem (oczekiwanym przez ustawodawcę) jest wyrażenie takiej zgody. Konstruowanie obowiązku wyrażenia, przez małżonka niewinnego zgody na rozwód w celu np. umożliwienia małżonkowi wyłącznie winnemu zawarcia nowego związku małżeńskiego, budzi fundamentalne wątpliwości. Przedstawione niezwykle istotne mankamenty konstrukcyjne stały się przyczyną wątpliwości interpretacyjnych dotyczących art. 56 § 3 k.r.o. niezmiennie obecnych w doktrynie i orzecznictwie Sądu Najwyższego. W opracowaniu przedstawiony został postulat (po dokonaniu generalnej analizy użyteczności i celowości dalszego obowiązywania zasady rekryminacji) powrotu do konstrukcji przyjętej w art. 30 § 2 k.r.

Keywords: *divorce, reason of breakdown of marriage, principle of recrimination, marriage, family law.*