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Abstract:

Under Polish law divorce can only be granted by the court. Spouses are not able to independently determine how the marriage is to be dissolved. In the wake of sweeping socio-economic changes that occurred in Poland after 1989, it became reasonable and appropriate to consider the possibility of extending the scope of the autonomy of will of spouses, so that it covers the dissolution of marriage.

A comparative approach adopted in the article made it possible to develop models that reflect the systems currently used within other legal systems with regard to the dissolution of marriage. A comparative-law analysis was meant to facilitate an in-depth discussion in Polish literature on the admissibility of and rationale for the introduction of extrajudicial divorces.

In particular, the article attempts to determine the limits of the autonomy of will of spouses wishing to dissolve their marriage that would be acceptable at the level of national legal systems in Europe. Furthermore, a model solution is proposed on the basis of an analysis of legal systems of European countries that should optimally implement the principle of the autonomy of will of divorcing spouses.