

Author: Jakub Pawliczak

Title: Rozwiązanie małżeństwa na podstawie prawa obcego a orzekanie o winie rozkładu pożycia / Dissolution of marriage under foreign laws and the apportionment of fault for breaking down the marriage

Source: Kwartalnik Prawa Prywatnego („Quarterly of Private Law”)

Year: 2017, vol. XXVI, number 4, pages: 845-875

Keywords: divorce, matrimonial fault, conflict of laws, application of foreign law, overriding mandatory provisions

Discipline: Law (Family Law)

Language: Polish

Document type: Article

Publication order reference: University of Warsaw

Abstract:

Polish courts more and more often face considerable difficulties related to dissolving marriages on the basis of foreign law. In these cases it is necessary to jointly apply rules of private international law (of national as well as international origin), foreign divorce law and procedural rules of the forum. In particular, it is problematic whether and how Polish courts should rule on matrimonial fault, if foreign law governs the divorce. To answer this question the legal character of article 57 of the Polish Family and Guardianship Code shall be analysed. This provision states that the court, in its ruling on divorce, shall also determine, whether and which spouse is at fault for the breakdown of marriage. In this study it is argued that Polish and foreign law provisions concerning determination of matrimonial fault are primarily of material character and should be applied as the integral part of the law governing divorce. Article 57 of the Polish Family and Guardianship Code does not constitute an overriding mandatory provision of the forum, which could govern dissolution of marriage regardless of the law under which it falls. Neither it is a procedural regulation, which should be applied by the Polish courts as *legis fori processualis*. As a result, if the applicable law does not provide for ruling on fault for the breakdown of marriage, the competent court shall not deal with this issue.