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**Title:** Rozdzielność płci nupturientów jako przesłanka istnienia małżeństwa (art. 1 k.r.o.)/  
Separation of sexes as a prerequisite of the existence of marriage (art. 1 Family and Guardianship Code)

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**Abstract:**

Under Polish law marriage is defined as the union of respectively ‘a man’ and ‘a woman’. Since the meaning of the terms in the context of marriage has not been specified by the legislator a reference to medical understanding is necessary to determine a person’s sex for the law of marriage. Currently in medicine, sex of a person is determined by the application of chromosomal, gonadal and genital as well as psychological tests. Under the Polish legal system distinction between sexes is based purely on biological criteria. Therefore, it is not possible to amend the initial entry in a birth certificate solely on the basis of a person’s gender. It is only allowed to amend a birth certificates when an individual’s sex has been wrongly determined at birth due to congruency of the biological criteria (intersex conditions) Article 31 of Civil Status Act.

The Supreme Court, however, by the application of “creative” interpretation of law, has found a judicial procedure for transsexuals to be able to change their legal sex. The procedure has been based on a suit for establishing personal rights such as sex or gender. This solution made a basis for creating a practical model for a legal sex - change operation even on pre-operative transsexuals.

The established model even though solving a significant social issue became a fundamental legal system discrepancy. Due to the fact that, under the Polish family law ‘a man’ and ‘a woman’ are terms used solely in biological context (e.g. filiation regulations) the life of a person with an assigned biological sex (and the consequential procreation capability) with opposite legal sex leads to unsolvable *de lege lata* problems e.g. assignment of paternity and maternity.

The adopted position of the Polish legislature, even though coherent in legal institutions, is in variance with international standards of human rights protection and does not meet social expectations (especially transsexuals or medical milieus). Nevertheless, a solution to the problem is not achievable without the interference of the legislator.