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**Abstract:**

The paper describes the concept of marriage and divorce, as presented in the Model Family Code (the MFC), and compares it to the provisions of the Polish Family Law. The MFC was developed on the basis of research carried out by the Commission on European Family Law (CEFL) and focuses on the very essential ideas of the future regulation of Family Law. As per Article 1.1 of the MFC, the main institution is partnership, which includes both marriages and non-marital relationships, provided that they have lasted more than three years or that the partners have a common child or that one of the partners has made substantial contributions to the relationship or in the sole interest of the other partner. This approach is not consistent with the Polish legal system, because of the division between private life and family life. Family life is a social situation between spouses or relatives that is brought about exclusively by coital interactions between spouses or partners or by adoption that eventually result in maternity, paternity and kinship between the relatives. On the other hand, private life is a social situation brought about by various personal interactions that only result in personal relations. The scope of private life is broader and it always includes family life. The two fundamental categories pertinent to this division are sexual interactions, defined as a broad group of personal behaviours, and coital interactions (conjugal interactions), defined exclusively as behaviours between two adult persons of different sex. The existence of coital interactions constitutes a different and only one kind of the social reality (social group), which is open for maternity, paternity and kinship between the relatives.

In contrast to Article 1.1 of the MFC, a conjugal union between woman and man, who have not entered into marriage, is treated as concubinage. It has a private character only, but it can be translated into a family situation, because of maternity and paternity connected with the delivery of a common child of the partners. It is indispensable to divide all private phenomena into two groups: the transformable phenomena and the non-transformable phenomena. If a concubinage is transformed into family, it receives, as a family, a full-scale protection offered by the state. However, a large group of sexual interactions does not have a conjugal character at all; these are recognised as being non-transformable and exclusively private phenomena. Certain other social unions that do not involve any sexual bonds also have a non-transformable nature.

The regulation of divorce is a controversial one, because of the absence of any positive substantial premise for a decree of divorce and the absence of any negative premises for divorce (like welfare of the child). What is more, the mandatory 'period of six months' intended for reflection (Article 1.10 of the MFC) seems to be rather old-fashioned.