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Professor Leon Piniński on the marriage law project from 1929

Profesor Leon Piniński o projekcie prawa małżeńskiego z 1929 r.
Профессор Леон Пининьский о проекте брачно-семейного права 1929 г.
Професор Леон Пінінський про проєкт закону про шлюб 1929 року

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Abstract: The present paper will discuss issues related to the problem of the unification of Polish family law after 1918, with particular emphasis on the marriage law which aroused great emotions in Polish society at that time. It focuses on the ongoing discussion on the draft of the personal marriage law, developed by Prof. K. Lutostański and made public in 1929. Particular attention was paid to the position of Professor Leon hr. Piniński, who also took the floor to discuss the solutions adopted in this draft. In 1931, the Union of Polish Catholic Intelligentsia carried out a survey on the aforementioned project, in which 11 prominent representatives of social life and the academic community of the inter-war period took part, in particular Professor Leon Piniński.
Keywords: Leon Piniński, personal matrimonial law, inter-war period, unification, codification

Streszczenie: W niniejszym opracowaniu zostały omówione zagadnienia związane z problemem unifikacji polskiego prawa rodzinnego po 1918 r., ze szczególnym uwzględnieniem prawa małżeńskiego, które budziło wówczas wielkie emocje w polskim społeczeństwie. Skupiono się na dyskusji wokół projektu osobowego prawa małżeńskiego opracowanego przez prof. K. Lutostańskiego w 1929 r. W 1931 r. Związek Polskiej Inteligencji Katolickiej przeprowadził ankietę w sprawie wspomnianego projektu, w której udział wzięło 11 wybitnych przedstawicieli życia społecznego i środowiska naukowego okresu międzywojennego, w tym prof. Leon Piniński. W artykule szczególną uwagę zwrócono na stanowisko prof. Leona hr. Pinińskiego w sprawie osobowego prawa małżeńskiego, jako że on również zabrał głos w polemice toczącej się nad rozwiązaniami przyjętymi w projekcie.
Słowa kluczowe: Leon Piniński, osobowe prawo małżeńskie, okres międzywojenny, unifikacja, kodyfikacja

Резюме: В данной статье рассматриваются вопросы, связанные с проблемой унификации польского семейного права после 1918 г., с особым акцентом на брачно-семейное право, вызвавшее большие эмоции в польском обществе того времени. В центре внимания – дискуссия вокруг проекта личного брачно-семейного права, разработанного профессором К. Лютостанским в 1929 г. В 1931 г. Союз польской католической интеллигенции провел опрос по этому проекту, в котором приняли участие 11 выдающихся представителей общественной жизни и научных кругов межвоенного периода, в том числе профессор Леон Пининьский. Особое внимание в статье уделяется позиции профессора графа Леона Пининьского по вопросу личного брачно-семейного права, поскольку он также выступал в полемике, которая велась по поводу решений, принятых в проекте.
Ключевые слова: Леон Пининьский, личное брачно-семейное право, межвоенный период, унификация, кодификация

Анотація: У даній статті розглядаються питання, пов'язані з проблемою уніфікації польського сімейного права після 1918 року, з особливим акцентом на шлюбному праві, яке викликало бурхливі емоції в тогочасному польському суспільстві. У центрі уваги – дискусія навколо проєкту персонального шлюбного

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права, розробленого в 1929 р. професором Каролем Лютостанським. У 1931 р. Об'єднання польської католицької інтелігенції провело опитування щодо цього проєкту, в якому взяли участь 11 видатних представників суспільного життя та наукових кіл міжвоєнного періоду, у тому числі й професор Леон Пінінський. У статті особлива увага приділена позиції професора Леона Пінінського у питанні особистого права шлюбу, оскільки він також брав участь у полеміці щодо рішень, прийнятих у проєкті.
Ключові слова: Леон Пінінський, особисте шлюбне право, міжвоєнний період, уніфікація, кодифікація

Introduction

After Poland regained its independence in 1918, there were five legal orders left in place on its territory by the post-partition states. In the field of civil law, these were the Bürgerliches Gesetzbuch (BGB), i.e. the German Civil Code of 1896 in force during the Prussian partition, and the Allgemeines Bürgerliches Gesetzbuch (ABGB), i.e. the Austrian Civil Code of 1811, which was in force during the Austrian partition on the territory of former Galicia and Cieszyn Silesia. In addition, in the eastern borderlands incorporated into the Russian Empire, the Russian code of 1835, the so-called "Svod Zakonov or Collection of Laws" was applied. On the other hand, in the areas of the former Kingdom of Poland, which retained a certain degree of distinctiveness from the other lands of the Russian partition, the Napoleonic Code of 1804, with changes introduced by, among others, the Code of Laws of the Kingdom of Poland of 1825 and the Marriage Act of 1836, retained legal force. On the other hand, in the part of the Spiš and Orava areas annexed to Poland and before 1918 belonging to the Kingdom of Hungary, Hungarian law remained in force until 1922. Apart from this, many other local legal acts issued by the governing bodies of individual Polish territories in the period before the formation of the unitary state authority retained legal force, e.g. acts issued by the military commander of Central Lithuania, the war authorities in the Eastern Borderlands, the liquidation commissions of individual districts.[1]

[1] The Codification Commission was active until 1939, and its achievements constitute an important part of the Polish legislative art. Individual members of the Commission drafted legal acts, which were then discussed in the Commission's forum and, once approved, presented to the President. Legal acts of the Commission entered into force as ordinances of the President of the Republic, rather than laws, which made it possible to avoid political interference by the Sejm in the content of the normative acts. For more details, see. L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, Wrocław 2000, p. 251; S. Grodziski, *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej*, Czasopismo Prawno-Historyczne 1981, vol. 33, no. 1, p. 47; A.J.R, *Komisja tworzenia dobrego prawa*, Palestra 2009, no. 9–10; I. Mazurek, *Specyfika prac Komisji Kodyfikacyjnej w procesie unifikacji prawa w II Rzeczypospolitej*, Studia Iuridica Lublinensia 2014, no. 23, pp. 237–238; E. Borkowska-Bagieńska, *O doświadczeniach kodyfikacji prawa cywilnego w II Rzeczypospolitej*

However, numerous problems were created not only by the multiplicity of legal acts in force on the territory where Poland was established after 123 years of partitions. Further difficulties were caused by the fact that the legal orders of the partitioning states were different both in terms of general principles and the content of individual ones. All this caused many doubts of interpretation, e.g. with regard to bigamy in Spisz and Orawa.[2] Admittedly, a legal fiction was adopted that the laws of the partitioned states constituted Polish district laws and conflict-of-laws norms were introduced to determine the applicable law for a given legal state. However, in the long run, such a solution was unacceptable and, therefore, unification of law, i.e. its unification, became necessary.[3]

In this article I would like to present issues related to the problem of the unification of Polish family law after 1918, with particular emphasis on the marriage law which aroused great emotions in the Polish society of that time. I would also like to present the discussion following the publication in 1929 of a draft of the personal marriage law developed by Prof. K. Lutostański. Particularly noteworthy is the voice of Professor Leon Count Piniński, whose views on the marriage law project will be analysed in detail in the following article.

1. Unification of family law

With regard to family law, the draft personal marriage law, drawn up in 1929, was particularly controversial. It was viewed negatively especially by the Catholic Church for the introduction of optional civil marriages and the possibility of dissolving a marriage by divorce.

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dla współczesnego ustawodawcy, Czasy Nowożytne 2002, vol. 12, pp. 125–141; W.L. Jaworski, *Prawo cywilne na ziemiach polskich*, vol. 1. *Źródła. Prawo małżeńskie osobowe i majątkowe*, Kraków 1919, pp. 44–45; K. Sójka-Zielińska, *Historia prawa*, Warszawa 2022, p. 258; eadem, *Organizacja prac nad kodyfikacją prawa cywilnego w Polsce międzywojennej*, Czasopismo Prawno-Historyczne 1975, vol. 27, no. 2, pp. 271–280.

2 A. Korobowicz, W. Witkowski, *Historia ustroju i prawa polskiego (1772–1918)*, Warszawa 2017, pp. 10–20; M. Allerhand, *Prawo małżeńskie obowiązujące na Spiszu i Orawie*, Lwów 1926, footnote 2.

3 R. Radwański, *Kształtowanie się polskiego systemu prawnego w pierwszych latach II Rzeczypospolitej*, Czasopismo Prawno-Historyczne 1969, vol. 21, no. 1, p. 31; J. Markiewicz, *Kształtowanie się polskiego systemu prawa sądowego i jego twórcy w okresie międzywojennym 1919–1939 (wybrane zagadnienia)*, Teka Komisji Prawniczej PAN – Oddział w Lublinie 2010, vol. 3, pp. 113–122.

In the lands forming the newly established Polish state in the 19th century, there were three legal orders relating to the institution of marriage, different in content.[4] Firstly, there was the secular (lay) system, which was present in the Napoleonic Code. It legalised the civil character of marriage with regard to the form of marriage and jurisdiction. However, certain solutions, e.g. concerning the prerequisites for marriage, were based on canon law and old French law. The same system was also in force in the German Civil Code (BGB), according to which marriage had the nature of a civil contract and was concluded in the presence of a registrar.[5]

In contrast, denominational rules were in force in Russian law (Zwód Praw) and in the lands of the Kingdom of Poland from 1836. On the other hand, the Napoleonic Code, in force in the Duchy of Warsaw since 1808, and with it the dissolution of marriage law, met with great protest from the clergy. After the fall of the Duchy, the Tsarist authorities attempted to reach an agreement with the clergy and, as a result, in 1825 the Code of the Law of the Kingdom of Poland came into force, which defined the nature of marriage as religious, abolishing divorce, but left civil jurisdiction. Due to the Catholic Church's failure to respect the Code's provisions on secular jurisdiction in matrimonial matters, further discussions were initiated, which, however, due to the November events, led to the imposition of Russian marriage law on the Kingdom in 1836. According to the guidelines of the officials of the Department for the Affairs of the Kingdom of Poland, the marriage law was based on a purely denominational form with separation for four Christian denominations, i.e. Roman Catholic, Greek-Russian (Orthodox), Evangelical-Augsburg and Evangelical-Reformed. Judicial jurisdiction for the Christian denominations was to be exercised by the clergy.[6]

A third secular-religious (mixed) system was in force in the provisions of the Austrian Civil Code. It defined marriage as a contract between two persons of different sexes, who by this act declare their will to be with each other, while leaving the secular nature of the general rules, which dealt with the essence of marriage as a civil contract, the prerequisites for marriage and the obstacles to marriage. The forms of marriage were either confessional or secular (civil marriage). The Code

4 K. Lutostański, *Zasady projektu prawa małżeńskiego*, Gazeta Sądowa Warszawska 1931, no. 46, p. 1.

5 I. Leciak, *Polemika wokół kodyfikacji prawa rodzinnego i opiekuńczego w II Rzeczpospolitej*, Studia Iuridica Toruniensia 2013, vol. 13, pp. 81–107; P. Fiedorczyk, *Polish Matrimonial Law 1918–1939: Regulations, Attempts to Unify and Codify*, in: *Kulturkampf um die Ehe: Reform des europäischen Eherechts nach dem Grossen Krieg*, ed. M. Löhnig, Tübingen 2021, pp. 147–165; idem, *Development of Family Law on Polish Lands 1795–1945*, in: *Framing the Polish Family in the Past*, eds. P. Guzowski, C. Kuklo, New York 2022, pp. 165–180.

6 K. Sójka-Zielińska, *Historia prawa*, p. 258; K. Lutostański, *Prawo cywilne obowiązujące w b. Królestwie Polskiem*, vol. 1, Warszawa 1931, p. 58.

included secular jurisdiction in matrimonial matters, regarding the validity of marriage, separation and divorce. Except that separations were applied to all persons, and divorce could be pronounced against non-Catholics. The different nature of entering into and dissolving Jewish marriages was also defined, taking into account the institution of the so-called divorce letter.[7]

The above-mentioned discrepancies regarding the treatment of marriage as a secular, confessional or mixed institution posed many problems for the section of the Codification Commission that dealt with family law. Its main referent was first Professor Władysław Leopold Jaworski and from 1924 onwards Professor Karol Lutostański. With the commencement of the work on the codification of the marriage law, a heated discussion on the presented draft began, especially as the presented concept of marriage was primarily secular in nature.[8] Therefore, the main opponents of the new draft were the circles of Catholic intelligentsia as well as the Catholic Church itself, which according to Article 114 of the March Constitution had a privileged position among other equal confessions in Poland.[9] The objections to the prepared draft concerned the composition of the sub-committee drafting the draft, the secular form of marriage, the admissibility of divorce and the entrusting of matrimonial matters to state jurisdiction. The opponents of the draft mainly raised the issue of admissibility of divorce as an institution contradictory to the teaching of the Church, while the principle of permanence of marriage, on which the draft was based, was considered fictitious. Criticism was also levelled at the idea that all matters arising from marriage should be submitted to the state judiciary. The first public attack on the new marriage project can be seen as a pastoral letter drafted by Archbishop Józef Bilczewski of Lwów, in which the Polish bishops appealed to Catholic parliamentary activists to prevent the introduction of civil weddings and divorces. The firm stance of the episcopate had a negative impact on further work on the project, which was suspended for a period of two years.[10]

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7 K. Sójka-Zielińska, *Historia prawa*, pp. 274–275.

8 According to K. Krasowski, it was related to an enquiry, addressed unofficially by Prof. W.L. Jaworski to the Episcopate, concerning the reaction of the Church to the possible introduction of civil marriages and divorces in Poland. On the actions taken by the episcopate at that time to combat the proposed solutions, see K. Krasowski, *Próby unifikacji osobowego prawa małżeńskiego w II Rzeczypospolitej*, Kwartalnik Prawa Prywatnego 1994, no. 3, pp. 467–487.

9 Act of 17 March 1921 – Constitution of the Republic of Poland, Journal of Laws [Dziennik Ustaw] 1921 no. 44, item 267.

10 P. Zakrzewski, *Prawo małżeńskie w II Rzeczypospolitej – nieudane próby normalizacji*, Kortowski Przegląd Prawniczy 2015, no. 2, pp. 91–95; K. Krasowski, *Próby unifikacji…*, p. 4; A. Woźniczek, *Rozbiór krytyczny małżeństwa. Spory o kodyfikację prawa małżeńskiego w II RP*, Więź 2011, no. 5–6, pp. 32–141; J. Jaglarz, *Problem kodyfikacji prawa małżeńskiego w Polsce*, Poznań 1934, p. 22.

The work of the commission was resumed in 1924, and its new referent Professor Karol Lutostański presented his own draft to the Civil Law Section in December of that year.[11] The draft covering the principles of matrimonial law was passed by the Codification Commission on 28 May 1929[12] and consisted of nine chapters: I. Engagement, II. Legal capacity to enter into marriage, III. Obstacles to marriage, IV. Preliminary acts to marriage, V. Marriage, VI. Obligations arising from marriage, VII. Annulment, VIII. Separation, IX. Jurisdiction and proceedings. In addition, the draft contains final provisions, introductory and transitional provisions.[13]

In formulating the articles of the new marriage law, the Sub-Commission started from the premise that canon law remains the internal law of the Catholic Church and has no legal effect in state law. Furthermore, it considered that the new marriage law should be in line with the principles of the March Constitution. Therefore, the drafters of the project recognised marriage as a subject of state legislation, applying the principle of the exclusivity of the secular judicature and the uniformity of the marriage law with respect to the whole Polish society.[14]

Despite the acceptance of Prof. Lutostański's draft, by the Civil Law Subcommittee, the discussion on the shape of the new marriage law did not stop. The wave of

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11 In 1927, following a reorganisation, the Sub-Committee on Family and Inheritance Law and the Sub-Committee on Personal Marriage Law, composed of the same members as the Preparatory Sub-Committee, were created. This Sub-Committee consisted of Prof. K. Lutostański as the main referent, Prof. H. Konic, Prof. Z. Nagórski, Prof. I. Koschenbahr-Łyskowski, S. Bukowiecki, Dr. J. Wasilkowski and the delegate of the Minister of Justice with an advisory vote, K. Głębocki. On the other hand, this commission did not include representatives of various confessions, including the Catholic Church, which, according to S. Biskupski, condemned the effect of the work of this group to imperfection and failure. On the work on the project see S. Gołąb, *Polskie prawo małżeńskie w kodyfikacji*, Warszawa 1932, p. 107; L. Górnicki, *Prawo cywilne*…, pp. 194–206.

12 See the Draft Marriage Law adopted by the Codification Commission on 28 May 1929, Codification Commission. Subsection I of the Civil Law, vol. 1, item 1, Warsaw 1931. This publication contains the full Draft of the Marriage Law. The first reading of the Draft took place from 3 March 1925 to 21 December 1929. The second reading took place from 16 February 1926 to 4 October 1927. The subcommittee was composed of: Prof. I. Koschenbahr - Łyskowski (chairman), Prof. K. Lutostański (speaker), Prof. W. Abraham, S. Mańkowski, S. Bukowiecki, Prof. H. Konic, Prof. S. Gołąb, Prof. Z. Nagórski and the delegate of the Minister of Justice, K. Głębocki. The subcommittee dealing with matrimonial proceedings was attended by Prof. S. Gołąb (chairman), Prof. K. Lutostański, Prof. S. Mańkowski (speaker) and the delegate of the Minister of Justice.

13 *Zasady projektu prawa małżeńskiego w opracowaniu referenta głównego prof. K. Lutostańskiego, uchwalone w dniu 28 maja 1929*, Warszawa 1931, https://www.bibliotekacyfrowa.pl/dlibra/publication/29359/edition/35388/content [access: 13.11.2025]; S. Gołąb, *Polskie prawo*…, p. 92; J. Dworas-Kulik, K. Moriak-Protopopowa, *Projekt Lutostańskiego a bolszewickie regulacje prawne dotyczące prawa małżeńskiego okresu międzywojennego*, Kościół i Prawo 2020, vol. 9, no. 1, pp. 193–206.

14 D. Szczepaniak, *Wpływ włoskiej reformy prawa małżeńskiego z 1929 roku na projekty Zygmunta Lisowskiego i Jerzego Jaglarza*, in: *Pomniki prawa na przestrzeni wieków*, eds. K. Górski et al., Kraków 2016, pp. 203–219.

criticism increased with the public announcement of the draft marriage law in 1931. The biggest controversy among the hierarchy of the Church and Catholic opinion was the possibility of changing separation into divorce, and state jurisdiction in matrimonial matters.[15]

In response to the publication of the project, the Polish Episcopate issued a message to society in November 1931, in which it criticised the project of the Codification Commission and called on all Catholics to oppose.[16] As a result, manifestations of opponents of the new marriage law were organised, editors of Catholic periodicals published surveys on the project of Prof. Lutostański, and professors of the Catholic University of Lublin published a critical work entitled: *A critical discussion of the project of the marriage law passed by the Codification Commission* [*Rozbiór krytyczny projektu prawa małżeńskiego uchwalonego przez Komisję Kodyfikacyjną*].[17] Other denominations existing in the Second Republic (Jews, Orthodox and Evangelicals) also spoke against the project of the Codification Commission.

In 1934, in turn, a project based on the principles of canon law was presented by Fr Zygmunt Lisowski, a professor at the University of Poznan, which was to be the response of the bishops of the Roman Catholic Church to the proposal of the Codification Commission. Rev. Prof. Z. Lisowski's project consisted of 117 paragraphs. It divided citizens wishing to marry into three groups. The first group included persons belonging to the Catholic Church of all its rites existing in Poland, who were subjected to the provisions of the canon law regarding the prerequisites of entering into marriage, preliminary actions and the form of its conclusion. The second group consisted of persons belonging to other denominations, insofar as their marriage rights were recognised by the Polish state, who were subject to their own denominational marriage laws. The third group included persons not belonging to any denomination recognised in Poland and persons belonging to denominations not recognised by the state. This group was subject to the civil law provisions contained in the paragraphs of the draft (§ 6). On the other hand, irrespective of the nupturients' religion, the draft regulated identically for all persons the issues related to: capacity to marry, permission to marry, impediment to waiting time (§ 15–19). The obstacles to marriage, on the other hand, were to be determined by the denominational law of the church to which the fiancées belonged. Those contained in the provisions

15 K. Krasowski, *Próby unifikacji*…, pp. 467–502; J. Godlewski, *Problem laicyzacji osobowego prawa małżeńskiego w Polsce międzywojennej*, Państwo i Prawo 1967, no. 11, pp. 750–761.

16 *W sprawie projektu ustawy o małżeństwie. Orędzie Episkopatu Polski*, Miesięcznik Kościelny Archidiecezji Gnieźnieńskiej i Poznańskiej 1931, no. 11, pp. 206–208.

17 *Rozbiór krytyczny projektu prawa małżeńskiego uchwalonego przez Komisję Kodyfikacyjną*, ed. J. Wiślicki, Lublin 1932, pp. 74–85.

of the draft were to apply only in the case of the marriage of persons belonging to the third group (§ 22–30). The form of marriage, on the other hand, depended on the religion of the nuptialists, while the civil form was allowed for persons without religion or when only one of the fiancées belonged to a church.

Furthermore, Z. Lisowski's draft gave the issues related to preliminary actions, the form of marriage, annulment, divorce and jurisdiction to the religious law recognised by the state. On the other hand, for persons with no religion or belonging to a religion not recognised by the state, the draft by Z. Lisowski provided for the obligation to make a proclamation (§ 32) and a secular form of marriage (§ 39–42), as well as their nullity (§ 45–58) and contestability (§ 59–67). In contrast, the effects of marriage provided for in the draft of Z. Lisowski referred to all unions regardless of the form of their conclusion and the religion of the spouses (§ 68–71). Also the separation of spouses (separation) was uniformly regulated in the draft for all marriages, regardless of the religion of the spouses and the form in which the marriage was concluded (religious or secular). The effects of separation were identical to those contained in foreign legislation (§ 79–84). Separation was pronounced by the court as a result of a petition filed by one of the spouses; moreover, unlike the draft of the Codification Commission, the draft of Z. Lisowski did not make separation an obligatory stage on the way to obtaining a divorce. A divorce could be pronounced despite the absence of a prior separation of the spouses. For the dissolution of marriage (divorce), the law according to whose provisions the marriage was concluded remained applicable (§ 102–104). In the case of a secular form, the rules of the draft were applicable (§ 106). However, due to its discrepancies on the question of allowing divorce, it was not published. It was not until 1934, after the amendments recommended by the Congregation for Extraordinary Church Affairs, that it saw the light of day. However, plans to refer it to the Sejm were thwarted by the outbreak of the Second World War.[18]

[18] Z. Lisowski, *Prawo małżeńskie (projekt ustawy)*, Poznań 1934, pp. 19–59. A brief description of the project is contained in J. Gwiazdomorski, *Trudności kodyfikacji osobowego prawa małżeńskiego w Polsce*, Kraków 1935, pp. 204–213; more recently K. Mika, *Małżeńskie prawo osobowe w projekcie Zygmunta Lisowskiego z 1934 r.*, in: *Prawo blisko człowieka. Z dziejów prawa rodzinnego i spadkowego – materiały konferencji zorganizowanej przez Sekcję Historii Państwa i Prawa Towarzystwa Biblioteki Słuchaczów Prawa Uniwersytetu Jagiellońskiego, Kraków, 7–8 marca 2007 r.*, ed. M. Mikuła, Kraków 2008, pp. 79–85.

2. Leon Piniński on the draft marriage law

Professor Leon Piniński also spoke in the discussion on the solutions adopted in this draft of the marriage law. The Union of Polish Catholic Intelligentsia carried out a questionnaire on the aforementioned project in 1931.[19] Two main questions were asked: firstly, whether the principles on which the project was based were correct and in line with the beliefs and customs of Polish society, and secondly, what impact they would have on the moral, national and state life of Poland and its citizens. Eleven prominent representatives took part in the survey, including from the academic community.[20]

At the outset of his reply, Leon Piniński indicated that he had prepared it in such a way that it would be understandable not only to the academic and legal community, but above all to the ordinary citizen. Professor L. Piniński is very critical of the draft marriage law, considering it harmful to the prevailing social relations of the time. According to him, the introduction of civil marriages as a generally binding rule, or as the so-called optional (free) marriages combined with the general admissibility of divorce and far-reaching facilitations in this respect would lead to a loosening of the family and a dangerous decline in morality. Adoption of the proposed solutions could not only lead to a conflict with the Catholic Church, but also affect the loosening of the prevailing faith in Polish society (or at least respect for religious practices) and in the further future could turn Polish society towards communism (Bolshevism).[21]

According to L. Piniński, the very idea of unification of the marriage law is a desirable reform in Poland; however, it cannot contradict the principles of marriage recognised by the Catholic faith and Church law. Admittedly, the Professor was aware that it was difficult to base marriage law (even for Catholics) solely on religious law. A controversial issue would be, for example, the possibility of mixed marriages (between Christians and persons belonging to non-Christian religions). In such cases, the regulations introduced should respect the principles of religious

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19 *Ankieta w sprawie projektu prawa małżeńskiego uchwalonego przez K.K.*, Lublin 1932, pp. 1–55. Those who took part in this survey clearly criticised the proposed solutions. For different voices in the discussion on the regulations included in the Project, see K. Lutostański, *O metodach stosowanych w polemice z projektem prawa małżeńskiego Komisji Kodyfikacyjnej*, Warszawa 1932, pp. 3–14; S. Gołąb, *O zasadach prawa małżeńskiego*, Palestra 1925, no. 2, pp. 593–595; S. Gwiazdomorski, *Trudności kodyfikacji*…, pp. 176–178.

20 Among others Prof. O. Balcer, Prof. L. Piniński, P. Dunin, Borkowski, Prof. E. Dubanowicz, Prof. O. Halecki, Prof. M. Thulli, P.J.J. Bzowski, P.L. Bujaiski, Prof. St. Głąbiński, Prof. T. Brzeski, Prof. J. Makarewicz.

21 L. Piniński, *Ankieta w sprawie projektu prawa małżeńskiego uchwalonego przez K.K.*, Lublin 1932, pp. 14–25.

law, as the majority of the Polish population professes the Catholic faith. In his reply, he points out that the principles underlying the unification of the marriage law in Poland could be based on the proposals of Władysław Abraham, which he presented in his thesis entitled: *The issue of the codification of marriage law in Poland* [Zagadnienie kodyfikacji prawa małżeńskiego w Polsce]. According to prof. Władysław Abraham, the confessional form of marriage should be maintained for all persons belonging to legally recognised confessions; furthermore, the judicial power in matrimonial matters should remain with the confessional union, i.e., as regards marriages of Catholics, with the authorities of the Catholic Church; and an absolute ban on divorce should be maintained as regards marriages of those persons who are adherents of the Catholic religion at the time of the marriage; and civil weddings should be allowed only for those persons who do not belong to any religion recognised by the Polish legislation at the time of the marriage. Adoption of the above principles would not only guarantee good solutions, but also avoid disputes with the Catholic Church.[22]

At the same time, Leon Piniński points out that despite the strong ties of Polish society to the Catholic faith, jurisdiction in matrimonial matters should be exercised by state courts. This is important especially with regard to the issue of the validity or invalidity of a marriage (since legal problems are caused by so-called ritual Jewish marriages). If, on the other hand, jurisdiction for other denominations than the Catholic religion were to be accepted, and the ecclesiastical authorities were to be left exclusively for Catholic marriages, this would contradict the constitutionally recognised equality of religious denominations in the Republic of Poland. According to L. Piniński, the state jurisdiction should remain in ruling on the validity or invalidity of a marriage (whereby the prerequisites for the validity of a marriage, the form of its conclusion and marriage impediments should be indicated by law). The reform should clearly address first of all the issue of admissibility or inadmissibility of divorce, so that the state law in the case of marriages of Catholics does not significantly deviate from the principles of canon law.

In the further part of his argumentation, Prof. L. Piniński[23] considers the possibility proposed in the draft marriage law to conclude a civil wedding before a state authority. He points out that solutions in other legal orders (e.g. Germany, Belgium, Italy) provide for either compulsory civil weddings for all, or as optional weddings, according to the free will of the parties as to the form (civil or confessional), or civil weddings are provided for when there is no possibility of concluding the union in

22 W. Abraham, *Zagadnienie kodyfikacji prawa małżeńskiego*, Lwów 1929, pp. 8–14.

23 L. Piniński, *Ankieta*…, pp. 17–18.

a confessional form (e.g. different religions). He is against the introduction of compulsory civil weddings, mainly because of the fear of excessive divorces. In addition, the introduction of compulsory civil weddings would entail handing over the maintenance of all civil status books and registers to state or municipal offices. This would result in a significant increase in expenses, and an additional burden on the state treasury. Furthermore, inferior civil registrars (especially in smaller municipalities) would not provide a guarantee of conscientious and efficient performance of their duties. The keeping of metrological books and registers by parish offices under the supervision of state authorities saves the state treasury considerable expense and does not give rise to major abuses and complaints.

As for the optional civil weddings, he points out that their proponents in the proposed reform refer to the Italian marriage legislation, which, following an agreement between the Italian Government and the Roman Curia and the signing of the Concordat, adopted this form of marriage. At the same time, he points out that, according to the draft Subsection, the optional secular form of marriage has been combined with the permissibility of divorce (unlike Italian law) which is contrary to the teaching of the Holy See. The introduction of the absolute impermissibility of divorce, on the other hand, would meet with strong opposition from some other denominations. According to him, there is also no compelling reason to exclude divorce for those denominations that allow divorce (e.g. Evangelicals, Orthodox, Jews). On the other hand, the combination of optional civil weddings with easy permissibility of divorce, according to L. Piniński, without excluding Catholics, would be a reform as bad as the introduction of compulsory civil weddings. All this would not only show a hostile attitude towards the Catholic Church, but could lead to a reduction of the essence and solemnity of the very act of marriage. At the same time, L. Piniński emphasises the negative role that could be played by some political groups with a negative attitude to religion and the possible influence they could have on the decisions of nuptialists regarding the choice of the form of marriage. According to L. Piniński, it is unlikely that in addition to the civil form, nuptialists would marry in a religious form.

He states unequivocally that the unification of marriage law with the maintenance of the general jurisdiction of civil courts in matrimonial matters would be possible with the adoption of the principles of the so-called civil marriage of necessity (according to the principles in force in the former Austrian partition). The rule would be the confessional form of marriage, a civil wedding would only be allowed if there was an obstacle of ecclesiastical law (or another recognised religious association). Of course, there would have to be a rule that marriages of persons belonging to the Catholic faith, would not allow divorce. The time of the marriage would be decisive

for this 'obstacle' to divorce. Any conversion to another denomination would not allow for the dissolution of the marriage and the conclusion of a new one. Civil-status registers would be kept by denominational parish offices, except for those who have entered into a civil marriage out of necessity or do not belong to any legally recognised denomination.

He goes on to address the issue of divorce. According to him, the dissolution of a marriage by divorce should not be possible in the case of Catholic marriages, as this is contrary to religious principles. He goes on to point out that the prevalence of divorce had far-reaching moral consequences. For the majority of the public, especially those with traditional and Catholic views, condemn divorce. In support of his assertions, he cites the regulations in force in other European countries (Great Britain, Scandinavian countries, France, Belgium and Germany) regarding divorce and its consequences. According to him, the introduction of the possibility to dissolve a marriage through divorce would indeed lead to the cessation of so-called lame marriages, but so-called seasonal marriages – equally dangerous for the family and society – would emerge. In addition, the Draft Subsection provides for a further facilitation of divorce, through the possibility to convert separation into divorce and not only in the case of fault of one of the parties, but also on the basis of the consent of both spouses without stating reasons. Admittedly, the latter possibility requires the passage of a longer period of time, but due to the very general grounds of application (e.g. aggravated insult, insult) it could lead to abuse. As the Professor points out, this could lead to so-called trial marriages or marriages on notice and a category of ex-spouses would be created. It would be easier to get a divorce than a lover or mistress. Which, in his opinion, would bring us closer to Russian legislation.[24]

He goes on to point out that he will not go into detail on all the specific proposals contained in the draft. Indeed, the most important issues are the question of the form of marriage, the question of jurisdiction and precisely the admissibility of divorce. In addition, he has identified two other issues of concern. Thus, according to Article 50 of the draft: "Children of an annulled union have the right to marry on an equal footing with the children of separated parents." The professor's concern is the lack of any specificity, which means that these provisions will also apply to children of marriages that have been annulled due to bigamy, even when the nuptiurents were in bad faith. Moreover, if one takes into account that under Article 48a in conjunction with Article 51 of the draft there is a kind of 'convalescence' of bigamy, through the death of the other spouse, it is hard not to get the impression that bigamy is treated more leniently, yet it is a punishable offence.

[24] Ibidem, p. 21.

Further doubts of L. Piniński were raised by the content of Article 29 of the draft, that in the case of danger to life, a marriage may be recognised as valid, even without the participation of an official, only by mutual declarations, pronounced in the presence of two witnesses. The professor points out the dangers that may follow the conclusion of such a marriage, e.g. with regard to wills, hearsay.

In conclusion, Professor Leon Piniński states that he assesses the 1929 draft of the Personal Marriage Law Subsection of the Codification Commission negatively. Pointing out that, despite many assurances from the drafters of the draft about the importance of the matrimonial knot, its content indicates the opposite.

Summary

In conclusion, from our contemporary perspective, Professor Leon Piniński's voice may seem very conservative, favouring the Catholic religion and the Holy See. This, however, in a footnote to his response, a brief explanation has been added by the editors: "The reply of Prof. Piniński, an excellent scholar and seasoned expert in social relations, in the part where he discusses which principles of the future marriage law, does not agree in everything (e.g. as regards the jurisdiction of the state courts) with the views of the Board of the Z.P.I.K., but it must be noted that the illumination of these principles is given by the strongly emphasised necessity to conform to the religious principles of the Church and to the ecclesiastical marriage code and the indispensable need for agreement with the Holy See. Also, such a strong moral sense, piercing throughout the response, means that Hbirthcontrol ˙cannot contradict morality, as it is sometimes understood'" (Footnote Red).[25] The above explanation indicates that for part of the society of the time his position was quite liberal. The acceptance of the jurisdiction of state courts in matrimonial matters during the interwar period was highly contentious.

Precisely because of the above controversies, a comprehensive unification and codification of marriage law was not achieved during the Second Republic. Ideological disputes concerning the personal marriage law and the treatment of marriage as a secular, confessional or mixed institution brought many problems to the section of the Codification Commission dealing with family law. The draft property marriage law by Prof. K. Lutostański published in 1929 did not manage to enter into force due to the outbreak of war. Similarly, the work, which was seriously advanced, on

25 Ibidem, p. 14, note 1.

the preparation of the personal marriage law, authored by Prof. W.L. Jaworski and followed by Prof. K. Lutostański was interrupted by the outbreak of the Second World War. On the other hand, the codification commission prepared a draft of the matrimonial property law, the law on the relations between parents and children, on the guardianship office, while norms referring to guardianship were missing there[26].

Work on the unification and codification of the law was not resumed until after the Second World War, based to a large extent on the draft marriage law left by Professor Lutostański. In the end, the process of unification of family law ended in 1946, and in 1964 family and guardianship law was codified in a separate legal act.

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[26] P. Fiedorczyk, *Kościół katolicki i opozycja polityczna wobec unifikacji osobowego prawa małżeńskiego w 1945 r.*, Czasopismo Prawno-Historyczne 2004, vol. 56, no. 1, pp. 97–100.

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