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ANNULMENT OF MARRIAGE AFTER ITS DISSOLUTION

Dr. habil. Magdalena Rzewuska, University Professor

University of Warmia and Mazury in Olsztyn, Poland
e-mail: magdalena.rzewuska@uwm.edu.pl; https://orcid.org/0000-0003-0718-7210

Abstract. This article analyzes the legal grounds for annulment of marriage after its dissolution. Despite its vital social consequences, this issue has received little attention from the academic community. In the Polish legal system, a marriage cannot generally be annulled after its dissolution, except for two cases. The first is close kinship (incest), and the second is bigamy. These two exceptions will be discussed in this article, both in the context of substantive and procedural law. Interpretive doubts concerning annulment regulations and the proposal to amend the provisions of the Family and Guardianship Code will also be addressed.

Keywords: annulment of marriage; bigamy; kinship; prosecutor; dissolution of marriage; adoption.

INTRODUCTION

The subject matter of this article is a relatively narrow issue that has not received sufficient attention in the literature. On the contrary, the solution introduced by the legislator in Article 18 of the Polish Family and Guardianship Code (FGC) has been adopted in a rather heedless manner in the legal doctrine and has not been amended in more than 50 years. Meanwhile, political and economic relationships have undergone profound change during that period, and social expectations have clearly shifted towards a simpler and faster process for annulment of marriage.

This article will attempt to justify the view that the legal framework prescribing the grounds for the annulment of marriage following its termination warrants amendment. Above all, there is a need for new legal regulations that would permit the annulment of marriage between individuals in an adoptive relationship after the marriage has been dissolved.

A comprehensive and well-founded analysis of the matter necessitates an initial discussion of several systemic issues concerning the annulment and dissolution of marriage.

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1. IMPERMISSIBILITY OF ANNULMENT OF MARRIAGE AFTER ITS DISSOLUTION

A marriage cannot be annulled for reasons other than those provided for by the legislator. These are: marital impediments, defects in the declaration of intent, and invalid agency. The catalogue of legal grounds for annulment is closed, and a marriage cannot be declared null and void for reasons other than those prescribed in the FGC [Domański 2024a; Pietrzykowski 2023a].

Marital impediments include underage marriage, complete legal incapacitation, mental illness or intellectual disability, bigamy, close kinship and affinity, and adoption ties (Articles 10-15 FGC) [cf. Gromek 2021b, 970-78]. Defects in the declaration of intent are indicated in Article 15^1 FGC, which states that a marriage may be annulled if one party's declaration of intent was made in a state of mental incapacitation that prevented that party from consciously exercising his/her will or understanding the nature of the marriage commitment, if one of the parties has been deceived regarding the other party's identity, if one party was forced into the marriage by the other party or a third party. In turn, invalid agency can constitute the grounds for annulment if the parties were married by proxy without a court's permission or if the power of attorney was invalid or was effectively revoked (Article 16 FGC). A marriage is dissolved upon the death of a spouse, judicial declaration of presumptive death of a missing spouse, or through divorce. It is also terminated by a court's judgement declaring the marriage null and void [Pawliczak 2024]. The Polish legal framework relies on the *numerus clasus* principle, which implies that a marriage can be voided based solely on specific, legally defined grounds [Załucki 2023].

Article 18 FGC states that a marriage cannot be declared null and void after it has been terminated. There are only two exceptions to the above rule. A marriage can be annulled on grounds of close kinship (incest) and bigamy. The legal doctrine rightly states that dissolution of marriage constitutes a negative substantive prerequisite for the annulment of marriage [Domański 2024b]. In view of the above, once a marriage is dissolved, no party has standing to bring an action for the annulment of that marriage [ibid.]. The provisions of Article 18 FGC were introduced mainly for pragmatic reasons. In the absence of such regulations, a marriage could be voided after dissolution, irrespective of the legal basis for the action. It should also be noted that dissolution of marriage is effective *ex nunc* (prospectively), whereas annulment has *ex tunct* (retroactive) effects [Pietrzykowski 2023b].

In view of the provisions of Article 18 FGC, a court should deny any annulment petition if the marriage in question has already been dissolved through divorce. If a marriage is dissolved upon the death of either spouse or judicial declaration of presumptive death of a missing spouse, a petition

can be denied only if either of these events occurred before the petition was filed [Domański 2024c].

According to the literature, when interpreting legal provisions, certain ambiguity may arise if a marriage is dissolved after the annulment decision has been issued, but before this decision becomes legally effective. The above could occur, for instance, if two legal proceedings aiming to declare the marriage void and to end the marriage through divorce are initiated concurrently, and if the divorce becomes legally effective after the annulment decision has been issued, but before this decision takes effect. Since a marriage cannot be voided after its dissolution, the legal consequences of a valid annulment decision cannot take effect once the marriage has ended. Therefore, a marriage should be dissolved after the court's annulment ruling has come into effect. If either spouse dies after the annulment decision has been issued, but before it became legally effective, the ambiguity surrounding the first sentence of Article 18 FGC is resolved due to the provisions of Article 19 FGC. However, it should be noted that the court becomes bound by its judgement as of the moment of its pronouncement; therefore, once rendered, a court's decision cannot be revoked or modified. A court's judgement can be modified only through an appeal to a higher-instance court [Idem 2024d].

2. EXCEPTIONS TO THE IMPERMISSIBILITY OF ANNULMENT OF MARRIAGE AFTER ITS DISSOLUTION

2.1. Annulment of Marriage on Grounds of Close Kinship

As previously noted, the legislator has introduced two exceptions to the general rule stating that a marriage may not be voided after its dissolution. The first exception applies to marriages contracted between close relatives, while the second applies to cases where in which one of the spouses was already legally married to another person at the time of the marriage.

According to the literature, these exceptions are rooted in the fundamental provisions of the Polish legal framework that are protected by the conflict-of-law rule, namely the principle of monogamy and prohibition of marriage between close relatives [Stawarska-Rippel 2023a; Domański 2024e]. In addition, incestuous and bigamous marriages are generally regarded as socially unacceptable and are penalized under criminal law. Legal regulations preventing the annulment of such marriages would also generate serious problems in the context of succession law [Zielonacki 2013; Stawarska-Rippel 2023a; Domański 2024e], as well as in matters concerning disability or unemployment benefits [Winiarz 1985, 204].

Close kinship constitutes one of marital impediments. Marriages between direct-line relatives and siblings are explicitly prohibited by the law

[Borysiak 2014a]. Therefore, kinship is an absolute and permanent impediment to marriage [Gromek 2021a, 913]. The prohibition of marriage between siblings applies to both natural siblings and step-siblings, as well as to the adoptee, adopter's children and other persons he/she adopted [Prucnal-Wójcik 2024a]. It is generally recognized that prohibition of incestuous and bigamous marriages has special significance in Polish culture and traditions which have been largely shaped by Christianity. These marital impediments are also grounded in ethical considerations, social customs, and genetic health concerns [Pietrzykowski 2023c].

Consanguinity is a relationship that is based on shared ancestry and descent [Gromek 2021a, 912]. Parents and their children can be bound by the following types of kinship: a) a child is the biological offspring of legally married parents, b) a child born out of wedlock is recognized by its biological father, c) the identity of a child's biological father is established through court proceedings, d) a child born out of wedlock is legitimized through the subsequent marriage of its parents (*legitimatio per subsequens matrimonium*), e) the identity of a child's biological mother is established through court proceedings [Kasprzyk and Skubiszewski 2017, 190]. There are two degrees of kinship: direct (lineal) and indirect (collateral). A direct-line kinship is a relationship between individuals where one is the direct ancestor or descendant of the other. In turn, an indirect kinship is a relationship between individuals who share a common ancestor but are not in a direct line of descent (Article 61^7(1) FGC). The degree of kinship is established by counting the number of births separating two individuals in a direct or collateral line (Article 61^7(1) FGC).

The doctrine raises interpretative doubts as to whether the provisions of Article 14 FGC apply only to kinship through adoption or also to biological (natural) kinship. According to Pietrzykowski, these provisions regulate only kinship through adoption. In turn, Gajda has argued that the cited article applies to both types of kinship because it does not contain any provisions that clearly limit its applicability to kinship through adoption [Gajda 2014, 173]. Other jurists have also observed that due to the *ratio legis* of Article 14(1) and the underlying genetic factors, the prohibition of marriage between direct-line relatives and siblings applies not only to kinship that has been legally recognized based on civil status records or a valid court decision, but also to biological kinship [Borysiak 2014b and the literature cited therein]. However, to ascertain the degree of kinship, the registrar or the court is guided solely by civil status records or a court's decision amending the content of these records, and they cannot independently ascertain the degree of biological kinship in a manner that is inconsistent with the formal evidence [Borysiak 2014c; Piasecki 2011a]. Despite the above, Pietrzykowski rightly remarked that this point of view is internally inconsistent [Pietrzykowski 2023d]. Since the degree of kinship between spouses seeking an annulment

of their marriage cannot be independently ascertained by the court, it should be assumed that Article 14(1) applies only to kinship through adoption. If a spouse petitions for annulment under Article 14 on the basis of kinship but cannot furnish civil status records or a relevant court judgement, three alternative solutions can be considered: 1) the court may uphold the claim if, during the annulment proceedings, kinship between the spouses is confirmed through an event such as the legal acknowledgement of paternity or maternity, 2) annulment proceedings may be suspended if legal action seeking to establish paternity or maternity is initiated concurrently, 3) the claim may be dismissed if legal action seeking to establish paternity or maternity is not initiated during annulment proceedings [Gromek 2021a, 913].

While an incestuous marriage cannot be convalidated, a putative incestuous marriage (between direct-line relatives who denied paternity or whose acknowledgement of paternity was voided) cannot be annulled [Gajda 2014, 174]. Therefore, a marriage between relatives cannot be annulled after its dissolution if it becomes evident, with retroactive effect, that the kinship impediment did not exist (kinship ceased after the marriage was contracted [Borysiak 2014d].

3.2. Annulment of Bigamous Marriage

In the Polish legal system, a bigamous marriage can be annulled after its dissolution. According to Article 13(1) FGC, a person who is legally married may not enter into another marriage. This provision applies to the institution of marriage stipulated in Article 1(1) and Article 1(2) FGC [Haak and Haak-Trzuskawska 2022]. Bigamy is an absolute impediment to marriage [Bagan-Kurluta 2023].

However, Pietrzykowski has argued that a bigamous marriage could be convalidated [Pietrzykowski 2023e]. The FGC clearly states that a bigamous marriage cannot be annulled solely because one of the spouses remained in the previous marriage if that prior marriage was dissolved or voided, unless it ended due to the death of the person who entered into the second marriage while still remaining in the first marriage (Article 13(3) FGC). According to the judicature, Article 18 FGC does not create grounds for voiding a bigamous marriage which, due to the dissolution of the previous marriage, ceased to be bigamous and could not be annulled pursuant to Article 13(3) FGC [Stawarska-Rippel 2023a and the literature cited therein]. The doctrine states that convalidation of a bigamous marriage could be supported by the fact that its annulment is an instrument of civil, rather than criminal law, and has been designed to prevent polygamy and its socially and legally undesirable effects. Therefore, the reason for voiding the second marriage disappears when the first marriage is terminated or annulled.

As a result, the marriage is no longer bigamous and should receive the same legal protection as any other valid marriage [Nazar 2011].

According to jurisdiction, in annulment cases where one of the spouses remains in a previous marriage (Article 13(2) FGC), the marriage cannot be declared void if it is documented by a marriage certificate (Articles 25 and 49 of the Act on Civil Status Records), regardless of whether the certificate was issued by the registrar as part of standard proceedings or pursuant to a decision of another state institution as part of a procedure stipulated by special regulations.[1] In annulment cases, the status of the first marriage should be ascertained upon the conclusion of the hearing, rather than at the time the case was brought to court.[2] A bigamous marriage can also be voided when it ended upon the death of both bigamous spouses.[3] In this case, the action for annulment of a bigamous marriage can be brought only against a guardian appointed for each of the deceased spouses.[4]

The legislator addressed the ambiguity concerning the concurrent institution of two proceedings aiming to dissolve the first marriage through divorce and void the second bigamous marriage by stating that a final divorce judgment is also enforceable against third parties; therefore, if proceedings for the dissolution of the first marriage by divorce and for the annulment of the second bigamous marriage are instituted concurrently, the annulment claim will be dismissed if the divorce judgment relating to the previous marriage attains legal finality first.[5] On grounds of public interest, the court should examine the existing circumstances to determine whether the annulment case should be suspended until the court's makes a final decision in divorce proceedings because that decision could constitute grounds for dismissing the annulment claim.[6] As has been rightly emphasized, in certain cases, the public interest may not support the suspension of proceedings.[7]

In practice, a bigamous marriage is usually annulled after its dissolution following the death of the bigamous spouse, upon a petition filed either by the surviving spouse or by the deceased spouse's children from the first marriage [Pietrzykowski 2023f].

Some jurists have expressed doubt regarding the mutual relationship between Article 18 and Article 13(3) FGC. According to Piasecki, when the first marriage and the bigamous marriage are dissolved simultaneously, the provisions of Article 18, which state that a bigamous marriage can be voided

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1 Supreme Court's Judgement of 18 October 1982, ref. no. I CR 338/82, Legalis no. 23373.
2 Supreme Court's Judgement of 4 December 1951, ref. no. C 423/51, Legalis no. 683921.
3 Supreme Court's Judgement of 12 March 1961, ref. no. 2 CR 1127/60, Legalis no. 109467.
4 Ibid.
5 Supreme Court's Judgement of 4 December 1951, ref. no. C 423/51, Legalis no. 683921.
6 Supreme Court's Judgement of 29 March 1957, ref. no. 4 CR 101/57, Legalis no. 610422.
7 Ibid.

even if the first marriage has ended, should take precedence. In turn, the *ratio legis* behind Article 13(3) is that a marital relationship, even if bigamous, should not be disrupted if it continues to exist and if the previous marriage has already ended [Piasecki 2011b]. This line of reasoning was upheld by Pietrzykowski who also remarked that Piasecki's argument applies to Article 13(3) FGC *in principio*. Pietrzykowski emphasized that Piasecki's argument was misconstrued because in the analyzed situation, the admissibility of bringing an action for annulment of a bigamous marriage stems not so much from Article 18 as expressly from Article 13(3) *in fine* [Pietrzykowski 2023f]. The most convincing interpretation was offered by Gajda who rightly noted that Article 18 cannot be interpreted in isolation from Article 13(3) FGC because the latter corresponds to the former [Gajda 2014, 185; cf. Winiarz 1987, 80]. According to Gajda, Article 18 FGC applies to all bigamous marriages that ended but were not convalidated before dissolution. In this case, a bigamous marriage can be voided even after it has been dissolved. In turn, the aim of Article 13(3) FGC is to prevent the convalidation of a bigamous marriage through the death of the bigamous spouse, which would lead to the dissolution of both marriages. In the discussed scenario, Article 13(3) FGC prevents the convalidation of a bigamous marriage if both the first marriage and the bigamous marriage ended upon the bigamous spouse's death, which creates legal grounds for voiding the bigamous marriage [Gajda 2014, 185-86].

4. ANNULMENT OF MARRIAGE BETWEEN PERSONS RELATED BY ADOPTION

The foregoing arguments substantiate the proposal that the Polish legal system should permit the annulment of marriage between persons related by adoption after that marriage has been terminated. This postulate is justified mainly on axiological grounds.

Marriages between an adoptee and an adopter are penalized under criminal law and generally regarded as socially unacceptable. However, the fact that a marriage between an adoptee and an adopter cannot be annulled after its dissolution also appears to violate social norms. The purpose of an adoptive relationship (which is one of the impediments to marriage stipulated in Article 15 FGC) is to create a legal relationship between the adopter and the adoptee equivalent to that which exists between a parent and a biological child [Gajda 2024], (cf. Article 121(1) FGC). According to legal guidelines for strengthening and supporting families, adoption leads to the establishment of legal relationship which is directly equivalent

to a substantive parental relationship.[8] Therefore, the fact that a marriage between persons related by adoption cannot be voided after its dissolution runs counter to legal reasoning. The absence of such a mechanism appears to undermine the legislator's rationale.

Adoption is formalized through a court judgement. The main purpose of adoption is to prioritize the welfare of the child. Above all, adoption seeks to provide a minor with a safe and nurturing environment that replicates, as close as possible, a natural family setting [Gajda 2024]. According to Gajda, marriages between persons related by adoption are prohibited mainly on grounds of custom and social norms [cf. Darnowska 2014, 37-38]. In addition, Gajda argued that an adoptive relationship is characterized by the child's dependence on the adoptive parent, which justifies the rationale behind Article 15 FGC. In the absence of a prohibition on marriage between persons related by adoption, there is a risk that the adoptive parent might exert undue influence or coercion on the adoptee to enter into marriage [Gajda 2014, 179]. Lastly, a prohibition of marriage between persons related by adoption in justified on moral and ethical grounds [Stawarska-Rippel 2023b].

The FGC distinguishes three types of adoption: irrevocable full adoption, full adoption, and incomplete adoption [Prucnal-Wójcik 2024b]. In irrevocable full adoption, the child is treated as if born to the adoptive parents. A new birth certificate is issued, where the child's natural parents are replaced with the adoptive parents. In full adoption (and irrevocable full adoption), the adoptee enters into a relationship with the adopter, which is equivalent to that between parents and their natural children. The adoptee acquires the rights and obligations arising from a relationship with the adopter's relatives. In other words, in full adoption (and irrevocable full adoption), the adoptee becomes a full and permanent member of the adoptive family, and all legal ties with the natural family are severed. In turn, incomplete adoption establishes a legal bond solely between the adopter, the adoptee, and the adoptee's descendants, which implies that its effects extend only to the adoptee's descendants. A new birth certificate is not issued for the adoptee; only a relevant entry is made in the original certificate. The adoptee's ties with the natural family are not severed [Ignatowicz 2001, 297-304].

Article 15(1) FGC states than an adopter may not enter into marriage with an adoptee. However, since the type of adoption was not clearly stipulated by the legislator, some jurists have argued that the provisions of the above article apply to all three types of adoption [Prucnal-Wójcik 2024c]. In contrast, Pietrzykowski rightly asserted that in the light of Article 15(3) FGC, the provisions of Article 15(1) may not be construed as applicable to irrevocable

[8] Resolution of the full bench of the Civil Chamber of the Supreme Court of 9 June 1976, III CZP 46/75, Legalis no. 19477.

full adoption [Pietrzykowski 2025a]. However, this interpretation raises doubt. If irrevocable full adoption is the most comprehensive type of adoption (with the widest scope of legal consequences for both sides), what is the rationale for excluding this type of adoption from the scope of Article 15(1) FGC, which prohibits marriage between an adopter and an adoptee?

According to Pietrzykowski, the prohibition of marriage between persons bound by irrevocable full adoption follows from the provisions of Article 14 FGC [Pietrzykowski 2025b]. This argument is debatable. If we assume that an adoptive relationship is equivalent to kinship, then Article 15 FGC appears to be redundant [Gajda 2014, 179-80]. The wording of Article 15 has long been a source of interpretative uncertainty [Pietrzykowski 2025c and the literature cited therein]. In any future amendments to the FGC, the legislator should consider expressly including all three types of adoption in Article 15 in order to eliminate ambiguity and prevent misinterpretations in legal practice [cf. Gajda 2014, 180].

Most jurists are of the opinion that the prohibition of marriage stipulated in Article 15(1) FGC applies only to the parties to an adoptive relationship, namely the adoptee and the adopters [Prucnal-Wójcik 2024d]. This view is consistent with the literal interpretation of the above article [Pietrzykowski 2025d], but it raises doubt as to whether the prohibition of marriage extends to the adopter and, for example, the adoptee's children. Obviously, the absence of such a prohibition would undermine the fundamental principles of an adoptive relationship. For this reason, the provisions relating to the annulment of marriage between persons related by adoption should be amended. Article 15 FGC should be modified by clearly indicating the parties to an adoptive relationship who may not enter into marriage in all three types of adoption. In incomplete adoption, the prohibition of marriage should apply to the adopter, the adoptee, and the adoptee's descendants. In turn, in full adoption and irrevocable full adoption, this prohibition should be extended to the adopter's and the adoptee's direct-line relatives and siblings [Gajda 2014, 180].

As previously mentioned, a marriage between an adopter and an adoptee is prohibited under the Polish Penal Code (PC) as an incestuous union. According to Article 201 PC, any individual who has sexual intercourse with an ascendant, descendant, adoptee, adopter, brother or sister is liable to imprisonment for three months up to five years. A strictly semantic interpretation of the above regulation implies that all elements of the indicated offence are present only in the relationship between the adopter and the adoptee. However, this interpretation does not seem to be appropriate. In the case of incomplete adoption, these constituent elements are also fulfilled when the adopter engages in sexual intercourse with the adoptee's descendants. As regards full adoption and irrevocable full adoption, these elements are also fulfilled when the adoptee enters into sexual intercourse with the adopter's relatives [Budyn-Kulik

and Kulik 2023a]. Therefore, to avoid interpretative doubts, Article 201 PC should also be amended to consider three different forms of adoption.

CONCLUSIONS

In principle, the Polish legal system does not permit the annulment of marriage after it has been dissolved. Bigamous marriages and incestuous marriages are the only exceptions to this rule. These exceptions have been introduced to uphold the fundamental principles of Polish law, while also reflecting the fact that incestuous and bigamous marriages are generally regarded as socially unacceptable and are penalized under criminal law [Stawarska-Rippel 2023a; Domański 2024e; Zielonacki 2013].

The presented discussion validates the research hypothesis, namely that the annulment of a marriage between an adoptee and an adopter should be permitted in the Polish legal system after the marriage has been terminated. This proposal is supported by Article 121(1) FGC, which states that an adoptive relationship is equivalent to that which exists between a parent and a biological child. If these relationships are deemed equivalent under the law, it follows that they should be accorded identical legal treatment. In addition, the possibility of annulling a marriage between an adopter and an adoptee after its dissolution is further supported by Polish customs, culture, and the prevailing negative perception of incestuous marriages.

The provisions of Articles 18 and 15 FGC and Article 201 PC should be amended to achieve the above goal. These regulations should be harmonized with each other to eliminate any interpretative doubt in legal practice.

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