

RECOGNITION OF A STATUS ACQUIRED ABROAD: POLAND*

RECONOCIMIENTO DE UNA SITUACIÓN JURÍDICA RELATIVA AL ESTATUTO PERSONAL VÁLIDAMENTE CREADA O MODIFICADA EN EL EXTRANJERO: POLONIA

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Abstract: This report describes legal framework and practical aspects of civil status recognition in Poland. The provisions of the Act on Private International Law and the Law on Civil Status Registry, as well as the Polish judicial and administrative practice are presented. There are certain values that are protected by the Polish Constitution and therefore changes in recognition of the status acquired abroad in some matters seems more difficult to be implemented in the nearest future. The ECHR and CJEU case law are important for the discussion of the issue related to recognition of a status acquired abroad in Poland.

Keywords: status recognition, status acquired abroad, transcription, civil registry, Polish private international law.

Resumen: Este informe describe el marco legal y los aspectos prácticos del reconocimiento del estatuto personal en Polonia. Se presentan las disposiciones de la Ley de Derecho Internacional Privado y la Ley del Registro del Estado Civil, así como la práctica judicial y administrativa polaca. Hay ciertos valores que están protegidos por la Constitución de Polonia, y, por lo tanto, en algunos asuntos los cambios en el reconocimiento de una situación jurídica relativa al estatuto personal válidamente creada en el extranjero parecen más difíciles de implementar en un futuro próximo. La jurisprudencia del TEDH y del TJUE es importante para la discusión del tema relacionado con el reconocimiento en Polonia de una situación jurídica relativa al estatuto personal válidamente creada en el extranjero.

Palabras clave: reconocimiento del estatuto personal, situación jurídica relativa al estatuto personal válidamente creada en el extranjero, transcripción, registro civil, derecho internacional privado de Polonia.

Summary: I. General Issues. 1. Awareness in academia. 2. Legal framework. A) Name and surname. B) Company incorporation theory. C) Same-sex marriages and adoption. D) Parentage. E) Civil Status Registry. F) Transcription. G) EU regulation 2016/1191. 3. Judicial and administrative practice. II. Process of recognition. 1. Recognition of court decisions. 2. Procedure in the civil registry. 3. Acceptance via conflict of laws. III. Conclusions.

*This national report forms part of a comparative law research project which started in 2018. Preliminary results were presented and discussed at an internal meeting in Würzburg in spring 2019, at the JPIL conference 2019 in Munich and at the online conference “La famille dans l’ordre juridique de l’Union européenne” in autumn 2020. The overall comparative analysis, results and discussion are published in this issue in S. GÖSSL/M. MELCHER, “Recognition of a Status Acquired Abroad in the EU – A Challenge For National Laws”.

I. General issues

1. Awareness in academia

1. Academic discussion regarding status recognition in Poland is relatively high. The issue is raised in commentaries on international private law¹ and articles on specific topics of international private law, e.g. names, adoption, surrogacy, registered partnerships and same sex marriages², as well as legal opinions of private persons and institutions³. The articles discuss not only Polish solutions, but regulations in other EU member states. They mention the issue of cross-border recognition, though concentrating on non-acceptability of status recognition due to the provisions of the Constitution of Poland, especially when it concerns registered partnership, same-sex marriages, and public policy when it refers to surrogacy. The problem is raised in several textbooks and commentaries⁴. There is a monography about name in international private law that raises this problem⁵. The scholars' impact on family law and other areas of law is valuable. There are articles focusing on matters related to family law, and also extending discussion to other problems, e.g. company law⁶. There is a methodological discussion on specific questions, e.g. same-sex marriage and surrogacy and the need for recognition is discussed.

¹ „Prawo prywatne międzynarodowe. Komentarz”, ed. J. POCZOBUT, Warszawa 2017, „Prawo prywatne międzynarodowe, t. 20A”, (in:) *System Prawa Prywatnego*, ed. M. PAZDAN, Warszawa 2014.

² A. MAĆZYŃSKI, „Kolizyjna problematyka nazwiska” (in:) ed. J. GUDOWSKI, K. WEITZ, *Aurea praxis aurea teoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, Warszawa 2011; M. PAZDAN, „Nazwisko w prawie prywatnym międzynarodowym”, (in:) ed. P. MACHNIKOWSKI, J. GOŁACZYŃSKI, *Współczesne problemy prawa prywatnego: księga pamiątkowa ku czci Profesora Edwarda Gniewka*, Warszawa 2010; A. DORABIALSKA, „Między normą kolizyjną a instytucją uznania – nazwisko w orzecznictwie TS”, *EPS* 2011, no. 3; M. PILICH, „Prawo właściwe dla dóbr osobistych i ich ochrony”, *KPP* 2012, no. 3; M. TABOROWSKI, „Swobodny przepływ osób w UE a nazwiska osób fizycznych, uwagi na tle orzecznictwa TS”, *EPS* 2012, no. 1; A.N. SCHULTZ, „Ochrona prawa do imienia i nazwiska dziecka w świetle prawa międzynarodowego i polskiego”, *Metryka* 2012, no. 2; A. PAPIS, „Zmiana imienia i nazwiska obywatela polskiego dokonana za granicą”, *Technika i USC* 2013, no. 1 (74); F. NOWAK, „Kilka uwag na temat wskazania prawa właściwego dla imienia i nazwiska osoby fizycznej w ustawie z dnia 4 lutego 2011 r. – Prawo prywatne międzynarodowe”, *Metryka* 2015, no. 1; A. BARAŃSKA, „Uznawanie zagranicznych rozstrzygnięć dotyczących zmiany imienia i nazwiska”, *Metryka* 2015, no. 1; P. KASPRZYK, P. SKUBISZEWSKI, „Problem imienia i nazwiska a transkrypcja zagranicznych dokumentów stanu cywilnego”, *Metryka* 2015, no. 1; M. WOJEWODA, „Prawo właściwe dla nabycia i zmiany imienia i nazwiska”, *Metryka* 2015, no. 1, *idem*, „Międzynarodowe uznawanie imion i nazwisk”, *Metryka* 2015, no. 5; *idem*, „Kilka uwag o definicji „stanu cywilnego” w nowej ustawie – Prawo o aktach stanu cywilnego”, *Metryka* 2014, no. 2; P. KASPRZYK, „Zmiana imienia i nazwiska w prawie polskim: (wstęp do problematyki)”, *Studia Prawnoustrojowe* 2006, no. 6; P. WYPYCH, „Prawo właściwe dla nabycia i zmiany imienia i nazwiska”, (in:) ed. P. KASPRZYK, *Prawo rodzinne w Polsce i w Europie, Zagadnienia wybrane*, Lublin 2005; P. RUCZKOWSKI, „Ustawa o zmianie imienia i nazwiska. Komentarz”, Warszawa 2010; P. MOSTOWIK (ed.), „Fundamental legal problems of surrogate motherhood. Global perspective”, Warsaw 2019; P. MOSTOWIK (ed.), „Fundamentalne prawne problemy surrogatki. Perspektywa krajowa”, Warszawa 2019.

³ J. PAWLICZAK, „Opinia prawna na temat potrzeby oraz dopuszczalności instytucjonalizacji związków partnerskich osób tej samej płci (w świetle prawa cywilnego oraz konstytucyjnego)” [English: *Legal opinion about the need and acceptance of institutionalization of partnerships of same sex persons (in the context of civil and constitutional law)*], POLISH SOCIETY OF ANTIDISCRIMINATION LAW; HELSINKI FOUNDATION FOR HUMAN RIGHTS, “European Court of Human Rights Orlandi and others against Italy application nos. 26431/12, 26742/12, 44057/12, 60088/12 written comments by the Helsinki Foundation for Human Rights”, Warsaw 2014; HELSINKI FOUNDATION FOR HUMAN RIGHTS, “Request for an advisory opinion from the French Court of Cassation no. P16-2018-001”, Warsaw 2019.

⁴ M. PAZDAN, „Prawo prywatne międzynarodowe”, Warszawa 2017, M. CZEPELAK, „Międzynarodowe prawo zobowiązań Unii Europejskiej”, Warszawa 2012.

⁵ K. MIKSZA, „Nazwisko w prawie prywatnym międzynarodowym”, Gliwice 2015.

⁶ P. BŁASZCZYK, „Pojęcie siedziby osoby prawnej w nowej ustawie o prawie prywatnym międzynarodowym”, *PiP* 2011, no. 11, M. MATA CZYŃSKI, „Kolizyjnoprawne pojęcie siedziby osoby prawnej”, *KPP* 2013, no. 2, J. POCZOBUT, „Osoby prawne w polskim prawie prywatnym międzynarodowym. Projekt nowelizacji ustawy”, *KPP* 2000, no. 3, *idem*, „Statut personalny osób prawnych w projekcie ustawy – prawo prywatne międzynarodowe z sierpnia 2010 r.” (in:) red. J. GUDOWSKI, K. WEITZ, *Aurea praxis aurea teoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, Warszawa 2011, M. SZYDŁO, „Statut personalny osób prawnych w projekcie nowej ustawy – Prawo prywatne międzynarodowe”, *KPP* 2007, no. 1.

2. Legal framework

2. Poland has introduced a new legal act on private international law in 2011 (hereinafter referred to as “PIL”), the previous law was in force since 1965. The introduction of PIL and its provisions were highly debated in Polish academic circles⁷.

PIL does not include provisions about the recognition of foreign decisions, as they are incorporated into the provisions of the Code on Civil Procedure from 1964 (hereinafter referred to as “CCP”)⁸. Article 1145 of CCP states that the decisions of foreign courts in civil matters shall be recognized by law, unless there are obstacles listed in Article 1146.

A) Name and surname

3. PIL introduced Article 15 about name and surname of a person. There is awareness that the questions of recognition are not limited to regulation of name. Article 15 par. 1 of PIL uses nationality as connecting factor, with a preference of Polish nationality in case of double national with Polish nationality. This provision does not provide for possibilities of choice of law⁹. The acquisition and change of name and surname are governed by law applicable to evaluation of consequences of event that leads to acquisition or change of name or surname (Article 15 par. 2 of PIL). Nevertheless, choice of name after marriage or divorce is subject to national law of each spouse.

4. In Polish legal system change of name and surname is conducted in an administrative procedure¹⁰, and though in legal literature it is considered that it constitutes a civil case¹¹. The reason is that name and surname identify a physical person as civil law subject and elements of civil status. The cases about change of name and surname are specific, as prerequisites of change are provided for in civil law, e.g. Civil Code and Family and Guardianship Code, as well as in the Law on Change of Name and Surname¹².

5. The change of name is regulated by internal laws: the Law on Civil Status Registry¹³ and the Law on Change of Name and Surname. Article 29 of the Law on Civil Status Registry states that “1. The family name is the surname stated in the birth certificate, and the surname is stated in marriage certificate or death certificate; the name of the person who did not get married is the family name”; 2. In the civil status record the civil status of a person is specified as a situation of this person in relation to marriage:

⁷ A. MAĆZYŃSKI, „Opinia o projekcie ustawy – Prawo prywatne międzynarodowe (druk sejmowy nr 1277) z 16.12.2008 r.”, *BAS* 2008, *idem*, „Przeciwko potrzebie uchwalenia nowej ustawy – Prawo prywatne międzynarodowe”, *ZPBAS* 2009, no 1 (21), *idem*, „Kodyfikacyjne zagadnienia części ogólnej prawa prywatnego międzynarodowego”, w: A. JANIK (ed.), *Studia i rozprawy, Księga jubileuszowa dedykowana profesorowi Andrzejowi Calusowi*, Warszawa 2009, *idem*, „Europejski kontekst re kodyfikacji polskiego prawa prywatnego międzynarodowego”, (in:) J. WROCENSKI, J. KRAJCZYŃSKI (ed.), *Finnis legis Christus. Księga pamiątkowa dedykowana Księdzu Profesorowi Wojciechowi Góralskiemu z okazji siedemdziesiątej rocznicy urodzin*, Warszawa 2009, *idem*, „Program haski a polskie prace kodyfikacyjne w dziedzinie prawa prywatnego międzynarodowego”, *KPP* 2009, no. 1, M. PAZDAN, „O potrzebie reformy polskiego prawa prywatnego międzynarodowego i niektórych proponowanych rozwiązaniach”, *KPP* 2000, z. 3, *idem*, „O potrzebie uchwalenia nowej ustawy – Prawo prywatne międzynarodowe”, *ZPBAS* 2009, nr 1 (21), K. ZAWADA, „O projekcie nowej kodyfikacji prawa prywatnego międzynarodowego”, *KPP* 2006, z. 4.

⁸ The Code of Civil Procedure of 17th November, 1964, as published in *Dziennik Ustaw* 1964, No. 43, item 296 (with further amendments).

⁹ This solution is criticized by A. MAĆZYŃSKI, „Kolizyjna problematyka nazwiska” (in:) red. J. GUDOWSKI, K. WEITZ, *Aurea praxis aurea teoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, Warszawa 2011, p. 2410.

¹⁰ Please see discussion if it is civil or administrative case: A. BARAŃSKA, „Uznawanie zagranicznych rozstrzygnięć dotyczących zmiany imienia i nazwiska”, *Metryka* 2015, no. 1, p. 121. The same solution is adopted in other member states, as discussed by D. DZIEWULAK, „Zmiana nazwiska w państwach Unii Europejskiej”, *Analizy BAS* 2012, no. 14 (81).

¹¹ M. WOJEWODA, (in:) ed. M. PAZDAN, *System prawa prywatnego T. 20C*, Warsaw 2015, p. 571; A. PAPIS, „Zmiana imienia i nazwiska”, *Technika i USC* 2013, no. 1, p. 14.

¹² Law on Change of Name and Surname of 17th October 2008, as published in *Dziennik Ustaw* 2008, No. 220, poz. 1414 (with further amendments).

¹³ Law on Civil Status Registry of 28th November 2014, as published in *Dziennik Ustaw* 2014, item 1741 (with further amendments).

single, married, divorced, widow, widower; 3. Surnames and names of foreigners shall be determined on the basis of a travel document or other document confirming their identity and citizenship, and surnames and names of child's parents and surname of foreigners' child shall be determined on the basis of a travel document or other document confirming identity and citizenship of parents”.

6. There is an opinion in the doctrine in relation to the acceptance of name and surname that if the civil status document was construed in accordance with local regulation, it should be automatically recognized in Poland¹⁴. It is advised to adopt this solution in cross-border cases for incidental questions¹⁵. Recognition of surname acquired and registered in the country with which person is closely connected, serves better than classical conflicts of law method to obtain international uniformity of surname of the person¹⁶.

7. In case of a marriage outside Poland we can imagine two scenarios¹⁷: 1) marriage between man and woman, and 2) same sex marriage. In first case if a woman (Polish citizen) acquires a surname of her husband, it will be recognized in Poland. In second case if a woman (Polish citizen) acquires another surname abroad, it is not possible to use it in Poland. Polish law does not know the institution of same sex marriages; therefore, it is not recognized, and consequently it is problematic to accept changes of surname. The woman can nevertheless apply to change of name in accordance with the law on change of name and surname (Article 4 par. 1). The reason to justify the change in this case would not be the same sex marriage concluded abroad, as it would not be accepted by the Polish authorities, but constant use of the other name abroad. In the doctrine it is underlined that this solution does not seem to be correct¹⁸. This solution will most probably not be accepted by the Polish officials. In confirmation of this statement there was already the decision of the Regional Administrative Court with the reference to Article 4 of Law on Change of Name and Surname which suggests that the surname of a same-sex partner, even if it is used abroad, cannot be „recognized”.

B) Company incorporation theory

8. PIL introduced new regulation related to status of company, adopting theory of seat (Article 17 par 1). In case law applicable in accordance with par. 1 provides for application of law of incorporation (theory of incorporation: Article 17 par. 2). In accordance with Article 17 par. 1 of PIL the seat is the relevant connecting factor. Actually, there is no common interpretation of the “seat” that might be difficult in practice. There might be a conflict with freedom of establishment, therefore in Article 17 par. 2 provides an alternative in form of application of incorporation theory, if the applicable law establishes in accordance with the par. 1 provides so. This provision was introduced to enable use that place of incorporation is used as a connecting factor. It is in line with case law of CJEU.

C) Same-sex marriages and adoption

9. In Poland recognition of same-sex marriage and adoption is not possible due to Article 18 of the Constitution stating that: “Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland¹⁹”.

¹⁴ M. WOJEWODA, „Międzynarodowe uznawanie imion i nazwisk”, *Metryka* 2015, no. 5, p. 67.

¹⁵ A. DORABIALSKA, „Uznanie stosunku prawnego powstałego za granicą”, *PiP* 2012, no. 4, p. 55-56.

¹⁶ A. MAĆZYŃSKI, „Kolizyjna problematyka nazwiska” (*in.*) ed. J. GUDOWSKI, K. WEITZ, *Aurea praxis aurea teoria. Księga pamiątkowa ku czci Profesora Tadeusza Erecińskiego*, Warszawa 2011, p. 2420.

¹⁷ M. WOJEWODA, „Międzynarodowe uznawanie imion i nazwisk”, *Metryka* 2015, no. 5, pp. 59-61.

¹⁸ M. WOJEWODA, „Międzynarodowe uznawanie imion i nazwisk”, *Metryka* 2015, no. 5, pp. 60.

¹⁹ The Constitution of the Republic of Poland of 2nd April, 1997, as published in *Dziennik Ustaw* 1997, No. 78, item 483, available: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

The main aim of this constitutional provision is to ensure that the introduction of same-sex marriage would not be passed without Constitution amendment²⁰. In the legal literature it is raised that legalization of same sex partnership relations is possible, though at the same time reserve that freedom of legislator is limited in this field. It is raised that in the light of Article 18 of the Constitution it is not possible to establish an institution that is “identical” or “similar” to marriage. It is stated that “violation of Article 18 of the Constitution would be not only alignment of regulation about same sex partnership with regulation about marriage, but also assimilation of these regulations²¹. In another article there is an opinion that Article 18 of the Constitution does not “preclude to adopt in the legislation of general regulation allowing registration of same sex partnerships under condition that they are not recognized as marriages and would not have identical rights (or broader) than marriages²². The Constitutional Court have indicated in its decisions that from Article 18 of the Constitution the obligation to protect and care for marriage indicates that persons who entered into marriage should not be treated worse than persons living together who have not entered into marriage²³. It is important to note that recently the Supreme Administrative Court 20 March 2012²⁴ stated in its decision taking under consideration the provisions of foreign law that “registered partnership relation also called as formal partnership relation is understood quite generally as legal civil relationship of two persons of any gender”. The Supreme Court of Poland has delivered resolution on 28 November 2012²⁵ in which the Court formulated the obligation of equal treatment of persons remaining in same-sex and heterosexual cohabitation. According to the Supreme Court, a person being in *de facto* cohabitation with a deceased partner is a person who remained in emotional, physical and economic ties with the partner, including homosexual partner. The resolution was delivered as a result of the case pending before Polish courts regarding the right to enter into a lease agreement after homosexual partner death. The Supreme Court referred to the European Court of Human Rights case law, in particular to the judgment in the case from 2 March 2010 *P. Kozak v. Poland*²⁶.

D) Parentage

10. The Polish law does not allow parentage for same sex marriages or partnerships (concluded abroad), at the same time it is noticed that Polish law does not provide for definition of motherhood or parentage. In such cases the public order clause is applied, though non-recognition of one of the parents in practice would deprive a child of guardianship of one legal guardian that could lead to violation of child’s rights²⁷. The same could be applicable in context of genetic mother in case of surrogate motherhood²⁸.

E) Civil Status Registry

11. The Law on Civil Status Registry regulates in detail what kind of events may be included in the civil status registry, i.e. marriage, birth and death. Events registered in other countries which are not

²⁰ Judgment of the Polish Constitutional Court of 11 May 2005, K 18/04 . Please refer to: A. MAĆZYŃSKI, „Konstytucyjne podstawy prawa rodzinnego”, (in:) ed. P. KARDASS, T. SROKA, W. WRÓBEL, *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla, vol. I*, Warsaw 2012, p. 757-778.

²¹ A. MAĆZYŃSKI, „Konstytucyjne i międzynarodowe uwarunkowania instytucjonalizacji związków homoseksualnych” (in:) ed. M. ANDRZEJEWSKI, *Związki partnerski. Debata na temat projektowanych zmian prawnych*, Toruń 2013, p. 94. B. BANASZEK, „Konstytucja Rzeczypospolitej Polskiej. Komentarz”, Warszawa 2012, p. 148.

²² M. NAZAR, „Niektóre zagadnienia małżeństwa i rodziny w świetle unormowań Konstytucji RP z dnia 2 kwietnia 1997 r.”, *Rejent* 1997, no. 5, p. 109.

²³ Judgments of the Polish Constitutional Court: 1) of 18 May 2005 (K 16/04, published in OTK ZU no. 5/A/2005, item 51, part III, par. 4), and 2) of 3 December 2013 (P40/12, published in OTK ZU no. 9/A/2013, item 133) part III, par. 10.

²⁴ Judgment of the Polish Supreme Administrative Court of 20 March 2012, II FSK 2083/10.

²⁵ Judgment of the Polish Supreme Court of 28 November 2012, ref. no. III CZP 65/12.

²⁶ ECtHR 2 March 2010, *P. Kozak v. Poland*, no. 13102/02.

²⁷ A. DORABIALSKA, „Uznanie stosunku prawnego powstałego za granicą”, *PiP* 2012, no. 4, p. 63, footnote 39.

²⁸ A. DORABIALSKA, „Uznanie stosunku prawnego powstałego za granicą”, *PiP* 2012, no. 4, p. 63-64, footnote 39.

known in the Polish legal system, such as same-sex partners, are not subject to obligation to register in the civil status registry. Furthermore, the Court stated that such interpretation does not infringe provisions of PIL. According to Article 7 of PIL, the law of other state is not applied when the consequences of its application would be contrary to the fundamental rules of the Polish legal system. The refusal to include an event in the civil registry is thus lawful if it would violate the constitutional order. In Poland case law is not binding source of law. In practice lower courts are following the decision line of the higher courts.

F) Transcription

12. In accordance with Article 2 par 1 of the Law on Civil Status Registry²⁹: “a civil status is a legal situation of a person expressed by personalizing features of the person, shaped by natural events, legal acts or court decisions, or decisions of the authorities stated in the civil status records”. The transcription - a faithful and literal transfer of the contents of a foreign civil registration document, both linguistically and formally, without any interference in the spelling of names and surnames of persons indicated in a foreign civil registration document - is conducted in accordance with Article 104 of Law on Civil Status Registry³⁰. All the data is transferred without introduction of any changes related to Polish language or changes to form of surname after marriage, e.g. change from male to female form³¹. The spelling of a non-Polish personal name shall be in accordance with the rules of orthography of the relevant language.

13. The analysis of the civil status document that leads to refusal of transcription is required in the following cases (in accordance with Article 107):

- 1) A document in the country of issue is not recognized as a civil status document or is not authentic or has not been issued by the competent authority, or raises doubts as to its authenticity, or confirms an event other than birth, marriage or death.
- 2) A foreign document was created as a result of transcription in a country other than the state of the event.
- 3) Transcription is contrary to the basic principles of the legal order of the Republic of Poland.

14. Due to this reason the following acts are not subject to transcription in Poland: divorce certificates issued in some countries, registered partnership certificates, same sex marriage certificates. The transcription (in general) refers only to marriage that is not contrary to the basic principles of the Polish legal order, as mentioned above marriage is only possible between man and woman³².

G) EU regulation 2016/1191

15. In terms of the reception of the EU Regulation 2016/1191 on the circulation of public documents the discussion be summarized with as follows: EU competence in family matters should not

²⁹ Detailed analysis: M. WOJEWODA, „Transkrypcja aktu urodzenia dizeza, które zostało uznane za granicą”, *KPP* 2017, no. 2, pp. 337-361; P. KASPRZYK, P. SKUBISZEWSKI, „Problem imienia i nazwiska a transkrypcja zagranicznych dokumentów stanu cywilnego”, *Metryka* 2015, no. 1, p. 331-342.

³⁰ Detailed analysis: M. WOJEWODA, „Transkrypcja aktu urodzenia dizeza, które zostało uznane za granicą”, *KPP* 2017, no. 2, pp. 337-361; P. KASPRZYK, P. SKUBISZEWSKI, „Problem imienia i nazwiska a transkrypcja zagranicznych dokumentów stanu cywilnego”, *Metryka* 2015, no. 1, p. 331-342.

³¹ Judgment of the Polish Supreme Court of 8 August 2003, ref. no. V CK 6/2002, OSNC 2004, no. 1-8, item 131; Judgment of the Polish Supreme Court of 15 April 2011, ref. no. III CZP 12/2011; Judgment of the Polish Supreme Court of 3 June 2011, ref. no. III CSK 259/2010, Judgment of the Polish Supreme Court of 20 November 2012, ref. no. III CZP 58/2012, Biuletyn SN 2012/11.

³² M. WOJEWODA, „Zaświadczenie o stanie cywilnym a małżeństwa jednopłciowe I związki partnerskie zawierane za granicą”, *KPP* 2015, no. 3, pp. 713-714.

affect de facto material effects³³ and should not establish uniform rules about adoption, marriage, or change the definition of marriage on the member state level. In accordance with its preamble it shall not influence recognition in of the members states of legal effects of the document issued in another member state. There were doubts if this regulation does not have a broader meaning than announced, e.g. for understanding of the meaning of civil status³⁴. In practice it will not affect material law of member states about civil status³⁵. It will be in force to enhance the movement of public documents. The doctrine states that EU regulation will not have other effects that currently are achievable when applying Polish law³⁶. There is currently no legislative adaption³⁷. The Ministry of Digitalization has commissioned the Central Computer Center to formalize this issue from the technical side.

3. Judicial and administrative practice

16. In accordance with the Polish doctrine “acceptance” could only be applicable to relations documented in appropriate registry, e.g. companies, marriages, registered partnership relations, parentage, name and surname, and some property rights³⁸. There are arguments stating that status recognition is in the interest of international cooperation, as well as efficiency of procedures and protection of parties’ expectations. Recognition could be refused due to public policy clause or mandatory rules, though it is always stated that this clause should not be abused.

17. The Supreme Court has stated in its decision of 20 November 2012 that “civil status document issued abroad constitutes only a proof of event recorded therein, even if it has not been entered into Polish civil status registry. Foreign document may be presented in courts or administrative bodies”³⁹. This corresponds to interpretation Article 3 of the Law on Civil Status Registry⁴⁰. It states that “civil status records are the sole proof of events stated in them; their non-compliance with the truth can only be proven in court proceedings”. The civil status document is a proof of the event, but it does not automatically lead to acceptance of circumstances in accordance with the public policy. In practice it means that a foreign civil status document is considered to prove that a certain event took place in that country, but it does not entail automatic recognition of its content. In case of a judgement, the judgement proves the event rather than a document issued as a consequence.

18. There was a following case: the minor Aleksander was a Polish citizen by law. In accordance with the Article 34 par. 1 of the Constitution the Polish citizenship is acquired by birth to Polish parents. Article 14 of the Law on Polish Citizenship from April 2, 2009⁴¹, states that the minor acquires Polish citizenship by law when born to at least one Polish citizen. The dispute concerned the following: whether the authority was required to transfer the minor’s birth certificate to the civil status registry. In

³³ P. MOSTOWIK, K. SONDEL-MACIEJEWSKA, „Materialnoprawne rezultaty unijnejwspółpracy sądowej w sprawach rodzinnych”, (in:) ed. J. POCZOBY, *Współczesne wyzwania prawa prywatnego międzynarodowego*, Warsaw 2013, p. 172-202.

³⁴ P. MOSTOWIK, „Kwestia zakresu zastosowania rozporządzenia UE nr 1191/2016 do zagranicznej rejestracji stanu cywilnego”, *Rodzina i Prawo* 2016, no. 37, p. 105-106.

³⁵ P. MOSTOWIK, „Kwestia zakresu zastosowania rozporządzenia UE nr 1191/2016 do zagranicznej rejestracji stanu cywilnego”, *Rodzina i Prawo* 2016, no. 37, p. 97-107.

³⁶ M. WOJEWODA, „Transkrypcja aktu urodzenia dizeza, które zostało uznane za granicą”, *KPP* 2017, no. 2, pp. 337-361; P. KASPRZYK, P. SKUBISZEWSKI, „Problem imienia i nazwiska a transkrypcja zagranicznych dokumentów stanu cywilnego”, *Metryka* 2015, no. 1, p. 344, footnote 29.

³⁷ P. MOSTOWIK, „Kwestia zakresu zastosowania rozporządzenia UE nr 1191/2016 do zagranicznej rejestracji stanu cywilnego”, *Rodzina i Prawo* 2016, no. 37.

³⁸ I. KARASEK, „Kolizyjnoprawna problematyka nieposesoryjnych zabezpieczeń rzeczowych ustawowionych pod rządami praw obcych”, *Transformacje Prawa Prywatnego* 2006, no 2, p. 17.

³⁹ Judgment of the Polish Supreme Court of 20 November 2012, III CZP 58/12, OSNC 2013, no. 5, item 55.

⁴⁰ Law on Civil Status Registry of 28 November 2014, as published in Dziennik Ustaw 2014, item 1741 (with further amendments).

⁴¹ Dz. U. z 2012 r. poz. 161(with further amendments).

accordance with the binding legislation – Article 104 par. 5 of the Law on Civil Status Registry - the issue of the Polish passport to a minor will depend on the transcription. In accordance with the decision of the panel of seven judges of the Supreme Court from November 20, 2012⁴², the foreign civil status certificate should only be considered as evidence of the events stated therein, even though it was not transcript to the Polish Civil Status Registry. The Supreme Court clearly stated that the transcription is not obligatory is in accordance with the Article 104 par. 1 of the Law on Civil Status Registry (previously it was the Article 73 par. 1). The Supreme Court also referred to the Article 1138 of the CCP, in accordance with which the foreign civil status records have the same evidential value, as the Polish documents. Nevertheless, there is a requirement to make a transcription of a foreign birth certificate in order to obtain a Polish passport, as it is obligatory to submit a copy of the Polish birth certificate by an applicant for a passport, as per § 3 (1) point 4 of the Regulation of the Minister of the Interior from August 16, 2010 on passport documents⁴³. The legal status changed after the entry into force of the new Law on Civil Status Registry from November 28, 2014. The requirement to submit a Polish civil status certificate in the event of applying for a Polish identity document has been expressly stated in Article 104 par. 5. This provision introduced the obligation to transcribe a foreign marital status document, *inter alia*, if a Polish citizen to whom a foreign marital status document applies is applying for a Polish identity document or a PESEL number.

19. In the Judgment of the Supreme Administrative Court⁴⁴ it was stated that child of Polish citizen has a right to acquire Polish citizenship. The American documents showed that the applicants were children of Polish citizen, the deliberations of the administrative authorities and regional administrative courts with regard to same-sex marriages and adoptions are irrelevant. Irrelevant was also the question of legality of surrogacy contracts in Poland. The court stated that the right to citizenship is a human right and therefore the law in this area should be interpreted in accordance with the principle of human dignity, equality and non-discrimination. The Court invoked Article 15 of the Universal Declaration of Human Rights, as well as Articles 7 and 8 of the Convention on the Rights of the Child, Article 8 of the ECHR.

20. On 10 October 2018 the Supreme Administrative Court overruled a judgment of Administrative Court in Cracow⁴⁵ and previous administrative decisions related to the refusal to enter a British birth certificate into the Polish birth register (transcription)⁴⁶. The case concerned the transcription of a British birth certificate of a four-year-old boy, a son of two women who are Polish citizens. It was underlined that as in binding legislation there is an obligation to have a transcription of a foreign birth certificate for a Polish citizen to receive an identity document, it is not possible to use public policy clause in such cases. The refusal to transcribe a foreign birth certificate would render a child an “illegal person”. Such status would restrict the child’s access to other rights and freedoms. The best interest of a child and the principle of nondiscrimination were the key elements in this decision. The court applied ECHR and Charter of Fundamental Rights of the European Union. The court underlined that though under ECHR Poland does not have an obligation to recognize same-sex marriages that were entered into outside of Poland, there is an obligation to register birth certificates of children of same-sex parents that can be derived from Polish law. The Court did not consider the necessity to refer for a preliminary ruling to the CJEU, especially considering that the ruling in *Coman & Others*⁴⁷ that same-sex marriages need to be recognized between the EU Member States for the purpose of the freedom of movement. In previous case in 2014 the Supreme Court rules against transcription. This was due to the change in the Law on Civil Status, as prior to 1 March 2015, a transcription of a foreign civil status act, such as a birth certificate, was facultative under Polish administration law. The new legislation introduced an obligatory transcription of a foreign civil status act

⁴² Ref. no. III CZP 58/12, LEX no. 1227013.

⁴³ Dz. U. Nr 152, poz. 1026.

⁴⁴ Judgment of the Polish Supreme Administrative Court of 30 October 2018, ref. no. II OSK 1868/16, II OSK 1869/16, II OSK 1870/16, II OSK 1871/16.

⁴⁵ Case no. XI.534.2.2018 of the Polish Administrative Court in Cracow.

⁴⁶ Judgment of the Polish Supreme Administrative Court of 10 October 2018, ref. no. II OSK 2552/16.

⁴⁷ Case C-673/16 (Judgment of 5 June 2018).

in cases of a Polish citizen applying for a passport, an ID card or a social security number. In the past the administrative courts invoked Article 107 of the Law on Civil Status Registry to refuse transcription of foreign birth certificates in which two persons of the same sex were indicated as parents of the child⁴⁸. In practice this obligatory transcription only means that the child receives Polish nationality and passport, but it does not constitute recognition of the parentage by the same-sex parents. Technically it does not constitute recognition, as it is limited to the effects of Polish nationality.

21. The areas of law concerned by the recognition problems are the following:

Many areas of **name law**: recognition and acceptance of public and private name changes, surname after marriage, name by birth.

In the cases related to the recognition of names courts refer to the case-law both the CJEU and the ECHR. Courts made reference to Article 8 of the ECHR refusing acceptance of same-sex marriages and parenthood as not violating ECHR.

22. Parentage: adoption (recognition), fatherhood by declaration of recognition and later registration in civil status records (acceptance), surrogacy arrangements (recognition).

On April 17, 2019, the Supreme Administrative Court heard the case regarding the transcription to the Polish registers of civil status of a foreign birth certificate of a child who is a Polish citizen, and there are two women indicated as its parents⁴⁹. The Supreme Administrative Court decided to postpone to the substantive examination of the case and present this legal issue to the panel of seven judges as the case raises serious doubts. The Ombudsman joined the proceedings before the Supreme Administrative Court, supporting the cassation complaint against the judgment of the Provincial Administrative Court in Warsaw, brought by the child's mother. The Ombudsman expressed an opinion that due to the fact that the transcription constitutes a necessary condition to obtain a Polish identity document and PESEL number, it is obligatory. This results not only from the provisions of the Law on Civil Status Registry, but also from the obligation to consider the best interest of the child and protection of its right to citizenship resulting from its rights to identity, respect for family life and relationship of both parents. It is in the best interest of the child that the transcription of the foreign birth certificate is made to the Polish civil registry. The Supreme Administrative Court confirmed it in its decision from October 10, 2018 issued in the case with the same factual background⁵⁰.

23. In the discussed case the panel of seven judges received the question from – whether the art. 104 par. 5 of the Law on Civil Status Registry in connection with the art. 7 of PIL allows transcription of the foreign birth certificate where two persons of the same sex are indicated as parents. The resolution issued by the panel of seven judges of the Supreme Administrative Court will be binding in the case, and also in accordance with the prevailing doctrine, will have to be respected in the future similar cases. The date of the hearing is not yet determined. On December 2, 2019, the panel of seven judges of the Supreme Administrative Court adopted the following resolution: the provision of Article 104 par. 5 and Article 107 clause 3 of the Act on Civil Status in connection to Article 7 of PIL does not allow transcription of the child's foreign birth certificate, in which persons of the same sex are entered as parents⁵¹. The Supreme Administrative Court indicated that as a result of such transcription a Polish marriage certificate is being created, which in terms of the probative effect does not differ from civil status certificate resulting from the registration of a legal event/ *zdarzenie prawne*. Entering in the Polish civil status register of by transcription of two women as parents of a child would violate the basic principles of the Polish legal order. In Polish law, only a mother and a father can be parents of a child. Interpretation of art. 104 par. 5 of the Act on Civil Status cannot lead to a situation in which a Polish citizen will not be able to obtain a PESEL number or identity card due to entering on their foreign birth certificate two women as parents.

⁴⁸ Judgment of the Polish Regional Administrative Court in Gliwice of 6 April 2016, ref. np. II SA/GI 1157/15; Judgment of the Polish Regional Administrative Court in Warsaw of 20 October 2016, ref. no. IV SA/Wa 1784/16.

⁴⁹ Ref. no. II OSK 1330/17.

⁵⁰ Ref. no. II OSK 2552/16

⁵¹ Ref. no. II OPS 1/19.

In such a case, the evidential value of foreign official documents should be taken into account, along with Polish official documents pursuant to art. 1138 CCP. The Court considered unjustified to refer a legal question to the Court of Justice of the EU in the case under consideration. It was only because of the negative result of the procedure for issuing an identity card that the freedom of movement of the applicant could be affected within the EU.

24. Marriage, legally concluded in other country is being recognized in Poland without particular preconditions. The PIL rules are applied and public policy clause. Same sex marriages or partnerships will not be recognized due to public policy exception. In majority of cases the courts grant acceptance for the name acquired abroad, unless the name was acquired upon conclusion of same sex marriage or registered partnership.

25. The court practice shows that Polish authorities and courts refuse not only to officially register the fact of concluding same sex marriages or registered partnership outside Poland, but also to insert to the Civil Status Registry some information about it in the form of unbinding note which does not create any right and obligation of same-sex partners⁵². According to the practice of Polish authorities and courts, same-sex partners who concluded partnerships abroad were treated as persons remaining in informal, not registered partnerships. The Regional Administrative Court in Warsaw⁵³ decided that recognizing the same-sex marriage would be contrary to the basic principles of the Polish legal order, therefore it is not possible to enter to the Civil Registry the marriage certificate of the same sex couple. In the judgment of the Supreme Administrative Court⁵⁴ it is stated that putting to the Civil Status Registry information about concluding same-sex partnership abroad is not possible as it is contrary to the Law on Civil Status Registry. The Supreme Administrative Court⁵⁵ stated that interpretation is not contrary to the case law of the European Court of Human Rights, according to which states are entitled to limit the access to the same sex marriages. In this respect the Court referred to the ECHR judgment in the case *Schalk and Kopf v. Austria*⁵⁶ and stated that such limitation concerns also same-sex civil partnerships. Another judgment of the Supreme Administrative Court⁵⁷ was delivered in a case brought by the same applicants - two woman (S.F. and K.F.), who concluded same-sex partnership in Edinburgh in the United Kingdom. Their partnership was registered in the Register of Civil Partnership of the UK. In 2011 S.F. and K.F. turned to the Civil Status Registry Office in Poland to include, under Article 73 par. 4 of the Law on Civil Status Registry⁵⁸, in their birth certificate information about the partnership. The administrative authorities - the Head of the Civil Status Registry Office and courts refused to put such information in the birth certificate. The Supreme Administrative Court judgment denied putting an unbinding information into the birth certificate.

26. On February 28, 2018, the Supreme Administrative Court confirmed the position of the prosecutor of the National Prosecution Office and dismissed the cassation complaint of two woman who got married abroad and wished their marriage to be recognized in Poland⁵⁹. In this matter the Head of Civil Status Registry Office refused to make transcription of the foreign marriage certificate of two women. The Pomeranian Voivode upheld the decision of the Head of Civil Status Registry Office. The women appealed the decision to the Provincial Administrative Court in Gdańsk that issued a decision on January 14, 2016, confirming that the decision of the Pomeranian Voivode was in accordance with the Polish

⁵² Judgment of the Polish Supreme Administrative Court of 20 March 2012, ref. no. II FSK 2082/10.

⁵³ Judgment of the Polish Regional Administrative Court in Warsaw of 3 November 2017, ref. no. IV SA/Wa 1893/17.

⁵⁴ Judgment of the Polish Supreme Administrative Court of 19 June 2013, ref. no. II OSK 475/12.

⁵⁵ Judgment of the Polish Supreme Administrative Court of 20 March 2012, ref. no. II FSK 2082/10.

⁵⁶ ECtHR 22 November 2010, *Schalk and Kopf v. Austria*, no. 30141/04.

⁵⁷ Judgment of the Polish Supreme Administrative Court of 19 June 2013, ref. no. 475/12.

⁵⁸ This provision stipulates that the Head of the Civil Status Registry Office may include into Civil Status Registry information in a form of unbinding note as an additional information (*wzmianka dodatkowa*) or a postscript (*przypisek*) upon a document issued by other state that need not to be officially recognised in Poland.

⁵⁹ Ref. no. II OSK 1112/16.

law⁶⁰. The court emphasized that since in Poland only the marriage between woman and man could be registered in the of a civil status certificate (Article 2 par. 2 and par. 3 of the Law on Civil Status Registry), the foreign marriage certificate can be transcribed into the Civil Status Registry only if the spouses are a man and a woman. Otherwise, when the marriage certificate indicates persons of the same-sex, the transcription is against the basic principles of Polish law, and therefore is unacceptable. Then the women filed a cassation complaint to the Supreme Administrative Court.

27. The same decision line was upheld in the following decisions: of the Provincial Administrative Court in Gliwice from April 6, 2016⁶¹ and of the Provincial Administrative Court in Krakow from May 10, 2016⁶². In these decisions it was stated that it was not possible to perform transcription of the foreign birth certificates, when the parents are same-sex couple (two women).

28. On January 8, 2019, the first interpretation different to the traditional was laid out in the latest decision of the Provincial Administrative Court in Warsaw. In the decision's reasoning the court states that same-sex relationships are compliant with the Constitution. Article 18 of the Constitution does not prohibit the legislator to institutionalize by virtue of laws the status of same-sex or different-sex relationships of people, who for their own reasons do not want to enter into a marriage in its traditional meaning. The Article 18 was invoked when the Registry Office in Warsaw denied recognition of the marriage between Jakub and David in Madeira. The appeal was made to the Mazowiecki Provincial Office, who upheld the decision. The complaint to the Regional Administrative Court was filled. The hearings took place in January 2019. The decision was also negative, and the couple decided to appeal to Supreme Administrative Court. Nevertheless, the reasoning of the Regional Administrative Court came as a surprise. The Court states that "in accordance with Article 18 of the Constitution marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland. The Court agrees with the Applicants that the above-mentioned constitutional principle provides not only to constitutional understanding of marriage as institution but represents guarantees of the state related to special protection and care of marriage as institution, though only if it is the union of a man and a woman. In this context the content of Article 18 of the Constitution does not constitute an obstacle to the transcription of a foreign marriage certificate, if in the foreign internal law, the institution of marriage as a union of same sex is envisaged. The above-mentioned provision does not prohibit the legislator to institutionalize by virtue of laws the status of same-sex or different-sex relationships of people, who for their own reasons do not want to enter into a marriage in its traditional meaning"⁶³.

29. It is worth noticing that the administrative courts have given new interpretation of the "facilitation"⁶⁴ of the free movement of family members who are not nationals of a member state, including partner with whom the EU citizen has a durable relationship, duly attested. In the judgments⁶⁵ it is stated that due to non-implementation of Article 3(2) of the Directive to the Polish legal system, this provision should be applied directly. The circumstances of each case should be analysed separately in light of the domestic legal provisions before decision about the entry to the EU member state. In 2013 the Border Guard Commander-in-Chief published guidelines, which were distributed among the Polish Border Guard. The guidelines emphasized the need to recognize the right of entry for all persons (irrespective of their sex) being in a partnership with Polish citizens provided that such persons are able to prove their partnership status by relevant documents.

⁶⁰ Ref. no. III III SA / Gd 835/15

⁶¹ Ref. no. II SA/GL 1157/15

⁶² Ref. no. III SA/Kr 1400/15

⁶³ Judgment of the Polish Regional Administrative Court in Warsaw, ref. no. IV SA/Wa 2618/18.

⁶⁴ Please refer to Article 3(2) of the Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

⁶⁵ Judgments of the Polish Regional Administrative Court in Warsaw of 15 March 2013 (ref. no. IV SA/Wa 154/13) and of 22 May 2013 (ref. no. IV SA/Wa 2093/12).

II. Process of recognition

1. Recognition of court decisions

30. In Poland a court decision of a foreign court is understood broadly. The decision is issued by a public authority of another state and establishes a legal status. Polish authorities will recognize the status acquired abroad if it is confirmed by the valid document (e.g. birth certificate). Courts or authorities have to follow the relevant conflict of laws rule to determine the *lex causae* governing the establishment of the status. If the requirements of the *lex causae* are fulfilled, the Polish law accepts that status as valid. The courts and authorities will refuse to recognize if the recognition would be against public policy clause.

31. Article 1145 of CCP states that the decisions of foreign courts in civil matters shall be recognized by law, unless there are obstacles stated in Article 1146. Article 1145 of CCP refers to not only to court decisions, but also decisions of other authorities of the foreign states in civil matters (Article 1149 of CCP). It is worth mentioning that Article 1145 of CCP does not state that the foreign decision is also effective on the territory of Poland, though it is clear, but it does not apply to effects that are not provided in Polish law⁶⁶. In accordance with Article 1146 par. 1 a decision is not subject to recognition, if:

1. it is not legally binding in the country, where it was issued;
2. Polish courts have exclusive jurisdiction in the case, e.g. change of surname as a result of divorce proceedings, division of property located in Poland etc.;
3. a defendant, who did not get into the dispute as to the substance of the case, did not receive duly and in timely manner the letter initiating the litigation;
4. a party in course of litigation was deprived of an ability to defense;
5. a case for the same claim between the same parties is pending in the Republic of Poland earlier than before the court of a foreign state;
6. is inconsistent with a previously issued final judgment of a Polish court or a previously issued final judgment of the court of a foreign state;
7. recognition would be contrary to the basic principles of legal order.

32. Recognition can be thus refused when in accordance with the Polish law e.g. there is no competence of the foreign court (exclusive jurisdiction of the Polish courts), no correct service to one of the parties to allow her access to court or opposing Polish decision or pending proceeding or there is a public policy exception.

33. It is important to note that Constitutional Court stated that administrative recognition does not concern interpretation of legal provisions, assessment of facts or even interpretation of unclear or undetermined terms⁶⁷.

2. Procedure in the civil registry

34. There is no specific procedure on transcription. The foreign civil registry act is being registered in Polish civil registry. If the applicant is being refused to recognize his civil status or its element he has a possibility to appeal to the court. Acceptance through norms of private international law provides to application of foreign law determined by the conflict of law rules, including general norms of private international law, e.g. public policy exception and mandatory rules.

⁶⁶ A. BARAŃSKA, „Uznawanie zagranicznych rozstrzygnięć dotyczących zmiany imienia i nazwiska”, *Metryka* 2015, no. 1, p. 120.

⁶⁷ Judgment of the Polish Constitutional Court of 3 June 2003, ref. no. K 43/02, OTK-A 2003, item 49.

35. In accordance with the Polish law on change of name and surname, change of name means change to another name or change of spelling. The change of spelling might concern the following:

- adaption incorrect spelling to the Polish language rules of spelling, by replacing some letters with same or similar sound, e.g. Xawery – Ksawery, Bohdan – Bogdan;
- adaption to the rules of the Polish spelling of the first or surname with foreign spelling, e.g. by replacing letters that have a different wording in the Polish alphabet, e.g. “sz” instead of “sch”, “cz” instead of “tsch” or “tz”, “c” instead of “t”;;
- replacing unknown to Polish alphabet characters with other entries or their phonetic sounds, e.g. “ü”, “ä” or “ö” with complex “ue”, “oe” or “ae” letters.

The persons entitled to change of name are:

- Polish citizens;
- Stateless persons, permanent residents of Poland;
- Foreigners, who obtained refugee status in Poland, but only for particularly important reasons related to the threat to the right to life, health, liberty or personal safety.

36. The name is subject to legal protection, and the principle of stability of names and surnames is also adopted, therefore the change of names is only allowed for a “justified reason”. The Article 4 of Law on Change of Name and Surname contains only an exemplary catalog of justifications for making such change, e.g.:

- a name ridiculing or violating human dignity;
- to a name used, it concerns persons, who use a different name or surname than is entered into civil status registry, e.g. pseudonyms and names or surnames used due to persecution;
- to a name, which has been unlawfully changed, e.g. names of persons belonging to ethnic minorities, which were written with adaption to the Polish spelling;
- to the name given in by state, which citizenship is also held in accordance with the law.

37. The law gives only examples on when the change is possible therefore consent or refusal depends on decision of Head of Civil Registry Office competent for place of permanent residence of applicant. If it is not possible to determine a place of residence, a place of last residence is taken into consideration. If it is also not possible to determine, the competent authority is – Head of Civil Registry Office of Warsaw or his deputy.

38. In case the data in the marriage certificate was inserted without Polish letters – together with the application of transcription it is possible to submit an application for the adaptation of spelling in accordance with the Polish spelling or request to correct the data as in the birth certificate. Transcription (registration) of a foreign marital certificate is compulsory if a Polish citizen applies for civil status registration or applies for a Polish identity document or a PESEL number. In this case, it is possible to submit a request to adapt the spelling in the act of transcription to the Polish spelling rules or to correct the data based on the marriage certificate or the birth certificate. However, while civil registry offices in Poland make corrections on this basis to the parents’ data in the birth certificate of their child (as persons who already have a marriage status record in Poland), they do not always correct the child’s data. This can lead to a situation in which the parents’ data will be saved in accordance with Polish spelling rules and the child’s data without Polish diacritical marks. Documents drawn up in a foreign language shall be submitted with an official translation into Polish made by:

1. a sworn translator entered on the list kept by the Minister of Justice;
2. a sworn translator authorized to make such translations in the Member States of the European Union or the European Economic Area (EEA);

3. Consul

39. In Poland there were cases considering change of name and recognition of same sex marriages. Courts examined change of name due to “justified reason”. In one of the cases the Supreme Administrative Court discussed decided that lack of identification with the father is not a justified reason to change the surname⁶⁸. In another case the issue of indirect recognition of same sex marriages through change of surname appeared, and the Regional Administrative Court in Gorzow Wielkopolski stated that the change of name is possible due to bad childhood experiences, but it cannot be a surname of a partner, as it would create a presumption that partner relationships are allowed in Poland, and it is contrary to Article 18 of the Constitution⁶⁹.

40. In Poland recognition is based on the documents provided by the applicant. These documents are confirming the status. In all of the cases the courts and other authorities considered recognitions of the status that was registered in official registry.

41. The case law does not explicitly deal with involvement of a public authority. The rules on registration of civil registry documents require presenting a document confirming status, issued by the competent authority.

In order to recognize it in Poland, the status has to be documented. A certified copy of the status registration has primarily the value of proof.

The document issued by a public authority of the foreign state must be presented. Foreign documents need to be legalized or comply with the requirements of the Hague Convention of 5 October 1961 abolishing the requirements of legalization for foreign public documents.

In Poland only official documents are accepted. All the documents should be translated into Polish language and the translation should be certified by the notary. The civil registers and courts are not required to know foreign languages.

3. Acceptance via conflict of laws

42. In case there is no decision establishing a legal status issued by foreign authorities, the conflicts of law norms are used to accept foreign status.

If no separate choice of law rules exists, the status might not be accepted. There is no acceptance of same sex marriages or partnerships, parentage or adoption.

Polish court (or other authority) has to follow relevant national international private law norm to determine law governing the status. If requirements of Polish law are fulfilled, the status is valid, unless consequences of acceptance of the status lead to violation of Polish policy, or initially there was violation of Polish mandatory rules. To confirm the rules provided by Polish PIL courts refer to EU case law and ECtHR case law.

In practice the cases are linked either to member states of the EU or states with whom there is a bilateral treaty.

43. Cases in which acceptance of status was at stake usually were related either to registration of names in official register or to entries in identity documents. State of origin of the documents is very different. In majority of cases, these are EU Member States, sometimes third countries. The documents and entries in registries are usually related to Polish citizens or their children.

⁶⁸ The Judgment of the Polish Supreme Administrative Court of 10 October 2016 (II OSK 293/16).

⁶⁹ The Judgment of the Polish Regional Administrative Court in Gorzow Wielkopolski of 04 February 2016 (II SA/Go 941/15).

The case law referred to in order to justify recognition is the following:

- The case-law of the CJEU: *Werner Mangold v. Rüdiger Helm*⁷⁰, *Jürgen Römer v. Freie und Hansestadt Hamburg*⁷¹, *Carlos Garcia Avello v. Belgian State*⁷², *Stefan Grunkin, Dorothee Regina Paul*⁷³, *Coman & Others*.
- The case-law of the ECtHR: *Znamenskaya v. Russia*⁷⁴, *Mennesson v. France*⁷⁵, *Labasse v. France*⁷⁶, *S. Karner v. Austria*⁷⁷, *S.D. Burden v. Great Britain*⁷⁸, *Schalk and Kopf v. Austria, Oliaria & Others v. Italy*⁷⁹, *Gas and Dubois v. France*⁸⁰, *P. Kozak v. Poland*.

44. The case law referred to in order deny recognition is the following:

- Public Policy (E.g. Case Of The Ecthr: *Stjerna V. Finland*⁸¹), Especially, Prohibition Of Another Understanding Of Marriage And Family.
- *Fraus Legis* (Circumvention Of Law) For Polish Citizens Who Concluded Marriage Abroad Or Entered Into Surrogacy Arrangement.
- Abuse Of Law For Entering Information Into Civil Registries, And Thus Constituting The Status In Polish Legal System.

III. Conclusions

45. In Poland the status is accepted in the substance. In none of the cases the document itself raised any legal concerns. The documents are primarily the means of documentation/proof.

Please refer to the comments in the sections above. In case of other civil status, e.g. marriage, divorce or recognition of parentage the authorities are recognizing the status itself, but the consequences of possessing that status could depend on the applicable law, which would be determined according proper conflict-of-laws rules.

As a consequence of recognition in Poland, the civil status is registered with Civil Status Registry.

There is no case law in this specific matter. There might be an assumption that Polish authorities expect that local procedure is used, and Polish court will refuse to accept a name change abroad if this change was possible under Polish domestic law.

In Poland change of status in a foreign state does not have direct effect, it requires recognition.

In Poland certain values, e.g. marriage is a union of a man and a woman, are protected by Constitution and it seems unlikely that they change in near future. This is also greatly influenced by the Catholic Church.

⁷⁰ CJEU 22 November 2005, case C-144/04, *Werner Mangold v. Rüdiger Helm*, ECLI:EU:C:2005:709.

⁷¹ CJEU 10 May 2011, case C-147/08, *Jürgen Römer v. Freie und Hansestadt Hamburg*, ECLI:EU:C:2011:286.

⁷² CJEU 2 October 2003, case C-148/02, *Carlos Garcia Avello v. Belgian State*, ECLI:EU:C:2003:539.

⁷³ CJEU 14 October 2008, case C-353/06, *Stefan Grunkin, Dorothee Regina Paul*, ECLI:EU:C:2008:559.

⁷⁴ ECtHR 2 June 2005, *Znamenskaya v. Russia*, no. 77785/01.

⁷⁵ ECtHR 26 June 2014, *Mennesson v. France*, no. 65192/11.

⁷⁶ ECtHR 26 June 2014, *Labasse v. France*, no. 65941/11.

⁷⁷ ECtHR 24 July 2003, *S. Karner v. Austria*, no. 40016/98.

⁷⁸ ECtHR 29 April 2008, *S.D. Burden v. Great Britain*, no. 13378/05

⁷⁹ ECtHR 21 July 2015, *Schalk and Kopf v. Austria, Oliaria & Others v. Italy*, nos. 18766/11 and 36030/11.

⁸⁰ ECtHR 31 August 2010, *Gas and Dubois v. France*, no. 25951/07

⁸¹ ECtHR 25 November 1994, *Stjerna v. Finland*, no. 18131/91.