



**FACULTY OF LAW
AND ADMINISTRATION**
University of Lodz

Dawid Lis

**Legal effects of civil partnerships in light of Polish civil and canon law.
A comparative study.**

SUMMARY

***(Skutki prawne związków partnerskich w świetle cywilnego prawa polskiego
i prawa kanonicznego. Studium prawnoporównawcze)***

**A doctoral dissertation submitted
in the Department of Theory and Philosophy of Law
under rev. Prof. Grzegorz Leszczyński, PhD, DSc**

Lodz 2022

In this dissertation, the issue of civil partnerships is presented in terms of their legal effects. Legal effects should be viewed as those stemming from canon law and those derived from the norms of secular law (civil, family, succession, etc.). The principal aim of the work is to examine the issue of civil partnership in the context of the development of the historical understanding of such a relationship, and only then to trace its canonical and civil effects. To understand the context in which a civil partnership develops, one must grasp the essence and significance of marriage in cultural development and as a legal institution.

The dissertation consists of four chapters. The first chapter introduces the institution of marriage and its importance in cultural development. Marriage was already practised in Neolithic times and can reasonably be placed among the major human achievements of that historical period, which made family structures sustainable and, consequently, contributed to the stability of social life. Further, the chapter describes marriage in ancient cultures as the basic legal institution sanctioning the relationship between a man and a woman and the family they establish, which also includes their offspring. This chapter depicts the diverse relationships towards polygamy with entitlement of men (polygamy) and women (polyandry). Moreover, it explains that marriage was often believed to have a divine meaning, in other words that deities – or a single deity – sought to establish their order (order of heaven and earth) through it. It was only in the more recent ancient cultures that we saw some "slackening". In Greece, there were more informal unions, while in ancient Rome, even though the institution of marriage partially entered the sphere of the *sacred*, it was legal and social practice that determined the use of this institution with a preference for contractual conduct (marriage as a contract). According to the Old Testament, marriage was supposed to be a relationship requiring fidelity, tenderness, devotion and perseverance, although the origins of the Abrahamic tradition permitted polygamy and having children with slaves despite being married. Based on the teachings of Jesus Christ, the Old Testament vision of marriage was completed. Within the framework of the Church and the New Covenant with God, marriage was supposed to be a monogamous union, a lifelong one, based on love, fidelity, honesty, and intended to produce offspring.

In the second chapter, I present the effects of civil partnerships with reference to canon law. The problem of concubinages with which Christians were confronted as a result of contacts with Roman legal culture has led to steps being taken as early as in the first centuries of the Church's existence to ensure the primacy of marriage through the liturgy. Subsequently, informal unions gained importance. This commenced with the expansion of the Germanic peoples, who controlled almost the entire area of the Western Roman Empire. Despite the

adoption of Christianity in various forms (according to Roman rites, but also in the Nestorian and Arian heresy), informal unions were entered into by rulers and the mighty from various peoples (Burgundy, Franks, Visigoths, Ostrogoths, Alemans). The canonical effects of civil partnerships, aimed at stigmatising and marginalising them as contradictory to God's plan and as a manifestation of anti-marriage and anti-family, developed only later on with the councils which resulted in the introduction of the norms of canonical law. Civil partnerships were an obstacle to solemnising a valid marriage, and they constituted also a premise for divorce if entertained alongside the marriage. The Church imposed restrictions on persons living in civil partnerships as godparents or witnesses of confirmation, prohibited the participation in the distribution of Eucharist, nonetheless it admitted the baptism of children born from such unions. The norms against civil partnerships strengthened as a result of the Council of Trent in response to the reform movement. The second chapter also presents how to place the civil partnership in the context of sacramental life (in particular the sacrament of marriage) according to the Code of Canon Law of 1983 and the Catechism of the Catholic Church, affected by the teachings of Saint John Paul II. In this context, the chapter focuses on several main issues: the dignity of the person, the issue of 'marriage on trial' as an unacceptable relationship, and the presentation of civil partnership as an antinomy of marriage and family.

The third chapter addresses the historical determinants of the existence of civil partnerships in Polish law. In this chapter I describe the retrospective context of the existence of civil partnerships. It also explains the origins of civil partnerships as an informal relationship between a man and a woman existing already before marriage. Nonetheless, the civil partnership did not regulate family life, hence the institution of marriage became widespread, which is described in the first chapter. In this context, it should be noted that the ancient Sumerians and Egyptians already accepted civil partnership, but these were of marginal importance. It appeared even among the Aztecs, but it must be highlighted that adultery was punished with death. Civil partnerships gained importance in the somewhat more 'liberal' Greek and Roman cultures. I also describe the effects of the spread of Christianity and its impact on secular law in the context of civil partnerships. They were not equivalent to marriage, while the norms of church law in the Middle Ages marginalised them as offensive relationships. In the traditions of Polish law, informal unions had been developing in pre-Christian times, when customary law had allowed them to exist. On the other hand, not being based on religious norms, they had been a union of an inferior stance compared to those solemnised under the protection of deities. The tradition of customary marriage, which was a kind of partnership (no legal form, based on custom, no sacred ceremony) existed in Poland until the 11th to the 12th

century when, under the influence of the Church, it was replaced by a sacred marriage. Next, for centuries, civil partnerships would be placed on the fringes of society. Secular and canonical norms endeavoured to maintain the primacy of marriage and not to recognise civil partnerships. This state of affairs also persisted under partition and then in the inter-war period. The system of the People's Republic of Poland did not include legal acts recognising civil partnerships either, but through case-law and selected legal provisions it was recognised as a de facto union, and children from such unions were also given more extensive protection.

In chapter four, I refer to the issue of civil partnerships in Poland after 1989. First, the examination of the political environment, discussions on partner unions and possible law amendments are presented. The examination also partly concerns the international aspect, that is the development of Poland's membership in international organisations, primarily in the European Union and the Treaty obligations that this entails. I also describe relations with the Holy See, under the 1993 concordat. It is also important to point out the effects of political changes, in which the year 1997, when the Constitution of the Republic of Poland was passed (the 'April Constitution'), is an important turning point. Developments on the political scene are also explained. Moreover, I examine the main axes of the discussion on partnership in jurisprudence, case law and public debate. Accordingly, I take into account the following issues: cohabitation agreement, inheritance issues, termination of civil partnership, legal relations of non-marital cohabitantes to their offspring, obligations within the framework of state levies, contractual responsibility of non-marital cohabitee, matters of life in a civil partnership in parallel with the duration of marriage. Moreover, I discuss the issue of the adoption of a minor and the extent of parental authority in the case of people in an informal relationship.

4.05.2022 r.

/Dawid Lis/

