

# Getting married with the participation of an interpreter in Polish law (Matrimonium per interpretem)

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**Abstract**— The article deals with the issue of the necessity of the interpreter's participation in getting married in Polish law, taking into account the secular and religious form. The participation of an interpreter in the procedure of getting married is necessary in both forms; however, the regulations of this issue are slightly different in both legal systems, secular and ecclesiastical. The article is an in-depth scientific reflection on the issue and an attempt to argue for the unification of legal requirements in this regard.

**Index Terms** — Marriage, interpreter, religious marriage, Civil Registry Office, concordat

## I. INTRODUCTION

Polish law - in accordance with Article 1 of the Family and Guardianship Code - gives the possibility of marrying in a secular and religious form. A marriage in a secular form is concluded towards the head of the registry office, while a marriage in a religious form is concluded towards a clergyman, if additional conditions are met. The religious form of marriage appeared in the Polish law as a result of the ratified in 1998. The form of marriage was introduced in Polish law as a result of the concordat with the Holy See and the amendment of the Family and Guardianship Code and some other laws. However, non-Catholic believers, according to Art. 1 § 3, may enter into a religious marriage if such a possibility is provided for by the law regulating relations between the State and the Church or a religious association (Smyczyński 2012).

Both forms of marriage are equivalent and may be used at the discretion of those concerned. If nupturients wish to marry in the sacramental and secular dimension, they choose the religious form. The civil effect is then obtained by nupturients in a single normative event, with double effect in both religious and secular law (Strzebinczyk 2016).

The introduction of the religious form of marriage was a breakthrough from the principle of secularisation of family law,

which recognised only marriage concluded before a secular authority. In Article 10 of the Concordat, the parties agreed that from the moment of marriage, canonical marriage has the same effects as a marriage under Polish law (Article 10 of the Concordat). The idea of recognising the legal canonical meaning was reflected in the provisions of the Law of 26 June 1997 amending the Law on the guarantees of freedom of conscience and religion and certain laws.

Similar statutory regulations appeared between the state and the Polish Autocephalous Orthodox Church, the Evangelical-Augsburg Church, the Evangelical-Reformed Church, the Evangelical-Methodist Church, the Baptist Christian Church, the Seventh-day Adventist Church, the Polish Catholic Church, Jewish religious communities (Strzebinczyk 2016).

The publication concerns the issue of getting married in a secular form and the religious form of the Catholic Church with the participation of a translator. Both of the above mentioned forms of marriage include - if necessary - the participation of an interpreter, however, the regulations of this issue are slightly different in both legal systems, secular and ecclesiastical, hence the issue requires in-depth scientific reflection and an attempt to agree on common solutions to the issue of matrimonium per interpretation.

## II. THE CONDITIONS FOR MARRYING IN A CIVIL FORM

The prerequisites for marrying in a civil form are divided into necessary and formal and orderly conditions. According to Article 1(1)(c), for a marriage to take place, all the necessary conditions must be met cumulatively. This is different in the case of formal and orderly conditions, where failure to observe them does not have a negative impact on the marriage (Ignatowicz and Nazar 2012).

### 1) Necessary evidence

The law states that a marriage is concluded when a man and a woman present at the same time make a declaration to the head of the USC that they are entering into a marriage (Art. 1c).



Therefore, the necessary prerequisites for the marriage to take place are:

- gender difference of nupturients,
- to make consistent statements,
- simultaneous attendance at making declarations,
- to make these statements to the head of the Civil Registration Office.

### 2) *Formal and procedural reasons*

Formal and procedural conditions have been introduced into Polish law in order to prevent defective marriages and to increase the seriousness of the marriages. These conditions concern such issues as:

- place of marriage,
- submission of appropriate documents to identify nupturients and their legal status,
- appropriate power of attorney when the marriage is concluded by an attorney,
- the relevant documents to be submitted by the foreigner entering into a marriage, i.e. a document stating that he may enter into a marriage under the applicable law,
- a written statement from nupturients that they are not aware of the existence of circumstances excluding the marriage,
- a one-month period to get married from the submission of the written statements referred to above.

All these prerequisites apply in the form of an ordinary marriage. Derogations from them are related to the so-called extraordinary form of marriage (Smyczyński 2012).

## III. THE CONDITIONS FOR A RELIGIOUS MARRIAGE

The prerequisites for a religious marriage are partly the same as the prerequisites for a civil marriage; however, in the religious form there are more.

### 1) *the necessary conditions*

- The following grounds for marrying in a civil form are identical:
- gender difference of nupturients,
- the simultaneous presence of nupturients at the time of the declaration of marriage,
- the conformity of their statements expressing their willingness to marry a partner,
- the share of the official factor; in this case, nupt-traders make their declarations not to the head of the Civil Registration Office, but to the clergyman (Ignatowicz and Nazar 2012).

Additional prerequisites for a religious marriage are

- The expression by nupturients of their willingness to marry simultaneously, subject to Polish law,
- the drawing up of a marriage certificate by the head of the Civil Registration Office.

### 2) *Formal and orderly reasons*

The formal and orderly reasons for the religious form of marriage coincide with those of the civil form, supplemented by the following:

- for persons intending to enter into a religious form of marriage, the head of the USC of the place of residence of

one of the interested parties issues a certificate stating that there are no circumstances excluding the celebration of the marriage and any refusal to celebrate it in a situation prescribed by law (Art. 4(1)),

- the possibility of refusing to issue the certificate referred to above when there is a circumstance that excludes the celebration of the marriage (Art. 5c and art. 7 § 2 of the I.P.A.S.C.),
- the clergyman cannot accept a declaration of the intention to enter into a marriage governed by Polish law and enter into a religious marriage in case of failure to provide him/her with a certificate drawn up by the head of the Civil Registration Office on the absence of circumstances excluding the conclusion of a marriage with civil consequences under Polish law (Art. 8 § 1 concordat),
- the obligation to inform a person entering into a religious marriage about the content of the basic provisions of Polish law on marriage and its effects,
- the need for a clergyman to draw up a certificate stating that the declarations were made in his presence at the time of the conclusion of a marriage subject to the internal law of the Church or of a religious association (Ignatowicz and Nazar 2012).

## IV. INTERPRETER'S PARTICIPATION IN MARRIAGE

If the nupturient does not speak Polish and does not understand both the content of the statements he signs and the words he repeats, the participation of the translator is necessary. The presence of an interpreter is necessary when concluding a marriage in both civil and religious form.

### 1) *Interpreter's participation in a civil marriage*

The law and civil-status records state that "The participation of an expert or translator in making the declarations provided for by law or in the procedure for concluding a marriage is ensured by the persons making these declarations or intending to celebrate a marriage if they cannot communicate with the head of the civil-status department. Persons intending to marry shall ensure that an expert or translator is present even if the witnesses are unable to communicate with the head of the civil-status department" (Article 32 of u.p.a.s.c.). Thus, in connection with the marriage, the participation of an interpreter is necessary in the following situations:

- when the nupturient does not know the language in which the statutory statements that he signs are drawn up,
- in the marriage procedure if the nupturient is unable to communicate with the Civil Registration Office manager,
- if witnesses of the marriage are unable to communicate with the head of the Civil Registration Office.

The law states that the interpreter is to be taken care of by the nupturient traders themselves, while the interpreter will declare to the head of the registry office that he will carry out his tasks conscientiously and impartially, keeping a legally protected secret, and will be guided by honesty and ethics in his conduct. The statement is not collected from a court expert or a sworn translator (art. 32 of the Polish Civil Code). A sworn translator is not obliged to make such a statement because he or she has

already made it once - this is what each sworn translator takes before the Minister of Justice (the Civil Registration Office and the sworn translator).

A relevant note on the submission of the statement by the translator is included in the protocol of activities related to the registration of civil status (art. 32 of the Polish Civil Code). The translator taking part in a civil-status registration activity that requires the preparation of a protocol shall sign this protocol (Art. 32 of the C.C.C.C.). The head of the civil-status office instructs the interpreter in criminal liability (Art. 32 of the U.p.a.s.c.).

#### 2) *Interpreter's participation in a religious marriage*

The law states that a marriage is concluded when a man and a woman entering into a marriage subject to the internal law of the Church or another religious relationship in the presence of a clergyman declare their will to simultaneously enter into a marriage subject to Polish law and the head of the registry office then draws up a marriage record. When the above conditions are met, the marriage is considered to have been concluded at the moment of making a declaration of will in the presence of a clergyman (Art. 1 § 2 comcordat).

The internal law of the Catholic Church regarding the celebration of a marriage in the presence of an interpreter provides that the marriage consent may be expressed by nupturients in words or, if they cannot speak, in equivalent signs (can. 1104 K.P.K.). It must be expressed to the assistant local ordinary or parish priest, or to a priest or deacon delegated by one of them; as well as to two witnesses, according to the rules of law. Only those who are present and ask the newlyweds whether they agree and accept it on behalf of the Church are considered to be assisting in the celebration of the marriage.

The nupturient therefore has the right to give his consent in words or signs that are not necessarily understood by the person assisting in the celebration of the marriage. The words or signs may also be incomprehensible to witnesses whose presence is required for the validity of the marriage. For this reason the law allows the marriage to be celebrated through an interpreter, a competent person, at the level of both spoken and sign language, but the pastor should not assist him unless he is sure of the credibility of the interpreter (cf. Can. 1106 K.P.K.).

The person acting as an interpreter should be primarily proficient in the language or signs, e.g. sign language, through which the marriage consent is expressed. The Code of Canon Law does not require that the interpreter in matrimonial matters take the oath, only the parish priest has to make sure that the interpreter is reliable.

## V. DISCUSSION

The possibility of getting married under Polish law with the participation of an interpreter raises several issues for discussion. Firstly, can a nupturient himself be an interpreter? Secondly, when entering into a religious marriage, shouldn't some written certification of the presence of an interpreter and its credibility be required, and not be limited only to the requirements of the Church's internal law, especially since the fact of getting married has legal effects also on the basis of

secular law?

Regarding the first issue, the commentators point out that on the grounds of secular law - in accordance with Article 32 of the Civil Code. - the translator must be impartial; moreover, the translator takes an oath to the head of the registry office that he will perform the tasks entrusted to him conscientiously and impartially. Therefore, the interpreter cannot be one of the nupturients, as it is difficult to consider that one of the nupturients who translates the words of another during the marriage ceremony is completely impartial. This could raise doubts as to the correctness of such a marriage (Prawo.pl).

On the grounds of canon law, canonists also stress that a nupturient should not be the interpreter. Undoubtedly, this is related, among other things, to the fact that - under canon law - some questions should be asked to nupturients without the presence of the other party (General Decree of KEP). Some of the canonists indicate that the interpreter present at the marriage should be sworn in, all the more so as this is the case under canon law (Valencik 2004). For example, in procedural law standards, the interpreter is required to take the oath; the law speaks of *interpres iuratus* (Can. 1471 K.P.K.). In turn, the person acting as an interpreter during confession is obliged to keep a secret, for breaking of which ecclesiastical punishment may be imposed (Can. 1388 § 2 K.P.K.).

Furthermore, the canonists postulate that the interpreter should not only be present during the celebration itself, but should also take part in all - as required by the internal law of the Catholic Church - office matters. Furthermore, the canonists emphasize that the interpreter should enjoy the trust of both the pastor and the nupturients (Valencik 2004).

On the second question, whether a written statement of the translator's presence and credibility should not be required for a religious marriage, and not limited to the requirements of the Church's internal law, the comments take no position.

It seems, however, that in the case of a religious marriage, when declarations are made in the presence of a clergyman who does not know the language of even one of the nupturients, the presence of an interpreter, his credibility, as well as an appropriate annotation should be included in the documents. The internal law of the Catholic Church only requires, as already indicated, an examination of the credibility of the translator by the clergy and nothing more. Given the fact that a religious marriage has legal effects not only on the religious forum, but also on the civil forum, it seems reasonable to postulate that the above mentioned issue should be further elaborated or supplemented.

When concluding a religious marriage, each nupturient makes two statements, one that he is entering into a religious marriage, the other that he expresses the will to marry simultaneously under secular law. In this matter he does so to the clergyman, the spouse, witnesses and the interpreter. It is therefore important that all these people know what they are declaring, what they are witnessing and what the consequences are.

Then, in order to register the marriage concluded before the clergyman, the clergyman himself must draw up a certificate confirming this circumstance and send it to the competent civil-

status office. If all the required elements of the marriage procedure (deadlines, signatures) are observed, the head of the civil-status department will draw up a record of the civil marriage concluded with a religious marriage. This study aims, among other things, to ask whether the head of the Registry Office should not be informed and annotated about the presence of an interpreter when this type of marriage is celebrated.

#### VI. SUMMARY

In Poland, but not only that, a marriage between people from different countries, cultures and languages occurs time and again. For this reason, when entering into a marriage, the law indicates the need for a common interpreter or a sworn translator. The need for an interpreter in marriage and the possibility of marrying in two ways, secular and religious, made it necessary to reflect on this issue in a deeper, scientific way.

Currently, in Poland, a marriage can be concluded in a civil form - before the head of the registry office and in a religious form - in the presence of a clergyman. The secular form of marriage with the participation of an interpreter and the religious form, taking into account the law of the Catholic Church, have undergone this scientific reflection.

The presence of an interpreter in the marriage procedure is essential. The question is slightly different during the marriage ceremony itself, and different when completing the documents necessary for the marriage. During the marriage ceremony, the law does not require the presence of a sworn translator, while all documents to be submitted for marriage cannot be translated by an ordinary translator.

Although the law, both secular and canonical, does not explicitly state that a nupturient cannot act as a translator, the analyses quoted show that this is the case. Polish law more precisely defines the role of an interpreter in the civil form of marriage, but leaves this issue to the canonical law when entering into a religious marriage.

Canon law, although it allows for the possibility of marrying with the participation of an interpreter, does not devote much space to this issue, but only indicates the obligation to examine the credibility of the interpreter, which is the responsibility of the clergyman.

In view of the fact that a marriage of a religious form produces legal effects in a civil forum, the the thesis has been put forward that an interpreter should be present during the procedure of entering into a marriage of a religious form and, as is the case with entering into a marriage of a civil form, his presence should not only be credible but also recorded.

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