

DIVORCE IN POLAND OR ABOUT THE HELPLESSNESS OF THE LAW*

Marek Andrzejewski¹

ABSTRACT

The author discusses the issue of divorce from legal, demographic, and sociological points of view. In his analysis, he refers to the excellent book published 40 years ago by the prominent Polish demographer Edward Rosset titled 'Divorces'. The publication of this book was a scientific event, since, except for the authorities of the Catholic Church, at that time no one had criticised divorce so strongly and unequivocally. Therefore, the paper presents E. Rosset's views in detail, especially the breadth of his scientific reflections, emphasising the diverse scientific perspectives from which criticism of divorce was articulated. Against the backdrop of this criticism, E. Rosset also formulated ideas of what should be done to prevent divorce. For him, divorce was a very pressing issue, so the book has a slightly alarmist tone. To battle divorce, E. Rosset emphasised its pedagogical aspects and consequences. He considered it necessary for schools and parents to educate children and young people to respect the family, marriage, and parenthood. He also paid a lot of attention to the law, pointing out the need to create regulations more restrictive than those in force at the time. He was fully aware that the content of the law was important but wished to highlight that sometimes the way it is implemented is more important. Therefore, he strongly, and with good reason, criticised the liberal attitudes of judges.

The author then proceeds to present the legal and quantitative evolution of divorce after the 1989 breakthrough in Poland. He admits that modern law contains mechanisms in favour of the permanence of marriages, yet courts do not resort to them, instead ruling out more and more divorces nowadays. The author concludes that the transformation of civilisation is too profound, and it cannot be prevented even with the best scientific diagnoses and legal solutions.

KEYWORDS

divorce
demography
law
Edward Rosset
childlessness

* With Reference to E. Rosset's Classic Book Divorces.

1 | Professor at the Institute of Legal Studies, Polish Academy of Sciences; Head of the Poznań Center of Family Law and Children's Rights, Poland; andrzejewski.marek@wp.pl; ORCID: 0000-0002-6838-8414.



1. Initial remarks

The subtitle of this article points to the helplessness of law in the face of dramatic demographic trends in Europe, but this helplessness applies to all fields of science, especially pedagogy, psychology, economics, theology (especially dogmatic and pastoral), or the axiology of several philosophical currents. The emphasis on the helplessness of the law, however, is justified by the fact that its power and the public's naive faith in changing the world through the act of voting are often overestimated. This faith derives in part from ascribing causality to the law since the very reason it is created is to solve problems. The belief in the power of the law persists in society, despite the fact that the law is constantly being changed and unresolved problems remain. Nevertheless, it would be a mistake to treat the law as an asset in itself. In spite of its obvious weaknesses, it is more reasonable to see it as a tool for solving various social problems but not to have excessive expectations in this regard. It is worth mentioning here that the solutions found in legal acts do not come from lawyers, but from politicians, and the role of lawyers is to formulate these ideas in the specific language used in law, called legal language.² Many lawyers deny this observation because they do not understand and/or do not accept the reality in which they operate. Therefore, the assumption that this demonstrates a lack of humility is not unfounded.

The insignificant role of the law in counteracting negative social trends is indicated, among others, by the fact that the law is unlikely to prevent these trends. At most, it reacts to these processes after they occur – as a rule – with a delay and little effectiveness.

On the other hand, there are some examples showing that the law has exacerbated negative social processes, including changes in demography. In particular, no positive correlation was found in Poland between the significant extension of pro-family social benefits after 2015³ and the (expected) increase in the number of births. The benefits reduced poverty affecting children, while in demographic terms they only might have made those who already had a child consider the possibility of having another one (usually the second). The negative demographic effect, however, was brought about by poorly addressed social benefits. At the root of a radical increase in the number of divorces was the allowance targeted at formal single parents, introduced in November 2003. This was because it benefited women cohabitating with partners, as they were formally single mothers.⁴ The legislation introduced at the time caused the number of divorce petitions to increase by ¼ in 2004 compared to the previous year, and the number of separation cases increased by 300%.⁵

To prepare an appropriate legal tool (a legal act or part of it) for solving a social problem, it is necessary first to diagnose the problem. The basic field of knowledge necessary for making an accurate diagnosis of social issues, including family issues, is demography. In addition to demography, psychology, pedagogy, medicine, social work, and economics⁶ have had and continue to have a significant role in the search for solutions on the

2 | Morawski, 2010, pp. 97–114; Choduń, 2007.

3 | Szukalski, 2016, pp. 1–5.

4 | Act of 28 November 2003 on Family Benefits, *ct. Journal of Laws of 2023*, item 39.

5 | Zarzycki, 2005, p. 115.

6 | Andrzejewski, 2017, pp. 80–97; Wierchosławski, 1991, pp. 19–25.

grounds of family law. Sometimes the accumulated knowledge leads to abandonment of the intention to issue another law. In family matters, legislative restraint seems particularly advisable due to the specific nature (delicacy) of family relations. Today's legislators align with progressive circles and thus tend to regulate issues concerning the family that should be addressed with restraint, as exemplified by regulations created under pressure from supporters of so-called 'reproductive human rights'.⁷

Poland's Primate Cardinal Stefan Wyszyński, who died in 1981, warned against the demographic crisis. He included demography in the broad context of teachings about the family, and it was a key element of the theology of the nation that he preached.⁸ He spoke out about family responsibilities, including the importance of fertility, as well as the dangers posed by divorce. He did so during a period of relatively stable demographic growth in Poland: then the fertility rate reached 2.4 and the population was growing. The Primate held a doctorate in sociology and had a social intuition, but the state authorities of the time ignored his warnings for ideological reasons. Neither was there much response from scientists, though knowledge of the so-called 'negative growth' observed in many Western European countries in the 1970s was already accessible.⁹ Less than a decade after the Primate's death, social changes took place that brought a demographic crisis of a magnitude no one had predicted. In all European countries, the birth rate fell to a level described as a demographic catastrophe.

The reasons for this collapse are numerous and significant. They mostly encompass profound long-term civilisation processes, such as, in particular, urbanisation, industrialisation, and internal migration from villages to cities.¹⁰ In addition, changes in the structure and functioning of families were also significantly influenced by the process of emancipation of women.¹¹ These phenomena were partly inevitable and partly objectively positive (women's equality). Due to the strength of these processes, few governments have succeeded in counteracting their negative effects, or at least mitigating them. Many others have not even attempted to do so.

The societies of Central European (post-communist) countries were further disorganised as a result of the systemic transformation that began in 1989. At that time, family ties were significantly weakened, among other things as a result of the structural unemployment that lasted until about 2015 (in Poland ca. a third of the country was unemployed),¹² and the professional and economic instability of a significant part of the population. All this was a source of permanent stress and family conflicts that led to the breakdown of ties and broken relationships, oftentimes ending in divorce. This also contributed to a sharp decline in the number of children being born. At that time, the focus was on building democracy, which was however devoid of an ethical vision of how individuals, groups, and society as a whole should function. In Poland, it was only the Constitution of the Republic of Poland, passed in 1997, that 'codified' the axiological foundations of the new social order, but it did it on a very general level.¹³

7 | The magnitude of the problem can be also observed in: Mostowik, 2019; Łukasiewicz, 2022.

8 | Struzik, 2010, pp. 105–119; Gałązka, 2010, pp. 127–141.

9 | Rosset, 1986, pp. 95–97.

10 | Adamski, 2002, pp. 205–208; Rosset, 1986, pp. 310–338; Szukalski, 2004, pp. 145–146; Drobný, 2007, pp. 69–87.

11 | Rosset, 1986, pp. 315–316.

12 | Kozysa, 2005, pp. 67–77; Główny Urząd Statystyczny, 2023.

13 | Journal of Laws of 1997, N.78, item 483, as amended.

The authorities of many countries have long tried to boost birth rates by creating laws banning or allowing abortions. Today, this approach is still adopted in poor countries of the so-called third world.¹⁴ In Europe, this way of conducting demographic policy has long lost its relevance due to the widespread use of contraception and women's awareness of their own sexuality. Between 1956 and 1993, abortions on demand¹⁵ were permitted in Poland and, according to cautious estimates, about 450,000 were performed annually.¹⁶ During the same period, about 520-630 thousand children were born each year. Currently, the Act of January 1993 on Family Planning, Protection of the Human Foetus, and the Conditions for Permissibility of Abortion, protects the life of the unborn,¹⁷ but paradoxically fewer children are born each year. Since the mid-1990s, the number of live births has not exceeded 400,000 per year, and in 2023, for the first time, it did not reach the threshold of 300,000.¹⁸ Naturally, there is no basis for attributing this result to the measures contained in the aforementioned act of 1993, just as there is no basis for stating that the Law on the Protection of Life has prevented or reduced the low birth rate phenomenon since Poland ranks 212th in terms of the reproduction rate¹⁹ (1.35, with a replacement rate of 2.1). Contemporary disputes over the legal protection of the life of the child, the dignity of the conceived child, and – describing it in terms used on the other side of the barricade – i.e. the alleged human right to abortion as one of the manifestations of so-called reproductive human rights – are all strongly grounded in divergent worldviews, featuring ideological and axiological, and, to a much lesser extent, demographic aspects.

2. Divorce as a demographic category

The demographic situation of a country can be looked at from the perspective of a wide range of statistics and indicators, all showing various trends. These indices may range from the total number of the population; the fertility rate for women of childbearing age; the scale of migration (the emigration of its own citizens, the influx of immigrants, the outflow of population from rural areas to the cities and from the cities to the countryside); the number of marriages; the age of those getting married and their education or their economic situation; the number of marriages that have been terminated, distinguishing those that have terminated as a result of death or divorce; the scale of cohabitation; the magnitude of single parenthood, including single motherhood arising from a woman's choice (rather than widowhood or abandonment); up to the dynamics of life expectancy growth.²⁰ As for divorce, in addition to the absolute number of divorces and their dynamics over the years, pivotal from the point of view of demographics is the attitude toward

14 | Gwiazda, 2017, pp. 220–234.

15 | Act of 27 April 1956 on the Conditions of Admissibility of Termination of Pregnancy, Journal of Laws of 1956, No. 12, item 61.

16 | Dyczewski, 1988, pp. 99–128.

17 | Ct. Journal of Laws of 2022, item 1575.

18 | From January to September of 2023, 21,000 fewer children were born in comparison to the period from February to September of the previous year. Therefore, the birth rate in 2023 will be lower by 20,000 than the number of 305,000 born in 2022; Misztal, 2023.

19 | Central Intelligence Agency, 2023.

20 | Balicki, Frątczak and Nam, 2007. Cf. Rocznik Demograficzny, 2022, pp. 7–8.

this subject of individual divorcees (from trauma to trivialisation), their age, marital seniority, education, occupation, the number and age of their children (divorce of their parents is a border event for them), and the attitude to divorce of those close to the divorcing spouses. What matters for demographics is how public institutions, including those creating and applying laws, respond to the divorce phenomenon. It matters, for example, whether they facilitate divorce (when it is adjudicated based solely on the will expressed by the spouses, with a simplified procedure, sometimes outside of court), or whether they take the institution of marriage seriously by protecting its permanence. Also of significance is the attitude toward divorce of religions and religious institutions (despite the weakening of their influence), political parties, social organisations, and various types of media productions.

What also matters for demographics is that the consequences of divorce affect the lives of the children of those who have divorced. Divorce is a kind of conflict and crisis in which children are caught up, which adversely affects their psyche and may in the future influence their attitude toward marriage. This crisis lasts for a long time before the legal proceedings begin and continues afterwards. Children grow up feeling anxious about their future after their parents' divorce and then enter their relationships with fear, knowing that they, too, may experience the breakup of their marriage. Growing up in a conflicted family, they experience inconsistency in their upbringing by their parents, which lowers the parental authority and prompts children to manipulate them.²¹

3. Divorces according to Edward Rosset

There are few contributions in the scientific literature that combine legal and demographic reflection. The theme has only gained a high profile in recent years in the form of a research project coordinated from 2023 to 2024 by the Ferenc Mádl Institute of Comparative Law in Budapest, within the framework of which this article was written, as well as a Western European initiative coordinated by the European Association for Population Studies.²² The research conducted within both frameworks is a formal expression of acknowledgment of the high profile of the problem of the demographic crisis, as well as a manifestation of a kind of optimism that the law (especially the family law) can improve this dire situation.

Edward Rosset's book 'Divorces', published in 1986 in Warsaw by the State Economic Publishing House, stands out in the Polish literature on law and demography. It was written at a time when the divorce rate was not dramatically high, but it nevertheless caused concern among the church hierarchy, as well as among scientists, including those ideologically sympathetic to Marxism. Edward Rosset published the book at the age of 88, which evokes an obvious appreciation for the enlightenment of his mind, but even more for the commitment and undisguised emotion in his approach to the subject and also for his polemical verve and, at the same time, for the clarity and firmness of the views he proclaims, focusing attention on matters of importance without enmeshing the reader in issues of lesser importance.

21 | Izdebska, 2000, pp. 45–61; Beisert, 2000, pp. 135–138, 239–248; Rosset, 1986, pp. 340–355.

22 | Family demography and family law, 2023.

Edward Rosset, who was undoubtedly an outstanding demographer of international renown, was born in Łódź on 4 November 1897, and died there on 2 June 1989, i.e. two days before the first partially free elections in Poland after World War II. This date (4 June 1989) is symbolically marked as the beginning of post-communism. In 1922, he graduated from the University of Warsaw with a degree in law and political science. Academically, however, he was concerned only with demography. From 1929 to 1939, he was a senior assistant at the Lodz branch of the Free Polish University and an official at the Statistical Department of the Łódź City Board. At that time, he was associated with the outlawed (in 1936) Polish Association of Free Thinkers. During World War II, he went into hiding in Warsaw.

After the war, he participated in the founding of the University of Łódź. He received his doctoral degree in 1947 and became an assistant professor in 1954, associate professor in 1958, and full professor in 1963. He headed the Department of Statistics, then Demography and Statistics, at the University of Łódź (1945-1968). From 1961 to 1965, he was vice-chancellor of the university. He was also a correspondent member (1962) and then, from 1976, a full member of the Polish Academy of Sciences. He was repeatedly awarded state decorations and medals of an academic nature.²³

The book *Divorces* begins by discussing the history of divorce and shows the basic legal aspects of the titular institution. The author then outlines the social background of divorce, extensively discussing how the family has been transformed in the course of carrying out its functions. He also discusses the processes that have disorganised the family, such as the so-called 'sexual revolution,' extramarital births, and the development of the phenomenon of cohabitation, among others.

What is particularly important is the presentation of the doctrinal and pragmatic aspects of divorce. Worth emphasising is the author's thoroughness in the portrayal of both the teachings of the Catholic Church (which was not common at the time) and of these ideological currents which feature divorce as something ordinary, almost natural, and necessary. The latter approach to divorce was described by E. Rosset, with a hint of irony, as apologetic and firmly dismissed by him.

As an opponent of divorce, the author drew attention to the importance of upbringing, pointing to the '.../ the mistake of many generations/.../ manifested in the neglect – in the process of upbringing adolescents – of stressing the spirit of full moral responsibility for the established family and the fate of its members.'²⁴

In an attempt to outline the paths leading to the strengthening of the family and the prevention of divorce, E. Rosset emphasised the need to educate young people about marriage and to discourage them from marrying too early. He emphasised the importance of pedagogy by writing:

*.../ approval of divorce as one of the legal institutions that normalise marriage and family relations would be, in my eyes, an acceptance of the fact that people recklessly enter into marriage and no less recklessly bring human beings into existence, because such an approach does not exclude the readiness to abandon the family if the opportunity arises to change the current marital relationship for another, more attractive one.'*²⁵

23 | Domański, 2016, pp. 781–787.

24 | Rosset, 1986, p. 146.

25 | Ibid., pp. 146–147.

He also linked divorce to alcoholism and called for taking a firm countermeasure against this link (unfortunately, still current today) seen as a manifestation of social pathology destructive to families.²⁶

The book's numerous excerpts on law, social policy, pedagogy, philosophy, and sociology, provide the context for the key strictly demographic considerations, especially those concerning birth rates, marriages, and the adjudication of divorces and remarriages. Particularly noteworthy are the descriptions of the mechanisms governing divorce, including the explication of the causes of marital conflict, factors destabilising families, public awareness of divorce, including the public's increasing tolerance of the phenomenon, and what Rosset described as tolerance on the part of the law. He also pointed to the professional activism of women as a process that significantly disorganises family life and the fulfilment of functions by family members.

Regarding the consequences of divorce, E. Rosset focused attention on the fate of divorced women, the phenomenon referred to as 'orphanhood resulting from divorce,' as well as the mental condition of divorced persons.

The author's approach to the subject of the book is vividly demonstrated by the title of one of the chapters: 'How to fight divorce?' In it, he devotes much space to the role of the law. He advocated preventing divorce by creating more restrictive regulations. He did so knowing that the influence of legal norms, as well as religious, moral, and social norms, was becoming weaker and weaker, but it was on these norms that he pinned his hopes for changing the situation. At the time, some studies in the sociology of law shared a common thesis not to overestimate the impact of law on the functioning of society. Citing the prominent sociologist of law Maria Borucka-Arctowa, he wrote as follows:²⁷ '.../ the law can affect social relations only to a limited extent, which one should be aware of in order not to succumb to the false notion that intricate social problems can be solved through legal regulations alone.'²⁸

The author's knowledge of the literature on the sociology of law did little to undermine his confidence in the effectiveness of the legal changes he advocated. Looking from today's perspective, it can be assumed that the tendency to overestimate the law was the result of the great magnitude of the problem described, the firmness of the author's objections, and an awareness of ... 'the weakness of other conceivable tools.' In addition to the law, he placed high hopes in pedagogy and family-oriented teaching and upbringing of young people and their influence on shaping an approach supporting the permanence of marriages.

Referring to legal issues, E. Rosset distinguished between the creation of law and its application. Therefore, in addition to advocating for changes in the content of the law, he also advocated for a change in the liberal (as he perceived it) attitude of judges adjudicating divorce cases. This apt assessment prompts consideration of what term he would use had he been given the opportunity to observe the direction that divorce jurisprudence has taken some 15 years later.

In his final thoughts in the book, Rosset dwelled on the possible future of divorce in Poland, lamenting (prophetically, especially for divorce) the low credibility of demographic

26 | Falewicz, 1976, pp. 347–370; Obłąkowska and Bartoszewicz, 2022, pp. 5–25.

27 | Borucka-Arctowa, 1981.

28 | Rosset, 1986, p. 77.

forecasts.²⁹ In attempting to formulate the prediction, he pointed out the consistent negative impact of industrialisation, urbanisation, and migration (at that time it was mainly about the movement from the rural areas to the cities). He also made some remarks about the increase in the level of education, the phenomenon of addictions, especially alcoholism, the decreasing age of people getting married, and increasing sexual freedom, which also manifested in marital infidelity.³⁰ Rosset was only wrong about the impact of the low age of those marrying on their vulnerability to divorce, since now many more divorces are recorded than then, while the average age of those getting married has increased by about eight years.

The author of the book under discussion dreamed of a society without divorce, writing that 'this is one of the most beautiful dreams of a different, better future,'³¹ but he did not dream of introducing a formal ban on divorce. He hoped that its scale would be significantly reduced as a result of society's recognition of the importance of marriage and family. In the final section of the book, he created – based on the views of contemporary psychologists, pedagogues, and sociologists – a catalogue of recommendations for creating a dream society. In these recommendations, he emphasised the educational and upbringing aspects and the creation of a family-friendly policy by the state.³² He stated that there was '/.../ nothing more erroneous than the view, found here and there, tinged with optimism, that divorce is simply a way to change a failed marriage into a more successful one.'³³

He used metaphors, writing that divorces '/.../ are /.../ a manifestation of social pathology that harms the life of society like a poisoned arrow.'³⁴

He also criticised supporters of informal unions writing that

/.../ they want to remedy the institution of marriage by taking it out of the jurisdiction of the law, while the path to a happy and lasting marriage leads through educating young people to live in marriage by awakening in them a sense of moral responsibility for the family they have founded, for its happiness and permanence.³⁵

Critical of divorce, the main idea of E. Rosset's book was consistent with the teaching of the Catholic Church in Poland, although the author did not write it from a religious standpoint. The coherence was found especially in the legal postulates and the demand for the adoption of appropriate pro-family pedagogical proposals, in particular, in the call to educate young people so that they would treat marriage and family responsibly. On the issue of divorce, E. Rosset shared the opinion of the axiological justification of the permanence of such unions, but not of their indissolubility. At the deepest roots of the phenomenon of divorce, he saw a deep moral crisis in Polish society. Probably, both E. Rosset, as well as the Catholic Church in Poland at the time, would not have approved of solutions that would fall within the framework of today's popular postmodernism, as well

29 | Ibid., pp. 400–401.

30 | Ibid., pp. 402–403.

31 | Ibid., p. 78.

32 | Ibid., pp. 392–394.

33 | Ibid., p. 362.

34 | Ibid., p. 362.

35 | Ibid., p. 134.

as the individual (and therefore subjective) resolution of family ethics issues promoted by Pope Francis, which leads to expanding the scale of exceptions at the expense of departing from the rules.

This placed E. Rosset far from the ideologically justified disregard for the institution of marriage and the promotion of moral freedom advocated in communist literature, for which the revolutionary views of Alexandra Kollontai or Lenin were authoritative.³⁶ Similarly, E. Rosset was positioned far away from his Marxist contemporaries who emphasised the virtues of moral relativism (moral norms, as an element of the superstructure, were to be a function of the changing economic situation, i.e. the base). In the official narrative of the 1980s, divorce was described – according to the Communist doctrine – as a positive development in the process of secularisation. While secularisation was invented in – what Marxists described as – bourgeois states, Marxism took it over and developed it, eventually reaching the point of absurdity in Soviet Russia and later in China.

4. Divorces in the context of numbers and post-1989 Polish law

In the Polish legal literature, it is difficult to find statements as strongly critical of divorce as those made by E. Rosset. A group of author-lawyers wrote about divorce responsibly, at a high academic level, but no one did so as emphatically as he did. However, the voice of E. Rosset did not break through into the consciousness of the broader public. In scientific discourse it is mentioned,³⁷ but not to the extent it deserves. This was mainly due to the rapid social changes, including demographic changes, which took place in Poland after 1989. Among these changes which should be noted are high social mobility of an economic nature (business careers and bankruptcies, unemployment for some, precarious earnings for others) and geographic nature (money was earned far away, often very far from home and family). These were accompanied by the erosion of previously existing legal, moral, and religious norms, which were becoming less important due to the impact of what has been described as ‘the unfortunate gift of freedom.’³⁸ The Poles, unprepared for its arrival, were unable to properly manage it.

In the face of the scale of these changes, including the dynamics of divorce, Rosset’s warnings and postulates soon proved to be a reaction highly inadequate to the scale of the problems. Indeed, after his death, things only got worse, and although the laws changed to protect the permanence of marriage, divorce lawsuits were filed in increasing numbers and the judges ruling on divorce cases became even more liberal.

For about two decades, one in three marriages in Poland has ended in divorce. In the 21st century, the number of divorces has been fairly constant, with about 65,000 being granted annually.³⁹ Only during the years of the pandemic did the number drop to about 50,000, which can also be explained by the peculiar problems Polish citizens had at that time in their approach to the courts. It is easy to estimate that in the 21st century, about 3 million people in Poland have been divorced, or about 10% of the adult population. In

36 | Lityński, 2017, pp. 280–283.

37 | Szukalski, 2017.

38 | Tischner, 1992.

39 | Ibid., p. 232.

contrast, in the last few decades of the 20th century, about 20,000 fewer divorces were granted each year, or about 40,000 per year.

The marital length of divorcees now averages about 14 years. The age of men who divorce has reached an average of 41 years, and that of women has reached an average of 39 years.⁴⁰ An analysis of data in demographic yearbooks shows that the age of divorcees is increasing slightly each year.

More than two-thirds of divorce petitions are filed by women. There is a preponderance of cases in which the court, at the consensual request of the spouses, does not adjudicate fault in the dissolution of marriage (74% of cases). With the sole fault of the husband, 18% of divorces are adjudicated, and in 3%, the sole fault of the wife was recognised by the court.⁴¹

Among the reasons for the dissolution of marriage, spouses mainly declare incompatibility of character (about 30% of cases), infidelity or an intimate emotional relationship with another person (25% of cases), and alcoholism (10% of cases).⁴²

In 2021, out of 60,100 divorces, as many as 25,500 cases involved childless marriages. This raises the suspicion that, at least for some of them, childlessness was a choice and the cause of burnout in the relationship.⁴³

The remaining 36.3 thousand divorced couples had a total of 53.1 thousand children. An average of about 50,000 children from divorced families per year yields about 1.2 million children in the 21st century alone.

A total of 20.3 thousand couples with one child got divorced, the number of those with two children was 12.7 thousand, and the rest had three or more children each. A total of 29.1 thousand children of divorcing parents were between zero and six years old, and there were 34 thousand children between seven and 18 years old.⁴⁴

The prerequisites for divorce set forth in Article 56 of the Family Guardianship Code (FGC)⁴⁵ have not been modified since the FGC came into force in 1965. They include a complete and permanent breakdown of marital relations, as well as the incompatibility of divorce with the welfare of their common minor children or with other rules of social interaction. The court cannot grant a divorce if the spouse who is solely to blame for the breakdown of marriage applies for divorce.⁴⁶ The existence of grounds for divorce makes divorce cases a responsibility of the courts. This demonstrates the positive attitude toward marriage on the part of lawmakers, who have resisted the demands of liberals to abandon the need to prove, in the course of proceedings, the existence of legally defined prerequisites and instead to grant divorce only at the request of the spouses. The latter trend prevails in Europe, as a result of which in some countries divorce cases are not held before a court, but rather divorce is declared on the basis of declarations made before a notary or to an administrative authority. Documents issued by these authorities are declaratory in such cases.

40 | Ibid., pp. 239–242.

41 | Ibid., p. 236.

42 | Archive: Marriage and births in Poland, 2015.

43 | Rocznik Demograficzny, 2022, pp. 243–244.

44 | Ibid., pp. 243–245.

45 | Ct. Journal of Laws of 2020, item 1359.

46 | Smyczyński and Andrzejewski, 2022, pp. 164–176; Ignatowicz and Nazar, 2016, pp. 351–363.

In 2004, mediation was introduced into the divorce procedure, which can be requested by either party and can also be ordered by the court on its own motion.⁴⁷ Mediation may concern how to arrange the situation of the family after the divorce, but it may also serve to raise the question of whether divorce in a particular case is justified at all. The institution of mediation is a sign of the departure in Polish procedural law from the confrontational principle of adversarial divorce proceedings to conciliatory solutions. A similar solution is a parental agreement concluded by divorcing spouses regarding the exercise of parental authority after divorce, including contact and child maintenance.⁴⁸ Like mediation, the agreement is voluntary. Among its advantages are a reduced length of court proceedings and lower tension and less strain on the emotions of those involved. It should be emphasised, however, that the changes in the laws introduced in the 21st century were not aimed at reducing the number of divorces but at easing divorce proceedings and making the lives of former spouses and their children fairer and more stable.

In the scientific debate, approval for the current solutions dominates, but there are also opinions voiced in favour of liberalising the divorce laws – both the material-legal prerequisites for divorce and issues related to the divorce adjudication procedure. In the public domain, on the other hand, postulates are sometimes expressed that, in addition to the current regulations, there should be a possibility to conclude marriages without the possibility of their dissolution by divorce (on the model of non-dissolvable adoption).

It is also worth mentioning that in 2021, the Ministry of Justice presented a project to introduce family information proceedings as part of the divorce procedure. It was supposed to appear alongside mediation and parental agreement. This proceeding stemmed from the intention to encourage the spouses to give the idea of divorce deeper reflection, and it was supposed to be mandatory. The draft went against the European tendency to trivialise marriage by making it more accessible than it is today, as the European trend grants the possibility of marriage to seriously mentally disturbed people, to people younger than is required in modern times, and to homosexual couples. The proposal went against the flow so as not to allow termination of marriage without compelling reasons, at the request of one of the parties, and – if the spouses had any children from the marriage – at the request of both of them. The idea behind the new procedure was to talk to divorcing spouses about the legal, economic, pedagogical, and psychological aspects of divorce so that they would consider it more consciously, or in light of the information they received, consider the validity of this step. The intention of the drafters was criticised by the liberal media, which strongly objected both to the prospect of prolonging divorce proceedings by obliging spouses to participate in information proceedings and to possible attempts to discourage spouses from taking this step. It is to be regretted that for political reasons, the Ministry of Justice withdrew this project.

47 | Białycki, 2012, pp. 193–222; Kwaśniewska, 2007, pp. 1–16.

48 | Stojanowska, 2014, pp. 300–310; Długokęcka, 2013, pp. 29–39.

5. Heading for the punchline

The legal institution of divorce has always provoked disputes and continues to do so. New legal monographs on its various aspects are being published. In their reflections on divorce, lawyers usually focus on how divorce occurs and what effects divorce has, and only occasionally do they pose the question of the sense/justification of taking this step. Looking at the current volume of divorces, one can wonder about the usefulness of demographic forecasts and the possibility of modifying the social situation with the help of the law. Their magnitude – as well as the declining birth rate, the increasingly low fertility rate of women of childbearing age, and other parameters that prove the demographic collapse – was not anticipated by any study, including the alarmist-in-tone book by E. Rosset. Barely a decade after its publication, life has outgrown the vision that kept the old demographer awake at night, leading his wise outlook to be forgotten. In the face of an onslaught of dynamic changes, it is difficult to describe them on an ongoing basis, let alone analyse them in depth, so that the analyses might assist in attempts to counteract the changes. In conclusion, it should be said that scientific research (the analyses and forecasts of demographers, as well as the transformations of jurisprudence, or views expressed by representatives of legal science) has little impact on the course of significant social phenomena, let alone on the possibility of preventing them and their negative effects.

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