

Pilich on Recognition in Poland of Same Sex Relationships

Mateusz Jozef Pilich (University of Warsaw) has posted a paper on the Problem of Recognition of the Same-Sex Relationships in Poland in the Light of the EU Law and the New Polish Act on Private International Law on SSRN (*Das Problem der Anerkennung von gleichgeschlechtlichen Verhältnissen in Polen im Lichte des Europarechts und des neuen polnischen IPR-Gesetzes*). The English abstract reads:

On February 4th, 2011 Polish Parliament (Sejm) has voted on the new Act on the Private International Law, replacing the old instrument of 1965. At the final stage of the parliamentary debate the question of the constitutionality of the new Law arose; according to some deputies, the PIL would open the “backdoor” to the acknowledgment of foreign homosexual relationships, so far legally unrecognized on the constitutional level.

The main task of the article is to cast some light on the problem of the non-marital relationships under the EU and Polish law of conflict. The European law itself abstains from taking a clear position as to cross-border legal effects of the non-marital or quasi-marital couples. Under these circumstances, it is the law of each Member State of the UE which regulates the issue.

It is quite obvious that Art. 18 of Polish Constitution, which states that marriage is the union between the man and the woman only, forbids at the moment any material regulation of registered partnerships or homosexual marital unions in Poland. It is, however, not an argument against the application of conflict rules to such situations with the international element. It is welcomed that the new Law does not contain a ‘special clause of public policy’ put forward by the group of deputies just before the final parliamentary reading. The best regulation protecting Polish legal order is a general order public clause in Art. 7 of Polish Law. Some reflections on the choice-of-law characterization are also contained in the text.

The other problem touched is the question of the so-called “recognition” of foreign legal relationships. The sense of the notion may be twofold: either it is

the concurring method in the Private International Law replacing traditional conflict rules as a whole (at least as the intra-European conflicts of laws are concerned), or it only supplements the latter. Polish PIL contains no rules on the recognition of any type of the foreign legal relationships and the same is true also as to the homosexual unions.

According to the author's views, due to Art. 81(3) of the Treaty on the Functioning of the European Union, the EU law does not guarantee any automatic and general recognition of foreign registered partnerships or other gay or lesbian legal unions in Poland. Nonetheless, the careful application of the public policy rule makes it possible that certain legal consequences of these relationships do appear. Any general rule forbidding the application of foreign law only because of its content would infringe the sense of justice in the individual case.