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Could marital separation as regulated under Italian law serve as a point of reference for the Polish legislature?

Czy separacja małżeńska uregulowana w systemie prawa włoskiego może stanowić punkt odniesienia dla polskiego ustawodawcy?[1]

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Abstract: The article examines whether the Italian model of marital separation can serve as a point of reference for the Polish legislator in developing consensual and out-of-court forms of separation. The main research question is whether Italian solutions, in particular consensual separation, *negoziazione assistita*, and separation by agreement before the civil-status registrar, could be adapted the Polish legal system while ensuring adequate protection of spouses and children. The study applies dogmatic-legal and comparative legal methods and analyses relevant provisions of Italian and Polish family and procedural law, including recent developments resulting from the Cartabia Reform. The analysis demonstrates that Italian law combines judicial separation with consensual and out-of-court mechanisms, allowing the procedural form to be adapted to the circumstances of marital breakdown while retaining judicial safeguards where required. The findings indicate that selected elements of the Italian model, particularly separation before the civil-status registrar in uncontested cases, may provide a useful point of reference for the Polish legislator. The article concludes that introducing a carefully regulated out-of-court form of separation in Poland could simplify

[1] This text is the result of library research carried out at The Roma Tre University, Rome, Italy.

and improve the efficiency of family proceedings, provided that appropriate legals safeguards are maintained.

Keywords: separation, consensual separation, judicial separation, Italian family law

Abstrakt: Artykuł analizuje, czy włoski model separacji małżeńskiej może stanowić punkt odniesienia dla polskiego ustawodawcy przy opracowywaniu opartych na porozumieniu i pozasądowych form separacji. Głównym pytaniem badawczym jest to, czy włoskie rozwiązania, w szczególności separacja za porozumieniem stron, procedura *negoziazione assistita* oraz separacja na mocy porozumienia zawartego przed urzędnikiem stanu cywilnego mogłyby zostać zaadaptowane do polskiego systemu prawnego przy jednoczesnym zapewnieniu odpowiedniej ochrony małżonków i dzieci. W pracy zastosowano metody dogmatycznoprawną i prawnoporównawczą oraz poddano analizie właściwe przepisy polskiego i włoskiego prawa rodzinnego i procesowego, w tym zmiany wynikające z tzw. Cartabia Reform. Analiza wykazuje, że prawo włoskie łączy separację orzekaną przez sąd z mechanizmami pozasądowymi i opartymi na porozumieniu, co pozwala na dostosowanie formy postępowania do okoliczności rozpadu małżeństwa przy jednoczesnym zachowaniu sądowych gwarancji ochrony tam, gdzie są one wymagane. Wyniki badań wskazują, że wybrane elementy modelu włoskiego, zwłaszcza separacja przed urzędnikiem stanu cywilnego w sprawach bezspornych, mogą stanowić punkt odniesienia dla polskiego ustawodawcy. W konkluzji artykułu wskazano, że wprowadzenie w Polsce precyzyjnie uregulowanej pozasądowej formy separacji mogłoby uprościć postępowanie i zwiększyć jego efektywność, pod warunkiem zachowania odpowiednich gwarancji prawnych.

Słowa kluczowe: separacja, separacja za porozumieniem stron, separacja sądowa, włoskie prawo rodzinne

1. Introduction

Under Polish law, legal separation, alongside divorce, is a legal institution that significantly affects the nature of family law relationships (Kasprzyk 2000: 223–224; Dullak and Pniewski 2024: 254–255; Haak 2000: 214–219). This is because a legal order granting separation leads to a change in the way the family has hitherto functioned, giving rise to specific consequences for both the personal and property affairs of the spouses (Panowicz-Lipska 1999: 22–25; Grzelińska 2010: 23–57; Gajda 1999: 11–12; Rzewuska 2023: 330–335; Habdas 2025: 579–585; Jędrejek 2017: 550–555; Pawliczak 2017: 870–890). From the child's perspective, separation appears as an institution which, on the one hand, enables parents to live apart whilst maintaining the existing marital bond between them (Smyczyński 2000: 156; Jesion 2024: 1; Panowicz-Lipska 1991: 5–8), and on the other, influences the exercise of parental authority, maintenance payments and the child's place of residence.

Separation as a legal institution is present in many legal systems (Grzeźlikowski 2011: 81–93; Kasprzyk 2003a: 90; Halberda 2001: 89–91; Gajda 2021: 560). From the perspective of current legislative provisions, the provisions of the Italian legal

system are worthy of analysis. They provide for two forms of separation – judicial and consensual (Sylwestrzak 2007: 18–22; Sylwestrzak 2003: 769; Danovi 2014: 1141–1149). Their regulation in the Italian Civil Code is part of the legislature's aim to ensure that spouses have the opportunity to settle their legal situation both by means of a court ruling and by mutual agreement.

It should be borne in mind that the provisions governing both forms of separation also affect the institution of divorce. Under Italian law, it is accepted that the court grants a divorce if the spouses have been separated for a period specified by law. Initially, that is, under the 1970 Act, it was stipulated that the separation should last five years. Following the amendment of the legislation in 1987, this was reduced to three years; and following the amendment in 2015, it was further reduced to one year in the case of the so-called contested separation, or six months in the case of a separation by mutual consent (Ferrando 2015: 171). In contrast, therefore, to the provisions in force under Polish law, under Italian law spouses cannot apply for a divorce without a prior separation (Ferrando 2015: 171–172).

The Italian approach to separation therefore deserves particular attention, as, on the one hand, separation is viewed as a stage preceding the dissolution of marriage by divorce (Grzeźlikowski 2011: 83, 85; Panowicz-Lipska 2007: 52; Kosek 2021: 177), and on the other, as a means of regulating the legal situation of spouses who, despite the breakdown of their relationship, do not opt for divorce (Fonzone 2000: 45). This dualistic approach to the institution of separation is of significant importance, given current societal changes and the increasing frequency of divorce rulings (Ferro and Salvini 2007: 125–155). Separation therefore plays a fundamental role in the continued functioning of the family and in maintaining marital bonds despite the cessation of cohabitation between the spouses (Kasprzyk 2003b: 29–30, 33–34; Kasprzyk 1999: 14–15; Holewińska-Łapińska 2009: 273). In view of this, it seems justified to present the forms of marital separation under Italian law, particularly in light of the experience of the Polish legal system. The discussion will be conducted in such a way as to provide the most comprehensive answer possible to the question posed in the title of this text, namely: whether marital separation as regulated under the Italian legal system can serve as a point of reference for the Polish legislator.

2. Judicial separation under Italian law

Currently, the Italian Civil Code governs separation in Articles 150-158. Under Article 150 of the Civil Code, personal separation of spouses ('separazione personale') is permitted, which may take the form of judicial separation ('separazione giudiziale') or consensual separation ('separazione consensuale') (Kosek 2021: 177; Grzeźlikowski 2011: 90; Viarengo 2011: 601–624; Danovi 2015: passim). De facto separation ('di fatto') and temporary separation ('separazione temporanea') – or-

dered by the court for the duration of proceedings to annul the marriage – are also recognised (Bonilini: 223, 260; Auletta 2000: 233; Kosek 2021: 178; Sylwestrzak 2007: 18; Di Pirro 2022: 163–167). Furthermore, the Italian legislature provides in Article 150 of the Civil Code that the right to request a judicial separation or to consent to a mutual separation is reserved exclusively for spouses. The above therefore leads to the conclusion that the Italian legal system recognises two distinct forms of marital separation, the analysis of which appears necessary from the perspective of conducting a further analysis focusing on Polish legislative solutions, and in particular on possible legislative amendments to the Polish Family and Guardianship Code.

With regard to judicial separation, Article 151 of the Civil Code provides that an application for judicial separation may be made where – even irrespective of the wishes of one or both spouses – events occur which render the continuation of the marriage intolerable or cause serious harm to the upbringing of the children. When granting a separation, the judge, where the circumstances so warrant and at the request of a spouse, determines which spouse bears responsibility (i.e. fault) for the separation, taking into account their conduct contrary to the obligations arising from the marriage. In practice, this means that a crisis in the marital relationship, manifested by the breakdown of the emotional, physical or financial bond between the spouses, may be regarded as a sufficient ground for granting a separation.

It should also be emphasised that the Italian legislature does not provide, in the Civil Code, a list of the grounds necessary for granting a separation. Furthermore, the court has an extremely wide margin of discretion when assessing the circumstances that would form the basis for a separation order. Unlike the provisions in force under Polish law, where a permanent breakdown of the marriage is required, under Italian law the spouses do not have to prove a complete breakdown of the marriage. It is sufficient for the spouses to present circumstances on the basis of which it can be concluded that their continued life together in marriage is impossible or excessively difficult, or that by continuing to live together they would cause serious harm to the upbringing of their children. It appears that this approach may lead to a situation in which spouses might abuse such a broadly defined general clause. Nevertheless, on the other hand, it allows for a flexible adaptation of the court's decision to the circumstances of the specific case. In other words, it is not necessary to prove culpable behaviour on the part of one spouse towards the other in order to grant a separation; rather, it is sufficient merely to establish the objective circumstances adversely affecting the continuation of the marriage, which may, depending on the context, be interpreted extremely broadly.

It should also be emphasised that a breach of marital obligations by the spouses may result in a separation order in which responsibility (fault) for the breakdown of the marriage is attributed to one or both spouses (the so-called 'addebito della separazione') (Bobbio and Gliozzi, Lenti 1990: 114). The court, at the request of

one of the spouses (or both spouses), rules on fault in the breakdown of the marriage, having first examined the evidence gathered in the case, thereby establishing a culpable breach of the obligations arising from the marriage. Of course, not every breach of marital obligations will necessarily result in a finding of fault for the breakdown of the marriage. It is accepted that only a breach of marital obligations which has an unquestionable causal link to the emergence of a marital crisis – that is, the breakdown of the emotional, physical or financial bond between the spouses – allows for the attribution of fault for the breakdown of the marriage to a spouse. Consequently, if the so-called breakdown of the marriage occurred prior to any subsequent breach of marital obligations, it is difficult to attribute fault to either spouse (Galuzzo 2000: 760). In other words, a subsequent breach of marital obligations is irrelevant to the determination of whether either spouse is at fault.

Case law provides numerous examples of breaches of marital obligations which lead to the attribution of responsibility (fault) for the breakdown of the marriage (the so-called 'addebito della separazione') (Grzęźlikowski 2011: 91). The circumstances that most frequently justify a finding of fault in the breakdown of the marriage include, amongst others, marital infidelity, the use of physical and psychological violence against the spouse, persistent breaches of marital obligations, or addictions leading to the breakdown of the marriage. At the same time, it is accepted that marital infidelity does not automatically lead to the attribution of fault to either spouse, particularly when it occurred after the circumstances which caused the breakdown of the marriage had already arisen.

Furthermore, a finding of fault has far-reaching financial consequences. First and foremost, a finding of fault in the breakdown of the marriage means that the spouse found at fault is obliged to pay maintenance to the spouse who was not at fault for the breakdown and also loses the right to statutory inheritance from the innocent spouse. In addition to the maintenance obligation, the spouses remain obliged to provide for each other's maintenance, and furthermore, their property is divided between them (the community of property ceases) (Sesta 2019: 185–186; Dogliotii 1998: 103; Zatti 1982: 126; Santosuosso 1987: 370; Sylwestrzak 2007: 20).

However, regardless of whether one spouse is found at fault for the breakdown of the marriage, the Italian legal system provides that, during separation proceedings, the court decides on important matters concerning the child (Bianca 2001:186; Salluzzo 2004: 221–235). In particular, the court decides on the child's place of residence, the arrangements for the exercise of parental responsibility, the arrangements for contact between the parents, and the right to maintenance. Importantly, all decisions concerning the child in the context of a separation ruling must be in the child's best interests (Togliatti and Lavadera 2009: 3–40). Under Italian law, the best interests of the child are viewed through the prism of protecting the child's non-pecuniary and pecuniary interests, whilst taking into account the need for the child's emotional, physical and mental development. It is of the

utmost importance that both parents are jointly committed to the child's proper upbringing.

3. Consensual separation under Italian law

The second form of separation provided for by Italian law is consensual separation ('separazione consensuale'). Under Article 158 of the Civil Code, separation by mutual consent alone has no legal effect without the approval of a judge. Thus, consensual separation takes place when the spouses give their consent to it. It is therefore the result of an agreement between the spouses, which subsequently comes into effect following approval by the court (Izzo 2017: 75). It is pointed out that the agreement between the spouses regarding separation is a 'bilateral transaction'. Its purpose is to protect family interests, relating primarily to the child's situation and the personal and financial circumstances of the spouses. Under the agreement, the spouses not only jointly acknowledge the impossibility of continuing their marriage, but also reach an agreement on the very fact of remaining separated. Unlike a court-ordered separation, therefore, in the case of a consensual separation, the most important aspect is reaching an agreement between the spouses, and their mutual consent helps to minimise any potential conflicts between them.

Consensual separation takes place in two stages. The first stage begins with the parties (the spouses) being referred to mediation. If mediation does not produce the desired results – that is, the reconciliation of the spouses and their resumption of cohabitation – the second stage takes place before the adjudicating panel: the approval of the spouses' agreement on separation. Approval of the spouses' agreement on separation is tantamount to recognising the separation as effective. Importantly, the court has no authority to examine the reasons why the spouses decided to separate. It may, however, refuse to approve the agreement if it is contrary to the interests of the child, mandatory provisions of law or public policy (Kosek 2021: 178–179). Most often, however, the court calls upon the spouses to amend or supplement the terms of the agreement. Nevertheless, the court itself cannot make any changes or interfere with the content of the agreement. The legislature has therefore accepted that the spouses remain the parties best placed to understand the needs of their own family. For this reason, they are best placed to determine how to shape their legal situation once their cohabitation has ceased. Thus, Italian law moves away from a model of court intervention in family matters in favour of normative solutions based on cooperation and collaboration between the spouses for the benefit of the family they have established (Scardulla 2008: 86–87).

It should be added that an agreement between spouses setting out their mutual consent to separation may also cover the exercise of parental responsibility, each parent's contact arrangements with the child, maintenance obligations towards the child, and any maintenance obligations between the spouses. The principle

remains that parents should cooperate, regardless of whether they are in a judicial or consensual separation.

The above model of consensual separation was significantly amended by DECRETO-LEGGE No. 132 of 12 September 2014, and further amended by DECRETO-LEGGE No. 162 of 10 November 2014. This amendment did not in any way affect the content of Article 158 of the Civil Code, which remains in force. Nevertheless, it introduced two additional, out-of-court procedures for consensual separation into the Italian legal system, aimed at simplifying the procedure and relieving the burden on the judiciary. Consequently, consensual separation may now be effected either through the procedure provided for in Article 158 of the Civil Code, through negotiations facilitated by lawyers ('negoziazione assistita'), or by the spouses making joint declarations before the civil-status registrar ('separazione davanti all'ufficiale di stato civile' – separation by agreement before the civil-status registrar) (D'Alessandro 2025: 637–641).

Separation resulting from negotiations supported by lawyers ('negoziazione assistita') is regulated by Article 6 of DECRETO-LEGGE No. 132 of 12 September 2014. The wording of the aforementioned provision indicates, amongst other things, that spouses may enter into a negotiated settlement/agreement, in which at least one lawyer (advocate) representing each party is involved, with a view to reaching an amicable resolution of their legal separation. An agreement concluded in these circumstances does not require court approval. However, before proceeding to conclude the agreement, the lawyer (advocate) is obliged to inform the spouses of the possibility of entering into family mediation and to attempt mediation.

Where, however, there are no children, the agreement reached through negotiation is submitted to the public prosecutor (Pubblico Ministero), who, if no irregularities are found, issues a 'nulla osta', confirming that there are no obstacles to the agreement taking legal effect. Conversely, in the case of minor children, adult children who are legally incapacitated or severely disabled, or who are not financially independent, the agreement reached through negotiation must be submitted within ten days to the Public Prosecutor (Pubblico Ministero), who, if he or she considers that the agreement is in the best interests of the children, authorises it and communicates it to the parties. If the Public Prosecutor considers that the agreement is not in the children's best interests or that a hearing is necessary, they forward the agreement within five days to the court, where a date is set for the parties to appear (within the following thirty days). Thus, the court's involvement in the separation is the result of negotiations supported by lawyers (advocates) and occurs only in exceptional circumstances, that is, only when the public prosecutor assesses the content of the agreement negatively.

The second of the simplified separation procedures takes place following the submission of joint declarations by the spouses before the registrar ('separazione

davanti all'ufficiale di stato civile'). Article 12 of DECRETO-LEGGE No. 132 of 12 September 2014 stipulates that the spouses may submit, before the mayor, acting as a registrar, of the municipality of residence of one of them or of the municipality where the marriage certificate was registered or transcribed, a declaration establishing their separation. However, this provision applies only if the spouses do not have minor children or children requiring special care (with disabilities) and provided that the spouses' declarations do not include provisions concerning the division of property or other property-related matters. Therefore, the spouses' declarations must relate exclusively to matters of their marital status. Upon receiving the spouses' declarations, the head of the registry office summons them to appear before him or her no earlier than thirty days after receipt of the declarations, to confirm them. Failure to appear is tantamount to a failure to confirm the declaration. Interestingly, no judicial review is required, nor is the involvement of a public prosecutor or solicitor necessary; nevertheless, the separation produces the same substantive legal effects as separation under the other procedures discussed previously.

In conclusion, it can therefore be stated that Article 158 of the Civil Code governs the 'judicial' procedure for consensual separation, whilst the provisions contained in DECRETO-LEGGE No. 132 of 12 September 2014, as amended by DECRETO-LEGGE No. 162 of 10 November 2014, govern two separate procedures. However, their common element remains the mutual consent of the spouses regarding the settlement of the separation.

The legal framework governing separation in Italy has subsequently undergone significant procedural changes as a result of the so-called Cartabia Reform, introduced by DECRETO LEGISLATIVO No. 149 of 10 October 2022 (Danovi 2024: 2259; Querzola 2024: 237–245). The reform introduced a new and more unified procedural framework for proceedings concerning people, minors and families, in doing so, substantially reorganised the procedural rules applicable to separation (and divorce) (Lupoi 2023: 447–465; Paladini 2022: 75–84). One of the most significant innovations is contained in Article 473-bis. 49 and Article 473-bis. 51 of the Italian Code of Civil Procedure (Scuderi 2024: 1748–1774). Article 473-bis. 49 expressly provides for the possibility of cumulating claims for personal separation and for the dissolution or cessation of the civil effects of marriage within the same proceedings. In addition, Article 473-bis. 51 establishes a specific procedure for applications submitted jointly by the spouses. As a result, the spouses may submit a joint application ('ricorso congiunto') concerning their separation and, subject to the statutory requirements and the expiry of the legally prescribed period of separation, the subsequent dissolution or cessation of the civil effects of the marriage. What is more, the reform does not eliminate the substantive distinction between separation and divorce but enables the spouses to address the successive stages of the matrimonial crisis within a more closely integrated procedural

framework. This development was subsequently confirmed and clarified by the Italian Court of Cassation in judgment No. 28727 of 16 October 2023. The Court of Cassation held that, in proceedings under Article 473-bis. 51 of the Italian Code of Civil Procedure, a joint and cumulative application by the spouses concerning both personal separation and the dissolution or cessation of the civil effects of the marriage is admissible.

The Cartabia Reform is also relevant to consensual separation and to the alternative mechanisms for resolving matrimonial disputes introduced in 2014 (Paladini 2023: 41–56). In particular, the reform reorganised the procedural framework within which agreements concerning separation and divorce are examined and strengthened the role of procedural safeguards where the interests of children are concerned. Where an agreement reached by the spouses raises concerns regarding the interests of a minor, judicial involvement may therefore become necessary, including in connection with the hearing of the child ('ascolto del minore'). This demonstrates that the Italian model does not equate procedural simplification with the complete exclusion of judicial supervision. Rather, judicial intervention is retained where it is necessary to protect the interests of children or to ensure that the agreement complies with the applicable legal requirements.

At the same time, the reform confirms the importance of consensual and negotiated solutions in Italian family law. The mechanisms of 'negoziazione assistita' and agreements concluded before the civil-status registrar ('separazione davanti all'ufficiale di stato civile') remain important examples of the tendency towards the so-called 'degiurisdizionalizzazione', understood as the transfer of certain matters traditionally dealt with by courts to alternative procedures, while maintaining appropriate legal safeguards. The current regulatory framework should therefore be understood as a combination of judicial and non-judicial mechanisms rather than as a simple replacement of judicial proceedings by out-of-court procedure.

From a comparative perspective, the Italian experiences may also be considered in connection with the role of family mediation in Polish separation proceedings. Under Polish law, family mediation is a voluntary and confidential method of resolving disputes and may be conducted both before court proceedings are initiated and during pending proceedings. In separation cases, mediation may assist spouses in reaching an agreement concerning parental responsibility, contact with children, maintenance, property matters. Any agreement reached through mediation does not itself replace the judicial decision on separation; rather, it may provide the basis for the court's determination of the relevant matters. Mediation therefore constitutes an important consensual mechanism within the existing Polish judicial framework, but it does not amount to a general transfer of separation proceedings from the courts to an out-of-court authority.

The comparison with the Italian model leads to the conclusion that the Polish legislator could consider further development of consensual and out-of-court

mechanisms for regulating the consequences of marital breakdown. In particular, the Italian experience demonstrates that judicial proceedings may coexist with mediation and civil-status procedures, provided that appropriate safeguards are maintained. Such a solution could be considered in Poland especially in cases in which the spouses are in agreement, no minor children's interests require extensive judicial intervention, and the spouses are able to regulate the consequences of their separation in a legally effective manner.

4. Conclusions, together with proposals *de lege ferenda* regarding marital separation under Polish law

An analysis to date of the legal provisions in force under the Italian family law system leads to the conclusion that simplifying the procedure needs not in any way prejudice the interests of the spouses; nor does it undermine the safeguards on which the protection of the family is based, provided that the legislature provides for appropriate mechanisms to ensure that the content of the spouses' agreement complies with the law.

The above takes on particular significance from the perspective of Polish law. Discussions are currently taking place regarding the need to introduce the institution of out-of-court divorce. This, in turn, provides an undeniable basis for considering the need to regulate the institution of out-of-court separation. It seems that making the separation procedure less formal in uncontested cases will not only allow spouses to settle their legal situation efficiently but will also help to relieve the burden on the Polish justice system. Naturally, any proposals for changes regarding the institution of separation should remain consistent with the guarantees and principles on which the Polish family law system is based.

It is clear that, unlike divorce, separation does not result in the dissolution of the marital bond between the spouses. Its purpose is to regulate the situation of spouses whose marriage has completely broken down. The breakdown of the spouses' relationship is understood to mean the continuation of their physical, emotional and financial ties. Therefore, it seems appropriate, following the example of the provisions in force under Italian law, to introduce an alternative form of separation to the existing provisions – separation before a Polish registrar.

It would be advisable, as the Italian legislature has done, to leave the essence of the institution of legal separation unchanged, whilst focusing on simplifying the procedure for its establishment. Therefore, *de lege ferenda*, spouses who have cohabited for at least one year, have no minor children in common, and submit mutual declarations of intent to terminate their cohabitation should be permitted to apply for legal separation before a Polish registrar. This approach appears to be consistent with the intentions of the Italian legislature, whilst in no way serving to circumvent the provisions of Polish law. Spouses will, as before, be able to decide

for themselves whether they prefer to obtain a separation under the existing rules or under the new ones. The situation is similar under Italian law, where there are several distinct procedures for obtaining a separation – alongside consensual separation approved by the court, there are two simplified procedures: separation based on negotiations involving a lawyer (advocate) and separation before the registrar.

Nevertheless, following the example of the provisions adopted in Italian law, the possibility of using the out-of-court procedure should be limited to strictly defined circumstances. First and foremost, such a procedure should not be available to spouses with minor children or to spouses who cannot reach an agreement on making joint declarations of intent regarding the complete breakdown of their marriage. Of course, the Italian legal system provides for the possibility of intervention by the public prosecutor where spouses make use of the simplified procedure despite having children. It seems, however, that introducing a similar solution into the Polish legal system would lead to consequences contrary to the intention of the Polish legislator. Namely, rather than simplifying the procedure for obtaining a separation, it would complicate it and prolong the duration of the proceedings. Furthermore, Polish civil procedure provides that it is the court which has jurisdiction to rule on a separation. Therefore, there is no justification for extending the public prosecutor's powers to include a secondary review of the spouses' mutual declarations of intent regarding the establishment of a separation between them.

It is also worth considering solutions based on separation resulting from negotiations supported by lawyers ('negoziazione assistita'). It would be worth considering introducing the mandatory participation of a spouse's lawyer (solicitor) when that spouse makes a declaration of the complete breakdown of the marriage before a Polish registrar.

Experience with Italian law confirms that it is possible to reconcile and apply both traditional court proceedings and the so-called simplified procedure in relation to the institution of legal separation. Therefore, *de lege ferenda*, serious consideration should be given to introducing extrajudicial separation into the Polish legal system, i.e. separation before the head of the Registry Office, available to spouses who agree that their marriage has completely broken down and who have no joint minor children. This solution, partly modelled on the Italian system, would allow for the streamlining of family proceedings, whilst maintaining the safeguards on which the Polish family law system is based. Abolishing mandatory court proceedings in uncontested cases would enable spouses to settle their affairs more quickly, which is in line with the Italian concept of 'degiurisdizionalizzazione', i.e. limiting the court's involvement to cases that genuinely require its intervention.

Abbreviations

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