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Legal consequences of emancipation by marriage

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Subject scope

Age is measurable and associates natural transformations occurring in a human being (namely: biological, intellectual, emotional as well as moral). The legislator regulates age limits which demarcate the right of individual subjects and respectively cause application of disparate rules. There do exist individual inconsistencies in the process of growing up which result from influences of genetic, social, economic and civilization factors effecting an individual¹. Age limits supported by the legislator stem from a deluge of sociological research and historical experiences which despite their much “artificial” nature aim to provide law and order.

Age limit is enacted in Polish Civil Code by the legislator, (Law dated 23rd April 1964, Journal of Law 1964, no. 16, item 93 including following amendments, to be hereinafter referred to as PCC), establishing that majority shall be attributable to one upon reaching eighteen years of age (as stipulated in Article 10 of the aforementioned PCC). A major is a full-legal age adult², therefore assumed to be independent and freely capable to decide for oneself and as such fully and completely liable for civil-law consequences of one’s own conduct and acting.

In compliance with the regulation defined in Polish Family and Guardianship Code Article 10 § 1 (Law dated 25th February 1964 – Family and Guardianship Code, Journal of Law 1964, no. 9, item 59 including following amendments, to be hereinafter referred to as Family and Guardianship Code) matrimony may be concluded by an individual upon reaching 18 years of age, hence becoming a major. Under extraordinary circumstances, age

¹ G. Rdzanek-Piwowar, *Nieletność i jej granice*, Warszawa 1993, pp. 115–136.

² Ruling dated 3.12.1993 by Supreme Administrative Court in the city of Poznań Ruling Registry no. SA/Po 1931/Pa (enacted until 31.12.2003) Quote: Term “adult” within the meaning of Article 43 of the Family and Guardianship Code bears the same meaning as the term “major” within the meaning Article 10 § 1 of the Civil Code. Supreme Administrative Court Ruling 1995/2/53.

capacity to conclude an act of matrimony needs not be unanimous in majority³. However, PCC regulations premise a likelihood of matrimony conclusion by a minor due to crucial causes and upon being granted court consent to do so only. In other Easter and Central Europe countries the age of majority is also eighteen (only in Albania the legal age of majority is fourteen years⁴) with some exceptions when emancipation takes place. Generally the marriageable age is also 18, but under special circumstances some countries provide a possibility to contract a marriage by minors.

The debate concerning the issue of attaining majority in an extraordinary course of events is primarily focused on the complexity involved in an individual's civil-law liability range, causes and circumstances of granting court's consent to conclude matrimony, loss and maintenance of majority in case of matrimony annulations (nevertheless, the Legislator clearly stated in Article 10 § 2 of the aforementioned PCC what follows: "an individual shall not be denied majority on the grounds of matrimony annulations" and therefore shall face full civil-law liability resulting from conclusion of matrimony as it had been stipulated in Article 10 § 2 of the aforementioned PCC (whereby a minor irrespective of one's age has concluded a lawfully binding act of matrimony). All of the above issues had already been adequately addressed in subject-relevant literature.

On the grounds of the effective regulations in force, it may seem to be plausible to perform extensive deliberations on functionality and application of the terms such as majority and attaining 18 years of age. The study has been mainly presented according to Polish regulations.

Attaining majority under extraordinary course of events

In Articles 10–15 of the Family and Guardianship Code, the Legislator among barriers constraining conclusion of matrimony act such as mental disease, bigamy and/or consanguinity, also indicates lack of majority as its negative evidence. *Ratio legis* of establishing an age limit entitling to conclude matrimony arises most of all due to particular necessity of the betrothed spouses to attain biological, physical and psychological, and moreover social maturity (the former forming a particular capacity to enter into matrimony). In other words, such maturity means an awareness of the consequences arising from entering into a formal and lasting wedlock with another individual as well as a capacity to make conscious and reasonable decisions regard-

³ T. Smoczyński (ed.), *System prawa prywatnego. Prawo rodzinne i opiekuńcze*, Warszawa 2009, p. 148.

⁴ National Laws, *Legislation of Interpol member states on sexual offences against children, Albania - Albanie - Albania (Tirana)*, available at <<http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/CsaAlbania.pdf>> (last visited 1.02.2011).

ding one's own vital affairs⁵. Simultaneously, the legislator failed to indicate top limit age of the betrothed spouses, hence allowing for full freedom in the aforementioned matter for the parties involved⁶. This particular stipulation allows to draw the following conclusion i.e. in the cases of incapacity by the elderly to perform conjugal obligations, the above bears no influence upon their matrimonial efficacy⁷.

An obligation to specify required minimum age for matrimony conclusion is imposed onto Polish Legislator in New York Convention on Consent to Marriage Article 2, Minimum Age for Marriage and Registration of Marriages from 1962 (Journal of Law 1965, no. 9, item 53).

Amendment made to Polish Family Law in 1998⁸, reduced male statutory matrimony age from 21 to 18 and therefore made it equal with female statutory matrimony age of 18, hence allowing both genders to enter into matrimony upon attaining the same age. Simultaneously, males were deprived of the possibility to seek court's consent to enter into matrimony before attaining statutory majority age of 18⁹. Such resolution is proved *inter alia* by the fact that it is a female who attains mental maturity to perform conjugal duties earlier whilst only a mature male may provide for the family¹⁰. The above remains in conformity with constitutional principle of equality as well as with European legislative framework¹¹.

Attaining the capacity to conclude matrimony or in other words attaining statutory age of the betrothed spouses is subjected to variable establishment at different levels in particular legal systems. Statutory provisions are formed on the grounds of research and hypothesis and most of all they are founded upon a given community tradition. Nevertheless, in most European countries, individuals who have attained 18 years of age, have at the same time also acquired a capacity to conclude matrimony. Usually it is also plausible to enter into matrimony in the course of extraordinary events (ie upon being granted sufficient court or parental consent to do so, which shall be subjected to precise description on the case of Poland)¹². Without

⁵ E. Drozd, *Uzyskanie pełnoletności przez zawarcie małżeństwa*, „Nowe Prawo” 1969, no. 7–8, p. 1111.

⁶ M. Lech-Chełmińska, W. Przybyła, *Kodeks rodzinny i opiekuńczy – praktyczny komentarz z orzecznictwem*, Warszawa 2006, p. 33.

⁷ J. Strzebińczyk, *Prawo rodzinne*, Warszawa 2003, p. 100.

⁸ Family and Guardianship Code amended by Article 1 point 11 of the Act dated 24.07.1998 on amendment of Act of the Family and Guardianship Code, Civil Proceeding Code, Law on marital status files, Act on State relation with Catholic Church in Republic of Poland and other Acts (Journal of Law 1998, no. 117, item 757), amendments were implemented on 15.11.1998.

⁹ J. Strzebińczyk, *op. cit.*, pp. 100–101.

¹⁰ T. Smyczyński, *op. cit.*, p. 148.

¹¹ J. Ignatowicz, M. Nazar, *Prawo rodzinne*, Warszawa 2010, p. 104.

¹² Synthesis Report, Final Report for the European Commission, DG JLS – Directorate-General for Justice, Freedom and Security on the project No JLS/2006/C4/004, 2008, *Facilitating Life Events, Part II*, available at <http://ec.europa.eu/civiljustice/publications/docs/study_ms_legislation_synthesis_report_en.pdf> (last visited 20.05.2010).

some exceptions, in most Central and Easter Europe countries, the “special” marriageable age is equal for both sexes and it is sixteen, but the requirements for entering into such matrimony vary between countries. The data has been presented in table 1.

Table 1

Marriageable age

Country	Age for marriage	Age require for matrimony in the course of extraordinary events	Other requirements for matrimony in the course of extraordinary events
Poland	18	16 (only females)	for important reasons, a family court may allow a woman who has attained 16 years of age to marry
Czech Republic	18	16	in accordance with the social purpose of marriage, for important reasons, the court may permit to marry
Slovakia	18	16	a minor who wants to enter into marriage is entitled to lodge a motion with a court that shall decide; the court shall hear the person that wants to enter into marriage and hear the person the marriage shall be entered into with
Hungary	18	16	the preliminary approval of the guardianship authorities (and only in well-founded cases)
Lithuania	18	15 or less	on request of a person, the court permission; In case of pregnancy the marriage age could be below 15 years
Latvia	18	16	the consent of the parents and authorities provided that the marriage is contracted with a person who has attained majority
Estonia	18	15	written consent of parents or a guardian. If there is no consent, a court may grant the right to marry if the marriage is in the interests of the minor
Belarus	18	no data	no data
Ukraine	18 (males) 17 (females)	14	court permission
Slovenia	18	no data	good grounds and decision of the Centre for Social Work
Croatia	18	16	a court licence. with the additional requirements according to minor (mentally and physically mature); the parents social welfare service opinion is heard
Bosnia and Herzegovina	18	16	important reasons and a court permission
Serbia	18	16	important reasons and a court permission
Montenegro	no data	no data	no data
Macedonia	no data	no data	no data
Albania	18 (male) 16 (female)	no data	no data
Bulgaria	18	16	important reasons and a court permission
Romania	18 (males) 16 (females)	15 (only females)	only solid reasons; the approval can be given by the Local Council/the council of the Bucharest municipality, depending on the place where the woman resides and only based on an endorsement gave by the official doctor

Source <<http://www.right-to-education.org/node/272>> (last visited 2.02.2011)

The marital status of population in EU has been presented by European Union Commission Report. As a general trend very few people between 15–19 get married¹³. It is worth to wonder why in this document (and many other statistics studies) the population has been joined in groups 15–19, 20–24, and 25–29 (when marriageable age is usually 18). As it is shown in table 1, in almost every Central and Eastern European countries it is possible to enter into matrimony in the course of extraordinary events before 18. The statistics studies showing how often such marriages are concluded could be very interesting. It will relate the necessity to regulate this matter and induce the legislator to consider if it is a dead letter or not. Unfortunately it is not a subject to compare the conditions to enter into matrimony in the course of extraordinary events before 18.

The Polish Family and Guardianship Code does provide for extraordinary circumstances whereby an individual, having not attained 18 years of age yet, may be conditionally consented to enter into matrimony. In compliance to Article 10 of the Family and Guardianship Code, the Domestic Affairs Tribunal due to extraordinary course of events, may consent to conclude an act of matrimony by a female who has attained 16 years of age whilst the concurring circumstances clearly indicate that the aforementioned shall serve the best interest of the newly established family. The consequence of entering into matrimony under extraordinary course of events is equivalent to majority attainment by the female (Article 10 § 2 of the PCC) which shall in turn also result in acquiring complete civil-law liability for one's actions and deeds. A similar resolution, when marriage shall result in emancipation so in acquiring complete civil-law liability for one's actions and deeds, has been adopted by the Legislators in Czech and Slovak Republic¹⁴, and Hungary¹⁵ alike. Interesting example is Ukraine, where the marriageable age for women is 17 years and for men – 18 years, while the age limit to conclude matrimony upon court consent has been established at 14 years of age (a court may grant him or her the right to marry if it is found than such

¹³ Commission of the European Countries, *EU Youth Report*, available at <http://ec.europa.eu/youth/news/doc/new_strategy/youth_report_final.pdf> (last visited 1.02.2011).

¹⁴ Civil Code of Czech and Slovak Republic 40/1964 Zb. § 8 (1) A full capacity of an individual to acquire rights and assume duties on the basis of the own legal acts (capacity to legal acts) shall arise at the moment of his or her majority. (2) The majority shall be acquired by achieving the age of eighteen years. Before achieving this age, the majority can be acquired only by entering into a marriage. The majority acquired in this way can not be lost even if the marriage becomes extinct or if it is declared invalid by a court.

¹⁵ Act IV of 1959 On the Civil Code of the Republic of Hungary, Part two, *Section 12*: Persons who have not yet reached the age of eighteen years shall be deemed minors, unless they are married. Marriage shall not constitute adulthood if the marriage has been annulled by a court owing to the absence of the guardian's permission, which is necessary because of the lack of competency or minority, [online] <<http://www.lexadin.nl/wlg/legis/nofr/legis.htm>>, last visited 20.05.2010.

a marriage satisfies his or her interests¹⁶) but the consequences to be born by such an act are alike. What is peculiar and ought to be emphasized is the fact that the Ukrainian Civil Code states that any individual who has a child (regardless of age and gender) shall be eligible to conclude matrimony (therefore holds a capacity to enter into matrimony) and as a result one shall be assumed to have attained majority¹⁷.

Considering the impact of matrimony conclusion on legal circumstances of the minor, the legislators in different countries provide for variable consequences¹⁸. In Belarus legislature stipulates that conclusion of matrimony by the minor shall not result in attaining majority, yet shall only lead to attainment of complete civil-law liability for one's deeds and actions¹⁹. Another stand on this issue is for example presented by French or Belgium legislature, whereby conclusion of matrimony quarantines emancipation (disambiguation), however the minor still attains quasi "restrained" liability²⁰.

Significant reasons indicated by judicature, forming circumstances in which a minor female in Poland, in compliance with Article 10 of the Family and Guardianship Code, may conclude an unalluable act of matrimony include the following: giving birth to a child of betrothed spouses, pregnancy, long-lasting factual relationship (which shall arise much controversy)²¹. It is therefore plausible to advance a thesis, that in most cases such a matrimony is concluded under "duress" or in other terms under an obligation caused for example by pregnancy²². Such a matrimony is hence an ostensible solution only due to the fact that in many instances spouses are not able to function solely by themselves, particularly for financial and/or organizational reasons (i.e. lack of work, own accommodation ect.), therefore they continue to remain dependant upon their parents.

Among the motives causing a minor to conclude matrimony there is no mention of snobbism which does occur in reality (i.e. entering into matrimony with individuals of famous and recognizable names), willingness to better

¹⁶ Art. 23 of Family Code of Ukraine, As amended by the Law # 407-IV (407-15) of 26.12.2002, VVR, 2003, # 7, p. 70.

¹⁷ Art. 23 § 4 point 1 and 2 of Ukrainian Civil Code from 16.01.2003 with subsequent amendments.

¹⁸ E. Drozd, op. cit., p. 1110.

¹⁹ Article 20 Civil Code of the Republic of Belarus, 7 Dec. 1998, no. 218-Z (Amended as od 28.12.2009).

²⁰ Civil Code, ordonnance no. 2004-164, 20.02.2004; art. 476, 481, 488 available at <http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm#CHAPTER%20I%20-%20GENE> (last visited 30.04.2010).

²¹ K. Piasecki et al., *Kodeks rodzinny i opiekuńczy, Komentarz*, Warszawa 2009, p. 83-84.

²² D. Kowalczyk, *Wybrane aspekty funkcjonowania małżeństw zawartych za zgodą sądu, Czy potrzebna jest w Polsce zmiana prawa rodzinnego i opiekuńczego*, [in:] B. Czech (ed.), *Materials from all-Polish Scientific Conference organized in 21 and 22 of Sept. 1995*, Katowice 1997, p. 532.

oneself (i.e. in order to be granted a preferential credit rating) and/or with a view of acquiring naturalization (as may be the case for foreign citizens). Even if the aforementioned circumstances form the reason for the willingness to conclude act of matrimony in the case of the minors, the Domestic Affairs Tribunal shall not consent to such conclusions.

The court's consent shall not be granted upon the existence of extraordinary circumstances only. The Domestic Affairs Tribunal assesses separately each case on the basis as to whether or not the circumstances of matrimony conclusion remain in the best interest of the newly established family.

The legislator fails to define in the Family and Guardianship Code the concept of "family", yet every time an invariably different meaning gets applied depending upon what the results are to be attained²³. In colloquial terms, a "family" refers to a community comprising of individuals who are bounded together by the ties of consanguinity, adoption, affinity and/or matrimony²⁴. This term is applicable to the individuals belonging to a particular household, i.e. married spouses²⁵ since matrimony conclusion and/or spouses rising children. The doctrine fails to remain in conformity with the qualification of individuals remaining in factual relationships. Within the meaning of the Family and Guardianship Code, a common-law marriage fails to constitute a family²⁶, whereas it is evident from the analysis of the European Court of Human Rights rulings that a "family live" category may also refer to the individuals who do remain in factual relationship together²⁷.

Family forms a basic social unit, a natural and irreplaceable human environment which bears an enormous influence onto its existence and development, hence neither its various surrogate forms shall fully satisfy individual needs nor compensate its lack entirely. In consequence, an objective scope of many sciences such as sociology, psychology, pedagogy, theology as well as law is primarily concerned with the institution of family and a magnitude and deluge of its aspects.

Family foundation is formed by the act of matrimony concluded in the form defined in the Law namely (Article 1 of the Family and Guardianship Code). In compliance to the Article 18 of The Constitution of The Republic of Poland dated 2nd April 1997 (Journal of Law 1997, no. 78, item 483 including further amendments), it is stated that matrimony forms a formal relationship between a male and a female. The consequences of matrimony conclusion include both rights and obligations for each of the parties involved therein, hence it may be claimed, refraining from detailed examination of

²³ T. Smyczyński, *Prawo rodzinne i opiekuńcze*, Warszawa 2005, p. 148.

²⁴ M. Andrzejewski, *Prawo rodzinne i opiekuńcze*, Warszawa 2010, p. 18.

²⁵ J. Ignatowicz, M. Nazar, op. cit., p. 23.

²⁶ Ibidem.

the contents, that conclusion of matrimony ought to be a result of a thoughtful and conscious decision made by each of the parties²⁸. Domestic Affairs Tribunal assessment whether or not conclusion of matrimony by the minor female remains in the best interest of the newly established family ought to be considered on the grounds of individual reasons concerning biological, psychological as well as social maturity, features of one's personality required in marriage and even educational background and/or vocational training which in effect may have significant influence on possessing indispensable resources to maintain oneself and one's family alike²⁹. Moreover, Domestic Affairs Tribunal while filing an assessment on proper functioning of the future family also ought to make sufficient considerations for the following aspects: personal and cognitive details about the betrothed female, attitude of the betrothed spouses towards each other, attitude of the parents of the betrothed spouses towards future family, expected material and housing conditions following matrimony conclusion³⁰.

In practice courts rarely refuse to consent to early matrimony conclusions³¹. According to the information gained from The Marriage Registry Office in the city of Olsztyn, minor females very often concluded matrimony upon receiving court's consent in the 1990's. The Ministry of Justice statistics, presented in D. Kowalczyk paper, also indicate such similarities³². Currently, such an occurrence is a rare "phenomenon" (in The Marriage Registry Office in the city of Olsztyn, there were only 2 such marriages recorded in year 2009 alone). It may be a subject of much debate as to whether or not conducted research by P. Szukalski on adulterine child birth in Poland is an affirmation of the information presented above. The author states that between 1985 and 2005 there was an increasing trend in adulterine child birth noted amongst the minor mothers and this very trend has continued to intensify being currently 2,5 to 3 fold higher by comparison to the national average³³. Research results prove an increase in the number of the minor mothers but above all they also confirm that matrimony conclusion for an important reason such as pregnancy is a rare occurrence in this particular age group.

Conclusion of matrimony prior to attainment of statutory majority age bears little fruit and at the same time fails to provide for extraordinary

²⁷ J. Strzebińczyk, op. cit., p. 27; M. Andrzejewski, op. cit., pp. 17–18.

²⁸ H. Chwyć, *Zawarcie małżeństwa w prawie polskim. Poradnik dla kierowników urzędu stanu cywilnego*, Lublin 1998.

²⁹ M. Lech-Chełmińska, W. Przybyła, op. cit., p. 33.

³⁰ H. Haak, *Zawarcie małżeństwa, Komentarz*, Toruń 1999, p. 112.

³¹ J. Strzebińczyk, op. cit., p. 101.

³² D. Kowalczyk, op. cit., p. 532.

³³ P. Szukalski, *Urodzenia pozamałżeńskie w Polsce w XX i XXI wieku*, „Wiadomości Statystyczne GUS” 2010, no. 2.

authorizations and/or privileges, whereas circumstances of the conclusion do not yield much hope for relation durability. The reasons for the observed downward tendency of matrimony conclusion upon the court's consent include changes within family model, increase in consciousness and prioritisation (first comes an investment in oneself – namely in education, well-paid profession, and only then comes the family). Public opinion neither exerts pressure to conclude matrimony as a result of pregnancy nor is a female with an illegitimate child subjected to a public condemnation and/or rejection. An increase in the age of the newlyweds has been notably observed. In Poland at the outset the 1990's over a half of males and almost 1/3 of females concluding matrimony failed to attain the age of 25. Whereas nowadays the number of individuals in the age group of 25–29 concluding matrimony constitutes approximately 44% of the entire population (whilst in 1990 – this statistic amounted to 14% only)³⁴. The same is in other European countries (according to Commission of the European Communities Report the average age to enter into a first marriage is 27,3 years)³⁵.

Majority versus capacity to civil-law liability

Within the meaning of the PCC, a major is an individual who has attained eighteen years of age (Article 10 of the aforementioned PCC) and an individual who has not attained eighteen years of age but has concluded matrimony upon the consent of the Domestic Affairs Tribunal (Article 10 § 2 of the aforementioned PCC). The Legislator stipulates that upon attainment of majority, one shall attain a capacity to civil liability alike (Article 11 of the aforementioned PCC).

The concept of attainment of such a liability has not been defined unambiguously within statutory provisions of the law. According to the provisions of the PCC three scopes of the aforementioned capacity are plausible namely, complete, restrained and null. The legislator by means of the age criterion, clearly determined “threshold levels” of the capacity³⁶ establishing that the individuals devoid of such capacity are persons who have not attained 13 years of age and those individuals who are completely incapacitated (Article 12 of the PCC), however the minors who have attained 13 years of age and

³⁴ Materials from Central Statistical Office of Poland press conference in 28.01.2010, *Notatka informacyjna: Podstawowe informacje o rozwoju geograficznym Polski w latach 2000–2009*, available at <http://www.stat.gov.pl/gus/5840_3091_PLK_HTML.htm> (last visited 4.05.2010).

³⁵ Commission of the European Countries, *EU Youth Report*, available at <http://ec.europa.eu/youth/news/doc/new_strategy/youth_report_final.pdf> (last visited 1.02.2011).

³⁶ M. Watrakiewicz, *Wiek a zdolność do czynności prawnych*, „Kwartalnik Prawa Prywatnego” 2003, no. 2, p. 528.

those individuals who are partly incapacitated (Article 15 of the PCC) hold restrained capacity. Therefore, attaining one's majority shall not warrantee holding complete capacity (since a major individual may be subjected to incapacitation).

Majority attained through the process of reaching statutory majority age of 18 years, is not a *sine qua non* condition allowing for the attainment of the capacity to civil liability. This is clarified in the quoted Article 10 § 2 of the PCC. The main consequence of matrimony conclusion under extraordinary course of events by a minor female means attainment of the aforementioned capacity.

It is generally approved that holding complete capacity enables one to acquire and form individual rights and to assume defined obligations³⁷. The complete capacity scope comprises the performance of all legally permitted acts and deeds including inter alia contract conclusions in current and every day life business such as food product or cosmetics purchases as well as contracts bearing unfrivolous consequences associated with financial obligations as a rule. A major individual who holds complete capacity is a person who acts sensibly within the scope of the consequences of the performed factual deeds and actions all bearing legally binding consequences upon one³⁸.

Considerations regarding constrained and null capacity were purposefully omitted, since these issues do not form objective subject of the study herein.

A minor female's legal circumstances prior to the attainment of the statutory majority age of 18 years

Pregnancy and/or a long-lasting factual relationship, even though they frequently form the reasons for, they are still not obligatory factors to conclude matrimony. What then makes one to take a decision to marry (or not)? What are the consequences of making such a decision?

A minor female until attaining majority (by the process of attainment of the statutory majority age of 18 years or by concluding matrimony) continues to remain under parental authority (Article 92 of the Family and Guardianship Code). Such a woman holds a restrained capacity to undertake legal acts and deeds, therefore she is not entitled parental authority towards her child, and what is more – an administrator to the unborn child shall be appointed (Article 182 of the aforementioned Family and Guardianship

³⁷ E. Gniewek et al., *Kodeks cywilny. Komentarz*, Warszawa 2008, pp. 37–43, 130–133; M. Watrakiewicz, op. cit., p. 503.

³⁸ Ruling dated 3.12.1993 by Supreme Administrative Court....

Code) as well as a protector for the born one (Article 94 of the aforementioned Family and Guardianship Code). (It is most commonly a parent of the minor female who acts as an administrator or a protector to a child³⁹). Since, as it had been stated above, the result of concluding matrimony by a 16-years-old female means attainment of the majority and acquisition of complete capacity to undertake legal acts and deeds, her parents' statutory guardian status ceases⁴⁰, while a minor mother assumes the right to a complete parental authority towards her child.

A female who holds a constrained capacity to undertake legal deeds and acts, shall seek the consent of her statutory guardian to perform such deeds and acts which exceed current daily life business matters. Therefore, without the consent of the statutory guardians, a minor female may not submit a motion for any allowance (such as 'child benefit'). Generally such a resolution causes the statutory guardian of a minor female to assign the benefit not for the purpose of layette yet other purposes such as alcohol⁴¹. A minor mother will not receive any aid from the state. As Labour Ministry admits – "The system of family welfare does not provide any extraordinary kinds of benefits for minor mothers and their progeny"⁴².

The meaning of civil majority goes beyond the problem of the capacity to perform legal acts and deeds, what is clearly stated in Article 114 of the aforementioned Family and Guardianship Code (whereby a minor person may be subjected to adoption for one's own best interest), Article 70 of the aforementioned Family and Guardianship Code (whereby a child after attaining majority may bring an action for denial of paternity of his mother's husband, but no later than within three years after having attained majority), Article 81 of the aforementioned Family and Guardianship Code (whereby after attaining majority, but no later than three years after having attained it, a child may demand to establish ineffectiveness of the recognizing fatherhood, if a holder is not one's father), or Article 173 of the aforementioned PCC (whereby if the owner of real estate, against whom acquisitive prescription has been filed, shall be a minor, the acquisitive prescription may not be completed earlier than two years after the property owner attains such majority)⁴³.

The consequence of matrimony conclusion by a minor female on the grounds of the courts consent means treating her accordingly to the attained capacity to perform legally binding acts and deeds on equal terms to the

³⁹ T. Sokołowski, *Sytuacja prawna małoletniej matki przed urodzeniem dziecka*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1995, no. 3(6).

⁴⁰ J. Ignatowicz, M. Nazar, *op. cit.*, p. 334.

⁴¹ A. Monkos, *Nastolatki rodzą, ich rodzice płacą*, „Dziennik Gazeta Prawna”, A11, 27.04.2010, p. 81.

⁴² *Ibidem*, A11.

⁴³ E. Drozd, *op. cit.*, p. 1109.

majors (i.e. by the virtue of Article 944 of the aforementioned PCC such a person is eligible to make a will⁴⁴). There is no equality between a legal position of a person who attains majority under extraordinary course of events through the process of matrimony conclusion and a person who attains such majority through the attainment of statutory majority age of 18 years. There do exist special regulations which treat the above-mentioned persons in a different manner from attainment of statutory majority age of 18, depending upon the possibility of particular behaviours or acting.

In support of the above-mentioned thesis, the following ought to be considered:

1. Formed in Article 10 of the Family and Guardianship Code, the age barrier, consisting of prohibition to enter into matrimony by a person who has not attained 18 years of age. A female who attains majority by concluding matrimony, maintains it even if marriage has ceased and/or has been annulled (Article 10 § 2 of the Family and Guardianship Code), but before attaining 18 years of age she may not enter into next matrimony without the consent of the Domestic Affairs Tribunal⁴⁵.

2. Article 5 of the Act dated 16th July 1998 Electoral law to commune council, district councils and provincial councils (Journal of Law 2003, no. 159, item 1547), states that voting right (i.e. an active voting right) to a particular council is held by every Polish citizen, who at least on the voting day attained 18 years of age and permanently resides in the council's activity area.

3. Article 2 of the Act dated 27th June 1997 on Political Parties (Journal of Law 2001, no. 79, item 857) – a member of political party shall be a citizen of Republic of Poland who has attained 18 years of age.

4. Article 15 of the Act dated 7th September 1991 on Education System (Journal of Law 2004, no. 79, item 2572) states that education shall be compulsory upon attaining 18 years of age.

5. Article 15 of the Act dated 26th October 1982 on Upbringing in sobriety and alcohol counteraction (Journal of Law 2007, no. 70, item 473) directly forbids selling and serving alcohol beverages to those who have not attained 18 years of age, however in the second point of this article the legislator states the following: in an instance of being in doubt as to whether or not the buyer is major, alcohol beverages seller or server is allowed to request to be presented a document confirming one's majority – this article may be questionable as to what the legislator means by the notion of majority.

6. Article 6 of the Act dated 9th November 1995 on Health protection against the consequences of using tobacco and tobacco related products

⁴⁴ E. Gniewek (ed.), *op. cit.*, p. 1518.

⁴⁵ J. Ignatowicz, M. Nazar, *op. cit.*, p. 103.

(Journal of Law 1996, no. 10, item 55) it is forbidden to sell tobacco products to persons who have not attained 18 years of age; the supplement to this note is point 1a of Article 6, which states that in case of having doubts as to whether or not the buyer is a major the seller is allowed to request to be presented a document confirming majority (therefore a female who has not attained 18 years of age yet has attained majority through the conclusion of matrimony, is not eligible to purchase tobacco or tobacco related products).

7. Article 2 of the Act dated 27th September 1990 on Election of the President of the Republic of Poland (Journal of Law 2000, no. 47, item 544) stipulates that an active participation in general election depends upon attainment of 18 years of age at least upon the day of voting.

8. The statutory provisions dated 20th June 1997 on Road Traffic Law (Journal of Law 2005, no. 108, item 908) in Article 87, 90 and 96 stipulate eligibility to drive vehicles upon attainment of statutory age (i.e. required statutory age for eligibility to obtain driving license of the categories such as A, B, B+, C, C+E, C1 or C1 + E is actually 18 years of age).

9. In conformity to the provisions of Article 36 item 2 of the Act dated 10th April 1974 on Population Records and National Identification, an identity card issued to a person who has not attained 18 years of age, shall remain valid for the duration of 5 years since its date of issue (however in relation to the remainder of the population an identity card shall remain valid for the duration of 10 years).

10. On the grounds of Article 3 of the Act dated 14th March 2003 on National Referendum (Journal of Law 2003, no. 57, item 507) a right to participate in referendum shall be granted to the citizen of Poland if upon the date of voting one has attained 18 years of age.

11. The limit of attaining 18 years of age is also set by the Employment Code (Act dated 26th June 1974, Journal of Law 1998, no. 21, item 94) in Article 22 § 2. An employee may be a person who has attained 18 years of age. On the grounds of the stipulations defined in the 9th section, an employee may be also a person who has not attained 18 years of age, Article 197 § 1. A juvenile employee is obliged to continue education upon attainment of statutory majority age of 18 years.

12. On the grounds of the Article 8 § 2 of the Penal Code (Act date 6th June 1997, Journal of Law 1997, No 90, item 557) during court proceedings a plaintiff who has not attained 18 years of age shall be eligible to a defender.

Regulation quoted above prove that a female who in the course of extraordinary event through conclusion of the matrimony attains majority, on the grounds of some legal regulations due to not having attained statutory maturity age will be treated differently than a major eighteen-year-old. Taking into consideration numerous legal acts binding in Poland, it is not possible to enumerate all such situations.

Conclusions

As a matter of principle it seems to be matterless whether or not attainment of maturity has been caused by the attainment of statutory majority age of 18 years or as a direct consequence of matrimony conclusion. The regulations do not treat both of these methods of attaining maturity variably⁴⁶. In these areas where the legislator uses the term “major” or “maturity” or stipulates the application of law upon attainment of complete capacity to perform legal acts and deeds, the legislator refers the same to a person who has attained 18 years of age and to a minor who has attained majority in the course of extraordinary events.

The legislator does not differentiate between the concept of majority attained in one way or the other yet adequately disperses both subject groups on the grounds of particular legal acts and attainment of statutory majority age of 18 years. It must be stated that a female who attains majority through conclusion of matrimony is not treated on equal terms with a major eighteen-year-old. This introduces certain inconsistency as a result.

Age restriction as well as stipulation of majority upon attainment of 18 years of age is a purposeful act by the legislator. Similarly, setting age limits for performing duties of a member of parliament (attainment of 21 years of age), a senator (attainment of 30 years of age), president (attainment of 35 years of age) is caused by the need to acquire widely understood life experience by these individuals. The prohibition to perform certain activities on the grounds of attainment of certain age (most commonly the age of 18 years) is attributable to generally accepted patterns and views regarding biological and emotional maturity of a human being. In certain circumstance, i.e. consumption of alcoholic beverages and/or tobacco products, a variable treatment of a female, who has attained majority in the course of extraordinary event through conclusion of matrimony upon the consent of Domestic Affairs Tribunal from a major eighteen-year-old is a matter of necessity.

Similar considerations shall be presented according to other Central and Eastern Europe countries, but in this stage it is simply impossible. The Author should know the details and many special acts from nations legislature, what because of lack of translations will need years of studies.

Taking into consideration all of the above, a view may be shared that the significance of regulation of majority attainment in the course of extraordinary events through conclusion of matrimony upon the consent of Domestic Affairs Tribunal is strictly theoretical in nature. The consequences stipulated in the PCC (i.e. majority, complete capacity to perform legal acts and deeds) are subjected to restrictions in statutory provisions and moreover contemporary minors rarely enter into matrimony in practise.

⁴⁶ Sentence from 13.05.1977 Supreme Court, SN, IIICRN326/77, OSNC 1978/2/35.

Streszczenie

Prawne konsekwencje emancypacji przez małżeństwo

Słowa kluczowe: emancypacja, dorosłość, pełnoletność, wiek, małżeństwo.

Wiek jest obiektywną cechą każdego człowieka. Ustawodawca może określić limity wiekowe, które przyznają różne prawa dla osób fizycznych i spowodować, iż będą one zgodne z różnymi zasadami. Np. art. 10 k.c. określa, że pełnoletność jest osiągnięta w wieku 18 lat. Polski ustawodawca przewidział jednak szczególną sytuację kobiety, która osiągnęła wiek 16 lat i wchodzi w związek małżeński za zgodą sądu, stając się w efekcie pełnoletnia przed 18 rokiem życia.

Niniejszy artykuł opisuje motywacje i powody uzyskania pełnoletności w ten sposób. Omawia też konsekwencje prawne w porównaniu z rozwiązaniami stosowanymi w innych krajach. Autorka zastanawia się, czy osoba, która osiąga pełnoletność w wieku 16 lat, ma takie same prawa i obowiązki jak 18-latek. Na zakończenie stwierdza, że regulacja pozwalająca na osiągnięcie pełnoletności poprzez specjalny proces małżeństwa za zgodą sądu jest czysto teoretyczna ze względu na szczegółowe ograniczenia, które sprawiają, że wiele praw uzależnionych jest od osiągnięcia wieku 18 lat.