

Polish Family Law

BY DOMINIK LASOK [A. W. SIJTHOFF, LEYDEN, 1968, p. 314]

This book is Volume 16 in a series issued by the Documentation Office for East European Law of the University of Leyden. For a lawyer brought up in the Common Law, who knows nothing of legal systems based on Roman Law, a comparison with such a system may come as a surprise or a salutary shock. The work under review provides such a comparison in a field which perhaps more than most is susceptible, one would have thought, to the influences of the tenets of moral and political philosophies on which the legal system of a particular State is based.

The work does not pretend to be a textbook or a comparative treatise. Its self-confessed aim is to provide a rudimentary exposition of the salient features of the system of Family Law in the Polish People's Republic.

This aim is too modestly stated. Professor Lasok, now Professor of Law in the University of Exeter, has here provided more than a mere glimpse into one of the countries of Europe, at once typical, yet with its own characteristics in which the philosophy of marxism is superimposed upon a traditional system derived from Western-Latin sources. It is, therefore, only to be expected that marxist ideas have been incorporated into the law of the country. Such well known precepts as the duty to work, for example, is regarded as both a right and an honour. Yet, it is also a duty, the dereliction of which, without excuse, is subject to sanctions. The particular relevance of this principle of course appears strongly when the subject of maintenance is in issue, the courts being far less ready than those in common law countries to take the right of a wife to maintenance for an indefinite period for granted.

The author fully realizes, and indeed sounds a warning to that effect, that a mere study of the legislation is insufficient and can be particularly misleading when it concerns the legal system of one of the "socialist" countries, unless it is complemented by a comparative study in depth of the law in action. Such a study is not within the avowed scope of this work, which is rather to provide a conspectus of a national legal system in one of its specialized aspects. It is much to the learned author's credit that he often goes beyond his modest aims without destroying the basic concept on which the work is based. Whilst detailed discussion of problematical aspects of the law are clearly beyond its scope, the approach throughout is scholarly, in relating the present law both to its own antecedents, and to the corresponding provisions in other systems, giving the reader valuable points of reference as he progresses in his study.

What perhaps most impresses and surprises the western reader is the fact that the Polish system of Family Law exhibits already a large proportion of those features which are being put forward as enlightened innovations by advocates of reform in common law countries. At a time when the United Kingdom is considering a Bill which will have the effect of putting illegitimate children on the same footing legally as legitimate children, we are told that Polish law has eradicated the notion of illegitimacy from the law altogether which knows only one relationship, namely, that of parent and child.

So it is that the chapter dealing with divorce is perhaps the most interesting to an Australian Family Lawyer, who is interested in divorce law reform. And here we find that what is now coming to be regarded and advocated as a new and enlightened approach to divorce is already a well established approach in Polish and indeed Soviet Family Law on which the former is modelled. We are told that this system knows but one comprehensive ground for divorce, namely "the complete and permanent breakdown of the marriage". Under this comprehensive head we find as exemplifications of breakdown many of those same indicia which we have come to regard as either matrimonial offences or indications of breakdown of marriage. In fact we are told that the four principles governing the courts in granting a dissolution are:—

- (1) Equal access to the courts for both spouses, irrespective of their individual responsibility for the breakdown of the marriage.
- (2) A close scrutiny of the matrimonial life and the sources of marital conflict.
- (3) A positive act of mediation on the part of the court.
- (4) A vindication of socialist morality.

Apart from the fourth principle which at first glance sounds strange to western ears we see nothing unusual but rather a marked affinity with our own practices and principles. The first is perhaps more sweepingly stated than we would be inclined to allow, but when the ground of separation comes to mind, this principle must be recognized as being already in operation in our own system.

We are told that the concept of socialist morality imposes certain restrictions but in relation to Family Law, as revealed in this volume, these turn out to be little more than what we would call "public policy", although, of course, the two terms do not cover exactly the same ground. Another important restriction, but again one that we readily recognize, is the effect upon the children of a marriage whose interests are given a dominant position in cases of conflicts of interests.

Whilst public policy in our scheme of things is not perhaps of the over-riding importance that socialist morality has in an eastern European country, it cannot be denied that with the introduction of the ground of separation into Australian divorce law, bearing in mind the restrictions imposed by s. 37 of the *Matrimonial Causes Act 1959*, the dictates of public policy or the public interest as it is termed in that section have certainly assumed a very important role. On the other hand we do not find in the Polish system, and one would not expect

to do so, those relics of the ecclesiastical law with which our law is still afflicted, such as the concepts of condonation, connivance and collusion as absolute bars, or the discretionary bars, notably that of adultery committed by a petitioner. Even so, Polish law recognizes the interest of an innocent spouse as does the common law, and provides that a spouse who was solely responsible for the breakdown of a marriage cannot obtain a decree unless either the innocent party consents, or that party's refusal would in the circumstances be inconsistent with the principles of social co-operation.

Nevertheless we are told that the Polish doctrine of divorce proceeds from the premise that as a matter of public policy the formal bond of a defunct marriage ought to be untied in a legal process—a proposition which could be regarded as a simplified and concise statement of the principle in *Blunt v. Blunt* and *Henderson v. Henderson*.

The book is to be recommended to any student of comparative law who is interested in Family Law as valuable source material as well as for its value as a commentary. The appendix contains a complete translation of the Polish Family and Guardianship Code by Professor Jan Gorecki which should be referred to in conjunction with the main text. There is also a translation of the relevant statute as to the rules of private international law in the Polish legal system. The volume is perhaps too specialized to warrant inclusion in the personal library of every Family Lawyer, but it should certainly be available to anyone working in this area through the medium of academic libraries and other public legal collections.

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