

Court cases regarding same-sex marriages in Poland

1. [Wyrok Wojewódzkiego Sądu Administracyjnego w Gdańsku \(III SA / Gd 835/15\)](#)

[Judgment of the Provincial Administrative Court in Gdańsk of 14 January 2016]

On 18 June 2015, the Civil Registry Office in Gdańsk received an application from K.F. and S.F. (two women) for the transcription of a same-sex marriage certificate issued on January 16, 2015 in a foreign country. The Director of the Civil Registry Office, in the decision of 7 July 2015, had refused to enter a foreign same-sex marriage certificate into the Polish civil registry. The Director of the Civil Registry Office referred to the Law on Civil Registry, which states that the law does not provide persons of the same-sex the possibility of entering into a marriage relationship.

On 22 July 2015, the same-sex partners filled an appeal. [Wojewódzki Sąd Administracyjny w Gdańsku](#), in the judgment of January 14, 2016, rejected the complaint against the decision of the Pomeranian *voivode* regarding the refusal to enter into Polish civil records a certificate issued abroad for a marriage concluded by two women. In this judgment, the Court stressed that in Poland, only the marriage of a woman and man can be registered in the form of a marriage certificate. Otherwise, when a marriage certificate includes persons of the same gender, the transcription is incompatible with the basic principles of the Polish legal system.

The Court noted that the Civil Registry Office must, therefore, transfer the foreign certificates without making any changes to it. The Court also stated that the marriage certificate is an official document based on the Ordinance of the Minister of Internal Affairs and Administration of 29 January 2015. There are only two ways to issue the marriage certificate of the two persons: the first column is marked as “male” and the second is marked as “woman”. In the presented case, a same-sex couple requested to enter a foreign marriage certificate (same-sex marriage) which in fact was incompatible with the legal possibilities of entering both names in the correct column. The circumstances were presented in the judgment of the Supreme Administrative Court of 17 December 2014 (II OSK 1298/13).

2. [Wyrok Wojewódzkiego Sądu Administracyjnego w Gliwicach \(II SA / GL 1157/15\)](#)

[Judgment of the Provincial Administrative Court in Gliwice of 6 April 2016]

and

3. [Wyrok Wojewódzkiego Sądu Administracyjnego w Krakowie \(III SA / Kr 1400/15\)](#)

[Judgment of the Provincial Administrative Court in Krakow of 10 May 2016]

In these judgments, the Courts dismissed complaints against decisions on the refusal to transfer to the civil registry by transcription of birth certificates issued in foreign countries. In both cases, the courts dismissed complaints about the refusal to transfer to the civil registry the birth certificates issued abroad, because the children were entered as a child of same-sex parents (two mothers).

In the first case, the director of the Civil Registry Office refused to enter a birth certificate of R.R.P. issued in London which confirmed that the child had parents of the same sex - two mothers (A.M.P. and E.A.K.). In the second case, the child Z.A. was born in 2014 in London. The child had two mothers, I.Z. and A.B. The parents of the child requested to make a transcription of birth certificate under Polish law. The director of Civil Registry Office refused to make transcription of such marriage because the child had same-sex parents.

In these judgments, the Courts dismissed the complaints against the refusal to transfer to the civil registry by transcription of the birth certificates made abroad. In both cases, the courts found that the transcription of the birth certificates into the Polish register is not possible when child has parents of the same gender (two mothers or two fathers).

4. [Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z dnia 3 listopada 2017 \(IV SA/Wa 1893/17\)](#)

[Judgment of the Provincial Administrative Court in Warsaw of 3 November 2017]

A Polish citizen, B. A., requested the Civil Registry Office in Goszczyna to enter into the Polish register his marriage certificate issued in the United Kingdom. The director of the Civil Registry Office refused to enter the marriage certificate, because the applicant's husband was of the same sex.

The director of the Civil Registry referred to Article 18 of the Constitution, and to art. 1 of the Family and Guardianship Code, which states that a marriage is concluded between a man and a woman. Even more, in the official document (marriage certificate), there are two columns concerning the spouses (one for male and one for female), so there is no place to write the names of the same-sex spouses.

B.A. appealed to the *Wojewoda Mazowiecki*. One of the arguments showed in the case by the applicant was that the Polish legal order can not undermine the legal order of the other State, especially a State with such great democratic traditions as Great-Britain. The arguments of the director of the Civil Registry Office were upheld by the *Wojewoda Mazowiecki*. The Provincial Administrative Court decided that recognizing the same-sex marriage would be contrary to the basic principles of the Polish legal order.

5. [Naczelny Sąd Administracyjny](#)

[Judgment of the Supreme Administrative Court of 28 February 2018]

Naczelny Sąd Administracyjny (the Supreme Administrative Court, February 28, 2018) has accepted the position of the National Public Prosecutor's Office, and dismissed the cassation complaint of two women who married abroad and wanted to have their same-sex marriage recognized under Polish law.

In this case, the Director of the Civil Registry Office refused to register their marital status by way of transcription of the foreign marriage certificate of the two women. The Pomeranian *voivode* upheld the decision of the Director of the Civil Registry Office.

The women appealed to the Provincial Administrative Court in Gdańsk (*Wojewódzki Sąd Administracyjny w Gdańsku*) against the refusal of the Pomeranian *voivode* to enter into the civil

registry the marital status of a same-sex marriage certificate drawn up abroad. The Court decided that the decision issued by the *voivode* is in line with Polish law.

While the case was pending in the Supreme Administrative Court, as a result of a cassation complaint filed by the women, the General Prosecutor issued recommendations in which he reminded all prosecutors that [“refusing to enter in the Polish civil registry documents a marriage certificate drawn up abroad, and concluded by persons of the same-sex, is unacceptable.”](#)

According to the position presented by the National Prosecutor's Office, the Supreme Administrative Court dismissed the cassation appeal of the women ([judgment of the Supreme Administrative Court of 28 February 2018, II OSK 1112/16](#)).

The Supreme Administrative Court unambiguously confirmed the position of the National Public Prosecutor's Office that registering a "marriage" concluded by persons of the same-sex is unacceptable in Poland, although the marriage of same-sex couples is allowed by law in more than a dozen European countries. In consequence, the Supreme Administrative Court dismissed the cassation complaint of two women, who had married outside the country and wanted their same-sex marriage recognised under Polish law. The main argument used by the Court at the ruling was that the Constitution of the Republic of Poland clearly defined “marriage as the union of man and woman” (art. 18).

Michał Zawiślak, 1 March 2018