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# The Participation of the Public Prosecutor in Cases of Judicial Matter of Gender Change

**Abstract:** In Polish civil procedure, a prosecutor may request the initiation of proceedings in any case, as well as participate in any proceedings already underway, if, in his/her discretionary assessment, the protection of the rule of law, citizens' rights or the public interest so requires. In non-property matters within the scope of family law, the prosecutor may file lawsuits only in cases specified in the act. This competence comes from the French model; it is deeply rooted in Polish legal tradition and is consistent with European standards. Prosecutors have reported their participation in proceedings for the judicial determination of gender as being for the purpose of protecting personal data, which has been assessed differently. A revision of the procedure for judicial gender change was brought by the resolution of the Supreme Court of 4 March 2025, which established that such changes will not take place, as before, by way of an action for determination, but in non-contentious proceedings for rectification of the civil status record. However, this does not affect the legitimacy of the prosecutor, because gender determination does not cause changes in family relations and therefore is not a family matter. *De lege ferenda*, it is necessary to postulate comprehensive statutory regulation of the judicial matter of gender change.

**Keywords**: judicial gender change, prosecutor, sexual identification, civil procedure

## Introduction

Prosecutors perform their duties by filing lawsuits in civil cases, submitting applications and participating in court proceedings, among other things (Sejm of Poland, 2016, Article 3(1)(2)). In Polish civil procedure, a prosecutor may participate

in procedural and non-contentious proceedings. In practice, it is generally accepted that, within the scope of these competences, prosecutors participate in all proceedings about gender change and are notified about them by the courts.

For years, proceedings on gender change have been conducted according to a specific construction created by the judiciary: the basis of a claim for determining gender is based on the theory that belonging to a particular gender is a personal right (Bielska-Brodziak et al., 2024, pp. 105–124). A revolutionary change in this respect was brought about by the resolution of the entire Civil Chamber of the Supreme Court of 4 March 2025, which departed from the legal principle adopted by a panel of seven judges of the Supreme Court on 22 June 1989, and resolved that '[a] request to change the gender designation in a birth certificate shall be subject to consideration by the court in non-contentious proceedings, applying by analogy Article 36 of the Law on Civil Status Records' (Sejm of Poland, 2014). Zmiana oznaczenia płci w akcie urodzenia może nastąpić wyłącznie na wniosek osoby, której dotyczy ten akt. Oprócz wnioskodawcy uczestnikiem postępowania może być tylko jego małżonek (art. 510 k.p.c.). Postępowanie uwzględniające wniosek wywołuje skutki od chwili uprawomocnienia się

This resolution, the justification of which has not yet been prepared, has caused understandable fascination due to its social consequences. It should be noted that abstract resolutions have the force of a legal principle (Sejm of Poland, 2017), and statistical data since 1989 show (based on the Supreme Court Rulings Database) that there have been 40 resolutions issued by the entire chamber, four by joint chambers, and four by the full bench of the Supreme Court, which means that the adoption of a resolution by the entire chamber occurs on average every 15 months and is therefore relatively rare. Incidentally, in this case, the applicant himself – the Prosecutor General – requested that this legal issue be resolved by a bench of seven judges (Prosecutor General, 2022), and the Commissioner for Human Rights did not request its extension (Ombudsman, 2023).

However, both the oral justification of the 4 March 2025 resolution and the legal and social reception of it focus on the mode of a proceeding and the participation of an applicant's children in it. Meanwhile, the practice of prosecutors' participation in these cases may also cause a change. In this article, we compare the *status quo ante* (both normatively and practically) with the changes that this resolution will cause in the scope of prosecutors' participation in such proceedings, assessing whether a prosecutor can or must participate in them. We will use the formal-dogmatic and the statistical-descriptive methods.

## 1. The powers of public prosecutors in the field of civil proceedings in general

So-called crown instigators were already established in the 16th century in Poland; they were both prosecutors and exercised non-criminal competences. The competences of the prosecutor's office in the field of civil law were also maintained under the regulation of the president of the Republic of Poland of 6 February 1928, the law on the organization of common courts, and it is still the case today (Zięba-Załucka, 2003, pp. 8–9, 14, 33–34, 39–40). Currently, the National Prosecutor's Office has a Civil and Administrative Division in the Department of Court Proceedings, and regional district prosecutors' offices have non-criminal departments, dealing mainly with civil proceedings. Prosecutors of the National Prosecutor's Office appear before the Supreme Court, regional prosecutors' offices (formerly called appellate prosecutors' offices) appear before appellate courts, prosecutors' offices appear before regional courts, and district prosecutors' offices appear before district courts (Minister of Justice, 2016).

In the Polish Code of Civil Procedure, the word 'prosecutor' appears 105 times, both in general provisions and those regulating separate proceedings (irrelevant to this article). The most important of them is Article 7, which establishes a general principle, according to which a prosecutor may request the initiation of proceedings in any case, as well as participate in any proceedings already underway, if in his/her opinion the protection of the rule of law, citizens' rights or the public interest so requires; in non-property matters within the scope of family law, a prosecutor may file lawsuits only in cases specified in the act, as well as in the provisions of Articles 55–60 of the Code of Civil Procedure, placed in the title called 'Prosecutor'. From the perspective of this article, Article 59, according to which the court notifies the prosecutor of any case in which it considers his/her participation necessary, is significant, as is Article 60, which states in its paragraph 1 that a prosecutor: may join the proceedings at any stage; may not be related to any of the parties; may make statements and submit motions that s/he considers appropriate, and cite facts and evidence to confirm them; and should be served with procedural documents, notifications of dates and sessions, and court decisions from the moment s/he has declared his/her participation in the proceedings. Paragraph 2 states that the prosecutor may appeal any court decision against which an appeal is available; the deadlines for appealing court decisions, established for the parties, are also binding on the prosecutor. This corresponds to the prosecutor's role, which is to safeguard the rule of law.

More regulations in this respect are included in the regulation of the Minister of Justice of 2016 in section XI, on the manner of performing tasks related to the participation of a prosecutor in civil, family, care, and employment and social security cases (paras. 353–366a); these provisions are addressed to prosecutors, not courts. For this article, the following provisions are relevant: the prosecutor independently assesses the premises specified in Article 7 of the Code of Civil Procedure, justifying a request to in-

itiate civil proceedings or to report participation therein; the participation of the prosecutor in the proceedings before the court, in which the parties are provided with legal assistance, may be justified by exceptional circumstances of the case (para. 353, sec. 2).

Moreover, the prosecutor reports participation in a case about which the court has notified him/her, pursuant to Article 59 of the Code of Civil Procedure; failure to report participation in such a case may only occur in exceptional cases (para. 360, sec. 2). Therefore the Regulations, which proclaim, in accordance with the literal wording of Article 7 of the Code of Civil Procedure, that 'the prosecutor independently assesses the premises specified in [this provision]', at the same time contain a catalogue of types of cases in respect of which it states that 'reporting the prosecutor's participation in court proceedings is recommended in particular'. One may have doubts as to whether the provision of para. 360, secs. 1–2, of the Regulations is consistent with Article 7 of the Code of Civil Procedure. However, Wiśniewski (1997, p. 64) claims that this provision does not violate the autonomy of the prosecutor's assessment of the premises of his/her participation in the proceedings.

Based on the annual reports on the activities of the common organizational units of the prosecutor's offices for the last five years (2020–2024), we calculated that the average annual inflow of cases from the 'Ds' repertory (inquiries and investigations) is 1,101,028, while from the 'Pc' repertory (civil proceedings) it is 78,071, so the prosecutor's offices handles 14 times more criminal cases than civil cases. Although the latter are therefore a side activity of the prosecutor's offices (it is obvious that its main scope is prosecuting crimes), it is not marginal. Although intuitively it might seem that most of these cases are proceedings for incapacitation (in which the prosecutor's participation is mandatory, according to Article 546(2) of the Code of Civil Procedure), a comparison of these numbers with statistical data on the number of cases for incapacitation leads to the conclusion that they are only about 10% of civil cases conducted by prosecutors. In other cases, prosecutors participate at their own discretion or upon a request from the court.

## 2. The status quo ante

The catalogue of cases in which a prosecutor is obliged to report his/her participation includes two interesting ones from the perspective of this topic. First are family protection cases (para. 360, sec. 2, item 6). Before the resolution of 4 March 2025, during proceedings for gender change, courts examined whether a minor's well-being was not opposed to taking the claim into account, although this does not refer directly to determining gender; the courts even referred to the fact that the prosecutor did not claim that the minor's well-being could be endangered (Judgment of the Court of Appeal in Łódź, 2017). Considering that this resolution, in point 3, excludes the passive

legitimacy of the participants' children, the courts will most likely not assess the issue of a minor's well-being, although this goes beyond the scope of this article.

The Supreme Court has commented on the participation of prosecutors in civil proceedings in general:

> The prosecutor does not exercise these powers due to being in relations created by substantive civil law with the parties to the dispute heard before a common court. The source of his legitimacy is Article 7, first sentence, of the Code of Civil Procedure, as a provision within the scope of civil procedure, and therefore belonging to the domain of public law. This provision also indicates the grounds for the prosecutor's legitimacy to act as an entity requesting the initiation of proceedings in a civil case or participating in such proceedings. These grounds are: the need to protect the rule of law, citizens' rights or the public interest. These grounds for the prosecutor's procedural legitimacy refer to the tasks assigned to this body in the systemic provisions (Sejm RP, 1985).[1] The prosecutor may implement them in civil proceedings by using those procedural instruments that have been provided for entities that are to benefit from legal protection, according to the principles of its granting by common courts, and therefore by filing documents initiating proceedings (claims, applications), by reporting participation in ongoing proceedings and using the applications provided for by law, admissible due to the state of advancement of the proceedings, and by filing appeals. In certain situations, the legislator specifically regulates the prosecutor's powers to act in civil proceedings (Article 7, second sentence, Article 3985 §2, Article 4242 of the Code of Civil Procedure), but the general basis for determining their scope is Article 7, first sentence, of the Code of Civil Procedure […] The above-mentioned premises of the prosecutor's procedural legitimacy guarantee him an independent procedural position in the proceedings that he initiates or joins. The prosecutor does not have to act on behalf of a specific party in a dispute that requires resolution and does not have to identify with the legal situation that concerns them. His actions are subordinated to the pursuit of concluding the proceedings with a judgment (decision) that meets the standard of the rule of law. (Judgment of the Polish Supreme Court, 2013)

However, the next fragment of this justification is of particular importance for this article:

> The possibility of initiating proceedings by a prosecutor in cases concerning the protection of personal rights, or participating in them, is of course not excluded. In cases concerning a claim corresponding to the one filed by the plaintiff, the participation of a prosecutor is not only permissible, but should even be the rule. Since a person's marital status is subject to detailed public law registration, taking into

1 The provisions of the subsequent Act of 2016 regulated this matter in the same manner.

> account data on their gender, established at the time of expressing their will to enter into a marriage according to the content of the entry in the register, the gender assigned to a person is not indifferent to the state either, which in a specific way perceives the role and tasks of marriages as unions of persons of different sexes. Of course, this does not refer to the state in the sphere of dominion (the State Treasury), because from the point of view of this private law entity, the relations under consideration are of no significance. Since the legislature has not indicated another state body that would guard the rule of law in judgments issued in cases concerning the determination of belonging to a specific gender, these tasks may be performed by prosecutors. (Judgment of the Supreme Court, 2013)

The doctrine claims that after this judgment, the practice of prosecutors participating in gender reassignment proceedings emerged, with the same authors claiming that 'some judges' justify summoning a prosecutor to participate in gender determination proceedings with the alleged mandatory participation of the prosecutor (Adamczewska & Pilch, 2020, p. 38). Perhaps this practice has intensified, but it certainly cannot be claimed that this practice appeared only after this judgment. Empirical research has allowed us to find judgments in cases involving a prosecutor for gender reassignment, the vast majority of which were issued before 6 December 2013, and none have been found in which the prosecutor did not report such participation.

This does not mean, however, that the cited judgment can be ignored. The statement that '[i]n cases concerning a request corresponding to that filed by the plaintiff, the participation of a prosecutor is not only permissible, but should even be the rule' is highly controversial. The claim that the participation of a prosecutor in cases concerning gender determination 'should be the rule' is not only devoid of any normative basis, but is also incompatible with the Polish legal system. Polish civil procedure provides for the participation of a prosecutor in civil proceedings as an exception (see Article 7 of the Code of Civil Procedure) to the principle of participation of persons interested in its outcome. If the legislature wanted to introduce the mandatory participation of a prosecutor in civil proceedings, they would clearly do so. In Polish civil procedure, only in cases concerning incapacitation is the participation of a prosecutor mandatory, which the legislation has expressed: 'The proceedings shall be conducted with the participation of a prosecutor' (Article 546(2) of the Code of Civil Procedure). It also contains a provision stating that the court shall notify the prosecutor of each case in which it considers his/her participation necessary (Article 59 of the Code of Civil Procedure), the literal wording of which indicates that this is to be an exception resulting from the special circumstances of a specific case. When the type of case itself obliges the prosecutor to be notified, the Code, amended many times, expresses this directly (Articles 449(1), 457, 5604(2), 5609(1), 5852, 5981(1) and 115316(a) of the Code of Civil Procedure); the Prosecutor General draws attention to some of these provisions (Prosecutor General, 2022, p. 10), for example in en-

forcement proceedings based on certain judgments of courts of EU Member States, and settlements, official documents and agreements from these countries (Article 115316(a) of the Code of Civil Procedure). Therefore, if the legislature also wanted the courts to notify the prosecutor in all cases about determining gender solely due to their type, they would have done so expressly. Even the cited provision of the Internal Regulations on the functioning of common organizational units of the prosecutor's offices (although addressed to prosecutors, not judges) does not mention cases concerning the judicial determination of gender as those in which the participation of a prosecutor is particularly justified (see para. 360, sec. 2). The statement contained in the judgment of the Supreme Court of 6 December 2013 can therefore be treated only as a *de lege ferenda* postulate, especially since it was provided with a three-sentence, convincing teleological justification.

In the years 2014–2022, 1,804 gender determination claims were filed, of which eight (4%) were finally dismissed (Commissioner for Human Rights, 2023, pp. 3–4). This means that there are an average of 226 such cases per year; even if a prosecutor participated in all of them, they would constitute only 3% of civil cases in which prosecutors participate. The research shows that only once has the Minister of Internal Affairs asked the Prosecutor General to file a complaint to determine the illegality of a judgment determining a gender change (Minister of Internal Affairs and Administration, 2012); as a result, the prosecutor requested the reopening of the proceedings (Judgment of the Court of Appeal in Warsaw, 2012). In other cases, the courts notified the prosecutors about these proceedings or summoned him to participate in them. However, the prosecutor's declaration of his participation in the proceedings did not always mean that he would submit motions, statements or appeals; sometimes it was limited to his physical presence at the hearing.

The position of prosecutors regarding the validity of a claim is diverse, regardless of political conditions (Kuśmirek & Sztandera, 2017, p. 278). For example, prosecutors supported the claims of transgender to determine gender at a time when conservatives such as Andrzej Czuma or Zbigniew Ziobro were Prosecutors General[2]. This is surprising, because prosecutors from district prosecutors' offices participated in these proceedings. The doctrine emphasizes that only the lowest-level prosecutors' offices, i.e. district prosecutors' offices, are exempt from pressure in practice (apart from internal supervision of cases in which temporary detention is applied), while in higher-ranking prosecutors' offices, supervision (internal or external) applies to all cases (Serowaniec & Dorochowicz, 2023, pp. 48–49). However, it also happened that

2 See the Judgment of the District Court in Tarnobrzeg (2009); in this case the prosecutor referred to the case law of the ECtHR allowing legal determination of actual gender. See also the Judgment of the Court of Appeal in Rzeszów (2009), issued as a result of the prosecutor's appeal against the judgment stating the inadmissibility of a judicial gender change; and the Judgment of the District Court in Sieradz (2017), in a case in which the prosecutor supported the claim for determining gender.

the prosecutor opposed taking the claim into account, e.g. arguing that in concrete terms this would result in the creation of a same-sex marriage, which in his opinion was contrary to the legal order (Judgment of the Polish Supreme Court, 2013, Additional Collection 2015 no. B, item 19; the Commissioner for Human Rights (2023) stated similarly). A prosecutor also filed an appeal due to alleged procedural irregularities (Adamczewska & Pilch, 2020, p. 38).

Opponents of prosecutors' participation in cases of gender determination claim that 'their participation in most cases […] is not justified [… and] may prolong the process or, in certain cases, make it more difficult. It usually also makes it more difficult for the transgender person, who fears that the prosecutor's participation may prevent them from obtaining the expected decision' (Adamczewska & Pilch, 2020, p. 38). Indeed, in the Polish legal system, where non-criminal activities constitute a negligible element of the prosecutor's office's activities and there is little public knowledge of them, the appearance of a prosecutor in civil proceedings may raise concerns among the parties. The only way to try to remedy this is to begin the prosecutor's first letter in the case by referring to their duties and position in the proceedings, primarily that s/he is not the applicant's opponent but an advocate of the public interest, which may be reassuring for the parties.

On the other hand, the first argument deserves strong disapproval. Without a doubt, a prosecutor's poor performance of their function – as a result of ignorance or ill will – may indeed cause an unjustified prolongation or obstruction of the trial, which should be remedied by training prosecutors. However, it cannot be claimed that because a prosecutor's participation prolongs or obstructs the trial, it is unnecessary. Since the task of the prosecutor's office is to guard the rule of law, if the rule of law requires that the trial be longer or more difficult for the plaintiff, and a prosecutor duly performs their duties, then their participation in the proceedings is an added value. Proper proceedings are not those in which the request is quickly accepted in a way that is beneficial to its initiator, but those in which justice is served. However, those who justify the participation of prosecutors with the need for them to verify the marital status of the plaintiffs are also wrong, because the court has the possibility of obliging the plaintiff to submit documents and statements, including those regarding his/her marital status (Adamczewska & Pilch, 2020, p. 38).

## 3. Effects of the resolution of 4 March 2025

The resolution of 4 March 2025 is a revolution in proceedings to change gender, and undoubtedly socially beneficial: non-contentious proceedings, as the name suggests, are not adversarial, which corresponds to the nature of gender-change proceedings. In the previous formula they were treated as contentious, although the participants (spouse, children) were rarely actually against the applicant's request, so the

contentiousness of this process was a fiction. However, as the results from the analyses carried out show, it does not change anything regarding the scope of the prosecutor's participation.

In the resolution of 4 March 2025, the Supreme Court ordered the application *per analogiam* of the procedural provision of the Law on Civil Status Records, and regulated how the application may only be filed by the person to whom it relates, and that in addition to the applicant, only his or her spouse may be a participant in the proceedings (which, importantly, is expressly indicated in Article 510 of the Code of Civil Procedure). This means that from a procedural point of view, the Supreme Court has created a certain hybrid. On the one hand, it orders the application *per analogiam* of the provision that begins with the words '[t]he court shall correct the civil status record in non-contentious proceedings, at the request of the interested person, prosecutor or head of the civil status office' (the entire subsequent content of this provision is not suitable for analogous application in the case of a judicial gender change), and therefore the application of non-contentious proceedings as is appropriate for civil status records. On the other hand, it resolves that only the person affected by the act should have active legitimacy, and only the spouse should have passive legitimacy, while directly referring to Article 510 of the Code of Civil Procedure, according to which anyone whose rights are affected by the outcome of the proceedings has an interest in the case. They may participate in each stage of the case until the end of the proceedings in the second instance; if they participate, they become a party and a complaint may be lodged against a refusal to allow them to participate. Therefore the essence of the second and third points of the cited resolution is the indication that the provision is to be applied *per analogiam* only regarding the scope of the procedure, and not to the entities legitimized (this excludes the active legitimacy of the head of the registry office).

Although prima facie it might seem that the possibility of a prosecutor's participation was also excluded, it follows from the direct reference to the provision of the Code of Civil Procedure that the intention of the Supreme Court was not to create law and regulate the participants in the proceedings (legislative activity), but to regulate activity appropriate to abstract resolutions, which, although they have the force of a legal principle, consist of the interpretation of law, not its enactment (they are acts of applying the law).

As mentioned, active legitimacy is granted to a prosecutor by the Act on Civil Status Records, and, *maiori ad minus*, he is all the more entitled to participate in proceedings initiated by another entity. Incidentally, the provisions regulating non-contentious proceedings directly refer to the prosecutors' active legitimacy in them (Article 511(2) of the Code of Civil Procedure). It should be noted that the provisions of the Act on Civil Status Acts do not constitute *lex specialis* in relation to the Code of Civil Procedure, but 'only emphasize the right provided for in Article 7 of the Code of Civil Procedure […] This means that the participation of the prosecutor […] is reg-

ulated by the provisions of the Code of Civil Procedure and is not subject to any restrictions in these acts' (Wiśniewski, 1997, p. 68). Therefore, regardless of whether the Act on Civil Status Acts or – as the third point of the resolution recommends – the Code of Civil Procedure should be applied to the participants of the proceedings, the prosecutor is still entitled to file an application and participate. Although the third point of the resolution directly refers to the Code of Civil Procedure and the second point does not, an interpretation in which the Supreme Court would independently create a legal norm, instead of indicating the appropriate procedure (procedural or non-procedural), is unacceptable; this would result from the wording of the second point of this resolution read in isolation from the detail of the third point.

There is one more issue to consider. When a judicial change of gender took place through a trial, in the case law the parties questioned the legitimacy of the prosecutor, which was not recognized by common courts. The Court of Appeal in Warsaw indicated that, based on the then state of affairs,

> Filing a lawsuit on the basis of Article 189 of the Code of Civil Procedure to determine female gender cannot be classified as a non-property case within the scope of family law. A trial to determine gender (a so-called judicial change of gender) is not a trial to determine marital status, even though the determination of gender may be significant for the existing law on marital status. (Judgment of the Court of Appeal in Warsaw, 2012)

In the same case, the Supreme Court found that

> [i]n Article 7, second sentence, of the Code of Civil Procedure, the legislation limited the prosecutor's authority to file a request to initiate civil proceedings in cases of non-property claims within the scope of family law to the cases specified in the Act (Article 22, Article 86, Article 127 of the Family and Guardianship Code), but this case is undoubtedly not of such a nature. (Judgment of the Polish Supreme Court of 6 December 2013)

Article 7, second sentence, of the Code of Civil Procedure states that in non-property cases within the scope of family law, a prosecutor may file lawsuits only in the cases specified in the Act. Therefore the possibility of the prosecutor participating in the two cited judgments issued in the same case was based on the fact that the proceedings for gender change 'are not proceedings for determining marital status, even though the determination of gender may be significant for the existing civil status law'. While the conclusion about the admissibility of the prosecutor's interference was correct, its justification was flawed.

It has been correctly pointed out in the doctrine that '[f]amily law is a branch of law that deals with the family. Civil status rights […] are the right to be considered a spouse of a specific person, a child of specific parents or a parent of a specific child' (Bieliński & Pannert, 2022, p. 10). While marriage, kinship and affinity fall within the scope of family matters, which are also regulated by some provisions of the Act on

Civil Status Records (Article 63 or Article 76), cases of gender determination do not have any consequences for family relations. After all, the applicant may be single (and most often is; Commissioner for Human Rights, 2023, p. 9) and childless (Jastrzemska, 2015, p. 22). Above all, the existence of such a marriage is a negative premise for a judicial change of gender (Commissioner for Human Rights, p. 9ff; Czech & Sobotko, 2014, p. 111). Transsexuality also does not justify the annulment of a marriage (Article 151(1) of the Family and Guardianship Code) nor the determination of its non-existence (Article 22 of the Family and Guardianship Code; Karakulski & Pyłko, 2017, p. 75).

> Even before the aforementioned resolution was issued, it had been correctly stated that
>
> a court judgment determining the gender of a parent does not constitute a basis for making a tax entry in the child's birth certificate […] nor does it affect the scope of parental rights. The rights and obligations of a child towards its parents and of parents towards the child are the same, regardless of the child's gender and the parent's gender. Therefore issuing a judgment to determine gender does not affect the legal relations between the parent and the child. (Judgment of the Court of Appeal in Łódź, 2017; also see Resolution of the Court of Appeal in Łódź, 2021; Czech & Sobotko, 2014, p. 111)

This will not change after the aforementioned resolution is issued, since it clearly states in point IV that 'a resolution granting an application [for a judicial change of gender] shall have effect from the moment it becomes final'. Therefore in no case will a judicial gender change affect family relations: it will not cause someone to become or cease to be someone's parent, child or spouse.

Although the Law on Civil Status Records is routinely discussed in the doctrine about family law, not all matters regulated by it constitute family matters (Domański, 2023, p. 105). It is indicated that family cases 'on civil status rights include cases on determining the existence and non-existence of marriage; on annulment of marriage; on divorce; on determining paternity and maternity; on denying paternity and maternity; on determining the ineffectiveness of recognition of paternity; on dissolution of adoption' (Bieliński & Pannert, 2022, p. 13). The cited *numerus clausus* clearly refers to those cases within the scope of the Law on Civil Status Records that regulate family matters – 'the right to be considered the spouse of a specific person, the child of specific parents or the parent of a specific child'; determining gender is not one of these. The cited catalogue omits cases for the rectification of civil status records, the procedure for which is to be applied *per analogiam* in cases for judicial gender change.

Determining gender may undoubtedly depend on the consequences in the scope of family law. The very fact that belonging to a given gender affects the possibility of entering into a family relationship (marriage with a person of the same sex, although this is contrary to the European standard; Bagan-Kurluta, 2025) does not mean that

the case is a family case, just as complete incapacitation is not a family case (but a civil case in a broader sense), although it also closes the way to entering into marriage (Article 11(1) of the Family and Guardianship Code). Family cases are only those whose subject is to cause changes in the scope of family relations, and determining gender does not aim to and cannot cause this.

## Conclusions

In Polish civil procedure, a prosecutor may request the initiation of proceedings in any case, as well as participate in any proceedings already underway, if in his/her discretionary assessment it is required for the protection of the rule of law, citizens' rights or the public interest; in non-property matters within the scope of family law, the prosecutor may file lawsuits only in cases specified in the act. This competence comes from the French model; it is deeply rooted in the Polish legal tradition and is consistent with the European standard.

The change in the procedure for judicial gender change was brought about by the resolution of the Supreme Court of 4 March 2025. It established that judicial gender changes will not take place, as before, through determination in a lawsuit, but in non-contentious proceedings to correct a civil status record. However, this does not affect the prosecutor's legitimacy, because it serves him/her under the Law of Civil Status Records and general civil procedure, and the exclusion contained in Article 7(2) of the Code of Civil Procedure does not apply because gender determination does not cause changes in family relations, therefore is not a family matter.

*De lege ferenda*, the simplest solution from the legal point of view should be postulated, which for social reasons the legislature has not undertaken for decades. This would mean introducing comprehensive regulations on the procedure for the judicial determination of gender into the statutory provisions; if the legislature considered it justified, this could satisfy the postulate of the Supreme Court expressed in the judgment of 6 December 2013 on a prosecutor's participation in all proceedings for gender change (which, however, we do not suggest), notifying him/her of these cases or excluding the admissibility of his/her reporting his/her participation in these proceedings.

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