Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

Articles

Studia Iuridica Lublinensia vol. 31, 2, 2022
DOI: 10.17951/sil.2022.31.2.229-244

Agnieszka Targońska
University of Bialystok, Poland
ORCID: 0000-0002-1703-2661
a.targonska@uwb.edu.pl

Legal Evolution of Same-Sex Marriage in Ireland

Ewolucja prawna instytucji małżeństwa osób tej samej płci w Irlandii

ABSTRACT

The legalization of same-sex relationships has always been a controversial subject. Ireland is a good example of such a case, which decided to legalize same-sex marriages following a referendum held in 2015. Conclusions which stem from the Irish experience in this matter can provide valuable lessons for those countries that have not yet legalized one-sex marriages. The subject of this article is an analysis of the path that Ireland has undertaken to legalize same-sex marriages and an indication of current Irish regulations concerning these marriages. The aim is to discuss legal evolution of the institution of same-sex marriages in Ireland and its consequences for the constitutional order and social perception of the Irish citizens. Due to the fact that there is a lack of complex legal research of this subject in Poland, this article constitutes a gap-filling study. The article has a scientific and research character and may constitute a contribution to further legal considerations on the issue of same-sex marriages in the EU states.

Keywords: same-sex relationships; referendum; same-sex marriages

CORRESPONDENCE ADDRESS: Agnieszka Targońska, Master of Administration, University of Bialystok, Faculty of Law, Department of Constitutional Law and Political Systems, Mickiewicza 1, 15-213 Bialystok, Poland.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

INTRODUCTION

Same-sex marriages have always been forced to face numerous obstacles. For a long time, one-sex relationships not only had been forbidden but also many countries penalized them.[1] Difficult situation of those couples proves also the fact that legalization of same-sex marriages has not taken place until the first decade of the 21st century, and only 29 countries in the world legalized same-sex marriage so far.[2]

International law and jurisprudence of the European Court of Human Rights (ECHR) agree that the regulation of the institution of same-sex marriages (which belongs to the competences of each country) needs to respect first and foremost human rights, including prohibition of discrimination on any grounds (i.a., sexual orientation[3]) and the right to respect for private and family life.[4]

Countries which have already introduced same-sex marriages to law present different ways to address the lack of regulations in this matter. Generally, legislative actions in the form of passing specific laws or constitutional amendments have prevailed. In Europe, a standout example is Ireland – a country under a strong influence of the Catholic Church – which (as a first and so far only country in Europe) legalized same-sex marriage following a nationwide referendum in 2015.[5] Four other referendums[6] on this issue have failed resulting in the continued lack of regulation of same-sex marriage.

---

[1] In countries like Afghanistan, Saudi Arabia, Brunei, Iraq, Iran, Yemen, Qatar, Mauretania, Nigeria, Somalia, or the Republic of Sudan, gay relationships are still punished by the death penalty.

[2] Human Rights Campaign, *Marriage Equality Around the World*, https://www.hrc.org/resources/marriage-equality-around-the-world (access: 14.4.2021).

[3] Article 26 of International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

[4] Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4 November 1950 in Rome: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

[5] F. Ryan, *Ireland's Marriage Referendum: A Constitutional Perspective*, 2015, https://mural.maynoothuniversity.ie/8934/1/FR-Ireland-2015.pdf (access: 14.4.2021), p. 1.

[6] Apart from Ireland, referendum considering same-sex marriages has been held in Croatia (2013), Romania (2018), Slovakia (2015), and Slovenia (2012).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

The subject of this article is an analysis of the path that Ireland has undertaken to legalize same-sex marriages. The aim of the paper is to discuss legal evolution of the institution of same-sex marriages in Ireland and its consequences for the constitutional order and social perception of the Irish citizens. This in turn will allow to identify those elements that guaranteed the success of the referendum on the issue of same-sex marriages in Ireland. The list of these elements may serve as a guideline for those countries which definitely face the issue of one-sex marriages in the future (including Poland). Methods used to verify this thesis are primarily the dogmatic-legal and the historical-legal.

The reason why the author has decided to take into consideration the aforementioned topic firstly is the fact that no Polish complex legal study on Irish same-sex marriages issue has been conducted so far. This subject has been researched by a few Polish scholars: E. Kużelewska from the University of Bialystok[7], P. Mazurkiewicz[8] from the Cardinal Stefan Wyszynski University in Warsaw or P. Szukalski[9] from the University of Lodz. They examine the subject by focusing generally on a current, post-referendum situation or basically on the institution of referendum itself. Considerations proposed in this article may fulfil the research about same-sex marriage in Ireland. Secondly, the Republic of Poland remains among six European Union countries which have not legalized any form of same-sex relationships yet.[10] I would like to answer the following question then: Is a referendum really an acceptable way to decide whether to legalize same-sex marriages? There are many systemic similarities which connect Ireland and the Republic of Poland, so Irish experiences in this matter would be a valuable lesson and kind of a signpost for the Polish legislator.

[7] E. Kużelewska, *Same-Sex Marriage – A Happy End Story? The Effectiveness of Referendum on Same-Sex Marriage in Europe*, "Białostockie Studia Prawnicze" 2019, vol. 24(1).

[8] P. Mazurkiewicz, *Czy grozi nam scenariusz irlandzki?*, "Pastores" 2020, vol. 87(2), pp. 53–64.

[9] P. Szukalski, *Rejestrowane związki osób tej samej płci we współczesnej Europie*, "Dysfunkcje Rodziny. Roczniki Socjologii Rodziny" 2011, vol. 21.

[10] Bulgaria, Latvia, Lithuania, Romania, and Slovakia still do not have any provisions for same-sex relationships (civil partnerships or cohabitation). See Your Europe, *Help and advice for EU nationals and their family*, https://europa.eu/youreurope/citizens/family/couple/registered-partners/index_en.html (access: 16.3.2021).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

SAME-SEX MARRIAGES SITUATION PRIOR TO THE 2015 REFERENDUM

Since 1922 when Ireland became an independent country marriage has been considered a Christian[11] union between a man and a woman. Neither the Irish Constitution (1937)[12] nor any legal act have established a definition of marriage. Nevertheless, several judgments of the Irish High Court include some attempts: "the voluntary union for life of one man and one woman to the exclusion of all others"[13] or "marriage as understood by the Constitution, by statute and by case-law refers to the union of a biological man with a biological woman"[14] or "the concept and nature of marriage, was derived from the Christian notion of a partnership based on an irrevocable personal consent given by both spouses which establishes a unique and very special life-long relationship". Generally, the language of the constitution bore the hallmarks of Catholic Church teaching.[15]

Under the Constitution of Ireland and Article 41.1.2 it was an obligation of the Irish State to protect the family "as the necessary basis of social order and as indispensable to the welfare of the Nation and the State". According to Article 41.3.1 "the State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack". Until 1995 there was not any possibility to dissolve lawful matrimony under the Irish Constitution.[16]

Even though the 20th-century Irish legislation did not literally specify a required gender of prospective spouses eligible to marry each other, other regulations penalized relationships of the same-sex couples.[17] Until the 1990s homosexual relationships in Ireland were strictly penalized by the Offences against the Person Act 1861 and the Criminal Law Amendment Act 1885. According to section 61 of the 1861 Act, "whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be kept in penal servitude for life". Section 62 then provided that "whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent

[11] In the 20th century the number of Catholics in Ireland exceeded 90% of Irish citizens, with the highest percentage in 1961 (94,9%). Even nowadays Ireland possesses about 78% Catholics in its society. See Central Statistics Office, *Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion*, https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8rrc (access: 16.3.2021).

[12] Constitution of Ireland, enacted on 1 July 1937, in operation as from 29 December 1937, https://www.gov.ie/en/publication/d5bd8c-constitution-of-ireland (access: 16.3.2021).

[13] *Griffith v Griffith* (1940).

[14] *Foy v Ant Ard Chlaratheoir* (2002).

[15] *Murray v Ireland* (1985), cited after A. O'Sullivan, *Same-Sex Marriage and the Irish Constitution*, "International Journal of Human Rights" 2009, vol. 13(2–3), p. 478.

[16] M. Harding, *Marriage equality: A seismic shift for family law in Ireland*, [in:] *International Survey of Family Law*, ed. B. Atkin, New York 2016, pp. 256–257.

[17] *Ibidem*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

to commit the same, or of any indecent assault upon a male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding ten years". On the other hand, according to the 1885 Act (section 11) "any male person who, in public or in private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour". Interesting is the fact that the State penalized only male homosexual behaviour, there was not any act concerning lesbian relationships.

First groundbreaking change has been initiated by the *Norris v. Ireland* case.[18] Mr. Norris, a lecturer in English at Trinity College, Dublin and a senator, has complained above mentioned Irish legislation. According to Mr. Norris, penalization of same-sex relationships in Irish law constantly interfered with individual's right to respect of private life, which was protected by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR adjudged that Mr. Norris could consider himself as a victim. According to the ECHR's view, although Mr. Norris has not remained in Irish justice's interest (no criminal proceedings have been conducted against the applicant) his conflict with Irish law was inevitable by reason of his homosexual orientation.[19] The ECHR noted that the above-mentioned legislation permanently affected and interfered with the applicant's right to respect for his private life, guaranteed by Article 8 (1) of the Convention. The ECHR remarked also that complained Irish provisions do not meet its purpose. Instead of discouraging the prospective criminal behaviour, Articles 61 and 62 penalized unchangeable behaviours which entirely remain as private matters. The ECHR recognized Mr. Norris as a victim of Irish legislation and decided that the Irish law violated Article 8 of the Convention. The ECHR also decided that Ireland shall pay to the applicant, in respect of legal costs and expenses, the amount of IR£ 14,962.49 less 7,390 French francs to be converted into Irish pounds at the rate applicable on the date of delivery of this judgment.[20]

Several years after this historic verdict, Ireland's legislator has enacted the most important for same-sex couples Criminal Law (Sexual Offences) Act 1993. Since then, one-sex relationships have no longer been penalized in Ireland. Even though those relationships were no more punished, some other problems aroused. More and more European countries at the turn of the 20th and 21st centuries have introduced registered partnerships to their legislation (Denmark – 1989, Netherlands – 1998, Sweden – 1995, Belgium – 1998, France – 1999, Germany – 2001, UK and Spain

[18] *Norris v Ireland* (1988), application no. 10581/83.
[19] *Ibidem*.
[20] *Ibidem*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

– 2005).[21] This tendency forced Irish legislator to fill the gap of recognition of one-sex civil unions and marriages performed in foreign jurisdictions.[22]

In *Zappone & Gilligan v Revenue Commissioners & Ors* case[23], the ECHR faced the following actual state. Two women who were Irish citizens and domiciled in this jurisdiction, lived together as a lesbian couple since their relationship began in 1981. On 13 September 2003, the plaintiffs married each other in Vancouver, British Columbia, Canada where same-sex marriages have been recognized at the time. Then, moved back as a married couple to Ireland. They tried to receive a confirmation from Irish authorities that their marriage is legal and recognized by the Irish Taxes Consolidation Act, so they can benefit from tax profits. In a letter response, the Revenue Commissioners did not approve lesbian marriage' proposal.[24] Women were treated like a cohabiting couple for tax purposes. Having received the Revenue Commissioners' response, Katherine Zappone and Ann Louise Gilligan applied for judicial review of the High Court. In their pleadings, Zappone and Gilligan highlighted that apart from being excluded from numerous financial benefits of the Tax Code, they were also discriminated as a married lesbian couple. They stated that authorities wrongfully defined marriage because there was no definition of marriage in the Irish Tax Law. What is more, Zappone and Gilligan stated that the Revenue Commissioners acted in breach of the constitutional rights of the plaintiffs under Articles 40 and 41 of the Constitution, as well as on the grounds of their sexual identity in breach of Article 14 of the Convention and have violated their right to respect for their private and family life and their right to marry under Articles 8 and 12 of the Convention.[25]

The Irish High Court's verdict did not agree with plaintiffs. The Irish High Court stated that the institution of marriage was described within the Constitution as traditional marriage (confirmed to persons of the opposite sex). The High Court highlighted also that it was not his competence to change or redefine the constitu-

[21] P. Festy, *Legal Recognition of Same-Sex Couples in Europe*, https://www.cairn-int.info/article-E_POPU_604_0493--legal-recognition-of-same-sex-couples-in.htm# (access: 16.3.2021).

[22] Y. Murphy, *The Marriage Equality Referendum 2015*, "Irish Political Studies" 2016, vol. 31(2), p. 317.

[23] 2004, No. 19616 P.

[24] According to the Revenue Commissioners: "Section 1017 TCA 1997 provides for a husband being assessed on his and his wife's total income. Section 1019 provides for a wife being assessed on her and her husband's total income. The Taxes Act do not define husband or wife. The *Oxford English Dictionary* offers the following: Husband – a married man, especially in relation to his wife. Wife – a married woman, especially in relation to her husband. Revenues interpretation of tax law is that the provisions relating to married couples relate only to a husband and a wife" (The High Court [2004 No. 19616 P.], *Between Katherine Zappone and Ann Louise Gilligan Plaintiffs and Revenue Commissioners, Ireland and the Attorney General Defendants and the Human Rights Commission Notice Party*, https://fdelondras.files.wordpress.com/2015/09/zapp_me.pdf, access: 16.3.2021).

[25] *Ibidem*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

tional definition of marriage.[26] Apart from the fact that the High Court verdict has been widely evaluated by the public opinion as incoherent with the rest of the Irish constitutional jurisprudence on the right to marry, it has provoked a vivid public debate about the situation of same-sex couples.[27]

The public pressure following the High Court decision forced Parliament to create a regulation concerning the situation of one-sex couples. The project of an act considering those relationships was created by Independent Senator David Norris and Labour Party Deputy Brendan Howlin. Then, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (hereinafter: Civil Partnership Act 2010) was passed by the Oireachtas (Parliament) in July 2010, and then President of Ireland Mary McAleese signed the Bill into law on 19 July 2010.[28]

The Civil Partnership Act 2010 for the first time in history introduced a statutory institution of civil partnership and it provided legal protection for cohabiting couples. Even though the Civil Partnership Act 2010 guaranteed some entitlements as married couples possess (e.g., remain in a shared home regardless of legal ownership, the right to challenge partner's will and the same level of protection from domestic violence as that granted to spouses), it still defined same-sex relationships as cohabitating couples (partnerships), not marriages.[29] Other differences were that civil partnership could have been started exclusively in a civil ceremony and possible options for nullity were much more limited than for marriage. The procedure for dissolution of a civil partnership was comparable to that for divorce but formalities were less demanding. The Civil Partnership Act 2010, according to Ms. Zappone, did not change the segregationist and discriminative treatment of same-sex couples.[30]

However, numerous entitlements civil partnerships acquired,[31] regulations such as larger catalogue of eligible individuals, easiness of dissolution of civil partnerships or much difficulty with annulment of civil partnerships have shown that civil partnerships were still treated as second-class partnerships.[32] The evident discrimination of civil partnerships was the most visible in adoption and guardianship over children. When opposite-sex (biological) parents were eligible to exercise guardianship or have custody and access rights over their children and they were eligible to jointly adopt a child, civil partners could have adopted only as individuals.[33]

---

[26] *Ibidem*.

[27] K. Zappone, *In pursuit of marriage equality in Ireland: A narrative and theoretical reflection*, "The Equal Rights Review" 2013, vol. 10, p. 116.

[28] Y. Murphy, *op. cit.*, p. 318.

[29] M. Harding, *op. cit.*, p. 259.

[30] K. Zappone, *op. cit.*, p. 116.

[31] D. McGowan, *Governed by Marriage Law: An Irish Genealogy*, "Social & Legal Studies" 2016, vol. 25(3), p. 326.

[32] F. Ryan, *op. cit.*, p. 9.

[33] M. Harding, *op. cit.*, p. 261.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

The Civil Partnership Act 2010 was again widely criticized mainly because of its discriminative character and numerous legal lacks. Because of the fact that Irish one-sex civil partnership legislation left much to be desired, more and more opinions were appearing that Ireland needs a general referendum on same-sex marriages. The institution of referendum has been especially comfortable for governing parties which feared political repercussions in case the Supreme Court rejects the proposition of a bill. That is why the government opted for the referendum route.[34]

According to the 1937 Constitution of Ireland, referendum is conducted in two circumstances: when it comes to the amendment of the Constitution (Article 46.2) and rejective referendum on ordinary legislation (Article 27). Amendment of a certain article of the Constitution requires a two-stage process. At first, the Parliament (two houses jointly) must give its consent to put a proposal under the general voting in referendum. Then, the people must vote in favour of certain change to promulgate the change. The simple majority of voters in favour of one of the referendum options decides.

On the other hand, the rejective referendum is conducted in a situation when the majority of Seanad and at least a one-third of the members of the Dáil jointly will ask the President to decline to sign and promulgate as a law any bill when the Bill contains a proposal of a national importance. The aim of this procedure is to ascertain the will of the nation before promulgation the law. If the President decides that a Bill contains a solution of such national significance and the will of the people ought to be verified, he will inform the Taoiseach (Prime Minister) and the Chairman of each House of the Oireachtas (the Parliament of Ireland) that he will decline to sign and promulgate such Bill as a law unless the proposal will be approved either by the people at a Referendum in accordance with the provisions of section 2 of Article 47 of this Constitution within a period of 18 months from the date of the President's decision, or by a resolution of Dáil Éireann passed within the said period after a dissolution and re-assembly of Dáil Éireann.[35]

Two years after the entrance into force of the Civil Partnership Act 2010 the Irish Parliament summoned a convention on the Constitution to discuss and propose an amendment to the Constitution on same-sex marriages.[36] In January 2015, the 34th Amendment of the Constitution (Marriage Equality) Bill 2015 has been proposed by Justice Minister Frances Fitzgerald and it said: "Marriage may be contracted in accordance with law by two persons without distinction as to their sex".[37]

---

[34] J.A. Elkink, D.M. Farrell, T. Reidy, J. Suiter, *Understanding the 2015 Marriage Referendum in Ireland: Context, Campaign, and Conservative Ireland*, "Irish Political Studies" 2016, vol. 32(3), p. 4.

[35] Constitution of Ireland with amending Acts, http://www.irishstatutebook.ie/eli/cons/en#part1 (access: 23.03.2021).

[36] M. Harding, *op. cit.*, pp. 262–263.

[37] Y. Murphy, *op. cit.*, p. 319.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

PUBLIC OPINION ON SAME-SEX MARRIAGES

The pre-referendum campaign was divided into two camps: the "Yes campaign" and the "No campaign". The "Yes campaign" has been conducted by an umbrella group called the Yes Equality. They have been supported by a large group of citizens and majority of political parties represented in the Dáil. It is said that the effectiveness of the "Yes campaign" stemmed from a great organization and concrete purpose – to show as many citizens as possible that they advocate for equality for all couples. The key argument in the "Yes campaign" was to fight with discrimination against one-sex marriage and individual freedom. A great number of celebrities also contributed to the success of the "Yes campaign" as well.[38]

On the other hand, the "No campaign" organized by conservative Catholic groups and Catholic Church, presented only religious and moral objections to homosexuality. The "No" campaigners as an argument against same-sex marriages posed the welfare of children who, according to them, needs a traditional family patterns, with both a mother and a father, to proper child development. What is more, the "No campaign" supporters were convincing that legalization of same-sex marriages will result in further legalization of surrogacy and polygamy, which destroys social values. In extreme examples, they claimed that same-sex marriages will evolve paedophilia cases.[39] According to the observers, the "No campaign" played rather insignificant role that it was in the previous campaigns. Their campaign was almost invisible to citizens, situated in insignificant places such as YouTube advertisements or the airwaves. Their arguments were considered unrelated to the main matter of the referendum.[40]

Even though the "Yes campaign" won, members of the "No campaign" continued to criticize the referendum. They claimed that the construction of the referendum question was misleading and might cause the impression of deciding about the gender roles within heterosexual marriage, no same-sex one. Among other arguments criticizing the referendum was the insufficient number of resources for the "Yes campaign" and the erroneous assumption that the majority of voters decide, not the majority of those registered for the referendum.[41]

---

[38] G. Healy, B. Sheehan, N. Whelan, *How the Yes was won: the inside story of the marriage referendum*, 6.11.2015, https://www.irishtimes.com/life-and-style/people/how-the-yes-was-won-the-inside-story-of-the-marriage-referendum-1.2418302 (access: 16.3.2021).

[39] As E. Kużelewska and M. Michalczuk-Wlizło state, this is a typical argument of opponents of legalizing same-sex marriages in countries with high influence of the Catholic Church based on stereotypes. See, E. Kużelewska, M. Michalczuk-Wlizło, *Same-sex marriage and the catholic church in Europe: Any chance for understanding?*, "Studies in Logic, Grammar and Rhetoric" 2021, vol. 66(79), p. 268.

[40] J.A. Elkink, D.M. Farrell, T. Reidy, J. Suiter, *op. cit.*, p. 5.

[41] M. Harding, *op. cit.*, p. 264-265.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

The tactic of especially the "Yes campaign" has given marvellous results. During 2015 referendum the highest number of voters has taken part in voting – the turnout exceeded 60.5%, and a majority of 62% voted in favour of the proposal.[42] It is estimated that average turnout at referendums in Ireland was just over 50%. Ireland was the first European country to accept same-sex marriages via referendum.[43]

The 2019 Eurobarometer on Discrimination report shows that majority of Irish society (83%) believes that gay, lesbian and bisexual people should have the same rights as heterosexuals. Moreover, 79% of Irish citizens agreed also that same-sex marriages should be allowed throughout Europe. Ireland possesses the tenth highest rate of support gay marriages among the 28 EU Member States.[44]

POST-REFERENDUM REALITY

Current situation concerning same-sex marriages is regulated by Constitution of Ireland with the Marriage Equality amendment (the result of the 2015 referendum) – the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the Civil Registration Act 2004, the Marriage Act 2015 and the Family Law (Divorce) Act 1996.

Thirty-fourth Amendment of the Constitution (Marriage Equality Act 2015) changed the definition of marriage in the Irish Constitution and removed obstacles for same-sex marriages in the law but it did not change drastically the Constitution. To the original Article 41 was extended by adding an additional subsection "Marriage may be contracted in accordance with law by two persons without distinction as to their sex". More specific provisions concerning marriages the Constitution leaves for statute and case-law. Thirty-fourth Amendment did not abolish civil partnerships but thanks to its provisions civil partners may marry each other any time.[45]

Under section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, civil partnership to which same-sex marriages are entitled to, appears when the relationship is exclusive in nature, the relationship is permanent and has been officially registered. The procedure of registration of the civil partnership is identical to the registration of the marriage which has been charac-

[42] J. Elkink, D. Farrell, J. Suiter, T. Reidy, *Young people voted in droves for marriage equality in Ireland. Equality would have won without them*, 30.1.2015, https://www.washingtonpost.com/news/monkey-cage/wp/2015/06/30/young-people-voted-in-droves-for-marriage-equality-in-ireland-equality-would-have-won-without-them (access: 16.3.2021).

[43] E. Kużelewska, *op. cit.*, p. 22.

[44] European Commission, *Eurobarometer on Discrimination 2019: The social acceptance of LGBTI people in the EU*, 23.9.2019, https://ec.europa.eu/info/sites/info/files/ebs_493_data_fact_lgbti_eu_en-1.pdf (access: 16.3.2021).

[45] F. Ryan, *op. cit.*, p. 18.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

terized below. The Civil Partnership Act 2010 possesses two ways of ending civil partnership: nullity and dissolution of civil partnership. The court may grant nullity of the civil partnership when at least one of the reasons enlisted in section 107 of the Civil Partnership Act 2010 occurred (e.g., either or both of the parties lacked the capacity to become the civil partner of the other for any reason, the parties were within the prohibited degrees of relationship or the parties were not of the same sex). In case the court grants a decree of nullity, the civil partnership is declared not to have existed (section 108 of the Civil Partnership Act 2010).

On the other hand, the dissolution of civil partnership is declared by the court when civil partners have lived apart from one another for a period of or periods amounting to at least two years during the previous three years and provision that the court considers proper, having regard to the circumstances, exists or will be made for the civil partners (section 110 of the Civil Partnership Act 2010). Under section 113 of the Civil Partnership Act 2010, when the court grants a decree of dissolution, the civil partnership is thereby dissolved and either civil partner may register in a new civil partnership or marry. According to the Marriage Act 2015, which amends the Civil Partnership Act 2010, there is one more possibility to dissolve the civil partnership, which is dissolution of civil partnership on marriage. The Marriage Act 2015 adding a section 109a which states: "Notwithstanding any provision of this Part, a civil partnership subsisting between two persons immediately before their marriage to each other shall stand dissolved on and from the date of that marriage".

To make marriage legally valid in Ireland prospective spouses must meet certain requirements. Under section 46 of Civil Registration Act 2004, future spouses (both) need to inform (in person) a registrar about their intention to marry not less than three months prior to the date on which the marriage is to be solemnised, unless they have already received a court order granting the exemption from the above-mentioned obligation. Not less than five days before the established date of the ceremony, prospective spouses are required to attend registrar to sign a declaration in his or her presence that there is no obstacle to get married. A marriage may only be solemnised in front of a registered solemniser, when both prospective parties and their witnesses are present and are at least 18 years old, the place where the wedding takes place is open to the public and he or she is satisfied that the parties to the marriage understand the nature of the marriage ceremony (section 51 of Civil Registration Act 2004).

The wedding ceremony must be conducted by registered solemniser: either civil celebrants (employees of a state), religious celebrants (representative of a certain religious body) or secular celebrants (representative of a secular, ethical and humanist organization). Religious celebrants are not obliged, under Article 7 of Marriage Act 2015, to conduct a ceremony for same-sex marriage (which has not been accepted by certain religious association) but they are not excluded from such an opportunity.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

Thirty-fourth Amendment of the Constitution brought a major change to the Irish marriage legislation because apart from that same-sex couples are eligible to legally marry in Ireland, they are considered family now. All families under Article 41 of the Constitution of Ireland benefits from the constitutional protection. What is more, since 2015 every legal act discriminating same-sex marriages is unconstitutional as well. Same-sex marriages are now eligible to enjoy same benefits as traditional marriages (in tax law, property law, maintenance, etc.). Thirty-fourth Amendment has allowed to regulate also relationships between children and their non-biologically related same-sex parent. According to Children and Family Relationships Act 2015 both members of a same-sex couples are now both legal parents and can jointly adopt a baby. What is more, those children adopted by same-sex couples will be considered marital children.

Marriage in Ireland may be legally end in three ways: by nullity, by judicial separation or by divorce.

Nullity declared by the court means that the marriage was invalid from the start so it has never existed.[46]

Judicial separation, on the other hand, does not end the marriage. The decree of judicial separation certifies only that spouses do not have to share the same household as a married couple. It may also contain regulations concerning children custody, the transfer of property, the extinguishment of succession rights, etc.[47]

Divorce law regulations are more onerous in comparison to the dissolution of civil partnership ones.[48] Under section 41.2 of the Constitution of Ireland, a Court designated by law may grant a dissolution of marriage only where, it is satisfied that: there is no reasonable prospect of a reconciliation between the spouses, such provision as the Court considers proper, having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and any further conditions prescribed by law are complied with. If spouses have lived separately for a period of at least four years during the previous five years, it is unlikely that spouses will reconcile, and such provision as the court considers proper having regard to the circumstances exists or will be made for the spouses and any dependent members of the family, the court may grant a decree of divorce in respect of the marriage concerned (section 5 of the Family Law [Divorce] Act 1996). Divorce allows to re-marry (section 10 of the Family Law [Divorce] Act 1996).

[46] Citizens Information, *Nullity of marriage*, https://www.citizensinformation.ie/en/birth_family_relationships/civil_annulment/nullity_of_marriage.html (access: 30.03.2021).

[47] Citizens Information, *Judicial separation*, https://www.citizensinformation.ie/en/birth_family_relationships/separation_and_divorce/judicial_separation.html (access: 30.03.2021).

[48] M. Harding, *op. cit.*, pp. 271–272.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

CONCLUSIONS

Having analyzed the evolution of same-sex marriages in Ireland, it is necessary to confirm that the legalization of one-sex marriages was a relatively long process (27 years have gone by from the *Norris v. Ireland* case to the legalization of same--sex marriage). It was definitely not an easy-peasy. Mainly, it was due to the fact that the Catholic Church still has a strong influence in Ireland and has openly expressed its opposition to the referendum.

Irish experiences in the matter of legalization of same-sex marriages constitute a very valuable and important lesson especially for Poland which do not possesses any regulations concerning this topic. What is more, similarly to Ireland, should Poland decide to legalize same-sex marriages it also requires to amend the Constitution.

The element that in my opinion immensely contributed to the successful outcome of the referendum for the supporters of the legalization of one-sex marriages in Ireland was the joint participation of direct and representative democracy in decision-making process. The order in which the two forms of democracy worked is also important. As in the case of Ireland, the Parliament was first engaged in drafting an amendment to the Constitution. The work carried out in the Parliament for about three years definitely clarified many doubts and then made it easier for the citizens to make a decision at the ballot box. Only then was the proposal to amend the Constitution submitted to a national referendum. The result of the 2015 Irish referendum was certainly also influenced by the fact that the topic of same-sex relationships had been the subject of extensive public debate for a long time.

In conclusion, the example of Ireland on the issue of legalizing same-sex marriage allows to formulate the following conclusion: the institution of referendum is a suitable way of discussing the subject of same-sex marriage, but it requires the support of the institutions of representative democracy. The institution of referendum can not be use only as an exception[49] but as a regular part of the legislative process. Otherwise, the multitude of ambiguities surrounding the referendum' topic will cause its failure and antagonize the society.

[49] As M. Rachwał stated, the institution of the referendum in modern democracies is rarely used. See M. Rachwał, *Referendum on abortion in Poland: Submitted proposals and main topics of the debate*, "Białostockie Studia Prawnicze" 2019, vol. 24(1), p. 58.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

REFERENCES

Literature

Elkink J.A., Farrell D.M., Reidy T., Suiter J., *Understanding the 2015 Marriage Referendum in Ireland: Context, Campaign, and Conservative Ireland*, "Irish Political Studies" 2016, vol. 32(3), **DOI: http://dx.doi.org/10.1080/07907184.2016.1197209**.

Harding M., *Marriage equality: A seismic shift for family law in Ireland*, [in:] *International Survey of Family Law*, ed. B. Atkin, New York 2016.

Kużelewska E., *Same-Sex Marriage – A Happy End Story? The Effectiveness of Referendum on Same-Sex Marriage in Europe*, "Białostockie Studia Prawnicze" 2019, vol. 24(1), **DOI: http://dx.doi.org/10.15290/bsp.2019.24.01.01**.

Kużelewska E., Michalczuk-Wlizło M., *Same-sex marriage and the catholic church in Europe: Any chance for understanding?*, "Studies in Logic, Grammar and Rhetoric" 2021, vol. 66(79), **DOI: http://dx.doi.org/10.2478/slgr-2021-0015**.

Mazurkiewicz P., *Czy grozi nam scenariusz irlandzki?*, "Pastores" 2020, vol. 87(2).

McGowan D., *Governed by Marriage Law: An Irish Genealogy*, "Social & Legal Studies" 2016, vol. 25(3), **DOI: https://doi.org/10.1177/0964663915614110.**

Murphy Y., *The Marriage Equality Referendum 2015*, "Irish Political Studies" 2016, vol. 31(2), **DOI: https://doi.org/10.1080/07907184.2016.1158162**.

O'Sullivan A., *Same-Sex Marriage and the Irish Constitution*, "International Journal of Human Rights" 2009, vol. 13(2–3), **DOI: https://doi.org/10.1080/13642980902758242**.

Rachwał M., *Referendum on abortion in Poland: Submitted proposals and main topics of the debate*, "Białostockie Studia Prawnicze" 2019, vol. 24(1), **DOI: https://doi.org/10.15290/bsp.2019.24.01.04**.

Szukalski P., *Rejestrowane związki osób tej samej płci we współczesnej Europie*, "Dysfunkcje Rodziny. Roczniki Socjologii Rodziny" 2011, vol. 21.

Zappone K., *In pursuit of marriage equality in Ireland: A narrative and theoretical reflection*, "The Equal Rights Review" 2013, vol. 10.

Online sources

Central Statistics Office, *Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion*, https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8rrc (access: 16.3.2021).

Citizens Information, *Judicial separation*, https://www.citizensinformation.ie/en/birth_family_relationships/separation_and_divorce/judicial_separation.html (access: 30.03.2021).

Citizens Information, *Nullity of marriage*, https://www.citizensinformation.ie/en/birth_family_relationships/civil_annulment/nullity_of_marriage.html (access: 30.03.2021).

Elkink J., Farrell D., Suiter J., Reidy T., *Young people voted in droves for marriage equality in Ireland. Equality would have won without them*, 30.1.2015, https://www.washingtonpost.com/news/monkey-cage/wp/2015/06/30/young-people-voted-in-droves-for-marriage-equality-in-ireland-equality-would-have-won-without-them (access: 16.3.2021).

European Commission, *Eurobarometer on Discrimination 2019: The social acceptance of LGBTI people in the EU*, 23.9.2019, https://ec.europa.eu/info/sites/info/files/ebs_493_data_fact_lgbti_eu_en-1.pdf (access: 16.3.2021).

Festy P., *Legal Recognition of Same-Sex Couples in Europe*, https://www.cairn-int.info/article-E_POPU_604_0493--legal-recognition-of-same-sex-couples-in.htm# (access: 16.3.2021).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

Healy G., Sheehan B., Whelan N., *How the Yes was won: the inside story of the marriage referendum*, 6.11.2015, https://www.irishtimes.com/life-and-style/people/how-the-yes-was-won-the-inside-story-of-the-marriage-referendum-1.2418302 (access: 16.3.2021).

Human Rights Campaign, *Marriage Equality Around the World*, https://www.hrc.org/resources/marriage-equality-around-the-world (access: 14.4.2021).

Ryan F., *Ireland's Marriage Referendum: A Constitutional Perspective*, 2015, https://mural.maynooth university.ie/8934/1/FR-Ireland-2015.pdf (access: 14.4.2021).

The High Court [2004 No. 19616 P.], *Between Katherine Zappone and Ann Louise Gilligan Plaintiffs and Revenue Commissioners, Ireland and the Attorney General Defendants and the Human Rights Commission Notice Party*, https://fdelondras.files.wordpress.com/2015/09/zapp_me.pdf (access: 16.3.2021).

Your Europe, *Help and advice for EU nationals and their family*, https://europa.eu/youreurope/citizens/family/couple/registered-partners/index_en.html (access: 16.3.2021).

Legal acts

1937 Constitution of Ireland with the Marriage Equality amendment.

Civil Registration Act 2004.

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Constitution of Ireland.

Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4 November 1950 in Rome.

Criminal Law Amendment Act 1885.

Family Law (Divorce) Act 1996.

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 23 March 1976.

Marriage Act 2015.

Offences against the Person Act 1861.

Case law

Foy v Ant Ard Chlaratheoir (2002).

Griffith v Griffith (1940).

Murray v Ireland (1985).

Norris v Ireland (1988), application no. 10581/83.

Zappone & Gilligan v Revenue Commissioners & Ors (2004, No. 19616 P.).

ABSTRAKT

Kwestia związków jednopłciowych od zawsze budzi wiele kontrowersji. Nie inaczej było w przypadku Irlandii, która na legalizację małżeństw jednopłciowych zdecydowała się w następstwie referendum przeprowadzonego w 2015 r. Wnioski płynące z irlandzkich doświadczeń w kwestii zalegalizowania małżeństw tej samej płci mogą stanowić cenną lekcję dla tych państw, które jeszcze tego nie dokonały. Przedmiotem niniejszego artykułu jest analiza ścieżki, jaką przebyła Irlandia w celu zalegalizowania małżeństw jednopłciowych oraz wskazanie aktualnych uregulowań prawnych dotyczących małżeństw osób tej samej płci. Celem jest omówienie ewolucji prawnej instytucji małżeństw

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 19/11/2026 06:32:05

osób tej samej płci w Irlandii oraz skutków, jakie wywarła ona w porządku konstytucyjnym i odbiorze społecznym obywateli Irlandii. Z uwagi na to, że w polskich zbiorach brakuje kompleksowych badań prawnych nad tym tematem, opracowanie stanowi wypełnienie tej luki. Niniejszy artykuł ma charakter naukowo-badawczy i może stanowić przyczynek do dalszych rozważań prawnych nad kwestią małżeństw jednopłciowych w krajach Unii Europejskiej.

Słowa kluczowe: związki jednopłciowe; referendum; małżeństwa jednopłciowe

UMCS