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## FINANCIAL ASPECTS IN CASES OF NULLITY OF MARRIAGE

Financial aspects of human life are important not only in the secular community, but also in the ecclesiastical community. This is evidenced by both scientific conferences on the financial aspects of life in the Church<sup>1</sup> as well as publications devoted to these issues.<sup>2</sup> For those who know the teaching of the Catholic Church and its legal norms, it is known that the Church's legal norms protect not only the rights of the Church as an institution, but also human rights in the Church, that is, the rights of the faithful. But some who still succumb to the anti-law ideology of the 1960s, which also rejected the right of the Catholic Church to operate in the public sphere,<sup>3</sup> do not know that the rights of the faithful are protected not only in the doctrinal or social aspect, but also in the canonical legal order. The Church also protects human rights in the financial aspect, both through the norms contained in canonical substantive law and in procedural law.

It is worth returning to the topic of some economic aspects of canon law. One should ask what norms in canon law protect man in financial terms; in everyday life as well as in conducting legal proceedings. What are these standards and what is their meaning?

In order to answer the posed questions, the article will examine the following issues: 1) basic regulations of economic matters in the Church; 2)

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<sup>1</sup> For example, there are conferences on November 12-14, 1992 in Płock and two at UWM in Olsztyn: June 1, 2007 and February 19, 2015.

<sup>2</sup> The most important are: Seweryniak 1993; Sobczyk and Warchałowski 2013; Sztuchmiler 2013, 293-301; Walencik 2008; Idem 2013.

<sup>3</sup> *Czy Kościół przetrwa w demokracji (cz. 2). Relacja z debaty 28 lutego 2019 w Ośrodku Badań Naukowych w Olsztynie*, "Debata. Miesięcznik regionalny", no. 4 (139) 2019, p. 9-12, especially p. 9.

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financial-related regulations in general canonical procedural law; 3) costs directly related to cases concerning the declaration of nullity of marriage.

### **1. Basic regulations of economic matters in the Church**

The need to regulate economic matters in the Church results from two sources: a) The Church is not only an institution of God, but also a human and social one, so it also needs a framework of social action, including determining the economic conditions for the activity of Church institutions and individual faithful; b) this is also explicitly required by the 1983 Code of Canon Law<sup>4</sup> and other ecclesiastical documents, which will be considered later in the article. The ecclesiastical legislator, taking into account human weakness, but also showing him trust, issued general norms regarding the financial aspects of life in the Church.

The Church in Poland does not have a uniform model of financing its activity. Different dioceses have different solutions. They also affect the economic situation of the faithful, especially during important life events. If one were tempted to adopt general solutions for the whole country, one could refer to regulations in this area in other countries, e.g. to regulations in Italy or Germany, which are known and described [Boniecki 1993a, 83-90; Idem 1993b, 91-96]. In the countries of the former socialist bloc, appropriate solutions began to be proposed and developed after the political breakthrough in 1989-1990. Models from selected western countries were often proposed, but some smaller countries also draw on models developed in Poland.

To begin with a minimal idea of the scope of financial regulations in the Church related to human rights, only some of the regulations contained in the CIC/83, in the law on the People of God (on the rights of the faithful and the functioning of the structures of the Church) will be mentioned, which formally do not belong to the procedural law, but they determine norms important in procedural law:

1) Among the norms determining the rights of all the faithful in the Church, the norm securing funds for the Church's activities is important. In

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<sup>4</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [henceforth cited as: CIC/83].

can. 222 it was decided: “The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity [...]. They are also obliged [...] to assist the poor from their own resources.” And helping those in need also means helping to determine the status of the faithful in the Church, including procedural assistance.

2) The diocesan bishop is responsible for the efficient functioning of the diocese, including the functioning of the seminary and for the implementation of the rights of the faithful (can. 263-264). He is also responsible for the efficient functioning of the ecclesiastical tribunal.<sup>5</sup> To assist the bishop in this scope, to ensure the correct regulation of financial matters in each diocese, there is the finance committee, the financial administrator and the finance department of the diocesan curia (can. 492-494, 537).

3) The bishop has the right to impose a levy on the faithful to provide for the needs of diocesan institutions (can. 264 and 1266), including the ecclesiastical tribunal.

4) “[...] clerics [...] deserve remuneration [...] by which they can provide for the necessities of their life as well as for the equitable payment of those whose services they need” (can. 281 § 1); on the remuneration of permanent married deacons – cf. § 3 of the same canon.

5) “With special solicitude, a diocesan bishop is to attend to presbyters [...]. He also is to take care that provision is made for their decent support and social assistance, according to the norm of law” (can. 384).

6) The parish priest has a duty to ensure respect for the rights of the faithful in the parish, organize help for the poor in its area, as well as for spouses and parents who have difficulties (can. 529). This also includes helping spouses in irregular marriage legal-ecclesiastical situation, free help in referring them to the appropriate diocesan institutions.

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<sup>5</sup> In financial terms, the bishop responds by issuing norms under can. 1649 CIC/83.

## 2. Finance-related regulations in general canonical procedural law

Just as in Book II CIC/83, the ecclesiastical legislator included basic norms protecting the rights of the faithful, in Book VII he included detailed norms regulating the processes and the exercise of the rights of the faithful in these processes, which is inseparably connected with the financial aspects. These standards specify: 1) the obligation to set up a tribunal, its maintenance and proper functioning; 2) the obligation to determine judicial expenses and other fees related to conducting the trial.

### 2.1. Appointment of a tribunal, its maintenance and proper functioning

Can. 1420 and 1421 § 1 imply the obligation to appoint an ecclesiastical tribunal in every diocese. Each diocesan bishop, although he is the first judge in a diocese, generally does not have the time and the opportunity to exercise his judicial power personally. And his faithful have the right to ask for the resolution of doubts or legal facts. Until 2015, each diocesan bishop was obliged (on the basis of the above-mentioned canons) to appoint a judicial vicar and diocesan judges, which was tantamount to the appointment of a diocesan tribunal to a minimum extent. At the latest after reporting any case to the diocese, the bishop was to appoint a notary (can. 1437), and after lodging the first case which deal with the nullity of marriage, he should also appoint a defender of the bond (can. 1432). However, according to the new can. 1673 § 2, binding on *Mitis Iudex Dominus Iesus* of Pope Francis, “The bishop is to establish a diocesan tribunal for his diocese to handle cases of nullity of marriage without prejudice to the faculty of the same bishop to approach another nearby diocesan or interdiocesan tribunal.”<sup>6</sup> So now every diocese should have an ecclesiastical tribunal, at least for matrimonial processes, if not their own, at least interdiocesan.

The bishop is not only to appoint a tribunal, but is also obliged to ensure its maintenance and proper functioning. Therefore, he should wisely and

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<sup>6</sup> Franciscus PP., Litterae apostolicae motu proprio datae *Mitis Iudex Dominus Iesus* quibus canones Codicis Iuris Canonici de causis ad matrimonii nullitatem declarandam reformantur (15.08.2015), AAS 107 (2015), p. 958-70 [henceforth cited as: MIDI].

prudently determine judicial expenses. At the same time, he should also care for tribunal employees and associates so that their work is properly remunerated, and for the parties in the case, so that judicial expenses can be paid by them.

## **2.2. Determining judicial expenses and other fees related to conducting the trial**

It is a pity that in the provisions regarding the contentious process, and thus also on matrimonial processes, the basic norm concerning judicial expenses (can. 1649) was placed almost at the end. For practical reasons, it seems right to place the norm on judicial expenses next to the norms regarding the introduction of the case. The parties have the right to know what financial burden will be associated with the conduct of the case, and the judge should know if the tribunal can count on the judicial expenses to be covered by the party in the case.

The first information about judicial expenses is usually given to the plaintiff before or shortly after a petition is filed. The possibility and appropriateness of explaining financial issues at the beginning of the trial is indicated by the legislator in can. 1464. He states: “Questions concerning the provision for judicial expenses or a grant of gratuitous legal assistance which had been requested from the very beginning and other such questions as a rule must be dealt with before the joinder of the issue.”

In can. 1649 § 1, the legislator orders the bishop who directs the tribunal is to establish norms concerning: “1° the requirement of the parties to pay or compensate judicial expenses; 2° the fees for the procurators, advocates, experts, and interpreters and the indemnity for the witnesses; 3° the grant of gratuitous legal assistance or reduction of the expenses; 4° the recovery of damages owed by a person who not only lost the trial but also entered into the litigation rashly; 5° the deposit of money or the provision furnished for the payment of expenses and recovery of damages.”

Ad 1°. The bishop should issue norms regarding “the requirement of the parties to pay or compensate judicial expenses.”

The bishop is to issue norms, and judges should follow them. It follows from can. 1649 § 2 that a judge should determine of judicial expenses.<sup>7</sup> The determination of expenses is issued by the judge in the form of a decree and notifies the plaintiff or both parties about it, depending on the norms issued by the bishop, customs in a given area and financial possibilities of the parties. In the decree on judicial expenses, a judge may include not only the sums due to the tribunal, but also expenses incurred by the respondent, by witnesses, or for work ordered by the tribunal to clarify the case, e.g. fees for experts (can. 1571 and 1649).

Mention of judicial expenses should be in acts again at the end of the trial. According to can. 1611, 4<sup>o</sup> the judgment should also determine the expenses of the litigation. However, it can be assumed that the judgment should include information about whether the judicial expenses have been covered or whether one of the parties still has obligations in this respect. Then also the final amount of judicial expenses can be given if the previously determined ones have changed.

Ad 2<sup>o</sup>. The bishop is to establish norms concerning the fees for the procurators, advocates, experts, interpreters and the indemnity for the witnesses (can. 1649 § 1, 2<sup>o</sup>). The above provision implies the obligation of the bishop to establish norms regarding the remuneration of three groups of people involved in canonical processes: a) advocates and procurators, b) experts and interpreters, c) witnesses who will need to be reimbursed.

a) *remuneration of advocates and procurators*

The possibility for advocates to function significantly increased since the promulgation of the CIC/83, i.e. during the pontificate of John Paul II, as well as from the MIDI [Kiwior 2007, 162-63; Szytchmiller 2008, 127; Idem 2015, 127-42; Rodríguez-Ocaña 1999, 48]. However, the most significant strengthening of the position of an advocate took place in the instruction *Dignitas connubii* (2005), in which the ecclesiastical legislator

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<sup>7</sup> “There is no separate appeal from the determination of expenses, fees, and recovery of damages, but the party can make recourse within fifteen days to the same judge who can adjust the assessment” (can. 1649 § 2) [Walicki 1984, 58-59; Gullo 1997, 229-44; Ramos 2000, 495-504].

reminds of the legitimacy of appointing advocates and procurators,<sup>8</sup> the need to publish an index or directory in which there are listed the advocates and the procurators admitted before tribunal (DC, Art. 112 § 1), actions of legal counseling taken by each tribunal (ibid., Art. 113 § 1) and the appointment of stable advocates (ibid., Art. 113 § 3) [Llobell 2001, 71-91]. It is also worth noting that the wider introduction of advocates into ecclesiastical tribunals has enabled greater opportunities to employ graduates of canon law, of whom there are already many in Poland [Szytchmiller 2000b, 705].<sup>9</sup>

According to the general principle of justice, everyone has the right to an appropriate remuneration, in accordance with the dignity of the office which fulfills and the amount of work.<sup>10</sup> Thus, an advocate deserves a salary when he helps to reach the truth and strives to make a fair decision [Fąka 1978, 29].<sup>11</sup> As a rule, it is accepted that an advocate in a canonical trial has the right to fair remuneration. And fair remuneration occurs when there is an appropriate proportion of real remuneration in relation to what the advocate should receive, taking into account the difficulty of the task, the cost of his constantly expanded knowledge and professionalism, without risking the charge of acting only for profit.<sup>12</sup>

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<sup>8</sup> Pontificium Consilium de Legum Textibus, Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii *Dignitas connubii* (25.01.2005), "Communicationes" 37 (2005), p. 11-92 [henceforth cited as: DC], Art. 110; cf. Lüdicke 2008, 222-24; Llobell 2006, 47-82.

<sup>9</sup> R. Szytchmiller, *Praca dla absolwentów prawa kanonicznego* – article submitted for print in the quarterly "Prawo Kanoniczne" in October 2018.

<sup>10</sup> "Who ever serves as a soldier at his own expense? Who plants a vineyard without eating its produce? Or who shepherds a flock without using some of the milk from the flock?" (1 Cor 9,7); Pius PP. XI, Litterae encyclicae *Quadragesimo anno* (15.05.1931), AAS 23 (1931), p. 198-200; Ioannes Paulus PP. II, Litterae encyclicae *Laborem excercens* (14.09.1981), AAS 73 (1981), p. 625-29; Idem, Litterae encyclicae *Sollicitudo rei socialis* (30.12.1987), AAS 80 (1988), p. 528-30; Idem, Litterae encyclicae *Centesimus annus* (1.05.1991), AAS 83 (1991), p. 811-13.

<sup>11</sup> Considerations regarding the remuneration of advocates are largely based on the material contained in the publication: Krzywkowska and Szytchmiller 2018.

<sup>12</sup> Secretaria Status, *Ordinatio ad exsequendas Litteras Apostolicas motu proprio datas Iusti iudicis* (23.07.1990), AAS 82 (1990), p. 1630-633, Art. 20 § 1.

In determining the rates for advocates, bishops can follow the rates established for similar matters in civil law (can. 1290) [Gross 1997, 20-145] or on detailed guidelines in this respect (especially from Italy) cited by Bishop A. Miziński (currently Secretary General of the Polish Bishops' Conference) in his important monograph on the subject of an ecclesiastical advocate [Miziński 2011, 270-79].

Some form of determinant in assigning the advocate's remuneration for his service in cases at ecclesiastical tribunals was a letter of John Paul II to the Cardinal Secretary of State on November 20, 1982, *De laboris significatione qui Apostolicae Sedi praebetur*. It is noteworthy that, when determining the remuneration for employees of ecclesiastical institutions, the Pope takes into account both the tasks they perform and their personal and family needs.<sup>13</sup> The remuneration of advocates should be determined within the limits of what is fair and equitable, taking into account the responsibility of the profession, required qualifications and preparation, social levies (taxes and insurance) [Mioli 2009, 86-238] appropriate material, social and cultural aspirations for an advocate and his family; and sometimes also possible negative property consequences that can happen in a particular case [Llobell 1988, 195; Mioli 2011, 200-12]. In Poland, some bishops set the advocates's salary at such a low level<sup>14</sup> that official ecclesiastical advocates do not accept cases.<sup>15</sup> And many bishops did not specify advocates rates, leaving it to the prudence of advocates and parties.

A stable (tribunal) advocate is paid differently than a private (contractual) advocate. According to the norm of can. 1490, a stable advocate is paid by the tribunal himself, as are other employees. Therefore, he has no right to demand from the client any fees due to the services provided.<sup>16</sup> Only the registry of the tribunal may require the party to pay the relevant

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<sup>13</sup> Ioannes Paulus PP. II, *De laboris significatione qui Apostolicae Sedi praebetur* (20.11.1982), AAS 80 (1988), p. 923-30.

<sup>14</sup> There were decrees setting the rate for the entire process in the amount of 100-500 PLN.

<sup>15</sup> It is known that the faithful then use the advice of unauthorized persons, claiming to be specialists in canon law.

<sup>16</sup> For information on practical solutions, cf. Szychmiller 1994, 36.



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fee at the tribunal's cash desk.<sup>17</sup> Considering both the requirements for the candidate for the office of stable advocate and the scope of the tasks entrusted to him, his remuneration should also be fair and equitable, and therefore proportional to devoting a large amount of time, also after working hours, and to the quality of services provided by him [Greszata 2007, 215-28].

When a judicial vicar grants a party the right to free legal aid, he may designate one of the stable defenders appointed at the tribunal as advocate. In this situation, the party generally does not pay a fee for an advocate [Miziński 2004, 177-78], but he may be called to pay the due defense fee at the tribunal or the diocesan curia [Idem 2011, 277; Szychmiller 2008, 115-16].

There are different opinions among canonists as to who should pay the fee to stable advocate and who should determine its amount.<sup>18</sup> For example, T. Rozkrut claims that a stable advocate, being a member of the tribunal, should receive remuneration from fees paid by the parties to the tribunal's cash register in the amounts determined by the judicial vicar [Rozkrut 2000, 279]. R. Szychmiller treats this problem in a similar way, but also expresses doubts as to whether this is the best solution for advocates to be paid by the tribunal. Then they are more dependent on the judicial vicar, and in addition, if they cannot pay fairly, they could not always have a serious motivation to do zealous work. Perhaps it would be more appropriate for the defenders (advocates and necessary procurators) to be paid by the diocesan curia. There, in part, offerings of the faithful from the entire diocese are discharged, which could also be used in the event of urgent needs of the faithful, especially the poor. Often in dioceses there are joint curial and tribunal funds, so there should be no major problems with

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<sup>17</sup> "Some authors express the opinion that from the norms contained in can. 1490 and 1649 § 1, it can be concluded that if there is a judicial team of defenders, the party may choose an advocate and demand that the judge assign the advocate to the party and not charge the party any additional costs. The party does not have to justify the request with his poverty. It does not seem fair that the parties who benefit from the assistance of an advocate should pay as much for the process as those who do not. Certainly based on can. 1649 § 1 no. 3, the diocesan bishop may issue relevant detailed provisions in this matter" [Szychmiller 2008, 115-16].

<sup>18</sup> For information on practical solutions, cf. Szychmiller 1994, 36.

this interpretation of this code norm. The remuneration of advocates should depend not only on judicial vicars, but also diocesan bishops (perhaps by directors of pastoral faculties or heads of pastoral care of families) should have an impact on this [Sztuchmiller 2008, 114-15]. The advocate's remuneration should always be fair, i.e. proportional to the amount and quality of the work advocate does. The legislator who exercised administrative power over a given ecclesiastical tribunal entrusted the exact determination of the method of remuneration of tribunal defenders [Miziński 2004, 178].

Contractual (private) advocates work not on behalf of the tribunal but on the basis of a private contract with a party to the trial. They have the same rights and obligations as tribunal advocates (called stable) appointed at tribunals. However, they are less dependent on the tribunal, especially as regards their working time and remuneration. Basically, they themselves should regulate the level of remuneration according to the capabilities of the interested parties, workload and to their time capabilities, while respecting applicable standards [Sztuchmiller 2008, 117; Montini 2011, 96-97]. Certain guidelines, e.g. the limits of the advocate's highest and lowest remuneration, should be set by the bishop – the moderator of the tribunal. In addition, the bishops' conference of a given country or region should ensure harmonization of these minimum and maximum rates for defense, ensuring that they are appropriate.

The bishop, who has the right to direct the tribunal, should issue fair rules regarding the assistance of advocates to parties. They should relate to both fully paid defense assistance, the one with reduced costs, as well as taking into account the granting of *gratuito patrocinio* to a party who has shown his poverty and the inability to pay defense costs (can. 1649 § 1, 3°). Not only tribunal (stable) advocates, are required to provide free defense, but private advocates cooperating with tribunals may also be called upon [Villeggiante 1997, 561]. This type of obligation was sanctioned in Art. 112 § 2 DC, in which the advocates inscribed in the directory are bound, by a mandate of the judicial vicar, to provide gratuitous legal assistance to those to whom the tribunal has granted this benefit. This is a new provision in relation to Code legislation. But when there is a team of stable advocates at the tribunal, it is advisable for the judge to grant free advocate aid or if he decides to use the advocate in a given case (can. 1481 § 1), he first

turned to the stable advocate, not to a ‘private’ advocate [Sztychmiler 2008, 115].

b) *remuneration for experts and interpreters*

In some cases concerning the declaration of nullity of marriage should be appointed by tribunal experts. In cases involving persons (parties or witnesses) from different countries, translation of documents, including the questions and the acts, may be required. It may be necessary to appoint interpreters. Both perform important tasks serving the tribunal with their expertise. They should also be paid fairly.

c) *reimbursement of expenses for witnesses*

In some cases, it can be needed to reimburse expenses for the witnesses. The judge should therefore ask the witness if he demands reimbursement, especially if he knows that the witness is poor or had to come from afar, or if he showed up for the hearing resulted in his loss of earnings. If there are bishop’s norms in this regard, he should take them into account. It is worth recalling, however, that on the basis of can. 1649 § 1, witnesses may request reimbursement of costs arising from giving evidence, but they do not have to do so. These costs will generally have to be covered by the plaintiff.

Ad 3°. The bishop should issue norms regarding “the grant of gratuitous legal assistance or reduction of the expenses” (can. 1649 § 1, 3°).

It is known that, as in other countries, Poland also has poor people who cannot afford to pay the full judicial expenses. Ecclesiastical tribunals should be prepared for such situations. Norms issued by individual diocesan bishops should be sufficient, but joint norms issued by bishops’ conferences that regulate this issue equally throughout the country would be most desirable. These standards should be fair and prudent.

It is not always easy to determine the poverty level of a person asking for exemption of judicial fees or for their reduction. It seems that in Polish conditions, the optimal means of verifying the state of affluence can be the demand for two documents: a copy of the tax return (PIT) for the previous year and the current opinion of the parish priest on the level of affluence of the applicant. Therefore – apart from obvious situations – it is advisable to demand both of these documents. Because PIT does not have to disclose all

the income of the applicant, and the parish priest does not always know his real financial status.

Ad 4°. The bishop should issue norms regarding the recovery of damages owed by a person who not only lost the trial but also entered into the litigation rashly (can. 1649 § 1, 4°).

This provision should be issued as a general rule for contentious trial, but generally it will not apply in cases of nullity of marriage. The judge may not allow reckless disputes by reject the case. And the recovery of damages after losing a trial may not be enforceable unless the deposit of money or the provision is used, as described in the next issue.

Ad 5°. The bishop should issue norms regarding the deposit of money or the provision furnished for the payment of expenses and recovery of damages (can. 1649 § 1, 5°).

The appropriateness of the bishop's legislation in this matter is high. It seems that these provisions are underestimated. Such provisions should be issued for all contentious trials, although they will not generally be used frequently in cases of nullity of marriage. However, it cannot be ruled out that in an exceptional situation, when someone strongly insists on a trial without clear grounds, it can be allowed by setting an appropriate deposit at the beginning, depending on the weakness of the arguments and the wealth of the plaintiff. The deposit can be set in an amount exceeding the average cost of the trial, adding up all anticipated judicial expenses as well as the costs of the trial participants' remuneration and any damages. Determining the appropriate provision may cool the plaintiff's desire to conduct a trial that seems unlikely to succeed.

### **3. Expenses of cases of nullity of marriage**

In cases of nullity of marriage, the total expenses consist of: judicial expenses, advocate and procurators expenses, expenses of any experts and interpreters as well as expenses of parties and witnesses.

#### **3.1. Judicial expenses**

Fees for a process of nullity of marriage are set by diocesan bishops, hence there are differences between these fees in different ecclesiastical

tribunals. The wealth of the environment is often taken into account. Current information shows that basic judicial expenses in one instance in individual dioceses range from 800 to 2.200 PLN<sup>19</sup> or are equivalent to one month's income of the plaintiff. It can be assumed that they usually fall within 1.000-1.500 PLN.<sup>20</sup> In the Metropolitan Tribunal in Warsaw (at least in the past) the fees were adjusted to the parties' earnings.<sup>21</sup>

Another detail affecting the costs is the residence of the paying party or the respondent. It may happen that these costs are higher if the party lives abroad.<sup>22</sup>

When the respondent lodges a counter action in which it proposes an additional title or titles to be attached to the trial, some tribunals demand an additional fee. For example, in Gniezno and Cracow, such a fee charged to the defendant is half of the usual fee paid by the plaintiff,<sup>23</sup> and in Warsaw for each additional title introduced at the request of the defendant, the fee is additional 200 PLN. Due to the fact that the cost of the process of nullity of marriage conducted in different parts of Poland and the world is different, the party should find out what the fee is there and whether it depends on the number of titles.

In general, the main judicial expenses are determined and charged after the petition introducing the suit is accepted. Earlier, small office fees may

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<sup>19</sup> The information obtained shows that the lowest rate of judicial fee is in Gniezno (800 PLN, for the second instance), and the highest in Warsaw (2.200 PLN, for the first instance).

<sup>20</sup> For example, judicial expenses at the Metropolitan Tribunal in Olsztyn amount to 1.250 PLN. A similar rate is in the Metropolitan Tribunal in Cracow. In Gniezno, the costs are 1.200 PLN (first instance), and in Lublin 1.000 PLN.

<sup>21</sup> Rev. Stefan Kośnik, the judicial vicar, claimed that both the tribunal and the plaintiff were satisfied with this solution. The plaintiff often because he did not disclose all his income and was satisfied with the lower fee, and the tribunal was satisfied with this fee because it was generally higher than the fixed rate.

<sup>22</sup> For example, in the Metropolitan Tribunal in Olsztyn, these costs increase then by 250 PLN.

<sup>23</sup> Metropolitan of Gniezno, *Dekret o opłatach sądowych w sprawach małżeńskich rozpatrywanych w Trybunale Metropolitalnym w Gnieźnie* (15.05.2013), <https://www.google.com/search?client=firefox-b-d&q=Dekret+Prymasa+Polski+o+kosztach+s%C4%85dowych> [accessed: 7.05.2019], Art. 3.

be required for an initial assessment of the merits of the petition. They range from approx. 100 to approx. 200 PLN. The party in the case should also inquire about the final costs if the petition is rejected or withdrawn. This may be limited to the initial fee, or the refund of part of the fee, if the entire fee for the trial has already been paid.<sup>24</sup>

Some tribunals demand a separate fee (50-100 PLN) for a copy of the judgment or decree deciding the case. This seems unjustified, at least in relation to the plaintiff, since the plaintiff has already paid the entire fee for the trial.

In the second instance and in further instances, the costs in some tribunals are the same as in the first instance (as is in Lublin and Olsztyn, for example), and sometimes they may be lower.<sup>25</sup>

Comparison, in Germany judicial expenses in most dioceses are flat-rate and amount to 100 EUR. The rest of the actual costs of running cases is covered by the Church with taxes from the faithful. At the Tribunal of the Vicariate of Rome at the appellate level, until recently costs were high,<sup>26</sup> as they were generally costs actually incurred by the tribunal. At the beginning of the case, a provisional budget is prepared, which the plaintiff accepts and pays the advance, and at the end of the process the actual costs are calculated and the plaintiff pays them.<sup>27</sup> However, in 2019 at the same Tribunal at first instance, the plaintiff's tribunal fee is 525 EUR, and the respondent should also pay 262,50 EUR (i.e. half of the basic fee) if applies to an advocate.<sup>28</sup>

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<sup>24</sup> Such a solution was adopted, for example, at the Metropolitan Tribunal in Gniezno: "In the event of rejection of the petition, abatement or renunciation of the instance before the commencement of evidence, at the request of the party bearing the costs, 80% of the tribunal fee shall be reimbursed; after the commencement of this proceeding, 20% of this sum," *ibid.*, Art. 6.

<sup>25</sup> This is the case in Gniezno, where the second instance costs 800 PLN.

<sup>26</sup> It could not be established whether the costs are still the same or whether they have been changed.

<sup>27</sup> According to information from Rev. Dr. S. Oder, a judicial vicar of the tribunal there, a few years ago.

<sup>28</sup> According to information from Rev. Dr. S. Oder from 2019.

Costs for running a case of nullity of marriage in the Roman Rota used to depend on the plaintiff or appellant's country of residence: people from rich countries incurred costs, and from countries considered poor (including Poland) were exempted from tribunal costs. For Pope Francis, the Dean of Rota strives for free trial, but the party is asked for a voluntary offering 'of justice', and when appoints an advocate by choice, is obliged to pay tribunal costs: 150 EUR for accepting the trial, 300 EUR for *animadversiones* and 1.000 EUR for the judgement.<sup>29</sup> Together, this gives 1.450 EUR, not including the cost of an advocate.

### 3.2. The expenses of an advocates and procurators

The activity of advocates in ecclesiastical justice, especially in cases of nullity of marriage, is an expression of the Church's concern for the protection of the legal order in force in the Church and contributes to building the Church by serving the faithful and saving their souls.<sup>30</sup> In a speech to the Roman Rota in 1989, John Paul II emphasized that the judiciary should guarantee the parties the right to defense and act in the "interest of their rights of defense."<sup>31</sup> It should be recalled that the party has the right of defense at every stage of the trial [Gullo 1988, 25-50; Gherro 1988, 1-16; Idem 2007, 81-105].

In the process of nullity of marriage, there is no compulsion to appoint an advocate [Sztafrowski 1979, 473; Pawluk 1984, 96]. The rule is that parties can personally defend their rights or freely name an advocate (DC, Art. 101) [Geringer 1976, 36; Pawluk 1985, 296; Sztafrowski 1986, 378; Leszczyński 2006, 140; Jankowetz 2007, 747-55]. However, the tribunal is bound by the obligation to provide that each spouse is able to defend his rights with the help of a competent person, most especially when it concerns causes of a special difficulty (DC, Art. 101 § 1) [Kiwior 2006, 65; Góralski 2006, 37-38]. And this subjective right of parties results in the

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<sup>29</sup> Information from an employee of the Roman Rota.

<sup>30</sup> Pius PP. XII, *Allocutio ad Romanam Rotam* (6.10.1946), AAS 38 (1946), p. 391-97; Sobański 1979; Idem 2008, 32; Domeniconi 2010, 141-64; Gullo 2011, 170-89.

<sup>31</sup> Ioannes Paulus PP. II, *Allocutio ad Romanae Rotae auditores, officiales et advocatos coram admissos* (26.01.1989), AAS 81 (1989), p. 922-27. The commentary to the papal speech of 1989 was prepared by, among others: Stawniak 1990, 145-47.

obligation of diocesan bishops to create the conditions necessary for the existence and operation of advocates at ecclesiastical tribunals. In the instruction of *Dignitas connubii* it was stated that the task of the bishop exercising supervision over the tribunal is, among others: public disclosure of a list of advocates admitted in his tribunal.<sup>32</sup>

There are many people, also among Catholics, who do not know the rules of conducting tribunal cases, they do not have the knowledge necessary to prepare a petition [Chiappetta 1990, 438; Szytchmiller 2000a, 16]. In addition, during the process the party may not participate at the examination of the other people.<sup>33</sup> And in the new can. 1677 § 1 CIC/83, it was decided that defenders of the parties may to be present at the examination of the parties, the witnesses, and the experts.<sup>34</sup> This gives defenders the opportunity to help the parties more effectively. The need for advocates in cases of nullity of marriage is therefore high. This is also indicated by numerous prompts from the Supreme Tribunal of the Apostolic Signatura to Polish ecclesiastical tribunals, which meant that at

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<sup>32</sup> “It pertains to the Bishop Moderator to publish an index or directory in which there are listed the advocates admitted before his tribunal and the procurators who usually represent parties there” (DC, Art. 112 § 1). Commentary on this article: Kiwior 2006, 71-72. An order to draw up a list of defenders operating at the tribunal was already imposed on bishops in art. 53 § 1 of the instruction *Provida Mater Ecclesia*, cf. Sacra Congregatio de Disciplina Sacramentorum, *Instructio servanda a tribunalibus dioecesanis in pertractandis causis de nullitate matrimoniorum Provida Mater Ecclesia* (15.08.1936), AAS 28 (1936), p. 313-61. Their number is not specified, which will probably depend on the needs of a given diocese.

<sup>33</sup> New can. 1677 § 2 CIC/83 (from 2015).

<sup>34</sup> “The defender of the bond, the legal representatives of the parties, as well as the promoter of justice, if involved in the trial, have the following rights: 1° to be present at the examination of the parties, the witnesses, and the experts, without prejudice to the prescript of can. 1559; 2° to inspect the judicial acts, even those not yet published, and to review the documents presented by the parties” (can. 1677 § 1). Until 2015, the relevant canon (can. 1678 § 1) had a slightly different layout and accents: “The defender of the bond, the legal representatives of the parties, and also the promoter of justice, if involved in the trial, have the following rights: 1° to be present at the examination of the parties, the witnesses, and the experts, without prejudice to the prescript of can. 1559; 2° to inspect the judicial acts, even those not yet published, and to review the documents presented by the parties” (cf. 1936 *Provida Mater Ecclesia*, Art. 70-71, 128).



present almost every ecclesiastical tribunal has been appointed at least one advocate, and often there are several.<sup>35</sup>

The minimum fees for advocates' activities should be set by appropriate norms of Church authorities. As previously mentioned, such regulations were issued by the Italian Episcopal Conference,<sup>36</sup> which by decree of 18 March 1997 decided to appoint at each regional tribunal at least two stable defenders who, according to can. 1490 will act as advocates or procurators.<sup>37</sup> This contributed to the reduction of judicial costs in cases of nullity of marriage, giving everyone access to justice regardless of economic conditions.

The fees for advocates in Italy in 2007 ranged from 1.500 to 2.850 EUR, i.e. the minimum fee was about 150% of the judge's monthly salary and the

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<sup>35</sup> This issue was raised by the Apostolic Signatura in letters to ecclesiastical tribunals: *Supremum Signaturae Apostolicae Tribunal, Litterae*, 4.10.1993, Prot. N. 4600/93 SAT; *Litterae*, 14.12.1993, Prot. N. 4614/93 SAT; *Litterae*, 30.05.1994, Prot. N. 4604/94 SAT; *Litterae*, 16.01.1995, Prot. N. 4600/2/95 SAT; *Litterae*, 13.11.1995, Prot. N. 4609/05 SAT; *Litterae*, 18.11.1996, Prot. N. 4611/96 SAT; *Litterae*, 10.04.1997, Prot. N. 4612/97 SAT; *Litterae*, 12.05.1997, Prot. N. 4617/97 SAT; *Litterae*, 9.10.1997, Prot. N. 4609/97 SAT; *Litterae*, 3.04.1998, Prot. N. 4622/98 SAT; *Litterae*, 05.10.1998, Prot. N. 4599/98 SAT; *Litterae*, 2.12.1999, Prot. N. 4612/1/99 SAT; *Litterae*, 25.02.2000, Prot. N. 4618/2000 SAT; *Litterae*, 22.08.2000, Prot. N. 4617/2000 SAT; *Litterae*, 28.05.2001, Prot. N. 4599/2001 SAT; *Litterae*, 27.05.2002, Prot. N. 4620/2002 SAT; *Litterae*, 15.11.2003, Prot. N. 4612/2003 SAT; *Litterae*, 29.03.2004, Prot. N. 4611/2004 SAT; *Litterae*, 7.08.2004, Prot. N. 4616/2004 SAT; *Litterae*, 14.02.2005, Prot. N. 4599/05 SAT; *Litterae*, 15.02.2005, Prot. N. 4618/05 SAT; *Litterae*, 15.02.2005, Prot. N. 4620/05SAT; *Litterae*, 15.02.2005, Prot. N. 4600/1/05 SAT; *Litterae*, 25.02.2005, Prot. N. 4622/05 SAT; *Litterae*, 10.03.2005, Prot. N. 4616/3/05 SAT; *Litterae*, 27.04.2005, Prot. N. 4609/05 SAT; *Litterae*, 14.05.2005, Prot. N. 4624/05 SAT; *Litterae*, 17.06.2005, Prot. N. 4616/05 SAT; *Litterae*, 21.06.2005, Prot. N. 4598/1/05 SAT; *Litterae*, 7.07.2005, Prot. N. 4460/05 SAT; *Litterae*, 2.09.2005, Prot. N. 4607/1/05 SAT; *Litterae*, 2.03.2006, Prot. N. 4600/2/06 SAT; *Litterae*, 18.03.2006, Prot. N. 4609/1/06 SAT; *Litterae*, 25.08.2006, Prot. N. 4607/1/06 SAT; *Litterae*, 29.08.2006, Prot. N. 4622/06 SAT.

<sup>36</sup> Henceforth cited as: CEI.

<sup>37</sup> CEI, *Norme sui tribunali ecclesiastici*, in: *Enchiridion della Conferenza Episcopale Italiana*, vol. 6, Bologna 2002, p. 316-17, Art. 6; cf. CEI, *Modifica delle Norme circa il regime amministrativo dei Tribunali ecclesiastici regionali in italiani e l'attività di patrocinio svolta presso gli stessi. Decreto di "recognitio". Decreto di promulgazione, Testo delle Norme*, "Notiziario della Conferenza Episcopale Italiana" 9 (1998), p. 311-12, art. 6; Miziński 2011, 352, 584-93.

maximum about 250% of the judge's monthly salary [Miziński 2011, 520-23]. These standards are updated by the Italian Episcopal Conference every few years. In 2010, advocates' fees increased by approximately 5% to 1.575-2.992 EUR [ibid., 525-27]. In the following years increased accordingly.

And in the Roman Rota, advocate of choice usually charge rates of several thousand euros. Recently (2019), the Dean of the Roman Rota has been seeking to appoint primarily stable advocate, but it is difficult to get them because he offers them a poor salary.<sup>38</sup> The party should be asked to transfer a voluntary fee to the Rota. It is not yet known if and how it will work. If the party wishes to have an advocate of choice (*patronus fiduciae*), then bears the above-mentioned three types of costs (1.450 EUR for the Rota) and advocate's fee.<sup>39</sup>

In Poland, however, norms regarding the remuneration of advocates and procurators were issued only by some diocesan bishops, and there are no nationwide norms in force in this respect. Since 2009, work is underway to develop and promulgate such norms. By letter of June 6, 2009, Archbishop Andrzej Dzięga, Chairman of the Legal Council of the Polish Bishops' Conference,<sup>40</sup> authorized Rev. Prof. Ryszard Szytchmiller to organize and lead an expert editorial team for the Legal Council of PEC, to develop a draft document regulating the activity of ecclesiastical advocates in Poland. On September 4, 2009, the team sent to A. Dzięga a scheme of such norms, specifying, among others fees of ecclesiastical advocates.<sup>41</sup> There are two alternative indications: one making the amount of the fee dependent on the minimum and average remuneration in the country, and the other making the fee dependent on the party's earnings. The necessity to take into account the norms issued by the moderator bishop of tribunal and the norms issued by the Polish Bishops' Conference is also indicated.

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<sup>38</sup> The Dean reportedly offers them 200-400 EUR for participating in the case.

<sup>39</sup> Information from an employee of the Roman Rota from May 6, 2019.

<sup>40</sup> Henceforth cited as: PEC.

<sup>41</sup> *Normy Konferencji Episkopatu Polski (projekt) dotyczące aprobowania adwokatów kościelnych oraz ich współpracy ze stronami i sądami kościelnymi* (draft from September 3, 2009). Again, the scheme of these norms was posted on March 19, 2010, and the scheme with a modification proposal was sent on December 21, 2013.

The ecclesiastical advocates community has repeatedly informed the PEC Legal Council, including its Chairman, that if the bishops do not ensure the proper working conditions of the ecclesiastical advocates approved by them, including the financial conditions of their work, then there will be no willing persons properly educated for this task and assistance required by universal law, and legal aid for Catholics in Poland will be a fiction. If this situation lasted a long time, the most accessible to the faithful will remain unapproved, unofficial ‘lawyers’, whose attitude, work and practice the Church has no influence.

In point 6 of the scheme *Normy* (2009) set out rules for the remuneration of advocates. The advocate privately selected by the party agrees with him the amount and method of payment of the fee, taking into account the norms issued by the moderator bishop and the norms issued by the Polish Bishops’ Conference. It was proposed there that the advocate’s remuneration for leading the case should be no less than the national minimum wage and not more than the national average wage in the previous year, and as an alternative solution it was proposed that the advocate’s remuneration was 50-100% of the monthly earnings of the party, depending on the number of invalid titles, academic degree and number of years of advocate’s practice, his workload, as well as the financial capacity of the party. If a private advocate is also a procurator, he would be entitled to a 20% increase in his fee. A private advocate who provides free legal aid to a party who has obtained such a privilege from a tribunal (DC, Art. 112 § 2) should receive from the diocese a fee not less than 50% of the national minimum wage applicable on the day of ordering the case (DC, Art. 113 § 3).<sup>42</sup>

In the next PEC’ scheme, called *Pro memoria Konferencji Episkopatu Polski*, of December 8, 2013, in point 9 also set the rules for remuneration

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<sup>42</sup> This scheme *Normy* was discussed and enacted on September 8, 2009 in Częstochowa, at the General Meeting of the Ecclesiastical Advocate’ Corps in Poland and at the meeting of the Expert Team for Ecclesiastical Advocates, appointed by A. Dzięga, Chairman of the Legal Council of the Polish Bishops’ Conference. Under the authority of both above-mentioned bodies, the scheme was edited by R. Szychmiller, Chairman of the Ecclesiastical Advocate’ Corps in Poland and the appointed Team. The text was sent to A. Dzięga on March 19, 2010. This text is published in: Miziński 2011, 487-91, as Annex 3.

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of the work of advocates, but as suggested by the Legal Council of PEC, it has been formulated more generally. It says, among others: “An advocate paid by the diocesan curia or diocesan tribunal does not accept additional fees from the parties of trial. The advocate privately selected by the party, agrees with the party in writing the amount and method of payment of the fee, taking into account the norms issued by the diocesan bishop and the instructions issued by the Polish Bishops’ Conference. It should be taken into account that advocates must maintain their offices, pay taxes and social security contributions. Poor people should be able to choose an advocate from among stable advocates who receive remuneration only from the diocese.”<sup>43</sup>

After proper elaboration, also at the meetings of the Legal Council of PEC, the scheme *Normy* was – according to information obtained from the then Chairman of the Legal Council of PEC – approved at the Plenary Meeting of PEC, which took place on October 6-7, 2015 and on the basis of a delegation from PEC from on this day, on November 25, 2015, it was refined in detail at a meeting of the Legal Council of PEC in Częstochowa, with the participation of R. Sztymmler. The text *Wytyczne Konferencji Episkopatu Polski dotyczące aprobowania i działalności adwokatów kościelnych oraz ich współpracy z sądami kościelnymi*, refined in Częstochowa on November 25, 2015, the Chairman of the Team received from the Chairman of the Legal Council of PEC on May 10, 2016<sup>44</sup>. Art. 3 and 10 of these guidelines provide even more general rules for the remuneration of the work of advocates: “A diocesan bishop, when appointing a stable advocate for a definite period, which may be extended, should also provide him with adequate monthly remuneration (DC, Art. 113 § 3), in accordance with diocesan norms. [...] A stable advocate does not accept an additional fee from parties of trial. The contractual advocate agrees with the party the

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<sup>43</sup> This project, entitled *Pro memoria Konferencji Episkopatu Polski*, was developed at meetings of the Legal Council of the Polish Bishops’ Conference, the Team (at the Legal Council of PEC) for the Preparation of PEC Guidelines for Ecclesiastical Advocates, the Ecclesiastical Advocate’ Corps in Poland and at joint meetings of representatives of these bodies in the years 2010-2013. It was perfected by R. Sztymmler, Chairman of this Team. On December 8, 2013, it was sent to A. Dzięga, Chairman of the Legal Council of PEC.

<sup>44</sup> Archives of the Ecclesiastical Advocate’ Corps in Poland.

amount and method of payment of the fee, taking into account the regulations issued by the diocesan bishop. The poor have the right to a *gratuitum patrocinium* (they can receive free legal aid), in accordance with canon law.”

However, the new Chairman of the Legal Council of PEC, Bishop Ryszard Kasyna, announced two years later that at the Plenary Meeting of PEC on October 6-7, 2015, *Wytoczne* and *Normy* discussed for several years were not adopted. Until May 3, 2019, the case did not go further. The lack of publication of nationwide guidelines for ecclesiastical advocates still results in the lack of uniform or similar solutions, including financial ones.

In the current legal status, it can be concluded that an advocate should not demand excessive fees or undertake defense for a frivolously low fee.<sup>45</sup> He should arrange a fair fee with the parties, i.e. tailored to the parties’ abilities and meeting the requirement of fair remuneration for the contribution of highly qualified and solid work. It should also take into account relevant regulations issued by the competent Church authorities. And if a party wanted to appoint several advocates, the issue of their fee should be regulated in separate agreements concluded with each of them.

### **3.3. The expenses of experts and interpreters**

In general, the salary of one expert appointed by an ecclesiastical tribunal in Poland is around 200-500 PLN. At the Metropolitan Tribunal in Olsztyn, the cost of one expert opinion is up to 300 PLN. It is similar in Cracow. In Lublin this fee is 250 PLN, in Gniezno 300-400 PLN, and in Warsaw up to 500 PLN. For comparison, in tribunals in Italy in 2010, expert fees were 273-682 EUR [Miziński 2011, 526]. The cost of an expert opinion in 2019 at the Tribunal of the Vicariate of Rome is 250-690 EUR,

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<sup>45</sup> We find an interesting statement in this matter in the legal literature: “An advocate who is content with a small salary may pass in society as an uneducated person and, for this reason, may even be exposed to disregard, and if he demands too much payment, he may be removed” [Grabowski 1934, 168]. It is worth comparing the advocate’s fees in the secular judiciary [Juszczuk, Proksa, and Zajac 1995, 46-55, 150-64]. Current rates can be found in the applicable normative acts available (e.g. the Act on Court Fees) in Dz. U. RP and in browsers.

and in the Roman Rota about 600-700 EUR.<sup>46</sup> If the tribunal appoints (usually at the request of a party) more experts, the fee will be multiplied accordingly.

Usually, the fee for an expert is borne by the party who brings the title requiring the expert to be consulted and prepare his opinion. There may also be a situation when, during the judicial proceedings, the existing acts are supplemented, which also requires the preparation of a supplementary expert opinion. In such a situation, additional costs will be demanded and paid.

In a specific sense, interpreters are also experts (in language matters). Therefore, when calculating the costs of the process, the remuneration of interpreters should also be taken into account, if any, especially in cases where one party or witnesses are foreigners. Interpreters' remuneration is calculated at the rate per page.

### **3.4. The expenses of party and witness**

In Poland, each party generally bears its own costs; the parties do not claim reimbursement from themselves. Similarly, no reimbursement is usually required by witnesses. But they have the right to do so and if they make a reasoned request, the judge must comply with it.

## **4. Conclusions**

The purpose of the article was to deepen the question: whether and how the Church protects human rights in financial terms, especially with regard to nullity of marriage proceedings. A preliminary assumption was made that these rights are protected both by the norms contained in canonical substantive law and in procedural law. Some analyzes were also carried out to examine how consistent this legal protection is. In order to verify the thesis and to determine the coherence of norms protecting the faithful in the aspect of financial matters, the following issues were analyzed: 1) basic regulations of economic matters in the Church; 2) financial-related

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<sup>46</sup> Information from employees of the Tribunal of the Vicariate of Rome and the Roman Rota from May 2019.

regulations in general canonical procedural law; 3) costs directly related to cases concerning the declaration of nullity of marriage.

The ecclesiastical legislator, taking into account man's weakness, but also showing him trust, issued general norms regarding the financial aspects of life in the Church. The Church in Poland does not have a specific and homogeneous model for financing its activities. Therefore, it applies almost exclusively to the regulations contained in CIC/83. The norms of substantive law are mainly the regulations contained in Book II of CIC/83 (The People of God), in norms defining the rights of the faithful and the functioning of the Church's structures. Although they do not belong to procedural law, they affect the norms contained in this law. It has been shown that such norms are the provisions contained in can. 222, 163-264, 281, 384, 492-494, 529, 537 and 1266 CIC/83.

In Book VII CIC/83 the ecclesiastical legislator included general and detailed norms regulating the conduct of processes and the exercise of the rights of the faithful in their financial aspects. These norms impose on bishops, among others the following duties: appointment of a tribunal, its maintenance and proper functioning, determining judicial expenses and other fees related to conducting the trial. At the same time, the bishop should take care of the employees and associates of the tribunal, as well as procedural parties, so that tribunal fees can be borne by them. The bishop issues norms and judges should follow them. This applies in particular to: the requirement of judicial expenses, determining the fees for the procurators, advocates, experts, and interpreters and the indemnity for the witnesses, the grant of gratuitous legal assistance or reduction of the expenses, as well as setting a deposit for future procedural expenses. Ways of determining the poverty level of the party asking for exemption from tribunal costs or for their reduction were also proposed.

Due to the issue of remuneration of advocates and procurators currently being discussed in Poland, more attention was paid to the analysis of applicable and prepared norms in this respect. It has been shown that, in accordance with the general principle of justice, an advocate (like any other person) has the right to appropriate remuneration, in accordance with the dignity of the office that he fulfills, the amount of work, including responsibility for the profession, required qualifications, preparation and

social levies (taxes and insurance). A stable (tribunal) advocate is paid differently than a private (contractual) advocate. The bishops' conference of a given country or region should ensure harmonization of minimum and maximum rates for defense, ensuring that they are fair.

The last item of the article lists all costs directly related to process of nullity of marriage. They include: judicial expenses, advocates and procurators expenses, experts and interpreters expenses, as well as possible expenses of parties and witnesses. To the extent possible to determine, the actual costs to be paid by the plaintiff in ecclesiastical tribunals in Poland (800-2.200 PLN) and in the Roman Rota (up to approx. 1.500 EUR) were given.

Of course, in any tribunal, a party may ask for a reduction of judicial expenses or for an exemption if it is justified.

A greater opportunity has been demonstrated to protect the rights of the faithful if a legal advocate is involved in the trial. Model standards regarding tribunal costs and advocate's fees are issued by the Italian Episcopal Conference every few years. In 2010, the advocate's fee in Italy was between 1.600-3.000 EUR. In Poland, work on similar standards has been ongoing since 2009 and it is not known when they will be finalized. The Team appointed to develop norms for advocates presented several proposals that were approved by the Legal Council of PEC in 2015, but have not yet been promulgated by PEC. Similarly, there are no national standards on tribunal costs, expert costs, interpreters and provision.

Regarding the consistency of regulations on tribunal costs, especially in cases of nullity of marriage, it should be stated that these norms are consistent in the CIC/83 and in some particular Churches, e.g. in Italy. There, they actually protect the rights of the faithful to the trial for a decent and not excessive price. On the other hand, there is a lack of such coherence in Poland, because so far PEC has not adopted relevant nationwide standards regarding fees for advocates and procurators (which are already developed), as well as tribunal fees and related to conducting the process (which are being developed).



## REFERENCES

- Boniecki, Adam. 1993a. "Finanse. Doświadczenia różnych krajów." In *Kościół i pieniądze*, ed. Henryk Seweryniak, 83-90. Płock: Płockie Wydawnictwo Diecezjalne.
- Boniecki, Adam. 1993b. "Finanse Kościoła we Włoszech." In *Kościół i pieniądze*, ed. Henryk Seweryniak, 91-96. Płock: Płockie Wydawnictwo Diecezjalne.
- Chiappetta, Luigi. 1990. *Il matrimonio nella nuova legislazione canonica e concordataria. Manuale giuridico-pastorale*. Roma: Edizioni Dehoniane.
- Domeniconi, Onorina. 2010. *L'avvocato ecclesiastico: pro veritate rei et salute animarum*. Roma: Reate.
- Fąka, Marian. 1978. *Normy ogólne kanonicznego procesu sądowego*. Part 2. Warszawa: Akademia Teologii Katolickiej.
- Geringer, Karl T. 1976. *Das Recht auf Verteidigung im kanonischen Prozess. Wiener Beiträge zur Theologie*. Vol. 1. Wien: Wiener Dom Verlag.
- Gherro, Sandro. 1988. "Il diritto alla difesa nei processi matrimoniali canonici." *Monitor Ecclesiasticus* 113:1-16.
- Gherro, Sandro. 2007. *Diritto canonico*. Vol. 3: *Sul processo matrimoniale*. Padova: CEDAM.
- Gordon, Ignacio. 1983. *Novus processus nullitatis matrimonii. Iter cum adnotationibus*. Romae: Pontificia Universitas Gregoriana.
- Góralski, Wojciech. 2006. "Rola adwokata w kościelnych procesach małżeńskich w świetle KPK z 1983 roku oraz Instrukcji „Dignitas connubii”." *Prawo Kanoniczne* 49, no. 3-4:35-50.
- Grabowski, Ignacy. 1934. "Adwokatura w ustawodawstwie kościelnym." *Ateneum Kapłańskie* 34:147-68.
- Greszata, Marta. 2007. "Dylematy dotyczące udziału adwokata w procesie o nieważność małżeństwa." In *Kościelne prawo procesowe. Prawo rodzinne. Materiały i studia*, ed. Andrzej Dzięga, Marta Greszata, and Piotr Telusiewicz, vol. 4, 215-28. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu.
- Gross, Ingrid. 1997. *Anwaltsgebühren in Ehe- und Familiensachen*. München: Deutscher Anwaltverlag.
- Gullo, Alessia. 2011. "Principi deontologici riguardanti gli avvocati." In *Deontologia degli operatori dei tribunali ecclesiastici*, 170-89. Città del Vaticano: Libreria Editrice Vaticana.
- Gullo, Carlo. 1988. "Il diritto di difesa nelle varie fasi del processo matrimoniale." *Monitor Ecclesiasticus* 113:25-50.
- Gullo, Carlo. 1997. "Celerita e gratuita dei processi matrimoniali canonici." In *La giustizia nella Chiesa: fondamento divino e cultura processualistica moderna*, 229-44. Città del Vaticano: Libreria Editrice Vaticana.

- Jankowetz, Karina. 2007. "Anfragen und Anliegen der Anwältin/Prozessprokuratorin an die neue EPO." In *Im Dienst von Kirche und Wissenschaft. Festschrift für Alfred E. Hierold zur Vollendung des 65. Lebensjahres*, ed. Wilhelm Rees, Sabine Demel, and Ludger Müller, 747-55. Berlin: Duncker & Humblot.
- Juszczuk, Agnieszka, Aleksandra Proksa, and Krzysztof Zając. 1995. *Oplaty sądowe, adwokackie, notarialne i skarbowe. Zbiór przepisów z uwzględnieniem denominacji*. Kraków: Wydawnictwo Centrum Prawne.
- Kiwior, Wiesław. 2006. "Zasady działania obowiązujące w sądach i strony procesowe." In *Proces małżeński według Instrukcji „Dignitas connubii”*. *Materiały z ogólnopolskiego spotkania pracowników sądownictwa kościelnego w Gródku nad Dunajcem w dniach 13-14 czerwca 2005 roku*, ed. Tomasz Rozkrut, 53-73. Tarnów: Wydawnictwo Diecezji Tarnowskiej Biblos.
- Kiwior, Wiesław. 2007. "Strony procesowe." In *Komentarz do Instrukcji procesowej „Dignitas connubii”*, ed. Tomasz Rozkrut, 153-77. Sandomierz: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu.
- Krzywkowska, Justyna, and Ryszard Sztymmler. 2018. *Adwokat w sprawach o nieważność małżeństwa. Rozwiązania ustawodawcze i ich stosowanie w sądach kościelnych (1983-2018)*. Olsztyn: Zakład Poligraficzny Uniwersytetu Warmińsko-Mazurskiego w Olsztynie.
- Leszczyński, Grzegorz. 2006. "Urząd adwokata stałego w świetle Instrukcji Dignitas connubii." *Ius Matrimoniale* 11 (17): 139-52.
- Llobell, Joaquín. 1988. "Lo «ius postulandi» e i patroni." In *Il processo matrimoniale canonico*, ed. Pietro A. Bonnet, and Carlo Gullo, 185-202. Città del Vaticano: Libreria Editrice Vaticana.
- Llobell, Joaquín. 2001. "I patroni stabili e i diritti-doveri degli avvocati." *Ius Ecclesiae* 13:71-91.
- Llobell, Joaquín. 2006. "Cenni sul diritto di difesa alla luce dell'Istr. «Dignitas connubii»." In *Il diritto di difesa nel processo matrimoniale canonico (Atti del XXXVII Congresso nazionale di Diritto canonico dell'Associazione Canonistica Italiana, Pisa, 5-8 settembre 2005)*, 47-82. Città del Vaticano: Libreria Editrice Vaticana.
- Lüdicke, Klaus. 2008. "Einführung in die Instruktion Dignitas connubii." In *Matrimonium spes mundi. Małżeństwo i rodzina w prawie kanonicznym, polskim i międzynarodowym. Księga pamiątkowa dedykowana ks. prof. Ryszardowi Sztymmlerowi*, ed. Tadeusz Płoski, and Justyna Krzywkowska, 210-24. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego.
- Mioli, Graziano. 2009. *La remunerazione degli avvocati nei giudizi di nullità matrimoniale*. Città del Vaticano: Lateran University Press.

- Mioli, Graziano. 2011. "L'osservanza deontologica come problema di autodisciplina degli avvocati." In *Deontologia degli operatori dei tribunali ecclesiastici*, 197-224. Città del Vaticano: Libreria Editrice Vaticana.
- Miziński, Artur G. 2004. "Instytucja obrońcy stałego w KPK z 1983 roku." *Roczniki Nauk Prawnych* 14, issue 2:161-90.
- Miziński, Artur G. 2011. *Status prawny adwokata w Kościele łacińskim*. Lublin: Wydawnictwo Archidiecezji Lubelskiej Gaudium.
- Montini, Gian P. 2011. "L'osservanza deontologica come problema disciplinare, ossia il procedimento disciplinare canonico per i ministeri del tribunale e per gli avvocati." In *Deontologia degli operatori dei tribunali ecclesiastici*, 79-112. Città del Vaticano: Libreria Editrice Vaticana.
- Pawluk, Tadeusz. 1984. "Procesy małżeńskie w świetle Kodeksu Jana Pawła II." *Prawo Kanoniczne* 27, no. 3-4:89-107.
- Pawluk, Tadeusz. 1985. "Kanoniczne sprawy o nieważność małżeństwa w świetle odnowionego prawa procesowego." In *Duszpasterstwo w świetle nowego Kodeksu Prawa Kanonicznego*, ed. Jerzy Syryjczyk, 290-311. Warszawa: Akademia Teologii Katolickiej.
- Ramos, Francisco. 1998. *I tribunali ecclesiastici. Costituzione, organizzazione, norme processuali*. Roma: Millennium Romae.
- Ramos, Francisco. 2000. *I tribunali ecclesiastici. Costituzione, organizzazione, norme processuali*. Ed. 2. Roma: Millennium Romae.
- Rodríguez-Ocaña, Rafael. 1999. "La tutela del derecho al proceso en las causas de nulidad matrimonial." *Ius Ecclesiae* 11:41-70.
- Rozkrut, Tomasz. 2007. "Adwokat i pełnomocnik procesowy w procesie kościelnym." *Polonia Sacra* 7:27-288.
- Seweryniak, Henryk, ed. 1993. *Kościół i pieniądze*. Płock: Płockie Wydawnictwo Diecezjalne.
- Sobański, Remigiusz. 1979. *Kościół – prawo – zbawienie*. Katowice: Księgarnia św. Jacka.
- Sobański, Remigiusz. 2008. "Prawda jako entelechia procesu o nieważność małżeństwa w świetle przemówień Piusa XII do Roty Rzymskiej." *Ius Matrimoniale* 13 (19): 29-41.
- Sobczyk, Paweł, and Krzysztof Warchałowski. 2013. *Finansowanie Kościołów i innych związków wyznaniowych*. Warszawa: Oficyna Wydawnicza ASPRA-JR.
- Stawniak, Henryk. 1990. "Prawo do obrony w procesie kanonicznym (Refleksje na kanwie przemówienia Jana Pawła II do Roty Rzymskiej w dniu 26.01.1989 roku)." *Prawo Kanoniczne* 33, no. 1-2:141-52.

- Sztafrowski, Edward. 1979. *Prawo kanoniczne w okresie odnowy soborowej. Podręcznik dla duchowieństwa*. Vol. 2. Warszawa: Akademia Teologii Katolickiej.
- Sztafrowski, Edward. 1986. *Podręcznik prawa kanonicznego*. Vol. 4. Warszawa: Akademia Teologii Katolickiej.
- Sztychmiler, Ryszard. 1994. "Potrzeba udziału adwokata w procesie o nieważność małżeństwa." *Biuletyn Stowarzyszenia Kanonistów Polskich* 4, no. 1:28-38.
- Sztychmiler, Ryszard. 2000a. *Sądownictwo kościelne w służbie praw człowieka*. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego.
- Sztychmiler, Ryszard. 2000b. "Sędziowie i urzędnicy sądowi w służbie praw człowieka." In *Plenitudo legis dilectio. Księga pamiątkowa dedykowana prof. dr. hab. Bronisławowi W. Zubertowi OFM z okazji 65. rocznicy urodzin*, ed. Antoni Dębiński, and Elżbieta Szczot, 681-707. Lublin: Redakcja Wydawnictw KUL.
- Sztychmiler, Ryszard. 2008. "Adwokat w procesie o nieważność małżeństwa." In *Proces małżeński w świetle Dignitas connubii – pierwsze doświadczenia. Materiały z ogólnopolskiego spotkania pracowników sądownictwa kościelnego w Górkach nad Dunajcem w dniach 11-12 czerwca 2007 roku. III Ogólnopolskie Forum Sądowe*, ed. Tomasz Rozkrut, 103-28. Tarnów: Wydawnictwo Diecezji Tarnowskiej Biblos.
- Sztychmiler, Ryszard. 2013. "Składki ubezpieczeniowe adwokatów kościelnych." In *Finansowanie Kościołów i innych związków wyznaniowych*, ed. Paweł Sobczyk, and Krzysztof Warchałowski, 293-301. Warszawa: Oficyna Wydawnicza ASPRA-JR.
- Sztychmiler, Ryszard. 2015. "Posługa adwokata po Mitis Iudex." In *Proces małżeński według motu proprio Mitis Iudex Dominus Iesus*, ed. Jan Krajczyński, 127-42. Płock: Płocki Instytut Wydawniczy.
- Villeggiant, Sebastiano. 1997. "L'avvocato del foro ecclesiastico ed i poteri disciplinari del giudice, nelle cause di nullità matrimoniale." *Monitor Ecclesiasticus* 122, no. 3-4:553:61.
- Walencik, Dariusz. 2008. *Rewindykacja nieruchomości Kościoła katolickiego w postępowaniu przed Komisją Majątkową*. Lublin: Wydawnictwo KUL.
- Walencik, Dariusz. 2013. *Nieruchomości Kościoła katolickiego w Polsce w latach 1918-2012. Regulacje prawne – nacjonalizacja – rewindykacja*. Katowice: Księgarnia św. Jacka.

## Financial Aspects in Cases of Nullity of Marriage

### Summary

The text discusses the following three issues: basic regulations of economic matters in the Catholic Church, financial regulations related to canonical

procedural law and costs directly related to cases of nullity of marriage. The article shows general norms regarding the financial aspects of life in the Church (especially from book II of CIC/83), as well as general and specific norms regulating the financial aspects of conducting processes in the Church (especially from book VII of CIC/83). The final part of the text demonstrates all costs related to conducting cases of nullity of marriage, which include: judicial expenses, advocate and procurator fees, costs of possible experts opinions and assistance of interpreter, as well as possible costs of the parties and witnesses.

**Key words:** Church financing, procedural law, canonical processes, cases of nullity of marriage, judicial expenses

### **Aspekty finansowe spraw o nieważność małżeństwa**

#### Streszczenie

W artykule analizowane są następujące 3 kwestie: podstawowe regulacje spraw ekonomicznych w Kościele katolickim; związane z finansami regulacje w ogólnym kanonicznym prawie procesowym oraz koszty wprost związane ze sprawami o nieważność małżeństwa. Zaprezentowano generalne normy dotyczące aspektów finansowych życia w Kościele (zwłaszcza z księgi II KPK/83), a także ogólne i szczegółowe normy regulujące aspekty finansowe prowadzenia procesów w Kościele (z księgi VII KPK/83). W końcowej części wykazano wszystkie koszty związane z prowadzeniem spraw o nieważność małżeństwa, na które składają się: koszty sądowe, koszty adwokata i pełnomocnika, koszty ewentualnych opinii biegłych i pomocy tłumacza, a także ewentualne koszty stron i świadków.

**Słowa kluczowe:** finansowanie Kościoła, prawo procesowe, procesy kanoniczne, sprawy o nieważność małżeństwa, koszty sądowe

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