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EXAMINATION OF WITNESSES OUTSIDE THE SEAT OF THE TRIBUNAL IN THE LIGHT OF CAN. 1558 OF THE 1983 CODE OF CANON LAW

Introduction

Examination of the witnesses should normally take place at the seat of the court. However, sometimes it is impossible due to their health or some impediments. When gathering evidence to pass a fair sentence, an ecclesiastical judge often has to choose whether to wait for a witness to arrive at the tribunal building without being able to convince him to do so, or to allow a requisition, expecting that the quality of the testimony maybe weaker, as it will probably be performed by someone with less competence and procedural experience. Some persons, such as cardinals, patriarchs, bishops or high office holders, can indicate the place of the hearing themselves. Often, they want to help an ecclesiastical judge come to moral certainty in a given case. Publicizing the fact that they testify may have social or political repercussions and become an opportunity to express sympathy with the person giving the testimony. Therefore, the possibility provided by the 1983 Code of Canon Law[1] has its deep justification. There was a time when the Romans liked to go to trial in public places so that judges could "shine" in the eyes of their relatives and neighbours, and the period when hearings were held in closed places, away from the street noise. The contents of the canon 1558 § 2 CIC/83 allows *personae illustres* protecting their privacy zone. Witnesses' testimonies play a large role in finding the truth. Many factors affect the assessment of their testimony. The judge should consider the condition of the witness, his/her honesty, the basis of knowledge, consistency in testimony, the testimony of

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[1] *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].

other witnesses, and compliance with other elements of evidence (can. 1572 CIC/83).

The purpose of this paper is to present the issue of the testimony of witnesses outside the seat of the courts. Out of 14 canons directly devoted to the question of examining witnesses (Art. 3 *De testium examine*), I pay attention to only one of them 1558 CIC/83, which concerns of the place where witnesses are interviewed. I am looking for answers to the questions of whether the church legislator prefers to testify at or outside the seat of the court and in what cases it is possible to give evidence outside the seat of the court? Is it only an ecclesiastical solution or is it correlating with solutions also of the state law? Were the solutions of the can. 1558 known to the ancient Romans and finally, what reasons did the church legislator have in favour of such solutions? The paper consists of two parts. In the first one, I discuss the content of the canon concerning the place where witnesses are interrogated when they have to testify outside the court seat, in the second one I look for the reason for such a canon.

1. Contents of can. 1558

Can. 1558 CIC/83 states: "§ 1. Witnesses must be examined at the tribunal unless the judge deems otherwise. § 2. Cardinals, patriarchs, bishops, and those who possess a similar favor by civil law are to be heard in the place they select. § 3. The judge is to decide where to hear those for whom it is impossible or difficult to come to the tribunal because of distance, sickness, or some impediment, without prejudice to the prescripts of can. 1418 and 1469 § 2." This canon is one of the canons of Book VII devoted to trials (*De processibus*), part II relating to the litigation process (*De iudicio contentioso*) and section I to ordinary litigation. This canon belongs to Title IV of the section on evidence, Chapter III: *Witnesses and testimony*, and Article 3: *The examination of witnesses*. It refers to the place where witnesses should be heard. Usually, the witnesses are heard at the seat of the tribunal – the tribunal that deals with the case. From the contents of can. 1468 we know that each tribunal should have a permanent seat and be available at fixed hours. The permanent seat allows for the creation of appropriate conditions for collecting the testimony, where the interrogators and interviewed persons can feel safe and comfortable and where they are not rushed or fearful that an un-

authorized person may hear the testimony. T. Pawluk wrote that the seat of the court is the most appropriate place for court hearings because of its seriousness, marked by the rhythm of the court work [Pawluk 1990, 267].

Can. 1558 § 1 however also says that the judge may decide that the hearing will take place outside the seat of the tribunal. Thus, we see that it is not the place of the hearing that determines the value of the testimony. Sometimes a judge may be by force removed from his territory, and at other times he may be prevented from exercising his jurisdiction there. In such a situation, he can exercise his jurisdiction and make judgments outside the territory, but he should notify the diocesan bishop about it (can. 1469 § 1 CIC/83). At other times, a tribunal asks another tribunal to carry out instructions in a case (can. 1418 CIC/83; Art. 29 *Dignitas connubii*[2]). We are then dealing with the so-called requisitions. In such cases, the questions referred by the judge in charge of the case, and usually prepared in cases of nullity of marriage by the defender of the marriage bond, are used. J. Krzywkowska rightly believes that the cases of applying for requisitioning should not be overused, but rather limited to a minimum, because a person delegated to collect a witness' testimony, not having the skill to perform such an action, may affect the quality of the testimony. Many answers may be too laconically limited to "yes" or "no," while a judge would be able to obtain more information relevant to adjudication [Krzywkowska 2019, 145]. R. Sztychmiler treats the request for requisitioning as an example of a desire to reduce the distance between a judge and participants of a trial, so much postulated by the Pope Francis. The geo-political situation results in a greater need for interdiocesan, interfaith and international cooperation between church courts [Sztychmiler 2018, 8].

Bearing in mind the importance of examining the witnesses at the seat of the tribunal, the legislator makes two exceptions, namely it guarantees the certain persons such as: cardinals, patriarchs, bishops and those who, under the law of their own country, have such facilities that they can be heard at the place they indicate themselves, and other persons who, due to distance,

[2] 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].

disease or other obstacle, cannot come to court, the place of questioning of which will be ordered by the judge himself (can. 1558 § 2-3).

In the case of the so-called *testes egregi* there is no need for a judge's decision because the right to choose the place of interrogation is the entitlement of these persons and is granted by law. Among these people are cardinals, patriarchs and bishops. In the Latin Church, the title of patriarch does not confer any governing power, unless it is the result of an apostolic privilege or an approved custom (can. 438 CIC/83). In the Latin Church, the title of honorary patriarch is given to the bishops of Jerusalem, Venice, India and Lisbon. Until 2006, such a title was also used by the bishop of Rome [Adamowicz 2011, 45]. The provisions of CIC/83 refer to the Latin Church (can. 1 CIC/83), however in addition to the patriarchs of the Eastern Catholic churches, we know that this title is also used by the leaders of some non-Catholic Eastern churches. R. Sztychmiler believes that in the world of ecumenical sensitivity, the prerogative belonging to the patriarchs should also apply to them. Likewise, he argues that the privilege of the Catholic bishops should also apply to the Orthodox and Protestant bishops, assuming that the interviewer would be a Catholic judge [Sztychmiler 2018, 15].

The group of witnesses entitled to be heard outside the court seat, in correlation with the legislation of their country, may include clergy and laity of various levels. The paragraph 2 can. 1558 CIC/83 uses the term "those" – (ii), while the 1917 Code of Canon Law[3] in can. 1770 spoke of "outstanding persons" (*personae illustres*). Both codes do not list these people taxatively, but only specify that it concerns those who enjoy similar facilities for questioning in a place designated by them under the laws of their own country. To some extent, this evidences the elimination of elitist terminology from the canonist text in favour of a more egalitarian approach in understanding the rights and obligations of the faithful. Of course, CIC/83 was written for the Catholics living in different countries, with different legal orders. If the judge himself wanted to hear a witness who chose a place outside the jurisdiction of the trial court, the judge does not need the consent of the local bishop, although he should be informed about such a hearing [Idem 2007, 212].

[3] *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 1-593 [henceforth cited as: CIC/17].

Analysing the contents of the can. 1558 § 2 CIC/83 and a possible catalogue of people holding high offices cannot even include the president of the Republic of Poland here, because this issue has not been regulated in state law [Idem 2018, 15]. However, since the President of the Republic of Poland can be heard as a witness in a civil or criminal trial, it can also be done in a canonical trial. This does not affect the dignity of his/her office or the principle of the separation of powers. In Poland, in the pre-war 1932 Code of Civil Procedure,[4] there was Art. 287 stating that "If there is a need to hear the President of the Republic of Poland, the court shall request him/her in writing to designate the place and time of the hearing." Together with the amendment of the 1950 Code of Civil Procedure,[5] this contents was given in Art. 277. However, in the Constitution of the People's Republic of Poland,[6] adopted on 22 July 1952, it lost its importance because it did not predict the office of the President. Currently, Art. 10 or 126 of the Constitution of the Republic of Poland[7] do not allow for drawing a conclusion that it is impossible to call the President of the Republic of Poland as a witness in a civil or criminal case [Knoppek 2002, 53]. Art. 145 of the Constitution of the Republic of Poland provides for the possibility of holding the President of the Republic of Poland responsible before the Tribunal of State for a breach of the Constitution or for committing a crime. As the issue of giving testimony by the President of the Republic of Poland as a witness raises some doubts for some people, therefore K. Knoppek rightly postulates, as part of *de lege ferenda* to introduce in the Code of Civil Procedure and the Code of Criminal Procedure the provisions regulating this issue similar to the pre-war regulations [ibid., 54]. The history shows that on March 12, 2021, the President of the Republic of Poland was questioned in a case concerning threats against him. As reported by the media, the hearing took place at the Presidential Palace. Of course, it would be impossible to call the President of the Republic of Poland as a witness if he/she had to testify breaking the obligation to keep classified information secret (Art. 259, para. 2 of the Code of Civil Procedure[8]).

[4] Journal of Laws of 1932, No. 112, item 934.

[5] Journal of Laws of 1950, No. 43, item 394.

[6] Journal of Laws of 1952, No. 33, item 232.

[7] Journal of Laws of 1997, No. 78, item 483.

[8] Journal of Laws of 1964, No. 43, item 296.

When witnesses who, due to the distance, disease or other impediments, may ask for the appointment of a place other than the tribunal conducting the case, the judge decides the new *locum* by a decree [del Amo 2011, 1172]. Such situations occur frequently in the court practice. As neither distance nor disease is listed taxatively, it can sometimes be overused. The more that the words "other impediments" can be interpreted differently. The state legislation is more detailed in these issues. For example, the By-laws of Procedure of Common Courts,[9] which is the Regulation of the Minister of Justice of 18 June 2019, precisely defines the distance between the witness's place of residence and the seat of the adjudicating court, which does not allow the taking of evidence to another court (in this case, the distance does not exceed 50 km).

What is interesting, the church regulations correlate with those of the state in terms of the very possibility of hearing a witness outside the court seat in certain circumstances. The Code of Civil Procedure in Art. 235 § 1 stipulates that due to "serious inconvenience or disproportionate costs in relation to the subject of the dispute" in the evidence proceedings before the adjudicating court, it will order one of its members or another court to take evidence. The adjudicating court may also order the taking of evidence with the use of technical devices (Art. 235 § 2). The Code of Civil Procedure in Art. 263 and the 1997 Code of Criminal Procedure[10] in Art. 177 § 2 assume that disease, disability or other insurmountable obstacle is a factor that allows the hearing of a witness in his/her place of his stay.

Can. 1558 CIC/83 corresponds to can. 1239 of the Code of Canons of the Eastern Churches.[11] In the latter canon we read only about the witnesses, not about the parties. Among the *testes egregi* were bishops and those who, under the laws of their own country, take the advantage of the possibility of indicating the place of the hearing. On the other hand, the contents of can. 1239 § 3 CCEO essentially correlates with the contents of can. 1558 § 3 CIC/83.

Can. 1558 CIC/83 was essentially repeated in Art. 162 DC. Art. 162 § 1 DC pointing to the tribunal as the essential place apart from witnesses, it also lists the parties and experts. Moreover DC adds the requirement of a just ca-

[9] Journal of Laws of 2019, item 1141, § 156.2.

[10] Journal of Laws of 1997, No. 89, item 555.

[11] *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), p. 1045-363 [henceforth cited as: CCEO].

use (*iusta causa*). The contents of Art. 162 § 2 DC of the *testes egregi* corresponds to that which we read about in can. 1558 § 2. The same applies to the contents of paragraph 3 of the analysed canon of CIC/83 or the article of DC. Art. 51 DC permits the *praeses*, *ponens* or *auditor*, for a just cause, to delegate to a competent person (*persona idonea*) the hearing of a party or witness who is unable to attend the tribunal.

It is also worth paying attention to how the contents of can. 1558 CIC/83 was presented in CIC/17 (it corresponded to the contents of can. 1770 CIC/17). In the paragraph 1, the legislator stated that "Testes sunt examini subiiciendi in ipsa tribunalis sede." In the paragraph 2, he listed exceptions to this rule, namely cardinals, bishops and *personae illustres*, who by the law of their own country are exempt from the obligation to appear before a judge and may choose a place for questioning, those who because of physical or mental disease are impeded or because of living conditions as nuns will be questioned at home. On the other hand, those who would be outside the diocese and would not be able to come to the tribunal dealing with the case will be heard in the court of their place of residence according to the questions and instructions provided by the judge conducting the case. And witnesses living in a given diocese who would not be able to appear before a judge without great expenses, just as the judge could not go to them, are questioned by a priest delegated by the judge, worthy and appropriate, assisted by a notary competent for this duty, according to the questions and instructions received [Bączkowicz, Baron and Stawinoga 1958, 102]. Among the sources of can. 1770 CIC/17, and thus indirectly can. 1558 CIC/83, the following were listed: C. 8,34, X, *de testibus et attestationibus*, II,20; c.3, X, *de fideiussoribus*, III,22; c.2, *de iudiciis*, II,1, in VI; S.C. S. Off., instr. (ad Ep. Rituum Orient.), a. 1883, tit. III, n. 15; S.C. Episcoporum et Regularium, instr. 11 iun. 1880, n. 19; S.C.C., inst. 22 aug. 1840; S.C. de Prop. Fide. instr. a. 1883, n. XIX; instr. A. 1883, n. 15.[12] A comparison of the analysed standard CIC/83 with those from CIC/17 or DC shows slight differences between them, which are complementary and not exclusive. DC, adding the expression *iusta causa*, as if she wanted to emphasize the uniqueness of the hearing outside the

[12] *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus praefatione, fontium annotatione et indice analytico-alphabetico ab Emo Petro Card. Gasparri auctus*, Typis Polyglottis Vaticanis, Romae 1917, p. 502, note 3.

court seat, not only of the witness, but also of the parties and experts and, in a way, counteract to overuse this possibility.

2. The case of Urgulania and the reasons for can. 1558

We can already see the excuse for the obligation to come to the tribunal in order to testify in the attitude of Urgulania, the friend of Livia Drusilla (Julia Augusta), who, as Tacitus informs[13] Augusta's friendship brought above the law (*quam supra leges amicitia Augustae extulerat*). Urgulania was the mother of Mark Plautius Silvanus, the consul of 2 BC, who in Ponte Lucano built a family mausoleum (CIL XIV, 3606) and the grandmother of Plaucia Urgulanilla, the first wife of the future Emperor Claudius. Tacitus mentions two testimony situations with regard to Urgulania. In the light of one piece of information, Urgulania, instead of responding to the summons, went to the Caesar's house as a defendant. Augusta, offended and humiliated, failed to have Piso (*Lucius Calpurnius Piso Augur*) withdraw his complaint. Before Tiberius, for the sake of his mother, reached the praetor to intercede for Urgulania, Augusta ordered the required amount to be brought to Piso. This happened shortly after the Piso Augur in AD 16 complained about electoral fraud, corruption of the courts, fury of the speakers, and even for this reason he wanted to leave Rome [Martínez Caballero 2017, 213]. Tiberius then intervened with the relatives of Piso to dissuade him from such a decision. Moreover, Tiberius' action did not discourage him from suing the Emperor mother's friend. The action of Piso testifies that he stood his ground to the emperor's authority and was far from an attitude of seeking protection in the court proceedings [Ducos 2013, 260]. As R. Sajkowski noted, the privileging of Urgulania and the intervention of Tiberius at the praetor were not directly related to her position but was "the effect of «radiation» *maiestas* of her mighty protector" [Sajkowski 1998, 135]. It is worth adding that the wife of Octavian Augustus received *sacrosanctitas tribunicia* already in 35 BC, that is, inviolability belonging to folk tribunes, or something analogous to it, or eventually *sacrosanctitas* to the Vestals [Sajkowski 1998, 127-32]. Urgulania did not get all of this.

[13] Tacitus, *Annales* II, 34.

Tacitus also mentions another situation,[14] when Urgulania no longer wanted to testify as a defendant but as a witness (*ut testis*) in the case conducted in the senate, which resulted in the fact that the praetor questioned her at home. Tacitus does not mention what the case was about. He explains that Urgulania's decision was due to the fact that she considered it to be beneath her dignity. Meanwhile, as the Roman historian adds, even the Vestals gave testimony in the forum and in court. The laconic description of Tacitus does not help us to accurately discern the facts of the aforementioned proceedings. We can see that in this case Urgulania did not want to evade participation in the proceedings, but only did not want to come to the hearing place to give evidence as a witness. Tacitus describes the refusal of Urgulania as exceeding the civic standard and a manifestation of a high opinion of oneself. J. Mogenet believes that Tacitus's account in *Annales* II, 34 could have been more specific, but apparently a Roman historian considered that additional information would not add anything significant to his argument [Mogenet 1947, 256]. In the case in which she was a witness, she was ultimately supposed to give evidence. Perhaps, in fact, the clarification of the principle *in ius vocatio*, it seemed to her that the mere intimacy in relations with Tiberius' mother was enough not to have to go to the tribunal or possibly be questioned in a place of her choice. Urgulania was a strong personality since she sent her grandson Plautius Silvanus a dagger when he was about to knock his wife Apronia out of the window. Admittedly, Silvanus denied that it was so, but Tiberius himself was to investigate the matter and see traces of the resistance offered by Plautius Silvanus's wife.[15] The information contained in *Annales* II, 34 and IV, 22 does not allow us to be sure that there is only one trial, because if it were, Augusta's friend might want to avoid testifying in the trial of her grandson. Tacitus's description of the special treatment of the witness of Urgulania does not allow us to unequivocally assess her motives. Whether she had usurped privileges that were not actually due to her, or she had allowed herself to abuse her acquaintance with Tiberius's mother? In any case, at the time of the beginning of the principate, the praetor allowed Urgulania to act as if he legitimized her decision, and it was he who "bothered" himself

[14] Ibid.

[15] Ibid., IV, 22.

in order to learn about her position. He decided that the good of the case required it.

Under the Roman law, there was a category of people who should not be summoned to the court, such as high-ranking officials, or who were sued with the consent of the praetor. The Romans knew that the dignity of certain offices and the protection of the effectiveness of their operation required them to be treated with special respect and privileges. Of course, Urgulania was not a civil servant. Ulpian, commenting on *restitutio in integrum* explained that the so-called procedural immunity of some officials results from the *mos maiorum* i.e., the custom of the ancestors.

D. 4,6,26,2 (Ulpianus, *On the Edict, Book XII)*: "The Praetor further says: «Or where it was not lawful for him to be summoned against his will, and no one defended him.» This clause has reference to those who, according to the custom of our ancestors, could not with propriety be cited into court; for instance the consul, the Praetor, and others who exercise power or authority […]."

The principle of the full sovereignty of the legislative power of emperors was formed in the late Principate, while it became fully binding in the Dominate. A jurist from the turn of the 2nd and 3rd century Ulpian in book thirteenth of his *Commentary to Julian and Papal Acts On the Lex Julia et Papia* argued that "princeps legibus solutus est." "The Emperor is free from the operation of the law, and though the Empress is undoubtedly subject to it, still, the Emperors generally confer upon her the same privileges which they themselves enjoy" (D. 1,3,31). The Emperor Valentinian, in the 429 Constitution, expressed the thought that it was better for the state to subordinate the imperial power to laws (C. 1,14,4). W. Wołodkiewicz wrote that it was only "an uncovered declaration" [Wołodkiewicz 2002, 56]. We could see some kind of adherence to the rules of law in the words of Septimius Severus and Antoninus Caracalla, quoted by Justinian, that although Emperors are free from the bonds of rights, they still live according to the laws (I. 2,17,8). *Ius singulare* or the activities of the Roman praetors testify that the Romans sometimes resorted to *relaxatio legis*. Following *aequitas*, they allowed exceptions to the rule several times [Sadowski 2012, 91]. The Roman roots of the particular way of litigating or questioning parties or witnesses in the correlation of church and state law can also be found in such institutions as *audientia episcopalis* or *prifilegium fori*, which have already been discussed in

detail in the literature on the subject. Moreover, the Romans were sensitive to the issue of the elderly and the sick and obliged to deliver them to the court [Zabłocki 1994, 47-57].

Being questioned outside the court seat in the light of canon 1558 CIC/83 is a kind of privilege of certain people included in the so-called *personae illustres*. Whether it is in the case of cardinals, patriarchs, bishops, and others who are permitted by the law of their country, it is due to the respect that comes with the exercise of their offices. Just browse the official calendar of the activities of these people available on the Internet site to see how different meetings in matters of national or international church and state are, and how big is their number. Thus, the possibility of determining the place and time of the president's testimony appears as an aid in the performance of his/her office. By giving some people the opportunity to testify in a place convenient for them, the church legislator satisfies the postulate not to interfere with the fulfilment of obligations important for the church and the state. In a world steeped in an egalitarian culture, in which the equality of ontic dignity is so emphasized, certain privileges nevertheless appear necessary. Social dignity related to certain offices or functions requires us to respect specific legal solutions aimed at protecting the peace and safety of people holding them. The lack of certain cardinal or episcopal prerogatives could in certain situations have a negative effect and be an obstacle in reaching a possible conclave or council. In the history of the church, the privileges of cardinals, patriarchs and bishops have evolved. Some of them corresponded to the mentality of the era. The position of a cardinal is related to his right to elect the Pope, as well as his availability in relation to the Pope. CIC/83 regulates the question of cardinals in can. 349-359. In the light of can. 350 CIC/83, the eastern patriarchs are included in the college of cardinals. The cardinals enjoy their privileges from the moment they are declared cardinals, and not from being promoted *in pectore* (can. 351 CIC/83). The cardinals help the Pope in considering the most important matters or in the celebration of particularly solemn liturgical acts [McCormack 1997, 142-46]. They work in various congregations or Vatican offices. The current privileges of cardinals can be found in the document Segreteria di Stato, *Elenchus privilegiorum et facultatum S.R.E. Cardinalium in re liturgica et canonica* of 18 March 1999. A very valuable commentary on this document are the Notes described by A.S. Sanchez-Gil [Sanchez-Gil 2000, 272-83]. These privileges currently in

force differ from those in force before. For example, the Pope Innocent IV in 1245 distinguished cardinals with red hats worn at special times for the Church, but they are no longer used since the pontificate of Paul VI. The Pope Urban VIII in the 17th century wanted cardinals to be called eminences (*eminentissimi*) [Ciprotti, Paschini and Bartoccetti 1949, 783]. Among the many standards relating to the cardinals and announced in the *Norme ceremoniali per gli Eminentissimi Signori Cardinali* by the Sacred Congregation for the Ceremonial (*Congregatio coeremonialis*) on 6 January 1943 in point 82, we read that cardinals, when they have to travel by train, should take care to have a compartment reserved, if this was impossible, they should wear back cloths without any visible cardinal signs. Congregation cared for the observance of the ceremonial at the papal court but was abolished by the Pope Paul VI in 1968.

The patriarchs, i.e., bishops who have authority over the bishops and the faithful of the Church whom they preside in accordance with the regulations approved by the supreme authority of the Church (can. 56 CCEO), call and preside over a permanent synod (can. 116 CCEO), may bless marriages around the world when one of their betrothed belongs to their Church (can. 829 § 3 CCEO) [Adamowicz 2011, 41-43]. The bishops, who are treated mainly in can. 375-411 CIC/83, had the customary law of precedence in the diocese, but also insignia such as a ring or a crosier modelled on royal insignia [Wójcik 1989, 590-91]. And although today, in the light of can. 387 they are called to the simplicity of life, and at the same time they can use pontificals in their diocese (can. 390 CIC/83). In the light of can. 1227 CIC/83 and the bishops may have a private chapel.

A.S. Sanchez-Gil, describing the liturgical and canonical prerogatives of the cardinals, treats canon 1558 § 2 as an example of a certain autonomy of the cardinals in the judicial matter in addition to canon 1405 § 1, 2° [Sanchez-Gil 2000, 281, note 31]. He believes that the 1999 Document of the Secretariat of State clearly shows the tendency to delineate the area of cardinals' autonomy, especially in the liturgical matters, which would not apply to the relationship between the cardinals and the Pope. Although CIC/83 does not overuse the concept of autonomy, it sometimes uses it directly or descriptively, e.g., in can. 809 with regard to the scientific disciplines of the universities or faculties in the area of concern of the Episcopal Conferences or the statutes and curricula of universities and ecclesiastical faculties (can. 816 §

2), institutes of consecrated life, foundations, chapters or personal prelatures. The church legislator treats the autonomy as more or less independent, not as a complete independence [Pikus 2009, 96-102].

Conclusions

Can. 1558 CIC/83 deals with the place where witnesses are interrogated. The church legislator clearly prefers in it to testify at the seat of the tribunal. There, as a rule, the conditions for obtaining information useful in the process calmly and safely exist. There are situations when someone is questioned outside the seat of the trial court. We are then dealing with requisition. It should not be overused. When an appropriate priest is delegated to accept the testimony, it is advisable to interview in the parish office. However, there are situations when testimony is taken at the witness's house, even if only because of his illness. Sometimes this can make the situation awkward, as the matter treated may be very intimate, and someone in the next room may hear the content of the testimony. This may affect the quality of the testimony or result in later tensions in the witness's family relations.

It is not only church legislation that prefers to testify at the seat of the tribunal. The Polish legislation in this respect is similar. The contents of can. 1558 § 2, which deals especially with persons holding high dignities, has no equivalent in the contemporary Polish law. It was different in the pre-war code of the civil procedure of 1932. On the other hand, can. 1558 § 3 finds its equivalent in the standards of both the Code of Civil Procedure in Art. 263 and the Code of Criminal Procedure in Art. 177 § 2, which allow the hearing of a witness in his/her place of stay due to disease, disability or other insurmountable obstacle. The convergence of solutions proves that these standards are of common sense. Of course, it would be interesting to trace how the contents analysed by me correlates with the legislation of other countries.

The church standards proposed by CIC/83, in terms of the matter discussed by us, partially correlate with the solutions of the Roman law. Already the *Law of the Twelve Tables* I,1 was: "Si in ius vocat, [ito]. If he (i.e., anyone) summons to a pre-trial, he (the defendant) is to go" [Crawford 1996, 579]. Moreover, the provision of Table I,3 specifies: "Si morbus aevitasve vitium escit, [qui in ius vocabit] iumentum dato. Si nolet, arceram ne sternito; i.e. If there is illness or age, he (the plaintiff) is to provide a yoked beast of

burden; if he shall be unwilling, he is not to prepare a carriage" [ibid.]. At the time when these regulations were created, Rome was not yet great, hence it was possible to transport the sick to the court. Today, when the distances between the tribunal and the witness's place of residence may be big, it is allowed for hearing the witness at his/her place of residence. The example of Urgulania, who, referring to her friendship with the Emperor's mother, did not want to come to court and to whom the praetor came as a witness, proves that in the ancient Rome certain privileges were not always specified and that they were in fact only subject to elaboration. In the contents of can. 1558 CIC/83 we can see the historical continuity of the adopted solution, which already functioned in CIC/17. The reasons for this canon include rationality, efficiency, awareness of social privileges of people holding high dignities, their autonomy, the desire to conflict with their daily duties is as little as possible, but also sensitivity to the needs of the sick and the poor.

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Examination of Witnesses outside the Seat of the Tribunal in the Light of Can. 1558 of the 1983 Code of Canon Law

Abstract

Can. 1558 CIC/83 states that the seat of the tribunal is the main place for examination the witnesses. However, the opposite possibilities are allowed if the judge decides otherwise. The cardinals, patriarchs, bishops and persons who enjoy similar facilities under the laws of their own country may choose their own place of testimony. On the other hand, the judge decides about the place of the hearings when the matter concerns the sick or those who, due to distance

or other obstacles, experience the inability or difficulty to come to the court. In the contents of can. 1558 CIC/83 we can see the historical continuity of the adopted solution. The legal and church solution to a large extent, though not completely, coincides with the Roman and legal-state solution. The article consists of two parts. In the first one, the Author discusses the contents of the canon concerning the place of hearing the witnesses when they have to testify outside the court, in the second one, he looks for the reasons for such a canon and perceives it in rationality, effectiveness, awareness of the social privileges of people holding high dignities, their autonomy, and the will to minimize their interference with everyday duties, but also sensitivity to the needs of the sick and the poor.

Keywords: canon law, Roman law, process, *personae illustres*

Przesłuchanie świadków poza siedzibą trybunału w świetle kan. 1558 Kodeksu Prawa Kanonicznego z 1983 roku

Streszczenie

Kan. 1558 KPK/83 stanowi, że zasadniczym miejscem przesłuchania świadków jest siędziba trybunału. Dopuszcza jednak możliwości przeciwne, gdy sędzia uzna inaczej. Kardynałowie, patriarchowie, biskupi i osoby, które cieszą się podobnym ułatwieniem na bazie prawa własnego kraju mogą sami wybrać miejsce zeznań. Natomiast o miejscu przesłuchań decyduje sędzia, gdy rzecz dotyczy chorych, czy tych którzy z powodu odległości, jak i innej przeszkody doświadczają niemożliwości czy trudności w przybyciu do sądu. W treści kan. 1558 KPK/83 możemy dopatrzyć się ciągłości historycznej przyjętego rozwiązania. Rozwiązanie prawno-kościelne w dużej mierze, choć nie całkowicie, pokrywa się z tym rzymskim i prawno-państwowym. Artykuł składa się z dwóch części. W pierwszej Autor omawia treść kanonu dotyczącego miejsca przesłuchania świadków, gdy muszą zeznawać poza siedzibą sądu, w drugiej szuka racji takiego kanonu i postrzega je w racjonalności, skuteczności, świadomości uprzywilejowania społecznego osób piastujących wysokie godności, ich autonomii, chęci jak najmniejszego kolidowania z ich codziennymi obowiązkami, ale także i w wrażliwości na potrzeby chorych i biednych.

Słowa kluczowe: prawo kanoniczne, prawo rzymskie, proces, *personae illustres*

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