Biuletyn Stowarzyszenia Kanonistów Polskich XXX (2020), no. 33, p. 53-69
https://doi.org/10.32077/skp.2020.33.1-4en

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OPINION ON TRIBUNAL FEES

I.

The article published in the "Bulletin of the Association of Polish Canonists" by Prof. Ryszard Sztychmiler on judicial expenses[1] has given me a lot of reflection based on 33 years of judicial experience[2] that I present here, without reference to ecclesiastical documents and authors' opinions, which seems understandable.

It should be noted at the beginning, as R. Sztychmiler also writes, that even the tribunals of the Holy See are not able to fulfil Pope Francis' desire for free cases of nullity of marriage. There is no point in paying for trials by diocesan curia. I don't know if there are dioceses in Poland with larger surpluses in the budget necessary for their ordinary functioning.

II.

I consider it unrealistic to set equal judicial expenses for the whole country and even the metropolis. For example, it is impossible to compare generosity in the diocese of Łomża with Western Pomerania. It is also impossible to compare areas in the same metropolis, for example, the generous Garwolin with the "communist" Ostrowiec Świętokrzyski in the Lublin province, or even more "communist" Sosnowiec with the Vistula sands in the Zwoleński

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[1] See Sztychmiler 2019, 195-224.

[2] Notary of the Bishop's Tribunal in Sandomierz (1978-1979), vice-official of the Ecclesiastical Tribunal in Radom (1984-1992), consultant (1990-1995) and vice-official (1995-2000) of the Inter-diocesan Tribunal in Grodno, official of the Bishop's Tribunal in Sandomierz (1992-2017). I don't count here on the little experience of the last three years when I am a judge in a small number of cases.

decanate in the Częstochowa metropolis.[3] The situation of various tribunals is also different. For example, in some heating, lighting,[4] etc. is paid by the curia, in others the tribunal itself. This must be relevant to the amount of fees; it must be sufficient for the tribunal's current expenses.

Can. 1611, 4º of the 1983 Code of Canon Law[5] ordering the determination of judicial expenses in the judgment ending a case (when the real costs of the entire trial are already known) can only function in state courts that have the power to enforce them. It is also impossible to distribute judicial expenses to both parties and enforce them from the respondent, who often does not care about the trial. By necessity, therefore, the burden of the expenses of the process lies with the plaintiff.

The fee for all cases considered in a given tribunal must be the same in substance. By "in substance" I mean typical judicial expenses without fees for experts and advocates who do not appear in every trial. However, I do not consider it necessary to require payment of expenses at the beginning of the process. Some people do not find it easy, so they just need to pay until the trial is over. A fairer than equal payment for all is used by some tribunals depending on the party's earnings (one monthly salary). However, I did not want to apply this rule, because a person earning, for example, 8,000 PLN a month, will not say that the process cost one month's earnings, but 8,000 PLN and such an opinion about ecclesiastical trial fees will be another argument for the widespread opinion about the materialism of the Church.

I consider it appropriate for the respondent to participate in the judicial expenses if respondent lodges a counter action. It is argued that the trial

[3] In Poland, there is no internal coherence of church provinces, often created without the criteria of the decree *Christus Dominus*: "Thus the needs of the apostolate will be better met in keeping with social and local circumstances. Thus, too, the relationships of the bishops with each other and with their metropolitans, and with other bishops of the same nation and even between bishops and civil authorities will be rendered easier and more fruitful." Sacrosanctum Concilium Oecumenicum Vaticanum II, Decretum de pastorali episcoporum munere in Ecclesia *Christus Dominus* (28.10.1965), AAS 58 (1966), p. 673-96, no. 39. Not much metropolis (for example Katowice) meets these requirements, and most probably does not correspond to this conciliar principle of the Częstochowa metropolis.

[4] It is worth noting that heating or lighting the tribunal costs the same regardless of whether it is 10 cases or 100 cases, so with fewer cases the fee must be higher.

[5] *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].

would have been conducted anyway if there had been no counter action, so the respondent should not pay, or pay less, because respondent only joins the trial. This is true, but it would also be dishonest to pay a higher fee for one party and a smaller fee for the other. It may be smaller for both parties, as R. Sztychmiler writes about it, but it is not always easy. Although according to can. 1463 § 1 a counter action cannot validly be proposed 30 days of the joinder of the issue, according to the repeated answers of the "high" officials of the Roman Rota to my questions during conferences, the general norms of the contentious trial have only auxiliary significance in cases of nullity of marriage (from these replies it follows that not only those contained in can. 1671-1691, because there is nothing there about it) and to avoid an unfair judgment, a counter action can also be filed at a later date.[6] Therefore, if the respondent submits a counter action after publication of the acts, it would not be easy to determine lower expenses for both parties than in the process without a counter action: would it be possible to reimburse part of the costs already paid by the plaintiff? What part of them? So it seems right to pay the full fee by both parties.

I do not consider it appropriate, rare practice of some tribunals, to make the amount of the judicial expenses dependent on the number of grounds of nullity. The argument: "If a party wants to submit an additional ground, let it pay extra, because it requires additional work from the tribunal" I do not consider correct. First of all, the party itself only sporadically wants an additional ground. Mostly the party does not know the law and introduces ground of nullity under the influence of someone else, even a judge who sees the faint chances of the ground in question and proposes to add another, which is drawn in the acts. In addition, the new ground usually only slightly increases the work of judges. In general, the acts already contains some information relevant to the new ground, and additional examination of parties and witnesses is not always necessary. After all, the judge is already trying to hear other grounds of nullity during the examination of the parties. It also happens that at the beginning of the trial the judge determines the terms of the controversy broader than that given by the petition, or if the party edited the

[6] I have never questioned the validity of the trials in which the counter action was filed later than 30 days of the joinder of the issue. Anyway, I consider this to be in accordance with can. 1600 CIC/83.

petition itself without knowing the law and does not clearly state the ground of nullity, but it results from the content of the petition. Then the judge himself formulates the ground one or more, which means that from the beginning different fees should be applied. The Tribunal in Lublin even determines the terms of the controversy after examination the parties, during which it tries to detect the most appropriate or all possible grounds.[7]

III.

In terms of exemption from or reduction of judicial expenses, I can say that the vast majority of people asking for this have just cause for it, tricksters are quite rare. The problem is proving the "poverty" of the parties, so probably in most cases it should be approached gently and believe the requesting party (sometimes this can be known during the examination), and even in doubt it is better to be cheated than to be rigorous. It is worth noting that people who are really poor often do not ask for relief and tend to pay for the case in the belief that they should pay what is due and are even ashamed to admit poverty.[8] However, can it always be determined?

The suggestion of R. Sztychmiler to demand a PIT document from the party asking for it should be considered accurate, although it sometimes happens that in addition to the revenue specified in this document it may have other income. The request to send a certificate from the commune office on income or earnings from the workplace did not pass the exam. One of these cases: the person asking for exemption from fees presented a document from the commune office stating that he was unemployed, while the parish priest asked for an opinion wrote that he was the actual owner of two orchards and other income formally referring to the old, infirm father with whom he lived and actually he managed everything. He stubbornly portrayed himself as

[7] To my question about the validity of this deviating from practice, the outstanding canonist Rev. Remigiusz Sobański replied that he saw no reason to question it.

[8] More than 20 years after sending a dispensation from a ratified and non-consummated marriage from Rome, the Congregation for Divine Worship and the Discipline of the Sacraments demanded to send 596 USD. The petitioner asked for a delay in writing because there was no buyer for a cow. After sending her a letter to the Apostolic Nunciature, we immediately received a decision to exempt her from payment without demanding evidence of poverty. The cow remained on the farm.

poor, and it was only the suspension of sending him a judgement that forced him to pay the judicial expenses, and even more interestingly forced the exemption from the judicial fee by the second instance tribunal, which at that time was less willing to exempt. Another plaintiff claiming to be poor came by car at a time when it was rather rare and refused to pay judicial expenses. Doubts about his honesty disappeared when he brought the writing: "I authorize the law office in Warsaw [address] to represent me as a procurator in the process of nullity my marriage." That's all, nothing more. When asked how much this office costs, he said nothing; they only spent the night when they came to him (200 km!) and he gave them dinner and breakfast. Philanthropic law office! However, he stubbornly forced him not to pay the judicial expenses. There was a lack of money to pay for the costs of the trial, but there was an expensive lawyer from a secular court who knew little about the canonical process and really didn't help. I remember the contract attached by the other party found in the papers left by the plaintiff with such a lawyer for 5,000 PLN, and the judgment turned out to be negative for the plaintiff. How much should a ecclesiastical judge earn in comparison with such a lawyer?

Experience has shown that the demand for a certificate from a parish priest about difficult financial conditions is usually of little value. A parish priest aware that the party lives in his parish prefers not to argue with the party and usually supports the request; less often gives an enigmatic, and even less often a negative opinion. It is better if the tribunal itself turns to the parish priest, stating that his opinion will remain a secret, but this also rarely helps. The parish priest is afraid that the party will find out about his opinion. If you can convince and send an opinion unfavourable to the party, you need to look for a justification for refusing to be exempt from the fee, which does not result from the parish priest's letter. This can usually be found in the civil documents attached to the acts, or in the testimonies of the parties or witnesses, on which one can be cited without exposing them to the un-pleasantness of the plaintiff. This is what I did with the aforementioned [non] owner of two orchards.

If the plaintiff has not paid the judicial expenses by the end of the trial, I wrote that the judgement was issued and will be sent after payment of the fees. In the absence of a reply, I sent a judgement stating that the party undertakes in conscience to pay for the trial when "party's material situation improves" (although I did not believe that this would happen, but I thought

that the party should be aware of his dishonesty). This was also the case with the client of the "philanthropic" law office in Warsaw. I have no doubt that no one can be refused to send a judgement just because of money, the more that the lack of a judgement usually prevents the conclusion of a new marriage, and thus keeps the plaintiff and the person living with the plaintiff in a sin.

IV.

Advocates are needed in ecclesiastical tribunals. In penal and contentious matters, except marital ones, they are necessary. Based on experience, however, I have no doubt that in R. Sztychmiler's article, as well as in the position of the Holy See, their role in processes of nullity of marriage (at least in Poland) is emphasized. There is also no need for many advocates.

Throughout my judicial work I can mention only a few cases where without an advocate there would be no positive judgement for the plaintiff: once when he suggested the appointment of an expert indicating his person, the second time when he proposed adding a new ground of nullity.[9] The remaining cases (about three) are convincing the plaintiff to add the ground of nullity of the plaintiff (such a suggestion by the judge was not accepted by the party). In all other cases, careful reading of the acts by the judge and his request for new evidence by the party, or a suggestion for an additional ground of nullity, were sufficient. Judges are not soulless and according to can. 1452 have the duty to *ex officio* assist in bringing about a just judgment. Of course, this role of the judge is limited, and his proposals must be careful not to expose him to bias accusation. Usually, in such cases, I sent a letter to the plaintiff informing that the ground of nullity in question "seems to have little chance of proving (I wrote carefully even if it not only seemed but was ob-

[9] I have seen this ground (the plaintiff's incapable), but I was going to propose it only as a last resort, if the ground in question would prove impossible, due to the exceptional aggressiveness of the respondent, who, after receiving a copy of the petition, sued the plaintiff for defamation. There, without waiting for the judgement in our tribunal, he was sentenced to high fines twice, which he had to pay. My reference to the Church's autonomy, including the freedom of canonical processes, did not help. It was only the state-church concordat commission that recognized the interference of secular courts in this canonical process. However, it lasted a long time, and in the meantime the advocate added the ground I was delaying.

vious), while the acts suggest the possibility of nullity of marriage due to… If you think it is right, you can add the ground." If the party did not respond to the letter or wrote that it did not add the proposed ground, I called party to tribunal and verbally, again very carefully, I presented the problem. Here I see the benefit of an advocate, because he finds it easier to convince the party than the judge and does not have to be as careful as the judge.

A dozen years ago, I expressed my conviction that church advocates were of little value to Card. Zenon Grocholewski. He only replied that matters involving an advocate are of a higher level. It's true, but I have two reservations. First of all: a "high level" is needed in few cases. Secondly: Card. Grocholewski thinks by the criteria of the Holy See, which is reached almost exclusively by difficult cases.

I consider the participation of an advocate in the vast majority of cases to be insufficient and even not useful at all, unnecessarily burdening the parties financially. R. Sztychmiler often answered that a party does not have to have an advocate. Rightly so, but if he is an advocate, and a few others are, but all the advocates do not inform the party that their participation does not seem necessary, all the more so because the faithful, thinking according to the criteria of the secular courts, are convinced of the great role of advocates, moreover, information an advocate that he is not necessary may be considered by the party to disregard him. Regrettably, parties spending money unnecessarily on advocates. Parties are for the most part poor people. However, I do not see a way out of this situation, the more so because as a result of the urging of Western thinking Apostolic Signature, the participation of church advocates has become widespread. The tribunal counsel can only minimize this universality, but it will not change it, because a significant number of applicants believe that in addition to writing a petition, it is also necessary to direct their process by "competent" persons.[10]

According to R. Sztychmiler's article, it appears that the advocate's primary task is to defend the trial party. This may not be questioned, but other aspects of this issue should also be recalled. The advocate's duties also include presenting statements, submitting motions, and thus making demands. The advocate's overall judicial work consists of his defensive (defence) as

[10] In our tribunal, free counseling operates with a break of several years two days a week since 1985.

well as offensive (demands), therefore the term "ministry" – *ministerium* (can. 1481 § 3), *munus* (Art. 101 § 2 of the instruction *Dignitas connubii*[11]) seems more appropriate. **It is very important to remember that both defence and demand (attack?) have a limit. It is the truth** [distinction – W.G.]. By demanding the nullity of marriage and defending his clients, the advocate is also to assist judges in finding out the truth; he cannot strive to "win" the case against his conscience.

The parties' right to defence is not tantamount to having an advocate, which is also acknowledged by R. Sztychmiler, although he strongly emphasizes the tasks of defence advocates. At this point, the question may be asked: who should the advocate defend against? Of course, against the claims of the other litigant, against unjust demands, false accusations, etc. However, the article in question says little about it, this is not its main topic, but something about it wonders. The not very fitting wording suggests that the advocate is supposed to defend the party… against the tribunal. A somewhat strained (perhaps not perverse) course of thought can be considered that the first addressee of this defence, and maybe even the main opponent of the advocate, is the judge. The author probably does not mention the defence against the other party (maybe because it is obvious), but, for example, expresses the fear that paying an advocate through tribunal may be making him dependent on a judicial vicar. Is this not an exaggeration? Does it mean that giving money from the tribunal cashier to the advocate makes him dependent on the judicial vicar and makes him a tool against the party? Indeed, this can be read as the belief that the judge can be an opponent of the party. An advocate may or even should notice a mistake made by a judge or a lack of correctness in his reasoning. An advocate may raise an objection to the judge's bias, of course with justification. I do not exclude such a possibility, however, I do not recall the actual bias of the judge in examining and deciding the judgement.[12] Even despite the emerging sympathy for one of the parties (especially abused

[11] 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.

[12] Once I suspected such a judge from a fairly distant tribunal when a party brought a petition to our tribunal. Suspicion, not certainty.

by the other party), the judges strive for honesty. There are negative judgments for people close to the judge or his colleagues.[13]

V.

How much time does a typical ecclesiastical advocate in Poland devote to the average case? A few, at most a dozen hours. Of course, there are more (especially recently), but quite rarely. Most often, advocate edits the petition,[14] but does not always read the acts during the publication of the acts and, as a result, responds to their content in writing, responds to the pleading (*votum*) of the defender of the bond even less often, and prepares an appeal. We had an advocate whose response to the acts covered over twenty pages. It was fairly justified by normative ecclesiastical documents and statements of the authors. A lot of work. We were astonished. In the future, however, it turned out that this elaborate had been sent in all subsequent cases and changed a bit with their specificity. Therefore, in accordance with reality, the preparation time for this defence should be divided into a dozen cases to which it was applied.

Recently, advocates are more likely to read the acts before they are published. Several judges shared with me the fear that advocate would guide the case. They noticed that after the advocate got acquainted with the acts at the stage of gathering evidence, the parties often brought new elements, sometimes even significantly changing their current position. Sometimes the further behaviour of the parties simply raised suspicion and even conviction (unfortunately impossible to prove) that the advocate informed his client about the content of the evidence of the other party or witnesses. The judges see here the danger of violating the equality of the parties in the process: an advocate of one party often looks into the acts, knows their content, predicts the outcome of the case and looks for a way to influence the result, while an

[13] It must be admitted that in such situations the judicial vicar does not appoint judges for the cases of their relatives (I did not even appoint them for their parishioners), and if the judicial vicar did not know this, the judge himself asked to be excluded from such a case.

[14] In general, I have more confidence in petitions edited in the counseling center at the tribunal, and I see the need for advocates to prepare a petition "in the field", i.e. in the vicinity of the tribunal.

advocate of the other party does not often look at the acts,[15] or if the other party does not have an advocate (which is much more frequent), also has no access to the acts, does not know their content and in this situation the equality of parties at the stage of the declarations of the parties becomes only theoretical.

Only once the advocate was present during the examination of the party (this is more frequent recently). This action may be useful in complex cases, because during the examination advocate may suggest additional questions to the judge to clarify the case.[16] This, however, takes a lot of time and does not really attract advocates, perhaps because it is difficult to meet (I have not met) advocates who have canonistic knowledge even slightly more than minimal. At this point I will quote information from one of the judges that in some cases during the examination the party hesitated what to say and looked at the advocate. There was a suspicion that the advocate was setting testimonies, and in this case he had not warned what to say and the party did not know how to testify.[17] I do not know how often this phenomenon occurs (I think it is rare), but it suggests that advocates are instructing the parties about what to say in the examination.[18] About 10 years ago, the advocate to whom I presented the "suspicious" documents sent by the party at various stages of the process and explained why I think they came from him, without arguments against my theses, admitted to me that he actually wrote them. It also happens that during a sworn examination the plaintiff says something different, or even opposite to the content of the petition, moreover, sometimes even denies the fact written in the petition, obviously not remembering (or

[15] Here you can see the low usefulness of advocates living far from the tribunal.

[16] Once, I had questions from the advocate for parties and witnesses, which were 90% of the repetition of questions prepared in the tribunal. An advocate who has already appeared in the tribunal knows what questions are being prepared in it, and he replicates them. Other judges also noticed this value of the questions prepared by the advocate. Advocate's work in vain, but he will add it to his earnings.

[17] The judge said that when the party looked at him, he wrote something; he thought he could make a sign. Perhaps this judge exaggerated his suspicions, but he had some evidence to suspect this advocate.

[18] I have heard such suspicions in another tribunal.

perhaps not knowing)[19] that the petition is different.[20] At this point, it should be said that conscious lie under oath occurs very rarely (people have respect for the oath), more often it happens to stretch the testimony, stressing the facts, not to mention the innocent subjectivity, which is a common phenomenon, but there is also a conscious lie.

VI.

What advocates' fees should be regarded as fair and in proportion to the time spent on the case? First of all, it should be noted that there were hardly any church advocates in Poland who made a living out of this activity alone. Only now are there more of them. Most of them have other sources of income.

One of my bishops specified the amount of the advocate's fee for the entire case as not higher than half of the usual judicial fee, i.e. 500-600 PLN. Is the remuneration of such work (in fact usually 5-10 hours, rarely more, and more often less) of 500 PLN (or even less) really unfairly small for an advocate? It should also be added that the average advocate accepts a few cases a month (in our tribunal about 2 – which gives a total of about 10-20 hours). With such a small amount of time, he would have a monthly salary equal to almost half of the judicial vicar's work, and the judicial vicar works several dozen hours a month, often also in the afternoon and evening, and he receives the lowest national salary in our tribunal. There are tribunals where

[19] One of the judicial vicar told me about writing a petition by advocate on the phone talking from a distance to a previously unknown party.

[20] After several years of experience, when a party speaks differently than wrote in the petition, or testified differently earlier, I did not look for a correction immediately, but before saving this testimony I asked if the statement formulated in this way reflects what party said and if I can write it down, only after confirmation I saved this answer. After all, you can't be glad that you caught a party on a lie, because it can be influenced by the lack of thinking about when the thought is still at the previous question, and there is also stress during the examination. I also decided that the party should not be presented immediately before choosing one of the contradictory statements. However, in order to avoid hasty recognition of dishonesty, with both conflicting sentences I repeated the question: did you say that? I repeated the same question at each of these points when reading testimonies before they were sworn in. Usually, at the end of the examination with the plaintiff, I would read the petition, asking if plaintiff could confirm the content under oath. There were corrections, sometimes such that they convinced about the sincerity of this person.

an advocate has more cases. There are advocates approved simultaneously in several dioceses, even in importance distant from each other.[21]

It often happens that an approved advocate does not officially appear in the case, but the party submits documents written by him, of course not for free. Knowing the language of some advocates, it is easy to know it, and sometimes the party itself when asked who wrote it tells the truth. As a rule, I don't see anything wrong with that, I think it usually costs a party less than formally "hiring" an advocate for the whole process. A dozen or so years ago, I heard from three different sources about an advocate, formally charging 300-400 PLN per case, that he charges 3,000 PLN for the party. When asked by me, he denied, stating that he did not take more than 500 PLN per case, and he can show the party's receipts as proof of this. When a little later one of the priests told me what I had heard earlier, I asked him to ask the advocate who advertised himself on the Internet (I rightly suspected that he was the same and knows my voice) about the amount of the fee. He heard that 300 PLN for writing a petition, and 3,000 PLN for participation in the entire process. I recently came across an advocate approved in two or three dioceses. I heard from him that for writing a petition he takes 300 PLN, and for participating in the whole process from 3,000 to 5,000 PLN,[22] and because he has a "so small" fee, he has cases from many dioceses (he mentioned some), where parties cannot afford paying local advocates charging twice as much, or even more. Unable to believe it, I repeated the question several times about these amounts and whether these advocates were actually approved by the church authority. If the mentioned advocate has 5 cases a month (in one or several tribunals), he earns 15,000-20,000 PLN per month. We in

[21] Only a few times during my work, an advocate from a remote tribunal approved *ad casum*, asked for the acts to be sent to the tribunal of his place of residence for publication. He came about 300 km once or twice for the publication, but on the occasion of another trip. Mostly, however, they were not interested in publishing the acts (it is good that the party usually came). So what's the point of approving advocates from other dioceses? Advocates asking for approval in our diocese sent proofs of their approval from several dioceses, even quite distant from each other. How seriously could they do their job in different parts of the country while having a different job first? R. Sobański was also skeptical about them.

[22] When I looked at his website, the slogan "price list" was only 100 PLN for advice and 300 PLN for writing a petition. For other services listed there, there was no price, only "negotiable" information.

the tribunals make sure that the burden on the parties is as low as possible, and for advocates, draining them is an easy way to live well. I am not saying that this is a common phenomenon, but it is not unique. I suppose that also R. Sztychmiler does not know the scale of this practice and would be surprised no less than I was. I stand by the position that the real work of an average church advocate in Poland is worth no more than a few hundred, and certainly not a thousand zlotys.

The party using such an advocate will truthfully claim that the church trial cost 5,000, 7,000 or 10,000 PLN, because the party paid not only 1,200 PLN in the tribunal, but also several thousand for the advocate, although in fact in most cases he was not needed for anything. As you can see, there is not only the problem of arbitrary, unapproved advocates, but also of the approved advocates. Needless to say, it also "lends credence" to the public's opinion about the rip-off of the Church, because the activities of "our" advocates are on its account.

In this situation, I agree with R. Sztychmiler that, in contrast to the rather impossible to uniformly define ordinary judicial costs, the need to regulate fees for advocates on a national scale is necessary and urgent. Advocates and judicial vicars from the Corpus Advocatorum and the Convention of Polish Judicial Vicars should participate in the development of these standards. After establishing the standards, it is necessary to actually control their compliance by an appropriate team.

As I have already mentioned, few dioceses (or perhaps none) in Poland are rich enough to pay for advocates through the curial fund. The burden of their remuneration is necessarily borne by the parties, and for a large part, if not most, even the usual judicial fees are not easy. I consider the proposed 50-100% of the average monthly salary of a national advocate too high, especially since the real work of an advocate is usually small. Cited after A. Miziński, the amount of remuneration of advocates in Italy in the amount of 150-250% of the monthly remuneration of a judge in Polish conditions is unthinkable. Adding to this the usual judicial fee and expert's fee, travel costs, etc., the party would have to spend several thousand zlotys and then, according to popular opinion, one would have to sell a cow (maybe more than one) to "settle" the nullity of marriage. Compared to an advocate, an expert of the church tribunal, especially a psychologist, spends a few or maybe a dozen or

so hours more on one case than an advocate, and is content with a fee of approx. 300 PLN (and willing to undertake this work), so is it right to fear that there will be a shortage of canonists willing to work in church tribunals?

I consider comparing the salary of a church advocate with a civil advocate inadequate. Civil advocate must devote much more time to the case than church advocate do. Acts on civil matters contain several or even a dozen or so volumes. There is a bigger maze of ever-growing regulations that must be followed. It is also necessary to prepare a reply for the advocate of the opposing party or the prosecutor and attend court sessions almost every day. If, as in secular courts, the level of knowledge of an average church advocate corresponded to the level of knowledge of a judge, it could be discussed, while the entire "defence" of church advocate includes several excerpts from the acts and briefly commented on, often ending with the sentence that "the nullity of this the marriage has been fully proven". What does this bring to the case? How much should a church judge, who has much more work than they do, earn in comparison to advocates?

Even if there were not enough genuinely secular church advocates due to too low, in their opinion, salaries, the "defence of the parties" emphasized by the Author would not lose much, or even nothing. Even the Metropolitan Tribunal in Katowice in the times of R. Sobański, which I considered then (not only me) the best church tribunal in Poland, had only two lawyers.[23] Based on my experience, I believe two or even one would be enough. There will always be a few volunteers and we are not threatened by the fear expressed by the Author several times that there will be no one to work in church tribunals. The reality clearly shows that their real role in marriage processes in Poland is very small, and sometimes even none. Repeated reliance on the Holy See's norms for the establishment of church advocates is the mentality of the higher tribunals and Western conditions of people's lives. The advocates of Roman tribunals are seasoned canonists, even law professors who often have valuable scientific publications. How many church advocates in Poland have canonistic publications? I have not heard of a church advocate in Poland who would be able to penetrate deeper into the doctrine of law, understand, for example, the essence of the exclusion of marriage consent, the nature of discretion of judgement concerning the essential

[23] R. Sobański's oral answer to my question.

matrimonial rights and obligations, not necessarily as well as Prof. Wojciech Góralski, but at least to penetrate the state of consciousness and the psyche of a person facing the dilemma of getting married or not, etc. (of course, the same can be applied to many judges). Maybe they are. Those whom I have met slide on the surface of the problem, for the most part, contributing nothing to the solution. I do not know how many actually deepen their knowledge and read studies on dogmatic of material marriage law. Ideally, the advocate should have the same knowledge as the judge, but let him have at least enough knowledge to understand less than superficially the inner content of the definition of marriage, its qualities, rights and obligations, a little more than the definition needed to pass the exam.

VII.

A more serious problem is the remuneration of translators. Their service is very expensive. It is of particular importance in proceedings for dispensation from a ratified and non-consummated marriage, when it was necessary to translate a few or a dozen pages into Latin, and after the introduction of the obligation to translate all texts that could have probative value several years ago. The payment for such a translation is higher (sometimes even twice or more than the usual costs of the trial, which is a huge burden for the party, sometimes even beyond its capacity). I asked a professor of classical studies in a seminary to translate them into Latin, who took a fee of half or even a third of what a professional translator would take. I asked a priest who studied abroad to translate from other languages; he also charged a small fee, and often no fee. There is no trouble if one of the judges knows a foreign language well; he can translate even during working hours. This solution is helpful, but can it be considered valid? The problem still exists. How to solve it structurally? I do not know. After all, you cannot demand a lot of money from the parties, and the tribunal usually cannot afford it. Fortunately, the translator's service is infrequent.

VIII.

I would not like the above comments to be perceived as a criticism of R. Sztychmiler. I treat them as a contribution to the discussion on this important

judicial problem from a side other than him. Although he has many years of judicial practice in various positions, including a judicial vicar, the situation in tribunal has changed somewhat since then, and his main judicial activity in recent years, the advocate, justifies his view of this work from this point of view. Moreover, the article in question is primarily the work of a scientist and an advocate, and I am looking at the eye of a judicial vicar. It seems to me that despite the discrepancies with Professor (my colleague from studies), I was able to be as gentle as possible. If not, I'm sorry. I wrote in the conviction that the difference in views on the same issue would help to better situate it in the Polish church judiciary. And this is an important issue because it affects the opinion of the Church.

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Opinion on Tribunal Fees

Summary

The article contains some remarks based on many years of judicial experience regarding procedural fees in Polish ecclesiastical tribunals. The author analyzes the rules practiced in various tribunals to determine ordinary costs of a trial and the rules for their reduction or complete release for those who have material difficulties. However, the main content of the article concerns the payment for the ecclesiastical advocates. After presenting, based on experience, the real participation of advocates in the process, the time devoted by them to the cases, the usefulness of their pleadings and doubts about the honesty of some of them, a conclusion arises about their very low, mostly no usefulness in marriage cases with surprisingly high fees taken from the litigants without real need. Based on the facts and their interpretations, there is a postulate to develop in Poland, with the participation of advocates and judicial vicars, the principles of operation, and in particular the remuneration of ecclesiastical advocates.

Key words: advocate, remuneration, judicial vicar, litigants

Głos dotyczący opłat sądowych

Streszczenie

Artykuł zawiera oparte na wieloletnim doświadczeniu sądowym uwagi dotyczące opłat procesowych w polskich sądach kościelnych. Autor analizuje

praktykowane w różnych sądach zasady ustalania zwyczajnych kosztów procesu oraz zasady ich zmniejszania lub całkowitego zwalniania osób mających trudności materialne. Zasadnicza jednak treść artykułu dotyczy opłacania adwokatów kościelnych. Po przedstawieniu, na podstawie doświadczenia, realnego udziału adwokatów w procesie, ilości czasu poświęconego sprawom, przydatności redagowanych przez nich pism procesowych oraz wątpliwości dotyczących uczciwości niektórych z nich nasuwa się wniosek o bardzo małej, w większości żadnej ich przydatności w sprawach małżeńskich przy zaskakująco wysokich honorariach pobieranych od stron procesowych poważnie obciążających je bez rzeczywistej potrzeby. W oparciu o przytoczone fakty i ich interpretacje jawi się postulat opracowania w Polsce, przy udziale adwokatów i oficjałów, zasad działalności, a zwłaszcza wynagradzania adwokatów kościelnych.

Słowa kluczowe: adwokat, wynagrodzenie, oficjał, strony procesowe

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