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Abstract: In Poland, there is no dual judiciary structure, ecclesiastical courts are not part of the judiciary authority, and at the moment there is no legal basis for common courts to respect the judgments of ecclesiastical courts.

However, the fact that the issue of marriage between the same parties may be the subject matter of a trial in different normative orders begs the question: in the event of marriage cases, is there any form of cooperation between ecclesiastical and common courts? Is such cooperation a desirable phenomenon and should it be analyzed as an example of cooperation between the Church and the State for the individual and common good?

This article attempts to answer these questions.

Keywords: individual good, common good, marriage, judiciary, evidence proceedings, legal aid

Introduction

The principle of independence and autonomy of the Church and the State expressed in Art. 1 of the Concordat between the Holy See and the Republic of Poland[1] in legal terms means that each of the two communities recognises its own legal system and is able to govern itself within such an order, which—however—does not cause a complete isolation of these two legal structures.

[1] Concordat between the Holy See and the Republic of Poland signed in Warsaw on 28 July 1993 (Journal of Laws No. 51/1998, item 318), ratified with the act of 8 January 1998 (Journal of Laws No.12/1998, item 2); hereinafter: the Concordat.

In the ecclesiastical and secular doctrine, it is emphasised that institutional relations between the Church and the State are based on the principle of co-operation. The Constitution of the Republic of Poland from 1997 states in its Art. 25 § 3 that "the relationship between the State and Churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good," while the *Gaudium et Spes* Constitution in its clause number 76 has it that "the Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more they both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all."[2]

How this cooperation should be understood and what "common good" and "individual good" mean are not easy questions and as such they have been the subject of many disputes and academic discourse for years.[3] In the literature

[2] Second Vatican Council, *Konstytucja dissipaters o Kosice w świecie współczesnym Gaudium et spes*, in *Sobór Watykański II. Konstytucje, dekrety, deklaracje, tekst łacińsko-polski* (Poznań 1967), 830–987; *Acta Apostolicae Sedis* 58 (1966), 1025–120. It should be noted that *Gaudium et Spes* presents the contemporary standpoint of the Catholic Church as regards the co-operation with political communities. A similar standpoint was, however, expressed long before that, by Pope John XXIII in his encyclical *Mater et Magistra* of 1961. (*Acta Apostolicae Sedis* 53 (1961), 453) and in the encyclical titled *Pace in Terris* from 1963 (*Acta Apostolicae Sedis* 55 (1963)). For more information, see: Włodzimierz Kaczocha, "Dobro wspólne w nauce społecznej Kościoła Katolickiego," *Przegląd Religioznawczy* 2 (2000): 89–108.

[3] For more information, see, among others: Piotr Steczkowski, "Konstytucyjna zasada współdziałania Państwa i Kościoła w kontekście interpretacji zasad poszanowania godności osoby ludzkiej i dobra wspólnego," *Studia z Prawa Wyznaniowego* 11 (2008): 155–70; Paweł Sobczyk, "Dobro wspólne jako cel współdziałania państwa z kościołami i innymi związkami wyznaniowymi," *Kościół i Prawo* 1 (2015): 169–84; Wojciech Brzozowski, "Konstytucyjna zasada dobra wspólnego," *Państwo i Prawo* 11 (2006): 17–28; Marek Piechowiak, "Dobro wspólne jako fundament polskiego porządku konstytucyjnego," *Tom XL Studiów i Materiałów Trybunału Konstytucyjnego, Monografie Konstytucyjne* 2 (Warszawa: Wyd. KUL, 2012); Ryszard Mojak, "Kościół a sprawy publiczne w demokratycznym państwie. Podstawy doktrynalne oraz zasady prawne współdziałania Kościoła i państwa w sferze prawa publicznego," in *Funkcje publiczne związków wyznaniowych*, ed. Artur Mezglewski (Lublin: Wyd. KUL, 2007), 63; Piotr Zamelski, "Wybrane koncepcje dobra wspólnego w ujęciu prawnonaturalnym i normatywnym," in *Efektywność europejskiego systemu praw człowieka. Ewolucja i uwarunkowania europejskiego systemu ochrony praw człowieka. Część I: współczesne rozumienie praw człowieka*, red. Jerzy Jaskiernia (Warszawa: Wyd. Adam Marszałek, 2012), 180–206; Anna Młynarska-Sobaczewska, "Dobro wspólne jako kategoria normatywna," *Acta Universitatis Lodziensis. Folia Iuridica* 69 (2009): 61–72; Wacław Uruszczak, Katarzyna Krzysztofek, and Maciej Mikuła, eds., *Kościoły i inne związki wyznaniowe w służbie dobru wspólnemu* (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2014); Jakub Królikowski, "Pojęcie dobra wspólnego w orzecznictwie Trybunału Konstytucyjnego," in *Konstytucja Rzeczypospolitej Polskiej w pierwszych dekadach XXI wieku*

on the subject, however, it is agreed that this cooperation is exercised within the realm of affairs of the so-called miscellaneous forum (*rei mixti fori*), which refers to such matters in which both the Church and the State are competent, although each of them deals with such matters in its own specific manner. Such matters, apart from education and upbringing, social and humanitarian aid, or activities aimed at protecting culture and national heritage, include also actions related to concluding civil law marriage in a religious form. A classic example of "miscellaneous affairs," which are subject both to the ecclesiastical and state rule, is the protection of marriage and family.[4] Such protection is multidimensional and exercised in various areas, including court proceedings. In the case of Polish citizens who are also members of the Catholic Church, the issue of effectively concluding, existence or non-existence of marriage is more and more often the subject of analysis of both common and ecclesiastical courts.

In Poland, there is no dual judiciary structure, ecclesiastical courts are not part of the judiciary authority and, at the moment, there is no legal basis[5] for common courts to respect the judgments of ecclesiastical courts.

The fact that the issue of marriage between the same parties may be the subject matter of a trial in different normative orders begs the question: in the event of marriage cases, is there any form of cooperation between ecclesiastical and common courts? Is such cooperation a desirable phenomenon and should it be analyzed as an example of cooperation between the Church and the State for the individual and common good?

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wobec wyzwań politycznych, ed. Stanisław Bernat (Warsaw: nazwa wyd., 2013), 159; Marek Zubik, "Refleksje nad 'dobrem wspólnym' jako pojęciem konstytucyjnym," in *Prawo a polityka. Materiały z konferencji Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, która odbyła się 24 lutego 2006 roku*, ed. Marek Zubik (Warsaw: Liber, 2007), 404.

[4] For more information, see: Józef Krukowski, *Kościół i państwo. Podstawy relacji prawnych* (Lublin: Wyd. KUL, 2000), 313.

[5] In the literature on the subject, however, we can also find the view that since the legislator has regulated the issue of marriage in its Concordat form on the basis of the provisions included in the Concordat, which means that a couple may conclude marriage within a single ceremony, then the possibility to regulate the recognition of the judgments passed by ecclesiastical courts in common law courts should be considered, as regards the marriage annulment cases. The solutions adopted in the Concordat do not envisage such a situation, but—following the presented point of view—the communicating parties have allowed for the possibility of legal changes in this respect, because Art. 10 § 5 of the Concordat has it that the question of notification of adjudication referred to in paragraphs 3 and 4 may be subject to proceedings in accordance with Art. 27. Accordingly, pursuant to the autonomy and independence principle, a good solution could be a form of controlled recognition (Adam Bartczak, "Sądowa jurysdykcja nad małżeństwem w Polsce," *Łódzkie Studia Teologiczne* 2 (2014): 35. For more information, see: Piotr Majer, "Uznawanie przez państwo wyroków sądów kościelnych w sprawach małżeńskich. Czy byłoby pożyteczne przyjęcie takiego systemu w Polsce?", in *Funkcje publiczne związków wyznaniowych. Materiały III Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 16–18 maja 2006)*, ed. Artur Mezglewski (Lublin: Wydawnictwo KUL, 2007), 414–31.

Ecclesiastical and Secular Judiciary as the Area for Cooperation between the Church and the State—Theoretical Aspect

The definition of *cooperation* as mentioned in Art. 25 § 3 of the Constitution of the Republic of Poland and in the teaching of the Catholic Church is not—as indicated above—an easy task, because such notions are not defined either by the secular or by the ecclesiastical legislator. There are no formal rules for interpretation that would define the areas of social life or activity, where such cooperation would be practised, and there are no rules that would define the forms of such cooperation.

In the doctrine, we may find three principal views, with regard to the analyzed issue, differing in focus. One of them, represented by Michał Pietrzak,[6] focuses on the independence of the state and religious groups in defining the essence of such cooperation, stipulating, however, that the abovementioned independence may not hinder the cooperation of both partners for the sake of the common and individual good. This interpretation also notes that although the Constitution does not define the substantial scope of the cooperation, it may be inferred from other sources of religious law that this principle is manifested mainly in such areas as charity and education.

According to another view (represented by Piotr Stanisz and the representatives of the "Lublin school"),[7] the essence of the debated principle rests in each coordinated activity undertaken together by the parties that wish to cooperate, and focused of pursuing the same goals, whereas the enforcement of the cooperation principle should also refer to such actions of one of the parties aimed at supporting the activities undertaken by the other partner, after previously confirmed the legitimacy of such activities (with reference to individual and common good). The areas where the principle of cooperation is manifested should be identified on the basis of those provisions, where the cooperation between the States and Churches is expressly indicated. The authors claim that such provisions include Articles 16, 16a, 17 of the Act of 17 May 1989 on the guarantees of the freedom of conscience and faith[8] as well as Art. 11 of the Concordat.[9]

[6] Michał Pietrzak, *Prawo wyznaniowe* (Warszawa: Wyd. LexisNexis, 2010), 231–32.

[7] Artur Mezglewski, Henryk Misztal, and Piotr Stanisz, *Prawo wyznaniowe* (Warszawa: Wyd. C.H. Beck, 2011), 77.

[8] Journal of Laws 1989, No. 29, item 155.

[9] Steczkowski, "Konstytucyjna zasada," 157.

However, according to Józef Krukowski,[10] the interpretation of the cooperation principle should be based on understanding its raison d'être, that is, on understanding the notions of the "common and individual good." The role of the Church is to teach and propagate human rights and to undertake educational activity in order to shape the attitudes focusing on respecting those rights and freedoms, whereas the obligation of the State is to recognize human rights and freedoms, create conditions for people to exercise and use these rights and freedoms and protect them, if needed.[11] "Individual good" is interpreted here in the context of Art. 30 of the Constitution, whereas the "common good" is understood as building such social order in which individual rights and freedoms are respected and exercised.

Referring the above views to the issue of how contemporary common courts cooperate with ecclesiastical courts, it should be noted that such cooperation would be included in the notion of "cooperation between the State and the Church," in the meaning of each of the presented concepts. First of all, if we assume that—as mentioned in the Introduction—in both proceedings the protected value is the wellbeing of marriage and family, then the basis for such cooperation can be found directly in the quoted Art. 11 of the Concordat, which expressly states that "the Contracting Parties declare their will to co-operate for the purposes of protecting and respecting the institution of marriage and the family, which are the foundation of society." Secondly, this type of cooperation also seems to be proved by its purpose, that is, that such cooperation would be justified due to the "individual good" and "common good." Without getting too deep into the details of the concepts related to both of the notions mentioned, due to the framework of this paper, it should only be emphasised that the basic rule of the canon law case for the annulment of marriage is getting at the truth—and not just any truth, but the truth on the existence or non-existence of the sacrament, and therefore—the concern for the salvation of a human being. In its strife for the truth, the canon law case touches upon the crucial goal, that is, the eschatological one, whereas the truth regarding a particular marriage is the concern of the whole human and divine community of the Church.[12] Also the doctrine of the state law emphasizes that the judgment should be consistent not only with the mandatory law, but also with the system of approved and socially relevant non-legislative values.[13] Law is not used to achieve justice as such, as an

[10] Józef Krukowski, "Konstytucyjny model stosunków między państwem a kościołem w III Rzeczypospolitej," in *Prawo wyznaniowe w systemie prawa polskiego*, ed. Artur Mezglewski (Lublin: Wyd. KUL, 2004), 98.

[11] Steczkowski, "Konstytucyjna zasada," 159.

[12] Aleksandra Brzemia-Bonarek, *Dopuszczalność dowodów zdobytych w sposób niegodziwy w kanonicznym procesie o stwierdzenie nieważności małżeństwa* (Katowice: Księgarnia Św. Jacka, 2007), 117.

[13] Jerzy Skorupka, *O sprawiedliwości procesu karnego* (Warszawa: Wolters Kluwer, 2013), 327

autonomous value. Among the values more precious than justice itself, one can mention those achieved with it, that is, the harmony of interpersonal relations and the reinforcement of the everyday order.[14]

Therefore, both in the proceedings in ecclesiastical courts and in common law courts, the crucial purpose is to determine the *truth* concerning the marriage of the parties. In both types of proceedings, the common factor is also that while passing judgments, each of the abovementioned courts is obliged to achieve one of the purposes of the court trial, that is, fairly resolve as regards the subject matter of the proceedings. Therefore, if cooperation between courts would be helpful in passing a fair judgment and would be tantamount to action in the name of truth, then in this context it would be hard to defend a possible thesis that such an action would not be for the benefit of individual good and for the common good.

Ecclesiastical and Secular Judiciary as the Area for Cooperation between the Church and the State—Practical Aspect

In the canon law case concerning the annulment of marriage, it is increasingly frequent that we observe the parties' right to adduce evidence, identical to the right they have in the civil law case. Ecclesiastical courts do not, however, take advantage of the privileges available to secular courts. They do not have, among others, the formal possibility to obtain documents including the information subject to the so-called personal data protection, such as for example, official medical records. It is such documents that are usually of key importance to resolve certain marriage annulment cases, especially those conducted under can. 1095, 1084 or 1103 of the Code of Canon Law.[15]

With reference to these documents, it should be noted that the standard of Art. 40 § 1 of the Act on medical professions of 5 December 1996[16] says that a doctor is obliged to observe the physician-patient privilege, which includes information related to the patient, whereas the physician-patient privilege ex-

[14] Skorupka, *O sprawiedliwości*, 328. It should also be noted that in the judgment dated 27 January 1999 (K. 1/98), the Polish Constitutional Tribunal stated that there is the public interest (identified as the common good) which involves shaping an external image of justice, which produces a conviction in the society that court is impartial. The existence of autonomous judiciary is—in the opinion of the Tribunal—one of the prerequisites for proper functioning of the community, which can satisfy its interests in this way (OTK ZU 1999, No. 1, item 3).

[15] Codex Iuris Canonici. Auctoritate Ioannis Pauli PP. II promulgatus. Code of Canon Law. Polish translation approved by the Polish Episcopal Conference, Pallotinum 1984; hereinafter: CCL.

[16] Journal of Laws of 2005, No. 226, item 1943, as amended.

tends—as follows from Art. 14 § 1 and 2 as well as Art. 23 § 2 of the act on patients' rights and the ombudsman of patients' rights dated 6 November 2008[17]—onto all the medical documentation including information concerning the patient. The physician-patient privilege may be waived, for example, when it follows from legal acts. Such acts include the Law of 17 November 1964, The Code of Civil Procedure,[18] whose Art. 248 § 1 states that following the court order, everybody is obliged to serve—within a determined time and place—a document he or she holds, which is the evidence of a fact significant for the resolution of the case, unless the document contains classified information.[19] A doctor is, therefore, obliged to present relevant medical documentation following the order of a common court, whereas the mode of presentation is determined in the regulation of the Minister of Health of 30 July 2001 on the types of individual medical records, the way of keeping them and special conditions for disclosing them.[20] However, as regards ecclesiastical courts, a doctor is still bound with the physician-patient privilege, which shall not be waived, because the proceedings in ecclesiastical courts are not regulated in the Act [21] and there is no specific provision that would allow for disclosing medical records in a canon law case. The patients may require to be handed over his/her own medical records, but he/she has no possibility to obtain the documents concerning his/her former spouse. This means that if one of the parties on the canon law case does not agree to participate in the proceedings and is not interested in providing the evidence, the ecclesiastical court cannot obtain the evidence directly, even if it is crucial and decisive in solving the case. Since medical records to be used as evidence in a canon law case cannot be obtained for this case, be it by the party and its legal representative, or by the ecclesiastical court while for the common court they would be available, the situation begs the question whether in such circumstances the ecclesiastical court can use the help of a common court. This issue was debated during the shared meetings of the Ecclesiastical Concordat Commission and the Government Concordat Commission in the years 2003–2005,[22]

[17] Journal of Laws of 2009, No. 52, item 417, as amended.

[18] Journal of Laws of 1964, No. 43, item 293, as amended; hereinafter: CCP.

[19] Documents including classified information are documents whose unauthorized disclosure would or could cause damage to the Republic of Poland or be prejudicial to its interest, also when such information is being developed and regardless of the form and expression (see Art. 1 § 1 of the act of 5.8.2010 on the protection of classified information, Journal of Laws, No. 182, item 1228)

[20] Journal of Laws of 2001, No. 83, item 903.

[21] Canon law is not one of the sources of law defined in Art. 87 of the Constitution of the Republic of Poland, therefore it is not universally mandatory in the whole area of the Republic of Poland. It may have legal effect in the Polish legal order only pursuant to a permit following from the provision of the act and only to the extent included in the permit.

[22] Aleksandra Brzemia-Bonarek, *Pomoc sądowa pomiędzy sądami kościelnymi a państwowymi w celu uzyskania dokumentów niedostępnych dla strony w kanonicznym procesie małżeń-*

and it was even the subject matter of an interpellation lodged by a member of the parliament, yet it still remains a problem both for canon law specialists and for secular judges.[23]

Letters rogatory (judicial assistance) among ecclesiastical courts and among common courts is known and used in both legal orders. Neither the provisions of the common law, nor those of the canon law expressly allow for the possibility of legal aid between ecclesiastical and common courts. Pursuant to Art. 44 § 1–4 of the Act of 27 July 2001 the Law on the System of Common Courts,[24] in the cases stipulated in the acts, courts are obliged to perform particular judicial actions at the request of other courts and other authorities (§ 1), as well as when requested by foreign courts, provided reciprocity is ensured (§ 2), and to the extent stipulated in the provisions concerning civil proceedings, common courts are obliged to perform proceedings to take evidence also when requested by adjudicating authorities other than those listed in § 1 and 2, provided the request has been addressed by the Minister of Justice (§ 3).

The problem is that ecclesiastical courts are not classified as courts in the meaning of the abovementioned law on the systems of common courts, nor do they count among non-judicial adjudicating authorities (Art. 44 § 1 of the LSCC), because their activities are not governed by the Law; they are not foreign courts, either (Art. 44 § 2 of the LSCC). In the literature on the subject, though, there is a view presented among others by Lucjan Świto that ecclesiastical courts should be treated as "other adjudicating authorities" in the meaning of Art. 44 § 3 of the LSCC. In the light of such interpretation, when we assume at the same time that the possibilities of cooperation between ecclesiastical courts and common courts as regards obtaining evidence are not ruled out by the canon law, civil and canon judicial assistance would be possible pursuant to the procedure defined in Art. 44 § 3 of the LSCC, that is, through the Minister of Justice. According to this concept, though—which should be noted—judicial assistance as described above would only be acceptable "one way," that is, in the situation when the common court responds to the request of the ecclesiastical court. If the situation was reversed, namely, in the event when the ecclesiastical court was summoned to provide judicial assistance to the common court, the discussed judicial assistance shall not find any justification in the mandatory legal solutions.

The above interpretation is undoubtedly interesting and worth attention. It must be observed, though, that in the case law in both ecclesiastical and common courts the proposed solution is virtually non-existent. This is due to the fact

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skim (analiza prawna zagadnienia i propozycje „de lege ferenda"), in Sędzia i pasterz. Księga pamiątkowa w 50-lecie pracy ks. Remigiusza Sobańskiego w Sądzie Metropolitalnym w Katowicach (1957–2007), ed. H. Typańska (Katowice 2007), 49.

[23] Lucjan Świto, "Rekwizycja cywilno-kanoniczna? Pomoc sądowa pomiędzy trybunałami kościelnymi a sądownictwem powszechnym w Polsce," *Prawo kanoniczne* 2 (2012),

[24] Journal of Laws of 2001, No. 98, item 1070, as amended; hereinafter: LSCC.

that the abovementioned interpretation is innovative, but above all it includes certain organisational difficulties. If we assume that in order to obtain particular evidence through the common court, the ecclesiastical court would each time have to launch the procedure involving the Polish Minister of Justice, it is hard to conclude that such proceedings could actually impact the effectiveness of the canon law marriage nullity trials.

The abovementioned solution may also raise some doubts because of the lack of "reciprocity." If legal help between ecclesiastical and secular courts constituted only the help offered to ecclesiastical courts, then the axiology of such requisition would become questionable.

Regardless of the fact that the effective regulations do not provide *epressis verbis* any solutions within which secular courts could use legal assistance of ecclesiastical courts, still there are some mechanisms in the Polish legal system which, as it seems, do not allow for complete failure to act in response to the requests of common courts. In terms of a civil procedure, the rule which directly can oblige judges and ecclesiastical court employees to act specifically when they are subpoenaed by a common court is the above quoted Art. 248 § 1 of the Code of Civil Procedure (CCP). Since, according to the abovementioned rule, *everybody* is obliged by a court order to present in an appointed place and at specified time the document they hold which proves a fact significant for settling a case − unless the document contains confidential information − then claiming that the rule does not apply to clergymen, or broadly defined employees of church institutions, would be difficult to accept in the light of linguistic interpretation. As a side note, one should observe that the above-mentioned Art. 248 § 1 of the Code of Civil Procedure seems to be supported by, among others, the rules of the Law of 29 August 1997 on personal data protection.[25] Sharing specially protected data, that is, data concerning religious affiliation, is forbidden in the light of the law (Art. 27 § 1), however, it is acceptable if it concerns the data which are necessary for court actions (Art. 27 § 2 pt. 5). It is beyond any doubt that the rules of the abovementioned law apply also to the Catholic Church.[26]

It is difficult to determine unequivocally what is the limit of the common court powers due to Art. 248 of CCP, and, within this regulation, which documents can be requested by a secular court as regards the documents at an ecclesiastical court's disposal. According to Art. 5 of the Concordat and Art. 2 of the Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Polish Republic,[27] the Church for its own cases uses its own law,

[25] Journal of Laws of 2004, No. 101, item 926, as amended.

[26] See "Ochrona danych osobowych w działalności Kościoła katolickiego. Instrukcja opracowana przez Generalnego Inspektora Ochrony Danych Osobowych oraz Sekretariat Konferencji Episkopatu Polski," http://www.giodo.gov.pl/data/filemanager_pl/wsp_krajowa/KEP.pdf (accessed 20.10.2016).

[27] Journal of Laws of 1989, No. 29, item154, as amended.

and freely executes ecclesiastical and judicial power, as well as governs its matters. One of the rules of the Code of Canon Law is the rule of confidentiality of matrimonial proceedings. Thereby, when a secular court requests providing complete acts of matrimonial proceedings, or significant number of documents collected in the proceedings, such a request should be considered unacceptable. Such an interpretation is directly supported by § 2 of Art. 248 of CCP which states that, among others, a person as a witness may refuse to give evidence on the circumstances covered by the content of the document, or a person who holds a document on behalf of a third party who could reasonably object to the presentation of the document for the same reasons. This means that the duty to present a document can be deviated by a person who, as regards the circumstances covered by the content of the document, could deny a testimony, or a person who holds a document on behalf of a third party, who may, for the same reasons, object to the presentation of the document. The holder of the document may be released of duty to present it when the revealed content of the document could expose him/her or his/her close relative, as defined in Art. 261 § 1 of CCP, to penal liability, shame or severe and direct material damage, or would constitute a breach of crucial professional secrecy.

On the other hand, if the request considered only a specific document, for example, a document indicating the ordination, justification of possible denial of its delivery would be rather dubious. Likewise, the reasons why the officials of the ecclesiastical court could reasonably and convincingly refuse, for example, to give the contact address of a person heard in a canonical process would be difficult to indicate.

Evaluating whether the requested document constitutes the proof of fact relevant for the resolution of the case belongs exclusively to the court and not to the holder of the document. It is also important that, within the scope of Art. 248 of CCP, a common court can take quite intimidating measures. An unjustified refusal to submit a document by a third party to the court, after hearing it and the parties as to the merits of the refusal, the court may penalize a third party with a fine of up to PLN 5,000 (Art. 163 § 1 of CCP).[28]

Conclusion

Institutional relations on the State and the Church level, in the area of cooperation between ecclesiastical and state courts in Poland, in the current legal situation are not subjected to any unequivocal regulation. Despite the fact that

[28] The decision is subject to appeal (Art. 394 § 1, point 5 CCP).

cooperation between ecclesiastical and common courts regarding matrimonial proceedings seems, without a doubt, to be assumed by the idea of "cooperation for the good of individual and the common good," so far, this aspect has not been the subject of deeper reflection, and basically escapes common notice. Such a state of affairs is clearly demonstrated by the document issued by the Polish Episcopal Conference and prepared in Tarnów in 2012 by the Social Council "To Care for the Good of Individual and the Common Good," which, aiming at promoting an integral image of man, included into its analysis such areas of human activity as culture, political life, business activity, media (in the service of the truth and the good). The law and broadly understood judiciary are not mentioned in the document.

Meanwhile, the activities of ecclesiastical and common courts concerning matrimonial proceedings are not mutually isolated. For one thing, the fact that the proceedings in the two legal systems apply to the same spouses and often rely on analogous evidence in the form of the same documents or testimony of the same witness have a number of "tangent points." The formal admittance of the possibility of interaction between these courts and the clear definition of the way in which such cooperation can take place would thus facilitate the parties to prove their arguments and, consequently, to come to the truth, which for obvious reasons is a socially desirable phenomenon.

Such solutions are not alien to European legislation. For example, following Michał Rynkowski,[29] it should be pointed out that the problems of ecclesiastical courts and relations with state courts were partially settled, among others, in agreements between the Federal Republic of Germany (or individual Lands) and churches and religious associations. These agreements are specific legal acts: they have a form similar to international agreements, although they do not have international law values. They are concluded between Germany or the Land and a subject of German public law. For example, Art. 12 of the Treaty of 18 February 1960 between Hesse and the Evangelical Church makes it clear that in ecclesiastical proceedings and in formal disciplinary action against clerics and church officials, ecclesiastical and ecclesiastical disciplinary authorities are authorized to make an oath to witnesses and expert witnesses. The secular district courts are required to grant legal aid to church courts, with the exception of only infringement proceedings. In some Lands, there are clear rules for the help of the church courts (Hesse, Rhineland-Palatinate, Saxony, Saxony-Anhalt, and Schleswig-Holstein).

In Finland, the Law on the Evangelical-Lutheran Church states that state courts are to help the ecclesiastical courts of this church, among other things, through legal assistance involving the interrogation of witnesses.[30]

[29] Michał Rynkowski, *Sądy wyznaniowe we współczesnym porządku prawnym* (Wrocław: Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, e-Monografie, Nr 31, 2013), 146–47.

[30] Rynkowki, *Sądy wyznaniowe*, 148.

If in Poland the state has entrusted the church with carrying out public tasks and in such a dimension that in the literature one may find the view that "[…] the Republic of Poland is increasingly involving the church in the public administration of the witness," and if one considers that the faithful of the Catholic Church in Poland are also citizens of this country, the introduction of the possibility of using judicial assistance between ecclesiastical courts and common courts, with a clear definition of its principles, seems to be worth considering *de lege ferenda*.

Małgorzata Tomkiewicz

La coopération pour le bien de l'homme et pour le bien commun dans la pratique des tribunaux de droit commun et des tribunaux ecclésiastiques en Pologne

Résumé

En Pologne, il n'y a pas de double structure juridique, les tribunaux ecclésiastiques ne font pas partie de la justice, et à présent il n'y a pas de bases juridiques pour que les tribunaux de droit commun puissent respecter les jugements des tribunaux ecclésiastiques.

Pourtant, le fait que la question de mariage entre les mêmes parties peut être l'objet de procès dans deux ordres normatifs différents incite à poser la question si—dans le cas des mariages—il existe une quelconque forme de coopération entre les tribunaux ecclésiastiques et séculiers. Une telle coopération est-elle un phénomène désiré et faudrait-il la considérer dans les catégories de coopération de l'Église et de l'État pour le bien de l'homme et pour le bien commun ? L'article essaie de répondre à ces questions.

Mots clés: bien de l'homme, bien commun, mariage, juridiction, procédure probatoire, aide juridictionnelle

Małgorzata Tomkiewicz

La cooperazione per il bene dell'uomo ed il bene comune nella pratica dei tribunali ordinari e dei tribunali ecclesiastici in Polonia

Sommario

In Polonia non esiste la struttura duale della giurisdizione, i tribunali ecclesiastici non costituiscono una parte dell'amministrazione della giustizia ed attualmente non vi è alcun fondamento giuridico perché i tribunali ordinari possano rispettare le sentenze dei tribunali ecclesiastici.

Tuttavia il fatto che la questione del matrimonio tra le medesime parti sia oggetto di processo in due differenti ordini normativi fa sorgere la domanda se nel caso delle cause matrimoniali esista una qualsiasi forma di collaborazione tra i tribunali ecclesiastici e quelli laici. Tale collaborazione è un fenomeno auspicabile e la si dovrebbe esaminare come un esempio di cooperazione della Chiesa e dello stato per il bene dell'uomo e il bene comune?
L'articolo contiene un tentativo di risposta a tali domande.

Parole chiave: bene dell'uomo, bene comune, matrimonio, giurisdizione, istruzione probatoria, aiuto legale