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Apostolate of the lay canonist

1. Brief historical background

40 years after the entry into force of the Code of Canon Law promulgated by John Paul II and described as the transmission belt of post-conciliar theology, and 35 years after the publication of the post-synodal apostolic exhortation *Chiristifideles laici* (John Paul II 1989)[1] comes the natural time to reflect on the practical implementation of lay faithful participation in Church tribunals.

For classical canonists, the lay faithful were, as a rule, not admitted to offices and functions, including those related to the ecclesiastical judiciary. Lay lawyers, even the best educated in both disciplines (state law and canon law), were not appointed as ecclesiastical judges (neither defender of the bond nor notary). They were denied the ability to judge - *capacitas iudicii* (Wernz and Vidal 1927, 200) and this was related to the theological doctrine of the time on the passive than the active presence of the laity in the life of the structures of the Church. The direct link between the judicial power and that of the bishop, who was always the first judge in his diocese, was invoked.

The function of the advocate was an exception, since - in connection with the reception of Roman law by the Church and the treatment of Roman law as an auxiliary source for canon law - from the earliest times lay advocates and attorneys were present in ecclesiastical courts (*episcopalis audientia*).[2] In addition, in the judicial reality - in the proceedings at the diocesan level of cases of non-completion of marriage - the assistance of lay experts has always been used: doctors and midwives.[3] However, it is worth remembering that both lawyers and experts are not part of the Court. They are persons assisting the court from outside.

[1] Published in the official journal of the Holy See, Acta Apostolicae Sedis (hereafter: AAS) 81 (1989), 393-521.
[2] The practice of this profession was even linked to an obstacle to the acceptance of higher priestly ordination as a profession 'incompatible' with the tasks and vocation of a clergyman. There was, however, a prohibition on the exercise of this function for women, with the exception of mothers acting in defence of the rights (personal, property) of their minor wards
[3] Canon 1979 of the Code of Canon Law/1917 relating to the examination of those asking for the grace of dispensation: § 1. Ad inspiciendum virum duo periti medici ex officio deputari debent. § 2. Ad mulierem vero inspiciendam duae obstetrices, quae legitimum peritiae testimonium habeant, ex offlcio designentur; nisi maluerit mulier a duobus medicis ex officio pariter designandis inspici vel id Ordinarius necessarium habuerit. § 3.

Under the pontificate of Pius X, the rules governing the institutions of the Roman Curia allowed both clergy and laity to appear before these bodies as attorneys.[4] In the 1917 Code of Canon Law, in Canon 1657, the general word "laici" and not: "viri laici". However, the exclusion of women from the office of attorneys in the ecclesiastical forum was maintained "from a general principle of law". [5] Hence, until the twentieth century in theology, there was a general belief that the authority came from the sacrament of Holy Orders and therefore could not be exercised by anyone who had not received them. However, there is scattered source data that in cases of the private welfare of the Church, in damage cases, private action cases, or the compulsory judicial mediation that existed in the old Church law, bishops (and judges as their judicial delegates) used lay assessors[6] assisting the judge-bishop of the diocese. In the regulations of the 1917 Code, canon 373§3 contained a regulation allowing the diocesan bishop in extraordinary situations, caused by the inability to elect a priest, or a lay person to act as a notary, both in the curia and in the court. In formal terms, this also meant that women were allowed to hold these offices, but in practice, this was not the case (Ghisoni 2014, 94).[7]

The Second Vatican Council updated the Church's teaching on the People of God by pointing out the fundamental rights and duties of all the faithful in connection with the dignity of the Christian acquired in the sacrament of baptism: *Lumen Gentium* 33: *Besides this apostolate which certainly pertains to all Christians, the laity can also be called in various ways to a more direct form of cooperation in the apostolate of the Hierarchy. This was the way certain men and women assisted Paul the Apostle in the Gospel, laboring much in the Lord. Further, they have the capacity to assume from the Hierarchy certain ecclesiastical functions, which are to be performed for spiritual purposes.* The Pastoral Constitution *Gaudium et spes* signed a year later, placed particular emphasis on the prohibition of discrimination in no. 29,

Corporalis mulieris inspectio fieri debet, servatis plene cliristianae modestiae regulis et adstante semper honesta matrona ex offldo designanda.

[4] *Lex Propria Sacrae Romanae et Signaturae Apostolicae*,06.1908r, AAS 1 (1909), 20-35. Canon 44§2 "Admittuntur (...) sive sacerdoces sive laici".

[5] "Feminae, licet de illis Codex, canon sileat, tamen ex generali principio iuris a munere advocati in foro ecclesiastico omnimo exclundur", as Stanislaw Bielecki wrote in his monograph *De munere advocati*, Romae 1937, 17. This "general principle", in turn, still deriving from Roman law, was taken over by Gratian (the father of canonistics as a discipline distinct in methodology from theology) in his *Decretals* (Can. 1.C.3 q.7), then repeated in the Decretals of Gregory IX and read: "feminae non quia non habent iudicium, sed quia receptum est ut ciuilibus non fungantur offitiis".

[6] And these included, for example, master builders (later engineers), accountants or lay lawyers.

[7] It is also worth saying that this power of the bishop was realistically exercised by using trusted lay men and, where women were concerned, nuns. On the wave of thought of the Second Vatican Council, but still under the 1917 Code of Canon Law. (the new code was promulgated in 1983), also in Poland, nuns began to appear in curiae and ecclesiastical courts as notaries (e.g. the Diocese of Katowice).

which contributed to opening the way for women to perform certain ecclesiastical functions and offices.

Significant changes in the filling of judicial offices in the Church with lay faithful began with the motu proprio *Causas matrimoniales,* promulgated on 28 March 1971 by Pope Paul VI**.** In response to numerous demands from the bishops not only of Western European countries, Canada, the USA, and Australia but also from the bishops of missionary churches, the Pope agreed that the episcopal conferences should entrust - in the event of a shortage of clergy - the office of judge in matrimonial cases to laymen (*viri laici*)[8] at a ratio of 1:2, i.e. one lay representative in a three-person collegial tribunal (*Causas matrimoniales*, V§ 1).[9] In addition, the motu proprio allows the position, of assessor of magistrates and auditor (person questioning the parties and witnesses) to be entrusted to men, and that of a notary of the court to women as well.

2. The Actual Code of Canon Law.

The overcoming of the unnatural and inappropriate distinction between men and women in terms of knowledge and intellectual skills in the work of ecclesiastical justice was brought about by the new Code of Canon Law promulgated on 25 January 1983. The legal basis, anchored in theology, and expressing the Church's own nature is canon 129 §2 CIC: *lay members of the Christian faithful can cooperate in the exercise of the same power* [potestas regiminis] *according to the norm of law.* The general norm contained in canon 129§2 is concretized in canon 228§1 which reads affirmatively rather than debatably: *lay persons who are found suitable are qualified to be admitted by the sacred pastors to those ecclesiastical offices and functions which they are able to exercise according to the precepts of the law.*

It was not a change in theological truth, but a stimulating and active approach to it in its orientation towards the man who is the way of the Church and who, by virtue of his baptism, is

[8] Women remained excluded from receiving the office of judge, exemplifying the legacy of archaic Roman law norms in relation to the so-called *officia virillia*, public offices and functions traditionally reserved for men. **De constitutione tribunalum V.§ 1.** Si nec in Tribunali dioecesano nec in Tribunali regionali, ubi erectum sit, collegium trium iudicum clericorum effformari possit, Conferentia Episcopalis facultate instruitur permittendi in primo et secundo gradu constitutionem collegii ex duobus clericis et uno viro laico. **§ 2.** In primo gradu, cum nec per aggregationem viri laici collegium de quo in § 1 efformari possit, singulis in casibus causae nullitatis matrimonii clerico tamquam iudici unico per eandem Episcopalem Conferentiam demandari possunt. Qui iudex, ubi fieri possit, assessorem et auditorem in iudicio sibi asciscat. **§ 3.** (...)

[9] In the process of nullity of marriage, the case was in principle decided by a collegiate tribunal.

worthy to be sent by the shepherds (here: the bishop) to use and multiply his moral and intellectual talent in the Church's institutions.

In the tribunals of the particular Churches (diocesan, metropolitan, regional- inter-diocesan tribunals, in all instances except the tribunals of the Holy See) since 1983, a layperson may be granted the following offices and perform the following functions:

- **Notary of the court.** The Code of Canon Laws constitutes this office in the tribunal in canon 1437. In accordance with the general requirements relating to notaries of the curia, the notary of the tribunal must also be a person of "good repute and above suspicion" (canon 483§2). Their tasks - with the proportion and distinctiveness appropriate to the nature of court cases - are described in canon 484[10]. The presence of a notary is mandatory in every trial (canon 1437§11).
- **The defender of the bond,** who is required to have a doctoral degree or at least a bachelor's degree in canon law together with three personal qualities: an unblemished reputation, proven prudence and a love of justice (canon 1435). The task of the defender is to bring and present everything (in a reasonable manner) against the nullity of the marriage. The defender of the knot ex officio thus defends the validity of the contested marriage. His office is autonomous from the judge, who in certain cases indicated by law[11] is obliged to hear the opinion of the defender before making a decision. The voice of the defender of the bond is also to be the last one before the sentence is pronounced.
- **The promoter of justice**, who guards the public good of the Church and in matrimonial matters, in the exceptional situation described in canon 1674§1 point 2, has the right to challenge a marriage, which - apart from this single exception - can only be challenged by the spouses themselves. The requirements pertaining to the promoter of justice are identical to those of the defender of the bond enumerated in canon 1435. Since there is no code prohibition on combining these offices, in the practice of tribunals one of the defenders of the bond is often also appointed promoter of justice.

[10] Drafting documents, signing or countersigning them, documenting actions (e.g. court hearings), taking care of the procedural files from a formal point of view, as well as making them available to persons allowed to read them, certifying that the files are in conformity with the originals, ensuring that the participants in the proceedings are informed of dates and places in accordance with the law.

[11] For example, a decision in the course of proceedings to extend the scope of the dispute to include a new void title.

- **Auditor**. His task is to collect evidence and pass it on to the judge, according to his order.[12] In matrimonial cases, this primarily involves conducting hearings. The requirements for the auditor are: "good morals, prudence, and knowledge", according to canon 1428 § 2 of the Code of Canon Law, for which, however, according to ecclesiastical law, no special professional qualifications are needed.[13] In the preceding first paragraph of canon 1428, the Legislator recommends (but does not determine this as a condition *sine qua non*) that auditors should be chosen from among the judges examining the case (the collegiate tribunal).
- **Assessor in matrimonial cases** (advisor to the single judge). As in historical times, this is a consultant who assists the single judge in judging the case properly, (e.g. in documentary proceedings), and who must be characterized by qualities only of good reputation. The assessors of the judge can be deacons, seminary alumni, consecrated persons, and also the classically understood laity of both sexes (can. 1424). As early as 1983, all non-clergy could hold this office without the need for general approval by the Episcopal Conferences.
- **Finally,** in accordance with the Council's demands: " (...) may every opportunity be given them [to laity] so that, according to their abilities and the needs of the times, they may zealously participate in the saving work of the Church" (*Lumen Gentium*, 33 *in fine*), the ecclesiastical legislator in canon 1421 §2 opened the office of a **diocesan judge** to laymen of both sexes. It left it up to the Episcopal Conference to take general permission for bishops within its territory to appoint laymen as diocesan judges in the contentious trial: one layman (woman or man) to a collegial composition of 3 persons. Beginning in the year of the promulgation of the Code, over the following years numerous episcopates issued relevant documents allowing lay faithful of both sexes to the office of judge[14]. The novelization of the Code of Canon Law regarding the **matrimonial process** by Pope Francis on 8 December

[12] The auditor may also decide - unless otherwise instructed by the judge in the instructions - how evidence will be obtained, e.g. the place of the hearing, and the attendance of persons at the hearing. On an ad hoc basis (but never definitively), the auditor may decide what evidence the court will or will not obtain (e.g. at a hearing, a party brings several volumes of his or her diary to court, and the auditor decides on the admission of specific excerpts from these private documents).

[13] This is surprising given the sensitivity and psychological difficulty of matrimonial cases. Hence, in practice, the auditor should not only be proficient in the techniques of interrogating persons of different psychological condition, psychological condition, and religious sensitivity but should also be familiar with matrimonial material law to the extent that he or she can extract from the testimony the most relevant information for the title of nullity under examination.

[14] For details for every Episcopal Conference in the world see: Martin de Agar and Luis Navarro, *Legislazione delle conferenze episcopali complementare al C.I.C.* ed 2, Colleti a San Pietro, Roma 2009.

2015[15] brought - when it comes to the appointment of lay people to the office of ecclesiastical judges - an important *novelty*, namely the absence of the need for the general consent of the Bishops' Conference. Henceforth, it is at the sole discretion of the diocesan bishop to appoint laymen as judges adjudicating in cases of annulment of marriage. In addition, in marriage tribunals, in the college of judges, two lay judges may henceforth sit under the chairmanship of a single cleric - Canon 1673§3. In situations where a single judge judges, he must still be a cleric. [16]

3. An example from the heart of Christian Europe.

Poland, where I come from, is a country in Central Europe, still strongly Catholic, as 32.5 million people out of a population of 28 million declare their adherence to the Catholic religion.[17] Data from the compilation of the annual reports of the ecclesiastical courts to the Supreme Tribunal of the Apostolic Signatura indicate that in 2017 the number of pending cases in the Polish matrimonial tribunals in the first and second instances was about 10,000.[18] This was more than in Italy - whose courts had more than 4,500 cases, in Spain more than 2,000 cases, in Germany just over 1,000 trials, France, the United Kingdom - each country registered almost 1,000 pending cases, Lithuania - about 600 cases (Malecha,2020, 21-22).

Out of the 40 episcopal tribunals operating in Poland, 658 employees work permanently, of whom 549 were clergy, while 83 were representatives of the laity and 26 were religious (nuns).[19] Detailed data taking into account the participation of lay people in the episcopal courts of the individual dioceses of Poland is presented below:

- Judges - **2** feminine religious, **1** layman, **1** laywoman
- Defenders of the bond - **27** women (among them **7** religious sisters) and **6** laymen
- Notaries- **38** laywomen (among them **12** nuns) and **2** men
- Auditors (interrogators) - **11 lay**women; **3** laymen;

[15] The motu proprio, which in canon circles is called and written: MIDI, was the result of numerous demands made by the bishops at the Third Extraordinary Synod of Bishops held from 5 to 19 October 2014 and dedicated to the family. The final document: "Relatio Synodi" was prepared and published in English. See issue 48 for a description of these demands. Official text: www.vatican.ca/ roman_curia/synod/documents/rc_synod_doc_20141018_relatio-synodi-familia_en.html.

[16] However, it is possible for a clergyman as a single judge to have a lay notary beside him, a defender of the bond and to be assisted by a lay assessor.

[17] According to Polish Statistic Office data from the statistical analyze *Religiuos denomination in Poland 2018-2021*, http://www.stat.gov.pl/en/topics/other-studies/religious-denominations/(access: 30.01.2023).

[18] At the time of going to press, official figures for 2020 were not yet available, and when it comes to the time of the pandemic (March 2020 - May/June 2022), it can be assumed that the figure will be lower, affected by the slowdown in tribunal`s work due to COVID-19.

[19] There is no record of any monk (religious brother) in the judicial office.

- Assessors - no data available
- Promoteur of justice - **1** female, **1** male
- Other tribunal staff (named: 'protocol officers', 'secretarial staff', 'archivists') - **13** laywomen (including **5** religious) and **two** laymen.

As already mentioned, in 2015, Pope Francis, in motu proprio *Mitis Iudex Dominu Iesus*, left to the autonomous discretion of the bishop of a diocese the decision to appoint a non-clergy ecclesiastical judge in the marriage tribunal of the diocese entrusted to him. In these cases, the Pope also allowed for the presence of two lay judges in the ruling college under the chairmanship of a cleric and, consequently, for the situation where the votes of two lay judges overtake the vote of the presiding judge. Canon 1673 § 3, in its current wording, reinforces the norm of canon 1421 § 2 and it is now beyond doubt that the laity, by virtue of the canonical mission, enjoys full judicial power (in the college all judges are *inter pares* - equal in a vote) and not merely partial inclusion to participate in it (Ghirlanda 2022,1).[20] In spite of these changes, the extremely low representation of lay ecclesiastical judges in Polish tribunals is surprising. Those in Catholic Poland (where there are three faculties of canon law and many institutes of canon law attached to numerous university theological faculties) are only **four** in the tribunals of the diocesan tribunals in Sandomierz and Elbląg as well in the metropolitan tribunals of Wrocław and Katowice.[21]

4. **An attempt to clarify the situation and conclusions**.

The ecclesiastical court employs highly specialized staff, educated in a niche field of study. The responsibilities are serious because they can change the legal status of a person in the Church, and the consequences of a court judgment are complex in spiritual as well as social terms. There is therefore a natural moral pressure and a sense of responsibility in any deontologically well-formed employee of an ecclesiastical court. He/she should have the time to undertake this function freely, including with a sense of financial security. A query I conducted among European canonists showed that the predominant forms of employment (not only of lay people) in ecclesiastical tribunals are contracts for work or part-time jobs and that the fees themselves are among the low ones.[22] A forensic expert is usually paid several times

[20] "Il fatto, poi, che il Motu proprio di Papa Francesco Mitis Iudex Dominus Iesus del 15 agosto 2015, all'art. 1673 §3 ammetta che su un collegio di tre giudici due possano essere laici, pur disponendo che presidente debba essere un chierico, viene a rafforzare la previsione del can. 1421 §2, perché non si può porre in dubbio che possono i laici, che, esercitando la potestà di governo giudiziale ricevuta con la missione canonica, determinano la nullità o meno del matrimonio in causa."

[21] Year of appointment of judges: 2017 -Sandomierz, 2018- Elbląg, 2021 -Wrocław and 2022- Katowice.

[22] There is also a lack of unification at the Polish level of the fees for individual personnel. This is the case, for example, in Italy, where the Episcopal Conference refers fairly regularly to the issue of formal requirements,

the amount that is paid to a judge or knot defender after all the work on a single case has been completed. Such harsh pay conditions do not encourage lay people, especially laymen, to tie their professional life to the Church. Consequently, this becomes a cause of secondary clericalisation and lack of involvement of the lay intelligentsia[23] in the institutional structures of the Church. Hence, church courts are staffed by enthusiasts who earn their living in academic centers or by people who accumulate court offices to "art" a full-time position or to combine an employment contract with a contract for work/contract. Still another group of employees (notaries, defenders of the bond, or auditors) set up their own businesses and make a living as ecclesiastical lawyers or are employed by a law firm offering their canonical knowledge and practical skills in the functioning of the ecclesiastical judiciary. This can be done in courts with which the court of their office is not bound by the right of appeal.[24] However, there is always a greater or lesser problem with procedural integrity and work ethic.

Another reason for the low activity of the laity in the judicial forum as a workplace is still the general passivity of the lay faithful when it comes to engaging their professional energies in building up the community of the Church, due to the lack of in-depth knowledge of the clergy about the position of the lay faithful in the legal structure of the People of God and the shallow - because mainly ritualistic - religious formation of the laity. It seems that the lay faithful have for too long been positioned as passive objects of Church activity. In addition, an erroneous one still prevails, based first on the principle of non-consent (or lack of custom) and only later on "allowing", "permitting" the laity to become active and actually enabling them to act. Meanwhile, the law is to be the law of opening up and leading the faithful, through service to the community, to the development of his or her gifts according to the free will of a gracious God, which [the layperson] has received by incorporating himself or herself through faith freely received. Enabling the exercise of service to the community in accordance with the natural and supernatural endowment of the human person is the realization of the fundamental rights of the faithful, and the source of this right must be the teaching on the role of the sacrament of baptism as a factor which involves the faithful in growing in faith and actively implementing the

practice, formation, number of staff. See Conferenza Episcopale Italiana, *Determinazioni riguardanti i Tribunali ecclesiastici italiani in materia di nullità matrimoniale*. Prot. no. 768/2019. https://giuridico.chiesacattolica.it/wp-content/uploads/sites/37/Determinazioni-Tribunali-03.12.2019-3.pdf; Conferenza Episcopale Italiana, *Determinazioni circa la remunerazione dei giudici laici e dei patroni stabili laici nei tribunali ecclesiastici regionali italiani*. Prot. no. 125/03, 29-32. www.chiesacattolica.it/wp-content/uploads/sites/31/2017/02/Giudici_Patroni_Trib.pdf.

[23] The second group of believers, after the young, moving away from the Church.

[24] The legislator, in Article 36 § 1 and 3 of the procedural instruction *Dignitas Connubii*, does not allow the combination of certain judicial functions and offices (Brzemia-Bonarek, 2017,61-81).

missionary imperative in their natural environment; to the extent that the gifts of the Holy Spirit have been received, it still requires urgent tutelage by the faithful of all states, so that it does not come as a surprise, and certainly not as indignation, that, in re-reading the synodal and diaconal character of the Church (while preserving her hierarchical structure), *the natural working environment of the* lay faithful may also be the diocesan curia, its institutions, and offices not reserved to the clergy. Although rare, there are still environments where the question of governing authority in the Church is still approached in a historical and a-personal way.[25] Meanwhile, "what is at stake is the perspective of the universal Church, of a mother Church that does not shy away from taking responsibility, but is also not afraid to entrust responsibility".

Numerous statements by the hierarchy about the ability of the lay faithful to collaborate in the exercise of judicial authority in the Church emphasize the uniqueness of such an arrangement and staff shortages among the clergy as the primary reason for allowing the laity to hold judicial offices. This, however, supersedes the interpretation that practical reasons override theological foundations.

On the other hand, in the discussion of the powers of the lay faithful in cooperating with the power of government, it appears erroneously to contrast canons 129§1 and 274§1[26] of the Code of Canon Law with canons 129§2 and 228§1.[27] Such a reading of the provision obviously contradicts the axiological basis of law in the Church. The correct interpretation of the relation of the indicated canons is a complex interdisciplinary, theological-legal issue, which is still waiting to be reliably addressed. It is worth remembering, however, that these canons do not contradict each other, but complement each other, showing the complexity of the problem on

[25] In 1986, Fr. Prof. Jean Beyer SJ explained the incorrectness of such a belief in his article *Iudex laicus vir vel mulier*, Periodica de Re Canonica, 75 (1986), 1-2, 39-40. "Errare videtur qui putat solos clericos esse ad hæc munera habiles. Indaganda est ipsa ratio habilitatis de qua in canone 129 § 1. Et, uti videtur, ratio est sequens: clerici, saltem presbyteri, ordinatione sacra munerum Christi fiunt participes sicut et episcopi. Quæ tamen munera non sunt ipsa potestas. Quæ potestas, ut habeatur, conceditur vel sola ordinatione et est potestas sacramentalis, vel addita communione hierarchica quæ, ratione ordinationis conceditur, mandato quidem pontificio sive explicito, sive saltem implicito peractæ. Quæ potestas est diversæ naturæ, non sacramentalis sed missionis et natura sua 'moralis' i.e. ad actus moraliter licitos et validos ponendos; non sacramentales actus, qui ipso actu ministri sunt actus Christi; ad quos actus exigitur minister sacramento ordinis i.e. saltem ad presbyteratum consecratus; qui actus est sacramentalis, et cuius effectus e recipientis conditione ipso facto est sacramentalis. Distinctio vero inter potestatem ordinis et potestatem regiminis seu iurisdictionis remanet in tota hac materia ontologice essentialis."

[26] Canon 129§1: "Those capable of the power of government, which is in the Church by divine appointment and which is also called the power of jurisdiction [*potestas iurisdictionis*], are, according to the prescriptions of the law, those who have received ordination". Canon 274§1: "Only clerics can receive offices for the exercise of which the power of ordination or the ecclesiastical power of government [*potestas regiminis*] is required."

[27] Canon 129§2: "In the exercise of this power [*potestas regiminis*], the lay faithful may collaborate, according to the prescriptions of the law". Canon 228§1: "The laity declared fit are capable of receiving from the holy pastors those ecclesiastical offices and tasks which they are permitted to fulfil according to the prescriptions of the law".

the basic, i.e. theological ground. The current canon law offers both empirical and theoretical elements, metaphysical and phenomenological methodological foundations, supporting both principles present in the law and relating to the power to govern (*potestas regimis*). However, this is the sign not of chaos, but of a law that fully evolves, and functions within a community that writes its own norms (*lex christiana*) not only starting from abstract theories but above all from an extended experience drawn continuously from the richness of the different moments of its history (Kouvelgo 2017, 212).[28] The aforementioned canons should not be applied dialectically, instrumentally, in an isolated manner, and for the purpose of defending a preconceived thesis/view 'for' or 'against', but synthetically and with the knowledge that there is no perfectly constructed and completely internally harmonious law in the world. The tension and discourse between the various provisions is a natural consequence of the various factors of the legislative process. The art of interpreting and applying the law is to update the *lex scripta* to the changing reality of the Church while preserving the doctrinal basis. In interpreting the canons of the current code, it is pointed out that the foundation for understanding the legitimacy of filling offices belonging to the area of governing authority with laymen, while preserving the hierarchical priesthood in other reserved cases, is to participate in the missionary mission of all the baptized, endowed with the radical equality of the Children of God.[29]

The presence of laypeople in the courts contributes significantly to the quality of the court and its working culture by preventing hermetic and corporate thinking. The exchange of legal thought between clerical canonists and lay canonists, who in turn are often also trained and practicing lawyers in state law, cannot be overestimated. The shared experience of the ecclesiastical tribunal supports the ecclesiological formation of the laity, who, by working 'inside' the structures of the Church, better understand its community, tasks, and eschatological goals. This enables them to be better witnesses of the faith in their extra-professional lives. In cases of annulment of marriage, the experience of the "secular everyday life" of judges or knot

[28] "Di fatto, sulla questione della partecipazione dei laici all'esercizio della potestà nella Chiesa, il Diritto vigente sembra offrire elementi empirici e teoretici, scelte terminologiche e sostanziali, a sostegno sia dell'una che dell'altra tesi. Ciò è segno però di una Normativa in piena evoluzione su questa materia all'interno di una Comunità che scrive il proprio Diritto non solo a partire da Teorie astratte ma anche e soprattutto a partire dal vissuto incrementato continuatamente dalla ricchezza dei vari momenti della sua storia."

[29] This is how the then Bishop Francesco Coccopalmerio (President of the Pontifical Council for the Interpretation of Legal Texts from 2007-2018 and Cardinal since 2012) analysed the provisions relating to the laity and their participation in the life of the Church (including ecclesiastical structures): "Oggi, invece, sul riguadagnato presupposto della comune titolarità della missione ecclesiale, dire che i laici sono coloro che non sono chierici, viene semplicemente a risolversi in una differenza di ruoli, nella comunanza, però, di azione ecclesiale. Ora è evidente che l'accento valutativo deve venire posto sulla partecipazione alla missione della Chiesa: ciò che veramente importa è esserne partecipi. Se così è, i ruoli per l'attuazione di detta missione risultano 'secondari', fossero anche quelli di presidenza propri del chierico" *in I "Christifideles" in genere e i "Christifideles laici"*, AA. VV., *Temi pastorali del nuovo Codice*, Queriniana, Brescia, 1984, 27-28.

defenders coming from the laity, and in particular their life in marriage and parenthood, [30] is very helpful for a better judgment. The Church is not a purely sociological structure, but a community; which does not mean, however, that sociological elements can be omitted. The prudent legislator and the prudent representative of authority (here: the diocesan bishop) should realise that the "representation" of representatives of all states in the episcopal court increases the credibility of the Church both locally and universally in the eyes of the faithful.[31] The division between "us" and "them" is disappearing; the adjective "our" is emerging, as well as a healthy culture of openness and the implementation of the principle of subsidiarity in the Church, not only at the level of parishes and pastoral, economic or evangelisation councils. However, this obliges the laity to "get up from the couch of passivity", to make a personal effort of responsibility for the Church, and to make a discernment of what can be offered to the Church from their intellectual abilities, resources, competences, and skills. On the part of the ecclesiastical hierarchy, this requires abandoning the "preservationist pastoral" and reaching out to the lay faithful by very concretely inviting them to cooperate in the areas of responsibility of the ecclesiastical structures. In a still strongly clericalised Church with a concomitant exodus of the laity (while maintaining faith in a personal God) and abandonment of the regular religious practice, both laity and representatives of the clergy must undergo, without undue delay, a "profound change of mentality"[32] in order to experience anew with reason and emotion the common baptismal heritage.

A very important and dynamic topic also concerns the participation of lay canonists in ecclesiastical penal proceedings in painful and harrowing *de sexto* The Undersecretary Dr.Linda Ghisoni, whose iconic speech at the Vatican summit on the protection of minors against minors on 22 February 2019 we all remember, drew attention to the need for interaction between functions, roles, and authorities in the Church on the principle of accountability. She stressed

[30] Since ancient times, the principle has been that the judge judges on the basis of records and evidence, according to his or her conviction and conscience (*ex actiis ex probactis, con anima sua*).

[31] European canonists debate the secular official of the court or the secular single judge, the three-person secular college or the secular judges in the Roman Rota, based on recent developments in the canonical procedural law of marriage and the theological foundation of the doctrine of the nature of the canonical mission (cf. L. Ghisoni, *La cooperazione della donna...*, 97-100; also Rea, F.S. Rea, *L'esercizio della potestà giudiziaria...*, 40-46; 55-57, with cited world literature). In Poland, scholarly discussion of these issues does not exist other than behind the scenes, appearing to be more than avant-garde.

[32] Although this requires changing habits, refreshing beliefs and stepping out of one's "comfort zone", as American canon law professor John P. Beal, in his article *The Ordinary Process According to Mitis Iudex: Challenges to Our "Comfort Zone*", aptly pointed out: "Human institutions, like the human beings who create and shape them (and, in turn, are shaped by them), are creatures of habit. They develop ways of dealing with routine and recurring tasks and situations and usually persist in these behaviours unless external factors force reconsideration and revision. Indeed, change in these ingrained habits can be wrenching, for both individuals and institutions'. Published in: 'The Jurist', 76 (2016), 1, 159.

the need for all states to take part in the evaluation of the problem, reporting, judgment, remediation, and prevention. The need for participation and therefore openness, trust and admittance of the lay faithful to criminal matters stems from the truly communal and not corporate nature of the Church. Through baptism, we are 'connected vessels', individual organs, and members of one organism: The People of God. Dott. Ghisoni reminded us in her speech of the existence of different charisms in the structure of the whole People of God and, consequently, of different means and possibilities in solving problems. This thought is beautifully concretised in the practice of criminal proceedings, if only in the preliminary investigation (canon 1717 CIC). I say this from experience because in my own country, I am one of the very small numbers of lay people who are commissioned to carry out a preliminary investigation or asked for an opinion/consultation on canon law during a criminal trial. Conducting a preliminary investigation requires delicacy, the ability to ask the right questions, a good investigation plan, an objective outlook, and good legal knowledge. Many times, victims or witnesses have only agreed to give evidence to a layperson because, in their traumatised eyes, he or she was more credible, objective, and independent than a clergyman.

It seems that the presented analysis should nullify the still smoldering remnants of an attitude of doubt in some places about the validity and legitimacy of Pope Francis' consistent stance in promoting a greater presence of the lay faithful in the institutional life of the Church. Not only the ecclesiastical courts, but also the faculties in the episcopal curia should open themselves up to the laity, taking as a model the increasing casting of laymen of both sexes (and consecrated persons) in positions of leadership and decision-making in the dicasteries, in the Vicariate of Rome, or in the administration of the Vatican City State.

The bishops, on whom in fact most depend should bear in mind the synodal nature of the Church and the sharing of the gifts of the Holy Spirit among the People of God of all states.

Appendix. Testimony.

My personal path to the office of judge was as follows: At the age of 30, married and the mother of two children, after a doctorate in canon law, I was admitted as an ecclesiastical lawyer in two courts bound by the law of appeals. At the same time, I started working at the university and also gave birth to my third child.

After three years, when a vacancy arose by chance, the clerk of the Metropolitan Court in Krakow offered me the office of defender of the bond, which I gladly accepted, not least because it gave me more "ad intra" contact with the tribunal than my work as an advocate. In view of the norms concerning the incompatibility of office (Art. 36 §3 of the Processual Instruction Dignitas Connubii from 2005), I resigned from my work as an ecclesiastical

advocate at the Metropolitan Court in Katowice, but I also resigned from my work as an ecclesiastical advocate altogether.

I have served as a defender of the bond for 10 years. (Meanwhile, my husband and I welcomed two more children into the world). In addition, as a researcher at the Faculty of Canon Law of the Pontifical University in Krakow, at the request of judges, I supported them in analyzing their matrimonial or criminal cases that were not routine or required more intellectual work. Many times I heard praise for my work and the sincere statement that I would have excelled in the role of a judge, yet due to “no such custom for women in Poland” a precedent was not even considered.

In the meantime, as a university lecturer, I have witnessed the brilliant careers of my student-scholars to the office of a judge (or even adjunct judicial vicar) which took place immediately after their degree.

In 2020, after the change of the judicial vicar in the tribunal, I decided to ask to be relieved of my position as a defender of the bond. I felt truly tired of more than a decade of working in looking at the acta from only one perspective. Above all, I was becoming increasingly active in advising my fellow judges as more criminal cases came in. I offered my knowledge and experience as a judge to the new judicial vicar but did not receive a positive response from him.

In the following months of 2021, I devoted myself more to my academic work at the university, but - as a man of action - I missed the tribunal very much. I received many offers to work in law firms as a matrimonial specialist, but I turned them down because I knew from my first year at university that my place was in the curia and its institutions.

At the end of 2021, the judicial vicar of the Metropolitan Tribunal in Katowice, Rev. Prof. Piotr Ryguła, offered me a position as an ecclesiastical judge. I would like to say that the approval of the Ordinary Bishop came without undue delay. The Archdiocese of Katowice, located in the South of Poland, a heavily industrialized area and with a strong sense of egalitarianism among the working people of Silesia, was always considered a leader in the involvement of the lay faithful in parish structures. (Must also be said that in the early 1970s, a nun held the office of a notary at the Metropolitan Tribunal in Katowice; for several years as the one and only woman in Poland). Upon receiving the decree appointing me as a judge for a period of 5 years, my fellow priests greeted me with the words: "Welcome to the team". And I would like to make it clear that I feel I am a full member of the crew. My gender is not an obstacle to discussing the issue. On the contrary, my experience of balancing professional activity with marital and parental roles is valued in the case discussion. I wish all tribunal and Church office staff such inspiring case discussions as I have with my colleagues.

For me, being an ecclesiastical judge is also a way of my private religious formation. Every judgment is the result of my intellectual work for the Church as a Communion. In every judgment, I also give something of myself as a baptized person. The ecclesiastical tribunal is my place where I bring others closer to God by doing as a layperson what I do best, which is to be a lawyer in the Church.

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