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The Individual and Social Dimension of Canon Law on the Example of the Declaration of Marriage Nullity in the Light of Polish Research

Przemysław Kisiel, Piotr Kroczek, Paweł Ulman

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Introduction

Canon law arises out of the nature of the Church – *Ius canonicum e natura Ecclesiae manare*.¹ It is a practical tool or an instrument of the Church designed to serve the salvation of souls (*salus animarum*) (can. 1752). This primary purpose of canon law, while rooted in the nature of the Church, also extends to the important task of organizing the life of the community of the faithful in both individual and social dimensions.

¹ Praefatio, [in:] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, 25. 1. 1983, in: AAS 75 (1983), pars 2, p. XX.

The Church is a community of faith. Faith in Jesus Christ unites people and creates *communio*. However, the Church can also be viewed as any other human community made up of individuals. In other words, the supernatural qualities of the Church, such as holiness (“I believe in (...) the holy Catholic Church”), do not eliminate the natural or human qualities of either the individual members or the entire group of individuals.

The individual and social dimension of canon law is manifested in the fact that it is a regulator which performs some functions of importance to the faithful. It is also done through “marriage annulment.” In the Church, this is a “declaration of nullity”. It is a declaration in the form of a court judgment by a Church tribunal (court) that a marriage fell short of at least one of the essential elements required for a binding union and cannot be recognized as a valid marriage by the Church. There are three sources of grounds of nullity: diriment impediments (can. 1083–1094), lack of canonical form of marriage imposed to validity of marriage (can. 1108–1123), and defect of matrimonial consent (can. 1095–1103). The process of declaration of nullity of marriage is in procedural aspects regulated in can. 1671–1691 and other laws, e.g. Apostolic Letter *Motu Proprio Mitis Iudex Dominus Iesus*.²

In this paper, the focus is on presenting the individual and social dimensions of canon law based on research on the experience of the faithful who were involved as parties in declaring the nullity of marriage. The foundations for this article are built on the results of research conducted by a canonist, sociologist, and statistician in Poland in the period from 2017 to 2023.³

1. Data on Marriage and Divorce in Poland

As part of the so-called “current surveys”, official statistics in Poland provide data on marriages and divorce rulings. In Poland, 155 816 marriages were performed in 2022, the lowest number since 2002. In 2002, 191 915 new marriages were recorded. The highest number of marriages performed during this period was in

² *Mitis Iudex Dominus Iesus*, in: AAS 107 (2015), p. 958–970.

³ This paper was produced as part of a project funded by the National Science Centre of Poland, project no: UMO -2019/33/B/HS1/00625. Details of the research and a complete description of the results can be found in the monograph: KISIEL, Przemysław, KROCZEK, Piotr, ULMAN, Paweł, *Diagnoza kondycji współczesnej rodziny poprzez pryzmat procesu orzekania nieważności małżeństwa*, Kraków, 2023.

2008, with 257 744. In other words, compared to 2008, the number of marriages in 2022 fell by nearly 40 %.

Among the total number of marriages performed, the majority were religious marriages, but their share declined steadily in subsequent years from 73 % in 2002 to nearly 51 % in 2022. In this regard, there is considerable urban-rural variation in Poland. In cities, the share of denominational marriages in the period under review ranged from about 68 % to 44 %, and in rural areas, 82 % to 61 %. These results are reflected in the indicator showing the number of marriages per 1 000 population aged 15 and over. Its value has steadily declined since 2008, from a maximum of about 8.0 to 4.87 in 2022. It is worth noting that this decline was mainly due to a significant drop in religious marriages (from a maximum of 5.37 in 2007 to 2.48 in 2022) and a stable level of civil marriages, with an average marriage rate of about 2.26 from 2007 to 2022.

In 2002, 45 412 divorces were registered, while in 2022, 60 162 were registered. It is vital to highlight that divorces increased significantly in a relatively short four years, 2002–2006. From the aforementioned level of 45 212 divorces in 2002 to 71 912 in 2006, the number has fluctuated between 60 000 and 67 000, skipping 2020, the pandemic year.

Considering the number of divorces per 1000 marriages, it, too, steadily declined during the period under review from 423 marriages in 2002 to 259 in 2022. This decline was definitely due to changes in the indicator mentioned above in the countryside, where in 2002, 1 076 new marriages per 100 divorces were observed, and in 2022, only 381.

The data provided above clearly demonstrate the dynamic changes in Polish society, particularly concerning contracting marriages. In particular, the popularity of religious marriages is steadily declining.

Against this background, one can see the number of marriage annulment cases in Poland's Church courts. The data in Table 1 shows that the popularity of declaring a marriage null has steadily increased. These are not large numbers on the scale of marriages entered into and existing marriages as well as divorces pronounced, but together, they show the deepening crisis of marriage and family life in Poland – a declining number of marriages entered into (including religious marriages), a relatively large number of divorces and an increasing number of cases of declaration of nullity.

Table 1. Cases of declaration of nullity in the Church's courts in Poland; the first instance, ordinary process – the reason for the closure – cases settled 1989–2017

Year	Total	Declaration of nullity	Judgment against nullity	Abatement of the trial	Renounce of the trial
1989	1,250	807	302	84	57
2001	2,158	1,490	469	104	95
2006	2,481	1,843	472	115	51
2010	3,446	2,235	934	139	138
2017	3,875	2,755	907	119	94

Source: GUS, *Kościół Katolicki w Polsce 1991–2011*, Warszawa, 2014, p. 177; Data for 2017 from ISKK, *Annuario Statisticum Ecclesiae in Polonia AD 2019*, Warszawa, 2019, p. 26.

However, there is an optimistic element in this rather pessimistic picture. A marriage crisis, especially one that ends the relationship, can lead to a new opening in the life of a person and his or her family. This is particularly true for people who seek a declaration of nullity of marriage. These people's religious sensitivity stimulates actions, allowing them to regain a socio-religious life. They are anxious to regularize their situation and their families before God. In this context, Church institutions should assist – within the scope of applicable canon law – in this process with the very welfare of those who come forward in mind. Thus, these institutions have a crucial socio-religious role.

The survey from 2017 to 2021, conducted on a 326-person sample of individuals seeking to declare a marriage invalid in the Krakow Church court, confirms the social importance of the procedure mentioned above.

Women predominated among the respondents. About 62 % of them were women. Most of the respondents were 30–39 years old (49 %), had higher education (46 %), and lived in villages (40 %) or large cities (26 %). These people most often declared that they came from a family with a solid Christian tradition (parents at least attended Mass every Sunday and the Holy Days of Obligation) (84 %) and rated themselves (74 %) as believers and at least practicing every Sunday and the Holy Days of Obligation.

The respondents were overwhelmingly divorced (94 %); most often, the period from the date of divorce to the action to declare the marriage invalid lasted from one to less than six years (about 39 %). Less than a year was declared by

27 % of respondents. On the other hand, the duration of the relationship from marriage to divorce also most often lasted from one year to less than six years (52 %) and from six to eleven years (23 %). Most often, respondents had no children (42 %) or had one child (37 %) with the person against whom the marriage annulment case was filed. When seeking annulment of the marriage, they lived in an informal relationship (39 %) or a civil union (21 %), of which 54 % had at least one child.

During the survey, the respondents were asked to rate the importance of factors (areas of their life and functioning) that would be affected by a marriage annulment. The respondents rated as significant (on a scale of 1 to 5) the possibility of receiving the sacraments (91 %), with this factor being more important for women than for men (96 % women, 82 % men). In the second place, respondents indicated that the possibility of sacramental marriage is essential for them (82 % overall; 81 % women, 83 % men).

Slightly smaller shares were observed for the motive identified as calming one's conscience – 69 % of respondents indicated as essential (including women 73 % and men 62 %). In addition to the above-mentioned religious factors, 75 % of respondents identified setting an excellent example for their children as significant. This factor is more important for women; 81 % consider it vital (among men, 66 %). Approximately half of the respondents also see completing a particular stage of life as an essential factor in their future functioning after obtaining a marriage annulment. In respondents' opinion, the other areas of life, i.e., meeting the expectations of loved ones, meeting the expectations of the current partner, and improving one's image in the residential environment, are no longer as important as those mentioned earlier. Only in the case of men does slightly half consider it very important to meet the expectations of a current partner.

After identifying the areas of the respondents' lives that would be affected by obtaining a marriage annulment ruling, they were asked to list the reasons that prompted them to seek such a ruling. The most frequently cited reason for seeking a declaration of nullity of marriage was to get to know the person with whom the respondent wanted to marry validly in the Catholic Church – more than 48 % of such respondents (68 % of men and 37 % of women). Among all indications of reasons, this reason was mentioned by 29 % (for men, 41 %; for women, 22 %). Respondents often cited obtaining the opportunity to receive Holy Communion and

their spiritual conversion (about 29 %), with women citing this reason more often than men. A conversation with another person and the persuasion from a priest played a vital role in the decision to seek a declaration of nullity. In the former case, 26 % of respondents indicated such a conversation as decisive, and in the latter case such respondents were 17 %. The above results strongly suggest that spiritual and religious motives supported by talking to another person were important in seeking a declaration of nullity.

Finally, the respondents were asked to determine what motivated them to file a lawsuit for the declaration of nullity of their marriage. By far, the most common (with 54 % of respondents) were statements that fell into one group: receiving the sacraments, being fully a member of the Catholic community, participating in worship, receiving a sacramental marriage, becoming a godparent, maintaining ties with the Church, confirming one's situation with the authority of the Church. This group of motives was slightly more often indicated by women (60 %) than men (44 %). The possibility of starting a family was also mentioned fairly regularly (39 % of respondents mentioned it). This motive was more important for men (51 % of men mentioned it) than women (32 %) this time. Respondents also mentioned other motives related to spiritual life (e.g., peace of conscience) and family life (e.g., setting an excellent example for children). However, these were mentioned less often than those mentioned earlier.

2. Marriage Annulment as a Traumatic Individual Experience

When considering the declaration of nullity of marriage, two fundamental issues should be emphasized.

Firstly, it should be noted that the reasons that make it possible to declare a marriage invalid are related to the fact that the sacrament of marriage was administered contrary to the requirements of canon law. Therefore, a marriage can only be declared null if invalidly contracted. At the same time, however, according to can. 1060, marriage enjoys the favor of law, so in doubt, it should be considered valid until the contrary is proven. The consequence of this state of affairs is that the initiation of the process of recognizing the sacrament of marriage as non-existent is not a direct consequence of a defective marriage for formal reasons – such as marital impediments or a defect in or lack of canonical form of marriage but is

related to situations of actual dissolution of the marriage. This fact becomes a direct reason for seeking annulment of the marriage.

There are many reasons for the malfunction and, as a result, the breakup of a concluded marriage. However, among the most frequently cited threats preventing the spouses from continuing to function in a consensual manner are addictions, all forms of psychological, physical, sexual, and material violence, emotional inability to form a relationship with another person, inability to build a marital relationship, disagreement between spouses regarding the preferred family model and procreative plans, and excessive interference by either spouse's parents in the marital relationship. All of these phenomena, occurring separately or with others, can cause spouses to be unable to function in the relationship following religious and social norms. Thus, a process is set in motion that can lead to the complete breakdown of the marital relationship.

The process of the breakdown of the marital relationship in each case is, of course, highly individualized. However, an in-depth analysis of this process, based on the results of a qualitative study carried out in 2021–2022 on a sample of 30 respondents, using the technique of in-depth interviews, allows us to identify certain structural similarities and to distinguish peculiar “turning moments”, illustrating not only the dynamics of this type of process but also the depth of traumatizing experiences of the participants in this process.⁴

The first such moment, proving, on the one hand, the deep crisis of the marital bond and, on the other hand, triggering further stages of marital breakdown, is the crossing of the boundary of acceptance of the behavior of the spouse, as they begin to be perceived as a direct threat to family members (spouse, children). They are most often the result of the threats indicated earlier. At the same time, it is often about individual situations that do not have to be unique (and may even be similar to those previously experienced). However, the cumulative fears and emotions associated with it cause the boundary of acceptance to be crossed and cause open or hidden rebellion of the affected party. This situation thus acquires a unique traumatic character and begins to be perceived as a boundary event. However, it

⁴ The sample size for this study was 30 people, including 20 women and 10 men. The participants had previously initiated the canonical process and received a judgment from a court declaring their marriage null.

also happens that it is only the final accent of arriving at a situation of expressing defiance in the face of what has happened between spouses.

It is also worth noting here that sometimes the expression of objections or the triggering of rebellion is enabled or accelerated by people in the environment who clarify that certain behaviors or situations are simply unacceptable. These people are the so-called “significant others”.⁵ “Significant others” can be close family members, but they can also be people in the circle of friends and clergy. However, it should be emphasized that the appearance of such people is not necessary and is not a condition for crossing the border of acceptance.

Crossing the boundary of acceptance then triggers further stages in the process of marital breakdown. Initially, this manifests itself at the mental level and involves experiencing the alienation of the spouse. The affected person in this situation ceases to be able to place trust in the spouse and begins to perceive him/her as a stranger who poses a threat to members of the immediate family. This can further lead to a physical breakdown of the relationship, which can consist of temporary or permanent separate residences of the spouses, whereby it is irrelevant whether the aggrieved person or the oppressor abandons the shared residence. The next stage in the breakdown of the relationship is divorce, which, under civil law, ends the legal existence of the marriage.

Nonetheless, it is imperative to note that the circumstances of individuals who are religiously committed and view the marriage relationship as insoluble are markedly distinct. This is because divorce does not solve the problem in their situation and is usually treated by these people only as some necessary action to reduce or eliminate the immediate threat from the spouse guilty of a situation that threatens the marriage.

Thus, divorce is more of a preventive measure against the threat, while the problem of the concluded marriage continues to exist, albeit in a slightly different dimension. Therefore, it cannot be said that a divorce does not bring any changes, but neither is it the final solution to the problem. On the other hand, it undoubtedly

⁵ The concept of “significant other” is understood here following the meaning given to it by P. Berger and T. Luckmann. “Significant other” is a person from a close social environment who, in a given situation or at a given moment, is particularly important to the individual and has a significant influence on his value system or behavioral patterns, see BERGER, Peter, LUCKMANN, Thomas, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*, London, 1991, pp. 202–226.

forces the aggrieved spouse to define himself in his new life situation and prompts him to seek solutions to regain a sense of at least residual stability. Anselm Strauss calls this process of defining oneself an “identity transformation”.⁶ And Peter Berger calls it “alternation”.⁷ It can play an important role. The essence of this process is the need to look again at one’s past, reassess, and reinterpret one’s behavior and the situations in which one has participated. This means, among other things, having to construct an entirely new narrative about the beginning, duration, and breakdown of the marriage relationship. As a result, the events of the past begin to be perceived quite differently than they were before.

It should be noted here that religious believers and religiously committed people experience the trauma of divorce in a multiplied way. For them, the breakup of marriage means not only the personal tragedy associated with the breakup of the family, but also the threat of having their rights within the religious community restricted by entering into a new civil marriage. This makes them seek a solution that will protect them from the negative consequences of the situation in which they find themselves. Such a solution may be the initiation of a canonical process for the annulment of a marriage.

When analyzing the motivations that drive religiously committed people to initiate this procedure, it is worth noting that they are convinced that the situation in which they find themselves was not their fault. On the contrary, they feel wronged and, at the same time, they very often realize that their behavior (leaving their spouse, filing for divorce, etc.) is perceived by the social environment as reprehensible behavior – this is especially true for people who come from communities associated with traditional folk religiosity.⁸ Thus, initiating a suit for annulment of marriage is seen by them not only as a way to regain full rights in the Church – for example, the possibility of entering into a religious union – but also as a confirmation of the rightness of their previous conduct. These issues become crucial for them because the proceedings before the Church Court themselves have a primarily religious and moral dimension and do not change their civil formal-legal situation.

⁶ STRAUSS, Anselm, *Mirrors and Masks. The Search for Identity*, London, 2017, pp. 91–133.

⁷ BERGER, Peter, *Invitation to Sociology. A Humanistic Perspective*, New York, 1963, pp. 54–65.

⁸ Characterizing folk religiosity, T. Szawiel stressed that there is an overemphasis on ritual religion and a metrification of the truths of faith and moral principles, see SZAWIEL, Tadeusz, *Religijność ludowa: perspektywy spojrzenia*, in: *Miesięcznik Znak*, march 2008, no. 634.

The decision to initiate the process in question is an essential step for believers and another turning point in their lives. Its initiation requires deep consideration of the consequences of such a course of action and, above all, the performance of an identity transformation (alteration). Only when the past is redefined does it become possible to mentally close the period of marriage, which also means its end. Often, “significant others” again play an important role in the process of deciding on this course of action. However, they do not have to be (but can be) the same people who were important in the earlier period. Very often, among these “significant others”, there are sympathetic clergymen who support or even help in the proper preparation of a lawsuit for the annulment of marriage.

Thus, the judgment of a church court, declaring the nullity of marriage, is a confirmation, based on the premises recognized by canon law, of the state of final dissolution of the marriage, which, however, had already been reached earlier. This canonical confirmation, made in the Name of the Holy Trinity, has great importance. For the canonical situation of the spouses becomes clear, and the past becomes only a traumatic experience.

However, it is entirely different when the judgment of a Church court does not declare the nullity of marriage. This is because, in this situation, the spouses are still canonically united by the marriage bond, although the actual breakup of the relationship has already occurred. This breakup is, after all, the primary motivation prompting the person concerned to initiate the process before the Church court. Moreover, in this situation, many fundamental questions arise. What are and should be the natural consequences of a judgment that does not declare a nullity of marriage? Should the failure to declare a marriage invalid result (e.g., for religious reasons) in a call for a renewal of the union mentally, and perhaps also in civil-legal terms? While civil reunion is possible (life experience indicates), the breakup in the mental dimension most likely cannot be reversed. The verdict in favor of the validity of the marriage means condemning the person initiating such a procedure to continue living as if with “open wounds” and pushes him into a life situation that is also disapproved of from the Church’s perspective. At the same time, it is also worth remembering that precisely the individuals initiating such proceedings are, among spouses experiencing marriage breakdown, by far the most strongly connected to the Church. This is a significant value, and it would be a shame not to use it for the good of the community of the faithful.

Conclusions

After conducting a survey, it was found that the faithful who sought a declaration of nullity did so for religious and spiritual reasons and to regulate their family and personal situation. Such attempts indicate a level of religious and social maturity that the Church institutions should support in guiding them to regulate their marital and family situation under canon law and the spirit of the Gospel.

After conducting a thorough investigation, it has been found that parish priests play a crucial role in guiding the respondents towards resolving their complex family situations. When asked about where they obtained information regarding the possibility of annulling their marriage, more than half of the survey participants stated that a priest in their parish had provided them with the required information. Thus, it is also worth appreciating and supporting priests who, with the welfare of families subjected to them in pastoral care in mind, suggest solutions as soon as they discern that there are grounds for seeking a declaration of nullity of marriage. This is appreciated by the respondents, who more than 63 % would recommend a priest from the parish as an appropriate source of information on the procedure for declaring a marriage invalid.

Undoubtedly, the possibility of obtaining a declaration of nullity of marriage is an essential instrument for resolving many problems. Declaring such a marriage null allows the affected party to get out of an oppressive or toxic relationship. Also, it helps them overcome the trauma caused by a failed marriage. Therefore, obtaining a declaration of nullity carries a therapeutic value, which can be very important in sorting out personal affairs after closing a particular stage of one's life.

The declarations of nullity can restore the spouses to the community of the faithful in the sense that they do not have to live in an "irregular situation" but can enter into a valid canonical marriage.⁹ This allows them to participate fully in the life of the Church community.

Canon law thus has a strong individual and social dimension. These two dimensions should be considered when evaluating and further reforming the laws regulating declaring marriage invalid.¹⁰ Any reform of canon law must consider

⁹ Joannes Paulus PP. II, Adhortatio Apostolica *Familiaris consortio* de Familia Christianae muneribus in mundo huius temporis, 22. 11. 1981, in: AAS 74 (1982), p. 81–191, here no. 79–84.

¹⁰ See KROCZEK, Piotr, *Ocena instrukcji „Dignitas connubii” z perspektywy sztuki legislacji*, in: *Prawo Kanoniczne* 58 (2015), no. 1, p. 94–109.

the characteristics in question. Only then will canon law have a truly pastoral dimension and can be a remedy for irregular situations.

Summary

Canon law is an integral part of the Church's life, and it has two dimensions: individual and social. The effects of declaring a marriage null highlight this characteristic of the law, as it significantly impacts both the religious life of the individuals involved and the wider community of the faithful. This article presents research results on individuals who have participated in this process, which demonstrate that canon law plays a crucial role in resolving many individual and collective issues within the Church.

Resumé

Individuální a sociální rozměr kanonického práva na příkladu prohlášení manželství za neplatné ve světle polského výzkumu

Kanonické právo je nedílnou součástí života církve a má dva rozměry: individuální a sociální. Účinky prohlášení manželství za neplatné tuto charakteristiku práva zdůrazňují, neboť významně ovlivňují jak náboženský život zúčastněných osob, tak širšího společenství věřících. Tento článek představuje výsledky výzkumu jednotlivců, kteří se tohoto procesu zúčastnili, které ukazují, že kanonické právo hraje zásadní roli při řešení mnoha individuálních i kolektivních problémů v církvi.

Keywords: declaration of nullity, marriage, canon law, divorce, individual and social dimension

Klíčová slova: prohlášení neplatnosti, manželství, kanonické právo, rozvod, individuální a sociální rozměr

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Society. With over 80 scientific publications, his academic specialization includes sociology of culture, sociology of art, sociology of science, and methodology of social research.

Rev. Piotr Kroczek holds a Ph.D. in theology and philosophy and serves as a professor of social sciences specializing in canon law. He is the head of the Department of General Norms and Theory of Law at the Pontifical University of John Paul II in Cracow, Poland. Additionally, he is a judge of the Metropolitan Court in Cracow and serves as the Church Inspector of Data Protection. His areas of expertise include legal theory, religious law, and personal data protection.

Pawel Ulman is a professor in the Department of Statistics at Krakow University of Economics in Poland. He has authored numerous scientific works in the field of social statistics, covering topics such as household income and expenses, well-being, poverty, population economic activity, wages, standard of living, and the economic situation of people with disabilities. Ulman also serves as an academic teacher, specializing in various statistical subjects, and supervises and reviews bachelor's, master's, and doctoral theses. He holds managerial positions at his alma mater, including Director of the Institute of Quantitative Methods in the Social Sciences. Throughout his professional career, he has worked at the Pontifical University of John Paul II in Krakow and the Statistical Office in Krakow.

Autoři

Przemysław Kisiel, Ph. D., je profesorem na Ekonomické univerzitě v Krakově. Působí jako vedoucí Katedry sociologie a je také ředitelem Institutu politologie, sociologie a filozofie na Vysoké škole ekonomie a veřejné správy téže univerzity. Kromě toho byl od roku 2019 do roku 2022 členem prezidia Výboru pro vědu Polské akademie věd. Od roku 2016 je spoluzakladatelem a předsedou sekce sociologie umění Polské sociologické společnosti. Jeho vědecká specializace, která čítá více než 80 vědeckých publikací, zahrnuje sociologii kultury, sociologii umění, sociologii vědy a metodologii sociálního výzkumu.

Rev. Piotr Kroczek je doktorem teologie a filozofie a působí jako profesor společenských věd se specializací na kanonické právo. Je vedoucím Katedry obecných norem a teorie práva na Papežské univerzitě Jana Pavla II. v Krakově, Polsko. Kromě toho je soudcem Metropolitního soudu v Krakově a působí jako církevní inspektor ochrany osobních údajů. Mezi jeho odborné oblasti patří teorie práva, církevní právo a ochrana osobních údajů.

Pawel Ulman je profesorem na Katedře statistiky Ekonomické univerzity v Krakově v Polsku. Je autorem řady vědeckých prací z oblasti sociální statistiky, které se zabývají tématy jako příjmy a výdaje domácností, blahobyt, chudoba, ekonomická aktivita obyvatelstva, mzdy, životní úroveň a ekonomická situace osob se zdravotním postižením. Ulman působí také

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