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# Polysemy of the Term Complaint in Legal Doctrine – the Impact of Roman Law on Canon Law

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***Abstract:*** *Roman law has had a significant impact on the development of the both canon law and church legislation. Medieval canonists were fascinated by the Roman law. Thanks to the Roman law, the Church has obtained an auxiliary source of the canon law. During the Middle-Ages, even the division into canonists and secular lawyers disappeared. Academies were awarding degrees in both laws, i.e. the canon law and the Roman law. Many church legal institutions and canonical procedures are rooted in the Roman law. The purpose of this paper is to show the ambiguity of the term "complaint" in the legal doctrine, because the canon law derives from the conceptual apparatus of the Roman law.*

***Key Words:*** *Roman Law; Canon Law; Complaint; Plea; Claim; Libellus of Litigation; actio; libellus; petitio; querela; Case; Poland.*

## Introduction

In the words of Władysław Rozwadowski, "Nearly all contemporary civil law systems trace their roots to the Roman law, modelling themselves upon its organisation, concept, and even phraseology. As a result, Roman law and particularly its established legal terminology imported into contemporary law draw a bridge between the variety of legal systems, even those originating from different socio-economic formations. Thus, Roman law is the *lingua franca* of the legal circles – from the Middle-Ages to the present day".[1]

In the words of Kazimierz Kolańczyk, "The terminological and notional framework of the Roman law gained an inter-formational importance, becoming a sort of an international legal alphabet. Many a legal institution, defined by the Roman jurists, stood the test of time – filled with new content – and proved its usefulness also in the later socio-eco-

[1] See ROZWADOWSKI, W. *Prawo rzymskie: Zarys wykładu wraz z wyborem źródeł*. 2. wyd. Poznań: Wydawnictwo Naukowe PWN, 1992, p. 21. ISBN 83-01-10031-1.

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nomic formations".[2] The law created for the community of the Catholic Church is no exception.

The terms familiar to the Roman legal professionals and adopted in the procedural canon law include *actio*, *libellus*, *petitio* or *querela*. As history progressed, they assumed multiple meanings. Hence, the attempts to reflect their proper sense (assigned in the system of the Roman law) in terms employed in contemporary legal systems yield an array of different solutions. This trend may also be observed in the interpretation of their usage in the applicable canon law, as demonstrated by the variety of translation methods adopted in the translation of normative texts from the Latin into national languages. Undoubtedly, translation precision is informed by the impact of the Latin on the vocabulary of individual modern languages. Latin is the legacy of the European nations, and its wealth is particularly pronounced in the renderings into the Romanesque languages (for instance, the Italian term *azione*, Spanish – *acción*, French – *action*, but also English – *action*). If the national language has no linguistic equivalent, the translation method may involve borrowing legal terms from the original (for instance, the term *libellus* in English) or coining new ones with reference to the resources of another language, the achievements of the legal doctrine or the practice of the national legal systems (for instance, the terms *skarga* in Polish, *Klage* in German, иск [ısk] in Russian).

In the original Latin text of Book VII in the Code of Canon Law promulgated by Pope John Paul II:[3]

- the term *actio* occurs 24 times: can. 1410, can. 1463 § 1, can. 1463 § 2, can. 1485, *Titulus V. De actionibus et exceptionibus*, *Caput I. De actionibus et exceptionibus in genere*, can. 1491, can. 1492 § 1 (twice), can. 1493, can. 1494 § 1 (twice), can. 1495 (twice), *Caput II. De actionibus et exceptionibus in specie*, can. 1500, can. 1512 n. 2, can. 1621, can. 1642 § 2, can. 1655 § 1, can. 1720 n. 3, can. 1726, *Caput III. De actione ad damna reparanda*, can. 1729 § 1;
- the term *petitio* occurs 31 times: can. 1455 § 1 n. 1, can. 1494 § 1, can. 1501, can. 1503, can. 1505 § 2 n. 4, can. 1513 § 1, can. 1513 § 2, can. 1552 § 2, can. 1589 § 1, can. 1616 § 1, can. 1620 n. 4, can. 1641

[2] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 22. ISBN 83-7334-031-9.

[3] See *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* [1983-01-25]. AAS 75 II (1983), pp. 1-317.

n. 1, can. 1647 § 1, can. 1647 § 2, can. 1658 § 1 n. 1, can. 1658 § 2, can. 1659 § 1, can. 1644, can. 1665, can. 1681, can. 1686, can. 1700 § 2, can. 1703 § 1, can. 1705 § 3, can. 1734 § 1 (twice), can. 1734 § 2, can. 1735 (twice), can. 1736 § 1, can. 1736 § 2;

- the term *libellus* occurs 32 times: *Caput I. De libello litis introductorio*, can. 1502, can. 1503 § 1, can. 1503 § 2, can. 1504, can. 1505 § 1, can. 1505 § 2 (twice), can. 1505 § 3 (twice), can. 1505 § 4 (twice), can. 1506 (three times), can. 1507 § 1, can. 1507 § 2, can. 1508 § 2 (twice), can. 1513 § 2, can. 1587, can. 1596 § 2, can. 1658 § 1, can. 1658 § 2, can. 1659 § 1 (twice), can. 1677 § 1, can. 1699 § 1, can. 1699 § 2, can. 1709 § 1, can. 1709 § 2, can. 1721 § 1;
- the term *querela* occurs 14 times: can. 1445 § 1 n. 1, can. 1460 § 2, can. 1593 § 2, *Caput I. De querela nullitatis contra sententiam*, can. 1619, can. 1621, can. 1623, can. 1624 (twice), can. 1625, can. 1626 § 1, can. 1626 § 2, can. 1627, can. 1629 n. 2.

This statistic encompasses the words in various declension forms, regardless of the context.

Meanwhile, in the instruction *Dignitas connubii. Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractantibus causis nullitatis matrimonii*,[4] the word:

- *actio* occurs 6 times: art. 107 § 1, art. 129, art. 209 § 2 n. 3, art. 271, art. 274 § 1, art. 277 § 1;
- *petitio* occurs 26 times: art. 46 § 2 n. 16, art. 114, art. 115 § 2, art. 116 § 1 n. 2, art. 116 § 3, art. 121 § 1 n. 2, art. 121 § 1 n. 4, art. 126 § 1, art. 134 § 2, art. 135 § 1, art. 135 § 2, art. 150 § 1, art. 153 § 1, art. 153 § 3, art. 154 § 1, art. 164, art. 220, art. 222 § 1, art. 239 § 1, art. 260 § 1, art. 270 n. 4, art. 274 § 3, *Caput III. De petitione novi eiusdem causae examinis post duplicem decisionem conformem*, art. 294 (twice), art. 295;
- *libellus* occurs 36 times: art. 45 n. 3, art. 46 § 2 n. 7, art. 46 § 2 n. 9, art. 47 § 2, art. 104 § 2, *Caput I. De libello causae introductorio*, art. 115 § 1, art. 115 § 2 (twice), art. 116 § 1, art. 116 § 2, art. 117, art. 118 § 1, art. 119 § 1, art. 120 § 2 (twice), art. 121 § 1, art. 121 § 1 n. 4, art. 122, art. 123 (twice), art. 124 § 1 (twice), art. 124 § 2, art. 125

[4] See *Dignitas connubii: Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii* [2005-01-25]. Città del Vaticano: Typis Vaticanis, 2005. 102 p. ISBN 88-209-7679-X.

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(three times), art. 126 § 1, art. 126 § 2, art. 127 § 2, art. 127 § 3 (twice), art. 135 § 2, art. 217, art. 306 n. 1, art. 306 n. 3;

- *querela* occurs 17 times: art. 78 § 2, art. 139 § 2, art. 145 § 2, *Caput I. De querela nullitatis contra sententiam*, art. 271, art. 273, art. 274 § 1 (twice), art. 274 § 2, art. 274 § 3, art. 275, art. 276 § 1, art. 276 § 2, art. 277 § 1 (twice), art. 277 § 3, art. 280 § 1 n. 2.

In the translation of the procedural canon law into the Polish, the notion of complaint exhibits a significant versatility in terms of usage. The meaning depends on the context and usually aims to reflect the Latin terms listed above. The translation of the Code, Book VII, uses the word *complaint* 68 times: in 29 cases to render the term *libellus* (in can. 1699 § 1 – 2 *libellus* is translated as writ, letter and in can. 1721 § 1 *libellus accusationis* is translated as accusation – in the meaning of a writ), in 24 cases to render the term *actio* (in can. 1410 *actio* is translated as case, matter), in 11 cases to render the term *querela* (in can. 1445 § 1 n. 1 *querelas* are translated as cases, matters, in can. 1624 the phrase *iudex, qui sententiam querela nullitatis impugnatam tulit* is translated as *the judge who rendered the sentence challenged by the complaint of nullity*, in can. 1627 the phrase *Causae de querela nullitatis* is translated as *Cases for nullity*), in two cases to render the term *petitio* (in can. 1620 n. 4 and in can. 1686). In can. 1494 § 2, the term *mutual complaint* appears twice as the rendition of the term *reconventio*.

In turn, in the translation of the Instruction *Dignitas connubii*, completed by the authors of the Polish Commentary,[5] the term appears 56 times: in five cases to render the term *actio* (in Art. 209 § 2 n. 3 *Dignitas connubii* – *actiones* is translated as tasks, in Art. 270 § 1 *Dignitas connubii* the term *actio* mistakenly translated as allegation), in five cases to render the term *petitio* (Art. 116 § 3, Art. 121 § 1 n. 2, Art. 270 n. 4, Art. 274 § 3, Art. 295), in 31 cases to render the term *libellus* (in Art. 121 § 1 n. 4 *Dignitas connubii* – *libello petitionem* is translated as claim, in Art. 124 § 2 the translation uses a mental shortcut by equating complaint with the case, in Art. 306 n. 1 *libellum* is translated as a written request, in art. 306 n. 3 *libellum* is translated as a request) and in 15 cases to render the term *querela* (in Art. 274 § 1 of *Dignitas connubii* the first term *querela* is translated as request and in Art. 277 § 1 in the phrase *Causae de querela nullitatis* as *Cases for nullity*).

[5] See ROZKRUT, T. ed. *Komentarz do Instrukcji procesowej „Dignitas connubii"*. 1. wyd. Sandomierz: Wydawnictwo Diecezjalne i Drukarnia, 2007. 421 p. ISBN 978-83-7300-796-3.

### *Actio*

The Polish term *skarga* used in the framework of the canon law abundantly draws upon the historical usage of the term *actio* in the system of the Roman law. Kazimierz Kolańczyk observes: "In our literature, *skarga* is the most prevalent, although rather unfortunate equivalent of *actio*".[6] The church legislation itself uses the notion of *actio*, although it introduces also other terms inspired by the Roman legacy, all included in the semantic scope of *skarga* in the Polish translation of the procedural norms and the doctrine. In the context of the Roman law, *actio* is currently regarded as a fundamental term of the contemporary procedural law. The differentiation between substantive law and procedural law is inherent only to the contemporary legal systems.[7] From the perspective of modern legal science, the notion of *actio* has gained general recognition in the framework of procedural law and it also preserved its dimension pertaining to substantive law. The notion is hard to explain because of the wealth of meanings it took as history progressed, but also in the light of its particular interpretation among the Romans themselves, which differed from our contemporary ideations.

In colloquial language, *actio* meant "action" (from *agere* – to rush, to act). Imported into the legal language, it was understood as "action by means of law" (*lege agere*). It referred chiefly to the conduct of legal proceedings, hence the principal meaning of *actio* as the acts of legal procedure, concerning, in particular, the plaintiff (*actor*), but also the defendant, "allowed and sanctioned by a representative of the public authority".[8]

In the meaning cited above, *actio* was a remedy of procedural law. With time, yet another meaning emerged – or rather took root. It framed *actio* as a procedural equivalent of a substantive right.[9] Wiesław Litewski gives the following explanation: "In civil procedure, *actio* is primarily the action (rather than merely a motion) of the plaintiff brought against the

[6] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 118. ISBN 83-7334-031-9.
[7] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 103. ISBN 83-7334-031-9; and ROZWADOWSKI, W. *Prawo rzymskie: Zarys wykładu wraz z wyborem źródeł*. 2. wyd. Poznań: Wydawnictwo Naukowe PWN, 1992, p. 57. ISBN 83-01-10031-1.
[8] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 117. ISBN 83-7334-031-9.
[9] See ROZWADOWSKI, W. *Prawo rzymskie: Zarys wykładu wraz z wyborem źródeł*. 2. wyd. Poznań: Wydawnictwo Naukowe PWN, 1992, p. 57. ISBN 83-01-10031-1.

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defendant, whereby the plaintiff makes his/her right the subject of the legal procedure".[10] In this context, we could speak of a complaint, although not in the exact meaning employed in modern law. This original, procedural term of *actio* gave rise to *actio* in the meaning of a substantive claim, i.e. the possibility of pursuing one's substantive right. However, to the Roman mind, the resulting procedural protection was a reflection of the circumstances.

Initial difficulties with relating *actio* to subjective rights (the fulfilment of subjective rights by means of *actio*) resulted from the specific scope of power wielded by praetors.[11] A praetor could – "for the betterment of civil law" – refuse procedural protection (refuse *actio* even though the civil law provision granted a subjective right). He could also offer legal assistance (grant *actio*) – "for the supplementation of civil law" – in situations where no civil law provisions were applicable.[12]

The recognition of *actio* as a procedural remedy which aimed to enforce a subjective right in legal proceedings emerged in the classical Roman law. However, it secured a dominant position only in the post-classical and Justinian law, as manifested by the definition of Celsus: *Nihil aliud est actio quam ius quod sibi debeatur, iudicio persequendi* (d. 44, 7, 51) – "Actio is nothing but the right to go to court to get one's due".[13] Another interpretation emerged in the post-classical period, when *actio* came to denote also the substantive claim itself, irrespective of its procedural aspect.[14]

With reference to the modern terminology, we could assert that the Roman term *actio* as used in the sources bears a procedural meaning ("plea", "complaint"), a substantive meaning ("claim") or – very frequently – both. As a result, its translation into modern languages fails to reflect the exact substance attributed to the term in the Roman law. For in-

[10] See LITEWSKI, W. *Słownik encyklopedyczny prawa rzymskiego*. 1. wyd. Kraków: Universitas, 1998, p. 210. ISBN 83-7052-819-8.
[11] See LITEWSKI, W. *Słownik encyklopedyczny prawa rzymskiego*. 1. wyd. Kraków: Universitas, 1998, p. 210. ISBN 83-7052-819-8.
[12] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, pp. 117-118. ISBN 83-7334-031-9; and ROZWADOWSKI, W. *Prawo rzymskie: Zarys wykładu wraz z wyborem źródeł*. 2. wyd. Poznań: Wydawnictwo Naukowe PWN, 1992, pp. 57-58 and 62-63. ISBN 83-01-10031-1.
[13] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 118. ISBN 83-7334-031-9.
[14] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 118. ISBN 83-7334-031-9.

stance, Kazimierz Kolańczyk observes that the closest Polish equivalent, the most faithful in linguistical terms, seems to be plea (*actor – actio*, *plaintiff – plea*), although he recommends preserving the original technical term of *actio*.[15] By using the Polish equivalent, the author provides a "classification of pleas", i.e. *actiones*. The word *plea* is also the translation adopted by Władysław Rozwadowski.[16] The preponderance of possible uses of the term *actio* is discussed by Janusz Sondel who points to the following meanings: action, act; a trial, legal proceedings; *legis actio*: a) a strictly formalistic court procedure, b) the right of a Roman citizen to pursue in court the claims recognised by civil law, c) the right of a senior official to preside over court proceedings and to issue a ruling; claim; complaint; plea; a substantive right entitling to a complaint; any manner of pursuing rights, even by means of interdicts; a public accusation; a hearing (*prima actio* – the first hearing); a document, a written proof of contract; a legal act.[17]

### *Libellus*

Another term generally translated as a complaint introducing litigation is *libellus*. The basic meanings of the term underscore mainly the form of communication, with only a secondary focus laid on the content, as the word assumes such meanings as a writ, a letter, a petition, a small book, a small work, the content of the work, writings, a register, a list, a log, a diary, a poster, an announcement, a tablet.[18] In the context of the Roman law, *libellus* denoted motions, requests, grievances and complaints of private persons addressed to the emperor or senior officials, "containing provisions of law" and "constituting a basis for a rescript process".[19]

In the procedural canon law, the notion is used to denote the written form of some procedural actions or qualified procedural document – the

[15] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001. 521 p. ISBN 83-7334-031-9.

[16] See ROZWADOWSKI, W. *Prawo rzymskie: Zarys wykładu wraz z wyborem źródeł*. 2. wyd. Poznań: Wydawnictwo Naukowe PWN, 1992, p. 57. ISBN 83-01-10031-1.

[17] See SONDEL, J. *Słownik łacińsko-polski dla prawników i historyków*. 1. wyd. Kraków: Universitas, 2009, p. 16. ISBN 978-83-242-0895-1.

[18] See SONDEL, J. *Słownik łacińsko-polski dla prawników i historyków*. 1. wyd. Kraków: Universitas, 2009, p. 572. ISBN 978-83-242-0895-1; LITEWSKI, W. *Słownik encyklopedyczny prawa rzymskiego*. 1. wyd. Kraków: Universitas, 1998, p. 159. ISBN 83-7052-819-8; and KUMANIECKI, K. *Słownik łacińsko-polski*. 17. wyd. Warszawa: Państwowe Wydawnictwo Naukowe, 1988, p. 291. ISBN 83-01-03531-5.

[19] See LITEWSKI, W. *Słownik encyklopedyczny prawa rzymskiego*. 1. wyd. Kraków: Universitas, 1998, p. 159. ISBN 83-7052-819-8.

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"petition" in cases for the nullity of marriage or the nullity of ordination (CIC 1983, can. 1504, can. 1508 § 2, can. 1513 § 2, can. 1658 § 2, can. 1709 § 1 and § 2), the petition for a dispensation from a ratified and non-consummated marriage (CIC 1983, can. 1699 § 1 and § 3) or in the phrase *accusationis libellum* for denoting a written accusation in a canonical penal procedure (CIC 1983, can. 1721 § 1). In the wording of Chapter I (Book VII, Part II, Section I, Title I) and in canons 1504, 1508 § 2, 1513 § 2, 1587, 1658 § 1, the legislator asserts the special dimension of the complaint in the given context, as it brings the dispute to a court (*libellus litis introductorius; libellus, quo lis introducitur*).

### *Querela*

The terms used in sentence nullity cases include *querela nullitatis*, a plea for the nullity of sentence. The term *querela* is translated as a complaint, a grievance, an accusation, a dispute, a grudge, grumbling, etc. However, the legislator reserves it to the scope delimited above, wherein it refers only to the circumstances where a sentence is challenged.

### *Petitio*

The meanings ascribed to the term *petitio* include a striving, a pursuit, a request, the right to file a complaint, a substantive complaint in contrast to *actio* – a personal complaint, a request, a supplication. In procedural regulations, the notion is translated as complaint only on occasion. Yet, it often bears enormous significance for clarifying the term complaint in other situations, providing the element or the basis of the complaint – the request it entails, the claim it serves to pursue, the demand expressed. For instance:

- *Iudex nullam causam cognoscere potest, nisi petitio, ad normam canonum, proposita sit ab eo cuius interest, vel a promotore iustitiae* (CIC 1983, can. 1501) or: A judge cannot adjudicate a case unless the party concerned or the promoter of justice has presented a petition according to the norm of the canons;
- *Petitionem oralem iudex admittere potest, quoties vel actor libellum exhibere impediatur vel causa sit facilis investigationis et minoris momenti* (CIC 1983, can. 1503 § 1) or: The judge can accept an oral petition whenever the petitioner is impeded from presenting a libellus or the case is easily investigated and of lesser importance;
- *Libellus reici potest tantum*: [...] *si certo pateat ex ipso libello petitionem quolibet carere fundamento, neque fieri posse, ut aliquod ex*

*processu fundamentum appareat* (CIC 1983, can. 1505 § 2, n. 4) or: A libellus can be rejected only: [...] if it is certainly clear from the libellus itself that the petition lacks any basis and that there is no possibility that any such basis will appear through a trial;

- *Partium petitiones responsionesque, praeterquam in libello litis introductorio, possunt vel in responsione ad citationem exprimi vel in declarationibus ore coram iudice factis...* (CIC 1983, can. 1513 § 2) or: The petitions and responses of the parties, besides those in the libellus which introduces the litigation, can be expressed either in a response to the citation or in the oral declarations made before the judge [...].

## The notion of complaint in canonical definitions

Despite the long centuries of tradition and experience in the making and the application of law, an observation made by Javolenus, a Roman lawyer living at the turn of the 1st and the 2nd Centuries, still holds. Javolenus remarked that *Omnis definitio in iure civili periculosa est: parum est enim, ut non subverti potest* (D. 50, 17, 202) – "Every definition in civil law is dangerous; for rare are those that cannot be subverted".[20] Undoubtedly, this comment can be referred to the notions adopted and definitions formulated not only in the framework of the substantive law, but also the applicable procedural law, both national and ecclesiastical.

The problems that surface in the selection of terms fit to express the significance of legal institutions adopted by the ecclesiastical legislator in the system of the canon law also govern the attempts to provide a strict definition of complaint made by the representatives of the doctrine. As a result – as observed by Józef Krukowski – the people currently responsible for the codification of the norms of procedural law "fail to go beyond the formal systematisation of procedural complaints and define the notion of a complaint".[21]

Tadeusz Pawluk frames the notion of a complaint in the following terms: "Complaint (*actio*), also referred to as a plea, is a procedural action brought to court by the party in order to defend that party's rights.

[20] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 26. ISBN 83-7334-031-9.

[21] See J. Krukowski in ERLEBACH, G., A. DZIĘGA, J. KRUKOWSKI and R. SZTYCHMILER. *Komentarz do Kodeksu Prawa Kanonicznego: Tom V: Księga VII: Procesy*. 1. wyd. Poznań: Wydawnictwo Pallottinum, 2007, p. 113. ISBN 978-83-7014-571-2.

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Consequently, it is a procedural remedy used by the plaintiff to make a specific demand on the defendant before the court. […] The complaint is a means for the fulfilment of a legal norm with regard to the injured party. The complaint in this meaning, as a plea, should not be confused with a letter of complaint (*libellus introductorius*), which is a procedural document issued to demand legal protection, which is also referred to as a complaint".[22] To describe the complaint, the author uses the term claim as well: "A cumulation of complaints occurs when several claims of the same or different nature, each of which could be the subject of a separate plea, are investigated in the course of a single legal procedure. […] This substantive cumulation of claims should not be confused with the cumulation of subjective claims, which occurs when a plaintiff brings action against the formal co-participants in the procedure".[23] The author continues: "The initiation of the contentious process, which is the introduction of the litigation (*introductio causae*), occurs upon the presentation of a plea. The plea is presented by submitting an adequate bill of complaint, referred to as the petition, containing the demands of the plaintiff".[24]

Meanwhile, Ryszard Sztychmiler points to three interpretations of the notion of complaint (*actio*): one in the framework of substantive law – as the pursuit of one's rights against another natural or legal person in court and two in the framework of procedural law – firstly, as a procedural action by which the party demands the protection of its rights in court, petitioning the court for assistance in a specific matter, and secondly – as a procedural document which contains a demand for legal protection (*libellus* or *libellus introductorius*).[25] In general, the author asserts that a complaint is a material legal remedy in enforcing the

[22] See PAWLUK, T. *Prawo kanoniczne według Kodeksu Jana Pawła II: Tom IV: Doczesne dobra Kościoła: Sankcje w Kościele: Procesy*. 1. wyd. Olsztyn: Warmińskie Wydawnictwo Diecezjalne, 1990, p. 228. ISBN 83-88348-27-2.

[23] See PAWLUK, T. *Prawo kanoniczne według Kodeksu Jana Pawła II: Tom IV: Doczesne dobra Kościoła: Sankcje w Kościele: Procesy*. 1. wyd. Olsztyn: Warmińskie Wydawnictwo Diecezjalne, 1990, p. 230. ISBN 83-88348-27-2.

[24] See PAWLUK, T. *Prawo kanoniczne według Kodeksu Jana Pawła II: Tom IV: Doczesne dobra Kościoła: Sankcje w Kościele: Procesy*. 1. wyd. Olsztyn: Warmińskie Wydawnictwo Diecezjalne, 1990, p. 233. ISBN 83-88348-27-2.

[25] See SZTYCHMILER, R. *Ochrona praw człowieka w normach kanonicznego procesu spornego*. 1. wyd. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego, 2003, pp. 43-46. ISBN 83-7299-229-0.

rights enjoyed by the injured party and securing the application of the violated legal norm.[26]

## Terms describing *skarga* in the Polish doctrine of procedural law

A substantive claim is a possibility – existing under an applicable legal norm – to demand a specific behaviour from another party.[27] In this meaning, a claim is an entitlement arising from this norm. It is fulfilled when the opposing party performs a given obligation, which is also defined by a legal norm. The entitlement and obligation in question are a manifestation of the right enjoyed by a party or the legal relationship binding both parties. Often the contents of the legal norms applicable to the parties provide for their mutual entitlements and obligations.

The lawmakers who create a law or a legal relationship assume that the parties will perform their obligations properly and will use their entitlements in accordance with law. However, in anticipation of a potential dispute concerning the existence or the scope of entitlements – for the protection against both the potential breach of subjective entitlements and those already breached – the lawmakers introduce an option to assert these entitlements in court, i.e. grant the right to file a complaint (the right to bring a plea). All people have the right to exercise justice which, in its basic dimension, comes to fulfilment in the right to petition the court for legal protection. A plea is a procedural remedy taken to establish the protection of subjective rights in a court setting. The contents of a plea include the following key elements: firstly – a court motion for legal protection in the course of a court procedure, secondly – the demand made on the defendant by the plaintiff through of the court, and thirdly – grounds for the plea which clarify the said demand.[28]

The motion for legal protection can be articulated in a demand to adjudge some compensation from the plaintiff, to rule on the existence or non-existence of a right or a legal relationship, or to establish a right or a legal relationship. When making the demand, the plaintiff should in-

[26] See SZTYCHMILER, R. *Ochrona praw człowieka w normach kanonicznego procesu spornego*. 1. wyd. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego, 2003, pp. 43-46. ISBN 83-7299-229-0.

[27] See JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009, p. 274. ISBN 978-83-7620-260-0.

[28] See JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009, pp. 268-269. ISBN 978-83-7620-260-0.

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voke the applicable subjective right from which he/she derives the claim against the defendant, indicate the ruling demanded from the court and cite factual circumstances to back the demand.[29] However, the plaintiff does not need to provide a legal basis, since the proper qualification of the facts falls within the competence of the court – *da mihi factum, dabo tibi ius*.[30]

The plea has a formal dimension and a substantive dimension. The formal right to bring a plea is fulfilled in the party's right to have the court investigate the demand on its merits, which is dependent on the existence of the required procedural premises. The substantive right to bring a plea is expressed in the right to have the court consider the demand on its merits, which is dependent on the existence of the required substantive law premises.

Bringing a plea is a procedural action based on a statement of will and knowledge of the plaintiff. It may be brought by anybody who claims to have a right arising from the law or a substantive law relationship.[31] Since that claim may be verified only upon the initiation and the conduct of the procedure, some doctrinal representatives refer to it as the procedural (formal) claim, in contrast to the substantive claim, the existence or non-existence of which is objective and independent of the substantive law. Thus, it is the procedural claim that becomes the subject of the procedure – it justifies its initiation and defines its scope; the legitimacy of the claim will inform the content of a merit-based ruling.[32]

The described concept ensures that if a plea is deemed without merit for the lack of a substantive claim, but the required regulations and procedural premises are met, the procedure is not deemed irrelevant.

[29] See JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009, pp. 268-269. ISBN 978-83-7620-260-0.
[30] See JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009, p. 269. ISBN 978-83-7620-260-0.
[31] See JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009, pp. 268-274. ISBN 978-83-7620-260-0.
[32] See JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009, p. 268. ISBN 978-83-7620-260-0.

## Conclusions

Beyond a doubt, the canon law is a descendant of the Roman legal system. It is asserted both by its choice of the Latin, which is still the operative language in the formulation of canonical norms, and by the legal terms and the regular attempts at providing their definitions.[33] As remarked by Kazimierz Kolańczyk, "Roman law survived [...] both the state and the socio-economic formations wherein it came to life [...]. In the 20th Century [...] it remains directly applicable only in insular oases, but its indirect influence persists, manifested in the multitude of applicable legal norms inspired by the Roman law. Thus, a nearly uninterrupted tradition of knowing and applying the Roman law continues from the antiquity until the modern day".[34] Additionally, the author indicates that "The proceedings *extra ordinem* survived the end of the Roman State, were consolidated in the Justinian legislation and with it informed the later history of procedural law in Europe by, among other things, providing the rudiments for the famous Roman-canonical procedure".[35] In turn, Władysław Rozwadowski observes that "[...] the values of the Roman law, flowing from a single source, split into two separate currents after the death of Justinian. [...] The Western current, initially covert, resurfaced in the Middle-Ages with such force that it has continued to enrich jurisprudence until the present day, particularly in the scope of all the systems which form the so-called Roman family of the law".[36] In addition, the author notes: "In the Western Europe, an important factor in the preservation of the Roman law tradition was the respect of the Church for the principles formed in the legal practice of the Roman law in its internal relationships, in line with the rule *Ecclesia vivit lege romana* – the Church lives by the Roman law".[37] Tadeusz Pawluk expresses a similar view: "The procedure before the ecclesiastical court was formed over the centuries under the influence of various legal systems. The development

[33] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 22. ISBN 83-7334-031-9; and SONDEL, J. *Słownik łacińsko-polski dla prawników i historyków*. 1. wyd. Kraków: Universitas, 2009, pp. IX-X. ISBN 978-83-242-0895-1.

[34] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 20. ISBN 83-7334-031-9.

[35] See KOLAŃCZYK, K. *Prawo rzymskie*. 5. wyd. Warszawa: LexisNexis, 2001, p. 168. ISBN 83-7334-031-9.

[36] See ROZWADOWSKI, W. *Prawo rzymskie: Zarys wykładu wraz z wyborem źródeł*. 2. wyd. Poznań: Wydawnictwo Naukowe PWN, 1992, pp. 45-46. ISBN 83-01-10031-1.

[37] See ROZWADOWSKI, W. *Prawo rzymskie: Zarys wykładu wraz z wyborem źródeł*. 2. wyd. Poznań: Wydawnictwo Naukowe PWN, 1992, p. 48. ISBN 83-01-10031-1.

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of the ecclesiastical process was fundamentally affected by the Roman law, regarded as an auxiliary source of the canon law for long centuries".[38]

The canon law adopted those Roman norms that suited the evangelical principles and doctrinal requirements of the Catholic Church.[39] Canonistics developed under the influence of the Roman law. Lawyers received their degrees *utriusque iuris*, i.e. in the both laws – canon and Roman. Roman law had an enormous impact on the contents of the Pio-Benedictine Code[40] (CIC 1917) and continues to inspire the contents of the second Code (CIC 1983). Both Codes establish a general principle of interpretation:

- *Si certa de re desit expressum praescriptum legis sive generalis sive particularis, norma sumenda est, nisi agatur de poenis applicandis, a legibus latis in similibus; a generalibus iuris principiis cum aequitate canonica servatis; a stylo et praxi Curiae Romanae; a communi constantique sententia doctorum* (CIC 1917, can. 20);
- *Si certa de re desit expressum legis sive universalis sive particularis praescriptum; aut consuetudo, causa, nisi sit poenalis, dirimenda est attentis legibus latis in similibus, generalibus iuris principiis cum aequitate canonica servatis, iurisprudentia et praxi Curiae Romanae, communi constantique doctorum sententia* (CIC 1983, can. 19).

Jan Zabłocki emphasises that the codified canon law, while renouncing any formal references to the Roman law, copiously drew upon its contents, importing legal principles, definitions and structures of many institutions, particularly marital law and legal procedure.[41]

[38] See PAWLUK, T. *Prawo kanoniczne według Kodeksu Jana Pawła II: Tom IV: Doczesne dobra Kościoła: Sankcje w Kościele: Procesy*. 1. wyd. Olsztyn: Warmińskie Wydawnictwo Diecezjalne, 1990, p. 163. ISBN 83-88348-27-2.

[39] See DĘBIŃSKI, A. *Kościół i prawo rzymskie*. 1. wyd. Lublin: Wydawnictwo KUL, 2007. 238 p. ISBN 978-83-7363-608-8; and ŻUROWSKI, M. A. *Kanoniczne prawo małżeńskie Kościoła Katolickiego*. 2. wyd. Katowice: Księgarnia Świętego Jacka, 1987, p. 19.

[40] See *Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus* [1917-05-27]. AAS 9 II (1917), pp. 1-521.

[41] See ZABŁOCKI, J. Rzymskie korzenie prawa kanonicznego. In: J. WROCEŃSKI and H. PIETRZAK, eds. *Ars boni et aequi: Księga pamiątkowa dedykowana Księdzu Profesorowi Remigiuszowi Sobańskiemu z okazji osiemdziesiątej rocznicy urodzin*. 1. wyd. Warszawa: Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 2010, pp. 587-594. ISBN 978-83-7072-602-7.

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