

The Principle of Adversarial System in Canon Law and Polish Law – Outline of the Issues¹

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Abstract: *This paper attempts to describe the meaning and role of the adversarial system principle in the canon law against the background of the Polish law. The eponymous issue of the adversarial system was analysed using a comparative legal method, which makes it possible to identify similarities and differences found in the two legal orders, as well as to determine the priorities and principles that guide the Polish and ecclesiastical legislators at the stage of creating and applying the law. The restoration of the principle of the adversarial system in the system of the canon law is expected to lead to an assessment of the level of procedural warranties of the parties, and further provide a stimulus for a detailed study of eponymous issues.*

Key Words: *Canon Law; Polish Law; Principle of Adversarial System; Church; Poland.*

Introduction

The essence of the adversarial system is expressed in the conduct of the dispute by the parties, seeking a favourable settlement within the limits strictly determined by law. It is necessary to determine to what extent the canonical process meets the conditions of the adversarial system, and to what extent it provides for derogations in favour of inquisitorialism of the proceedings. The restoration of the adversarial system in the canon law system will lead to an assessment of the level of procedural warranties of the parties, for one of the consequences of the adversarial system is the equality of litigants. This equality of the parties is supposed to arise not only from comparable access to the evidentiary proceedings, but also from access to information about the subject matter of the trial, or the necessary minimum of availability, that is, influence over the course and outcome of the trial. A party who is aware of the real impact on the con-

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duct and resolution of the dispute, at the same time identifies with and accepts the judgement rendered. In this way, not only a dispute of a procedural nature is resolved, but also on a social level. In the description of the adversarial system, the key place is to assess to what extent this principle leads to knowledge of reality and a fair decision. Thus, it is a question of how the litigation is conducted, the role and function of the various litigants and the adjudicating authority. The position of the dispute resolution authority in a trial is of momentous importance, as it can determine the effectiveness of the adversarial system.

The issue of the adversarial system will be analysed using the comparative law method. This method is increasingly used by researchers in the canon law and secular law, the research is carried out on the example of specific institutions, most often within marriage law.² In ecclesiastical procedural law there are also attempts to take a comparative look at selected procedural institutions for example, the effects of the declaration of presumed death in the canon law and the effects of being declared dead in the Polish family law³ were examined, the right to a fair trial in both legal orders was analysed,⁴ and civil trial and *iudicium*⁵ were compared. In contrast, no comparative legal research has yet been conducted on the validity of the adversarial system in the ecclesiastical procedural law system against the background of the Polish court procedures. The chosen method makes it possible to point out the similarities and differences found in the two legal orders, as well as to identify the priorities

² See, for example JĘDREJEK, G. Regulacja instytucji małżeństwa w prawie kanonicznym i świeckim. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*. 2008, vol. 70, nr 2, pp. 47-63. ISSN 0035-9629; and KASPRZYK, P. Separacja małżonków – instytucja funkcjonująca w polskim prawie rodzinnym i w prawie kanonicznym. *Ius Matrimoniale* [online]. 2003, vol. 14, nr 8, pp. 87-118 [cit. 2024-08-14]. ISSN 2353-8120. Available at: [https://doi.org/10.21697/im.2003.8\(14\).06](https://doi.org/10.21697/im.2003.8(14).06).

³ GRESZATA-TELUSIEWICZ, M. and P. TELUSIEWICZ. Skutki deklaracji domniemanej śmierci w prawie kanonicznym a skutki uznania za zmarłego w polskim prawie rodzinnym: Studium prawno-porównawcze. In: W. IREK, red. *Vir Ecclesiae deditus: Księga dla uczczenia Księdza Profesora Edwarda Góreckiego*. 1. wyd. Wrocław: Papieski Wydział Teologiczny we Wrocławiu, 2011, pp. 91-100. ISBN 978-83-7454-163-3.

⁴ ORŁOWSKA, Z. Znaczenie prawa do rzetelnego procesu sądowego w prawie państwowym i w prawie Kościoła katolickiego. In: R. SZTYCHMILER and J. KRZYWKOWSKA, red. *Problemy z sądową ochroną praw człowieka: Tom I*. 1. wyd. Olsztyn: Uniwersytet Warmińsko-Mazurski w Olsztynie, Wydział Prawa i Administracji, 2012, pp. 219-227. ISBN 978-83-62383-14-6.

⁵ GRESZATA, M. *Iudicium cum principiis: Kodeksowa weryfikacja wybranych zasad procesowych w kanonicznych sprawach o nieważność małżeństwa*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2008, pp. 173-193. ISBN 978-83-257-0018-8.

and principles guiding the Polish and the Church legislatures at the stage of creating and applying the law. The specificity of the canon law showing its ecclesial rooting means that the Church has the law as a community of faith, hope and love, this theological rooting of the canon law is the basic element that distinguishes the legal order in the Church from the state law. When examining procedural rules in the canon law, it is, therefore, necessary to take into account their ecclesial nature.

The collection of experiences from the Polish court procedures, which provide for the adversarial system to apply to a certain extent in civil procedure, criminal trial and judicial-administrative proceedings, is intended as a counterpoint to the analysis of the adversarial system in the canonical court procedures. Due to the complexity of the research issue, it is impossible to discuss at the same time the validity of the adversarial system in the canonical litigation and in some special trials, primarily in matrimonial trials against the background of the Polish civil procedure, in the canonical criminal trial against the background of the Polish criminal procedure, and in the canonical litigation against the background of the Polish administrative court proceedings. Therefore, the present discussion will focus on fundamental questions regarding the meaning and role of the principle under consideration in each of the legal orders analysed.

1 The meaning and role of the adversarial system in the system of the canonical procedural law

The precise norms of procedural law are intended to be a warranty for the protection of the rights of the faithful, as well as the public good, and lead to the discovery of objective truth, which in all canonical trials must be “the foundation, mother and law of justice,” so that the most fundamental rights of the faithful are not violated and injustice is not committed by severely insulting Christ in the person of one’s neighbour or violating the public good.⁶

The literature on the subject points out that, in addition to the legal norms themselves, of fundamental importance for the community of believers are certain groups of overarching rules that define not only the immediate purpose of the norm itself, but also the further purposes of the entire set of norms, or the entire section of law, and are called princi-

⁶ GROCHOLEWSKI, Z. *Zmiany w kanonicznym prawie procesowym. Kościół i Prawo*. 1990, nr 7, p. 91. ISSN 0208-7928.

ples of law. These principles of law can either be explicitly written by the legislator into the content of a given group of norms, or such a principle must be interpreted from special provisions, but in either case they provide an interpretative key for the application of the remaining norms.⁷

The Church, being the People of God and carrying out God's plan of salvation, is at the same time a human community, so *iudicium*, or the judicial route, was chosen to resolve disputes as the most perfect form of conflict resolution in the Church. Therefore, the canon law, adhering to the efforts of resolving doubts in a judicial manner in order to preserve the completeness of structures, procedures and rules, creates a system of ecclesiastical procedural law. This is important because the judgements of church tribunals are issued in God's Name, which supersedes their conformity to God's design.⁸ The canonical *iudicium* is made up of structural elements (i.e., the parties, the judge, the subject matter of the dispute and procedural norms) and procedural elements (i.e., the preliminary procedure, the procedure for determining the subject matter of the dispute, the procedure for proof, the procedure for discussing the case, the procedure for sentencing and the procedure for challenging the judgement). The procedural rules oscillate around the structural and procedural elements that make up the *iudicium* giving them a procedural rhythm and functioning within the *iudicium*.⁹

The analysis of the issue of procedural rules should begin with a reminder of the fundamental study entitled *Kościelny proces ustny*, in which Andrzej Dziega analysed the oral process in the Vatican Code, the oral process in the law of the Eastern Churches and the oral process in the law of the Latin Church and also proposed *de lege ferenda* postulates through the primacy of five principles, i.e.: the principle of directness; the principle of concentration; the principle of the living word; the principle

⁷ DZIĘGA, A. Zasada poszukiwania prawdy obiektywnej w procesie kanonicznym. In: A. DZIĘGA, M. GRESZATA and P. TELUSIEWICZ, red. *Prawo rodzinne: Materiały i studia: Tom IV*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2007, pp. 169-170. Kościelne prawo procesowe. ISBN 978-83-7300-791-8.

⁸ GRESZATA-TELUSIEWICZ, M. System kanonicznego prawa procesowego. *Człowiek – Rodzina – Prawo*. 2012, nr 1, p. 10. ISSN 2299-0283.

⁹ GRESZATA, M. *Iudicium cum principiis: Kodeksowa weryfikacja wybranych zasad procesowych w kanonicznych sprawach o nieważność małżeństwa*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2008, p. 216. ISBN 978-83-257-0018-8.

of identity of persons and the principle of indisputability of pre-statutory judgements.¹⁰

Zenon Grocholewski introduced the concept of “inspiring principles of Book VII of the Code of the Canon Law” to the canonical process, which included fundamental principles (i.e.: the centrality of the judicial authority of the Pope and the diocesan bishop; the centrality of the concept of moral certainty; the preference for non-judicial solutions) and inspiring principles of great importance (i.e.: the essential uniformity of procedural law; the joint exercise of judicial authority at the level of the particular Churches; a procedure that is clear, short, simple and at the same time secure; the centrality of the ordinary litigation process; a procedure that is essentially written; a process that is public to the parties and secret to others).¹¹

A classification of procedural principles was made by Marta Greszata-Telusiewicz with regard to the formation and conduct of the *iudicium*, dividing them into three groups: principles necessarily present in the actions of all participants in the *iudicium* (the principle of the search for objective truth; the principle of respect for the right of defence), technical principles (the principles of written and oral forms; the principles of secrecy and publicity; the principles of privacy and audience, and the principles of inquisitiveness and disposition), and principles that define the rights and obligations of trial participants with regard to the structure of the *iudicium* (principles relating to the judge, i.e.: responsibility of the presiding judge and collegiality; principles relating to the subject matter of the litigation, i.e., litiscontestatio and litispensio; principles relating to adjudication, i.e., appellate jurisdiction, the effectiveness of two concurring judicial rulings, the unchallengeability of decrees and pre-state judgements; and principles relating to the parties, i.e., equality, bilateralism and adversarial litigation).¹²

The problems of the adversarial system have so far been described in a fragmentary way. There is a lack of studies devoted to a comparative

¹⁰ DZIĘGA, A. *Kościelny proces ustny*. 1. wyd. Lublin: Redakcja Wydawnictw KUL, 1992. 234 p. ISBN 83-228-0286-2.

¹¹ GROCHOLEWSKI, Z. *Zasady inspirujące Księgę VII „de processibus” KPK. Ius Matrimoniale* [online]. 1999, vol. 10, nr 4, pp. 153-180 [cit. 2024-08-14]. ISSN 2353-8120. Available at: [https://doi.org/10.21697/im.1999.4\(10\).08](https://doi.org/10.21697/im.1999.4(10).08).

¹² GRESZATA, M. *Iudicium cum principiis: Kodeksowa weryfikacja wybranych zasad procesowych w kanonicznych sprawach o nieważność małżeństwa*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2008, pp. 216-217. ISBN 978-83-257-0018-8.

presentation of the principle of the adversarial system in the canon law and the Polish law, despite the fact that more and more often the sphere of the two orders: the state and the canon law are merging, if only on the grounds of adjudication of the invalidity of marriage after a prior divorce in civil law. Therefore, a fundamental issue for the ongoing research on the adversarial system is the very discussion of it in relation to all the separate forms of the canonical process, which has not been done so far. To be analysed is also the question of whether the adversarial system exists in the canonical criminal trial, whether it is understood in a similar way as in matrimonial trials, and what is the extent of the impact of this principle in these proceedings. A similar question would also have to be asked regarding the canonical litigation.

The issue of the scope of the adversarial system is of vital importance for any procedural system. This principle determines the model of the trial, on its formation depends the position of the trial authority and the scope of the rights of the parties, in particular at the stage of taking evidence, and, therefore, the formation of the factual basis of the court decision. The impact of the adversarial system is also a lively subject of debate among the legal community in the state law, which seeks in this principle an antidote to the length of proceedings and inefficiency of certain institutions, a strengthening of the parties' procedural warranties, or a dialectical way of arriving at the truth in a trial.

Of fundamental importance from the point of view of the subject of this study is to determine how the adversarial system is regulated and implemented in the canon law against the background of secular law legislation in Poland. First of all, it is necessary to determine whether the adversarial system in the canonical process can be spoken of as a principle, i.e. an idea that sets the appropriate direction for the application and interpretation of legal norms. In this sense, it is necessary to answer the question of whether the adversarial system is an important directive for regulating the most important issues of the canonical process, whether it has a knotty significance on determining the model of ecclesiastical court proceedings, whether it contains a certain normative, social and ecclesiological content.

The litigation process is a basic type of the canonical trial, so without presenting the scope of the adversarial system in this process, it will not be possible to talk about the scope of its validity in special trials primarily in matrimonial trials, nor in the canonical criminal trial, which is fun-

damentally different from the litigation process due to the subject matter and frequency of its conduct in ecclesiastical courts, so it is important to determine the scope of the adversarial system in the staging stages of these proceedings such as preliminary investigation and the instructional and decision-making phase of the trial. The dogmatic analysis of the scope of the adversarial system in dispute-administrative proceedings requires a separate study. The canon law provides for the possibility of appealing against an act of administrative authority or to a superior through a hierarchical recourse or complaint to an administrative tribunal, this power to choose the judicial route at the level of the particular churches has been limited. The possibility of filing a complaint with an administrative tribunal has been made conditional on the decision of a country's bishops' conference, and the establishment of such a tribunal is only optional. In Poland, a diocesan administrative act can be challenged in the first instance by a hierarchical recourse filed with the appropriate congregation of the Roman Curia, and only in the second instance is it possible to challenge the act to the Apostolic Signatura by appeal. Therefore, it is necessary to examine whether the adversarial system exists in the canonical dispute-administrative process and what is the extent of its impact.

Two aspects of the adversarial system in the annulment process can be pointed out, the first aspect concerns the opposing claims of the Church and the spouses on the marriage, since on the one hand there are the spouses challenging their marriage, and on the other the Church standing on the side of the legal presumption of the validity of the marriage.¹³ The second aspect of the principle in question, boils down to the filing and defence of are opposing theses by both litigants, the opposability of claims is, from a formal point of view, a necessary element for the structure of the entire process, since it is impossible to speak of adversarial proceedings when the two theses filed in the process do not oppose each other.¹⁴

¹³ GRESZATA, M. Problem kontradiktoryjności w kanonicznym postępowaniu o nieważność małżeństwa. In: A. DZIĘGA and M. WRÓBEL, red. *Materiały i studia: Tom III*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2003, p. 253. Kościelne prawo procesowe. ISBN 83-7300-271-5.

¹⁴ GRESZATA, M. *Iudicium cum principiis: Kodeksowa weryfikacja wybranych zasad procesowych w kanonicznych sprawach o nieważność małżeństwa*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2008, p. 254. ISBN 978-83-257-0018-8.

Adversarial system in the canonical system of procedural principles belongs to the group of principles organizing the *iudicium* and shows close ties with the participation of such parties as: defender of the matrimonial tie, ombudsman of justice, lawyer, attorney, *defensor, procurator speciales, stabilis patronus, patronus, curator, tutor, legitimus repraesentantus personarum iuridicarum* and *administrator personarum iuridicarum*. The multifaceted nature of the adversarial system in the canonical process results in the expression of this principle implicitly in the code norms, while its effectiveness is felt in all stages of the *iudicium*. This principle has a fundamental impact on the course of the *iudicium*, both in theoretical and practical aspects. The practical aspect arises from the activity of the participants in the canonical process with regard to the subject of the dispute and the judge. The theoretical aspect reduces the principle of the adversarial system to a guiding thought, providing the basis for the creation of specific and detailed norms in which rights and obligations are implemented in the various stages of the *iudicium*.¹⁵

2 The meaning and role of the adversarial system in the Polish law

When considering the place and position of the adversarial system in the system of procedural principles of criminal, civil and administrative court procedure, it is first necessary to consider the status of each principle within the procedure. The thesis that the role and place of the principles of law is not the same in the different fields of law does not need to be substantiated, while the phenomenon of the principles of the criminal process is that the principles of the criminal process determine its most important features, i.e. the construction and model of the process; the way of arriving at the final findings and the position and scope of warranties of the participants in the proceedings.¹⁶

An attempt to comprehensively present the adversarial system, taking into account all the elements that make up the principle in question, was made by Piotr Hofmański, who proposes to understand this principle as “a directive to organize the trial in such a way that it takes place in the form of a dispute of equal parties before an impartial and objective court.

¹⁵ GRESZATA-TELUSIEWICZ, M. Zasada kontrydiktoryjności (Przewodnik po kanonicznych zasadach procesowych – część II). *Człowiek – Rodzina – Prawo*. 2014, nr 2, p. 13. ISSN 2299-0283.

¹⁶ WILIŃSKI, P. Rozdział 2 Doniesłość zasad w procesie karnym. In: P. WILIŃSKI, red. *Zasady procesu karnego: Tom III*. 1. wyd. Warszawa: LexisNexis, 2014, pp. 87-89. System prawa karnego procesowego. ISBN 978-83-278-0256-9.

This directive is directed both to the legislator, who first of all must decide whether the trial is to take an adversarial (is a dispute between the parties) or an inquisitorial (investigative) form, and to the court, which is the body that conducts the trial in its adversarial phase, to which it prescribes equal treatment of the parties, also in the sense of creating equal opportunities to exercise their procedural rights in such a way that they can realistically litigate the subject matter of the trial”.¹⁷ It should be noted that this principle has become known in the literature as the supreme principle of the criminal trial,¹⁸ i.e. one that is of nodal importance to the trial, carries a certain ideological and social content, directly concerns the trial, and has a directive character.¹⁹ One should share the opinion of Andrzej Murzynowski that the proper functioning of the complaint-adversarial model of criminal trial should be a matter of common interest for all participants in the proceedings regardless of their function in it. Such shaping of the model of criminal trial, on the one hand, is able to guarantee the rights of the individual under the basic principles of a democratic and fair trial, and on the other hand can ensure the realization of the objectives of the trial, which are the discovery of the material truth and the issuance of a fair judgement.²⁰

The adversarial system principle in civil procedure means that the parties to the proceedings present evidence in support of their claims, while the court decides the case solely on the basis of that evidence, which was conducted at the request of a party.²¹ With regard to the position of the parties and the court, it is emphasized that the court is only obliged to analyse the evidence presented by the parties and make a de-

¹⁷ HOFMAŃSKI, P. Rozdział 21 Zasada kontradiktoryjności. In: P. WILIŃSKI, red. *Zasady procesu karnego: Tom III*. 1. wyd. Warszawa: LexisNexis, 2014, p. 649. System prawa karnego procesowego. ISBN 978-83-278-0256-9.

¹⁸ WILIŃSKI, P. Rozdział 6 Naczelne (podstawowe) zasady procesu karnego. In: P. WILIŃSKI, red. *Zasady procesu karnego: Tom III*. 1. wyd. Warszawa: LexisNexis, 2014, p. 149. System prawa karnego procesowego. ISBN 978-83-278-0256-9.

¹⁹ For a detailed discussion of the conditions that a principle must meet in order to be considered supreme see WALTOŚ, S. *Naczelne zasady procesu karnego*. 1. wyd. Warszawa: Wydawnictwo Prawnicze, 1999, pp. 5-6. ISBN 83-219-0772-5.

²⁰ MURZYŃOWSKI, A. Znaczenie zasady skargowości i kontradiktoryjności w działalności sądów w świetle przepisów nowego kodeksu postępowania karnego. In: T. NOWAK, red. *Nowe prawo karne procesowe: Zagadnienia wybrane: Księga ku czci Profesora Wiesława Daszkiewicza*. 1. wyd. Poznań: Biuro Usługowo-Handlowe „Printer”, 1999, p. 110. ISBN 83-86254-30-0.

²¹ ZIELIŃSKI, A. *Postępowanie cywilne: Kompedium*. 15. wyd. Warszawa: C. H. Beck, 2016, p. 26. ISBN 978-83-255-8515-0.

cision on this basis.²² In civil proceedings, in addition to the guiding principles of the aspect of justice, there are other guiding principles of this procedure, which include the adversarial nature of the proceedings.²³ The validity of this principle in civil litigation is the result of the abandonment in 1996 – 2000 of the principle of inquisitorial proceedings, which was not insignificantly influenced by the ongoing social, political and political changes.²⁴

Subjecting the activities of public administration to judicial review is based on the assumption that only an adversarial process provides a chance to equalize the situation of parties with disputed interests. No one needs to be persuaded that there is an imbalance between the public interest and the private interest, which is caused by the weight and scope of the interacting rights and obligations of the state and the individual, while the proceedings before the court are supposed to be “the highest warrant for the harmony of these interests, subordinated equally to the idea of legality”.²⁵ In administrative court procedure, “adversarial is such a procedure in which the accumulation of procedural material depends on the activity of the parties, and the court, in examining the validity of their reasons, is limited only to the facts and evidence they have presented”. The adversarial nature is equated with the complaint nature of the proceedings, which implies the possibility of initiating these proceedings only by an entity that seeks judicial protection due to its own interest.²⁶ In administrative court procedure, the adversarial system is one of the principles that expresses the “spirit and essence” of the proceedings before administrative courts, it is referred to as the basic principle of administrative court proceedings.²⁷ In administrative court procedure, the

²² JODŁOWSKI, J. and W. SIEDLECKI. *Postępowanie cywilne: Część ogólna*. 1. wyd. Warszawa: Państwowe Wydawnictwo Naukowe, 1958, p. 144.

²³ JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009, p. 142. ISBN 978-83-7620-260-0.

²⁴ KNOPPEK, K. *Postępowanie cywilne*. 4. wyd. Warszawa: Wolters Kluwer, 2015, p. 117. ISBN 978-83-264-9280-8.

²⁵ SUWAJ, R. Sądowa kontrola działań administracji publicznej jako przejaw judycjalizacji postępowania administracyjnego. *Studia Prawnoustrojowe*. 2009, nr 9, p. 200. ISSN 1644-0412.

²⁶ WOŚ, T., H. KNYSIAK-MOLCZYK and M. ROMAŃSKA. *Postępowanie sądowoadministracyjne*. 6. wyd. Warszawa: LexisNexis, 2013, pp. 116-117. ISBN 978-83-278-0075-6.

²⁷ BOJANOWSKI, E., Z. CIEŚLAK and J. LANG. *Postępowanie administracyjne i postępowanie przed sądami administracyjnymi*. 5. wyd. Warszawa: LexisNexis, 2013, pp. 219-220. ISBN 978-83-7806-352-0.

adversarial system principle is equated with the principle of complaint, and the proceedings take a formally adversarial form.²⁸

Summarizing the analysis on the validity of the adversarial system in the civil trial, in the context of the earlier analysis of this principle in the criminal trial, it is reasonable to ask whether the adversarial system in each procedure means the same thing. In the literature on the subject, Dobrosława Szumiło-Kulczycka pointed out that the adversarial system in a criminal trial is something quite different from the adversarial system in a civil trial, this is particularly evident in the context of the principle of truth.²⁹

Conclusions

The noticeable gap in the doctrine of the canonical procedural law regarding the adversarial system principle requires comparative discussion in the canon law and the Polish law due to the following circumstances. The issue of the scope of the adversarial system principle is of significant importance both for the science of the Polish procedural law and the doctrine of the canon law, as well as for the practice of justice in both legal orders. This principle determines the model of the trial, so on the extent of its formation depends the position of the body conducting the trial, the scope of the powers of the parties, in particular at the stage of taking evidence, and therefore the formation of the factual basis of the court decision. The impact of the adversarial system on the trial model is also a lively subject of debate, as this principle seeks an antidote to the length of proceedings and inefficiency of certain institutions, or the strengthening of the parties' procedural warranties.

The restoration of the adversarial system principle in the canon law system will lead to an assessment of the level of procedural warranties of the parties, for one of the consequences of the adversarial system principle is the equality of litigants. This equality of the parties is supposed to arise not only from comparable access to the evidentiary proceedings, but also from access to information about the subject matter of the trial, or the necessary minimum of availability, that is, influence over the

²⁸ WOŚ, T., H. KNYSIAK-MOLCZYK and M. ROMAŃSKA. *Postępowanie sądownoadministracyjne*. 6. wyd. Warszawa: LexisNexis, 2013, pp. 116-117. ISBN 978-83-278-0075-6.

²⁹ SZUMIŁO-KULCZYCKA, D. Głos w dyskusji. In: P. WILIŃSKI, red. *Kontradukcyjność w polskim procesie karnym*. 1. wyd. Warszawa: Wolter Kluwer, 2013, p. 103. ISBN 978-83-264-4541-5.

course and outcome of the trial. A party who is aware of the real impact on the conduct and resolution of the dispute, at the same time identifies with and accepts the judgement rendered. In this way, not only a dispute of a procedural nature is resolved, but also on a social level.

In the description of the adversarial system, the key place is to assess to what extent this principle leads to knowledge of reality and a fair decision. Thus, it is a question of how the litigation is conducted, the role and function of the various litigants and the adjudicating authority. The position of the dispute resolution authority in a trial is of momentous importance, as it can determine the effectiveness of the adversarial system principle. A detailed analysis of the issue of the adversarial system principle in both legal orders will allow us to identify the existing regulation and identify recommended directions for change in areas where the adversarial deficit does not support the parties' procedural warranties and does not contribute to the efficiency of the proceedings.

References

- BOJANOWSKI, E., Z. CIEŚLAK and J. LANG. *Postępowanie administracyjne i postępowanie przed sądami administracyjnymi*. 5. wyd. Warszawa: LexisNexis, 2013. 298 p. ISBN 978-83-7806-352-0.
- DZIĘGA, A. *Kościelny proces ustny*. 1. wyd. Lublin: Redakcja Wydawnictw KUL, 1992. 234 p. ISBN 83-228-0286-2.
- DZIĘGA, A. Zasada poszukiwania prawdy obiektywnej w procesie kanonicznym. In: A. DZIĘGA, M. GRESZATA and P. TELUSIEWICZ, red. *Prawo rodzinne: Materiały i studia: Tom IV*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2007, pp. 169-188. Kościelne prawo procesowe. ISBN 978-83-7300-791-8.
- GRESZATA, M. *Iudicium cum principiis: Kodeksowa weryfikacja wybranych zasad procesowych w kanonicznych sprawach o nieważność małżeństwa*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2008. 415 p. ISBN 978-83-257-0018-8.
- GRESZATA, M. Problem kontrydiktoryjności w kanonicznym postępowaniu o nieważność małżeństwa. In: A. DZIĘGA and M. WRÓBEL, red. *Materiały i studia: Tom III*. 1. wyd. Lublin: Wydawnictwo Diecezjalne i Drukarnia w Sandomierzu, 2003, pp. 239-258. Kościelne prawo procesowe. ISBN 83-7300-271-5.


- GRESZATA-TELUSIEWICZ, M. and P. TELUSIEWICZ. Skutki deklaracji domniemanej śmierci w prawie kanonicznym a skutki uznania za zmarłego w polskim prawie rodzinnym: Studium prawno-porównawcze. In: W. IREK, red. *Vir Ecclesiae deditus: Księga dla uczczenia Księdza Profesora Edwarda Góreckiego*. 1. wyd. Wrocław: Papieski Wydział Teologiczny we Wrocławiu, 2011, pp. 91-100. ISBN 978-83-7454-163-3.
- GRESZATA-TELUSIEWICZ, M. System kanonicznego prawa procesowego. *Człowiek – Rodzina – Prawo*. 2012, nr 1, pp. 10-11. ISSN 2299-0283.
- GRESZATA-TELUSIEWICZ, M. Zasada kontradyktryjności (Przewodnik po kanonicznych zasadach procesowych – część II). *Człowiek – Rodzina – Prawo*. 2014, nr 2, pp. 13-17. ISSN 2299-0283.
- GROCHOLEWSKI, Z. Zasady inspirujące Księgę VII „de processibus” KPK. *Ius Matrimoniale* [online]. 1999, vol. 10, nr 4, pp. 153-180 [cit. 2024-08-14]. ISSN 2353-8120. Available at: [https://doi.org/10.21697/im.1999.4\(10\).08](https://doi.org/10.21697/im.1999.4(10).08).
- GROCHOLEWSKI, Z. Zmiany w kanonicznym prawie procesowym. *Kościół i Prawo*. 1990, nr 7, pp. 91-117. ISSN 0208-7928.
- HOFMAŃSKI, P. Rozdział 21 Zasada kontradyktryjności. In: P. WILIŃSKI, red. *Zasady procesu karnego: Tom III*. 1. wyd. Warszawa: LexisNexis, 2014. 1817 p. System prawa karnego procesowego. ISBN 978-83-278-0256-9.
- JĘDREJEK, G. Regulacja instytucji małżeństwa w prawie kanonicznym i świeckim. *Ruch Prawniczy, Ekonomiczny i Socjologiczny*. 2008, vol. 70, nr 2, pp. 47-63. ISSN 0035-9629.
- JODŁOWSKI, J. and W. SIEDLECKI. *Postępowanie cywilne: Część ogólna*. 1. wyd. Warszawa: Państwowe Wydawnictwo Naukowe, 1958. 440 p.
- JODŁOWSKI, J., Z. RESICH, J. LAPIERRE, T. MISIUK-JODŁOWSKA and K. WEITZ. *Postępowanie cywilne*. 6. wyd. Warszawa: LexisNexis, 2009. 597 p. ISBN 978-83-7620-260-0.
- KASPRZYK, P. Separacja małżonków – instytucja funkcjonująca w polskim prawie rodzinnym i w prawie kanonicznym. *Ius Matrimoniale* [online]. 2003, vol. 14, nr 8, pp. 87-118 [cit. 2024-08-14]. ISSN 2353-8120. Available at: [https://doi.org/10.21697/im.2003.8\(14\).06](https://doi.org/10.21697/im.2003.8(14).06).

- KNOPPEK, K. *Postępowanie cywilne*. 4. wyd. Warszawa: Wolters Kluwer, 2015. 559 p. ISBN 978-83-264-9280-8.
- MURZYNOWSKI, A. Znaczenie zasady skargowości i kontradiktoryjności w działalności sądów w świetle przepisów nowego kodeksu postępowania karnego. In: T. NOWAK, red. *Nowe prawo karne procesowe: Zagadnienia wybrane: Księga ku czci Profesora Wiesława Daszkiewicza*. 1. wyd. Poznań: Biuro Usługowo-Handlowe „Printer”, 1999, pp. 93-110. ISBN 83-86254-30-0.
- ORŁOWSKA, Z. Znaczenie prawa do rzetelnego procesu sądowego w prawie państwowym i w prawie Kościoła katolickiego. In: R. SZTYCHMILER and J. KRZYWKOWSKA, red. *Problemy z sądową ochroną praw człowieka: Tom I*. 1. wyd. Olsztyn: Uniwersytet Warmińsko-Mazurski w Olsztynie, Wydział Prawa i Administracji, 2012, pp. 219-227. ISBN 978-83-62383-14-6.
- SUWAJ, R. Sądowa kontrola działań administracji publicznej jako przejaw judycjalizacji postępowania administracyjnego. *Studia Prawnoustrojowe*. 2009, nr 9, pp. 199-214. ISSN 1644-0412.
- SZUMIŁO-KULCZYCKA, D. Głos w dyskusji. In: P. WILIŃSKI, red. *Kontradiktoryjność w polskim procesie karnym*. 1. wyd. Warszawa: Wolter Kluwer, 2013, pp. 102-104. ISBN 978-83-264-4541-5.
- WALTOŚ, S. *Naczelné zasady procesu karnego*. 1. wyd. Warszawa: Wydawnictwo Prawnicze, 1999. 164 p. ISBN 83-219-0772-5.
- WILIŃSKI, P. Rozdział 2 Doniosłość zasad w procesie karnym. In: P. WILIŃSKI, red. *Zasady procesu karnego: Tom III*. 1. wyd. Warszawa: LexisNexis, 2014. 1817 p. System prawa karnego procesowego. ISBN 978-83-278-0256-9.
- WILIŃSKI, P. Rozdział 6 Naczelné (podstawowe) zasady procesu karnego. In: P. WILIŃSKI, red. *Zasady procesu karnego: Tom III*. 1. wyd. Warszawa: LexisNexis, 2014. 1817 p. System prawa karnego procesowego. ISBN 978-83-278-0256-9.
- WOŚ, T., H. KNYSIAK-MOLCZYK and M. ROMAŃSKA. *Postępowanie sądowniczo-administracyjne*. 6. wyd. Warszawa: LexisNexis, 2013. 391 p. ISBN 978-83-278-0075-6.
- ZIELIŃSKI, A. *Postępowanie cywilne: Kompendium*. 15. wyd. Warszawa: C. H. Beck, 2016. 463 p. ISBN 978-83-255-8515-0.

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