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Way of discernment. Assistance for divorced persons living in new relationships¹

One of the fundamental issues highlighted by Pope Francis in the Apostolic Exhortation „*Amoris laetitia*” (hereinafter: AL) is a way of discerning the situation of divorced people living in new relationships². This discernment of the particular situation of the faithful mentioned, and especially the consideration of circumstances that reduce the moral responsibility of these people and the proposals for concrete pastoral solutions that crown this process, has provoked a very lively public discussion in which various circles have been involved.

This study attempts to define the essence of this particular process. The author limits his deliberations to the following fundamental issues: 1) the discernment of abnormal situations, their nature, motives and purpose; 2) the principles to be respected in discernment of abnormal situations; 3) the ways of responding to God and developing in the midst of limitations, appropriate to the effects of discernment. The author intends to achieve these research objectives by means of a logical-linguistic method.

¹ This submission was presented by the author at 375. Plenary Meeting of the Polish Episcopal Conference in the seat of PEC in Warsaw on 13 March 2017. Apart from the bishops from Poland, 17 bishops from abroad, representatives of the 15th Episcopal Conference, took part in the aforementioned proceedings, including: Chairman of the French Bishops' Conference, Chairman of the Scandinavian Bishops' Conference, Chairman of the Cuban Bishops' Conference.

² Cf. FRANCESCO, Esortazione Apostolica sull'amore nella famiglia *Amoris laetitia*, (19 III 2016), [hereinafter: AL], 6, 33, 41, 43, 49, 57, 60, 78-79, 106, 119, 200-201, 222, 238, 240-246, 252, 291, 293, 296-298, 300-312, 317, 325, https://w2.vatican.va/content/francesco/plapost_exhortations/docum [access: 25/10/2016].

1. Discernment of abnormal situations, its nature, motives and purpose

As far as definitions of the meanings of the word „discernment” are concerned, the term includes the following contents: knowledge of the issue, orientation in a certain field, awareness of something, orientation in something.³ As you know, this verb comes from the non-prefixal verb „to discern”. They mean no less, no more, than: to distinguish one from another, to discern, to see with difficulty, realise something, become aware of something⁴. The phrase „discernment is dynamic and remaining ever open to new stages of growth and to new decisions which can enable the ideal to be more fully realized”, which appears in the 303rd number of the AL, indicates a long process, a cognitive effort that is not ad hoc, satisfactory for the time being. The term „discernment”, derived from the verb „discern”, indicates such thought processes as: recognizing, cognition, identifying, distinguishing, capturing, perceiving, reading, examining, deciphering⁵. To recapitulate, it can be assumed that discerning the situation of divorced spouses who have tried to enter into a new marriage⁶, implies an insightful, comprehensive knowledge of the canonical-legal, spiritual and social situation of these people, aimed at providing them with constant and varied assistance appropriate to the results of this discernment.

The „discernment of the situation” of the divorced living in new relationships, as treated by John Paul II⁷ and Francis⁸, is one of the elements of pastoral ministry for divorced spouses who tried to enter into a new marriage. This discernment is intended to precede the assistance given by the pastor and, at the same time, to constitute a permanent element of pastoral accompaniment for these faithful. In other words, the discernment in question cannot be reduced to mere self-reflection by these people, to thinking about themselves or leaving to

³ Cf. M. SZYMCZAK (science ed.), *Słownik języka polskiego*, t. III, Warszawa 1985, Państwowe Wydawnictwo Naukowe, p. 88.

⁴ See IBID.

⁵ Cf. Synonyms for „discernment”, <https://www.synonimy.pl/synonim/rozeznawac> [2017-02-22].

⁶ The faithful divorced, who enter into a new marriage, as it is clearly stated in the CIC, do not enter invalidly into a marriage (as, for example, those who are bound by an obstacle of age, kinship or sexual impotence), but try to enter into it (Latin: *invalidae matrimonium attentant*). According to the canon law provisions, „an attempted marriage” (Latin: *matrimonium attentatum*) defines an invalid marriage that has been concluded in bad faith. In other words, it is a situation where a person who is aware that he or she is bound by a marriage obstacle and cannot marry legally is attempting to do so. Attempted marriage can be said to be a case where at least one of the parties is bound by the following obstacle breaking: the knot of a previous marriage, even one that has not been completed; ordination; the perpetual public vow of chastity made at a religious institute; the murder of the spouse, including through physical or moral complicity. Cf. can. 1085 § 1, 1087, 1088, 1090 § 1-2 of the CIC

⁷ IOANNES PAULUS II, Adh. Apost. *Familiaris consortio*, (22 XI 1981), 84, AAS 74 (1982) p. 81

⁸ AL, 243, 297-305, 312.

penitents, as some priests serving in the confessional are said to be trying to do⁹, deciding on the shape and extent of their participation in the sacramental life of the Church.

The discernment as mentioned by the Roman Bishop is of „pastoral” nature and is the responsibility of the pastor, that is, of his own bishop, pastor, confessor or spiritual director. John Paul II, in *Familiaris consortio* (hereinafter: FC) clearly indicates: „Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations” (No. 84). Nor does Pope Francis define this discernment in any other way than „pastoral”¹⁰; „pastoral discernment”¹¹, „responsible and serious discernment of the shepherd”, which takes into account the properly formed conscience of persons¹², a discernment which „is necessary for the pastoral accompaniment of divorced persons”¹³. Finally, it is a pastoral effort which must „discern which of the various forms of exclusion [of the faithful in an abnormal situation - J.K.] currently practised in the liturgical, pastoral, educational and institutional fields can be overcome”¹⁴.

Naturally, this cognitive-decisional process, which is the responsibility of the faithful in a situation „which does not fully correspond to what the Lord is proposing to us”, should also go hand in hand with the pastoral care of discernment¹⁵. Only such an effort, which means

⁹ A similar postulate, contradictory to the instructions of the Canons 1060, 1100, 1642 § 1 of the CIC, and the position of the Congregation for the Doctrine of the Faith [see „The Congregation for the Doctrine of the Faith”]. 1060, 1100, 1642 § 1 of the CIC, and the position of the Congregation for the Doctrine of the Faith [see *Epistula ad catholicam Ecclesiam episcopos de receptione communionis eucharisticae a fidelibus qui post divortium novas inierunt nuptias*, (14 IX 1994), 3-4, AAS 86 (1994), p. 974-976], was also included in the *Pastoral Letter of the Bishops of the Upper Rhine* dated July 10th 1993 Diocesan bishops: Oswald Saier, Karl Lehman and Walter Kasper suggest that divorced persons living in a new relationship who are convinced that their marriage is invalid and void and cannot prove it before a competent ecclesiastical court should, after the pastor has considered their particular situation, make their own decision on entering into Holy Communion. See DIE BISCHÖFE DER OBERRHEINISCHEN KIRCHENPROVINZ, *Zur seelsorglichen Begleitung von Menschen aus zerbrochenen Ehen, Geschiedenen und Wiederverheirateten Geschiedenen, Einführung, Hirtenwort und Grundsätze*, Freiburg and- Br, Mainz, Rottenburg-Stuttgart 1993, p. 31 [The answer to these demands see C.M. GONZÁLEZ SARACHO, *La admisión a la Eucaristía de los fieles divorciados que se han vuelto a casar civilmente*, Roma 2000, p. 151-161].

A similar solution is also allowed by Bishop Stefan Oster of Pasava, who, in his letter to the priests in connection with the apostolic exhortation „*Amoris laetitia*”, states, among other things: I would like to ask Pastors and clearly advise them that those who, after examination of their conscience, decide to receive Holy Communion („diejenigen, die nach Prüfung ihres Gewissens entscheiden, zur Eucharistie hinzuzutreten”), should point out that such a step in the case of believers entails taking on a serious personal responsibility, because here someone decides to make an exception to the norm of the Church, which, after all, as Pope Francis points out, remains valid in itself. See S. OSTER, *Brief an die Priester im Nachgang zum päpstlichen Schreiben „Amoris laetitia”*, <https://stefan-oster.de/brief-an-die-priester-im-nachgang-zum-paepstlichen-schreiben-amoris-laetitia> [access: 2017-02-17].

¹⁰ AL, 302, 304, 312.

¹¹ IBID. 297-298.

¹² See IBID. 302-303.

¹³ IBID., p. 242.

¹⁴ IBID., p. 299.

¹⁵ See IBID., 6.

„his own discernment”¹⁶ and leads to a „stirring of the conscience that initiates an internal evolution”¹⁷, can lead the person in question to conversion and to take the actions that Pope Francis describes as „some way of participating in the life of the community”¹⁸. The actions, which mean conversion and active participation in the life of the ecclesial community, dictated by the love of God, cannot be imposed, ordered or prescribed.

It is understandable, then, that Pope Francis does not overlook their personal discernment when he addresses the situation of the divorced living in new relationships. In fact, the Pope makes a distinction here between the twofold discernment that is left to the said faithful. Firstly, he speaks of „his own discernment”¹⁹, which all the faithful who are concerned about shaping their conscience and making progress on the „path of personal development and transformation” are obliged to do constantly²⁰. Secondly, while specifying the rules concerning the discernment carried out in the case of so-called „difficult situations”²¹, Francis observes that parallel to the discernment carried out by the pastor, „appropriate personal discernment” should also go hand in hand.²²

One and second personal discernment should be carried out with the active and loving and understanding participation of the pastor. The role of the pastor in this case can be defined as follows: „to help [the said faithful - J.K.] live better and recognize their place in the Church”²³. And even if, as a result of this pastoral „listening with love and serenity, with a sincere desire to get to the heart of the drama of [these - J.K.] persons and to understand their point of view”²⁴, these faithful „will not always find in [the pastor - J.K.] the confirmation of their own ideas and desires, [...] they will certainly receive [through his ministry - J.K.] the light that will allow them to better understand what is happening and to discover the path of personal maturity”²⁵.

It is worth noting that Pope Francis, in his pastoral assistance for the formation of the conscience of the lay faithful, calls on priests to review their attitude towards people who are getting married²⁶. The result of this critical reflection by pastors should be, among other

¹⁶ IBID., 37.

¹⁷ Cf. CCC, 1453.

¹⁸ AL, 297.

¹⁹ See IBID., 37.

²⁰ Cf. IBID., p. 163.

²¹ IBID., p. 79.

²² See IBID. 298, 300.

²³ IBID., p. 312.

²⁴ IBID.

²⁵ IBID.

²⁶ Francis states, among other things, that „For a long time we have been convinced that only by emphasising doctrinal, bioethical and moral issues, without encouraging openness to grace, have we supported families

things, that married life is seen not „as a burden to be borne throughout life”²⁷, but as the cooperation of spouses with God's grace subject to the process of development. Finally, pastors, while avoiding „developing a cold morality at the desk in dealing with the most sensitive issues”²⁸, should remember that they are „called to shape consciences, not to demand that they be replaced”²⁹.

The nature of the process of discernment referred to in the AL is also demonstrated by the terms used by Pope Francis to describe the complex nature of this action for the benefit of the faithful in an irregular situation. These expressions reflect the specific nature of the discernment that is to precede and accompany the pastoral service to the divorced who tried to marry: „a process of discernment which «directs these faithful to an awareness of their situation before God»³⁰; „careful discernment”³¹; pastoral discernment „commensurate with the spiritual good of these people”³²; discernment which fosters „evangelization and human and spiritual growth”³³; „practical discernment in the face of a concrete situation”³⁴, which „must help to find possible ways of responding to God and developing in the midst of limitations”³⁵; „a path of discernment, in accordance with the teaching of the Church and the guidelines of the Bishop”³⁶; „discernment [which - J.K.] must never disregard the requirements of evangelical truth”³⁷; „special discernment”, implemented in such a way that „it is never thought of trying to minimize the requirements of the Gospel”³⁸; and finally, „pastoral discernment, full of merciful love, which is always ready to understand, forgive, accompany, wait and, above all, incorporate”³⁹.

It is not only the nature of discerning the situation of individual divorced people who are living in a new relationship that is peculiar; the motives for undertaking this effort are also specific. Among them are: respect and love for the truth about the marriage and its actual

sufficiently, strengthened the bond between spouses and made sense of their lives together. It is difficult for us to present a marriage more as a dynamic process of development and realisation than as a burden to be borne throughout life. It is also difficult for us to give room to the conscience of the faithful, who in the midst of their limitations often respond as best they can to the Gospel and can develop their own discernment when all systems fail. We are called upon to shape consciences, not to demand that they be replaced”. AL, 37.

²⁷ IBID.

²⁸ IBID., 312.

²⁹ IBID., 37.

³⁰ IBID., 300.

³¹ IBID., 243.

³² IBID., 249.

³³ IBID., 293.

³⁴ See IBID., 304.

³⁵ IBID., 305.

³⁶ IBID., 300.

³⁷ IBID.

³⁸ IBID., 301.

³⁹ IBID., 312.

legal and moral consequences; establishing a genuine dialogue with the faithful who find themselves in a difficult situation; knowing all aspects of their lives and helping them to find ways out of this situation and to open up to the demanding and yet full understanding of human limitations of the Gospel on marriage. Pope Francis puts it this way: „In the face of difficult situations and wounded families, a general principle must always be kept in mind: «Let pastors know that, for the love of truth, they have a duty to discern the situation properly»”⁴⁰ and „it is the task of pastors not only to promote Christian marriage, but also «to discern the situation of all those who are no longer living in this reality», in order to «enter into a pastoral dialogue with such people in order to know the elements of their lives that can lead to a greater openness to the Gospel of marriage in all its fullness»”⁴¹. Among the motives for pastoral discernment of the situation of the divorced living in new relationships, there should also be a conviction about the personal factors that determine the degree of responsibility and guilt of these people. Francis notes, among others: „The degree of responsibility is not equal in every case and there may be factors that limit the ability to make decisions. Therefore, [...] judgments that do not take into account the complexity of different situations must be avoided and attention must be paid to the way people live and suffer from their condition”⁴². Referring to the principle set out in the Catechism of the Catholic Church (hereinafter: CCC), according to which „accountability and responsibility for action can be reduced or even abolished as a result of ignorance, inattention, coercion, fear, habituation, unfamiliar feelings, and other psychological or social factors” (n. 1735), the Pope states: „Pastoral discernment, taking into account a properly formed conscience, must feel responsible for these situations. The consequences of the acts committed need not be the same in every case”⁴³.

No less characteristic are also the aims of discerning the situation of people in an irregular situation. They are strictly religious, individual and social in nature. First of all, this discernment is intended to help the faithful to understand better God's idea of marriage, „their place in the Church”⁴⁴ and „the possible ways of responding to God and developing in the midst of limitations”⁴⁵; in some cases, it may also be to „enlighten those who have lost course”⁴⁶. Secondly, entering into a path of discernment of the situation of the divorced living

⁴⁰ IBID., 79.

⁴¹ IBID., 293

⁴² IBID., 79

⁴³ IBID., 302.

⁴⁴ Cf. IBID., 312.

⁴⁵ IBID., 305.

⁴⁶ IBID., 291.

in a new relationship should aim at converting these people and taking concrete steps to „live better”⁴⁷, „redeem their sins with righteous works”⁴⁸, „grow in the life of grace”⁴⁹ and „please God more”⁵⁰. Thirdly, and finally, this process of discernment and the accompanying of divorced parents living in a new relationship are dictated by the welfare of the offspring of the parties, the optimum realisation of the aims of upbringing and the welfare of the human and ecclesiastical community, which have no interest in either multiplying the number of immature people or in „inheriting the scourge of divorce”. As Francis points out, „The Church, although understands the conflict situations that spouses have to go through, cannot cease to be the voice of the weakest, who are suffering children [...]. I ask myself whether today, «despite our seemingly developed sensitivity and all our sophisticated psychological analyses, we have not become insensitive to the wounds in the soul of children? [...] Do we feel the weight of the mountain that overwhelms the soul of a child in families where people badly relate to themselves and harm each other and finally break the bond of marital loyalty?» Such bad experiences do not help these children to grow up to be able to make definite commitments. For this reason, Christian communities should not leave divorced parents living in a new relationship alone. On the contrary, they should involve them and accompany them in their educational role. For «how could we recommend to these parents that they do their utmost to bring their children up to Christian life by setting an example of a convinced and practised faith, if we kept them away from the life of the community, as if they were excommunicated? We must behave in such a way that we do not add extra burdens to those that children already have to bear in these situations!» Helping parents to heal their wounds and welcoming them spiritually is also good for children who need the family face of the Church, which welcomes them in this traumatic experience. Divorce is an evil, and the increase in divorce rates is very worrying. For this reason, our most important pastoral task in relation to families is undoubtedly to strengthen love and help heal wounds so that we can prevent this drama of our time from spreading”⁵¹.

⁴⁷ IBID., 312.

⁴⁸ See Dan 4:24; AL, 306.

⁴⁹ AL, 305.

⁵⁰ IBID.

⁵¹ IBID., 246.

2. Principles to be respected when dealing with abnormal situations

While the „key to the pastoral accompaniment” of baptised persons who have divorced and entered into a civil relationship is, according to Pope Francis, to be „the logic of integration”⁵², the very discernment of their difficult situation⁵³ should be given the tone of „the logic of compassion for the weak and the avoidance of persecution or judgments too harsh or impatient”⁵⁴. In this process of discernment, carried out „in accordance with the teaching of the Church and the guidelines of the [diocesan - J.K.] Bishop”⁵⁵, one cannot „disregard the requirements of evangelical truth and love proposed by the Church”⁵⁶. In other words, in the pastoral assessment of an individual case, it is absolutely necessary to respect both the God's intention for marriage, and no less important, the loving approach of Jesus Christ to the weak and sinful. In the first case, it is a matter of not damaging the splendour of marriage, which the Creator envisaged as good for man and woman⁵⁷, and Christ the Lord raised to the dignity of the sacrament, which sanctifies the married and represents a path of salvation for them⁵⁸. As for the assessment of the situation of the divorced living in a new relationship, following the example of Christ, who „looked upon ... people with love and tenderness”⁵⁹, it is necessary to refrain in this case from „cold morals at the desk in treating the most sensitive issues”⁶⁰, referring to the very „general principles”⁶¹ of abnormal situations, a cool and rigorous „cataloguing” of the situation of divorced people living in a new relationship⁶², „unbearable casuistry” that could jeopardise „values that should be

⁵² IBID., 299.

⁵³ Cf. IBID., 79.

⁵⁴ See IBID., 308.

⁵⁵ IBID., 300. Naturally, these guidelines of the diocesan bishop must not contradict the permanent position of the Church's Magisterium on the pastoral care of divorced persons who have tried to get married. As the Prefect of the Congregation for the Doctrine of the Faith notes, Cardinal Gerhard Müller, „it must not be so that the Pope's formulation of the Church's teaching, which is generally valid, is interpreted differently or even contradictory to it in the local Churches. The foundation of the Church is unity in the faith”. *The voice of Cardinal Müller, „Idziemy”*, 26 II 2017, p. 9. One of the tasks of bishops, authentic teachers of the faith and guardians of its unity, is „to take care that, in the midst of the diversity of expressions on the doctrine of the Church, the same sense of faith is preserved and strengthened, that the integrity and unity of the faith does not suffer, and that the Catholicity of the Church through legitimate diversity is shown in a better light”. J. KRAJCZYŃSKI, *Biskup w służbie jedności*, [in:] Eximio Episcopo et Amico nostro laus. -A memorial book dedicated to His Excellency Bishop Roman Adam Marcinkowski on the twentieth anniversary of the bishop's sacrament and the fortieth anniversary of the ordination of the presbyter, Płock 2005, p. 233. Cf. DE, 4; CC, 18, 25; can. 604 of the CCEO.

⁵⁶ AL, 300.

⁵⁷ Cf. Gen. 1:26-31; 2:18 -24.

⁵⁸ Cf. AL, 72.

⁵⁹ IBID., 60.

⁶⁰ IBID., 312.

⁶¹ Cf. IBID., 304.

⁶² Cf. IBID., 298.

guarded with special care”⁶³ and the declaration that „all those who are in a so-called «irregular» situation live in a state of mortal sin, deprived of sanctifying grace”⁶⁴.

In the implementation of the process of discerning the situation of divorced persons living in a new relationship, certain principles of human nature should be preserved, which serve the conversion of these believers and their integration into the Church community. Among these conditions, which are in fact „paths of mercy and integration”⁶⁵, the following are to the fore: 1) „a kind love [which - J.K.] creates bonds, cultivates relationships, creates new networks of integration, builds strong social bonds”⁶⁶; 2) a close and favourable relationship with those in difficulty⁶⁷, being „a sign and instrument of closeness to the Lord who does not [only J.K.] leaves us alone”⁶⁸, but „at the same time proposing a demanding ideal never loses the compassionate closeness to the weak, such as the Samaritan or the woman of adultery”⁶⁹; 3) patient and attentive listening, combined with delicacy, trusting hope and understanding, when the pastor, free from indifference, fatigue and discouragement, with appropriate wisdom and tact, suggests to the faithful concrete ways of conversion and fuller participation in the life of the parish, and finally „points out to them the goal of the journey, when God «wipes away all tears from their eyes and there will be no more death. No mourning, no crying, no hardship» (Rev 21:4)”⁷⁰; 4) to offer spiritual support, free from all forms of discrimination and exclusion⁷¹, appropriate to the current needs and canonical and legal situation of the divorced living in a new relationship, so that they „not only know that they belong to the Body of Christ, which is the Church, but that they may have a happy and fruitful experience of it”⁷².

⁶³ Cf. IBID., 304.

⁶⁴ IBID., 301.

⁶⁵ See IBID., 296.

⁶⁶ IBID., 100.

⁶⁷ Cf. IBID., 5, 161, 164, 208, 230, 254, 319. „Jesus «expects us to give up looking for personal or community protection measures to keep our distance from the essence of human anguish, so that we really want to come into contact with the concrete lives of others and know the power of sensitivity»”. IBID., 308.

⁶⁸ IBID., 319.

⁶⁹ See IBID., 38.

⁷⁰ IBID., 22.

⁷¹ „It is important [that] divorced persons living in new relationships feel that they are part of the Church, that they «are not excommunicated» and are not treated as such, because they always form a church community. These situations «require careful discernment and accompaniment with great respect, avoiding any language and attitude that would make them feel discriminated against and encouraging their participation in community life [...]»”. IBID., 243. „They are baptized, they are brothers and sisters, the Holy Spirit poured gifts and charisms into them for the good of all. Not only do they not have to feel excommunicated, but they can live and develop as living members of the Church, feeling that she is the mother who always welcomes them, cares for them with love and supports them on the path of life and the Gospel”. IBID., 300.

⁷² AL, 300.

To these principles of a purely human nature, which must be respected in the process of pastoral discernment of individual cases, we must also add a few other strictly religious principles, without respect for which it is impossible to speak of a ministry following the example of Jesus Christ, accompanying human „steps with truth, patience and mercy”⁷³. Among these latter principles, the following should certainly not be overlooked: 1) acquainting the divorced living in new relationships with the whole teaching of Christ about marriage, the need for conversion, repentance and eternal life⁷⁴, so that the process of discernment will help them to „become aware of their situation before God”⁷⁵, to make „a correct assessment of what hinders [them - J.K.] to participate more fully in the life of the Church”⁷⁶, and to „sincerely seek God's will and desire to achieve a more perfect answer to it”⁷⁷; 2) to ensure that the divorced living in new relationships and third parties never think that the Church „tries to minimize the requirements of the Gospel”⁷⁸, „supports a double morality”⁷⁹ or evades the principle of the inseparability of marriage; 3) „not condemning anyone for eternity, offering the mercy of God to all those who sincerely ask for it”⁸⁰; 4) remembering that since „the degree of responsibility is not equal in every case”, [and - J. K.] the consequences or effects of a given norm are not necessarily the same”⁸¹.

Of course, only respect for all the human and Christian principles mentioned above can guarantee that the special nature of discernment is preserved and its objectives are

⁷³ IBID., 60.

⁷⁴ Cf. J. KRAJCZYŃSKI, *Prawo rodziny do opieki duszpasterskiej*, Płock 2007, Apostolicum, p. 219, 228-229.

⁷⁵ See AL, 300.

⁷⁶ FC, 34; AL, 300.

⁷⁷ AL, 300. This sincere search for God's will, which must be accompanied by humility, discretion, love for the Church and her teaching, is, according to Pope Francis, a safeguard against the serious risk of „erroneous messages, such as the idea that a priest can quickly agree to «exceptions», or that there are people who can obtain sacramental privileges in exchange for favours. When we are dealing with a responsible and discreet person who does not demand to put his or her desires above the common good of the Church, and a pastor who is able to recognise the seriousness of the issue he or she is considering, the danger is avoided that some specific discernment will lead to the idea that the Church is in favour of double morality”. IBID.

Making pastoral discernment in a particular case, as Francis rightly calls it, may also translate into a decision to admit the faithful to the sacraments of the Church. The Pope states: „Even when it comes to sacramental discipline, because after discernment it can be considered that there is no serious fault in a given situation. What I said in another document applies here: Cf. Adhortatio apostolica *Evangelii gaudium*, (24 XI 2013), 44. 47, AAS 105 (2013) p. 1038-1040”. AL, note 336.

⁷⁸ AL, 301.

⁷⁹ IBID., 300.

⁸⁰ IBID., 296. But we must not forget the principle laid down in the CCC that „reconciliation through the sacrament of Penance can be granted only to those who regret having broken the sign of the Covenant and faithfulness to Christ, and commit themselves to live in complete abstinence”. (No 1650).

„The best way to show mercy to divorced couples and those living in new relationships is to proclaim to them the truth about marriage and their situation in the Church and to accompany them pastorally on the road of their lives. Any attempt to pave the way for them to the Eucharist without regard for the truth about marriage would be to show only the appearance of mercy”. W. GÓRALSKI, *Sprawiedliwość czy miłosierdzie? Problem Komunii Świętej katolików rozwiedzionych i żyjących w małżeństwie cywilnym*, Płock 2016, p. 59.

⁸¹ AL, 300.

achieved. Omitting any of these conditions may give rise to many negative phenomena among the members of the families and outsiders mentioned, including: the belief that they are not equal members of the People of God; doubts about the content of the Church's teaching about the inseparability of marriage, confusion and scorn for destroying the values of Christian marriage; indignation of spouses who patiently bear the cross of abandonment and separation⁸²; weakening of faith, religious indifference and even abandonment of religious practices.

3. Ways of responding to God and of developing within the limitations appropriate to the outcome of discernment

Following a process of discernment of the situation of the divorced living in new relationships, the pastor should offer these people concrete actions that will help them to embark on a path of conversion, to grow in their faith, to become involved in the life of the Church in accordance with their situation, to fulfil their natural obligations to another party or to their children, which are the result of a previous relationship.

The solutions „based on truth and love”⁸³, that the pastor may offer to divorced persons who have tried to enter into a marriage are in fact conditioned by the following four factors of a dogmatic, disciplinary and personal nature: the unchanging, unquestionable and explicit intention of God on marriage; the nature of the provisions of canon law, violated by those in an abnormal situation; the aims and motives of pastoral service to the divorced living in new relationships; the specific situation and needs of those living in a given relationship, established through a process of discernment. All the conditions mentioned here are to be treated cumulatively. In other words, the suggestions put forward cannot, for example, take account only of facts such as the divorced person's sincere regret for the break-up of the marriage, the conclusion of a new relationship because of the upbringing of the children, the ardent desire to enjoy the full spiritual benefits of the Church and the long duration of the new relationship, without taking into account such fundamental issues as the violation of God's law in this case or the Church's unchanging teaching on the inseparability of marriage.

⁸² The source of this indignation of these faithful can be found in the very liberal solutions proposed by pastoralists following individual cases of discernment, such as the supposedly „progressive” declarations by diocesan bishops, authors of instructions for pastoral discernment, which treats differently divorced persons who have tried to marry and differently those spouses who have been unfairly abandoned faithfully maintaining the principle of the inseparability of marriage and at the same time see that the Church is indirectly trying to sanction the new relationships of these first spouses.

⁸³ J. KRAJCZYŃSKI, *Prawo rodziny do opieki duszpasterskiej*, op. cit., p. 307.

If we are talking about a real awareness of „being aware of one's situation before God”, to which divorced persons are to be directed by the process of pastoral discernment⁸⁴, it is necessary that the said believers are informed about their situation in the Church in an intersubjective way and with due kindness⁸⁵. It is important to make it clear that these believers are in the Church and that it cares for them with love and supports them on their way of life⁸⁶, and the very limitation of their subjective powers is not a manifestation of discrimination and condemnation on the part of the Church, but the mere consequence of a situation „which objectively transcends the law of God”⁸⁷, namely the public and permanent adultery⁸⁸, in which they persist.

Along with information about the ecclesiastical functions that these faithful cannot perform, the pastor should submit to them the reasons for such disciplinary arrangements, including an instruction on the nature of the task and the offence. Among the services and tasks that do not correspond to the „objective situation of sin”⁸⁹, in which the divorced persons living in a new relationship find themselves, are: the ministry of the extraordinary minister of Holy Communion, the minister, lector, commentator and cantor in the liturgical assembly; the task of catechist, professor of the seminary, missionary and catechist; membership in the pastoral, diocesan and parish councils; participation in the deliberations of the General Council and the particular synod. Nor should the named faithful be appointed as collaborators of bishops and presbyters in the service of the word of God according to can. 759 of the CIC, that is, to preach by order of the bishop and on behalf of the Church in a church or chapel, if under certain circumstances this is required.

According to the principle of revision of „the various forms of exclusion currently practised in the liturgical, pastoral, educational and institutional fields”⁹⁰, that could be overcome, it is legitimate to include the following points in particular law: 1) in view of the marked increase in the number of divorced persons entering into new relationships, the inclusion of the men and women referred to in can. 1064 of the CIC, selected faithful divorced persons who have tried to get married and are currently actively involved in the life

⁸⁴ See AL, 300.

⁸⁵ For the legal status of these believers and their right to enjoy the spiritual goods of the Church, see M.Á. ORTIZ, *La pastorale dei fedeli divorziati risposati civilmente e la loro chiamata alla santità*, [in:] C.J. Errázuriz, M.Á. Ortiz (ed.), *Misericordia e diritto nel matrimonio*, Roma 2014, p. 131-164; W. GÓRALSKI, *Sprawiedliwość czy miłosierdzie? Problem Komunii Świętej katolików rozwiedzionych i żyjących w małżeństwie cywilnym*, op. cit., p. 30-54.

⁸⁶ AL, 299.

⁸⁷ CCC, 1650.

⁸⁸ Cf. IBID., 2384.

⁸⁹ See AL, 305.

⁹⁰ IBID., 299.

of the local Church, so that they can help the Ordinary of the place to organise pastoral ministry for that community; 2) the above may also constitute a title to allow representatives of divorced persons living in new unions to participate in meetings of pastoral councils and particular synods, also as members of those bodies⁹¹; by involving these people in these groups, it will be possible to better organise the pastoral care of the divorced living in the new unions and to develop various forms of participation of these believers in the life of the local ecclesial community. 3) the experience of a lack of certain spiritual values such as those of the divorced who tried to enter into marriage (e.g. absolution, Holy Communion), and the various forms of religious activity of these people, meaning works of education, penance and mercy, may also justify the consent of the Ordinary of the place to allow these believers, on an ad hoc basis, to share with others the experience of their growth in the faith in the midst of their limitations in specific apostolic undertakings such as retreats, parish missions, evangelistic retreats and retreats for the divorced living in new relationships.

In principle, in each case in question, divorced people living in new relationships should be advised to examine their conscience, including with the help of a confessor, a spiritual director and a retreatist⁹². In the latter case, it would be advisable to encourage the use of bishops, presbyters and lay faithful, particularly those involved in the pastoral care of non-sacramental associations and competent in these matters. Without this thorough examination of one's own conscience, it is impossible to speak of the fundamental objectives of discernment, which are conversion⁹³ and spiritual „development amidst limitations”⁹⁴.

All divorced persons who live in new relationships should be strongly encouraged to listen systematically to the word of God⁹⁵. For the more they seek to „listen to God and His

⁹¹ Cf. G. TREVISAN, *I divorziati risposati possono assumersi delle responsabilità nella vita della Chiesa?*, Quaderni di Diritto Ecclesiale 6 (1993), p. 249-260; B. DE FILIPPIS, *È caduto il muro tra Chiesa e divorziati?*, Pisa 2016, p. 126.

⁹² „In this process, it will be useful to take stock of one's conscience, through moments of reflection and repentance. Divorced people who have remarried should ask themselves how they behaved towards their children when they were married in crisis; whether there have been attempts at reconciliation; what is the situation of the abandoned spouse; what consequences the new relationship has for the rest of the family and the community of believers; what example it gives to young people who are preparing for marriage. Sincere reflection can strengthen confidence in God's mercy, which is not denied to anyone”. AL, 300.

⁹³ This process of conversion will not be possible if, as part of their discernment before God, the divorced do not recognise that they have transgressed God's law and are continuing in sin, and the pastor does not make them aware of the necessary conditions for conversion, such as fulfilling the orders of justice towards the lawful spouse and common children and taking responsibility for both their constituted relationships.

⁹⁴ Cf. AL, 305.

⁹⁵ Cf. FC, 84; CCC, 1651. It is not only a personal reading of Scripture and a private meditation on the message of God. It is advisable that these people should also benefit from communal knowledge and meditation on the word of God. Therefore, they should be recommended to participate in meetings of biblical circles, groups to share the word of God, various retreats, meditations, conferences, etc. Cf. J. GREŻLIKOWSKI, *Wokół problemu związków niesakramentalnych. Dostęp do sakramentów świętych osób żyjących w małżeństwach niesakramentalnych*, Homo Dei 1 (2000), p. 52.

commandments in their conscience [...] the more their decision will be internally free from subjective judgement and from adapting to the behaviour of their environment”⁹⁶. In this word, they will finally find a strengthening on their difficult path of faith, the hope of obtaining the forgiveness of their sins and eternal life.

Their persistent prayer should also go hand in hand with getting to know the person of Jesus Christ. In this prayer they will be able to find help „to heal wounds”⁹⁷ and „a privileged place where hope is expressed and nourished”⁹⁸. Through prayer and self-denial they will also multiply and develop human and Christian virtues⁹⁹. In prayer, at last, they will be able to ask for grace from God from day to day¹⁰⁰.

These faithful should also particularly value the proximity of God in the sacrament of the Eucharist. Therefore, they should be encouraged to come to the Blessed Sacrament, to Eucharistic adoration, to take part in the liturgy of Mass, if possible, to enjoy at least spiritual communion¹⁰¹ and the special blessing of the priest¹⁰²; and finally to promote Eucharistic spirituality¹⁰³. Here, in fact, „in the sacrifice that the Divine Spouse offers for his beloved Bride, they can penetrate and understand the mystery of perfect love [...]. Here, finally, by experiencing a strong urge for inner renewal, which makes them struggle with the sin in

⁹⁶ AL, 222.

⁹⁷ IBID., 246.

⁹⁸ JAN PAWEŁ II, adh. apost. *Pastores gregis*, 17.

⁹⁹ Cf. can. 652 § 2 of the CIC

¹⁰⁰ Cf. FC, 84; CCC, 1651.

¹⁰¹ „The Eucharist therefore manifests itself as the culmination of all the sacraments through which we achieve perfect communion with God the Father by identifying ourselves with the Only-begotten Son through the action of the Holy Spirit. With the clarity of faith, this truth was expressed by an eminent writer from the Byzantine tradition: in the Eucharist «unlike any other sacrament, the mystery [of communion] is so perfect that it leads to the summit of all things: it is here that all human desire ends, because here we receive God and God enters into perfect union with us». That is why it is worth *cultivating the constant desire for the Eucharist in the soul*. This is how the practice of «spiritual communion» was born, happily rooted in the Church for centuries and recommended by the holy masters of spiritual life. St. Theresa of Jesus wrote: «When you do not come to communion and attend Mass, the most beneficial thing is the practice of spiritual communion Through it you are abundantly marked by the love of our Lord». IOANNES PAULUS II, *Lit. enc. Ecclesia de Eucharistia*, 34, AAS 95 (2003) p. 456.

„Undoubtedly, full participation in the Eucharist occurs when you personally come to the altar to receive Communion. Nevertheless, care must be taken to ensure that this correct statement does not introduce a certain automatism among the faithful, as if by the very fact of being in church during the liturgy one has the right or even the obligation to enter the Eucharistic Table. Even when it is not possible to receive sacramental communion, participation in Mass remains necessary, important, meaningful and fruitful. In this situation, it is good to nourish the desire for full communion with Christ, by means of, for example, the practice of spiritual communion, recalled by John Paul II and recommended by the holy masters of the spiritual life”. BENEDICTUS XVI, Adh. apost. *Sacramentum caritatis*, 55, AAS 99 (2007), p. 147-148.

¹⁰² Such a blessing, like that given to young children, is given during Holy Communion in many countries. Naturally, those who ask for this blessing should take the appropriate attitude (e.g., hands folded at the cross on the chest) so as not to cast doubt on the mind of the minister of Holy Communion about what they ask for.

¹⁰³ For more on the nature and meaning of these forms of devotion in the context of married life see J. KRAJCZYŃSKI, *Eucharystia a przygotowanie wiernych do życia w małżeństwie*, Ius Matrimoniale 14 (20) 2009, p. 7-37.

which they are entangled¹⁰⁴, [the divorced living in new relationships - J.K.] can learn to overcome their own selfishness, to close themselves in and seek their own pleasures, and to truly open themselves up to others, to the total gift of themselves and to mutual help.¹⁰⁵

Good deeds and the virtue of humility have invaluable value in the perspective of eternity. It is therefore important that pastors responsible for discerning the situation of divorced persons living in new relationships encourage these faithful to „multiply works of love [...] and to nurture the spirit and penance”¹⁰⁶. In this way, as Pope Francis notes¹⁰⁷, they will be able to make love that „covers many sins”¹⁰⁸ and to redeem „their sins with works of justice and their iniquities with mercy on the poor”¹⁰⁹.

The obligation to involve these people in the upbringing of their offspring from the first marriage as well as from the second marriage is not debatable. Naturally, there is talk of upbringing to the essential values of human life and of formation in the Christian faith¹¹⁰. It is extremely important in this case to make parents living in the new relationship aware of the moral and psychological damage they have caused to their children through divorce, the right of children to be brought up by both parents, the natural obligations of the father and mother towards their children, and the negative impact of the parent's absence from the upbringing process on the emotional and social development of the offspring. Finally, entering the path of conversion should mean, in this case, forgiving the first spouse, healing the interpersonal relationship with him and the offspring from that relationship, making good the harm done and making good the natural responsibilities towards the children¹¹¹.

Sometimes the process of discerning the situation of divorced couples living in a new relationship may result in them being helped to assert and defend their rights in the Church, by identifying a court competent to consider the validity of their marriage¹¹² or by asking the

¹⁰⁴ Cf. IOANNES PAULUS II, Epist. apost. *Dies Domini*, 73, AAS 90 (1998), p. 758.

¹⁰⁵ J. KRAJCZYŃSKI, *Eucharystia a przygotowanie wiernych do życia w małżeństwie*, op. cit., p. 31.

¹⁰⁶ FC, 84.

¹⁰⁷ See AL, 306.

¹⁰⁸ 1 Pet 4:8.

¹⁰⁹ Dan 4:24.

¹¹⁰ Cf. can. 795, 1136 of the CIC

¹¹¹ This includes such natural obligations towards the offspring from a previous marriage as constant contact with the children, interest in their current emotional, social and material situation, securing their current needs, including psychological and material ones. A divorced man who lives in a new relationship and converts should remember that his offspring from the first relationship, who is a victim of the breakdown of the marriage, must not be exposed to additional psychological challenges that are disproportionate to his mental capacity.

¹¹² „Where legitimate doubts arise as to the validity of a sacramental marriage, steps must be taken to verify their legitimacy”. Benedictus XVI, Adhortatio apostolica *Sacramentum caritatis*, 29. Cf. H. FRANCESCHI, *Divorziati risposati e nullità matrimoniali*, Ius Ecclesiae 25 (2013), p. 617-639.

Undoubtedly, such judicial proceedings are of considerable pastoral importance in this case and constitute an effective means of pastoral influence. Cf. F. DANEELS, *Osservazioni sui processi per la dichiarazione di nullità del matrimonio*, Quaderni Diritto Ecclesiale 14 (2001), p. 85-87.

Pope to dissolve an unfulfilled marriage. Naturally, in such a case, they should be instructed about the validity of the marriage, the nature of process of the nullity of marriage, the legal titles of nullity and the internal and external indissolubility of the marriage, so that they do not equate these special processes with „church divorce”, „annulment of the marriage” or the Pope's power to dissolve any marriage concluded in the Church.

Divorced persons in a new relationship can find invaluable help in their spiritual development in a sacramental meeting with a confessor, when, taking the attitude of a penitent waiting for the Lord's eschatological forgiveness¹¹³, although they will not receive from him the absolution of sins for public and permanent adultery, they will find in the sacrament of penance the necessary guidance to lead a spiritual life, spiritual reinforcement and blessing.

Accepting with love divorced people who have tried to get married, and making sure that they experience the love of Christ and the maternal closeness of the Church, cannot under any circumstances go hand in hand with denying the truth about marriage, which the Church serves. With this in mind, the pastor should refrain from any legal acts, ceremonies and gestures, public or private, made to the divorced living in a new relationship that could be understood as approval or recognition of that new relationship¹¹⁴. Furthermore, in the name of ensuring that no one ever thinks that the Church „tries to minimize the requirements of the Gospel”¹¹⁵ by repealing the principle of the indissolubility of marriage, the pastor who discerns the situation of the divorced living in the new relationship should not admit them to Eucharistic communion as long as „by their condition and situation of life they objectively oppose that unity in love between Christ and the Church which is marked and realized in the Eucharist”¹¹⁶.

¹¹³ Cf. T. GOFFI, *Duchowość małżeńska*, Kraków 2001, p. 201.

¹¹⁴ Cf. FC, 84; PAPIESKA RADA ds. RODZINY, *Zalecenia Duszpasterstwo osób rozwiedzionych żyjących w nowych związkach*, (25 I 1997), III, [in:] *Posoborowe dokumenty Kościoła katolickiego o małżeństwie i rodzinie*, T. II, Kraków 1999, Wydawnictwo M, p. 437.

This includes such *quasi* pastoral undertakings as the blessing of rings used during the ritual of civil marriage, the celebration of Mass for the intention of the parties on the occasion of the act, the blessing of the parties or participation in an occasional wedding reception.

¹¹⁵ AL, 301.

¹¹⁶ BENEDICTUS XVI, Adh. Apost. *Sacramentum caritatis*, 29. „Noting that authentic understanding and true mercy are never detached from the truth, the pastor has a duty to present to the said faithful the Church's teaching on the celebration of the sacraments, especially on receiving the Eucharist. When informing them that, in accordance with the Church's discipline, the faithful living in new relationships are counted among those who persist in overtly heavy sin, and recalling that it is not possible for them to be admitted to Holy Communion for all, he should at the same time instruct them that they may, in certain strictly defined cases, be admitted to the sacrament of Penance and the Eucharist. By categorically rejecting the position that these persons may be admitted to the Eucharist in cases where the faithful, guided by the judgement of their conscience, feel entitled to do so, the pastor must indicate the conditions under which the Church admits to the sacrament of Penance and

The possible exceptional granting of sacramental absolution to these faithful and their admission to Holy Communion is only possible if the following four conditions, taken together, apply¹¹⁷: 1) the inability of the parties to part (e.g., because of the guarantee of the necessary education of the offspring, the provision of necessary assistance in sickness or old age); 2) the firm decision to refrain from married life; 3) the remedy of damage and injustice committed in the marriage; 4) the absence of scandal (for this reason, especially in smaller towns, such persons are to be recommended to receive Holy Communion in a foreign environment)¹¹⁸. As for the latter, it should be noted that the desire to remain pure is not enough. For conversion, which is a condition for receiving absolution, presupposes a sincere decision to improve, that is, to break with a lifestyle contrary (in this case) to God's law. Of course, if the faithful do not persevere in this resolution of improvement, another sincere declaration of perseverance in chastity is enough to give them another chance in the name of God¹¹⁹.

The instruction of the divorced living in new relationships about the conditions for the celebration of the sacraments of penance and the Eucharist¹²⁰ should be accompanied by an awareness of other forms of Eucharistic piety, so that they know that the participation of the lay faithful in the life of the Church is not limited to receiving Holy Communion alone¹²¹.

When it comes to taking into account mitigating factors which, as Pope Francis notes, „it is possible that, in the midst of a certain objective situation of sin, a person who is not subjectively guilty¹²² or not fully guilty may live in God's grace”¹²³, it should be remembered

the Eucharist those of her members who find themselves in a situation which is objectively contrary to God's law. J. KRAJCZYŃSKI, *Prawo rodziny do opieki duszpasterskiej*, op. cit., p. 310-311.

¹¹⁷ Otherwise, neither of these conditions can be excluded. In the event of factual doubt, namely whether the said condition exists in a particular case, the matter must be resolved in favour of the petitioner.

¹¹⁸ Cf. KONFERENCJA EPISKOPATU POLSKI, *Dyrektorium Duszpasterstwa Rodzin*, Warszawa 2003, 74.

¹¹⁹ „Perhaps because of scruples, hidden behind a great desire to be faithful to the truth, some priests require penitents to improve without any shadow. For this reason, mercy fades in the search for hypothetically pure justice. It is therefore worth recalling the teachings of Saint John Paul II, who stated that the predictability of a new fall «does not prejudice the authenticity of the decision» (*Lettera al Card. William W. Baum in occasione del corso sul foro interno organizzato dalla Penitenzieria Apostolica* [access: 22 marca 1996], 5: *Insegnamenti*, XIX, 1 [1996], 589)”. AL, note 364.

¹²⁰ For more on the conditions for receiving these sacraments see W. GÓRALSKI, *Problem udziału w życiu sakramentalnym osób żyjących w niekanonicznych związkach małżeńskich*, *Roczniki Nauk Prawnych* 14 (2004) 2, p. 99-102.

¹²¹ Cf. D. KOWALCZYK, *Bóg może udzielać łaski pozasakramentalnie*, <http://niedziela.pl/artukul/18417/O-prof-Kowalczyk-Bog-moze-udziela-laski-pozasakramentalnie> [access: 2017-03-02].

¹²² „[...] the good faith of a person who believes that intimate acts with a person with whom he or she has a new relationship are permitted and even constitute a duty in such a situation does not justify anything here. After all, a confessor, in the exercise of his office as the minister of God's mercy, but also of God's justice, is obliged to take into account the objective sinful condition of a penitent living in a non-sacramental marriage when he undertakes bodily coexistence with the other party. The confessor must act in defence of the inseparability and sanctity of marriage, which excludes the right to such cohabitation, both by the virtue of chastity derived from

that, in the assessment of a given case, „it is good to distinguish between moral responsibility for choices made in the past (marriage break-up, divorce, civil marriage) and the current situation. [For what - J.K.] is irreconcilable with receiving Holy Communion is not past sins (if they have been forgiven), but the present will to live in contradiction with the «salvific covenant, of which sacramental marriage is the sign». As W. Góralski points out, spokespersons for the admission of spouses who do not have a canonical relationship but wish to receive the Eucharist when all attention is paid to their grief and penance for breaking a previous marriage”¹²⁴.

Finally, it is possible to suggest to the pastor, especially in the case of a significant deficiency in religious formation, that those who are in an abnormal situation should wish to take advantage of the catechesis of adults or - in exceptional cases - the post-baptismal catechumenate. The solution in question will, understandably, require the pastor to devote more time to such a family and to establish a closer relationship with its members. There is no doubt, however, that this effort of accompaniment, in which honesty, openness and trust are

God's law and by virtue of the principle of justice towards the first spouse. If, after divorce, the spouse considers adultery to be a conjugal life to be continued with a third party, it is objectively contrary to God's law [...].

A confessor cannot therefore grant sacramental absolution even to a spouse who is in good faith, following his or her subjective sense of conscience. He must then demand from the penitent a proper disposition, one element of which is the recognition of the Church's teaching as the norm of conduct”. W. GÓRALSKI, *Problem udziału w życiu sakramentalnym osób żyjących w niekanonicznych związkach małżeńskich*, art. cit. p. 98.

¹²³ AL, 305.

¹²⁴ W. GÓRALSKI, *Sprawiedliwość czy miłosierdzie? Problem Komunii Świętej katolików rozwiedzionych i żyjących w małżeństwie cywilnym*, op. cit., p. 57-58.

If it is a question of taking into account - under the discerning of the situation of divorced persons living in a new relationship - the circumstances which Pope Francis has highlighted in his AL, it is important to stress that these principles of reducing or abolishing accountability and responsibility (cf. AL, 302), have already been clarified in the body of canon law, in force since 1983. Moreover, these principles were taken into account in ecclesiastical practice. A good example of this can be the trials for invalidity of a marriage on the grounds of: lack sufficient use of reason (cf. can. 1095 n. 1 of the CIC), a grave lack of discretionary judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted (cf. can. 1095 n. 2 of the CIC), lack of mental capacity to to assume the essential obligations of marriage (cf. can. 1095 n. 3 of the CIC), minimum knowledge about marriage (cf. can. 1096 § 1 of the CIC), error about a quality of the person (cf. can. 1097 § 2 of the CIC), an error as to the essential attribute of marriage and its sacramental dignity (cf. can. 1099 of the CIC), a deceitful deception made in order to obtain the consent of a marriage (cf. can. 1098 of the CIC), entering into a marriage under force or grave fear (cf. can. 1103 of the CIC). Undoubtedly, in the marital trials referred to here, the circumstances of a person treated by the author of AL were taken into account in the last four decades, including: „a degree of responsibility that is not equal in every case”. (cf. n. 300), the ability of a person to „grow in the maturation of responsible freedom”. (n. 275, cf. *ibid.* n. 262), the ability to „control yourself” (No 280), the ability to „overcome attempts” (n. 293), the ability to „love” (n. 325), capacity „in the field of responsible parenting” (n. 68, cf. *IBID.*, 78, 82, 166, 167, 188, 222, 259 and 293), ability to “be liable to another person”. (cf. n. 131, 132), the ability to „exercise his inviolable freedom wisely and responsibly”. (cf. n. 167), the ability to „share responsibility for the family”. (cf. n. 220), „emotional maturity”. (n. 302). Moreover, there should be no doubt as to the degree of the aforementioned fundamental, inner capacity of the human person, as decided in can. 1574 and 1680 of the CIC, as a rule, the opinion of an expert psychologist or psychiatrist was used in such proceedings.

The mentioned circumstances reducing or waiving the responsibility of a person, exposed in AL, should not be omitted by a confessor performing his ministry according to can. 981 of the CIC and the diocesan bishop and judge in criminal cases (cf. can. 1321 § 1, 1324 § 1 n. 10, 1771 § 1 of the CIC).

invaluable, can make a significant contribution to the evangelisation and authentic conversion of these people.

Divorced persons living in new couples, who cannot prove the invalidity of their first marriage, have the right to ask for their offspring to be baptised. The pastor gives this sacrament fairly, as long as „there is a reasonable hope that the child will be brought up in a Catholic way”¹²⁵.

The pastor responsible for the process of individual case studies should be careful in allowing, as some authors postulate, the widespread application of the principle of graciousness and mercy in irregular situations. Against such pastoral *quasi*-compassion, which does not necessarily serve the salvation of people and respect for the inseparability of marriage, John Paul II warned, when judging cases of invalidity of a marriage¹²⁶. An attempt, in the name of the principle of *oikonomy*, as proposed by Jean Bernhard,¹²⁷ René Metz¹²⁸, Josef Prader¹²⁹, Eberhard Schockenhoff¹³⁰ and Giovanni Cereti¹³¹, to move away from the position of moral condemnation that causes divorced people living in new relationships to feel painfully excluded, towards the practice of admitting them to Holy Communion, after appropriate penance has been imposed, may also cause considerable spiritual harm, including in the case of the above mentioned persons in abnormal situation. He expressly warns against this danger, even in the case of the reception of Holy Communion by these faithful at his own responsibility, Stefan Oster¹³².

¹²⁵ Can. 868 § 1 n. 2 of the CIC. Cf. M. DEL POZZO, *La richiesta del battesimo in situazioni contrarie alla dignità del matrimonio*, *Ius Ecclesiae* 24 (2012), p. 589-608.

¹²⁶ „A marriage that is important, however difficult it may be, cannot be considered invalid and void. Otherwise, the truth is violated, thus destroying the only sure foundation on which personal, marital and social life can rest. A judge, too, should always be careful to avoid sympathy in the false sense, that is to say, pity falling into sentimentalism, seemingly only pastoral in nature. Ways that move away from justice and truth contribute to people moving away from God, an effect contrary to what is sought in faith. IOANNES PAULUS II, *Allocutio Ad Romanae Rotae praelatos, auditores, officiales et advocatos anno iudiciali ineunte*, (18 I 1990), 5, *Insegnamenti di Giovanni Paolo II* 13 (1990) 1, p. 113. See also id., *Ai Membri del Tribunale della Rota Romana in occasione dell'apertura dell'anno giudiziario*, 5, *Insegnamenti di Giovanni Paolo II* 17 (1994) 1, p. 211-212.

¹²⁷ Cf. J. BERNHARD, *Comment traduire en termes canoniques les cas d'échec dans le mariage?*, *Revue de Droit Canonique* 36 (1986), p. 243-266.

¹²⁸ Cf. R. METZ, *Dissolubilité du mariage dans L'Église catholique du Concile de Trente (exclu) à la veille de Vatican II (1564-1959)*, *Revue de Droit Canonique* 38 (1988), p. 127-132.

¹²⁹ Cf. J. PRADER, *Das kirchliche Eherecht in der seelsorglichen Praxis*, Bozen – Würzburg – Innsbruck – Wien 1991, p. 39.

¹³⁰ Cf. W. GÓRALSKI, *Sprawiedliwość czy miłosierdzie? Problem Komunii Świętej katolików rozwiedzionych i żyjących w małżeństwie cywilnym*, op. cit., p. 10.

¹³¹ Cf. G. CERETI, *Divorzio, nuove nozze e penitenza nella Chiesa primitiva*, Roma 2013, p. 433-437.

¹³² „None of us, however, should act recklessly, because St. John Paul tells us (1 Cor 11:27): «So he who eats bread and drinks the cup of the Lord unworthily is guilty of the body and blood of the Lord». Receiving Holy Communion in the absence of due disposition therefore does not necessarily bring about strengthening, but can even lead to significant spiritual weakness”. S. OSTER, *Brief an die Priester im Nachgang zum päpstlichen Schreiben „Amoris Laetitia”*, op. cit., p. 3.

Concluding remarks

The discernment of the situation of divorced persons living in new relationships, prescribed by John Paul II and Francis, appears to be an important pastoral measure of a cognitive-chaired nature, intended for use in the service of spouses who find themselves in abnormal situations. The very process of discernment of individual cases is at the same time complex, difficult, requiring special preparation, and significant for the progress in the faith of those for whom it is recommended. Depending on how it is implemented in an individual case, it will prove to be a salutary tool for the faithful whose situation is radically opposed to the ideal of marriage or a factor that disintegrates local church communities.

The role that this discernment will play in practice will depend crucially on how the pastors themselves approach this particular mission. Their openness, delicacy, sincere interest in the problems of the spouses, zeal and knowledge of the complex aspects of family life can result in divorced persons in new relationships being trusted, converted and progressing in their faith. On the contrary, the pastoral sluggishness of pastoralists in pursuing the difficult objectives of discernment, the distance to life's problems of people in an abnormal situation and the failure to comply with the rules that apply to this important process can cause much confusion and even scandal.