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CRITERIA SET OUT IN CIC C. 874 § 1, 4°-5° AND THE VALIDITY OF ADMISSION TO THE *MUNUS* OF SPONSOR

Content: Introduction. – 1. The penalised. – 1.1. Analogy of norms in CIC/17 and CCEO. – 1.2. Purposes of the existence of penalties. – 1.3. The principle of the legislator's rationality. – 1.4. Consequences of ecclesiastical penalties. – 2. Parents. – 2.1. Infant baptism. – 2.2. Adult baptism. – Conclusion.

Introduction

According to the doctrine of the Catholic Church, the faith of all the baptised, both infants and adults, should grow after baptism.¹ However, this process is not possible without active help from the Church community (CCC, nn. 1253-1254).² The parents and sponsors play a special role in this. That truth is confirmed by the *Instruction on Infant Baptism* of the Sacred Congregation for the Doctrine of the Faith of October 20, 1980. In n. 29 of the mentioned document we read, "In the first place, much importance is given to the presence and active participation of the parents in the celebration. The parents now have priority over the godparents, although the presence of the

¹ The article was translated by Agnieszka Burakowska.

² CCC – abbr. of *Catechism of the Catholic Church*, Vatican City 1994.

latter continues to be required, since their assistance in the child's education is valuable and can sometimes be essential.”³

The unique position of godparents in the life of a Christian is endorsed by the discipline of the Catholic Church. Both in CIC c. 872⁴ and CCEO, c. 684 § 1⁵, the legislator wrote that everyone who is baptised should have at least one sponsor. Although this requirement is not absolute, only the impossibility of its implementation exempts from its fulfilment.

Since the sponsor's *munus* is essentially bound to obligations – accompanying a baptised adult in Christian initiation and, in the case of an infant baptism, presenting the infant for baptism with his or her parents, as well as helping the baptised person to lead a Christian life in the future, corresponding to the received sacrament and faithfully fulfilling his/her duties (CIC c. 872) – the person assigned to this role must be able to perform them. Therefore, in order to avoid assigning an unsuitable godparent, in CIC c. 874 § 1 the legislator regulated the criteria that must be met by a candidate for sponsor. Among them are the requirement of being free from any canonical penalty, according to the law imposed or declared, and not being the father or mother of the one to be baptised.

Unfortunately, neither the doctrine nor the discipline of the Latin Church explicitly state whether non-compliance with the

³ Cf. SACRA CONGREGATIO PRO DOCTRINA FIDEI, *Instructio de baptismo parvulorum Pastoralis actio*, no. 29, 20.10.1980, AAS 72(1980), p. 1152; English translation: SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Instruction on Infant Baptism Pastoralis actio*, 20.10.1980, available at: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19801020_pastoralis_actio_en.html (accessed on 10 August 2019).

⁴ CIC – abbr. of *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus fontium adnotatione et indice analytico-alphabetico auctus*, Liberia Editrice Vaticana 1989; English translation: *Code of Canon Law*, available at: http://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html (accessed on 10 August 2019).

⁵ CCEO – abbr. of: *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus*, Typis Polyglottis Vaticanis 1990; English translation: *Code of canons of Oriental Churches*, available at: <http://www.intratext.com/X/ENG1199.HTM> (accessed on 10 August 2019).

requirements set out in CIC c. 874 § 1, 4°-5° affects the validity or only liceity of acquiring the sponsor's *munus*. Given this lack, the author of this article has set himself the goal of answering this doubt.

1. The penalised

To be admitted a candidate for this function of a godparent must be free from any canonical penalty in accordance with the law imposed or declared (CIC c. 874 § 1, 4°).⁶ This requirement has long been known in ecclesial law.⁷ It refers to two other criteria, stipulated in CIC c. 874 § 1, 1° and CIC c. 874 § 1, 3°, according to which sponsors must have the required qualifications and lead a life in accordance with faith, and corresponding to the function they are to perform.⁸

Since for the explanation of the consequences of non-compliance with the norm in CIC c. 874 § 1, 4° the grammatical interpretation of this provision turns out to be insufficient, it will be necessary to examine how the ecclesiastical legislator regulated similar norms in CIC/17⁹ and CCEO to determine the correctness of the hypothesis formulated in the introduction of the article. The systemic, teleological, and logical interpretation of CIC c. 874 § 1, 4° will also help in dispelling doubts.

⁶ Cf. B.F. PIGHIN, *Diritto sacramentale*, Venezia 2006, p. 125; R. ALTHAUS, *Taufe*, in: *Münsterischer Kommentar zum Codex Iuris Canonici*, vol. 4, ed. K. LÜDICKE, can. 874, p. 874/8.

⁷ Cf. M. PASTUSZKO, *Prawo o sakramentach świętych. Normy ogólne i sakrament chrztu*, vol. 1, Warszawa 1983, pp. 289-292.

⁸ Cf. T. JAKUBIAK, *Zdatność do przyjęcia urzędu chrzestnego w Kościele łańskim*, *Prawo Kanoniczne* 60(2017), no. 2, p. 60; P.J. VERE, *Canon 874: Convicted Felon Fulfilling the Office of Godparent or Sponsor*, in: *Roman Replies and CLSA Advisory Opinions 2002*, eds. S. Pedone, J.I. Donlon, Washington 2002, pp. 107-108.

⁹ CIC/17 – abbr. of *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus. Benedicti Papae XV auctoritate promulgatus*, Romae 1917, AAS 9(1917)II; English translation: *The 1917 or Pio-Benedictine Code of Canon Law in English Translation with Extensive Scholarly Apparatus*, curator E.N. Peters, San Francisco 2001.

1.1. Analogy of norms in CIC/17 and CCEO

In the Pio-Benedictine Code, the norm analogous to that contained in CIC c. 874 § 1, 4^o was provided in an equivalent way (*aequivalenter*) with an incapacitating clause. Pursuant to CIC/17 c. 765 2^o, persons excommunicated, infamous by infamy of law or excluded from legitimate acts – under a condemnatory or declaratory sentence – could not validly perform the function of godparent.¹⁰ Also, the 1917 code explicitly did not permit the person punished with the aforementioned penalties, although not without a sentence, to take on the *munus* of a sponsor. Moreover, it barred the interdicted from serving as sponsors. For a change, these prohibitions, written in CIC/17 c. 766, 2^o, were related to liceity.¹¹

In the system of law of the Eastern Catholic Churches, Catholics who are excommunicated, suspended, deposited or punished by the deprivation of the right of acting in the function of sponsor cannot validly fulfil a godparent's *munus* (CCEO c. 685 § 1, 6^o).¹² Since the law of the Eastern Churches does not provide for the possibility of incurring a punishment by the very fact of committing a crime (there is no penalty *latae sententiae*), the aforementioned norm regulates, like

¹⁰ Cf. CIC/17 c. 10; H.A. AYRINHAC, *Legislation on the Sacraments in the New Code of Canon Law*, New York – London 1928, p. 48; P. CH. AUGUSTINE, *A Commentary on the New Canon Law*, vol. 4, *On the Sacraments (Except Matrimony) and Sacramental*, St. Louis – London 1920, p. 78; I. GRABOWSKI, *Prawo kanoniczne*, Warszawa 1948, p. 309; E. SZTAFROWSKI, *Prawo kanoniczne w okresie odnowy soborowej*, vol. 2, Warszawa 1979, p. 29; S. WOYWOOD, C. SMITH, *A practical commentary on the code of Canon Law*, vol. 1, New York – London 1948, pp. 390-391.

¹¹ Cf. F. BĄCZKOWICZ, J. BARON, W. STAWINOĞA, *Prawo kanoniczne. Podręcznik dla duchowieństwa*, vol. 2, Opole 1958, p. 14.

¹² Cf. D. SALACHAS, *Divine Worship, Especially the Sacraments*, in: *A Guide to the Eastern Code, A Commentary on the Code of Canons of the Eastern Code*, ed. G. Nedungatt, Roma 2002, pp. 504; D. SALACHAS, *De cultu divino et presertim de sacramentis*, in: *Commento al Codice dei Canoni delle Chiese Orientali. Studium Romanae Rotae. Corpus Iuris Canonici. II*, ed. P.V. Pinto, Roma 2001, pp. 571-572.

CIC c. 874 § 1, 4°, the capacity for a valid admission to the godparent's office of persons on whom penalties have been imposed.¹³

Unlike in CIC/17 and CCEO, in CIC c. 874 § 1, 4°, the legislator did not provide an explanation as to whether the norm contained in it relates to liceity or validity. Furthermore, the bishop of Rome did not include a closed catalogue of penalties that exclude the faithful from among those entitled to undertake the office of sponsor, as he did in other codes of the Catholic Church. In CIC c. 874 § 1, 4°, the pope, using a general formulation, stated that those who have been bound by any canonical penalty (*poena canonica*), legitimately imposed or declared, must not be permitted to the *munus* of a godparent.

When conducting research on the analogy of the aforementioned laws, it should be noted that the existence of similarities between the norms enshrined in CIC/17 and CCEO, containing an incapacitating clause, and the norm enshrined in CIC c. 874 § 1, 4° does not authorise the thesis that all those who are not free from any canonical penalty, legitimately imposed or declared, cannot be validly permitted to acquire godparent dignity in the Latin Church. As stipulated by the legislator in CIC c. 18, laws restricting the free exercise of rights are subject to strict interpretation. Hence, due to the absence of an incapacitating clause in CIC c. 874, while taking into account the norms enshrined in CIC cc. 17 and 19, it is not possible to use the rule of legal inference *per analogiam* in order to determine the consequences of failure to comply with the criterion enshrined in CIC c. 874 § 1, 4°.¹⁴

¹³ Cf. F. LEMPA, *Podstawowe zasady wymierzania poprawczych kar kanonicznych*, Civitas et Lex 16(2017), no. 4, p. 34; J. SYRYJCZYK, *Kanoniczne prawo karne. Część ogólna. Komentarz*, Warszawa 2008, p. 69.

¹⁴ Cf. U. NOWICKA, *Wzajemne powiązania KPK i KKKW na płaszczyźnie ich autonomicznego funkcjonowania*, Prawo Kanoniczne 55(2012), no. 2, pp. 67-185; J. KRZYWDA, *Sakramenty*, in: *Komentarz do Kodeksu prawa kanonicznego. Księga IV. Uświęcające zadanie Kościoła*, vol. III. 2, eds. W. Góralski, E. Górecki, J. Krukowski, J. Krzywda, P. Majer, B. Zubert, Poznań 2011, p. 61; K. NIŃKIEWICZ, *Chrzest dziecka w małżeństwie mieszanym*, Roczniki Nauk Prawnych, vol. XVII, 2007, no. 2, p. 72.

In the present case, however, the comparative analysis shows that in relation to the norms set out in CCEO c. 685 § 1, 6°, CIC/17 c. 765, 2°, and CIC/17 c. 766, 2°, the legislator extended the subjective scope of the prohibition enshrined in CIC c. 874 § 1, 4° to all those with the declared or imposed penalty. After the reform of the law in 1983, all the medicinal (*poenae medicinales*) and expiatory penalties (*poenae expiatoriae*), imposed or declared (CIC cc. 11, 1312 § 1-2, 1331-1333, 1336), have become the punishments excluding the faithful from the group of candidates for godparents.

1.2. Purposes of the existence of penalties

The purposes, for which there are penalties in the Catholic Church, seem to confirm the grammatical interpretation of the norm written in CIC c. 874 § 1, 4°, according to which all those bound by any medicinal and expiatory penalties, whether imposed or declared, are excluded from the possibility of undertaking a baptismal *munus*.

By introducing penalties into the ecclesiastical legal system, the legislator aims to: repair the scandal, restore justice and, most importantly, reform the offender.¹⁵ It is important to remember that the declaration and imposition of penalties should only be made when other measures to achieve the purposes of the penalties have failed.¹⁶ This means that the persons punished with them, in principle, do not constitute an example of a Christian life, because their conduct requires improvement, which is confirmed in a judicial

¹⁵ Cf. V. DE PAOLIS, *The Application of Penalties*, in: Exegetical Commentary on the Code of Canon Law, eds. Á. Marzoa, J. Miras, R. Rodríguez-Ocaña, English language eds E. Caparros, P. Lagges, vol. IV/1, Montreal-Chicago 2004, p. 365.

¹⁶ Cf. T. JAKUBIAK, *Czy zawsze po uzyskaniu informacji o możliwości popełnienia przestępstwa należy wszczynać karne postępowanie sądowe, lub administracyjne, dla realizacji sankcji karnej?*, Prawo Kanoniczne 59(2016), no. 1, pp. 118-131; J. SYRYJCZYK, *Niektóre gwarancje sprawiedliwego wymiaru kar w Kodeksie prawa kanonicznego z 1983 r.*, Prawo Kanoniczne 34(1991), no. 3-4, p. 158; J. SYRYJCZYK, *Kanoniczne prawo karne...*, p. 259.

or administrative process ended with a declaration or imposition of a penalty.¹⁷

However, this thesis has a weak point. It is impossible not to notice that not all the people who are bound with expiatory penalties require further betterment. The penalties referred to in CIC c. 1336 do not cease when the offenders correct their conduct, but only when they adequately compensate for their criminal act.¹⁸

1.3. The principle of the legislator's rationality

Although it is difficult to justify the thesis formulated via a grammatical interpretation of CIC c. 874 § 1, 4° that the existence of penalties in the Catholic Church is justified by their purposes, the opinion that the legislator excluded from the possibility of acquiring the task of a sponsor all those bound by the penalty imposed or declared, regardless of its effects, finds justification in the principle of the legislator's rationality.¹⁹ According to this principle, it should be assumed that if the legislator intended to limit oneself in CIC c. 874 § 1, 4° to penalties directly and indirectly related to the possibility of acquiring and performing the godparent's function, such a will would be explicitly expressed in it, as was done in CIC/17 cc. 765, 2° and 766, 2°, and CCEO c. 685 § 1, 6° – forbidding the faithful who have been punished with specific penalties to undertake the godparent's function. A rational legislator that decided to exclude from the possibility of taking on the sponsor's function persons punished with penalties directly related to the possibility of fulfilling the sponsoring *munus*, could also resign from including in CIC c. 874 § 1 the ban on permitting persons punished with ecclesiastical penalties to perform the sponsoring function. In such a situation, thanks to the systemic interpretation, such a prohibition would be formulated anyway on the

¹⁷ Cf. W.H. WOESTMAN, *Sacraments Initiation, Penance, Anointing of the Sick. Commentary on Canons 840-1007*, Bangalore 2001, p. 69.

¹⁸ Cf. J. SYRYJCZYK, *Kanoniczne prawo karne...*, pp. 55, 237.

¹⁹ Cf. P. KANTOR-KOZDROWICZ, *Racjonalność prawodawcy jako paradygmat nauk prawnych*, *Folia Iuridica Universitatis Wratislaviensis* 7(2018), no. 1, pp. 95-109.

basis of the provisions determining the consequences of ecclesiastical penalties, and the norm included in CIC c. 874 § 1 would constitute a statutory *superfluum*.

To conclude this part of the considerations, it should be noted that the interpretation of the norm in CIC c. 874 § 1, 4° made by reference to the purposes of the existence of penalties in the Church and the principle of the rationality of the legislator, apart from determining the subjective scope of persons bound by the prohibition of admission to the function of sponsor, referred to in the aforementioned canon, does not allow to determine the consequences of violation of this prohibition. The explanation of the hypothesis formulated in the introduction proves to be helpful in the systemic interpretation of the norm, carried out by the analysis of the consequences of ecclesiastical penalties and their impact on the capacity to take on a godparent's task.

1.4. Consequences of ecclesiastical penalties

The analysis of the effects of medicinal and expiatory penalties allows us to formulate the hypothesis that some of them seem to have no connection – even indirect – with the possibility of acquiring or performing godparent's duties. This lack of linkage, considered through the prism of the consequences of penalties, makes it difficult to find a reason for which the legislator excluded all those on whom any penalty has been imposed or declared from the people who could undertake the sponsor's task. Penalties that seem to be reconcilable with performing the function of godparent may include, for example, the penalty of suspension (CIC c. 1333) or the penalty of deprivation of insignia (CIC c. 1336 § 1, 2°).

Medicinal and expiatory penalties also include the penalties whose effects are directly related to the possibility of undertaking a godparent's *munus*. These include excommunication. Whether imposed or declared, it results in the incapacity of the punished person to acquire validly a *munus in Ecclesia*, that is, among other things, a sponsor's function (CIC c. 1331 § 1 n. 3, § 2, 4°). However, the question remains open whether among expiatory punishments the penalty of

deprivation of right (*ius*), referred to in CIC c. 1336 § 1, 2°, may also directly contribute to the invalid undertaking of the godparent's function. If one were to consider that the *ius*²⁰ referred to in this norm concerns the baptised person's right to take on the godparent's *munus*, then the persons punished with the aforementioned expiatory penalty would probably also lose their ability to acquire validly the task of a sponsor.²¹

It is worth noting that the possibility of punishing the faithful with the penalty incapacitating to undertake a sponsor's *munus* was provided for by the legislator in CCEO c. 685 § 1, 6° (*privationis iuris patrini munus gerendi punitus*). However, CIC does not explicitly mention such a penalty. Di Mattia indirectly advocated the existence of a norm among the CIC provisions authorising deprivation the faithful of their personal right to take on the godparent function. He believed that norms defining vindictive penalties of CIC/17 c. 2291 7-10° were included in CIC c. 1336 § 1, 2°.²² Among them was the prohibition of exercising legitimate ecclesiastical acts (*actus legitimi ecclesiastici*) specified in CIC/17 c. 2256, 2° – i.e., the prohibition to exercise the function of sponsor (CIC/17 c. 2291, 8°).²³ Hence, following the reasoning of the canonist mentioned above, we may conclude that he believed that nowadays CIC c. 1336 § 1, 2° may constitute a legal basis for imposing on the faithful a ban on acquiring the sponsor's office.

²⁰ The term *ius, iuris* was used to describe subjective law– J. DUDZIAK, *Wprowadzenie do nauki prawa kanonicznego. Pomoc akademicka dla studentów teologii*, Tarnów 2002, p. 11.

²¹ Cf. G. DI MATTIA, *Expiatory Penalties*, in: *Exegetical Commentary on the Code of Canon Law*, eds. Á. Marzoa, J. Miras, R. Rodríguez-Ocaña, English language eds. E. Caparros, P. Lagges, vol. IV/1, Montreal-Chicago 2004, p. 345.

²² Cf. G. DI MATTIA, *op.*, cit. 345.

²³ Cf. F. BĄCZKOWICZ, J. BARON, W. STAWINOĞA, *Prawo kanoniczne. Podręcznik dla duchowieństwa*, vol. 3, Opole 1958, pp. 434, 465; CH. AUGUSTINE, *A Commentary on The New Code of Canon Law*, vol. 8, *Book V. Penal Code (Can. 2195-2414)*, London 1922, p. 249.

Let us return to the interrupted thread. When analysing the effects of ecclesiastical penalties, it can also be seen that the possibility of taking on a godparent's office is indirectly linked to an interdict. After its imposition or declaration, the candidate for a sponsor should be removed from the baptismal ceremony or the liturgical act of baptism should be stopped if the sponsor punished with this medicinal penalty is present there, actively participating in the liturgy. The effect of this penalty may be suspended if a grave cause precludes its implementation (CIC cc. 1331 § 2, 1^o, 1332).

Another example of an indirect relationship between the effects of penalty and the possibility to exercise one's sponsor's duties is the prohibition or order to stay in a specific place or territory (CIC c. 1336 § 1, 1^o). Imposing this expiatory penalty may prevent godparents from having any permanent or prolonged contact with their godchildren; as a result the sponsors may not be able to fulfil their obligations.

Summing up this part of the discussion, we can conclude that the analysis of the norm in CIC c. 874 § 1, 4^o shows that the bishop of Rome excluded from the possibility of acquiring the *munus* of a sponsor all the faithful who are bound by the ecclesial penalty, declared or imposed, both medicinal and expiatory. The consequences of violating this prohibition are not the same in every case. Failure to comply with the norm proclaimed in the provision under consideration may affect the liceity or validity of the punished person's admission to the godparent's task. This is related to the consequences of individual penalties.

Excommunication is the penalty that effectuates the invalidity of admitting the faithful to the sponsor's function. As we read in CIC c. 1331 § 2, 4^o, the persons to whom it was imposed or declared cannot validly perform ecclesiastical functions, and thus, the sponsor's *munus* (cf. CIC c. 874 § 1, 4^o; CCC, n. 1255). The second penalty, which results in the invalid acquiring of the sponsor's office, is – as described above – the penalty of deprivation rights, which the legislator regulates in CIC c. 1336 § 1, 2^o. The deprivation of the right to take on the office of sponsor incapacitates the person to validly acquire this function.

The invalidity of undertaking a godparent's *munus* may also be indirectly related to the consequences of the penalty imposed or declared. If they prevented the performance of the godparent's tasks (but not in the short term) then, according to the principle of *Impossibilia nulla obligatio est*, the faithful would invalidly take on the obligations associated with the office of sponsor and thus invalidly acquire the office itself. For the *munus* of a godparent exists for the performance of the duties associated with it.

2. Parents

According to the tradition of the Church dating back to the fifth century, which is reflected in CIC c. 874 § 1, 5°, neither the father nor the mother of the baptised person can assume the function of a godparent.²⁴ Unlike the 1917 code (CIC/17 c. 765, 3°) and the code promulgated for the Catholic Churches of Eastern rites (CCEO c. 685 § 1, 5°), which contain similar norms prohibiting the admission of the baptised person's parents to the *munus* of a sponsor, the 1983 code does not contain an invalidating clause.

In response to the question about the consequences of breaching the prohibition contained in the norm, it is necessary to refer to a teleological interpretation of CIC c. 874 § 1, 5°.

2.1. Infant baptism

Both the doctrine and the discipline of the Church's *ratio legis* of this law, which excludes parents of the baptised person from the group of potential candidates for sponsors, see the nature of the godparent's *munus* – which is secondary to the nature of the mission performed by parents in relation to their child.²⁵ This teaching is particularly evident

²⁴ Cf. *Leksykon liturgii*, ed. B. NADOLSKI, Poznań 2006, p. 258; L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, vol. 2, Bologna 2011, p. 118.

²⁵ Cf. M. BLANCO, *Baptism*, in: Exegetical Commentary on the Code of Canon Law, eds. A. Marzoa, J. Miras, R. Rodriguez-Ocaña, English language eds. E. Caparros, P. Lagges, vol. 3/1, Montreal-Chicago 2004, p. 481; R. ALTHAUS, op. cit., kan. 874, p. 874/8.

when it emphasises the importance of the sponsor's function and the accepted obligations in the circumstances in which parents fail to fulfil their natural duty to educate the child in faith.²⁶ This obligation of the godparents for persons without the use of reason is noted in the *General Introduction* to the Rite of baptism for infants and adults.²⁷ In this document, the godparents are presented as representatives of both the baptised family (understood physically and spiritually) and the ecclesial community. They are to support parents in their efforts to increase their child's faith when necessary.

It is worth noting here that the Sacred Congregation for the Doctrine of the Faith in the *Instruction on Infant Baptism* of 1980, when speaking about the auxiliary function in raising a child that the sponsors perform in relation to his parents, drew attention to its relevance not only in circumstances in which the assistance of godparents is necessary.²⁸ It emphasized that godparents fulfil their obligations also when the infant's parents show due care for the upbringing of their offspring. In a similar vein, CIC can. 872 was formulated, but interpreted with the help of a systemic interpretation, it allows constructing a norm that does not diminish the primary importance of the role of parents in raising children.

The secondary character of the sponsor's function in relation to the tasks of parents of infants receiving baptism was also noted in the *Introduction to the Rite of Baptism for Children*.²⁹ As the document

²⁶ Cf. L. CHIAPPETTA, op. cit., p. 118.

²⁷ *Praenotanda Generalia*, no. 8, in: *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II Instauratum Auctoritate Pauli PP. VI Promulgatum Ordo Baptismi Parvulorum*, Editio typica altera 1986 (Nova impressio 2003), Typis Polyglottis Vaticanis, s. 9; English translation: *General Introduction*, no. 8, in: *Christian Initiation*, available at: <https://www.liturgyoffice.org.uk/Resources/Rites/CIGI.pdf> (accessed on 10 August 2019).

²⁸ Cf. *Pastoralis action*, no. 29, pp. 1151-1152.

²⁹ *Praenotanda*, no. 5, in: *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II Instauratum Auctoritate Pauli PP. VI Promulgatum Ordo Baptismi Parvulorum*, Editio typica altera 1986 (Nova impressio 2003), Typis Polyglottis Vaticanis, s. 16; English translation: *Introduction*, no. 5, in: *Rite of Baptism for*

cited above states, the priority of the tasks and activities of parents in baptising an infant over the tasks of godparents is enshrined in natural law, which must be safeguarded by the Church.³⁰

Considering the support in bringing up infants that their godparents are obliged to give to their parents, it can be concluded that the constitutive element of the act of assuming the function of the infant's sponsor is the consent to assist the parents in raising their offspring. This servient character of the function of sponsor in relation to the position of parents (guaranteed by natural law), based in turn on the principle of subsidiarity, is the *ratio legis* of the norm prohibiting the admission of the infant's parents to the sponsor's office. The definition of the *ratio legis* of the aforementioned prohibition clearly proves that the inability of parents to assume the function of sponsor is conditioned by the important purpose for which the institution of sponsor currently exists in the Church. A violation of this prohibition results in invalid acceptance of *munus*, because in accordance with the order of nature, the infant's parents cannot commit themselves to helping themselves. As Pighin notes, "The parents' mission in the Christian initiation of infants is already so important and complete that it does not accept even small additions that are attributed to the godparent's function".³¹

2.2. Adult baptism

The contemporary doctrine's justification for the prohibition of the infant's parents to accept a sponsor's office – that is by referring to the secondary nature of the godparent's *munus* in relation to the mission performed by the parents towards their child – does not exist in the case of godparents of the person who has unlimited rights in shaping his or her religion. When the natural rights of parents to educate their offspring are inferior to the natural right to freedom of

Children, available at: <https://www.liturgyoffice.org.uk/Resources/Rites/Baptism-Children.pdf> (accessed on 10 August 2019).

³⁰ Cf. *Pastoralis action*, no. 15, pp. 1144-1145.

³¹ Cf. B.F. PIGHIN, *op. cit.*, p. 123.

conscience and religion of their offspring, then the essential purposes for which a sponsor's office exists in the Church are different from those of the sponsor's function of persons who do not decide about themselves.³² The godparent of an adult no longer supports his or her parents in raising their offspring, but directly assists those who are baptised. This variety of purposes is clearly demonstrated by the aforementioned *General Introduction* to the Rite of Infant and Adult Baptism.³³ Sponsors of an adult helps him or her at least in the final preparations for the sacrament, and after baptism, they ensure that their godchild perseveres in faith and Christian life. The *Introduction to the Rite of Christian Initiation of Adults* draws attention, however, to the fact that the sponsor is chosen by an adult catechumen because of exemplary behaviour, good qualities, and friendship, as a delegate of the local Christian community, approved by the priest.³⁴

³² On the natural right to raise children and the exercise of the right to freedom of conscience and religion can be found in: K. WARCHAŁOWSKI, *Prawnokarna ochrona wolności religijnej w Polsce w latach 1932-1997*, *Studia z prawa wyznaniowego* 4(2002), p. 59; E. TEJERO, *The Teaching Office of the Church*, in: *Exegetical Commentary on the Code of Canon Law*, eds. A. Marzoa, J. Miras, R. Rodriguez-Ocaña, English language eds. E. Caparros, P. Lagges, vol. 3/1, Montreal-Chicago 2004, p. 19; SACROSANCTUM CONCILIIUM OECUMENICUM VATICANUM II, *Declaratio de libertate religiosa Dignitatis humanae*, no. 2, 21.II.1964, AAS 57(1965), pp. 930-932; *Konwencja o prawach dziecka przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r.*, art. 14, w: *Dz.U. z 1991 r. Nr. 120, poz. 526*; R. SOBAŃSKI, *Osoby fizyczne i prawne*, in: *Komentarz do Kodeksu Prawa Kanonicznego*, eds. J. Krukowski, R. Sobański, vol. 1, Poznań 2003, p. 168; J.P. MCINTYRE, *Status and Rules of Order*, in: *New Commentary on the Code of Canon Law*, eds. J.P. Beal, J.A. Coriden, T.J. Green, New York 2000, p. 143; kan. 98, 748 § 2, 852 § 1 KPK.

³³ *Praenotanda Generalia*, no. 8, in: *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II Instauratum Auctoritate Pauli PP. VI Promulgatum Ordo Baptismi Parvulorum*, Editio typica altera 1986 (Nova impressio 2003), *Typis Polyglottis Vaticanis*, p. 9.

³⁴ Cf. *Praenotanda*, no. 43, in: *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II Instauratum Auctoritate Pauli PP. VI Promulgatum Ordo Initiationis Christianae adultorum*, Editio typica, *Typis Polyglottis Vaticanis* 1972, p. 17; English translation: *Introduction*, no. 43, in: *Rite of Christian Initiation for*

Considering the important goals to be accomplished by a godparent of an adult, it seems possible to reconcile being both the candidate's parent and sponsor. Therefore, the prohibition existing in the ecclesiastical law must have a different *raison d'être*. It seems to be the Church's tradition, which began to be formed in the sixth century. Then, when describing the effects of baptism, a stronger emphasis was placed on the spiritual relationship arising between the baptised and his godparents than on the natural bonds existing between the infant and his parents. It was believed that God himself was the creator of the spiritual bond.³⁵ Its existence caused an impediment to marriage in the Latin Church until 1983, and in the Eastern Catholic churches it still causes such an impediment (CIC/17 cc. 768 and 1079; CCEO c. 811 § 1).

According to St. Thomas Aquinas, the reason for choosing godparents other than the parents of the baptized person was the desire to highlight the differences between the spiritual generation that occurs at baptism and carnal generation. The choice of people other than parents clearly showed the importance and value of spiritual generation. A godparent was said to be a midwife, nurse and tutor. Assigning a parent for this function could make it difficult for believers to understand one of the effects of baptism, which is spiritual generation. According to Thomas, this ban was not absolute. The author of *Summa Theologica* provided for the possibility of admitting a parent to the sponsor's function if necessary.³⁶ At this point it is worth mentioning that history knows cases when the child's

Adults, available at: <http://www.catholicliturgy.com/index.cfm/FuseAction/documentText/Index/14/SubIndex/0/ContentIndex/541/Start/539> (accessed on 10 August 2019).

³⁵ Cf. W. WĄSIK, *Instytucja rodziców chrzestnych od czasów starożytnych do prawa dekretalów*, Kieleckie Studia Teologiczne 16(2017), p. 271.

³⁶ Cf. THOMAS AQUINATUS, *Summa Theologica*, Tertia Pars, q. 67, art. 7-8, in: Thomas Aquinatus, *Summa Theologica*, vol. 8, Matriti 1797, pp. 398-400; English translation: *The „Summa Theologica” of St. Thomas Aquinas, Part III. Literally translated by Fathers of English Dominican Province*, Third Number (QQ. LX.-LXXXIII), London 1914.

parents were sponsors, however such a situation was usually treated as inappropriate.³⁷

Although at present there is still an impediment of spiritual relationship in the tradition of the Eastern Churches, hardly anyone in the Catholic Church places the function of sponsor above the role of the baptised person's parents. Today, there is a departure from the view promoted by the Roman Catechism of 1566, which equated the position of godparents in the education of the baptised persons with the position of their natural parents.³⁸

Church documents, while respecting the natural rights of parents to educate an infant and emphasising the superior character of their role in baptism, no longer underline so strongly the spiritual parenthood of sponsors, but highlight the auxiliary nature of their function. Such a shift of emphasis in the modern teaching of the Church makes it possible to conclude that, apart from the tradition of the Church, it is difficult to find another reason justifying the extension of the prohibition to undertake the function of sponsor by the infant's parents to the parents of the adult candidate for baptism. The violation of the norm in CIC c. 874 § 1, 5° by parents of an adult catechumen does not seem to affect the validity of the accepted office. At this point, it should be noted that the pastoral effects of breaking this prohibition are different in the case of baptism of an adult and a minor who has recently attained the use of reason.

Conclusion

The differences existing in CIC, CIC/17, and CCEO in the regulation of the criteria to be met by a candidate for sponsor before admission

³⁷ Cf. *Corpus Iuris Canonici*, Pars Prior, Decretum Magistri Gratiani, Lipsiae 1879, Pars II, C. XXX, q. I, c. I, col. 1096; L. CHIAPPETTA, *op. cit.*, p. 118; R.E. PADILLA, P.J. VERE, *Canon 874: Birth Parent Acting as Godparent in Cases of Adoption*, in: *Roman Replies and CLSA Advisory Opinions 2003*, eds. S. Pedone, J.I. Donlon, Washington 2003, pp. 59-61.

³⁸ Cf. *The Catechism of the Council of Trent published by command of Pope Pius the Fifth*, translated by J. DONOVAN, *On the Sacrament of Baptism*, Baltimore 1829, p. 121.

to a sponsor's *munus* do not legitimise the interpretation of CIC c. 874 § 1, 4° by means of the rule of legal inference *per analogiam* or the recognition of the norm contained therein as an incapacitating act, or narrowing its subjective scope. The inapplicability of such an interpretation arises from the nature of the provision in question.

Since the norm contained therein restricts the free exercise of rights, it must be interpreted strictly. Therefore, by its grammatical analysis we can formulate the thesis that the legislator in CIC c. 874 § 1, 4° has deliberately excluded all those punished with imposed or declared penalties from the possibility of undertaking a godparent's *munus* and that the consequences of non-compliance with the criterion contained in it do not always have to be the same, unlike the consequences of violating the analogous norms enshrined in CIC/17 and CCEO.

Failure to comply with the norm enshrined in CIC c. 874 § 1, 4° may result in the invalidity or illicitity of admitting an unsuitable candidate to the sponsor's *munus*. This invalidity may be directly related to the effects of ecclesiastical penalties. Some of the penalties incapacitate Catholics to validly acquire a godparent's office directly (excommunication, interdict, deprivation of right). Invalidity may also become an indirect result of the penalty imposed or declared. This situation occurs when the Catholic who has been assigned as sponsor is unable to perform obligations that are essential to the sponsor's *munus* (e.g. as a result of a long-term ban on staying in a particular territory) because of the punishment.

As for the norm in CIC c. 874 § 1, 5°, according to which the parents of the baptismal candidate cannot be sponsors, it seems that the consequences of its violation depend on whether an infant or an adult is to be baptised. This difference is due to the fact that the obligations essentially related to the godparent's *munus* are not the same for the sponsors of those who have the full right to exercise their freedom of conscience and religion, and the sponsors of those on behalf of whom someone else exercises this right. As a consequence, the thesis can be formulated that it is probable that in the case of infant baptism the norm written in CIC c. 874 § 1, 5° is associated with the invalidity of

the sponsor's function, and in the case of adult baptism it is associated with the illicit of admission of the father or mother of the baptismal candidate to the sponsor's *munus*. In the latter case, it seems that although the law explicitly prohibits such proceedings, the parent of an adult candidate for baptism is able to fulfill the duties associated with the sponsor's office. Moreover, the fact that a parent assumes the sponsor's function of an adult baptismal candidate does not contradict the nature of that office. For pastoral reasons, being both a sponsor of the minor who has attained the use of reason and his or her parent seems incompatible.

Criteria set out in CIC c. 874 § 1, 4°-5° and the validity of admission to the *Munus* of sponsor

A person to be baptized should, insofar as possible, be given a sponsor who – before being admitted to undertaking the office – must satisfy the criteria specified in CIC c. 874. Among them are the requirement of being free from any canonical penalty, according to the law imposed or declared, and not being the father or mother of the one to be baptized. Unfortunately, neither the doctrine nor the discipline of the Latin Church explicitly state whether non-compliance with the requirements set out in CIC c. 874 § 1, 4°-5° affects the validity or only liceity of acquiring the sponsor's *munus*. Given this lack, the author of this article has set himself the goal of answering this doubt.

KEYWORDS: baptism; parents; penalties; sponsors

SŁOWA KLUCZOWE: Chrzest; rodzice; kary; chrzestni

NOTA O AUTORZE

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