

KS. DR WOJCIECH WITKOWSKI SDB – asystent
Katedra Kościelnego Prawa Procesowego, Instytut Prawa Kanonicznego KUL, Wydział
Prawa, Prawa Kanonicznego i Administracji, Katolicki Uniwersytet Lubelski Jana Pawła II
Al. Raławickie 14, 20-950 Lublin, Poland
e-mail: boski4@poczta.onet.pl

Measures of Proofs' Consideration in the Canonical Trial of Nullity of Marriage

Summary

Evidentiary procedure is elementary part of every court process. The judge derives moral certitude (which is necessary to pronounce the sentence) from the proofs. Cumulation of the evidences is not enough – the judge needs to weigh them. The procedural canon law uses two different systems of weighing proofs: system of formal truth and system of free appraisal of evidence. The number of evidences and their sources demands pointing the way they were verified. The first measure is usefulness of evidence for the case. The first analysis of usefulness should be done by the parties, who adduce or deliver such a proof. The judge can decide that some of proofs have no connection with the case. Next measure of proofs is licitness. When the proof is not licit or it was gained indecent way, it cannot be used in trial. Very similar measure to licitness is legitimacy. As far as evidentiary prohibitions, validity of legal acts and penal protection of evidentiary means are concerned legitimacy is seen in the same way as licitness. Another criteria is presumption of certain proof's probative force which coming from legal presumptions included in legal provisions. Important group of legal criterions are formal requirements such as time, form and way of adducing the proofs. There can be applied means which enhance proof's credible for confirmation of proof's probative force. The personal evidentiary means as declaration of the parties and testimonies should be strengthen by an oath and testimonial letters. Meanwhile for the material proofs as documents it is needed presumption that they arose in *tempore non suspecto*.

Translated by Anna Terpin

Słowa kluczowe: proces kanoniczny, pewność moralna, strony, sędzia, domniemanie prawne

Key words: canonical trial, moral certitude, parties, judge, legal presumption