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THE CRITERIA STIPULATED IN CANON 874 § 1, 1^o-2^o
OF THE CODE OF CANON LAW AND THE VALIDITY
OF TAKING ON THE *MUNUS* OF SPONSOR

INTRODUCTION

It is a very ancient custom of the Church that a person to be baptized must have at least one sponsor.¹ Even though his or her presence does not affect the validity of baptism, it proves to be a significant element of the Christian initiation of the person being baptized. In the case of baptism administered to a person who has attained the use of reason, the task of the sponsor is to accompany the baptized person in their Christian initiation. When baptism is administered to a person who has not attained the use of reason, the sponsor presents the infant for baptism together with the parents, and helps ensure that the baptized person leads a Christian life in keeping with the received sacrament, and faithfully fulfills the obligations inherent to it [CIC, c. 872].²

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¹ Cf. *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 impression 2003), Roma: Typis Polyglottis Vaticanis 2003, p. 9; English translation: *General Introduction*, no. 8, in: *Christian Initiation*, [in:] <https://www.liturgyoffice.org.uk/Resources/Rites/CIGI.pdf> [accessed on: 10.08.2019].

² *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1–317 [CIC]; English translation: *Code of Canon Law. Latin – English edition. New English translation*, Washington: Canon Law Society of America 1999.

The criteria used to verify the eligibility of candidates to the office of sponsor in the Latin Church have been codified by the legislator in c. 874 CIC. They include, without limitation, the requirement that a candidate sponsor must: 1) be designated by the one to be baptized, by the parents or the person who takes their place, or in their absence by the pastor or minister; 2) have the required aptitude; 3) have the intention of fulfilling the tasks of sponsor; 4) have completed the sixteenth year of age, unless the diocesan bishop has established another age, or the pastor or minister is of the opinion that a just cause substantiates the granting of an exception [CIC, c. 874 § 1, 1^o-2^o CIC].

Unlike in the case of CIC/17 and CCEO, the legislator has not specified whether the criteria stipulated in c. 874 CIC are related to the liceity or to the validity of taking on the office of sponsor.³ The above-mentioned codes did provide for the difference between the two. While analogous provisions laid down in c. 765 CIC/17 and c. 685 § 1 CCEO specify conditions affecting the validity of taking on the office of sponsor, the provisions stipulated in c. 766 CIC/17 and c. 685 § 2 CCEO affect only the liceity of being admitted to the office [AYRINHAC 1928, 48; AUGUSTINE 1920, 78; GRABOWSKI 1948, 309; BĄCZKOWICZ, BARON and STAWINOĞA 1958, 13; SZTAFROWSKI 1979, 29; WOYWOOD, SMITH 1948, 390–91; SALACHAS 2002, 504; IDEM 2001, 571–72].

The absence of a distinction between those conditions to be satisfied by a candidate sponsor which are related to validity, and those affecting the liceity of being admitted to the office of godfather or godmother – unlike in CIC/17 and CCEO – was a deliberate editorial decision. This was pointed out by members of the codification committee working on a reviewed version of cc. 27 and 28 (former cc. 765 and 766 CIC/17) in April 1978.⁴ The absence of a disqualifying or invalidating clause in provisions regulating the conditions to be satisfied by candidates to the office of sponsor does not necessarily imply that they are only related to liceity.⁵ The invalidity of a legal act may also result from the absence

³ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus. Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars. II, pp. 1–594 [CIC/17]; English translation: *The 1917 or Pio-Benedictine Code of Canon Law in English Translation with Extensive Scholarly Apparatus*, cur. E.N. Peters, San Francisco: Ignatius Press 2001. *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), pp. 1045–1364 [CCEO]; English translation: *Code of Canons of Oriental Churches, Latin – English edition. New English translation*, Washington: Canon Law Society of America 1999.

⁴ Cf. *Ex Actis Pontificiae Commissionis Codicis Iuris Canonici Recognoscendo. Coetus studiorum «De sacramentis», Conventus 17-21.04.1978*, “Communicationes” 13 (1981), no. 1, pp. 229–30.

⁵ The Author’s findings based on analyses of the character of the norm stipulated in CIC c. 874, seen as a whole, without examining its individual components (i.e. the individual criteria) have been presented in the article: JAKUBIAK 2019, 431–47.

of a constitutive element required for its performance, or from a failure to comply with the precepts of divine law [CIC, c. 124 § 1; DUDZIAK 2002, 15–18; PAWLUK 2002, 24–25].

The question is, therefore, whether in spite of the absence of a disqualifying or invalidating clause, the criteria laid down in c. 874 § 1, 1^o-2^o CIC affect the validity of taking on the office of sponsor. This article is an attempt at answering this question.

1. DESIGNATION

Among the criteria to be met by candidates in order to be admitted to the office of sponsor in the Latin Church, the legislator first lists the requirement of being designated by a competent person. As results from c. 874 § 1, 1^o CIC, a sponsor must “be designated by the one to be baptized, by the parents or the person who takes their place, or in their absence by the pastor or minister”.

This requirement has been present in canon law for a long time. It was pointed out, for example, by the Council fathers at Trent. One of their decrees provides that: “The parish priest, before he proceeds to confer baptism, shall carefully inquire of those whom it may concern, what person or persons they have chosen to receive from the sacred font the individual baptized, and he shall allow him or them only to receive the baptized; shall register their names in the book, and teach them what relationship they have contracted, that they may not have any excuse on the score of ignorance. And if any others, besides those designated, should touch the baptized, they shall not in any way contract a spiritual relationship [...]”.⁶

The requirement that the sponsor must be designated by a person who has the use of reason or by the parents of a person who does not have the use of reason seems to stem from human rights as an element of divine law, and result from the purpose for which the office of sponsor exists in the Church. One of the fundamental legal rights vested in every person and inherent to their human dignity is the right to the freedom of conscience and confession [WARCHAŁOWSKI 2002; TEJERO 2004, 19].⁷ As a result of their subjective rights, every person is entitled to decide about their choice of religion and confession. The decision to be baptized, as well as the choice of persons who are responsible for assisting the catechu-

⁶ THE COUNCIL OF TRENT, *Session 24, Decree on the reformation of marriage*, November 1563, [in:] *The canons and decrees of the Sacred and Oecumenical Council of Trent*, trans. J. Waterworth, London–New York: Burns and Oates, Ld. – Catholic Publication Society Company 1848, pp. 200-201.

⁷ SACROSANCTUM CONCILIUM OECUMENICUM VATICANUM II, *Declaratio de libertate religiosa Dignitatis humanae* (21.11.1964), AAS 57 (1965), pp. 930–32, no. 2.

men in their growth in faith, must be made in compliance with human rights and liberties [CIC, c. 748 § 2].

The right to the freedom of conscience and religion may be exercised even by minors. In accordance with the *Convention on the Rights of the Child* of 1989, minors aged between ten and eighteen may exercise their subjective rights to a different extent.⁸ In c. 98 CIC, the church legislator stipulates that minors under the age of eighteen are not subject to the authority of parents or guardians in those matters in which they are exempted from their authority by divine or canon law. The decision to be baptized and to lead a life of faith is just such an exception in which minors who have attained the use of reason may, in accordance with divine law, autonomously exercise their right to the freedom of conscience and confession [SOBAŃSKI 2003b, 168; MCINTYRE 2000, 143]. This claim is supported by the provisions of c. 852 § 1 CIC which stipulate that “the prescripts of the canons on adult baptism are to be applied to all those who, no longer infants, have attained the use of reason”.

As far as the baptism of persons who have not attained the use of reason is concerned, the right to designate a sponsor is vested first of all in the parents. This right also stems from divine law. In accordance with natural law, parents are responsible for the upbringing and warrant the exercise of subjective rights vested in their children [STADNICZEŃKO 2015, 85–118; STRZESZEWSKI 1994, 426].⁹ This principle is reflected in the *Convention on the Rights of the Child* of 1989. With respect to the right to the freedom of conscience, Article 14.2 of the said document says: “States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right [to the freedom of thought, conscience, confession] in a manner consistent with the evolving capacities of the child”.

As regards the right to upbringing, Article 18.1 of the *Convention* says: “States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern”.

The power of persons other than the parents (listed in c. 874 § 1, 1^o CIC – that is, the persons who take their place – *ab eo qui eorum locum tenet* – for example

⁸ Cf. *Convention on the Rights of the Child*. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, [in:] https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf [accessed on: 10.09.2019], art. 14.

⁹ Cf. *Catechism of the Catholic Church*, Vatican City: Libreria Editrice Vaticana 1994, no. 2201.

the legal guardians, or, in their absence, the pastor or minister) to designate a sponsor for a person who habitually lacks the use of reason stems from outside divine law. Unlike the right of parents, it results from positive law, which in turn stems from the principle of subsidiarity and common good.¹⁰

Failure to comply with the requirements of divine law – which grants to all those who have attained the use of reason the right to decide about themselves in matters of the freedom of conscience and confession, and makes it obligatory for parents to raise their children (which includes their religious education) and to guard their liberties – when designating a sponsor certainly contradicts the purpose for which the office of godfather and godmother exists in the Church. Since the sponsor of an adult should “show the catechumen in a friendly way how to practice the Gospel in personal and social life, help them resolve their doubts and concerns, bear witness, and guard the growth of life received through baptism”,¹¹ and the sponsor of an infant should support the parents in helping the child come to profess the faith and manifest it in his or her life,¹² a candidate to the office of sponsor should be a person elected and consequently designated by those who decide to be baptized as adults, or who ask for baptism to be conferred to their child.

If sponsors cannot be designated by the parents of the child, the right of the person who takes their place, and in the absence of such a person, the right of the parish priest or minister to designate a sponsor stems from positive law. Failure to comply with its requirements may (but does not have to) hinder the fulfillment of purposes for which the office of sponsor exists in the community of the Church. Taking into account the rights vested in persons who take the place of parents (e.g. legal guardians) of persons who habitually lack the use of reason, and considering the role performed at baptism by the parish priest and the minister, it appears that the absence of approval granted to the sponsor by the said persons does not necessarily affect the fulfillment of the legal tasks of sponsors in the same way. It will certainly be easier for a sponsor designated by the legal guardians of an infant and not approved by the minister to fulfill the obligations assumed at baptism, than for a sponsor who has been designated by the minister and not approved by the legal guardians of the infant.

¹⁰ Cf. PIUS PP. XI, Litterae encyclicae *Quadragesimo anno* (15.05.1931), AAS, 23 (1931), p. 203, no. 80–81, IOANNES PP. XXIII, Litterae encyclicae *Mater et magistra* (15.05.1961), AAS 53 (1961), p. 418.

¹¹ *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, Roma: Typis Polyglottis Vaticanis 1972, p. 17; English translation: *Introduction*, [in:] *Rite of Christian Initiation for Adults*, [in:] <http://www.catholicliturgy.com/index.cfm/FuseAction/documentText/Index/14/SubIndex/0/ContentIndex/541/Start/539> [accessed on:10.09.2019], no. 43.

¹² Cf. *Praenotanda Generalia*, no. 8.

To sum up the above reflections, it appears that the designation of a sponsor by the catechumen in the case of baptism administered to adults (within the meaning of regulations applicable to baptism) and by the parents of an infant (within the meaning of regulations applicable to baptism) [CIC, c. 852] represents a criterion in the legal order of the Latin Church related to the validity of taking on the office of sponsor under divine law and in view of the purposes for which the office of sponsor exists in the Church. As far as the other persons competent to designate a sponsor are concerned, it is less clear whether designation by persons other than the parents and the catechumen affects the validity of taking on the office of sponsor. Invalidity of taking on the tasks of sponsor could in such case depend on the inability to fulfill the obligations assumed by the sponsor – strictly related to the purposes for which the office exists in the Church.

When discussing the potential invalidity of taking on the *munus* of sponsor by one not designated by persons authorized to do so by the legislator, it should also be considered whether invalidity in such circumstances is not the result of the absence of an essential element constituting the act of entrusting the office of sponsor – which is the act of designation (as such) [CIC, c. 124 § 1]. In resolving this uncertainty, it may be helpful to refer to the provisions included in the *Rite of Baptism for Children*. In the Latin text of the *Rite*, the criterion of designation (or, more precisely, of election – *electio*) is found in the introduction to the entire provision *Praenotanda Generalia* n. 10. It reads as follows: “Therefore godparents, chosen by the catechumens or by the families of children to be baptized, must, in the judgment of the parish priest (pastor), be qualified to carry out the proper liturgical functions mentioned in no. 9” (*Propterea, de iudicio animarum pastoris, patrinus, a catechumeno vel familia electus, oportet his dotibus sit praeditus, ut actus liturgicos sibi proprios, de quibus sub n. 9, praeferat*).¹³

The structure of this provision and the assumption that, when wording its stipulations, the legislator was following the principles of logic justify the conclusion that the election (*electio*) of a sponsor by the catechumen or by the parents, and the sponsor’s admission to the office of godfather or godmother has a different legal value than the criteria specified in nos. 10.1-6. As far as the provisions of *Praenotanda Generalia* no. 10.1 are concerned [regulating the matter of the sponsor’s designation (*designatio*) by a competent person], its role is to add precision to the introductory sentence of the said provision. It specifies the persons competent to designate (*designatio*) a sponsor for a person who habitually lacks the use of reason, if the act (of election - *electio*) cannot be performed by the infant’s parents. Consequently, the election (*electio*) of a sponsor by the catechumen or by the

¹³ Cf. *Praenotanda Generalia*, no. 10.

parents has a different legal value than the designation (*designatio*) of a sponsor by persons taking the place of parents, and in their absence – by the minister or the parish priest. In addition, an analysis of the structure of this provision supports the claim that in the event a sponsor cannot be designated by the parents of an infant to be baptized, the designation (*designatio*) of a sponsor represents a necessary criterion which should be taken into account when admitting a person to the office. The structure of the provision does not make it clear, however, whether the catalogue of persons authorized by the legislator to designate a sponsor in the event such designation cannot be performed by the parents represents, together with such designation, an integral element of regulations affecting the validity of taking on the office of sponsor. It appears that the catalogue of persons listed in *Praenotanda Generalia* n. 10.1 (restated in c. 874 § 1, 1^o CIC) as those authorized to designate a sponsor may, with some likelihood, be considered a closed catalogue, which, together with the requirement to designate a sponsor, is related to the validity of taking on the office of sponsor under canon law.

It should be emphasized that in c. 685 § 1, 4^o CCEO, the designation of a sponsor by competent persons is a criterion related to the validity of being admitted to the office. The same was the case in the Code of the Latin Church previously in force [CIC/17, c. 765, 4^o].

2. APTITUDE

The second criterion to be satisfied by a candidate sponsor is „aptitude« , as referred to by the legislator in c. 874 § 1, 1^o CIC. In pastoral practice, this condition is often marginalized when assessing the eligibility of candidates to the office of godmother or godfather. This is probably the consequence of the fact that it has not been described by the legislator with more precision. In CCEO and CIC/17, this criterion was not included.

In order to specify the qualifications necessary for a person to become a godfather or godmother, it is necessary to refer to: the purposes for which the office of sponsor exists in the Church, the duties taken on by sponsors, and the qualities which they should display. They have been specified by the legislator both in CIC and in the rites of baptism for infants and adults. They differ depending on whether the person to be baptized has attained the use of reason or not [CIC, c. 872].¹⁴

¹⁴ Cf. *Praenotanda Generalia*, no. 8, 9; *Praenotanda*, no. 43; *Wprowadzenie teologiczne i pastoralne*, [in:] *Obrzędy chrztu dzieci dostosowane do zwyczajów diecezji polskich*, ed. 3, Katowice: Księgarnia św. Jacka 1994, p. 21, no. 6.

In accordance with Church documents, the qualifications of a sponsor for an adult person should enable them to: a) assist their godchild at least in the final preparations to baptism; b) ensure that their godchild perseveres in faith after receiving baptism; c) be present during the final celebrations of catechumenate and the ceremony of baptism; e) witness the faith of their godchild. Furthermore, a candidate to the office of sponsor for an adult person should be characterized by: exemplary conduct, values of character, friendship, the ability to show to the catechumen the practice of the Gospel in personal and social life. The candidate should be known to the local Christian community to an extent warranting their approval as its delegate in assisting the baptized person on the road of faith. They should have the ability to resolve doubts and concerns which their godchild may have prior to or after receiving baptism [JAKUBIAK 2017, 60].

The sponsor of a person who has not attained the use of reason should be able to present the infant for baptism together with the parents. In addition, they should have the aptitude necessary to support the parents in ensuring that the child comes to confess the faith and to manifest it in his or her life, and – as in the case of adult baptism – to live a Christian life in keeping with the sacrament they have received, and faithfully fulfill the obligations inherent to it. A candidate sponsor should also be able to truthfully make a confession of faith during the ceremony of baptism.

In view of the tasks and obligations of sponsors listed above, it is apparent that the aptitude required of candidates to the office of godfather or godmother consists of a set of human, moral, spiritual, intellectual, physical and mental qualities. They often depend on subjective factors, such as, for example, the place of residence of the sponsor and the godchild, their age, the family background of the baptized person and the environment in which they are brought up, etc. [*Ibidem*].

Unfortunately, in provisions regulating the Holy Baptism, the legislator has not specified – unlike in the case of regulations concerning marriage in c. 1056 CIC – which of the above qualities are essential for validly holding the office of sponsor. The author is not aware of any judicial decisions which would help define a catalogue of essential duties which sponsors – having the appropriate aptitude – should be able to fulfill, as is the case when adjudicating on the invalidity of marriage under c. 1095 CIC.

When determining the relationship between the lack of aptitude and the validity of taking on the office of sponsor, it is helpful to refer to one of the fundamental legal principles – *Impossibilium nulla obligatio est*. It supports the conclusion that the office of sponsor is taken on invalidly when the designated person does not have any of the qualifications necessary to fulfill the tasks which the legislator and the custom have assigned to sponsors in the Catholic Church. The case

is different as regards the validity of taking on the office of sponsor when only some of the obligations taken on with the office cannot be fulfilled. In such case, until it is demonstrated that an obligation (which cannot be fulfilled due to the lack of aptitude) is essential for the fulfillment of the tasks of sponsor, it should be concluded that the person has been validly admitted to the office.

It is worth noting the opinion, found in the literature, that in order to be admitted to the office, sponsors must be able to fulfill the obligations inherent to the *munus* at the time they assume the obligation. This opinion seems to be upheld by Lang, who claimed that the person taking on the obligations of sponsor for an infant should be sufficiently mature to be able to provide for the Christian upbringing of the minor in the event his or her natural parents pass away [LANG 1989, 230; JANCZEWSKI 2006, 120–21]. This opinion fails, however, in confrontation with the provisions laid down in both c. 685 § 2 CCEO and /17 cc. 765, 1^o, 766, 1^o CIC, which stipulate that in order for the office of sponsor to be taken on validly, the person must have the use of reason, rather than be of a certain legally specified age or have qualifications acquired over time.

In order to determine whether the sponsor, when taking on the obligations, must be able to fulfill them at the time of baptism, or whether it is enough for such ability to be potential, it may also be helpful to refer to the law on marriage. As regards the ability of the betrothed to contract marriage, the jurisprudence has pointed out that the obligations apply always, but not continually (*semper, sed non semper*) [GÓRALSKI 2006, 116]. Taking this opinion into account, along with the principle *Impossibilium nulla obligatio est*, it may be concluded that a candidate sponsor should currently have those qualifications which are related to the fulfillment of an essential obligation which currently exists. In addition, they should have the potential qualifications related to essential obligations which may become actualized in the future. The consequences of the lack of such qualifications vary. The lack of qualifications necessary to fulfill an essential current obligation will result in the invalidity of assuming the tasks of sponsor. If potential qualifications are lacking such as are necessary to fulfill an essential obligation which may become actualized in the future, the invalidity of taking on the office is no longer as obvious. This will probably depend on whether the qualifications required in the future – necessary to fulfill an essential obligation – can be attained by the so-called model candidate to the office of sponsor; it is clear that no extraordinary qualifications may be required of sponsors.

3. INTENTION

Another condition which must be satisfied by a person to be admitted to the office of sponsor is intention, as stipulated in c. 874 § 1, 1^o CIC. In the codes of the Latin Church and of the Eastern Catholic Churches previously in force, this criterion had also been included by the legislator in provisions on sponsors, providing, however, that their satisfaction was a condition of the validity of taking on the office [CIC/17, c. 765, 1^o; CCEO, c. 685 § 1, 3^o].

In order to determine the nature of the relationship existing in the law of the Latin Church between the intention of a candidate to the office of sponsor and the validity of taking on the office, it is worth considering the notion of intention and the related decision-making process. In the literature, it is accepted that intention is a conscious act of will aimed at achieving a certain goal by particular means [ŚLIPKO 1982, 56; OLEJNIK 1998, 179]. Having an intention, that is, making a decision to employ one's will to perform a particular action, is preceded by the recognition and desire of the object of this action. Such recognition involves the senses and the mind; the mind enlightens sensory perception whose goal is to create an intellectual, mental image of the recognized object of action [JAKUBIAK 2018, 189].

Referring to the general principles applicable to intention, it may be assumed that the making of a decision employing a person's will to take on the office of sponsor once they have been designated to the office in compliance with the law must be preceded by recognizing what the function of sponsor actually consists in, and what tasks are inherent to it. Otherwise, a candidate to the office of sponsor would not be able to desire the intellectual image evoked in his or her mind of the recognized object of action, i.e. the taking on the office of sponsor together with the related obligations; and without desiring it, he or she would not make a decision to become a sponsor.

The taking on of the office of sponsor and the obligations inherent to it is based on a human act (*actus humanus*). The subject who performs it must have the legal capacity regulated by natural law. As pointed out by Sobański, the requirement to invoke an intention is related precisely to the "natural" capacity of a person to perform acts at law, including the capacity, based on the reason and the will, to act freely and deliberately (*persona capax actus humani*) [SOBAŃSKI 2003a, 203]. Consequently, the requirement to invoke an intention stems from divine law. Any factors which entirely cancel out the freedom or deliberation of a person designated to take on the office of sponsor when making an act of will (e.g. force – *vis*, or error which determines the will) result in the invalidity of admission to the office of sponsor.

In determining the type of intention which must be invoked in order for the person designated as sponsor to be validly admitted to the function, it is helpful to refer to the doctrine. According to canonists, human acts which result in the assumption of obligations must, in order to be valid, be performed by a person who has invoked and has (preferably) an actual – *actualis*, or (at least) virtual – *virtualis* – intention. In addition, in view of the assumed obligations, such human acts must be performed with a explicit (*explicita*) intention [MCHUGH and CALLAN 1930, 640, 722; POHLE and PREUSS 1915, 199; VANYO 1965, 86–87]. This opinion – as far as the obligations of sponsor are concerned – was not concurred with by Conte a Coronata. He believed that implied (*implicita*) intention was sufficient [CONTE A CORONATA 1951, 108].

In order to settle whether the intention invoked by the candidate to the office of sponsor must be explicitly manifested (by word or deed), or whether for the validity of admission to the office a “tacit” – *tacita* intention (that is, one that is not explicitly manifested) is sufficient, it is necessary to determine whether the taking on of the office of sponsor is a juridical act (*actus iuridicus*). According to Michiels, the essence of a juridical act is an *actus humanus* expressly manifested in accordance with positive law. Its consequences are determined by the legislator [DZIERŻON 2002, 27–28]. This description was matched by actions performed by sponsors as specified by the legislator in the Pio-Benedictine Code. According to c. 765, 1^o, 5^o CIC/17, aside from having the intention to perform the office, the sponsor was required, himself or through another, to physically hold or touch the one to be baptized in the act of baptism or immediately lift him up or receive him from the sacred font or from the hands of the one baptizing. It may be concluded that this way the legislator has described the form of exteriorizing the act of will to take on the office of sponsor. In the law of the Catholic Church currently in force, both in the Latin and the Eastern rite, the requirement of exteriorizing the act of will has not been regulated by the legislator. Only the liturgical ritual specifies the form in which it is to be expressed.¹⁵ Changes introduced by the legislator in 1983 seem to support the claim that in compliance with the law currently in force, the taking on of the office of sponsor is no longer a juridical act, but another act (*alius actus*) whose validity does not depend on an exterior manifestation of the act of will [*Ibidem*, 29].

¹⁵ *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II Instauratum Auctoritate Pauli PP. VI Promulgatum: Ordo Initiationis Christianae adultorum*, editio typica, Roma: Typis Polyglottis Vaticanis 1972, p. 286, no. 77; *Rituale Romanum ex decreto Sacrosancti Oecumenici Concilii Vaticani II Instauratum Auctoritate Pauli PP. VI Promulgatum: Ordo Baptismi Parvulorum*, editio typica altera 1986 (Nova impression 2003), Roma: Typis Polyglottis Vaticanis 2003, pp. 24, 37, 49, 59, 72–73. no. 40, 78, 110, 135, 169.

4. AGE

In accordance with the law of the Latin Church currently in force, a person designated to the office of sponsor should have completed the sixteenth year of age. This limit is not permanently fixed, however. In c. 874 § 1, 2^o CIC, the Church legislator has made sure that it can be modified by authorizing diocesan bishops to specify in their dioceses a higher or lower age limit which must be attained by candidates to the office of godfather or godmother. This solution provides for adjusting particular laws to the specific circumstances of the local Church. It also contributes to ensuring that no persons are designated as sponsors who are unable to fulfill obligations imposed on them by positive and common law.

Furthermore, in accordance with the norm interpreted from c. 874 § 1, 2^o CIC, persons younger than specified in common and particular law may be admitted to the office of sponsor by parish priests and ministers. To do this, it is sufficient for them to form an impression that a just cause makes it advisable to grant an exception [BLANCO 2004, 481].

The structure of the legal provisions laid down in c. 874 § 1, 2^o CIC warrants the conclusion that it is not directly related to validity. Otherwise, the Church legislator would not have provided for parish priests or ministers to be able to admit persons younger than specified by the common or particular legislator to the function of sponsor, but would provide for the parish priests or ministers to have the right to grant a dispensation from non-compliance with regulations promulgated by the pope or the diocesan bishop.

The lowering of the age requirement applicable to candidates to the office of sponsor may not be left to the sole discretion of diocesan bishops, parish priests or ministers, however. The age may only be limited to the extent the person designated as sponsor is sufficiently mature to fulfill this task, i.e. to the extent they have the aptitude required of godfathers or godmothers.¹⁶ Otherwise, such person would not be able to validly take on the office of sponsor. The ultimate lower limit which can certainly not be exceeded is the moment of attaining the use of reason, that is – in accordance with the presumption stipulated in c. 97 § 2 CIC – completion of the seventh year of age. Without having attained the use of reason, a person would not be able to invoke an intention to take on the office of sponsor.

It seems justified to hypothesize that the legally stipulated age limit which must be attained by prospective sponsors is related to the ordinary presumption that all

¹⁶ Cf. *Praenotanda Generalia*, no. 10.2.

those who have completed the sixteenth year of age (in Poland, the fifteenth year)¹⁷ have sufficient maturity and aptitude to become sponsors [ALTHAUS 874/6]. This view is supported by the linking in the *Roman Ritual* of the capacity for fulfilling the office of sponsor with the candidate having reached sexual maturity.¹⁸

The fact that the attainment of the legally required age is not directly related to the validity of admission to the function of sponsor may be supported by the fact that in CCEO the analogous stipulation was not provided with a disqualifying clause. The Church legislator explicitly linked it to liceity [CCEO, c. 685 § 2]. The case was similar in the Pio-Benedictine Code previously in force [CIC/17, c. 766, 1^o].

CONCLUSION

The provisions of c. 874 § 1, 1^o-2^o CIC are a good illustration of a situation where, despite the absence of an explicit disqualifying and invalidating clause, failure to observe them results, directly or indirectly, in the invalidity of the act they apply to – in this case, the admission of a person to the *munus* of sponsor.

The above analysis demonstrates that the designation of a sponsor by the catechumen (when baptism is received by an adult within the meaning of c. 852 § 1^o CIC) or by the parents (when baptism is received by a person habitually lacking the use of reason) is a criterion related to the validity of taking on the office of sponsor. This results from divine law and the purposes for which the office of sponsor exists in the Church.

Considering the above-mentioned purposes and the obligations inherently linked to the *munus* of sponsor, it also seems justified to say that the designation of a sponsor by persons other than those taking the place of parents (*ab eo qui eorum locum tenet*) – or, in their absence, by persons other than the parish priest or the minister – may also result in the invalidity of taking on the office of sponsor. In accordance with a purposive interpretation, invalidity would only occur, however, if a sponsor designated by unauthorized persons was unable to fulfill the obligations assumed at the baptism. The invalidity of admission to the office of sponsor by persons other than those listed in c. 874 § 1, 1^o CIC may also result from the structure of legal provisions describing the criteria which must be satisfied by a candidate to the office of sponsor – as is suggested by the linguistic interpreta-

¹⁷ Cf. *Instrukcja duszpasterska Episkopatu o udzielaniu sakramentu chrztu świętego dzieciom*, 1975, [in:] *Dokumenty duszpastersko-liturgiczne Episkopatu Polski 1966-1998*, eds. Cz. Krakowiak, L. Adamowicz, Lublin: Polihymnia 1999, p. 23. no. 5.

¹⁸ Cf. *Rituale Romanum Pauli V Pontificis Maximi*, De Sacramento Baptismi ritè administrando, De Patrinis, Parisiis: Societas Typographica Librorum Officii Ecclesiastici 1623, p. 13.

tion. Considering the structure of *Praenotanda Generalia* n. 10.1 and c. 874 § 1, 1° CIC, and the assumption that when making laws the legislator follows the rules of logic, it may, with some likelihood, be assumed that the catalogue of persons (authorized to designate a sponsor) specified in these provisions is a closed one, and just like the requirement that a sponsor must be designated by a competent person, affects the validity of taking on the office of sponsor under Church law.

The second criterion stipulated in c. 874 § 1, 1° CIC which is indirectly linked to the validity of admission to the *munus* of sponsor is having the required aptitude. In accordance with the principle *Impossibilium nulla obligatio est*, it is reasonable to assume that the office of sponsor is taken on invalidly when the designated person does not have any of the qualifications necessary to fulfill the tasks which the legislator and the custom have assigned to sponsors in the Catholic Church.

Another criterion, this time directly related to the validity of admission to the office of sponsor, is intention. This requirement is based on divine law, and any factors which cancel out the freedom or deliberation of a person designated to the office of sponsor when making an act of will result in invalidity of admission to the office of sponsor. An analysis of the doctrine of human acts which result in taking on obligations supports the thesis that for the purpose of validity, intention must at least be virtual. It appears that exteriorization of the act of will is no longer necessary.

Examination of the legal norm stipulated in c. 874 § 1, 2° CIC also leads to the conclusion that it is indirectly related to validity. This results from the fact that a person designated to the *munus* of sponsor may validly perform this function only if they are sufficiently mature, that is, have the aptitude necessary to become a godfather or godmother, irrespective of their age. The ultimate lower limit of age which can certainly not be waived when electing a sponsor is the moment when they have attained the use of reason. A person who lacks the use of reason is not able to invoke the legally required intention to validly take on the office of sponsor.

Translated by Małgorzata Wójcik

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THE CRITERIA STIPULATED IN CANON 874 § 1, 1^o-2^o
OF THE CODE OF CANON LAW AND THE VALIDITY
OF TAKING ON THE *MUNUS* OF SPONSOR

Summary

Conditions stipulated by the supreme legislator in CIC c. 874 § 1, 1^o-2^o which must be met by a person in order to be permitted to take on the office of sponsor include: 1) being designated by the one to be baptized, by the parents or the person who takes their place, or in their absence by the pastor or minister, 2) having the aptitude to perform the tasks of sponsor; 3) having the intention of fulfilling this function; 4) having completed the sixteenth year of age, unless the diocesan bishop has established another age, or the pastor or minister has granted an exception for a just cause. Neither the doctrine nor the discipline of the Latin Church explicitly specify whether failure to comply with these requirements affects the validity of taking on the *munus* of sponsor, or whether they are only related to its liceity. In view of the absence of such explicit provisions, the author has endeavored to address this concern.

Key words: baptism; godparent; office of sponsor

KRYTERIA OKREŚLONE W KAN. 874 § 1, 1^o-2^o
KODEKSU PRAWA KANONICZNEGO
A WAŻNOŚĆ PRZYJĘCIA *MUNUS* CHRZESTNEGO

Streszczenie

Wśród warunków jakie najwyższy ustawodawca przepisuje w kan. 874 § 1, 1^o-2^o KPK/83, jakie musi spełniać osoba przed dopuszczeniem do *munus* chrzestnego są między innymi: 1) wyznaczenie przez przyjmującego chrzest albo przez jego rodziców, albo przez tego, kto ich zastępuje, a gdy tych nie ma, przez proboszcza lub szafarza chrztu, 2) posiadanie wymaganych do tego kwalifikacji, 3) posiadanie intencji pełnienia zadania chrzestnego, 4) ukończenie szesnastu lat, chyba że biskup diecezjalny określił inny wiek albo proboszcz lub szafarz jest zdania, że słuszna przyczyna zaleca

dopuszczenie wyjątku. Zarówno doktryna i dyscyplina Kościoła łacińskiego w sposób jednoznaczny nie określają, czy nieprzestrzeganie wymienionych wymagań wpływa na nieważność przyjęcia *munus* chrzestnego, czy też wyłącznie na niegodziwość. Biorąc pod uwagę ten brak, autor niniejszego artykułu postawił sobie za cel udzielenie odpowiedzi na tę wątpliwość.

Słowa kluczowe: chrzest; chrzestny; urząd chrzestnego