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## Assessment of the cost of comprehensive divorce proceedings of spouses with minor children

### INTRODUCTION

This study constitutes a supplement and an expansion of the study entitled ‘Costs of court proceedings in divorce cases’<sup>1</sup> and ‘Costs of family proceedings following a divorce’<sup>2</sup> conducted in the Institute of Justice in 2016<sup>3</sup>. It covers an analysis of the model of divorce proceedings making it possible to provide a comprehensive explanation of the family situation of the divorcing spouses and consequently the actual implementation of the principle of the protection of the child’s welfare in these proceedings. Statistical and economic analyses were performed to assess budget expenses resulting from the implementation of the assumption specified in the subject of the study.

The presented report consists of two basic parts: the first gives a brief outline of a specific model of the divorce proceedings of spouses having common minor children while the second presents the results of analyses aimed at estimating the mean budgetary expense involved in the application of this model of divorce proceedings. An additional analysis of the comprehensive cost of the divorce proceedings of spouses not having common minor children and the so-called average divorce proceedings, taking into account the percentage of divorcing couples having and not having children, constitutes a supplement to these basic parts.

Like in the project ‘Costs of court proceedings in divorce cases’, also in relation to the costs of the court proceedings in a divorce case, the perspective adopted was

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<sup>1</sup> Comp. P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty postępowań sądowych w sprawach rozwodowych*, „Prawo w Działaniu. Sprawy cywilne” 2017, No. 29, p. 75 et seq.

<sup>2</sup> Comp. J. Klimczak, *Koszty wybranych postępowań dotyczących dzieci toczących się po rozwodzie ich rodziców*, „Prawo w Działaniu. Sprawy cywilne” 2017, No. 29, p. 109 et seq.

<sup>3</sup> The authors of the study also took into account the results of other studies conducted in the Institute of Justice: A. Siemaszko, P. Ostaszewski, *Efektywność kosztowa sądownictwa powszechnego*, Warszawa 2013, <https://www.iws.org.pl/pliki/files/Efektywno%C5%9B%C4%87%20s%C4%85downictwa%20powszechnego-oprac-12.pdf> (access: 18 October 2017); P. Ostaszewski, K. Joński, *The costs of maintaining the expert witness system*, „Prawo w Działaniu. Sprawy cywilne” 2017, No. 31, p. 202; J. Klimczak, *System biegłych sądowych w ocenie sędziów*, „Prawo w Działaniu. Sprawy cywilne” 2017, No. 31, p. 177; J. Włodarczyk-Madejska, *Opinia biegłego w sprawach cywilnych w świetle badania aktowego*, „Prawo w Działaniu. Sprawy cywilne” 2017, No. 31, p. 155.

that of the state budget not of a party to the proceedings. Consequently, the costs will be understood as all and any budgetary expenses<sup>4</sup> for conducting transactions necessary to adjudicate in the case (including, among others, the remuneration of judges, lay judges and court clerks, the costs of the circulation of documents, experts' opinions, environmental enquiries and mediation proceedings). The analyses performed will concern a single 'model' case and will consequently disregard completely the costs of maintaining the system of common courts (e.g. rents, leases, media, cleaning, security, maintenance of IT systems and the like). The question of a possible coverage of the costs by the parties to the proceedings or the state budget was not considered, either.

### **1. The course of the 'model' divorce proceedings of spouses having minor children – aspects of importance from the point of view of the costs of the proceedings**

The description of the 'model' divorce proceedings of spouses having minor children focused on elements of particular importance from the point of view of protecting the good of the child and translating into costs possible to be estimated. The term 'model' refers to proceedings in which the family situation of the divorcing spouses with minor children has been described in a comprehensive and exhaustive way. Obviously, the assumptions adopted to estimate the costs of the thus conducted proceedings are bound to be approximate in nature. It is so since it is impossible to adopt the 'model' process applicable to all cases as its course depends on a variety of factors, including, among others, the attitude of the very parties to the proceedings, settlements made in other court proceedings and the like. Nevertheless, studies carried out in the Institute of Justice so far allow to distinguish elements of the divorce proceedings which are particularly important from the point of view of the implementation of the basic assumptions made by the legislator with respect to the institution of the divorce (the principle of the protection of the good of the child, the principle of the protection of the durability of marriage) and normative rules of its adjudication (in particular: negative conditions of the child welfare and principles of social coexistence, adjudication of guilt, principle of recrimination).

It was assumed that the discussed average 'model' divorce proceedings will concern the parties and minimum two common minor children. The evidence proceedings will include: hearing of the parties (two people), hearing of at least one child (in accordance with the standards applicable, outside the courtroom in an adapted room), hearing of a minimum of four witnesses, at least two environmental inquiries by a professional court curator (in the place of living of the parents, evidence form an opinion of the Consultative Team of Court Experts (hereinafter referred to as CTCE) as well as a hearing of the experts who have prepared the opinion (two people). In addition, it was assumed that in spite of the instruction

<sup>4</sup> They should not be confused with the expenses referred to in Article 2 Section 1 of the law of 28 July 2005 on court fees in civil cases (i.e. Official Journal of 2016, Item 623 with amendments) – hereinafter referred to as l.c.c.c.

given in Article 6 § 1 of the Code of Civil Procedure<sup>5</sup>, the court of the first instance will require at least three court hearings to adjudicate in the case. Also, in every case, mediation proceedings will be conducted.

In the case of children or parents affected by mental disorders or other forms of disability additional evidence from an expert's opinion will be taken and the doctor treating the patient will be heard (one person). Where the family was covered by social welfare or actions taken on the basis of the law on proceedings in cases concerning minors<sup>6</sup>, additional evidence from the hearing of relevant social workers (one person) and relevant documents will be ensured.

Consequently, it can be foreseen that the proceedings will necessitate that a minimum of 20 letters will have to be sent (instruction for environmental enquiries to be carried out, for a CTCE opinion to be prepared, summons of the parties, witnesses and experts to present for hearings and mediation, requests for information addressed to a relevant family department and a district court for juveniles as well as a social welfare centre).

The question of deciding about the guilt of one or both spouses or about their cohabitation was not considered in the course of the analysis. The very low share of appeal proceedings in divorce cases – in the study of P. Ostaszewski, J. Włodarczyk-Madejska and K. Joński only in 17 cases (out of 400) an appeal was lodged<sup>7</sup> – also allows to not include the costs of these proceedings in the estimates. There is no doubt that in practice the proceedings are likely to be significantly longer and consequently their costs higher as a result of the presentation by the parties of motions concerning security as well as consideration of complaints. However, elements of this type cannot be taken into account in the analysis made.

| Table 1<br>Elements of the adopted model |                                       |  |
|--|---------------------------------------|--|
|  | Discussed elements of the proceedings | Source of the estimated cost   |
| <b>IN EVERY CASE</b>                     |                                       |  |
| 1.                                       | Three court hearings:                 | Duration of the hearings: 34.8 minutes, 50.5 minutes, 50.2 minutes (Project 'Costs of court proceedings in divorce cases' <sup>8</sup><br>Cost of the work of the judge, lay judges and court clerks: estimated hourly rate of a judge adjudicating in the district court, lay judges and court clerks – PLN 85.63, court clerk rate – PLN 24.38 per hour and value of compensation for lay judges – PLN 9.16 per hour (Project 'Costs of court proceedings in divorce cases' <sup>9</sup> Project 'Cost effectiveness of common courts' <sup>10</sup> ) |
| 2.                                       | Hearing of the parties                | –  |

<sup>5</sup> Law of 17 November 1964 – Code of Civil Procedure (i.e. Journal of Laws of 2018, Item 155 with amendments) – hereinafter also referred to as CCP; Article 6 § 1: 'The court should always counteract the prolongation of proceedings and strive for a settlement at the first hearing provided it possible without damage to the clarification of the case'.

<sup>6</sup> Law of 26 October 1982 on proceedings in cases concerning minors (i.e. Journal of Laws of 2016, Item 1654 with amendments).

<sup>7</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 12.

<sup>8</sup> P. Ostaszewski, J. Włodarczyk-Madejska, *Koszty...*, p. 13.

<sup>9</sup> P. Ostaszewski, J. Włodarczyk-Madejska, *Koszty...*, pp. 28–30.

<sup>10</sup> A. Siemaszko, P. Ostaszewski, *Efektywność...*

| Table 1<br>Elements of the adopted model |  |  |
|--|--|--|
|  | Discussed elements of the proceedings              | Source of the estimated cost   |
| 3.                                       | Hearing of four witnesses                          | Mean refund of travelling expenses and lost earnings or income by witnesses: PLN 94.13. Application for a refund of travelling expenses and lost earnings was presented by 6.6% of all witnesses, i.e. no more than one in a case ('Costs of court proceedings in divorce cases' <sup>11</sup> ) – it was therefore assumed that at least one witness will present such an application   |
| 4.                                       | Hearing of two CTCE experts                        | Mean remuneration for presentation at court hearings by court experts: PLN 105.50 (Project 'Expert in court proceedings. A comprehensive picture of the system in light of court files studies, survey studies, statistical and economic studies' <sup>12</sup> )  |
| 5.                                       | Interview with one child                           | Duration of the interview: 50.5 minutes (Project 'Costs of court proceedings in divorce cases' <sup>13</sup> )<br>Cost of the work of the judge and the court clerk: 'estimated hourly rate of a judge adjudicating in the district court – PLN 85.63, of the court clerk – PLN 24.38 per hour (Project 'Costs of court proceedings in divorce cases' <sup>14</sup> ; Project 'Cost effectiveness of common courts' <sup>15</sup> )                                |
| 6.                                       | Two environmental enquiries by a probation officer | Remuneration for preparing an environmental enquiry: 4% of the base amount, i.e. PLN 74.95 (Art. 14 of the budget law for 2017 <sup>16</sup> , Art. 91 of the law on court curators <sup>17</sup> )  |
| 7.                                       | CTCE opinion                                       | Remuneration for the preparation of a diagnostic opinion: 15% of the base amount for professional probation officer, i.e. 281.076 for one person examined (Art. 14 of the budget law for the year 2017 <sup>18</sup> , § 2 decree of the Minister of Justice of 15 December 2015 on flat-rate costs of taking evidence from an opinion of a consultative team of court experts <sup>19</sup> )<br>Number of people studied: four, including two adults, two minors |
| 8.                                       | Mediation proceedings                              | Cost of mediation proceedings, in cases for non-material rights, completed at one court hearing: PLN 150 (§ 2 of the decree of the Minister of Justice of 20 June 2016 on the remuneration and refundable expenses of a mediator in civil proceedings <sup>20</sup> ).   |
| 9.                                       | Sending of 20 letters                              | Quotient of the received number of letters with a confirmed receipt and PLN 1.2 for one letter sent (Project 'Costs of proceedings in divorce cases' <sup>21</sup> )   |
| 10.                                      | Other actions/works on the case                    | Actions of the judge: 2.5 hours (median adopted on the basis of a nation-wide questionnaire survey carried out among judges and employees of 1 <sup>st</sup> instance civil divisions of all district courts, Project 'Costs of court proceedings in divorce cases' <sup>22</sup> )  |

<sup>11</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 13.

<sup>12</sup> P. Ostaszewski, K. Joński, *The costs...*; J. Klimczak, *System...*; J. Włodarczyk-Madejska, *Opinia...*

<sup>13</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, pp. 28–29.

<sup>14</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, pp. 28–29.

<sup>15</sup> A. Siemaszko, P. Ostaszewski, *Efektywność...*

<sup>16</sup> Budget law for 2017 of 16 December 2016 (Journal of Laws of 2017, Item 108).

<sup>17</sup> Law of 27 July 2001 on court curators (i.e. Journal of Laws of 2014, Item 795 with amendments).

<sup>18</sup> Budget Law for 2017 of 16 December 2016 (Journal of Laws of 2017, Item 108).

<sup>19</sup> Journal of Laws, Item 2190.

<sup>20</sup> Journal of Laws, Item 921.

<sup>21</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 34.

<sup>22</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 31.

| Table 1<br>Elements of the adopted model |  |   |
|--|--|---|
|  | Discussed elements of the proceedings                                | Source of the estimated cost  |
| 10.                                      | Other actions/works on the case                                      | Action of the court clerk: four hours (median adopted on the basis of a nation-wide questionnaire survey carried out among judges and employees of 1 <sup>st</sup> instance civil divisions of all district courts, Project 'Costs of court proceedings in divorce cases' <sup>23</sup> )<br>Costs of the work of the judge and the court clerk: estimated 'hourly rate' of the judge adjudicating in the district court – PLN – 85.63, rate of the court clerk – PLN 24.38 per hour (Project 'Costs of proceedings in divorce cases' <sup>24</sup> ; Project 'Cost effectiveness of common courts' <sup>25</sup> ) |
| <b>IN SELECTED CASE</b>                  |  |   |
| 11.                                      | Opinion of an expert in the field of medicine                        | Mean cost of an opinion of an expert in the field of medicine: PLN 691.10 (Project 'Expert in court proceedings. A complex picture of the system in light of court files studies, survey studies, statistical and economic studies' <sup>26</sup> )   |
| 12.                                      | Additional court hearing date  | Duration of court hearings: 50 minutes (Project 'Costs of proceedings in divorce cases' <sup>27</sup> )<br>Cost of the work of the judge, lay judges and court clerks: estimated hourly rate of the judge adjudicating in the district court – PLN 85.63, court clerk – PLN 24.38 per hour and value of compensation for lay judges – PLN 9.16 per hour (Project 'Costs of court proceedings in divorce cases' <sup>28</sup> ; Project 'Cost effectiveness of common courts' <sup>29</sup> )  |
| 13.                                      | Hearing of the doctor in charge                                      | Mean refund of travelling expenses and lost earnings or income: PLN 94.13 (Project 'Costs of court proceedings in divorce cases' <sup>30</sup> )  |
| 14.                                      | Hearing of a social worker   | Mean refund of travelling expenses and lost earnings or income: PLN 94.13 (Project 'Costs of court proceedings in divorce cases' <sup>31</sup> )  |
| 15.                                      | Getting acquainted with court files of guardianship and minors cases | Additional work hours of the judge: one hour (assumption)<br>Costs of the work of the judge: estimated 'hourly rate' of a judge adjudicating in the district court – PLN 85.63 (Project 'Costs of court proceedings in divorce cases' <sup>32</sup> ; Project 'Cost effectiveness of common courts' <sup>33</sup> )   |

Source: own study.

<sup>23</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 31.

<sup>24</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, pp. 29–30.

<sup>25</sup> A. Siemaszko, P. Ostaszewski, *Efektywność...*

<sup>26</sup> P. Ostaszewski, J. Klimczak, J. Włodarczyk-Madejska, K. Joński, *Biegły w postępowaniu sądowym. Kompleksowy obraz systemu w świetle badań aktowych, ankietowych, statystycznych i ekonomicznych*, Warszawa 2016, p. 85, [https://www.iws.org.pl/pliki/files/kolor\\_IWS\\_Sekcja%20Analiz%20Ekonomicznych\\_Biegli.pdf](https://www.iws.org.pl/pliki/files/kolor_IWS_Sekcja%20Analiz%20Ekonomicznych_Biegli.pdf) (access: 10 January 2017).

<sup>27</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 13.

<sup>28</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, pp. 28–30.

<sup>29</sup> A. Siemaszko, P. Ostaszewski, *Efektywność...*

<sup>30</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 13.

<sup>31</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 13.

<sup>32</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 13.

<sup>33</sup> A. Siemaszko, P. Ostaszewski, *Efektywność...*

## 2. Estimation of the cost of the 'model' divorce proceedings of spouses with minor children

As it has already been mentioned, this part focuses on the estimation of the cost of the 'model' divorce proceedings of spouses having common minor children. In the study entitled 'Costs of court proceedings in divorce cases' the mean cost of typical divorce proceedings (and thus both spouses having and not having minor children) was estimated in three brackets: from PLN 338.32 in a minimum scenario, through PLN 527.31 in the most likely scenario, up to PLN 1311.04 in the maximum scenario<sup>34</sup>. As pointed out by P. Ostaszewski, J. Włodarczyk-Madejska and K. Joński: '(...) remunerations of judges and court clerks are the most significant categories of costs generated by court proceedings in district courts<sup>35</sup>, that why: '(...) the key problem in the attempt to estimate the costs of conducting proceedings in divorce cases will be the question of assigning the working hours of the adjudication court and the auxiliary staff<sup>36</sup>. The remaining cost categories included in the project referred to were: the coverage of costs as defined in Article 2 Section 1 of the law on court costs in civil proceedings (understood as the remuneration of experts, probation officers and sworn translators, and the like) as well as the costs of correspondence (calculated as the quotient of the mean number of receipt confirmations from court files – 10 – and PLN 1.2 for one letter).

The analyses of the time of work of judges and court clerks on the 'model divorce case' included data from the so-called 'most likely scenario' developed by P. Ostaszewski, J. Włodarczyk-Madejska and K. Joński, that is the duration of court hearings coming from the examination of court files and with respect to the work of the judge and the court clerk – medians from the results of the survey studies (2.5 hours for the judge and 4 hours for the clerk)<sup>37</sup>. The project 'Costs of court proceedings in divorce cases' took into account the total duration of all court hearings in a case, averaging 67.8 minutes (1.13h). However, the model discussed here assumed that a minimum of three court hearings were necessary and as a result it was decided that the mean time of the duration of the first, second and third court hearing (34.8, 50.5 and 50.2 minutes, respectively) calculated in the said project be taken into account<sup>38</sup>.

In the calculation of the cost of work of the adjudicating court and clerks we adopted the 'hourly rates' estimated in the project referred to, namely, PLN 85.63 for a judge adjudicating in a district court, PLN 24.38 for the court clerk and PLN 9.16 for the lay judge<sup>39</sup>. In accordance with Article 47 § 2 pt. 2 a) of the Code of Civil Procedure, the court adjudicating in divorce cases is composed of a judge and two lay judges. The remuneration of the court reporter taking part in the court hearing was adopted to be the same as that of the court clerk.

The average return of the travelling expenses and the remuneration or lost income by witnesses appearing in divorce cases amounted to PLN 94.13<sup>40</sup>. The

<sup>34</sup> Comp. P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 34.

<sup>35</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 7.

<sup>36</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 7.

<sup>37</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 31.

<sup>38</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 13.

<sup>39</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, pp. 29–30.

<sup>40</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 13. The result verified in the course of additional analyses. The report referred to gives the amount of PLN 103.69.

study carried out made it possible to estimate accurately the number of witnesses participating in the procedures undertaken by the court (court hearing or court case) and the number of witnesses applying for a return of travelling expenses and lost income. In total, in the 400 cases studied, there were 229 witnesses appearing. Only 15 of them, i.e. 6.6% applied for the above. It was assumed that in the 'model' divorce proceedings the percentage of witnesses applying for a return of the above cost will not be lower than that obtained in the representative sample of divorce cases. For the needs of the analysis, it seems reasonable to adopt an assumption that it will be even higher. Consequently, it was assumed that the application referred to and as a result the return of travelling expenses and lost income will be given to at least one witness in a case (i.e. every fourth witness heard).

The estimation of the remuneration due for the environmental inquiry and diagnostic opinion was made on the basis of Article 91 of the law of 27 July 2001 on probation officers<sup>41</sup> and § 2 of the decree of the Minister of Justice of 15 December 2015 on the level of flat-rate costs of taking evidence from an opinion of a consultative team of court experts<sup>42</sup>. In accordance with the above regulations, the cost of an environmental interview amounts to 4% of the base amount<sup>43</sup> specified in the budget law for professional probation officers<sup>44</sup>, i.e. PLN 74.95. The cost of evidence form an diagnostic opinion issued by the consultative team of court experts, prepared on the basis of psychological, pedagogical or medical examinations conducted by at least two specialists constitutes, on the other hand, 15% of the base amount specified by the budget law for professional curators, i.e. 281.076 for one person examined<sup>45</sup>.

For the purposes of the model divorce proceedings it was assumed that every opinion will be prepared on the basis of an examination of four people: two adults, two minors. This assumption also finds its confirmation in the decree referred to above and concerning flat-rate costs of taking evidence from an opinion of a team of court experts in force since 1 January 2016. Till 2016 this question was not subject to such a regulation and hence the costs of an opinion indicated by researchers on the basis of studies carried out in 2015 varied significantly<sup>46</sup>.

<sup>41</sup> i.e. Journal of Laws 2018, Item 1014.

<sup>42</sup> Journal of Laws, Item 2190.

<sup>43</sup> Comp. Art. 91 l.c.c.c.

<sup>44</sup> Article 14 of the budget law for 2017 of 16 December 2016 (Journal of Laws of 2017, Item 108), comp. also J. Klimczak, *Koszty...*, pp. 40–41.

<sup>45</sup> Comp. § 2 of the decree of the Minister of Justice of 15 December 2015 on the flat-rate costs of taking evidence from an opinion of a consultative team of court specialists (Journal of Laws Item 2190).

<sup>46</sup> P. Ostaszewski, analysing in 2012 bills attached to the FDCCs in guardianship and divorce cases, pointed out that the value given in them is a total of several components, including: the cost of an analysis of case files, psychological, pedagogic, psychiatric and medical examinations as well as preparation of an opinion and administrative acts such as printing and sending of letters. The study shows that the cost of one opinion ranged from PLN 202 to 828.32, with a mean of PLN 555. The analysis of made for the project '*Biegły w postępowaniu sądowym. Kompleksowy obraz systemu w świetle badań aktowych, ankietowych statystycznych i ekonomicznych*', revealed that diagnostic opinions prepared in family and guardianship cases in the years 2013–2014 cost from PLN 90.09 to PLN 1072.22. The mean cost of one opinion amounted to PLN 375.92 (median PLN 281.08). In studies concerning costs of proceedings after a divorce (J. Klimczak, *Koszty...*) an FDCC opinion was prepared only in 5 of the cases studied. Its cost ranged from PLN 680 to 808.00, with a mean of PLN 704.18. On the basis of the study of cases for the establishment of children's contacts with people other than their parents completed before the court of the 1<sup>st</sup> instance in the years 2014–2017, conducted in the Institute of Justice in 2017 under the project entitled: '*Kontakty ustalane z innymi osobami niż rodzice*', it can also be concluded that significant differences can be observed. The cost of an opinion given in the attached bills amounted from PLN 5998 to 1142.30, with a mean of PLN 1025.60.

Mediation proceedings in cases for moral rights completed at the first session, in accordance with § 2 of the decree of the Minister of Justice of 20 June 2016 on the amount of remuneration and refundable expenses of a mediator in civil proceedings<sup>47</sup> is PLN 150. This amount was used for the present analyses.

The authors of the study assumed, for instance, that at the first court hearing (assumed to last 34.8 minutes) the parties will be heard. At the second and third court hearing (lasting 50.5 and 50.2 minutes, respectively) the court will, among others, hear witnesses and two CTCE experts.

For the needs of this report it was assumed that the interview with the child in the model proceedings will be conducted in accordance with relevant standards outside of the courtroom in a specially adapted room, last as long as the second court hearing (50.5 minutes) and will be attended by the judge and the court reporter.

Additional costs resulting from the hearing of two CTCE specialists involve the return of the costs of presentation at the court hearing while in the case of the doctor in charge as well as the social worker – the return of travelling expenses and the return of the lost income.

To calculate the cost of the presentation at a court hearing of two specialists from the consultative teams of court specialists we used data proceeding from a dossiers study of 925 civil cases conducted for the already referred to project ‘Expert in court proceedings. A complex picture of the system in light of court files, survey studies, statistical and economic studies’<sup>48</sup>. In 224 cases information appeared on remuneration given to an expert for presentation at a hearing. The mean remuneration in this respect amounted to PLN 4229, in half of the cases not exceeding PLN 105.5. Given a rather large disproportion between the minimum (PLN 10) and the maximum (PLN 305 531) remuneration, in the present analysis we used the median value.

The amount of the lost remuneration is regulated by Article 86 Section 1 of the law on court fees in civil cases<sup>49</sup>. Pursuant to Section 3 of the said article, the upper limit of the compensation for the lost earnings is the equivalent of 4.6% of the base amount for people occupying executive public positions, specified in the budget law for 2017 (comp. Article 9 Section 2 a) that is PLN 82.31. As it has been mentioned above, the study carried out in the Institute of Justice with respect to the costs of divorce proceedings provides solely general information on the amounts applied for by witnesses and awarded to them in virtue of the return of travelling expenses and lost earnings. This amount averaged PLN 94.13. The authors of the study conclude that it was appropriate to assume that the return of costs to the doctor in charge and the social worker will be the same as that to the witness, with an assumption that every doctor and every social worker heard will apply for and will receive such a refund.

The estimation of the cost of an opinion of an expert in the field of medicine was made on the basis of an analysis of data placed in registers of court files made available to experts for opinion-preparing purposes for the 2013–2014 period made in the project ‘Expert in court proceedings. A comprehensive picture of the

<sup>47</sup> Journal of Laws Item 921.

<sup>48</sup> J. Włodarczyk-Madejska, *Opinia...*

<sup>49</sup> Law of 28 July 2005 on court fees in civil cases (i.e. Journal of Laws of 2016, Item 623 with amendment).



system in light of court files examinations, survey studies, statistical and economic studies<sup>50</sup>. The mean cost of an opinion of an expert in the field of medicine in cases before district courts calculated in this study amounted to PLN 1360.4 while the median to PLN 691.1 (minimum value PLN 90.1, maximum value – PLN 9259.0). Like above, the distribution of the values justified the use of the median value in further analyses. Table 2 below sums up costs resulting from all the assumptions referred to above while further on we describe the details of the calculations made.

| <b>Table 2</b>   |   |                                   |
|--|---|-----------------------------------|
| Estimated mean cost of the model divorce proceedings of spouses with common minor children |   |                                   |
|  | <b>Discussed elements of proceedings</b>  | <b>Estimated cost in the case</b> |
| <b>IN EVERY CASE</b>   |   |                                   |
| 1.   | Three court hearings (remunerations), including                                   | PLN 289.81                        |
| 2.   | Hearing of the parties  | -                                 |
| 3.   | Hearing of four witnesses (refund)  | PLN 94.13                         |
| 4.   | Hearing of two CTCE specialists (refund)  | PLN 211.00                        |
| 5.   | Interview with one child (remunerations)  | PLN 92.59                         |
| 6.   | Two environmental enquiries of a professional probation officer (cost)            | PLN 149.90                        |
| 7.   | CTCE opinion (cost)   | PLN 1124.30                       |
| 8.   | Mediation proceedings (cost)  | PLN 150.00                        |
| 9.   | Sending of 20 letters (cost)  | PLN 24.00                         |
| 10.  | Other actions/works on the case   | PLN 311.60                        |
| <b>TOTAL</b>   |   | <b>PLN 2 447.33</b>               |
| <b>IN SELECTED CASES</b>   |   |                                   |
| 11.  | Opinion of an expert in medicine (remuneration)                                   | PLN 691.10                        |
| 12.  | Additional court hearing (remunerations), including:                              | PLN 106.94                        |
| 13.  | Hearing of the doctor in charge (refund)  | PLN 94.13                         |
| 14.  | Hearing of the social worker (refund)   | PLN 94.13                         |
| 15.  | Getting acquainted with dossiers of guardianship and minors cases (remunerations) | PLN 85.63                         |
| <b>TOTAL</b>   |   | <b>PLN 3 519.26</b>               |

Source: own calculation.

## 2.1. Cost of the 'model' court proceedings in each case

### *Conducting of three court hearings*

The cost of conducting three court hearings in every case will be an equivalent of the remuneration of the adjudication body and the court reporter. This remuneration is a product of the 'hourly rate' of the judge (PLN 85.63), the court clerk (PLN 24.38), two lay judges (PLN 18.32) and the mean duration of every court hearing (34.8, 50.5, 50.2 minutes, respectively). The cost of the first court hearing

<sup>50</sup> P. Ostaszewski, J. Klimczak, J. Włodarczyk-Madejska, K. Joński, *Biegły...*, pp. 84–85.

will thus amount to PLN 74.43, of the second – PLN 108,01, the third – PLN 107.37). The total cost of all the three court hearings will thus be PLN 289.81.

### *Hearing of witnesses*

The cost of hearing witnesses in the model divorce proceedings takes into account the mean amount in virtue of refunding travelling expenses or lost earnings or income by witnesses appearing in divorce cases as well as the assumed number of witnesses applying for the said refund (1). The mean refund of travelling expenses and lost earnings or income to witnesses amounts to PLN 94.13.

### *Hearing of two CTCE experts*

In accordance with the assumptions specified above the cost of the hearing of two CTCE experts will equal the total of the mean remuneration for presentation at a court hearing for two court experts (2 x PLN 105.50, i.e. PLN 211).

### *Interview with a child*

The premise is that at least one minor child should be interviewed in every case. The cost of conducting this procedural step will be an equivalent of the remuneration of the judge adjudicating in the district court and the court clerk for the participation in a court case lasting on average 50.5 minutes, according to the adopted hourly rates. According to the above, the remuneration of the judge will amount to PLN 72.07 and of the court clerk to PLN 20.52. The sum of the above allows to assume that in the model divorce proceedings the cost of interviewing one minor child is PLN 92.59.

### *Environmental interviews by the probation officers*

The remuneration of the probation officer for conducting an environmental enquiry amounts to 4% of the base amount, i.e. PLN 74.95. Assuming that two enquiries will be carried out in every case, it should be said that these actions will cost PLN 149.90.

### *CTCE opinion*

The calculation of the cost of the CTCE opinion was based on the decree of the Minister of Justice of 15 December 2015 on flat-rate costs of taking evidence from an opinion of a consultative team of court experts<sup>51</sup> and the budget law for 2017<sup>52</sup>. Pursuant to these regulations, remuneration for the preparation of a diagnostic opinion on the basis of an examination carried out amounts to 15% of the base amount for professional probation officers, i.e. 281.076 for every person examined. It was assumed that in the model divorce proceedings every opinion will be

<sup>51</sup> Journal of Laws Item 2190.

<sup>52</sup> Budget Law for 2017 of 16 December 2016 (Journal of Laws of 2017, Item 108).

prepared on the basis of an examination of at least four people, including two adults and two minors. The total cost of one opinion will thus amount to PLN 1124.30.

### *Mediation proceedings*

In accordance with the decree of the Minister of Justice of 20 June 2016 on the level of remuneration and refundable expenses of the mediator in civil proceedings<sup>53</sup>, the cost of the mediation proceedings completed at one session is PLN 150.

### *Sending of letters*

It was assumed that in every case a minimum of 20 letters will be sent. The result of the number of letters and the amount related to sending each of them, i.e. PLN 1.2 allows to state that the cost of sending letters in the model divorce proceedings amounts to PLN 24.00.

### *Other actions/works on the case*

The average time spent on conducting other actions ('work on the divorce case outside of the court hearing') is 2.5 hours for judges and 4 hours for court clerks. When the hourly rates for each of the groups are taken into account, the mean cost of these actions in the model divorce proceedings can be estimated at PLN 214.08 for a judge and PLN 97.52 for a court clerk, i.e. PLN 311.60 in total.

## 2.2. Additional costs in individual cases

### *Opinion of an expert in the field of medicine*

On the basis of the hitherto conducted studies it was assumed that the mean cost of an opinion of an expert in the field of medicine in the model divorce proceedings will amount to PLN 691.10.

### *Additional court hearing*

Assuming that the duration of an additional court hearing will amount to approximately 50 minutes, it can be said that its cost will total PLN 106.94 (the remuneration of the judge of PLN 71.36, of the court clerk of PLN 20.32 and of the lay judges of PLN 15.27 included).

### *Hearing of the doctor in charge and the social worker*

The cost of the hearing of the doctor in charge and the social worker was assumed to be the equivalent of the refund of travelling expenses and earnings or lost income already referred to (PLN 94.13 each).

<sup>53</sup> Journal of Laws Item 921.

### *Acquaintance with the court files of guardianship and minors cases*

It was assumed that the cost of getting acquainted with the court files of guardianship and minors concerning cases will constitute the equivalent of the remuneration for one additional hour of work of the judge adjudicating in the district court (PLN 85.63).

### **3. Estimation of the cost of the 'model' divorce proceedings of spouses not having minor children**

In this part, supplementing the analyses conducted above, an estimation was made, on the basis of the discussed data sources, of the cost of comprehensive divorce proceedings of spouses not having common minor children and the so-called average divorce proceedings (taking into account the percentage of married couples with or without children) getting divorced.

Having deducted from the elements of divorce proceedings discussed in the two previous parts of the elements directly related to having children (the CTCE opinion and hearing of their workers, probation officers' interviews, interview with a child, part of the costs of correspondence) as well as those from the expanded variant, the estimated amount of the mean cost of the model divorce proceedings of spouses not having common minor children was PLN 859.94 (comp. table 3).

| Table 3<br>Estimated mean cost of the model divorce proceedings of spouses not having common minor children |   |                            |
|---|---|----------------------------|
|   | Discussed elements of proceedings               | Estimated cost of the case |
| <b>IN EVERY CASE</b>  |   |                            |
| 1.  | Three court hearings (remuneration), including  | PLN 289.81                 |
| 2.  | Hearing of the parties                          | -                          |
| 3.  | Hearing of four witnesses (refund)              | PLN 94.13                  |
| 4.  | Mediation proceedings (cost)                    | PLN 150.00                 |
| 5.  | Sending of 12 letters (cost)                    | PLN 14.40                  |
| 6.  | Other actions/works on the case (remunerations) | PLN 311.60                 |
| <b>TOTAL</b>  |   | <b>PLN 859.94</b>          |

Source: own calculation.

The estimation would thus take into account 3 court hearings, hearing of the parties and 4 witnesses, mediation proceedings, remuneration for works on the case outside of the court hearings and limited costs of correspondence. In practice, the thus extended proceedings would involve cases in which action was not recognized and/or the court adjudicated on the guilt of one or both spouses. Pursuant to Article 442 of the Code of Civil Procedure. 'Where the defendant recognizes the statement of claim and the spouses do not have common minor children, the court can limit the evidence proceedings to the hearing of the parties'. Consequently, in part of the divorce proceedings of the spouses not having common minor children costs can be expected to be even lower, covering only one court hearing, with the

remaining actions and correspondence costs being even more limited. The cost of such proceedings, estimated according to the above guidelines, would amount to PLN 390.83 (a total of PLN 74.43 as remuneration for 34.8 minutes of the first court hearings, PLN 4.8 of correspondence costs and PLN 311.60 as remuneration for other actions in the case). Simultaneously, it would be hard to call proceedings of this kind comprehensive. It is also impossible to determine their exact share in all divorce proceedings. That is why they were not included in further estimations.

The Main Statistical Office data presented in the Demographic Yearbook for 2017<sup>54</sup> show that in 2016 for 63 497 of the adjudicated divorces in 20 209 (41.3%) spouses did not have common minor children, in 22 853 (36%) had one child, in 12 101 (19.1%) two children, in 1 881 (3%) three and in 453 (0.7%) four or more. As it was already indicated, for instance, in the report 'Costs of court proceedings in divorce cases'<sup>55</sup> the number of divorce proceedings is higher than the number of adjudicated divorces because it also includes the number of cases in which the claim was dismissed, the suit was returned or rejected, and also cases in which proceedings were discontinued. Unfortunately, information was not available on the exact number of children all the spouses who petition for divorce had, apart from information that in the representative sample of 400 divorces studied under the above mentioned project 220 (55%) of marriages had at least one common minor child. That is why the share of proceedings in which the divorcing spouses had minor children together (55%) referred to above was used to estimate the average (given the number of children) cost of divorce proceedings. Having taken into account the above share and the estimated costs of model proceedings without children (PLN 859.94) and with children (PLN 3 519.26 – in the extended variant) the expected cost of an average, comprehensive divorce proceedings will amount to PLN 2 322.57.

## SUMMARY

The mean cost of the model divorce proceedings of spouses having minor children estimated on the basis of the analyses carried out amounted in the basic variant to PLN 2 447.33 while in the variant extended due to the necessity of taking additional evidence and actions to PLN 3 519.26.

The cost of the average divorce proceedings in the most probable variant estimated in the project 'Costs of court proceedings in divorce cases' was PLN 527.31. This means that the model divorce proceedings conducted in every case would be PLN 1 920.02 more expensive than the average (in the basic variant) or even PLN 2 991.95 more expensive (in the extended variant). However, it should be emphasized that the described model refers solely to spouses having common minor children and this criterion, as it has already been said, was met by only 55% of married couples from the representative sample of 400 divorcing married couples covered by this study.

An additional element of the analysis carried out was the estimation of the comprehensive cost of the divorce proceedings of spouses not having common minor children and the so-called average divorce proceedings, taking into account the percentage of divorcing married couples having and not having children. On the basis

<sup>54</sup> Demographic Yearbook 2017, Warsaw 2017, <https://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/rocznik-demograficzny-2017,3,11.html> (access: 31 October 2017).

<sup>55</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 3.

of the determined share of proceedings in which the divorcing spouses had common minor children (55%) as well as the estimated costs of model proceedings without (PLN 859.94) or with children (PLN 3 519.26 – in the extended variant) the foreseen cost of the average, comprehensive divorce proceedings amounted to PLN 2 322.57.

Another crucial problem addressed in the project ‘Costs of court proceedings in divorce cases’ was the question of whether the fees paid in by the parties can cover the costs of the divorce proceedings. The analyses made under the project referred to required taking into account the question of exemption from court fees and refund of part of the court fees after the termination of the proceedings (divorce without deciding of guilt). As it was pointed out by P. Ostaszewski, J. Włodarczyk-Madejska and K. Joński ‘in 139 cases [out of 400] the plaintiff placed an application for exemption from the court fee for the divorce petition’<sup>56</sup>. The application was accepted fully in 25%, and in part in 6% of cases. The mean value of the court fee paid at the beginning of the proceedings was PLN 427. In addition, in 51% of the cases studied the court refunded to the plaintiff half of the fee paid in. After taking into account the refund of half of the fee, the estimated average value of the court fee was only PLN 273<sup>57</sup>.

At least part of the elements discussed within the framework of the present analysis of the total estimated cost of the model divorce proceedings was as a rule covered by the parties (e.g. the cost of mediation proceedings, the performance of the opinion of the expert in civil case). Frequently, the court makes the performance of a given action dependent on a prior downpayment for the coverage of relevant costs. The fee for the petition would in principle cover the expenses of the adjudicating court as such (e.g. remunerations, correspondence costs). In the model discussed in this analysis it is however assumed that all the specified elements are in principle obligatory in all proceedings satisfying the criteria and thus it can be discussed whether all of them should not be covered by the parties prior to the initiation of the proceedings. Naturally, considerations of this kind significantly surpass the framework of this analysis. Nevertheless, it is worthwhile to highlight that viewed in this way the differentiation between inflows to the court in virtue of payment for the petition and downpayments made becomes immaterial. What remains essential is the general question who and possibly to what extent is to cover the costs of conducting divorce proceedings.

### Abstract

**Paweł Ostaszewski, Justyna Włodarczyk-Madejska, *Assessment of the cost of comprehensive divorce proceedings of spouses with minor children***

*The article presents the results of a study covering statistical and economic analyses aimed at estimating the budgetary expenses linked to the model of divorce proceedings whereby a comprehensive evaluation of the family situation of the divorcing spouses is possible. The estimated average cost of the model divorce proceedings of spouses with minor children amounts, in the basic scenario, to PLN 2,447.33, while in the extended scenario, where it is necessary to take additional evidence and extra steps, PLN 3,519.26. The cost of the average divorce proceedings estimated in the project titled ‘Costs of court proceedings in divorce cases’ amounted, in the most likely scenario, to PLN 527.31. (It should be said that the described model concerned only married couples with common minor children and this criterion was met only by 55% of the 400 divorcing couples covered by the study ‘Costs of court proceedings in*

<sup>56</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, p. 14.

<sup>57</sup> P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty...*, pp. 27–28.

divorce cases', *Prawo w Działaniu* 2017, No. 29, p. 76). This means that the model divorce proceedings conducted in every case would be PLN 1 920.02 more expensive than the average (basic scenario) or even PLN 2 991.95 more expensive (extended scenario).

**Keywords:** divorce, expert's opinion, costs of proceedings, family law, divorce proceedings

### Streszczenie

#### Paweł Ostaszewski, Justyna Włodarczyk-Madejska, *Oszacowanie kosztu kompleksowego postępowania rozwodowego małżonków posiadających małoletnie dzieci*

Artykuł prezentuje wyniki badania obejmującego analizy statystyczne i ekonomiczne zmierzające do oszacowania wydatków budżetowych związanych z realizacją modelu postępowania rozwodowego umożliwiającą kompleksowe wyjaśnienie sytuacji rodzinnej rozwodzących się małżonków. Oszacowany przeciętny koszt modelowego postępowania rozwodowego małżonków posiadających małoletnie dzieci wyniósł w wariantcie podstawowym: 2 447,33 zł, natomiast w wariantcie rozszerzonym przez konieczność przeprowadzenia dodatkowych dowodów i czynności: 3 519,26 zł. Oszacowany w projekcie „Koszty postępowań sądowych w sprawach rozwodowych” koszt przeciętnego postępowania rozwodowego w wariantcie najbardziej prawdopodobnym wynosił zaś 527,31 zł (należy zaznaczyć, że opisywany model dotyczy jedynie małżeństw posiadających wspólne małoletnie dzieci, a to kryterium spełniało tylko 55% z reprezentatywnej próby 400 rozwodzących się małżeństw objętych badaniem, zob. P. Ostaszewski, J. Włodarczyk-Madejska, K. Joński, *Koszty postępowań sądowych w sprawach rozwodowych*, „Prawo w Działaniu” 2017/29, s. 76). Oznacza to, że modelowe postępowanie rozwodowe przeprowadzone w każdej sprawie byłoby droższe o 1 920,02 zł od przeciętnego (w wariantcie podstawowym) lub nawet o 2 991,95 zł (w wariantcie rozszerzonym).

**Słowa kluczowe:** rozwód, opinia biegłego, koszty postępowania, prawo rodzinne, postępowanie rozwodowe

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