

Maciej Andrzejewski

## IMPLEMENTATION OF THE PRINCIPLE OF CONTRADICTION IN THE CANONS OF THE CODE OF CANON LAW FOLLOWING THE REFORM BY POPE FRANCIS OF THE PROCESS TO DECLARE NULLITY OF MARRIAGE (PROCEDURAL PARTIES AND THEIR EQUALITY)\*

### Introduction

It might seem *a prima vista* that the process reform does not apply to the extent of applicability of the contradiction principle to matrimonial nullity trials. However, whereas this principle was not stated *expressis verbis* in the 1983 Code of Canon Law,<sup>1</sup> and its actual extent is only determined on the basis of a combination of all the procedural norms, particularly the structural and procedural *iudicium* elements, analysis should cover the changes made to the regulations on the matrimonial nullity process relevant to the scope of applicability of the contradiction principle in cases to declare nullity of marriage as a consequence of modification of the canons constituting the criteria that define the scope of this principle.

Therefore, we should consider the impact the Apostolic Letter Issued *Motu Proprio Mitis Iudex Dominus Iesus*<sup>2</sup> had on the regulations regarding:

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DR. MACIEJ ANDRZEJEWSKI, Department of General Norms and Legal Theory, Faculty of Canon Law, the Pontifical University of John Paul II in Cracow; correspondence address: ul. Kanonicza 9/408, 31-002 Kraków, Poland; e-mail: maciej.andrzejewski@upjp2.edu.pl; <https://orcid.org/0000-0001-8440-2426>

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<sup>1</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [hereinafter: CIC/83].

<sup>2</sup> Franciscus PP., *Litterae apostolicae motu proprio datae Mitis Iudex Dominus Iesus* quibus canones Codicis Iuris Canonici de causis ad matrimonii nullitatem

the *libellus* as an impulse for the process; identification of the subject-matter of the process; the parties to the case and the competent forum; equal treatment of process parties, minimum availability of the parties, and the competent forum to pass a determination, having the attributes of neutrality and impartiality. This article will present certain remarks concerning the effect of Pope Francis's process reform on the extent of the principle of contradiction in respect of such constituting factors of that principle as: the parties to the case and the competent forum, and the matters of equality of the process parties.

The issue of the parties to the dispute and the person called to settle it is important in terms of the contradiction of the proceedings and, undoubtedly, involves the separation of procedural roles and the judicial process provides optimal conditions for the entry of two entities affecting the implementation of the principle of contradiction: the parties to the dispute and the person empowered to resolve it. It should be borne in mind that there is no dispute in the inquisitional process since there are no procedural parties in it who could assert their case before the procedural authority appointed to decide it. There is no doubt that the principle of contradiction and the principle contrary to it, that is to say, the principle of inquisitoriality do not exist in the canonical procedural law in their pure form and that each model of the process is based on competition between the two principles. It is up to the Legislature to decide whether elements of contradiction or inquisitoriality will prevail in a particular process model. It is therefore justified to ask a question about the embodiment of this condition in the reformed canonical process for the declare nullity of marriage since both the parties and the judge are among the most important structural elements of the *iudicium*. They not only define its structure but, above all, they are its foundation without which the *iudicium* could not exist.

With regard to the condition of equality of the parties to the process, the Legislature seeks, in the process of declare nullity of marriage, to provide both parties to the ongoing proceedings with adequate possibilities to make a thesis on the validity of the marriage and to formulate an opposite thesis, equipping the parties to the process with specific rights, from the initial stage of the trial, through the instruction of the case, to the stage

of the discussion of the case. A characteristic feature of the canonical process is that it makes equal in their rights not only the private parties among themselves but also the Promoter of Justice and the Defender of the Bond, which is due to the concept of the party in the canonical system of procedural law. In principle, a judge, after hearing the parties or one of them, is required to hear the Promoter of Justice and the Defender of the Bond if they attend the trial. Similarly, where a party's petition is required in the trial for the judge to be able to take a procedural decision, the petition of the Promoter of Justice or the Defender of the Bond have the same weight (can. 1434 CIC/83). With regard to the condition of equality of the parties to the canonical process for the declare nullity of marriage, it is also necessary to consider what novelties Pope Francis has introduced in this context, bearing in mind the concern for the salvation of souls, which, both today and in the past, remains the highest objective of institutions, statutes and laws in the Church (Preamble to MIDI, 9).

### **1. The parties to the case and the competent forum**

In analyzing the matters related to the principle of contradiction, we need to bear in mind that the determination of the legal positions of parties in canon law processes is essential not only in respect of the formal process consequences, but also the substantial final resolution. It is important that the extent of consequences depends on the particular party to be established as the petitioner, respondent, or another role in the process [Greszata 2003a, 101].

The division into the petitioner and the respondent is one of the crucial divisions concerning the process parties. This division is further supported by the Code organization. The provision of can. 1476 CIC is a fundamental regulation, establishing a contradictory process relationship where parties may appear in a canon law process as petitioner or respondent [De Diego-Lora 2011, 1112]. The consequence of the above principle of bilateral process is that two parties exist in *iudicium*, specifically the petitioner and the respondent, who appear before an ecclesiastic judge to proceed with their case in compliance with the law. This principle implies that in a matrimonial nullity procedure not only offers an opportunity for both spouses to engage in the process but also for the process being

pursued so as the spouses interested in obtaining a declaration of matrimonial nullity appear as one party and the Church appears as the other party, guarding the sacrament of matrimony and proving the validity of the sacramental bond through its representatives [Greszata-Telusiewicz 2014, 6-9]. What transpires from the foregoing are the two dimensions of the principle of contradiction in a process for declaration of nullity of marriage. The first of these dimensions consists of contradictory claims by the Church and by the spouses about the matrimony, whereas there are different parties on one hand, i.e. the spouses challenging their marriage, and the Church on the other hand, defending the legal assumption of validity of matrimony and presenting contradictory claims. In this process, the defendant of the bond, representing the public good of the Church, has the same rights as the parties; he presents the first legally significant claim of validity of the marriage, whereas the spouses propose a petition and define its scope [Greszata 2003b, 253]. The other aspect of that principle is that both parties to the proceeding propose and defend contradictory claims, which are indispensable component parts of the structure of the entire process in formal terms. A procedure cannot be considered contradictory when two claims raised in the process are not contradictory in themselves [Eadem 2008, 254]. In order to ensure the contradictory character of canon law proceedings, the institutions of a promoter of justice and a defender of bond have been established, in addition to the parties to the process. It should be noted that the norms applicable to a matrimonial nullity process are defined by the legislator so as not only to ensure the presence of two contradicting parties but also the contradictory character of the claims raised in the course of the process.

An important *novum* introduced by Pope Francis here is the extension of the applicability of ruling in the first instance, under the bishop's responsibility, on cases to declare nullity of marriage, and a broader admission of lay people as ecclesiastic judges. Special attention should be drawn here to new can. 1673 § 4 MIDI, allowing the formation of an ecclesiastic tribunal in the first instance as a sole clerical judge if a collegial tribunal cannot be constituted. Yet Pope Francis clearly emphasizes at the beginning of his Apostolic Letter MIDI that the bishop, in the pastoral exercise of his judicial power, is responsible for guarding against all laxism (Preamble to MIDI, 9). For this reason, subject-matter literature points out that

the ruling power entrusted to the judge is exercised by the judge on behalf of the Church, taking into account his responsibility before God and acting in compliance with the law [Wenz 2016, 208]. We should concur with A. Sosnowski in claiming that prolonged system of ruling by a sole judge on matrimonial nullity cases in the first instance would constitute malpractice, whereas the situation in which a tribunal cannot be established must encompass the inability to appoint two lay persons as judges [Sosnowski 2015, 74]. Before the Pope Francis process reform of 2015, only one lay person was authorized to rule as a judge in a collegial tribunal, upon prior approval from the episcopal conference, and then only in cases when it was necessary (can. 1421 § 2 CIC/83). As U. Nowicka noted, the function of an ecclesiastic judge is still generally reserved for the clergy in Poland [Nowicka 2016, 33], even though in the current legal framework, taking into account the practice of ecclesiastic judiciary in those particular churches where it is not possible to establish a collegial tribunal with clerical judges for reason of unavailability of an adequate number of clergy, Pope Francis permits the admission of lay people, women and men alike, to this kind of service, both in diocesan and interdiocesan tribunals [Sosnowski 2015, 73]. In this context, the role of a woman and her potential in serving as a judge is emphasized, and a woman is presented as well fitted to this duty of the Church, in accordance with the richness of her femininity and sensitivity, immersed in love and mercy, so that she will be able to do justice with the *salus animarum* in mind [Tavani 2018, 202].

Another point of renewal of the judiciary structures in the Church, aimed at facilitating matrimonial nullity trials, is the establishment by Pope Francis of a new type of procedure, in addition to an ordinary matrimonial nullity process and a documentary process, which is called a briefed process, whenever the *libellus* is supported by particularly obvious arguments. Even though the Pope perceived the potential threats relating to a briefed procedure, the Pope decided that the judge in this type of process be the bishop himself established, who, due to his duty of pastor, has the greatest care for catholic unity with Peter in faith and discipline (Preamble to MIDI, 13).

Before Pope Francis's reform in accordance with art. 22 DC,<sup>3</sup> where a diocesan bishop was recognized as the judge in the first instance, it was pointed out that the bishop should not exercise this privilege without a special reason. In MIDI, however, there is a recommendation for only the bishop being the judge in the briefed procedure, as a consequence of which a tribunal is not the competent forum for such a case in a briefed procedure, and no delegation of the bishop's authority is allowed in this respect. This modification is a significant *novum* [Nowicka 2016, 91]. Even though the canon tradition has long been recognizing the diocesan bishop's responsibility for his tribunal, only the reform by Pope Francis is intended to transform his involvement into more specific, particularly further to the introduction of the *procesus brevior* [Hebda 2016, 157].

The parties in a briefed procedure before the bishop are the spouses, who are obliged to propose their petition for declaration of nullity of their marriage, either jointly or solely by one of them, with the other's consent. The foregoing clearly implies that a consensual request by the spouses is a prerequisite for proceeding with the trial in accordance to this procedure. In this case, the spouses do not appear as contradicting parties, i.e. as petitioner and respondent; only the defender of the bond is intended to counterbalance the joint claims by the spouses. A joint petition proposed by spouses to an ecclesiastic tribunal eliminates the contradiction between the spouses due to its very nature, yet, importantly, it does not preclude the principle of contradiction, which is expressed in the contradiction of the process positions and not in a dispute between any particular individuals [Łukasik 2020, 199]. In a briefed procedure, both spouses are the petitioner because they have the quality of joint active participants, whereas the defender of the matrimonial bond has the role of the respondent. In this way, the procedure guarantees due respect for the principle of contradiction [Majer 2015, 166].

With regard to the concept of parties in a documentary procedure and the competent forum to resolve on the subject-matter of the procedure, the parties to the procedure are the same as in the ordinary matrimonial

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<sup>3</sup> Pontificium Consilium de Legum Textibus, *Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii Dignitas connubii* (25.01.2005), "Communicationes" 37 (2005), p. 11-92 [hereinafter: DC].

nullity process [Erlebach 2007, 363]. The *novum* introduced by Pope Francis to the reformed matrimonial nullity trial is the extension of the group of people qualified to pass a judgment in a documentary process. In accordance with the provision of can. 1688 MIDI, not only a judicial vicar or a judge designated by him can declare the nullity of marriage in this procedure, but also the diocesan bishop. It is noted in the doctrine of canon law that this change still guarantees due respect for the realization of the principle of objective truth in the documentary process, but also due respect for the consistency of the modifications implemented within the entire framework of the canon process for declaration of nullity of marriage, referring even stronger to the doctrinal, pastoral and judicial role of the diocesan bishop, which gives the process a more ecclesial character [Brzemia-Bonarek 2015, 221].

Enlarging the group of parties authorized to rule in a documentary procedure by adding the diocesan bishop as a process figure should definitely be viewed not only in the context of the documentary process but mainly the briefed process, where he declares the nullity of marriage in accordance with the provision of can. 1683 MIDI. Hence, it is reasonably noted in subject-matter literature that the service of the diocesan bishop receives a new, more dynamic character after the Pope Francis reform. The bishop, for whom it is mandatory to act as a judge in a briefed process and optional to adjudicate in a documentary process, exceeds the limits of the *pastor bonus* definition, becoming the *iustum iudex*, and as such should serve as an example and a steady point of reference to the particular Church entrusted to him [Rozkrut 2015, 47]. Considering the *ratio legis* for the introduced changes, we can clearly infer Pope Francis's belief that the diocesan bishop, being a judge of his own faithful, is a more complete interpretation of the claims postulated at the Second Vatican Council. Therefore, the diocesan bishop, who is intended at the same time to serve as the first judge in his own Church, particularly in matrimonial nullity processes, should not assign the entirety of his obligation to persons in official judicial positions at the diocese [Wenz 2016, 212]. Whereas the salvation of the souls is the supreme law in the Church, it should be noted that the pastoral dimension and the legal dimension are closely intertwined, as its very nature implies a pastoral character of every activity in the realm of canon law [Orłowska 2015, 243-44].

In conclusion, it should be noted that, also with regard to the issues of the parties to the dispute and the entity entitled to settle it, Pope Francis has decided that the principle of contradiction would continue to be the foundation of the *iudicium*. The reform has touched on existing norms and only these procedures which, in the spirit of the time, required it. In this way, only what was devalued was disposed of while the core of the contradiction has remained intact [Greszata-Telusiewicz 2020, 186].

## 2. The matters of equality of the process parties

The principle of contradiction considered *in abstracto* has a strong link with the equality of the parties to the process since the defense of one's assertions in the trial and the opposition have to provide for at least similar legal possibilities for the both parties [Cieślak 2011, 214]. The similar legal possibilities therefore means equality of procedural rights, but not equality of factual conditions, of the parties. The literature on the subject points that equality between the parties is based on legal equality but not on factual one which depends on many extra-legal factors, bearing in mind that this is to be equality between opposing parties and not between cooperating parties [Grzegorzczuk and Tylman 2014, 118]. The equality between the parties is intended to ensure that they have the same means of action in the process and that they can benefit from them despite the different roles that the opposing parties play in the process. Consequently, the equality of the parties *de facto* indicates the extent to which the parties can take certain procedural steps against each other within the limits laid down by the judging powers and contradiction of the proceedings [Osowy 2003, 111-12].

The literature on the subject points to the relationship between the bilateralism of the canonical process, its contradiction (in the form of opposing assertions) and the equality of the parties, stressing that equality is justified in the evangelical spirit of the CIC/83. The equality springs from the love of Jesus Christ to all members of the Church, leading to the realization of the principle of *salus animarum suprema lex* [Greszata-Telusiewicz 2019, 97]. It should also be noted that the principle of bilateralism is a *sine qua non* condition for the formation of the process carried out by the parties. The ability to make an opposite argument as to the validity of marriage is



the constitutive element for the materialization of the principle of contention, while the equality of the parties is important only after the formation of the contradiction. The equality gives the parties an opportunity to take procedural steps to unveil the truth about the sacrament and, thus, leads to the ultimate goal of the canon law, which is the salvation of the souls of the People of God [Andrzejewski 2020, 18]. The equality of the parties to the canonical process for the declare nullity of marriage has been guaranteed by the Legislature, first by including it as a general directive of conduct throughout the proceedings and, secondly, by emphasizing the equality of the parties in many procedural acts [Greszata 2008, 269].

In order to understand the reform of the process of the declare nullity of marriage, it is necessary to point out the novelty of the pontificate of Pope Francis who, referring to the Gospel of Jesus Christ, on the one hand, focuses on the poor and, on the other hand, promotes the law of justice and mercy, making it very clear that the administration of the law relies on the serving in the spirit of *diakonia* in a necessary unity with bishops at the head of the Churches throughout the world. The placement of the poor, and therefore the divorced who have re-married, at the center imposes certain obligations on the parties concerned: repentance and a change in mentality. This change of attitude should convince bishops to, and encourage them in, proceeding according to Christ's call. Without adopting this approach, the number of nullities could rise from the current several thousand to an indeterminate number, producing an uncountable number of unfortunate individuals, because of a manifest lack of faith as a bridge to knowledge and, therefore, the free will in the expression of sacramental consent [Pinto 2015, *passim*]. Therefore, Pope Francis, in the post-synodal apostolic exhortation, *Amoris laetitia*, teaches that "in the difficult situations in which the most needy live, the Church must seek to understand, comfort and re-include them while avoiding the enforcement of rigid set of norms, which would make them feel judged and abandoned by the Mother who has been called to bring them God's mercy" (no. 49).

It should be noted that two of the guarantees of equality of the parties to the process for the declare nullity of marriage are the institutions of *exemptio ab expensis processualibus* and *gratuitum patrocinium*, concerning the partial or full exemption from procedural costs and the benefit of partially or fully free legal aid from a lawyer [Greszata-Telusiewicz 2014,

13]. It is well emphasized in the literature on the subject that the Legislature, having regard to the special position of the poor, secures their rights in the process for the declare nullity of marriage through the institutions of reasonable apportionment of judicial costs and legal aid with a view to the salvation of the souls of the faithful [Bartczak 2013, 126]. And it could appear, *prima vista*, that MIDI does not introduce any change in this respect and, therefore, the legal order governed by can. 1649 CIC/83 and Articles 302-308 DC is still in force. In principle, it is for the parties to the petition for the declare nullity of marriage to pay the court costs according to their capacity (Article 302 DC). When laying down rules on court costs, and therefore free legal aid, the bishop has to take into account the specific nature of the matrimonial matters in the case and enable the both spouses to participate in the process for the declare nullity of marriage (Article 303(2) DC). In this regard, it is emphasized that the amount of the court costs may not lead to refusing access to the ecclesiastical tribunal to the faithful: the petitioner, as to the possibility of lodging the petition, and the respondent, in the context of the possibility of opposing the petition [Lüdicke and Jenkins 2006, 487-88]. Moreover, the right of an individual to obtain exemption from court and legal aid costs is inherent to the principles of equality, human solidarity and Christian love [Lagomarsino 2008, 789]. The Legislator therefore allows persons who are unable to cover any judicial expenses to be exempted fully from them and persons who can cover them only in part to be partially exempted (Article 305 DC).

Similarly, Pope Francis recognizes the need to protect the rights of the poor in the process for the declare nullity of marriage, pointing out that not only should the judge stay close to the faithful but that, where possible, the trial should be free of charge. The Church, appearing to the faithful as a generous Mother on the issue so closely connected with the *salus animarum*, expresses selfless love of Jesus Christ, through which we have all been saved (Preamble to MIDI, 15). In the post-synodal apostolic exhortation, *Amoris laetitia*, the Pope also points out that many Fathers have stressed the need to make the procedures leading to the declare nullity of marriage even more accessible and efficient, perhaps completely free, because the slowness of the process irritates people. The *motu proprio* of the MIDI was intended to simplify procedures and ensure the provision

of information, counseling and mediation services to those living in separation and to crisis-affected marriages. These services should be linked to family ministry which could also be used by persons prior to the preliminary investigation in the matrimonial process (no. 244). Given that the financial aspect was raised by Pope Francis in the preamble, it seems appropriate to recall the positions of P. Kroczek and P. Skonieczny. They point out that, in the doctrine of the canon law, the preamble is assumed to be the source of legal rules itself, defining the interpretation or application of the normative act [Kroczek and Skonieczny 2013, 876].

However, this aspect of the MIDI reform does not appear to have been sufficiently exposed among other fundamental changes. Since the beginning of Pope Francis's pontificate, sensitivity to the needs of the poor, whom the Pope has watched with love before, has been particularly evident in his ministry in Latin America. The Holy Father is particularly concerned about those who cannot meet the most fundamental needs and makes efforts to ensure that a financial hardship does not constitute an obstacle at the sacramental forum, particularly in the process for the declare nullity of marriage [Nowicka 2016, 88-89]. While introducing procedural the reform, Pope Francis wanted economic issues not to prevent the faithful from carrying out the whole process of declaring nullity of marriage [Malecha 2015, 161]. In view of the financial aspect of this process, it should be noted that Paweł Malecha has pointed out the inappropriate practice of certain ecclesiastical tribunals in Poland, which require payment of fees for the notification of the judgment to the parties, without which the conclusion of the judgment cannot become enforceable [Idem 2020, 36].

Similarly, in this spirit, Pope Francis decided to abandon the rule of two consistent judgments on matrimonial matters, making the first declaration the nullity of the marriage enforceable [can. 1679 MIDI]. For this reason, the procedural reform considers it sufficient to give a judgment annulling the marriage of the moral certainty of the ecclesiastical judge at first instance, which has been ascertained in accordance with the law. The abandonment of the *duplex conformis* system also has a positive effect on the financial aspect of the process for the declare nullity of marriage, as it reduces the costs of the trial and operation of the tribunal [Adamowicz 2015, 77-78]. The new can. 1679 MIDI has an impact not only on the procedural economy but also on the duration of trials

for the declare nullity of marriage which, in turn, corresponds to the Holy Father's idea that the hearts of the faithful who are waiting to clarify their situation should not be enslaved for too long by the gloom of doubt due to delays in the judgment [Leszczyński 2017, 140].

The Legislator seeks to ensure equality between the two sides of the ongoing process, also in terms of participation in the hearing of parties and witnesses. This is true only in the case of a shortened trial before the bishop, where private parties are allowed to be present and actively involved in certain activities (Article 18 § 1, *Ratio procedendi*, MIDI). The normative solution introduced by Pope Francis constitutes an important novum in relation to the ordinary matrimonial process where, pursuant to can. 1677 § 2 MIDI, the participation of the parties in certain procedural acts is impossible. In the context of the summary matrimonial process before the bishop, it should also be noted that can. 1683, no. 1 of the MIDI, where the filing of a petition by the both spouses or by one of them, with consent of the other, is the constitutive requirement for carrying out the *processus brevior*. At the same time, given that the Promoter of Justice is not a party to the *coram episcopo* process, it should be concluded that there is no dispute on the petitioner-respondent line and that the opposing claims about validity of the marriage are made on the private-public party line. It therefore appears that the amendments introduced by Article 18 § 1 (*Ratio procedendi*, MIDI) lead to an extension of the rule of equality of rights between private and public parties to the process for the declare nullity of marriage in a summary process before the bishop.

In conclusion, we should agree with M. Greszata-Telusiewicz that the reform of the process for the declare nullity of marriage introduced by Pope Francis not only has not weakened the guarantees for the procedural parties resulting from their equality but has further strengthened them. All the proposed changes strengthen the equal treatment of parties to the process not only through procedural guarantees but also, importantly, in the way how people are viewed: as trustworthy and in need of legal aid [Greszata-Telusiewicz 2019, 104-105]. It is worth recalling here the first address of Pope John Paul II to the Court of the Roman Rota of 17 February 1979, in which he made it clear that the human person is at the centre of the canonical legal order, and the role of this order in the Church is to show and support a person who is defended by inviolable and inalienable

universal rights and endowed with supernatural dignity. The Church is obliged to proclaim and defend at all times fundamental human rights, bearing in mind the educational function of the canon law, both for individuals and for entire communities, with a view to creating an orderly social coexistence affecting the development and integration of human-Christian personalities [Rozkrut 2003, 68].

## Conclusions

It should be concluded that the process reform introduced by Pope Francis in 2015 extended the range of applicability of the principle of contradiction in a process for declaration of nullity of marriage with respect to the prerequisites for contradictory proceedings in a canon law process concerning: the parties to the case and the competent forum, and the matters of equality of the process parties.

1 In the aspect of the process parties and the competent forum, there are certain changes introduced by Pope Francis that are highly relevant for the principle of contradiction, primarily concerning a higher level of responsibility of the diocesan bishop for the contemporary matrimonial nullity process, particularly in extraordinary procedures, in a briefed process or a documentary process. In his interpretation of the *signa temporis*, Pope Francis further decided to authorize lay persons with the right level of education to engage in the realization of the ecclesiastic justice system through a practical provision of can. 1673 § 3 MIDI, according to which a collegial tribunal can be established, composed of a judge who is a cleric, presiding over the college, and two lay persons, to rule on cases for declaration of nullity of marriage, without necessarily obtaining the episcopal conference's approval thereof, with the intention to ensure a streamlined process, maintaining a high level of qualifications necessary for the office of an ecclesiastic judge. What is also prominent is the broader acceptance of judgments by a sole judge in matrimonial nullity cases under the bishop's responsibility where a collegial tribunal cannot be established in the first instance in an ordinary marital nullity process, according to can. 1673 § 4 MIDI, which can make it similar to a briefed procedure and a documentary procedure in this respect, thus being relevant to the realization of the principle of contradiction.

For the sake of a more complete implementation of the directives which are based on the principle of contradiction, in particular in the context of equality between the parties to the process, it should be proposed to introduce a possibility of hearing the witness or the opposing party, as referred to in the MIDI (Article 18 § 1, *Ratio procedendi*, MIDI), into the ordinary process the declare nullity of a marriage, following the example of the summary process before the bishop. All the more so since, following the reform of the process for the declare nullity of marriage carried out by Pope Francis, it does not seem appropriate to differentiate between powers of the parties to the process in this regard. On the other hand, in the current legal situation, it will be hard to justify the impossibility of hearing the witness or the opposing party in the simple process for the declare nullity of marriage based on the specific nature of the *nullitatis matrimonii* proceedings. It seems reasonable to read pope Francis's appeal, which is set out in the MIDI's preamble, concerning the free of charge marriage nullity process, as a call for the ecclesiastical tribunals to apply more often Article 305 DC (concerning the possibility of full or partial exemption from judicial expenses for a party who cannot cover them) and the disposition of Article 307 DC (enabling the court vicar to identify a lawyer willing to offer free defense). The reformed nullity process highlights even stronger the moderating bishop's obligation to ensure that the faithful are not prevented from going to courts because of excessive costs, to a serious detriment to souls whose salvation should always be the highest law in the Church (Article 308 DC). The Church, like a generous Mother, expresses the selfless love of Jesus Christ by which we have all been saved also in trials for the declare nullity of marriage (Preamble to MIDI, 15).

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### **Implementation of the Principle of Contradiction in the Canons of the Code of Canon Law Following the Reform by Pope Francis of the Process to Declare Nullity of Marriage (Procedural Parties and Their Equality)**

#### Abstract

The article covers the influence of Pope Francis' Apostolic Letter Issued *Motu Proprio Mitis Iudex Dominus Iesus* on the scope of the principle of contradiction in matrimonial nullity trials. This article will present certain remarks concerning the effect of Pope Francis's process reform on the extent of the principle of contradiction in respect of such constituting factors of that principle as: the parties to the case and the competent forum, and the matters of equality of the process parties. In conclusion, it should be stated that Pope Francis' trial reform of 2015 extended the scope of the principle of adversarial in matrimonial nullity trial.

**Keywords:** canon law, principle of contradiction, process to declare nullity of marriage, *Mitis Iudex Dominus Iesus*, Pope Francis's reform

### **Realizacja zasady kontradiktoryjności w kanonach Kodeksu Prawa Kanonicznego po reformie procesu o stwierdzenie nieważności małżeństwa papieża Franciszka (Strony procesowe i ich równouprawnienie)**

#### Abstrakt

Artykuł porusza problematykę wpływu listu apostolskiego motu proprio *Mitis Iudex Dominus Iesus* papieża Franciszka na zakres obowiązywania zasady kontradiktoryjności w sprawach o stwierdzenie nieważności małżeństwa. W artykule zaprezentowane zostaną zmiany jakie reforma procesowa papieża Franciszka

wprowadziła w zakresie warunków kontradiktoryjności postępowania w procesie kanonicznym dotyczących: stron procesu i podmiotu uprawnionego do jego rozstrzygnięcia oraz równouprawnienia stron procesu. W konkluzji należy stwierdzić, iż reforma procesowa papieża Franciszka z 2015 r. poszerzyła zakres obowiązywania zasady kontradiktoryjności w procesie o nieważność małżeństwa.

**Słowa kluczowe:** prawo kanoniczne, zasada kontradiktoryjności, proces o stwierdzenie nieważności małżeństwa, *Mitis Iudex Dominus Iesus*, reforma papieża Franciszka

**Informacje o Autorze:** DR MACIEJ ANDRZEJEWSKI, Katedra Norm Ogólnych i Teorii Prawa, Wydział Prawa Kanonicznego, Uniwersytet Papieski Jana Pawła II w Krakowie; adres do korespondencji: ul. Kanonicza 9/408, 31-002 Kraków, Polska; e-mail: maciej.andrzejewski@upjp2.edu.pl; <https://orcid.org/0000-0001-8440-2426>