

THE PRINCIPLE OF CONTRADICTION FOLLOWING THE REFORM BY POPE FRANCIS OF THE PROCESS TO DECLARE NULLITY OF MARRIAGE (LIBELLUS AND THE SUBJECT-MATTER OF THE PROCESS)*

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Abstract. The article covers the influence of Pope Francis' Apostolic Letter *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 *libellus*; identification of the subject-matter of the process. 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, nullity of marriage, *Mitis Iudex Dominus Iesus*

INTRODUCTION

Ecclesia semper reformanda, a popular truth in the Church, applies to its normative dimension as well, specifically in the aspect of procedural law. The need to change the existing matrimonial nullity proceeding canons was also realized by Pope Francis, considering the salvation of the souls of the people of God entrusted to His care. In His Apostolic Letter *motu proprio Mitis Iudex Dominus Iesus*, the Holy Father introduced a reform of the canons in the Code of Canon Law regarding matrimonial nullity trials.¹

The procedural reform by Pope Francis of 8 December 2015 introduced certain modifications within Book VII, Part III, Title I, Chapter I *Cases to*

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¹ Franciscus PP., *Litterae apostolicae motu proprio datae Mitis Iudex Dominus Iesus quibus canones Codicis Iuris Canonici de causis ad matrimonii nullitatem declarandam reformantur* (15.08.2015), AAS 107 (2015), p. 958–70 [hereinafter: MIDI].

declare the nullity of marriage of the 1983 Code of Canon Law.² It clearly transpires from the foregoing that in his reforms of the special procedure to declare the nullity of marriage (can. 1671–1691), Pope Francis did not vary the canons on trials in general and on the ordinary contentious trial, which must be applied to cases for the declaration of the nullity of marriage unless the nature of the matter precludes it (can. 1691 § 3 MIDI).

Therefore, we should consider the impact the motu proprio *Mitis Iudex Dominus Iesus* Apostolic Letter had on the regulations regarding: 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 *libellus*; identification of the subject-matter of the process. However, the parties to the case and the competent forum, matters of equality of the process parties, minimum availability of the parties, and the competent forum for determination, having the attributes of neutrality and impartiality, will be discussed in the subsequent articles.

1. MODIFICATIONS OF CANONS REGARDING THE *LIBELLUS*

It might seem, *prima facie*, that the realization of the principle of contradiction, consisting of stating two contradictory claims, is far from the spirit of the Gospels as well. Nevertheless, considering that the principle of contradiction leads in reality to determination of objective truth about a marriage, there can be no doubt as to the fact that it also contributes to a fair judgment being passed, and maintains its ancillary character as *salus animarum* [Greszata-Telusiewicz 2020, 173]. The meaning of the principle of contradiction, which is a *sine qua non* prerequisite for the emergence of a canonic *iudicium*, has also been confirmed by Pope Francis in the published motu proprio MIDI, reforming only those procedures which no longer fulfilled their functions targeted at the salvation of souls, for reason of the spirit of contemporary times [Idem 2019, 95–96].

In cases of declaring nullity of a marriage, the principle of contradiction is based on the assumption that the Church is the first authority legally raising an essential claim of validity of a marriage, whereas the spouses have the right and obligation to file a *libellus*, thus defining the petition in the process [Idem 2008, 261]. A *libellus* is the basis for the petitioner to pursue their rights by

² *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1–317 [hereinafter: CIC/83].

stating the petition, whereas the respondent has the opportunity to acquaint themselves with the claim and the judge can resolve on the subject-matter of the dispute. It is emphasized in the doctrine of canon law that it is necessary for the benefit of the process parties and the arbitrator in the dispute, i.e. the judge [Szytchmiller 2003, 43–46].

For the above reasons, *libellus* is the foundation of an ecclesiastical process, whereas the Legislator defined the requirements which the petitioner should include in their petition. On one hand, these facts help the petitioner present their case to the judge, whereas they are also useful for the judge to decide whether to accept or reject the case. For the respondent, the *libellus* is the source of information necessary for proper commencement of defence. By giving the faithful the right to defend their rights before church tribunals, the Legislator further stipulates that any barriers to admission to ecclesiastic courts should be relatively limited. Even though the reasons for which a judge may reject a petition must be strictly construed, it is quite frequent for tribunals to reject *libelli* only on the grounds of difficulty of the cases, stating in the explanatory memoranda that these cases have no legal grounds [Doyle 2013, 437]. Considering the proper phrasing of a petition, there are mentions in the subject-matter literature of the importance of that writ of procedure, particularly if the parties are interested in requesting a briefer process. Whereas the circumstances of things and persons have to demonstrate the nullity of marriage and be supported with valid evidence, a failure to produce an appropriate *libellus* with the required contents will prevent admission to a process before the diocesan bishop, which further supports the importance of the academic background of the persons assisting in writing the petition [Jenkins 2016, 260].

At this point, it should be reiterated that the right to file a petition to an ecclesiastic judge is not only vested in a Catholic but in any person, pursuant to the regulation of can. 1476 CIC/83 *ab initio*. Whereas can. 1476 CIC/83 is fundamentally important for the establishment of a contradictory process relation, the rule set up therein refers to baptized as well as non-baptized individuals [De Diego-Lora 2011, 1112]. In this sense, a *libellus* is not just a *sine qua non* prerequisite for the commencement of an ecclesiastic trial, but also a manifestation of the realization of human rights, specifically giving a party the opportunity to take their case to court [Szytchmiller 2003, 43–46]. In this context, the remarks by P. Malecha, Substitute Promoter of Justice at the Apostolic Signature, should be approved in that oral decisions taken at so-called tribunal consultancies whether to accept or reject a *libellus* is a malpractice and a violation of the norm of can. 1476 CIC/83 [Malecha 2020, 23]. The above procedure not only infringes the principle of participation of both parties in a process to declare nullity of a marriage – *iudicium* (bilateral process), transpiring from can. 1476 CIC/83, but also the principle of contradiction. It has to be noted that without the establishment of the bilateral process

principle, it is not possible to proceed on the basis of contradictory claims, i.e. contradiction being the *sine qua non* prerequisite for the realization of the principle of contradiction in a matrimonial nullity process.

Pursuant to an analysis of the regulations applicable to an ordinary matrimonial process and a documentary procedure, it should be noted that these lack any autonomous regulations on the criteria to be fulfilled by a *libellus*. Only can. 1676 § 1 MIDI and can. 1688 MIDI indicate that a *libellus* is an indispensable impulse for opening an ordinary or documentary matrimonial nullity procedure. Consequently, can. 1691 § 3 MIDI will apply to ordinary proceedings as well as a documentary process. Accordingly, can. 1502 CIC/83 and can. 1504 CIC/83 concerning presentation of a *libellus* and the applicable requirements apply to both types of procedures. Hence, it should be concluded that the range of requirements set for a *libellus*, whether in an ordinary matrimonial nullity procedure or in a documentary process, has not changed further to the process reform by Pope Francis. Nevertheless, in this context we cannot disregard R. Sztychmiller's rightful remark to the effect that in a documentary process, the requirements defined by the legislator in can. 1684 MIDI should be followed with respect to a *libellus* as well. In the author's opinion, a *libellus* should not only include the requirements specified in can. 1504 CIC/83, but also a brief, comprehensive and transparent presentation of the facts on which the petitioner based their claim, and indication of proofs that can be gathered immediately by the judge, with appended documents constituting the basis of the petition [Sztychmiller 2020, 71]. We cannot disregard the fact that the *ratio legis* for a documentary process and for a briefer matrimonial process before the bishop is not only to simplify the procedures leading to the determination of a case to declare nullity of a marriage but also to streamline such procedures, while simultaneous compliance with the requirements of the judicial procedures which ensure to the maximum extent the determination of the objective truth about a marriage.

A separate reference needs to be made to a briefer matrimonial process before the bishop, in terms of the formal requirements defined for a *libellus*. The criteria for a *libellus* were defined on a hybrid basis in the *coram Episcopo* process. In accordance with can. 1684 MIDI, the norms of can. 1504 CIC/83 will apply to the construction of a *libellus*, identical to the requirements applicable to the construction of a *libellus* in an ordinary process and a documentary process. However, can. 1684 MIDI contains certain additional and partially autonomous norms concerning the formal requirements for a *libellus*, in the form of a short, comprehensive and transparent presentation of the facts on which the petition is based, with a reference to proofs that can be immediately collected by the judge and exhibit the documents, in an attachment, upon which the petition is based. It should be noted here that the requirements specified for a *libellus* in a process before the bishop, concerning a brief, complete

and clear presentation of facts, mirror the norm concerning an oral contentious process referred to in can. 1658 § 1, 1° CIC/83. This analogy is similar for the obligation to gather proofs that can be collected immediately by the judge in the context of can. 1658 § 1, 2° CIC/83. On the other hand, the obligation to attach documents on which the petition is based is a restatement of the norm in can. 1658 § 2 CIC/83, which also relates to an oral contentious process. The above clearly implies a similarity of the regulations on matters relating to *libellus*, whether in a briefer process before the bishop pursuant to can. 1684 MIDI or in an oral contentious process according to can. 1658 CIC/83.

Another view expressed in the doctrine of canon law is that in an oral process, the principle of contradiction is valued higher than other types of process [Dzięga 2007, 318]. The regulations on the requirements for a *libellus* in a briefer process before the bishop, similar to those applicable to a *libellus* in an oral contentious process, may imply that the extent of the contradiction principle will be broader in *processus brevior* than in an ordinary matrimonial nullity process, or in a documentary process. It needs to be emphasized very strongly that in processes for declaration of nullity of a marriage, in accordance with can. 1691 § 1 CIC/83, Pope Francis maintained the prohibition to resolve cases through an oral contentious process. This prohibition was based on the intention to ensure a fair resolution in matters of such importance as the validity of the matrimonial bond, with due respect of the principle of its indissolubility, which was clearly emphasized in the assumptions of Pope Francis's reform [Pieron 2015, 231].

As we analyze the reform by Pope Francis in respect of the criteria for a *libellus*, we cannot omit a reference to the provision of can. 1675 MIDI, requiring the judge to be assured that the marriage has irreparably failed, such that conjugal living cannot be restored, before the judge accepts a case. As reasonably noted in the doctrine of canon law, the implemented variation indicates that Pope Francis does not promote nullity of marriage for reason of the sanctity of the matrimonial bond. The reform by Francis rules out any proceedings in cases when the *libellus* only implies that a basis for a petition may only be revealed in the future [Krajczyński 2015, 67]. Moreover, the changes introduced through Pope Francis's reform relating to the assurance of failure of the matrimonial bond, as conditions for a process to declare nullity of marriage, show us that *iudicium* can only occur when convalidation of the marriage and restoration of conjugal living is no longer possible [Rozkrut 2015, 89–90].

2. IDENTIFICATION OF THE SUBJECT-MATTER OF THE PROCESS

Filing a *libellus* in an ecclesiastic tribunal starts a series of legal actions aimed at determining the subject-matter of the process to declare nullity of marriage, of which the decree of citation is of extraordinary importance for the realization of the principle of contradiction. Acceptance of a *libellus* constitutes three essential legal relations between the judge and the petitioner, the respondent, and the subject-matter of the petition. With regard to the petitioner, the relationships which already existed at the *libellus* submission phase are being transformed, as the petitioner becomes a party to the process and takes over the obligations transpiring from the course of the process. The respondent, on the other hand, sets up the initial process relation with the judge, arising from the respondent being established as a party to a case to declare nullity of marriage. The final relation into which the judge is entering is that with the subject-matter of dispute, for which the judge is responsible until the issuance of a final judgment [Greszata 2007, 145].

Citation is the formal act enabling initialization of contradiction of claims between the petitioner and the respondent [Dotti 2005, 83]. The respondent's statement of their view on the *libellus* is an act of particular importance for further proceeding. Judicial practice demonstrates the different views on facts and their interpretations which are typically presented by the respondent, when compared to those presented by the petitioner. Moreover, the defendant's response often indicates new evidence or emphasizes other events that undermine the petitioner's claims. This is how the dispute emerges, continuing throughout the proceedings thereafter, and the case will be in the jurisdiction of the judge that accepted the *libellus* [Dzięga 1992, 158–59].

Presentation of a legally meaningful challenge to the validity of a marriage is tantamount to formal occurrence of a contradiction [Greszata 2003, 244]. The matter of identifying the subject-matter of the process is certainly related to the scope of applicability of the principle of general availability and the principle of secrecy of proceeding in a process to declare nullity of a marriage. The mutual establishment of the two process principles determines the manner in which the parties are informed of the pending process and their effect on the accessibility of the process files for the parties, which is highly relevant to the principle of the right to defence and the principle of contradiction. The extent of available information regarding the essence of a pending matrimonial nullity process and the consequences thereof definitely have an effect on the process steps undertaken by the parties. Only this kind of knowledge will lead to presentation of contradictory proofs.

However, it should be borne in mind that the legal defence opportunity does not only encompass the right to technical defence but also the right to undertake legal measures. The above is the right to present a case to the

competent ecclesiastic judge in order to defend one's claims. This emphasizes the principle of contradiction which, in association with the principle of equality of the parties, enables adequate process measures to be undertaken during the dynamic phase of the process [Nanni 2009, 33]. Hence the close relationship between the right to defence and the contradiction principle, which has also been noted in subject-matter literature, pointing out that the right to defence is *ius ad contradictorium* as well as *ius ad auditionem iudiciale* [Acebal Luján 1993, 31]. Here, it would be reasonable to reaffirm the 1989 address of St. John Paul II to the Tribunal of the Roman Rota, concerning the importance of the right to defence, in which the Pope strongly emphasized that it is essential to "remind all engaged in the administration of justice that according to the sound jurisprudence of the Roman Rota, in cases of matrimonial nullity the party who may have renounced the exercise of the right to defence should be notified of the formula of the question to be judged, of every possible new demand of the opposing party, as well as of the definitive judgment" [Rozkrut 2003, 133]. What is notable in this context is the inappropriate proceeding of certain ecclesiastic tribunals, in which the respondent is completely excluded from trial. In such cases, the judge fails to communicate the basis for a petition for declaration of matrimonial nullity, even though such a communication is an integral part of the process, whereas the spouses and the defendant of the bond should be properly informed of the basis of the petition from the outset of the process, particularly as the formula of doubt is established. It turns out that the most common and most severe violation of a respondent's right to defence is that the respondent is not aware of the proofs presented against the validity of their marriage [Daniel 2014, 239–41].

As we relate to the reform by Pope Francis, we cannot disregard can. 1676 § 1 MIDI, obliging the judicial vicar, after receiving the *libellus*, if he considers that it has some basis, to admit it and to order that a copy be communicated to the defender of the bond and to the respondent, unless the *libellus* was signed by both parties. Consequently, the respondent would be acquainted with the *libellus* immediately upon its admission to trial, i.e. at the very beginning of the process. As rightfully noted in the doctrine, the respondent's right to be informed of the wording of the petition was particularly emphasized and appreciated in Pope Francis's reform. Thus, it seems reasonable not to follow the disposition of can. 1508 § 2 CIC/83 in such cases, as it is commonly criticized and objected against by the parties [Nowicka 2016, 40]. We should also concur with the claim that after the process reform by Pope Francis, a judicial vicar has the obligation to obtain assurance that the *libellus* not only reached the defendant of the bond but also the respondent, and to give them a period of fifteen days to express their views on the petition presented by the petitioner in the *libellus* [Rozkrut 2015, 93]. Another relevant obligation imposed on the judge, transpiring from the *Dignitas connubii* Process Instruction, to contact

the respondent, as presented in Article 126 § 1 [Stawniak 2007, 194]. An important regulation here is can. 1676 § 2 MIDI, additionally authorizing the official to summon the opposite party again to present their views on the case. The respondent's right to participate in the process and to undertake process steps aimed at determining the objective truth about the matrimonial bond, cannot be restricted in an arbitrary manner, even if the determination of the present place of domicile of the respective party is hindered. This is an even stronger argument against restriction of a party's rights as a consequence of neglecting the appropriate process steps [Wenz 2016, 261].

Therefore, T. Rozkrut is right to note that the official is obliged to undertake any and all possible process steps to obtain assurance that the respondent is informed of the process. Otherwise, without the respondent being given an opportunity to exercise their rights incorporated in the overall right to defence, the principle of contradiction in a process for declaration of nullity of a marriage is not fully realized [Rozkrut 2015, 97]. Hence, there can be no doubt that the matrimonial nullity process reformed by Pope Francis, at the preliminary stage when the parties to the process first intend to exercise their right to "proximity between the judge and the faithful," imposes a significant responsibility on a judicial vicar and auxiliary judicial vicars. They are the enforcers of the right to accept or reject a petition, to identify the subject-matter of the process, and to select the appropriate procedure for the case [Krajczyński 2015, 68–69].

As we review the *processus brevior* in the context of identifying the subject-matter of dispute, we should note that in view of the obvious nullity of marriage as the determining criterion for briefed proceeding, as well as the requirement for both spouses to give their consent to the proposed petition, or at least for the respondent not to object to the proposed petition, the subject-matter of the process is well known to both spouses, unlike in the case of an ordinary matrimonial nullity process, or a documentary process. The requirement specified in can. 1683, 1° MIDI is also relevant to the extent of the principle of contradiction in a briefed procedure before the bishop. In the latter case, contradictory claims regarding the subject-matter of the process are not raised by the spouses, who are in consent as to the reason of nullity of their matrimonial bond, whereas the contradiction principle is pursued as between the spouses and the defendant of the bond [Andrzejewski 2020, 16–17]. If a petition was proposed by one party and a judicial vicar sees an opportunity to proceed through a briefed procedure, the judicial vicar should request information from the respondent that did not sign the petition, together with the notification of the *libellus*, whether such a respondent will support the petition stated in the *libellus* and participate in the process (Article 15 *Ratio procedendi*, MIDI). There is no doubt in subject-matter literature as to the fact that a judicial vicar is entitled to address the respondent and to encourage the respondent to consider accessing the *libellus* presented by the petitioner

or completing the *libellus* with new elements and signings, so as to sanction a *processus breviar* [Rozkrut 2018, 182].

The process reform by Pope Francis in respect of identification of the subject-matter of the process in a documentary procedure makes a reference to the regulations of can. 1676 MIDI, without introducing any autonomous amendments in this respect, in accordance with can. 1688 MIDI. In this procedure, it is still required to attach a *libellus* to the other party's petition. The function of this obligation is to realize the principle of contradiction and the right to defence, as well as to facilitate the process of determination of the truth by the judge and obtaining moral assurance necessary for resolving on the case [Rozkrut 2014, 89–90]. Hence, there is no dispute as to the requirement for a copy of the *libellus* to be served upon the defendant of the bond as well as the respondent, unless the *libellus* was signed by both parties. We should concur here with R. Sztymiler in that the reference to can. 1676 MIDI done by the Legislator in the documentary process is excessively broad in terms of application of the arrangements stipulated in can. 1676 § 3–4 MIDI to a documentary process [Sztymiler 2020, 71]. On the other hand, it does not seem appropriate to disregard can. 1676 § 2 MIDI in a documentary process. First, the above references process norm is not contradictory to the nature of the documentary process, as may be the case with non-viable norms of can. 1676 § 3–4 MIDI, while it conforms *de lege lata* to the norm of can. 1688 MIDI. Second, there seems to be no *ratio* justifying a respondent in a documentary process being deprived of the guarantees transpiring from the right to be informed of the subject-matter of the process, and therefore to exercise their process entitlements transpiring from the principle of the right to defence and the right of contradiction. It further transpires from the requirement imposed on all the *iudicium* participants to seek objective truth about the marriage, like it is the case with an ordinary matrimonial nullity trial and in a briefed procedure. Moreover, the nature of the briefed procedure before the bishop and of the documentary process both follow the same direction, aiming at streamlining and facilitating the procedure.

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 a marriage with respect to the prerequisites for contradictory proceedings in a canon law process concerning: the *libellus*; the subject-matter of the process. As regards the modification of the requirements for the *libellus*, it should be claimed that in addition to the requirements presented in the provision of can. 1504 CIC/83, like in the case of the briefed procedure before the bishop, the *libellus* has to meet the following

requirements: brief, complete and clear presentation of the facts on which the petitioner bases their claim, and indication of proofs that can be collected immediately by the judge, with appended documents in an exhibit that constitute the basis for the petition. This kind of a normative arrangement not only seems reasonable, on the grounds of the simplified character of the briefed procedure before the bishop and the documentary process, but is also aimed at streamlining and facilitating matrimonial nullity trials. At the same time, the diocesan bishop was established on a mandatory basis in the briefed procedure and on an optional basis in the documentary process as the guarantor of respect of the principle of inseparability of marriage. With regard to a briefed procedure before the bishop, the requirement for joint presentation of a *libellus* by the spouses seems to be excessively stringent, particularly considering the fact that this procedure is intended to apply only to cases of particular obviousness from the viewpoint of the criteria constituting the basis for declaration of nullity of a marriage, whereas the decision on the election of the applicable process option is reserved to the competence of the judicial vicar.

As regards the prerequisite of identifying the subject-matter of the dispute, it should be noted that the Legislator continuously emphasizes communication of such subject-matter to other participants of the process, specifically through the obligation to serve the *libellus* upon the party that did not sign it and upon the defender of the bond. Moreover, in his reform act, Pope Francis gave even more prominence to this requirement, enabling the judicial vicar in an ordinary matrimonial nullity process, in a briefed process or in a documentary process to summon the party again whenever he does not have adequate assurance that the respondent was given an opportunity to become acquainted with the subject-matter of the case. In the context of the importance attributed by Pope Francis to the communication of the subject-matter of the process to the respondent, the postulated modification of the instructions in can. 1508 § 2 CIC/83, in which the authority of the judge to not serve the *libellus* upon the respondent for valid reasons, should be considered proper and justified. This is even more appropriate considering that this authority is practically never exercised in judicial processes for declaration of nullity of a marriage.

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