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THE PRINCIPLE OF *SALUS ANIMARUM*
AS THE ESSENCE OF THE CONTRADICTIONARY
CHARACTER OF THE CANONICAL TRIAL¹

INTRODUCTION

The contradictory character of the trial, or the so called the principle of contradiction, at first glance may seem to be afar from the spirit of the Gospel which as a matter of fact is a chief aim of all procedural activities. However this first impression cannot overshadow its proper content, which is the pursuit of objective truth by making a thesis that is opposite. Thanks to such a procedure, it is possible to obtain the true answer as much as possible, which enables the issuing of a just judgment, remaining in a subservient role *salus animarum suprema lex*.

The principle of contradiction is closely related to the parties' participation in *iudicium* which undeniably constitute its very crucial structural element. Parties should be understood as the following entities: *bond defender, a promoter of justice, lawyer, attorney, defender, procurator speciales, stabilis patronus, patronus, curator, tutor, legitimus repraesentantus personarum iuridicarum and administrator personarum iuridicarum*. These potential parties to a dispute may present this rule and implement it in the dispute before a judge.

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¹ For more about the contradictory system see GRESZATA 2008, 242–63.

Through this action it is possible to implement the most perfect form of conflict resolution in the system of canonical procedural law, which is the judicial process. The principle of contradiction is present implicitly in the code provisions and all documents constituting the reform of Pope Francis, because in its multi-faceted nature it is not possible to express it in the form of a directive. The effectiveness of this principle can be seen from the first moments of the *iudicium* until its final conclusion.

It is also assumed that the respondent does not oppose the request, if it relies on the justice of the court or is summoned properly for the second time, it does not give any answer.² It is in such a situation that there is an contradictory procedure between the position of the Church represented by the defender of the bond and the position of one spouse, in absence of the other, or the consistent position of both spouses. Nevertheless, the principle of contradiction in such a process structure is present and necessary as the basis of every *iudicium*.

1. THEORY OF THE CONTRADICTORY PRINCIPLE

The contradictory principle,³ which has a fundamental impact on the course of the *iudicium*, in addition to the practical dimension resulting from the actions of the parties in relation to the subject of the dispute and in relation to the judge, also has a theoretical picture. This image allows you to look at the principle of a dispute as a guiding idea that underlies the creation of specific and detailed norms from which rights and obligations that can be implemented at particular stages of the *iudicium* result.

The contradictory principle applied and implemented in the framework of the Polish criminal trial and Polish civil procedure is expressed primarily in the parties' freedom of action before the judge, but at the same time through a procedural "struggle" which is to lead to material truth. This procedural "struggle" is a particular manifestation of the implementation of the contradictory principle, without which this principle could not be itself. Of course, it is very important for the parties to have equal rights before an impartial arbitrator, but only by way of a procedural "struggle". What one side presents is called a thesis, the other side

² Art. 11 § 2 The principle of procedural *Mitis Iudex Dominus Iesus* [MIDI].

³ Contradictory nature of cases for annulment of marriage are widely discussed in the article [GRESZATA 2003b, 239–58]. At this point, the issue of contradictory issues is only shown in the aspect of its effectiveness as a procedural rule existing within the framework of the *iudicium* in canonical cases of marriage annulment.

presents an antithesis, and the judgment in such a situation becomes a synthesis [Greszata 2008, 242–48].

In canon law, the contradictory principle is very closely linked to two other principles which are the principle of equality of parties and the principle of bilaterality, which guard the parties' freedom of action before the church judge. However, the possibility of performing all legal actions by procedural parties can be realized only through formal and legal disputes in the form of litigation. This dispute does not have to have anything to do with the emotional dispute, on the contrary – it is enough that it takes the form of substantive and procedural “struggle”, without which the contradictory principle is simply not this principle.

2. ESTABLISHMENT OF CONTRADICTION

The subject matter of canonical trial is, among other things, stating legal facts.⁴ In the case of a marriage annulment, the legal fact, which is also the subject of the dispute, which is passed on to the judge, is the conclusion of a canonical marriage, the invalidity of which has serious doubt.⁵ The essence of this doubt, which subsequently raises a legal dispute, is the existence of two mutually exclusive claims.

These contradictory statements can have two manifestations. The first manifestation of contradictory principle may refer to what is inconsistent to each of the spouses about their marriage. It may be that the one of the spouses is of the opinion that their marriage is invalid and the other that it is valid. There may also be a situation where one of the spouses is of the opinion that their marriage is invalid on a bases of the specific ground of marriage nullity, the other spouse also considers similarly but indicates another reason for invalidity, i.e. another ground of marriage nullity in procedural understanding.

Second expression of contradictory procedure may also refer to what the Church holds about a particular marriage and which is contrary to the position of the spouses who claim this marriage holds. They may agree, or only one of them, that the marriage was invalid. The content of the Church's assertion in such

⁴ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1–317 [CIC], c. 1400 § 1, 1°.

⁵ A great threat for the institution of marriage in today's world is modern anthropology, which is moving away from Christian values and is increasingly striving to show the topic of marriage and family in the private world. This remains undoubtedly a clear provocation that humiliates a society born on the basis of the concept of natural law. An interpersonal relationship in marriage has its specific social dimension because it gives rise to family, the fundamental cell that gives rise to society. On this topic, see ROZKRUT 2001, 347–61.

a situation is a provision of church law, which presupposes that the expressed marriage consent lasts until it is certain of its revocation [DZIĘGA 1994, 140–43; CIC, c. 1107]. Marriage possesses the favor of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven (CIC, c. 1060).

It should be noted that what one party believes is *dictio* – saying, stating, renunciation, oracle, conversation, speech, lecture, hearing [KUMANIECKI 1979, 160]. The other party, however, recognizes the opposite with regard to the opposing party's assertion. This personal conviction of the other party can be described as *contra dictio*, that is, simultaneous speaking opposite, on the other side, quite contradictory, quite the opposite, in conflict with something [*Ibidem*, 124]. In such a situation, one can speak of the existence of a basis for contradiction, or this situation can be described as the actual emergence of an contradictory procedure, which during the *iudicium* in cases of nullity of a marriage turns into a procedural principle, which is the principle of contradiction.

The contradiction in the case of the Church's claim can only be said if the possibility that the Church, which protects the validity of marriage, can be a real party to the dispute in this process, of course, taking into account all the assumptions of this claim and its consequences.⁶

Filing an petition to the church tribunal does not close the spouses' way to reach agreement and return to marriage. The Code of Canon Law allows various ways to avoid processes and strongly emphasizes the need to reconcile, i.e. avoid or abandon the process.⁷ This obligation lies primarily, though not exclusively, with the judge. The judge, both at the beginning of the case and at any other time, noticing the hope of a good result, should encourage the parties to the litigation and help them to seek a solution to the dispute through a joint agreement, while at the same time showing them the right path, also using the mediation of other persons [CIC, c. 1446 § 2]. This is a general standard that applies to all types of processes⁸.

In the case of a marriage nullity process – in the old Code – a judge, before accepting a case and whenever he sees the hope of a good outcome, should apply pastoral measures so that the spouses, if of course possible, are brought to recognize the marriage and resume marriage [CIC, c. 1676]. In the reformed provision – before accepting a case, the judge should be sure that the marriage has broken

⁶ To learn more see DZIĘGA 1994, 140–43.

⁷ CIC, can. 1713. An agreement or compromise cannot be made validly concerning matters which pertain to the public good and other matters about which the parties cannot make disposition freely. See. CIC, can. 1715 § 1.

⁸ In the regulations concerning the hearing, the Legislator recall the attempt to reconcile the parties: CIC, c. 1659 § 1.

up irrevocably and that it is no longer possible to resume the communion of marriage life [MIDI, c. 1675]. From a formal and legal point of view, this situation should be looked at as follows: if both spouses decided to resume joint marriage life, then in these types of situations in the process the case is being abated [CIC, c. 1520]. For this reason, the reformed Code provision insists on making sure that marriage cannot be resumed.

Another Legislator shows the possibility of the so-called reconciliation of the parties in relation to matters regarding the separation of spouses.⁹ Also in this case, the judge, before accepting the case or whenever he sees the hope of a good outcome, should apply pastoral measures so that the spouses reconcile and are prompted to resume a married life together [CIC, c. 1695].

The above norms indicate the particular caution with which the Church approaches matrimonial petitions,¹⁰ trying to avoid them as much as possible, without, however, depriving the spouses of their right to challenge their marriage. And if during the marriage annulment process the spouses' marriage resumes, then the principle of contradiction is implemented only up to the moment when the formal end of the trial took place.

3. DEVELOPMENT OF THE PRINCIPLE OF CONTRADICTION

Marriage is a public good of the Church because it is a sacrament¹¹ during which God makes a covenant with people and undertakes in it to help the faithful constantly. That is why canon law introduces and at the same time requires a legal presumption for the validity of marriage, binding everyone until, according to the law, the opposite is proved [CIC, c. 1060], with full concern for the protection of the validity of the sacrament, i.e. concern for the good of the whole community of the Church [DZIĘGA 1992, 42].

When both spouses, or at least one of them, find that there is a serious doubt to the validity of their marriage, they can go to a church court asking for a formal

⁹ To learn more about the issue of separation see ROZKRUT 2000, 209–24.

¹⁰ Canonists should be concerned, however, by the growing number of cases filed for nullity of marriage to the forum of diocesan tribunals. See STASIAK 2002, 11–12.

¹¹ An exception in this respect is a marriage concluded with a dispensation from an impediment of a disparity of cult. See CIC, c. 1086. To learn more about the impediment see ŻUROWSKI 1987, 162–66; ADAMOWICZ 1999, 246–47; Góralski 2000, 61–63; GRĘŻLIKOWSKI 2002, 113–14. For more information on the development of *sacramentalis dignitas* see PASTWA 2007, 182–99.

resolution of that doubt.¹² The court then decides what actually happened at the time when the betrothed entered into a sacramental marriage: if there were any of them at the time diriment impediments [CIC, c. 1083–1094; GÓRALSKI 1987, 25; SZTYCHMILER 1993, 106] or whether there was a defect in marriage consent on one side [CIC, c. 1095–1098], or whether there was no canonical form [CIC, c. 1108–1123].

Therefore, when the spouses entrust the issue of the nullity of their marriage to the church tribunal, together with this issue they delegate to judges their right to decide on their marriage, because when the judges give judgment in this case, the parties will have to adapt to it and bear the consequences of that judgment. Thus, the spouses express the will that the controversy regarding the nullity of their marriage, treated by them as one of their private goods, and protected by the Church as its public good [DZIĘGA 1992, 41–43], be resolved by the judges. The point is that there should be a possible legal fact contrary to the fact stated by the official witness when the marriage was concluded [*Ibidem*, 43].

This disclosure to the ecclesiastical judge about the possible nullity of marriage can be described as the formal emergence of a contradiction. The act of entrusting the issue of marriage nullity to a ecclesiastical tribunal, also known as an allegation of nullity of marriage, does not require the simultaneous consent of both spouses. Moreover, the respondent may even be formally declared decree absent, and the trial may proceed freely without ones participation [CIC, c. 1510; cf. CIC, c. 1592 § 1].¹³ In addition to spouses, a marriage can also be challenged by the promoter of justice, but only in cases where the nullity of the marriage is made public, if the marriage cannot be recognized as valid or it is not advisable [MIDI, c. 1674 § 1; cf. CIC, c. 1674, 2°].¹⁴

4. THE SPECIFICITY OF THE PRINCIPLE OF CONTRADICTION IN CASES OF MARRIAGE NULLITY

To speak of the principle of contradiction in the canonical *iudicium* at all, two theses must be submitted to the judge. For contradictory procedure, the second thesis is more important, which should either completely exclude the truth of the

¹² Currently, most cases in church tribunals in Poland are pending based on canon 1095 of the current Code of Canon Law [FĄKA 1982, 245–69; DZIĘGA 1997, 85–97]. For more information see PAŹDZIÓR 1999.

¹³ For more information see MAJER 2002, 167–90.

¹⁴ For more information see GRZYWACZ 1974.

first thesis or partially refutes it [CIC, c. 1494 § 1]. It is the opposite thesis that creates contradiction, which is why it is so important.

The principle of contradiction in judicial practice therefore primarily consists in the two theses opposing each other be submitted to the judge. There is no contradiction in a situation where two theses do not contradict each other, i.e. when they deal with two different issues and are not opposed to each other. The principle of contradiction is therefore the principle of the opposite thesis. Such an contradictory procedure should be present in the mind of the judge at the time of formal acceptance of the claim, and in fact even earlier, i.e. at the moment when the judge decides about the fate of the petition presented to him [CIC, c. 1505 § 1]¹⁵. However, it is only when a procedural relationship arises between the parties by summoning the respondent that the process begins to be formally contradictory [SZTYCHMILER 2007, 123–315].

At the stage of determining the formulation of the doubt, contradiction is formally transformed into controversy, i.e. determination by a judicial decree to what extent and on what topic the dispute takes place, i.e. what its subject matter is. The doubt formula has the form of a question which the collegiate tribunal answers in the decisive part of the judgment [CIC, c. 1513–1516].

Two dimensions of the principle of contradiction can be identified in the context of the marriage nullity process. The first is the opposition of what the Church claims about the permanence and sacramentality of marriage and what is present in the Code provisions on the presumption of validity of marriage, and what the spouses claim that their marriage is invalid. Contradiction in such a situation gives the judge a certain guarantee of objectivity, because he obliges the claimant, claiming that his/her marriage is invalid, to actively conduct the trial. On the side of the Church's assertion about the validity of marriage in the trial, the bond defender stands along with all formal and legal effects of ones actions. This dimension of contradiction may exist before the trial begins and may never even be presented for judicial consideration. The second dimension of the principle of contradiction is the opposition of procedural theses submitted and rationally defended by both parties. This opposition, in fact, between specific people does

¹⁵ It should be remembered that in some situations the petitioner's claim may be rejected by the president for reasons provided by the law. For many years, there has been a discussion in the literature of canon law regarding the possibility of a party's appeal against a president's decision dismissing a claim. A party may submit a recourse to the college against such a decision, which may confirm the president's decision or not. However, it seems right that the party should also have the right to appeal to the metropolitan tribunal, which is not clearly determined by the Code. To learn about the canonists' views on this subject and commentary in this regard see SOBAŃSKI 1991, 211–13.

not have to exist at all,¹⁶ but from the formal side it is necessary for the structure of the ongoing process.

Even if the claimant's thesis appeared almost obvious, for example due to the existing diriment impediments or the lack of canonical form, it is presumed that the expressed consent lasts until two compliant court judgments obtain the formal certainty of the opposite claim [CIC, c. 1107], in the current regulations no compliance of two judgments is already required, as the verdict declaring the marriage nullity for the first time after the peremptory time limit expiry go in force [MIDI, c. 1679]. Spouses, before a final judgment of the church tribunal are not considered free to marry. Only the final sentence declaring the marriage null and void allows the spouses to enter into new marriages.

During the *iudicium*, the spouses' *lite pendente nihil innovetur* principle applies, which means that no changes [CIC, c. 1512, 5°] should be made to the subject of the dispute.¹⁷ That dispute, in the case of a canonical marriage nullity, is the validity of a particular marriage. Therefore, during the trial of the spouses, it is forbidden to change anything in the still existing marriage, at least from the formal and legal side. On the one hand, they cannot behave as if their marriage did not exist anymore, because this fact will only be decided by the judicial decision, but on the other hand the spouses, pending the judge's decision, do not have to behave as if their marriage lasted because after all, they not only question its validity, but even postulate its annulment. By initiating the trial, the claimant introduces legal doubt as to the nullity of his marriage. This doubt can only turn into a formal statement that marriage does not exist. Therefore, the basic question arises whether during the legal doubt to the nullity of marriage the spouses retain all canonical rights and obligations of marriage, or whether these rights and obligations are suspended. It seems that after the introduction of a state of litigation of controversy in respect of marriage, its canonical effects can be compared to the effects of separation during the marriage bond. The church legislator emphasizes that the spouses have the obligation and the right to preserve their common life, unless it is justified by legitimate reasons [CIC, c. 1151]. And in this case it seems that such a legitimate reason arises as a consequence of the ongoing dispute and suspends the duty and right to maintain the community of the table, bed and apartment, similarly to separation.¹⁸

¹⁶ For example, both spouses agree that their marriage is null and void, and the defender of the bond also does not point to any rational arguments against the annulment of the marriage.

¹⁷ For more on *litis pendens* see GRESZATA 2003a.

¹⁸ For more information on separation see KASPRZYK 2003.

In the context of the the time during which an action is pending, or litispence, the adversarial principle gains special significance.¹⁹ The principle of trial “struggle” of the parties is in fact very fair and very consistent for both “struggling” parties in a situation where at that time there are no changes in the subject for which the parties are in dispute. In order to determine if the contradiction is present in this situation, the question is whether it is important for the judge to recognize the trial theses or it is enough for the judge to recognize two subjects as the authors of two specific statements, i.e. the parties to the legal dispute. Two subjects are absolutely necessary for the theoretical structure of the process, for permanent legal relationships. On the other hand, to actually enable the judge to conduct intellectual examination and settlement of a marriage nullity case, the statements that the judge must take into account seem to be more important. Therefore, the physical presence of the subject is not necessary for the organization of court proceedings. Contradictional procedure in a pending trial for nullity of a marriage can actually exist without the simultaneous trial activity of both parties in the dispute. This situation in judicial practice is possible and quite common [CIC, c. 1592 § 1].

Another issue concerns the understanding of *iudicium* which is the basis of contradiction. Contradictional procedure is primarily a dispute in the intellectual surface when there are at least two, different from each other, rational possibilities of understanding a given issue. This intellectual dispute does not have to turn into an emotional dispute. In some situations, the Code allows a kind of intellectual dispute to arise between a formally mandated norm of law for the faithful and actual submission to that norm in order to more effectively protect the good of each faithful depending on the objective truth regarding the individual situation of a faithful one. This seems to be the case in matters of marriage nullity [DZIĘGA 1994, 147–50].

The canonical contradiction of these matters, therefore, means the theoretical possibility of the existence of two opposing statements about the validity of a marriage, in this situation the statements do not have to be emotionally experienced by the parties to the dispute as a reason for hostility or personal aversion. The more so that both spouses can be in complete agreement on this matter, while the controversy concerns only the opposition of their and church’s claims [GRESZATA 2003b, 249].

For a contradiction to take place formally, it must be submitted to the judge in an appropriate form. In the CIC, the legislator makes the judge not hear any case if the person concerned or the promoter of justice does not make a request

¹⁹ To learn more see GRESZATA 2005, 254–57.

that should meet the requirements set by the laws [CIC, c. 1501].²⁰ This request is a prerequisite for being able to submit a case to the judge at all, which is referred to as *petitio*. The legislator does not talk about a trial *dictio*, but about *petitio*, which is a request submitted before the judge to settle the case. If someone wants to sue somebody in court, must submit to the competent judge a petition in which one presents the subject of the dispute and expresses a request for the service of the judge [CIC, c. 1502]. *Petitio* is associated with the formal existence of the subject of the dispute, i.e. *controversiae obiectum*. The applicant must therefore be open to the judge from the commencement, because only in this way one can outline the dispute to the judge. This is his first *dictio*, one's approved claim. At the same time, the judge receives from the applicant information about what may be conducted as a *contra* by the respondent [GRESZATA 2003b, 249–50].

Considering canon 1504, which lists the formal requirements for the petition [CIC, c. 1504] and canon 1505 § 2, which sets out the circumstances in which the petitioner's request [CIC, c. 1502 § 2] can be rejected, attention should be paid to *domicilium* and quasi-*domicilium* of the respondent in the plaintiff's petition. If it is missing, the petition cannot be rejected²¹. Nevertheless, determining the respondent's residence is very important because, if there is no contact with the respondent, then the formulation of the doubt cannot be determined²². According to the CIC, an indication of residence of the respondent is not required to accept the plaintiff's petition, but it is very necessary for the formula of doubt to arise. Two entities are required to determine it and accept it [CIC, c. 1513 § 1, c. 1677 § 2].

The petitioner constitutes itself, but to create the proper structure of the process, there must still be the second entity - the respondent. This is the essence of the statement that there must always be two judges against the judge (*contra dictio*) who at least partly contradict each other and raise claims against each other, otherwise *nulla sunt acta processus* occurs. After accepting the petitioner's request, which is accepted by the judicial vicar [MIDI, c. 1676 § 1] in accordance with applicable regulations, one should recite and then notify this decision to the parties to the proceedings and the defender of the bond, in accordance with the law [MIDI, c. 1676 § 1; CIC, c. 1507 § 1, c. 1508 § 1]. It is the moment of notification that gives rise to the most significant effects for the process, such as: formal existence of the process, controversy, parties, validity of procedural acts. If all these effects did

²⁰ For more about the petition see SOBAŃSKI 1996, 143–52.

²¹ It might be done in the case of a canonical marriage annulment.

²² For more about the introduction of the case see SZTYCHMILER 2001, 101–25; GRESZATA 2004, 137–59.

not take place, only the *dictio* would be available to the judge, and therefore there would be no controversy and *no strict* trial could come into being.

The examination of the case presupposes the existence and preservation of the rights of defense on both sides of the *iudicium*. This requirement derives from natural law, but must also be confirmed by the set law. The manner of the court proceedings with respect to the judge consists in examining the case in adversarial proceedings between the petitioner and the respondent. This consideration occurs through providing evidence, arguments and discussions. Therefore, the examination of a proceeding where there is no contradiction is not recognised as court proceedings, i.e. based on the law of contradictory statements of the parties combined with the will of each party to defend their thesis against the theses and the assertions of the other party [DZIĘGA 1994, 64].

5. CONTRADICTIONARY SYSTEM AS A PRINCIPLE IN A CANON PROCEEDINGS ON THE ANNULMENT OF MARRIAGE

Most experts on procedural law claim that the principle of contradictory, also known as the principle of contention [FAKA 1978, 23], consists in imposing on the parties the obligation to gather and present evidence. In such a situation, the court reserves the role of observer and arbitrator of the “duel” conducted by the parties [LUDWIKOWSKA 1999, 249]. It is only for the court to assess the evidence and issue a decision on this basis. It is only for the public interest that the court may act on its own initiative [FAKA 1978, 23]. The most important element of this rule is to exclude the judge from all functions related to the search and proof gathering [PIKUS 2002, 279–80].

This was also reflected in the procedural provisions of the current CIC, according to which the obligation to provide proofs lies with the one who claims something [CIC, c. 1526 § 1]. The assumption, however, that the contradictory procedure consists in imposing on the parties the obligation to gather and present proofs, only shows the consequences arising from its application, and does not go to the essence of the problem. The essence of the principle of contradictory is the “struggle between the parties” before the judge, who must control that the parties “struggle” in a manner determined by precise rules. This principle has its additional support in the principle of equality of the parties [LUDWIKOWSKA 1999, 250–51].

The existence of disputable issues is also the sense of existence of canonical *iudicium*. If the rights in dispute were not disputable, then they would not be subject to litigation. This opposition of the parties is evident when it comes to two or more persons who demand the same right. However, it may happen that

the opposite does not appear externally in relation to the same claim in which both parties are interested in the same decision. In such a situation, in fact, the opposite exists, but as an objective interest to assert and defend [RAMOS 2000, 27].

This procedural “struggle” between the petitioner and the respondent is expressed in the specific possibilities of action provided for by each of the procedural laws. Generally speaking, this can be expressed in the priority of one party’s action over the other’s. It is always the case of the *iudicium* that first the petitioner claims “A” and must prove it later, while the respondent responds to the claimant’s claim: “Not A” and also has the right to prove it. Immediately during the first, preliminary stage of the suit, this is expressed in the right to lodge a complaint and in determining the claim by one party [CIC, c. 1674, 1^o], and the right to respond to the allegations presented in the complaint [CIC, c. 1494 § 1].

In the second phase of the trial, the essence of which is to determine the formulation of the doubt, each party has the same right to speak on this issue and each party can benefit from an identical number of statements [CIC, c. 1513–1514]. However, the direction of the judge to determine the extent of the dispute is determined at the outset by the party who makes the claim. In the third phase of the suit, i.e. the examination phase, the right to speak and present proofs of one party implies the right to do the same for the other party. Since the obligation to provide proof lies with the party who makes an allegation in the petition [CIC, c. 1526 § 1], i.e. primarily on the petitioner’s side, the right of other parties to speak at the stage of discussion of the case is implemented in a similar way as in the earlier phases. In the last stage of the process, i.e. in the judgment stage, the parties no longer actively participate. Contradictional procedure is expressed in the right of both parties to enjoy the rights to appeal [GRESZATA 2003b, 252–53].

The contradictional system also takes place in the procedural “struggle” between the spouses who challenge their marriage and the claimant of the validity of the marriage, in accordance with the legal presumption – the Church. The defenders of the bond,²³ as representatives of the public good of the Church, have the same rights as procedural parties. In addition to the procedural rights assigned to one, the defender of the bond also has obligations that are strictly defined and necessary to be implemented under the pain of nullity of the act [CIC, c. 1433]. The parties to the dispute do not have such obligations.

First of all, it should be noted that in terms of contradictional nature of cases of marriage nullity, the first entity submitting a valid legal statement is the Church, which by legal presumption determines the indicated marriage as valid. Therefore, the right and obligation to submit a petition and determine the claim is of the

²³ To learn more about the defender of the bond see GRESZATA 2001, 158–61.

spouses. This obligation – understood as the need to present the case to a judge due to the lack of other legal possibilities for obtaining a canonical declaration of marriage nullity, is in fact a reaction to the Church's unchangeable attitude regarding the validity of marriage, although in the procedural sense it is simply an *actio*. In accordance with the applicable regulations, before specifying the formulation of the doubt, the judicial vicar should hear the position of the defender of the bond as the guardian of the church good [MIDI, c. 1676 § 2]. The same happens when determining the formulation for the doubt, which is also primarily the responsibility of the spouses. The defender of the bond may only hinder their activity by asking to change the formulation of the dispute by removing one of the considered titles from their claim for the marriage invalidity. He can do it in the situation when he comes to the conclusion that the title entered by the parties cannot be proven, and therefore the marriage under this title, according to the defender of the bond is still valid.²⁴

During the proof gathering, the defender of the bond has the right to participate in the hearings of the parties, witnesses and experts [CIC, c. 1678 § 1, 1^o], and also has the basic right to view the acts before they are presented to the trial parties [CIC, c. 1678 § 1, 2^o]. This is important because the petitioner and the respondent are not entitled to these rights. At the same time, the defender of the bond has the duty to state [CIC c. 1433] and rationally present all arguments against the nullity of the marriage [CIC, c. 1432]. In addition, the defender has the right to be the last to speak [CIC, c. 1603]. During the judgment stage and appeal stage, ones rights are already the same as those of the petitioner and the respondent, i.e. they are equated with the rights of procedural parties in the proper sense.

The contradictory system is in opposition to the inquisitorial system. In the extreme version, the first is expressed in the fact that the judge issues the decision solely on the basis of evidence taken at the request of the parties, while he himself does not actively participate in the gathering of proofs; the other is expressed in the fact that the judge is obliged to seek proofs to determine the facts. Both the first and second principles are not suitable for implementation in their pure forms, they must be proportionally mixed together, with the predominance of one or the other, which then gives the proper character of each [LUDWIKOWSKA 1999, 250].

If the right of a judge to take the judge's initiative in taking evidence of which he knows that he can undermine the result of an *iudicium*, which is characteristic of the principle of contradiction, then a conflict arises between the judge's obligation to issue a fair judgment and the need to omit relevant proofs since the judge must not carry it out on its own initiative. On the other hand, impos-

²⁴ To learn more see DZIĘGA 1999, 23–40.

ing solely on the judge the obligation to gather proofs, which is characteristic for the inquisitorial system, is a fictitious procedural fiction in canonical reality since the judge usually has to obtain information about proofs from the parties. In addition, as far as the inquisitorial principle is concerned there is a danger that the judge may become somehow a participant in the dispute, acting for the benefit of one or the other party, which can even lead to the loss of his objectivity in his judgment. Such an eventuality does not threaten the introduction of contradictory measures, as the judge remains an objective observer of the parties' activity and does not necessarily participate in it. This is a strong argument in favor of the contradictory system.

The principle of contradiction in the CIC is described in a descriptive form, as there is no legal provision in which it is directly inscribed in. Therefore, it should be interpreted from all procedural provisions. In any case, it would be very difficult to write such a rule in a directive form. Therefore, it is taken into account and implemented at individual standards regarding the rights of procedural parties and standards regarding the organization of individual stages of the *iudicium* by the Legislator.

SUMMARY

The principle of contradiction is a condition for the existence of an *iudicium*. For any trial, including canonical marriage nullity, one needs a statement expressing the will to exercise his right with the opposite claim, which also expresses the will to exercise the same right. At this time, when these two contradictory statements arise simultaneously before the church judge, a dispute arises, which then can turn into an *iudicium*.

Such will to understand the canonical process as contradictory system is also expressed by Pope Francis in MIDI recalling the hitherto norms and reforming only those procedures that required it to move with the times. These changes are intended to remove from the content of the *iudicium* only what was devalued while the core of principle of contradiction remains inviolable. Pope Francis writes in MIDI: "[...] the zeal for the salvation of souls that, today like yesterday, always remains the supreme end of the Church's institutions, rules, and law, compels the Bishop of Rome to promulgate this reform to all bishops" [*Introduction to MIDI*]. Such justification underlies the Franciscan reform of the canonical process based on procedural principles.

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THE PRINCIPLE OF *SALUS ANIMARUM*
AS THE ESSENCE OF THE CONTRADICTORY
CHARACTER OF THE CANONICAL TRIAL

Summary

The principle of contradiction is a condition for the existence of an *iudicium*. For any trial, including canonical marriage nullity, one needs a statement expressing the will to exercise his right with the opposite claim, which also expresses the will to exercise the same right. At this time, when these two contradictory statements arise simultaneously before the church judge, a dispute arises, which then can turn into an *iudicium*.

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Key words: Pope Francis's reform; canonical process; process regarding the nullity of marriage; *Mitis Iudex Dominus Iesus*; canon law; principle of contradiction

ZASADA *SALUS ANIMARUM*
JAKO ISTOTA KONTRADYKTORYJNOŚCI
W SYSTEMIE PRAWA KANONICZNEGO

Streszczenie

Zasada kontrydktoryjności jest warunkiem zaistnienia *iudicium*. Do powstania każdego procesu, w tym również kanonicznego procesu o nieważność małżeństwa, potrzebne jest bowiem czyjeś twierdzenie wyrażające wolę realizacji swojego uprawnienia z jednoczesnym zaistnieniem twierdzenia przeciwnego, które również w swej treści wyraża wolę realizacji tego samego uprawnienia. W tym czasie, gdy te dwa sprzeczne ze sobą twierdzenia zaistnieją jednocześnie przed sędzią kościelnym, powstaje spór, który następnie może przekształcić się w *iudicium*.

Taką wolę rozumienia procesu kanonicznego jako kontrydktoryjnego, wyraża również Papież Franciszek w MIDI, przypominając dotychczasowe unormowania i reformując jedynie te procedury, które tego wymagały zgodnie z duchem czasu. Wprowadzenie tych zmian ma na celu pozbycie się z treści *iudicium* jedynie tego, co się zdewałowowało, przy czym trzon kontrydktoryjności pozostaje niewzruszony. Papież Franciszek pisze w MIDI: „...troska o zbawienie dusz, która – zarówno dzisiaj, tak jak w przeszłości – pozostaje najwyższym celem instytucji, ustaw i prawa, skłania Biskupa Rzymu do przedstawienia biskupom niniejszego aktu reformy”. Takie właśnie uzasadnienie staje u podstaw reformy Franciszkowej procesu kanonicznego opartego na zasadach procesowych.

Słowa kluczowe: reforma Papieża Franciszka; proces kanoniczny; proces o nieważność małżeństwa; *Mitis Iudex Dominus Iesus*; prawo kanoniczne; kontrydktoryjność