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LIBELLUS IN A BRIEFER PROCESS

Abstract. Briefer process, which in my opinion has become the most inventive establishment in the recent reform made by the Pope Francis, is believed to be at the same time the biggest challenge for Ecclesiastical Tribunal. There are two main and basic conditions that need to be met in order to make this situation happen, namely both spouses are in agreement to file for divorce, so the divorce petition was reported by both of them or by only one, but with another spouse's consent. Second basic condition is that all events and cases reported, considering facts or people, are advocated by testimony or documents and do not need to be explained and checked, so therefore they clearly indicate the nullity of marriage. Every process for nullity of marriage, no matter the form, begins with the presentation of the petition. Judge cannot familiarize with the case, until the request is not presented. Invariably, the right to complain about marriage have both spouses and the Promotor of Justice in some cases.

Keywords: Pope; process; nullity of marriage; reform; petition.

INTRODUCTION

Briefer process, which in my opinion has become the most inventive establishment in the recent reform made by the Pope Francis is believed to be at the same time the biggest challenge for Ecclesiastical Tribunal. There are two main and basic conditions that need to be met in order to make this situation happen, namely both spouses are in agreement to file for divorce, so the divorce petition was reported by both of them or by only one, but with another spouse's consent. Second basic condition is that all events and cases reported, considering facts or people, are advocated by testimony or documents and do not need to be explained and checked, so therefore they clearly indicate the nullity of marriage (can. 1683, in MIDI art. 5).[1]

[1] Cf. FRANCIS, Apostolic Letter Motu Proprio *Mitis Iudex Dominus Iesus* by which the canons of the Code of Canon Law pertaining to cases regarding the nullity of marriage are reformed, https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html. Abbreviation: MIDI.

The only occurrence in which the briefer process can be deployed is clear and unarguable situation. However, it often happens that only in a few cases it is possible to say that all the facts reported are fully evident, especially at the beginning of a proceeding. Such option cannot be excluded, but one needs to take into consideration that there is also another condition that need to be followed, namely both spouses must be in agreement – which happens in minority of cases in Ecclesiastical processes. There is some risk connected with such kind of process. If the evidentiary material is not enough to convince the bishop to give judgement *pro nullitate* the case is proceeded regularly. The Pope claims as follows: "It has not escaped my notice how a briefer process can put a rule of indissolubility or marriage at risk". Such awareness makes the Pope to pronounce that only a bishop is allowed to give judgements in briefer processes, because only he "has the greatest care for Catholic unity with Peter in faith and discipline" (MIDI, Introduction, IV).

1. *FAVOR VERITATIS* AND *FAVOR MATRIMONII*

Fair process is aimed to find a truth. In accordance with the Holy Father John Paul II in the speech to Roman Rota (2005) the criteria for all judges in every canonical process is the truth. In order to give a just sentence in a true and accurate way he or she needs to believe that the truth exists and do his/her best to find it, despite all difficulties and misunderstandings. Moreover, as it is highlighted by the Pope, only the truth, which is the Christ, can liberate us from any form of compromise with the inveracity.[2]

Nowadays, there are sometimes beliefs suggesting the replacement of the standard process into the briefer ones or even its mystification. The argumentation of that decision would be the fact that there is a big amount of divorced marriages and that more and more people live in non-sacramental relationships. As it is considered by John Paul II in his speech (2005) the objective truth has the biggest value in canonical process. It needs to be remembered by diocesan bishops as well as tribunals, which perform judicial power in Diocese.[3] Only the true judgement that is based on the truth about the marriage, it's not significant if it is decreed about nullity of marriage or not, gets into the act of the rule that marriage is indissoluble. Contrarily, every fallacious sentence, that is based on untruth confirms church's belief of the fact that marriage is indissoluble. In recent years,

[2] Cf. Joannes Paulus II, *Ad Romanae Rotae auditores, officiales et advocatos coram admissos (29 Ianuarii 2005)*, AAS 97, 2005, n. 5, p. 166.

[3] Cf. ibid., n. 4, p. 165.

as highlighted by the Pope in his speech to Roman Rote (2002) there are some attempts to replace traditional *favor matrimonii* by highlighting the freedom and the value of a person. As a consequence, the value and freedom of a person can be misunderstood and the truth of indissolubility of marriage is relativized. However, one should remember that marriage is a freedom, as each of the spouses choosing to get married freely obliged himself or herself to obey objective rules of a marriage. That is why *favor veritatis* demands from every judge to agree with *favor indissolubilitatis matrimonii.*[4] More truly *favor matrimonii* can be identified with *favor veritatis*. As highlighted by the Pope: "Every sentence that decrees a marriage valid or invalid, make the rule of indissolubility of marriage stronger in Church as well as in the world."[5]

2. PETITION – THE BEGINNING OF A PROCESS

One could consider that from logical point of view something that is shorter, must be at the same time more beneficial. Such assumption can be made taking into consideration the length of a process. Is the briefer process really more beneficial for spouses? Does it make the whole process more complicated to be reliably proceeded? It seems to be worth to compare advantages and disadvantages of the briefer process in order to state if the briefer process, which eventually was announced as the most important novum of the process reform made by the Pope Francis, is adequate in a given situation.

Every process for divorce begins with the petition. The Judge, in accordance with art. 114 of Instruction *Dignitas connubii*, cannot familiarize with any of the case until the request, made by the person that impleads the marriage, is presented.[6] The only ones that can implead the marriage are the spouses and the Promotor of Justice – the rule has not changed (can. 1674 § 1, in MIDI art. 2).[7] What is more, in accordance with the pontifical document, a marriage, that was not impleaded during a lifetime of both spouses, cannot be impleaded after the death of one of them, unless the validity of marriage is preprocess for solving another argument both on Canonical forum or Secular one (can. 1674 § 2, in MIDI art. 2).

[4] Cf. Joannes Paulus II, *Ad Romanae Rotae tribunal (28 Ianuarii 2002)*, AAS 94, 2002, n. 7, p. 345.

[5] Ibid.

[6] Cf. can. 1501 CIC; Pontificio Consilio per i testi legislativi, Istruzione *Dignitas connubbi,* Città del Vaticano 2005, art. 92-93.

[7] Cf. M. Wolczko, *Prawo zaskarżania małżeństwa*, in: *Praktyczny komentarz do Listu apostolskiego motu proprio "Mitis Iudex Dominus Iesus" papieża Franciszka*, Tarnów: Biblos 2015, p. 86.

3. CERTAINITY OF MARITAL BREAKDOWN

Truly significant rule for filing a lawsuit and its acceptance is described in the law included in can. 1675, in MIDI, art. 3. According to it, the judge who intends to accept the petition must be certain that the marriage fell apart in the way that is nonreversible, so there is no way to make the marriage community function again. What does it mean that the marriage has fallen apart in nonreversible way? As it is noticed by M. Wolczko it is a practical norm and it means that the process can take place only when there is no possibility to rebegin the community of marriage and make it function again. The divorce sentence can be a significant argument to confirm a complete dissolution or a marriage.[8] Much as, the divorce sentence is not a condition that must be met in order to file a lawsuit, but in the light of the norm that is presented, it has a significant meaning. Otherwise, there can always be some doubts connected to the fact that the marriage has fallen apart nonreversible, especially that in can. 1446 of the 1983 Code, if the judge during the proceeding sees any hope for agreement, should encourage both spouses and help them to look for a good solution by common agreement and show them appropriate ways. It is worth to be considered here that there is a rule included in art. 2-5 of the procedural rules included in *Mitis Iudex Dominus Iesus* suggesting that a preprocess research need to be carried out, diocesan or parochial. Such research, which is also called ministrative is aimed at checking the life situation of spouses that live separately or they are divorced. It is carried out to collect some information that may be useful during the process for annulment of marriage. The researched is carried out by the professionals, who have some Canonical knowledge, but it does not replace the process itself, but it is only the preparation for the process, especially because the rule including the criteria for people who are permitted to carried out such research is unclear.[9]

4. COMPETENT TRIBUNAL

Petition, namely *petitio*, has its own addressee. It cannot be addressed wherever and to whichever tribunal, and in the case of a briefer process – to whichever bishop. The reform of matrimonial process made by the Pope Francis has

[8] Ibid., s. 89-90.

[9] Cf. U. Nowicka, B. Nowakowski, *Od skargi powodowej do decyzji Roty Rzymskiej. Proces o nieważność małżeństwa po Mitis Iudex w pytaniach i odpowiedziach,* Warszawa: [s.n.] 2017, p. 27-28.

changed the competence of tribunals replacing four of them (the place of marriage, the place of residence of respondent, the place of residence of petitioner and the place of collecting the proofs) by three of them, which means that there is a bigger trust towards canonical proceeding. According to can. 1672 MIDI (art. 1) in processed nullity of marriage, which are not reserved for the Holy See, the relevant ones are: the place of marriage, the place of permanent or temporary residence of both spouses and the place where the proofs will be collected. There is a noticeable difference though, that there is no need to have an judicial vicar's agreement, as it was in the case of old rules. As it is stated by A. Sosnowski nowadays, the legislator has a bigger trust to procedural sides, which should be aware of the seriousness of the process. The possibility of conducting a process in the tribunal of permanent or temporary place of residence of a respondent assumes that the person will not start the process in such a way to make it impossible for the defendant to take part in all the stages of the proceeding.[10] Moreover, every tribunal is equal, so it's the respondent's choice which tribunal will be chosen to file for divorce petition. There are some doubts, apparently, as long as the briefer process is taken into consideration. As it is stated by Del Pozzo, if a briefer process should be finished during one session, whatever it means, and the duration of the session may be different, it seems that the best solution would be the tribunal in which it is possible to collect as much evidence that are strong and convincing. It is not connected to the amount of evidence, but rather the quality.[11]

5. CONTENT OF A PETITION

Petition, depending on the type of process, can be different, but there are some elements that are shared. Every petition should clearly indicate the addressee, so the tribunal or the bishop of the Diocese, in which the process will be conducted. It should also be titled according to the case. Of course, the petition should contain some facts that indicate to the nullity of marriage and some basic evidence confirming it. It should also contain some personal data of both sides, especially actual places of residences, unless it is hard to establish. Finally, the petition should also contain the signature of the petitioner, or of both sides. The place and the date of writing the petition. Apart from the requirements that apply

[10] Cf. A. Sosnowski, *Właściwość sądu i trybunały*, in: *Praktyczny komentarz*, p. 62.

[11] Cf. M. del Pozzo, *Il processo matrimoniale più breve davanti al Vescovo*, Roma: Edusc 2016, pp. 130-131.

to all types of processes, there are some characteristic ones that concern only briefer processes.[12]

The petition in a briefer process should be reported by both spouses, or by one of them but in agreement with another one. There should be some occurrences concerning facts and people, that are confirmed by testimony or documents, which do not need to be explained furthermore and which in a clear way indicate the nullity of marriage (can. 1683, MIDI art. 5). It indicates that both spouses, in the case of a briefer process, stand on the same side and complain the marriage and its validity. That is why, the defender of the Bond is on the opposite side in the dispute. It is rightly highlighted by P. Majer, that giving such a condition may suggest that the proceeding is not reliable, because spouses may think that giving signatures in the demand may expedite the whole process. There are also some doubts connected with the second condition of briefer process, especially with the expression „in a clear way" indicate the nullity of marriage.[13]

In his speech made on 25th of November, 2017 to members of the course organized by the Tribunal of Roman Rota, the Pope Francis in the point number 5 claims clearly: *l'istanza va sempre indirizzata al Vescovo diocesano*. It means that spouses requestion for the briefer process, should address it directly to the diocesan bishop. However, it does not matter if the petition will be addressed directly to the bishop or to the competent tribunal, its a judicial vicar, according with can. 1676 § 2, MIDI art. 3, decides about the type of a process. It needs to be highlighted that the briefer process is not an administrative proceeding, but a legal proceeding led towards diocesan bishop and equal supervisors of particular Churches (can. 135 § 3 CIC). What is more, a diocesan bishop is not permitted to delegate the judiciary to someone else, such as judicial vicar, which could be useful in some situations from substantive point of view. It is because a bishop should be a guaranty of a just sentence in a briefer process.[14]

A legislator in can. 1684, MIDI art. 5, indicates three elements that are characteristic for the petition in order to have a briefer process. This lawsuit should present shortly comprehensively the facts on which the request is based; indicate the evidence that can be collected by the judge; include documents in attachment, on which the request is based. It is clearly shown that the petition in a briefer process cannot be reduced only to general facts confirming the nullity of marriage, but it should also contain the evidence that can be collected at once. It results

[12] Cf. *La riforma dei processi matrimoniali di Papa Francesco. Una guida per tutti*, ed. Redazione di Quaderni di diritto ecclesiale, Milano: Ancora 2016, p. 32

[13] Cf. P. MAJER, *Proces małżeński skrócony przed biskupem,* in: *Praktyczny komentarz*, pp. 167-168.

[14] Cf. ibid., p. 164-165.

from the fact that the evidence that is hard to collect, because of the time or place of residence of witnesses, cannot be used in a briefer process. Similarly, the documents need to be attached at the moment of filing the petition.

6. MARRIAGE NULLITY AND ITS OCCURRENCES

It is obvious, that a petition should include a request, so it should indicate to the nullity of marriage. Facts, that are mentioned above, should justify the obviousness of a request in the case of a briefer process. In the case of a normal process, facts do not need to explicitly indicate to the nullity or marriage, but therefore they should confirm this nullity in a general way.

The most frequent titles of the marriage nullity concern different forms of consensual inability that are mentioned in can. 1095, 1-3 CIC. On the other hand, they also concern different forms of simulation of marriage agreement. In the case of a briefer process, it may be interesting to compare them to the occurrences presented in art. 14 of procedural rules determined by the Pope Francis. It is hard to consider all these occurrences separately.

It's obvious that the lack of sufficient use of reason in accordance with can. 97 and can. 124 CIC makes the person unable to live in agreement within a marriage. In accordance with can. 1095, 1° CIC indicates to the lack of sufficient use of reason to such extend, that is necessary to marriage agreement.[15] The lack of brain usage with regard to the act of marriage agreement does not indicate that the person is not able to express another legal act but of lesser importance. Person, who is deprived of the usage of a brain is the one, that in the moment of expressing consensus does not have full and harmonic management of his/her sensory power, appetitive power, intellectual and volatile power, which is necessary to indicate that the marriage is a human act. The reasons of not using the brain sufficiently can have habitual or actual character. As it is highlighted by P. Moneta, the most frequent reasons of a habitual character are mental illnesses and psychosis such as schizophrenia, paranoia, manic-depressive illness.[16] Comparing what was written above with the procedural rules one can claim that if there are documents that make it possible to state that the person

[15] Cf. A. ABATE, *Il consenso matrimoniale nel nuovo Codice di Diritto Canonico*, "Appolinaris" 59, 1986, p. 455.

[16] Cf. P. MONETA, *Il Matrimonio*, in: *Il Diritto nel Mistero della Chiesa*, t. 3, Roma: Pontificia Università Lateranense 1992, p. 221; J. J. GARCÍA FAÍLDE, *Trastornos psíquicos y nulidad del matrimonio*, Salamanca: Publicaciones Universidad Pontificia de Salamanca 1999, p. 336.

lacks of brain usage or there is the lack of proactivity because of the certain mental disorder while filing for divorce, there is a basis to proceed a briefer process.

The grave lack of discretion of judgment concerning rights and obligations of a marriage indicated the lack of capacity to express the marriage agreement. It happens when there is a serious lack of cognitive abilities, critical and volatile abilities in the case of marriage agreement. The most frequent reasons of the lack of evaluator's knowledge are psychosis, neurosis, disorders or even identity pathology. If there are medical documents confirming the occurrence of mental disorder in the moment of getting married as well as marital relation or physical abuse it is possible to request for a briefer process. It seems to be even harder to find occurrences confirming the inability of mental nature to take up important marital suites, unless there are serious addictions such as: alcohol addiction that is proved by the medical documents.

It is worth mentioning that hiding an alcoholism or any other addiction or disorder, even infertility can have a basis to file for divorce due to the fact that a spouse was misled.

In a marriage material law, a simulation means false marriage agreement in which an agreement expressed by words and signs is not adequate to the internal agreement.[17] In the case of simulation there is a difference between the real will of a counterparty and the external form of expressing it. It means that in spite of the fact that both spouses want to live in marriage agreement and want to show it, they do not honestly agree with it.[18] What is more, both spouses that express a marriage will not only do not agree with the marriage will, but also exclude it by a positive act of will, as indicated in can. 1101 § 2 CIC, 1983. The above-mentioned norm can. 1101 § 2 of CIC differentiate the stimulation subject by distinguishing between excluding the marriage and its important elements and qualities and indicated to the positive act of will as necessary for a person that is going to enter in a simulated marriage. In the case of total simulation, a counterparty has no will to get married, but in the case of part simulation, there is some will to enter a relationship, but the element or marriage is excluded.

There are some circumstances that in agreement with art. 14 of procedural rules can justify the petition for divorce due to the simulation of marriage agreement. For example, the lack of belief can justify the exclusion of a marriage,

[17] Por. R. Bacari, *La volontà nei sacramenti*, Milano: A. Giuffrè 1941, p. 173; G. Dzierżon, *Niezdolność do zawarcia małżeństwa jako kategoria kanoniczna*, Warszawa: Wydawnictwo UKSW 2002, p. 240.

[18] Por. F. Ferrara, *Della simulazione dei negozi giuridici*, Milano: Sel 1913, p. 37.

sacramental dignity of a marriage or even the mistake determining the will. Abortion that is made to avoid having children is the reason to exclude the good of children. Having an extramarital affair in the period of getting married can be the basis for filing for nullity because of the exclusion of the good and faithfulness. As it is easy to notice occurrences, which are explained in art. 14 of procedural rules, these are not all the rules that are the basis for filing for nullity in a briefer process, but they can justify the spouse's decision.

CONCLUSION

Every process for nullity of marriage, no matter the form, begins with the presentation of the petition. Judge cannot familiarize with the case, until the request is not presented. Invariably, the right to complain about marriage have both spouses and the Promotor of Justice in some cases.

Filing a petition is a beginning of a briefer process. Judicial vicar is the decisionmaker whether it meets the criteria of a briefer process, which is absolute *novum* in the canonical procedure.

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LIBELLUS W PROCESIE SKRÓCONYM

Streszczenie

Proces skrócony, który moim zdaniem jest najbardziej pomysłowym ustanowieniem ostatniej reformy prawa kanonicznego przeprowadzonej przez papieża Franciszka, jest jednocześnie uważany za największe wyzwanie dla Trybunału kościelnego. Istnieją dwa główne i podstawowe warunki, które muszą być spełnione, aby taka sytuacja mogła się wydarzyć, a mianowicie oboje małżonkowie zgadzają się na wniesienie pozwu o rozwód i pozew taki zostaje zgłoszony przez oboje małżonków lub tylko przez jednego z nich, ale za zgodą drugiego. Drugim podstawowym warunkiem jest to, aby wszystkie zgłaszane zdarzenia i sprawy, uwzględniając fakty i osoby, były poparte zeznaniami lub dokumentami i nie wymagały wyjaśniania i sprawdzania, a więc wyraźnie wskazywały na nieważność małżeństwa. Każdy proces o unieważnienie małżeństwa, bez względu na formę, zaczyna się od złożenia skargi (*petitio*). Sędzia nie może zapoznać się ze sprawą, dopóki taka skarga nie zostanie przedstawiona. Niezmiennie prawo do złożenia takiego zaskarżenia małżeństwa (skargi powodowej) mają oboje małżonkowie, a w niektórych przypadkach rzecznik sprawiedliwości.

Przekład angielskiego abstraktu
Stanisław Sarek

Słowa kluczowe: papież; proces; nieważność małżeństwa; reforma; skarga (*petitio*).