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Analiza i ocena skutków wprowadzenia motu proprio *Mitis Iudex Dominus Iesus* w zakresie określania właściwości miejscowej

Analysis and impact assessment of the implementation of *Mitis Iudex Dominus Iesus* in terms of defining the local jurisdiction

Introduction

The papal document titled „Mitis Iudex Dominus Iesus" (hereinafter: „MIDI") was written in the aftermath of the 3rd Extraordinary Council of Bishops held in 2014. The document has implemented changes to the process of establishing the invalidity of marriage, i.e. can. 1671-1691 of the Canon Law Code of 1983 (hereinafter: CIC). According to the preface to the MIDI, the document was intended to „further the good of the faithful in accord with their individual gifts and missions"[1], which falls into the pattern of a broader context of the teaching of pope Francis.[2]

The document has introduced a number of important changes that are likely to be soon discussed in detail by the jurisprudence. However, even today we can assume that that these deep and major changes may produce far-reaching consequences, which has been already noted by some canonists.[3]

This article focuses on revised can. 1672 that significantly alters the matter of determining local jurisdiction for the court of first instance in the process of declaring a marriage invalid. It is not only the parties and subject matter of the process but also the court handling the case that form a foundation of the process. The court is chosen based on its local jurisdiction. The papal

[1] Pope Francis, the apostolic brief titled „Mitis Iudex Dominus Iesus" of 15/08/2015 reforming canons of the Canon Law Code concerning marriage invalidation cases, Tarnów 2015, p. 7.

[2] Cf. FRANCISZEK, Adhortacja Apostolska *Evangelii gaudium*, 24 listopada 2013, AAS 105 (2013), pt 186: „Our concern for development of those who have been forsaken by the society emanates from our faith in Chirst who became poor while beeing close to those poor and excluded at all times".

[3] The author has proposed this thesis based on papers presented and discussions held at the *Auctoritas in Iudicium* conference (Lublin, 21/10/2015) hosted by WPPKiA KUL and the *Procesy i procedury: nowe wyzwania* conference (Warsaw, 22/10/2015) hosted by WPK UKSW. The both conferences were held directly after the publication of the papal document.

document has basically changed the rules for determining the local jurisdiction by adding, among others, a possibility of filing a complaint with a court competent for the place of residence of the plaintiff. It can be hypothesized that such significant change in the regulations on the determination of court jurisdiction in marital cases will affect also the process as such. This may also involve the occurrence of certain inappropriate pathological trends that can affect the process and the unveiling of truth directly.

The literature on the subject has discussed the issue of court jurisdiction in detail.[4] This term has been defined in many ways and broadly systematized.[5] In this article, the jurisdiction of the court is meant as it has been defined by Tadeusz Pawluk: „a scope of the jurisdiction of a court through which the court becomes competent to investigate into, and resolve on, a case, where the lack of jurisdiction makes the court incompetent"[6]. Based on this definition, a specific type of court jurisdiction restricted to a specific territory is the „local jurisdiction".

Contemporary legal systems are based on the Roman law. This law is also a starting point to, and a formal vehicle for,[7] the canon law[8] and the literature on the subject often highlights the assimilation of the Roman law by the canon law.[9] This is why this article will discuss briefly the concept underlying the Roman law's principle that „the jurisdiction belongs to the jurisdiction of the defendant's seat" *(actor sequitur forum rei)* in the first place, to proceed to the discussion of the application of the principle in the canon law after 1917 and in the contemporary Polish law. This discussion will underlie the analysis of can. 1672 of the CIC changed in 2015. Finally, the author will attempt to highlight the consequences that the change of the law may soon trigger in the context of the ecclesiastic judiciary and of the investigation of truth considered the greatest good in the process.[10] Further, there will be also an attempt to answer the question whether the new regulations or sufficient to meet challenges posed by the contemporary marital process. These will be based on legal and historical comparisons between selected public law regulations

[4] See incl. I. SUBERA, *Właściwość sądu z tytułu miejsca zamieszkania*, Prawo Kanoniczne 10 (1967) n. 3-4, p. 125.
[5] Z. JANCZEWSKI, *Właściwość trybunałów kościelnych w sprawach małżeńskich w okresie od 1917 roku do 1983 roku*, Prawo Kanoniczne 38 (1995) n. 3-4, p. 165-204.
[6] T. PAWLUK, *Reforma kanonicznego procesu małżeńskiego w świetle motu proprio „Causas Matrimoniales",* Prawo Kanoniczne 16/3-4, p. 251.
[7] See T. PAWLUK, *Reforma kanonicznego procesu małżeńskiego w świetle motu proprio „Causas Matrimoniales"*, op. cit., p. 245.
[8] See J. ZABŁOCKI, *Rzymskie korzenie prawa kanonicznego*, in: J. WROCEŃSKI, H. PIETRZAK (ed.), *Ars boni et aequi: księga pamiątkowa dedykowana księdzu profesorowi Remigiuszowi Sobańskiemu z okazji osiemdziesiątej rocznicy urodzin*, Warszawa 2010, p. 588.
[9] J. GRĘŹLIKOWSKI, *Ewolucja norm prawa kanonicznego związanych z pozycją procesową podmiotów uprawnionych do zaskarżenia nieważności małżeństwa*, Teologia i Człowiek 11 (2008), p. 209.
[10] See BENEDYKT XVI, Przemówienie do Roty Rzymskiej, 28 stycznia 2006 r.: AAS 98 (2006).

concerning the local jurisdiction in the ecclesiastic marital process as of the implementation of the Canon Law Code of 1917.

The current lack of similar discussion on the matter in the Polish literature is the cause for the presentation of, and investigation into the subject. The taking up of the so-outlined issue has been inspired by the existence of a niche in the literature and by the potential significance of consequences of the changes.

1. The *actor sequitur forum rei* principle in the Roman law

As rightly noted by Sebastian Stankiewicz,[11] the Roman law is studied and explained in depth in the literature. However, this is not case with the *actor sequitur forum rei* principle that has never been discussed in detail by authors of these studies. It is likely that the cursory treatment of the rule is a consequence of the fact that it is non-controversial and its application is simple.

The rule has a number of fringe forms, such as *actor rei forum sequi debet*[12] or *forum est ubi domicilium est*[13], but, more often, *actor sequitur forum rei*. The rule, as such, was generally applied in the 3rd century AC and it can be found in the constitutions of emperors Diocletian and Maximilian,[14] Gratian, Valentinian and Theodosius.[15] There are also other opinions claiming that the rule was formulated even earlier, in the formula process.[16]

Of course, there were exceptions from the principle. They happened mostly in situations that justified a change in the local jurisdiction of a court for easier, faster or less expensive investigation of the objective truth and for adjudication of court disputes. In the Roman law, this was the case where a property was the subject of a dispute. It was the right context for setting the local jurisdiction based on the location of the property. However, it is important to note that this was an alternative competence, so the plaintiff could, but did not have to, bring the case to a court with jurisdiction over the location of the property because the plaintiff could choose the

[11] S. STANKIEWICZ, *Rzymski rodowód zasady actor sequitur forum rei*, Studia Iuridica Lublinensia 20 (2013), p. 199.
[12] See W. MIKLASZEWSKI, *Wykład postępowania cywilnego rzymskiego w zarysie historycznym*, Warszawa 1885, p. 31.
[13] W. DAJCZAK, T. GIARO, F. LONGCHAMPS DE BÉRIER, *Trener akademicki. Prawo rzymskie*, Warszawa–Bielsko-Biała 2010, p. 15.
[14] J. H. OLIVER, *Marcus Aurelius*: *Aspects of Civic and Cultural Policy in the East*, New Jersey 1970, p. 16; C. 3, 13, 2: *Iuris ordinem converti postulas, ut non actor rei forum, sed reus actoris sequatur: nam ubi domicilium habet reus vel tempore contractus habuit, licet hoc postea transtulerit, ibi tantum eum conveniri oportet.*
[15] J. R. ROBLES REYES, *La competencia jurisdiccional y judicial en Roma*, Murcia 2003, p. 92; C. 3, 19, 3: *Actor rei forum, sive in rem sive in personam sit actio, sequitur. sed et in locis, in quibus res propter quas contenditur constitutae sunt, iubemus in rem actionem adversus possidentem moveri.*
[16] See W. DAJCZAK, T. GIARO, F. LONGCHAMPS DE BÉRIER, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa 2009, p. 158.

jurisdiction of the place of residence of the defendant. This placement of local jurisdiction was slightly different for a tort. Where the *locus delicti* was involved, there was a reasonable need for relying on evidence located at the place of committing the tort. So, the site of the tort was recognized as the local jurisdiction and that rightly, for the fairness of judgment. Such exceptions can be found both in the Justinian Code[17] and in the Digests.[18] Stankiewicz mentions more exceptions from the principle.[19] For the purposes of this article it is sufficient to note that all the exceptions were construed for the good of the process: for easier collection of evidence and for economy.

2. Regulations on the local jurisdiction in the canon law after 1917

According to can. 1964 of the Pio-Benedictine Code, the diocese of the marriage or the permanent or temporary place of residence of the defendant was the local jurisdiction with one reservation: if one of the parties was non-catholic, the place of residence of the catholic party was the local jurisdiction. The body of this regulation is consistent with the *actor sequitur forum rei* principle[20] but adds the foregoing exception in favor of the catholic party. This statutory construct was acknowledged by art. 3(1) of the Instruction issued by the Congregation of Sacraments on August 15, 1936, titled „Provida Mater Ecclesia"[21]. Further, there is the provision of can. 1559(1) of the CIC, which has been described by Grabowski as follows: „if someone can choose among court jurisdictions on various accounts, the plaintiff may choose a tribunal, unless the case fits in a category for which the legislator has already set a tribunal"[22].

Because the *quasi-domicilium* can be changed quite easily, the Congregation of Sacraments, mindful of the room for attempts of deception or fraud,[23] issued in 1929

[17] P. KRUEGER (ed.), *Corpus iuris civilis*, t. 2: *Codex Iustinianus*, Cambridge, p. 129; C.3, 16, 1: *Ubi aut vis facta dicitur aut momentaria possessio postulanda est, ibi loci iudicem adversus eum qui possessionem turbavit convenit iudicare.*

[18] P. BLAHO, J. VAŇKOV, *Corpus Iuris Civilis. Digesta*, t. 1, Bratysława 2008, p. 219; D. 10. 1, 4.4: *Si dicantur termini deiecti vel exarati, iudex, qui de crimine cognoscit, etiam de finibus cognoscere potest.*

[19] S. STANKIEWICZ, *Rzymski rodowód zasady actor sequitur forum rei*, op. cit., p. 207.

[20] I. GRABOWSKI, *Prawo kanoniczne według nowego kodeksu,* Lwów 1927, p. 577.

[21] SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, Instrukcja *Provida Mater Ecclesia*, 15.08.1936 r., AAS 28 (1936), p. 315: *In aliis causis matrimonialibus iudex competens est iudex loci in quo matrimonium celebratum est aut in quo pars conventa vel, si una sit acatholica, pars catholica domicilium vel quasi-domicilium habet.*

[22] I. GRABOWSKI, *Prawo kanoniczne według nowego kodeksu,* op. cit., p. 577

[23] See R. RODRIGUEZ-OCANA, *Mitis Iudex: Fuero compentente y sistema de apelaciones*, Ius canonicum, t. 56, (111) 2016, p. 108.

an instruction[24] providing for a special check procedure. The procedure applied to cases in which the local jurisdiction was determined based on the temporary residence. A court official and a defender of the holy matrimony were involved in the procedure.[25]

Subsequent changes in the standards of deciding on local jurisdiction of ecclesiastic courts ruling on marriage cases were implemented in the 1970's. Some of them had a local dimension[26] and some were applicable universally.[27]

Regarding the particular norms, they were devised as „experimental" ones[28] supposed to precede the introduction of more extensive changes to the public law enacted by the 2nd Vatican Council. The norms set for the USA (in 1970) offered a choice between three ecclesiastic court jurisdictions:[29] the place of permanent stay of the spouses, the marriage location or the location, the judge of the court of which has decreed, on request of the plaintiff, that he was in a better position to rule on the case, subject to prior consent of the ordinary competent for the judge's suitor and consent of the chairing judge.

The first of the norms is particularly important because it provides a major facilitation to the plaintiff for two reasons. First, the plaintiff was given an opportunity to bring the case to the court of his or her diocese. This seems to reverse the *actor sequitur forum rei* principle. As a consequence, the management of the process became easier for the plaintiff and more difficult for the defendant. Second, the temporary or permanent residence was replaced with the permanent stay. As T. Pieronek has noted,[30] the „permanent stay" was something lesser than even the „temporary residence", which changed the former trends quite significantly. It was manifestly easier to obtain a permanent stay (even a long-term one) than a temporary residence. And this could raise a temptation to choose a court based on its matrimony cancellation statistics and not on the criterion of the actual place of residence.

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[24] SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM*, Instructio De Competentia Iudicis In Causis Matrimonialibus Ratione Quasidomicilii*, 23.12.1929, AAS 22 (1930), p. 168-171.

[25] Z. JANCZEWSKI, *Właściwość trybunałów kościelnych w sprawach małżeńskich w okresie od 1917 roku do 1983 roku,* op. cit., p. 177.

[26] Including norms set by the Holy See for USA, which were not published yet in AAS, but were published in F. R. MCMANUS, *Procedural Norms for Matrimonial Cases*, in: The Jurist, 30 (1970) 363—368. Similar norms standed temporarily in Belgium, (1970) and England and Wales (1971).

[27] PAWEŁ VI, Motu proprio *Causa matrimoniales*, 28.03.1971, AAS 63 (1971), p. 441-446.

[28] Z. JANCZEWSKI, *Właściwość trybunałów kościelnych w sprawach małżeńskich w okresie od 1917 roku do 1983 roku,* op. cit., p. 178.

[29] RADA DLA MIĘDZYNARODOWYCH SPRAW KOŚCIELNYCH, *Normy postępowania w sprawach małżeńskich w Stanach Zjednoczonych Ameryki Północnej*, 28.04.1970 r., Norma 7, in: MCMANUS F. R., *Procedural Norms for Matrimonial Cases*, The Jurist, 30 (1970), p. 363-368.

[30] T. PIERONEK, *Normy postępowania w sprawach małżeńskich wydane przez Stolicę Apostolską dla diecezji Stanów Zjednoczonych*, Prawo Kanoniczne 16 (1973), n. 1-2, p. 186.

The papal document titled „Causas matrimoniales”[31] published in 1971[32] set the following three local jurisdictions: the place of marriage, the place where the defendant has a „sufficiently permanent residence” (the location of the *non precariae commorationis* court appeared here in place of the permanent or temporary residence, which, according to Tadeusz Pawluk, was supposed to „raise an obstacle against choosing a court at one's will or with an intention to act to detriment of the canon law”[33]) or the location of prevailing evidence (after obtaining as many as three consents[34]). Accordingly, this document lacked the norms included in the previously implemented particular regulations. Based on local experience from the USA, Belgium, Wales and England, it seems that these proposals were given up, and came back to the norms closer to can. 1964 of the Canon Law Code, though they were more „ecumenical” (no differentiation between Catholics and non-Catholics).

Canon 1673 of the Code of John Paul II of 1983 set four rules for the determination of the local jurisdiction of a court,[35] the first two of which seem to be the ruling ones. According to the first rule, the case should be referred to a tribunal with jurisdiction of the marriage location. As before, this is substantiated by the ease of determining the factual and legal statuses and of collecting evidence. The fourth rule headed in a similar direction: it provided expressly that the focus is on the getting of evidence. The third rule is also allowed where it is beneficial for the economy of the process. However, in this case, as in the case of the fourth rule, court vicars' consents were required. It is important that the court was supposed to be the one with jurisdiction over the place of residence of the defendant, the vicar of which consulted the case with the defendant as if „by default”. By using this wording, the legislator emphasized the weight of the second rule that can serve as an example of a literal reception of the Roman maxim. This affirms the primary role of the ac*tor sequitur forum rei* principle in the CIC of 1983.

These rules were conformed in 2005, which was reflected in the instruction titled „Dignitas connubii”[36]. However, Sztychmiler believes that „the legislator has not define directly

[31] PAWEŁ VI, Motu proprio *Causas matrimoniales*, AAS 63 (1971), pt IV § 1.
[32] T. Pieronek noted that the *„Causas matrimoniales”* was supposed to implement interim norms before the adoption of the CIC. Cf. T. PIERONEK, *Normy postępowania w sprawach małżeńskich wydane przez Stolicę Apostolską dla diecezji Stanów Zjednoczonych,* p. 177, 179.
[33] T. PAWLUK, *Reforma kanonicznego procesu małżeńskiego w świetle motu proprio Causas Matrimoniales*, Prawo Kanoniczne 16 (1973), n. 3-4, p. 254.
[34] Meaning a consent of the ordinary competent for the place of permanent resident of the defendant, the ordinary of the jurisdiction of the tribunal of the filing of the case and the chair of the tribunal to which the case is brought.
[35] See P. LOMBARDIA, J.I. ARRIETA, *Codice di diritto canonico. Edizione bilingue commentata,* t. 3, Roma, 1986, p. 1206-1207 and P. STRAVINSKAS, *Our Sunday Visitor's Catholic Encyclopedia,* 2002, p. 259.
[36] See DC, art. 10 § 1.

the ranks of the individual bases for jurisdiction (…) the plaintiff may choose freely between the first two bases because the choice is not contingent on anything"[37].

3. The *actor sequitur forum rei* principle in the Polish law

Also the Polish legislator has drawn a lot from the fundamental rules of the Roman law. Therefore, the *actor sequitur forum rei* principle surfaces in many areas of the Polish law. The intention of this article is not to discuss the whole body of the Polish law but just to highlight a certain continuity of the principle over the span of centuries in the context of the matrimonial law, so it discusses only the civil lawsuit concerning the matrimony.

Article 27(2) of the Civil Proceedings Code[38] sets a general jurisdiction determination rule consistent with the *actor sequitur forum rei* principle. However, for matrimony cases, the legislator has replaced this general jurisdiction with a particular one. According to art. 41, the applicable jurisdiction is the one in which the spouses resided recently if at least one of them continues to reside or stay there. In default of such jurisdiction, the jurisdiction passes on to the jurisdiction of the place of residence of the defendant or, if none, to the place of residence of the plaintiff.

This is the so-called „exclusive jurisdiction" defined in Section 3 of the Code, to the exclusion of the general jurisdiction. The provision of art. 41 is imperative without any exception.[39]

4. *Mitis Iudex Dominus Iesus* – new regulations

It is evident that both ecclesiastic and secular legislators were faithful to the Roman law's principle over the centuries. The principle conveys the privileged jurisdiction to the court competent for the place of residence of the defendant.

Today it seems that two rules decide in the establishment of court jurisdiction in the ecclesiastic procedural law concerning matrimony. The first, *forum contarctus*, emerges in the literature as the one that should prevail over all other rules. This is the conclusion of Tadeusz

[37] R. SZTYCHMILER, *Tytuł I. Właściwość sądu*, in: T. ROZKRUT (ed.), *Komentarz do Instrukcji procesowej Dignitas Connubii*, Sandomierz 2007, p. 40.
[38] *Kodeks postępowania cywilnego. Ustawa z dnia 17 listopada 1964 r.*, Dz.U. 1964 Nr 43 poz. 296)
[39] Follow A. ZIELIŃSKI, *Postępowanie cywilne. Kompendium*. Warszawa 2008, p. 46.

Pawluk,[40] Zbigniew Janczewski[41] and other authors. The second rule sets the court with jurisdiction over the place of permanent of temporary residence of the defendant as the competent one.[42] These two rules prevail and they have been sustained almost unchanged in all subsequent codes and other regulations. The remaining criteria for setting a competent court were secondary.

They changed over decades and supplemented the former two basis rules. Although all the historically applicable norms, presented above, have a lasting and invariable shared content, pope Francis has proposed different rules for setting the local jurisdiction in his document titled „Mitis Iudex Dominus Iesus". The revised can. 1672 makes a distinction between three methods of determining the jurisdiction of a court. However, he has not given a preference to any of them, has not demanded any consent or permit and has not provided for any check procedure, which were frequently the features of former regulations.[43] The present regulation defines the following ways of determining the jurisdiction: the place of marriage, the place of permanent or temporary residence of one of the both parties, or the place of origin of prevailing evidence.[44]

The rule of the „forum of the contract" *(forum contarctus)* defined in can. 1672, 1° of the MIDI, established over centuries, raises no doubt. What is more, as discussed above, it is fully consistent with the hitherto regulations. Likewise, there is the rule of can. 1672, 3° of the MIDI, which was often employed in the hitherto regulations.[45] However, today it is much more liberal. There are some things that can raise a kind of interpretational concern. First, the regulation does not say who is supposed to decide on the admission of a case. Second, there is no information whether there is a requirement for a consent of, or feedback from, the defender of the holy matrimony or a response of defendant.[46] The only uncertainty one can attempt to resolve without a commentary from the legislator is the interpretation of the term *pleraeque propationes* (prevailing evidence). It seems that it is not about a literal interpretation of the regulation

[40] T. PAWLUK, *Reforma kanonicznego procesu małżeńskiego w świetle motu proprio Causas Matrimoniales,* op. cit., p. 253.
[41] Z. JANCZEWSKI, *Właściwość trybunałów kościelnych w sprawach małżeńskich w okresie od 1917 roku do 1983 roku, ,* op. cit., p. 167.
[42] It seems that the legislator has abandoned the concept of the permanent residence.
[43] See incl. can. 1673, 3°-4° CIC.
[44] See FRANCISZEK, List apostolski motu proprio *Mitis Iudex Dominus Iesus*, op. cit., p. 17.
[45] Cf. can. 1673, 4°.
[46] Such consultations with the defendant were required under the wording of canon 1673 of the CIC from before the publication of the papal document: point 3 (*after the hearing of the defendant*) and point 4 *(the defendant should be asked in advance whether they have any petition or motion*).

(a quantitative criterion) but about the application of a qualitative criterion: „all circumstances to be judiciously considered and evaluated"[47].

The rule of can. 1672, 2° of the MIDI, though clear in its design, can significantly disrupt the order establish by previous regulations because it enables the plaintiff to choose a court relatively easily. This can oppose the hitherto rationale underlying the *actor sequitur forum rei* principle. All the foregoing legal norms, in which the local jurisdiction was determined based on the location of the defendant, set the defendant in a privileged position to diminish the hitherto advantage of the plaintiff (as the party initiating the procedure, better prepared, proactive and offensive). It is the plaintiff who decides about the time of taking the action, the heading for the suit and claims: the very important aspects that can be crucial for the final resolution. In contrast, the defendant is at a disadvantage at the start of the process (less time for preparation and for collecting evidence, hearing dates depending on moves of the plaintiff).[48] Also, the literature on the subject often mentions the cost of litigation, typically lower for the defendant at the location of their residence.[49]

As before, we should assume that there will be more than one diocesan court competent for a single case, so what rules shall be followed for the final choice? The answer, though not exhaustive, can be found in art. 19 of the papal document: „follow the rule of proximity between the parties and the judge, as far as possible"[50]. Paolo Moneta shares this opinion[51] while Adolfo Zambona argues that this proximity should be defined as a ministrative one rather than geographic (*un accompagnamento pastorale e l'indagine preliminare alla presentazione del libello*).[52]

5. *Mitis Iudex Dominus Iesus* – practical guidance

Three aspects should be noted while comparing the present legal situation to the former ones. First, a person can obtain a temporary residence if they intend to stay there for three months[53] while the 1917 Code required a larger part of the year.[54] The current construct facilitates

[47] Z. JANCZEWSKI, *Właściwość trybunałów kościelnych w sprawach małżeńskich w okresie od 1917 roku do 1983 roku,* op. cit., p.183.
[48] Cf. I. SUBERA, *Właściwość sądu z tytułu miejsca zamieszkania*, Prawo Kanoniczne 10 (1967) n. 3-4, p. 159.
[49] A. KACPRZAK, J. KRZYNÓWEK, W. WOŁODKIEWICZ, in: W. WOŁODKIEWICZ (ed.), R*egulae iuris. Łacińskie inskrypcje na kolumnach Sądu Najwyższego Rzeczypospolitej Polskiej*, Warszawa 2006, p. 132.
[50] FRANCISZEK, List apostolski motu proprio *Mitis Iudex Dominus Iesus*, op. cit., p. 44.
[51] P. MONETA, *La dinamica processuale nel m.p. „Mitis Iudex",* p. 17-18, http://www.consociatio.org /repository/Moneta_Lumsa.pdf (access: 29.01.2016)
[52] A. ZAMBONA, Il motu proprio Mitis Iudex Dominus Iesus. Prima presentazione, p. 11, www.ascait.org /sites/default/files/MID_Presentazione_2015-11-09%20(1).pdf
[53] See CIC, can. 102 § 2.

an fraudulent change of the local jurisdiction. Second, the MIDI does not require any extra check whether the choice of a temporary place of residence is not a deception. The regulations of 1929 contained this requirement[55] because even then it was clear that a temporary place of residence can be obtained too easily and though the problem involved the defendant, and not the plaintiff, in the context of the choice of a jurisdiction, it was assumed anyway that the place of residence could be deceitfully changed to obtain a ruling that contravenes the sacredness and indissolubility of matrimony. The new regulations explicitly enable the plaintiff to bring an action to a court where the plaintiff has their temporary residence. Where the plaintiff has deceitful intentions, they do not even need to act in collusion with the defendant. Third, the rules formulated in the papal document seem to be clear and simple. Probably, there will be no need for an extra interpretation of these regulations, which was the case with the norms of 1983 when the Pontifical Council for Legislative Texts and the Apostolic Signatura were asked many times for help in the interpretation of can. 1973.[56] These problems are also described in the *New Commentary on the Code of Canon Law*.[57]

All that gives raise to a legitimate concern that there will be a bulk of cases in which the plaintiff, in fact, changes their jurisdiction based on can. 102 § 2 of the CIC of 1983. This presumption may be based on a number of sources. The first one is, undoubtedly, the former regulations (discussed above). The next source is the opinions of authors who have commented on the applicable legal norms and those who are commenting the regulations implemented recently.[58] Without question, also our own observation of the contemporary world, in which the divorce-promoting attitudes [59] drive the initiation of a number of cases.

A suitor's wish to interfere with the determination of local jurisdiction can be driven by three factors or motives. Most importantly, it seems to be the matter of „effectiveness" (or leniency) of certain courts. Suitors tend to choose the court where they believe the ruling will be most favorable to them. The second „court selection" criterion is the time required for carrying

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[54] See CIC, can. 92.

[55] SACRA CONGREGATIO *DE DISCIPLINA SACRAMENTORUM, Instructio De Competentia Iudicis In Causis Matrimonialibus Ratione Quasidomicilii*, 23.12.1929, AAS 22 (1930) p. 168: *An titulus quasi-domicilii, ob quem causae nullitatis matrimonii, coram ipsius tribunali, introductio petitur, iuridico fundamento innitatur, seu canonice acquisitus haberi debeat.*

[56] See J. DUDZIAK, *Odpowiedzi Papieskiej Rady ds. Interpretacji Tekstów Prawnych w przedmiocie małżeństwa*, Ius Matrimoniale (67) 1996, p.153-168.

[57] J. P. BEAL, J. A. CORIDEN, T. GREEN, *New Commentary on the Code of Canon Law*, New York, p. 1766-1767.

[58] See J. KRAJCZYŃSKI, *Proces zwyczajny,* in: Proces małżeński według motu proprio *Mitis Iudex Dominus Iesus*, ed. J. KRAJCZYŃSKI, Płock 2015, p. 63-64.

[59] See J. KRAJCZYŃSKI, *Mentalność prorozwodowa a procesy małżeńskie*, in: *Procesy i procedury: nowe wyzwania*, Warszawa 2015, p. 23-48.

out the process, which, in fact, can be very different. Suitors want to know whether their marriage is valid or not as soon as possible. The last criterion is the cost: again, strongly varied between dioceses.[60] A difference of a few hundred zlotys, which can be saved by choosing a „cheaper" court may be important. Consequently, we should expect that some suitors will try to cheat, which was observed by the Congregation of Sacraments long time ago.[61]

The foregoing discussion leads us to two conclusions. First, there is a huge disposition and demand for finding a „better" court. Second, this can be done because an action may be brought at the place of temporary residence of the plaintiff. It is a commonplace knowledge that it is relatively easy to change (or doctor) a temporary place of residence. So, what risks can occur in this context?

The first possible consequence is a migration of a signification number of cases from courts perceived as „difficult", „slow" or „expensive" to dioceses perceived by suitors as „more promising". In the effect, the number of cases may sharply drop in some dioceses and grow in others. Although the changes brought about the papal document were intended to accelerate the process, it may turn out that the end result will be opposite. If a court with the same staffing and the same administrative and venue environment handles more cases the average case will take longer. This may lead to a breach of the norm of can. 1505 of the CIC.

A migration of court resources can be a recommendation for the alleviation of this consequence. We already have larger and smaller courts. But this variation is natural and fully justified. The phenomenon of migration will get out of any control because it will be unnatural.

Another, much more dangerous, consequence may consist in the taking of parallel actions in more than one ecclesiastic court. This problem has been pointed at a few times by Jan Krajczyński.[62] This is a real risk because of nonexistence of a single database of divorce cases. Further, the ruling of the „next" court hearing a case in parallel will be inevitably invalid because of the court's absolute incompetence.

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[60] E. g. court costs in Metropolitan Court in Częstochowa amount to 900 PLN without expertise and 1400 PLN with expertise (follow:http://kuriaczestochowa.pl/wp-content/uploads/2012/12/regulamin_sadu_metropolitalnego_w_czestochowie.pdf z dnia 16.11.2015); court costs in Metropolitan Court in Warsaw amount to from 2200 PLN.

[61] SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, *Instructio De Competentia Iudicis In Causis Matrimonialibus Ratione Quasidomicilii*, 23.12.1929, AAS 22 (1930) p. 168-171.

[62] J. KRAJCZYŃSKI, *Proces zwyczajny,* in: J. KRAJCZYŃSKI (ed.), Proces małżeński według motu proprio *Mitis Iudex Dominus Iesus*, pod, Płock 2015, p.63-64.

This problem, although encountered before, can take on importance harmfulness because of the greater room for duplication of courts with local jurisdiction over individual cases.

While looking at possible consequences of the reform, we should ask about the effectiveness of investigating the truth? Can a fraudulent change of the local jurisdiction affect the ruling as such? There is no clear answer but it seems that such practice can make the investigation of truth more difficult in certain cases. Even if the fairness of the process from the point of view of actions of judges, defenders of the wholly matrimony or even attorneys seems to be unthreatened, the interest of the defendant in the process can suffer. It is imaginable that a plaintiff can choose a diocese geographically very remote from the place of residence of a nonaffluent defendant. The defendant's participation in the process (appearing for hearings, forensic opinions, inspection of case files or even contacting the court for information)[63] can involve long travels and high costs. Not every defendant will want or even be able to get involved, which may affect their right of defense.[64] It is undeniable that the participation of the other spouse is by all means recommended.[65] Their absence can be detrimental to the process and to the investigation of truth.[66]

Conclusion

The need for simplifying and shortening the process is unquestionable. However, it is doubtful whether the change of the regulations on the local jurisdiction can help this happen. Based on the historical experience, the effect may be contrary to the intended one, which has been explained in this article. Ecclesiastic regulations on the rules of determination of local jurisdiction in marital cases have changed quite frequently over the recent century. The next change introduced by pope Francis may suggest that the hitherto regulations were inadequate. However, there are no voices calling for a change coming from ecclesiastic courts or visible in court rulings on in the literature. Therefore, the introduction of new guidelines comes as a surprise. It is also thought-provoking

[63] This is particularly about legal counsels offering essential information that can turn out invaluable to legal laypersons. See „Statute 23" in *IV Synod Archidiecezji Warszawskiej*, Warsaw, 2003, p. 30: „The legal counsel's office operating at the court deals with ecclesiastic judicature matters and can substitute the bar. Its mission is to inform the public about options for judicial invalidation of marriage, assist in the writing of petitions for divorce and advise on the writing of other pleadings".

[64] See J. LLOBELL, *Alcune questioni comuni ai tre processi per la dichiarazione di nullità del matrimonio previsti dal m.p. „Mitis Iudex", http://www.consociatio.org/repository/Llobell_Lumsa.pdf (29.01.2016),* p. 12-13.

[65] See B. NOWAKOWSKI, *Uczestnictwo strony pozwanej w procesie o stwierdzenie nieważności małżeństwa*, Ius Matrimoniale (24) 2013, p. 151.

[66] Cf. incl. P. MAJER, *Niestawiennictwo strony pozwanej w procesie o stwierdzenie nieważności małżeństwa*, Ius Matrimoniale (13) 2002, p. 189.

that the MIDI has introduced changes to the advantage of the plaintiff although earlier attempts to change the principle that the jurisdiction belongs to the jurisdiction of the defendant's seat failed to produce satisfactory results.

The implementation of the changes is certain to make courts develop methods for identification of defendants' frauds serving the transfer of local jurisdiction, and that soon. In addition, in this context, behaviors of both plaintiffs and defendants will need a more thorough observation. Many behaviors may surprise the contemporary judicature that should stay watchful.[67]

[67] Cf. BENEDYKT, *Przemówienie do Roty Rzymskiej*, 26.01 2013 r., AAS 105 (2013), p. 169: *Współczesna kultura, nacechowana silnym subiektywizmem i relatywizmem etycznym i religijnym, stawia osobę i rodzinę w obliczu naglących wyzwań*.