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Właściwość sądu w procesie zwykłym w „Mitis Iudex Dominus Iesus"

Tribunal's competencies in the process for the declaration of the nullity of marriage in the *Mitis Iudex Dominus Iesus*

Introduction

Amendments introduced by the reform of Pope Francis through the motu proprio „Mitis Iudex Dominus Iesus" proceedings, although implemented more than two years ago, still provoke a kind of discussion amongst canonists. This is certainly due to the fact that these provisions touch on one of the most practical parts of the Code of Canon Law, namely, court proceedings and, in particular, the process of nullifying a marriage. Discovering the meaning of changes and individual canons allows us at the same time to point out certain threats associated with the application of new legal norms. It is obvious that the scientific discussion has been going on from the very beginning, i.e. since the plans to amend the law, but still the final determination of changes in the law brings us its use. The issue I have taken up stands at the very beginning of the marriage process. The jurisdiction of court to conduct the process becomes the basis for judging that a marriage is invalid.

1. Judicial power

The legislator, in the Code of Canon Law of 1983 (hereinafter: CIC), does not explicitly mention the definition of the legal concept of judicial power. Article 135 § 1 of the CIC contains a norm which indicates that the judicial power is part of a single power to rule. This power in turn is the power resulting from entrusting a church office or from a certain mission in the

Church[1]. The power to rule has its source in God. It was Christ himself who entrusted this power to the Church. Nowadays, the legislator uses the term authority of jurisdiction to describe it. He therefore introduces two synonymous terms. However, as a careful analysis of the issue proves, the terms: authority of jurisdiction, jurisdiction, are used in principle only in procedural law. The subjects of this authority are those who received priestly orders and laymen who can cooperate in the exercise of this authority, in accordance with the law[2]. In the analysis of this norm, there is some variation in the doctrine regarding the interpretation of the term cooperate (*cooperatio*) in the context of the lay faithful. Admittedly, the majority of commentators believe that it should be understood as participation, and thus the possibility of entrusting the lay faithful with those powers for which the power of priestly orders is not required is highlighted. There are, however, also some dissenting voices[3].

In can. 135 § 3 of the CIC, the legislator characterises more closely the very concept of judicial power, stating that: „Judicial power, which is held by judges or colleges of judges, must be exercised in the manner prescribed by law and may not be delegated except for the execution of preparatory acts of a decree or judgment". Analysis of the canon indicates three important issues: 1) the legislator sees in the persons of judges and judicial colleges the entities exercising judicial power in the Church; 2) the legislator emphasises the functioning of the principle of legalism in the judiciary; 3) the prohibition of the delegation of judicial power.

The first point is that judicial power is exercised by judges, either alone or in judicial colleges. So who can be the judge? The legislator does not leave this question unanswered. When giving an answer, of course, it is important to bear in mind the power of government previously discussed. The first person to have the right to judge, and therefore the first judge in the Church, is the Bishop of Rome[4]. This is, of course, due to the primacy of the jurisdiction of the Bishop of Rome[5]. Moreover, judicial power is exercised by the tribunals of the Holy See - the Tribunal of the Roman Rota and the Supreme Court of the Apostolic Signatura. Moreover, the Legislator indicates that the judiciary is also held by diocesan bishops and superiors of particular churches equated to a diocese according to can. 368 of the CIC. A diocesan bishop may exercise judicial authority personally or through others, that is to say, a court vicar

[1] Cf. G. DZIERŻON, *Władza rządzenia*, in: G. LESZCZYŃSKI (ed.), *Wielka Encyklopedia Prawa. Prawo kanoniczne*, t. 2, Warszawa 2014, p. 256.
[2] CIC, Art. 129.
[3] Cf. W. AYMANS, K. MÖRSDORF, *Kanonisches Recht. Lehrbuch aufgrund des Codex Iuris Canonici*, I: *Einleitende Grundfragen und Allgemaine Normen*, Paderborn-München-Wien-Zürich 1991, p. 400.
[4] Cf. CIC, can. 1405.
[5] The law reserves the right for the Bishop of Rome to judge cases *a iure* and also *ab homine*. In addition, the Bishop of Rome may issue a special order to hear cases. Cf. J. KRUKOWSKI, *Komentarz do kan. 1405 KPK*, in: J. KRUKOWSKI (ed.), *Komentarz do Kodeksu Prawa Kanonicznego*, t. 5, Poznań 2007, p. 21.

(can.1420 of the CIC) and diocesan judges (can.1421 of the CIC). According to the law, the judicial power is also held by the major superiors in clerical religious institutes and associations of apostolic life under papal law.

The second important issue concerning judicial power is expressed in the principle of legalism. Judicial power should be exercised in accordance with the law. Those who exercise judicial power under the law are obliged to do so under the law. In the context of such an application of the law, the problem of competence to decide on the cases of nullity of marriage appears to be taken up and analysed by me.

The last issue for the judicial power is the issue of the prohibition on its delegation. The delegation is a way of handing over the power of ruling, including, of course, the judicial power, to a person who is not related to the office. The provision of can. 135 § 3 clarifies the general prohibition of delegation of the judicial power. It cannot be delegated because this power is linked to the office of a judge[6]. However, it is possible to delegate that power in order to conduct preparatory acts with the ultimate aim of issuing a decree or judgment. Therefore, a parish priest cannot pass judgment in a case, even though he has a degree in canon law or was an expert in canon law, but was not a judge. However, he may be delegated to gather evidence, for example, by taking the testimony of witnesses for the trial.

2. Competence

The Legislator, in the second canon of Book VII of the CIC (can. 1401, n. 1) indicated in a general way the scope of matters that can be resolved by the Church. One can read there: „By proper and exclusive right the Church adjudicates: cases which regard spiritual matters or those connected to spiritual matters". This canon defines the scope of the Church's judicial power. The doctrine distinguishes materially between spiritual matters (*causae spirituales*), temporal matters (*causae temporales*) and mixed matters (*causae mixtaae*). At the same time, it should be mentioned that the binding code does not guarantee the Church a court privilege, thanks to which clerics and monks could be judged only by church courts, and laymen by state courts. There is a separation of powers. The sources of the concept of competence should be found in Latin. The Latin word *competens* means 1. compliant, consenting, appropriate, relevant, suitable; 2. legally: competent, relevant, suitable[7]. The verb *competo*, *ere* - in legal

[6] Cf. T. PAWLUK, *Prawo kanoniczne według Kodeksu Jana Pawła II*, t. 1, Olsztyn 1985, p. 296.
[7] J. KORPANTY (ed.), *Słownik łacińsko-polski*, t. 1, Warszawa 2001, p. 371.

terms means to be legally permissible „legally motivated”[8]. A. Jougan, in his Latin-Polish church dictionary, translates the term *competentia* as: 1. affiliation, jurisdiction, power of attorney, scope of activity, entitlement, competence; 2. suitability, compliance, appropriateness[9]. In the Polish language, the word competence means the scope (usually formal) of someone's authority, power of attorney to act[10]. This is the scope of powers and authority, the scope of action of an authority or organisational unit; the scope of someone's authority, skills, responsibility[11]. Finally, competence is simply jurisdiction[12]. This is defined as a range of matters falling within the jurisdiction of a specific authorities of states; a distinction is made between local (territorial), material and functional jurisdiction; an authority of a state is required to respect its jurisdiction; an infringement of the rules of jurisdiction generally results in a defective procedure; procedural rules also regulate the settlement of conflicts of jurisdiction[13].

In the subject under consideration, the Legislator uses the term *forum competenti* in the Code[14]. The Latin *forum* as a place of trial before the people means the world of law, a court[15]. Therefore, by combining those two terms, the term jurisdiction used in Poland is coined. This is precisely this term that is synonymous with the competence of court. As M. Sitarz stated in the Dictionary of Canon Law, jurisdiction of a court is a competence of the court to accept and conduct matters in dispute[16]. According to can. 1401 of the CIC, the faithful of the Church have the right and duty to conduct their affairs before the Church tribunal in matters relating to spiritual matters or those related to them. (*Ecclesia iure proprio et exclusivo cognoscit*).

Marriage, as a good of the Church, one of the sacraments, remains in the perspective of spiritual matters, especially with regard to the consequences associated with it. Since the fiancés enter into a canonical marriage and the Church sets the criteria for its validity, it can thus conduct marital matters before its courts. At the same time, there is a clear separation of the powers of the church courts with regard to canonical effects and the state courts with regard to purely civil effects[17].

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[8] IBID., p. 372.
[9] A. JOUGAN, *Słownik kościelny łacińsko-polski*, 5th edition, Sandomierz 2013, p. 129.
[10] A. MARKOWSKI, R. PAWELEC, *Słownik wyrazów obcych i trudnych*, Warszawa 2003 p. 451
[11] E. SOBOL (ed.), *Mały słownik języka polskiego*, Warszawa 1996, p. 330.
[12] http://encyklopedia.pwn.pl/szukaj/kompetencja.html (access: 29.09.2017)
[13] http://encyklopedia.pwn.pl/haslo/wlasciwosc;3997069.html (access: 29.09.2017)
[14] Cf. *Kodeks Prawa Kanonicznego*, Pallottinum 1984, Księga VII, Część I, Tytuł I.
[15] J. KORPANTY (ed.), *Słownik łacińsko-polski*, op. cit., p. 786.
[16] Cf. M. SITARZ, *Właściwość sądu*, w: *Słownik prawa kanonicznego*, Warszawa 2004, kol. 197.
[17] Cf. A. BARTCZAK, *Sądowa jurysdykcja nad małżeństwem w Polsce*, Łódzkie Studia Teologiczne 23 (2014), no. 2, p. 33-34.

A competent court, as one can read in T. Pawluk's work, is that which, in view of the subject matter of the dispute and the defendant, as well as in view of other circumstances, as determined by law, is competent to hear and decide on a case[18]. Thus it is not the office of a judge that makes it possible to proceed with a case, but the core of the issue is jurisdiction. Only a specific court can resolve a specific case. Not every church court is competent, that is to say, have jurisdiction, to resolve every case that meets only the criteria of can. 1401 of the CIC. Otherwise, if the court did not have jurisdiction over the case and the judge was therefore inappropriate, we would have the lack of the jurisdiction of the court. Neither judge, apart from the Bishop of Rome[19], nor any tribunal does have unlimited power. Competence, that is to say the judicial power needed to resolve a specific case, is necessary[20]. What is important is that when a request for nullity of marriage is filed to a church court by a party or both parties (joint complaint), it is the duty of the tribunal to examine whether it is competent to proceed further. However, the judge's inability heard the case is only of a relative nature. Thus, if a case is admitted to trial despite the lack of competence under the law[21], and until such time as the dispute is settled, no charge of relative jurisdiction has been raised, judge *ipso iure* shall have jurisdiction to continue to pursue the case validly.

3. Competence of courts

According to can. 1671 § 1 of the CIC of the reformed motu proprio „Mitis Iudex", the marital affairs of the baptised under their own law (*iure proprio*) belong to a church judge. The general principle is detailed in the next can. 1672. We can read there that: in cases of invalidity of marriage, which are not reserved for the Holy See, are appropriate: 1° the tribunal of the place where the marriage was concluded; 2° the tribunal of the place where one or both parties have permanent or temporary residence; 3° the tribunal of the place where most of the evidence will actually have to be gathered. The legislator has therefore given the possibility to pursue invalidity cases in principle in three tribunals, although in practice, it will be possible to calculate even more.

[18] Cf. T. PAWLUK, *Prawo kanoniczne według Kodeksu Jana Pawła II*, op. cit., p. 173.
[19] See can. 1442 of the CIC.
[20] Cf. U. NOWICKA, *Forum kompetentne*, in: G. LESZCZYŃSKI (ed.), *Wielka Encyklopedia Prawa. Prawo kanoniczne*, t. 2, Warszawa 2014, Warszawa 2014, p. 80.
[21] Cf. can. 1672 MIDI.

3.1. Place of the conclusion of the marriage

As has already been mentioned, the legislator first of all refers to the court of the place of marriage as competent to decide on the *de nullitattae matrimonii* case. In principle, this category has not been changed from the previous rules[22]. The sources of this competence should be found in the *actor sequitur forum rei* principle, derived from the Roman law. The Roman law has known many exceptions to this basic principle of judicial competence. The exception we are interested in is the *actor sequitur forum contractus* principle. It was, in fact, from the times of Dominate when the competent court was the court of the place where the contract was concluded[23]. This principle was also adopted in canonical legislation in the context of the process. It is already known by the law of decretals[24]. It is also pointed out by the Council of Trent[25]. This principle is also referred to in canonical doctrine[26]. In the Codes of Canon Law of 1917 and 1983, the jurisdiction of the place continued to be mentioned first in the context of the competence of the courts to hear de *nullitatae matrimonii cases*[27]. It was also supported by the Procedural Instructions issued to church tribunals in accordance with the above-mentioned codes. The idea of conducting a trial in accordance with the place of marriage is based primarily on the certainty that we obtain from the document. The fact of entering into a marriage, confirmed on the basis of a marriage certificate drawn up and the parties baptismal notification to the parish, provides a guarantee of the performed certificate. That is why the Council of Trent has already introduced the obligation to record the marriage in the marriage books[28]. The legislator, in *Ne temere Decree* of 2 August 1907, also included an obligation to record the marriage in the baptism books[29]. It should be noted that these annotation obligations have also

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[22] In can. 1964 of the CIC/1917 we read: *In aliis causis matrimonialibus iudex competens est iudex loci in quo matrimonium celebratum est*. Canon 1673 of the CIC of 1983 presents this norm basically in the same way: *In causis de matrimonii nullitate, quae non sint Sedi Apostolicae reservatae, competentia sunt: 1° tribunal loci in quo matrimonium celebratum est.*

[23] Cf. W. MIKLASZEWSKI, *Wykład postępowania cywilnego rzymskiego w zarysie historycznym*, Warszawa 1885, p. 31-32;

[24] C. 17, 20, X, II, 2; c. 1, II, 2 in VI°; c. 1, V, 7 in VI°.

[25] Cf. SOBÓR TRYDENCKI, *Sesja 24: II (Dekret o reformie, 20), lit. a.*, in: A. BARON, H. PIETRAS (ed.), *Dokumenty Soborów Powszechnych*, t. 4 (1511-1870), Kraków 2004, p. 771: „Causae omnes ad forum ecclesiasticum quomodolibet pertinentes, etiam si beneficiales sint, in prima instantia coram ordinariis locorum dumtaxat cognoscantur atque omnino".

[26] Cf. F. BĄCZKIEWICZ, *Prawo kanoniczne. Podręcznik dla duchowieństwa*, t. 3, Opole 1958, p. 187.

[27] Cf. can. 1565 of the CIC/1917, can. 1673 of the CIC of 1983.

[28] Cf. SOBÓR TRYDENCKI, *Sesja 24: I/C (Kanony o reformie małżeństwa, 1), lit. m.*, in: A. BARON, H. PIETRAS (ed.), *Dokumenty Soborów Powszechnych*, op. cit., p. 723: „Habeat parochus librum, in quo coniugum et testium nomina, diemque et locum contractu matrimonii describat, quem diligentur apud se custodiat".

[29] *Decretum de sponsalibus et matrimonio iussu et auctoritate SS. D* N. Pii Papae X a S. Congregatione Concilii editum. Ne temere* (2.08.1907): IX. - § 1° Celebrato matrimonio, parochus, vel qui eius vices gerit, statim describat in libro matrimoniorum nomina coniugum ac testium, locum et diem celebrati ma trimonii, atque alia, iuxta modum in libris ritualibus vel a proprio Ordinario praescriptum; idque licet alius sacer dos vel a se vel ab

been maintained by the legislator at present[30]. Therefore, on the basis of a marriage certificate issued by a particular parish, it is ensured that the judge competent to examine a case for invalidity of a marriage becomes the head of that diocese, and thus his or her tribunal within the boundaries of which that parish is situated.

3.2. Place of residence of the parties

The second tribunal competent to conduct marital proceedings referred to by the Legislator shall be that of the place where one or both parties have their permanent or temporary residence. This jurisdiction derives, of course, from the principle of *actor sequitur forum rei* mentioned above.[31]. However, the norm that follows from this provision indicates that this principle has been extended. Not only does the legislator indicate the place of residence of a defendant, but the legal formula has also been extended to the place of residence of a claimant. This leads to an important conclusion, and it is certainly a novelty of this amendment to the law, that from now on there is no difference between the place of residence of the parties in the context of judicial jurisdiction. The claimant has sole discretion to choose the court. The competent court is the tribunal of the defendant's domicile or place of residence. One more issue is important, and it concerns the second part of the provision under consideration. The legislator indicates, by the way, the place of residence. In this sense it enumerates the permanent or temporary place of residence. It is worth pointing out that it is a question of actual residence, not registration, which has its connotations in civil law. The term place of residence should be understood in accordance with can. 102 § 1-2 of the CIC. Permanent residence is acquired by staying in the territory of a parish or at least a diocese which is either combined with the intention of staying there permanently if it does not cancel anything from there, or has lasted for the full five years. Temporary residence, on the other hand, is acquired by staying in the territory of a parish or at least a diocese which is either combined with the intention of staying there for at least three months, if nothing is withdrawn from there, or has actually been extended to three months. At the same time, it should be remembered that the Code also mentions, apart

Ordinario delegatus matrimonio adsti- terit. § 2° Praeterea parochus in libro quoque baptizatorum adnotet, coniugem tali die in sua parochia matrimonium contraxisse. Quod si coniux alibi baptizatus fuerit, matri monii parochus notitiam initi contractus ad parochum bap tismi sive per se, sive per curiam episcopalem transmittat, ut matrimonium in baptismi librum referatur. Quot. from: W. ABRAHAM, *Forma zawarcia zaręczyn i małżeństwa w najnowszym ustawodawstwie kościelnym*, wyd. II, Lwów 1913, p. 49.

[30] Cf. CIC, can. 1121 § 1 and can. 1122.

[31] Cf. S. STANKIEWICZ, *Rzymski rodowód zasady actor sequitur forum rei*, Studia Iuridica Lublinensia 20 (2013), p. 199-211.

from the category of resident and newcomer, as well as wanderer[32]. According to the can. 1409 § 1 of the CIC, the wanderer has a tribunal in his current location. It is worth noting that the doctrine indicates that the same person can have more places of residence at the same time, both permanent and temporary[33]. After all, permanent or temporary residence shall be lost by leaving the place with the lack of intention to return[34].

It should be noted that the legislator has introduced changes in this regard with the „Mitis Iudex" amendment. The earlier provision of can. 1673 § 2 of the CIC referred only to the defendant's permanent or temporary residence. The extension corresponds to Article 7 § 1 of the „Rules of Proceedings for Declaring the Nullity of Marriage" attached to the said amendment. According to it, the criteria of jurisdiction are equivalent, as far as possible, to the principle of proximity between the judge and the parties.

3.3. Place where most of the evidence is collected

The third title of jurisdiction is the tribunal of the place where most of the evidence will actually have to be collected. The content of this provision, like the previous jurisdiction, has changed from the previous can. 1673, n. 4 of the CIC[35]. In this case, the legislator has waived the need to obtain the consent of the judicial vicar of the defendant's domicile, which he should have asked in advance whether he is reporting something to be excluded[36]. This wording is not accidental. The aim of Pope Francis, as set out in „Mitis Iudex", that is, acceleration of the conduct and resolution of *de nullitatae* processes, is also highlighted in this amendment. However, there are three elements to the possibility of conducting a trial in the aforementioned tribunal which, in my opinion, should be looked at carefully. These are the determination of the (*de facto*) place of meeting, the majority (*pleraeque*) of evidence (*probationes*). Evidence, that is, a specific material which will serve to demonstrate the truthfulness of circumstances relevant to the resolution of a case. It is therefore evidence that can be produced by both the claimant and the defendant, regardless of whether the parties agree in their assertions or oppose them. In addition, a category of *ex officio* evidence should also be added. However, the evidence

[32] Cf. CIC, can. 100.
[33] Cf. R. SOBAŃSKI, *Komentarz do kan. 102 KPK*, in: J. KRUKOWSKI (ed.), *Komentarz do Kodeksu Prawa Kanonicznego*, t. 1, Poznań 2003, p. 172.
[34] Cf. CIC, can. 106.
[35] Cf. F. COCCOPALMERIO, *The reform of the canonical process for the declaration of nullity of marriagei*, in: P.M. Dugan, L. Navarro, E. Caparros (ed.), *The Reform Enacted by the m. p. „Mitis Iudex". Commentaries and Documentation. Proceedings of a Conference organised by LUMSA Università and the Consociatio Internationalis Studio Iuris Canonici Promovendo*, *Rome 30 November 2015*, Montréal 2016, p. 14.
[36] Cf. art. 10 § 1, n. 4 DC.

cannot be just single, specifically defined, but the legislator requires the majority of the evidence to be able to exercise this jurisdiction. This is, therefore, a situation in which we are dealing, for example, with the hearing of all witnesses appointed in the case by the trial parties. As G. Erlebach notes, it is not only about the quantity of evidence, but also about the quality (strength) of evidence[37]. The actual place where the evidence is gathered finally means the specific place where the evidence is located. And this category falls under one of the norms of procedural rules: „It should be made possible for any party or witness to participate in the process, at the lowest possible cost"[38].

4. Consequences of changes in law

Any change to the law is part of a broader social and cultural context. Particularly in church legislation, changes result from specific needs, but at the same time they are the result of in-depth analysis and a certain vision of the future. The primary goal of the *salus animarum* law must set and outline potential changes. Pope Francis pointed out that the Church „has developed a system of the invalidity of marriage consensual, and has appropriately arranged the court proceedings in this matter in such a way that the Church's discipline is more and more in line with the truth of the professed faith"[39]. However, their analysis shows that there are both positives, although there are also some doubts. On the basis of the subject of my analysis, there are also certain doubts.

Admittedly, the reform of the guidelines on jurisdiction affects the speed of the *de nullitatae* process. This reality was at the heart of the whole process reform of Pope Francis. As he expressed himself, by changing the law, he did not aim to promote the nullity of the marriage, but to speed up the trials so that the hearts of the faithful, who are waiting for their situation to be clarified, are not enslaved for too long by the darkness of doubt due to the delay in passing judgment[40].

The proximity of the tribunal makes the relationship between the claimant and the litigants to the Tribunal significantly improve. The ease of contact with process parties affects

[37] Cf. G. ERLEBACH, *Komentarz do kan. 1673 KPK*, in: J. KRUKOWSKI (ed.), *Komentarz do Kodeksu Prawa Kanonicznego*, t. 5, Poznań 2007, p. 333.
[38] Article 7 par. 2 of the „Rules of Proceedings for Declaring the Nullity of Marriage", in: List apostolski motu proprio „Mitis Iudex Dominus Iesus", reformujący kanony Kodeksu Prawa Kanonicznego dotyczące spraw o orzeczenie nieważności małżeństwa (tekst łacińsko-polski), Tarnów 2015, p. 38-39.
[39] FRANCISZEK, *List apostolski motu proprio „Mitis Iudex Dominus Iesus", reformujący kanony Kodeksu Prawa Kanonicznego dotyczące spraw o orzeczenie nieważności małżeństwa (tekst łacińsko-polski)*, Tarnów 2015, p. 7.
[40] IBID., p. 9-11.

the duration of processes. Moreover, at a time of such a strong migration of the population, the Tribunal, which is accessible to the parties through its proximity, can count on the fact that the situation of the parties will be quickly clarified, without unnecessary dragging out. The freedom of choice left to the claimant as to where to file an action for nullity is very important in this sense. In connection with the amendment, the provisions which referred to the need to obtain the consent of the court vicar in specific circumstances were derogated from[41]. The speed at which evidence is collected affects the length of the process. The ease with which evidence is collected ultimately affects the length of the procedure. It also applies, albeit indirectly, to the quality of the evidence.

The above issues also have an impact on procedural costs. Their amount *in genre* is reduced. The thing is not, obviously, about court fees, which are usually fixed, regulated by regulations and other guidelines of church courts or diocesan curia. I am thinking, however, of the procedural costs, costs of travelling to the hearings of the parties and witnesses, costs of collecting the remaining evidence or for correspondence with the court. Translation of texts from foreign languages increases the total costs, and due to the fact of being close to the parties homes or the place where most of the evidence is collected, a party is able to minimise these costs. In any case, Pope Francis also had the issue of costs on his mind[42].

However, all these arguments confirming changes in the law are accompanied by constant concern. The speed of processes may become the source of conducting them superficially. What is even more important in this matter, however, are the concerns raised by the canonists about practising the so-called „process tourism"[43]. The already mentioned freedom of choice of court, before which a party will want to conduct a trial, may be tempted to conduct a case in a court where the marriage is declared void more quickly and, above all, more effectively[44]. At the same time, it is worth adding that such a specific jurisdiction may give a claimant a chance to run the case in a place specially distant from the place of residence of a defendant, so as to avoid informing him about the trial being conducted. This is a very

[41] Cf. CIC, can. 1673, n. 3-4.

[42] FRANCISZEK, *List apostolsk*i …, op. cit., p. 15: „In addition to concern for the proximity of the judge, the Conferences of Bishops are guilty, while preserving the fair and dignified remuneration of the judicial personnel, to ensure, as far as possible, that the trial is free of charge, since the Church, by appearing to the faithful as a generous mother on an issue so closely linked to the salvation of souls, expresses the selfless love of Christ, through which we have all been saved".

[43] Cf. J. KRAJCZYŃSKI, *Proces* zwykły, in: J. KRAJCZYŃSKI (ed.), *Proces małżeński według motu proprio „Mitis Iudex Dominus Iesus"*, Płock 2015, p. 63-65; A. SOSNOWSKI, *Komentarz do kan. 1672*, in: P. SKONIECZNY (ed.), *Praktyczny komentarz do Listu apostolskiego motu proprio „Mitis Iudex Dominus Iesus" papieża Franciszka*, , Tarnów 2015, p. 64.

[44] Cf. B. NOWAKOWSKI, *„Mitix Iudex Dominus Iesus" – nadzieje i obawy sądownictwa kościelnego w sprawach o nieważność małżeństwa*, Ius Matrimoniale 26 (2015), no. 3, p. 29-30.

dangerous situation. This is because it exposes us to the risk of the trial being conducted in the direction of an invalid judgment[45]. More needs to be said. By doing so, the right of defence of the defendant is being denied. Yet, this is their fundamental right. Once the requirement for the consent of the court vicar of the place of residence of the defendant or the place of the collection of evidence has been repealed, church courts will have to ensure that allowing the claimant to lodge a complaint does not have the undesirable effect of depriving the defendant of his rights[46]. There is also another very important issue in connection with the amendment. As is well known, it is not possible to pursue a case on the same grounds again. The fact that a case can be handled in many places may lead to abuse. Without obtaining appropriate consent from the court vicar, as was the case in can. 1673, n. 3-4 of the CIC, it is difficult to ask for a review whether the nullity of a given marriage has already been considered in a given court under specific titles. That is why the plan to create nationwide databases of marriage cases in individual dioceses remains so important. Such a database will provide a source of knowledge about the competences of a given tribunal.

Conclusion

The changes made by the amendment of „Mitis Iudex Dominus Iesus" probably contribute to the legal order considerably. Significant changes are visible from the perspective of the jurisdiction. They are aimed at restoring proximity between the judge and the faithful, because, as Pope Francis emphasises, the legal and priestly dimension of the Church's ministry are not opposed to each other. The judicial office is a true diakonia, because behind every case, every trial, there are people who expect justice to be done[47]. The amendment of the question of jurisdiction seems to bring the law, courts, closer to the faithful who are seeking help in them. Although there are voices of concern, it should be pointed out that these relate more to the

[45] Cf. CIC, can. 1620, n. 7.

[46] Cf. J. P. BEAL, *Mitis ludex Canons 1671-1682, 1688-1691. A Commentary*, The Jurist 75 (2015), p. 476: „The elimination of requirements of contacts with the respondents and their judicial vicars prior to accepting cases as the forum of the petitioner or of the majority of proofs will certainly simplify the marriage nullity process and shorten it at least marginally by removing one not terribly difficult or time-consuming formality. However, like most legal formalities, the requirement of consulting respondents about their possible objections to having their cases heard in a tribunal convenient for petitioners was intended to prevent the advantage to the petitioner of being able to deal with a nearby forum from unduly disadvantaging the respondent. With the disappearance of this formality, tribunals will have to take care that allowing a forum convenient for the petitioner does not have the inadvertent effect'ofriding roughshod over the rights of the respondent".

[47] FRANCISCUS, *Allocutio Ad omnes participes Tribunalis Romanae Rotae* (24.01.2014), AAS106 (2014), n. 2, p. 89-90: „Ne consegue che l'ufficio giudiziario è una vera diaconia (…) Dietro ogni pratica, ogni posizione, ogni causa, ci sono persone che attendono giustizia".

sphere of „procedural logistics”. Bringing the judge and the faithful closer together forces a judge, from the very beginning of a trial, to realise the particular responsibility that lies with him. The freedom given by the Legislator in the freedom to choose the court is a great trust expressed in the lay faithful. For by declaring a marriage null and void, the truth is to be realised in their lives, and not just an attempt to wipe out what has simply not worked. Will the advantages and fears be confirmed in judicial practice? It only remains for us to keep a close eye on the application of the norms.