

Article 14 of the MIDI rules of procedure: a new procedural paradigm?

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MATRI-
MONIALIBUS**



De Processibus Matrimonialibus

DE PROCESSIBUS MATRIMONIALIBUS

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des Kanonischen Ehe- und Prozessrechtes

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ARTICLE 14 OF THE MIDI RULES OF PROCEDURE. A NEW PROCEDURAL PARADIGM?

by João Pedro Serra Mendes Bizarro

1. ARTICLE 14'S CIRCUMSTANCES AND THE CONCEPT OF NOTORIOUS

In 2015 Pope FRANCIS gave the Church a new matrimonial process for matrimonial nullity declaration. The way to gain access to it is express in c. 1683. The diocesan bishop himself is competent to judge cases of the nullity of marriage with the briefer process whenever:

„1° the petition is proposed by both spouses or by one of them, with the consent of the other;

2° circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest.“

From this n° 2 and its circumstances the legislator had the need to explain what circumstances rather the way they should or would be used, in the Art. 14:

„Art. 14 § 1. Among the circumstances of things and persons that can allow a case for nullity of marriage to be handled by means of the briefer process according to cann. 1683-1687, are included, for example: the defect of faith which can generate simulation of consent or error that determines the will; a brief conjugal cohabitation; an abortion procured to avoid procreation; an obstinate persistence in an extraconjugal relationship at the time of the wedding or immediately following it; the deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations; a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman, physical violence inflicted to extort consent, the defect of the use of reason which is proved by medical documents, etc.

§ 2. Among the documents supporting this petition are included all medical records that can clearly render useless the requirement of an *ex officio* expert.“

From here the need of some clarification was born, since every canonist knows that some of these circumstances are not chapters of nullity, and for so, can't render the nullity manifest.

When the initial petition (*libellus*) is presented at the Court of Law, the Judicial Vicar has to declare if the *libellus* has any *fumus boni iuris*, now with the *processus brevis*, it seems that he has to declare previous to the judgment the „manifest nullity“, but isn't the judgment made upon the rule *iudex secundum probata iudicare debet*? At this procedural stage there can't be any judgment, also because the *processus brevior* is reserve to the Bishop.

This approach to the definition of *manifest* takes us to the classic institute of notorious (*notorius*) and this can, in fact, takes us to a misunderstanding of the use of the circumstances in artº 14. In the CIC 17¹ notorious was use as a mechanism that supress the need of more proof, as GRATIANUS pointed:

„nullus est condemnandus, nisi iudicio ordinabiliter habito aut conuincatur, aut reum se ipse confiteatur. Verum hec de illis intelligenda sunt, quorum crimina sunt occulta; ceterum que manifesta sunt iudicarium ordinem non requirunt“²

But in this case, we agree with Professor BERTOLINO when he sustain:

„The need to connect the concept of the notorious to that of proof is felt by the classics themselves. We find in fact that Antonius de Brutrio had already defined the notorious *„probatum indubitata et finite nulla discussion agens“* [...] In fact, it seems to us that it is absolutely necessary to seek an autonomous configuration of the notorious, independently of the fact that it causes exemption from proof.“³

Professor BERTOLINO sustain in is book that this institute of notorious changes with time, place of the occurrence and social status of the judge. In so much circumstances can be reed in this particular sense although not as something that dispense proof, but some knowledge that belongs to the judge patrimony and allows him to discern circumstances, substantiating testimonies and records as a way to allow the *processus brevior*.

- 1 Vgl. c. 1747 Non indigent probatione: „1º Facta notoria, ad normam can. 2197, nn. 2, 3; 2º Quae ab ipsa lege praesumuntur; 3º Facta ab uno ex contententibus asserta et ab altero admissa, nisi a iure vel a iudice probatio nihilominus exigatur.“ CIC 1917.
- 2 Dict. Post. C. 14., Prohibitentur accusare, C. 1 II, q. 1: https://geschichte.digitale-sammlungen.de/decretum-gratiani/kapitel/dc_chapter_1_1301
- 3 BERTOLINO, R., Il notorio nell'ordinamnto giurico della chiesa. Torino 1965, 78-79. He states that the canonical doctrine moves between the concept of notorious and manifest as synonymous or figures radically opposites. Ebd., 352.

2. A POSSIBLE MISUNDERSTANDING: CIRCUMSTANCES – ART. ° 14 *Rp* AS JURIDIC PRESUMPTION (*IURIS ET HOMINIS*).

Another aspect to be taken into consideration with this evidence is that it cannot be confused with the so-called Presumptions of fact⁴. This is a real risk that could arise from a lack of knowledge of the law and jurisprudence. It will be so much easier to create a *vademecum* with circumstances and the respective *caput nullitatis* and present some sentences already written, allowing the Judicial Vicar to change the names and addresses! Of course, this is not only misrepresenting the meaning of the reform, but it is the categorical non-application of the final scope of the law – the salvation of souls by the application of justice.

The Judicial Vicar, upon receiving the introductory indictment, should, when analysing it, put to use all his legal knowledge, his forensic experience but also other knowledge related to sociology, such as the social relationships of the family, the importance of faith in the social context, constitution of society (patriarchal, matriarchal, postmodern, gender issues, etc.) on the analyses that he has to make of the case.

All this knowledge may lead him to assume at the time of the facts under analysis and his acceptance of the libel, which, with greater or lesser weight, will influence the choice of the procedural route. Regarding this change in the Judicial Vicar's way of acting, and specifically about the possibility of a return to the Presumptions of fact, Roch Pagé makes a very harsh criticism: „Now, it will be much easier to find a ground, given the recourse to spurious presumptions of fact and the widened scope for arbitrary, unappealable decisions“⁵.

These will have a greater or lesser importance according to the legal formation of the actors, but also with the clarification, for example, of the legal nature of the *Rp*.

As mentioned above, there is a strong probability of confusing circumstances, required by the regulation to make nullity evident, and evidence, which are different concepts.

We now play with two fundamental concepts, that of evidence and that of presumptions. These concepts, which are based on very subjective probabilistic calculations, will give the judge the ability to analyse the libel and judge its procedural viability.

4 Vgl. SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, Decretum, 13.12.1995, prot. N. 25651/94 V.T. „*praesumptiones facti pro causis nullitatis matrimonii*“, 15-20 and SCICLUNA, C. J., The use of „Lists of presumptions of fact“: Forum 7 (1996) 45-67.

5 PAGÉ, R., Questions regarding the Motu Proprio Mitis Iudex Dominus Iesus: The Jurist 75 (2015) 609.

Evidence is a certain fact that indicates and reveals the existence of another fact different from the first where there is a causal relationship between the two. It cannot be forgotten that we are talking about relative knowledge, as they involve a certain dose of uncertainty and error⁶.

From this we can deduce both the evidentiary nature of the presumptions and their essential characteristics. The probative nature is defined as an indirect proof mediated through an empirical rational act. The essential characteristics are reasonableness and probability.

A feature that will be highlighted in the following points is that, contrary to the improper and illegal use given to the famous Lists of Presumptions of Fact,⁷ used against the Law, the circumstances are used according to the law.

2.1. Analogy

Article 14 of the Rp can be treated as a human presumption (*praesumptio hominis*). A short marriage relationship is not a nullity chapter, but most Judicial Vicars will be in a position, due to their procedural experience, to be able to assume that this fact may be an indication that will value a related nullity chapter. It is the legislator himself, who in article 14 of the Rp now allows this conclusion. In fact, the evidence pointed by circumstances had previously been dealt by the legislation when it addressed the same issue for the documentary process now reinforced in this *processus brevior*.

We can find a few presumptions safeguarded by law regarding marriage, such as: marriage enjoys the favour of the law (c. 1060), the presumption of consummation (c. 1061 § 2), minimal knowledge of the nature of marriage (c. 1096 §§ 1 and 2), internal conformity of consent (c. 1101 § 1), marital perseverance in the presence of impediment (c. 1107), paternity (c. 1138 § 2) and pardon for the

⁶ „Mantengamos, pues, el principio general de que los conocimientos científicos, como todo conocimiento de pura razón, son *relativos* (porque en ellos caben la no exactitud y el error) y, además, de naturaleza solamente *probabilística y aproximativa* a un valor exacto, es decir, conocimientos que sólo *probablemente* se acercan a la realidad; son conocimientos que se obtienen mediante el procedimiento lógico de la inducción (a través de ellas pasa desde los hechos singulares observados a la formulación de afirmaciones generales) combinada con el procedimiento lógico de la deducción (con la que se desciende de los principios generales a lo particular) y la inducción-deducción sólo pueden producir conocimientos *probables*“; GARCIA FAILDE, J. J., Garantías procesales para el hallazgo de la verdad en el proceso canonico: Manzanares, J. (Hrsg.), Cuestiones básicas de derecho procesal canónico.: XII Jornadas de la Asociación española de canonistas, Madrid 22-24 abril 1992. Salamanca 1993,45.

⁷ SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, Decretum 13.12.1995, prot. N. 25651/94 V.T.: „*praesumptiones facti pro causis nullitatis matrimonii*“.

spouse adulterer (c. 1152 § 2). These are important for the safeguarding of the matrimonial institution and are based, in most of them, on logic, biology and common sense.

Jurisprudence canonized a set of presumptions⁸ which are an added value for the analysis of some chapters of marriage nullity and in some of them the presumption itself lies on the chapter itself or on the circumstances associated with it, for example the consensual incapacity can fall on the nature of the psychic anomaly or on the circumstances of marital life that may be indicative or revealing of the anomaly.

Article 14 of the *Rp* very visibly resembles the List of Presumptions of fact⁹. This list, which served to analyse cases of nullity, attributing to some *caput nullitatis* circumstances that led to previous presumptions of nullity¹⁰. In this list¹¹ we can find a good approximation to the circumstances pointed out by article 14 of the *Rp* to the extent that those List of Presumptions of Fact and those of article 14 are frequent realities in the causes of marriage nullity and, as already presented in the previous points of this dissertation, often referred to by the jurisprudence. Although they were seen as not being null chapters, they acted directly on the judge's ability to find moral certainty to dictate sentence. They have in common:

„Presumptions of fact are drawn from experience of live in a given society and culture and have to do with what generally is true regarding deliberation and capacity when certain circumstances are present. Presumptions alone do not constitute proof of given defect of consent, but they frequently clarify the significance of the facts in evidence and, together with that evidence, can bring us to moral certitude about the marriage's validity or nullity when the evidence alone would not have given rise to certitude“¹².

Here is a possible parallel between both, those that do not match, I leave in the first number omitted from the list of presumptions.

8 Vgl. PALOMBI, R., Il valore delle *praesumptiones*: I mezzi di prova nelle cause matrimoniale secondo la giurisprudenza rotali. Città del Vaticano 1995, 100-113.

9 SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL., Decretum 13.12.1995, prot. N. 25651/94 V.T. „*praesumptiones facti pro causis nullitatis matrimonii*“.

10 With the exception of presumption n.º 30, which serves to validate the marriage, for a long period of coexistence.

11 Vgl. SCICLUNA, The use (s. Anm. 4), 48-49.

12 Ebd., 51.

<i>Presumptions of Fact</i> ¹³	Circumstances art.º 14
n.º 1 – teenage, sixteen or below	
n.º 2 – teenage, seventeen or eighteen	
n.º 3 – teenage, nineteen	
n.º 4 – pregnancy	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 5 – [...]	- abortion sought to prevent procreation; - stubborn permanence in an extramarital relationship at the time of marriage or immediately afterwards; - the intentional concealment of sterility or a serious contagious disease or children born from a previous relationship or imprisonment;
n.º 6 – guilt over sexual activity in courtship	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 7 – (do not exist)	
n.º 8 – first serious boy or girl	
n.º 9 – ignoring of immature behavior	- failure to use reason proven through medical documents;
n.º 10 – (do not exist)	
n.º 11 – rebound from other boy or girl	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;

¹³ SCICLUNA, The use (s. Anm. 4), 48-49.

n.º 12 – rebound from previous spouse's death;	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 13 – rebound from recent divorce	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 14 – rebound from a death in one's family	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 15 – old maid anxiety	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 16 – graduation time: „the thing to do“	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 17 – severe conflicts in home life: „to get out of the house“	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 18 – other friends marrying: „the thing to do“	- the cause of the marriage that is completely unrelated to conjugal life or an unforeseen pregnancy of the woman;
n.º 19 – sexual abused girl lacking discretion	- failure to use reason proven through medical documents;
n.º 20 – very brief courtship	
n.º 21 – courtship at a distance	
n.º 22 – serious desire to back out	
n.º 23 – divorce mentality excluding perpetuity	- that lack of faith that can generate the simulation of consent or the error that determines the will;
n.º 24 – severely defective model in parents' marriage	

n.º 25 – macho infidelity	
n.º 26 – severely handicapped party	- failure to use reason proven through medical documents;
n.º 27 – radical ethnic, cultural, or religious disparity	
n.º 28 – radical disparity of personalities	
n.º 29 – convalidation as a cure-all	
n.º 30 – validity of a long marriage ¹⁴	
n.º 31 – very brief common life (less than 1 year)	- the brevity of marital coexistence;
n.º 32 – brief common life (1-2 years)	- the brevity of marital coexistence;
nº 33 – advancing maturity	- failure to use reason proven through medical documents;
n.º 34 – early breakup over a fact previously know	- the brevity of marital coexistence;
nn.º 35 – 39 (do not exist)	
n.º 40 – failure of good-faith marriage counseling	
n.º 41 – defensive refusal of counseling	
n.º 42 – defensive abandonment of consoling	
n.º 43 – sexually abused girl unable to assume	- (may be considered) – physical violence inflicted to extort consent;
n.º 44 – divorce mentality vitiating discretion	- that lack of faith that can generate the simulation of consent or the error that determines the will

If the Judicial Vicars, at the Courts, are not competent and well trained in canon law, there is a strong probability of falling and making a regular error that led to

¹⁴ This presumption is not for nullity! Is pro marriage.

the formulation and application of these presumptions. They should „examine these circumstances carefully and without prejudice, in a harmonious and broad view of the marriage experience, avoiding automatisms and undue presumptions“¹⁵.

However, it is not worth devaluing the social conditioning to which the judicial Vicar is subject. Sociocultural conditions will play a predominant role in the analysis of circumstances, as these will have a greater or lesser influence on the evidence. In other words, these social conditions will influence, to a lesser or greater extent, the circumstances to be valued in a case of nullity of marriage, since the experience of moral, social and cultural criteria are not the same in Europe or Africa, or even within the same country, in big cities or in a small village in the interior¹⁶.

2.2. Differences

1) At least three major significant differences between the circumstances and the presumptions are listed. A fundamental procedural difference, a substantive difference and finally a legal difference. Procedurally, the fundamental difference consists in the procedural position of the circumstances and the presumptions. The Presumptions of Fact were used at the end of the process, after the instruction and directly influenced the sentence „this list is, therefore, for the use of all those involved in the discussion or decision of the case“,¹⁷ in turn, the circumstances described in the Rp are used at the beginning of the process, in the introduction of the libel and its analysis, even before the decision to choose the procedural route. This analysis must result in evidence of nullity that later leads to its proof in the instruction supported by facts and documents. That is, the circumstances are subject to procedural verification.

15 „[...] dovrà esaminare con cura e senza pregiudizi tali circostanze, evitando automatismi e indebite presunzioni“, FRANCHETTO, F., Il vicario giudiziale e il vicario giudiziale aggiunto: I soggetti del nuovo processo matrimoniale canonico. Città del Vaticano 2018, 143.

16 BONNET already affirmed it when referring to the „notorious“: „Se il *notorium facti* è un'evidenza peculiarmente qualificata dalla *scientia plurium*, le altre fattispecie di notorietà trovano invece una diversa determinazione a renderle giuridicamente rilevanti come tali, sostituendosi più specialmente al vaglio critico della Comunità un differente esame non meno accurato e soddisfacente, come per esempio quello giudiziario per il delitto notorio di cui al can. 2197, 2° del codice, o lo stesso legislatore per la notorietà presunta. In altri termini la certezza evidente può diventare legalmente notoria in modi e vie diverse.“, BONNET, P. A., Il giudizio di nullità matrimoniale nei casi speciali. Roma, 73-74. BERTOLINO, R., Il notorio nell'ordinamento giuridico della Chiesa. Torino 1965.

17 „The list is therefore intended for the use of all those involved in arguing or deciding the case“, SCICLUNA, The use (s. Ann. 4), 49.

Circumstances do not automatically lead to the assumption of a presumption of accomplished fact, as these vary from case to case. It has been pointed out by the Apostolic Signatura, in response to the Presumptions of Fact, that a circumstance, such as age or an unwanted and planned pregnancy, does not always lead to the same consequences and certainly does not lead to marital nullity by itself.

Circumstances, unlike presumptions, must be proved and not deduced or admitted as hypotheses. When they are certain and have a univocal meaning, they are capable of providing the judge with a credible source of knowledge of the basis of the simulation¹⁸.

It is not surprising that for the circumstance to have value in the admission of the libel and in the procedural choice it must be based on evidence and testimonies.

2) The fundamental substantive difference results from the way in which the moral certainty of nullity is obtained. This certainty in the case of presumptions is obtained from an existing a priori certainty, for example being under 16 years of age, then the marriage is void, regardless of the nullity chapter.

In other hand, article 14 states that the circumstances may point to an evident nullity it is always required a later proof in the instructional phase.

The evidence that the libel must present will lead the judge to formulate not a presumption of matrimonial nullity, but the certainty that this libel has sufficient grounds to be accepted through the use of the *processus brevior*. SABBARESE proposes that „(...) circumstances and the facts, rather than making the nullity manifest, must make the nullity basis manifest; therefore it would have been better to have a text with the following content: *et fundamentum nullitatis manifestum reddant*“¹⁹.

3) Finally, the most important difference, which is of a legal nature. While the circumstances of article 14 are in favour of the law, not violating the legal order, Presumptions of Fact are against the law, as they violate the principles that marriage enjoys the protection of the law and wrongly presumes that the existence of certain circumstances *always* lead to the existence of a marriage nullity.

¹⁸ „Le circostanze, a differenza delle presunzioni, devono essere provate e non dedotte o ammesse come ipotesi. Quando sono certe e hanno un significato univoco, sono in grado di fornire al giudice una fonte attendibile della conoscenza della fondatezza della simulazione“, ARELLANO CEDILLO, A., Il valore presuntivo delle relazione extramatrimoniali. Quaestiones selectae de re matrimoniali ac processuali. Città del Vaticano 2018, 338.

¹⁹ SABBARESE, L., Il processo più breve: condizioni per la sua introduzione: Okonkwo, E. B. O. / Recchia, A. (Hrsg.), Tra rinnovamento e continuità. Le riforme introdotte dal motu proprio Mitis Iudex Dominus Iesus. Quaderni di Ius Missionale. Città del Vaticano 2016, 50.

However, this nullity cannot be based on a presumption, as it happens, which in turn is based on another presumption such as *praesumptum de praesumpto non admittitur*²⁰.

3 - TWO PROCEDURAL MECHANISMS – *BREVIOR* AND DOCUMENTARY – ARE THEY THE UNDER DIFFERENT NAME?

These two procedures – documentary process and *processus brevior* – have origin in the simplification of the entire *modus operandi* of canon procedural law. This is, moreover, the concept of a summary procedure, a simplified procedure that makes it possible for a judge to quickly decide without having to go through some additional steps and formalities. The goal is to achieve a greater simplicity of in the decision take process. This is not due to a merely simplistic criterion but is based in the fact that the causes admissible to these typologies are so obvious that they waive whole set of more complex actions to achieve the same goal. In both methods, we may find evidence of matrimonial nullity manifested in the *libellus*, as they both present: (i) an easy and immediate collection of evidence, (ii) a single judge and (iii) if the judge does not reach moral certainty, he is allowed to shift the process to follow the rules of the ordinary procedure, with no space for a negative sentence to the *dubium*. It would not be unreasonable to underline the notorious inspiration of the new *processus brevior* shaped in the documentary process²¹.

These procedures are based in three keywords: *Evidence – Confirmation – Judgment*. Each of these keywords corresponds to a procedural time, which are similar in both procedures, allowing full correspondence with those fundamental moments of the procedural analysis.

Evidence – will correspond to the initial moment (presentation of the *libellus*, procedural choice and establishment of the *dubium*), / *Confirmation* – will correspond to the phase of the investigation and / *Judgment* – will correspond to the phase of issuing the sentence or the referral of the case to the ordinary process. This is so obvious that we can ask ourselves if „these procedures, so close but distinct from each other, could be merged into one?“²².

20 SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, Decretum, 13.12.1995, prot. N. 25651/94 V.T. „*praesumptiones facti pro causis nullitatis matrimonii*“, n° 2 a, 16.

21 Without, however, discarding the influence that the oral process has on the *processus brevior*.

22 Vgl. TOXE, R. P., Les nouvelles procédures de *Mitis Iudex Dominus Iesus* confinent-elles à un procès documentaire portant sur le fond?: Gonçalves, B. (Hrsg.), Comprendre la réforme des procédures de nullité de mariage selon le motu proprio *Mitis Iudex*

In the introduction of the *libellus* there is a significant difference between the two mechanisms under procedural law. In the documentary, the case can be introduced by one of the parties or by the promoter of justice, „when the nullity is already disclosed and the marriage cannot or is not convenient“ (c. 1674 § 1, 1); in turn, in the *processus brevior*, the case must be introduced jointly by the spouses „or by one of them, with the written consent of the other“ (c. 1683 1st). If in the first typology the parties cannot be an obstacle to the choice promoting the case from procedural perspective, in the second scenario without their joint express consent the Judicial Vicar cannot refer the case to the *breviour*, even more, since he has the capacity to make the procedural choice, he can still invite one of the parties to accept the case and make, the until then initially respondent, to a co-author²³.

A significative difference lies also in the judge, because in the *brevior* the judge is the bishop, which at first glance may seem a novelty if one does not take into account that it is up to the Diocesan Bishop, first of all, to judge all the causes of his court. (c. 1419 § 1). But even the reasoning behind this attribution to the diocesan Bishop is not new in procedural law, as MONTINI²⁴ very well stated, since this safeguard of justice attributed to the Bishop already existed in cases of special proceedings.

Dominus Iesus. Colloque de la Faculté de Droit Canonique de l'Institut catholique de Paris. Paris 2019, 297-333.

23 Vgl. art.º 15 Rp.

24 In a lecture given at the Pontificia Universitas Gregoriana in honor of Professor BONNET, states: „Sul Vescovo diocesano non posso non manifestare tutta la mia sorpresa nel leggere quanto il Prof. Bonnet scriveva in relazione all'Ordinarius quale ‚iudicem agens‘ nel processo documentale: ‚la mancanza di tutte le formalità giudiziali, richiesta dalla notorietà stessa della nullità, può trovare una sua non disprezzabile garanzia sostitutiva, senza alcun ingiustificato rallentamento dei tempi di giudizio, nell'intervento personale di colui al quale è integralmente affidata la responsabilità di una particolare Comunità ecclesiale‘. Chiunque di loro avrà sentito riecheggiare in queste parole (anche ad litteram) quanto si legge nel *Mitis Iudex Dominus Iesus* in relazione al Vescovo diocesano protagonista del *processus brevior*: ‚Nos tamen non latuit, in quantum discernim ex breviato iudicio principium indissolubilitatis matrimonialis adduci possit; eum nimirum in finem volumus ipsum Episcopum in tali processu iudicem constitui, qui in fide et disciplina unitati catholicae cum Petro ob suum pastoris munus quam qui maxime cavet““, MONTINI, G. P., Il processo documentale nel diritto processuale canonico. Il contributo del Prof. Piero Antonio Bonnet (1979-2008), (pro manuscripto) 12-13, now published as Il processo documentale nel diritto processuale canonico. Il contributo del prof. Piero Antonio Bonnet (1979-2008): Periodica de re canonica 110 (2021) 439-457.

Already in 1979 stated Prof. BONNET: „Every Ordinary, by virtue of the peculiar power which he is invested and within its limits in special cases a responsibility he is personally entrusted by the law to prevent the absence of a decision in almost all procedural guarantees, useless the lack of special analyses results from the absolute notoriety of the nullity of marriage, may result into damage to the pursue of the truth, fundamental for human life as that concerning the sacrament of marriage.“²⁵.

3.1. Evidence

The requirements for the use of these two procedures are, above all, the evidence that the introductory indictment must be formally presented. In the documentary process it comes from a document, in the *processus brevior* it comes from circumstances supported by documents and witnesses. Although the *caput nullitatis*, in this case, diverge completely, we can foresee that in both cases it is necessary to provide evidence to trigger both of these typologies – *certo constat* (c. 1688) and *manifestam reddant* (c. 1683, 2^o) and in both cases it goes far beyond the mere *fumus boni iuris* of the ordinary process. Another common fact to both processes is the readiness of gathering evidence, which should mostly be presented in the introductory *libellus* of the case. „While it is true that there is a difference between these two procedures with regard to the way in which evidence is collected, it is perhaps more in appearance than fundamental“²⁶.

An easy evidence of the above may be seen from the previous investigation (prejudicial or pastoral inquiry)²⁷ which in both cases is very useful for procedural speed, saving time in the instructional phase.

²⁵ „Ogni Ordinario, in virtù del peculiare potere del quale è investito, e nei limiti di questo, ha nei Casi speciali una responsabilità personalmente affidatagli dal diritto per evitare che la mancanza di quasi tutte le garanzie procedurali, rese inutili dalla notorietà della nullità matrimoniale, possa tradursi per qualche abuso in un danno qualunque per la verità, tanto più grave in fattispecie come queste che coinvolgono un giudizio su di una realtà tanto importante e fondamentale per la vita dell'uomo qual è quella relativa al sacramento del matrimonio“, BONNET, P., Il giudizio di nullità matrimoniale nei casi speciali, 230.

²⁶ „S'il est vrai qu'il y a une différence entre les deux procédures au sujet des modalités pour colliger les éléments de preuve, elle est peut-être plus apparente que fondamentale“: TOXE, R. P., Les nouvelles procédures de *Mitis Iudex Dominus Iesus* confinent-elles à un procès documentaire portant sur le fond?: Gonçalves, B. (Hrsg.), Comprendre la réforme des procédures de nullité de mariage selon le motu proprio *Mitis Iudex Dominus Iesus*. Colloque de la Faculté de Droit Canonique de l'Institut catholique de Paris. Paris 2019, 297-333.

²⁷ With regard to this prejudicial inquiry, in the *processus brevior*, vgl. art. 2-5 *Rp*, with regard to the documentary process vgl. art.° 297 § 1 *DC*.

This similarity between the circumstances may be questioned, since at first glance the probatory force of the second method seems to be more evident than the first. Against this objection MONTINI argues:

„This objection largely depends on the superficiality in which the documental process is ordinarily seen, focusing on the document and without considering that the evidence force and nature attributed by the Legislator [1] to which can't be subject to contradiction, [2] that no dispensation is been given, and [3] only for certain *caput nullitatis*.

In items [1] and [2] we are far from the univocity of the document and the exclusion of any investigation under the instruction phase. Above all, the absence of granting an exemption is normally considered, as a negative fact, of extremely difficult proof as well as – according to the doctrine – it would not be originated under the codified law.

Congrua congruis referendo configures a similar situation from the formal procedure point of view as set forth in art. 14 § 1 from *Rp* based in the evidence of the *processus brevior*: the *brevis convictus coniugalis* [= document] must be accompanied by [1] witnesses and documents and [2] not requiring further investigations²⁸.

For the *processus brevior*, the collection of evidence can take place in the instructional session, as we may be in the presence of testimonial evidence, which however will already be described in the *libellus* indicating its degree of knowledge and importance for clarifying the case. Or at the very most „in issuing the citation in accordance with c. 1685, by virtue of which the parties shall be informed that, if possible, they are to make available in, at least three days prior to the session for the instruction of the case, those specific points of the matter upon which the parties or the witnesses are to be questioned, unless they are already part of the *libellus*“ (art 17 *Rp*). The *libellus* must „firstly set forth brief-

28 „Questa obiezione dipende per gran parte dalla superficialità con la quale ordinariamente si guarda al processo documentale, soffermandosi sul documento e senza considerare che l'evidenza che il Legislatore gli ha attribuito si ha se, e soltanto se, al documento si aggiunge [1] che non sia soggetto a contraddizione o eccezione alcuna, [2] che non fu concessa la dispensa e tutto ciò [3] solo per determinati capi di nullità. Nel punto [1] e [2] siamo ben lontani dalla univocità del documento e dall'esclusione di ricerche e istruttorie. Soprattutto la mancanza di una concessione di dispensa è ordinariamente considerata, in quanto dato di fatto negativo, di difficilissima prova e per di più – secondo la dottrina – non sarebbe stata legata a documento dal prescritto codiciale. *Congrua congruis referendo* è la medesima situazione che si riscontra dal punto di vista formale nell'art. 14, §1 *RP* e nell'evidenza del *processus brevior*: il *brevis convictus coniugalis* [= documento] dovrà essere accompagnato da [1] *testimonia et instrumenta* e [2] non esigere ulteriore investigazione», G.P. MONTINI, «Gli elementi pregiudiziali del *processus brevior*»: Prassi e sfide dopo l'entrata in vigore del M.P. *Mitis Iudex Dominus Iesus* e del *rescriptum ex audientia* del 7 dicembre 2015. Città del Vaticano 2018, 54-55.

ly, fully, and clearly the facts in which the petition is or grounded based“ (c. 1684, 1°), since it is from this clear exposition that the evidence of nullity will arise, in which lies the necessary foundation for the use of this procedural methodology. To reinforce this same clarity, „the proofs, which can be immediately collected by the judge“ (c. 1684, 2°) are also indicated and, „the documents, in an attachment, upon which the petition is based“ (c. 1684, 3°).

In the documentary process, the documents that are presented and based upon which the nullity is argued – since it can't be „subject to contradiction or exception – clearly establish either (i) the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or (ii) the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except for the parties notification and the intervention of the Defender of the Bond“ (c. 1688) – this is an evidence or a matter of proof but it does not mean that there cannot be witnesses, for example in the case of proving the absence of a canonical dispensation, or whether to prove the non-existence of a document, or a flaw in the procedural form. This documentary process, in some of its possibilities, is no less demanding than the *processus brevior*. *Provida Mater*, on the other hand, states that it can be proved in all other legal ways and not only through a legal document²⁹. The absence of a dispensation Furthermore, *Provida Mater* strengthens the jurisprudence praxis in use in those days that an authentic interpretation of 1931³⁰ give us note:

If, after Vatican II, the documentary process departed from what was foreseen in the *Provida Mater*, the two current procedures remain closed due to the fact that they go through two successive stages: the decision (usually of the Judicial Vicar) to initiate a summary procedure and the declaration of nullity issued by a single judge³¹.

29 Art. 226 – „Quoties agatur de casus excepto ad normam cân. 1990, officialis, auditibus coniugibus, si comparuerint, et perpensis rebus, videat an impedimenti existentia seu de nullitatis causa ex certo et authentico documento, quod nulli contradictioni vel exceptioni obnoxium sit constet. De quo si sibi videatur constare, necnon pari certitudine vel alio legitimo modo (Comm. Pont., 16 Aprilis 1931, ad I) appareat dispensationem concessam non fuisse, rem Ordinario deferat“, *Provida Mater*: AAS 28 (1936) 358.

30 „D. I. Utrum par certitudo, de qua in canone 1990, haberi possit tantum ex certo et authentico documento, an etiam ex alio legitimo modo [...] R. Ad I. Negative ad primam partem, affirmative ad secundam.[...]“ PONTIFICIA COMMISSIO AD CODICIS CANONES AUTHENTICE INTERPRETANDOS, Responsa ad dubia: AAS 23 (1931) 353-354.

31 „Si après Vatican II, le procès documentaire s'est éloigné de ce que prévoyait *Provida Mater*, les deux procédures actuelles restent proches par le fait qu'elles connaissent deux étapes successives : la décision (normalement du vicaire judiciaire) d'emprunter la voie d'une procédure sommaire et la déclaration de nullité par un juge unique“, TOXE, Les nouvelles procédures (s. Anm. 22), 297-333.

3.2. Confirmation

As already noted, in the prejudicial phase, the single judge – documentary process – and the instructor – *processus brevior* – are asked to confirm the veracity of the evidence presented. This, together with the procedural rules that govern these procedures indicate that they „do not require a more accurate discussion or investigation and make the nullity evident“ (c. 1683, 2º).

This confirmation arises, or must arise, from a brief instruction, not because the regulations so indicate, but because the evidence itself compels it. If the condition to initiate these mechanisms is an evidence of or the existence of nullity, then its confirmation cannot result from a long and difficult process, but it must be fast and obvious, as a result of the same evidence.

However, this does not mean that the instruction of the *processus brevior* cannot be extended to a second session if, in the first, there is no time to adequately specify the facts that have been shown or presented. „The instructor, insofar as possible, collects the proofs in a single session and establishes a time limit of fifteen days to present the observations in favour of the bond and the defence briefs of the parties, if there’s any“ (c. 1686). It should be noted that if, during the investigation, facts arise that require a more in-depth investigation, according to the opinion of some canon law experts, this process should be placed under an ordinary process. Effectively, this process is based on evidence and speed, a longer investigation is beyond the scope of its scope.

In principle, there will be no need to publish the case files because „the parties and their advocates can be present for the examination of other parties and witnesses unless the instructor, on account of circumstances of things and persons, decides to proceed otherwise.“ (art. 18. § 1, *RP*).

For the documentary process, we do not formally have an instructional session, but we do have a contradictory that can arise from the *animadversions* of the Defender of the Bond or the opposition of a part to the evidence that has been presented.

Hence the need to publish the case file even if the canons do not properly indicate it – in both procedures (if the parties are not present at the procedural session of the *processus brevior*) – will safeguard the parties' right of defence and translate the process in an more transparent the court's action³². Publication, in turn, will be timely and necessary when the opposing party has presented elements

32 It is interesting to compare the judgment of the European Court of Human Rights in its judgment against the Italian State for limiting the right of defence of an ecclesiastical judgment. Vgl. TRIBUNAL EUROPEU DOS DIREITOS DO HOMEM, sentença Pellegrini v. Italy, 20.06.2001: https://www.echr.coe.int/Documents/CLIN_2001_07_32_ENG_815323.pdf, 44-46.

against the evidence. In this case, before the judge's decision, the parties must be given the opportunity to express their own observations.

3.3 Judgment

After confirming the veracity of the evidence presented and the statements made, the judge, in the documentary process, and the Bishop, assisted by an advisor, in this last case only in a *processus brevior*, are empowered to make a judgment on the presented dubium.

One of the criticisms levelled at the *processus brevior* lies in the lack of legal knowledge of most diocesan Bishops³³. In truth, this knowledge, although desirable, is not a *sine qua non* condition for making a judgment. The fact that we are under a summary proceedings based on factual and almost indisputable evidence presented, allow the diocesan Bishop to make a judgment if he is able to achieve moral certitude., „about the nullity of marriage is reached. Otherwise, he must be morally obliged to refer the case to an ordinary procedure“ (c. 1687 § 1), where he will find officers of the Court duly trained in Canon Law. To reinforce this statement, one should note that the judgment carried out by the diocesan Bishop is assisted by an advisor, who does not replace the Bishop work, but who will be able to add some light on the procedural dynamics and on matrimonial law.

According to cc. 1687, 1688 and 1690 in these cases there is no room for a negative sentence regarding the proposed dubium, the judge must always issue a positive sentence or send it for ordinary examination.

A judgment following the model of the *processus brevior* could reach for such a negative conclusion, as imposed by the applicable law, would and would then be obliged to shift the matter to be ruled under an ordinary process³⁴. However,

33 „The Bishop for whom c. 378 § 1, 5° requires that he is ‚in possession of a doctorate or at least a licentiate in sacred scripture, theology, or canon law from an institute of higher studies approved by the Apostolic See, or at least truly expert in the same disciplines‘. At the very least, the exercise of the post of judge in the *processus brevior* requires that the diocesan Bishop have a real knowledge of the substantial canonical discipline and matrimonial procedure: prudence should advise him to ensure that some of the participants in the *processus brevior* are in possession of the academic degree of Licentiate in Canon Law“, CONGREGATION FOR CATHOLIC EDUCATION, Instruction, 29.04.2018.

34 In parallel with the documentary process, a case filed by ERLEBACH on 12.05.2000 declared the judgment of the first degree null and void with irremediable nullity for illegitimate use of the procedural typology. Vgl. MONTINI, G. P., L'uso illegittimo del *processus brevior*, 6-8. DERS., „La conclusione, pertanto, è che un uso illegittimo del processo documentale per mancanza del presupposto previsto dalla legge (can. 1688 §1) di un documento inoppugnabile che comporta la nullità del matrimonio, comporta la nulli-

there could be an affirmative sentence about the deceit (*dolus*) e.g., but this could be null, as MONTINI states:

„In the case that we have indicated [...], the Defender of the Bond alleges that the process did not consider the fact that have been alleged as being perpetrated ‚ad obtinendum consensum‘ (can. 1098). In the initial evidence there was the certainty of the bridegroom's homosexuality, of his prenuptial denial when questioned by the author, of this discovery after the nuptials and the immediate interruption of marital coexistence, (...) but nothing about the intentionality of the intent (even in the absence of the defendant's judgment). It seems, therefore, that the diocesan Bishop, deciding in the affirmative, on the one hand gave an unjust sentence (appealable), but the same sentence can be withheld as null since it is based on evidence that did not exist (such as the Defender of the Bond with his allegation, even during the process, had pointed out)“³⁵.

The big difference between these two processes is that according to c. 1690, the ordinary examination takes place in the first instance after the appeal of the Defender of the Bond³⁶. That is, in the *processus brevior*, if the diocesan Bishop does not reach moral certitude, he sends the case to ordinary examination, in the case of the documentary process it is not explicit in c. 1688 that if the judge, finding no basis, he should then also refer to the ordinary examination, but making a parallel with c. 1690 first, and now with c. 1687, it can be said that the procedural passage is identical in both cases. The fundamental point between the two procedures resides in the fact that the evidence of matrimonial nullity that the libel presents should easily lead the judge to a moral certitude. Moral certitude is

tà insanabile della sentenza (affermativa) in ragione del prescritto del can. 124 §1 secondo il quale la nullità dell'atto giuridico (sentenza) scaturisce dalla mancanza di ‚quae actum ipsum essentialiter constituunt‘“, ebd., 9.

35 „Nel caso sopra accennato, il difensore del vincolo eccepisce che nel processo non si è considerato il fatto che il dolo richiede di essere perpetrato ‚ad obtinendum consensum‘ (can. 1098). Nell'evidenza iniziale vi era la certezza dell'omosessualità del fidanzato, della sua negazione antenuziale su domanda dell'attrice, della sua scoperta dopo le nozze e dell'interruzione immediata della convivenza, peraltro brevissima (poco più di un mese), ma nulla circa l'intenzionalità del dolo (anche per l'assenza dal giudizio del convenuto). Appare perciò che il Vescovo diocesano, decidendo affermativamente, da un lato ha dato un giudizio ingiusto (appellabile), ma lo stesso giudizio può essere ritenuto nullo perché basato su un'evidenza che non esisteva (come il difensore del vincolo con la sua eccezione, già durante il processo, aveva fatto notare)“, MONTINI, L'uso illegittimo del *processus brevior*, 16.

36 C. 1690 – „Iudex alterius instantiae, cum interventu defensoris vinculi et auditis partibus, decernet eodem modo, de quo in c. 1688, utrum sententia sit confirmanda, an potius procedendum in causa sit iuxta ordinarium tramitem iuris; quo in casu eam remittit ad tribunal primae instantiae.“

one that is positioned between absolute certitude – where any doubt about the fact and the possibility of a contrary fact cannot occur – and probability – where the probability of the fact or its opposite to exist is not excluded – thus if it can be defined as the certitude that does not exclude the possibility of a contrary fact, it does exclude the probability of its existence³⁷.

Once the sentence has been issued, and with the derogation of the corresponding duo, there is the possibility of filing an appeal, which in the case of the documentary process is a right given to one of the parties or the Defender of the Bond, and in the case of the *processus brevior*, as the spouses present the *libellus* jointly, they will hardly appeal against the sentence, so it is up to the Defender of the Bond to do so. In both cases, we have a single judge, which is similar to the appeal procedure, in the first case it is presented to the Court of second instance (vgl. cc. 1689-1690) and in the second case „to the metropolitan or to the Roman Rota; if, however, the sentence was rendered by the metropolitan, the appeal is presented to the senior suffragan; if against the sentence of another bishop who does not have a superior authority below the Roman Pontiff, appeal is made to the bishop selected by him in a stable manner.“ (c. 1687 §3).

Because the *processus brevior* has some similarities with the oral process, as stated some authors, its greater similarity with the documentary process is reinforced in three fundamental points:

- 1) The apparent notoriety in the nullity *libellus*;
- 2) The criteria for admission to the case (Documentary – „a document subject to no contradiction or exception clearly establishes the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except for the citation of the parties and the intervention of the Defender of the Bond (c.1688); *Brevior* – circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest“ [c. 1683, 2°]);
- 3) The conclusion of both processes, where they can only consent to an affirmative sentence, or when they are sent back to the ordinary process. With this we can also reinforce the parallelism between them both.

The *processus brevior* assumes the brief process that was already carried out in the second instance, now with the possibility of being also analysed in the first instance.

³⁷ On this topic vgl. allocutions by PIUS XII to the Roman Rota (1941, 1942, 1944) and Saint JOHN PAUL II (1980).

To demonstrate the *locus processualis* of circumstances in this new procedural form, we seek to find a causal link, or rather, a parallelism between the procedural evolution of the documentary process and the *processus brevior*. It is true that the *processus brevior* has a certain similarity with the oral process, mostly in relation with the instructional phase, however we find a greater parallel with the documentary process³⁸. This is affirmed because in both processes two conditions are required: that the apparent notoriety of the nullity is already evident in the introductory libel and that the conclusion of both processes, can only consent to an affirmative sentence otherwise, if the Bishop, in the process brief, and the judge in the documentary process, are not able to achieve moral certainty, they must then refer the case to the ordinary process. We can also reinforce the parallelism between the two processes:

The „ex notorio“ procedure can, moreover, explain well the certainly exceptional modality provided for the documentary process not only, as it had been said, in the absence of the need for any stage of an evidentiary nature, but also in its other most striking particularities, such as the peculiar position of the spouses, the uniqueness of the judge, the conclusive sentence that is only affirmative and never negative, the very singular absence of the need for an appeal. That „ex notorio“ can thus constitute a very precious hermeneutic key for a better and deeper understanding of the documentary process³⁹.

38 They share this opinion, of the procedural similarity between the documentary process and the shorter process, among other canon lawyers: MONTINI (Vgl. MONTINI, Gli elementi pregiudiziali del *processus brevior*) and BIANCHI, this last one stated: „Le norme del MIDI e delle RP appena richiamate si ispirano infatti a quanto dal Codice è previsto (ai cann. 1661-1664) debba avvenire nella istruttoria del processo orale. È peraltro chiaro che nella normativa all’esame si fa riferimento esclusivamente a una fase (appunto quella istruttoria) del processo orale, non a tutto quel tipo di processo che resta comunque vietato nella sua totalità per le cause matrimoniali [...] mentre il processo matrimoniale breve sarebbe più assimilabile a quello documentale, che obbedisce piuttosto alla logica della notorietà del titolo che sta alla base della domanda giudiziale[...]“, BIANCHI, P., Lo svolgimento del processo breve: Redazione di Quaderni di diritto ecclesiale (Hrsg.), La riforma dei processi matrimoniali di Papa Francesco. Una guida per tutti. Milano 2016, 67-68.

39 „La procedura ‚ex notorio‘ può spiegare bene del resto il rito certamente eccezionale previsto per il processo documentale non soltanto, come si è appena detto, nella mancanza di qualsiasi fase necessaria di natura probatoria, ma anche nelle altre sue più vistose particolarità, quali la peculiare posizione dei coniugi, l’unicità del giudice, la sentenza conclusiva solo affermativa e mai negativa, la singolarissima mancanza di una istanza necessaria di appello. Quella ‚ex notorio‘ può così costituire una preziosissima chiave ermeneutica per una migliore e più approfondita comprensione del processo documentale“, BONNET, P. A., Il processo documentale (artt. 295-299): DERS. / GULLO, C., Il giudizio di nullità matrimoniale dopo l’istruzione Dignitas connubii. Parte terza. Città del Vaticano 2008, 762-763.

In a way, the *processus brevior* is brief process was as it would already be carried out in the second instance, insofar as the court of appeal, if it was not morally certain of the nullity, could refer the process to ordinary examination in the new instance⁴⁰.

In practice, the *modus operandi* is equal in both current special processes – documentary process and *processus brevior* – with some particularities.

It is here that we can find one of the existing parallels between these two processes in the visibility that the document and the circumstances bring to serve as a full proof of nullity or at least to achieve moral certainty.

„[...] under the assumption of the documentary process, the Legislator wanted the nullity to be evident, that is, to be a factual evidence resulting from the document, while the declaration of nullity will result from obtaining moral certainty. In a parallel way, in the presupposition of the *processus brevior*, the Legislator wanted the nullity to be evident, that is, to be proved from the *adiuncta causae*, while the nullity declaration will result from the attainment of moral certainty.“⁴¹.

However, the degree of evidence of the *processus brevior* must be identical to that of the documentary process but higher than that of the ordinary process, as otherwise the necessary conditions for the application of this procedural typology would not be met.

4. DOCUMENTS VS. CIRCUMSTANCES

Returning again to the possible analogy between *processus brevior* with the documentary process, one can find, *also* a parallel between the circumstances and the document.

The documentary process is only intended for specific situations where „it is certain that there is a direct impediment or lack of a legitimate form, provided

⁴⁰ C. 1682 § 2. Si sententia pro matrimonii nullitate prolata sit in primo iudicii gradu, tribunal appellationis, perpensis animadversionibus defensoris vinculi et, si quae sint, etiam partium, suo decreto vel decisionem continenter confirmet vel ad ordinarium examen novi gradus causam admittat.

⁴¹ „[...] nel presupposto del processo documentale il Legislatore ha voluto che la nullità fosse evidente, *ossia* provata attraverso il documento, mentre la dichiarazione di nullità avrà esito al raggiungimento della certezza morale. In modo parallelo nel presupposto del *processus brevior* il Legislatore ha voluto che la nullità fosse evidente, *ossia* provata attraverso le *adiuncta causae*, mentre la dichiarazione di nullità avrà esito al raggiungimento della certezza morale“, MONTINI, Gli elementi pregiudiziali del *processus brevior*, 54.

that it is equally certain that no waiver has been given, or that the attorney has not been given a valid mandate⁴².

The *processus brevior* is intended for those proceedings where „there are circumstances of facts and persons, supported by testimonies or documents, which do not require a more accurate discussion or investigation and make evident the nullity“⁴³.

A new similarity can be found between document and circumstances because, as foreseen under the law, in both the document and the circumstances point to evidence of the nullity of the marriage to the point of allowing the Judicial Vicar to use a special process where some of the procedural procedures are waived due to the lack of further investigation in the preparatory phase.

In other words, in both typologies is easy to understand the easiness in which the case can be dealt with because of the evidence that the libel presents and the facility of collecting testimonial and documentary evidence. The *processus brevior* finds parallels of proximity and similarity with the documentary because what has just been stated about the evidence that the libel presents, the facility of collecting documentary evidence can find a parallel in the documentary process.

However, one cannot forget that the probative force of a document is greater than the probative force of circumstances, to the point that these have to be supported by documents and testimonies⁴⁴.

In both cases, circumstances and documents make the marriage nullity evident in the libel, and they constitute the way in which such evidence appears to the Judicial Vicar. Different will be the degree of certainty reached by the judge when the instructional phase ends and he declares the sentence.

42 C. 1688. Recepta petitione ad normam can. 1676 proposita, Episcopus dioecesanus vel Vicarius iudicialis vel Iudex designatus potest, praetermissis sollemnitatibus ordinarii processus sed citatis partibus et cum interventu defensoris vinculi, matrimonii nullitatem sententia declarare, si ex documento, quod nulli contradictioni vel exceptioni sit obnoxium, certo constet de exsistentia impedimenti dirimentis vel de defectu legitimae formae, dummodo pari certitudine pateat dispensationem datam non esse, aut de defectu validi mandati procuratoris.

43 C. 1683, 2°. Recurrant rerum personarumque adiuncta, testimoniis vel instrumentis suffulta, quae accuratorem disquisitionem aut investigationem non exigant, et nullitatem manifestam reddant.

44 Vgl. c 1683, 2° e Rp art.º 14 § 2.

6. CONCLUSION

We made a journey and assumed the procedural parallelism between the documentary process and the *processus brevior*. We strayed from the route traced to compare the circumstances with the Presumptions of Fact because we believe that both can lead to a misapplication of the legal norm when poorly managed, otherwise the second are even contrary to the law. Stated that the notorious presented by the circumstances is not to be taken as a proof of the matrimonial nullity but as an extra *fumus bonis iuris* that allows the judicial vicar to conduct the process with the *processus brevior*.

We can't find any trace of the circumstances being a new paradigm in canonical procedural rules, but and again, they can be very badly use if misunderstood. Even worth if taken in consideration that there is no longer the need of the double sentence.

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ABSTRACTS

Dt.: Im Jahr 2015 führte Papst FRANZISKUS mit der Veröffentlichung des Motu proprio *Mitis Iudex Dominus Iesus* (MIDI) eine neue Art von Sonderverfahren in das kanonische Eheprozessrecht ein. Trotz ihrer Neuheit stellt diese aber keine Innovation dar, da sie Parallelen zu anderen bestehenden Verfahrensarten aufweist. Ziel der vorliegenden Abhandlung ist es, einen Ansatz für eine korrekte Anwendung von Art. 14 MIDI aufzuzeigen und die Ähnlichkeiten zwischen dem *processus brevior* und dem Dokumentenverfahren herauszuarbeiten. Dabei soll auf ein mögliches Missverständnis hingewiesen werden, wonach die in diesem Artikel genannten Umstände als Tatsachenvermutungen angesehen werden können. Ein fundiertes Verständnis der entsprechenden prozeduralen Mechanismen soll zu einer angemessenen praktischen Anwendung dieses Verfahrens beitragen.

Ital.: Nel 2015, con la promulgazione del *Mitis Iudex Dominus Iesus* (MIDI), Papa FRANCESCO ha introdotto una nuova tipologia di procedura speciale nel diritto processuale canonico. Questa, nonostante la sua novità, non è una novità in quanto ha un parallelo in altre tipologie procedurali esistenti. Con questo breve articolo intendiamo indicare un possibile uso corretto dell'art. 14 delle Norme di Procedura e indicare la somiglianza tra il *processus brevior* e il Processo Documentario e tutto ciò per indicare un possibile malinteso delle circostanze come presunzioni di fatto. Una comprensione dei meccanismi procedurali di questo strumento può aiutare nella sua adeguata applicazione pratica.