

APOSTOLIC TRIBUNAL OF THE ROMAN ROTA

Subsidium

for the application of the

M.p. *Mitis Iudex Dominus Iesus*

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Introduction

*“Wherever there is a person, the Church is called to come to that person to bring the joy of the Gospel and to bring the mercy and pardon of God.”*¹

Thus Pope Francis expressed himself on the occasion of the opening of the Holy Door for the Extraordinary Jubilee of Mercy, on the very same day that the norms of his apostolic letters of 15 August 2015 in the form of a *Motu proprio*, *Mitis Iudex Dominus Iesus* and *Mitis et Misericors Iesus*, took effect, both of which reformed the canonical process of matrimonial trials for the declaration of the nullity of marriage.

These words express the spirit with which the reform was realized. In fact, the reform was born out of a consideration of *de facto* situations, in which a delay was noted in the judgment decisions to the detriment of the faithful, restrained by long waits regarding a word of clarification about their state of life. The reform was generated as well from petitions received on the matter, not the least of which was the majority of the Fathers of the Extraordinary Synod held in the month of October 2014, who underscored the necessity to render more accessible and simplified the process for recognizing the cases of the nullity of marriage.²

The very impetus for reform, in turn, shows the Church as a mother who

¹ Francis, Homily, 8 December 2015.

² Cfr. *Relatio Synodi*, 18 October 2014, n. 48.

has at heart the good of her children,³ marked with a spirit of charity and mercy. It attempts as well to work in a way that shows the faithful, marked in life by a wound of love which has cut to the core,⁴ both the physical and the moral closeness of the ecclesiastical judicial structures destined to offer them a service of establishing the truth of their own past conjugal state and thus re-establish a right conscience in the upholding of marriage itself and of the personal dignity of each person.

All this, consequently, has been done with a vision of service, having always as a guide the supreme law of the Church: the salvation of souls (can. 1752 CIC), that – today as yesterday – remains the ultimate goal of the very institutions of law and of ecclesiastical legislation. Within the Church, in fact, the institution is not merely an exterior structure, while the Gospel would refer to the spiritual dimension. In reality, Gospel and institutions are inseparable, because the Gospel has corporeal form in this our time. Therefore, questions which at first appear to be institutional alone, are in reality questions which affect concrete life directly and involve the realization of the Gospel in our own day.

So taught Blessed Paul VI: “If the Church is of divine design – *Ecclesia de Trinitate* – her institutions, while perfectible, ought to be established for the end of communicating divine grace and encouraging, according to the gifts and mission of each person, the good of the faithful, that is, the essential purpose of the Church.... The common good of the Church reaches therefore a divine mystery, that of the life of grace, which all Christians, called to be sons of God, live through the participation in the Trinitarian life: *Ecclesia in Trinitate*. In this sense, the Second Vatican Council spoke of the Church also as “communion”

³ Cfr. Francis, Audience, 3 September 2014.

⁴ Cfr. *Relatio finalis*, 24 October 2015, n. 55.

(Cfr. *Lumen Gentium*, 4, 9, 13 etc.), thus placing in light the spiritual foundation of the Law in the Church and its ordering to the salvation of man, such that Law becomes the Law of Charity in this structure of communion and grace for the entire ecclesial Body.”⁵

Moved by this intent, Pope Francis, in the line of the ecclesiology of the Second Vatican Council and of the exercise of the ordained ministry understood according to the original meaning of the word, that is service, has characterized the present reform with the centrality of the diocesan Bishop as judge, with the mark of collegiality,⁶ to the extent that the Bishops share with him the task of the Church, that is, of protecting the unity in the faith and in the discipline regarding marriage, the pivot and origin of the Christian Family. Consequently, the new norms intertwine the responsibility of the individual Bishops and the supreme authority of the Successor of Peter, head of the Episcopal College which cannot exist apart from him. Pope Francis asks that the Pastors of the local Churches exercise and live the sacramental power as fathers, teachers and judges and calls them to fulfil the ministry of service for the salvation of the faithful entrusted to their care, making themselves available to listen, in times and ways that underscore the value of mercy and justice.

Together with the desire to bring into proximity the judge and the faithful, the present reform likewise works with provisions that intend to pursue speedy processes in order not to favour the nullity of marriage, but rather to respect the faithful themselves, who have the right to obtain, in a reasonable time, a response to their petition and to obtain justice.

The pastoral solicitude and the very motherhood of the Church are, in the

⁵ Paul VI, Allocution to the Participants of the II International Convention of Canon Law, 17 September 1973.

⁶ Cfr. *Lumen Gentium*, n. 23.

end, expressed in the indication that asks the assurance, to the extent possible, of a gratuitousness for these procedures, so as to favour all of the faithful, in a matter so strictly aligned to the salvation of one's own soul and which concern a very particular aspect of one's own life, the possibility to experience the gratuitous love of Christ by which all of us have been saved.

In the changing eras, the Church has always sought to render visible and efficacious the salvific Grace of Christ and as provident mother healed the wounds of her children, feeling herself involved in their fragility, with the constant scope of working for salvation and encouraging them to take up the right path once again. The reform carried out by Pope Francis regarding the canonical processes for cases of the declaration of matrimonial nullity are rooted in this pursuit, such that every member of the faithful feels that the Church looks at him/her with love and nourishes for each and everyone a sincere high regard and that She is moved by a pure, frank and firm purpose of serving him/her, of offering him/her consolation and salvation.

Foundational pillars of the reform

The reform of matrimonial procedures places at the centre of the preoccupation of pastors the service to the faithful in need of special pastoral care after the breakdown of their marriage, also by means of verification and eventual declaration of nullity of the marriage. The exercise of this pastoral service can no longer be totally delegated to offices of the Curia, but it demands as well *the personal involvement of the Bishop*.

The fundamental criteria of the work of the reform, presented in the preface to the *Motu proprio*, guide us in its right implementation and they can be summarized in the following principles of concrete application.

1. The centrality of the Bishop in the service of justice

With the present reform the Pope orders that for the ordinary process, each diocesan Bishop have a collegial Tribunal, without prejudice to the possibility of a sole judge, and that the briefer process be reserved to the Bishop personally.

In particular:

- *The Bishop himself is the judge*. The Bishop in his Church, as father and judge, is the icon of Christ-Sacrament. Therefore, *he ought to be personally the judge*,⁷ by giving a *sign* of his sacramental power. This is true especially in the briefer process: it is not the Bishop who instructs the case, interrogating the parties and witnesses, but he intervenes as judge in those cases in which the nullity is evident.⁸ The veracity of the judgment is safeguarded

⁷ Cfr. Francis, Apostolic Exhortation *Evangelii gaudium*, n. 27, in *AAS* 105 (2013), p. 1031.

⁸ Cfr. Francis, *Evangelii gaudium*, cited in: *Mitis Iudex* (MI), Preface, III.

because qualified personnel assist the Bishop, who, in the end, takes on the responsibility of the moral certitude of the sentence he is to pronounce.

- *The sole judge is appointed by the Bishop.* The judicial process requires, if possible, a collegiate panel of judges; however, it is within the power of the Bishop to appoint in first instance a sole judge, always a cleric, in a stable manner or for individual cases. The Bishop nonetheless ought to be alert lest the sole judge falls into any form laxism.⁹

2. Synodality in the pastoral service of rendering justice

The Bishop exercises his ministry in sacramental communion and of intent with the other members of the episcopal college. A manifestation of this real collegiality is to be found in the ancient institution of ecclesiastical provinces and the function of the Metropolitan. The Episcopal Conferences have a relevant function in assisting the Bishops in the working application of the new matrimonial procedures. For this reason:

- The right of the Metropolitan, never having been diminished, takes on new force, and from this flows a corollary: *the appeal to the Metropolitan See*, the head of the ecclesiastical province, as a distinctive sign of synodality in the Church.¹⁰ The Ecclesiastical Province, one will recall, is an intermediate jurisdictional instance between the Bishop and the Roman Pontiff.

- According to the new law, the Episcopal Conferences are to prepare their own *Vademecum* (Handbook) that guarantees the organization and uniformity of procedure, with particular attention to the carrying out of the pastoral

⁹ Cfr. MI, Preface, II.

¹⁰ Cfr. MI, Preface, V.

investigation mentioned below.¹¹

- The service of the *Apostolic See* on the part of the *Roman Rota* is concretised in two ways:

- through *reception of appeals from the faithful* in cases foreseen by the norms, whether from the ordinary process or from the briefer process;¹²

- through promoting, as has been done in recent years, *courses for the permanent and continued formation* of clerical and lay personnel who offer their services to the diocesan Curia and in tribunals for matrimonial causes (both for *ratum* cases as well as for nullity cases).¹³

3. More simplified and agile procedures

The need to *simplify and make the processes less complex* has led to:

- making the ordinary process more simple. In this context, the most significant innovation is the abolition of the obligation of having two conforming decisions. From now on, if there is no appeal within the time limit foreseen by law, *the first sentence that declares the nullity of the marriage becomes effective*;¹⁴

- setting up a new *procedure, a briefer one, to be applied in cases which are manifestly null, with the personal intervention of the Bishop* at the moment of the decision. This form of process is to be applied in cases in which the accused nullity of the marriage is upheld by a joint request of both spouses and by evident arguments, being the proofs of the marriage nullity of rapid

¹¹ Cfr. MI, Procedural Rules, art. 3.

¹² Cfr. MI, Preface, VII.

¹³ Cfr. MI, Procedural Rules, art. 8 § 1.

¹⁴ Cfr. MI, Preface, I, and cann. 1679 and 1680 § 1

demonstration. With a request made to the Bishop, and a process instructed by the Judicial Vicar or an Instructor, the final decision of the declaration of nullity or of remitting the case to the ordinary process, belongs to the Bishop himself, who by virtue of his pastoral office, is with Peter the major guarantor of Catholic unity both in faith and in discipline.

- Both the ordinary process as well as the *briefed one*, however, are *entirely judicial*, that is to say, the nullity of the marriage can be pronounced only if the judge has arrived at the *moral certitude* on the basis of the acts and of the proofs that have been gathered.

4. The procedures are to be offered free of charge

In respect for the right of the Bishops to organize the exercise of judicial power in their own particular Church, the *Episcopal Conferences* have the obligation to assist, *also financially* when possible,¹⁵ the individual Bishops in updating and renewing *the vicinity between the judicial power and the faithful*, both in the ordinary process as well as in the *briefed* process.

Upholding a just and dignified retribution for tribunal personnel, they will assist also in assuring, to the extent possible, a procedure that is offered *free of charge*. Where it is necessary, they ought to update the distribution of their available economic resources, cooperating in the search for necessary resources for diocesan tribunals.

It is left to the just sensitivity of pastors and those responsible for tribunals the possibility of asking the parties, with pastoral tact, to contribute with an offering for the needs of the poor. The parties will certainly be generous, such that the fragrance of charity will reach the minds and hearts of the faithful in the Church.

¹⁵ Cfr. MI, Preface, VI.

I. Immediate provisions of the diocesan Bishop

The effective application of the new processes for the declaration of the nullity of a marriage demands not only structures that are strictly jurisdictional, but also pastoral services which allow the faithful to present their eventual requests for the declaration of nullity whether to the Bishop or to the nearer Tribunal.

1. A juridical-pastoral service

The first step that the Bishops are called to take is that of creating a service of information, of counselling and of mediation, attached to the office of the family pastoral service, which would be able to receive persons in view of an eventual preliminary investigation for the matrimonial process.¹⁶

In fact, the *Relatio finalis* of the Synod of Bishops just concluded, at number 82, affirms: «For many faithful who have had the experience of an unhappy marriage, the declaration of the invalidity of the marriage represents a path to follow. The recent Motu Proprios *Mitis Iudex Dominus Iesus* and *Mitis et Misericors Iesus* have led to a simplification of the processes for the eventual declaration of matrimonial nullity. With these texts, the Holy Father has wished also “to make clear that the Bishop himself in his Church, of which he has been appointed pastor and head, is by this very fact judge of the faithful entrusted to him” (*MI*, Preamble, III). The implementation of these documents constitutes

therefore a serious responsibility for diocesan Ordinaries, called to judge they themselves some cases and, in any case, to ensure an easier access of the faithful to justice. This entails the preparation of sufficient personnel, composed of clerics and laity, who devote themselves to this ecclesial service as a priority. *It will therefore be imperative to place at the disposal of separated persons or couples in crisis, an information service of counsel and of mediation, attached to the pastoral care of the family, which can receive people even in view of a preliminary investigation of the matrimonial process* (cfr. MI, Art. 2-3) » (Synod, *Relatio finalis*, n. 82).

This service, within the pastoral care of marriage, whether at a *diocesan or parochial* level, will underscore the pastoral solicitude of the Bishop¹⁷ and of the parish priests (cfr. can. 529 §1) toward the faithful who, after the failure of their marriage, question with regard to the existence or non-existence of their marriage bond.

«The Church will have to initiate everyone – priests, religious and laity – into this “art of accompaniment” which teaches us to remove our sandals before the sacred ground of the other (cf. *Ex* 3:5). The pace of this accompaniment must be steady and reassuring, reflecting our closeness and our compassionate gaze which also heals, frees and encourages a maturing in the Christian life».¹⁸

This path of “accompanying” will aid in overcoming in a more satisfying manner matrimonial crises, but it is also called to verify, in concrete cases, the validity or non-validity of the marriage and «to gather the material useful for the eventual judicial process, be it the ordinary or the briefer one».¹⁹

¹⁶ Cfr. MI, Procedural Rules, artt. 2-5.

¹⁷ Cfr. can. 383 § 1.

¹⁸ Francis, *Evangelii gaudium*, n. 169.

¹⁹ Cfr. MI, Procedural Rules, art. 2.

a) Who does the pastoral investigation?

Within the context of the pastoral care of marriage, the Bishop will assign trained and capable persons, endowed with competencies, even if they are not exclusively juridical-canonical, (in first place the proper parish priest or the person who prepared the spouses for the celebration of marriage; other clerics, consecrated persons or lay-persons) for the pre-judicial investigation.

b) What is the concrete purpose of this pastoral investigation?

Such an investigation will serve *to gather useful elements for the eventual introduction of a judicial process*, ordinary or briefer, on the part of the spouses, possibly also by a joint petition for nullity, or though some canonically prepared persons, before the Bishop or the competent tribunal (diocesan or inter-diocesan).

Such an investigation concludes with the drafting of a request and/or *libellus*, to be submitted, if appropriate, to the competent judge.²⁰

²⁰ *Ibid.*, artt. 3-5.

Synthesis

• In the context of the diocesan pastoral care of marriage should be identified suitable persons who can:

- assist couples to overcome their marriage crisis
- gather useful elements for a nullity case
- prepare a *libellus* to be presented to the Tribunal

2. The diocesan Tribunal

a) The obligation/right of the Bishop to erect his own diocesan tribunal

After the aforementioned pastoral office has been constituted, both the Bishop and the Metropolitan *must*²¹ *proceed to the erection of a diocesan tribunal*, if one has not yet been constituted. This is done through *an administrative act* (cfr. attached *specimen*, p. 59).

If a diocesan tribunal already exists, but does not have competence for cases of matrimonial nullity, the Bishop will issue a *decree* by which he *confers such competence* to his tribunal to deal with matrimonial cases (cfr. attached *specimen*, p. 62).

b) Can a Bishop withdraw from an existing inter-diocesan tribunal?

The law now promulgated and clarified by the intention (*mens*) of the Pontiff,²² gives free and immediate right to the Bishop to withdraw from an existing structure of an inter-diocesan tribunal, if he decides to form his own tribunal or if he chooses a nearer one²³ (cfr. *infra: c*).

²¹ Within the Metropolitan or Ecclesiastical Province (can. 431) each Bishop, as well as the Metropolitan (the Archbishop of the diocese which he leads, who in his own See has the same rights and obligations of every diocesan Bishop) for his own diocese (can. 435), must constitute a First Instance Tribunal. From the reasoning of the *motu proprio* it is evident that the Bishop should constitute (*constituat*) his own diocesan Tribunal. Only when this is not realistically possible, may he use the faculty to have recourse to a nearer diocesan or interdiocesan Tribunal. In every case, as Art. 8 § 1 of the *Ratio procedendi* states, the Bishops, in dioceses which do not have their own tribunal, should take care that, as soon as possible, persons are formed, who are able to work in tribunals yet to be constituted for matrimonial cases, also by means of courses of permanent and continuous formation, promoted by the diocese or by groups of dioceses and with the assistance of the Apostolic See.

²² Cfr. L'OSSERVATORE ROMANO, Sunday 8 December 2015, p. 8.

²³ Cfr. MI, Procedural Rules, art. 8 §§ 1-2.

c) What happens if a Bishop cannot immediately constitute his own tribunal?

It is important to distinguish between the *ordinary process* and the *brief process*.

1. Regarding the *ordinary process*, as already clarified, the Bishop has the obligation/right to erect his own Tribunal. Only when it might not immediately be possible, the Bishop may *choose to accede to a nearer Tribunal*, whether diocesan or inter-diocesan, always taking into maximum consideration its proximity to the faithful.²⁴

In such a case, a Bishop nonetheless ought to make efforts to train soon persons who, also through permanent and ongoing courses of formation, would enable him to constitute as soon as possible his own tribunal.²⁵

It is necessary to clarify, that many dioceses already have their own diocesan tribunal which, though not dealing with marriage cases, already have personnel, for example, to deal with rogatories and even for proceedings *super rato*.

In such a case, as mentioned above, the Bishop will have to issue a decree by which he confers competence to his own tribunal also for the adjudication of matrimonial cases.

2. Regarding the *brief process*, on the other hand, matters are substantially different.

This process, to be used in cases where the alleged nullity is sustained by the joint request of the couple and with arguments which are clearly evident, has as its sole Judge the Bishop himself, who guarantees the principle of the indis-

²⁴ Cfr. MI, can. 1673 §§ 1-2.

²⁵ Cfr. MI, art. 8 § 1 of the Procedural Rules.

solubility of matrimony, and who, by reason of his pastoral office, is with Peter the major guarantor of the Catholic unity in faith and in discipline.

In such process, therefore, there are different possible solutions, namely:

2.1. *In dioceses where there is a Judicial Vicar*, the latter is called to associate himself with the Bishop in the *briefers process*; the diocesan Judicial Vicar is to examine the request and the *libellus* (always addressed to the Bishop) and, in conformity with the criteria of the diocesan Bishop, to route the case to the *briefers process*, or – in absence of the requirements for the same – to send the *libellus* to the Judicial Vicar chosen for the ordinary process;

2.2. *In dioceses where there is no Judicial Vicar*, the Bishop can associate to himself a qualified person (possibly a cleric, but also a layperson with the academic degree and experience) who is able to assist him in the choice of the options between the *briefers process* and the ordinary process. Also in this case, the request and the *libellus* will both be addressed to the Bishop;

2.3. In the hypothesis in which the Bishop finds it difficult to find even one person, qualified and with experience, in his own diocese, he can ask the help of another degreed cleric from another diocese, who would be able to deal with the *briefers process*, assisting the Bishop (cf. number 2.2 above). Also, in such a case, the request and the *libellus* for the *briefers process* will both be sent directly to the diocesan Bishop;

2.4. In the extreme hypothesis (to be considered truly the rarest) that the Bishop has no one within his own diocese and he is unable to make use of the assistance of another degreed cleric from another Diocese, he can entrust the case for instruction to a neighbouring Tribunal. The instruction having been concluded, the acts will be sent back to the diocese of origin, where, it will be

the Bishop who, having heard the Tribunal, will adjudicate the nullity of the marriage. In this case as well, the request and the *libellus* for the briefer process will both be addressed to the Bishop who will evaluate the subsistence of the pre-requisites for the briefer process, and in the absence of the latter (pre-requisites), he will invite the parties to approach the competent Tribunal for the ordinary process.

d) Constitution of a College of three Judges or of a sole Judge?

A further provision that the Bishop must make – whenever it would be impossible to have a college of three judges (presided over always by a cleric, but eventually comprising also two laypersons) – *will regard the decision to entrust the cases to a sole Judge, who will always be a cleric.*

Where possible, the sole Judge will associate himself with two assessors of upright and honest reputation, experts in the legal or human sciences, and approved by the Bishop for this special role; this can be done in a general way or for specific cases.²⁶

e) If the Bishop decides to constitute a sole Judge, must he seek the authorization of some competent authority?

No. The Motu proprio enables the Bishop to entrust the cases to a sole Judge, provided he be a cleric, without the necessity of the intervention of the Holy See nor of the competent National Conference.

²⁶ Cfr. MI, can. 1673 §§ 3-4.

Synthesis

- **The Bishop is called to establish immediately his own Tribunal, both for the ordinary process as well as for the briefer process**
- **For the ordinary process, if he encounters temporary difficulties, he can eventually accede to a diocesan or inter-diocesan Tribunal that is nearer**
- **In any case, it is evident that the beneficial outcome of the reform necessarily passes through a *conversion* both of structures and of persons, as has been repeated by Pope Francis on numerous occasions**

II. The processing of cases

In the ordinary and documentary process, a case can begin with the presentation of the *libellus*; in the *processus brevior* with the presentation both of the request and of the *libellus*.

1. Introduction of a case

a) *Who can introduce a case?*

Normally it will be the spouses who impugn the marriage, eventually also jointly; but it may be introduced as well by the promoter of justice, if it deals with a nullity already divulged, and for which it is not opportune or possible to convalidate the marriage.²⁷

b) *Is it necessary to take steps for reconciliation?*

Experience has shown that, when someone arrives at the stage of a nullity case, it is already extremely impossible to re-establish common life. Therefore it is sufficient that the judge, before accepting the case, has the certainty that the marriage has *irreparably failed*, and it is impossible to re-establish common life.²⁸

²⁷ Cfr. MI, can. 1674 and Procedural Rules, art. 9.

²⁸ Cfr. MI, can. 1675.

c) To whom is the libellus presented?

It is for the faithful to choose, from the competent tribunals, supported by a preliminary investigation, that tribunal to which to present the case, according to the varied criteria of competence. While these titles of competence are all equivalents, in making the choice, to the extent possible, the principle of proximity between the judge and the parties should be safeguarded; and the cooperation of other tribunals should be sought so that the parties and witnesses can participate in the process with a minimum of inconvenience.²⁹

d) What is the role of the Judicial Vicar in the ordinary process?

The Judicial Vicar of the Diocesan Tribunal:

after receiving the *libellus*, if he considers that it has some basis, admits it and, by a decree appended to the bottom of the *libellus* itself, is to order that a copy be notified to the defender of the bond and, unless the *libellus* was signed by both parties, to the respondent, giving them a period of fifteen days within which to express their views on the petition.

- The aforesaid deadline having elapsed, and after having once again admonished the other party to express his or her views, if he or she wishes:
- *If the respondent opposes the libellus or the circumstances of facts and of persons provided for in can. 1683 n. 2, are not presented by the respondent, the Judicial Vicar is to determine by his decree the formula of the doubt and is to declare that the case is to be treated with the ordinary process.*
- *If both the spouses or one of them with the consent of the other, believe it possible to ask for the briefer process, they may do so according to the norm of can. 1683 n. 1, the circumstances envisioned by can. 1683 n. 2*

²⁹ Cfr. MI, can. 1672 and Procedural Rules, art. 7.

having been met. The Judicial Vicar, in conformity with criteria established by the diocesan Bishop, is to decide by his own decree that the case is to be treated with the briefer process, and according to the norm of can. 1685, he is to determine, by the same decree, the formula of the doubt, appoint an instructor and an assessor and cite for the session all those who ought to participate in it.

The Judicial Vicar of the nearer Tribunal or the Inter-diocesan Tribunal:

after receiving the *libellus*, if he considers that it has some basis, admits it and, by a decree appended to the bottom of the *libellus* itself, is to order that a copy be notified to the defender of the bond and, unless the *libellus* was signed by both parties, to the respondent, giving them a period of fifteen days within which to express their views on the petition.

After the above-mentioned deadline has passed, and after the other party has again been admonished to express his or her views if and insofar as necessary:

- *If the respondent opposes the libellus or the circumstances of facts and of persons provided for in can. 1683 n. 2, are not presented by the respondent,* the Judicial Vicar is to determine by his decree the formula of the doubt and is to declare that the case is to be treated with the ordinary process.
- *If, on the other hand, both the spouses or one of them with the consent of the other, having been informed of the possibility of asking for the briefer process, ask for it according to the norm of can. 1683 n. 1, the circumstances envisioned by can. 1683 n. 2 having been met,* the Judicial Vicar of the nearer Tribunal or the Inter-diocesan Tribunal is to send the *libellus* to the Judicial Vicar of the competent diocesan Tribunal, who then, in conformity with criteria established by the diocesan Bishop, is to decide by his own decree that the case is to be treated with the briefer process, and according to the norm of can. 1685, he is to determine, by the same decree, the formula of the doubt, appoint an instructor and an assessor and cite for the session all those who ought to participate in it.

2. In the ordinary process

2.1. Introduction and instruction of the case

a) *What in concrete must the Judicial Vicar do upon receipt of the libellus?*

The *libellus* having been received,³⁰ the competent Judicial Vicar³¹, by means of a decree notified to the parties and to the defender of the bond, must:

1° *admit it*, if he finds some basis in it;

2° *notify it* to the defender of the bond and to the respondent (unless the latter had already signed the *libellus*), with a time limit of 15 days within which to express his/her position regarding the petition;

the term of fifteen days having elapsed, the Judicial Vicar must:

3° establish the *formula of the doubt*, determining the grounds of nullity in the case;

4° establish whether the case will be treated with the *ordinary process* or with the *brief process*.

If he decides that the case is to be treated with the *ordinary process*, in that same decree the Judicial Vicar will constitute either the *college of judges*³² or the *sole Judge* with two assessors. If, on the contrary, he decides for the *brief process*, he will proceed according to the norm of can. 1685.³³

³⁰ Alternatively, also an oral request, in conformity with MI, Procedural Rules, art. 10.

³¹ Cfr. MI, Procedural Rules, art. 11.

³² Where a diocesan tribunal has not yet been constituted, the Judicial Vicar will forward the *libellus* to the tribunal designated to carry out the ordinary process.

³³ Cfr. MI, can. 1676.

b) What are the innovations in the Motu proprio regarding the evaluation of the proofs?

The Motu proprio introduces a few innovations in this regard.

Primarily, the new legislation of Pope Francis strengthens the principle of the Code of 1983 regarding the value to be given to the *declaration of the parties*,³⁴ which, if supported by credibility witnesses, considering all the indications and the adminiculary circumstances, and in the absence of contrary elements, can be given the weight of *full proof*.

Likewise, the testimony of *only one witness* can produce full proof, if it deals with a qualified witness who deposes about matters performed ex officio, or if the circumstances of facts and of persons would so suggest.³⁵

In the cases of *impotence* or *defect of consent* due to mental illness or an anomaly of psychic nature, the judge ought to have recourse to the services of one or more experts, unless from the circumstances this appears evidently needless.

c) Possible passage to the administrative process

If during the instruction of the case a very probable doubt arises regarding the *non-consummation of the marriage*, it will be sufficient to *hear the parties* to suspend the nullity trial, then to complete the instruction for the dispensation *super rato*, and then to transmit the acts to the Apostolic See, with the request of one or both of the parties, together with a *votum* both of the tribunal and of the Bishop.³⁶

³⁴ Cfr. MI, can. 1678 § 1.

³⁵ Cfr. MI, can. 1678 § 2.

³⁶ Cfr. MI, can. 1678 § 4.

Synthesis

- The probatory weight of the declarations of the parties and of the qualified witnesses has been valorized
- The passage to the administrative process *super rato* has been simplified

2.2. The discussion and decision of the case. Challenges and execution of the sentence

a) *What is the most important innovation introduced in the Motu proprio?*

If one of the parties, during the course of the trial, refused to receive information about the case, he/she has the right to obtain a copy of the sentence.

If one of the parties has *refused* to receive any kind of information relative to the case, that party is held to have renounced as well the exercise of the right to receive a copy of the sentence, and it will be sufficient to notify that party only the dispositive part of the sentence.³⁷ Without limiting the right to present a *complaint of nullity* against the sentence,³⁸ the time limit for appeal having elapsed, the first sentence declaring the nullity of the marriage *becomes executive*.³⁹

b) *Are challenges of the sentence or a new proposition of the case possible?*

In the case of an appeal, the *tribunal of the higher instance*, having received the judicial acts, must constitute a college of judges, designate the defender of the bond and admonish the parties to present their observation within the prescribed time limit. If the collegiate tribunal considers the appeal to be manifestly dilatory, it must *confirm by its decree* the first instance sentence. If, however, *it admits the appeal*, it proceeds in the same manner as in first instance, with the required adaptations.⁴⁰

Against a decision which has become executive it is possible to have re-

³⁷ Cfr. MI, Procedural Rules, art. 13.

³⁸ Cfr. cann. 1619-1627.

³⁹ Cfr. cann. 1630-1633.

⁴⁰ Cfr. MI, can. 1680.

course to the tribunal of third instance for *a new proposition of the case* according to the norms of can. 1644, producing new and serious proofs or arguments within the peremptory time limit of thirty days from the proposed challenge.⁴¹

A prohibition against contracting a new marriage can be imposed, either in the sentence itself, or in the decree confirming the sentence, and/or by means of a decree of the local Ordinary.⁴²

⁴¹ Cfr. MI, can. 1681.

⁴² Cfr. MI, can. 1682.

Synthesis

- **The first affirmative sentence, if not appealed within the time-limits, becomes executive**
- **It is possible to reject an appeal when it appears to be merely dilatory, with a decree of the College**
- **A new examination of the case can be sought from the tribunal of third instance**

3. In the briefer process before the Bishop

3.1. Introduction of the case

a) What are the necessary prerequisites for the briefer process?

This new process permits the *diocesan Bishop* to issue a sentence of nullity in those cases in which the following *two prerequisites are present*:

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

2° if the circumstances of facts and of persons, supported by testimonies or documents, render *manifest* the nullity; there will normally be *a prejudicial or pastoral investigation* (described above) which permits the identification of these circumstances, listed in an *exemplificative* way in the Procedural Rules at art. 14.⁴³

b) How are these circumstances, described by art. 14 of the Procedural Rules, to be understood?

It is necessary to clear away any equivocation in this area: *these circumstances are not, in fact, new grounds of nullity.*

We are dealing here simply with situations that the jurisprudence has long enucleated as *symptomatic elements of the invalidity of matrimonial consent*, which can easily be proved by testimonies or documents that can be readily procured.

⁴³ Cfr. MI, Procedural Rules, art. 14.

These can present, in some cases, such a factual weight as to suggest evidence of the nullity of the marriage. In this regard, a more attentive and realistic reading of the global condition of the faithful in today's world, when studied in its cultural context, allows for the identification of some elements which are strongly indicative of the invalidity of consent, which perhaps in a previous and different social-cultural context would not be recognized in all their significance.

c) More in particular, what are these circumstances?

- A lack of faith that can generate a simulation of consent or an error determining the will

The text refers to a lack of faith that leads to a *false understanding* of marriage or to an induced simulation, not devoid of consequences for the maturing of nuptial will. In other words, one is facing an error that determines the will (cfr. can. 1099), or a defect of a valid intention through the exclusion of the marriage itself, or of one of its essential elements or properties (cfr. can. 1101 § 2).

The “de-Christianisation” of today's society provokes a grave *deficit* in the understanding of marriage itself, to such an extent that it determines the will. The crisis of marriage, therefore, at its root, is nothing other than a *crisis of knowledge enlightened by faith*.⁴⁴ The human and cultural formation of persons undergoes a strong and sometimes a very determining influence of worldly mentality;⁴⁵ a faith imprisoned in subjectivism, closed in the immanence of his or her own thoughts and feelings,⁴⁶ reveals itself insufficient to uphold a correct under-

⁴⁴ Francis, Allocution to the Roman Rota, 23 January 2015.

⁴⁵ Francis, Apost. Exhortation, *Evangelii gaudium*, n. 93.

⁴⁶ Cfr. *ibid.*, n. 94.

standing of the institution of marriage and its constitutive obligations.

To this is often added a substratum of the *psychological and moral fragility* of the *contracting parties*, particularly if they are young or at least immature, from which derives a perception of marriage that considers it to be a mere form of affective gratification which can push the contractants to a simulation of consent, or to a mental reservation about the permanence of the union, or about its exclusivity.⁴⁷

- The brevity of the conjugal life

The brevity of the conjugal life can be a particularly evident indicator of nullity in different areas (simulated will, form of reaction in the cases of condition, error or deceit, intolerability of living together due to a psychic anomaly).

- Abortion procured to impede procreation

This constitutes a vehement indication of a simulated will, typically contrary to the good of children. The delict of abortion in itself demonstrates the enormous distance of the person from the morals of the Church, which in its turn can be an indication of an essential lack of faith, with the possible effects mentioned earlier.

- The obstinate permanence in an extramarital relation at the time of the wedding or in the period immediately following

This can be considered an evident indication of the refusal of the obligation of faithfulness; it can be accompanied by a refusal to have intimate relations with the legitimate spouse. Also in this case there can be documentary proofs (private investigative reports, letters, records of telephonic or electronic communications).

⁴⁷ Cfr. *ibid.*, n. 66.

- The deceitful concealment of sterility or of a grave contagious sickness or of children born from a previous relationship, or of an incarceration

In these cases, there is a deception about a quality which can gravely disturb the consortium of conjugal life, giving rise as a result to the nullity of consent. The evidence asked for in the norms requires that the quality be demonstrated in an incontrovertible way (for example documentary proof: medical reports, certificates and civil sentences).

- The extraneous reason for conjugal life or consistent with an unforeseen pregnancy of the woman

If the reason that leads a person to contract marriage is totally extraneous to the communion of conjugal life (for example, to acquire citizenship, the legitimization of a child, economic benefits) or consists exclusively in the unexpected pregnancy of the woman, the possibility exists that one or both of the parties did not really intend marriage, understood as an interpersonal donation of the contractants.

This circumstance is frequently concurrent with others, such as the brevity of the conjugal life and the initiative to separate and divorce.

- Physical violence inflicted to extort consent

Fear caused from the outside is one of the classic grounds for the nullity of marriage. In cases in which true and specific acts of violence occur to the harm of the reluctant party, the gravest indication of the invalidity of consent is present. Also in these cases the violence must immediately be documentable (ex. gr., medical reports, written police records).

- The lack of the use of reason confirmed by medical documents

Consensual incapacity due to psychic reasons generally requires an in-depth scientific investigation by an expert, which can adequately be fulfilled

only within the ordinary process. Nevertheless, there can be instances of the gravest pathologies, duly documented (for example, clinical records, psychiatric reports in civil court), which, according to the well-established jurisprudence, permit handing down a judgement without any shadow of positive doubt concerning the nullity of the expressed consent.

d) What formal elements are necessary to initiate a briefer process?

- A *request* proposed by both the spouses or by one of them with the consent of the other, to the diocesan Bishop and/or to the Judicial Vicar.

- A *libellus*, presented to the diocesan Judicial Vicar, in addition to the elements listed in can. 1504, must:

1° expound briefly, wholly and clearly *the facts* upon which the request is based;

2° indicate *the proofs*, which can immediately be gathered by the judge;

3° present in an attachment *the documents* upon which the request is based.⁴⁸

⁴⁸ Cfr. MI, can. 1684.

Synthesis

- In the presence of situations of fact which are indicative of the evident nullity of a marriage, supported by testimonies or documents, the diocesan Bishop is competent to judge in the *briefer* way
- The *request* is to be presented either to the Bishop or to the diocesan Judicial Vicar or to both
- The *libellus*, presented to the diocesan Judicial Vicar, must expound the facts, indicate the proofs and exhibit in an attachment the documents upon which the request is based

3.2. Instruction and discussion of the case

a) How must the Judicial Vicar proceed, once the libellus is received?

Having received and accepted the *libellus*, in conformity with the criteria set by the diocesan Bishop, the Judicial Vicar, in the decree whereby he determines *the formula of the doubt*, must also *appoint* the instructor and the assessor, *cite* the parties, the defender of the bond and the witnesses to the session, for the gathering of the proofs, to be held not later than 30 days.⁴⁹ He may designate himself as the instructor, but – in the case of an inter-diocesan tribunal – he is to nominate, to the extent possible, an instructor in the diocese of origin of the case.⁵⁰

b) Who can carry out the duty of instructor and of assessor?

Clerics or lay persons, outstanding for their good character, prudence, and doctrine, can be chosen for the function of instructor.⁵¹

The assessors, approved by the Bishop for this task, can be clerics or lay persons of upright life.⁵²

c) How does the session for the gathering of proofs unfold?

If these were not already attached to the *libellus*, the parties can, at least three days prior to the aforementioned session, present the specific points of the matter upon which the parties or the witnesses are to be questioned.⁵³ The re-

⁴⁹ Only in case of special necessity, there will be more than one session.

⁵⁰ Cfr. MI, Procedural Rules, art. 16.

⁵¹ Cfr. can. 1428 § 2.

⁵² Cfr. can. 1424.

⁵³ Cfr. MI, Procedural Rules, art. 17.

sponses of the parties and the witnesses are to be redacted *summarily* in writing by the notary, limiting their content to that which is strictly essential to the substance of the marriage in question.⁵⁴ Once the instruction is concluded, a time period of *fifteen days* is allotted for the presentation of observations in favour of the bond and of the defence of the parties.⁵⁵

Synthesis

- **In the *brief* process the request is presented either to the diocesan Bishop or to the diocesan Judicial Vicar or to both**
- **The *libellus* is presented to the diocesan Judicial Vicar**
- **The procedure is agile and, as a rule, foresees only one session for the gathering of the proofs**

⁵⁴ Cfr. MI, Procedural Rules, art. 18 § 2.

⁵⁵ Ccr. MI, cann. 1685-1686.

3.3. Decision of the case

It is the diocesan Bishop who is to pronounce the *sentence* and *such exclusive competence cannot be delegated to a diocesan or inter-diocesan tribunal*, for the following reasons: *a)* for a *theological-juridical reason* underlying the reform (which wants exactly the Bishop *to make himself personally the sign* of the proximity of ecclesiastical justice to the faithful and to be the *guarantor against possible abuses*); *b)* for reason of a *systematic* nature, because the scrutiny of the possible *appeals* will however be made by the Metropolitan or the Dean of the Roman Rota, and this would not be possible if the sentence was rendered by a collegiate tribunal.

Even if the case is instructed at an inter-diocesan tribunal, the bishop competent to render the sentence is that of the place according to the competence established in accordance with can. 1672. If there are more than one, the principle of proximity between the parties and the judge is to be observed to the extent possible.⁵⁶

Having consulted the instructor and the assessor, the Bishop must weigh the observations of the defender of the bond (obligatory) and the defence briefs of the parties (optional), and if he arrives at the *moral certitude* regarding the nullity of the marriage, he will issue a sentence of nullity.

The Bishop, therefore, *can issue an affirmative sentence only*, if he reaches the required moral certitude. Otherwise *he remits the case to the ordinary process*.

It will be the same diocesan Bishop to establish, according to his own prudence, taking into account the will expressed on the matter by the parties, the

⁵⁶ Cfr. MI, Procedural Rules, art. 19.

manner in which he pronounces the decision (*e. g.*, in a public audience).

The sentence *must be signed personally by the Bishop* (but can be drafted, for example, by the assessor or by the instructor himself). The text of the sentence, containing a brief and ordered exposition of the motives of the decision, must be notified as soon as possible to the parties, ordinarily within a period of one month from the date of the decision.⁵⁷

Synthesis

- **If the Bishop reaches moral certitude, he renders an affirmative decision, having consulted beforehand with the instructor and the assessor; otherwise, he remands the case to the ordinary process.**
- **The decision is the exclusive competence of the Bishop**

⁵⁷ Cfr. MI, Procedural Rules, art. 20.

3.4. Challenges and execution of the sentence

There can be *appeal* against the sentence to the *Metropolitan* or to the *Dean of the Roman Rota*; if it was issued by the Metropolitan, the appeal is made to the *suffragan senior in office*⁵⁸; if it was rendered by a Bishop who has no superior authority below the Roman Pontiff, the appeal is made to the Bishop permanently designated by him. It is also evident, from the context, that also against a sentence rendered by the Metropolitan or another Bishop who does not have a superior authority below the Roman Pontiff, the appeal is made to the Roman Rota.

It is important to keep in mind that *because we are dealing with a case initiated by common agreement between the parties* or at least by one of them with the consent of the other, an appeal, though possible, *will in fact be very rare*.

In cases of appeal (eventually proposed by the defender of the bond), the Metropolitan or his equivalent according to the norm of canon 1687 § 3, or alternatively, the Dean of the Roman Rota, is to *reject it at the outset* whenever it appears to be merely dilatory.

If an appeal is *admitted*, the case is remitted to ordinary examination of second instance before the competent tribunal.⁵⁹

Synthesis

- **An appeal is possible before the Metropolitan or the Dean of the Roman Rota**
- **An appeal is to be rejected when it appears to be merely dilatory**

⁵⁸ Cfr. Communicationes, vol. XIV, n. 2, 1982, p. 220, can. 442, n. 2

⁵⁹ Cfr. MI, can. 1687 §§ 3 and 4.

4. The documentary process

a) What is the documentary process and what is its purpose?

With this process, *the diocesan Bishop or the Judicial Vicar* determined in accordance with can. 1672⁶⁰ (or *the judge designated* by one of them), setting aside the formalities of the ordinary process, can declare by sentence the nullity of a marriage, if, from a document that is not subject to any contradiction or to any exception, it is proven with certitude the existence of a *diriment impediment* or a *defect of form* (if it is proven with equal certitude that a dispensation was not granted), or the *defect of a valid mandate* by the party to the procurator.

b) To whom and how is the appeal made against a sentence emitted in the documentary process?

The defender of the bond or the party who considers himself aggrieved can *appeal* to the judge of second instance, to whom the acts are to be transmitted indicating by writing that it is a documentary process. The judge of second instance, with the intervention of the defender of the bond and after having heard the parties, decides whether the sentence ought to be confirmed or if the case must rather proceed according to the ordinary process of law, in which case he remands it back to the *tribunal of first Instance*.⁶¹

⁶⁰ Cfr. MI, Procedural Rules, art. 21.

⁶¹ Cfr. MI, cann. 1688-1690.

Synthesis

- **The documentary process is foreseen for some cases in which the nullity of a marriage can be proven by an incontrovertible document**
- **The formalities of the ordinary process are omitted**
- **In case of appeal, if the judge of second instance does not confirm the sentence, the case is remanded to the ordinary examination before the tribunal of first instance**

Appendices

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1. The mind of the Roman Pontiff on the reform of marriage nullity procedures⁶²

Two months ago, on the 8th of September, two documents in the form of a *motu proprio* were promulgated, *Mitis Iudex Dominus Iesus* and *Mitis et misericors Iesus*, whereby the Pontiff reformed the process for the declarations of nullity of marriage. A little more than a month before they take effect – the upcoming 8th of December – on the 4th November the inauguration of the academic activities of the Studium Rotale was held with a lecture, by Archbishop Angelo Bacci, Substitute of the Secretary of State, published in *L'Osservatore Romano* on the 5th November. Introducing the speech of the Substitute, the Dean of the Roman Rota, Monsignor Pio Vito Pinto, read the following declaration:

The Holy Father, for the purpose of giving a definitive clarification in the application of the pontifical documents on the matrimonial reform, has asked the Dean of the Roman Rota that the *mind* of the supreme legislator of the Church on the two *motu proprios* promulgated on the 8th September 2015 be made clear:

1. The Diocesan Bishop has the free and inherent right, in virtue of this pontifical law, to exercise *personally* the function of judge and to erect his own diocesan Tribunal.

2. The Bishops within the same Ecclesiastical Province can *freely* decide, in a situation where they do not foresee the possibility of constituting their own Tribunals in the immediate future, to create an inter-diocesan tribunal; without prejudice to the ability, according to the norms of law, that is with the approval of the Holy See, that Metropolitans of two or more Ecclesiastical Provinces can come together to create an inter-diocesan tribunal both of first and of second instance.

⁶² *L'Osservatore Romano*, Sunday 8 November 2015, p. 8.

2. Rescript of the Holy Father on the new law for matrimonial proceedings⁶³

The entry into force – which happily coincides with the opening of the Jubilee of Mercy – of the Apostolic Letters in the form of *Motu proprio* «*Mitis Iudex Dominus Iesus*» and «*Mitis et Misericors Iesus*» of 15 August 2015, given to bring justice and mercy on the truth of the bond to those who have experienced the failure of their marriage, necessitates, among other things, the need to harmonize the renewed procedures for marriage trials with the Norms of the Roman Rota, awaiting their reform.

The recently concluded Synod of Bishops strongly exhorted the Church to stoop to the «most fragile sons and daughters, marked by wounded and lost love» (*Relatio finalis*, n. 55), restoring to them trust and hope.

The laws that now come into effect are intended precisely to show the Church's *closeness* to the wounded families, desiring that the many who experience the tragedy of matrimonial failure are reached by Christ's healing work, through ecclesiastical structures, in the hope that they may discover themselves to be new missionaries of God's mercy towards other brethren, for the good of the institution of the family.

Acknowledging the jurisdiction of the Roman Rota as the ordinary court of Appeal of the Apostolic See, and also its office in safeguarding the unity of the jurisprudence (art. 126 § 1 *Pastor bonus*) and contributing to the continuing formation of pastoral workers in the Tribunals of the local Churches, I decree the following:

⁶³ Cfr. L'Osservatore Romano, Saturday 12 December, p. 8.

I.

The aforementioned laws for the reform of marriage procedures abrogate or derogate every contrary law or norm currently in force – general, particular or special – eventually also approved in specific form (such as, for example, the Motu proprio *Qua cura*, given by my Predecessor Pius XI in times very different from the present).

II.

1. In marriage nullity cases before the Roman Rota, the doubt is to be fixed according to the ancient formula: *An constet de matrimonii nullitate, in casu*.

2. There shall be no appeal against the Rotal decisions in matters of nullity of sentences or decrees.

3. Recourse for the *new proposition of the case* is not permitted before the Roman Rota, after one of the parties has contracted a new canonical marriage, unless the decision can be demonstrated to be manifestly unjust.

4. The Dean of the Roman Rota has the authority to dispense with the Rotal Norms in procedural matters for a serious cause.

5. As solicited by the Patriarchs of the Oriental Churches, the territorial tribunals shall have jurisdiction over the *iurium* cases connected with marriage cases submitted to the judgement of the Roman Rota at appeal.

6. The Roman Rota shall decide cases according to the principle of evangelical *gratuitousness*, that is by *ex officio* patronage, without prejudice to the moral obligation of the more affluent faithful to offer a just contribution towards the causes of the poor.

May the faithful, especially the wounded and unhappy, look to the new Jerusalem that is the Church as «the peace of justice and glory of piety» (Baruch 5: 4) and may it be granted to them, finding again the open arms of the Body of Christ, to intone the Psalm of the exiles (126: 1-2) «When the Lord brought back Zion's captives, we were like those who dream. Then our mouth was filled with laughter, and our tongue with shouts of joy».

Francis

The Vatican, 7 December 2015

3. Scheme of the marriage nullity processes according to the *M. P. Mitis Iudex Dominus Iesus*

Phase	Details	Source
1. Introduction of the case		
Who can introduce a case in the ordinary process	1° the spouses 2° the promoter of justice when the nullity is publicly divulged	Can. 1674 Art. 9
Who must introduce a case in the briefer process	One of the parties, or both, or one with the consent of the other	Can. 1683 § 1
Before which tribunal	1° the place of celebration 2° the place of domicile or quasi-domicile of one or both the parties 3° the place where the majority of the proofs must be collected	Can. 1672 Art. 7 § 1 Art. 7 § 2
<i>Libellus</i>	Must be redacted according to the norms of can. 1504 In the case of the briefer process before the Bishop, it must expose the facts on which the request for such a process is founded, indicate the proofs that the judge can immediately gather, and it must attach the necessary supporting documents	Can. 1504 Can. 1684 Art. 15
Preliminary passage to acceptance	The judge must have the certitude that the marriage has irreparably failed and of the impossibility to restore conjugal life	Can. 1675 Art. 10

Phase	Details	Source
Admission of the <i>libellus</i>	Judicial Vicar decrees it, notifies it to the parties and the defender of bond, granting all 15 days to express their stance	Can. 1676 § 1 Art. 11 § 1
Ordinary process – Formula of the doubt Passage to briefer process – Formula of the doubt	a) <i>If the two requisites for the briefer process are not fulfilled:</i> The Judicial Vicar with his own decree determines the formula of the doubt and rules that the case is to be treated with the ordinary process b) <i>If the requisites for the briefer process are present:</i> - <i>The Judicial Vicar of the nearer Tribunal or of the Inter-diocesan Tribunal</i> sends the <i>libellus</i> to the Judicial Vicar of the competent diocesan Tribunal who will decide the application of the briefer process and will determine the formula of the doubt - <i>The Judicial Vicar of the diocesan Tribunal</i> decides the application of the briefer process and the formulation of the doubt	Can. 1676 § 1-5 Art. 11 § 1-2 Art. 17
A college or a sole judge	If the ordinary process will be applied, the Judicial Vicar also designates either a college of judges or a sole judge (a cleric)	Can. 1676 § 3 Cf. Can. 1673 §4

Phase	Details	Source
Forwarding to briefer process	If the briefer process will be applied, the Judicial Vicar appoints the instructor and the assessor; cites the parties, defender of the bond and witnesses for the instruction session to be held within 30 days, inviting the parties to present the questions at least three days in advance of the session.	Art. 17
2. In the ordinary process		
2.1. Introduction and Instruction of the case		
<i>Libellus</i>	Must be redacted according to the norms of can. 1504	Can. 1504
Gathering of the proofs	Regarding the proofs, the canons in force are to be observed: the declarations of the parties and of the witnesses, the documentary proofs and expert reports	Can. 1677 § 1-2 Can. 1678 § 3 Cann. 1530-1586
Passage to the <i>ratum et non consummatum</i> process	The routing of a marriage nullity case to the procedures for dispensation from a <i>ratum et non consummatum</i> marriage has been simplified: it is sufficient to consult the parties, without the necessity of their consent.	Can. 1678 § 4
Defender of the bond and advocates	Norms regarding the rights of the defender of the bond, of the promoter of justice and of the advocates have not been modified	Can. 1677

Phase	Details	Source
Value of the proofs	The value of full proof of the declarations of the parties is admitted when there are eventual attestations of credibility, and of qualified witnesses	Can. 1678 §§ 1-2
2.2. Discussion and decision of the case. Challenges and execution of the sentence		
Defence briefs and observations	The canons already in force are to be observed regarding the publication, conclusion, and discussion of the case	Cann. 1598-1606
Sentence	The time limit for appealing against a sentence, foreseen by the canons continue to remain in force; which time limit having elapsed, an affirmative sentence becomes executive	Can. 1679 Artt. 12-13
Appeal, complaint of nullity	There are no changes regarding the time limits and the ways to place an appeal and/or a complaint of nullity	Can. 1680 § 1
Confirmation by decree	The panel of Judges having been constituted, if the appeal is deemed to be merely dilatory, the sentence is confirmed by decree	Can. 1680 § 2
Admission of appeal	If the appeal is admitted, the tribunal proceeds in the same manner as in the first instance	Can. 1680 § 3
Admission of a new ground of nullity	In second instance a new ground of nullity can be admitted, which will be adjudicated as if in first instance	Can. 1680 § 4

Phase	Details	Source
New proposition of the case	In the case of a sentence that has become executive, it is possible to propose anew the case before the tribunal of third instance, according to the norm of can. 1644	Can. 1681 Can. 1644
New Marriage	After a sentence which has become executive, the parties can contract a new marriage, unless a prohibition impedes it.	Can. 1682 § 1
Annotations	The Judicial Vicar must notify the sentence to the Ordinary of the place of the wedding, who will then take the necessary steps to assure that the required annotations are made in the baptismal and matrimonial registers.	Can. 1682 § 2
3. In the briefer process before the Bishop		
Necessary pre-requisites	1° Joint request, or request of one of the spouses with the consent of the other 2° Circumstances of facts and persons, supported by witnesses or documents that render the nullity manifest	Can. 1683 Art. 14 § 1 Art. 14 § 2
3.1. Introduction of the case		
<i>Libellus</i>	Must expound the facts upon which the request for the briefer process is made, indicate the proofs which can immediately be collected by the judge, and present in attachment the documents	Can. 1504 Can. 1684 Art. 15

Phase	Details	Source
3.2. Instruction and discussion of the case		
Decree of the Judicial Vicar	- Determines the formula of the doubt - Appoints the instructor and the assessor - Cites the parties and the DB for the session of collecting the proofs	Can. 1676 § 4 Can. 1685 Artt. 16-17
Session for collecting the proofs	To the extent possible, there should be only one session; if necessary, more than one	Can. 1686 Art. 18 § 1 Art. 18 § 2
Discussion of the case	The instruction concluded, the instructor fixes a time limit of 15 days to present the observations of the DB and of the defence briefs of the parties.	Can. 1686
3.3. Decision of the case		
Session for scrutiny	The Bishop, taking account of the observations of the DB and the defence briefs of the parties, studies the case, consulting with the instructor and the assessor	Can. 1687 § 1
Sentence or remanding to the ordinary process	If the Bishop arrives at moral certitude about the nullity of the marriage, he issues a sentence; otherwise, he remands the case to be tried according to the ordinary process.	Can. 1687 § 1 Art. 19
Notification of the Sentence	The full text of the sentence must be notified to the parties as soon as possible	Can. 1687 § 2 Art. 20 §§ 1-2

Phase	Details	Source
3.4. Challenges and execution of the sentence		
To whom is the appeal made	The sentence of the Bishop is appealed to the Metropolitan; The sentence of a Metropolitan is appealed to the senior suffragan Bishop, without prejudice to the right of appeal to the Roman Rota	Can. 1687 § 3
The handling of the appeal	If it is evident that the appeal is merely dilatory, it is rejected by the decree If it is admitted, the case is remitted to the ordinary examination in the second grade	Can. 1687 § 4
4.- In the documentary process		
Who is competent	The diocesan Bishop, the Judicial Vicar or a Judge nominated for this purpose	Can. 1688 Art. 21
Object	Cases in which, through a document that does not admit of any objection or exception, an impediment not dispensed, or a defect of the canonical form, or a defect of a valid mandate of the procurator, is proved	Can. 1688
Procedure	The formalities of the ordinary process are omitted The parties and the defender of the bond are cited A sentence is issued	Can. 1688
Appeal	The defender of the bond or the parties can propose an appeal	Can. 1689 §§ 1-2

<i>Phase</i>	<i>Details</i>	<i>Source</i>
The handling of the appeal	The Judge of second instance, with the intervention of the defender of the bond, confirms the sentence or remands the case to the ordinary examination in first instance.	Can. 1690

4. Examples

4.1. Decree of constitution of the diocesan Tribunal of first instance

Prot. N.

I,

Bishop of the Arch/Diocese of

In fulfilment of the reform of the procedures for matrimonial nullity approved by Pope Francis in his *Motu proprio* “*Mitis Iudex*” of 15 August 2015, which has entirely substituted the procedure for the declaration of the nullity of marriage (cann. 1671-1691) provided by the Code of Canon Law of 1983, and has established «to declare openly that the bishop himself, in the church over which he has been appointed shepherd and head, is by that very fact the judge of those faithful entrusted to his care», (M.p. *Mitis Iudex*, *preface*, III) and that «due to his duty as pastor, has the greatest care for catholic unity with Peter in faith and discipline» (M.p. *Mitis Iudex*, *preface*, IV);

having considered that

- the preoccupation for the salvation of souls remains the ultimate purpose of the Church,
- the great number of the faithful who – while desiring to provide for their own consciences, too often are discouraged by the juridical structures of the Church because of physical and moral distances – demand that the Church «like a good mother, be near her children»,
- can. 1673 § 2 of CIC directs that: «The Bishop is to establish for his own diocese a diocesan tribunal for cases of nullity of marriage»,
- the constitution of the *Diocesan Tribunal* for the cases of nullity of marriage for our Arch/Diocese, up to this time entrusted to the Inter-diocesan Ecclesiastical Tribunal, guarantees better the «speeding up of proceedings», called for by the Synod of Bishops and established by Pope Francis, both in the more agile «ordinary process», as well as in the «briefer process»;

BY THIS PRESENT DECREE

CONSTITUTE

The Arch/Diocesan Tribunal of, with its seat in at the diocesan Chancery in, effective as of, which is to be considered competent for all legal effects for the adjudication and

definition in first instance also of causes of marriage nullity which up to this time were entrusted to the Inter-diocesan Ecclesiastical Tribunal and of Appeal

Future challenges to the sentences issued by Our Tribunal are regulated by canons 1619-1640 and can be proposed either to the Metropolitan Tribunal ofof second instance or to the Apostolic Tribunal of the Roman Rota, according to the norms of can. 1673 §6.

And therefore, following Article 8 § 2 of the *Motu proprio* “*Mitis Iudex*”,

I WITHDRAW

formally from the Inter-diocesan Ecclesiastical Tribunal constituted according to the norms of can. 1423 CIC.

Transitional Norms

Those matrimonial nullity cases whose competence, by virtue of can. 1672 of the *Motu proprio* “*Mitis Iudex*”, belongs to our Tribunal, and which are now in course of adjudication in first instance before the Inter-diocesan Ecclesiastical Tribunal of, are to be transferred to our Diocesan Tribunal, if by [date] the concordance of the doubt has not yet been formulated, according to the norms of law.

With this present decree the mandate is given to all the competent Offices of our Curia to prepare the most of every aspect, also of economic and operational nature, so that Our Arch/Diocesan Tribunal will adequately be operational from [date], with the purpose of adequately exercising its activity and responding to the needs of the faithful requiring the verification of the truth about the existence of the bond of their failed marriage.

Given on, at

L.S. † _____, Bishop

Diocesan Chancellor

4.2. Decree to entrust the competence for marriage nullity cases to an existing diocesan Tribunal

Prot. N.

I.....,

Bishop of the Arch/Diocese of

In fulfilment of the reform of the procedures for matrimonial nullity approved by Pope Francis in his *Motu proprio* “*Mitis Iudex*” of 15 August 2015, which has entirely substituted the procedure for the declaration of the nullity of marriage (cann. 1671-1691) provided by the Code of Canon Law of 1983, and has established «to declare openly that the bishop himself, in the church over which he has been appointed shepherd and head, is by that very fact the judge of those faithful entrusted to his care», (M.p. *Mitis Iudex*, *preface*, III) and that «due to his duty as pastor, has the greatest care for catholic unity with Peter in faith and discipline» (M.p. *Mitis Iudex*, *preface*, IV);

having considered that

- the preoccupation for the salvation of souls remains the ultimate purpose of the Church,
- the great number of the faithful who – while desiring to provide for their own consciences, too often are discouraged by the juridical structures of the Church because of physical and moral distances – demand that the Church «like a good mother, be near her children»,
- can. 1673 § 2 of CIC directs that: «The Bishop is to establish for his own diocese a diocesan tribunal for cases of nullity of marriage»,
- for decades in our Arch/Diocese the diocesan Tribunal has been functioning, but incompetent to adjudicate cases of matrimonial nullity;
- the conferring of the competence to our Diocesan Tribunal to treat and define also marriage nullity cases in the first grade of judgement guarantees better the «speeding up of proceedings», called for by the Synod of Bishops and established by Pope Francis, both in the more agile «ordinary process», as well as in the «briefer process»;

BY THIS PRESENT DECREE

I CONFER

to our Arch/Diocesan Tribunal of, with its seat at in the Arch/Diocesan Curia Offices at, as of [date]

THE NECESSARY COMPETENCE TO ADJUDICATE AND DEFINE MARRIAGE NULLITY

CASES IN FIRST INSTANCE,

which to date have been entrusted to the Inter-diocesan Ecclesiastical Tribunal of

Future challenges to the sentences issued by Our Tribunal are regulated by canons 1619-1640 and can be proposed either to the Metropolitan Tribunal ofof second instance or to the Apostolic Tribunal of the Roman Rota, according to the norms of can. 1673 §6.

And therefore, following Article 8 § 2 of the *Motu proprio* “*Mitis Iudex*”,

I WITHDRAW

formally from the Inter-diocesan Ecclesiastical Tribunal constituted according to the norms of can. 1423 CIC.

Transitional Norms

Those matrimonial nullity cases whose competence, by virtue of can. 1672 of the *Motu proprio* “*Mitis Iudex*”, belongs to our Tribunal, and which are now in course of adjudication in first instance before the Inter-diocesan Ecclesiastical Tribunal of, are to be transferred to our Diocesan Tribunal, if by [date] the concordance of the doubt has not yet been formulated, according to the norms of law.

Also those cases which on the same date are in the phase of instruction, can be transferred to our diocesan Tribunal, if both the parties so consent.

Given on, at

L.S. † _____, Bishop

Diocesan Chancellor

4.3. Decree for withdrawal from an inter-diocesan Tribunal and access to a nearer Tribunal

Prot. N.

I,

Bishop of the Arch/Diocese of

In fulfilment of the reform of the procedures for matrimonial nullity approved by Pope Francis in his *Motu proprio "Mitis Iudex"* of 15 August 2015, which has entirely substituted the procedure for the declaration of the nullity of marriage (cann. 1671-1691) provided by the Code of Canon Law of 1983, and has established «to declare openly that the bishop himself, in the church over which he has been appointed shepherd and head, is by that very fact the judge of those faithful entrusted to his care», (M.p. *Mitis Iudex*, *preface*, III) and that «due to his duty as pastor, has the greatest care for catholic unity with Peter in faith and discipline» (M.p. *Mitis Iudex*, *preface*, IV);

having considered that

- the preoccupation for the salvation of souls remains the ultimate purpose of the Church,
- the great number of the faithful who – while desiring to provide for their own consciences, too often are discouraged by the juridical structures of the Church because of physical and moral distances – demand that the Church «like a good mother, be near her children»,
- can. 1673 § 2 of CIC directs that: «The Bishop is to establish for his own diocese a diocesan tribunal for cases of nullity of marriage, without prejudice to the faculty of the same bishop to approach another nearby diocesan or interdiocesan tribunal»,
- for now it is not yet possible to constitute our own *Diocesan Tribunal* for matrimonial nullity cases of our diocese;
- it will be my personal responsibility to prepare as quickly as possible persons who will be able to work in the Tribunal on matrimonial nullity cases, so as to be able eventually to constitute in our own Arch/Diocese a tribunal, as legislated in the M.p. *Mitis Iudex*, art. 8 § 1 of the *Procedural Rules*;
- the conferring of competence to adjudicate and define matrimonial nullity cases in first instance to the Ecclesiastical Tribunal of the Diocese of , guarantees better the «speeding up of proceedings» and the physical and moral proximity between the faithful of our Arch/Diocese and the juridical structures of the Church, called for by the Synod of Bishops and established by Pope Francis;

BY THIS PRESENT DECREE

I ESTABLISH

that marriage nullity cases which can be defined with the briefer process according to the norm of canon 1683 will be treated and defined by me as determined by the canons 1683-1687.

I RECEDE

according to the norm of Art. 8 § 2 of the Motu proprio *Mitis Iudex*, from the Inter-diocesan Ecclesiastical Tribunal of constituted according to the provisions of can. 1423 CIC.

I ACCEDE

ad triennium, in conformity with can. 1673 § 2 of the CIC, to the ECCLESIASTICAL TRIBUNAL of the Arch/Diocese of, with its seat at located in the Offices of the Arch/Diocesan Curia in, as of [date]....., which must be considered, for all the legal effects, competent for the adjudication and the definition in first instance of marriage nullity cases from our Arch/Diocese, which until now were entrusted to the Inter-Diocesan Ecclesiastical Tribunal of

TRANSITIONAL NORMS

The matrimonial cases whose competence, by virtue of can. 1672 of the Motu proprio *Mitis Iudex*, is of Our Tribunal, and which are now in course of adjudication in first instance before the Inter-diocesan Ecclesiastical Tribunal of, are to be transferred to the Ecclesiastical Tribunal of the Arch/Diocese of if by [date]..... the doubt has not yet been formulated according to the norm of law.

Given on, at

L.S. † _____, Bishop

Diocesan Chancellor

4.4. Request for the authorization of the Holy See for the constitution of an inter-diocesan tribunal of first and second Instance for more ecclesiastical provinces

To His Eminence
The Cardinal Prefect
Supreme Tribunal of the Apostolic Signatura

Your Eminence,

The undersigned Metropolitan Archbishops of
_____ and of _____;

following the entry into force of the two *motu proprios* “*Mitis Iudex Dominus Iesus*” e “*Mitis et Misericors Iesus*” on the 8th December 2015;

considering that for the moment it is not yet possible to constitute *Diocesan Tribunals* for the marriage nullity cases of Our Dioceses;

having established by common agreement to constitute an inter-diocesan tribunal of first and second instance, as is shown in the attached memorandum of the meeting of the two Metropolitans held on;

in conformity with the provisions of the M.p. *Mitis Iudex*, can. 1673 §§ 2 and 6, and in accordance with the *mens* of the Supreme Legislator of the Church, clearly expressed through the Dean of the Roman Rota on 4 November 2015, according to which is upheld «the ability, according to the norms of law, that is with the approval of the Holy See, that Metropolitans of two or more Ecclesiastical Provinces can come together to create an inter-diocesan tribunal both of first and of second instance» (“*Mens*” of the Pontiff, in *Oss. Rom.*, 8 November 2015, n. 2);

REQUEST

from the Supreme Tribunal of the Apostolic Signatura the aforementioned authorization for the constitution of the inter-diocesan tribunal of first and second instance for the Metropolitan Provinces of _____ and of _____.

Awaiting Your kind response to our request

We remain

Fraternally yours in Christ

Date and place

† _____
Archbishop of

† _____
Archbishop of

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