

A Decade of *Mitis Iudex*: Lights and Shadows

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SUMMARY: *Introduction.* I.- *The Bishop at the center of the reform.* 1.- The wounded faithful, at the center of the pastors' concerns. 2. The abolition of the need for double conformity. 3.- The centrality of the Bishop in the pastoral service of justice. 4.- Synodal dimension of the episcopal service of justice. 5.- Right of appeal to the See of Peter. 6.- The gratuity of the processes. II.- *The processus brevior, a special task of the Bishop.* Necessary conditions for its application. 2.- Introduction, instruction and discussion of the cause. 3.- Decision of the cause, contestation and execution of the sentence. III.- *Agile service respecting procedural rights.* 1.- Tribunals of first instance. 2.- Collegiate tribunal or single judge. 3.- The Tribunal of second instance. 4.- Practical guide for the constitution of new tribunals. *Conclusions.*

Introduction

On December 8, 2015, the new marriage nullity processes came into effect for both the Latin Church and the Eastern Churches. They bear the date August 15, 2015 and were presented at the Press Conference held on September 8 of the same year.

January 31, 2025, in the Address to the Roman Rota during the “Inauguration of the Judicial Year”, Pope Francis recalled the spirit that permeated the reform of the processes of marriage nullity, carried out through the Motu Proprio *Mitis Iudex Dominus Iesus* (hereinafter *Mitis Iudex*) for the Latin Church, and the Motu Proprio *Mitis et Misericors Iesus* for the Eastern Churches.

The Pope's words on that occasion are particularly useful for reviewing the status of the implementation of this reform, now that we reached the tenth anniversary of its entry into force. It is important to verify what has been done and what remains to be done so that with the application of the reform the Church, can attain the pastoral competence with which it was intended to be endowed, to come to the aid of the faithful who suffer because of doubts about the validity of their failed marriage, and to embrace them maternally with justice and mercy.

There is not enough data to make a balance sheet and to know today how far we have come, so what I propose is a description of the essential aspects of the reform undertaken, allowing each Tribunal, each diocese, each ecclesiastical province, etc., to make its own balance sheet, and to decide what still needs to be done, and therefore what is to be done next.

I will refer especially to the processes in the Latin Church, regulated by *Mitis Iudex*, but the same applies, *mutatis mutandis*, to the processes in the Eastern Churches, regulated by *Mitis et misericors Iesus*. The few differences that exist refer only to the different ecclesial structure between one Church and the others.

The three parts of *Mitis Iudex*, i.e., the proem, the canons and the Procedural Rules that follow them, are all legislative in character. For this reason they should be read in close relationship, since they illuminate each other. This is the purpose of the three appendices I have prepared.

Appendix 1 provides an outline of the contents of *Mitis Iudex* in three parallel columns, the Proemium, the canons and the Articles of the Procedural Rules, which allows one to see how these three types of content of the Motu Proprio relate to each other.

Appendix 2 presents the entire text of *Mitis Iudex*, distinguishing in three parallel columns, the Proemium, the canons and the Articles of the Procedural Rules, in order to facilitate the reading

of the various elements duly related to each other.

Appendix 3 provides an outline of the steps to be taken in the various phases of the three nullity processes available today (the ordinary, the briefer one before the Bishop and the documentary one), after the introduction of the cause, common to all three processes.

I will follow in my exposition the aspects that Pope Francis wanted to highlight as the main ones to verify the state of the application of the marital reform undertaken.

In the first place, the central place that corresponds to the Bishop, in light of the reform, in the application of the processes of matrimonial nullity. This central place of the Bishop implies that, as the one responsible for the administration of justice in his diocese, he must guarantee the proximity of the Tribunals to the faithful and supervise their functioning, also paying attention to the synodal dimension of the episcopal service.

Secondly, I will devote a special moment to the *processus brevior*, the only truly new one added to the two existing ones, the ordinary and the documentary. It seems appropriate to me to analyze in detail some of its particularities, in order to ensure a more effective and fruitful application, without fear and without excesses.

Thirdly, I consider it opportune to propose a correct balance between the agility of the processes that the reform under observation has sought, and the due respect for the rights of those who intervene in them,¹ in order to achieve the greatest good of the faithful.

Finally, I will venture to briefly propose some conclusions, with the intention of encouraging that, starting from what has already been done, a program can be prepared in each diocese of the Philippines with the steps to follow so that the task of the Tribunals, in the context of diocesan pastoral care, may offer an ever more effective service, as a fruit of a broader and more effective application of the reform of the processes of marriage nullity carried out by Pope Francis, for the good of the faithful.

I.- The Bishop at the center of reform

Pope Francis recalled this with special insistence in his last Address to the Roman Rota on January 31, 2025, when were approaching the ten years from the reform of the marriage nullity process. The Pope recalled that the Bishop “is responsible for the administration of justice in the diocese”, and this entails for him various tasks, all of them proper to the Pastor, and therefore all of them properly pastoral tasks.

1.- Wounded faithful at the center of pastors’ concerns

The reform of the marriage process places at the center of pastors’ concern the attention of the faithful in need of special pastoral care after the failure of their marriage, even with the verification of the eventual declaration of nullity. This service can no longer be totally delegated to the offices of the Curia, but requires the personal commitment of the Bishop.

There is no doubt about the evangelical root of this principle. Before the Pharisees and the scribes who murmured against Jesus because the tax collectors and sinners came to hear him, Jesus presents them with the parable of the lost sheep.² The Shepherd cannot be satisfied by attending to the sheep that “behave well” and remain faithful, together with the Shepherd, peacefully integrated into the community. Those who are or those who feel farther away, perhaps even because of the closed attitudes of the ecclesial communities, who have pointed an accusing finger at them, as the Pharisees and the scribes also did with the adulterous woman,³ accusing her before Jesus, who welcomes her with mercy and sends her away with forgiveness and exhortation.

¹ Cf. can. 221, § 2.

² Cf. Luke 15:1-7, and Mt 18:10-14.

³ Cf. Jn 8:3-11.

The process of matrimonial nullity that the Pope has placed in the hands of the Bishops with this reform is an instrument that allows them to reach the faithful in need of this pastoral service, who are often discouraged by the difficulty of accessing the Church's tribunals because of the distance, whether physical, psychological or moral, that has kept them away from them. In short, it is a matter of reaching not only the small group of faithful who before the reform had access to this service, but also the great number who today find themselves in need of it, often because of the difficult situation of marriage in the culture of our times.

2.- Abolition of the need for double conformity

In the first place, the abolition of the need for two conforming decisions affirming the nullity of the marriage in order for the decision to be executed is emphasized.⁴ This is not the place to dwell on the origin of this normative disposition, born in other circumstances, and for demands different from the present ones, which called to put a limit to some abuses suffered at that time. This is how Francis briefly referred to it when he spoke spontaneously, after the reading of the written speech, on March 12, 2016, to the participants in the course organized by the Roman Rota: "The double sentence of conformity is a historical fact, from the time of Pope Benedict XIV Lambertini. Being a historical thing, born for the problems that arose at that time, in the center of Europe, now it has no longer seemed necessary".⁵

At the III Extraordinary General Assembly of the Synod of Bishops, as previously in the reports coming from various Episcopal Conferences, the convenience of suppressing the need for the two affirmative sentences was felt, taking into account the enormous number of cases in which the affirmative sentences of nullity in the first instance were confirmed in the second instance, either by decree or by a new sentence.⁶ This does not preclude, when necessary, the recourse to review the affirmative decision. Therefore, being an unavoidable requirement of justice for whoever considers the affirmative sentence unjust, including the defender of the bond or the promoter of justice if he participates in the case, the possibility of appealing the said affirmative sentence.⁷

3.- The Centrality of the Bishop in the pastoral service of justice

In the second place, the intention was to restore to the Bishop the central place that corresponds to him in the exercise of justice in his diocese.⁸ This is an inescapable dimension of his ministry of government, which is exercised not only through the legislative and executive functions, but also through the judicial.⁹ Taking into account this proper place of the Bishop in the exercise of judicial power in his diocese, the possibility has been left to him to admit, when it is not possible to constitute a collegiate Tribunal for causes of matrimonial nullity, the constitution of a single judge, provided that he is a cleric (the latter not because it is a doctrinal requirement, but for the convenience of hierarchizing this ministerial function with the sacred order).¹⁰

The *Subsidium* for the application of *Mitis Iudex*, prepared by the Apostolic Tribunal of the Roman Rota at the request of the Holy Father, reminds us that the Bishop in his Church, as father and judge, is the icon of Christ-Sacrament, and by personally exercising this mission, he gives a

⁴ Cf. *Mitis Iudex*, Proemio, I.

⁵ FRANCESCO, *Ai partecipanti del corso della Rota Romana sul Motu proprio Mitis Iudex*, 12/03/2016 (in *Quaderni Rotali* 23 [2016], 51). The translation from Italian is mine.

⁶ Cf. can. 1682 of the Code of Canon Law, before *Mitis Iudex*.

⁷ Cf. trans. 1630-1633.

⁸ Cf. *Mitis Iudex*, Proemio, II and III.

⁹ Cf. *Mt* 16:19 and can. 135.

¹⁰ Cf. *Mitis Iudex*, Proemio, III, and can. 1673 § 4.

sign of his sacramental power.¹¹

In order to make more visible the central place of the Bishop in the judicial dimension of the governing power of his diocese, he should offer a sign of the conversion of the structures¹² of his particular Church. The Bishop should make use of the offices of the Curia in the exercise of this ministry, but at the same time he should be prepared to exercise this ministry personally in regard to causes of matrimonial nullity. This should be done especially in the *processus brevior*, foreseen for cases in which the arguments in favor of nullity are particularly evident.¹³

This *processus brevior* is the most outstanding novelty in the discipline of the canonical marriage process, and its effective implementation will require a true conversion of the structures of the diocese, at the service of its pastoral function.¹⁴

In short, the responsibility of the diocesan bishop in the application of the new marriage process is manifold. In the first place, it is up to him to personally judge some causes, following the *processus brevior*, which we will detail in due course. In addition, he must see to the formation of a sufficient number of persons, both clerics and laity, and among the former certainly the parish priests, proper pastors of the faithful entrusted to them,¹⁵ who can collaborate in this service of justice to be rendered to the faithful. And finally, he should provide a service of information, advice and mediation, linked to the pastoral care of the family, for the service of separated persons or couples in crisis, which is also capable of welcoming persons in view of the preliminary investigation of the marriage process.¹⁶

4.- Synodal dimension of the episcopal service of justice

Another aspect that has been carefully considered involves the synodal dimension of episcopal ministry, and its practical consequences in the pastoral service provided through judicial work.

4.1. The Archbishop of the Archdiocese

As the above-mentioned *Subsidium* reminds us, the Bishop is not alone in the exercise of his ministry, but in sacramental communion and communion of intent with the other members of the episcopal college, and one of the manifestations of this effective collegiality is found in the ancient institution of ecclesiastical provinces and in the role of the Metropolitan. Episcopal Conferences also have a relevant role among the new juridical expressions that help to visibly manifest the affective and effective collegial dimension of the episcopal ministry.¹⁷

Consequently, taking into account the urgent exhortation to the diocesan Bishops, if they do not already have one, to establish as soon as possible a Tribunal in their diocese to deal with causes of matrimonial nullity, or in any case to choose another Tribunal, diocesan or interdiocesan, nearby, to deal with these causes of their faithful, it has also been intended to restore, as far as possible, the function of the Metropolitan Tribunal as a Tribunal of Appeal for the diocesan Tribunals, recovering in the most effective way possible this distinctive sign of the synodality of the Church, in force since the first centuries.¹⁸

¹¹ Cf. APOSTOLIC TRIBUNAL OF THE ROMAN ROTA, *Subsidio applicativo del Motu proprio Mitis Iudex. Fundamental Pillars of Reform*, n. 1, p. 9.

¹² Cf. FRANCIS, Apostolic Exhortation *Evangelii gaudium*, n. 27, in AAS 105 (2013), p. 1031.

¹³ Cf. *Mitis Iudex*, Proemio, IV.

¹⁴ Cf. FRANCIS, Apostolic Exhortation *Evangelii gaudium*, n. 27, in AAS 105 (2013), p. 1031.

¹⁵ Cf. can. 519.

¹⁶ Cf. FRANCIS, Apostolic Exhortation *Amoris laetitia*, n. 244, where he also cites *Mitis Iudex*, Procedural Rules, arts. 2-3.

¹⁷ Cf. APOSTOLIC TRIBUNAL OF THE ROMAN ROTA, *Subsidio applicativo...*, n. 2, p. 10.

¹⁸ Cf. *Mitis Iudex*, Proemio, V, and can. 1673 § 6.

From the Metropolitan Tribunal of first instance, appeal is made to the Tribunal elected in a stable form by the Archbishop, with the approval of the Apostolic See, through the Apostolic Signatura.

This should lead to the multiplication not only of the Tribunals of First Instance, but also of the Archdiocesan Tribunals of Appeal, which in some places, such as Argentina and the Philippines, has been only one, that of the Episcopal Conference, for all the Courts within the scope of the Conference.

4.2. Episcopal Conferences

On the other hand, and also as a consequence of the synodal dimension of the episcopal office, the effective implementation of the new canonical marriage process requires the service that episcopal conferences can offer to bishops.¹⁹ With a just application of the principle of subsidiarity, they should respect the right of the Bishops to organize the judicial power in their own particular Church, and they should help them to do so.

Among the tasks of the Bishops' Conference may be noted:

a) To encourage the Bishops to put into practice the reform of the marriage process, helping them to organize their own Tribunals in order to concretize the closeness between the faithful and the Tribunal to which they can turn to clarify doubts about the validity or nullity of their marriage.

b) To help to find ways to ensure the gratuity of the processes, saving the just and worthy remuneration of the workers of the Tribunals, so that in a matter so closely linked to the salvation of souls, the Church manifests the gratuitous love of Christ, by which we have all been saved.

c) To offer ongoing formation, in communion with the initiatives of the Bishops and the Holy See, for the workers of the Tribunals. An important part of this formation can be offered by the Faculties and Institutes of Canon Law, offering, in addition to the courses already existing for obtaining academic degrees, specific courses, with all the modalities that current technical instruments permit, dedicated to substantive matrimonial law and to the specific procedural law of the causes of marriage nullity.

5.- Right of appeal to the See of Peter

Finally, while respecting an ancient juridical principle that strengthens the bond between Peter and the particular Churches, the right of the faithful to appeal to the ordinary Tribunal of the Apostolic See, that is, to the Roman Rota, is maintained, so as to strengthen the bond between the See of Peter and the particular Churches.²⁰ This will have to be done, as in fact is proposed in the norms of the new process, preventing any abuse of the right that could bring harm to the salvation of souls, with merely dilatory appeals, without a minimum foundation.

6.- Gratuity of the processes

It is clear that everything that is consumed or consumable has a cost. There is no such thing as zero-cost paper, ink, computer and use of time. Free processes, therefore, do not mean that no one will pay for what has a cost anyway. On the other hand, it does not mean that only those who use the service of the Tribunals should bear the cost of their operation. It is a matter of finding, as is done for other services of the Church, a mode of administration that distributes among all those who are willing to contribute, the cost of the service offered.

Among the assistance that the Episcopal Conferences are called upon to give to the Bishops for the creation of their Tribunals and the effective and widespread application of the new process of matrimonial nullity, is financial assistance. This is the only way to reach all the faithful who

¹⁹ Cf. *Mitis Iudex*, Proemio, VI.

²⁰ Cf. *Mitis Iudex*, Proemium, VII, and can. 1673 § 6.

need this service and do not have the necessary means to pay for it.²¹

Mitis Iudex presents the gratuity of the proceedings as an ideal to be achieved, “to the best of their ability and with due regard for the just compensation of tribunal employees”.²² This does not mean that an effective effort to achieve it can be avoided. Only an impossibility would justify that the faithful could not have access free of charge to the processes of matrimonial nullity. More than eleven years ago, before the reform of the process, the Holy Father, in his speech at the inauguration of the judicial year of the Roman Rota, explained the reasons that justify the gratuitousness of the processes: “I would like to underline that the Sacraments are freely given; the Sacraments give us grace; a matrimonial process touches upon the Sacrament of marriage. How I would like all processes to be free!”.²³

It should be clarified that at this point that all the causes in the Roman Rota are carried out with free sponsorship and without judicial fee, proceeding to exhort the parties, when they are notified of the sentence, to make a voluntary contribution, according to their possibilities, to help the causes of the poor. The *Subsidium* entrusts to the just sensitivity of pastors and of those who attend to the Tribunals the possibility of carrying out, with due pastoral tact, this same exhortation to the faithful to respond to the gratuitousness of the processes with a voluntary contribution in favor of the causes of the poor.²⁴

It is worth mentioning that the Archbishop of Madrid, in a decree of December 8, 2015, Solemnity of the Immaculate Conception and day of entry into force, determined in his first decisions, the suppression of all judicial fees in the Metropolitan Ecclesiastical Tribunal of Madrid, inviting all Christians and those who use this pastoral service to offer a donation to the extent of their possibilities, and offering everyone the possibility of being assisted free of charge by an advocate.²⁵ Similar measures were taken by Bishops moderating diocesan or interdiocesan tribunals created in Argentina for the causes of nullity.

II.- The processus brevior, a special task for the Bishop

This new marriage process, added to the two pre-existing ones (the ordinary and the documentary), gives rise to greater concern, not only because of its novelty, but perhaps especially because its decision is reserved to the Bishop.

The very name given to the new process (*brevior*) makes it clear that the ordinary process of nullity has also been simplified and streamlined. But this new process is intended to respond to the faithful who find themselves in the special circumstance of a case of obvious nullity, and therefore of an easy and irrefutable proof, and at the same time without the danger of conflict between the parties.

1.- Necessary conditions for its application

This new process allows the diocesan bishop to give a sentence of nullity himself in causes in which the necessary conditions are simultaneously met:

1° That the nullity action is proposed by both parties, or by one of them with the consent of the other;

2° Circumstances of facts and persons, supported by testimonies or documents, make the nullity evident. Normally it is a pastoral or pre-judicial investigation that allows the identification of these circumstances, of which the Procedural Rules present us with an indicative list (not

²¹ Cf. APOSTOLIC TRIBUNAL OF THE ROMAN ROTA, *Subsidio applicativo*, n. 4, p. 12.

²² *Mitis Iudex*, Preamble, VI.

²³ FRANCIS, *Address to the Roman Rota*, January 23, 2015.

²⁴ Cf. APOSTOLIC TRIBUNAL OF THE ROMAN ROTA, *Subsidio applicativo*..., n. 4, p. 12.

²⁵ Cf. OSORO SIERRA, C., *Decree for the application of the Motu proprio Mitis Iudex*, December 8, 2015.

exhaustive).²⁶

None of these circumstances is in itself a sufficient indication of the possibility of applying the *processus brevior* before the Bishop, but only insofar as and to the extent that they make the nullity effectively evident, which must be demonstrated by testimonies or documentary evidence of immediate acquisition. It is, in fact, the evidence of the nullity and the facility of its proof, in addition to the consent of both parties, that allows the application of the *processus brevior* before the Bishop.

a) *The lack of faith that can generate the simulation of the consent or the error that determines the will.* In this case, the cause of the nullity is not the lack of faith as such. This is only the circumstance that, in the particular case, leads one or both parties to *exclude* some essential element or property of the marriage, or to *err* about them.

The absence of faith can be such that the contracting party no longer has a way, in the concrete circumstances in which he lives, of conceiving or including in his will indissolubility, or fidelity, or the good of the offspring. This would be a defect of origin of consent due to a defect of valid intention (simulation or exclusion, can. 1101, § 2), or due to a grave error about the nature of the consent (error that determines the will, can. 1099).²⁷

Some circumstances could be: a) the human and cultural formation of the persons (e.g., atheistic or materialistic family), in the basis of which, there is a strong influence of worldly mentality;²⁸ b) the context of faith values - or their absence - in which the marriage decision matured; c) a subjectivism enclosed in the immanence of reason or feelings;²⁹ d) the perception of marriage as a mere form of affective gratification that drives the contracting parties to the simulation of consent, that is, to mental reservation about the very permanence of the union or its exclusivity.³⁰

b) *The brevity of the marital cohabitation.* The brevity of the conjugal cohabitation alone is not in itself a cause of nullity, but constitutes a strong indication of a possible defect in the consent, for example by exclusion of some essential property of marriage (indissolubility, unity), or of one of its ends (the good of the offspring, the *bonum coniugum*).

c) *Procured abortion to prevent procreation.* As in the previous cases, procured abortion is not in itself a ground of nullity, but it can be a strong indication of the will of one or both spouses, contrary to the good of the offspring. In this case it must be a positive act of will of the contracting party that is opposed to the offspring, and that is evidenced by the procured abortion, when an unwanted conception has occurred.

It must be verified, based on the declarations of the parties, that the abortion sought was motivated by the firm will to exclude the offspring. The affidavit of the party who procured the abortion, indications such as, for example, the contraceptive methods applied on a regular basis, and evidence such as medical records, can lead to the moral certainty that the parties, or at least one of them, entered into the marriage with the firm intention of excluding the offspring in perpetuity.

d) *The obstinate permanence in an extra-marital relationship at the moment of marriage or in an immediately successive time.* This extra-marital relationship may mean that the obligation of marital fidelity is excluded, especially if the declarations of the parties and witnesses show the intention of the contracting party not to abandon the parallel relationship.

Various circumstances may be indicative of a strong desire not to fulfill the duty of fidelity, such as the short duration of cohabitation after the marriage, or the refusal to have intimate

²⁶ Cf. *Mitis Iudex*, Procedural Rules, art. 14 § 1.

²⁷ Cf. Francis, *Address to the Roman Rota*, January 23, 2015.

²⁸ Cf. FRANCIS, Apostolic Exhortation *Evangelii Gaudium*, n. 93.

²⁹ Cf. *ibid.*, n. 94.

³⁰ Cf. *ibid.*, n. 66.

relations with one's spouse.

e) *The fraudulent concealment of sterility or of a serious contagious disease or of children born in a previous relationship or of an imprisonment.* It is necessary that there is a fraudulent concealment, and that this concealment has been made with the purpose of obtaining from the sharer the matrimonial consent. It must be possible to deduce the causal link between the malice and the matrimonial consent, in such a way that the celebration of the marriage can be attributed to direct malice.

Sterility, even if demonstrated with suitable medical documentation, does not by itself render the marriage null and void, but it can be a quality that can seriously disrupt the consortium of conjugal life, and can therefore constitute a ground of nullity, if it is fraudulently concealed.

f) *A motive to marry totally foreign to conjugal life or consisting of the unforeseen pregnancy of the woman.* It must be a motive foreign to conjugal life, which evidences the will of a spouse who does not intend to marry, but something else.

For example, a spouse who only intends the marriage to obtain citizenship or the right of residence in the other spouse's country. Another example would be the will to simulate consent, in a male who is forced to enter into the marriage because of an unplanned pregnancy of the bride or partner. It must be evident that the will of the contracting party does not intend at all the purpose of the marriage, but only a simulation of the marriage, with no intention to bind himself in any way.

In these cases the brevity of married life, sometimes together with the initiative of separation and divorce undertaken by the simulant, and even the introduction of the canonical process for the declaration of nullity can confirm the positive exclusion of the marriage.

g) *Physical violence exercised to extract consent.* In this case it must be proven with unassailable evidence and conclusively that the violence perpetrated against the spouse has been inflicted directly to force him/her to give marital consent. The situation of the spouses' freedom from external coercion must therefore be investigated. It is a question of verifying whether at the basis of the consent there is a real human act, born of the intelligence and free will of the spouse.

In order to apply the *processus brevior* before the Bishop in such a case, it must be evident, through the proposed proofs, that the personal freedom of the contracting party has not existed, or has been very limited, because of an external pressure on the same spouse (for example, physical violence by parents or other relatives, because of a pregnancy), and that this is documented (for example, with medical certificates, acts of public security issued to certify the violence suffered near the celebration of the marriage; the statement of the parties and credible witnesses, such as the celebrating priest).

h) *Lack of use of reason proven by medical documents.* In this case it is necessary to reach, through incontrovertible medical or scientific documents (such as medical records, psychiatric expertise, etc.), a certainty without the shadow of doubt about the nullity of the marriage, through arguments that lead to evidence of the incapacity of the subject due to lack of sufficient use of reason.

Proof by means of medical documents, especially psychological or psychiatric expertise, is not easily incontrovertible, and for this reason this example seems more applicable to causes of nullity for lack of sufficient use of reason (canon 1095, 1°), than to causes for defect of discretion of judgment (canon 1095, 2°) or for incapacity to assume the essential obligations of marriage (canon 1095, 3°), in which the evaluation of expert evidence can sometimes be very complex, and therefore not self-evident.

2.- Introduction, instruction and discussion of the cause

The statement of claim with which the cause of action is presented, in addition to the elements indicated in canon 1504, must: 1° state briefly, fully and clearly the facts on which the

claim is based; 2° indicate the evidence that can be immediately collected by the judge; 3° also present the documents on which the claim is based.³¹

The Judicial Vicar who admits the writ of petition, in the decree with which he determines the formulation of doubts, must also appoint the instructor and the assessor, and summon the parties, the defender of the bond and the witnesses, for the session for the collection of the proofs, which must be held no later than thirty days later.³² The Judicial Vicar can appoint himself as instructor, but if possible, appoint an instructor from the diocese of origin of the cause.³³

If they have not been submitted with the statement of claim, the parties may submit, at least three days prior to the session for the collection of evidence, the points on which the examination of the parties and witnesses is requested.³⁴

The responses of the parties and witnesses must be written by the notary, summarily and in writing, only with regard to the substance of the marriage whose validity is in dispute.³⁵

Once the collection of evidence has been completed, the instructor must set a period of fifteen days for the presentation of observations in favor of the bond and the defences of the parties.³⁶

3.- Decision of the cause, challenges and execution of the sentence

The diocesan bishop who is to pronounce the sentence is the bishop of the place on the basis of which the competence of the tribunal was established according to canon 1672, even if the cause was heard before an interdiocesan tribunal. If there is more than one, the principle of proximity between the parties and the judge should be followed as far as possible.³⁷

After consultation with the instructor and the assessor, the Bishop must examine the observations of the defender of the bond and the defences of the parties, and if he reaches moral certainty about the nullity of the marriage, he issues the corresponding sentence of nullity. Otherwise, he cannot give a negative sentence and must send the cause to the ordinary process.³⁸

The text of the judgment, with the corresponding motivation or argumentation, must be notified as soon as possible to the parties. Ordinarily it will be done within one month from the day of the decision. It is the Bishop himself who establishes according to his prudence, taking into account the will expressed in this regard by the parties, the manner in which the sentence is pronounced, which must always contain in a brief and orderly manner the reasons for the decision.³⁹

The Bishop's sentence admits appeal, although it must be considered that if things have been done with due prudence it will be very rare. On the one hand, the parties have jointly, or one with the consent of the other, requested the declaration of nullity. On the other hand, the defender of the bond has presented his observations before the Bishop makes the sentence. Therefore, reasonably his sentence, which can only be affirmative, will take place in the event that he can refute the observations of the defender of the bond in his argumentation.

The Bishop's sentence may be appealed to the Metropolitan or to the Roman Rota. If the sentence was issued by the Metropolitan, the appeal is made to the most senior Suffragan Bishop in office or to the Roman Rota. If it was issued by another Bishop who is not subject to any authority under the Roman Pontiff, the appeal is made to the Bishop established by him in stable

³¹ Cf. can. 1684.

³² Only in case of special need, more than one session will be held. Cf. transs. 1685-1686.

³³ Cf. *Mitis Iudex*, Procedural Rules, art. 16.

³⁴ Cf. *Mitis Iudex*, Procedural Rules, art. 17.

³⁵ Cf. *Mitis Iudex*, Procedural Rules, art. 18 § 2.

³⁶ Cf. can. 1686.

³⁷ Cf. *Mitis Iudex*, Procedural Rules, art. 19.

³⁸ Cf. can. 1687 § 1.

³⁹ Cf. can. 1687 § 2 and art. 20.

form or to the Roman Rota.⁴⁰

If it is evident that the appeal is merely dilatory, the Metropolitan Bishop or any of the others just mentioned, and also the Dean of the Roman Rota if this is the case, must reject it by decree immediately. If, instead, the appeal is admitted, the cause must be sent to the ordinary examination of the second degree.⁴¹

III.- Agile service respecting procedural rights

The necessary agility in the processes of matrimonial nullity is not an entirely new concern. As in so many other things, Pope Francis followed the intuition of his predecessor St. Paul VI, who more than 50 years ago had already begun to reform the process of matrimonial nullity, with the *Motu Proprio Causas matrimoniales*. Francis himself recalled it this year, in his address to the Roman Rota on January 31, citing that of his predecessor fifty years earlier: “in the simplifications [...] introduced in the management of matrimonial causes, it is intended to make this exercise more agile, and therefore more pastoral, without prejudice to the criteria of truth and justice, to which a process must honestly adhere, in the confidence that the responsibility and wisdom of Pastors are religiously and more directly engaged” (Paul VI, Address to the Roman Rota, January 30, 1975).

This service requires the virtues of prudence and justice, animated by charity, Pope Francis told us in 2025, citing what he had already said in the preceding year: “The recent reform also wanted to favor ‘not the nullity of marriages, but the celerity of the processes and, not least, an adequate simplification, so that, because of a delay in the definition of the judgment, the hearts of the faithful who await the clarification of their own state will not be long oppressed by the darkness of doubt’ (*Mitis Iudex*, Proemio). In fact, in order to prevent the saying ‘*summum ius summa injuria*’ (Cicero, *De Officiis* I,10,33) from occurring due to overly complex procedures, I have abolished the need for the double conformity sentence and have encouraged more rapid decision in cases where nullity is manifest, seeking the good of the faithful and desiring to bring peace to their consciences. It is evident - but I want to reiterate it here - that the reform strongly calls for prudence in the application of the norms. And this ‘requires two great virtues: prudence and justice, which must be informed by charity. There is an intimate connection between prudence and justice, because the exercise of the *prudentia iuris* is aimed at the knowledge of what is just in the specific case’ (Address to the Roman Rota, January 25, 2024)”.

It should be noted, in all cases, that the reform is of a procedural nature, the marriage nullity proceedings have been modified, but the doctrine on marriage has not been touched, and consequently no new grounds for possible nullity have been added, nor have the existing ones been annulled.

The consequences of these changes have changed, sometimes with serious consequences for the life of marriages and families, in customs and in cultures, and for this reason special attention must be paid to the consequences of these changes, as the Pontifical Magisterium and the jurisprudence of the Roman Rota do, which is the guide and point of reference for the jurisprudence of all the ecclesiastical tribunals,⁴² and as Pope Francis also did legislatively with Article 14 of the Procedural Rules for the application of the reform of the nullity process, with some examples where it is to be expected that the *processus brevior* can be applied.

1.- Tribunals of first instance

As far as I understand, according to the information I have been able to gather, in the Philippines most of the Tribunals are diocesan, so that the interdiocesan Tribunals are the exception. I assume then, although I do not know precisely, that for these diocesan Tribunals, the

⁴⁰ Cf. can. 1687 § 3.

⁴¹ Cf. can. 1687 § 4.

⁴² Cf. can. 19.

Tribunal of the Archdiocese of the respective ecclesiastical province functions as the Tribunal of Appeal.

If this is indeed the case, it is very favorable for the application of the new marriage process, which makes a clear choice to bring the Tribunals as close as possible to the faithful, considering the general norm the diocesan Tribunal, which can only not exist when it is impossible to constitute it, without this possibility dispensing the Bishop to form as soon as possible the people who can allow the constitution of the diocesan Tribunal. This is not the case in other countries and continents, even in Europe, where the norm (the diocesan Tribunal) has become the exception.

It is not new that the Bishop is recognized as judge in his diocese. The Code of 1917 already said so, and the current Code, in the light of the Council, takes it up. Nor is it new that this judicial power, part of his power of government, the Bishop can exercise it by himself or through others, adjusting himself to the norms that regulate its exercise.⁴³

Nor is it new that each diocese should try to have its own tribunal of first instance. The possibility of an interdiocesan tribunal was always an exception, so much so that it required the intervention of the Holy See.⁴⁴

The current situation has led the Holy Father to promote the creation of diocesan tribunals for causes of nullity.⁴⁵ In this way, it will be possible to respond to the needs of the faithful with the pastoral service of justice, which approaches the faithful as the Good Samaritan does to the wounded on the road.⁴⁶ In order that there may be no doubt as to the urgency of the commitment required of the Bishops to create their own Tribunal, in order to bring the pastoral service of justice in causes of nullity closer to the faithful, they have been given the faculty to withdraw from the interdiocesan Tribunal currently in their diocese for causes of matrimonial nullity, without the need to ask permission from the Holy See. Likewise, they can pass from the interdiocesan Tribunal to another of a diocesan character, closer than the one they are leaving.⁴⁷

The creation of the Diocesan Tribunals, on the other hand, makes even more evident the Bishop's status as judge in his diocese, as the Pope himself wished to point out in the preamble of *Mitis Iudex* and *Mitis et misericors*, and in the citation he makes of them in the Apostolic Exhortation *Amoris laetitia*: "With these [both *Motu proprio*], I wished 'to make clear 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' (*Motu proprio Mitis Iudex Dominus Iesus*, Preamble, 3)".⁴⁸

In any case, the Bishop will not be able to rest simply because he has a diocesan or interdiocesan Tribunal close to his faithful. He must also strive with solicitous pastoral zeal to prepare clerics and laity of the diocese to make the diocesan Tribunal for causes of matrimonial nullity effective.

As we will see later, the Tribunal of first instance is of capital importance for the treatment of causes according to the ordinary process, but this does not prevent that, under certain conditions, even if there is no diocesan Tribunal, the diocesan bishop may treat causes in his diocese according to the *processus brevior* before the diocesan bishop.⁴⁹

2.- Collegiate tribunal or single judge

The need for a collegiate tribunal with a minimum of three judges to resolve causes of

⁴³ Cf. can. 1419 § 1 of the CCD, in the light of its sources: can. 1572 § 1 of the CCD 1917, *Lumen gentium*, n. 27, and SIGNATURA APOSTOLICA, Litt. 24 iunii 1972, n. 1.

⁴⁴ Cf. canons 1420-1421 for the diocesan tribunal, and can. 1423 for the interdiocesan tribunal.

⁴⁵ Cf. can. 1673 § 2.

⁴⁶ Cf. *Lk* 10:25-37.

⁴⁷ Cf. *Mitis Iudex*, Procedural Rules, art. 8 § 2.

⁴⁸ FRANCIS, Apostolic Exhortation *Amoris laetitia*, n. 244.

⁴⁹ Cf. APOSTOLIC TRIBUNAL OF THE ROMAN ROTA, *Subsidio applicativo...*, pp. 18-19.

matrimonial nullity has been maintained as a general principle and criterion. However, in order to facilitate the treatment of these causes where there are not enough clerics, it is now admitted that two of them be laypersons, it being sufficient that there be at least one cleric in the college.⁵⁰

This principle of the collegiate tribunal admits the exception, when it is not possible to have a collegiate tribunal. It is the Bishop Moderator of the Tribunal (whether diocesan or interdiocesan), who can make this decision by entrusting the causes to a single judge, who must always be a cleric. For this, he does not need, as in the past, the “permission” of the Episcopal Conference. This single judge, as soon as possible, should have two advisors, experts in juridical or human sciences relevant to the matter in question, approved in a stable manner by the bishop for this task of consultancy.⁵¹ They could be jurists, psychiatrists, psychologists, or experts in other disciplines that may be useful in advising the judge in the particular aspects of each cause.

3.- The Tribunal of second instance

The number of cases to be heard in the Tribunals of Appeal has decreased, since there is no longer an automatic appeal of cases with an affirmative sentence in the first instance. Only cases that have been concluded with an affirmative or negative sentence in the courts of first instance and that are expressly appealed by one of the parties or by the defender of the bond.⁵²

In the same way that the existing interdiocesan tribunals do not automatically disappear with the entry into force of the new marriage process, neither do the tribunals of appeal. It will be the decisions that the Bishops will make, creating their own diocesan Tribunals or for more than one diocese (according to the freedom granted to them by the new norms to do so), with the corresponding determination of the Tribunal of Appeal, which will determine the fate of the current Tribunals of Appeal.

Necessarily, then, as they are created, as urged in *Mitis Iudex*, the new Tribunals of Appeal must also be created. These should be, in principle, the metropolitan courts. The intention was to revitalize an ancient and fruitful discipline, at the service of the proximity of the Tribunals to the faithful. In the case of the archdiocesan tribunals of first instance, it is the Archbishop who must designate a stable tribunal of appeal, with the approval of the Holy See through the Apostolic Signatura.⁵³

This does not apply to interdiocesan Tribunals, for which the Court of Appeal will always be the one created by the Episcopal Conference, with the approval of the Holy See.⁵⁴ The Episcopal Conference may create more than one Tribunal of second instance, in addition to the existing one, with the approval of the Holy See. This can be especially useful if, in accordance with the principle of proximity, which inspires the reform of the nullity process, a Bishop decides to adhere to a diocesan Tribunal of an ecclesiastical province other than his own.

In any case, the second instance court will always have to decide in a collegial manner, under penalty of nullity of the decision, thus not being possible in the second degree the decision of the single judge.⁵⁵

4.- Practical guide for the constitution of new Tribunals

The new norms require, for their correct application, the creation of new diocesan or interdiocesan tribunals of first and second instance.

⁵⁰ Cf. can. 1673 § 3.

⁵¹ Cf. *Mitis Iudex*, Proemio, II, and canon 1673 § 4. This changes the provision of the current canon 1425 § 4, which obliged the Bishop Moderator to have the “permission” (*permittere potest*) of the Episcopal Conference to entrust causes to a single judge, always a cleric.

⁵² Cf. *Mitis Iudex*, Proemio, I.

⁵³ Cf. *Mitis Iudex*, Proem V, can. 1673 § 6 and canons 1438-1439.

⁵⁴ Cf. can. 1439 of the CDC.

⁵⁵ Cf. can. 1673 § 5.

It should be noted that a bishop whose diocese belongs to one of the current interdiocesan tribunals does not need to ask for permission or approval to form a diocesan tribunal for the treatment of causes of matrimonial nullity. This is clearly stated in the current norm. If he is unable to do so, he can accede to another diocesan or interdiocesan Tribunal, always keeping in mind the criterion of the Tribunal's proximity to the faithful.⁵⁶ Even in the case of being part of an interdiocesan Tribunal, as happens in the majority of cases in Peru, the faculty to withdraw from this Tribunal for causes of nullity remains intact.⁵⁷

In such a way that some raised doubts about this faculty of the Bishop to withdraw from the interdiocesan Tribunal without the need for authorization from the Holy See, that the Holy Father expressly asked the Dean of the Roman Rota, president of the Pontifical Commission that prepared the text of *Mitis Iudex*, that for the purpose of definitive clarity in the application of the pontifical documents on marriage reform, that the mind of the supreme legislator of the Church be clearly manifested on the two *Motu proprio* reforming the process of matrimonial nullity, for the Latin Church and for the Eastern Churches. The Dean did so last November 4, saying on this point:

“The diocesan Bishop has the native right, and free by reason of this pontifical law, to exercise *personally* the function of judge and to erect his diocesan Tribunal”.⁵⁸

Doubts also persisted in some about the power of the Bishops to agree to the creation of new interdiocesan tribunals, of first and second instance, within and beyond the limits of the ecclesiastical provinces. Also to this point, therefore, the Holy Father's request to the Dean of the Roman Rota to express the mind of the supreme legislator was extended. And so he did on the same occasion already mentioned:

“The Bishops of the same ecclesiastical province, in the case where they do not see the possibility of constituting their own Tribunal in the immediate future, may freely decide to create an interdiocesan Tribunal; remaining, according to the law, that is to say with the approval of the Holy See, the possibility that the metropolitans of two or more ecclesiastical provinces may agree to create the interdiocesan Tribunal both of first and second instance”.⁵⁹

Speaking spontaneously after his written address on March 12 of this year to the participants in the Course given by the Roman Rota on *Mitis Iudex*, Francis summed up the provisions of the new norm, and his own mind on the matter, in four principles:

“First Principle: Each Bishop has the right to create his own Tribunal.

Second principle: Each Bishop has the right to associate one or more nearby Bishops (in the same ecclesiastical province), to constitute the Tribunal.

Third principle: Each bishop has the right to associate with one or more bishops of other provinces or metropolitans, in this case requesting an approval from the Apostolic Signatura.

Fourth principle: regional tribunals, such as exist, for example, in Italy, are not obligatory. The Bishop is free to decide whether to remain or to do otherwise”.⁶⁰

The Bishop who creates a Tribunal, whether of first or second instance, must give notice to the Apostolic Signatura, which is responsible for the supervision of all Tribunals, and if he needs for any member a dispensation from the conditions required by law, he must ask for it before the creation of the Tribunal. The same is to be said of Bishops who decide to create an interdiocesan Tribunal within the same ecclesiastical province. If, on the other hand, it is decided to create a new

⁵⁶ Cf. can. 1673 § 2. The verb used in the norm is clear and imperative: “*constituat*”.

⁵⁷ Cf. *Mitis Iudex*, Procedural Rules, art. 8 § 2.

⁵⁸ La “*mens*” del Pontefice sulla riforma dei processi matrimoniali, in L'Osservatore Romano, 8 novembre 2015, p. 8.

⁵⁹ *Ibid.*

⁶⁰ FRANCESCO, *Ai partecipanti del corso della Rota Romana sul Motu proprio Mitis Iudex*, 12 March 2016 (in Quaderni Rotali [2016], in press). The translation from Italian is mine.

Tribunal composed of dioceses of more than one ecclesiastical province, the permission of the Holy See must be obtained, as in the past.⁶¹

The minimum personnel necessary to constitute a diocesan tribunal for causes of matrimonial nullity consists of a judicial vicar, a defender of the bond and a notary, and, when their participation is required because the public good is at stake, a promoter of justice. There should be at least one assessor, to act in causes that are resolved by *processus brevior* before the diocesan bishop. If a Tribunal is intended to be able to judge collegially the causes of nullity, at least two other judges must also be present.

As an optional office there is that of the auditor, to whom the judicial vicar or the judge can entrust the instruction of a cause, whether it is carried out with the ordinary process or with the *processus brevior* before the bishop.

a) The Judicial Vicar must be a priest over thirty years of age, distinct from the Vicar General unless the diocese is very small or the causes are very few, of good reputation, and at least a licentiate in canon law.⁶² To appoint a priest with sufficient experience but without a degree in canon law as Judicial Vicar, a dispensation from the Holy See is required, which is granted by the Apostolic Signatura.

b) The defender of the bond and the promoter of justice can be clerics or lay persons, with proven prudence and zeal for justice, and at least a degree in canon law. Dispensation from this title must be requested from the Holy See, through the Apostolic Signatura.⁶³

c) The judges can be clerics or laymen, at least with a degree in canon law.⁶⁴ The dispensation from the academic degree, as in the previous cases, corresponds to the Apostolic Signatura. This dispensation is granted more easily when the candidate who lacks the academic degree has special characteristics of proven maturity and prudence, acquired in other areas of the juridical discipline.

All the offices mentioned so far are appointed for a determined period of time. There are no precise indications as to the duration of this term, but it usually varies between three or five years, although it may be longer, according to the conditions of the candidate and the customs or needs for similar offices.⁶⁵

In a college of judges that resolves a cause, it is sufficient that only one judge be a cleric; the other two may be laypersons.⁶⁶ Moreover, if it is not possible to form a diocesan or interdiocesan collegiate tribunal, it is the Bishop's faculty to entrust it to a single judge, who must always be a cleric (i.e., priest or deacon). In this case, as far as possible, two assessors should be associated with the single judge.⁶⁷

d) These advisors must be approved for such a function by the Bishop, and must have an exemplary life and experience in the juridical or human sciences.⁶⁸ Among these can be considered not only canon law and other juridical sciences, but also psychiatry, psychology, and psychological counseling. One of these advisors, or others with similar qualifications, should assist the Bishop in deciding a cause carried forward by the *processus brevior*.⁶⁹

e) The notaries can be specific to the task of the Tribunal, or the same ones who intervene in other processes of the diocesan curia. They must be persons of good reputation, above suspicion. Only if the reputation of a priest is at stake in the matters in which they intervene (and in principle

⁶¹ Cf. can. 1423.

⁶² Cf. can. 1420 §§ 1 y 4.

⁶³ Cf. transs. 1430, 1432 y 1435.

⁶⁴ Cf. can. 1421 §§ 1 and 3.

⁶⁵ Cf. can. 1422.

⁶⁶ Cf. can. 1673 § 3.

⁶⁷ Cf. can. 1673 § 4.

⁶⁸ Cf. *ibid.*

⁶⁹ Cf. can. 1685 y 1687 § 1.

this does not have to be the case in a cause of matrimonial nullity), the notary must be a priest.⁷⁰

f) The auditors, to whom the Judicial Vicar or the judge may entrust the instruction of a cause with the ordinary process or with the *processus brevior*, must be approved by the Bishop, and may be clerics or laymen, of good morals, who have sufficient prudence and upright doctrine.⁷¹

Conclusions

In short, the principles of the reform, which serve as the pillars on which it rests, express the need for a true conversion of persons and the updating of the structures that offer the Church's judicial service, in such a way as to make it more consistent and effective, within the framework of the Church's unique mission, willed by God to serve as an instrument that, in his hands, contributes to the salvation of mankind.

As I understand it, what Francis expressed in his first Apostolic Exhortation of November 24, 2013, *Evangelii gaudium*, as a dream of his regarding an ecclesial renewal that cannot be put off, applies in its entirety to the renewal that these principles just exposed, intended for a service that also cannot be put off, to the salvation of the faithful, through the exercise of the judicial ministry:

“I dream of a ‘missionary option’, that is, a missionary impulse capable of transforming everything, so that the Church’s customs, ways of doing things, times and schedules, language and structures can be suitably channeled for the evangelization of today’s world rather than for her self-preservation. The renewal of structures demanded by pastoral conversion can only be understood in this light: as part of an effort to make them more mission-oriented, to make ordinary pastoral activity on every level more inclusive and open, to inspire in pastoral workers a constant desire to go forth and in this way to elicit a positive response from all those whom Jesus summons to friendship with himself”⁷².

To this dream of Pope Francis can surely be added, as a charge to all the Tribunals of the Church, integrated into the pastoral service of the Church to families, what he himself said to the Roman Rota, his own Apostolic Tribunal, considering its members as pilgrims in hope: “the Church entrusts a task of great responsibility to you, but first of all of great beauty: to help purify and restore interpersonal relationships. The Jubilee context in which we find ourselves fills your work with hope, the hope that does not disappoint (cf. Rom 5:5). I invoke upon all of you, *peregrinantes in spem*, the grace of joyful conversion and the light to accompany the faithful towards Christ, who is the meek and merciful Judge.” (Francis, Address to the Roman Rota, 31 January 2025).

⁷⁰ Cf. trans. 483 y 1437.

⁷¹ Cf. can. 1428 § 2.

⁷² FRANCIS, Apostolic Exhortation *Evangelii Gaudium*, n. 27.