Mitis Iudex Dominus Iesus

In 2015 Pope Francis issued 2 motu proprios: *Mitis Iudex Dominus Iesus* for the Latin Church and *Mitis et Misericors Iesus* for the Eastern Catholic Churches. These are very similar and were issued at the same time. They were signed on August 15th (the Assumption of Mary); released on September 8th (the Birthday of Mary) and came into effect on December 8th (the Immaculate Conception). Both documents call upon Mary, the Mother of Mercy, in their conclusions.

These documents give the new procedures for the formal process concerning the declaration of nullity of marriage. Pope Francis' emphasis on mercy is at the heart of these changes. The role of mercy can be seen in various areas -

(1) Mercy is based on truth. Despite what certain parts of the media have said, the new process is just as thorough as the former one in establishing the truth as to whether or not a marriage is invalid. Moral certainty still has to be reached before declaring a marriage null. If there is any doubt then the validity of the marriage is upheld. The fact that there has been no weakening of the standard required for a declaration of nullity is further supported by the fact that no new grounds (that is, reasons) for nullity have been added.

(2) Access to the Church's judicial system must be free. People request a declaration of nullity not just because they wish to enter a new union in the Church. Some will request a declaration to give them closure and enable them to move on. For example, those who have been in abusive relationships. It is thus essential that nobody is put off applying by financial constraints. In practice, at diocesan level, many tribunals may still ask for a donation towards their costs. I would think this is acceptable as long as it is clear that these are merely requests for voluntary donations and that a case will be heard for free and that its outcome has nothing to do with any payment.

The matter of payments is very pertinent with regard to cases which go to the Roman Rota. Here the parties must have an Advocate who is qualified to present such cases. These Advocates have been expensive. It has been possible for parties to apply for the Church's equivalent of legal aid. This has involved local tribunals having to contact them to obtain proof that they cannot afford an Advocate themselves. This has resulted in awkward requests for bank statements and the like. Hopefully, this situation will improve.

(3) The time taken to receive a decision must be just. A tribunal has to perform a balancing act. On the one hand, it must not delay reaching a decision. On the other, it must be careful to give sufficient time to obtain accurate evidence (a case could be unjustly unsuccessful because not all the available evidence was obtained). The new rules help reduce the time taken to process a case.

In some quarters much has been made of a new shorter process which can be used in certain circumstances. I shall come back to this. What is important is that even without this shorter process the new norms make things quicker -

(a) The rules governing which tribunal can process a case have been simplified. Until the recent changes if an individual contacted the tribunal of the diocese in which he or she lived for a declaration of nullity then the tribunal could not necessarily take on the case. Often permission from elsewhere was needed. This took time. Now the tribunal of the individual's diocese can take the case on immediately. Not only does this save time but it also enhances the bishop's pastoral care for those in his diocese. The tribunal, which is an extension of the bishop's judicial power, can now assist him in his concern for those within his diocese without needing the permission of someone in another diocese. This new emphasis on the bishop's judicial power will be seen again in regard to the shorter process.

(b) Instead of using three judges to assess a case, the use of one is allowed. Thus, instead of three judges focusing on just one case, each judge could be deciding his own case. This would allow a greater turnover of cases. The new law still allows three judges to be used on a case and many tribunals will continue to do so because the observations of each judge is helpful.

(c) There is now a presumption that parties and witnesses are truthful. This will reduce the time taken obtaining corroborating evidence.

(d) If the initial tribunal gives a decision in favour of nullity then the case no longer has to go to a second tribunal to be ratified. It was rare for a second tribunal not to agree with the first's affirmative decision. Thus, the removal of this generally unnecessary step will prevent delay.

(e) Building on the previous point, once any tribunal in the chain gives an affirmative decision the case need not go any further. Until the recent changes two tribunals had to agree on an affirmative decision. One fairly common scenario was the following. An individual applied to a tribunal. The tribunal gave a negative decision and so upheld the marriage. The individual then appealed to the next higher tribunal (usually in the same country). This tribunal obtained further evidence and was able to grant an affirmative decision. However, the law was that this affirmative decision had to be agreed by a higher tribunal - in most cases the Roman Rota. This all took time. This is no longer the law. Once an affirmative decision has been given the case need not go any higher.

(f) The shorter process. There are some cases where the nullity of marriage is most evident. In these instances collecting evidence from many witnesses would be superfluous. Also, the full formal process with a judge would be unnecessary. The diocesan bishop is central to this shortened process. He is the chief judge of the diocese and is able to use his judicial power for the good of those in his care. This power is intimately linked with his episcopal state and so the bishop cannot delegate his role in the shorter process to someone else. However, the Judicial Vicar and tribunal personnel help collect the evidence, compile the case and provide advice.

The shorter process can only be used when both the person applying wants the declaration of nullity and also the other party (the Respondent) wants it.

As previously stated, this shorter process is for the more obvious cases. The following examples are given:
A lack of faith which gives rise to simulation of consent (not intending the vows) or an erroneous understanding of marriage which undermines consent; The brevity of shared marital life; Abortion to avoid procreation; An affair at the time of the wedding and immediately afterwards; Fraudulently hiding the fact that there is sterility; Fraudulently hiding the existence of a serious contagious disease; Hiding the existence of children resulting from a previous relationship; Hiding the fact that one has been to prison; Pregnancy being the cause of the marriage; Physical violence being the cause of consent; Other totally external causes of the marriage; Defects of the use of reason with supporting medical documents.

This list is not meant to be exclusive. Moreover, the existence of one of these factors does not mean that the marriage is automatically null. As marriage enjoys the favour of the law, the onus is on proving that it is null. Thus, even with one or more of these factors, it remains valid until there is moral certainty that it is not.

If during this shorter process it becomes clear that the bishop will be unable to grant a declaration of nullity because of insufficient evidence and that more detailed evidence will be required then the case is transferred to the fuller process.

As with the fuller process, there is always the possibility of parties lodging an appeal. The new norms reduce unnecessary and time-wasting appeals while maintaining access to justice.

In conclusion, the new norms concerning cases of marriage nullity imbue the search for truth with the mercy of God. This has always been the aim. However, the removal of financial constraints and quicker processes help with this. Finally, the new rules assist diocesan bishops to use their judicial power for the good of those in their care.

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