

The Marriage Nullity in the Context of Pastoral Service

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Introduction

The principal theme of this presentation is the office or diocesan service of providing help to the faithful who have experienced a failure in their marriage. We shall see that this office is of great importance, and in a special way to pastors. For them in their service to the faithful, who are concerned about this matter of the validity of their failed marriage, pastors become bridges for the faithful in order for them to have within arm's reach the pastoral response of the diocesan church through the Diocesan Tribunal.¹

In every parish, there are faithful who are in need of this service. It's not a choice of the pastor, therefore, according to his greater sympathy or antipathy towards juridical tools that can serve for the good of the faithful, to help them or not when they are asking about the validity or nullity of their failed marriage, but rather an obligation included in his pastoral service. It is precisely the pastoral spirit of service to all the faithful that needs to motivate the pastor to help those who are asking to for access to the ecclesial tribunal when they need to verify the validity or nullity of their marriage. It's safe to say that the pastors are missionaries of this pastoral work of justice especially to the faithful who feel distant from the Church. This task needs to be understood within the context of pastoral service that the whole Church is called to undertake, also through its judicial tools, in specific and particularly the ministry to the faithful who find themselves before the failure of their marriage and before the doubt about the validity or nullity of their contracted bond.

The object of this presentation is to help (us) to rightly understand the ways proposed by new norms from the Synod of Bishops, to facilitate a spirit of communion and obedience to the supreme legislator,² that permits its effective application with right prudence to require to do it without any rush, having always in mind the good of the faithful as the central preoccupation of the mission of the Church, which has also guided the promulgation of the new processes.

¹ To be clear from the beginning, when I am referring to the diocesan tribunal I am also referring to the interdiocesan tribunal which the diocesan bishop can have access to since he is not able to constitute his own according to canon 1673 § 2.

² Meanwhile for the personnel of ecclesiastical tribunals it should be sufficient to use the term "obedience", while referring to the relationship between the Bishops and the Pope it is more appropriate and to use the term "communion", which at a higher ecclesiological level implies obedience.

For this reason, I have avoided in this text the use of excessive footnotes limiting myself to the essentials that deals with or refers to the Pontifical Magisterium and synodal conclusions, to the Motu proprio *Mitis Iudex*, and to *Subsidium* prepared by the Roman Rota.

I. - Pastoral mark of the service of the faithful in the ecclesial tribunals

When he received the five hundred participants from all over the world in the course organized by the Roman Rota in the month of March of 2016 about the Motu proprio *Mitis Iudex* and for the procedure for the dispensation of the marriage *ratum et non consummatum*, in the written part previous the twenty minutes that he added spontaneously, Francis, in a phrase resumed the theme of this exposition. In referring to the Motu proprio, which reformed the process of marriage nullity: “These developments”, Francis said, “have an eminently pastoral objective: to demonstrate the Church’s concern for those faithful who await a swift assessment of their respective marital situations.”³

1. - The pastoral dimension reaches the entire ministry

The pontifical ministry has always had a dimension eminently pastoral, if we understand this term in its more evident meaning, to bring all men to the goods of salvation. Blessed Paul VI said in his Apostolic Exhortation that it could be considered its spiritual testimony, in which it gathering the fruits of the III Ordinary General Assembly of Synod of Bishops dedicated to the Evangelization towards the end of the Holy Year of 1975: “Evangelizing is, in fact, the grace and vocation proper to the Church, her deepest identity. She exists in order to evangelize, that is to say, in order to preach and teach, to be the channel of the gift of grace, to reconcile sinners with God, and to perpetuate Christ’s sacrifice in the Mass, which is the memorial of His death and glorious resurrection,”⁴ it is precisely in this that consist of the pastoral work of the Church.

However, it can be said that in a special way this dimension has been made visible, by the simple, profound and insistent way in which Pope Francis, with his signs and words, strives every day in order that this mission of the Church to always be giving strength to every work of the pastors.

This insistence of the Pope reaches also to the exercise of the judicial power, which has without any doubt, like every exercise of all the power in the Church, a principal objective, of the salvation of the faithful.

³ FRANCIS, to the *participants in the course organized by the Tribunal of the Roman Rota*, 12/03/2016 (http://w2.vatican.va/content/francesco/en/speeches/2016/march/documents/papa-francesco_20160312_corso-rotaromana.html).

⁴ Pope Paul VI, Apostolic Exhortation *Evangelii nuntiandi*, December 8th, 1975, n. 14.

It is understood then that introducing the rescript “ex audientia” on December 7th, 2015, in the vespers before coming into effect of the two Motu proprio which reformed the process of marriage nullity, Francis would say that these Apostolic Letters were given “to bring justice and mercy on the truth of the bond to those who have experienced the failure of their marriage.”⁵

In the same introduction of the rescript, the Pope exhorts us with words of the *Final Report* of the fourteenth Ordinary General Assembly of the Synod of bishops to draw near with all the Church towards “‘the weakest of her members, who are experiencing a wounded or lost love’ [*Final Report*, n. 55], restoring confidence and hope.”⁶

2. - Consequences in the judicial ministry

The pastoral dimension of all ecclesial ministries has specific consequences when it deals with the judicial ministry, in the concrete situation in which the reform of the process came for the declaration of marriage nullity.

Others could be pointed out, but I have chosen two of them, which acquires in my view special relevance because they reclaim a healthy updating of the structures and conversion of attitudes of us who work in the ecclesial tribunals.

From this point of view, it is understood that the Pope believes it necessary not only a “legal” embrace of the new norms, a new “obedience” to the letter of the law which needs to be applied, but also in its spirit, in order to achieve an effective pastoral attitude which helps the faithful come closer to an ecclesial tribunal, to encounter the salvation which they await. Pope Francis, on March 12, 2016 said as he received the participants of the course above mentioned: “It is important that the new norms be adopted and further developed, in merit and in spirit, especially by those working in ecclesiastical Tribunals, in order to render the service of justice and love to families. For many people who have experienced an unhappy marriage, verification of the presence or lack of validity of the bond represents an important possibility. And these people must be helped along this road in the swiftest manner.”⁷

It is important to note the exhortations that the Pope addresses to us in his

⁵ FRANCIS, *Rescript “ex audientia”*, December 7, 2015, introduction. It’s important to note that this rescript was published in L’Osservatore Romano, in Italian on December 12, 2015, adding to the large dates elected by the pope for the crucial moments of the new matrimonial procedure, all of them with a profound Marian significance: promulgation of Motu proprio August 15, solemnity of the Assumption; publication September 8th, Nativity of the Virgin; coming into effect on December 8th, Solemnity of the Immaculate Conception; Publication of the Rescript “ex audientia” December 12th, Solemnity of Our Lady of Guadalupe, Empress of the Americas.

⁶ *Ibid.*

⁷ FRANCIS, *To the participants...*, March 12, 2016.

discourse to the Roman Rota on January 23rd, 2015 because they are helpful not only to us (Auditors of the Roman Rota) but also to all the judges and all ministers of the ecclesiastical tribunals.

First, in a greater and more passionate commitment to our judicial ministry. The work of the judges is marked above all in the pastoral work of the Church this call to realize: “There is so much pastoral work for the good of so many couples, so many children, who are all too often victims in these matters! Here, too, there is a need for *pastoral conversion* of the ecclesiastical structures (cf. *Apostolic Exhortation Evangelii Gaudium*, 27) in order to offer the *opus iustitiae* to all those who turn to the Church to shed light on their respective conjugal situations.”⁸

The second is to not remain closed and to not close the salvation, which is the very mission of the Church, is to bring men closer to, in the juridical bottleneck. In the words of the Pope, conscious of the difficulty that this openness implies which is at the same time juridical and human, and precisely human since its juridical, to the reality of the fail marriages, which parities asked themselves of the validity of their bond: “This, then, is your difficult mission, as also shared by the judges of every diocese: do not close the salvation of people inside a juridical bottleneck. The function of law is directed toward the *salus animarum* on the condition that – and avoiding the sophisms that are far removed from the living flesh and blood of people who are in difficulty – it might help to establish the truth in the moment of consent: whether a person was faithful to Christ or instead to the lying paradigm of the world.”⁹

2.1. Shortening distances between the faithful and tribunals

We have already mentioned the reference from the Motu proprio *Mitis Iudex* to the distance both physical and moral that the faithful experience from the juridical structures of the Church, which discourages them in their intent to assuage their conscience regarding the subjective doubt or certitude of the nullity of their marriage.¹⁰ Pope Francis reminds us that since the Church is a mother, “who has the good of her children at heart and who is able to give her life for them.”¹¹ Precisely because of this he goes on to tell us in his intervention towards the end of the Ordinary General Assembly of the Synod of Bishops of October 5, 2015, being a mother she cannot remain passive but rather, “with the Merciful Heart of Jesus, the Church must draw near and guide the weakest of her members, who are experiencing a wounded or lost love, by restoring confidence and hope, as the beacon from a lighthouse helping them to find their way in the storm or a

⁸ FRANCIS, *discourse with the occasion of the inauguration of the year of judicial Tribunal of the Roman Rota*, January 23, 2015.

⁹ *Ibid.*

¹⁰ Cf. *Mitis Iudex*, Preamble.

¹¹ Cf. FRANCIS, *General Audience*, September 3, 2014.

torch carried in the crowd, to illuminate those who have lost their way.”¹²

The impetus of renewal in order to manifest the maternal closeness of the Church towards its hurting faithful because of their failed marriage, has intended that, through the reform of matrimonial procedure, the faithful experience, “both the physical and the moral closeness of the ecclesiastical juridical structures destined to offer the 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.”¹³

One of the reasons why it is difficult for the faithful to approach the tribunals of the Church is the progressive distancing, perhaps which is a product of technical specialization and its corresponding language used by tribunal personnel is sometimes hermetic (difficult to understand) for those who have not studied, of the personnel which has made them distant, if not invisible, for those pastoral instances which should attend this faithful.¹⁴

The reform of the matrimonial procedure, therefore, will require a change not only of structures, which certainly need to be adapted to this exercise of justice as pastoral ministry but also to true conversion of those responsible for guiding the process, having in mind that the task of the tribunal is to have the heart of the servants of the faithful as the Gospel and the institution of go hand in hand. As the same *Subsidium* reminds us “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.”¹⁵ Therefore, the judges should never forget that they are pastors themselves.

The Pope does not improvise, certainly, this pastoral vision about the service that is realized in the ecclesial tribunals, for the good of the faithful. In his first encounter with the Roman Rota, on January 24, 2014, Francis said to the judges and to the other officials of the Roman Rota and with them to all other judges and officials of all other ecclesial tribunals: “You are essentially shepherds. As you carry out your juridical work, do not forget that you are pastors! In every case, every profession and every cause,

¹² XIV ORDINARY GENERAL ASSEMBLY OF THE SYNOD OF BISHOPS, *Final Report*, October 24, 2015, n. 55.

¹³ APOSTOLIC TRIBUNAL OF THE ROMANA ROTA, *Subsidium For the Application of the M.p. Mitis Iudex. Introduction*, pg. 6.

¹⁴ There is room for a *mea culpa* to all of us who dedicate ourselves to Canon Law. This science, tangled up in technicalities, has sometimes lost contact with the faithful and with the service to saving mission of the Church.

¹⁵ APOSTOLIC TRIBUNAL OF THE ROMANA ROTA, *Subsidium... Introduction*, pg. 6.

people are waiting for justice.”¹⁶

2.2. The pre-judicial investigation

There is work to be done prior to the formal submission of a petition, which can be said to be both pastoral and pre-judicial. This work can be of great help for the faithful who feel that the tribunals are too distant or inaccessible to review of the validity of their conjugal bond, including those cases where the nullity is evident, which needs to be promoted and encouraged in every diocese, including possibly in every parish or groupings of parishes.

This service was already envisioned, at least since January of 2005, in what Pope Francis calls that modest but useful *Vademecum* (handbook),¹⁷ the Instruction *Dignitas Connubii*. The Pope considered the previous Instruction, and he mentioned it before the promulgation of the new process for the declaration of nullity of marriage, expressing his wish that it would be implemented effectively: “Once again it is helpful to recall what is prescribed in the Instruction *Dignitas connubii* in n. 113 – which is consonant with Canon 1490 of the Code of Canon Law – regarding the presence of competent persons in all ecclesiastical tribunals in order that counsel may be solicited with respect to the possibility of introducing a cause, or case, of matrimonial nullity.”¹⁸

The text of *Dignitas Connubii* which Francis referred to reads: “At every tribunal there is to be an office or a person available so that anyone can freely and quickly obtain advice about the possibility of, and procedure for, the introduction of their cause of nullity of marriage, if such should be the case.”¹⁹

We know that at times the texts could be reduced to a “dead letter,” if the Church does not dedicate itself to proactively implementing these initiatives. This happened with some tribunals, which leads to the suffering of conscience of the faithful, who found the bridge connecting them to ecclesiastical tribunals distant or difficult to access.

But, when evangelization and the pastoral activity of the Church is concerned brings the faithful to the instruments of salvation, it’s not enough to sit, to wait, and to hope that the faithful will come by their own initiative to take advantage of these instruments. There is a need to go to the faithful, with apostolic and missionary zeal, bringing the goods of salvation, as it’s the duty of the church and a church that exist to

¹⁶ FRANCIS, *Address Of Pope Francis To The Officials Of The Tribunal Of The Roman Rota*, 24 January 2014.

¹⁷ Cf. FRANCIS, *Address to Participants in an International Congress Sponsored By the Faculty of Canon Law of the Pontifical Gregorian University*, 24 January 2015.

¹⁸ Francis, *Address To The Officials Of The Tribunal Of The Roman Rota For The Inauguration Of The Judicial Year*, 23 January 2015

¹⁹ Instruction *Dignitas connubii*, art. 113 § 1.

evangelize.²⁰

One should not forget what St. John Paul II said in his Apostolic Exhortation after the Special Assembly of Synod of Bishops for the Church in Oceania, which Francis recalls citing it in his Apostolic Exhortation *Evangelii Gaudium*: “All renewal in the Church must have mission as its goal if it is not to fall prey to a kind of ecclesial introversion.”²¹

The *Motu Proprio Mitis Iudex* offers a good opportunity to shorten distances between the faithful and the tribunals, through the structures which are at the same time judicial and pastoral in the most habitual sense of the expression, propose in the first lines of the *Rules of Proceeding in Mitis*²², purpose of which is to reach out to the faithful offering this service. Having in mind the image often cited by Francis of the Church as a field hospital that needs to go out to the encounter of the hurting faithful, we could imagine, as that task is to realize through the pastoral initiative propose in the first *Rules of Proceeding of Mitis Iudex*, the ecclesial tribunal should be the “intensive care” unit of such a hospital, in which they will be treated, with specialized services, to whom consider their marital bond as being by seeking to know the validity or nullity.

It springs forward from the mission of the bishop that “as a good shepherd, must attend to his poor faithful who need particular pastoral care,” as it is in the case of those who are asking about the validity or nullity of their matrimony. In this sense, the tribunals have served the bishops to respond to the necessity of the faithful who are asking about the validity or their matrimony.²³ Several clues confirm us of the procedural rules, which point to the way we should go.

The first clue offered to us by the cited canon in the first article of procedural norms, which refer to the solicitude of the Diocesan Bishop for all the faithful that are in his charge, concerning himself it in a special way to the spouses who are separated or divorced²⁴, making as a goal of his apostolic eagerness those who, for their particular situation, cannot obtain in a sufficient manner the fruits of ordinary pastoral work, and also those who have departed from the practice of religion.²⁵ Just as the in the first in the second of these groups there are faithful who have failed in their matrimony and are in need of special pastoral attention, which begins with the solicitude of their bishop.

²⁰ Cf. Paul VI, Apostolic Exhortation *Evangelii nuntiandi*, 8 December 1975, n. 14.

²¹ JOHN PAUL II, Apostolic Exhortation *Postsynodal Ecclesia in Oceania*, 22 November 2001, n. 19. Cf. FRANCIS, Apostolic Exhortation *Evangelii Gaudium*, n. 27.

²² Cf. *Mitis Iudex*, Way of proceeding, arts. 1-5.

²³ *Mitis Iudex*, Way of proceeding, Introduction.

²⁴ Cf. *ibid.* art. 1.

²⁵ Cf. can. 383 § 1.

Certainly, pastors²⁶ are also involved in this apostolic zeal of the bishop who is helped by other presbyters, deacons, and lay faithful.²⁷

The second clue, offered to us at the beginning of the second article in which the phrase “The pre-judicial or pastoral inquiry,”²⁸ is used. Perhaps some experienced a moment of doubt and were unprepared for the presence of this phrase. In reality, the expression it’s explicitly desired to express the closeness to and pastoral attention given to the faithful during the first steps toward the tribunal. Also, the following steps especially when one begins to detect that there is not the possibility of finding oneself before a null matrimony in a way that halts the pastoral attention because a member of the faithful is guided into the judicial stage, nor does the judicial instance cut off the strictly pastoral stage.

As part of the pastoral work in regards to the faithful who have experienced a break-up in their marriage and there are signs of a possible nullity of their matrimony (because of defect of consent, diriment impediments not dispensed, defect of canonical form) there needs to be a great care which these cases require especially when the wounds are recent. All the elements of proof of divorce and the parts of nullity (partial exclusion or total, determining the substantial error, dolo, psychic incapacity, etc.). In order to have the possibility of applying for the Briefer Process, it is also important to establish the possible agreement of both parties in regards to the cause of nullity.²⁹

Lastly, everything that can be gathered during the pre-judicial phase the pastoral care given to the faithful who have experienced marital breakdown. The material collected will come together in the possible written petition which may be presented in the judicial phase of pastoral care. Those leading this pastoral service of helping people assist the party to present his or her petition before the competent tribunal.³⁰

3. - The bishop and his collaborators

The reform of matrimonial procedure calls for the pastors to pay attention to the faithful who are in need of special pastoral care after the demise of their matrimony. This solicitude includes the establishment of an eventual declaration of invalidity.

The roots of this call are evangelical. Jesus presents the parable of the lost sheep to the Pharisees and the scribes, who murmured about him because sinner came to hear Him.³¹ The faithful who are or feel far away, sometimes because of the closed attitudes of the ecclesial community, who have singled them out with an accusing finger, like the

²⁶ Cf. can. 529 § 1.

²⁷ Cf. can. 519.

²⁸ Cf. *Mitis Iudex*, Way of proceeding, art. 2.

²⁹ Cf. *ibid.*, art. 4.

³⁰ Cf. *Mitis Iudex*, Way of proceeding, art. 5.

Pharisees and the Scribes did with the adulterous woman who was brought to Jesus,³² require special attention, like that which e Jesus always offers.

There is a need of a new commitment of the whole Church in order to help with the new process of matrimonial nullity offered by the Pope to the bishops as a pastoral instrument for the faithful who need it so they can have access to this service. Moreover, to transform the small number to the great number who are in need of this same process. In order to achieve this, we need to overcome the barriers that have disheartened many in their attempt to have access to the Church's tribunals.

The central role corresponds to the bishop in the exercise of justice in his diocese,³³ an unavoidable dimension of his ministry of governance, which requires the cooperation of his *presbytery*,³⁴ and other faithful specially prepare for this task, in the unified diocesan pastoral care of marriage.³⁵ This without a doubt requires a change, an adaptation, and conversion of the structure of the particular church.³⁶

The point of this process is to reach all the faithful with this service and this can only be done with the help of the pastors. Pope Francis said in the inauguration of Extraordinary Jubilee of Mercy, "Wherever there are people, the Church is called to reach out to them and to bring the joy of the Gospel, and the mercy and forgiveness of God."³⁷

The words from the Pope expressed the urgency of the task, having before our eyes the sometimes unexplainable delays of defining the cause for matrimonial nullity, with the prejudice towards the faithful, and the complaints of the bishops in the III Extraordinary General Assembly of the Synod of Bishops from the beginning of its preparation.³⁸

The Church moves in the exercise of this power "with the desire that the many who experience the drama of a broken marriage may be touched by the healing work of Christ, through ecclesiastical structures."³⁹ This pastoral mode of its mission also through the judicial power can make also those who receive this mode the ministry of the divine

³¹ Cf. Lk 15: 1-7; Mt 18: 10-14.

³² Cf. Jn 8: 3-11.

³³ Cf. *Mitis Iudex*, Preface, II y III.

³⁴ Cf. can. 369.

³⁵ Cf. *Mitis Iudex*, Way of proceeding, art. 2.

³⁶ Cf. FRANCIS, Apostolic Exhortation *Evangelii Gaudium*, and n. 27, and en AAS 105 (2013), p. 1031.

³⁷ FRANCIS, *Homily*, 8 December 2015.

³⁸ Cf. Apostolic Tribunal of the Roman Rota, *Subsidium* for the application of the Motu proprio *Mitis Iudex*. Introduction. pg. 5.

³⁹ FRANCIS, *Rescript "ex audientia"*, 7 December 2015.

mercy, making it possible to create new missionaries. In the words of the Pope, “new missionaries of God’s mercy toward other brothers and sisters, for the benefit of the institution of the family.”⁴⁰

Speaking to the participants of the course done by the Roman Rota from the 7th to the 12th of March 2016, Pope Francis said, “Indeed, many faithful suffer on account of the end of their marriages and are often burdened by the doubt as to whether or not the marriage was ever valid. These individuals wonder if there was something in the intention or in the facts to impede the effective realization of the sacrament. Yet these faithful have in many cases encountered difficulty in accessing the ecclesiastical juridical structures and have signaled the need for the process to be simplified. Love and mercy, beyond being a reflection of experience, urges the Church to move closer to these individuals who are also her children, and she has thus heard their legitimate desire for justice.”⁴¹

“It’s not enough,” said Francis in the Mass celebrated with the bishops, priest, religious and seminarian participating in the 28th World Youth Day in Brazil, in his first trip to America, “to have the doors of the Church open”, so that the faithful who are hurting can come into it. A Church that is “going out” will be needed that goes to the encounter of the faithful who are in need of this service: “It is not enough simply to open the door in welcome because they come, but we must go out through that door to seek and meet the people” (July 23, 2013). This cannot be done without the pastors.

In an interview conducted by a Mexican journalist on November 22, 2016, published on the website of “*El Sembrador Nueva Evangelización*”, Pope Francis exhorted in a colloquial language to the parishes: “the parishes to the streets, every institution to the streets, to the streets in the sense of go out and search for open doors. My heart to the streets, in other words, my Christian heart open to the message of the one who suffers, the one who is having a hard time, the sick, the acts of mercy that are like the spine of the Gospel [...] Courage, courage eh? Like we are too comfortable and the community betrays us. Courage to go out, which is what St. Paul who had that apostolic fervor, apostolic fervor and to take, to take what we have received. Which we have received it freely, gives it freely, but the courage.”⁴² We can apply this directly to the task of going out to find the faithful who have failed in their marriage.

It is not sufficient for the work that is done “inside” the ecclesiastical tribunals. It’s necessary that the whole diocesan church places itself at the service of the needy faithful of this service, specialized to be sure, but eminently pastoral, as it is oriented to the

⁴⁰ *Ibid.*

⁴¹ FRANCIS, *to the participants of the course organized by Roman Rota in Rome*, March 12, 2016.

⁴² <http://elsembradorministries.com/esne/noel/encuentro-historico.html>.

service of the faithful in their concrete necessity of salvation when they doubt the validity or nullity of their matrimony. Here they find their place in the irreplaceable collaboration of the pastors, and of the other faithful diligently organized in service for the whole diocese, that brings the faithful to the service of the Tribunal.

II. - The office or diocesan service

In the *Final Report* of the XIV Ordinary General Assembly of the Synod of Bishops, referring to the great responsibility of the bishops to offer the faithful who have had an unhappy marital experience, the responsibility to verify the nullity of the matrimony: “This involves preparing a sufficient staff, composed of clerical and lay persons, who dedicate themselves *a priore* to this ecclesial service. Consequently, information, counseling and mediation services, associated with the family apostolate, need to be provided to persons who are separated or couples in crisis. These persons from the family apostolate are also able to receive persons in the preliminary inquiry of the marriage process (cf. *MI*, Art. 2-3)” (*Final Report*, n. 82).

The first articles of the “*The way of proceeding in cases regarding the declaration of the nullity of a marriage*,” which are part of the *Motu Proprio Mitis Iudex Dominus Iesus*, proposes an office or diocesan service dedicated to facilitating a way to bring the faithful closer to the service that the Ecclesiastical Tribunal can provide.

It also affirms in the same document that the diocese or several together, according to the present groupings, “can form a *stable structure through which to provide this service*”. The *Final Report* and, if appropriate, a handbook (*vademecum*) containing the elements essential to the most appropriate way of conducting the inquiry. In the *Final Report* of the XIV Ordinary General Assembly of the Synod of Bishops, in contrast, mentions an “information, counseling and mediation services, associated with the family apostolate, needs to be provided to persons who are separated or couples in crisis. These persons from the family apostolate are also able to receive persons in the preliminary inquiry of the marriage process” (n. 82).

It is obvious that we are dealing with the same pastoral reality, in the first case it describes with an evocative language of a text directly pastoral. In the second case, with the technical precision of normative language, that, however, is equally pastoral, in regards to the church, and moreover its norms as well, which work to the salvation of the faithful.

We will explain here these Rules of proceeding, that offer us, in a few words, the diverse elements of this office or pastoral structure: its end (art. 2), its persons/agents (art. 3, first part), its modality (art. 3, second part), and its tasks (arts. 4-5).

1. - Its end

“The pre-judicial or pastoral inquiry, which in the context of diocesan and parish structures receives those separated or divorced faithful who have doubts regarding the validity of their marriage or are convinced of its nullity, is, in the end, directed toward understanding their situation and to gathering the material useful for the eventual judicial process, be it the ordinary or the briefer one. This inquiry will be developed within the unified diocesan pastoral care of marriage.”⁴³

The first and primary end is the reception of the faithful. It’s important to have in mind the situation in which generally needy persons find themselves in this service, heavy with pain of their failed marriage and the wounds which this break down habitually causes, at times still open and “raw,” hence this requires a special sensibility, preparation, and capacity, in order that these persons can find through this service receive this maternal response of the Church which is motivated by the pastoral service to the care of its faithful.

Furthermore, this service has to give space also to the service the character of a more specifically technical, of investigation, in the concrete case of the person who is being served, it is possible that one finds oneself in the presence of matrimonial nullity, in order that the pastoral attention signifies also the possibility of opening the way and helping the persons in the condition of coming to the judicial service which they can receive in the Tribunal of the diocese.

In a work previous done before the one in the tribunal, at the same time pastoral and pre-judicial, of great help for the faithful that feel estranged or that their review of the validity of their marriage is not accessible; including the cases in which the nullity is evident. These services need to be fostered and encouraged in every diocese, including if possible in every parish or group of parishes.

The diocesan tribunal could be well organized but cannot be able to answer the inquiries of the faithful if the tribunal does not come to close the provide service to them. There is a need to go the faithful with an apostolic spirit and a missionary zeal. Bringing the good of salvation to them as it’s the responsibility of a Church that justly exists to evangelize.⁴⁴

This is all to cut the distances between the faithful and the tribunals through these structures which are at the same time judicial and pastoral.⁴⁵ With the image that Francis uses of the Church as a field hospital let us imagine the work of this office like the one that is realized in the “battlefield”, and the tribunals as the “intensive care unit”, that

⁴³ *Mitis Iudex*, Way of proceeding, art. 2.

⁴⁴ Cf. Paul VI, Apostolic Exhortation *Evangelii nuntiandi*, December 8, 1975, n. 14.

⁴⁵ Cf. *Mitis Iudex*, Way of proceeding, arts. 1-5.

applies specialized services to those who consider their matrimonial bond as being “mortally wounded”.

2. - Its members

“This same inquiry is entrusted to persons deemed suitable by the local ordinary, *with the appropriate expertise, though not exclusively juridical-canonical*. Among them in the *first place is the pastor* or the one who prepared the spouses for the wedding celebration. This function of counseling can also be *entrusted to other clerics, religious or lay people approved by the local ordinary*.”⁴⁶

This is a manifestation of the wide range of those called to form part of this service and the qualities necessary for those engaged in this service.

In the first place, without making it impossible for them to delegate this task is the pastor which its proper duty. The previous attempts to create this service in the narrow walls of the tribunal have demonstrated their ineffectiveness. This requires us to go beyond the narrow limits to bring an effective service to the faithful.

In effect, as it was previously stated, this service was already foreseen at least since January of 2005 within the ecclesiastical tribunal’s field, in that modest but useful *Vademecum*, as Pope Francis⁴⁷ calls it, the instruction *Dignitas Connubii*.

The pope claims that this should be a living letter and not just a pious although ineffective norm. For this reason, he has thought more coherently with the entire mission of the Church to bring the specialized service of the tribunals all the closer to the faithful, at least in this initial phase of consultation and discernment. This first binds the pastors, although, not just them. Also, other clerics, consecrated or lay persons can help in this service having the proper approval of the bishop and also the proper preparation as well. This preparation not only in the juridical and canonical field but also in other fields that could be useful in this case.

The bishops should take care of the formation of a sufficient number of personnel both made of clerics and layperson and among the first of them without doubt the parish pastors, whose proper care of the faithful has been entrusted to them.⁴⁸ All of them collaborating in this service of justice to ensure access to justice to the faithful: information, counseling and mediation services associated with the family apostolate. These services could also include meeting with individuals in view of the preliminary

⁴⁶ *Mitis Iudex*, Way of proceeding, art. 3.

⁴⁷ Cf. FRANCIS, *to the participants in the International Congress organized by the Faculty of Canon Law of the Pontifical Gregorian University, January 24, 2015*, and Instruction *Dignitas connubii*, art. 113 § 1.

⁴⁸ Cf. can. 519.

inquiry of a matrimonial process.⁴⁹

3. - Its modality

“One diocese or several together, according to the present groupings, can form a stable *structure through which to provide this service*.”⁵⁰

It correspond to the bishop’s responsibility, because normally surpasses the possibilities of the means available to the parochial radius. For this reason, it belongs to the diocese to organize this service or if the case requires it because of lack of resources or other reasons several dioceses together to provide this service.

It is clear that the Church cannot resolve in a single universal norm all the possible forms which this service might take, that will depend on the actual pastoral circumstances in as specific place, the quantity of prepared pastoral agents, and the means that one can count on to achieve this service. In every diocese, there needs to be the possibility or the advisability to offer a service realized by the parishes or some of them together or by means of a in a diocesan structure. Nevertheless, in every case there needs to be service to the faithful and that this situation should be done in the context of a unified diocesan pastoral care of marriage, that some of the diverse efforts turn to a common objectives, in order that this attention to the faithful serves also to bring all the elements that could be useful in a future cause of nullity.⁵¹

It will be the task of the ordinary of the place to organize the way of making reality this type of pastoral service working from what already exists in the diocese such as services of family counseling services, psychological, of the spiritual counsel, etc. One needs to keep in mind not only the indispensable service of the priest, primarily the pastors, also the service that the deacons and all the faithful can provide with experience and competence in various fields. In any case, a service needs to be formed which combines forces from different fields permits to have a better service to the faithful. There should be a minimal but effective organizational structure that coordinates the different efforts whether it is diocesan or Interdiocesan. This pastoral service, coordinating with other services that deal with other matrimonial or familial issues, should take care of the faithful whose matrimonies have failed, helping them when that is the case and also to bring them to the ecclesial tribunal, to bring forwards the cause for nullity of their marriage. A handbook (*vademecum*) prepared by persons who are experts and experienced done by the diocese or by a conference of bishops could be a useful

⁴⁹ Cf. FRANCIS, APOSTOLIC Exhortation *Amoris laetitia*, n. 244, where he also cites *Mitis Iudex*, Way of proceeding, arts. 2-3.

⁵⁰ *Mitis Iudex*, Way of proceeding, art. 3.

⁵¹ For example, the list of witnesses that can be cited, the documentation hinting to the documental proof of some chapters of nullity, includes the documentation of the marriage in question. Cf. *Mitis Iudex*, Way of proceeding, art. 2.

instrument to a pastoral agent that will serve these people, guiding them when necessary, to the doors of the tribunal⁵².

4. - Its tasks

“The pastoral inquiry will collect *elements useful for the introduction of the case* before the competent tribunal either by the spouses or perhaps by their advocates. It is necessary to discover whether the parties are in agreement about petitioning nullity.”⁵³ “Once all the elements have been collected, *the inquiry culminates in the libellus*, which, if appropriate, is presented to the competent tribunal.”⁵⁴ “This inquiry will be developed within the unified diocesan pastoral care of marriage.”⁵⁵

As you can already see the tasks indicated are numerous. We are dealing always of a pastoral task even when dealing with the specific collection of the elements to introduce a cause of nullity (documental proofs, among them possible expert witnesses, testimonial proofs, etc.).

It will be up to the faithful to decide to present the cause or not, counting on the help and guidance that they have received in the preparatory stage, but will not be left alone to take that step, if they decide to make it. They will help even in the crafting of the *libellus*, commonly known as the petition, with which they can formally initiate the cause for nullity before the tribunal

It is understood that should the faithful decide to not present the cause for nullity, or if they actually decide to do it, they will continue to be accompanied pastorally. This is why so important to realize this work in the context of the diocesan pastoral care of marriage which having an adequate continuation permits the relationship to go without bumps in the pastoral journey which brings the faithful in a growth of the encounter with Jesus in the Church.

In the pastoral care of attending to the faithful who have had a break down in their matrimony and there are signs of possible matrimonial nullity (defect of consent, diriment impediments, defect of canonical form), one should seek, with the delicacy and discretion that these situations require, especially when the wounds are still fresh, one should seek to collect all the elements of proof needed for grounds of nullity with care that these cases require (for example: partial exclusion or total, substantial determining error, dolo, psychic incapacity, etc.). In order to use for Briefer Process before the Bishop

⁵² Cf. *Mitis Iudex*, Way of proceeding, art. 3. Here is advice based upon the fruit of the experience. A *Vademecum* does not create pastoral realities that can be found there almost as a spontaneous generation. Its utility consists in proposing, alternating, organizing, ordering, and with it bring the potential of the pastoral instruments which are generated in the service of the faithful.

⁵³ *Mitis Iudex*, Way of proceeding, art. 4.

⁵⁴ *Mitis Iudex*, Way of proceeding, art. 5.

⁵⁵ *Mitis Iudex*, Way of proceeding, art. 2.

it will important to make sure of the agreement of both parties in the presentation of the cause of nullity.⁵⁶

Lastly, everything that can be gathered during this stage of pastoral attention of the faithful whose marriage has failed in order to present a possible cause for nullity will flow together in the preparation of the writing of the libellus (petition) which the person in charge of this service will help to write up in order to present it to the competent tribunal.⁵⁷

III. - Some examples

How all of these will be concretize in each diocese will depend in a vast number of circumstances, such as, how the work has been done up to this moment, the availability of trained personnel and structural and economic means, etc. For this reason, it's not possible to think about a concrete plan that can be helpful for every situation.

However, I consider helpful present three concrete applications of this aspect of *Mitis Iudex* in three dioceses, two from South America (one on each side of the Andes mountains) and one in North America (not as far north as Canada or the United States...).

More than the concrete aspects of each of these successful experiences I consider useful to attest that in each of them there are common elements that will prove useful as a guide for arriving at similar experiences in other dioceses.

1. - A diocese in Mexico

In this case, the initiation was of the diocesan bishop. Only after twenty days of becoming the Diocesan Bishop, at the beginning of September, 2016, at the request of his episcopal vicar for the family apostolate and his judicial vicar, he met for three day with one hundred of his priests and in the afternoon with three hundred lay people, to hear a judge of the Rota explain to them the developments and the pastoral service that follows from application of the new process of matrimonial nullity.

After having encourage the people present at the beginning of these fruitful days, on the last day of those meetings, Friday, the second of September, he came to invite all those who were willing to serve their brothers (and sisters) with the pastoral eagerness to bring to the ecclesiastical tribunal's service all those who might be in need of it. He also invited them to meet with his immediate collaborators the following Friday to begin to organize themselves and to be formed in order to offer service. More than eighty people attended and were motivated to join in this pastoral work. It consisted of a majority of lay people but there were among them a few priests, permanent deacons, and religious.

Among the lay people, a great number of them were sacramentally married; some

⁵⁶ Cf. *ibid.*, art. 4.

⁵⁷ Cf. *Mitis Iudex*, Way of proceeding, art. 5.

of them were already working in some task of the diocesan family apostolate or in other fields in the diocesan pastoral work. Yet others were lay people that had come to celebrate their marriage sacramentally after having obtained a marriage nullity.⁵⁸ Others were just beginning themselves to walk this journey of marriage nullity process.

The 28th of January of this year, little shy than a month, the office of Consultation and Guidance of the Diocesan Commission on the Pastoral Care of the Family, presented the group created of Counselors of Post Matrimonial Break-up, and the criteria and means including formative in which this new form of apostolate began in the diocese.

2. - A diocese in Chile

In this case, the initiating party was the Judicial Vicar, of particular conditions, since he is not just a canon lawyer but a bishop emeritus who next May 2nd he will turn 88 years old, God willing.

The initiative was enthusiastically accepted by the diocesan bishop, that on 1st of April of 2016 created in his diocese the office of “Tribunal Visitors to the Parishes,” and on 3 of June of the same year promulgated a *Vademecum* now at your disposal, in which details the goal, the means, and the modes of this service which they are called to realize. In the detailed description of this service, the document insists to highlight the importance of the essential connection between the Tribunal and the parishes, where the faithful find themselves in need of this service.

These Tribunal Visitors to the Parishes constitute a body of the Tribunal, linked to the family apostolate, whose purpose is to inform, counsel, and mediate. When the case permits to conduct the preliminary investigation of the process of nullity, for the faithful who can be helped by this pastoral service offer in the Ecclesial Tribunal, in order to clarify or in the eventual case to clarify, if the invalidity of the marriage is proven. They can be priests, deacons, religious or lay people “who, having fulfilled the necessary conditions to fulfill are qualify the task at hand, and who feel that the Lord has asked them to do this service” (Decree establishing the Service of Tribunal Visitors to the Parishes), and they present their request through the Tribunal, in order to be approved by the Diocesan Bishop.

It will be necessary that the Visitors be persons who are sensitive to human suffering, are able to listen, with a certain contemplative attitude that permits them to discover God acting in the conscience of the people.

This path was made possible dictated by several circular letters in which the vital connection between the Tribunal and the pastors was highlighted. For this reason, priests known as Deanery Collaborators were added to the Tribunal Visitors to the Parishes. These priests had as their responsibility to encourage the parish pastors encourage the

⁵⁸ Cf. FRANCIS, *Rescript “ex audiencia”*, December 7, 2015.

pastors and help them to put at their disposal the faithful to the service of the Visitors and at the same time to the Tribunal for the declaration of matrimonial nullity.

In the handbook, it details the attitudes necessary for the Visitors when they are called to the parishes, in order to conduct service of guidance to the faithful, having always in mind that three dimensions are necessary for the field: orientation in the strictly judicial context, of accompaniment and healing in the human dimension of the faithful hurting due to their broken marriages, and in the encounter with the Lord, the only one who saves. In it, there are twelve guides for the work of the Visitors, which range from the initial steps to the redaction of the written libellus, including the elements that can help to identify the cases in which to ask for the application of the brief process before the diocesan bishop.

In September of 2017, with the occasion of the two years of promulgation of *Mitis Iudex*, the bishop diocese has published a Guidebook of 26 pages, entitled “Parochial Pastoral concerning/on the Nullity of Matrimony,” with the indication that the pastors collaborate in this ministry.

3. - A diocese in Argentina

In this case, the initiative was of a woman, lawyer, mother of several young children, after a hard journey to obtain a declaration of nullity of her marriage, found it possible to encourage other faithful to take that hard step but a healing one. She presented herself to the Dean of the Canon Law Faculty presented her interest applied to be accepted into the program. She obtained the Licentiate (JCL) in canon law. She earned the degree after many long years of dedication together with her main responsibilities as a mother of a family; she presented herself to the bishop and made herself available to his disposal.

As the new process of matrimonial nullity had already been promulgated, the Bishop on 8th of May of 2016, together with a neighboring bishop created the Tribunal for the causes of nullity. This gave rise to what he called “Way of Hope,” a team of lay people of the diocese that accompanies, through an outline process to those who realize a process of discernment about the nullity of their marriage.

The goal of the service is to inform those who want to know about the process of marriage nullity and the steps they need to follow. To accompany those who wish to do the process of discernment for the nullity of their marriage as a process of personal healing and family healing.

To every faithful that comes seeking this service a person is assigned to accompany them. This person meets with the petitioner and following a detailed process of study, with various interviews accompaniment, following a process that has been studied diligently, with diverse interviews; this is how he accompanies the faithful and

properly guides him or her. Having completed that journey the canonist of the team helps to discern whether or not there does or does not exist sufficient foundations to initiate a process of nullity in the Tribunal, a decision that always remains with the faithful who has chosen this “Way of Hope.”

4. - Common elements, special accents, principal challenges

As already stated it’s not possible to give excessively detailed universal norms (an English expression which might be apt here is a “blueprint” for this service including the pre-judicial or pastoral investigation guiding the faithful that, having experienced matrimonial failure are asking for the validity or nullity of their bond.

You cannot ask for a recipe, complete and close, that has every single element so that the mechanical application brings about a result which everyone is seeking. At the same time, it is impossible to make it universal these three experiences that I know intimately, giving the fact that each of them responded to the history and the special circumstances of every diocese.

It will be necessary to have pastoral creativity moved always for the pastoral seal of going to the encounter of the hurting faithful because of their failed marriages. In order to attend to them in the best way possible, according to the circumstances, conditions and possibilities of each diocese.

Pastoral creativity it will be necessary which it is moved by the pastoral zeal of going to the encounter of the hurting faithful due to their failed marriages in order to attend the faithful in the best way possible according to the characteristics, condition, and possibilities of each diocese. However, it’s possible to recognize e some common elements in these three experiences that could be easily applied in similar circumstances. The particular accents each of them that one can take advantage in some of the dioceses with similar characteristics and the same challenges that are present in every case.

4.1. Common elements

- The participation of the lay faithful and priests, organized under the authority of the bishop.
- The goal of bringing the Tribunal closer to the parishes.
- The difficulty exists because of the lack of interest and commitment from some of the pastors, which fear the multiplication of their work which is already vast. Upon this challenge the only thing to do is to keep showing the trust in Jesus with boldness, the Word made flesh to save us, also to the priests and to continue to insist in the mission of the Church, which always sows seeds of hope.

4.2. Special accents

The accent of Mexico: the integration of the family apostolate, openness to many collaborators, such as lay faithful, religious and priests.

The accent of Argentina: initiative and participation of the lay faithful (even though in that diocese there are two priests participating in the course).

The accent of Chile: an initiative of the Tribunal, opening itself to the parishes to reach the faithful.

4.3. Principal challenges

Without a doubt, the first of the challenges is to involve in a greater number possible the faithful in this task, which properly ecclesial, even though not necessarily priestly. In order to accomplish this there needs to be thought of many faithful who are heavily involved in the task of the Church, and others who can join them, that have a particular predisposition and preparation for giving a warm welcome, the attentive listening and the empathy necessary to come in contact with the human hurt, maintaining the sufficient objectivity to give the proper counsel in every situation.

In Second place, there is the challenge of the preparation of the pastoral agents who will dedicate themselves to this service. This implies a preparation not only in the elements of the doctrine of faith and those elements which are properly juridical and canonically necessary to discern the cases in which it is possible that there exists a possibility of matrimonial nullity, but also in other circumstances that they can help in this service, like psychology, counseling both spiritual and psychological, and the ministry of listening.⁵⁹

Conclusion

This is a change not only of the structures, which should certainly be adapted to this service which is the call to the exercise of justice as a pastoral ministry, but, also, a true conversion of those who work in this service.

In the introduction of the Rescript “*ex audientia*” of December 7, 2017, on the vespers (Eve) of the coming into effect the *Motu Proprio* which renewed the process of marriage nullity. The Pope exhorts us with the words in the *Final Report* of the XIV Ordinary General Assembly of the Synod of Bishops and with a reverence which we do well to imitate, inviting us to incline ourselves, together with all the church, towards “the weakest of her members, who are experiencing a wounded or lost love” [*Final Report*, n.

⁵⁹ The School of Ministers of Listening was inspired by the Pope Francis when he was the archbishop of Buenos Aires and founded by father Eduardo Giotto OSB, father Juan Carlos Gil and Canon lawyer Vivian Morrow: <http://www.buscarsoloadios.com.ar/>.

55], to whom we need to restore confidence and hope.”⁶⁰

When Pope Francis received, the participants from around the world in the course conducted by the Roman Rota last March regarding the *Motu Proprio Mitis Iudex* and the procedure for the dispensation of a marriage *Ratum non consumatum* (that is the vows have been exchanged between two baptized persons, but the couple did not consummate the union), he concluded in a phrase the theme of this occasion referring to the two *Motu proprio* which revised the matrimonial nullity process, “these developments have an eminently pastoral objective: to demonstrate the Church’s concern for those faithful who await a swift assessment of their respective marital situations.”⁶¹

Mitis Iudex is not a frame law or directive that point to a new process, briefer process, that need to be applied according to subjective criteria dependent on the subjective opinions (including also that changing mind) of the ministers of the law, but rather a precise law, a law that obliges and commits, that offers a concrete instrument, to the service of the good of the souls “which has to be the supreme law of the Church.”⁶²

This process, then, needs to be applied every time that the condition of the petition together with the parts and the evidence of nullity, permit to respond to the faithful, with the decision of the Bishop, Shepherd and Head of the particular church, in briefest way possible.

May the Lord permit all of us, “unprofitable servants,”⁶³ to be adequate instruments to help the bishops, who have been called to this service of the apostolic ministry, to respond without haste to this need of the faithful.

⁶⁰ *Ibid.*

⁶¹ FRANCIS, *To the participants of the course organized by the Tribunal of the Roman Rota*, 12/03/2016 (http://w2.vatican.va/content/francesco/en/speeches/2016/march/documents/papa-francesco_20160312_corso-rotaromana.html).

⁶² Can. 1752.

⁶³ Lk 17, 10.