Nature and peculiarities of the briefer process before the Bishop

Msgr. Alejandro W. BUNGE

Little Rock, August 6, 2019

Introduction

The legislative initiative of Pope Francis to renew the special procedural law that governs the process to declare the nullity of marriage[1] came at an opportune time. The simplification and speed up of the process was requested by the Bishops of the whole world, and the III Extraordinary General Assembly of the Synod of Bishops asked "the possibility of determining an administrative path under the responsibility of the diocesan bishop", and also "a summary process to be initiated in cases of self-evident nullity"[2]. While the first of these proposals has not been accepted, thus preserving the judicial procedure for the declaration of nullity, "not because it is imposed by the nature of the thing, but rather by the need to protect the truth of the sacred bond to the utmost degree"[3], the second one was accepted by the Holy Father, establishing the process we are now presenting.

This new process to declare the nullity of marriage, called the "briefer marriage process before the Bishop"[4], which is added and does not overlap or merge with existing ones (the ordinary and the documentary), is what likely arouses most curiosity, not just for the novelty, but also and perhaps especially because its decision is entitled to the Bishop.

The name itself entails the mission of the new process (brevior) making it clear that even the ordinary process to declare the nullity of marriage has been simplified and streamlined compared to the existing process before December the 8th, this new process, then, is to be intended not only to speed up the treatment of nullity cases, but also as the right tool to respond to those faithful who find themselves in the particular circumstance of an evident case of nullity, and at the same time, with an easily and irrefutable proven

---

[1] FRANCISCUS PP., Litt. Ap. M.P. datae: Mitis Iudex Dominus Jesus quibus canones Codicis Iuris Canonici de causis ad matrimonii nullitatem declarandam reformatur, 15 agosto 2015, in AAS 107 (2015), 958-970 (di seguito Mitis Iudex); ID., Litt. Ap. M.P. datae: Mitis et Misericors Jesus quibus canones Codicis Canonum Ecclesiarum Orientalium de causis ad matrimonii nullitatem declarandam reformantur, 15 agosto 2015, in AAS 107 (2015), 946-957. Con il Mitis Iudex sono stati modificati i cann. 1671-1691 del Codice di Diritto Canonico, che si trovano nel Liber VII, De processibus, Pars III De quibusdam processibus specialibus, Titulus I De processibus matrimoniali-bus, Caput I De causis ad matrimonii nullitatem declarandam (cf. Mitis Iudex, Proemio, in fine).

[2] III Assemblea Generale Straordinaria del Sinodo dei Vescovi (5-19 ottobre 2014), Relatio Synodi, n. 48.

[3] Mitis Iudex, Proemio.

[4] Mitis Iudex, art. 5: «De processu matrimoniali breviore coram Episcopo».

evidence and without the danger of conflict between the parties[5].

The Proemium of the Motu proprio Mitis Iudex lists the fundamental criteria of the reform. Among these, the centrality of the Bishop emerges clearly. It is to be found in the exercise of the pastoral service to justice through his direct intervention as pastor and head in his Church[6]. In fact, the Bishop, to let his central role in the judicial dimension of the power of government in his diocese become more visible, he must offer a sign of conversion of the structures of his particular Church[7].

The Bishop may use the instruments of the Curia in the exercise of this ministry, but at the same time he will have to prepare himself for his personal exercise with regards to the cases of nullity. The Bishop will have to do it in a dedicated way, taking care personally of the resolution of the briefer processes in his particular Church, especially for those cases in which the arguments in favor of nullity are clearly evident[8].

In these cases, the Bishop, relying on specific suitable figures to provide adequate advice, once reached moral certainty about the nullity of marriage, will issue the affirmative sentence, or otherwise decide that the case should be treated with the ordinary nullity process.

It is clear that this will require the dedication and personal involvement of the Bishop in this area of his ministry, perhaps until now left only to his collaborators, but as the Roman Pontiff himself tells us in the Preamble of the new law, it is intended to respond to "the enormous number of faithful who, while wishing to care for their own conscience, are too often diverted from the juridical structures of the Church because of physical or moral distance".

This approach reserves a special place to the personal involvement of the Bishop, so as the Pope says in the introduction to the Rules of Proceeding, "like the Good Shepherd, bound to go out to meet his faithful who need particular pastoral care"[9].

This briefer process before the Bishop, on the other hand, must be understood in the totality of the cornerstones of the reform of the process to declare the nullity of marriage, listed in the Proemium of Mitis Iudex and highlighted in the *Subsidium*[10]: the centrality of the Bishop in the service of justice; the synodality in the pastoral service of

---

[5] Cf. il caso preso come esempio dal Papa: FRANCESCO, Mens legislatoris del 12 marzo 2016, in Quaderni dello Studio Rotale 23 (2016), 51.

[6] Cf. Mitis Iudex, Proemio, II-III.

[7] Cf. FRANCESCO, Esortazione Apostolica Evangelii gaudium, n. 27, in AAS 105 (2013), 1031.

[8] Cf. Mitis Iudex, Proemio, IV.

[9] Mitis Iudex, Regole procedurali (di seguito RP), Introduzione.

[10] Cf. TRIBUNALE APOSTOLICO DELLA ROTA ROMANA, Sussidio applicativo del Motu Proprio Mitis Iudex Dominus Jesus, Città del vaticano, 2016, 9-12 (di seguito: Sussidio applicativo).

justice; simple, agile and free procedures[11], thus managing to approach and make accessible the service of justice to the faithful who need it.

This process, however, must not be confused with the already existing documentary process, although there are some points in common. In the briefer case the proof is not only the documentary one, but also the testimony; not to forget that the peculiarity of this new process is the Bishop himself who issues the sentence, making it clearly different from other types of process previously envisaged.

We will follow a pattern that will progressively answer three questions meant to clarify what this new process consists of: *who can apply it, when can apply it and how must apply it*. Having personally taken part in the "*Special Study Commission* to Reform the Canonical Marriage Process" established by the Holy Father on August 27th, 2014[12], I apologize for not citing authors and allow me not to enter into doctrinal or scholar discussions on the subject, focusing me only on the illustration and explanation of the law in force.

1.- Who: The competent judge

First of all, we must consider who should generally be the competent judge, then the competent judge (or judges) in this specific case.

1.1. The Bishop only

By restoring the ancient personal Bishop jurisdictional power exercise, the Pope reserves him the application of the briefer process for the cases in which the nullity of the marriage is assumed on the basis of particularly evident arguments.

The Legislator himself highlights the reason for this choice. Certainly he thought that in cases of evident nullity faithfuls should not face unnecessary and avoidable delays, always keeping in mind that a process to be applied in a shortened manner could have jeopardized the indissolubility of marriage. Therefore, he considered it appropriate to reserve the decision of these cases to the Bishop, "who by virtue of his pastoral office is with Peter the greatest guarantor of Catholic unity in faith and discipline"[13].

It does not seem to be the case to retrace the historical events that, due to contingent circumstances, have progressively removed the Bishops from the direct and personal exercise of their judicial power[14], since it would lead away from the object of the present discussion. It is enough to keep in mind that this exercise had different forms,

[11] Disse il Papa Francesco un anno e mezzo dopo questa relazione (ma prima della sua pubblicazione), il 25 novembre 2017, nel Discorso ai partecipanti nel Corso organizzato dalla Rota Romana: "La prossimità e la gratuità, come ho più volte ribadito, sono le due perle di cui hanno bisogno i poveri, che la Chiesa deve amare sopra ogni cosa" (Communicationes, 49 [2017] 278, n. 8).

[12] Cf. Comunicato della Sala Stampa della Santa Sede, 20 settembre 2014.

[13] Mitis Iudex, Proemio, IV.

which went hand in hand with the different historical events and with the different needs of the faithful. Today, in this particular historical moment, we feel the urgency to respond in a safe, fast and effective way to a number of faithful who're in difficulty because they experience the suffering of a failed marriage, whose invalidity is easily demonstrable, for the existence of evidence that makes it clear. In order to work without delays in these cases, the Pope entrusted the briefer process to the diocesan bishops.

The legitimate choice of the Legislator is clear, once the essentially diocesan dimension of jurisdiction for the cases of nullity of marriage is restored[15], which places full trust in the individual responsibility of the individual Bishop for the application of the briefer process, personally involving him in the response which is asked of the Church today, in the current emergencies, faced in all its dimensions in the last two General Assemblies of the Synod of Bishops, the III Extraordinary of 2014 and the XIV Ordinary of 2015.

In the context of the Mitis Iudex, it does not seem that whomever presides over the particular Church can delegate to another person the authority to judge with the briefer process, unless he has a special concession, that he must to ask to the Holy See in particular cases. The circumstances to ask for this special concession can be, for example, some impediment – even temporary – of the Bishop, or the territorial extension of the diocese, or the large number of the faithful[16].

Someone may argue that the Bishop does not always have such in-depth and specific knowledge of canon law, considering it therefore not in a position to decide in which way to treat the case. This cannot be shared for two reasons: first, because, as we

---

[14] Il Concilio di Trento aveva fatto ritornare nelle mani del Vescovo le cause di nullità matrimoniale, (cf. CONCILIUM TRIDENTINUM, Sessio XXIV, canon XX, in: Conciliorum Oecumenicorum Decreta, Bologna 1973, 772-773).

[15] Cf. Mitis Iudex, can. 1673.

[16] È di grande importanza, per capire il posto centrale del Vescovo nel processo breviore, tener conto di quanto ha stabilito il Santo Padre il 25 novembre 2017, nel Discorso ai partecipanti nel Corso organizzato dalla Rota Romana, un anno e mezzo dopo la pronuncia di questa relazione (ma prima della sua pubblicazione): "Al fine di rendere l'applicazione della nuova legge del processo matrimoniale, a due anni dalla promulgazione, causa e motivo di salvezza e pace per il grande numero di fedeli feriti nella loro situazione matrimoniale, ho deciso, in ragione dell'ufficio di Vescovo di Roma e Successore di Pietro, di precisare definitivamente alcuni aspetti fondamentali dei due Motu proprio, in particolare la figura del Vescovo diocesano come giudice personale ed unico nel Processo breviore. Da sempre il Vescovo diocesano è Iudex unum et idem cum Vicario iudiciali; ma poiché tale principio viene interpretato in maniera di fatto escludente l'esercizio personale del Vescovo diocesano, delegando quasi tutto ai Tribunali, stabilisco di seguito quanto ritengo determinante ed esclusivo nell'esercizio personale del Vescovo diocesano giudice: 1. Il Vescovo diocesano in forza del suo ufficio pastorale è giudice personale ed unico nel processo breviore. 2. Quindi la figura del Vescovo –diocesano –giudice è l'architrave, il principio costitutivo e l'elemento discriminante dell'intero processo breviore, istituito dai due Motu proprio. 3. Nel processo breviore sono richieste, ad validitatem, due condizioni inscindibili: l'episcopato e l'essere capo di una comunità diocesana di fedeli (cfr can 381 § 2). Se manca una delle due condizioni il processo breviore non può aver luogo. L'istanza deve essere giudicata con il processo ordinario. 4. La competenza esclusiva e personale del Vescovo diocesano, posta nei criteri fondamentali del processo breviore, fa diretto riferimento alla ecclesiologia del Vaticano II, che ci ricorda che solo il Vescovo ha già, nella consacrazione, la pienezza di tutta la potestà che è ad actum expedita, attraverso la missio canonica" (Communicationes, 49 [2017] 277-278).

will see shortly, the Bishop, at the time of the decision, can rely on the help and support of the trial instructor and assessor, but the decision is reserved to him. On the other hand, considering the Gospel source of the canon law, it is clear that the Bishop will not lack his substantial knowledge as well as the sound doctrine and prudence of the Pastor.

1.2. Which bishop?

The titles of competence indicated by Mitis Iudex apply to all cases of marriage nullity, therefore also to the briefer process before the Bishop. These titles have now been extended and simplified, always following the criteria of closeness and proximity, mentioned several times in the Mitis Iudex Proemium.

Therefore, the Bishop called to decide the case of nullity of the faithful will be that of the marriage place of celebration, or of the domicile or quasi-domicile of one or the other party, or – finally – the Bishop of the place where most of the evidence is collected[17]. With specific regard to this latter title of competence, it should be noted that, in the particular case of the briefer process, this will certainly be the less frequent title, except for those limited hypotheses in which witnesses live far from the parties' domicile.

Although these titles of competence are equivalent, when more than one Bishops is equally competent in a given case, the criterion of proximity between the judge (in this case the Bishop) and the parties is to be preferred[18].

1.3. Bishops' support offices

The Bishop, to carry out the preliminary or pastoral inquiry[19], can count on his own diocese structures, both on diocesan and parish level (or aggregations of parishes), but needs specific aids to be able to apply the briefer process. So to say, at least a case instructor, an assessor, a defender of the bond and a notary.

1.3.1. The Judicial Vicar

In ideal conditions, the Bishop will have his own diocesan tribunal. In this case, the judicial vicar of the court will receive the *libellus*, and once decided, under the conditions and in the manner described below, the application of the briefer process in a given case, it will be possible to go forward.

If the Bishop doesn't have or cannot constitute immediately the diocesan tribunal, but instead has a judicial Vicar, this judicial Vicar will receive the *libellus* and, in the presence of the necessary conditions and in accordance with the criteria established by

[17] Cf. Mitis Iudex, can. 1672.

[18] Cf. Mitis Iudex, can. 1672.

[19] Cf. artt. 2-5 RP.

the diocesan Bishop, will start the case in the briefer process[20].

If the Bishop does not have a judicial Vicar in the diocese, the Bishop will still have the opportunity to work alongside a qualified person (possibly cleric, but also a lay person with title and experience) of his own diocese, or even ask for a priest entitled to another diocese, which can assist him in the decision to address a case to the briefer process[21].

In the extreme situation, i.e. none of the two conditions apply, the Bishop will still be able to address the briefer process to a neighboring court, so that the faithful always have the possibility to rely on their own Bishop who will decide their case of nullity by means of the briefer process[22]. In the light of the above, considering the unavailability of the judicial Vicar in a diocese, the *libellus* has to be addressed to the Bishop[23].

1.3.2. The instructor

The instructor, in principle appointed by the judicial vicar case by case[24], is the one who is in charge of collecting the evidence in the instructional investigation and, once the parties' defenses and the observations of the defender of the bond have been collected, hand them over to the Bishop to study and decide.

No need for special requirements, but it is clear that the importance of his duty demands experience and prudence. Nothing prevents the judicial vicar to act as instructor himself, in certain or all cases, always respecting the criterion of proximity, which means that an instructor of the case diocese of origin is to be appointed as far as possible[25].

More details on the instructor's tasks and on how to carry out the assignment will be presented later, during the explanation of the dynamics of the briefer process.

1.3.3. The assessor

The judicial vicar must also appoint an assessor. The requirements for the assessors who help, with their advice, the Bishop in the study of the case before the decision, are established by canons on the competent forum and courts.

They have to "be of upright life, experts in juridical or human sciences"[26], without further clarification; they can be not only canonists or jurists, but also psychiatrists,

---

[20] Cf. Sussidio applicativo, cit., 9.

[21] Cf. Ibid., 2.2-2.3, 19.

[22] Cf. Ibid., 2.4, 19.

[23] Cf. Ibid., 2.2-2.4, 19.

[24] Cf. Mitis Iudex, can. 1685.

[25] Cf. art. 16 RP.

[26] *Mitis Iudex*, can. 1673 § 4.

psychologists, psychological counselors or experts in other disciplines, according to the needs and matter, of each case.

1.3.4. The defender of the bond and the notary

Preserving the judicial procedure even in the briefer process, "not because it is imposed by the nature of the thing, but rather by the need to protect the truth of the sacred bond to the utmost degree"[27], makes necessary the intervention of the Defender of the bond.

In fact, remembering the requirement of the agreement between the parties in the request for nullity (either from the beginning, or at a later time, admitting that the Respondent consents to the Petitioner's initiative), it will be the presence of the Defender of the bond in all the phases of the process to guarantee the adversarial procedure, a presence also necessary for the validity of the acts[28].

The requirements of the Defender of the bond are established by the laws in force: they can be clerics or lay persons, in all cases of unimpaired reputation, doctors or licensed in canon law, and proven prudence and zeal for justice[29].

Even the intervention of the notary is necessary in the briefer process, so that all the acts not signed by him must be considered null[30]. Notaries do not require special qualities, but they must have an unimpaired reputation and being above any suspicion[31].

1.3.5. The help of the Bishops' Conference

The Bishops' Conferences were urged by the Pontiff to offer their contribution for the conversion of the ecclesiastical structures already requested in the Apostolic Exhortation *Evangelii gaudium*[32], in full respect of the right of the Bishops to organize the judicial power in their own particular Church; they were also encouraged to stimulate and help the Bishops to restore closeness between the judge and the faithful[33].

This acquires a special meaning in the application of the shortest process. Here the closeness of the Pastor to the faithful is manifested in a special way, when he personally exercises his judicial power in favor of the good of his flock.

---

[27] Mitis Iudex, Proemio.

[28] Cf. can. 1433.

[29] Cf. can. 1435.

[30] Cf. can. 1437 § 1.

[31] Cf. can. 483 § 2.

[32] Cf. FRANCESCO, Esortazione Apostolica Evangelii gaudium, n. 27.

[33] Cf. Mitis Iudex, Proemio, VI.

2.- When: The necessary conditions

The are two conditions that allow the Bishop to issue a sentence of nullity in a short time with this process, and must be present simultaneously.

First, the agreement of both parties to present the case for one or more grounds of nullity. Furthermore, it must be manifest and evident nullity, which can be easily proved, with evidence to be collected without complications. The law puts it expressly:

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

2° circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest»[34].

There will normally be a pre-judicial or pastoral investigation which permits the identification of these circumstances, listed in an exemplificative way in the Rules of Proceeding, at art.14.

2.1. The agreement between the parties

This condition is sufficiently clear. Anyway, it's useful to be insistent on the fact that this condition cannot be presumed, but must always be expressly stated.

There are two different ways for the parties to express their agreement. First: the petition is proposed by both the spouses. Second: the petition is proposed by one of them, with the consent of the other.

This consent not only concern the petition, but also the process to be applied, that is the briefer before the Bishop, and surely also the mention of the ground or the grounds of nullity for which the validity of the marriage is challenged.

2.2. Evidence of nullity

Excepting the agreement of the parties, to apply the briefer process is necessary that «circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest»[35].

This condition, of course, cannot be understood as if the proof of nullity were already fully enlisted in the *libellus*. It means instead that in the libellus the circumstances of facts and persons must be indicated so that, proven through the depositions of the parties and witnesses as well as with the documents presented, make the nullity of the marriage evident and clear in the case.

[34] Mitis Iudex, can. 1683.

[35] Mitis Iudex, can. 1683, 2°.

Normally these circumstances of facts and persons must have been already identified in the preliminary investigation, which should allow to distinguish between the cases in which the possibility of a nullity of the bond is alleged and those in which the proof is easy and the nullity evident.

The Rules of Proceeding, moreover, have already indicated some of the circumstances that can make a nullity evident[36]. This should not be interpreted in an almost automatic way, as if, in the sole presence of some of these circumstances, one could already declare the nullity of the bond. To put it clear, "*these circumstances are not, in fact, new grounds of nullity*. We are dealing here simply with situations that the jurisprudence has long enucleated as *symptomatic elements of the invalidity of matrimonial consent*, which can easily be proved by testimonies or documents that can be readily procured"[37]. It is, therefore, a useful indicative list, which presents cases in which, in the light of the rotal jurisprudence, it is possible to find evident cases of nullity.

The Legislator himself, on March 12, 2016 speaking to the numerous participants from all over the world at the formation course on the new marriage process and on the *super rato* procedure, organized by the Roman Rota, speaking off the cuff said: «A month ago I received a phone call from a Bishop, not from Italy. He said me: "I am in trouble, because there is a married girl, I believed only civilly, but she was also married in church and then divorced; and now everything is prepared for her catholic wedding to be celebrated in fifteen days. Now she tells me: "I got married in church, because I was pregnant and my parents told me to do it, then the marriage immediately failed and the next year I divorced". "Tell me Holy Father – this Bishop told me – what should I do?" I replied: "did you do something?". "Yes, – he replied –, I talked to the parents and they told me it's true that they forced this marriage". I told this Bishop: "Call a priest, expert in canon law, also a judge, from your diocese, to help you. Call another expert in canon law, to act as a defender of the bond. And then you decide the nullity, if that's the case. You are the judge". And so he did. There are such clear, clear cases with all the testimonies, which can be decided with the briefer process, in which the Bishop judges, always assisted by the judicial Vicar or by another instructor and assessor, even lay, being always present a defender of the bond»[38].

To avoid possible confusion or misunderstanding, it is appropriate to offer at least a brief explanation of these circumstances, and the way in which they can be indicative of the evidence of a marriage nullity. Taking into account, certainly, from the outset, that none of them by itself is sufficient to consider the briefer process applicable, but only in their suggestion of the evidence of nullity, which will have to be proven as always, in

[36] Cf. art. 14 § 1 RP.

[37] Sussidio applicativo, cit., 3.1.b, 32.

[38] FRANCESCO, Mens legislatoris del 12 marzo 2016, cit., 51.

particular with depositions and documents, in addition to the already asserted consent of both parties for the application of this process, with the Bishop's sentence.

First of all, no one should be scandalized because we used an indicative list of circumstances that could indicate cases of possible evident nullity, as in the aforementioned art. 14 § 1 RP. Even other texts, such as some canons in the Code, have used indicative lists. Quoting the can. 1741, should be enough. This article enlists the possible cases for the removal of a parish priest: «The cases, for which the pastor can legitimately be removed from his parish, are mainly these: [...]».

Now let's see these circumstances:

a) *The defect of faith which can generate simulation of consent or error that determines the will*. In this case, the ground of the nullity is not the lack of faith as such, but a lack of faith such that, in the particular case, it may be able to bring one or both spouses to exclude some element or essential property of the marriage, or to make an error on one of them, in such a way that this error determines the will of one or the two parties.

It is necessary, therefore, to investigate and ponder the concrete and effective influence of the worldly mentality of contemporary culture on one or both spouses, so that in the specific circumstances of their lives, extraneous to or contrary to faith, ensure that their consent is not integrated into the organic framework of a marriage properly understood and authentically lived. Faith illuminates intelligence and this moves the will. The lack of faith can be such that someone, absorbed by the cultural worldliness, has no longer the chance to include the indissolubility of marriage, or fidelity, or the good of the offspring in its will. It would be the case of a defect in the origin of the consent due to the lack of a valid intention (simulation or exclusion), or to a serious error in the understanding of the marriage itself, such an error as to determine its will[39].

Therefore, in this case, applying the usual probative syllogism for these grounds of nullity, would be much more than desirable keep in mind the following circumstances: i) the human and cultural formation of people (for example an atheistic or materialistic family), with a strong influence of the mainstream mentality[40]; ii) the context of the values of faith – or their absence – in which the marriage decision matured; iii) the possible exclusion of the spouse due to a closed subjectivism in the immanence of reason or feelings[41]; iv) the perception of marriage as a mere form of temporary affective gratification that drives the person to the simulation of consensus, that is the mental reserve about the very permanence of the union or its exclusivity[42].

---

[39] Cf. ID., Allocuzione alla Rota Romana, 23 gennaio 2015, in AAS 107 (2015), 183-184.

[40] Cf. ID., Esortazione Apostolica Evangelii gaudium, n. 93.

[41] Cf. ibid., n. 94.

b) A brief conjugal cohabitation. In this case, it is clear that the mere brevity of marital cohabitation is not itself a case of nullity, but is to be regarded as a strong indication of a possible defect of consent, for example due to the exclusion of an essential property (indissolubility, unity), or of someone of the ends of the marriage (bonum coniugum, bonum prolis).

c) An abortion procured to avoid procreation. As in the previous cases, here too the abortion is not a motive or a nullity in itself, but it can be a strong indication of the will of one of the spouses, or both, contrary to the good of the offspring. If this were the case, it will not only be a desire, but a positive will to avoid the offspring, which is evident in the procured abortion, once an unwanted pregnancy has occurred.

In this case, it will be necessary to verify, through the depositions of the parties, that the procured abortion has been wanted and promoted by the firm will to exclude the offspring. The sworn deposition of those who procured the abortion, the clues (i.e. contraceptive methods applied in the usual form, the documents such as medical certificates), can lead to moral certainty that the parties, or at least one of them, have celebrated the marriage with the firm intention to exclude the offspring perpetually, resorting to abortion every time an unwanted pregnancy occurred.

d) An obstinate persistence in an extra conjugal relationship at the time of the wedding or immediately following it. This extramarital relationship can be considered a clear proof that allow us to presume the exclusion of the obligation of conjugal fidelity, especially if the depositions of the parties and witnesses, confirm the purpose of the spouses not to abandon the parallel relationship.

Various circumstances can specify the firm will of at least one of the parties not to want to fulfill the obligation of fidelity, for example the brevity of cohabitation after the celebration of the wedding or the refusal of intimate relationships between the spouses.

e) The deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations. The aforementioned circumstances applies when the malicious concealment of sterility, or a serious contagious illness (such as AIDS), or the existence of a children born of a previous relationship, or of a previous time spent in prison, aims at obtaining matrimonial consent from the other party. So, It is possible to deduce the causal link between the intent and the matrimonial consent, so that the celebration of the marriage can be attributed to a direct intent.

Sterility by itself does not invalidate marriage, even if demonstrated with suitable medical documentation. It can seriously disrupt the consortium of married life and, therefore, constitute a ground of nullity, if intentionally concealed.

f) A cause of marriage completely extraneous to married life, or consisting of the

[42] Cf. ibid., n. 66.

unexpected pregnancy of the woman. It must be a cause totally extraneous to married life, since the betrothal aims to achieve a purpose other than those of marriage, understood as an interpersonal donation between spouses. It's recognized, for example, the desire to simulate consent, in the man who is obliged to contract marriage because of the unintended and unplanned pregnancy of his partner. It must be clear, in this case, that a party excludes the other as a spouse and expresses with his/her consent something quite different from marriage which by nature includes the communion of life and love between the parties. What should be extremely clear is the complete unwillingness of the party to contract marriage (assuming his ends), his/her consent is only a simulation, so to say no intention to commit to it in any way. Who, by means of his/her vitiated consent causes the nullity, doesn't want the correspondence between the appearance and the substance of marriage.

Among the circumstances that can confirm the positive exclusion of marriage in this case, we can include: the brevity of marital cohabitation, the separation and divorce initiative undertaken by the simulant, as well as the introduction of the canonical process by requesting the declaration of the nullity of marriage.

g) Physical violence inflicted to extort consent. This case has to be demonstrated conclusively and with incontrovertible evidence, so that the violence perpetrated against a spouse aims at obliging him/her to give matrimonial consent. Therefore, the spouses' freedom or its absence regarding any external compulsion must be investigated. We must verify the consent basis, if it is a real human act, a product of intelligence and free will of the spouses. Any physical violence perpetrated against a spouse makes marriage void, because the will forced by violence has no value, since the faithful must be free when choosing about the state of life[43].

In such a case the briefer process applies only when the proposed proofs make clear that there was no – or very limited – personal freedom of the party due to an external pressure (for example, physical violence on the part of parents or other family members, due to a pregnancy), this must be clearly documented (for example with medical certificates, public safety records issued to certify violence suffered close to the celebration of the marriage, the depositions of the parties and credible witnesses, such as the wedding celebrant).

Starting from the conclusions of the pastoral or preliminary investigation, the Judicial Vicar will evaluate the sufficiency of the evidence presented to arrive at the necessary moral certainty about the reality and truth of the case presented for the application of the briefer process before the Bishop.

h) The lack of the use of reason which is proved by medical documents. In this case, the Bishop must arrive, through incontrovertible medical or scientific documents

[43] Cf. can. 219.

(such as medical records, medical reports, etc.), to a certainty without a shadow of doubts about the nullity of marriage.

It is clear that medical documents, above all psychological and psychiatric expertise, is not easily incontrovertible. On the contrary, they can easily be discussed and objected. The language of psychological sciences is not like that of mathematics. For this reason, the briefer process before the Bishop seems to be more likely applicable above all to the hypotheses of lack of sufficient use of reason (contemplated in can. 1095, 1°), than in cases in which the validity of the marriage is challenged by defect of sufficient discretion of judgment or incapacity to assume the essential obligations of marriage (can. 1095, 2°-3°). In these latter cases the evaluation of the expert evidence can be very complex.

Finally, before entering the various stages of the process, it must be reiterated that the conditions necessary to apply the briefer process must be applied in a balanced way, far from the two extremities that would lead us out of the good service the faithful are entitled to and expect from a Church conscious of their needs and faithful to its mission. On the one hand, we would go astray if we were to resolve all cases of invalidity with the briefer process. But, on the other hand, we would also go astray if in a systematic way all the faithful were denied the possibility of the briefer process, considering, before each analysis of the particular case, that there are no obvious nullities, because all cases are difficult.

3.- How: The stages of the process

We will now illustrate the typical course of the briefer process for the declaration of the nullity of a marriage: in particular, we will focus on its particularities, analyzing the novelties that characterize it[44].

3.1. The introduction of the case

The introductory act, commonly called *libellus*, is to be presented to the judicial

[44] The following paragraphs must be read in the light of what Pope Francis established on November 25, 2017, in the aforementioned Address to the participants in the Course organized by the Roman Rota: "The streamlined process is not an option that the diocesan bishop can choose, but rather an obligation that derives from his consecration and from the mission received. He holds exclusive competence in the three phases of the briefer process: - the request must always be addressed to the diocesan bishop; - the preliminary phase, as I have already affirmed in my address at the Course held by the Roman Rota on 12 March last year, will be conducted by the bishop «always assisted by the judicial vicar or other instructor, even a layperson, by the assessor, and always with the presence of the defender of the bond". Should the bishop not have the assistance of clerical or lay canonists, the charity, which distinguishes episcopal office, of a nearby bishop may come to his aid for the time necessary. Furthermore, I reiterate that the briefer process must typically be concluded in one session, requiring as an indispensible condition the absolute evidence of the facts proving the alleged nullity of the marriage, as well as the consent of both spouses. - the decision to pronounce coram Domino is always and only taken by the diocesan bishop" (Communicationes, 49 [2017] 278, n. 5; Here it is the whole Address of Pope Francsis: http://w2.vatican.va/content/francesco/en/speeches/2017/november/documents/papa-francesco_20171125_corso-rotaromana.html).

Vicar or directly to the competent Bishop[45]. This *libellus*, besides to the elements common to all libels indicated in can. 1504, must include:

1° a brief, complete and clear statement of the facts on which the petition is based;

2° a list of proofs that can be immediately collected by the instructor, without further or special difficulties;

3° the documents that will serve as evidence in the case[46].

If the *libellus* had been deposited by one party not requesting the briefer process, but the judicial vicar considers it possible, he should not limit himself to notify the libellus to the other party and to the Defender of the bond, but should also invite the party that did not sign the *libellus* to express its will to associate with the petition and participate to the process. If so, it must also ask, if it were the case, the parties to integrate the *libellus* with all the elements required for the briefer process, so that the brief, complete and clear exposition of the facts on which the petition is based and the list of evidence that can be immediately collected by the instructor[47].

The judicial vicar who admitted the libellus, or his stead, as mentioned above, in a single decree must:

a) determine the formula of the doubt;

b) appoint the instructor and assessor;

c) cite the parties, the Defender of the bond and the witnesses, to the proof gathering session, to be held no later than thirty days[48].

The evidence of nullity, one of the conditions necessary to start the briefer process, should find its correspondence in a simple and linear formula of doubt, with one or possibly two compatible grounds of nullity.

The Judicial Vicar, as already said, can appoint himself as an instructor, but as far as possible, he should appoint one who is of the same diocese of origin of the case[49].

3.2. Instruction and discussion of the case

If the parties do not submit queries about their previous statements or that of witnesses, they have the right to do so up to three days before the scheduled session; this also applies to the Defender of the bond, for he is a "party" in the process too, a public party. This will allow the instructor to prepare the interrogations that will actually take

[45] Cf. Mitis Iudex, cann. 1676 § 1; Sussidio applicativo, cit., 2.2-2.4, 19.

[46] Cf. Mitis Iudex, can. 1684.

[47] Cf. art. 15 RP.

[48] Cf. Mitis Iudex, can. 1685.

[49] Cf. art. 16 RP.

place, integrating what is necessary and avoiding unnecessary repetitions[50].

A particularity of the instruction in the briefer process, as a consequence of the possibly unique session, is the possibility of the participation of both lawyers and parties during the hearing of the other party and witnesses, unless particular circumstances determine the instructor to decide otherwise[51]. This special provision is easily justified by both the agreement of the parties to petition for a case of nullity and its evidence.

In the instructional session, parties and witnesses' replies are to be transcribed by the notary, under indication of the instructor, but he will always have to do it in a summary way, so to say, consistently with the substance of the case, everything useful to solve it and its formula of the doubt[52]. If the instruction can't be carried out in a single session, the instructor can decide for another one, taking always into account the briefer nature of the process[53].

Once evidence has been collected, without the need for explicit publication (for the parties and their lawyers took part in the process), the instructor must set the deadline of fifteen days within the Defender of the bond and the parties both can submit their observations and defenses. The difference is clear, due to the different position of the parties and the Defender of the bond in the case. For the Defender of the bond is an obligation, since he is the public office of defense of the public good. For the parties is a right allowing them to explain again, if necessary, the reasons set out in the *libellus*, proved in the instructional session, in favor of the declaration of nullity[54].

3.3. The decision of the case

The diocesan Bishop is to pronounce the sentence and such exclusive competence cannot be delegated to a diocesan or inter-diocesan tribunal. Even if the case is instructed at an inter-diocesan tribunal[55], the bishop competent to render the sentence is that of the place according to the competence established in accordance with can. 1672. If there are more than one, the principle of proximity between the parties and the judge is to be observed to the extent possible[56].

Taking into account the criteria set out in the Introduction and the text of the law,

[50] Cf. art. 17 RP.

[51] Cf. art. 18 § 1 RP.

[52] Cf. art. 18 § 2 RP.

[53] Cf. Mitis Iudex, can. 1686.

[54] Cf. ibid.

[55] Si debe tener conto di quanto detto da Papa Francesco in data posteriore a questa relazione, il 25 novembre 2017, nel Discorso ai partecipanti nel Corso organizzato dalla Rota Romana: "Affidare l'intero processo breviore al tribunale interdiocesano (sia del viciniore che di più diocesi) porterebbe a snaturare e ridurre la figura del Vescovo padre, capo e giudice dei suoi fedeli a mero firmatario della sentenza" (Communicationes, 49 [2017] 278, n 5).

[56] Cf. art. 19 RP.

as well as the Rules of Proceeding, it does not appear that the sentence can be delegated. This process was entrusted to the Bishop as head office of the particular Church. If one diocesan Bishop thought of delegating to one or several auxiliary bishops of a very large diocese, with a large number of faithful, he has to ask the Holy See for a special faculty[57].

The instructor must deliver the acts of the case to the Bishop. After a first study, the Bishop must consult both the instructor and the assessor, together or in separate meetings. It would be very useful for both the instructor and the assessor to write their comments and observations, so that during the meeting with the Bishop they can clarify all his observations or doubts.

Pondering the evidence, the Bishop must take a penetrating but positive look at the judicial confession and the declarations of the parties which, supported by witnesses about their credibility, can have the value of full proof, as long as there are no other elements that refute them[58]. In addition, he must take into special consideration the declaration of a qualified witness who gives evidence of things that are *ex officio* or when the circumstances of facts or people suggest it, since they can be taken as authentic[59].

Finally, the Bishop must examine the observations of the Defender of the bond and the defenses of the parties. If, having completed the due analysis of the arguments, the Bishop arrives at the moral certainty of the nullity of the marriage, he will have to issue the sentence. If not, since it is not possible to conclude the briefer process with a negative sentence ("*non constat*"), the Bishop by decree has to remit it to the ordinary process[60].

The sentence must be signed personally by the Bishop (but can be drafted, for example, by the assessor or by the instructor himself). The text of the sentence, containing a brief and ordered exposition of the motives of the decision, must be notified as soon as possible to the parties, ordinarily within a period of one month from the date of the decision[61].

It will be the same diocesan Bishop to establish, according to his own prudence, taking into account the will expressed on the matter by the parties, the manner in which he pronounces the decision (e. g., in a public audience)[62].

---

[57] Cf. Sussidio applicativo, cit., 3.3, 40-41.

[58] Cf. can. 1678 § 1.

[59] Cf. can. 1678 § 2.

[60] Cf. Mitis Iudex, can. 1687 § 1.

[61] Cf. art. 20 RP; Sussidio applicativo, cit., 40-41.

[62] Cf. Mitis Iudex, can. 1687 § 2 e art. 20 RP.

3.4. Challenges and execution of the sentence

The Bishop's sentence admits an appeal, although it is reasonable to consider that it will happen very rarely. Because we are dealing with a case initiated by common agreement between the parties or at least by one of them with the consent of the other, an appeal, though possible, will in fact be very rare. We can thought that, if this appeal exists, it would be a sign of a certain abnormality in the application, development or resolution of the process. Precisely for this reason the right to this appeal has been maintained.

First, taking into account the sentence of the Bishop can be only affirmative, and both parties have requested together, or at least one with the consent of the other, the declaration of nullity, it does not seem logical that they are the ones who appeal the decision that gives reason to their request.

Secondly, given that the Defender of the bond has had to participate throughout the process, from the beginning, and has also done so by presenting his final observations, if there were particular difficulties presented by him against the evidence of nullity in the case, the Bishop would have had the opportunity and would have had to stop the cause to send it to the ordinary process, without issuing the sentence. If the Defender of the bond had presented reasonable observations, the Bishop should arrive at reach the sentence only when able to refute trough his argumentation the observations reasonably proposed by the Defender of the bond.

Anyway, in compliance with the proper judicial process, of contradictory nature, the security valve of the appeal has remained open, even in the briefer process.

The sentence of the diocesan Bishop appeals before the Metropolitan or the Roman Rota. If it concerns the sentence of a Metropolitan, it is appealed to the oldest appointed suffragan Bishop[63], or to the Roman Rota[64]. If the sentence was issued by another Bishop not subject to any authority under the Roman Pontiff (as is the case of the Archbishops of the Archdiocese without suffragan dioceses), the appeal is presented to the Bishop established by him in a stable form or to the Roman Rota[65].

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

[63] Alla luce della discussione dei testi paralleli durante la redazione del Codice, non è possibile condividere la risposta particolare (non autentica) del Pontificio Consiglio per i Testi Legislativi del 13 ottobre 2015 (Prot. N. 15155/2015). Cf. Communicationes 14 (1982) 220.

[64] Stabilì Papa Francesco, in data posteriore a questa relazione, il 25 novembre 2017, nel Discorso ai partecipanti nel Corso organizzato dalla Rota Romana: "Quanto alla competenza, nel ricevere l'appello contro la sentenza affermativa nel processo breviore, del Metropolita o del Vescovo indicato nel nuovo can. 1687, si precisa che la nuova legge ha conferito al Decano della Rota una *potestas decidendi* nuova e dunque costitutiva sul rigetto o l'ammissione dell'appello" (Communicationes, 49 [2017] 279, n. 9).

[65] Cf. Mitis Iudex, can. 1687 § 3.

dilatory. If, however, the appeal is admitted, the case is remitted to ordinary examination before the competent tribunal[66].

Conclusion

This paper shows not a framework law or a directive, which indicates a new, briefer process, to be applied according to subjective criteria, hanging on the subjective (and perhaps also variable) opinion of legal practitioners, but a precise, demanding and obligatory law which offers a concrete instrument serving the good of souls, "that must always be the supreme law in the Church"[67].

This process, then, is to be applied whenever the conditions of the joint request of the parties and the evidence of nullity make it possible to respond to the faithful, with the decision of the Bishop, Pastor and head of the particular Church, as quickly as possible. The Lord allows all of us "useless servants"[68] to be adequate instruments to help the Bishops respond promptly to this need of the faithful, for they have been called to the apostolic ministry for their service.

[66] Cf. Mitis Iudex, can. 1687 § 4.

[67] Can. 1752.

[68] Lc 17, 10.