Workshop Questions

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1.- *The role of the Defender of the Bond in today's process in Ordinary Cases. Specially, does the Defender of the Bond in their role prior to the decision, have a right to effect, manipulate or make demands of the Advocates, Notary's, Court Experts, or Judges in a case?*

The role of the Defender of the Bond has not changed. It is the same as it has always been since it was instituted by Benedict XIV in the year 1741. In reality, it is enough to remember by its utility, as Pius XII said to the Roman Rota on October 2, 1944. He spoke about the Judge and the Defender of the Bond. Of the latter, he said: "It pertains to the Defender of the Bond to advocate for the existence of the conjugal bond, although not in an absolute way, but subordinated to the ends of the process that is to look for the objective truth. The Defender of the Bond should collaborate with the mutual goal (of discovering the truth), investigating, and expressing all that can be said in favor of the bond. And as it is not compatible with the importance of his/her office and carefully fulfilling his duties by limiting himself to a cursory overview of the acts and some superficial observations, this office should not be entrusted to someone who does not have experience and maturity of judgment. Neither should one make an artificial defense of the bond, and therefore should recall the right to declare that after a diligent, detailed, and conscientious examination of the acts, that one has not found any reasonable objection to offer against the presentation of the petitioner. All who have a role in the process, without exception have to unite ones action towards the one goal: to favor the truth!" One must recall that the Defender of the Bond has, during the development of the process the same rights and obligations of the parties (petitioner or respondent).

2.- *Can the Defenders of the Bond warn that they will appeal in the event of an affirmative decision? What judicial basis supports this warning?*

This question surprises me, at least for three reasons.

First, because this question has already been asked by other people, in other circumstances, always in the context of an opposition to the renewal of the process of nullity of marriage carried out by Pope Francis. The people who raised this question were not happy with the abolition of the requirement of double conforming sentences. I guess now, here, the question has no such motivation, because in the first way mentioned above, I should not response anything. Then,

based on that assumption, I will respond directly, clearly and sincerely

Second, because any warning made by the defender of the bond is an abuse of power. The defender of the bond does not have any power to warn anyone, and least of all the judges. Instead, the Bishop Moderator of the Tribunal should warn this defender of the bond, and if he insists on this behavior, the Bishop has sufficient grounds to remove him from his office.

Third, because it is absolutely unreasonable that a defender of the bond warn that he or she will appeal sentences which have not yet been decided, because a decision will be reached by the judges only after he has submitted his observations.

A defender of the bond can appeal only after having received an affirmative sentence which is not based on valid arguments. For this appeal, the defender of the bond must present a petition for an appeal consisting in arguments demonstrating the injustice of the judges' decision. Otherwise, the appeal is unreasonable and uselessly delays the cause.

Such delays violate both the spirit and letter of the legislator's will, promulgated with *Mitis Iudex*. In these circumstances, it could be suspected that a defender of the bond who makes such warnings is only willing to accept the declaration of invalidity of a marriage if two conforming sentences declare it invalid. That would reveal a resistance, disguised but manifest, against the supreme legislator, the successor of Peter, and that is not admissible.

Finally, I think it is clear that such a warning from a defender of the bond has no judicial basis, and is only an abuse of power.

In the end, I quote the words of Pius XII to the Roman Rota on October 2, 1944, about the role of the Defender of the bond.

3.- *If I understand correctly he served under the Pope Francis as his JV in Buenos Aires. Is this correct? If so I would like any insights he can share as to Francis' views as Bishop re canonical matters. We get some of that certainly from his exhortations and other writings but how did the Pope relate to the Tribunal? What were his expectations for the Tribunal? What were the views of those he approved for hiring to work in the Tribunal? I am interested in anything he can tell us about the mindset of the Pope, whom I admire tremendously. Can he comment on Briefer Process and its compilation, Amoris Laetitia, and any other writings by the Holy Father concerning Tribunal Ministry.*

I was a Judge in the Tribunal fo Second Instance, that in its time had jurisdiction for all of Argentina from 1989 until October 2007, and Judicial Vicar of the Interdiocesan Tribunal of Buenos Aires from October, 2007 until my nomination to the Roman Rota on April 7, 2013. Cardinal Bergoglio was

Archbishop of Buenos Aires from February of 1989 until his election as Bishop of Rome and successor of Peter on March 13, 2013. I want to say that I was a direct collaborator of Cardinal Bergoglio during many years, especially and Judicial Vicar. My relationship with him during these years of service and collaboration were always very direct. When he had need of some advice or explanation, he called me and in five minutes he explained the situation to me and he asked my advice. If it was I who needed guidance before an administrative decision regarding the operation of the Tribunal, I asked him in the same manner and with the same immediacy. He always responded simply and speed. We made many changes in the operation of the Tribunal. Not to bore with too much detail, its enough to make reference to the principles that guided Mitis iudex, they are a faithful reflection of what he always thought and put into practice in the work of the Tribunal: a pastoral work, through the administration of Justice, at the service of the faithful, which has to go out looking for the faithful instead of "sitting and waiting" that the faithful come to the Tribunal. A personal anecdote will help to understand the what Pope Francis thinks of Canon Law, and in turn also of the Ecclesiastical Tribunals: "The Pope Francis who also makes the most of his "Jesuit style humor" in the service of his mission, he usually makes some opportunity, a question that he asked me in one of the first encounters with him, towards the end of the past millennium, when I was judge on the Second Instance Tribunal for all of Argentina: "Alejandro, can you explain to me in a few words what is Canon Law? (or perhaps it might be translated with more punch: Alejandro, can you explain to me in a few words what good is Canon law?). Of course, my response extended to explanations beginning with canon 1752 (the Supreme law of the Church is the Salvation of Souls), and I tried to put into evidence the pastoral sense of canon law that has its foundation in the Gospel and places itself at the service of salvation. And the Cardinal, who is today the Pope, in his turn, responded to me in a few words: "Yes, that is good, it is like that, unless when it dedicates itself to place a trap for the Gospel." Indeed, for the Pope canon law is an instrument of natural justice at the service of the faithful and their salvation. What the Pope wishes for all ecclesiastical tribunals is expressed in the introduction to Mitis Iudex, and in his frequent interventions explaining the motives of the reforms undertaken: that he reforms may be useful instruments in the hands of the Bishop to serve all of the faithful who need it and to their salvation, in a convenient and closely manner, effective and in a reasonable amount of time, and in as much as possible without cost or without having to relapse in those who receive service of support from all the Tribunal.

As for *Amoris Laetitia*, there would be much to say, since that undertaking is not only the concern of cases of nullity, but *all of the pastoral care of marriage*,

and carrying all of the fruit of the two Assemblies of the Synod of Bishops, the Extraordinary of October 2014 and the Ordinary of October 2015, the first of his Pontificate. We need at least three days to comment on this. If you have three days available, I can start. Otherwise, we have to wait for another opportunity.

4.- *If a first instance court finds in the negative and the Petitioner appeals to second instance at the Metropolitan tribunal which decides on the same grounds in the affirmative. If the other party does not appeal to the Rota, the affirmative decision of second instance becomes executive. Is this a correct reading of the law?*

Right. In the case you describe, the judgment of the Metropolitan Tribunal is a second degree sentence, but it's the first affirmative sentence of nullity in the case, and therefore is applied can. 1679: "The sentence that first declared the nullity of the marriage, once the terms as determined by cann. 1630-1633 have passed, becomes executive".

Therefore, if the Respondent or the Defender of the Bond does not appeal in the peremptory term of 15 days from the notification the sentence becomes executive. The tribunal must declare the executivity of the sentence.

5.- *I have a question as to current praxis of the Roman Rota. Do they accept every appeal that comes to them from diocesan tribunals? If not, what is their criteria? And is there a directory or form that indicates how a case should be prepared for submission on appeal?*

I can answer considering the canons 1679-1680 (of *Mitis Iudex*), which deal with the appeal, and we have to applied, as in fact we do, also in the Roman Rota. If it is an appeal against the first affirmative nullity ruling, the first decision in the Tribunal of Appeal (also in the Rota) is about the admission or rejection of the appeal. The matter is dealt with after giving the parties a period of at least one month to submit their comments. If the appeal is considered merely dilatory, it is rejected and, consequently, the sentence of the previous grade is confirmed.

The appeal can be considered merely dilatory if it is not based on sufficient arguments to weaken the moral certainty that has led to the affirmative sentence of the previous degree. If the sentence of the previous grade does not have a solid argument based on the law and the facts, the possibility of considering the reasonable appeal and, therefore, of accepting it, is greater. If the sentence of the previous grade is based solidly on the law and the facts, the possibility of the appeal being accepted is less. If it is an appeal against a negative sentence, the Tribunal of Appeal have to deal with the case following the ordinary process, including the possibility to complete the instruction, unless it is absolutely unnecessary.

6.- *Is it necessary to create a Second Decree of Conclusion or can the case be passed to the judges for deliberation?*

The question seems incomplete; however, I can try to answer, based on an assumption. I suppose (the author of the question) refers to the case in which new evidence has been presented and admitted after the decree of conclusion. If it is the case, it's necessary to issue a decree of publication of the new evidence, and once the determined time has elapsed for the review of the acts, it is necessary to make a new decree of conclusion. Only after the stage of discussion (presentation of the allegations of the parties and the observations of the defender of the bond) is finished, can the cause pass to the judges for their decision (cf. canons 1590-1601).

7.- *Based on all the methods available to us here in the USA, what will be the maximum efforts required to proof that a Respondent has been duly cited?*

I don't know all the methods available in the USA to notify of a citation, but I can respond with the law, that is clear: "Canon 1509 § 1. The notification of citations, decrees, sentences, and other judicial acts must be made through the public postal services or by some other very secure method according to the norms established in particular law. § 2. The fact of notification and its method must be evident in the acts".

8.- *How can we who send cases to the Rota make life easier for the notaries (and the Auditors as well) of the Rota? Is there a preferred format in arranging documents, type of font to use.*

It's useful that the Tribunal of the origin sends all the acts (the "acts of the cause", that is the proofs, and the "acts of the process", that is the notifications and decrees with procedural effects) signed by the notary, numbered, if possible in chronological order, and preceded by an index. If they are handwritten pages, together with the originals it must be sent the corresponding transcripts in legible characters. The type of font must be readable, and for this reason not so small as to make necessary the special intervention of oculist, in order to allow its reading.

9.- *Was in Argentina, and in any case, in what Diocese did you know the Service of Tribunal Visitors tho the Parish*?

This service was born in the Diocese of Rancagua, Chile. I know that the Diocese of San Isidro, in Argentina, in which was born the service "Way of Hope", have a productive interchange with the Diocese of Rancagua, and one help the other, with the own experiences. I know that also the Diocese of Tijuana shares the own experiences with the other two, the Dioceses of Rancagua in Chile and San Isidro in Argentina.

I think that the Bishop's Conference can do a great work helping the

Dioceses who want to share their experiences in this matter. Also the Canon Law Societies can do this service, so useful when we are trying with new experiences.

10.- *How many cases that you know of have been submitted as briefer process?*

They are many Dioceses in the world. Because that, it's impossible to know how many cases have been submitted as briefer process, unless you work in the Apostolic Signature. This office has a Section dedicated to supervise the functioning of the tribunals in all the world. All the tribunals must inform the Signature every year all the cases treated, with which grounds, and the sentences reached, if affirmative or negative, and with which grounds. From the entry into force of the new process, the courts must also report the number of cases introduced and resolved with that process. It means that the Apostolic Signature have this fact. Anyway, I think that it is not an important fact. The important thing is to remain 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.

11.- *How can we help the older people in mixed marriages be aware of annulments and undo the misinformation?*

I have just tell you a lot of tips for the cases of mixed marriages. The situation it's not different in the cases of older people. We must to apply all the tips to be applied in these special cases.

Regarding the misinformation, it's clear that one of the aims of the pastoral of the families in the Diocese must be to nuance, with clarity and in a language that the people can understand, this service of the Church for the faithful who need it. I can also say, seriously, indeed, that the office for the pre-judical or pastoral step must be a special concern, and a special dedication for these people, because they have not so much time. They are as airplane in an emergency situation, asking the airport for a runway to land.