

## **Pope Francis Reforms Procedures for Marriage Cases:**

### **9 Things to Know and Share**

Jimmy Akin (Catholic Answers – 8 September 2015)

On September 8, the Holy See released a pair of documents by Pope Francis that reform the way the Church handles marriage cases, specifically declarations of nullity (frequently, but mistakenly, called “annulments” – mistakenly since the word “annul” means “to undo” and that is not what Church courts do).

Here are nine things to know and share . . .

#### **1) What is a declaration of nullity? Is it the same thing as a divorce?**

An declaration of nullity is a ruling by a Church court (or “tribunal”) that a particular marriage was null from the beginning – that is, something was gravely wrong at the time the wedding vows were said and that made defective the consent, which is the essential factor in entering into a marriage, and prevented a valid marriage from coming into existence. It is often, perhaps usually, the case that no one involved in the ceremony know that the consent was defective and the consent only came to be questioned after the marriage broke up.

This is different from a divorce, which proposes to dissolve a marriage that is in existence.

#### **2) Why are declarations of nullity an important issue in the Catholic Church?**

Jesus Christ expressly taught that if two people divorce and then remarry, they are committing the grave sin of adultery. He said: “Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery” (**Mark 10:11-12**). Because of this teaching, the Church cannot simply give divorced people permission to remarry. To do so would be to give them permission to commit adultery. Consequently, if a divorced person wishes to remarry, the Church needs to examine the first “marriage” to see whether it was valid or not.

If it was valid, then the person is still bound to his or her previous spouse and cannot marry another person in the Church.

If it was not valid, then the parties to the first marriage are not bound and so, unless something else affects the situation, they are free to marry other people.

The number of people in our society who are divorced makes this a pressing pastoral problem.

Catholics in the United States have a divorce rate of about 28%, the lowest among all religious groups but still a significant number.

#### **3) How does the declaration of nullity process work?**

This is a complicated subject, but in simplest terms, the rules governing declarations of nullity are expressed principally in two documents: the Code of Canon Law, which governs the western Catholic Church, and the Code of Canons of the Eastern Churches, which governs the eastern Catholic churches. When a man and a woman have divorced, they can contact the appropriate diocese and have their marriage investigated to see whether it was valid. This process could be simple or lengthy, depending on the nature of the case and the forms of evidence available. If their marriage was not valid, they would be given a “declaration of nullity.”

#### 4) What has Pope Francis done?

He has issued two documents, each of which is a *motu proprio*. A *motu proprio* is a document issued on the pope's initiative. Such documents are frequently used to establish or clarify legal matters (as opposed to matters of doctrine, which are dealt with in other documents, such as encyclicals).

The two documents issued by Pope Francis are:

- **Mitis Iudex Dominus Iesus** ("The Lord Jesus, the Gentle Judge"), which reforms the declaration of nullity process for the Western Church, and
- **Mitis et Misericors Iesus** ("Gentle and Merciful Jesus"), which reforms the declaration of nullity process for the Eastern Catholic churches.

At the time of this writing, these documents are available only in Latin and Italian; translations into other languages will probably be made soon. These documents were prepared, at Pope Francis's direction, by a group of legal experts at the Vatican, whom he appointed to the task in October 2014. The unprecedented speed with which the commission completed its work and the Pope acted on it is a sign of the pastoral significance of the issue.

Both documents contain an introduction explaining the pope's actions followed by a set of canons that replace the sections on declarations of nullity in the Code of Canon Law and the Code of Canons of the Eastern Churches.

Appended to each document is a set of procedural rules explaining to bishops (and others) how the new processes are to work.

#### 5) Why has Pope Francis done this?

He did so out of a desire to make the declaration of nullity process more efficient. In many parts of the world, the process has been notoriously slow and difficult. In some countries, it could be practically impossible to get a Church court even to hear one's case, and if a court did take it, it could take many years to get a ruling. Thus, as Pope Francis notes, the 2014 Synod of Bishops requested changes to the declaration of nullity process. The Synod wrote: "A great number of Synod fathers emphasized the need to make the procedure in cases of nullity more accessible and less time-consuming, and, if possible, at no expense." They proposed, among others, the dispensation of the requirement of a second trial to confirm an initial declaration of nullity; the possibility of establishing an administrative means under the jurisdiction of the diocesan bishop; and a simple process to be used in cases where nullity is clearly evident.

Some Synod fathers, however, were opposed to these proposals, because they thought that they would not guarantee a reliable judgment and would call the Church's doctrine of the indissolubility of marriage into question.

In all these cases, the Synod fathers emphasized the necessity of ascertaining the truth about the validity of the marriage bond.

Among other proposals, the role which faith plays in persons who marry could possibly be examined in ascertaining the validity of a marriage.

The new documents seek to make the declaration of nullity process more accessible and less time-consuming. They do not require the process to be free of charge (dioceses need to pay the

time-consuming. They do not require the process to be free of charge (dioceses need to pay the people who work on these cases, and in some cases that means paying a fee to partially cover the costs), but the procedural norms attached to the documents do call for the costs to be minimized.

#### **6) What changes did Pope Francis make to the process?**

This is a complicated subject, because he replaced the sections in the two codes of canon law that deal with declarations of nullity. In the case of the Western code, that means he had twenty-one canons rewritten (canons 1671-1691).

Some of the changes were slight, but there are too many to go into here. Among the major changes, as listed in the introduction to *Mitis Iudex Dominus Iesus*, are:

- Only a single judgment of nullity is required. Until now, in most cases, if one tribunal determined that a marriage was null, the decision was automatically appealed to a court of second instance, and only if the second tribunal agreed was a declaration of nullity granted. Now the morally certain decision of the first court will be sufficient in uncontested cases.
- The bishop himself is a judge. Although the bishop has always been the principal judge in his diocese, previously, the section on declaration of nullity did not establish that the bishop himself was a judge in marriage cases. Now, in keeping with his role as shepherd of the faithful, it does. In fact, he is the principal judge in his diocese, to be assisted by others whom he chooses. The new law thus puts the responsibility squarely on the bishop as a pastor.
- A new, briefer process involving the bishop has been created. Up to now, there have been two processes for handling declarations of nullity: the formal process (which is the lengthier one involving gathering and weighing testimony) and the documentary process (which deals with situations where a marriage can be proved invalid simply by presenting certain documents, such as showing that a Catholic was married outside the Church without the required permission). Now there is a middle process involving the bishop. If the evidence for nullity is especially clear, they can be presented to the bishop in a process intended to take less time than a formal process case. However, if the evidences require more examination, the case is to be referred to the formal process.
- Appeals can be made against the judgment of the bishop to the metropolitan. As a check on the judgment of the bishop, parties can appeal his decision to the metropolitan bishop (i.e., the bishop who heads the local ecclesiastical province, composed of several neighboring dioceses). Or, if it was the metropolitan himself who heard the original case, appeal can be made to the senior suffragan bishop (i.e., the bishop in the province with the most seniority, apart from the metropolitan). All of New York State is an ecclesiastical province, and the Archbishop of New York is the metropolitan.

#### **7) In what kind of situations can the new, shorter process be used?**

According to the procedural norms attached to *Mitis Iudex Dominus Iesus*, these cases include the following:

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- the brevity of married life (i.e., the couple divorced very quickly after being married)
- procured abortion to prevent procreation (presumably during the marriage itself, prior to bearing other children and thus showing an unwillingness to procreate)
- the stubborn persistence in an extramarital affair at the time of the wedding or at a time immediately following
- the malicious concealment of:
  - o infertility
  - o a serious contagious disease
  - o children born from a previous relationship
  - o an incarceration
- a reason for getting married that is completely foreign to married life (presumably something like entering a legal fiction of a marriage to be able to immigrate or gain an inheritance) or consisting of the unplanned pregnancy of the woman
- the physical violence inflicted to extort the consent to marry
- the lack of use of reason proved by medical documents

**8) When does all this take effect?**

Not immediately. According to Vatican Information Service, the effective date is December 8, 2015.

**9) Is there more to say about all this?**

Lots. However, this will do for an initial look at the subject.

From 1970 until the promulgation of the current Code of Canon Law in 1983, many of the “new” provisions were already in effect in the United States under the “American Procedural Norms.”

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