



The Holy See

APOSTOLIC LETTER
MOTU PROPRIO

OF THE SUPREME PONTIFF
FRANCIS

MITIS ET MISERICORS IESUS

BY WHICH THE CANONS OF THE CODE OF CANONS OF EASTERN CHURCHES
PERTAINING TO CASES REGARDING THE NULLITY OF MARRIAGE ARE REFORMED

The Gentle and merciful Jesus, the Shepherd of our Souls, entrusted to the Apostle Peter and to his successors the power of the keys to carry out the work of truth and justice in the Church; this supreme and universal power of binding and loosing here on earth asserts, strengthens, and protects the power of Pastors of particular Churches, by virtue of which they have the sacred right and duty before the Lord to enact judgment toward those entrusted to their care.^[1]

When he promulgated the Code of Canons of Eastern Churches, our Venerable Predecessor, Saint John Paul II, noted: “From the beginning of the codification of the canons of the Eastern Churches it was the firm will of the Roman Pontiffs to promulgate two codes: one for the Latin Church, the other for the Eastern Catholic Churches. This would clearly show the observance of that which results in the Church by God's Providence - that the Church itself, gathered in the one Spirit, breathes as though with two lungs - of the East and of the West - and that it burns with the love of Christ in one heart having two ventricles.”^[2]

Following the same path, and taking into consideration the unique ecclesial and disciplinary structure of the Eastern Churches, we have decided to promulgate norms through a separate *motu proprio* to update the practice of matrimonial processes according to the Code of Canons of Eastern Churches.

Through the centuries, the Church, having attained a clearer awareness of the words of Christ, came to and set forth a deeper understanding of the doctrine of the indissolubility of the sacred bond of marriage, developed a system of nullities of matrimonial consent, and put together a juridical process more fitting to the matter so that ecclesiastical discipline might conform more and more to the truth of the faith she was professing. All these things were done following the supreme law of the salvation of souls.

From this perspective, it is a very important mission of the bishop – who, according to the teaching of the Eastern fathers, acts as judge and physician – that man, having been wounded and having fallen (*peptokós*) by original sin and his own faults, and thus having been weakened, attains healing and mercy from the medicinal means of penance offered by God and is reconciled with the Church. For indeed the Bishop – having been constituted a model of Christ and standing in his place (*eis typon kai topon Christou*) – is above all a minister of divine mercy; therefore, the exercise of juridical power is a privileged place where, using the laws of *oeconomia* or *acribia*, he himself imparts the Lord's healing mercy to the Christian faithful in need of it.

Whatever we establish in this *motu proprio*, we do so following in the footsteps of our predecessors, who wished cases of nullity to be handled in a juridical rather than an administrative way, not because the nature of the matter demands it, but rather due to the unparalleled need to safeguard the truth of the sacred bond: something ensured by the juridical order.

A few fundamental criteria stand out that have guided the work of reform.

First of all, it seemed that a double conforming decision in favor of the nullity of a marriage was no longer necessary to enable the parties to enter into a new canonical marriage. Rather, moral certainty on the part of the first judge in accord with the norm of law is sufficient.

In the first instance, the responsibility of appointing a single judge, who must be a cleric, is entrusted to the bishop, who in the pastoral exercise of his juridical powers must guard against all laxism.

In order that a teaching of the Second Vatican Council regarding a certain area of great importance finally be put into practice, it has been decided to declare openly that the bishop himself, in the church over which he has been appointed shepherd and head, is by that very fact the judge of those faithful entrusted to his care. It is thus hoped that the bishop himself, be it of a large or small eparchy, stand as a sign of the conversion of ecclesiastical structures,^[3] and that he does not delegate completely the duty of deciding marriage cases to the offices of his curia. This is especially true in the streamlined process for handling cases of clear nullity being established in the present document.

For indeed, in simplifying the ordinary process for handling marriage cases, a sort of briefer

process was devised – besides the current documentary procedure –, to be applied in those cases where the alleged nullity of marriage is supported by particularly clear arguments. Nevertheless, we are not unaware of the extent to which the principle of the indissolubility of marriage might be endangered by the briefer process; for this very reason we desire that the bishop himself be established as the judge in this process, who, due to his duty as pastor, has the greatest care for catholic unity with Peter in faith and discipline.

The appeal process to the Metropolitan See, insofar as it has been a capital duty of the ecclesiastical province through the centuries and a prime example of the original mark of the synodality of the Eastern Churches, should, by that reason, be maintained and fostered.

The synods of Eastern Churches, which above all should be driven by apostolic zeal to reach out to the dispersed faithful, should especially feel the duty of participating in the aforementioned “conversion” and they should respect the restored and defended right of organizing judicial power in their own particular churches. The restoration of the proximity between the judge and the faithful will never reach its desired result unless episcopal synods offer encouragement and assistance to individual bishops so that they may carry out the reform of the matrimonial process.

Synods, in close collaboration with judges, should ensure, to the best of their ability and with due regard for the just compensation of tribunal employees, that processes remain free of charge, and that the Church, showing herself a generous mother to the faithful, manifest, in a matter so intimately tied to the salvation of souls, the gratuitous love of Christ by which we have all been saved.

In accord with a revered and ancient right, it is still necessary to retain the appeal to the ordinary tribunal of the Holy See, namely the Roman Rota, so as to strengthen the bond between the See of Peter and the particular churches, with due care, however, to keep in check any abuse of the practice of this appeal, lest the salvation of souls should be jeopardized.

Nevertheless, insofar as necessary, the respective law of the Roman Rota will be adapted as soon as possible to the rules of the reformed process.

Therefore, having taken all of this into consideration, we have determined and established the following changes to the Code of Canons of Eastern Churches, Title XXVI, Chapter I, Article 1, “Cases to Declare the Nullity of Marriage” (cann. 1357-1377), which will take effect beginning December 8th, 2015:

1. The Competent Forum and Tribunals

Can. 1357 § 1. Any marriage case of a baptized person belongs to the Church by proper right.

§ 2. With due regard for personal statutes wherever they are in force, if cases primarily regard merely the civil effects of marriage, then they belong to a civil magistrate, but, in an incidental or accessory way, they can also be recognized and determined by an ecclesiastical judge by his own authority.

Can. 1358. In cases regarding the nullity of marriage not reserved to the Apostolic See, the competencies are: 1° the tribunal of the place in which the marriage was celebrated; 2° the tribunal of the place in which either or both parties have a domicile or a quasi-domicile; 3° the tribunal of the place in which in fact most of the proofs must be collected.

Can. 1359 § 1. In each eparchy, the judge in first instance for cases of nullity or marriage for which the law does not expressly make an exception is the eparchial bishop, who can exercise judicial power personally or through others according to the norm of law.

§ 2. The bishop is to establish an eparchial tribunal for his eparchy to handle cases of nullity of marriage without prejudice to the faculty of the same bishop to approach another nearby eparchial or intereparchial tribunal.

§ 3. Cases of nullity of marriage are reserved to a college of three judges. A judge who is a cleric must preside over the college, but the other judges may be laypersons.

§ 4. The bishop moderator, if a collegial tribunal cannot be constituted in the eparchy or in a nearby tribunal chosen according to the norm of § 2, is to entrust cases to a single clerical judge who, where possible, is to employ two assessors of upright life, experts in juridical or human sciences, approved by the bishop for this task; unless it is otherwise evident, the same single judge has competency for those things attributed to the college, the *praeses*, or the *ponens*.

§ 5. The tribunal of second instance must always be collegiate for validity, according to the prescript of the preceding § 3.

§ 6. The tribunal of first instance appeals to the metropolitan tribunal of second instance without prejudice to the prescripts of cann 1064 and 1067, § 5.

2. The Right to Challenge a Marriage

Can. 1360 § 1. The following are qualified to challenge a marriage: 1° the spouses; 2° the promoter of justice when nullity has already become public, if the convalidation of the marriage is not possible or expedient.

§ 2. A marriage which was not accused while both spouses were living cannot be accused after the death of either one or both of the spouses unless the question of validity is prejudicial to the

resolution of another controversy either in the canonical forum or in the civil forum.

§ 3. If a spouse dies while the case is pending, however, can. 1199 is to be observed.

3. The Introduction and Instruction of the Case

Can. 1361. The judge, before he accepts a case, must be informed that the marriage has irreparably failed, such that conjugal living cannot be restored.

Can. 1362 § 1. After receiving the libellus, the judicial vicar, if he considers that it has some basis, admits it and, by a decree appended to the bottom of the libellus itself, is to order that a copy be communicated to the defender of the bond and, unless the libellus was signed by both parties, to the respondent, giving them a period of fifteen days to express their views on the petition.

§ 2. After the above-mentioned deadline has passed, and after the other party has been admonished to express his or her views if and insofar as necessary, and after the defender of the bond has been heard, the judicial vicar is to determine by his decree the formula of the doubt and is to decide whether the case is to be treated with the ordinary process or with the briefer process according to cann. 1369-1373. This decree is to be communicated immediately to the parties and the defender of the bond.

§ 3. If the case is to be handled through the ordinary process, the judicial vicar, by the same decree, is to arrange the constitution of a college of judges or of a single judge with two assessors according to can. 1359, § 4.

§ 4. However, if the briefer process is decided upon, the judicial vicar proceeds according to the norm of can. 1371.

§ 5. The formula of doubt should not only inquire into the nullity of the marriage in question, it should also determine by which ground or grounds the validity of the marriage is being challenged.

Can. 1363 § 1. The defender of the bond, the legal representatives of the parties, as well as the promoter of justice, if involved in the trial, have the following rights: 1° to be present at the examination of the parties, the witnesses, and the experts, without prejudice to the prescript of can. 1240; 2° to inspect the judicial acts, even those not yet published, and to review the documents presented by the parties.

§ 2. The parties cannot be present at the examination mentioned in §1, n. 1.

Can. 1364 § 1. In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, can have the force of full

proof, to be evaluated by the judge after he has considered all the indications and supporting factors, unless other elements are present which weaken them.

§ 2. In the same cases, the testimony of one witness can produce full proof if it concerns a qualified witness making a deposition concerning matters done *ex officio*, or unless the circumstances of things and persons suggest it.

§ 3. In cases of impotence or defect of consent because of mental illness or an anomaly of a psychic nature, the judge is to use the services of one or more experts unless it is clear from the circumstances that it would be useless to do so; in other cases the prescript of can. 1255 is to be observed.

§ 4. Whenever, during the instruction of a case, a very probable doubt arises as to whether the marriage was ever consummated, the tribunal, having heard both parties, can suspend the case of nullity, complete the instruction to obtain the solution of a sacramental unconsummated marriage, and then transmit the acts to the Apostolic See together with a petition for this solution from either one or both of the spouses and the *votum* of the tribunal and the eparchial bishop.

4. The Judgment, its Appeals and its Execution

Can. 1365. The sentence that first declared the nullity of the marriage, once the terms as determined by cann. 1311-1314 have passed, becomes executive.

Can. 1366 § 1. The party who considers himself or herself aggrieved, as well as the promoter of justice and the defender of the bond, have the right to introduce a complaint of nullity of the judgment or appeal against the sentence, according to cann. 1302-1321.

§ 2. After the time limits established by law for the appeal and its prosecution have passed, and after the judicial acts have been received by the tribunal of higher instance, a college of judges is established, the defender of the bond is designated, and the parties are admonished to put forth their observations within the prescribed time limit; after this time period has passed, if the appeal clearly appears merely dilatory, the collegiate tribunal confirms the sentence of the prior instance by decree.

§ 3. If an appeal is admitted, the tribunal must proceed in the same manner as the first instance with the appropriate adjustments.

§ 4. If a new ground of nullity of the marriage is alleged at the appellate level, the tribunal can admit it and judge it as if in first instance.

Can. 1367. If an executive sentence has been issued, one can go at anytime to a tribunal of the

third level for a new proposition of the case according to the norm of can. 1325, provided new and grave proofs or arguments are brought forward within the peremptory time limit of thirty days from the proposed challenge.

Can. 1368 § 1. After the sentence declaring the nullity of the marriage has been executed, the parties whose marriage has been declared null can contract a new marriage unless a prohibition attached to the sentence itself or established by the local ordinary forbids this.

§ 2. As soon as the sentence is executed, the judicial vicar must notify the Hierarch of the place in which the marriage took place. The Hierarch must take care that the declaration of the nullity of the marriage and any possible prohibitions are noted as soon as possible in the marriage and baptismal registers.

5. The Briefer Matrimonial Process before the Bishop

Can. 1369. The eparchial bishop himself is competent to judge cases of the nullity of marriage with the briefer process whenever:

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.

Can. 1370. The libellus introducing the briefer process, in addition to those things enumerated in can. 1187, must: 1° set forth briefly, fully, and clearly the facts on which the petition is based; 2° indicate the proofs, which can be immediately collected by the judge; 3° exhibit the documents, in an attachment, upon which the petition is based.

Can. 1371. The judicial vicar, by the same decree which determines the formula of the doubt, having named an instructor and an assessor, cites all who must take part to a session, which in turn must be held within thirty days according to can. 1372.

Can. 1372. The instructor, insofar as possible, collects the proofs in a single session and establishes a time limit of fifteen days to present the observations in favor of the bond and the defense briefs of the parties, if there are any.

Can. 1373 § 1. After he has received the acts, the eparchial bishop, having consulted with the instructor and the assessor, and having considered the observations of the defender of the bond and, if there are any, the defense briefs of the parties, is to issue the sentence if moral certitude about the nullity of marriage is reached. Otherwise, he refers the case to the ordinary method.

§ 2. The full text of the sentence, with the reasons expressed, is to be communicated to the parties as swiftly as possible.

§ 3. An appeal against the sentence of the bishop is made to the metropolitan or to the Roman Rota; if, however, the sentence was rendered by a metropolitan or another eparchial bishop who does not have a superior authority below the Roman Pontiff, the appeal is made to a bishop selected by him in a stable manner after consultation with the Patriarch or Hierarch as indicated in can. 175.

§ 4. If the appeal clearly appears merely dilatory, the metropolitan or the bishop mentioned in § 3, or the dean of the Roman Rota, is to reject it by his decree at the outset; if the appeal is admitted, however, the case is remitted to the ordinary method at the second level.

6. The Documentary Process

Can. 1374. After receiving a petition proposed according to the norm of can. 1362, the eparchial bishop or the judicial vicar or a judge designated by him can declare the nullity of a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except for the citation of the parties and the intervention of the defender of the bond.

Can. 1375 § 1. From what is given in can. 1374, the defender of the bond, if he prudently thinks that either the flaws or the lack of a dispensation are not certain, must appeal to the judge of second instance, to whom the acts must be sent and who must be informed that a documentary process is involved.

§ 2. The party who considers himself or herself aggrieved retains the right of appeal.

Can. 1376. The judge of the tribunal in second instance, with the intervention of the defender of the bond and after having heard the parties, will decide whether the sentence is to be affirmed or to proceed according to the ordinary method of the law; in the latter event the judge remands the case to the tribunal of first instance.

7. General Norms

Can. 1377 § 1. In the sentence the parties are to be reminded of the moral and even civil obligations binding them toward one another and toward their children to furnish support and education.

§ 2. Cases for the declaration of the nullity of a marriage cannot be treated in the summary contentious process mentioned in cann. 1343-1356.

§ 3. In other procedural matters, the canons on trials in general and on the ordinary contentious trial must be applied unless the nature of the matter precludes it; the special norms for cases concerning the status of persons and cases pertaining to the public good are to be observed.

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The provision of can. 1365 will apply to sentences declaring the nullity of marriage published starting from the day this *motu proprio* comes into force.

Attached and made part hereof are the procedural rules that we considered necessary for the proper and accurate implementation of this new law, which must be observed diligently to foster the good of the faithful.

What we have established by means of this *motu proprio*, we deem valid and lasting, notwithstanding any provision to the contrary, even those worthy of meriting most special mention.

We confidently entrust to the intercession of the blessed and glorious ever Virgin Mary, most rightly referred to as *Theotokos*, who shines forth as the ideal Mother of Mercy, and of the Holy Apostles Peter and Paul, the active implementation of this new matrimonial process.

Given in Rome, near the tomb of Saint Peter, on the 15th day of August, the Assumption of the Blessed Virgin Mary, in the year 2015, the third of our pontificate.

Francis

The way of proceeding in cases regarding the declaration of the nullity of a marriage

The Third General Assembly of the Extraordinary Synod of Bishops, held in October of 2014, looked into the difficulty the faithful have in approaching church tribunals. Since the bishop, as a good shepherd, must attend to his poor faithful who need particular pastoral care, and given the sure collaboration of the successor of Peter with the bishops in spreading familiarity with the law, it has seemed opportune to offer, together with the detailed norms for the application to the matrimonial process, some tools for the work of the tribunals to respond to the needs of the faithful who seek that the truth about the existence or non-existence of the bond of their failed marriage be declared.

Art. 1. The eparchial bishop, under can. 192, §1 is obliged, with an apostolic spirit, to attend to separated or divorced spouses who perhaps, by the conditions of their lives, have abandoned religious practice. He thus shares, together with pastors (cf. can. 289, §3), the pastoral solicitude for these faithful in difficulties.

Art. 2. The pre-judicial or pastoral investigation, which in the context of eparchial 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 investigation will be developed within the unified eparchial pastoral care of marriage.

Art. 3. This same investigation is entrusted to persons deemed suitable by the local Hierarchy, 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.

One eparchy, or several together, according to the present groupings, can form a stable structure through which to provide this service and, if appropriate, a handbook (*vademecum*) containing the elements essential to the most appropriate way of conducting the investigation.

Art. 4. The pastoral investigation 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.

Art. 5. Once all the elements have been collected, the investigation culminates in the libellus, which, if appropriate, is presented to the competent tribunal.

Art. 6. Since the Code of Canons of Eastern Churches must be applied in all matters, without prejudice to special norms, even the matrimonial processes in accord with can. 1377, § 3, the present *ratio* does not intend to explain in detail a summary of the whole process, but more specifically to illustrate the main legislative changes and, where appropriate, to complete it.

1. The Competent Forums and the Tribunals

Art. 7 § 1. The titles of competence in can. 1358 are the same, observing in as much as possible the principle of proximity between the judges and the parties.

§ 2. Through the cooperation between tribunals mentioned in can. 1071, care is to be taken that everyone, parties or witnesses, can participate in the process at a minimum of cost.

Art. 8 § 1. In eparchies which lack their own tribunals, the bishop should take care that, as soon as possible, persons are formed who can zealously assist in setting up marriage tribunals, even by means of courses in well-established and continuous institutions sponsored by the eparchy or in cooperation with groupings of eparchies and with the assistance of the Apostolic See.

§ 2. The bishop can withdraw from an intereparchical tribunal constituted in accordance with can. 1067, § 1.

2. The Right to Challenge a Marriage

Art. 9. If a spouse dies during the process with the case not yet concluded, the instance is suspended until the other spouse or another person, who is interested, insists upon its continuation; in this case, a legitimate interest must be proven.

3. The Introduction and Instruction of Cases

Art. 10. The judge can admit an oral petition whenever a party is prevented from presenting a libellus: however, the judge himself orders the notary to draw up the act in writing that must be read to the party and approved, which takes the place of the libellus written by the party for all effects of law.

Art. 11 § 1. The libellus is presented to the eparchial or intereparchical tribunal which has been chosen according to the norm of can. 1359 § 2.

§ 2. A respondent who remits himself or herself to the justice of the tribunal, or, when properly cited, once more, makes no response, is deemed not to object to the petition.

4. The Sentence, Its Appeals and Execution

Art. 12. To achieve the moral certainty required by law, a preponderance of proofs and clues is not sufficient, but it is required that any prudent doubt of making an error, in law or in fact, is excluded, even if the mere possibility of the contrary is not removed.

Art. 13. If a party expressly declares that he or she objects to receiving any notices about the case, that party is held to have renounced of the faculty of receiving a copy of the sentence. In this case, that party may be notified of the dispositive part of the sentence.

5. The Briefer Matrimonial Process before the Bishop

Art. 14 § 1. Among the circumstances of things and persons that can allow a case for nullity of marriage to be handled by means of the briefer process according to cann. 1369-1373, are

included, for example: the defect of faith which can generate simulation of consent or error that determines the will; a brief conjugal cohabitation; an abortion procured to avoid procreation; an obstinate persistence in an extraconjugal relationship at the time of the wedding or immediately following it; the deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations; a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman, physical violence inflicted to extort consent, the defect of the use of reason which is proved by medical documents, etc.

§ 2. Among the documents supporting this petition are included all medical records that can clearly render useless the requirement of an *ex officio* expert.

Art. 15. If the libellus was presented to introduce the ordinary process, but the judicial vicar believes the case may be treated with the briefer process, he is, in the notification of the libellus according to can. 1362, §1, to invite the respondent who has not signed the libellus to make known to the tribunal whether he or she intends to enter and take an interest in the process. As often as is necessary, he invites the party or parties who have signed the libellus to complete it as soon as possible according to the norm of can. 1370.

Art. 16. The judicial vicar can designate himself as an instructor; but to the extent possible, he is to name an instructor from the eparchy where the case originated.

Art. 17. In issuing the citation in accordance with can. 1371, the parties are informed that, if possible, they are to make available, at least three days prior to the session for the instruction of the case, those specific points of the matter upon which the parties or the witnesses are to be questioned, unless they are attached to the libellus.

Art. 18. § 1. The parties and their advocates can be present for the examination of other parties and witnesses unless the instructor, on account of circumstances of things and persons, decides to proceed otherwise.

§ 2. The responses of the parties and witnesses are to be rendered in writing by the notary, but in a summary way and only that which refers to the substance of the disputed marriage.

Art. 19. If the case is instructed at an intereparchical tribunal, the bishop who is to pronounce the sentence is the one of that place according to the competence established in accordance with can. 1358. If there are several, the principle of proximity between the parties and the judge is observed as far as possible.

Art. 20 § 1. The eparchical bishop determines according to his own prudence the way in which to pronounce the sentence.

§ 2. The sentence which is signed by the bishop and certified by the notary, briefly and concisely explains the reasons for the decision and ordinarily the parties are notified within one month of the day of the decision.

6. The Documentary Process

Art. 21. The competent eparchial bishop and the judicial vicar are determined in accordance with can. 1358.

[1] Cf. Second Vatican Council, the Dogmatic Constitution *Lumen Gentium*, n. 27.

[2] John Paul II, Apostolic Constitution *Sacri Canones*, 18 October 1990, *Prooemium*, *Acta Apostolicae Sedis* 82 (1990), p. 1037.

[3] Cf. Pope Francis, Apostolic Exhortation *Evangelii Gaudium*, n. 27, in the *Acta Apostolicae Sedis* 105 (2013), p. 1031.
