



Italy - October 2015

Reforms of the Catholic Church Law in Marital Nullity Trials and the Italian Legal System

Pope Francis recently enacted the acts regulating the new abbreviated procedure for the nullity of marriage cases. While a juridical process is needed for making accurate judgments, the canonical marriage annulment process must be quicker, cheaper and much more of a pastoral ministry. These reforms have been in particular formalized by two papal documents, *Mitis Iudex Dominus Iesus* (The Lord Jesus, the Gentle Judge) for the Latin-rite church and *Mitis et misericors Iesus* (The Meek and Merciful Jesus) for the Eastern Catholic churches. In practice, these documents are not intended for promoting the nullity of marriages, but the quickness of the processes, as well as a correct simplicity of the procedures, so that Catholic couples are not oppressed by the shadow of doubt for prolonged periods.

Nevertheless, these acts raise a variety of questions concerning the civil effects of the ecclesiastical judgement affirming the nullity of a marriage, under Article 8 (section 2) of the 1984 Italian Concordat between the Holy See and the Italian Republic. The papal documents seem to affirm a sort of voluntary jurisdiction, similarly to dispensation from valid (non consummated) marriage. That can have some important impacts in respect to the so-called “*delibazione*”, the procedure through which the effects of a canonical judgment are recognised within the Italian civil order – as established by Article 8.2 of the 1984 Concordat (see Nicola Colainni, *Il giusto processo di delibazione e le “nuove” sentenze ecclesiastiche di nullità matrimoniale*).

As far as marriage law is concerned, according to the prefatory remarks attached to the *Mitis Iudex Dominus Iesus* and the *Mitis et misericors Iesus*, the Catholic reforms are the result of an expert group appointed to study the current state of law and practice in the Church. Here Pope Francis makes clear that the single most important principle guiding his action is that of *salus animarum* (the salvation of souls), which is the *suprema Ecclesiae lex* (the supreme law of the Church). In the light of that, the changes (including the option of a brief process without the obligatory automatic appeal) go into effect on December 8, 2015 (the opening day of the Year of Mercy), and are guided by some specific criteria.

First of all, the reforms affirm that there be only one sentence in favour of executive nullity. This means that, in order to be admitted to new valid marriages, the believers are no longer required to have a twofold decision in favour of marital nullity: the moral assurance reached by the first judge is sufficient. The reforms also states that the constitution of a single judge in the first instance (here the judge must always be a cleric) is placed under the responsibility of the Bishop who, in the pastoral exercise of his own proper judicial power, must guarantee that no laxity be indulged in this matter. Besides, as far as matters pertaining to marriage are concerned, in order to finally implement the II Vatican Council, the Bishop himself should offer a sign of the conversion of ecclesiastical structures, and not leave the judicial function completely delegated to the offices of the diocesan curia.

It should be noted that, in addition to the documentary process already approved, and beyond making the marriage annulment process more agile, a briefer form of trying nullity cases has been designed. This new form is to be applied in cases in which the accusation of marital nullity is supported by particularly evident arguments. In such cases the Bishop himself shall be constituted judge. It is fitting that the appeal to the Metropolitan See be re-introduced, since that office of headship of an Ecclesiastical province, stably in place through the centuries, is a distinctive sign of the synodality of the Church.

Finally, the Bishops' Conferences, which must be driven above all by the anxious apostolic desire to reach the far-off faithful, should formally recognize the duty to share the aforesaid conversion: here it is important to respect the Bishops' right to organize judicial power within his own particular Church. Yet, we should not forget that the appeal to the ordinary Tribunal

of the Apostolic See, i.e. the Roman Rota, is maintained (see [Rescritto del Santo Padre Francesco sul compimento e l'osservanza della nuova legge del processo matrimoniale](#)).

As we can easily notice, this is a very important reform, not only for the Church's law, but also for some States' law, with which the Catholicism has imperative links, especially in matter of marriage. The example is given by Italy where, on the basis of the 1984 Agreement between the Catholic Holy See and the Italian Republic that modified the 1929 Lateran Concordat, a marriage contract made in accordance to Canon law has civil effects, when registered in the State's registers and notified in the local registry office. The application for registration is made in writing by the Catholic priest no more than five days from wedding date.

Now, as many know, in this matter the sentence of annulment of a marriage pronounced by ecclesiastical tribunals is, at the request of the parties or one of them, effective in the Italian legal order by the judgement of the competent Court of Appeal.

In particular, the sentence of annulment of a marriage pronounced by ecclesiastical tribunals, which are furnished with the decree of execution from the higher controlling ecclesiastical authority, is, at the request of the parties or of one of them, pronounced effective in the Italian Republic by the judgement of the competent Court of appeal, when the following have been ascertained: a) that the ecclesiastical judge was competent to adjudicate that the marriage had been celebrated in accordance with the present article; b) that during the proceedings prior to the ecclesiastical tribunal the parties had been assured the right to sue and to defend themselves in court in a way which does not differ from the fundamental principles of Italian law; c) that other conditions required by Italian law for the efficacy of foreign judgements are in place. The Court of appeal shall be able, in a judgement which intends to execute a canonical judgement, make provisional economic measures in favour of one of the spouses for whom the marriage has been declared null, referring the parties to a competent judge for a final decision on their case. While assenting to the present law on matrimony, the Holy See feels the need to reaffirm the immutable value of Catholic doctrine on marriage and the concern of the Church for the dignity and values of the family as a fundamental element of society.

For these reasons, as far as marriage law is concerned, in the light of the 1984 rules, it is very important to understand the impact on the Francis Pope's reforms on the relationship between the Italian Republic and the Catholic Church. For example, can an Italian Court of Appeal recognize the effects of a canonical marital nullity when affirmed by a Bishop? In particular, it is important to understand if the new canonical law is compatible with the principles established by both the Italian Constitution and the European Convention of Human Rights (ECHR), guarantying the right to a fair trial.

Vera Valente
Università degli Studi di Bari, Italy
LUM "Jean Monnet" – Casamassima, Bari, Italy
January 2016