



Vatican City, 24 January 2018

Prot. N. 15721/2017

Reverend Father _____,

I refer to your letter to this Pontifical Council, in which you asked several questions regarding the role of the defender of the bond in the marriage nullity procedure in light of can. 1676 §§1-2, 1685 and 1687 §1 of the motu proprio *Mitis Iudex Dominus Iesus* (MIDI), as well as regarding the transition from a judicial procedure to an administrative procedure *super rato* in the sense of can. 1678 §4 CIC/MIDI. The wording of the abovementioned canons is clear and does not need any authentic interpretation. Your questions concern instead the correct application of the norm.

As to your first five questions, the following can be noted. Can. 1676 §1 CIC/MIDI clearly requires the judicial vicar to order that a copy of the *libellus*, once admitted, be communicated to the defender of the bond. The latter should then give his observations within fifteen days. Can. 1676 §2 CIC/MIDI holds that the judicial vicar can only fix the formula of the doubt once he has received the observations by the defender of the bond or once the term of fifteen days mentioned in §1 has expired.

Can. 1685 CIC/MIDI states that “*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 (omnes ... qui in ea interesse debent), which in turn must be held within thirty days according to can. 1686.*” This undoubtedly includes the defender of the bond. If it turns out to be impossible to conclude the instruction of the case in one session, the defender of the bond must also be cited for all successive sessions.

Finally, can. 1687 §1 CIC/MIDI specifies that, regarding the briefer process, the diocesan bishop has to consider the observations of the defender of the bond (*perpensis animadversionibus defensoris vinculi*) before rendering his sentence. Of course, the diocesan

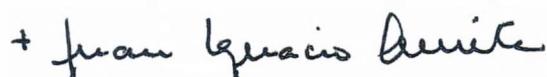
bishop is not bound to follow the reasoning proposed by the defender of the bond but his reasoning could nevertheless indicate to the Bishop whether the case has to be further investigated by the ordinary process (cf. can. 1687 §1).

All these provisions are motivated by the desire to protect the contentious nature of the judicial procedure, as well as the right of defense. It is outside the competence of our Pontifical Council to determine whether the partial non-respect of these canons in a particular case amounts to an irremediable nullity in the sense of can. 1620, 7° CIC.

Your final question concerns the application of can. 1678 §4 CIC/MIDI. It results from that canon, as well as from an earlier Circular Letter by the Congregation for the Sacraments dated 20 December 1986 (Art. 7), that there is no dogmatic or any normative obstacle to a transition from a judicial nullity procedure to an administrative procedure *super rato*, if there is a very probable doubt (*dubium valde probabile*) as to whether the marriage was ever consummated. Whereas the said Circular Letter still requires the consent of both parties (*accedente consensu utriusque*), can. 1678 §4 CIC/MIDI only requires that the parties be heard (*auditis partibus*), even though it might still be prudent to evaluate the parties' opinion. It clearly follows, however, from the use of the term '*potest*', that the college of judges or the single judge is not obliged to suspend the judicial process. It is left to the discretion of the judge(s) to decide upon the expediency of such a transition to the administrative process *super rato*. Finally, it should be noted that prior to the granting of the dispensation *super rato*, the judicial process is only suspended, not terminated.

In the hope to have given you some helpful information, we assure you of our best and prayerful wishes for your ministry.

Sincerely yours *in Domino*,

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+ Juan Ignacio Arrieta
Segretario


Mons. Markus Graulich SDB
Sotto-Segretario