

English Translation of
Prot.N.15170/2015
Vatican City, 25 November 2015

(omisis)

I respond to the letter of 20 October 2015, with which you have asked for the opinion of this Pontifical Council regarding two questions on the new motu proprio *Mitis et misericors Iesus*.

Paragraph 2 of can. 1372 CCEO, up until now in force, establishes that the prenuptial investigation referred to in can. 748 demonstrate the free status of the person who has to observe the form of marriage celebration prescribed by law, but who attempted the marriage before a civil officer or non-Catholic minister.

The new can. 1374 of the motu proprio *Mitis et misericors Iesus*, on the other hand, makes no mention of the content of the aforementioned paragraph 2 of can. 1372 and mentions the aforementioned case among the causes that present a defect of the legitimate form, requiring for all a declaration of nullity of the marriage by sentence in the documentary process.

Consequently, with the entry into force of the motu proprio *Mitis et Misericors Iesus*, the preliminary investigations will no longer be sufficient to prove the free status of those who attempted the marriage in the circumstances indicated, but the nullity of the previous marriage must be declared by observing the prescriptions of the new can. 1374 of the documentary process.

The other question presented by you emerged from the comparison between can. 1087 § 2 CCEO and the new can. 1359 §3. The can. 1087 § 2 is a norm concerning judgments in general, while the new can. 1359 § 3 of the motu proprio *Mitis et misericors Iesus* is inserted in the part on special processes, and concerns only the matrimonial processes.

Even if the text of paragraph 3 of the new can. 1359 is not explicit in indicating if, for the designation as *judici alii christifideles*, the permission mentioned in can. 1087 § 2 CCEO, from the overall logic of the provisions of the motu proprio on the broad power that is intended to recognize the eparchial bishop, it seems necessary to deduce that in the process of nullity of marriage the eparchial bishop can appoint judges who are other faithful Christians without the prior permission of the authority indicated by can. 1087 § 2 CCEO.

(omisis)