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Kerala, India

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However, if, instead of a declaration of nullity, it was a mere act of divorce issued by the Orthodox authority, one must proceed as indicated in no. 3.

Vatican City, December 20, 2012

✦ Francesco Card. Coccopalmerio

President

✦ Juan Ignacio Arrieta
Secretary

PCLT's Particular Answers to m.p. *Mitis et misericors Iesus*

Pablo Gefaell

On November 25 2015 the Pontifical Council for Legislative Texts (PCLT) issued a particular answer (Prot. No. 15170/2015) on two questions regarding the *motu proprio Mitis et misericors Iesus*¹ which merits some comments.

1. On the canonical *status* of civilly married Oriental faithful

The first reply is the following:

“Paragraph 2 of can. 1372 CCEO², up to now still in force, stipulates that the pre-nuptial investigation mentioned in can. 748 is enough to demonstrate the free *status* of the person who had to observe the form of marriage prescribed by law, but who has attempted marriage before a civil officer or a non-Catholic minister.



The new can. 1374 of the motu proprio *Mitis et misericors Iesus*,³ instead, makes no mention of the content of the above-cited paragraph 2 of can. 1372 and mentions the cited case among the causes that have a defect in the legitimate form, requiring in all of them a declaration of nullity of marriage by judicial sentence in the documentary process.

As a result, with the entry into force of the motu proprio *Mitis et misericors Iesus* premarital investigation will no longer be sufficient to prove the free *status* of those who have attempted marriage in the indicated circumstances, but it will be needed to declare the nullity of the prior marriage by observing the prescriptions of the new can. 1374 on the documentary process."⁴

I fear that this will create a disparity of treatment between Orientals and Latins. In fact, on 18 November 2015 the PCTL gave another answer to the Latin motu proprio *Mitis iudex* (published on the PCTL's website: www.delegumtextibus.va), in which it is stated that the 1984 PCTL Authentic Interpretation of can. 1686⁵ and the 2007 Answer given by the Apostolic Signatura⁶ are still in force. And, consequently, I believe, is also art. 5 § 3 of the instr. *Dignitas Connubii*, although it is not even mentioned in the PCTL's answer of 18 November. Therefore, a civilly married Latin faithful can be accepted for canonical marriage after the premarital investigation alone carried out by the Parish priest or the Ordinary, and the same in the case of a civilly married and divorced Orthodox who now wishes to marry a Latin faithful.

But in the case of civilly married Oriental Catholics a **judicial sentence will now be necessary** given by documentary process, and the same will be necessary for a civilly married Orthodox who after divorce from the previous union wishes to marry an Oriental Catholic. In both cases the simple premarital investigation carried out by the parish priest or the Ordinary will not be sufficient. The disparity with Latins is thus evident.

I have been told that for years in some places there has been a practice of turning to ecclesiastical tribunals in cases of civil marriages of Catholics, asking for a decision of nullity due to lack of canonical form, although strictly speaking this is not needed. In the case of Orientals this judicial sentence will now be compulsory. Perhaps it will not take longer than the pre-nuptial investigation carried out by the Ordinary or the parish priest, provided that these cases will be treated with the new briefer process. But the question arises here whether a canonical marriage celebrated after the pre-nuptial investigation alone should be considered null. On what ground? Perhaps due to the impediment of the previous bond? It would certainly be a great novelty to acknowledge that a civil bond between two Catholics has such force as to invalidate a subsequent canonical marriage.

2. The freedom of the eparchial Bishop for appointing non-cleric judges

The second reply of the PCTL is put in the following manner:

"Although the text of paragraph 3 of the new can. 1359 [CCEO] is not explicit in indicating whether, for designating *alii christifideles* as judges, the permission mentioned in can. 1087 § 2 CCEO is needed, from the overall logic of the provisions of the motu proprio regarding the wide-ranging power which is meant to be acknowledged to the eparchial Bishop, it seems it must be inferred that in the processes of nullity of marriage the eparchial Bishop may appoint judges who are "other Christian faithful" without the previous written permission of the authority indicated in can. 1087 § 2 CCEO."⁷

This second answer implies that the motu proprio *Mitis et misericors Iesus* allows by universal law the appointment of lay faithful in the collegiate tribunal for matrimonial cases, without the need for the Bishop to ask the permission of the

Patriarch (and neither of the Major Archbishop nor the Metropolitan of a Metropolitan *sui iuris* Church), as an exception to the general rule of can. 1087 § 2 which instead requires this permission.

My previous understanding of the new can. 1359 § 3 of the *motu proprio* was that it was meant to allow for the inclusion of two non-cleric faithful in the collegiate tribunal, provided however that the Superior administrative authority of the Church *sui iuris* had previously permitted in the territory the appointment of "other Christian faithful" as judges, as per the norm of can. 1087 § 2. In this case the novelty of the *motu proprio* would simply have consisted in the possibility of appointing two non-cleric judges in the Collegiate tribunal instead of only one (as established by the general rule of can. 1087 § 2).

With the answer of the PCLT my opinion seems no longer sustainable, although the answer reveals some kind of doubt ("it seems it must be inferred that...").

This answer of the PCLT to the Oriental *motu proprio* could, I think, be taken into account in the Latin discipline regarding the permission of the Episcopal Conferences (cfr. m.p. *Mitis iudex Dominus Iesus*, can. 1673 § 3 and CIC can. 1421 § 2).

End notes:

1. Cfr. FRANCIS, *Motu proprio Mitis et misericors Iesus*, 25 August 2015, www.vatican.va.
2. CCEO can. 1372 § 2: «However if it is the case of one who would have been obliged to observe the prescribed form for the celebration of marriage required by law, but who attempted marriage before a civil official or a non-Catholic minister, the pre-nuptial investigation mentioned in can. 784 suffices to prove his or her free status.»
3. M.p. *Mitis et misericors Iesus*, 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.»

4. My translation.
5. PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS *Authentic Interpretation of can. 1686 CIC*, 26 June - 11 July 1984, in AAS 76 (1984), pp. 746-747.
6. APOSTOLIC SIGNATURE *Decree of 3 January 2007*, Prot. No. 38964/06 VT, in «Periodica» 97 (2008) pp. 45-46. In this decree, the Apostolic Signature says that a juridical act is presumed valid only if it was adequately performed following its external elements (cfr. CIC can. 124 § 2 and CCEO can. 931 § 2); then it applies CCEO can. 781 and *Dignitas Connubii* art. 4 § 1 no. 2, taking into account by analogy the aforementioned authentic interpretation of CIC can. 1686, which regards the same case for the marriages of Catholics without canonical form. This 2007 Apostolic Signature decree has also been quoted in the *Nota explicativa quoad pondus canonicum divortii orthodoxi* of the PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, 20 December 2012, in «Communicationes» 44 (2012), pp. 357-359, No. 4.
7. My translation.