

OIKONOMIA FOR FAILED MARRIAGES?
A CATHOLIC PERSPECTIVE BASED ON PASTORAL SENSITIVITY

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I. Introduction

Against the backdrop of the two Synods on the family in 2014 and 2015 and the imminent opening in the Catholic Church of the Jubilee Year of Mercy¹, suggestions have been made to investigate to what extent the Orthodox praxis of *oikonomia*² of allowing remarriage after a failed marriage, or admitting to Eucharistic communion those who have divorced and remarried after a period of penance, would be acceptable in the Catholic Church. It is a fact that at times the Catholic Church has made recourse to the Orthodox practice in order to clarify certain particular issues, as, for example, Pius XII's decision not to include the *traditio instrumentorum* among the essential rites of the sacred ordination to priesthood, given that the Orthodox Churches had never used that rite³. As we will see, for at least the last two centuries not a few Catholic authors have pointed to the Orthodox praxis as a viable alternative for dealing with the painful situation of those faithful who bear the weight of a failed marriage. Recently even Pope Francis has put the question on the table. In fact, talking with the journalists during a flight to Rio de Janeiro in 2013, he said:

“But also – a parenthesis – the Orthodox have a different practice. They follow the theology of what they call *oikonomia*, and they give a second chance, they allow it. But I believe that this problem – and here I close the

¹ This Holy Year will open on 8 December 2015: cfr. FRANCIS, Bull *Misericordiae Vultus* for the Indiction of the Extraordinary Jubilee of Mercy, 11 April 2015, no. 3, in: www.vatican.va [this and all other websites quoted checked at 19.11.2015]. The text of this article was first written just before the Synod of 2015, but for publication it was enriched with some references to the discussions and conclusions of this Synod, and with some words which Pope Francis pronounced after it.

² Years ago I wrote an article on this subject: cf. P. GEFAELL, *Foundations and Limits of Oikonomia in the Oriental Tradition*, in: *Folia Canonica* 3 (2000) 101-115 [originally in Italian: cf. IDEM, *Fondamenti e limiti dell'oikonomia nella tradizione orientale*, in: *Ius Ecclesiae* 12 (2000) 419-436]. And more recently, I repeated the same ideas in IDEM, *Oikonomia*, in: J. OTADUY – A. VIANA – J. SEDANO (ed.), *Diccionario General de Derecho Canónico V*, Pamplona 2012, 695-700.

³ “Besides, everyone knows that the Roman Church has always held as valid Ordinations conferred according to the Greek rite without the *traditio instrumentorum*; so that in the very Council of Florence, in which was effected the union of the Greeks with the Roman Church, the Greeks were not required to change their rite of Ordination or to add to it the *traditio instrumentorum*: and it was the will of the Church that in Rome itself the Greeks should be ordained according to their own rite. It follows that, even according to the mind of the Council of Florence itself, the *traditio instrumentorum* is not required for the substance and validity of this Sacrament by the will of Our Lord Jesus Christ Himself”. PIUS XII, *Apostolic Constitution Sacramentum ordinis*, 30 November 1947, no. 3, in: AAS 40 (1948) 5-7 (English translation from: <http://www.papalencyclicals.net/Pius12/P12SACRAO.HTM>).

parenthesis – must be studied within the context of the pastoral care of marriage”⁴.

We know well the polemic caused by the proposals of Cardinal Walter Kasper in his address of 20 February 2014 at the opening of the extraordinary Consistory on the Family⁵. His proposals were aimed at opening up the discussion encouraged by the Pope. And if there were many animated responses to those proposals, we should only thank the Cardinal for having stimulated the frank and free interchange of respective viewpoints.

II. Divorce and remarriage by oikonomia

Years ago, under the guidance of the most dear Prof. Carl Gerold Fürst, I had the chance to do research on the advisory opinions written by the Consultors of the Commission for the Missions and Oriental Churches in preparation for the first Vatican Council⁶. One of these advisory opinions is interesting for our topic. In fact, at that time – that is, nearly one hundred and fifty years ago – a question was put whether, in view of the situation of the Greeks, it was convenient to propose at the Council a more explicit definition than the one given by the Council of Trent of the indissolubility of marriage even in the case of adultery⁷. Francesco Rosi Bernardini, the Consultor appointed to study this matter, concluded that there were sufficient grounds to declare this Catholic teaching to be a dogma, provided that only Oriental Catholics attend the Council. But, he stated, taking into account the circumstances of the time, in case the Orthodox were present at the Council, it would be better for the sake of unity not to proclaim the dogma immediately. Rather, there should be a gradual process in this direction, delaying the definition until a more appropriate time, in order to attain union first, and afterwards gradually inculcate the doctrine among them⁸.

In the current context of ecumenical dialogue between the Catholic and Orthodox Churches, it is obvious that the course of action proposed by Rosi Bernardini in the XIX century is no longer acceptable. The Uniatist method has been surpassed, and dialogue requires from both parties a clear and fair

⁴ FRANCIS, Apostolic Journey to Rio de Janeiro on the Occasion of the XXVIII World Youth Day. Press Conference during the Return Flight, 28 July 2013 (English translation from: www.vatican.va).

⁵ Published firstly, without the author’s permission, in: *Il Foglio Quotidiano*, Anno XIX Numero 51, Saturday 1st March 2014 (consulted in: www.ilfoglio.it). As far as I know, an English translation of this speech was included in the last edition of his book: W. KASPER, *The Gospel of the Family*, Mahwah, N. J. 2014. I do not have access to this book, so in this article I will use other internet sources for the English version of Kasper’s speech.

⁶ Cf. P. GEFAELL, *Il Primo Concilio Vaticano e gli orientali. Voti dei consultori della Commissione preparatoria per le Missioni e le Chiese orientali*, Thesis ad Doctoratum partim edita, Facoltà di Diritto Canonico Orientale, Rome 2005.

⁷ Cf. MANSI 49, coll. 1016 C-1018 B.

⁸ Cf. P. GEFAELL, *L’indissolubilità del matrimonio e gli orientali nel Vaticano I – Voto di Rosi-Bernardini*, in: *Eastern Canon Law* 2/2 (2013) 243-305; IDEM, *Oikonomia e indisolubilidad del matrimonio en el Vaticano I*, in: *Revista Española de Teología* 75 (2015) 43-69.

presentation of each's unchangeable doctrinal points, seeking mutual understanding of what we have in common and avoiding false agreements reached at the expense of truth, because they would be ephemeral:

“In the Body of Christ, ‘the way, and the truth, and the life’ (Jn 14:6), who could consider legitimate a reconciliation brought about at the expense of the truth?”⁹ “When undertaking dialogue, each side must presuppose in the other a desire for reconciliation, for unity in truth”¹⁰. “To uphold a vision of unity which takes account of all the demands of revealed truth does not mean to put a brake on the ecumenical movement. On the contrary, it means preventing it from settling for apparent solutions which would lead to no firm and solid results. The obligation to respect the truth is absolute. Is this not the law of the Gospel?”¹¹

Decades of civil divorce legislation have undermined in many of the faithful the belief in indissolubility of Christian marriage. Hence pastoral action cannot be limited simply to avoiding errors among the Orthodox faithful: it must focus also on Catholics, because they too need to rediscover the deep meaning and solidity of this doctrine. From the studies of Rosi-Bernardini we can conclude that in past centuries the Catholic Church at times did not oblige those who asked to be received into Catholic communion to make an explicit profession of faith in the absolute indissolubility of marriage, even in case of adultery or malicious abandonment. Nevertheless, she did not do this because she held doubts over this doctrine: rather her aim was only to facilitate the union of those faithful, always maintaining the ultimate goal of full acceptance of this Catholic truth once they were received. We can attain the same conclusion from the research of Luigi Bressan¹².

As we have said, during the last decades some Catholic authors have insisted on introducing the praxis used by the Orthodox Churches for the problem of divorced and remarried faithful¹³. Let us now study this possibility.

⁹ JOHN PAUL II, Encyclical Letter *Ut unum sint*, 25 May 1995, no. 18, in: AAS 87(1995)921-982.

¹⁰ *Ibid.*, no. 29.

¹¹ *Ibid.*, no. 79.

¹² Cf. L. BRESSAN, *Il divorzio nelle Chiese orientali, ricerca storica sull'atteggiamento cattolico*, Bologna 1976.

¹³ Cf., for example, V. J. POSPISHIL, *Divorce and Remarriage: Towards a New Catholic Teaching*, New York 1967; and by the same author: Chapter 70 (Appendix 6): *Pastoral Economy*, in: IDEM, *Eastern Catholic Church Law. Revised and Augmented Edition*, New York 1996, 845-851 (specially: 851). Cf. also F. GIL DELGADO, *Divorcio en la Iglesia: Historia y futuro*, Madrid 1993; G. CERETI, *Divorzio, nuove nozze e penitenza nella Chiesa primitiva*, Bologna ²1998, 23 (first edition: Bologna 1977; latest edition: Aracne 2013); IDEM, *Divorziati risposati. Un nuovo inizio è possibile?*, Assisi 2009; B. PETRÀ, *Divorziati risposati e seconde nozze nella Chiesa, una via di soluzione*, Assisi 2012.

1. The early praxis of the Church

Firstly, some affirm that this praxis has existed from the beginning of the Church. But in actual fact this is not certain, since many authors assert its late origin as a result of the interference of the imperial civil power in ecclesiastical affairs¹⁴. We cannot deny that there exist some patristic texts that give the impression of tolerating – with more or less ambiguity – the remarriage of one spouse while the other is still living¹⁵. Some ecclesiastical Synods of the first millennium also seemed to allow for remarriage after divorce¹⁶. These texts show

¹⁴ Cf. H. CROUZEL, *L'Église primitive face au divorce*, Beauchesne, Paris 1970, 363-370; BRESSAN, *Il divorzio nelle Chiese orientali* (= note 12), 20-28; T. RINCÓN, *La doctrina sobre la indisolubilidad del matrimonio en el primer milenio cristiano*, in: *Ius Canonicum* vol. XIII, n° 25 (enero-junio 1973) 91-139; C. PUJOL, *El divorcio en las Iglesias ortodoxas orientales*, in: *AA.VV.*, *El vínculo matrimonial*, Madrid 1978, 371-434; F. DELPINI, *Indissolubilità matrimoniale e divorzio dal I al XII secolo*, Milano 1979; J. A. FUENTES, *El divorcio de Constantino VI y la doctrina matrimonial de San Teodoro Studita*, Pamplona 1984, 87; G. PELLAND, *La pratica della Chiesa antica relativa ai fedeli divorziati risposati*, in: *CONGREGAZIONE PER LA DOTTRINA DELLA FEDE* (ed.), *Sulla pastorale dei divorziati risposati: Documenti, commenti e studi*, Città del Vaticano 1998, 99-131 (specially: 121-122); C. VASIL', *Separation, Divorce, Dissolution of the Bond, and Remarriage: Theological and Practical Approaches of the Orthodox Churches*, in: R. DODARO (ed.), *Remaining in the Truth of Christ. Marriage and Communion in the Catholic Church*, San Francisco 2014, 93-128.

¹⁵ Especially, the famous canon 9 of Saint Basil: “[...] Thus, she who abandons her husband becomes an adulteress if she unites herself to another man, while the abandoned man is excusable and the woman who cohabitates with him shall not be condemned”. Ed. P.-P. JOANNOU, *Les canons des Pères Grecs* (Fonti fas. IX: *Discipline générale antique* [IV^e-IX^e s.] II), Grottaferrata 1963, 109 (own translation). The different translations of this text are significant. In fact the French version of the *Fonti* speaks of the man's “new wife” (“mais l'homme abandonné est excusé et sa nouvelle épouse ne sera point condamnée”: *ibid.*, emphasis mine). Then, going a step forward, Salachas adds that the man “can remarry” (“il marito abbandonato è scusato (συγγνωτός) e può risposarsi, e la sua nuova sposa non sarà affatto condannata”: D. SALACHAS, *Il sacramento del matrimonio nel Nuovo Diritto Canonico delle Chiese orientali*, Rome 1994, 41 [emphasis mine]). But the original Greek text does not say that the man “can remarry” nor does it speak of a “new wife” but more generally of “the cohabitating woman” (συνουκοῦσα). Thus, I think the translation by Pelland is correct: “the husband who is left by his wife is excusable and the woman who lives with him is not condemned” (taken from G. PELLAND, *Did the Church Treat the Divorced and Remarried More Leniently in Antiquity than Today?*, in: *L'Osservatore Romano* [English Edition], 2 February 2000, 9). In fact, this author stresses the fact that this woman is not called wife: “converrà notare che questa donna non è qualificata come sposa: ‘ella vive con lui’”: PELLAND, *La pratica della Chiesa antica* (= note 14), 114. The same is said by H. CROUZEL, *Separazione e nuove nozze secondo gli antichi Padri*, in: *La Civiltà Cattolica* 117/3 (1966) 145-147. Cf. also P. SZABÓ, *Il matrimonio canonico nelle Chiese orientali*, in: *AA.VV.*, *Matrimonio canonico e culture* (Studi Giuridici CXIII), Vatican 2015, 113-162 (here: 132). As PELLAND, *Did the Church Treat* (= note 15), 9, explains: “The context should always be closely examined. There are some ancient documents that at first sight actually seem to permit the dissolution of the bond. Tertullian thinks that divorce ‘dissolves the marriage in the same way as death’, but in a treatise from his *Montanist* period which rules out a new marriage under any circumstances. Asterius says that marriage is ended by death *and by adultery*, but in a homily where he rules out the remarriage even of the widowed. Chrysostom holds that ‘an adulteress is no longer anyone's wife’, but in the same text he says over and over that, no matter what she does, ‘a wife remains bound to her husband for as long she lives’. [...] In reality, such statements in Christian antiquity did not per se imply the strict sense that they would have for canonists today. They must be evaluated case by case”.

¹⁶ In the East, the Council of Trullo (a. 691) based its c. 87 on the cc. 9 and 77 of Saint Basil, and it also does not say openly that the abandoned husband can remarry but only that he “*venia dignus est*” (deserves allowance). In the West, the Synods of Aachen (a. 862) and Metz (a. 863) granted

that the Church faced – like today – pastoral challenges in dealing with failed marriages, but nonetheless from the Catholic perspective such pronouncements have no definitive doctrinal value, because the declarations of the Fathers and of particular Synods or even general Councils form part of the authentic Tradition of the Church only insofar as they correspond to what is believed always, everywhere and by everyone¹⁷. As Pelland explains:

“In order to speak of a ‘tradition’ or ‘practice’ of the Church, it is not enough to point out a certain number of cases spread over a period of four or five centuries. One would have to show, insofar as one can, that these cases correspond to a practice accepted by the Church at the time. Otherwise, we would only have the opinion of a theologian (however prestigious), or information about a local tradition at a certain moment in its history – which obviously does not have the same weight”¹⁸.

In fact, it seems scientifically incorrect to select a few cases in order to claim the existence of an accepted praxis when the historical evidence to the contrary is overwhelmingly more abundant¹⁹. In this sense, the number of texts in the Fathers of the Church that peremptorily deny the possibility of second marriages is much higher, and the texts more direct and clearer, than those quoted by the authors of the contrary opinion²⁰. So it can be said that the authentic “Tradition” of the Church never allowed divorce and remarriage. Among the saints, we have the luminous example of the holy monk Theodore the Studite (VIIIth century) who opposed the desires of emperor Constantine VI²¹, and more recently that of St Thomas More (XVIth century), martyred under King Henry VIII precisely for not betraying this doctrine.

As we have said, many ancient texts are not very clear, and at times the translation is difficult. For example, the famous text of Origen can be translated in this way:

remarriage to King Lothair II, but the Pope reversed the decision of those synods (cf. PL 125, 619-722D).

¹⁷ Cf. W. BRANDMÜLLER, *Unity and Indissolubility of Marriage: From the Middle Ages to the Council of Trent*, in: DODARO (ed.), *Remaining in the Truth of Christ* (= note 14), 129-147 (here: 141).

¹⁸ PELLAND, *Did the Church Treat* (= note 15), 9.

¹⁹ Cf. J. M. RIST, *Divorce and Remarriage in the Early Church: Some Historical and Cultural Reflections*, in: DODARO (ed.) *Remaining in the Truth of Christ* (= note 14), 64-92 (here: 90).

²⁰ Cf. J. J. PÉREZ-SOBA, *L’esperienza della chiesa antica, fedeltà al Vangelo della Famiglia*, IDEM – St. KAMPOSWSKI, *Il vangelo della famiglia nel dibattito sinodale oltre la proposta del Cardinale Kasper*, Cantagalli, Siena 2014, 97 (English translation: *The Gospel of the Family. Going Beyond Cardinal Kasper’s Proposals in the Debate on Marriage, Civil Re-Marriage and Communion in the Church*, San Francisco 2014).

²¹ Cf. FUENTES, *El divorcio de Constantino VI* (= note 14), 205-222.

“Yet against the law of Scriptures, some rulers of the Church have allowed women to remarry even if the husband is still alive, acting against what is written. [...] Nevertheless, they did not act completely without reason; for it is likely that they permitted these things – against the law given and written at the beginning – managing customs obliged by others, in order to prevent greater evils”²².

I have translated *alieni arbitrio* as “obliged by others”. And this reminded me of a relatively recent piece of news which reported that the High [civil] Court of Egypt ruled that the Coptic Church cannot refuse to remarry those faithful who have divorced without ecclesiastic permission²³. History repeats itself.

2. The limits of *oikonomia*

Secondly, we all know that *oikonomia* is an inspiring principle for the discretionary action of a bishop who has governing responsibilities in the Church that leads him, in concrete cases and in a provisional and exceptional manner, to deviate from the strict application (*akribeia*) of the canons and disciplinary norms, but never at the cost of fidelity to matters of faith and dogma²⁴.

Given this premise, the praxis of divorce and subsequent remarriage could be accepted only in the case that one is dealing with a simple disciplinary matter²⁵.

²² “Iam vero contra scripturae legem, mulieri vivente viro nubere quidam ecclesiae rectores permisserunt, agentes contra id quod scriptum est ... non omnino tamen sine ratione, haec enim contra legem initio latam et scriptam, ad vitanda peiora, alieno arbitrio mores gerentes eos permisisse verisimile est.” ORIGEN, In Matth. 19, 2-11: PG 13, 1245 (own English translation from the Latin text).

²³ “‘Following the law – the tribunal has declared – a Christian can remarry and the Constitution guarantees him the right to create a family.’ The case began from an initiative of some divorced persons, who have sued Shenouda III for refusing to remarry them. Having lost in the first instance, the Patriarch had appealed to the High Court, but it ruled against him again. In Egypt [...] civil marriage is not allowed without being accompanied by religious marriage. The Coptic Church contemplates divorce only in the case of proved adultery or of conversion to another religion or Christian denomination” (in: L’Osservatore Romano, 1st June 2010; own translation). Another modern example of the civil power’s imposition of ecclesiastical divorce could be seen in the Constitutional Chart (Statute) of the Orthodox Church in Greece No. 126/69 which established: “When a civil judiciary decision of invalidity or dissolution of matrimony becomes irrevocable, the Procurator sends a copy of it to the Bishop who had authorized the wedding and *he is obliged* to declare the matrimony invalid also from the spiritual point of view, in the first case; or to declare it dissolved from the spiritual point of view, in the second case” (art. 49 par. 6; quotation from D. SALACHAS, *Matrimonio e Divorzio nel Diritto Canonico Orientale*, in: Nicolaus I/1 [1973] 65; English translation and italics are mine from the Italian version).

²⁴ Cf. COMMISSION INTERORTHODOXE PRÉPARATOIRE, *L’économie dans l’Eglise Orthodoxe*, in: *Istina* 18 (1973) 372-383 (here: 379); P. l’HUILIER, *L’Economie dans la tradition de l’Eglise Orthodoxe*, in: *Oikonomia Mischehen (Kanon VI)*, Vienna 1983, 24.

²⁵ For example, in the XIXth century even the Greek-Catholic priest Klein de Szad defended the praxis of divorce and remarriage because, as he said, it was only a matter of Latin discipline, whereas the disciplinary autonomy of the Orientals must be respected. Cf. P. GEFAELL, *Oikonomia e indisolubilidad del matrimonio en el Vaticano I*, in: *Revista Española de Teología* 75 (2015) 43-69 (here: 47).

And this is to some extent understandable in a context where official doctrinal statements happen to be lacking regarding the absolute indissolubility of every Christian consummated marriage, as is the case in the Orthodox Churches, where no ecumenical Council has proclaimed such doctrine²⁶. But in a context like that of the Catholic Church, in which matrimonial indissolubility has been declared as a definitive truth, accepting the praxis of divorce and remarriage while claiming to leave untouched the clear doctrine on indissolubility would be manifestly incoherent.

It is known that the Council of Trent did not proclaim directly the dogma of the indissolubility of marriage because the Council Fathers did not wish to create an insurmountable barrier with the Orthodox Churches²⁷. Therefore the anathema of c. 7 in Session XXIV of Trent was addressed only to those who would say that the Catholic Church errs when proclaiming the indissolubility²⁸ – something that the Orthodox have never said.

The majority of authors who write on Orthodox divorce and remarriage assert that this is a praxis by means of *oikonomia*²⁹. Other authors however state that if a supposedly exceptional case-by-case praxis is established by means of written laws and granted to every person who complies with a set list of licit reasons for divorce and remarriage, then strictly speaking Orthodox divorce is not

²⁶ As it is well known, the Orthodox Churches have developed their praxis and legislation based on the Matthean clause regarding *porneia* (Mt 5:32 and 19:9) interpreted by them as an exception permitted by Jesus to the general rule of indissolubility: Cf. B. PETRÀ, *Divorzio e seconde nozze nella tradizione greca*, Assisi 2014.

²⁷ Cf. L. BRESSAN, *Il canone tridentino sul divorzio per adulterio e l'interpretazione degli autori*, Roma 1973; N. ÁLVAREZ DE LAS ASTURIAS, *Il Concilio de Trento e l'indissolubilità del matrimonio: questioni ermeneutiche*, in: *Ius Ecclesiae* 27 (2015) 11-35. As I have written – cf. GEFAELL, *Oikonomia e indisolubilidad* (= note 8), 59 – I think G. PANI, *Matrimonio e "seconde nozze"* al concilio di Trento, in: *La Civiltà Cattolica*, N° 3943 of 04/10/2014 (Civ. Catt. IV 3-104) 19-32 [consulted in www.laciviltacattolica.it] is mistaken when he considers the population of the Greek islands under Venetian dominion to be "Catholic". Most of the population was Orthodox even if it was obliged to be under the jurisdiction of Latin bishops. This is why the Venetian Legates asked the Council not to provoke them with an anathema.

²⁸ "If anyone should say that the Church errs in having taught or in teaching that, according to the teaching of the Gospel and the Apostles, the bond of marriage cannot be loosed because of the sin of adultery of either party; or that neither party, even though he be innocent, having given no cause for the sin of adultery, can contract another marriage during the lifetime of the other; and that he commits adultery who marries another after putting away his adulterous wife, and likewise that she commits adultery who puts away her husband and marries another: let him be anathemae". COUNCIL OF TRENT, *Sessio XXIV, c. 7* (translation from www.vatican.va).

²⁹ Cf. J. MEYENDORFF, *La teologia bizantina: sviluppi storici e temi dottrinali*, Casale Monferrato 1984, 109-111 (especially 111); P. L'HUILLIER, *L'indissolubilité du mariage dans le droit et la pratique orthodoxes*, in: *Studia Canonica* 21 (1987) 239-260; A. KAPTIJN, *Divorce et remariage dans L'Eglise orthodoxe*, in: *Folia Canonica* 2 (1999) 105-128; J. GETCHA, *L'idéal du mariage unique exclut-il la possibilité d'un remariage? La position de l'Église orthodoxe face au divorce*, in: *Revue d'éthique et de théologie morale "Le Supplément"* - Religions et Nations 228 (2004) 275-306 (especially 293); G. D. GALLARO, *Oikonomia and Marriage Dissolution in the Christian East*, in: *Folia Canonica* 11 (2008) 87-124; C. VASIL' – G. GALLARO, *Remarriage in the Orthodox Church Challenges Catholic Church*, in: *Studia canonica* 47 (2013) 119-143; G. D. GALLARO, *Christian Oikonomia Revisited*, in: *Studia Canonica* 48/1 (2014) 151-169.

granted through *oikonomia*³⁰. In any case, at least it seems a law based originally on a series of economical decisions.

Moreover, some Orthodox³¹ and even Catholic³² authors have tried to justify on theological grounds the praxis of divorce and remarriage. Basile Petrà develops the theory that matrimony in itself ought to be eternal and indissoluble, even after death, since the union is not limited to the corporal dimension but is established at a personal level, and the person continues existing after earthly life. That is why, he says, when the Church grants a new marriage to widowers in reality she is applying her authority to dissolve the first matrimony, even if it was sacramental and consummated. In consequence, he concludes, the Church could also apply this power to dissolve a sacramental and consummated marriage which has “died” due to adultery or analogous reasons³³. But this explanation fails to take into account the Gospel passage in which Jesus is tempted by the Sadducees, who ask Him which of the seven brothers who each married the woman in this life will be her husband in the next. Our Lord answers:

“The sons of this age marry and are given in marriage; but those who are accounted worthy to attain to that age and to the resurrection from the dead neither marry nor are given in marriage, for they cannot die anymore, because they are equal to angels and are sons of God, being sons of the resurrection” (Lk 20:27-37).

I admit that the argument from reason regarding eternal union at the personal level is suggestive, and I think it is undeniable that in Heaven some kind of special relationship will continue to exist in God between those who on this earth were husband and wife (as with every other honest loving relationship). But in order to do sound theology, probable good arguments from reason are not enough – one also has to take into account the given datum of Sacred Scripture and the Magisterium. This passage of the Gospel which denies the persistence of the marriage bond in Heaven requires that theologians find some other way to explain

³⁰ Cf. B. PETRÀ, Il concetto di ‘economia ecclesiastica’ nella teologia ortodossa, in: Rivista di teologia morale 14 (1982) 511-512.

³¹ Cf. J. MEYENDORFF, Il Matrimonio e l’Eucaristia, in: Russia Cristiana 119 (1970) 7-27; 120 (1970) 23-36; IDEM, Marriage: an Orthodox Perspective, Crestwood, NY, 1970; P. EVDOKIMOV, La grace du sacrement de mariage selon la tradition orthodoxe, in: Parole et Pain 35-36 (1969) 382-394.

³² Cf. B. PETRÀ, Il matrimonio può morire? Studi sulla pastorale dei divorziati risposati, Bologna 1995; IDEM, Potere della Chiesa e matrimoni falliti, in: Rivista di Teologia Morale 38, no. 151 (2006) 379-397; IDEM, Divorziati risposati e seconde nozze nella Chiesa, una via di soluzione, Cittadella Editrice, Assisi 2012, 208-221; IDEM, Sull’accoglienza dei divorziati risposati. Una proposta formale, in: Il Regno – documenti (11/2014) 369-372. Jiri Dvoracek rightly criticizes other proposals of some German authors (Andréa Belliger, Rudolf Weigand, Marcus Gütter and Bernhard Häring) based in “equitas”, “dispensatio” and “epikeia”: cf. J. DVORACEK, L’oikonomia quale fondamento per le seconde nozze nell’Ortodossia: una possibilità anche per i cattolici divorziati?, in: Apollinaris 87 (2014) 171-204 [here: 188-197].

³³ Ibid.

such relationship, especially if that argument was constructed to deny a magisterial teaching. As the then cardinal Ratzinger asserted:

“today in many Oriental Churches [I would rather say: ‘in many oriental authors’] there exists a series of motivations for divorce. Moreover, there is already a ‘theology of divorce’ that is in no way reconcilable with the words of Jesus on the indissolubility of marriage. [...]. If the Church were to accept the theory that a marriage dies when the spouses no longer love each other, then with this she would approve divorce and would support the indissolubility of marriage only in words and not in deeds”³⁴.

We have seen that indissolubility has never been directly defined as a dogma, even by Trent, but from the definition given by the Council it is evident that this truth belongs to the Catholic doctrinal deposit of faith. Following the Tridentine statement, in the Catholic Church there have been many other magisterial pronouncements on this matter³⁵. In light of the deep crisis of faith concerning this doctrine even among Catholics, in the year 2000 Saint John Paul II decided to confirm explicitly that it is a “definitive truth”, that is to say, infallible and therefore not susceptible to exceptions³⁶. These are the words of the great and holy Polish Pope:

“Today’s meeting with you, members of the Tribunal of the Roman Rota, is an appropriate setting for also speaking to the whole Church about the limits of the Roman Pontiff’s power over ratified and consummated marriage,

³⁴ J. RATZINGER, Introduzione, in: CONGREGAZIONE PER LA DOTTRINA DELLA FEDE, Sulla pastorale dei divorziati risposati (= note 14), 23 and 27 (own translation).

³⁵ “If therefore the Church has not erred and does not err in teaching this, and consequently it is certain that the bond of marriage cannot be loosed even on account of the sin of adultery, it is evident that all the other weaker excuses that can be, and are usually brought forward, are of no value whatsoever.” PIUS XII, Encyclical Letter *Casti connubii*, no. 89 (English translation from www.vatican.va). Also, among others, the Catechism of the Catholic Church, no. 1640: “Thus the marriage bond has been established by God himself in such a way that a marriage concluded and consummated between baptized persons can never be dissolved. This bond, which results from the free human act of the spouses and their consummation of the marriage, is a reality, henceforth irrevocable, and gives rise to a covenant guaranteed by God’s fidelity. The Church does not have the power to contravene this disposition of divine wisdom”. Cf. also all the magisterial pronouncements quoted by St. John Paul II in no. 7 of his address to Roman Rota in 2000 (see below, note 37).

³⁶ The Prefect of the Congregation for the Doctrine of the Faith affirms: “The doctrine of *epikeia*, according to which a law remains valid in general terms but the human action not always is able to comply fully with it, cannot be applied in this case, because the indissolubility of sacramental marriage is a norm of Divine law, which therefore does not fall inside the authoritative dispositions of the Church”. G. L. MÜLLER, Indissolubilità del matrimonio e dibattito sui divorziati risposati e i sacramenti. La forza della grazia, in: *L’Osservatore Romano*, ed. quotidiana 153, nr 243, Wednesday 23/10/2013, published also in www.vatican.va (own translation). E. BAURA confirms the impossibility of applying *oikonomia* in these cases: cf. E. BAURA, *Misericordia, Oikonomia e Diritto canonico nel sistema matrimoniale canonico*, in: C. J. ERRÁZURIZ – M. A. ORTÍZ (ed.), *Misericordia e Diritto nel matrimonio*, Rome 2014, 23-45 (specially: 28-29); IDEM, *Primacia de la persona. Misericordia, oikonomia y derecho*, in: N. ÁLVAREZ DE LAS ASTURIAS (ed.), *En la salud y en la enfermedad. Pastoral y derecho al servicio del matrimonio*, Madrid 2015, 75-111.

which ‘cannot be dissolved by any human power or for any reason other than death’ (CIC, can. 1141; CCEO, can. 853). By its very nature this formulation of canon law is not only disciplinary or prudential, but corresponds to a doctrinal truth that the Church has always held. [...] it is necessary to reaffirm that a ratified and consummated sacramental marriage can never be dissolved, not even by the power of the Roman Pontiff. [...] the non-extension of the Roman Pontiff’s power to ratified and consummated sacramental marriages is taught by the Church’s Magisterium as a doctrine to be held definitively, even if it has not been solemnly declared by a defining act”³⁷.

Once this doctrine is declared a definitive truth, the Catholic faithful are bound to “accept and firmly retain” it, lest they incur in the penalty foreseen by both Codes³⁸. Thus in the Catholic Church there is no room for introducing a contrary praxis.

Still, we ought to search for all the pastoral and canonical means in order mercifully to meet the spiritual needs of the faithful who desire to regularize their situation before God and the Church. In order to act with true mercy we should approach their situation with respect, helping them with sensitive charity to discover the truth which liberates us – “speaking the truth in love” (Eph 4:15), “you will know the truth, and the truth will make you free” (Jn 8:32) – and accompanying them in the arduous but joyful path towards reconciliation, as Pope Francis recalled to parish priests:

“I would like to emphasize strongly: closeness. Closeness and service, but closeness, nearness! [...] Whoever is wounded in life, in whatever way, can find in him [the Pastor] attention and a sympathetic ear. [...] Neither the laxist nor the rigorist bears witness to Jesus Christ, for neither the one nor the other takes care of the person he encounters. The rigorist washes his hands of them: in fact, he nails the person to the law, understood in a rigid way; and the laxist also washes his hands of them: he is only apparently merciful, but in reality he does not take seriously the problems of that conscience, by minimizing the sin. True mercy *takes the person into one’s care*, listens to him attentively, approaches the situation with respect and truth, and

³⁷ JOHN PAUL II, Address of the Holy Father to the Tribunal of the Roman Rota, 21 January 2000, nos. 6-8, in: AAS XCII (2000) 350-355 (here: 353-354; English translation from www.vatican.va).

³⁸ Cf. CIC cc. 750 § 2 and 1371, 1° – CCEO cc. 598 § 2 and 1436 § 2. These new *factispecies* were established by JOHN PAUL II in the *Motu Proprio Ad tuendam fidem*, 18 May 1998, in: AAS 90 (1998) 457-461. Cf. J. KOWAL, *L’indissolubilità del matrimonio rato e consumato. “Status quaestionis”*, in: *Periodica* 90 (2001) 273-304.

accompanies him on the journey of reconciliation. All this is demanding, yes, certainly”³⁹.

I think the Catholic Church has made and still makes an enormous effort to look for new pastoral ways for being sensitive to the situation of divorced and remarried Catholics. In fact, the *Relatio* of 2015 Synod, while asserting many times the indissolubility of marriage (cfr. nos. 36, 40, 47,48, 49, 51, 69), and consequently not even giving a hint of ecclesial recognition of remarriage, nevertheless calls for an effort of discernment in order to find suitable means for integrating those faithful into the life of the Church, because

“for the Christian Community, to take care of these persons does not mean a weakening of its own faith or of its witness to the indissolubility of marriage: rather, the Church expresses its Charity precisely with this care” (no. 84)⁴⁰.

III. Penance and Eucharist for divorced and remarried faithful

In the Orthodox Churches another way of living *oikonomia* for divorced and remarried faithful is to allow them to receive Eucharistic communion after a long period of penance⁴¹. And some authors have proposed to introduce this praxis in the Catholic Church as well. In fact, some years ago Cereti asserted that this could be done since every sin, even the gravest, such as adultery, can be absolved by the Church, and this is what the Orthodox have done⁴².

Nevertheless, the official response of the Catholic Church is that she does not allow such a praxis, although there is a continuous searching for the possibilities

³⁹ FRANCIS, Address to the Parish Priests of the Diocese of Rome, 6 March 2014, in: www.vatican.va.

⁴⁰ SYNOD OF BISHOPS – XIV ORDINARY ASSEMBLY, Final “Relatio” to Pope Francis, 24 October 2015, in: www.press.vatican.va [from now onwards: *Relatio* 2015], no. 84 (own translation).

⁴¹ This is an interpretation of c. 77 of Saint Basil and the last part of c. 87 of Trullo: “[...]. It has been declared through canons by our Fathers that such men are to weep for one year, to listen for two years, to prostrate themselves for three years, and in the seventh are to stand together with the faithful; thereupon they are deemed worthy to partake of the offering, if they repent with tears”. English translation from G. NEDUNGATT – M. FEATHERSTONE (ed.), *The Council in Trullo Revisited* (Kanonika 6), Rome 1995, 167-168. As can be seen, the text does not expressly speak of allowing them to keep the second union, and one could even say that when declaring that they can partake of the Eucharist if “they repent” it is asking them to change life.

⁴² “[...] la Chiesa dei primi secoli, dopo un certo periodo di esclusione dalla comunione e di sottomissione alla disciplina penitenziale, assolveva i divorziati risposati ai quali naturalmente era riconosciuto lecito continuare a vivere con il secondo coniuge. Qualsiasi peccato anche gravissimo infatti poteva venire assolto dalla Chiesa, e l’ortodossia ha rivendicato questo potere di rimettere anche i peccati più gravi quale l’adulterio di colui che ha lasciato il proprio coniuge per prenderne un altro, contro le impugnazioni degli eretici novaziani”. G. CERETI, *Divorzio, nuove nozze e penitenza nella Chiesa primitiva*, Bologna ²1998, 23. More recently, cf. also J. CORIDEN, *The Marriage Bond and Ecclesiastical Reconciliation of the Divorced and Remarried*, in: *Studia Canonica* 38 (2004) 155-172; X. LACROIX, *Indissolubilité et pardon: contribution au débat sur les baptisés divorcés et remariés*, in: *Nouvelle Revue Théologique* 137/3 (2015) 388-405. SZABÓ, *Il matrimonio canonico nelle Chiese orientali* (= note 15), 150, tries to find a middle way, proposing an absolution *sub condicione*.

and limits regarding this point. Saint John Paul II's Apostolic Exhortation *Familiaris Consortio* no. 84 lays down the basic criteria for dealing with the reception of the Eucharist by divorced and remarried Catholics:

“Reconciliation in the sacrament of Penance which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the Covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage. This means, in practice, that when, for serious reasons, such as for example the children’s upbringing, a man and a woman cannot satisfy the obligation to separate, they ‘take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples’⁴³.

These criteria, given in 1981, were repeated in 1992 by the *Catechism of the Catholic Church*⁴⁴, in 1994 by the Congregation for the Doctrine of the Faith⁴⁵, in 2000 by the Pontifical Council for Legislative Texts⁴⁶, and in 2007 by Benedict XVI’s Apostolic Exhortation *Sacramentum Caritatis*⁴⁷. It is a pity that many faithful still do not know about this option⁴⁸.

In February of 2014 Cardinal Kasper again proposed to apply the Orthodox Churches’ praxis⁴⁹. This proposal was discussed at the October 2014 Synod, and

⁴³ JOHN PAUL II, Apostolic Exhortation *Familiaris Consortio*, 22 November 1981, no. 84, in: AAS 74 (1982) 81-192 (here:186).

⁴⁴ “Today there are numerous Catholics in many countries who have recourse to civil divorce and contract new civil unions. [...] If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God’s law. [...] Reconciliation through the sacrament of Penance can be granted only to those who have repented for having violated the sign of the covenant and of fidelity to Christ, and who are committed to living in complete continence”. (*Catechism of the Catholic Church*, no. 1650).

⁴⁵ The Congregation adds that: “In such a case they may receive Holy Communion as long as they respect the obligation to avoid giving scandal”. CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter to the Bishops of the Catholic Church concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful, 14 September 1994 (specially no. 4; official version in Latin in AAS 86 [1994] 974-979; English version in www.vatican.va). So, one should receive Eucharistic communion privately, or in a place where his / her situation is not known.

⁴⁶ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Declaration On admissibility to Holy Communion of Divorced Remarried, 24 June 2000, in: *Communications* 32 (2000) 159-162. Where it is asserted that: “by its nature, the prohibition of canon [915 CIC] derives from divine Law and transcends the ambit of positive ecclesiastical laws: these cannot induce legislative changes that oppose to the Church’s doctrine” (own translation).

⁴⁷ BENEDICT XVI, Apostolic Exhortation *Sacramentum Caritatis*, 22 February 2007, no. 29, in: www.vatican.va.

⁴⁸ “Furthermore, persons who are divorced and civilly remarried and are living in continence for various reasons, do not know that they can receive the sacraments in a place where their condition is unknown. Some of those in situations of irregular unions who have chosen, in the internal forum, a life of continence, can have access to the sacraments, while being careful to avoid scandal”. SYNOD OF BISHOPS – XIV ORDINARY GENERAL ASSEMBLY, *Instrumentum laboris*, 23 June 2015, no. 119, in: www.vatican.va.

⁴⁹ KASPER, Opening Speech of the Extraordinary Consistory on Family, 20 February 2014 (= note 5; English translation from: <http://chiesa.espresso.repubblica.it/articolo/1350729?eng=y>): “The early Church gives us an indication that can serve as a means of escape from the dilemma. [...] In the

as the *Lineamenta* for the 2015 Synod reports, the conclusion was reached that “the subject needs to be thoroughly examined” (no. 51)⁵⁰. In spite of this, the hypothesis has been heavily criticized⁵¹, because as is logical, penance requires true conversion, that is, first of all a recognition that the second union was contrary to God’s will concerning matrimony⁵²; consequently, repentance for

individual local Churches there existed the customary law on the basis of which Christians who, although their first partner was still alive, were living in a second relationship, after a time of penance had available [...] not a second marriage, but rather through participation in communion a table of salvation. [...] The question is: This way that stands beyond rigorism and laxity, the way of conversion, which issues forth in the sacrament of mercy, the sacrament of penance, is it also the path that we could follow in the present question? A divorced and remarried person: 1. if he repents of his failure in the first marriage, 2. if he has clarified the obligations of the first marriage, if it is definitively ruled out that he could turn back, 3. if he cannot abandon without further harm the responsibilities taken on with the new civil marriage, 4. if however he is doing the best he can to live out the possibilities of the second marriage on the basis of the faith and to raise his children in the faith, 5. if he has a desire for the sacraments as a source of strength in his situation, should we or can we deny him, after a period of time in a new direction, of ‘metanoia,’ the sacrament of penance and then of communion?”.

⁵⁰ SYNOD OF BISHOPS – XIV ORDINARY GENERAL ASSEMBLY, *The Vocation and Mission of the Family in the Church and Contemporary World – Lineamenta*, Vatican City 2014 [consulted in www.vatican.va]: “The synod fathers also considered the possibility of giving the divorced and remarried access to the Sacraments of Penance and the Eucharist. Various synod fathers insisted on maintaining the present discipline, because of the constitutive relationship between participation in the Eucharist and communion with the Church as well as her teaching on the indissoluble character of marriage. Others proposed a more individualized approach, permitting access in certain situations and with certain well-defined conditions, primarily in irreversible situations and those involving moral obligations towards children who would have to endure unjust suffering. Access to the sacraments might take place if preceded by a penitential practice, determined by the diocesan bishop. The subject needs to be thoroughly examined, bearing in mind the distinction between an objective sinful situation and extenuating circumstances, given that ‘imputability and responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors’ (Catechism of the Catholic Church, 1735)”. Basing on no. 6 of the aforementioned CDF’S 1994 Letter (see note 45) in the Synod of 2014 there was a reflection on the possibility of “spiritual communion” for divorced and remarried persons (cf. *Relatio* 2014 no. 53, *Instrumentum laboris* 2015 no. 124) but it was not included in the *Relatio* 2015, because it seems clear that, in order to make a true spiritual communion, conversion and state of grace are presupposed (cf. *Instrumentum laboris* 2015, no. 125). So, if someone has not the due moral dispositions to receive physically the Eucharist, neither will he be able to receive sanctifying grace through an imperfect attempt to make a spiritual communion. At most, there will exist a simple desire that could be part of the way to full conversion. Concerning this issue, cf. J. KELLER, *Is Spiritual Communion for Everyone?*, in: *Nova et Vetera* (English Edition) XII, No. 3 (2014) 631-655.

⁵¹ Cereti’s thesis had already been deeply criticized by Crouzel in some articles, recently reedited in Italian: cf. H. CROUZEL, *Divorziati risposati: la prassi della Chiesa primitiva*, Siena 2014. Moreover, we have already quoted other new books that refute the theses of Cereti and Kasper: R. DODARO (ed.), *Remaining in the Truth of Christ. Marriage and Communion in the Catholic Church*, San Francisco 2014; J. J. PÉREZ-SOBA – ST. KAMPOWSKI, *The Gospel of the Family. Going Beyond Cardinal Kasper’s Proposals in the Debate on Marriage, Civil Re-Marriage and Communion in the Church*, San Francisco 2014; J. CORBETT et al., *Recent Proposals for the Pastoral Care of the Divorced and Remarried: A Theological Assessment*, in: *Nova et Vetera* (English Edition) XII, No. 3 (2014) 601-630; G. MÜLLER, *The Hope of the Family. Dialogue with Gerhard Cardinal Müller*, [San Francisco, CA] 2014; A. SCOLA, *Mariage et famille à la lumière de l’anthropologie et de l’Eucharistie. Notes en vue du Synode extraordinaire des évêques sur la famille*, in: *Nouvelle Revue Théologique* 136/4 (2014) 549-564 (specially: 557-559).

⁵² The situation of the innocent party unfairly abandoned by the spouse is really pitiful and very hard to bear with. Often it is difficult to establish the full innocence of the abandoned party – cf. A.

having entered into it, and finally making a resolution to act according to God's will. In fact, Kasper's earlier proposal contains the serious drawback that even though it – justly – requires that the person “repent from the failure of his first marriage”, it does not require the person to repent from having remarried⁵³. But nobody can be healed without acknowledging his illness, because he will not admit therapy, even if the divine physician be ready and eager to cure him. Without true repentance no one can attain pardon⁵⁴. That is why the *Relatio* of 2015 Synod recalls that in the process of discernment “an examination of conscience will be useful, through moments of reflection and repentance”⁵⁵. And Pope Francis, at the end of the same 2015 Synod, while stressing mercy, has also underlined the need for conversion:

“the necessary human repentance, works and efforts take on a deeper meaning, not as the price of that salvation freely won for us by Christ on the cross, but as a response to the One who loved us first and saved us at the cost of his innocent blood, while we were still sinners (cf. Rom 5:6). The Church's first duty is not to hand down condemnations or anathemas, but to proclaim God's mercy, to call to conversion, and to lead all men and women to salvation in the Lord (cf. Jn 12:44-50)”⁵⁶.

KAPTIJN, Divorce et remarriage (= note 29), 125 – but even in this case the decision to remarry – although less malicious – is not justifiable: cf. SZABÓ, Il matrimonio canonico nelle Chiese orientali (= note 15), 154. One could argue that the abandoned party did not choose to keep continence and live in solitude (cf. *ibid.*, 152) but there are many situations in life – often dramatic ones – that we do not choose.

⁵³ Cf. W. KASPER, Opening Speech (= note 49), § 2, nos. 1-4.

⁵⁴ P. SZABÓ, Canon Law and Mercy from the Oriental Point of View, München Küldve, 12 August 2105, 21 [pro manuscripto] suggests that maybe God could concede forgiveness even without the existence of full repentance in the sinner, because the “salvific power of God's mercy is so efficient to be able to overcome even the insufficiencies and lacks of human disposition to cooperate with it”. In this way – he seems to say – we could hope that the fact of anticipating the pardon would lead the sinner to full conversion when he feels himself undeservedly forgiven. But note what the Gospel says when Jesus came to his hometown and His town-mates did not believe in Him: “He could not do any miracles there, [...] and He marveled because of their unbelief” (Mk 6:5-6). Although Jesus desires to heal, without human openness to grace, God the Son has His omnipotent hands tied, because He wants to respect our freedom.

⁵⁵ *Relatio Synodi* 2015, no. 85 (own translation): “Therefore, it is the task of presbyters to accompany the concerned persons on the way of discernment, following the teaching of the Church and Bishop's guidelines. In this process an examination of conscience will be useful, through moments of reflection and repentance. The divorced and remarried should ask themselves how they have behaved towards their children when the conjugal union has entered into crisis; whether there have been attempts of reconciliation; how is the situation of the abandoned partner; what effect the new relationship has on the rest of the family and on the community of the faithful; what kind of example it offers to young people who are preparing for marriage. A sincere reflection can strengthen trust in the mercy of God that is not denied to anyone”.

⁵⁶ FRANCIS, Address at the Conclusion of the 2015's Synod of Bishops on the Family, 24 October 2015, in: www.vatican.va.

In this sense, as Biju-Duval says:

“a mercy which was content with a vague regret without proper conversion would not be mercy. [...] Vague regret can coexist with a refusal to convert. One might consider, for example, that regarding this or that sin there is nothing more that can be done. Or one might think that a given situation contrary to the will of God is too consolidated to free oneself of it. In such cases – with some regret certainly – one is nevertheless making accommodation to sin and not converting from it. By this a lack of hope is also manifested. The correct way is to undertake or continue the journey without getting discouraged – limping, it is true, perhaps sometimes falling, but relying on the hand of Christ to lift us up again and support us in the efforts which we will keep making for his love. [...] an understanding of mercy that gave excellent reasons for not converting would be certainly mistaken”⁵⁷.

In order to study the possibility of giving Holy Communion to divorced remarried faithful some Synod fathers proposed to take into account

“the distinction between an objective sinful situation and extenuating circumstances, given that ‘imputability and responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors’ (CCC, 1735)” (*Lineamenta*, no. 51; cf. *Instrumentum laboris* no. 122)⁵⁸.

As a result of that discussion, the *Relatio* of 2015 Synod concludes that

“[u]nder certain circumstances people find it very difficult to act differently. Therefore, while upholding a general rule, it must be recognized that the responsibility with respect to certain actions or decisions is not the same in all cases. The pastoral discernment, even taking into account the rightly formed conscience of persons, must consider these situations” (no. 85).⁵⁹

Actually, it is very difficult to find circumstances that completely nullify the responsibility of a Catholic who decides to enter into a new union after divorce. But, even if there might be mitigating circumstances, the fact of permitting that person to receive the Eucharist, without his acknowledging the wrong done nor repairing it, would perpetuate the situation and give the false impression that the Church recognizes the moral legitimacy of a marital life without true marriage.

⁵⁷ D. BIJU-DUVAL, Gesù Cristo, giusto e misericordioso, in: ERRÁZURIZ – ORTÍZ (ed.), *Misericordia e Diritto nel matrimonio* (= note 36), 13-21 (here:17-18; own translation).

⁵⁸ Cf. above, note 50.

⁵⁹ Own translation.

Thus, the consequence in the minds of the faithful would be the complete loss of belief in indissolubility⁶⁰.

We have said that truth is what makes persons free. In this sense, if the marriage of one of the Christian faithful was invalid and in this particular case there was no way of convalidating it, a declaration of nullity could be an appropriate way of putting into practice pastoral sensitivity towards such a person. Obviously, this way cannot resolve every case of failed marriages, but only those where it can be proved that the bond never came to existence due to some ground of nullity. But the way of verifying this nullity becomes at times unreasonably long, complicated and expensive. For this reason Pope Francis and the 2014 Synod⁶¹ had called for technical means to make the canonical process for the declaration of nullity of marriage quicker and more affordable. During the year 2015 many authors have spoken of this reformation⁶². And, finally, the two new *motu proprio* – “*Mitis et misericors Iesus*” and “*Mitis iudex Dominus Iesus*” – have been issued on 15 August 2015 and published on 8 September⁶³.

In finishing this paper, I think appropriate to quote the words that Pope Francis used for presenting the *motu proprio* addressed to Oriental 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

⁶⁰ Cf. C. CAFFARRA, *Sacramental Ontology and the Indissolubility of Marriage*, in: DODARO (ed.), *Remaining in the Truth of Christ* (= note 14), 174 and 177.

⁶¹ Cf. SYNOD OF BISHOPS, *Lineamenta* (= note 50), nos. 48-49.

⁶² Cf. J. LLOBELL, *La pastorality del complesso processo canonico matrimoniale: suggerimenti per renderlo più facile e tempestivo*, in: ERRÁZURIZ – ORTÍZ (ed.), *Misericordia e Diritto nel matrimonio* (= note 36), 131-164; F. COCCOPALMERIO, *L'applicazione della Dignitas connubii nell'esperienza del Pontificio Consiglio per i Testi Legislativi*, in: J. KOWAL (ed.), *Congresso Internazionale di Diritto Canonico. “Dignitas connubii” a 10 anni dalla pubblicazione: bilancio e prospettive*, Pontificia Università Gregoriana, Roma, 22-23-24 gennaio 2015, Rome 2015 (on Press); J. I. ARRIETA, *Alla ricerca di sviluppi nel diritto matrimoniale processuale canonico alla luce dei recenti lavori sinodali*, Paper read at the opening Session of the 2015 Judicial Year of Palermo's ecclesiastical Tribunal (on Press).

⁶³ Latin and English versions can be found at www.vatican.va. They will enter into force on December the 8th.

above all a minister of divine mercy; therefore, the exercise of juridical power is a privileged place where, using the laws of *oeconomia* or *acribeia*, he himself imparts the Lord's healing mercy to the Christian faithful in need of it⁶⁴.

⁶⁴ FRANCIS, *Motu proprio Mitis et misericors Iesus*, 15 August 2015, Introduction § 5, in: www.vatican.va.

KANON XXIV

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OIKONOMIA, DISPENSATIO AND
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