



The Holy See

APOSTOLIC LETTER
GIVEN MOTU PROPRIO
DETERMINING NORMS
FOR EXPEDITING MARRIAGE CASES

CAUSAS MATRIMONIALES

March 28, 1971

Marriage cases have always been given special care by Mother Church, and through them she endeavors to safeguard the holiness and true nature of the sacred bond of matrimony. The ministry of ecclesiastical judges shows forth clearly—though in its own special way—the pastoral charity of the Church, which is well aware how much the salvation of souls is sought in marriage cases.

Since the number of these cases is greatly increasing at the present time, the Church cannot but be very concerned about this matter. This increase of cases, as we said to the Prelates of the Sacred Roman Rota, "is a special sign of the decrease of the sense of the sacred nature of the law upon which the Christian family is based; it is a sign of the restlessness and disturbance of present-day life, and of the uncertain social and economic conditions in which it is lived. It is a sign therefore of the danger which may threaten the solidarity, vigor and happiness of the institution of the family" (cf. A.A.S., LVIII [1966], p. 154).

Mother Church trusts that the attention given by the recent Ecumenical Council to explaining and fostering the spiritual good and pastoral care of marriage may produce results with regard also to the firmness of the marriage bond; she moreover desires at the same time by the laying down of opportune norms that the spiritual well-being of many of her sons and daughters may not be damaged by the excessive lengthiness of matrimonial processes.

Therefore, while awaiting the fuller reform of the marriage process which our Commission for the

Revision of the Code of Canon Law is preparing, we thought it well to issue certain norms on the constitution of ecclesiastical tribunals and on the judicial process, which will expedite the matrimonial process itself.

While other canonical norms concerning processes remain unchanged, we therefore on our own initiative and by our apostolic authority decree and lay down the following norms, which are to be faithfully observed from October 1, 1971, in all tribunals, including apostolic tribunals, until the new Code of Canon Law is promulgated.

The competent forum

I. The marriage cases of baptized persons by proper right pertain to an ecclesiastical judge.

II. Cases concerning the merely civil effects of marriage are the concern of the civil authorities, unless a particular law lays down that such cases, if they are dealt with in an incidental and accessory manner, may be examined and decided by an ecclesiastical judge.

III. All marriage cases concerning those mentioned in the Code of Canon Law, Can. 1557, § 1, n. 1 are judged by the Congregation, Tribunal or special Commission to which the Supreme Pontiff entrusts them in each case.

IV. § 1. In other cases concerning the nullity of marriage the competent body is:

a) the tribunal of the place in which the marriage was celebrated, or

b) the tribunal of the place in which the defendant has an abode which is not transitory, which may be proved from some ecclesiastical document or in some other legitimate manner, or

c) the tribunal of the place in which in fact most of the depositions or proofs have to be collected, provided the consent is obtained both of the Ordinary of the place where the defendant habitually lives and of the Ordinary of the place in which the tribunal approached is situated, and of the President of the tribunal itself.

§ 2. If the circumstances mentioned in § 1, c) above occur, the tribunal, before admitting the case, shall inquire of the defendant whether he or she has any objection to the forum approached by the plaintiff.

§ 3. If there occurs a substantial change in the circumstances, places or persons mentioned in § 1, the instance, before the closing of the case, may be transferred in particular cases from one tribunal to another equally competent one, provided both parties and both tribunals agree.

THE CONSTITUTION OF TRIBUNALS

V. § 1. If it is impossible either in a diocesan tribunal or, where one is set up, in a regional tribunal, to form a college of three clerical judges, the Episcopal Conference is given the faculty of permitting in the first and second instance the setting up of a college composed of two clerics and one layman.

§ 2. In the first instance, when a college as described in § 1 cannot be set up even by adding a layman, in individual instances, cases concerning the nullity of marriage may be entrusted by the Episcopal Conference to one cleric as the sole judge. Such a judge where possible will choose an assessor and auditor for the case.

§ 3. The Episcopal Conference can, in accordance with its statutes, grant the above-mentioned faculties, through a group of members or at least one member of the Conference, to be chosen for this purpose.

VI. For the office of assessor and auditor in tribunals of any instance laymen may be called. The office of notary may be accepted both by men and women.

VII. Lay people chosen for these offices should be exemplary in their Catholic Faith and good character and in their knowledge of Canon Law. When it is a question of conferring the office of judge upon a layman, as laid down in V, § 1, those persons are to be preferred who have legal experience.

APPEAL

VIII. § 1. The Defender of the Bond is obliged to appeal to the higher tribunal, within the time laid down by law, against a first sentence declaring the nullity of a marriage. If he fails to do this, he shall be compelled to do so by the authority of the President or the sole judge.

§ 2. Before the tribunal of second instance, the Defender of the Bond shall express his observations in order to state whether or not he has any objection to make against the decision made in the first instance. The college shall, if it thinks it opportune, ask for the observations of the parties or of their advocates against those made by the Defender of the Bond.

§ 3. Having examined the sentence and having considered the observations of the Defender of the Bond and, if they were asked for and given, those of the parties or of their advocates, the college

by its decree shall either ratify the decision of the first instance, or admit the case to the ordinary examination of the second instance. In the first of the two cases, if no one makes recourse, the couple, provided there is no other impediment, have the right to contract a new marriage after ten days have elapsed from the publication of the decree.

IX. § 1. If the decree of the college ratifies the first instance sentence, the Defender of the Bond or a party who believes himself aggrieved has the right to make recourse to a higher tribunal within ten days from the date of publication of the decree, provided he presents new and serious arguments. These arguments must be placed before the third-instance tribunal within a month from making recourse.

§ 2. The Defender of the Bond of the third instance, after hearing the President of the tribunal, can withdraw from the recourse, and in that case the tribunal shall declare the case terminated. If it is a party who makes recourse, the tribunal, having considered the arguments adduced, within a month from the making of recourse shall either reject it by decree or admit the case to the ordinary examination of the third instance.

Rules in special cases

X. When there is proof from a certain and authentic document, not subject to any contradiction or exception, that a diriment impediment exists, and when it is also equally certain and clear that no dispensation from these impediments has been given, in these cases the formalities laid down in law can be omitted and the Ordinary, after the parties have been summoned and the Defender of the Bond has intervened, can declare the marriage null.

XI. With the same provisions and in the same manner as in n. X, the Ordinary can declare a marriage null also when the case was entered into on the grounds of lack of canonical form or lack of a valid mandate on the part of the proxy.

XII. If the Defender of the Bond prudently considers that the impediments or defects mentioned in nn. X and XI are not certain or that it is probable that there was a dispensation from them, he is bound to appeal against this declaration to the judge of second instance. The proceedings are to be transmitted to him and he is to be notified in writing that the case is a special one.

XIII. The judge of second instance, with the sole intervention of the Defender of the Bond, shall decide in the same way as in n. X whether the sentence is to be confirmed or whether the case is to be proceeded with through the ordinary channels of law. In this latter case he shall send it back to the tribunal of first instance.

Transitional norms

1. On the day on which the present Apostolic Letter comes into force, a marriage case which is proceeding before a higher tribunal by reason of lawful appeal after a first sentence declaring the marriage null shall be temporarily suspended.

2. The Defender of the Bond of the tribunal of second instance shall make his observations on all that concerns either the decision given in the first instance or the proceedings completed in the second instance up to that date, and thereby state whether or not he has any objection to make against the decision made in the first instance. The college shall, if it thinks it opportune, ask for the observations of the parties or of their advocates against these observations.

3. Having considered the observations of the Defender of the Bond and, if they were asked for and given, those of the parties or of their advocates, and having examined the sentence of the first instance, the college by its decree shall either ratify the first-instance decision or decide that the case must be proceeded with by examination in the second instance. In the former case, if no one makes recourse, the couple have the right, provided there is no other impediment, to contract a new marriage after ten days have elapsed from the publication of the decree. In the latter case the instance must be proceeded with until the definitive sentence is given.

We order that all that is decreed in this Letter issued by us motu proprio be valid and firm, anything to the contrary notwithstanding, even if worthy of most special mention.

Given in Rome at St. Peter's, on the 28th day of March in the year 1971, the eighth of our Pontificate.

PAULUS PP. VI