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Survey of Tribunals on the application  
of *Mitis Iudex* about Gratuity

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# Survey of Tribunals on the application of *Mitis Iudex* about Gratuity\*

Christopher MBITHI KING'OO\*\*

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\*\* Tabla de siglas y abreviaturas:

AAS	Acta Apostolicae Sedis
Adhort. ap.	Apostolic exhortation
All.	Adresse
ASS	Acta Sanctae Sedis
can.	canon
CIC/CIC83	1983 Code of Canon Law
CIC17	1917 Code of Canon Law
cit.	work quoted
ComExe	<i>Comentario Exegético al Código de Derecho Canónico</i> , Eunsa, Pamplona <sup>3</sup> 2002
DC	Pontifical Council for Legislative Texts, Instruction <i>Dignitas Connubii</i>
DGDC	J. OTADUY, A. VIANA, J. SEDANO (eds.), <i>Diccionario General de Derecho Canónico</i> , Thomson Reuters Aranzadi, Cizur Menor (Navarra) 2012
ed./eds.	Editor/editors
MIDI	Motu Proprio <i>Mitis Iudex Dominus Iesus</i>
M.P.	Motu Proprio
No.	Number
SRR	Sacra Romana Rota
SRRD	Sacrae Romanae Rotae Decisiones seu Sententiae

## 1. INTRODUCTION

With this study I propose the abolition of judicial fees as part of a much broader project to help families at this crucial time. It is a tiny, even insignificant step, but in my view a necessary one. It is not going to be the remedy for all the problems of the family, nor of the administration of justice in the Church, but it can help to put some solutions in place. I understand that it can stimulate a change of mentality, not only of the faithful who go to the process, but also of those who attend to them at this delicate moment in their lives, and of the whole Church that considers this process as something very much its own.

I studied how fees affected the people who went to tribunals to seek justice<sup>1</sup>. With this in mind, I started by designing a questionnaire that allowed me to see the judges' opinions about the reform and its implementation<sup>2</sup>. I was also very interested in the reaction of the faithful to the measures taken by each region<sup>3</sup>.

The questionnaire was a great tool to know how the directives of the Pope were being implemented<sup>4</sup>. It is habitual that people receive and appreciate information placed before them differently<sup>5</sup>. This is partly appreciated in the way they implemented the guidelines of the *Motu Proprio*<sup>6</sup>. This work intends to be an instrument to identify what different tribunals have done<sup>7</sup>.

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<sup>1</sup> Some studies of this type have already been carried out and offer very interesting results: cf. R. RODRÍGUEZ CHACÓN, *Resultados de la encuesta realizada por la Asociación Española de Canonistas sobre la aplicación de «MIDI» en su primer año de vigencia en los tribunales eclesiásticos españoles*, in L. RUANO-ESPINA and J. L. SÁNCHEZ-GIRÓN RENEDO (eds.), *Novedades de Derecho canónico y Derecho eclesiástico del Estado, a un año de la reforma del proceso matrimonial: actas de las XXXVII Jornadas de Actualidad Canónica, organizadas por la Asociación Española de Canonistas y celebradas en Madrid los días 19 al 21 de abril de 2017*, Dykinson, Madrid 2017, 301-326.

<sup>2</sup> Cf. J.M. FERRARY OJEDA, *La reforma procesal Mitis Iudex Dominus Iesus. Aportaciones más relevantes y puesta en marcha de la misma*, *Revista Española de Derecho Canónico* 186 (2019) 17-36.

<sup>3</sup> Cf. Th.J. PAPROCKI, *Implementation of «Mitis Iudex Dominus Iesus» in the Diocese of Springfield in Illinois*, *The Jurist* 75 (2015) 593-605.

<sup>4</sup> Cf. B. NDUBUEZE EJEH, «*Mitis Iudex Dominus Iesus*»: *obbiettivi, novità e alcune questioni*, *Ephemerides iuris canonici* 56 (2016) 383-404.

<sup>5</sup> Cf. R. PAGÉ, *Les conséquences de la mise en œuvre du motu proprio Mitis Iudex Dominus Iesus par les tribunaux ecclésiastiques au Canada*, *Revue de droit canonique* 67 (2017) 239-246.

<sup>6</sup> Cf. A. KY-ZERBO, *Quel rôle pour les Conférences épiscopales dans la mise en œuvre du motu proprio Mitis Iudex Dominus Iesus?*, *Revue de droit canonique* 67 (2017) 151-170.

<sup>7</sup> Cf. J. ALWAN, *Le motu proprio Mitis Iudex Dominus Iesus, une solution pour les tribunaux ecclésiastiques en Afrique?: L'expérience du Burkina Faso*, *Revue de droit canonique* 67 (2017) 247-267.

Regarding the case we are dealing with, it is worth appreciating that different settings and experiences affect the way we take information. I went to find out how some of the directives of the Pope are being put into practice and what we can learn from them<sup>8</sup>. I also would like to offer a more reliable diagnostic that could be used to encourage further research in this area.

This questionnaire will be both useful for the legislator as well as the different tribunals. The legislator will get to know what has come of the great idea he had while the tribunals will get experiences, will get to benchmark and at the same time get an opportunity to rethink what they have or have not done so far.

## 2. METHODOLOGY

First step is the design of the questionnaire and explaining why the questionnaire appears the way it does. The second step refers to the source of information and train to explain where I got all the data that I am going to analyze later on.

### 2.1. *Design of the questionnaire*

The objective of the questionnaire is to collect data about the implementation of *Motu Proprio Mitis Iudex Dominus Iesus* regarding economic sustenance of tribunals. There are twelve questions to find out how different tribunals have implemented the suggestions given by the Pope.

Many of the questions come with options for the respondents to tick, this made sure they would spend less time filling the questionnaire and were thus motivated to fill it. It also facilitated easier collection and analysis of data.

### 2.2. *Sources of information*

I have utilised primary source of information from a set of questions. The questions were sent mainly to judicial vicars of tribunals all over the world. A

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<sup>8</sup> Cf. H. ALWAN, *Les enjeux de l'application du motu proprio Mitis et Misericors Iesus par les tribunaux ecclésiastiques en Orient, spécialement au Liban*, *Revue de droit canonique* 67 (2017) 191-218.

small number were sent to the secretary Of the tribunal or the bishop. Their contacts were retrieved from diocesan websites all over the world. A total of 571 questionnaires were sent.

This questionnaire should in fact have been answered by directors of the office of Stewardship and Development. They are in charge of financing family pastoral programmes. The tribunals should judge and not be involved in money matters otherwise conflict of interest arises. Neither should it be the office of Oeconomus because they administer the assets of the church and any shortage for them means they stop anything else to cover it. The directors of the Stewardship and Development would have been better placed to answer these questions. Since most dioceses don't have these offices I opted to having it answered by the tribunals.

On-line participation through the google forms portal was totally voluntary. The questionnaire was available for filling from mid May 2019. 111 questionnaires were filled. This comes to 20% of those who received the questionnaire. The table below shows the responses received from different regions:

**Table 1.** Sample size received from different areas

Areas	No. of respondents	Total sent	% of respondents
USA	73	279	26.2%
France and Belgium	5	39	12.8%
Italy	8	67	11.9%
Germany	10	40	25.0%
Spain and South America	15	146	10.3%

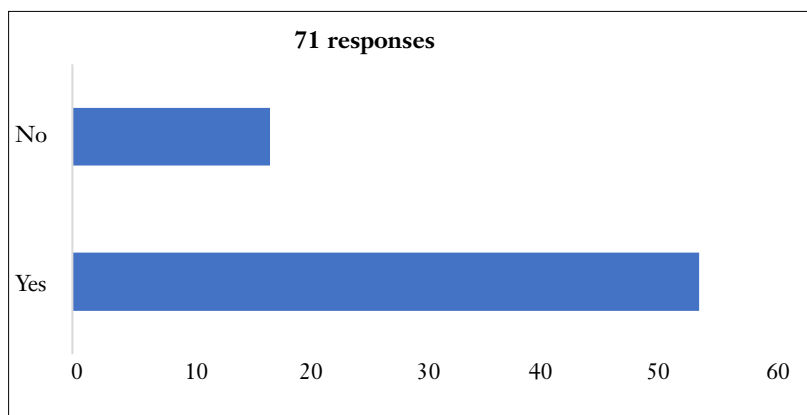
### 3. ANALYSIS OF RESULTS

As stated earlier, different tribunals applied the guidelines of *Mitis Iudex* differently depending on their economic possibilities. The questionnaires I sent were therefore trying to find out how the *Motu Proprio* of the Pope on gratuity of nullity processes was being implemented. We are therefore going to analyse each question.

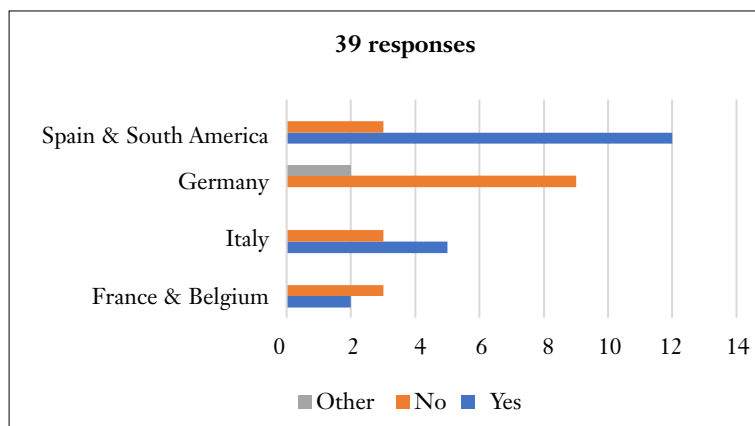
3.1. *Question 1: Whether the tribunal has made any changes in response to the Motu Proprio*

**Table 2:** Analysis of question 1

	USA	France and Belgium	Italy	Germany	Spain and South America
Yes	54	2	5	0	12
No	17	3	3	9	3
Other	2	0	0	2	0



**Figure 1:** Response to question 1 in USA



**Figure 2:** Response to question 1 in France and Belgium; Italy; Germany; Spain and South America.

73 tribunals had adopted some changes in respect to the Pope's proposal for gratuity in ecclesiastical tribunals. This is 66% of those who responded to the questionnaire.

It is worth commenting that:

1. It is possible that those who have responded are the ones who have implemented major changes in regards to the reform of Pope Francis.
2. We have the highest number of respondents coming from the United States. 74% of the respondents said they had implemented some changes. In France it was 40%. In Italy it was 63%. In Spain and Latin America it was 80%. It is however worth going back to the previous point that probably tribunals that responded are the ones that made major changes. Going by this, in the United States we have the highest numbers in absolute terms compared to all the other regions. Based on this also I could conclude that the reforms seem to have been better accepted and implemented in the United States than in any other region.

### 3.2. Question 2: Specific changes that tribunals have realized

This question wanted to find out what specific tribunals have done in regards to reforms on gratuity. There were eight options to facilitate ease of answering.

The table below shows the results received:

**Table 3:** Analysis of question 2

	USA	France & Belgium	Italy	Germany	Spain & South America
Elimination of Judicial fees	41 (68.3%)	1 (33.3%)	0	0	2 (13.3%)
Reduction of Judicial fees	2 (3.3%)	0	2 (25%)	0	7 (46.7%)
Updation of the approved list of attorneys	6 (10%)	0	0	1 (20%)	4 (26.7%)
Institution of permanent legal assistants	3 (5%)	0	1 (12.5%)	1 (20%)	1 (6.7%)
Increased Legal aid	1 (1.7%)	0	4 (50%)	2 (40%)	7 (46.7%)
Set limit to lawyers fees	0	0	1 (12.5%)	0	2 (13.3%)
Institution of free consultation services	4 (6.7%)	0	4 (50%)	0	7 (46.7%)
Other	3 (5%)	2	4	0	2 (13.3%)

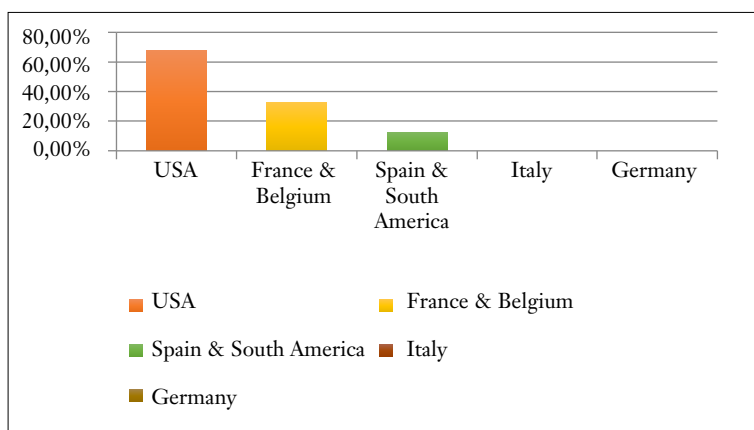


For those who fall under the category of others, the following are the changes they implemented in response to *Mitis Iudex Dominus Iesus*:

- a. They started relying on voluntary offerings from the faithful.
- b. Some tribunals created a marriage office to deal with arising issues.
- c. Some tribunals had already eliminated or reduced fees before the existence of the *Motu Proprio* so they just continued doing what they had started.
- d. Some also started aligning legal costs depending on the income of the plaintiff and varying it accordingly.
- e. Other tribunals started facilitating granting of services free of charge.

From the above data it can be appreciated that a good number of tribunals in the United States of America eliminated fees. In other countries, things were different, for example in Spain and South America the majority of tribunals reduced fees instead of abolishing them.

The following figure will help us appreciate the elimination of fees across the globe.



**Figure 3:** The elimination of fees across the globe

### 3.3. Question 3: Reasons for not eliminating fees

Some tribunals did not eliminate fees. The following were their reasons:

- a) Lack of resources;
- b) Some found it unnecessary;
- c) Some also had other solutions in mind;

- d) Some believe what is free is normally shoddy or has no value, so those tribunals demand people to pay to appreciate the good work being done;
- e) Some tribunals believe that unless there are serious economic difficulties, it is advisable that there be a small contribution as a sign of seriousness of the petition.

It is interesting that the reasons many tribunals gave for not eliminating fees are to get funding and that their work be appreciated. These tribunals which should only be judging seem to be engaged in administration of resources. There is the danger of conflict of interest and failure to do a good job since they are not as qualified as the directors of Stewardship and Development.

Even though I will develop it later, I think that to get funding, judicial fees are not the best option. They are quite limiting. The funds collected this way are so little and even for the image they transmit. Many tribunals thought they get value for the money. These taxes however block generosity and transmit the wrong message that a conjugal crisis is something personal that the rest of the faithful are not interested in getting involved. To convey the seriousness of the matter it seems advisable not to charge that little. With such a small fee nobody is willing to appreciate the seriousness of the matter. The process costs money, it is expensive, therefore if people pay little they will not appreciate and may not value the service being rendered.

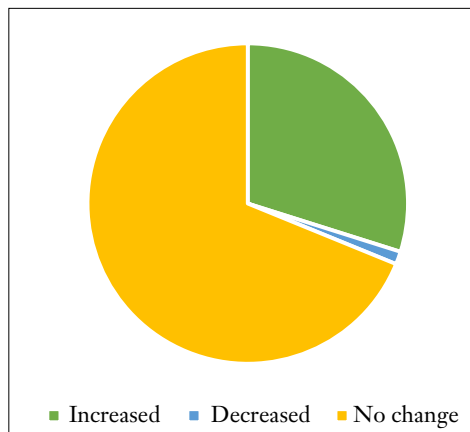
#### 3.4. *Question 4: Amount of judicial fees*

- a) In the United States of America most tribunals charge between \$ 0-250. This however is not enough to cover operating costs which are in the range of \$ 1,000. Most tribunals therefore rely on the diocese to cover these costs.
- b) In Spain, the fees mainly range between € 500-1000.
- c) In Italy the Episcopal conference has stabilized it at € 525.
- d) In Germany, it is generally € 200 including expert's fees.
- e) In Belgium and France the fees are about € 500.

In the United States the fees charged only cover 25% of the cost of administration of justice. This is very limiting. It would be better to eliminate the fees and look for funding from donations, grants, etc.

3.5. *Question 5: The impact of the elimination of fees on cases presented*

The following figure is a representation of the results obtained:



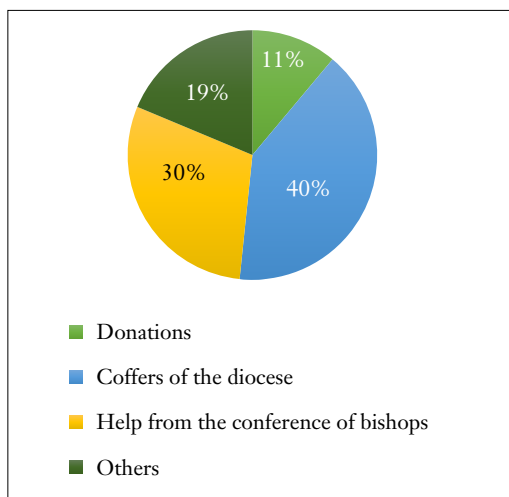
**Figure 4:** The impact of elimination of fees on cases presented

There was a notable increase in the cases presented. From the chart above we have 23% increase from the tribunals that responded to our questionnaire. We expect this number should increase in the coming years, especially because with the reform, nullity processes have enjoyed media coverage that in many regions has sensitized people on the possibility that our mother the Church offers to its ailing sons. Many people are appreciating that the Church is home.

3.6. *Question 6: How tribunals are being financed*

This question relies on the premise that tribunals have eliminated judicial fees. It was only answered by those tribunals that have eliminated fees.

There were a number of options given to respondents to facilitate their work and of course they had the option of adding any other source of financing that was not included in the list. The following chart shows a summary of the results received from around the globe:



**Figure 5:** How tribunals are being financed after eliminating fees

Donations were the lowest source of financing for most tribunals. It is however a great avenue to source for funds. Those who come to tribunals and are helped kindly and diligently to know the truth about their matrimony tend to be very grateful and willing to help other marriages going through the same predicament. It therefore comes as a surprise why this source of financing is not used by a majority while it should be the greatest source of income for tribunals.

Some tribunals though have managed to get donations. It would be good to know and further do research on how they are getting their donations. A programme of Stewardship and Development would always do a better job as they are mainly dedicated to designing and financing an ambitious family pastoral programme that involves a wholistic care of families starting with the pre-matrimonial courses.

### *3.7. Question 7: How much is the budget of the tribunals*

This question was supposed to help us get a feel of how much money do tribunals have at their disposal. The responses vary a lot as would have been expected mainly because of size and work they do. From the results we got, the following summary could be presented:

- a) In the United States of America the largest tribunal we found had a budget of \$ 1,500,000 while the smallest had a budget of \$ 25,000.
- b) In Europe the highest we found was € 1.041.119 while the lowest was € 10.000.
- c) Most of these tribunals also stated that they spend a big part of their budget on salaries for personnel.

In the United States, where only 25% of the budget of most tribunals come from fees, it leaves one thinking that the dioceses could do much better having a well organized fundraising.

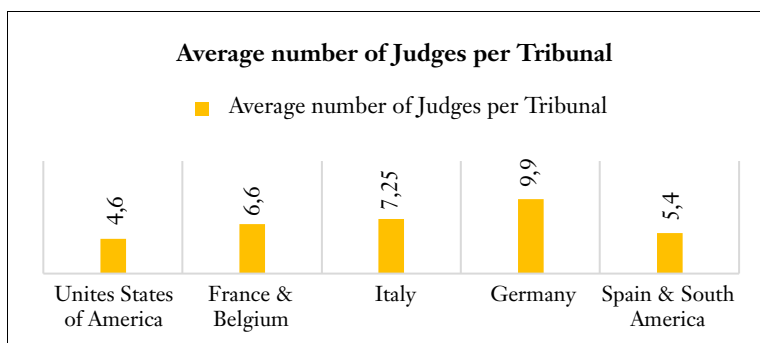
A unitary family pastoral programme would even require much more funding than the dioceses can afford. It is therefore prudent for them to start thinking of other sources of funding to carry out such a worthwhile venture as to safeguard the family.

Most of the tribunals have a big part of their budget on salaries for personnel. This is bound to increase with a unitary pastoral family care programme that would get many professionals from different fields and the most qualified so as to be able to help the families live their vocation well.

3.8. *Question 8: How many judges do the tribunals have*

This question was to follow up on the number of judges for most tribunals. As would be expected this would vary across the board mainly influenced by the size of the tribunal but we thought it worthwhile just to get a feel of how tribunals are stuffed.

The following is a chart showing the average number of judges per tribunal in different regions:



**Figure 6:** The average number of judges per tribunal

The highest average number of judges per tribunal is found in Germany. From those tribunals that responded to us from Germany, the average budget per year was € 506,704.

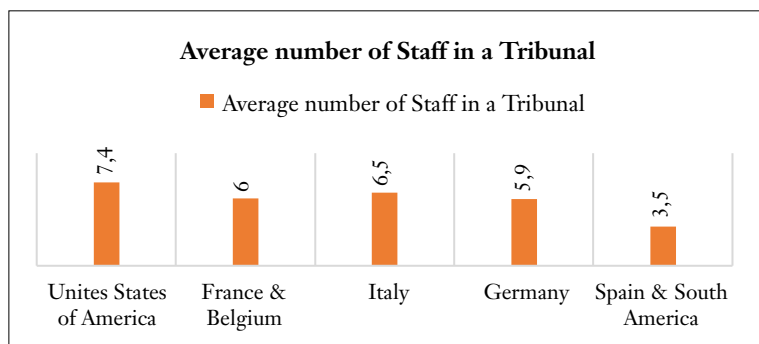
The United States of America had the lowest average number of judges per tribunal. The tribunals that responded had an average budget of \$ 263,762.

Probably tribunals that are well funded can afford to get more judges to take care of nullity cases. This is the case in Germany where tribunals have a bigger budget. A tribunal with more judges will make sure that they are not overwhelmed with work. That translates into quality work.

The opposite is also true. It is the case in the United States. Tribunals have less budget and thus can only afford fewer judges. This probably translates into the judges being overwhelmed with work which affects the quality of their work.

### 3.9. Question 9: Staff/Personnel for the tribunal besides the judges

Most tribunals have categorically stated that a big part of their budget goes to paying the personnel. This question was meant to know the average number of people serving different tribunals. It would also be crucial in determining whether tribunals are understaffed or overstaffed.



**Figure 7:** The average number of personnel per tribunal

The United States has more personnel but the least judges compared to other regions. On average they have 11 employees per tribunal while in Germany where we had the highest number of judges, the average number of employees comes to 16.

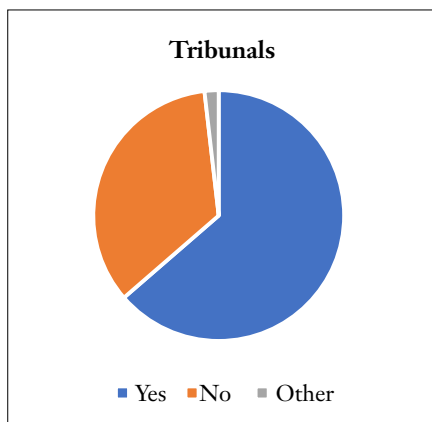
The tribunals with a higher budget can afford to get more employees to serve their tribunals. This will hopefully lead to better attention to families and more diligent treatment; they just have enough work and are not overwhelmed or stressed. It has been proven that these conditions which lead to families that are happy with the tribunals are the prerequisites for donations from the faithful, and therefore should be fostered that tribunals are better staffed. It is much easier to receive better attention, kindness and help from an employee who is not overwhelmed with work.

3.10. *Question 10: Plan for continual formation of personnel*

This question wanted to know whether tribunals have a plan in force to continually form their personnel. A well-formed personnel will most likely deliver better service. This is part of the reform that the Pope was proposing.

Out of the 111 tribunals that I sent questionnaires to, 70 had a plan in force to form their personnel while 38 didn't have any plan.

The following pie chart tries to visualize this information:



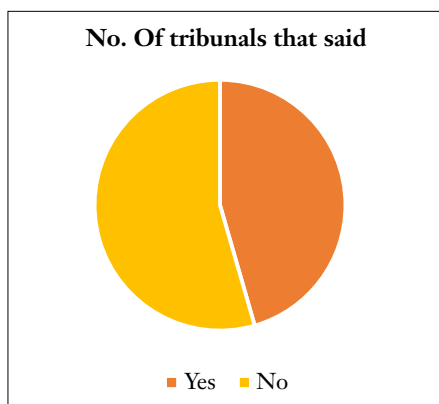
**Figure 8:** Whether there is a plan in force for continual formation of personnel/staff?

It is really good news that many tribunals have a plan to form their employees. This will make them more efficient and able to offer a great service to the church. Employees that are well prepared to deal with marriage problems and help families in matrimonial life have a better chance of doing a good job.

It is probable that those who don't have a plan have their employees overwhelmed with work and hope for the day when things will ease up so they can implement the plan to get them formed. Experience has shown that this is the situation in many dioceses.

### 3.11. *Question 11: Lawyers willing to offer their services free of charge*

The following chart demonstrates the results obtained:



**Figure 9:** Whether lawyers are willing to offer their services for free.

Majority of the tribunals answered in the negative. They believed lawyers were not willing to offer their services for free. This is in-line with part of the doctrine that suggested that they should be justly remunerated and in-line also with the Pope's recommendation on gratuity of canonical processes without compromising on the emoluments of the judicial officials.

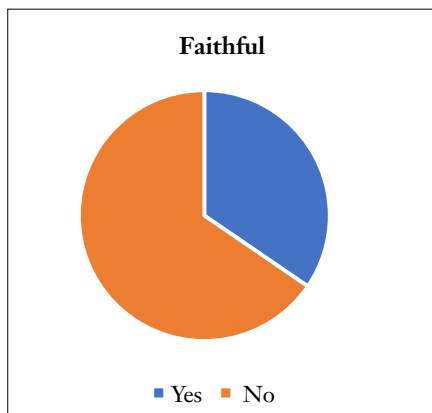
Lawyers and other experts, especially psychiatrists offering their services should be paid very well. Since the good of the family is so valuable to us, we should get the best lawyers in these tribunals. The best lawyers have good academic qualifications, are hardworking and sought-after. This makes them expensive and should rightly be so. They should be paid very well to be motivated to do a good job, partly also because if we don't pay them well they will have to look for part-time jobs to sustain their families and thus not dedicate quality time to tribunals.



3.12. *Question 12: Donations by the faithful to sustain tribunals*

I think this is an area that can be taken advantage of to finance tribunals. With gratuity, we will have to think of where to get money and a good option would be donations from faithful who appreciate the good work being done by the tribunals.

The following chart demonstrates the results obtained:



**Figure 10:** Whether tribunals are receiving donations from the faithful

From the above pie chart, most or majority of the tribunals are not receiving donations from the faithful so they have to look for other ways to finance tribunals. In a previous question it was evident few tribunals are receiving donations to finance their activities. Of the few that received donations, even less got them from their faithful. Some dioceses have managed to have faithful donate, this means it is possible.

This is an avenue that could be taken advantage of by the dioceses. They should start by establishing an office of Stewardship and Development which should see to it that tribunals are well-staffed with motivated, well-paid employees. Mainly to make sure those who seek help in the tribunals leave satisfied with the treatment and services received. It is therefore much easier to get them to assist in this mission with their resources, talent or/and time.

In such an environment a lot of good can be done to families that need help. Diocese can therefore have tribunals, counselling centres, marriage therapy units and information centres to give family and marriage good publicity.

## 4. PRACTICAL PROPOSALS FOR THE PASTORAL CARE OF THE FAMILIES

The introduction of gratuity in the process of declaration of nullity of matrimony is not an isolated proposal<sup>9</sup>. It is part of the big plan to help the family in the beginning of the third millennium of the Christian era<sup>10</sup>. It is a step to facilitate access to ecclesiastical courts so that faithful can easily exercise their right to know the truth about their matrimony. It is also a way to facilitate access of the Christian faithful to justice in the church so that they can legitimately vindicate and defend the rights which they possess in the Church, in a competent ecclesiastical forum according to the norm of law (c. 221). This is also closely related to bringing back to the church those who have distanced themselves for whatever reason. But it is about a wider plan to accompany the families in these trying times: «the welfare of the family is decisive for the future of the world and that of the Church»<sup>11</sup>.

## 5. GRATUITY NOT ONLY OF THE PROCESSES

Will the maintenance of fees give us the necessary funds for this pastoral family care programme?<sup>12</sup>

How much do we really need to carry forward an undertaking of such magnitude?<sup>13</sup> Who will be in charge of looking for money?<sup>14</sup> With gratuity how will we be able to achieve such huge sums of money?<sup>15</sup>

From the survey we did the average budget of the respondents from the United States was \$ 323,302.02. This figure is not representative of what it would take to finance our full-fledged project but at least it tells us that it

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<sup>9</sup> The doctrine assumes that the reflection has not arrived to an end but to a beginning. Cf. H. WARNINK, *El Motu proprio «Mitis iudex dominus Iesus»*. *Oportunidades, desafíos y peligros potenciales*, Concilium 368 (2016) 95-106.

<sup>10</sup> Cf. L. MARTÍNEZ SISTACH, *Innovacions en el procés de nullitat de matrimoni. Motu proprio «Mitis Iudex Dominus Iesus» del papa Francesc*, *Revista jurídica de Catalunya* 116 (2017) 643-664.

<sup>11</sup> FRANCIS, Adhort. ap. *Amoris Laetitia*, n. 31.

<sup>12</sup> Cf. F.R. AZNAR GIL, *La inserción del Tribunal Eclesiástico en la pastoral matrimonial diocesana*, *Revista Española de Derecho Canónico* 152 (2002) 249-261.

<sup>13</sup> Cf. C.E. ZECH, *Why Catholics don't give and what can be done about it*, Huntington (Indiana) 2006.

<sup>14</sup> Cf. D. CONWAY, *Advancing the mission of the Church, Best Practices in Stewardship and Development for Catholic Organizations*, Indianapolis 2009.

<sup>15</sup> Cf. L. ANSLINGER and V. SHEEP, *Forming Generous Hearts: Stewardship Planning for Lifelong Faith Formation, the definitive guide*, New London 2009.

would cost more than this to finance the afore-mentioned program in a typical tribunal since most tribunals stated their budget went mainly to paying salaries of personnel.

The program mentioned above proposes that we create a foundation to pay experts and lawyers so as also not to compromise tribunals if they had to pay them. In that case independence would be put to question. This would mean all the costs that were formerly taken care of by the plaintiff or defendant are now taken care of by this foundation registered and constituted according to the local legislation.

Without going into details, family pastoral care that takes care of all the aspects raised above is very expensive.

Most tribunals that filled the questionnaire stated that their budget is mainly financed by the coffers of the diocese. Funds received from judicial fees are usually so limited that they cannot finance tribunals. A case in point is the marriage tribunal of the Archdiocese of Los Angeles that told us that money received from fees is so little compared to the budget of the diocese.

For gratuity to be effective, it should go hand in hand with many other pastoral initiatives. Some of them belong to the process of declaration of nullity, but the great majority are related to the pastoral care of the family.

This gratuity of nullity processes as a means to facilitate this access however faces a number of challenges on its application<sup>16</sup>:

- The question troubling many Bishops, Judicial Vicars and other stakeholders is first of all on how to finance these ecclesiastical tribunals<sup>17</sup>. In the just-concluded survey, many tribunals agree with the Pope that judicial fees should be eliminated. It is however not clear how to finance these tribunals since in many of these dioceses there is an obvious lack of economic means.
- It is not easy to reconcile gratuity with the expertise required of those who work in the justice system in the church. Gratuity should not be implemented at the expense of professionalism, integrity, accountability and transparency. These great maxims come at a price<sup>18</sup>.

<sup>16</sup> Obviously this is not the only challenge of the reform. Cf. C.M. MORÁN BUSTOS, *Retos de la reforma procesal de la nulidad del matrimonio*, *Ius Canonicum* 56 (2016) 9-40.

<sup>17</sup> Cf. H.J.M. NOUWEN, *A Spirituality of Fundraising*, Nashville 2010.

<sup>18</sup> «La gratuidad puede dificultar la eficacia de los procesos de nulidad, en el sentido de impedir la retribución adecuada a los operadores que intervienen en el proceso de nulidad, personas con dedicación prioritaria y formación jurídica y deontológica adecuada, que deben ser debidamente remunerados, tal y como se contempla en el *Mitis Iudex*»: M. GUZMÁN ALTUNA, *La gratuidad de*

- To get the best professionals working in our tribunals, they need to be remunerated well.
- To get better results while protecting these institutions (marriage and family), to give the maximum pastoral attention, we need more material resources, as part of the unified pastoral care mentioned by the Pope<sup>19</sup>.

## 6. FEES ARE NOT ENOUGH TO COVER THE BUDGET OF TRIBUNALS

It is also worth noting that fees are not the only charges paid in a tribunal. More often than not, they are the least of the charges. Other charges include emoluments for lawyers, compensation for the witnesses, etc. Judicial fees are however not enough to finance tribunals. Most of the tribunals say that they are a very small percentage of their budget. These tribunals therefore have to have recourse to other sources of funding. It is time to ask ourselves whether it is worth spending time collecting fees<sup>20</sup>. Would it be more beneficial to seek money elsewhere and not charge for cases brought for examining? Is it true that charging fees is a hindrance to getting more money?

Fees paid therefore have been ceremonial, they do not cover costs provoked. Most of the tribunals have had to be financed by funds from elsewhere, it therefore doesn't make sense to have fees.

## 7. GRATUITY-GRATITUDE-GENEROSITY

Fees go against gratitude. People think they got what they paid for<sup>21</sup>. Even if the tribunals really do a good job, people would easily think they had paid for

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*las causas de nulidad matrimonial*, in L. RUANO-ESPINA and A.M. LÓPEZ-MEDINA (eds.), *Antropología cristiana y derechos fundamentales: algunos desafíos del siglo XXI al derecho canónico y eclesial del estado : actas de las XXXVIII Jornadas de Actualidad Canónica, organizadas por la Asociación Española de Canonistas*, Dykinson, Madrid 2018, 235.

<sup>19</sup> Cf. FRANCISCUS PP., M.P. *Quibus canonibus Codicis Iuris Canonici de Causis ad Matrimonium: nullitatem declarandam reformantur*, 15-VIII-2015, AAS 107 (2015) 967.

<sup>20</sup> Cf. F. DANEELS, *A first approach to the reform of the process for the declaration of nullity of marriage*, *The Jurist* 76 (2016) 115-136.

<sup>21</sup> «La accesibilidad y facilitación mencionadas exigen una referencia al ideal de la gratuidad. En los textos sinodales, el ideal de la 'posible gratuidad' se puso en relación con los servicios de información y consulta anteriores al proceso. La posible extensión del ideal de gratuidad a todo el procedimiento obliga a distinguir entre la gratuidad que logre ofrecer la estructura institucional de la Iglesia (las costas judiciales) y la que se refiere a la justa compensación de los defensores de las partes. En relación con estos, además de los principios establecidos en la deontología

it anyway, they are getting value for their money. On the other hand, gratuity begets gratitude. If someone really goes out of his way to help me, and at no cost, I will be very grateful. This gratefulness, from the point of view of tribunals, if well taken care of could be a source of generosity among the faithful<sup>22</sup>.

To carry out this great Project of family pastoral care we need a lot of funds, material resources that cannot only come from fees. It would be very limiting to rely only on fees<sup>23</sup>. Nothing much comes from fees and on top of that they block generosity which vanishes whenever one is not grateful<sup>24</sup>. As stated earlier, gratefulness goes hand in hand with generosity. Those who are grateful are ready to give so that many more may benefit as they did.

When the faithful are going through a difficult time in their marriage (a conjugal crisis), it is not very tactful to start asking them for money. It could even hurt them and lead them to give up going through the canonical process to seek the truth.

A lot is at stake here. It is not only individual good but also the good of the society. Besides, it is not only the right of the faithful to know his legal status. Marriage is a public good, the legal status of the faithful is a public

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canónica, es praxis mayoritaria en la Iglesia, como en la mayoría de los sistemas judiciales seculares, atender gratuitamente a quien lo necesita por razones objetivas, sea a través de los turnos de oficio entre los abogados admitidos en el tribunal, sea a través de la figura de un patrono estable. La intromisión institucional indebida en la designación de los abogados de las partes, obstaculizando la intervención de los que hayan sido designados por ellas, además de poner en serio peligro el reconocimiento externo de la actividad judicial de la Iglesia (y de las sentencias eclesiásticas), compromete gravemente la posición de imparcialidad que debe mantener a toda costa a la autoridad judicial»: M.J. ARROBA CONDE, *La experiencia sinodal y la reciente reforma procesal en el Motu Proprio Mitis Iudex Dominus Iesus*, Anuario de Derecho Canónico 5 (2016) 165-191.

<sup>22</sup> It is hard to believe that a topic like this is not usual in the manuals regarding the book V of the Code. Cf. V. DE PAOLIS, *Los bienes temporales de la Iglesia, [edición preparada, revisada y ampliada del original Italiano por Roberto Serres López de Guereñu y Alejandro Arellano Cedillo]*, Madrid 2012; F.R. AZNAR GIL, *La administración de los bienes temporales de la Iglesia*, Salamanca 1993; R. FUNGHINI (ed.), *I beni temporali della Chiesa*, (Studi Giuridici-L), Citta del Vaticano, 1999; GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO, *I beni temporali della Chiesa*, (Quaderni de la Mendola-4), Milano 1997; K.E. MCKENNA, L. A. DINARDO, J. W. POKUSA (eds.), *Church Finance Handbook*, Washington D. C. 1999; I. PEREZ DE HEREDIA Y VALLE, *Libro V del CIC: bienes temporales de la Iglesia*, Valencia 2002; J. P. SCHOUPPE, *Derecho Patrimonial Canónico*, Pamplona 2007; J.C. PERISSET, *Les biens temporels de l'Église, Commentaire du Code de Droit Canonique, Livre V*, Paris 1996; M. MORGANTE, *L'amministrazione dei beni temporali della Chiesa. Diritto canonico. Diritto concordatario. Pastorale*, Casale Monferrato 1993; H. HELMERL and H. PREE, *Handbuch des Vermögensrechts der katholischen Kirche*, Regensburg 1993; C. BEGUS, *Diritto patrimoniale canonico*, Roma 2007.

<sup>23</sup> Cf. C.J. CLEMENTS, *Stewardship, A Parish Handbook*, Liguori (Mo) 2009.

<sup>24</sup> Cf. J.M. CHAMPLIN, *Grateful caretakers of God's many gifts, A parish manual to foster the sharing of time, talent and treasure*, Collegeville (Minnesota) 2002.

good. Therefore, the whole church is interested in the declaration of validity or nullity; the truth of that union, whether marriage existed or not.

Generosity is always stimulated by appreciation. A couple undergoing through tough time/crisis in their marriage, convinced of the nullity of their marriage should be taken care of free of charge. If these couples are helped to successfully overcome their crisis and hardships, to even know the truth about their marriage in a charitable, less time consuming and if possible free of charge, they will for sure be willing to contribute and help others going through the same predicament.

It would also be good for the tribunals to publish their accounts. Could be annually or every six months. Transparency facilitates generosity, the last thing people want is to be supporting a scam, they want to be helping bring happiness to people's lives<sup>25</sup>.

The faithful need to be convinced that the administration of justice in the church is reliable. The canonical proceedings for the nullity of marriage are essentially a means of ascertaining the truth about the conjugal bond and not to complicate the life of the faithful uselessly, nor far less to exacerbate their litigation but to render a service to the truth<sup>26</sup>. The bad reputation associated with some ecclesiastical tribunals could be done away with when people finally see that the proceedings are professional, uphold and seek the truth<sup>27</sup>. Complying always with the duty of justice they purport to serve. Good reputation of the tribunals will facilitate those who need them to have recourse to them while those who don't need them support financially, through their time, etc. The tribunals should always endeavor to guarantee the objectivity, speed and efficacy of the judges' decisions while at the same time assuring faithful of their resolve to finding objectively adequate solutions to the requirements of justice. To get people donating to the administration of justice in the church we all therefore have a duty to make it attractive and respectful<sup>28</sup>.

In the survey we did earlier, of the 111 tribunals interviewed, 72 (65%) of them said they have not received donations from faithful<sup>29</sup>. A lot could be

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<sup>25</sup> Cf. D. ZALBIDEA, *La rendición de cuentas en el ordenamiento canónico: transparencia y misión*, Eunsa, Pamplona 2018.

<sup>26</sup> Cf. BENEDICTUS PP. XVI, All. *Ad Tribunal Rotae Romanae*, 28-I-2006, AAS 98 (2006) 136.

<sup>27</sup> Cf. D. ZALBIDEA, *The Church's temporal goods at the service of mercy*, Scripta Theologica 48 (2016) 149-172.

<sup>28</sup> Cf. V.G. D'SOUZA, *General principles governing the administration of temporal goods of the Church, in the service of truth and justice*, Bangalore 2008.

<sup>29</sup> Cf. J. VÁZQUEZ SÁNCHEZ, *La Corresponsabilidad. Un derecho-deber de todo fiel cristiano a la luz del C. 222 § 1 del CIC*, Pamplona 2014 (*Pro manuscrito*).

interpreted from this. It could be that they don't see the usefulness of the tribunals, nobody has asked them to help, they think that the judicial fees paid suffice, they don't know that you can institute judicial proceedings in the church to know the truth about one's marriage, etc<sup>30</sup>.

All these possibilities can be taken care of in the unified pastoral family care I have talked about.

It would also make a lot of sense that before asking the faithful to contribute to the ordinary pastoral care program, we come up with a budget of how much it would cost to implement such a program. This would be a clear guideline of how much we are talking about and for the contributors it would help them know the magnitudes we intend to raise.

## 8. PRACTICAL PROPOSALS TO MAKE BEST OUT OF GRATUITY OF NULLITY CASES

For many people gratuity of nullity processes means elimination of fees. I however think, it should be more than that, a bigger plan to safeguard this public good (family) that is in so much danger<sup>31</sup>.

This big plan will include<sup>32</sup>:

- a. Letting the tribunals be included as part of the ordinary family pastoral care.

<sup>30</sup> Cf. D. ZALBIDEA, *Corresponsabilidad en el sostenimiento de la Iglesia*, in DGDC, II, 785-787.

<sup>31</sup> «Attesa la marcata prevalenza delle cause di nullità di matrimonio deferite alla Rota, Mons. Decano ha sottolineato la profonda crisi che attualmente investe il matrimonio e la famiglia. Un dato rilevante che emerge dallo studio delle cause è l'offuscamento tra i contraenti di ciò che comporta, nella celebrazione del matrimonio cristiano, la sacramentalità del medesimo, oggi assai frequentemente disattesa nel suo intimo significato, nel suo intrinseco valore soprannaturale e nei suoi positivi effetti sulla vita coniugale»: S. JOHN PAUL II, All. *Ad Romanae Rotae iudices*, 30-I-2003, AAS 95 (2003) 393.

<sup>32</sup> Lot of them has been proposed by the Instrumentum Laboris of the 2015 Synod on Family: <117. One proposal wanted each diocese to provide, at no charge, information, counselling and mediation in matters related to the pastoral care of families, especially for those in troubled marriages and those who are separated. An effective service of this kind could help people undertake a judicial process, which in the history of the Church seems to be the most reliable way of discerning and ascertaining the true validity of a marriage. In addition, the request came from various parts of the world for an increased number of ecclesiastical courts and greater decentralization in their regard and for providing them with qualified and competent personnel> ([http://www.vatican.va/roman\\_curia/synod/documents/rc\\_synod\\_doc\\_20150623\\_instrumentum-xiv-assembly\\_en.html](http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20150623_instrumentum-xiv-assembly_en.html) [consulted: 16-X-2020]).

- b. The ordinary family pastoral care<sup>33</sup> will include pre-judicial or pastoral inquiry<sup>34</sup>, premarital training and counselling<sup>35</sup>, family therapy units, training of lay leaders to assist in the pastoral care of families<sup>36</sup>, accompaniment of couples during the first years of their married life, marriage counselling centres, programs for positive and prudent education to be imparted to children and adolescents<sup>37</sup>, tribunals, etc.
- c. Tribunals should be equipped with the necessary means to facilitate their proximity and celerity<sup>38</sup>. They should first of all have the necessary personnel, adequate to be able to handle the cases presented in a faster way.
- d. It would not be sufficient to eliminate fees while lawyers are inaccessible<sup>39</sup>. The diocese or conference of bishops should facilitate access to the best lawyers at a reasonable price or even free of charge. This however does not mean that they will not be paid. On the contrary, they should be paid and paid well for that matter so that they do their work well. It is up to the diocese to look for funds to take care of this noble and worthwhile project.
- e. The same should apply to psychiatric experts. They should also receive just reward or remuneration for their labour.
- f. We also need opinion formers and experts with a lot of prestige to collaborate in the spreading of a culture of the family. This is very much in line with what Benedict XVI said: «The good that the Church and society as a whole expects from marriage and from the family founded upon marriage is so great as to call for full pastoral commitment to this particular area»<sup>40</sup>.

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<sup>33</sup> Cf. arts. 20-28 of CONGREGATION FOR CATHOLIC EDUCATION, *Instruction «The Study of Canon Law in light of the Reform of the Matrimonial Process»*, 27-IV-2018, available at [http://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20180428\\_istruzione-diritto-canonico\\_en.html](http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20180428_istruzione-diritto-canonico_en.html) [consulted: 17-X-2020].

<sup>34</sup> *Ibidem*.

<sup>35</sup> Cf. BENEDICT XVI, All. *Ad sodales Tribunalis Rotae Romanae*, 22-I-2011, AAS 103 (2011) 110.

<sup>36</sup> Cf. FRANCIS, Adhort. ap. *Amoris laetitia*, 19-III-2016, AAS 108 (2016) 392.

<sup>37</sup> *Ibidem*, 423.

<sup>38</sup> Cf. C. PEÑA GARCÍA, *Agilización de los procesos canónicos de nulidad matrimonial: de las propuestas presinodales al motu proprio Mitis Iudex y retos pendientes tras la reforma*, *Ius Canonicum* 56 (2016) 41-64.

<sup>39</sup> Cf. M.J. ARROBA CONDE, *La giusta mercede dell'avvocato ecclesiastico*, in L. SANSALONE and A. GULLO (eds.), *Prassi e sfide dopo l'entrata in vigore del M.P. Mitis Iudex Dominus Iesus e del Rescriptum ex audientia del 7 dicembre 2015*, Vaticano 2018, 129-138.

<sup>40</sup> BENEDICT XVI, Adhort. ap. *Sacramentum Caritatis*, 22-II-2007, AAS 99 (2007) 105-180.



I am therefore going to talk about programmes and initiatives that could be included as part of the unified pastoral care.

### 8.1. *The pre-judicial or pastoral inquiry*

Gratuity is not an isolated and independent part of the move to make processes of marriage nullity more accessible nor is it an independent measure of the family pastoral care<sup>41</sup>.

It is part of the pastoral care that has many facets<sup>42</sup>. One such aspect is brought out by MIDI in art. 2:

«The pre-judicial or pastoral inquiry, which in the context of diocesan and parish structures receives those separated or divorced faithful who have doubts regarding the validity of their marriage or are convinced of its nullity, is, in the end, directed toward understanding their situation and to gathering the material useful for the eventual judicial process, be it the ordinary or the briefer one. This inquiry will be developed within the unified diocesan pastoral care of marriage»<sup>43</sup>.

The Pope is calling for greater pastoral care for those who, after going through a painful experience of the failure of their marriage, need closeness and help of the church to clarify their situation, heal their wounds and accompany them towards a more mature faith<sup>44</sup>. In other words, it is that «art of accompaniment» that the Pope Francis talks about in *Evangelii Gaudium* so that all can feel that closeness of the Church ready to seek them and support those who are in need<sup>45</sup>:

«The Church will have to initiate everyone – priests, religious and laity – into this ‘art of accompaniment’ which teaches us to remove our sandals before the sacred ground of the other (cf. Ex 3:5). The pace of this accom-

<sup>41</sup> Cf. G. NÚÑEZ, *La fase preliminar del nuevo proceso de nulidad*, *Ius Canonicum* 57 (2017) 9-44.

<sup>42</sup> Cf. P.A. MORENO GARCÍA, *El servicio de indagación prejudicial: aspectos jurídico-pastorales*, *Ius Canonicum* 56 (2016) 65-85.

<sup>43</sup> Cfr. the complete study E.A. TOCTO MEZA, *La investigación prejudicial o pastoral: una propuesta al M.P. «Mitis Iudex»*, Eunsa, Pamplona 2019.

<sup>44</sup> M.J. ARROBA CONDE, *La pastoral judicial y la preparación de la causa en el «Motu Proprio Mitis Iudex Dominus Iesus»*, in M.E. OLMOS ORTEGA, R. RODRÍGUEZ CHACÓN, M.J. ARROBA CONDE, C. PEÑA GARCÍA and C.M. MORÁN BUSTOS (coords.), *Procesos de nulidad matrimonial tras la reforma del Papa Francisco*, Dykinson, Madrid 2016, 63-82.

<sup>45</sup> Cf. F.J. REGORDÁN BARBERO, *La investigación preliminar en las nuevas normas procesales del M. P. Mitis Iudex Dominus Iesus*, *Anuario de derecho canónico* 5 (2016) 39-52.

paniment must be steady and reassuring, reflecting our closeness and our compassionate gaze which also heals, liberates and encourages growth in the Christian life»<sup>46</sup>.

Prejudicial investigation however is not a novelty in the canonical discipline. DC had established that in each tribunal there exist preliminary consultation:

«At every tribunal there is to be an office or a person available so that anyone can freely and quickly obtain advice about the possibility of, and procedure for, the introduction of their cause of nullity of marriage, if such should be the case» (DC 113 § 1).

*Mitis Iudex* however does not purport to annul the aforementioned law but extends it, involving a bigger number of pastoral workers in a wider project to face the current challenges to evangelization in the Church<sup>47</sup>: unmarried partners who don't want to be married, unions between persons of the same sex, mixed marriages, single-parent family, a culture of lack of commitment, relativistic pluralism in the conception of marriage, subjective and libertarian relativization of the sexual experience, high numbers of separations and divorces, etc. There is thus a challenge to pastoral care of marriages on how to face these actual circumstances<sup>48</sup>.

Subsequently, in relation to legislation by MIDI, published on the January 2016, the Roman Rota sent a subsidium to all the bishops in the world to help them in implementing these standards. This document encourages all the bishops to start by creating a service of information, of counselling and of mediation, attached to the office of the family pastoral service, which would be able to receive persons in view of an eventual preliminary investigation for the matrimonial process<sup>49</sup>, with the purpose of helping them overcome their conjugal crisis; gathering relevant details for a cause of nullity, and if need be come up with a statement of claim to be presented to the tribunal.

It is also worth noting that this prejudicial service opens new horizons by first of all verifying the existence or the non-existence of the validity of

<sup>46</sup> FRANCIS, Adhort. ap. *Evangelii Gaudium*, 24-XI-2013, AAS 105 (2013) 1091.

<sup>47</sup> Cf. P.A. MORENO-GARCÍA, *El servicio de indagación prejudicial...*, cit., 69.

<sup>48</sup> Cf. C.M. FABRIS, *Indagine pregiudiziale o indagine pastorale nel Motu proprio Mitis Iudex Dominus Iesus: Novità normative e profili critici*, *Ius Ecclesiae* 28 (2016) 479-503.

<sup>49</sup> Cf. APOSTOLICUM ROTAE ROMANAE TRIBUNAL, *Subsidium for the application of the M.P. Mitis Iudex Dominus Iesus*, Vatican City 2016, 13.

marriages by not limiting itself to only that. They should facilitate renewal of pastoral work related to the sacrament of marriage<sup>50</sup>: helping marriages in times of difficulty but also before that, supporting couples in order to grow as husband and wife. It is a challenge to bishops, parish priests and all the faithful not to wait and see the destruction of many Christian matrimonies.

The doctrine has pointed out that the matrimonial reform is not only interested in bringing into proximity the judge and the faithful and pursue speedy processes but also seeks pastoral conversion of the judicial structures in what could be intergrated and form part of the unified diocesan family pastoral care<sup>51</sup>. That would mean the family, the nucleus of the society, would become the centre of the pastoral focus of the Church<sup>52</sup>.

For the pre-judicial or pastoral inquiry to be effective and in line with the unified pastoral care in the Church, the following sets of criteria/principles noted by a certain author<sup>53</sup>, of which I concur, are necessary:

- a. Principle of «information»: so that the faithful know what processes of nullity entail, what good can come out of it, why some people pursue them and what are the requirements for one to take advantage of them. This way we would be able to get rid of negative perceptions that exist regarding work of tribunals in the Church and we would thus achieve more utilization of these services. This criterion has been incorporated into the family pastoral care and demanded of in no. 82 of *Relatio finalis* that was approved by the General Ordinary Assembly on the 24<sup>th</sup> of October 2015 with the following words: «information, counselling and mediation services, associated with the family apostolate, need to be provided to persons who are separated or couples in crisis».
- b. Principle of «accompaniment», this is brought very well in the introduction of MIDI «The desire for this reform is fed by the great num-

<sup>50</sup> Cf. G. NÚÑEZ, *La fase preliminar...*, cit., 11.

<sup>51</sup> «Esta oportuna ‘llamada a la conversión’ – con su insistencia en la intrínseca dimensión pastoral del proceso y del mismo tribunal eclesiástico, y en la conveniencia de una mayor implicación y coordinación entre la actuación del tribunal eclesiástico y las estructuras de la pastoral familiar diocesana – constituye, a mi juicio, la aportación fundamental, de fondo, de esta reforma procesal, y la clave para comprender el espíritu que la inspira, espíritu que deberá actuar como criterio general de interpretación de las novedades legislativas positivas»: C. PEÑA-GARCÍA, *Agilización de los procesos canónicos de nulidad matrimonial...*, cit., 49-50.

<sup>52</sup> Cf. A.M. LASCHUK, *Mitis iudex and the Conversion of Ecclesiastical Structures*, *Studia canonica: Revue canadienne de droit canonique – A Canadian Canon Law Review* 51 (2017) 529-549.

<sup>53</sup> Cf. C.M. MORÁN-BUSTOS, *Retos de la reforma procesal de la nulidad del matrimonio*, *Ius Canonicum* 56 (2016) 13-16.

ber of Christian faithful who, as they seek to assuage their consciences, are often kept back from the juridical structures of the Church because of physical or moral distance. Thus charity and mercy demand that the Church, like a good mother, be near her children who feel themselves estranged from her». This accompaniment should be an integral part of the family pastoral care<sup>54</sup>.

- c. Principle of «coordination» between the different agents and levels of family pastoral care. They all want the best for the families in crisis thus they should come together or rather coordinate while safeguarding the unity of the faith and teaching regarding marriage, the source and center of the Christian family<sup>55</sup>.

## 8.2. *Premarital training and counselling*

Many Popes have insisted on the need for these premarital training. One such case is Benedict XVI in the Post-Synodal Apostolic Exhortation, *Sacramentum Caritatis*:

«Given the complex cultural context which the Church today encounters in many countries, the Synod also recommended devoting maximum pastoral attention to training couples preparing for marriage and to ascertaining beforehand their convictions regarding the obligations required for the validity of the sacrament of Matrimony. Serious discernment in this matter will help to avoid situations where impulsive decisions or superficial reasons lead two young people to take on responsibilities that they are then incapable of honouring. The good that the Church and society as a whole expect from marriage and from the family founded upon marriage is so great as to call for full pastoral commitment to this particular area<sup>56</sup>. Marriage and the family are institutions that must be promoted and defended from every possible misrepresentation of their true nature, since whatever is injurious to them is injurious to society itself»<sup>57</sup>.

<sup>54</sup> Cf. R. SERRES LÓPEZ DE GUERENU, *El motu proprio «Mitis Iudex Dominus Iesus»: un servicio de misericordia y de verdad*, *Ius Communionis* 4 (2016) 71-102.

<sup>55</sup> FRANCIS, M.P. *Quibus canones Codicis Iuris Canonici de Causis ad Matrimonii...*, cit., 959.

<sup>56</sup> Cf. M.J. ARROBA CONDE, *La primera instancia en la Instrucción Dignitas Connubii. Novedades, concreciones e innovaciones*, in R. RODRÍGUEZ CHACÓN and L. RUANO ESPINA (eds.), *Los procesos de nulidad de matrimonio canónico hoy*, Dykinson, Madrid 2006, 64-65.

<sup>57</sup> BENEDICT XVI, *Adhort. ap. Sacramentum...*, cit., 128-130.

Preparation for marriage is so beneficial<sup>58</sup>, not only does it cover the juridical dimension but transcends that to constitute an integral, human and Christian good of the married couple and the future children as brought out so well in CIC 83, c. 1063, 2°:

«c. 1063 Pastors of souls are obliged to take care that their ecclesiastical community offers the Christian faithful the assistance by which the matrimonial state is preserved in a Christian spirit and advances in perfection. This assistance must be offered especially by: (...) 2° Personal preparation to enter marriage, which disposes the spouses to the holiness and duties of their new state».

It is therefore the holiness of the spouses which is at stake. The immediate objective though is to promote the free celebration of a true marriage, that is, «the constitution of a bond of justice and love between the spouses, characterized by unity and indissolubility, ordained for the good of the spouses and for the procreation and upbringing of their offspring, and which among baptized people constitutes one of the sacraments of the New Covenant. This preparation does not address an extrinsic ideological message to the couple, nor, still less, does it impose a cultural model; rather, the engaged couple are put in a position to discover the truth of a natural inclination and a capacity for committing themselves which they bear inscribed in their relational entity as man-woman. From this derives the law, as an essential component of the marital relationship, rooted in a natural potential of the spouses that the consensual gift of self actualizes»<sup>59</sup>.

Marriage preparation is also a great opportunity to rediscover and deepen the faith received in baptism and nourished by Christian upbringing. After going through the process, it should be everyone's wish that they discover and accept their vocation to follow Christ and serve God's kingdom in their married state. Given the amount of good that can come from this pastoral initiative, it makes sense that the dioceses or parishes organize these courses very well to safeguard these institutions (marriage and family) that are fundamental to the success of any society.

In the African customs, up until recently, the families themselves ensured the passing on to the young people of values concerning married and family life

<sup>58</sup> Cf. *Itinerario de preparación al matrimonio*, which take two years prepared by the Conference of Catholic Bishops of Spain: <https://conferenciaepiscopal.es/wp-content/uploads/masquedados/JUNTOS%20EN%20CAMINO.pdf> [consulted: 15-X-2020].

<sup>59</sup> BENEDICT XVI, All. *Ad Tribunal Rotae...*, cit., 136.

through a gradual process of education and initiation. In Kenya, which is the situation that I am well-versed in, these customs which were the order of the day ten years ago, are slowly fading away mainly because people are so occupied and unavailable that no one has time for the other, even less to prepare them for marriage. The results are therefore being felt where divorces and separations are becoming more and more frequent. Those young people who have been prepared for family life however seem to succeed in married life better than others.

With these changes, society and the Church should be involved in properly preparing young people for their future responsibilities<sup>60</sup>.

In 1981, St Pope John Paul II gave the Church many good guidelines on how to go about marriage preparation in his apostolic exhortation *Familiaris Consortio*. While talking about immediate preparation, the one that takes place weeks or months preceding the wedding, he insisted that there must be insistence on the mystery of Christ and the Church, of the meaning of grace and of the responsibility of Christian marriage, as well as preparation for taking an active and conscious part in the rites of the marriage liturgy<sup>61</sup>.

Many Conferences of Bishops have a Directory for the Pastoral Care of the Family. In these, they normally have the content, duration and method of «Preparation courses» balancing the different aspects-doctrinal, pedagogical, legal and medical-concerning marriage, and structuring them in such a way that those preparing for marriage will not only receive an intellectual training but will also feel a desire to enter actively into the ecclesial community<sup>62</sup>. It is also up to each local church to discern the best way to prepare young people for marriage without distancing them from the sacrament<sup>63</sup>. These young people don't need to be overwhelmed by too much information<sup>64</sup>. Focus should be on the ability to feel and relish things interiorly that content and satisfy the soul. While still giving them quality information, they should still focus on

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<sup>60</sup> Cf. S. JOHN PAUL II, Adhort. ap. *Familiaris Consortio*, 22-XI-1981, AAS 74 (1982) 159.

<sup>61</sup> Cf. *ibidem*.

<sup>62</sup> Cf. *ibidem*.

<sup>63</sup> Cf. FRANCIS, Adhort. ap. *Amoris Laetitia*, 19-III-2016, AAS 108 (2016) 394.

<sup>64</sup> «Non si può avere la pretesa di affrontare in modo esaustivo tutti i temi che interessano il matrimonio cristiano e la vita di famiglia. È importante però dare una panoramica sufficiente degli aspetti essenziali della relazione di coppia, del matrimonio cristiano e delle scelte di vita che caratterizzano una famiglia cristiana. Occorre suscitare la curiosità e il gusto di approfondire tali tematiche, perché i nubendi sentano che la proposta di vivere la propria unione di amore, alla luce di una vocazione divina, conferisce pienezza e fascino al progetto di vita coniugale e familiare»: CONFERENTIA EPISCOPALIS ITALICA, Commissione Episcopale per la famiglia e la vita, *Orientamenti pastorali sulla preparazione al matrimonio e alla famiglia* (22-X-2012), 16.

attractive and helpful presentation to help them live the rest of their lives with great courage and generosity<sup>65</sup>.

Preparation courses though are neither a requirement nor are they an impediment to the celebration of marriage. The ecclesial community should think of way to make it attractive without watering down its usefulness. If people benefit and see the value, word will go around and in the future probably many people will come seeking this service. Gratuity of these services makes them even more attractive, and of course not at the expense of quality; always getting the best professionals to deliver the course. As a result, when the beneficiaries of these courses are asked to donate they will be more than willing. This is because the Church has nourished a sincere high regard among them, they realise that the church is a real mother, involved in their fragility and moved by a pure, frank and firm purpose of serving them.

The pastors or those asking for money should do it with pastoral tact for them to be effective<sup>66</sup>. For example, for those going through a conjugal crisis, they need help and accompaniment rather than being asked for money.

### 8.3. *Preparation of staff*

N. 82 of *Relatio finalis* that was approved by the General Ordinary Assembly on the 24<sup>th</sup> of October 2015 says: «his involves preparing a sufficient staff, composed of clerical and lay persons, who dedicate themselves *a priori* to this ecclesial service»<sup>67</sup>.

For the tribunals to work well, legal practitioners and those who collaborate with the tribunals need to be well formed<sup>68</sup>. The *Subsidium* for the

<sup>65</sup> Cf. *ibidem*, 1.

<sup>66</sup> «Si lascerà alla giusta sensibilità dei pastori e di chi cura i tribunali la possibilità di chiedere alle parti, con tatto pastorale, di contribuire con un obolo alla causa dei poveri. Esse saranno certamente generose, perché il profumo della carità raggiunge la mente e il cuore dei fedeli della Chiesa»: APOSTOLICUM ROTAE ROMANAE TRIBUNAL, *Sussidio applicativo del Motu pr. Mitis Iudex Dominus Iesus*, Città del Vaticano 2016, 12.

<sup>67</sup> «L'unica vera e duratura garanzia di miglioramento del servizio giudiziario consiste nella presenza, disponibilità, preparazione e formazione morale e professionale degli addetti»: M. DEL POZZO, *Statistiche delle cause di nullità matrimoniale 2001-2005: 'vecchi' dati e 'nuove' tendenze, in Verità del consenso e capacità di donazione. Temi di diritto matrimoniale e processuale canonico*, in H. FRANCESCHI and M.A. ÓRTIZ (eds.), *Verità del consenso e capacità di donazione. Temi di diritto matrimoniale e processuale canonico*, Roma 2009, 453.

<sup>68</sup> Cf. R. DÍAZ-GUARDAMINO DELCLAUX, *Aplicación y valoración del M. Pr. «Mitis iudex»: la pastoral prejudicial, la formación de los abogados y agentes implicados, y otras cuestiones*, L. RUANO ESPINA and

application of MIDI mentions on a number of occasions the need to get the personnel well-formed: «The service of the *Apostolic see* on the part of the *Roman Rota* is concretised through promoting, as has been done in recent years, courses for the permanent and continued formation of clerical and lay personnel who offer their services to the diocesan curia and in tribunals for matrimonial causes (both for *ratum* as well as for nullity cases); (...) a Bishop nonetheless ought to make an effort to train persons, also through permanent and ongoing courses of formation, to enable him to constitute a tribunal as soon as possible in his own diocese»<sup>69</sup>.

The lay people should thus be integrated to the pastoral work in the parishes (family of families). For this great initiative to be effective, they need to be well formed. This formation is therefore aimed at the priests, deacons, religious men and women, catechist and other pastoral workers. *Amoris Laetitia* mentions the worldwide consultation that found out that ordained ministers often lack training needed to deal with complex problems currently facing families<sup>70</sup>.

Seminaries have not been giving adequate training to their seminarians to allow them to explore their own psychological and affective background and experiences. Some of them come from troubled families, with absent parents and a lack of emotional stability. Pope Francis has pointed out on the need to ensure that the formation process can enable them to attain the maturity and psychological balance needed for their future ministry<sup>71</sup>. This should be augmented with life in the parishes, to give them greater contact with realities of family life and especially in presence of women to promote an appreciation of the diversity and complementarity of the different vocations in the Church<sup>72</sup>.

Training is therefore needed by both clergy and the lay to be able to face adequately all the challenges that families are going through. Based on the common priesthood of the faithful, by virtue of baptism and without belonging to the religious state or having received holy orders, the Church can clearly recognize the aptitude or capability of the lay people to occupy ecclesi-

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C. PEÑA GARCÍA (eds.), *Verdad, justicia y caridad: volumen conmemorativo del 50.º aniversario de la Asociación Española de Canonistas*, Dykinson, Madrid 2019, 365-385.

<sup>69</sup> R. ROMÁN SÁNCHEZ, *Juez único, jueces laicos y asesores en el motu proprio «Mitis Iudex Dominus Iesus»*, *Revista Española de Derecho Canónico* 184 (2018) 235-272.

<sup>70</sup> Cf. FRANCIS, *Adhort. ap. Amoris ...*, cit., 392.

<sup>71</sup> Cf. E. DE LEÓN REY, *El proceso de nulidad matrimonial. El motu proprio Mitis iudex y la exhortación apostólica Amoris laetitia*, *Seminarios* 217 (2016) 67-80.

<sup>72</sup> Cf. *ibidem*, 392-393.



astic office, something not only contained in the Code of Canon Law but has also been spelled out very strongly in «Lumen Gentium», when it says that the laity «have the capacity to assume from the Hierarchy certain ecclesiastical functions, which are to be performed for a spiritual purpose», as long as «the spiritual shepherds (...) recognize and promote the dignity as well as the responsibility of the laity in the Church»<sup>73</sup>.

As clearly outlined in the post-synodal Apostolic Exhortation «Christifideles Laici»<sup>74</sup> about the mission and vocation of lay people in the Church and the world, the lay people need be fully involved in the life of the Church and for them to live well their vocation, they should be integrally formed to foster unity of life between spiritual and secular aspect. To foster this intimate union there should be spiritual formation starting with spiritual help to them to participate actively in the sacred liturgy; doctrinal formation through catechesis and Christian promotion of culture. A more detailed understanding of the social doctrine of the Church is indispensable as well as personal growth in human virtues<sup>75</sup>. This way, the salvific mission of the Church in the world will be carried out not only by ministers, by virtue of the sacrament of Holy Orders, but also by lay faithful.

Training therefore should be budgeted for and taken care of with the funds for family pastoral care. It is equally important that the church with the cooperation of its members should see to it that formation of both clergy and lay people is carried out well; getting the best professors and if need be people moving to other Universities for some time to receive training. This being part of the big plan to give quality services free of charge. This is a very costly endeavour but if well done a lot of good can come out of it.

#### 8.4. *Accompaniment of couples during the first years of their married life*

After receiving adequate formation, the newly married couples, in agreement with the priest should further deepen their understanding of the mystery of the sacrament (Cfr. Ef 5, 32) aware that «the ministry that is born from the Sacrament of Matrimony is important for the life of the Church: the family is

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<sup>73</sup> Nn. 33 and 37.

<sup>74</sup> Cf. S. JOHN PAUL II, Adhort. ap. *Christifideles Laici*, 30-XII-1988: AAS 81 (1989) 393-521.

<sup>75</sup> Cf. M. E. OLMOS-ORTEGA, *La capacidad jurídica del laico para el desempeño de cargos eclesiásticos*, *Ius Canonikum Volumen especial* (1999) 139.

the privileged place of human and Christian education and remains, for this end, as the closest ally of the priestly ministry. It is a precious gift for the edification of the community»<sup>76</sup>.

There should be a plan to be followed by the newly wed, mainly to keep their faith alive and to foster appreciation and collaboration with an ecclesial community. Together with the priest who prepared them for matrimony they are a great resource to serve as a bridge to safeguard the bond of young married couples in their parish community. Not forgetting that Matrimony and Holy Orders have a Eucharistic source, where they should get inspiration and energy for their conjugal love and education of their children, to which they have been called: «Indeed, both these states of life share the same root in the love of Christ who gives himself for humanity's salvation. They are called to a common mission: to witness and make present this love at the service of the community in order to build up the People of God»<sup>77</sup>. «God is love» (1 Jn 4:8), this is the foundation of marriage and this love culminates in the Cross and is «signified and made present in the Eucharist»<sup>78</sup>.

It is thus a great opportunity for the spouses to be helped to discover the beauty of spousal and family love. By first of all investing in the best brains and dedicating a lot of energy; through passionate and competent pastoral workers, experts in humanity and witnesses of faith. This investment will require a lot of material resources.

### 8.5. *Marriage counselling centres*

These centres advise people with difficulty in their marriage<sup>79</sup>. A failed marriage though does not necessarily mean an invalid one<sup>80</sup>, however it is also

<sup>76</sup> BENEDICT XVI, *Incontro con le famiglie e con i sacerdoti ad Ancona*, 11-IX-2011.

<sup>77</sup> Catechism of the Catholic Church, n. 1534.

<sup>78</sup> «Quell'unione di amore tra Cristo e la Chiesa che è significata ed attuata nell'Eucaristia»: BENEDICT XVI, Adhort. ap. *Sacramentum Caritatis*, 22-II-2007, AAS 99 (2007) 129.

<sup>79</sup> Cf. P. GENTILI, T. CATALEMI and M. AIELLO (eds.), *Amori Immaturo. Il contributo della Psicologia e della Psichiatria al Mitis Iudex*, Libreria Editrice Vaticana, Roma 2020.

<sup>80</sup> «In nome di pretese esigenze pastorali, qualche voce s'è levata per proporre di dichiarare nulle le unioni totalmente fallite. Per ottenere tale risultato si suggerisce di ricorrere all'espedito di mantenere le apparenze procedurali e sostanziali, dissimulando l'inesistenza di un vero giudizio processuale. Si è così tentati di provvedere ad un'impostazione dei capi di nullità e ad una loro prova in contrasto con i più elementari principi della normativa e del magistero della Chiesa»: S. JOHN PAUL II., All. *Ad Tribunal Rotae Romanae iudiciali ineunte anno*, 29-I-2005, AAS 97 (2005)

true that sometimes the failure of a union is provoked by an existence of a case of nullity.

For one to be able to distinguish one from the other and to give good advice, it is vital to have at least basic juridical knowledge of canonical marriage<sup>81</sup>. This knowledge, accompanied by rigor and profundity, as well as the practical aspect, explain what consultation centres do<sup>82</sup>.

In January 2016 the Roman Rota sent to all the Bishops in the world a *Subsidium* to help them put into practice the norms of MIDI. One of the things Bishops are called to do is creation of a service of information, of counselling and of mediation attached to the office of family pastoral service<sup>83</sup>, which would be able to receive persons in view of an eventual preliminary investigation for the matrimonial process<sup>84</sup>, helping overcome conjugal crisis, compiling useful elements for the case of nullity and where appropriate come up with statement of claim to be presented in the tribunal<sup>85</sup>.

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164; «Che dire allora della tesi secondo cui il fallimento stesso della vita coniugale dovrebbe far presumere l'invalidità del matrimonio? Purtroppo la forza di questa erronea impostazione è a volte così grande da trasformarsi in un generalizzato pregiudizio, che porta a cercare i capi di nullità come mere giustificazioni formali di un pronunciamento che in realtà poggia sul fatto empirico dell'insuccesso matrimoniale. Questo ingiusto formalismo di coloro che avversano il tradizionale *favor matrimonii* può arrivare a dimenticare che, secondo l'esperienza umana segnata dal peccato, un matrimonio valido può fallire a causa dell'uso sbagliato della libertà degli stessi coniugi»: IDEM, All. *Ad Rotam Romanam habita*, 29-1-2004, AAS 96 (2004) 351.

<sup>81</sup> Cf. P. BIANCHI, *¿Cuándo es nulo el matrimonio? Guía práctica de causas de nulidad para el asesoramiento jurídico de matrimonios en crisis*. Traducción, revisión y notas de J. FERRER, C. GARCIMARTÍN and P. ORMAZÁBAL, Pamplona 2005, 15. In the extraordinary assembly of 2014, a synodal father proposed an administrative procedure of nullity of marriage before the bishop that is very similar to what we have now in the abbreviated process. He further mentions how counseling centres would be useful: «the presence in every diocese or in a group of small dioceses of a counseling service for Catholics who have doubts about the validity of their marriage. From there one could start a canonical process for evaluating the validity of the bond, conducted by a suitable appointee (with the help of qualified personnel like notaries as required by canon law); this process would be rigorous in gathering evidence, which would be forwarded to the bishop, together with the opinion of the appointee himself, of the defender of the bond, and of a person who is assisting the petitioner»: A. Card. SCOLA, *Marriage and the Family Between Anthropology and the Eucharist. Comments in View of the Extraordinary Assembly of the Synod of Bishops on the Family*, *Communio* 41 (2014) 223.

<sup>82</sup> Cf. J.J. GARCÍA FAILDE, *Manual de psiquiatría forense canónica*, Salamanca: Publicaciones Universidad Pontificia, 1991.

<sup>83</sup> Cf. J. GARCÍA MONTAGUD and M.T. BOBES BASCARÁN, *La pericial psicológica en los procesos de nulidad matrimonial canónica*, *Informació psicològica* 114 (2017) 105-118.

<sup>84</sup> Cf. APOSTOLICUM ROTAE ROMANAE TRIBUNAL, *Subsidium for the application of the M.p. Mitis Iudex Domnus Iesus*, 1-2016, 13.

<sup>85</sup> Cf. *ibidem*, 15.

This consultation, inspired by Christian teaching, pays careful attention to all the dimensions of a person; using diverse modes and languages to communicate to the person the love of Christ and the beauty of the faith. First of all by fostering that welcoming climate and reciprocal listening, appreciating all the contributions that anyone can give. This synergy among several experts and groups is great for the engaged couples to also see the complementarity and cordial collaboration between ministries and charisms to edify the church.

#### 8.6. *Programs for positive and prudent education to be imparted to children and adolescents*

It is very well explained in *Familiaris Consortio* that «education in love as self-giving is also the indispensable premise for parents called to give their children a clear and delicate sex education. Faced with a culture that largely reduces human sexuality to the level of something common place, since it interprets and lives it in a reductive and impoverished way by linking it solely with the body and with selfish pleasure<sup>86</sup>, the educational service of parents must aim firmly at a training in the area of sex that is truly and fully personal: for sexuality is an enrichment of the whole person-body, emotions and soul- and it manifests its inmost meaning in leading the person to the gift of self in love»<sup>87</sup>. This education, which is a right and duty of the parents could be carried out under their attentive guidance in the Church, parish's premises or anywhere else deemed fit to prepare the young ones for future responsibilities. A plan should be organized for evangelization and catechesis before, during and after adolescence. Pastors, the community and experts should be part of the project which sometimes can get difficult. Everybody knows some adolescents who are disturbed, rebellious and sometimes stormy.

This is a great investment for marriage which all agree is worth spending lots of time and money to safeguard. Good formation at this stage would help

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<sup>86</sup> «È difficile pensare l'educazione sessuale in un'epoca in cui si tende a banalizzare e impoverire la sessualità. Si potrebbe intenderla solo nel quadro di una educazione all'amore, alla reciproca donazione. In tal modo il linguaggio della sessualità non si vede tristemente impoverito, ma illuminato. L'impulso sessuale può essere coltivato in un percorso di conoscenza di sé e nello sviluppo di una capacità di dominio di sé, che possano aiutare a far emergere capacità preziose di gioia e di incontro amoroso»: FRANCIS, Adhort. ap. *Amoris Laetitia*, 19-III-2016, AAS 108 (2016) 423.

<sup>87</sup> S. JOHN PAUL II., Adhort. ap. *Familiaris Consortio*, 22-XI-1981, AAS 74 (1982) 127.

the youth in their future roles as parents and spouses, to also understand the ultimate meaning of truth of conjugal and family life.

This formation should above all be geared to helping the young understand the beauty and grandeur of the vocation to love and the service of life.

### 8.7. *Tribunals*

The *Motu Proprio* MIDI talks about the duty of bishops to establish tribunals in their diocese to handle cases of nullity of marriage and if this is not possible to have recourse to a nearby diocese for an interdiocesan tribunal. This document goes on to say that those bishops, whose dioceses lack tribunals should take care of that as soon as is possible, by first ensuring that there are persons well formed who can zealously assist in setting up marriage tribunals, even by means of courses in well-established and continuous institutions sponsored by the diocese or in cooperation with groupings of dioceses and with the assistance of the Apostolic See<sup>88</sup>.

Generally, a major part of the activity carried out in tribunals of justice of the Church is giving judgements to cases of matrimonial nullity, this has been observed repeatedly by the canonical doctrine and supported by statistics<sup>89</sup>. The tribunals of the Church not only safeguard the sanctity of matrimony, contract and sacrament but also through its judicial shelter it inspires the protection of the stability of the same family, basic unit of the social life and at the same time core unit of support for christian life for a great number of faithful, «domestic church» where they learn and live, spontaneously, the light of love among men and constitute natural space for a better development of christian virtues in the life of the *Christifideles*<sup>90</sup>.

For the concrete determination of the personal and material resources necessary to implement these measures, it is necessary to take into account the new Instruction of the Congregation for Catholic Education on «The Study of Canon Law in light of the Reform of the Matrimonial Process» of 27 April 2018<sup>91</sup>.

<sup>88</sup> Cf. FRANCIS, M.P. *Mitis Iudex Dominus Iesus*, 15.VIII.2015, AAS 107 (2015) 968.

<sup>89</sup> Cf. J. LLOBELL, «Introducción al tit. I: De los procesos matrimoniales», *ComExe*, IV/2, 1812-1813. Cf. also Z. GROCHOLEWSKI, *Processi di nullità nella realtà odierna*, in P.A. BONNET and C. GULLO (eds.), *Il processo matrimoniale canonico*, Città del Vaticano 1994, 11-25.

<sup>90</sup> Cf. S. JOHN PAUL II., Adhort. ap. *Familiaris Consortio*, 22-XI-1981, AAS 74 (1982) 81-191; IDEM, Nuntius *Gratissimam Sane* (Letter to families), 2-II-1994, AAS 86 (1994) 868-925.

<sup>91</sup> Cfr. [https://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20180428\\_istruzione-diritto-canonico\\_sp.html](https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20180428_istruzione-diritto-canonico_sp.html) [consulted: 3-10-2020].

## 9. CONCLUSIONS

1. In the light of the data I have obtained from this research, I would like to point out some practical observations that I have made: judicial fees are not high, far from it. However, it seems to me that they have a certain capacity to distort the nature of the canonical process of declaring the nullity of marriage. The impact they have on the parties and on public opinion is great by their very nature, not by their value. They create, or rather imply, a peculiar relationship between the tribunal and the person under its jurisdiction.

According to c. 221 § 1, CIC 83, the Church is very interested that all the faithful have access to ecclesiastical tribunals, and can legitimately vindicate and defend the rights they possess in the Church. Hopefully this precept would be better applied to those who find themselves in some irregular marital situation.

2. Gratuity in ecclesiastical tribunals would really facilitate access to these forums, there however are a number of hurdles to be overcome: evident lack of economic means in many dioceses and conferences of bishops; difficulty in reconciling gratuity and professionalism demanded of the operators of justice; facilitating access to these tribunals could come at the expense of jeopardizing other family pastoral activities being funded by the diocese or Conference of bishops.

3. Fees are a contribution to the expenditure generated by a service demanded by the taxpayer. I wonder if this definition is applicable to judicial fees charged in the proceedings for the declaration of marriage annulment. Is it only the husband and wife who are interested in knowing the truth about their marriage? Is it not rather the whole Church that wishes to accompany them at this difficult time in their lives? Is it not true that the Church itself is interested in knowing the truth about this bond?

On top of this, the overall amount of funds received from judicial fees is often very limited. In many cases, even before the reform of *Mitis Iudex*, free proceedings (legal aid) were already granted without very comprehensive requirements to demonstrate inability to meet the costs. Such little revenues could at best support small expenses of the administration of justice, but would never be able to finance the tribunals.

It is also well known that it is often other items that make the process more expensive. Judicial fees are the least burdensome part. Lawyers and possible psychiatric expertise are a real burden for the parties. However, these costs are not considered as enrichment for those who receive them. This is not the case for the Church, which is accused of enriching itself and favouring those who can contribute the most money to the proceedings.

4. There is however a danger in abolishing judicial fees. Being free of charge should not be implemented at the expense of professionalism, integrity, accountability and transparency of proceedings. These fundamental principles come at a price. How then do we reconcile free of charge without compromising the quality of the services offered by the courts? Where do we get the money to pay the best lawyers, to finance the continuous training of judges, to implement effective systems of care for married couples, to prepare young people attractively for marriage? Can we still aspire to a comprehensive family pastoral care that includes well-funded courts, pre-marriage courses, family therapy units, along with other measures that have proven to be effective in accompanying marriages and families?

The Pope had proposed that dioceses with limited means could be helped by those with more means. If dioceses can have a fundraising office, with professionals trained in raising funds, they could do a better job. This is to avoid a situation where tribunals have to ask for donations, there could easily arise conflict of interest for those who donate and yet are part of the process.

5. An office dedicated to seeking funds has better chances of being more successful mainly because they dedicate time to that. They are usually part of a bigger programme called Stewardship and Development. Focussing not only on raising funds but also getting faithful engaged in the mission of the Church by sharing their time and talent.

6. The office of diocesan oeconomus could take up the aforementioned duties but experience has demonstrated this strategy to be unsuccessful mainly because this office lacks the required skill set. The oeconomus office also has to split time between the many activities they have to do. The priority for them is to take care of the accounts and to administer the assets of the diocese.

7. It has sometimes been argued that nobody values what has not cost them. However, I am convinced that what moves people to appreciate something is the value it has in itself and not, on the contrary, the economic valuation that someone has given to that good or service. In the same vein, court fees may be sending a poisoned message about the Church's perception of the work of judges and court support staff. The low level of these fees can be seen as an index of the value of such work, often carried out under very difficult conditions and at great sacrifice. What moves people to appreciate something is the value it has and not the economic value that someone has established or attached to it. On this same line, if tribunals ask for fees as they have done in recent times, they seem not to value much their work since these fees only cover a small percentage of their costs.

For all these reasons I propose the elimination of judicial fees as a first step, rather symbolic, but full of meaning to achieve a family pastoral care according to the needs of our families at the beginning of the 21st century.

8. Gratuity is usually followed by gratitude. In the face of what we perceive as gratuitous, it is easier to have a grateful attitude. The gratitude of those who participate in the trial is likely to turn into generosity over time. Logically it would be much more advisable for this help to come after the judgement has been emitted. Gratuity generates gratitude, and this is the key factor for generosity.

9. Gratuity should not be at odds with the outstanding qualifications of the professionals involved in the process and in the whole rich range of circumstances in which the family finds itself<sup>92</sup>. It is obvious that the process is not the central core of family ministry. It is a necessary but subsidiary tool. Helping families involves using other less traumatic and more effective mechanisms for conflict resolution.

10. All this seems coherent and also exciting. However, who is going to pay for this increasing amount of expenses? The courts are not the best suited to ask for money, this is because it would be a clear conflict of interest. Nor does the bursar usually have this profile, and in most dioceses the tribunal functions independently from the rest of the diocesan administration. A Stewardship and Development programme should be able to implement and involve the community in this development. It is a strategic project not just to cover the costs of a marginal service, but to implement an ambitious pastoral plan. A dedicated fundraising office is more likely to succeed, not only from a financial point of view. It is absolutely necessary to focus not only on fundraising, on money, but also on the commitment of the faithful through their time and talent.

Proven and verified experience in many places and areas shows that generosity is not encouraged by fees. For this very reason, this development can be the birth of a way to build a Church that is more involved in the care of families. This challenge is not solved by money alone. All possible talent and time must also be brought into play, for it is the future of the Church that is at stake.

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<sup>92</sup> «Salva la giusta e dignitosa retribuzione degli operatori dei tribunali, affinché sia assicurata, per quanto è possibile»: TRIBUNALE APOSTOLICO DELLA ROTA ROMANA, *Sussidio applicativo del Motu p. Mitis Iudex Dominus Iesus*, Città del Vaticano 2016, 12.



11. Recent Popes have affirmed that family is such a treasure that any effort to safeguard it is worthwhile<sup>93</sup>. Thus getting the best prestigious lawyers to help families, at no cost is totally worth it. The same would apply for psychiatrists, psychologists, catechists, family counsellors etc.

12. To pay these professionals well, so well that they are motivated to do whatever it takes to help these wounded families, requires lots of recourses. This cannot be supported by fees. On the other hand, gratuity at that moment would generate appreciation for the administration of justice in the Church.

13. It is therefore worthwhile to have that office, foundation or trustee to raise funds to help take very good care of the families going through a conjugal crisis.

14. Processes should therefore be free of charge, eliminating judicial fees and professional fees for experts who participate in a process. The elimination of all these charges should therefore not compromise the quality of professionals who intervene but rather have the contrary effect. Elimination of fees for example should move the tribunals to rely on the generosity of the faithful, who in turn would donate money that professionals are paid and so well that they are very motivated to do a good job. Part of the plan also involves paying for the formation of the operators of justice in an effort to make them better qualified to offer their services. These professionals will thus offer their services in an effort to serve, to give back since they have been well taken care of<sup>94</sup>.

14. Going by the words of Pope Francis, the family needs help. It is attacked left, right and center by doctrines that praise individualism and lack of commitment, provisional mentality as opposed to permanence. To such people a lifelong union doesn't make sense<sup>95</sup>. These people need our help.

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<sup>93</sup> «Troppo grande è il bene che la Chiesa e l'intera società s'attendono dal matrimonio e dalla famiglia su di esso fondata per non impegnarsi a fondo in questo specifico ambito pastorale. Matrimonio e famiglia sono istituzioni che devono essere promosse e difese da ogni possibile equivoco sulla loro verità, perchè ogni danno arrecato ad esse è di fatto una ferita che si arreca alla convivenza umana come tale»: BENEDICT XVI, All. *Ad sodales Tribunalis Rotae Romanae*, 22-I-2011, AAS 103 (2011) 110.

<sup>94</sup> «Tante volte sento paura davanti al giudizio di Dio che noi avremo su queste due cose. Nel giudicare, sono stato *prossimo* al cuore della gente? Nel giudicare, ho aperto il cuore alla *gratuità* o sono stato preso da interessi commerciali? Il giudizio di Dio sarà molto forte su questo»: FRANCIS, All. *Discorso del santo padre Francesco in occasione dell'inaugurazione dell'anno giudiziario del Tribunale della Rota Romana*, 25-I-2020, AAS 112 (2020) 164.

<sup>95</sup> «Tra i 'luoghi' in cui la vostra presenza mi sembra maggiormente necessaria e significativa – e rispetto ai quali un eccesso di prudenza condannerebbe all'irrelevanza – c'è innanzitutto la *famiglia*. Oggi la comunità domestica è fortemente penalizzata da una cultura che privilegia i

The Popes have also insisted, that the family is a treasure<sup>96</sup> that need to be taken care of now and is being attacked from all sides by all the bad ideologies. On this treasure depends an integral progress of society because it is based on an inviolable dignity of the human person. Any society that wants integral progress needs to take care of its families. That is most precious good of the society together with the Church.

16. The church, through its institutions wants to help those who, while knowing the value of matrimony and family try to live it faithfully, and those who are uncertain and anxious and are looking for the truth and also those who are unjustly prohibited from living their own familial project. I have already outlined many of those institutions that can help the family, safe guard it from attack and help it achieve its goals which are renewal of the society and at the same time people of God.

17. The cost to sustain a tribunal and all the other institutions that families need is quite high. First of all the tribunals need the best professionals with canonical background. The emoluments for lawyers and experts, mainly psychiatrists constitute the greater part of the cost of administration of justice. On top of that, tribunals need a whole team of experts to receive couples and try to reconcile them if possible. Always showing the loving face of the church, which is quite a feat for judges who have to deal with very complicated matters with lots of suffering involved.

18. On the other hand, a new pastoral programme adequate to the challenging times facing families requires establishment of prejudicial services. To help faithful analyse their family situation in case there exist reason for

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diritti individuali e trasmette una logica del provvisorio. Fatevi voce convinta di quella che è la prima cellula di ogni società. Testimoniatene la centralità e la bellezza. Promuovete la vita del concepito come quella dell'anziano. Sostenete i genitori nel difficile ed entusiasmante cammino educativo. E non trascurate di chinarvi con la compassione del samaritano su chi è ferito negli affetti e vede compromesso il proprio progetto di vita»: FRANCIS, All. *Ad LXVI Generalem Conventum Coetus Episcoporum Italiae*, 19-V-2014, AAS 106 (2014) 448.

<sup>96</sup> «Questa realtà associativa, 'giovane' nello spirito e nella sua storia, è chiamata a contagiare altre nel servizio alle famiglie, perchè l'Europa continui ad avere come suo tesoro più prezioso la famiglia. L'immagine del 'tesoro' è stata presente nell'incontro di ieri che vi ha riunito a Roma, famiglie di molti paesi d'Europa. È un'immagine che riflette molto bene la stima che tutti dobbiamo avere per la famiglia. In effetti, le famiglie non sono pezzi da museo, ma attraverso di esse si concretizza il dono, nell'impegno reciproco e nell'apertura generosa ai figli, così come nel servizio alla società. In questo modo, le famiglie sono come lievito che aiuta a far crescere un mondo più umano, più fraterno, dove nessuno si senta rifiutato o abbandonato»: FRANCIS, All. *Ad participes Occursus promoti a Foederatione Europaea Consociationum Familiarum Catholicarum (EAFCE)*, 1-VI-2017, AAS 109 (2017) 601.

invalidity<sup>97</sup>. Chances are that if they wait to file a complaint in court it might be too late to save the marriage. The sooner these services are offered to marriages, the number of families saved from crisis could rise exponentially.

19. It is well documented that Family Therapy Units save up to 75% of the cases they are working on. Part of their fundamental requirement is the appearance of both spouses which would mean they would be forced to show up before things are irreparable. The claim for invalidity is normally not presented when there is a crisis but when one of the parties to the case has found a new home and wishes to put in order his christian life. At this point there is low possibility of saving the marriage.

20. The programme of stewardship and development should be able to help families in an integral way, coming up with a strategic project not to cover costs but to implement an ambitious pastoral plan. This would mean including tribunals as a small part of the resolution of conflicts. Getting professionals from diverse fields to help in the accompaniment of families. To implement the pastoral programme proposed by recent Roman Pontiffs for the church to help families in the 21<sup>st</sup> century will require a lot of resources.

21. The generosity of faithful who could help finance this reform will depend if they are truly grateful for the support they received at different times of their married life.

22. It would be desirable therefore that a faithful feel extremely grateful for the kind treatment and personal attention received in the tribunal that, even if the tribunal doesn't declare nullity of their marriage, they feel interested that many people should participate in this maternal care of the Church.

23. The gratuity of ecclesiastical tribunals through elimination of judicial fees is only the first step. It is the beginning of setting up a system of getting the Church more involved in taking care of families. Not only with its money but also with all the talent and dedication that is necessary.

24. Gratuity helps us understand that matrimony, its legal protection and validity are a mission of the whole community, and not only those who have suffered its failure. Charging for these services would mean not considering them as a good for the whole society.

25. Fees are imposed to oblige the users to contribute to the cost incurred by a public entity for offering that service. To ask spouses to cover this

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<sup>97</sup> «... pur non sfuggendo a nessuno la necessità delle attività giuridiche che precedono il matrimonio, rivolte ad accertare che «nulla si oppone alla sua celebrazione valida e lecita»: BENEDICT XVI, All. *Ad sodales Tribunalis Rotae Romanae*, 22-I-2011, AAS 103 (2011) 109.

cost would mean they are the only beneficiary. It is abandoning them in the most delicate period of their lives, at a key moment for their faith. In these circumstances they need the Church to be near more than ever.

26. If we really want people to collaborate, they should not feel obliged. Experience has shown that grateful people are more generous. That would imply changing a number of things: how we work, respond, attend to and help those who come.

27. Amongst us there could have permeated a certain mentality of service providers. These offer a service at a price. We are a community and if one is sick, we all are. We are all responsible of all the families and are not indifferent to the situation of families. What happens to a singular matrimony affects us.

28. If we want people to collaborate to the needs of tribunals we need to be transparent. This would open pathways to the generosity of people. There is so much time and talent to be discovered and be put into play. Many faithful would be very happy collaborating.

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