THE HOLY SEE

APOSTOLIC LETTER

IN THE FORM OF MOTU PROPRIO

OF THE SUPREME PONTIFF

FRANCIS

MITIS IUDEX DOMINUS IESUS

ON THE REFORM OF THE CANONICAL PROCESS FOR DECLARATION OF NULLITY OF MARRIAGE

IN THE CODE OF CANON LAW

The Gentle Judge, the Lord Jesus, Shepherd of our Souls, entrusted to the Apostle Peter and his successors the power of the keys to carry out the work of truth and justice; this supreme and universal power of binding and loosing here on earth affirms, strengthens and vindicates that of the Pastors of the particular Churches, in accordance with which they have the sacred right and duty before the Lord to judge their subjects.[1]

In the course of the centuries the Church, gaining an ever-clearer understanding of the words of Christ, has more completely understood and explained the doctrine of the indissolubility of the sacred bond of marriage, and has developed a system of matrimonial consent and established a process more fitting to the matter, that ecclesiastical discipline might more and more conform to the truth of the faith which is professed.

This teaching was always done having as a guide the supreme law of the salvation of souls,[2] since the church, as Blessed Paul VI, wisely taught is a divine plan of the Trinity, and therefore all its institutions, although always capable of being improved, ought to aim to transmit divine grace, and each, by its own function, ought continuously to favor the good of Christ's faithful, which is the essential purpose of the Church itself.[3]

Aware of this reality, we decided to undertake a reform of the processes for the declaration of nullity of marriage and for this purpose we have constituted a group of persons, eminent for their competence in legal doctrine, their pastoral prudence, and their forensic experience. Under the guidance of the his excellency the dean of the Roman Rota, they have drafted a plan for reform, upholding and keeping in first place the indissolubility of marriage. Working quickly, in a short period of time, this group has provided a structure of reform, which after thoughtful consideration along with the assistance of other experts, has provided a basis for this *motu proprio*.

It is thus the concern for the salvation of souls that today as yesterday remains the supreme goal of the Church's institutions, rules and law, which impels the Bishop of Rome to offer to the bishops this document of reform, inasmuch as they share with him the task of the Church, namely the protection of the unity of faith and discipline regarding marriage, the cornerstone and origin of the Christian family. The zeal to reform has been fueled by the enormous number of faithful who, while wishing to act according to their consciences, are too often separated from the legal structures of the Church due to physical or moral distance; charity and mercy therefore require that same Church, as a mother, to make herself closer to her children who consider themselves separated.

This direction was also indicated by the votes of the majority of our brothers in the episcopate, gathered in the recent extraordinary synod, who implored more flexible and accessible judicial processes.[4] In full harmony with this desire I have decided to introduce, by this *motu proprio*, provisions that favor not the nullity of marriage but rather the speed of the processes, along with the appropriate simplicity, so that the heart of the faithful who await clarification of their status is not long oppressed by the darkness of doubt due to the lengthy wait for a conclusion.

We have done so following in the footsteps of my predecessors, who desired cases for the declaration of the nullity of marriage to be treated by a judicial rather than an administrative

process, not because the nature of the matter imposes this but because it is demanded by the need to protect, to the greatest extent possible, the truth of the sacred bond; and this is precisely what is ensured by the guarantees of the judicial order.

There are some fundamental criteria which have governed the work of reform:

I. – *A single executory sentence in favor of nullity.* – It seemed appropriate, in the first place, that there is no longer required a double conforming decision declaring the nullity of the marriage to enable the parties to be able to contract a new canonical marriage. Instead, moral certainty, reached by the first judge under the norm of law, is considered sufficient.

II. – *A single judge acts under the responsibility of the bishop.* – The constitution of a single judge, who nevertheless is to be a cleric, is in the first instance committed to the responsibility of the bishop, who in the pastoral exercise of his judicial power is to take care that no laxism whatever is indulged.

III. – *The bishop himself is judge.* – In order that the teaching of the Second Vatican Council may finally be put into practice in an area of great importance, it was decided to make it clear that the bishop himself, in his church of which he is constituted shepherd and head, is by that reason himself a judge among the Christian faithful entrusted to him.[5] It is greatly hoped that in large as well as in small dioceses the bishop becomes a sign of the conversion of ecclesiastical structures and does not leave the judicial function in matrimonial matters completely delegated to the offices of his curia. This is especially true in the briefer process which will be established to resolve the most evident cases of nullity.

IV. – *The briefer process.* – Indeed, aside from expediting the ordinary process for the declaration of nullity, a form of briefer process is designated – in addition to the current documentary procedure – to be applied in cases in which the alleged nullity of the marriage is supported by particularly clear arguments. It has not entirely escaped us that a briefer process can endanger the principle of the indissolubility of marriage. For precisely this reason we have chosen that in such a procedure, the judge is to be the bishop himself who, due to his pastoral office, is with Peter the greatest guarantor of Catholic unity in faith and in discipline.

V. – *The appeal to the metropolitan see.* – It is appropriate that the appeal to the metropolitan be restored, especially as the office of head of the ecclesiastical province, which has been stable for centuries, is a distinctive sign of collegiality in the church.

VI. – *The proper task of episcopal conferences.* – These conferences, which above all should be driven by apostolic zeal to reach the dispersed faithful, should feel strongly the duty of participating in the above mentioned conversion while absolutely respecting the right of the bishops to organize judicial power in their own particular churches.

The restoration of a proximity between the judges and the faithful will not succeed unless the conferences are a stimulus to the individual bishops and provide help for putting into practice the reform of the matrimonial process.

The episcopal conferences, working together with the judges and safeguarding the just and fair remuneration of the workers in the tribunals, shall insofar as possible take care to assure that cases are free of charge, and the church, showing herself to be a generous mother to the faithful in a matter so closely linked to the salvation of souls, might manifest the freely-given love of Christ by whom we all have been saved.

VII. – *An appeal to the Apostolic See.* – It is necessary, in any case, to retain the appeal to the ordinary Tribunal of the Apostolic See, that is, the Roman Rota, respecting a most ancient right, so as to strengthen the bond between the See of Peter and the particular churches, in any case taking care, in the discipline of such appeal to limit any abuse of the right, so as not to jeopardize the salvation of souls.

The law proper to the Roman Rota, however, is to be adapted as soon as possible to the rules of the reformed process, as necessary.

VIII. – *In favor of the Eastern Churches.* – Lastly, in view of the particular ecclesial order and discipline of the Eastern Churches, we have decided to issue separately, at this same time, the norms to reform the discipline of matrimonial processes in the *Code of Canons of the Eastern Churches*.

Having duly considered the matter we decree and define that in Book VII of the *Code of Canon Law*, Part III, Title I, Chapter I, Cases to Declare the Nullity of Marriage (cann. 1671-1691), shall from the 8th day of December, 2015 be replaced in its entirety as follows:

Art. 1 – The Competent Forum and Tribunals

Can. 1671 § 1. Marriage cases of the baptized belong to the ecclesiastical judge by proper right.

§2. Cases concerning the merely civil effects of marriage belong to the civil magistrate unless particular law establishes that an ecclesiastical judge can investigate and decide these cases if they are done in an incidental or accessory manner.

Can. 1672. In cases concerning the nullity of marriage which are not reserved to the Apostolic See, the following are competent:

1° the tribunal of the place in which the marriage was celebrated;

2° the tribunal of the place in which either or both parties have a domicile or a quasi-domicile;

3° the tribunal of the place in which in fact most of the proofs must be collected.

Can. 1673 § 1. In each diocese the judge of first instance for cases of nullity of marriage, for which the law does not expressly make an exception, is the diocesan bishop, who can exercise judicial power personally or through others, according to the norm of law.

§ 2. The bishop constitutes for his diocese the diocesan tribunal for the cases of nullity of marriage, without prejudice to the faculty of the same bishop to approach another nearby diocesan or interdiocesan tribunal.

§ 3. Cases of nullity of marriage are reserved to a college of three judges. A clerical judge must preside, the remaining judges can even be laypersons.

§ 4. The bishop moderator, if a collegial tribunal cannot be constituted in the diocese or in a nearby tribunal chosen according to the norm of §2, is to entrust cases to a single clerical judge who, where possible, is to employ join two assessors of upright life, experts in juridical or human sciences, approved by the bishop for this task; unless it is otherwise evident, the same single judge has those things which are attributed to the college, the praeses, or the ponens.

§ 5. The tribunal of second instance must always be collegiate for validity, according to the prescript of the preceding §3.

§ 6. The tribunal of first instance appeals to the metropolitan tribunal of second instance, without prejudice to the prescripts of cann. 1438-1439 and 1444.

Art. 2 -- The Right to Challenge a Marriage

Can. 1674 § 1. The following are qualified to challenge a marriage: 1° the spouses; 2° the promoter of justice when nullity has already become public, if the convalidation of the marriage is not possible or expedient.

§2. A marriage which was not accused while both spouses were living cannot be accused after the death of either one or both of the spouses unless the question of validity is prejudicial to the resolution of another controversy either in the canonical forum or in the civil forum.

§ 3. If a spouse dies while the case is pending, however, can. 1518 is to be observed.

Art. 3 -- The Introduction and Instruction of the Case

Can. 1675. The judge, before he accepts a case, must be informed that the marriage has irreparably failed, such that conjugal living cannot be restored.

Can. 1676 § 1. After receiving the *libellus*, the judicial vicar, if he considers that it has some basis, admits it and, by a decree appended to the bottom of the *libellus* itself, is to order that a copy be communicated to the defender of the bond and, unless the *libellus* was signed by both parties, to the respondent, giving them a period of fifteen days to express their views on the petition.

§ 2. After the above-mentioned deadline has passed, and after the other party has been warned to express his or her views if and insofar as necessary, and after the defender of the bond has been heard, the judicial vicar is to determine by his decree the formula of the doubt and is to decide whether the case is to be treated with the ordinary process or with the briefer process

according to cann. 1683-1687. This decree is to be communicated immediately to the parties and the defender of the bond.

§ 3. If the case must be treated with the ordinary process, the judicial vicar, by the same decree, is to arrange the constitution of a college of judges or of a single judge with two assessors according to can. 1673, §4.

§ 4. If the briefer process is established, however, the judicial vicar proceeds according to the norm of can. 1685.

§ 5. The formula of the doubt must determine by which ground or grounds the validity of the marriage is challenged.

Can. 1677 §1. The defender of the bond, the legal representatives of the parties, and also the promoter of justice, if involved in the trial, have the following rights:

1° to be present at the examination of the parties, the witnesses, and the experts, without prejudice to the prescript of can. 1559;

2° to inspect the judicial acts, even those not yet published, and to review the documents presented by the parties.

§2. The parties cannot be present at the examination mentioned in §1, n. 1.

Can. 1678 § 1. In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, can have the force of full proof, to be evaluated by the judge after he has considered all the indications and supporting factors, unless other elements are present which weaken them.

§ 2. In the same cases, the testimony of one witness can produce full proof, if it concerns a qualified witness making a deposition concerning matters *ex officio*, or unless the circumstances of things and persons suggest otherwise.

§ 3 In cases of impotence or defect of consent because of mental illness or an anomaly of a psychic nature, the judge is to use the services of one or more experts unless it is clear from the circumstances that it would be useless to do so; in other cases the prescript of can. 1574 is to be observed.

§ 4. Whenever, during the instruction of a case, a very probable doubt emerges that consummation of the marriage did not occur, having heard the parties, the tribunal can suspend the case of nullity, complete the instruction for a dispensation *super rato*, and then transmit the acts to the Apostolic See together with a petition for a dispensation from either one or both of the spouses and the *votum* of the tribunal and the bishop.

Art. 4 – The Judgment, its Appeals and its Execution

Can. 1679. The sentence which first declared the nullity of the marriage, when the deadlines ordered by cann. 1630-1633, becomes executed.

Can. 1680 § 1. The party, who considers himself or herself aggrieved, as well as the promoter of justice and the defender of the bond have the right to introduce a complaint of nullity of the judgment or appeal against the sentence, according to cann. 1619-1640.

§ 2. After the time limits established by law for the appeal and its prosecution have passed, and after the judicial acts have been received by the tribunal of higher instance, the college of judges is established, the defender of the bond is designated, and the parties are admonished to propose observations within the prescribed time limit; after this time period has passed, if the appeal clearly appears merely dilatory, the collegiate tribunal confirms the sentence of the prior instance by decree.

§ 3. If the appeal is admitted, the tribunal must proceed in the same manner as the first instance with appropriate adjustments.

§ 4. If a new ground of nullity of the marriage is alleged at the appellate grade, the tribunal can admit it and judge it as if in first instance.

Can. 1681. If an executive sentence has been issued, at any time one can go to a tribunal of the third grade for the new proposition of the case according to the norm of can. 1644, if new and grave proofs or arguments are brought forward within the peremptory time limit of thirty days from the proposed challenge.

Can. 1682 § 1. After the sentence, which declared the nullity of the marriage, has been executed, the parties whose marriage has been declared null can contract a new marriage unless a prohibition attached to the sentence itself or established by the local ordinary has forbidden this.

§ 2. As soon as the sentence is executed, the judicial vicar must notify the local ordinary of the place in which the marriage was celebrated. The local ordinary must take care that the declaration of the nullity of the marriage and any possible prohibitions are noted as soon as possible in the marriage and baptismal registers.

Art. 5 -- The Briefer Matrimonial Process before the Bishop

Can. 1683. The diocesan bishop himself is competent to judge the cases of the nullity of marriage with the briefer process whenever:

1° the petition is proposed by both spouses or by one of them, with the consent of the other;

2° circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest.

Can. 1684. The *libellus* which introduces the briefer process, in addition to those things enumerated in can. 1504 must:

1° set forth briefly, fully, and clearly the facts on which the petition is based;

2° indicate the proofs, which can be immediately collected by the judge;

3° exhibit documents on which the petition is based in an attachment.

Can. 1685. The judicial vicar, by the same decree which determines the formula of the doubt, having named an instructor and an assessor, cites all who must take part to a session which must be held no later than thirty days according to can. 1686.

Can. 1686. The instructor, insofar as possible, collects the proofs in a single session and is to establish a time limit of fifteen days to present the observations in favor of the bond and the defense briefs of the parties, if there are any.

Can. 1687 § 1. After he has received the acts, the diocesan bishop, having consulted with the instructor and the assessor, and having considered the observations of the defender of the bond and, if there are any, the defense briefs of the parties, is to issue the sentence if moral certitude about the nullity of marriage is reached. Otherwise, he refers the case to the ordinary method.

§ 2. The full text of the sentence, with the reasons expressed, is to be communicated to the parties as swiftly as possible.

§ 3. An appeal against the sentence of the bishop is made to the metropolitan or to the Roman Rota; if the sentence was rendered by the metropolitan, however, the appeal is made to the senior suffragan; and against the sentence of another bishop who does not have a superior authority below the Roman Pontiff, appeal is made to the bishop selected by him in a stable manner.

§ 4. If the appeal clearly appears merely dilatory, the metropolitan or the bishop mentioned in §3, or the dean of the Roman Rota, is to reject it by his decree at the outset; if the appeal is admitted, however, the case is remitted to the ordinary method in the second grade.

Art. 6 - The Documentary Process

Can 1688. After receiving a petition proposed according to the norm of can. 1677, the diocesan bishop or the judicial vicar or a judge designated by him can declare the nullity of a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate f a proxy. In these cases, the formalities of the ordinary process are omitted except for the citation of the parties and the intervention of the defender of the bond.

Can. 1689 §1. If the defender of the bond prudently thinks that either the flaws mentioned in can. 1688 or the lack of a dispensation are not certain, the defender of the bond must appeal against the declaration of nullity to the judge of second instance; the acts must be sent to the appellate judge who must be advised in writing that a documentary process is involved.

§ 2. The party who considers himself or herself aggrieved retains the right of appeal.

Can. 1690. The judge of second instance, with the intervention of the defender of the bond and after having heard the parties, will decide in the same manner as that mentioned in can. 1688

whether the sentence must be confirmed or whether the case must rather proceed according to the ordinary method of law; in the latter event the judge remands the case to the tribunal of first instance.

Art. 7 -- General Norms

Can. 1691 §1. In the sentence the parties are to be reminded of the moral and even civil obligations which can bind them both toward one another and toward their children to furnish support and education.

§ 2. Cases for the declaration of the nullity of a marriage cannot be treated in an oral contentious process, mentioned in cann. 1656-1670.

§ 3. In other procedural matters, the canons on trials in general and on the ordinary contentious trial must be applied unless the nature of the matter precludes it; the special norms for cases concerning the status of persons and cases pertaining to the public good are to be observed.

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The provisions of the can. 1679 will apply to sentences declaring the nullity of marriage published starting from the day this *Motu proprio* comes into force.

Attached and made part hereof are the procedural rules that I considered necessary for the proper and accurate implementation of this new law, which must be observed diligently to foster the good of the faithful.

What we have established by means of this *Motu proprio*, we deem valid and lasting, notwithstanding any provision to the contrary, even those worthy of meriting most special mention.

We confidently entrust to the intercession of the blessed and glorious ever Virgin Mary, Mother of mercy, and of the Holy Apostles Peter and Paul, the active implementation of this new matrimonial process.

Given in Rome, at Saint Peter's, on 15th day of August, the assumption of the Blessed Virgin Mary, in the year 2015, the third year of my pontificate.

Francis

The III general assembly of the extraordinary Synod of Bishops, which was held in October 2014, has looked into the difficulty of the faithful in approaching church tribunals. Since the bishop, as the good Shepherd, is to attend to his poor faithful who need particular pastoral care, and given the sure collaboration of the successor of Peter with the bishops in spreading the knowledge of the law, it has seemed opportune that together with the detailed norms for the application to the matrimonial process, to offer some tools for the work of the tribunals to respond to the needs of the faithful, who are asking that the truth about the existence or not of the bond of their failed marriage be declared.

Art. 1. The bishop under can. 383, §1 is obliged to follow with an apostolic spirit the separated or divorced spouses, perhaps who by the conditions of their lives have abandoned religious practice. Thus he shares with the pastors (cf. can. 529, §1) pastoral solicitude for these faithful in difficulties.

Art. 2. The pre-judicial or pastoral investigation, 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, in the end is directed to understanding their situation and to gathering elements useful for the eventual judicial process, either the ordinary or the briefer one. This investigation will be developed within the unified diocesan pastoral care of marriage.

Art. 3. This same investigation is entrusted to persons deemed suitable by the local ordinary, with the appropriate expertise, though not exclusively juridical-canonical. Among them in the first place is the pastor or the one who prepared the spouses for the wedding celebration. This function of counseling can also be entrusted to other clerics, religious or lay people approved by the local ordinary.

One diocese, or several together, according to the present groupings, can form a stable structure through which to provide this service and, if appropriate, a handbook (*vademecum*) containing the elements essential to the most appropriate way of conducting the investigation.

Art. 4. The pastoral investigation will collect elements useful for the introduction of the case before the competent tribunal either by the spouses or perhaps by their advocates. It is necessary to discover whether the parties are in agreement about petitioning nullity.

Art. 5. All elements having been collected, the investigation culminates in the *libellus*, which, if appropriate, is presented to the competent tribunal.

Art. 6. Since the code of canon law must be applied in all matters, without prejudice to special norms, even the matrimonial processes in accord with can.1691, §3, the present *ratio* does not intend to explain in detail a summary of the whole process, but more specifically to illustrate the main legislative innovations and, where appropriate, to complete it.

Title I – The Competent Forums and the Tribunals

Art. 7 §1. The titles of competence in can. 1672 are equivalent, observing as much as possible the principle of proximity between the judges and the parties.

§2. Through cooperation between tribunals mentioned in can. 1418, care is to be taken that everyone, parties or witnesses, can participate in the process with a minimum of cost.

Art. 8 §1. In dioceses which lack their own tribunals, the bishop should take care that, as soon as possible, persons are formed who can zealously assist in setting up matrimonial 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.

§2. The bishop can withdraw from an interdiocesan tribunal constituted in accordance with can. 1423.

Title II - The Right to Challenge a Marriage

Art. 9. If a spouse dies during the process with the case not yet concluded, the instance is suspended until the other spouse or another person, who is interested, insists upon its continuation; in this case, a legitimate interest must be proven.

Title III -The Introduction and Instruction of Cases

Art. 10. The judge can admit an oral petition whenever a party is prevented from presenting a *libellus*: however, the judge himself orders the notary to draw up the act in writing that must be read to the party and approved, which takes the place of the *libellus* written by the party for all purposes of law.

Art. 11 §1. The *libellus* is presented to the diocesan or interdiocesan tribunal which was chosen according to the norm of can. 1673 §2.

§2. The respondent who remits himself or herself to the justice of the tribunal, or, when properly cited once more, makes no response, the respondent is deemed not to object to the petition.

Title IV-The Sentence, Its Appeals and Execution

Art. 12. To achieve the moral certainty required by law, a preponderance of proofs and clues is not sufficient, but it is required that any prudent doubt of making an error, in law or in fact, is excluded, even if the mere possibility of the contrary is not removed.

Art. 13. If a party expressly declares that he or she objects to receiving any notices about the case, that party is held to have renounced of the faculty of receiving a copy of the sentence. In this case, that party may be notified of the dispositive part of the sentence.

Title V-The Briefer Matrimonial Process before the Bishop

Art. 14 §1. Among the circumstances of things and persons which can allow a case for nullity of marriage to be handled by means of the briefer process according to cann. 1683-1687, are included, for example: the defect of faith which can generate simulation of consent or error that determines the will; a brief conjugal cohabitation; an abortion procured to avoid procreation; an obstinate persistence in an extraconjugal relationship at the time of the wedding or immediately following it; the deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations; a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman, physical violence inflicted to extort consent, the defect of the use of reason which is proved by medical documents, etc.

§2. Among the documents which support this petition are included all medical records which can evidently render useless the requirement for an *ex officio* expert.

Art. 15. If the petition was presented to introduce it in the ordinary process, but the judicial vicar believes the case may be treated with the briefer process, he is, in the notification of the *libellus* according to can. 1676, §1, to invite the respondent who has not signed the *libellus* to make known to the tribunal whether he or she intends to enter and take an interest in the process. As often as is necessary, he invites the party or parties who have signed the *libellus* to complete it as soon as possible according to the norm of can. 1684.

Art. 16. The judicial vicar can designate himself as an instructor; but to the extent possible, he is to name an instructor from the diocese where the cause originated.

Art. 17. In issuing the citation in accordance with can. 1685, the parties are informed that, if possible, they are to make available, at least three days prior to the session for the instruction of the case, those specific points of the matter upon which the parties or the witnesses are to be questioned, unless they are attached to the *libellus*.

Art. 18. § 1. The parties and their advocates can be present for the examination of other parties and witnesses unless the instructor, on account of circumstances of things and persons, decides to proceed otherwise.

§2. The responses of the parties and witnesses are to be rendered in writing by the notary, but in a summary way and only that which refers to the substance of the disputed marriage.

Art. 19. If the case is instructed at an interdiocesan tribunal, the bishop who is to pronounce the sentence is the one of that place according to the competence established in accordance with can. 1672. If there are many, the principle of proximity between the parties and the judge is observed as far as possible.

Art. 20 §1. The diocesan bishop determines according to his own prudence the way in which to pronounce the sentence.

§2. The sentence which is signed by the bishop and certified by the notary, briefly and concisely explains the reasons for the decision and ordinarily the parties are notified within one month of the day of the decision.

Title VI – The Documentary Process

Art. 21. The diocesan bishop and the competent judicial vicar are determined in accordance with can. 1672.

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[1] Cf. Concilio ecumenico Vaticano II, Const. dogm. Lumen Gentium, n. 27.

[2] Cf. CIC, can. 1752.

[3] Cf. Paolo VI, Allocuzione ai partecipanti del II Convengo Internazionale di Diritto Canonico, il 17 settembre 1973.

[4] Cf. Relatio Synodi, n. 48.

[5] Cf. Francesco, Esortazione Apostolica Evangelii gaudium, n. 27, in AAS 105 (2013), p. 1031.
