

RECENT DEVELOPMENTS CONCERNING THE PROCESS FOR THE DISSOLUTION OF MARRIAGES IN FAVOUR OF THE FAITH

Rev. Wojciek Kowal, O.M.I.

1. INTRODUCTION

During the Canadian Canon Law Convention of 2002, in Halifax, NS, I presented a seminar¹ on the New Norms for Completing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith *Potestas Ecclesiae*, approved by Pope John Paul II on February 16, 2001.² Since the promulgation of the Norms, there have been more than eight years of their application and of canonical reflection on the new legislation. It seemed to the organizers of the Canadian Canon Law Convention that the time has come to revisit the issue. It should be added that a new, fourth, revised and updated edition of Fr. W.H. Woestman's book, *Special Marriage Cases* – well known and appreciated in canonical circles – appeared in December of 2008, as W. KOWAL, OMI, W.H. WOESTMAN, OMI, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation, Presumed Death*, Faculty of Canon Law, Saint Paul University, Ottawa, 2008, xii, 355 p. The present seminar builds upon that presentation, adding some new elements for discussion and offering a more extensive treatment of some chosen issues.

When addressing the question of relevance of the procedure for the dissolution of the marriage bond, one points, first of all, to the religious and social context at the beginning of the 20th century, namely the frequent marriage between the baptized and the unbaptized, a culture favouring divorce, and the desire of those who attempted an invalid marriage to have their situation rectified.³ These phenomena continue nowadays and,

¹ See W. KOWAL, "The New Norms for Completing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith," in *Proceedings of the 37th Annual Convention of the Canadian Canon Law Society, Halifax, NS, October 23, 2002*, pp. 69–88.

² See CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Normæ de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei Potestas Ecclesiae*, April 30, 2001, E civitate Vaticana, 2001, 15 p. [*Potestas Ecclesiae*]. The English translation can be found in the commentary on *Potestas Ecclesiae* in W. KOWAL and W.H. WOESTMAN, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation, Presumed Death*, fourth revised and updated edition, with appendices, Faculty of Canon Law, Saint Paul University, Ottawa, 2008, pp. 92–128. This translation is used in the text of this conference.

³ See W.H. WOESTMAN, *Special Marriage Cases: Non-Consummation, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation-Sanation, Presumed Death*, 3rd ed., Ottawa, Faculty of Canon Law, Saint Paul University, 1994, p. 53.

arguably, have even become amplified; one could point, for example, to the attitude in Western society favouring divorce. This explains the actual situation of the high number of marriages potentially subject to dissolution of the bond. One can add a fairly new phenomenon: the diminishing number of children from Christian families being presented for baptism.⁴

Even though, in the past, there were instances of such papal favours, it is only since the pontificate of Pope Benedict XV that dissolutions of valid non-sacramental marriages in favour of the faith of one of the parties, or in favour of the faith of a third party, have seen an increase.⁵ This points to the fact that the Church's existing awareness of the power to dissolve non-sacramental marriages has been translated into the actual exercise of this power, subject however to various cultural and pastoral conditions of place and time.⁶

Soon after the promulgation of *Potestas Ecclesiae*, numerous commentaries on the new legislation appeared in canonical periodicals.⁷ Their goal was clearly to present the new legislation to canonists entrusted with instructing the process on the diocesan level. Evidently, those first commentaries paid special attention to both the differences and similarities between the 2001 Norms and the preceding Instruction of 1973. On the other hand, they did not neglect reflecting on the theological and canonical principles underlying the new legislation.

Nowadays, there is some slowdown in the frequency of publications on the issue of dissolution of marriage in favour of the faith, although there seem to be some signs of a renewed interest in the theological and canonical principles underlying the present discipline.⁸

2. SUBSTANTIVE PRINCIPLES UNDERLYING THE PROCESS FOR DISSOLUTION OF MARRIAGE IN FAVOUR OF THE FAITH

The Norms for Completing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith *Potestas Ecclesiae* were issued by the Congregation for the Doctrine of the Faith on April 30, 2001. These new provisions abrogated the previous norms, namely the instruction *Ut notum est* and the attached Procedural Norms.⁹

⁴ See D. DEBUF, "Le privilège en faveur de la foi: que change l'instruction d'avril 2001 par rapport à celle de décembre 1973?" in *Revue de droit canonique*, 52 (2002), p. 429.

⁵ See J. KOWAL, "L'indissolubilità del matrimonio rato e consumato. Status questionis," pp. 273–304.

⁶ See J. KOWAL, "Nuove 'Norme per lo scioglimento del matrimonio *in favorem fidei*,'" in *Periodica*, 91 (2002), p. 468.

⁷ A select bibliography is presented at the end of the paper.

⁸ Cf., for instance, D. GARCIA HERVAS, "La disolución del matrimonio a favor de la fe," in *Revista española de derecho canónico*, 64 (2007), pp. 220–257.

⁹ See CONGREGATION FOR THE DOCTRINE OF THE FAITH, instruction *Ut notum est*, December 6, 1973, in *Leges Ecclesiae post Codicem iuris canonici editae*, collegit, digessit notisque ornavit Xaverius Ochoa

The Congregation for the Doctrine of the Faith communicated to chancery offices *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, which also include a revised summary form and the text of the promises needed in the case of a mixed marriage.¹⁰

The main doctrinal principles concerning dissolution of the marriage bond in favour of the faith, together with an overview of the historical development of the respective discipline are presented in the Preface to the 2001 Norms.

2.1. Essential conditions (art. 1)

The Preface underlines the theological principle that the Roman Pontiff enjoys the power to dissolve those marriages which do not enjoy absolute extrinsic indissolubility.¹¹ In other words, a marriage entered into by the parties, of whom at least one was not baptized, can be dissolved by the Roman Pontiff in favour of the faith, provided that the marriage itself was not consummated after both spouses have received baptism.

The Preface to the 2001 Norms uses the following expressions to indicate the motive of granting the favour: “[...] in favour of the faith and the salvation of souls”¹² or “[...] in favour of the faith and the good of souls.”¹³ From that it is logical to conclude that the first stage of the procedure for the dissolution of the matrimonial bond in favour of the faith is aimed at providing the competent ecclesiastical authority with the necessary data to decide whether to grant the requested favour in the specific and individual circumstances of the petitioner and his/her prospective marriage. In other words, it leads towards the evaluation of a just cause for granting the dissolution, the necessary condition for the valid use of the vicarious power of the Supreme Pontiff.

It is commonly held that the present Norms demand two essential conditions for the valid dissolution of a non-sacramental marriage: the lack of baptism in at least one of the parties throughout the entire time of their marital life and the lack of consummation of the marriage after the ensuing baptism(s), if this be the case, of the previously unbaptized spouse(s). The Instruction of 1973, however, had an additional condition *sine qua non*: “that the person, who is unbaptized or baptized outside the Catholic Church, grants the

(=LE), vol. 5, *Leges annis 1973–1978 editae*, Roma, Commentarium pro Religiosis, 1980, no. 4244, col. 6701-6705, unofficial English translations in *CLD*, vol. 8, pp. 1177–1184, in *The Jurist*, 34 (1974), pp. 418–423, in W.H. WOESTMAN, *Special Marriage Cases: Non-Consummation, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation-Sanation, Presumed Death*, 3rd ed., Ottawa, Faculty of Canon Law, Saint Paul University, 1994, pp. 129-134 [=Ut notum est].

¹⁰ See KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, Appendix I, pp. 219–224.

¹¹ See *Potestas Ecclesiae*, p. 3, English translation in KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, Appendix I, p. 210. Cf. PIUS XII, allocution to the Roman Rota, October 3, 1941, no. 3, in *AAS*, 33 (1941), pp. 424–425, in W.H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota 1939-2002*, Ottawa, Faculty of Canon Law, Saint Paul University, 2002, p. 14.

¹² “[...] in favorem fidei salutemque animarum” (Preface, in *Potestas Ecclesiae*, p. 3).

¹³ “[...] in favorem fidei et bonum animarum [...]” (ibid., p. 5).

Catholic party the freedom and ability to profess his/her religion and to baptize and educate their children as Catholics – this condition is to be assured in the form of a [written] promise (*cautio*).”¹⁴

2.2. Competent authority to grant the dissolution (art. 2)

Favour of the faith cases are examined by the Congregation for the Doctrine of the Faith prior to their submission to the Holy Father¹⁵ who grants the favour personally. The Matrimonial Office in the Congregation is composed of three full-time officials. In the evaluation of cases it relies also on defenders of the bond and commissioners from outside.¹⁶

Certain marriages could be treated, in principle, either as non-consummation cases (c. 1142) or as favour of the faith cases, however, in accordance with the established practice of the Holy See, “marriages *entered into by parties of whom at least one is not baptized* which are consummated before but *not after* both parties received baptism”¹⁷ are to be instructed as favour of the faith cases and therefore should be submitted to the Congregation for the Doctrine of the Faith.¹⁸

2.3. Competent authority to instruct a case (art. 3)

It is within the competence of the diocesan bishop (and those equivalent to him in law) or the eparchial bishop to conduct the instruction of the process on the diocesan (eparchial) level.

Which diocesan bishop is competent? The bishop in his *votum* is to pronounce on the existence of reasons for granting the dissolution and the worthiness of the parties,¹⁹ the possibility of scandal arising from the concession of the favour, and is to advise the Congregation in the case of any doubt about the sincerity of the conversion of the

¹⁴ “I. [...] c) ut persona non baptizata vel baptizata extra ecclesiam catholicam libertatem facultatemque parti catholicæ relinquat profitendi propriam religionem atquæ catholice baptizandi educandique filios: quæ condicio, cautionis forma, in tuto ponenda est” (*Ut notum est*, no. I, in *LE*, vol. 5, col. 6702, English translation in WOESTMAN, *Special Marriage Cases*, p. 129).

¹⁵ Some 750 cases are received yearly in the recent times. See J.J. KENNEDY, “The Dissolution of Marriage in Favour of the Faith: New Norms Invite a New Look at Our Practice,” in *CLSA Proceedings*, 67 (2005), p. 160.

¹⁶ See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 123. For an overview of the process of evaluation at the Congregation, see *ibid.*, pp. 132–134.

¹⁷ A.R.A. MCCORMACK, “A Commentary on the Norms for Favour of the Faith Cases,” in *The Jurist*, 65 (2005), p. 281.

¹⁸ For the discussion of the competence of the Roman dicasteries in this regard, cf. J. KOWAL, “Nuove ‘Norme per lo scioglimento del matrimonio *in favorem fidei*,’” pp. 489–490; K.M. AMBORSKI, *The Development of the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith*, Rome, Pontificia Università Lateranense, 2004, pp. 31–35.

¹⁹ See *Potestas Ecclesiæ*, art. 24, §2.

petitioner or intended spouse.²⁰ It appears, therefore, that the bishop of the place where the Catholic party, be it the petitioner or the spouse in the future marriage, actually resides could fulfil this duty most efficiently, especially in the case of possible requests from the Congregation for further information. That points to the fact that the bishop under whose authority the case is instructed does not always have to be the bishop of the petitioner.²¹ If the petitioner is not Catholic, then the diocesan bishop of the Catholic party in the prospective marriage seems to be competent. The question is not without importance for bishops, especially those who lack a qualified personnel to handle the case, as, in accordance with c. 57, they must respond to lawful requests or bear the consequences of possible administrative recourse²² (cf. c. 1699, §3), including claims for damages (cf. c. 128).

2.4. Necessary requirements for the admission of a case (art. 4)

There are two requirements: first that there is no possibility of restoring the consortium of the conjugal life and second, that the petitioner was not “[...] the exclusive or prevailing culpable cause of the breakup of the conjugal common life.” Therefore, the Congregation accepts petitions for dissolution of marriages in which both parties caused its failure, nevertheless, the mutual guilt or responsibility must be clearly and conclusively demonstrated. Moreover, the norm prohibits the situation that the future spouse of the petitioner was at fault to provoke the separation of the spouses.

2.5. Promises (*cautiones*)

The Congregation for the Doctrine of the Faith treats the *cautiones* as an essential element in any marriage to be contracted with a non-Catholic [...], required even in those situations when the couple is beyond childbearing years.²³ It is understandable because the content of the promises concerns not only baptism and Catholic upbringing of children to be born in the marriage, but also the practice of the faith of the Catholic party in the future marriage.

²⁰ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 3, in Appendix I, p. 220.

²¹ See J. KOWAL, “Nuove ‘Norme per lo scioglimento del matrimonio *in favorem fidei*’,” p. 491; P. MONETA, “Le nuove norme per lo scioglimento del matrimonio in favore della fede,” in *Il diritto ecclesiastico*, 113 (2002), p. 1334, note 7.

²² There is a known case of a lay person having recourse to the Holy See. A Catholic man, who had previously married an unbaptized woman with a dispensation from disparity of worship, subsequently civilly married a Catholic woman with whom he had five children. When his diocese would not consider the case, he wrote to the Holy Office. The Holy Office requested information from the man’s ordinary, who wrote that it was not his practice “to make a request for a dissolution in a union between a Catholic and an unbaptized person when there was no basis for questioning the validity of the marriage.” The Holy Office asked the ordinary to prepare the process in favour of the faith. See SACRED CONGREGATION OF THE HOLY OFFICE, May 25, 1964, in *CLD*, vol. 6, p. 648.

²³ *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Case*, no. 5, in Appendix I, p. 221.

Some authors²⁴ point to the difference between the promises required in mixed marriages and the *cautiones* needed for the dissolution of marriage in favour of the faith. In the first case, of mixed marriages, c. 1125, 1° demands that the Catholic party declare that he or she is prepared to remove dangers of defecting from the faith, and make a sincere promise to do all in his or her power in order that all the children be baptized and brought up in the Catholic Church. Art. 5, §1 of *Potestas Ecclesiae* requires, however, that the Catholic party declare that “[...] he or she is ready to remove dangers of departure from the Faith [...]” without any explicit mention regarding promises concerning Catholic baptism and upbringing of children in the Catholic faith. This stipulation is found in the second part of art. 5, §1 concerning the non-Catholic party who must declare that “[...] he or she is ready to allow the Catholic party the freedom to profess his/her own religion and to baptize and rear the children as Catholics.” However, the *cautiones* are made in view of a future marriage with a non-Catholic party, therefore the requirements of c. 1125 should be required from the Catholic party. Indeed, in rescripts granting the favour of the dissolution of a marriage, permission for the subsequent mixed marriage is being accorded,²⁵ which would suggest that c. 1125 indeed obtains in this case. It seems, therefore, that the wording of art. 5 of *Potestas Ecclesiae* is somewhat lacking as to the promises required from the Catholic party. In fact, the text of the promises communicated by the Congregation to ordinaries²⁶ makes up for that and includes the obligation of the Catholic party²⁷ “[...] to have all children who may be born to our marriage baptized in the Catholic Church and carefully raised in the knowledge and practice of the Catholic faith.”²⁸

On the other hand, unlike in c. 1125, which requires that the other, non-Catholic party be simply informed of the promises made by the Catholic party, the non-Catholic party is obliged to make the promise that he or she will permit the Catholic spouse in the marriage to be contracted after the dissolution of the previous union to practice the Catholic religion and to fulfill the promise to have all the children baptized and raised only in the Catholic faith.

Some commentators postulate, therefore, that the *cautiones* should be interpreted in light of the promises required for mixed marriages (cc. 1124–1129).²⁹ However, the

²⁴ See, for instance, AMBORSKI, *The Development of the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith*, pp. 41–45.

²⁵ The customary text of the rescript includes the following: “In præsentì concessione includitur quoque, quatenus opus sit, dispensatio ab impedimento vel licentia a prohibitionè, iuxta cann. 1086 et 1125 *CIC*.”

²⁶ The Congregation insists that the wording of the promises be not modified in any way. See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 136.

²⁷ Cf. AMBORSKI, *The Development of the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith*, pp. 44–45: “[...] it seems that CDF [Congregation for the Doctrine of the Faith] would require a non-Catholic person to provide for the Catholic baptism and education of all the children as Catholic. The only logical explanation and most likely acceptable interpretation is that the CDF would demand this promise from a Catholic party.”

²⁸ KOWAL and WOESTMAN, *Special Marriage Cases and Procedures*, Appendix II – Sample Forms, p. 310.

²⁹ See J. KOWAL, “Nuove ‘Norme per lo scioglimento del matrimonio *in favorem fidei*’,” p. 493; F.R. AZNAR GIL, “Nuevas normas sobre la disolución del vínculo matrimonial no sacramental,” in *Revista española de derecho canónico*, 60 (2003), p. 165.

promises of the Catholic party in a mixed marriage are made in view of a marriage to be contracted by someone who is not bound by the previous marriage bond. It is understandable that in such a situation the norm concerning the promises is balanced towards not restricting the natural right to marry (*ius connubii*, c. 1058), except for a serious and just reason. On the other hand, the *cautiones* required in the process for the dissolution of a marriage refer to the situation when no one can claim a right to have one's marriage dissolved – it is always a favour.³⁰ True, the promises (*cautiones*) are made in view of the marriage to be contracted, but they are at the same time a part of the procedure for the dissolution of the previous marriage. It should not come as a surprise, therefore, that the legislator expects more from the parties requesting a favour, than from someone exercising his or her right.

The reason for such an encompassing character of the promises is the expected benefit for the faith of the Catholic party in whose respect the favour is actually granted.³¹ If this was not a necessary assertion for granting the favour, it would be enough to require the promises of c. 1125 within the process of the preparation for the subsequent marriage.

Another question associated with the promises relates to the situation of the lack of sincerity in making the promises. It seems that with the 2001 Norms the qualification of the requirement of the *cautiones* has been changed from one affecting the validity of the act to its liceity, and, consequently, insincerity of the party making the promises is no longer relevant with respect to the question of the validity of the dissolution.³² Nevertheless, one could still ask the question whether or not insincerity of the promises, at least in particular cases, would compromise the expected benefit for the faith of the Catholic party.³³ Especially, in cases of the express will to preclude the Catholic party from the practice of religion and Catholic upbringing of children would constitute a serious obstacle to spiritual benefit. A question can be asked if in such a situation any favour for

³⁰ “[...] lo scioglimento del matrimonio da parte del Sommo Pontefice non è un diritto naturale, come il contrarre matrimonio, ma una concessione graziosa fatta in previsione di un bene per la fede, di cui deve essere perseguito l’incremento, appunto, almeno nell’educazione religiosa della prole. Per avere la certezza morale di tale incremento la Chiesa esige una precisa e sincera presa di coscienza da parte del coniuge acattolico, esigendo dallo stesso che prenda precisi impegni in proposito, dandone cauzione” (A. SILVESTRELLI, « Scioglimento del matrimonio in favorem fidei », Studi giuridici, no. 27, Vatican City, Libreria editrice Vaticana, 1992, no. 30, p. 187).

³¹ For that reason, the favour of the dissolution is always granted in view of a prospective marriage with the specific person. If that person dies before the marriage, or if another partner is chosen, the Congregation must be contacted again for marriage with an intended spouse (see SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter to Archbishop of Vancouver, November 7, 1981, in *LE*, vol. 6, *Leges annis 1979–1985 editae*, Roma, EDIURCLA, 1987, no. 4871, col. 8255).

³² See J. KOWAL, “Nuove ‘Norme per lo scioglimento del matrimonio *in favorem fidei*’,” p. 493; MONETA, “Le nuove norme per lo scioglimento del matrimonio in favore della fede,” p. 1339; AZNAR GIL, “Nuevas normas sobre la disolución del vínculo matrimonial no sacramental,” p. 165; AMBORSKI, *The Development of the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith*, p. 42.

³³ I discussed this issue in my article “Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith,” in *Studia canonica*, 38 (2004), pp. 429–438, published also in P. COGAN (ed.), *Sacerdotes iuris (Digesta 1.1): Miscellanea in Honour of William H. Woestman, O.M.I.*, Ottawa, Faculty of Canon Law, Saint Paul University, 2005, pp. 85–94.

the faith of the Catholic party and/or of his/her children is actually being accorded?³⁴ In any case, the favour of a dissolution will not be granted unless the *cautiones* regarding Catholic practice and the formation of the children are made in writing by both parties.³⁵

2.6. Restrictions of the number of dissolutions (art. 6)

The supreme legislator decided that it would not be opportune to grant dissolutions if a previous non-sacramental marriage has already been dissolved in favour of the faith. Accordingly, a petition for the dissolution of the bond of a marriage contracted or convalidated after having obtained the dissolution of a prior marriage in favour of the faith will not be admitted for examination by the Congregation.

2.7. Dissolution of a non-sacramental bond of marriage entered with the dispensation from the impediment of disparity of worship (art. 7)

There was a number of private responses given over the years by the Congregation for the Doctrine of the Faith³⁶ concerning petitions for the dissolution of the non-sacramental bond of a marriage entered into with a dispensation from the impediment of disparity of worship. Article 7 refers to those cases and states that such petitions can be presented to the Supreme Pontiff if the Catholic party intends to contract a new marriage with a baptized person. Accordingly, the non-baptized party in the same case can present a petition to the Supreme Pontiff, if that party intends to receive baptism and enter a new marriage with a baptized party. As the effect, the law precludes the possibility of a second marriage entered into with a dispensation from the impediment of disparity of worship. The Congregation points to the fact that in such cases the “benefit of indissolubility” (*bonum sacramenti*) would not have been accomplished.³⁷

³⁴ “[...] lo scioglimento del matrimonio da parte del Sommo Pontefice non è un diritto naturale, come il contrarre matrimonio, ma una concessione graziosa fatta in previsione di un bene per la fede, di cui deve essere perseguito l’incremento, appunto, almeno nell’educazione religiosa della prole” (SILVESTRELLI, “Scioglimento del matrimonio in favorem fidei,” no. 30, p. 187). A just cause, defined as the *salus animarum*, is the common presupposition for every case of the dissolution of marriage involving the exercise of the pope’s vicarious power. Consequently, if a just cause for the dissolution does not exist in a particular case, can such a dissolution be valid? It does not seem so, otherwise that assertion would amount to giving the pope practically an unlimited power over the divine law of indissolubility of marriage. John Paul II, however, insists that the pope has no per se power over the divine law. See Allocution to the Roman Rota, January 21, 2000, no. 8, in AAS, 92 (2000), p. 355, in WOESTMAN (ed.), *Papal Allocutions to the Roman Rota 1939-2002*, p. 258.

³⁵ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Case*, no. 5, in Appendix I, p. 221.

³⁶ See SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter to Bishop of Pittsburgh, April 5, 1976, in *LE*, vol. 5, no. 4442, col. 7183, English translation in *CLD*, vol. 9, p. 995; SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter of the Cardinal Prefect to the Cardinal Prefect of the Congregation for the Evangelization of Peoples, October 19, 1977, in *LE*, vol. 5, no. 4532, col. 7359–7360, English translation in *CLD*, vol. 9, pp. 995–996.

³⁷ See SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter of the Cardinal Prefect to the Cardinal Prefect of the Congregation for the Evangelization of Peoples, in *LE*, vol. 5, col. 7359, English translation in *CLD*, vol. 9, p. 996.

Art. 9, §2 of the Norms of 1973 pointed to removal of “[...] any reasonable suspicion concerning the sincerity of the conversion [...] (*quævis rationabilis suspicio de conversionis sinceritate*).”³⁸ The present norms (art. 7, § 3) rephrase this requirement, and warn before sending a petition if there is “[...] prudent doubt concerning the sincerity of the conversion of the petitioning party or the party to be married, although one or both have received baptism” (*prudens [...] dubium circa conversionis sinceritatem partis oratricis vel partis desponsæ, quamvis una vel utraque baptismum receperit*).” One can question if the expression used in *Ut notum est*, namely *quævis rationabilis suspicio*, and the wording in the 2001 Norms *prudens [...] dubium* convey the same meaning. It seems that the notion of “suspicion” could be understood as setting a lower threshold than the notion of “prudent doubt” when authority acts to clarify the issue.

The question of the consequences of the lack of sincerity of conversion is also entertained by authors. In this regard, Silvestrelli maintained that the sincerity of conversion of a non-baptized petitioner, even though not specifically mentioned among the conditions *sine quibus non* is, in fact, required for the validity of the dissolution of a marriage in favour of the faith.³⁹

2.8. Marriage to be entered by a catechumen (art. 8)

The gravity of reasons for the delay and the foundations for moral certainty that the baptism will be received are to be explained in the acts by the instructor of the case and also referred to in the *votum* of the bishop.⁴⁰ On the other hand, the dissolution has its effect even in the case when the catechumen later decides not to receive baptism.⁴¹

³⁸ *Ut notum est*, art. 9, §2, in *LE*, vol. 5, col. 6704.

³⁹ “Quanto poi alla sincerità della conversione stessa, essa viene esigita per il fatto che solo se è tale si può parlare di “favor Fidei” e quindi può celebrarsi il successivo matrimonio, previo scioglimento del primo, diversamente il secondo matrimonio non potrebbe celebrarsi validamente, in quanto resterebbe insoluto il primo per mancanza di motivazione sufficiente, cioè la conversione” (SILVESTRELLI, “Scioglimento del matrimonio in favorem fidei,” no. 75, p. 196). This way of argumentation seems to be followed by some authors writing on the 2001 Norms. See E.L. BOLCHI, “Lo scioglimento del matrimonio non sacramentale in favorem fidei,” in *Quaderni di diritto ecclesiale*, 20 (2007), p. 309: “Il § 3 dell’art. 7 si sofferma sulla questione della sincerità della conversione, indicando al vescovo diocesano di non inviare la domanda alla Congregazione, anche se il battesimo sia già stato amministrato, qualora sussista un dubbio prudente circa tale conversione. Anche in questo caso se il richiedente mancasse di sincerità, e in particolare se fingesse la conversione al fine di ottenere la dispensa matrimoniale, la stessa finalità della concessione della grazia, il *favor fidei*, sarebbe in radice frustrata. Per questo motivo si può dubitare che, in mancanza di una sincera conversione, la concessione della dispensa sia valida.”

⁴⁰ See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 138.

⁴¹ “Se poi nel rescritto pontificio viene inserita come clausola la ricezione del battesimo dopo il matrimonio, questa non pare possa essere considerata una condizione *de futuro ad validitatem*: pertanto, la dispensa sarebbe valida (e pure il susseguente matrimonio) anche se il catecumeno interrompesse il proprio cammino verso il battesimo” (BOLCHI, “Lo scioglimento del matrimonio non sacramentale in favorem fidei,” p. 309). Unless there is a question of insincerity, when the discussion on art. 7 of *Potestas Ecclesiae* obtains.

2.9. Obligations toward the prior spouse or to children (art. 9)

The petitioning party is obliged to satisfy his or her obligations toward the prior spouse and to the children who may have been born of that marriage,⁴² including specifically the provision for their religious upbringing.⁴³

The bishop is to consult the Congregation if there are special difficulties concerning the way in which the petitioning party intends to fulfil this obligation or there is fear of scandal from the granting of the favour. It does not mean that this consultation should take place before the initiation of the procedure, but rather that the matter is to be settled before the case is finally submitted to the Congregation.⁴⁴

2.10. Positive doubt about the validity of the marriage (art. 10)

The Norms of 1973 assured that in such a case the dissolution was more easily granted.⁴⁵

If the bond does not exist, there is no point in attempting to dissolve it.⁴⁶ Therefore, if there is a positive doubt about the validity of the marriage in question, the Congregation communicates that to the Supreme Pontiff. Accordingly, the rescript will indicate rather the freedom of the parties to enter into a new marriage (*detur documentum libertatis*) than a favour (*pro gratia*).⁴⁷

⁴² See *Potestas Ecclesiae*, art. 20, §2.

⁴³ See *ibid.*, art. 20, §1.

⁴⁴ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 3, in Appendix I, p. 219. See also MCCORMACK, “A Commentary on the Norms for Favour of the Faith Cases,” p. 313 and BOLCHI, “Lo scioglimento del matrimonio non sacramentale in favorem fidei,” pp. 309–310. See, however, KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 139: “The Bishop is not required to consult the Congregation before initiating the process but rather on presentation of the *Acta*.”

⁴⁵ See *Ut notum est*, no. III, in *LE*, vol. 5, col. 6703, English translation in WOESTMAN, *Special Marriage Cases*, p. 130.

⁴⁶ Some authors debate the course of action which should be taken in this case: “Non si può non riconoscere che dal punto di vista strettamente logico in effetti sembrerebbe più coerente, una volta emerso il dubbio della nullità del matrimonio, prevedere che si proceda all’accertamento dell’eventuale nullità” (BOLCHI, “Lo scioglimento del matrimonio non sacramentale in favorem fidei,” p. 310, and note 9).

⁴⁷ See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” pp. 139–140.

3. PROCEDURE FOR THE INSTRUCTION OF DISSOLUTION OF A MARRIAGE IN FAVOUR OF THE FAITH CASES AT THE DIOCESAN LEVEL

Part II of the Norms of 2001 (retaining, however, the consecutive numbering of the articles) concerns procedural aspects of cases of dissolution of a marriage in favour of the faith.

3.1. Competent authority to instruct the case and appointment of officers (art. 11)

The competent bishop (eparch) can carry out the instruction of the process personally or he can entrust it to an instructor, who could be a tribunal judge or another person approved by the bishop for this task. This commission may be given on a permanent or case by case basis.⁴⁸

The communication from the Congregation reveals that the appointment of the officers was sometimes made after the instruction process had been started, or, in particular cases, even at its conclusion! Therefore, unless the commission of officers is given for all cases, the *Notes* point to the precise moment of this appointment being made “[...] after the date of the petition, but *before* any testimony is received or research takes place,”⁴⁹ The commission is to be done in writing, signed by the diocesan bishop, dated and notarized, and made evident in the acts. It seems, however, that if, through oversight, someone who took part in the process as notary or auditor has not been properly appointed for a case, this will not bear on the validity of the acts.⁵⁰

The new Norms introduce an important novelty, long expected in the canonical milieu. Under the Instruction *Ut notum est* of 1973, the local ordinary was to deal with the case either personally or by another cleric (*ecclesiasticus vir*) delegated by him.⁵¹ Article 11 of *Potestas Ecclesiae*, however, uses the Latin word *persona* to designate the officer to be entrusted with the instruction of the case. This opens the way for lay persons to be appointed instructors in favour of the faith cases. It seems that in not a few cases this will help to eliminate those unfortunate occurrences when the clerics appointed to the offices of instructor and defender of the bond in order to satisfy the requirement of the previous law had constantly to delegate their work to others, actually more competent to fulfil the task.⁵²

⁴⁸ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 2, in Appendix I, p. 219.

⁴⁹ *Ibid.*, p. 220.

⁵⁰ See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” pp. 141–142.

⁵¹ See *Ut notum est*, art. 1, in *LE*, vol. 5, col. 6703, English translation in WOESTMAN, *Special Marriage Cases*, p. 131. The Congregation for the Doctrine of the Faith insisted upon the observance of this requirement in its directives for diocesan personnel charged with the instruction of favour of the faith cases: “The judge must be an ecclesiastic” (SCHUMACHER and JARRELL [eds.], *Roman Replies and CLSA Advisory Opinions 1990*, Washington, DC, Canon Law Society of America, 1990, no. 6, p. 29).

⁵² See Directives from the Congregation for the Doctrine of the Faith, in SCHUMACHER and JARRELL (eds.), *Roman Replies and CLSA Advisory Opinions 1990*, no. 1, pp. 28–29.

Other officials involved in the instruction of the process are the notary and the defender of the bond. The participation of the defender of the bond is broadened in comparison with what was stipulated in the Instruction of 1973. Although the defender of the bond's participation is no longer strictly required in preparing the questionnaires for the parties and the witnesses⁵³ (art. 14, §3 of the new Norms states that "the instructor is to question the parties and witnesses in accord with a questionnaire prepared beforehand either by him or by the defender of the bond"), nevertheless, he is to be cited by the instructor for the examination of the parties and the witnesses (art. 14, § 1). Consequently, if the defender of the bond is present for the examination, he can add pertinent questions, by proposing them to the instructor,⁵⁴ or another person acting on his behalf, in accordance with art. 15, § 1. Article 23 of *Potestas Ecclesiae* affirms explicitly that the defender of the bond is to put forward reasons, if he finds any, which might oppose granting the dissolution of the bond. In sum, the character of the involvement of the defender of the bond in the procedure for dissolution of a marriage in favour of the faith resembles that which he undertakes in marriage nullity trials.⁵⁵

The involvement of advocates or experts is not foreseen during the instruction process.⁵⁶ But they might be of help, especially, when the case is returned to the diocese of origin⁵⁷ for further instruction (*dilata et compleantur acta*). The Congregation will specify the character of the problems, for instance, the insufficiency of the evidence in order to reach moral certainty on the question of the non-reception of valid baptism or the non-consummation of a ratified marriage.⁵⁸

3.2. Proofs (art. 12–15)

Article 12, § 1 of *Potestas Ecclesiae* provides the fundamental principle that "all assertions must be proven according to the norm of law, either by documents or by depositions of witnesses which are worthy of belief."⁵⁹

⁵³ As art. 4, §1 of *Ut notum est* stipulated. See in *LE*, vol. 5, col. 6703, English translation in WOESTMAN, *Special Marriage Cases*, p. 132.

⁵⁴ Cf. c. 1561 and art. 166 of PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Instruction to Be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage *Dignitas connubii*, bilingual and annotated Latin-English edition, Vatican City, Libreria Editrice Vaticana, 2005, p. 133.

⁵⁵ See DEBUF, "Le privilège en faveur de la foi," pp. 438–439.

⁵⁶ See BOLCHI, "Lo scioglimento del matrimonio non sacramentale in favorem fidei," p. 312.

⁵⁷ See KENNEDY, "The Dissolution of Marriage in Favour of the Faith," p. 134.

⁵⁸ See *ibid.*, p. 133.

⁵⁹ "Asserta probari debent ad normam iuris, sive documentis, sive depositionibus testium fide dignorum" (*Potestas Ecclesiae*, p. 11). Cf. *Ut notum est*, art. 2, in *LE*, vol. 5, col. 6703, English translation in WOESTMAN, *Special Marriage Cases*, p. 132.

Both spouses are to be heard in the instruction.⁶⁰ The other party in the marriage has the right of to be heard. The Congregation will ask for the evidence that a real effort was made to contact the other party in the marriage. Moreover, the *Notes* insist that the instructor contact the other party in a manner that will invite cooperation in obtaining testimony.⁶¹ The absence of the other party from the process must be declared according to the norm of law (cf. cc. 1592-1593).⁶² The Congregation also requires that the prospective spouse in the future marriage always be heard as his/her testimony can throw light on the petitioner's obligations relative to the spouse and the children from the first marriage and the causes which brought the marriage to its failure.⁶³

In line with c. 1536, § 2, “the force of full proof cannot be attributed to the declarations of the parties, unless there are present other elements which corroborate them and from which moral certitude can be established.”⁶⁴

The issue of interrogation by letter or telephone⁶⁵ received due attention in the Congregation, namely the lack of guarantee of the identity of the person who responds in a written form or is interrogated on the phone. The problem lies with the impossibility of instant asking for clarifications if the written responses are vague: this would demand another round of correspondence. There is also a danger that the responses are given or dictated by a person other than stated in the letter, unless the deposition is certified by a notary or legitimated in some other way.⁶⁶

A question can be asked, if the parallel to some other procedures which foresee providing evidence specifically by letter could not be made. In the procedure for the dissolution of ratified and non-consummated marriages the possibility of giving evidence by letter is admitted: “If a party or a witness refuses to testify before the judge, it is permitted [...] for them to make a declaration [...] in any other lawful manner, e.g., by letter, provided that it is clear that these declarations are genuine and authentic.”⁶⁷

⁶⁰ See *Potestas Ecclesiae*, art. 12, § 2, p. 11.

⁶¹ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 6, in Appendix I, pp. 221–222.

⁶² See *Potestas Ecclesiae*, art. 15, § 2, p. 12.

⁶³ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 6, in Appendix I, pp. 221–222.

⁶⁴ “Partium declarationibus vis plenæ probationis tribui nequit, nisi accedant alia elementa quæ eas corroborent et ex quibus certitudo moralis efformari possit” (*Potestas Ecclesiae*, art. 12, § 3, p. 11).

⁶⁵ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 7, in Appendix I, p. 222.

⁶⁶ *Ibid.*

⁶⁷ “Quatenus pars vel testis se sistere ad respondendum coram iudice renuat, licet [...] requirere eorum declarationem [...] quovis alio legitimo modo, ut puta per epistulam, dummodo huiusmodi acta secum ferant fidem genuinitatis et authenticitatis” (CONGREGATION FOR THE SACRAMENTS, *De processu super matrimonio rato et non consummato*, no. 9, in *Communicationes*, 20 [1988], p. 80, English translation in Appendix I, p. 203).

Similarly, c. 1145, §1 speaks about a period of time granted to the unbaptized party for reply to the interpellation in the Pauline privilege cases. This provision is understood as allowing for the interpellation to be made, in particular cases, by letter: “If no other forms of proof can be obtained, letters may be resorted to; but the greatest care should be taken to avert all danger of forgery or dishonesty.”⁶⁸

Each testimony is to be signed by the witness, the instructor, and the notary (art. 14, §4). Similarly, in the acts there is to be an indication as to whether the oath was taken, or excused, or refused.⁶⁹

The acta of the case should contain original documents or their copies, certified by ecclesiastical or civil notaries as concordant with the originals (cf. c. 1544).⁷⁰

The notary does so also with regard to the copies of the acts sent to the Congregation. It seems that “[...] the practice introduced by the 1973 *Norms* is followed, namely, either each page is authenticated or a Decree of Authentication is prepared and is included in the Acta in conformity with canon 1474, § 1.”⁷¹

The Instruction *Ut notum est*, art. 4, §3, required in addition, that whenever the parties or the witnesses spoke about facts which they did not know first hand, their depositions and testimonies should indicate the source of their knowledge and the time when that knowledge had been acquired.⁷² This is no longer mentioned in the procedural norms but it seems to be perfectly reasonable that the Congregation would expect this kind of information.

3.3. Proof of non-baptism (art. 16–17)

Proof of non-baptism is an essential part of the instruction process, as the absence of baptism of one or the other spouse must be demonstrated with moral certainty in order to have the case presented to the Holy Father for dissolution.

⁶⁸ W.J. DOHENY, *Canonical Procedure in Matrimonial Cases, Volume II: Informal procedure*, Milwaukee, WI, The Bruce Publishing Company, 1944, no. 11, pp. 529–530. Admittedly, in this particular situation, the requested evidence is rather limited in its extent as it refers basically to two questions concerning the desire to receive baptism and to live peacefully with the baptized party without offence to the Creator. Also, as the baptized party has the right to contract a new marriage with a Catholic if the unbaptized party has replied in the negative to the interpellation (c. 1146), the law should facilitate the exercise of this right even if the unbaptized party is uncooperative.

⁶⁹ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 7, in Appendix I, p. 222.

⁷⁰ See *ibid.*, no. 9, in Appendix I, pp. 223–224.

⁷¹ KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 144.

⁷² See in *LE*, vol. 5, col. 6703–6704, English translation in WOESTMAN, *Special Marriage Cases*, p. 132.

The proof is complicated by the nature of the knowledge sought. The rules of logic tell us that it is much easier to prove convincingly the existence of a certain thing, or even the occurrence of a certain situation, than their its non-existence or non-occurrence, as in the case of the absence of baptism. Therefore, the testimony is to address not only the absence of baptism, but also point to the circumstances and indicators that would support the conviction that baptism was not conferred.

In view of the theological principle that a ratified and consummated marriage is by divine law indissoluble, if at the time when the favour of dissolution is being sought the non-baptized spouse has received baptism, the parties and witnesses must be questioned about any possible cohabitation after baptism.

3.4. Break-down of the previous marriage (art. 18–19)

Testimony regarding the breakup of the previous marriage is considered important evidence by the Congregation; therefore the instructor is to gather information concerning the state of life of the other party. Explicit reference as to whether he or she has attempted a new marriage after divorce is also to be included in the acts. The parties and witnesses are to pronounce on the cause of separation or divorce to provide clarity as to who was at fault for the breakup of the marriage or marriages. Consequently, the acts of the case must show who was the exclusive or predominant cause of the breakup of the union.⁷³ Granting the favour to the petitioner guilty of the break-up of the marriage, or to the party with which the new marriage is to be concluded, but guilty of the break-up of the first union might easily become a source of scandal that the Church seems to benefit those who through their actions caused the failure of a marriage.

The new Norms also add that the copies of relevant documents concerning any marriages attempted by either one or other of the spouses, if this is the case, are to be collected, i.e., the divorce decree or the civil sentence of nullity and the dispositive portion of the canonical sentence of nullity of marriage. In the case of any marriage attempted without canonical form, an administrative declaration of the nullity issued by competent ecclesiastical authority must always be included.⁷⁴

3.5. Satisfaction of obligations toward the party and children in the previous marriage (art. 20)

While art. 9 of the 2001 Norms demands a consultation with the Congregation if there are special difficulties concerning the way in which the petitioning party intends to satisfy his or her obligations toward the prior spouse and to the children who may have been born of that marriage, art. 20 points specifically to the provision for the religious upbringing of the children and to moral and civil obligations towards them and the first spouse.

⁷³ Cf. *Potestas Ecclesiae*, art. 4, 2.º

⁷⁴ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 5, in Appendix I, p. 221.

3.6. Conversion of, religiosity of the petitioner or the intended spouse (art. 21–22)

The Norms of 1973 explicitly stated that the ordinaries should “never send a petition to the Sacred Congregation for the Doctrine of the Faith, unless every reasonable suspicion concerning the sincerity of the conversion has been removed.”⁷⁵ As it was seen *supra*, this reminder is found now in the context of petitions for dissolution of marriages which have been contracted with a dispensation from the impediment of the disparity of worship. Consequently, the bishop is not to send the petition to the Congregation if there is prudent doubt concerning the sincerity of the conversion, even though one or both parties might have received baptism.⁷⁶

The acts of the case should also include an explicit report about the religious practice both of the petitioner and of the intended spouse, also when one of the parties is not Catholic.

The dossier should also indicate that the person, whom the petitioner wishes to marry in the Church, is free to marry with the proof included in the acts, if the individual was previously married, or lacked freedom to marry because of sacred orders or perpetual religious vows. In all cases it is necessary to include an interview with the prospective spouse.

Cases where a petitioner does not yet have an intended spouse at the moment of petitioning are not unknown. In such cases, it seems to be the policy of the Congregation for the Doctrine of the Faith that the case may be instructed and sent to the Congregation where it will be studied and remain pending at the Congregation, all this in order to speed up the eventual response when the petitioner decides to get married with a specified person. The decision, however, will not be made until the documentation concerning the person whom the petitioner intends to marry is received.⁷⁷ Otherwise, it would not be possible to ascertain the “benefit of the faith” in a given case.

What if the intended spouse dies or another person is chosen as the prospective spouse after the dissolution has been granted? This is a different situation than the one above, as the dissolution has actually taken place and the bond of the previous marriage does not exist anymore. It appears that the Congregation has to be contacted in order to know the baptismal status of the new party and to ascertain the question of any possible

⁷⁵ *Ut notum est*, art. 9, §2, in *LE*, vol. 5, col. 6704, English translation in WOESTMAN, *Special Marriage Cases*, p. 133.

⁷⁶ See *Potestas Ecclesiae*, art. 7, §3.

⁷⁷ See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 161.

responsibility of that party for the break-up of the marriage that was dissolved.⁷⁸ A new rescript is not issued in such cases, but rather the declaration of freedom to marry.⁷⁹

3.7. Report of the Instructor and Intervention of the defender of the bond (art. 23)

After the instruction of the case is completed, the instructor is to prepare the report which is to be a genuine commentary on the development of the process, including specifically the statement on the quality of the obtained testimony, the reasons why certain witnesses cited by the petitioner may not have given formal testimony, and the motives for omission of the required searches of baptismal records. A well prepared report will make unnecessary requests by the Congregation for additional testimony or some other completion of the acts.⁸⁰

After having completed the instruction of the case, the instructor is to send all the acts, together with his report, to the defender of the bond. His or her task is to find reasons, if there are any, which might stand in the way of the dissolution of the bond.⁸¹

3.8. *Votum* of the bishop (art. 24)

After having received the report from the defender of the bond, the instructor sends all the acts together with the animadversions of the defender of the bond to the bishop who prepares a *votum pro rei veritate*, i.e., a written opinion in which he recommends or not the granting of the favour.

Although the Bishop himself should draw up his *votum*, he can, nevertheless, give general delegation to draw it up (cf. cc. 134, §2; 137, §1). If the bishop commits to another the writing of the *votum*, before sending it to the Congregation, he must at least appropriate it himself by personally signing it.⁸²

⁷⁸ See SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, letter to Archbishop of Vancouver, in *LE*, vol. 6, no. 4871, col. 8255, in *CLD*, vol. 9, p. 684. That corresponds to art. 2 of the 2001 Norms that it is the prerogative of the Congregation to examine the individual cases. The favour of the dissolution is always granted in view of a prospective marriage with the specific person or the case is pending until such a person is chosen and the new situation evaluated. It seems that if the diocesan authority was to ascertain the required qualities of the prospective party, even after the dissolution had been granted, that would have compromised the authority of the grantor. For an opposite opinion, cf. J. Kowal who states that even if a new spouse is chosen, there is no need to contact the Congregation: the bishop can himself check if the new prospective spouse fulfills the conditions under which the dissolution would have been normally granted (“Le Norme per lo scioglimento del matrimonio *in favorem fidei*: parte procedurale,” in *Periodica*, 93 [2004], pp. 312–313).

⁷⁹ See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 161.

⁸⁰ See *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 4, in Appendix I, p. 220.

⁸¹ See *Potestas Ecclesiae*, art. 23, p. 15. Cf. *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 4.

⁸² See CONGREGATION FOR THE SACRAMENTS, *De processu super matrimonio rato et non consummato*, nos. 7 and 23c, in *Communicationes*, 20 (1988), pp. 80 and 83, in Appendix I, pp. 202 and 205–206.

The *votum* is to state whether all the conditions for the granting of the favour are present, especially, the non-baptism of the party and whether the promises mentioned in art. 5 have been made. Information about any positive doubt which may have arisen about the validity of the marriage is to be included in the *votum* as well.⁸³

The bishop should also pronounce on the existence of reasons for granting the dissolution and the worthiness of the parties, including an attempted marriage or cohabitation. Other important aspects to cover in the *votum* are “[...] fear of scandal arising from the concession of the favour, or any doubt about the sincerity of conversion of the petitioner or intended spouse, or any particular difficulties regarding the manner in which the petitioner is fulfilling obligations arising from the former marriage.”⁸⁴ These matters should be settled before the case is submitted.

The fee asked by the Congregation (*taxa*) was, for the USA, \$420 (in 2005), with an expected rise of 2% annually due to inflation.⁸⁵ In the case of a request that the favour be granted without the usual fee (*in forma pauperum*), the bishop should express his opinion on this matter.

3.9. Preparation of the dossier (art. 25)

The acts sent to the Congregation must contain all the documents which belong to the process; “a statement that the documents are ‘on file in the chancery’ is not sufficient.”⁸⁶

Three copies of all the acts (typed and each of them bound), together with the bishop’s *votum* and the animadversions of the defender of the bond, accompanied by an index of the material and a summary are to be sent to the Congregation for the Doctrine of the Faith, often through the papal nuncio offices. Those acts of the case which are completed in a local language and style⁸⁷ must be translated into one of the languages commonly used in the Roman Curia.⁸⁸ The oath supporting the faithfulness of the translation and of the transcription is to be taken and recorded in the acts.

⁸³ Cf. *Potestas Ecclesiae*, art. 10, p. 10.

⁸⁴ *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 3, in Appendix I, p. 220.

⁸⁵ KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 160. Checks should be made to the Congregation for the Doctrine of the Faith. When making payments, one should also indicate the CDF protocol number and the names of the parties. See *ibid.*, pp. 160–161.

⁸⁶ *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 9, in Appendix I, p. 223.

⁸⁷ To ensure greater fidelity to the original way of communication. See DEBUF, “Le privilège en faveur de la foi,” p. 441.

⁸⁸ Cf. JOHN PAUL II, apostolic constitution *Pastor bonus*, art. 16, in AAS, 80 [1988], p. 863, English translation in E. CAPARROS, M. THÉRIAULT, and J. THORN (eds.), *Code of Canon Law Annotated*, second ed., revised and updated, of the 6th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, Montréal, Wilson & Lafleur Limitée, 2004, p. 1465.

In the words of the Congregation, “the summary is an overview of the essential information regarding the petitioner, the former spouse and the future spouse. The index is the table of contents or list of all documents, testimonies and other acts and the pages where they are found. For this reason, every page of the acts must always be clearly numbered.”⁸⁹ The summary should be placed at the beginning of the acts immediately after the covering letter.

One might add that the Congregation no longer acknowledges receipt of the acts because the processing of the cases is rather swift. It takes, on average, five months from the moment of the reception of a case at the Congregation until the communication of the favour to the diocese of origin.⁹⁰ It seems, however, that the Congregation would take into account some particular situations making the request for the dissolution an urgent case.⁹¹

It may happen, however, that the commissioners of the Congregation examining the case decide that it be returned to the diocese of origin⁹² for further instruction (*dilata et compleantur acta*). In this case, the problems, be it insufficiency of the evidence to reach a moral certainty or some procedural errors, will be clearly indicated.⁹³

The promulgation of the *Code of Canon Law* for the Latin Church and the *Code of Canons of the Eastern Churches* required accommodation of some of their provisions into the special legislation regarding dissolution of marriages in favour of the faith. At the same time, it seems that the provisions for completing the process for the dissolution of the bond in favour of the faith are presented now in a simpler form which is welcome by those entrusted with the instruction of cases at the diocesan level.

Rev. Wojciek Kowal, O.M.I.
Saint Paul University
Faculty of Canon Law
223 Main Street
Ottawa, ON K1S 1C4

⁸⁹ *Notes Regarding the Documentary and Procedural Aspects of Favour of the Faith Cases*, no. 8, in Appendix I, p. 223.

⁹⁰ See KENNEDY, “The Dissolution of Marriage in Favour of the Faith,” p. 161.

⁹¹ J. Kennedy gives two specific examples: terminal illness of a party or its close family member, discovering the impediment of the previous bond when all was prepared for the wedding. For practical reasons, the case should be clearly marked as “urgent” on the cover page or the front page – if that designation is made in the bishop’s *votum* it will be discovered only in the course of evaluation. See *ibid.*, pp. 158–159.

⁹² Often by fax, to speed up the process, with the original send by mail. See *ibid.*, p. 134.

⁹³ See *ibid.*, p. 133.

SELECT BIBLIOGRAPHY ON DISSOLUTION IN FAVOUR OF THE FAITH

1. Sources

APOSTOLIC SIGNATURA, *Decretum de recta applicatione canonum* 1150 et 1608, §4, January 23, 1996, in *Periodica*, 85 (1996), pp. 357–360, Latin text with English translation in K.W. VANN and J.I. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions*, 1996, pp. 39–45.

CONGREGATION FOR THE DOCTRINE OF THE FAITH, instruction *Ut notum est*, December 6, 1973, in *LE*, vol. 5, col. 6701–6705, no. 4244, English translations in *CLD*, vol. 8, pp. 1177–1184, in *The Jurist*, 34 (1974), pp. 418–423, in W.H. WOESTMAN, *Special Marriage Cases: Non-Consummation, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation-Sanation, Presumed Death*, 3rd ed., Ottawa, Faculty of Canon Law, Saint Paul University, 1994, pp. 129–134.

_____, *Normæ de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei* Potestas Ecclesiæ, April 30, 2001, E civitate Vaticana, 2001, English translation with a commentary, in W. KOWAL and W.H. WOESTMAN, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation, Presumed Death*, fourth revised and updated edition, with appendices, Faculty of Canon Law, Saint Paul University, Ottawa, 2008, pp. 92–128, and in Appendix I, pp. 209–218 (Preface).

_____, Norms on the Preparation of the Process for the Dissolution of the Marriage Bond in Favour of the Faith, in F.S. PEDONE and J.I. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions*, 2004, pp. 47–72.

_____, requests for further instruction, in K.W. VANN and L. JARRELL (eds.), *Roman Replies and CLSA Advisory Opinions*, 1991, pp. 30–31.

_____, response, in F.S. PEDONE and J.I. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions*, 1998, pp. 13–15.

CONGREGATION OF THE HOLY OFFICE, response, March 6, 1964, [Santa Rosa], in *LE*, vol. 3, *Leges annis 1959–1968 editæ*, Roma, Commentarium pro Religiosis, col. 4479–4480.

2. Authors

AMBORSKI, K.M. , *The Development of the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith*, Rome, Pontificia Università Lateranense, 2004.

_____, “Procedural Norms of the Process for the Dissolution of the Matrimonial Bond in Favorem Fidei,” in *Apollinaris*, 77 (2004), pp. 835–858.

- ANASTASIUS AB UTRECHT, “*De privilegio piano polygamis conversis dato (interpretatio canonis 1125)*,” in *Ius seraphicum*, 4 (1958), pp. 127–142, 283–335, 426–473.
- AZNAR GIL, F.R., « *Nuevas normas sobre la disolución del vínculo matrimonial no sacramental*,” dans *Revista española de derecho canónico*, 60 (2003), p. 141–169.
- BOLCHI, E.L., “*Lo scioglimento del matrimonio non sacramentale in favorem fidei*,” in *Quaderni di diritto ecclesiale*, 20 (2007), pp. 299–319.
- BRIDE, A., “L’actuelle extension du ‘privilège de foi’,” in *Année canonique*, 6 (1958), pp. 53–81.
- _____, “Le pouvoir du Souverain Pontife sur le mariage des infidèles,” in *Revue de droit canonique*, 10–11 (1960–1961), pp. 52–101.
- CANON LAW SOCIETY OF AMERICA, “Roman Report – Appendix: Privilege of the Faith Cases,” in *Canon Law Society of Great Britain & Ireland Newsletter*, no. 63 (December 1984), pp. 15–16.
- CIVISCA, L., *The Dissolution of the Marriage Bond*, Naples, D’Auria, 1965.
- DEBUF, D., “Le privilège en faveur de la foi: que change l’instruction d’avril 2001 par rapport à celle de décembre 1973?” in *Revue de droit canonique*, 52 (2002), pp. 428–442.
- DONNELLY, F., “The Helena Decision of 1924,” in *The Jurist*, 34 (1976), pp. 442–449.
- EASTON, F.C., “Favour of the Faith Cases and the 2001 Norms of the Congregation for the Doctrine of the Faith,” in *CLSA Proceedings*, 64 (2002), pp. 97–119.
- GARCIA HERVAS, D., “*La disolución del matrimonio a favor de la fe*,” in *Revista española de derecho canónico*, 64 (2007), pp. 220–257.
- GOTI ORDEÑANA, J., “*El proceso para la disolución del vínculo matrimonial en favor de la fe*,” in *Revista española de derecho canónico*, 62 (2005), pp. 425–457.
- GRECO, J., *Le pouvoir du Souverain Pontife à l’égard des infidèles: Le Privilège «Petrium» peut-il être étendu au mariage de non baptisés, spécialement à celui des catéchumènes? Jalons historiques: faits et doctrines*, Rome, Université Gregorienne, 1967.
- GÜTHOFF, E., “*Das Privilegium Petrinum: Die Auflösung einer nichtsakramentalen Ehe durch päpstlichen Gnadenakt*,” in *De processibus matrimonialibus*, 9 (2002), pp. 245–257.

- HÜRTH, F., “Notæ quædam ad privilegium petrinum,” in *Periodica*, 45 (1956), pp. 3–22; 371–391.
- IUNG, N., *Évolution de l’indissolubilité. Remariage religieux des divorcés*, P. Lethielleux, Paris, 1975.
- KENNEDY, J.J., “The Dissolution of Marriage in Favour of the Faith: New Norms Invite a New Look at Our Practice,” in *CLSA Proceedings*, 67 (2005), pp. 123-162.
- KOWAL, J., “Le Norme per lo scioglimento del matrimonio in favorem fidei: parte procedurale,” in *Periodica*, 93 (2004), pp. 265–325.
- _____, “Nuove ‘Norme per lo scioglimento del matrimonio in favorem fidei,’” in *Periodica*, 91 (2002), pp. 459–506.
- KOWAL, W., “The New Norms for Completing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith,” in *Proceedings of the 37th Annual Convention of the Canadian Canon Law Society, Halifax, NS, October 23, 2002*, pp. 69–88.
- _____, “Norms for Preparing the Process for the Dissolution of the Matrimonial Bond in Favour of the Faith,” in *Folia canonica*, 8 (2005), pp. 89–118.
- _____, “The Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith,” in *Studia canonica*, 38 (2004), pp. 411–438; also in P. COGAN (ed.), *Sacerdotes iuris (Digestæ 1.1): Miscellanea in Honour of William H. Woestman, O.M.I.*, Ottawa, Faculty of Canon Law, Saint Paul University, 2005, pp. 67–94.
- _____, “Dissolution of a Marriage in Favour of the Faith,” in W. KOWAL and W.H. WOESTMAN, *Special Marriage Cases and Procedures: Ratified and Non-Consummated Marriage, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation, Presumed Death*, 4th rev. and updated ed., with appendices, Faculty of Canon Law, Saint Paul University, Ottawa, 2008, pp. 81–130.
- KUNTZ, J.M., “Deux nouveaux cas de dissolution du mariage,” in *Sciences ecclésiastiques*, 12 (1960), pp. 267–269.
- _____, “La dissolution du mariage et de pouvoir des clefs,” in *Sciences ecclésiastiques*, 10 (1958), pp. 321–339.
- _____, “The Petrine Privilege: A Study of Some Recent Cases,” in *The Jurist*, 28 (1968), pp. 486–496.
- _____, “*Quousque se extendat Ecclesiæ vicaria potestas solvendi matrimonium*,” in *Periodica*, 48 (1959), pp. 335–348.

- LABELLE, J.-P., “Les incidences pastorales de la dissolution du mariage non sacramentel en faveur de la foi,” in *Studia canonica*, 33 (1999), pp. 27–70.
- LERY, L.C. DE , *Le Privilège de la foi*, Montreal, *Collegium Maximum Immaculatae Conceptionis*, 1938.
- MCCORMACK, A.R.A., “A Commentary on the Norms for Favour of the Faith Cases,” in *The Jurist*, 65 (2005), pp. 268–336.
- MENDONÇA, A., “The Correct Interpretation of Canons 1150 and 1608, § 4,” in *Studia canonica*, 31 (1997), pp. 475–512.
- MONETA, P., « *Le nuove norme per lo scioglimento del matrimonio in favore della fede,*” dans *Il diritto ecclesiastico*, 113 (2002), p. 1331–1346.
- NAVARRETE, U., “*Commentarium decreti Signaturæ Apostolicæ de recta applicatione canonum 1150 et 1608, §4,*” in *Periodica*, 85 (1996), pp. 360–385.
- _____, “*De termino ‘privilegium petrinum’ non adhibendo,*” in *Periodica*, 53 (1964), pp. 323–375.
- _____, “*Potestas vicaria Ecclesiæ. Evolutio historica conceptus atque observationes attenta doctrina Concilii Vaticani II,*” in *Periodica*, 60 (1971), pp. 415–486.
- NOONAN, J.T. JR, “Privilege of the Faith: Divorce or Dispensation?” in *The Jurist*, 65 (2005), pp. 412–419.
- O’ROURKE, J.J., “The Faith Required for the Privilege of the Faith Dispensation,” in *The Jurist*, 36 (1976), pp. 450–455.
- PEÑA GARCÍA, C., “*La disolución pontificia del matrimonio in favorem fidei: Cuestiones sustantivas y procesales,*” in *Estudios Eclesiásticos*, 81 (2006), pp. 699–723.
- READ, G., “Revised Norms for Dissolution in Favour of the Faith,” in *Canon Law Society Newsletter*, no. 127 (2001), pp. 64–67.
- SABBARESE, L., “*Lo scioglimento del vincolo matrimoniale in favore della fede,*” in *Angelicum*, 82 (2005), pp. 673–713.
- _____, “The Dissolution of a Non-Sacramental Marriage in Favour of the Faith,” in *Studies in Church Law*, 1 (2005), pp. 199–245.
- SILVESTRELLI, A., “*Scioglimento del matrimonio in favorem fidei,*” in *I procedimenti speciali nel diritto canonico, Studi giuridici*, no. 27, Vatican City, Libreria editrice Vaticana, 1992.

TOMKO, J. “*De dissolutione matrimonii in favorem fidei eiusque fundamento theologico,*”
in *Periodica*, 64 (1975), pp. 99–140.