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**THE SEPARATION OF THE SPOUSES
WITH THE BOND REMAINING**

**Historical and Canonical Study
with Pastoral Applications**

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Because of the reasons mentioned, the Church has made an innovation of no small importance in comparison with the previous Code. The present law allows a Catholic to go through a civil action. Canon 1152 § 2 speaks about the civil authority as one of the competent instances to which the innocent party has recourse within a time limit of six months if tacit condonation is not to be presumed⁴². The canon under consideration does not state that for such an action the innocent spouse needs the prior permission of the competent ecclesiastical authority. However, the requirement becomes clear from canon 1692 § 2: «the bishop of the diocese in which the spouses are living can [...] give them permission to approach the civil courts»⁴³.

When the ordinary is petitioned for permission to approach the civil courts in the event of marital breakdown, canon 1692 § 2 obligates him to consider the particular circumstances of each individual case, the customs and mores of the place, and the civil legislation of his own country on this matter. If a civil divorce is the only way to obtain the protection of the civil law, the permission to seek it should be granted under the following conditions: a) the ecclesiastical decision has no civil effects in the particular country⁴⁴; b) a civil judgment must not be contrary to divine law (can. 1692 § 2); c) the petition is based on canonical grounds for separation (can. 1152 and 1153); d) the petitioner is aware that civil divorce does not affect the marital bond and has no intention to enter into a second union.

The permission to approach the civil court should contain some statement on indissolubility, by which the spouses are reminded that permission for civil action and a decree of civil divorce themselves do not grant freedom to contract a new marriage. Once the permission has been granted, the party may apply for a civil divorce in order to obtain the merely civil effects, including the civil recognition of their new state.

The phrase, «give them permission» (*licentiam concedere*), used in canon 1692 § 2, must be seen in the light of the canon 59 § 2. This canon speaks about the granting of permission as a particular administrative act issued by a

⁴¹ W.H. WOESTMAN, *Special Marriage Cases*, 71.

⁴² «Notevole è il fatto che si parli anche dell'autorità civile come istanza presso la quale si può ricorrere con effetto rilevante per il diritto canonico!». R. SEBOTT - C. MARUCCI, *Il nuovo diritto*, 230.

⁴³ «Ubi decisio ecclesiastica effectus civiles non sortitur, vel si sententia civilis praevidetur non contraria iuri divino, Episcopus diocesis commorationis coniugum poterit, perpensis peculiaribus adiunctis, licentiam concedere adeundi forum civile» (can. 1692 § 2).

⁴⁴ See C. DE DIEGO-LORA, «Mediddas», 222.

competent executive authority. It means that such a permission is needed for each case. The diocesan bishop has no power to grant a general permission that all separation cases in his diocese will be decided in the civil court. This would be contrary to the provision laid down in canon 87 § 1, which states that the diocesan bishop cannot dispense from procedural laws, that is, laws «established to safeguard justice and protect the rights of the faithful»⁴⁵. The norms dealing with the cases of the separation of spouses correspond to this description as found in Book Seven of the Code, entitled «Processes». However, there is no need for granting permission in those countries where the Supreme Authority of the Church has decided by the way of Concordat that cases of separation will be handled by civil court⁴⁶.

Ecclesiastical permission to approach the civil court is not required by the party who does not initiate the civil process and is cited at the request of the other spouse. The persons involved in cases of temporary separation, wherein the period of time is specified, should use the remedy of separate maintenance or a decree for alimony if such is possible. Legal separations are usually the last resort, and divorces are permitted only when the circumstances force this extreme remedy as the only solution.

1.6. Implications for a minister to help

⁴⁵ CLSGBI, *The Canon Law*, n. 176, 50.

⁴⁶ See C. DE DIEGO-LORA, «Mediddas», 222-223.

⁴⁷ The *Catechism* acknowledges that «there are some situations in which living together becomes practically impossible for a variety of reasons. In such cases the Church permits the physical *separation* of the couple and their living apart» (CCC 1649). See also B.A. SIEGLE, *Marriage*, 180; T.P. DOYLE, «Marriage», 819.

⁴⁸ It is necessary to always make a distinction between the separation or divorce on the one hand and remarriage on the other; or between those who are separated or even divorced and those who entered into new unions. It should be noted that in what follows there is constant reference to the separated or divorced but not remarried persons.

⁴⁹ It should be noted that many Catholics do not know about the canonical requirement to have the permission of the competent ecclesiastical authority before they