The Holy See

ADDRESS OF JOHN PAUL II TO THE TRIBUNAL OF THE ROMAN ROTA

Monday, 22 January 1996

1. I cordially thank Monsignor Dean for the meaningful words with which you expressed the sentiments of everyone present. Together with you I affectionately greet the prelate auditors, the promoters of justice, the defenders of the bond, the chancery officials, the rotal advocates and the students of the *Studio Rotale*. At the beginning of the new judicial year I extend to everyone my fervent best wishes for peace and fruitful endeavor in the demanding field of studying and concretely applying the law.

It is always a great joy for me to welcome you on the occasion of this traditional meeting of ours, at which I have the opportunity to express to you my deep gratitude and appreciation for the fidelity and commitment with which you carry out your particular ecclesial service.

In his address, Monsignor Dean underscored the problems that in the exercise of judicial power weigh heavily on the mind, conscience, and heart of the prelate auditor judges. They are problems which I fully understand. Indeed, I would like to spend a few moments considering them.

I will start with some basic concepts about the true and genuine nature of *marital nullity procedures* in order to speak then of the canonical judge's proper task of considering the particular nature of each individual case in the context of the specific culture in which it is found.

2. The authentic *nature of marital nullity procedures* can be deduced not only from their proper object, but also from their very place within the canonical legislation that regulates the introduction, conduct and resolution of the procedure.

Thus, while the legislator, on the one hand, has established some specific norms for cases of marital nullity (see *CIC*, cc. 1671 ff.; *CCEO*, cc. 1357 ff.); on the other, he has determined that for the rest the canons *de iudiciis in genere et de iudicio contentioso ordinario* ("concerning processes in general and concerning the ordinary contentious process") should be applied in these cases (*CIC*, c. 1691; *CCEO*, c. 1376). At the same time he has expressly pointed out that these are cases which pertain to the *status of persons*, that is, to their position in relation to canon law (see CIC, c. 1691) and to the

public good of the Church (see *CIC*, c. 1691; *CCEO*, c. 1376).

Without these premises, it would not be possible to understand various prescriptions of both the Latin and the Eastern *Codes*, in which the *activity of public power* seems to have priority. Think, for example, of the role exercised by the judge in guiding the instructional phase of the procedure, supplying even for the negligence of the parties themselves; or of the indispensable presence of the defender of the bond as the one who safeguards the sacrament and the validity of the marriage; or again, of the initiative taken by the promoter of justice in serving as the petitioner in particular cases.

At the same time, however, the current legislation of the Church shows a deep sensitivity to the requirement that the status of persons–if called into question —does not remain in doubt for very long. This is the reason for the possibility of approaching different tribunals for greater ease in instructing the case (see *CIC*, c. 1673; *CCEO*, c. 1359); it is also the reason at the appellate level for the assigning of competence on new grounds of nullity to be judged *tamquam in prima instantia* ("as at the first instance", *CIC*, c. 1683; *CCEO*, c. 1369); or also for the abbreviated appellate process, after one sentence finds for nullity, with all the procedural formalities being eliminated and the decision being given by a simple decree of ratification (see *CIC*, c. 1682; *CCEO*, c. 1368).

3. Looming over all of this, however, is the *nature of the marital nullity procedure as pertaining to the public good* and the specific juridical nature of the *determination of a person's status*, which is the judicial conflict concerning an objective reality, that is, whether the bond is valid or null.

This feature cannot be obscured in the actual conduct of the case by the fact that a nullity procedure is set in the broader framework of a contentious trial. Moreover, it must be remembered that the spouses, who in any case have the right to assert the nullity of their marriage, do not however have either the right to *its nullity* or the right to *its validity*. In fact, it is not a question of conducting a process to be definitively resolved by a constitutive sentence, but rather of the juridical ability to submit the question of the nullity of one's marriage to the competent Church authority and to request a decision in the matter.

This does not prevent the spouses themselves—since it is a question regarding the determination of their personal status—from having their essential procedural rights recognized and granted: to be heard in court, to submit proofs in the form of documentation, expert opinions and witnesses, to know all the instructional acts, and to present their respective "pleadings."

4. Nevertheless, it must never be forgotten that it is a question of a good *that cannot be disposed of* at will and that the ultimate goal is the determination of an objective truth, which also concerns the common good. From this standpoint, such procedural acts as the proposal of certain "incidental questions" or delaying, irrelevant, pointless actions or those which even impede the attainment of this goal, cannot be allowed in a canonical trial.

In this overall framework, it thus seems contrived to have recourse to complaints based on alleged injuries of the right to defense as well as to attempt to apply to the judgment of marital nullity procedural norms which are valid in other sorts of procedures but are completely inappropriate to cases that never become an adjudged matter (*res iudicata*).

These principles must be elaborated and translated into clear judicial practice, especially through the jurisprudence of the tribunal of the Roman Rota, so that violence is not done to universal and particular law nor to the rights of parties legitimately admitted to judgment. They also call for corrective measures by the legislator or for specific norms for the application of the *Code*, as occurred in the past (cf. *Congregation for the Sacraments*, instruction, *Provida Mater Ecclesia*, August 15, 1936).

5. I trust that these reflections will be able to remove the obstacles that could impede the timely resolution of cases. However, for a suitable judgment in their regard, I consider it no less important to recall a few points about the need to evaluate and weigh every individual case, taking into account the *individuality of the subject* as well as the *particular nature* of the culture in which the person grew up and lives.

Wishing at the beginning of my pontificate to explain the truth about human dignity, I stressed that man is one, unique, and unrepeatable being (see Christmas address, December 25, 1978, in *AAS*, 71 [1979], p. 66; *Origins*, 8 [January 4, 1979], p. 454).

This unrepeatability concerns the human individual, not taken abstractly, but immersed in the historical, ethnic, social and above all cultural reality that distinguishes him in his individuality. However, the fundamental and inescapable principle must be reaffirmed of the *intangibility of the divine law, both natural and positive*, authentically formulated in the canonical legislation on specific matters.

Thus it is never a case of bending the objective norm to the desires of private subjects, much less of interpreting or applying it in an arbitrary way. Likewise, it must be constantly kept in mind that the individual juridical institutions defined by canon law—I am thinking particularly about marriage, its nature, properties, and connatural ends—have and must always in every case preserve their proper value and their own essential content.

6. Since the abstract law finds its application in individual, concrete instances, it is a task of great responsibility *to evaluate the specific cases in their various aspects* in order to determine whether and in what way they are governed by what the law envisages. It is precisely at this stage that the *judge's prudence* carries out the role most its own; here he truly *dicit ius*, by fulfilling the law and its purpose beyond preconceived mental categories, which are perhaps valid in a given culture and a particular historical period, but which cannot be applied a priori always and everywhere and in each individual case.

Moreover, the jurisprudence itself of this tribunal of the Roman Rota, translated and hallowed as it were in many canons in the legislation of the current *Code*, could not have been expressed, improved, and refined if it had not bravely yet prudently paid attention to a more developed anthropology, that is, to a conception of man derived from progress in the humane sciences illumined by a clear and well-grounded philosophical and theological vision.

7. Thus your most sensitive judicial function is situated and in some ways channeled in the age-old effort by which the Church, from her contact with the cultures of every time and place, has adopted whatever she found that was basically valid and suitable to the immutable requirements of the dignity of humans, made in the image of God.

If these reflections have value for all the judges of the Church’s tribunals, they seem all the more fitting for you, the prelate auditors of a tribunal to which, by definition and because of its primary competence, procedures from all the world’s continents are appealed. It is not merely for the sake of image, then, but out of conformity with the task entrusted to you that the first article of the norms of the Roman Rota prescribe that the college of judges be composed of prelate auditors “chosen by the Supreme Pontiff form the various parts of the world.” Yours then is an international tribunal which brings together the contributions of the most diverse cultures and harmonizes them in the higher light of revealed truth.

8. I am sure that as prudent and enlightened judges you will give full intellectual adherence to these reflections as will all who assist you in the judicial activity of the Rota: the promoters of justice, the defenders of the bond, the Rotal advocates. I exhort everyone to cultivate the same goals, with regard both to procedural initiatives and to the in-depth study of individual cases.

As I wish you an abundance of grace and light, invoked from the Spirit of truth in the liturgy that began this opening day of the judicial year, I impart a special apostolic blessing to you all as a sign of appreciation for your generous dedication to the Church’s service.

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