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

Thursday, 26 January 1989

I thank his excellency the dean for his words of greeting, and I express my sentiments of esteem and gratitude to all who work in the Apostolic Tribunal of the Roman Rota: the prelate auditors, the promoters of justice, the defenders of the bond, the other officials, the advocates, and also the professors of the *Studio Rotale.*

Bearing in mind that the papal discourses to the Roman Rota, as is known, are addressed in fact to all engaged in the administration of justice in the ecclesiastical tribunals, I intend in today's annual meeting to emphasize the importance of the right to defense in canonical trials, especially in cases for the declaration of nullity of marriage. Though it is not possible to treat here every problem regarding this issue, I wish, however, to insist on some points bearing on this question.

The new Code of Canon Law attributes great importance to the right of defense. In relation to the obligations and rights of all the faithful, c. 221, §1 states: "Christ's faithful may lawfully vindicate and *defend the rights* they enjoy in the Church, before a competent ecclesiastical forum in accordance with the law." Paragraph 2 continues: "If any members of Christ's faithful are summoned to trial by the competent authority, they have the right to be judged according to the provision of the law, to be applied with equity." Canon 1620 of the Code explicitly determines the irremediable nullity of the judgment if one or other party was denied the right of defense, while one can deduce from c. 1598, §1 the following principle which must guide all judicial activity in Church: "the right of defense always remains intact."

It must be noted immediately that the absence of such an explicit norm in the Pio-Benedictine Code certainly did not imply that the right of defense was disregarded in the Church under the regime of the previous Code. That Code, in fact, contained opportune and necessary dispositions to guarantee this right in canonical trials. Even though c. 1892 of the previous Code did not mention the "denial of the right of defense" among the cases of irremediable nullity of the judgment, it should nevertheless be noted that both the doctrine and the rotal jurisprudence held for the irremediable nullity of the judgment whenever one or other party was denied the right of defense.

One cannot conceive of a just judgment without the contention (*contraddittorio*), that is without the concrete possibility granted to each party in the case to be heard and to be able to know and contradict the requests, proofs, and deductions adopted by the opposing party or *ex officio*.

The right of defense of each party in the trial, that is, not only of the respondent but also of the plaintiff, should obviously be exercised according to the just dispositions of positive law. It is not the function of positive law to deprive one of the exercise of the right of defense, but to regulate it so that it does not degenerate into abuse or obstructionism, and at the same time to guarantee the practical possibility of exercising it. The faithful observance of the positive law in this regard constitutes therefore a grave obligation for those engaged in the administration of justice in the Church.

Obviously a *de facto* defense is not required for the validity of the process provided its concrete possibility is always present. Therefore the parties can renounce the exercise of the right of defense in a contentious trial; in a penal case, however, there must always be a *de facto* defense, indeed a technical defense, because in a penal trial the accused must always have an advocate (see cc. 1481, §2, and 1723).

Certain clarifications regarding matrimonial cases must immediately be added. Although one of the parties may have renounced the exercise of the right to defense, the judge in these cases has the grave duty to make a serious effort to obtain the judicial deposition of the party concerned and also of the witnesses whom the party could have called. The judge should weigh carefully each individual case. Sometimes the respondents do not wish to be present at the trial without offering any adequate motive, precisely because they cannot understand how the Church could possibly declare the nullity of the sacred bond of their marriage after so many years of common life. True pastoral sensibility and respect for the party's conscience will oblige the judge in such a case to offer the respondent all opportune information regarding cases of matrimonial nullity and to seek patiently the party's full cooperation in the process, also for the sake of avoiding a partial judgment in a matter of such gravity.

I deem it opportune to remind all engaged in the administration of justice that according to the sound jurisprudence of the Roman Rota, in cases of matrimonial nullity the party who may have renounced the exercise of the right of defense should be notified of the formula of the question to be judged, of every possible new demand of the opposing party, as well as of the definitive judgment.

The right of defense demands of its very nature the concrete possibility of knowing the proofs adduced both by the opposing party and *ex officio*. Canon 1598, §1 therefore lays down that when the evidence has been assembled, the judge must, under pain of nullity, permit the parties and their advocates to inspect at the tribunal office those acts which are not yet known to them. This is a right of the parties and their advocates. The same canon provides for a possible exception. In

cases that concern the public good, the judge can decide that, so as to avoid very serious dangers, some of the acts are not to be shown to anyone; he must take care, however, that the right of defense always remains completely intact.

With regard to the aforementioned possible exception, it must be observed that it would be a distortion of the norm of law and also a grave error of interpretation if the exception were to become the general rule. One must therefore abide faithfully by the limits indicated in the canon.

In relation to the right of defense, it cannot be a matter of surprise to speak also of the necessity of publishing the judgment. How could one of the parties defend himself or herself in the court of appeal against the judgment of the lower tribunal if deprived of the right to know the reasons, both *in law* and *in fact*, supporting it? The Code therefore requires that the dispositive part of the judgment must be prefaced by the reasons on which it is based (see c. 1612, §3). This is not only to render its acceptance easier when it goes into effect, but also to guarantee the right of defense in the event of an appeal. Canon 1614 therefore decrees that a judgment has no effect before publication, even if the dispositive part has been made known to the parties with the permission of the judge. One cannot therefore understand how it could be confirmed in the appeal court without due publication (cf. c. 1615).

To guarantee still more the right of defense, the tribunal is bound to indicate to the parties the ways in which the judgment can be challenged (see c. 1614). It seems opportune to recall that the court of first instance, in fulfilling this duty, must also indicate the possibility of approaching the Roman Rota already as the court of second instance. Moreover, in this context is must be borne in mind that the time for lodging an appeal begins only from notification of the publication of the judgment (see c. 1630, §1), while c. 1634, §2 prescribes: “If the party is unable to obtain a copy of the appealed judgment from the originating tribunal within the canonical time-limit, this time-limit is in the meantime suspended. The problem is to be made known to the appeal judge, who is to oblige the originating judge by precept to fulfill his duty as soon as possible.”

It is sometimes said that the obligation to observe the canonical rules in this regard, especially concerning the publication of the acts and the judgment, could impede the search for the truth because of the witnesses’ refusal to cooperate in the trial in such circumstances.

In the first place it should be quite clear that the *publication* of the canonical trial as far as the parties are concerned does not affect its reserved nature as regards all others. It also should be noted that canon law exempts from the obligation of replying in a trial to questions all those who are bound by the secret of their office in respect to matters subject to this secret, and also those who fear that, as a result of giving evidence, a loss of reputation, dangerous harassment or some other grave evil will arise for themselves, their spouses, or those related to them by close consanguinity or affinity

(see c. 1548, §2). A similar norm exists in regard to the production of documents for a trial (see c. 1546). It is obvious that in the judgment it suffices to set out the reasons in law and in fact on which it is based, without having to refer every item of testimony.

Having said all this, I cannot but point out that full respect for the right of defense is particularly important in cases for the declaration of matrimonial nullity, both because they concern so profoundly and intimately the person of the parties in question, and also because they treat of the existence or non-existence of the sacred bond of marriage. These cases therefore require a particularly diligent search for the truth.

It is evident that witnesses must have explained to them the true meaning of the legislation in the matter, and it is also necessary to confirm that one of the faithful, who has been lawfully summoned to appear by the competent judge, is bound to obey and speak the truth, unless exempted by law (see c. 1548, §1).

On the other hand, a person should have the courage to assume responsibility for what is said, and should not be afraid if the truth was actually spoken.

I have said that the *publication* of the canonical judgment regarding the parties in the case does not affect its reserved nature for all others. In fact, in a penal trial the judges and tribunal assistants are bound to observe always the secret of the office; in a contentious trial, they are bound to observe it if the revelation of any part of the acts of the process could be prejudicial to the parties. Indeed, whenever the nature of the case or of the evidence is such that revelation of the acts or evidence would put at risk the reputation of others, or give rise to quarrels, or cause scandal or have any similar untoward consequence, the judge can oblige witnesses, experts, the parties, and their advocates or procurators, to swear an oath to observe secrecy (see c. 1455, §§1–2). Moreover, without an order from the judge, notaries and the chancellor are forbidden to hand over to anyone a copy of the judicial acts and documents obtained in the process (see c. 1475, §2). Besides, the judge can be punished by the competent ecclesiastical authority for the breach of the law of secrecy (see c. 1457, §1).

Ordinarily the faithful approach an ecclesiastical tribunal for a solution of their problem of conscience. For this reason they often say things that they would not otherwise have said. The witnesses also frequently testify under the condition, at least tacit, that their evidence will be used only for the ecclesiastical trial. The tribunal—for which the search for the objective truth is essential—must not betray their trust by revealing to outsiders what should remain secret.

Ten years ago, in my first address to this tribunal, I had this to say: “The task of the Church and her historical merit, which is to proclaim and defend in every place and in every age the fundamental human rights, does not exempt her but, on the contrary, obliges her to be herself a *mirror of justice* (*speculum iustitiæ*) for the world” (February 17, 1979, supra p. 162).

I invite all who are engaged in the administration of justice to safeguard in this perspective the right of defense. While thanking you profoundly for your tribunal's great sensibility to this right, I cordially impart to you my apostolic blessing.