

# ***DECREE OF THE ROMAN ROTA CONCERNING A NEW PRESENTATION OF A CASE ON NULLITY OF MARRIAGE (10.IV.1987)***

## ***I. GRAMUNT***

The «Decree of Turn» that follows this brief introduction decides a pre-judicial, that is an incidental question concerning the new presentation of a marriage nullity case. The outline of the facts and the points of law, both procedural and substantial, which seem more relevant is as follows:

### **THE FACTS**

1. On January 3, 1980, the Diocesan Tribunal declared a nullity of marriage; the Respondent appealed to the Metropolitan Tribunal on January 5th, but his appeal received no answers.

2. On January 12, 1980, the Metropolitan Tribunal confirmed the sentence of nullity issued by the first instance Tribunal.

3. Not until November 13, 1980, did the Respondent appeal to the Apostolic Signatura on grounds that no response was made by the Diocesan Tribunal to his first appeal. The Signatura referred the case to the Roman Rota. Since the deadline for appeal had elapsed (cf. c. 1633), the Judge-Relator did not reply to the appeal. We infer that, eventually, the Rota Judge-Relator requested from the Respondent an account of the events of his dealings with the Diocesan Tribunal.

4. When the account of the events was received in the Rota on July 30 (six years later!), the Judge Relator proceeded to take the following

steps: a) To declare, by Decree of October 4, 1986, that the process was then abandoned (cf. cc. 1520-1522); b) To order, on October 7, 1986, the suspension of the peremption of the case (cf. c. 1644, § 2), presumably to pave the way for the next step; c) To raise the «pre-judicial» (incidental) question on whether or not the case deserves a new examination, in view of the facts finally available to the Roman court (cf. c. 1644 § 1).

## THE LAW

1. The question raised is said to be, properly speaking, a *pre-judicial question* because the nature of the *dubium* is such that, should the decision be affirmative, the principal case would have to be adjudged again; and if negative, there could no be a reopening. It is generally accepted, we may add, that an incidental question can be initiated by the parties (both private or public), the judge, or a third party with a legitimate interest (cf. cc. 1452, 1587-1591).

2. The law allows the reopening of cases related to the status of persons even after two concordat sentences (cf. c. 1643), but if the question itself is to be examined, new and significant proofs or arguments or documents are to be presented (cf. c. 1644, § 1). This Rotal decision points out that new arguments can be *intrinsic* to the case itself when it can be shown that there has been a violation of procedural law by evident neglect or, *a fortiori*, a violation of the principles inherently linked with the institution of marriage.

## THE ARGUMENT

1. Arguing against the reopening of the case are the Promoter of Justice and the court-appointed Advocate of the Plaintiff; arguing for the reopening of the case are the Defender of the Bond and the court-appointed Advocate for the Defendant.

2. After due consideration of the arguments, the Rotal Tribunal concludes:

a. That the violations of procedural law on the part of both Diocesan and Metropolitan Tribunals were grave enough to arise legitimate suspicion about the correct administration of justice. Even the first Rotal Rela-

tor involved in the case is not exempted from criticism by the Roman court for his failure to acknowledge the appeal petition.

b. While the formulation of the doubt in the second instance was confined to lack of due discretion, the sentence went beyond the doubt to include incapacity to assume the essential obligations (cf. c. 1095), thus preventing the Respondent from making a legitimate defense against this new *caput* (cf. c. 1514). In addition, the *capita* were formulated by both Tribunals with ambiguous language and consequently, the Roman court concludes, that what is uncertain and undefined cannot convey the force of certitude.

c. The alleged lack of due discretion on the part of both parties was not verified by the parties' depositions concerning their lives before marriage, their period of engagement, the first seven years of their married life. The unhappy outcome of a conjugal union «is never in itself proof for demonstrating the incapacity of the contracting parties» (cf. John Paul II, Address, February 6, 1987, n. 6). The Rotal decision goes on to say that only incapacity, and not difficulty cannot be confused with even remarkable difficulty.

d. The evaluation of the psychiatrists, uncritically and carelessly accepted by both Tribunals, were based on certain views that are opposed to true Catholic Doctrine on marriage and to the principles of Christian Anthropology (cf. John Paul II addresses of Febr. 6, 1987 and January, 1988), thus violating principles inherently linked with the institution of marriage.

*Decision:* A new presentation of the case must be admitted.

These are in our opinion, the relevant points of law that emerge from the sentence.