

in *REU* 109 extended its competence, which has been maintained in *PB* 128-129. Norms of the Roman Rota actually in force, *Normæ Romanæ Rotæ Tribunalis*, were published on 18-04-1994 (*AAS* 86 [1994] 508-540; also in a separate edition, Libreria editrice Vaticana, 1994) and approved *in forma specifica*, although this information was given only *post factum* ("e ha disposto [Giovanni Paolo II] che tale atto [l'approvazione dal 7 febbraio 1994] debba intendersi come approvazione data *in forma specifica*, anche in deroga alla legge universale, *contrariis quibusvis non obstantibus*", Secretariat of State, Rescript *ex audientia Sanctissimi* of 23-02-1995, *AAS* 87 [1995] 366).

The Roman Rota is presently an ordinary collegiate appeal tribunal. It judges by rotation, by *turni*. The judges, known as auditors, have ordinary power in the cases which, according to law, are within the competence of the tribunal. It is composed of a certain number of prelates chosen and removed by the Pope. They must be priests born of a lawful marriage, of mature age, and doctors in canon law and Roman law, living an honest life, and noted for their prudence and their skill at law. A dean, named among the judges by the Supreme Pontiff for a specific term, presides over this tribunal. (*PB* 126). When a case is brought to the court, the dean appoints, according to the *turnus*, the judges and the relator, who is generally the senior of the auditors (cf. *Normæ Romanæ Rotæ Tribunalis* 17-18, *AAS* 86 [1994] 508-540, also in a separate edition, Libreria editrice Vaticana, 1994). When the Apostolic See falls vacant, the Roman Rota continues in the exercise of its tasks (cf. *Normæ Romanæ Rotæ Tribunalis* 23). Moreover, as indicated in an authentic interpretation of the CPL/89 — of 19-01-1988 (*AAS* 80 [1988] 1819; *RR* [1990] 112; cf. appendix II), religious appointed judges of the Roman Rota are not to be considered exempt from the religious Ordinary and from the obligations deriving from religious profession, as in the case of religious raised to the episcopate, "except in what concern the exercise of their office."

Can. 1444 — § 1. Rota Romana iudicat:

1° in secunda instantia, causas quæ ab ordinariis tribunalibus primæ instantiæ diiudicatæ fuerint et ad Sanctam Sedem per appellationem legitimam deferantur;

2° in tertia vel ulteriore instantia, causas ab ipsa Rota Romana et ab aliis quibusvis tribunalibus iam cognitæ, nisi res iudicata habeatur.

Can. 1444 — § 1. The Roman Rota judges:

1° in second instance, cases which have been judged by ordinary tribunals of first instance and have been referred to the Holy See by a lawful appeal;

2° in third or further instance, cases which have been processed by the Roman Rota itself or by any other tribunal, unless there is a question of an adjudged matter.

§ 2. Hoc tribunal iudicat etiam in prima instantia causas de quibus in can. 1405, § 3, aliasve quas Romanus Pontifex sive motu proprio, sive ad instantiam partium ad suum tribunal advocaverit et Rotæ Romanæ commiserit; easque, nisi aliud cautum sit in commissi muneris rescripto, ipsa Rota iudicat etiam in secunda et ulteriore instantia.

§ 2. This tribunal also judges in first instance the cases mentioned in can. 1405 § 3, and any others which the Roman Pontiff, either on his own initiative or at the request of the parties, has reserved to his tribunal and has entrusted to the Roman Rota. These cases are judged by the Rota also in second or further instances, unless the rescript entrusting the task provides otherwise.

1444 — At first sight, the structure of the canon on the order of instances (2nd, 3rd, 1st) may provoke some surprise, but we should consider that the Code has already dealt with the competent forum and cases reserved to the Roman Rota in c. 1405, § 3, and that the subject regulated in this canon refers to grades and kinds of tribunals. The Roman Rota is not normally considered a tribunal either of first or second instance, but as a tribunal of the Holy See. Consequently, after having said that the Roman Rota is a pontifical tribunal for appeals, this canon refers to the cases which this tribunal may hear. These positive norms may be understood more easily from the perspective of what the Roman Rota is not entitled to judge:

- 1) The cases reserved to the Roman Pontiff (c. 1405, §§ 1-2);
- 2) Matters of doctrine, faith and morals (*PB* 52-53);
- 3) Cases of beatification or canonisation of the servants of God (*PB* 72, § 2);
- 4) Cases which are not heard judicially (*PB* 19, § 2);
- 5) Cases which have arisen from the exercise of administrative power (*PB* 19, § 1), cases of conflict of competence among the dicasteries of the Holy See, or other cases that are the competence of the Apostolic Signatura (c. 1445; *PB* 122-123).

It is to note that the *Normæ Romanæ Rotæ Tribunalis* 52 (*AAS* 86 [1994] 508-540, also in a separate edition, Libreria editrice Vaticana, 1994) recognize to the dean of the Roman Rota, after having consulted the two older auditors, the capacity to judge in first instance the cases mentioned in c. 1444, § 1, each time that particular circumstances of place or of persons request it because of the salvation of souls. So, the extraordinary faculty (cf. c. 132) granted before by each pope (cf. *AAS* 74 [1982] 516) is now part of the ordinary power (vicarious) of the dean (cf. c. 131, § 1).

On 30-11-1993, the National Conference of Catholic Bishops asked the Holy See the following derogation on c. 1444, §1, 1°: that appeals in second instance in the case of penal process concerning delicts of c. 1395, §2, be heard only by tribunals of second instance of the United States, and that appeals to the Roman Rota be authorized only for further instances. The Holy See did not grant the derogation submitted; the Rescript *ex audientia SS.mi* is dated 25-04-1994 (RR [1994] 20-21). Cf. commentaries on cc. 1362 and 1395.

Can. 1445 — § 1. Supremum Signaturæ Apostolicæ Tribunal cognoscit:

1° *querelas nullitatis et petitiones restitutionis in integrum et alios recursus contra sententias rotales;*

2° *recursus in causis de statu personarum, quas ad novum examen Rotæ Romanæ admittere renuit;*

3° *exceptiones suspicionis aliasque causas contra Auditores Rotæ Romanæ propter acta in exercitio ipsorum muneris;*

4° *conflictus competentiæ de quibus in can. 1416.*

§ 2. *Ipsium Tribunal videt de contentione ortis ex actu potestatis administrativæ ecclesiasticæ ad eam legitime delatis, de aliis controversiis administrativis quæ a Romano Pontifice vel a Romanæ Curiæ dicasteriis ipsi deferantur, et de conflictu competentiæ inter eadem dicasteria.*

§ 3. *Supremi huius Tribunalis præterea est:*

1° *rectæ administrationi iustitiæ invigilare et in advocatos vel procuratores, si opus sit, animadvertere;*

Can. 1445 — § 1. The supreme Tribunal of the Apostolic Signatura hears:

1° *plaints of nullity, petitions for total reinstatement and other recourses against rotal judgements;*

2° *recourses in cases affecting the status of persons, which the Roman Rota has refused to admit to a new examination;*

3° *exceptions of suspicion and other cases against Auditors of the Roman Rota by reason of things done in the exercise of their office;*

4° *the conflicts of competence mentioned in can. 1416.*

§ 2. *This same Tribunal deals with controversies which arise from an act of ecclesiastical administrative power, and which are lawfully referred to it. It also deals with other administrative controversies referred to it by the Roman Pontiff or by departments of the Roman Curia, and with conflicts of competence among these departments.*

§ 3. *This Supreme Tribunal is also competent:*

1° *to oversee the proper administration of justice and, should the need arise, to take measures against advocates and procurators;*

2° tribunalium competentiam progare;

3° promovere et approbare erectionem tribunalium, de quibus in cann. 1423 et 1439.

2° to extend the competence of tribunals;

3° to promote and approve the establishment of the tribunals mentioned in cann. 1423 and 1439.

1445 — The origin of the Supreme Tribunal of the Apostolic Signatura dates back to the 13th century. Saint Pius X, in the Ap. Const. *Sapienti consilio* in 1908, restored the suppressed Papal Signatura of Grace and Justice, under the name of the Supreme Tribunal of the Apostolic Signatura. The *CIC/17* described this Tribunal as being totally different from the Sacred Congregations: the latter are administrative colleges; the Apostolic Signatura is a judicial college. Before *REU*, it judged with ordinary power and although not an appeal court, was supreme in that it was possible to have recourse to it against the judgements of the Roman Rota. Paul VI, while maintaining for the Signatura its supremacy as a tribunal, greatly extended its faculties, and also added a new section, whose function is to judge contentious-administrative recourses. John Paul II, in *PB* 122-124, confirmed this structure established in 1967. Up to now (31-08-2003), the procedural norms of this Tribunal issued on 25-03-1968 are still in force. The *Normæ speciales in Supremo Tribunali Signaturæ Apostolicæ ad experimentum servandæ post Constitutionem apostolicam Pauli PP. VI "Regimini Ecclesiæ universæ,"* Typis polyglottis Vaticanis, 1968, were not published in the *AAS*; they are to be found in *LE* 3 (1959-1968) col. 5321-5332. New norms will eventually be promulgated (*PB* 38 and 125).

1) *Competence in judicial matters (PB 122).* The Signatura adjudicates with judicial power in its First section: a) complaints of nullity against sentences of the Roman Rota, in cases of nullity according to cc. 1620 and 1622 provided that the nullity is overt (c. 1445, § 1, 1°; *PB* 122, 1°); b) petitions for total reinstatement (*restitutio in integrum*) against Rotal judgements within the legal time limit and for the reasons indicated in cc. 1645-1646 (c. 1445, § 1, 1°; *PB* 122, 1°) (it is to note that *PB* 122 doesn't use the expression "other recourses" of c. 1445, § 1, 1°); c) cases concerning the status of persons when the Rota has denied a new examination of the case (c. 1445, § 1, 2°; *PB* 122, 2°); d) exceptions of suspicion and other cases against any of the auditors of the Roman Rota for acts committed in the exercise of their functions (c. 1445, § 1, 3°; *PB* 122, 3°); e) conflicts of competence between tribunals subject to different appellate tribunals (cc. 1416 and 1445, § 1, 4°; *PB* 122, 4°).

2) *Competence in contentious-administrative matters (PB 123).* The Signatura is equally competent — through its Second Section — as an administrative tribunal, to adjudicate: a) recourses lodged within the peremptory limit of thirty useful days against singular administrative acts, whether issued by the

Titulus I
De foro competenti

Title I
The Competent Forum

(*León del Amo* [†] — *Joaquín Calvo*)

By jurisdiction is understood the public function whereby the Church, using courts set up for that purpose, exercises its power and right to govern its subjects according to the form imposed by law, and to settle any controversies that may arise by handing down firm and binding decisions. The *jurisdictional bodies* are the pertinent tribunals, with a specific organization.

The designation, “the competent forum,” refers to the judge or tribunal with the jurisdiction and competence to hear a specific matter. In the same way *forum* refers to the tribunal or specific jurisdictional body to which certain affairs are entrusted. In the judicial sphere, *forum* means also jurisdiction, judicial power, as well as the territory covered by this jurisdiction.

There are several types of fora: 1) *legal* fora or those established by law, as opposed to those which are *conventional*; 2) *ordinary* or common fora as opposed to *extraordinary* or special ones; 3) *procedural* fora or fora related to a procedural incident, for example, to the cumulation of actions, to the connection of cases; 4) *unique* or exclusive fora, as opposed to those that are *concurrent*, from among which the claimant may choose; 5) *personal* fora, relating to persons, and *real* fora because of the matter or object under consideration.

In simple terms, competence is the distribution of judicial power among the tribunals of the Church, a share of the jurisdiction given to each judge or tribunal. All judges have jurisdiction but not all have the competence to judge a specific case. According to procedural canon law, the absolute incompetence of a judge means the complete lack of jurisdiction for judging a specific case. On the other hand, only relative incompetence exists when a judge has jurisdiction to hear a particular type of case, but with competence limited by the norms of attribution. A *competent judge* is one who has jurisdiction and exercises it in a specific case, a case which he has a right to judge (material competence), because the respondent is one whom he may summon (personal competence), and because he has the judicial authority in the area where the case is to be heard (territorial competence).

Can. 1404 — Prima Sedes a nemine iudicatur.

Can. 1404 — The First See is judged by no one.

1404 — The Roman Pontiff, to whom the words *prima sedes* apply, cannot be judged on earth by any human power. The Pope is the supreme judge in the

Church, and only God may judge him. Not even the Pope himself may renounce this prerogative which proceeds from divine law. When it is said that the first see cannot be submitted to the judgement of any human power, it should be understood to refer both to the decisions handed down by the Pope as well as to those which he appropriates to himself with formal and express approval or acceptance (cf. *Comm* 10 [1978] 219).

Can. 1405 — § 1. Ipsius Romani Pontificis dumtaxat ius est iudicandi in causis de quibus in can. 1401:

1° eos qui supremum tenent civitatis magistratum;

2° Patres Cardinales;

3° Legatos Sedis Apostolicæ, et in causis pœnalibus Episcopos;

4° alias causas quas ipse ad suum advocaverit iudicium.

§ 2. Iudex de actu vel instrumento a Romano Pontifice in forma specifica confirmato videre non potest, nisi ipsius præcesserit mandatum.

§ 3. Rotæ Romanæ reservatur iudicare:

1° Episcopos in contentiosis, firmo præscripto can. 1419, § 2;

2° Abbatem primate, vel Abbatem superiorem congregationis monasticæ, et supremum Moderatorem institutorum religiosorum iuris pontificii;

3° diœceses aliasve personas ecclesiasticas, sive físicas sive iuridicas, quæ Superiorem infra Romanum Pontificem non habent.

Can. 1405 — § 1. In the cases mentioned in can. 1401, the Roman Pontiff alone has the right to judge:

1° Heads of State;

2° Cardinals;

3° Legates of the Apostolic See and, in penal cases, Bishops;

4° other cases which he has reserved to himself.

§ 2. A judge cannot review an act or instrument which the Roman Pontiff has specifically confirmed, except by his prior mandate.

§ 3. It is reserved to the Roman Rota to judge:

1° Bishops in contentious cases, without prejudice to can. 1419 § 2;

2° the Abbot primate or the Abbot superior of a monastic congregation, and the supreme Moderator of a religious institute of pontifical right;

3° dioceses and other ecclesiastical persons, physical or juridical, which have no Superior other than the Roman Pontiff.

1405 — It is reserved, solely and personally, to the Pope to judge or to try, either himself or by a delegate, the contentious or penal cases established in the canon. It is reserved to the Roman Rota to judge: 1) diocesan or titular bishops and those equivalent in law to them in contentious cases, without prejudice to the stipulations of c. 1419, § 2; 2) the abbot primate, or the abbot superior of a monastic

regation, and the supreme moderator of a religious institute of pontifical (this exempted forum must be strictly interpreted); 3) dioceses and other episcopal persons, either physical or juridical, with no superior other than the Roman Pontiff. (Cf. *PB* 129.)

1406 — § 1. Violato præscripto can. 1404, acta et decisiones propterea habentur.

In causis, de quibus in can. 1405, aliorum iudicum incompetencia absoluta.

— Acts or decisions in violation of c. 1404 are considered *pro infectis*, as though they had never existed. Consequently, *quod non est confirmari non potest* according to the *regula iuris communis*. Non-existence is more significant than nullity of acts or judgements, because something nullified does exist, without the juridical effect proper to the act: *quod nullum est, nullum profectum*, says another *regula iuris communis*.

On the other hand, the acts and judgements of any tribunal, other than the Roman Rota, against the exempted forum of persons listed in c. 1405, are void and null acts owing to absolute incompetence. They can be declared null and void either ex officio in the process, by a plea of non-competence of the court (*actio declinatoria fori*), or by a plaint of nullity of the judgement (c. 1620).

There are three factors which determine absolute incompetence:

- 1) The *matter* of the trial which determines whether the jurisdiction is ecclesiastical or civil;
- 2) The *persons* who are to be judged, their affiliation to the Church as well as the dignity imposed by the office they discharge (hence, the cases refer to the Roman Pontiff or to the Roman Rota);
- 3) The *grade of the tribunals*, which establishes the so-called *functional* incompetence.

This is used to determine which and how many of the tribunals may participate in hearing a case. Whoever hears a case at one level of a trial cannot hear another [c. 1447]. If this hierarchical order of the tribunals in the different instances is not observed, an absolute incompetence will be declared.

1407 — § 1. Nemo in prima instantia conveniri potest, nisi coram iudice ecclesiastico qui

Can. 1406 — § 1. If the provision of can. 1404 is violated, the acts and decisions are considered not to have taken place.

§ 2. In the cases mentioned in can. 1405, the non-competence of other judges is absolute.

— Acts or decisions in violation of c. 1404 are considered *pro infectis*, as though they had never existed. Consequently, *quod non est confirmari non potest* according to the *regula iuris communis*. Non-existence is more significant than nullity of acts or judgements, because something nullified does exist, without the juridical effect proper to the act: *quod nullum est, nullum profectum*, says another *regula iuris communis*.

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Can. 1407 — § 1. No one can be brought to trial in first instance except before a judge who is

competens sit ob unum ex titulis qui in cann. 1408-1414 determinantur.

§ 2. Incompetentia iudicis, cui nullus ex his titulis suffragatur, dicitur relativa.

§ 3. Actor sequitur forum partis conventæ; quod si pars conventa multiplex forum habet, optio fori actori conceditur.

1407 — This canon regulates relative competence. The norms which govern competence are essential in the process for a fair administration of justice. No tribunal is allowed, in law, to accept a claim if it is not competent to judge the case. Relative competence is also called *territorial* competence, because it distinguishes which among tribunals of equal grade set up for a territory has the jurisdiction to hear the case.

The determination of competence in tribunals of first instance is regulated according to territory by one or other of the different *titles* that make up the fora or tribunals to which the plaintiff (also called by some tribunals “the petitioner”) may lawfully file a claim, and which permits the plaintiff to bring the respondent to trial according to law. Titles are the factors which determine the tribunal to which the legislator will allocate the hearing of a case. The incompetence of a judge with none of these titles would be termed relative, that is, if the judge hears the case, he would do so invalidly, but the defect could be remedied.

The plaintiff follows the forum of the respondent (also called by some tribunals “the defendant”): *actor sequitur forum rei* (C. 3, 19, 3). There is another reason of procedural equity in favour of this principle: since a trial is invoked to clarify the existence of the right claimed by the plaintiff, a doubt is thereby formulated which must be solved with the least possible inconvenience, trouble and expense for the respondent who is called to trial. When there is more than one forum, the plaintiff may choose among them; § 3 is extensive. However, once the forum has been chosen or the judge declared competent according to one of the lawful titles and the respondent has been summoned by the judge, according to c. 1512 the case becomes that of the judge or of the tribunal before whom it was brought; the suit is then considered a pending one. *Semel iudex, semper iudex; semel competens, semper competens*. A claim for a change of tribunal may be refused on the ground that the suit is pending according to the right of a prior summons.

Can. 1408 — Quilibet conveniri potest coram tribunali domicilii vel quasi-domicilii.

competent on the basis of one of the titles determined in cann. 1408-1414.

§ 2. The non-competence of a judge who has none of these titles is described as relative.

§ 3. The plaintiff follows the forum of the respondent. If the respondent has more than one forum, the plaintiff may opt for any one of them.

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Can. 1408 — Anyone can be brought to trial before the tribunal of domicile or quasi-domicile.