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The Challenge of the Sentence and the Transmission of the Cause *Ex Officio* to the Appeal Tribunal

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1.4 Wanting to draw some conclusions, even partial ones, one
n say, without exaggeration, that the complaint of nullity has
een treated with great care by the Interdicasterial Commission
eated to prepare the text of the "new *Provida Mater.*"[23] *Dignitas*
nnubii contains diverse, if not innovative, dispositions in this
atter. Nevertheless, one cannot say that the same Commission
ished to promote complaints of nullity. On the contrary, it must
e recalled that it expressly states that regarding incidental causes,
nsidering their nature in matrimonial causes, they "are not to be
ghtly proposed or admitted" (art. 218).[24] A sound judgment is
eeded by all ecclesiastical tribunal officials, supported by an
ppropriate professional conduct, so that a complaint of nullity is
be made only when it is well founded and necessary,[25] and be
dged holding close to various, often diverse, principles pertinent
the case at hand.

I. The transfer *ex officio* of the cause to the appeal tribunal and its processing

legitimate transmission of a cause to the appeal tribunal (treated
art. 263–268), requires the fulfillment of certain prerequisites
ith regard to the sentence of the first instance.[26] Prescinding from
nsidering whether or not the sentence of the nullity of a
arriage is declarative, the fulfillment of the prerequisites

This, however, is not totally true. The Roman Rota possesses by law the necessary competence to proceed on the merit of the marriage nullity case only if the sentence of the first instance has not been declared null (leaving aside the rare cases in which the Rota judges marriage cases in the first instance by law). But in the last years it even happens that in such cases, after having declared the nullity of the sentence in second instance or of the decree of ratification of the local appeal tribunal, the college sometimes remits the case to the competent local tribunal.

When the Rota declares the nullity of the sentence of the first instance, however, the same instance is not competent to treat the merit of the marriage nullity case as long as the case has not been reserved to the Rota by the Dean (cf. art. 52 NRRT) or if a prorogation of competence has not been obtained in favor of the Rota or if it has not be given by pontifical mandate.

. It is not necessary here to enter into details regarding the individual schemata.

. As a font, *Dignitas connubii* recalls John Paul II's 22 January 1996 allocution to the Roman Rota (*AAS* 88 [1996] 774, n. 4). There, the Holy Father admonished: "As an excuse, therefore, appears [...] a recourse of complaint founded on presumed wounds to the right of defence."

. This last aspect is particularly important whenever a remediable nullity is found.

. The same is true, substantially, for the sentence given in appeal.

coincides with the premises of a legitimate appeal and with the processing of the cause (art. 279–289). I think it is beneficial to consider first the common prerequisites to any sort of procedure.

2.1 Prerequisites

2.1.1 The most fundamental prerequisite to a further treatment of the cause by the appeal tribunal is the publication of the definitive sentence by which a collegiate tribunal or a single judge—legitimately constituted—responds to the object of judgment. The definitive sentence is a true and proper sentence given according to the norm of article 253, and not just the dispositive part, but it is a manifestation (and a result) of the decision of the case. The dispositive part, even if it has been communicated to the parties (cf. art. 257, § 1), must not be confused with the definitive sentence nor with the decision of the case.[27]

2.1.2 Secondly, the sentence must be published, or more precisely, must be communicated to the parties by giving or sending a copy of the sentence (art. 258, § 1).[28] This is true also for those countries in which the judges are hesitant about giving a complete copy of the sentence for fear that it might be used improperly, especially in the civil sphere, or worse, as part of a penal case before a civil court. I hold that in such cases, instead of

27. Unfortunately, *modus loquendi* [the terms used] in *Dignitas connubii* may lead to equivocation. For example, article 60, where it is established that the failure to cite the defender of the bond or the promoter of justice, if his presence is required, does not render it null, if they have at least examined the acts, and were able to fulfill their roles before the sentence. It is obvious that such an intervention *in extremis* [in the last moment] could have effect only if it was made prior to the decision of the case, the fruit of which is the dispositive part of the sentence, but would have no effect if it were done in the period between the decision of the case and the drafting or giving of the sentence. Therefore, article 60, speaking only of the sentence, intends, in fact, the decision of the case, found in article 248. The same equivocation of words appears in article 248, § 5, because of the formulation of canon 1609 § 5, in which the words "sentence" and "decision" are used synonymously.

28. A subtle change is noticed between canon 1615 and article 258, § 1: "fieri potest" ["can be effected"] is substituted with "fit" ["is to be made"]. I maintain that this is not a drafting choice but that the Commission wanted to give a definite spin to this disposition and to stop other means of notifying the sentence which are incongruous with the law in force and above all which fail to respect the rights of the parties. One thinks, for example of the indiscriminate use by some tribunals of sending only the dispositive part of the sentence with a note that the party may request a complete copy of the sentence at the tribunal offices. There is no doubt that now there exists the obligation of fulfilling that which is contained in article 258, §§ 1 and 3.

using *præter legem* [beyond the law] ways (as to invite the parties to read the sentence in the tribunal offices, in front of an official who can grant the needed explanations), it is needed to follow the law in force, applying some measures in the drafting of the sentence. In fact, article 254, § 2 admonishes that the revelation of the facts, inasmuch as it is required by the nature of the question, must be done with prudence and caution, avoiding any offense to the parties, to the witnesses, etc. For the rest, if it would be an odious thing, it is not necessary to refer to the names of the witnesses: it is sufficient, in such cases, to summarize the proofs with precise references to places in the acts (specifying the page, and when possible, the internal number). It is important that from the reason (motivation) of the sentence results the foundation whether *in iure* [in law] or *in facto* [in fact] of the dispositive part, or more precisely, that it should be clear that the judges have reached the decision by some logical path (art. 254, § 1).

The Instruction *Dignitas connubii* underlines that the sentence must always be notified to the defender of the bond and to the promoter of justice if he has participated in the judgment.[29] The combined dispositions of paragraphs 2 and 3 of article 258 provide that the defender of the bond cannot renounce the obligation of receiving notice of the sentence.[30]

Dignitas connubii admits, in any case, two exceptions to the obligation of giving notice of the sentence. First, if the party is absent because he is unknown in the place where he is living, despite a diligent investigation and an eventual public summons/citation, the publication of the sentence with regard to him is not envisioned (cf. art. 134, § 4). Second, if one of the parties has declared his wish not to receive any information pertaining to the

29. The insertion of the phrase "si partem in iudicio habuerit" ["if he took part in the process"] may be interpreted in a strict sense, that is, referring to the combined provisions of articles 57, § 1 and 92, n. 2° when the promoter of justice challenged the validity of the marriage. It is not necessary, however, that he be notified of the sentence if his participation in the case was required only for the fulfillment of certain specific acts, for example, on the occasion of the request for the gratuitous legal assistance (cf. art. 306, n. 3°).
30. Sometimes it happens that the defender of the bond declares, when he makes his *Animadversiones* [observations], that in the event of a sentence *pro nullitate* [in favor of nullity], he does not intend to appeal. At first glance, such an innocuous declaration is, in fact, reprehensible because it manifests his conviction that the marriage in question is null. Nothing prevents the defender of the bond from arriving at that personal conviction but, in virtue of his *munus* [task], *he* is obliged to proceed according to article 56 and other norms of the Instruction.

case, the judge may decide to follow the party's wish, taking into account that such an intention presumes his renunciation to receive a copy of the sentence; otherwise, the judge may order that only the dispositive part be notified to that party (art. 258, § 3).

These two exceptions emphasize the principle that generally a complete copy of the sentence must be given to the parties or their procurators.[31] The reasons for this principle are many. Nevertheless, the useful time in which to make an appeal runs, for each party, from the day on which the sentence was legitimately communicated. Therefore, an eventual illegitimate notification of only the dispositive part of the sentence does not cause the time limits of an appeal to run.

2.1.3. Third, in the case in which the sentence was given in the first grade, at the moment of publication, the tribunal must indicate to the parties the way in which an appeal[32] may be lodged or followed (cf. art. 257, § 2). And not only that. The same article 257, § 2 requires not only an explicit mention of the right to initiate legal proceedings before the local appeal tribunal but also before the Roman Rota.[33]

This recall of the ways of challenging the sentence,[34] especially with regard to the appeal, is included, in certain cases, among the premises of a further *iter* [path] of the case. I hold that if the party who had not been assisted by an advocate, were to receive a copy of the sentence that would not mention the possibility of an appeal according to the norm of article 257, § 2, then even in this case, the time limits for making an appeal would not begin to run with all the subsequent consequences of that fact. In

31. When the party has an advocate, or the tribunal has assigned him one, either by request of the party or *ex officio*, that fact does not excuse from the obligation of notifying the party of the sentence. In the Roman Rota, the legal assistant is both the procurator and the advocate, but even in this case, the Rota nevertheless notifies the party of the sentence, usually through the tribunal of first instance.
32. Leaving aside the academic questions arising from article 257, § 2, for example, why the paragraph begins with "Si locus est appellationi" ["If there is the possibility for an appeal"].
33. This is not an innovation. It finds its foundation in the law in force, summarized in article 27, § 1: the Roman Rota is the appeal tribunal of second instance along with the tribunals mentioned in article 25; however, all cases judged by any tribunal whatsoever in first instance may be deferred by means of legitimate appeal to the Roman Rota (cf. c. 1444, § 1, n. 1°; Apostolic Constitution *Pastor bonus*, art. 128, n. 1°).
34. Cf. art. 253, § 5.