

## **AN OVERVIEW OF A TRIBUNAL'S WORK**

1. The Church's Tradition points out that, in principle, marriage is open to every man and woman. It is the vocation of the majority of the human race. The Catholic Church presumes that every marriage – whether it involves a Catholic or not – is valid until the contrary is proven (c.1060). This presumption is not changed by the separation of a couple or by a civil divorce.
2. A declaration of invalidity by a tribunal of the Catholic Church is strictly an ecclesiastical matter and should not be confused with an "annulment" given by a civil court. According to the laws of the Catholic Church, it should also be clearly understood that the Tribunal's decree of invalidity does not affect the legitimacy of children born to the parties (c.1137). In the event a declaration of invalidity is given, "the children remain what they always were (John Paul II, *Familiaris Consortio*)." The parties are to be reminded of the moral and civil obligations that they may have to each other and to their children, especially as regards their support and education (c.1689).
3. A previously married non-Catholic who wishes to marry a Catholic has a legitimate interest in asking a tribunal of the Catholic Church to examine the question of the validity of his or her marriage, which has civilly ended in divorce. In such a case, the tribunal of the Catholic Church makes a judgment about the alleged invalidity of the marriage of two non-Catholics in order to determine whether one of them is free to marry a Catholic. If the non-Catholic is bound by a previous valid marriage, the Catholic Church, which does not recognize that civil divorce gives a right to remarry, cannot witness a Catholic's marriage to this person.
4. In judging the validity of the marriage of two non-Catholics, an ecclesiastical tribunal does not apply those laws of the Catholic Church that affect only marriages involving a Catholic, for example, the "form" or type of wedding ritual, but rather those principles arising from the natural law or divine positive law that affect the validity of any marriage. These elements belong to the very nature or essence of marriage itself as determined by the Creator and are not optional elements that can be included or excluded at will. Consequently, their positive exclusion from marriage consent makes such consent invalid. (Drawn from a response of the Apostolic Signatura in Roman Replies, CLSA, 1997, p. 26, c. 1476).
5. The canonical presumption of validity can be challenged before a Church tribunal by one of the parties of the marriage (c.1674). Such a challenge does not deny that there was a wedding but claims that, from the first, something essential was missing from the consent the two parties gave to marriage, for example, that one was not free in consenting to marry, or did not understand marriage as the Church means it, or did not mean what was said, or did not have the capacity to carry it out. It is incapacity and not mere difficulty in giving consent to marriage and in realizing a true community of life and love that renders a marriage invalid, Pope John Paul II noted; and the breakdown of a marriage union is not in itself proof of such incapacity (2 Feb. 1987, to the Roman Rota).