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The forgotten category of involuntary act (*actus involuntarius*). The value of involuntary act and its implications in canonical matrimonial law[1]

Zapomniana kategoria aktu mimowolnego (*actus involuntarius*). Walor aktu mimowolnego i jego implikacje w kanonicznym prawie małżeńskim

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Abstract: In the presented study, the Author's attention was focused on the category of an involuntary act (*actus involuntarius*), which is absent in current canonical doctrine. It was, however, the subject of attention of some medieval thinkers (Abelard, St. Thomas). The main research goal of this study is to determine the issue of this category's implication in the functioning of canonical marital law and the answer to the key question: Does the reference to the category of an involuntary act undermine the theory of a legal act used in marital law? By presenting the achievements of representatives of medical and psychological sciences aho have researched the human brain, the Author demonstrated that the results of research indicate the existence of acts determining human action that remain outside the volitional sphere. In his opinion, however, the assumption of the existence of such acts does not undermine the theory of a legal act. By examining the defects of matrimonial consent which are related to the functioning of reason (simulation, error, lack of the use of reason, lack of discretion of judgment), the Author took the position that, in all of these hypotheses, the lack of will results in the absence of *consensus*, which is reflected in the absence of marriage (*matrimonium inexistens*).

Keywords: involuntary act, free will, reason, theory of legal act, canonical marriage

Streszczenie: W zaprezentowanym opracowaniu przedmiotem uwagi Autora stała się nieobecna we współczesnej doktrynie kanonistycznej kategoria aktu mimowolnego (*actus involuntarius*), a która była przedmiotem uwagi niektórych średniowiecznych myślicieli

[1] This article is the English version of the article published on page 5 by Rev. Prof. Ginter Dzierżon.

(Abelard, św. Tomasz). Zasadniczym celem badawczym opracowania stała się kwestia implikacji tej kategorii w funkcjonowaniu kanonicznego prawa małżeńskiego, a także odpowiedź na kluczowe pytanie: Czy nawiązanie do kategorii aktu mimowolnego nie podważa teorii aktu prawnego, stosowanej w prawie małżeńskim? Prezentując dokonania przedstawicielli nauk medycznych i psychologicznych nad mózgiem ludzkim Autor ukazał, iż rezultaty badań wskazują na istnienie aktów determinujących ludzkie działanie, pozostających poza sferą wolitywną. W jego opinii założenie istnienia takich aktów nie podważa jednak teorii aktu prawnego. Badając wady zgody małżeńskiej wiążące się funkcjonowaniem rozumu (symulacja, błąd, brak używania rozumu, brak rozenania oceniającego) Autor stanął na stanowisku, iż w wszystkich tych hipotezach brak woli skutkuje nieistnieniem konsensu, co znajduje przełożenie w nieistnieniu małżeństwa (*matrimonium inexistens*).

Słowa kluczowe: akt mimowolny, wolna wola, rozum, teoria aktu prawnego, małżeństwo kanoniczne

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Introduction

The category of a legal act and the theory associated with it together play a key role in the interpretation of the functioning of the institution of canonical marital law. According to its assumptions, the volitional sphere is particularly highlighted in the human decision-making process[2]. In considerations on the canonical order, one omits (most likely due to forgetting) a seemingly trivial category, which is the category of an involuntary act (*actus involuntarius*). This was the subject of interest of some medieval thinkers.

It seems that modern times, characterized by dynamic development of research in many fields of knowledge (including the medical and psychological sciences) demand a new recall and a new reflection on this category in canon law. Therefore, two fundamental questions

[2] G. Dzierżon, *Niezdolność do zawarcia małżeństwa jako kategoria kanoniczna*, Warszawa 2002, p. 34-36.

must be asked: Will the use of the category of an involuntary act in the marital law undermine the theory of a legal act that has been used so far? On the other hand, will it also undermine the currently used principles of adjudication in trials? Additionally, it would be necessary to ask about the further implications that result from the existence of this category.

The responses to these questions are the purpose of the research exploration in this study. However, the research goal (defined in this way) requires the use of an appropriate methodology, which will determine the structure of this article. The mentioned theory of a legal act is based on voluntarism, which particularly emphasizes free will. This concept is associated with the thesis that the legal effectiveness of the action taken is mainly determined by the volitional sphere. However, when addressing this issue, it should be noted that, in contemporary reality, the existence of the phenomenon of free will is questioned. As a result, when analyzing the intended research problem, we cannot abstract from the existing situation. Therefore, the starting point of the arguments will be a synthetic presentation of current discussions on this matter. Outlining this issue will provide a context for further considerations on the key issue of the value of *actus involuntarius* and its implications in marital law.

1. Controversy over the Concept of the Category of Free Will

For both canonists and theologians, man's free will seems obvious. However, when considering this topic, we must be aware that not all contemporary scientists share this anthropological vision. When reviewing the studies devoted to this issue, it is easy to notice that there are many publications in which the authors deny the existence of this phenomenon[3]. Interestingly, Sam Harris's questioning of the existence of free will even seems to herald the end of faith's

[3] R. Sapolsky, *Determined. The Science of Life Without Free Will*, Dublin 2023; D.M. Wagner, *Illusion of Conscious Will*, Cambrigde 2017[2].

era[4]. On the other hand, we cannot abstract from the fact that, in most areas of canon law, the category of a free will is a key category, an example of which is, among others, material marital law. One must also be aware that, when speaking about free will, we are dealing with a certain conceptual construct[5] that functions, among others areas, in Christian anthropology. This field does not have the character of naturalistic anthropology, but rather adheres to theoanthropology, also known as theological anthropology.

The anthropological concept of the human unity of reason and will in the first centuries of Christianity, as Jan Kiełbasa noticed, was not derived only from empirical knowledge and descriptive language, but also from those premises related to the phenomenon of faith and normative language, which found its expression in religious valuation[6]. This approach resulted in medieval voluntarism[7], a direction in which the will had an advantage over the intellect[8]. According to Kiełbasa, two factors had a significant impact on the formation of the medieval concept of free will: these were philosophical and theological in nature. From a philosophical perspective, free choice is not only any desire, but above all it is free judgment, in which the contribution of reason determining the will is crucial. On the other hand, in the mixed theological concept, the intellectual-volitional nature of free choice

[4] S. Hariis, *Free Will*, New York 2012.

[5] M. Bizoń, *Psychologia etyczna w myśli greckiej okresu klasycznego i hellenistycznego*, in: *Historia rozwoju pojęcia woli od starożytności do XII wieku*, J. Kiełbasa (ed.), Kraków 2022, p. 21.

[6] J. Kiełbasa, *Ikoniczna koncepcja człowieka a jedność woli i rozumu na gruncie antropologii wczesnochrześcijańskiej*, in: *Historia rozwoju pojęcia woli od starożytności do XII wieku*, J. Kiełbasa (ed.), Kraków 2022, p. 99 (99-107).

[7] J. Kiełbasa, *Pierwsze zapowiedzi późnośredniowiecznego woluntaryzmu w myśli XII wieku*, in: *Historia rozwoju pojęcia woli od starożytności do XII wieku*, J. Kiełbasa (ed.), Kraków 2022, p. 235-249.

[8] J. Herbut, *Woluntaryzm*, in: *Leksykon filozofii klasycznej*, J. Herbut (ed.), Lublin 1997, p. 542-543.

is emphasized – it is something characteristic of the rational soul – thanks to which the subject has the ability to distinguish good from evil[9].

In this context, it should be noted that the current philosophical and psychological doctrine on the relationship between the intellect and the will is not homogeneous. Generally, there are three directions: determinism, compatibilism, and indeterminism[10]. Determinists opt for the determination of will[11]; compatibilists maintain that free will and determinism are compatible[12]; and finally, indeterminists believe that a free man is capable of self-determination. The last of the mentioned trends is the basis of Christian anthropology. In this concept, valuation is particularly emphasized in relation to the decision-making process. It assumes, on the one hand, the existence of interaction between reason and the will. On the other hand, one finds the ability of man to enact self-determination, in which the decisive role is played by the volitional sphere[13]. However, in canonical research, the category of an involuntary act, in which a decision is made without the volitional sphere, is omitted (or forgotten?). As noted in the introduction,

[9] J. Kiełbasa, *XII-wieczna konfrontacja definicji i charakterystyk wolnego wyboru (liberum arbitrium)*, in: *Historia rozwoju pojęcia woli od starożytności do XII wieku*, J. Kiełbasa (ed.), Kraków 2022, p. 251 (p. 250-272).

[10] J. Dobrowolski, *Czy wola jest wolna?*, Warszawa 2022, p. 7-27.

[11] K. Rojek, *Wolność w kontekście determinizumu–analiza porównawcza–teorii N. Hartmanna i R.H. Kane'a*, Lublin 2019; H. Borowski, *Problem wolnej woli a determinizm*, Annales Universitatis Mariae Curie – Skłodowska 16 (1961) no. 2, p. 23-31; G. Munévar, *Naturalistyczne wyjaśnienie wolnej woli (I)*, Filozoficzne Aspekty Genezy 10 (2013), p. 112. The author emphasized that if determinism is true, then we are not morally responsible for our actions and are not truly free beings. He noted that, according to determinism, all action is causally conditioned. As a result, we can never act differently, and if we cannot act differently, then we are not truly free.

[12] S. Judycki, *Wolność i determinacja*, in: *Materiały V Światowego Kongresu Filozofii Chrześcijańskiej: KUL – Lublin, 20-25 sierpnia 1996*, Lublin, p. 9-11, https://www.kul.pl/files/108/Wolnosc_i_determinacja.pdf [access 15.03.2025].

[13] P. Gherri, *Discernere e scegliere nella Chiesa*, in: *Discernere e scegliere nella Chiesa. Atti della Giornata Canonistica Interdisciplinare*, P. Gherri (ed.), Roma 2016, p. 15.

in the past, an involuntary act was the subject of attention of some representatives of the medieval doctrine.

2. An Involuntary Act

In this study, we would like to address the key issue from two perspectives: the approach of some medieval thinkers and the current results of brain research. The adoption of such an assumption requires some explanation. Namely, understanding the problem of *actus involuntarius* seems incomplete without reference to medieval thinkers, who were the first to take up and consider this issue. They, however, saw the origin of this type of act in the improper functioning of human reason. If this were the case, in connection with the undertaken research goal, it would also be necessary to present current discoveries in research on the brain, which embodies reason.

2.1. An Involuntary Act According to Various Medieval Thinkers

In the Middle Ages, the category of an involuntary act in the variant that interests us was considered by Peter Abelard (1079–1142) and St. Thomas Aquinas (1224–1274).

2.1.1. Peter Abelard

The problem of an involuntary act was the subject of Peter Abelard's research interest. This philosopher was a supporter of rationalistic and open philosophy[14]. In the ethical considerations of this thinker, the issue of the will's freedom appeared[15]. His views, which were especially expressed in the *Commentary on the Epistle of St. Paul to the Romans*[16], focused on the problems of existential tension between the inner and outer spheres, intention and action, and between

[14] R. Palacz, *Abelard*, Warszawa 1966, p. 96.
[15] R. Palacz, *Abelard*, Warszawa 1966, p. 90-91
[16] Petrus Abelardus, *Expositio in Epistolam ad Romanos*, PL 178, p. 731-782.

introspection and law[17]. The subject of this thinker's particular attention was the situation of the individual as the subject of action. Abelard supported, on the one hand, the identification of truth with the invisible inner sphere of the individual, and on the other, God's exclusive competence in relation to this sphere[18]. From this perspective, he opted for the irrelevance of reality manifested in events or gestures[19]. In the *Ethics*, he maintained, among other points: "Leaving the sins of the soul to the divine judgment, we pursue their consequences by the sentence of our own judgment, which we ourselves can judge, paying attention, as I said, in such cases more to prudence, that is, to the motive of safety, than to justice itself. God, on the other hand, determines in an absolute way the punishment for each according to the gravity of the sin"[20]. Then he added: "In giving retribution for good and evil, God takes into account only the inner disposition, not the results of deeds, nor does he look at what comes from guilt or good will, but judges the spirit itself, according to the purpose of its intention, and not according to the effect of the external deed"[21]. It should be emphasized that this concept also appeared in his following work, *A Conversation Between a Philosopher, a Jew, and a Christian*, in which the philosopher argued: "Indeed, because the difference lies in reality itself, and does not depend on human opinion. People judge and reward the effects of action rather than moral value itself, and according to the external deeds they look at, they judge some as just or braver or better than others"[22].

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[17] S. Menzinger, *Finzioni del diritto medievale*, Macerata 2023, p. 28.

[18] P. Abelard, *Rozprawy. Etyka czyli poznaj samego siebie*, transl. L. Jachimowicz, Warszawa 1969, p. 195-196. Abelard wrote that God penetrates our intentions or consents. However, we are not able to examine these things and judge them rightly; therefore, we pay attention to external actions and punish not so much for the sin as for the deed. See also S. Menzinger, *Finzioni del diritto medievale*, p. 29.

[19] S. Menzinger, *Finzioni del diritto medievale*, p. 29.

[20] P. Abelard, *Rozprawy. Etyka*…, p. 197.

[21] P. Abelard, *Rozprawy. Etyka*…, p. 198. See A. Domańska, *Koncepcja czynu moralnego w etyce Piotra Abelarda*, Studia Filozoficzne 10 (1979), p. 49-51.

[22] P. Abelard, *Rozprawy. Rozmowa pomiędzy filozofem, Żydem i chrześcijaninem,* transl. L. Jachimowicz, Warszawa: Pax 1969, p. 201, p. 83.

Abelard clearly distanced himself from the idea that sin could be an act in itself, because in his opinion, there are no good or bad actions in themselves[23]; in this case, he considered human intention to be the most important[24]. He argued that actions in themselves are not sinful because, in many cases, they are the result of ignorance, mental incapacity, or coercion[25]. In referring to ignorance he said: "So if it happens that someone in ignorance marries his sister, will he be a criminal?"[26]. He maintained the thesis that a person who sins in ignorance is not guilty of the act he has committed[27]. He held the opinion that an intentionality is not a sufficient criterion for assessing an act, because in a specific case, the behavior may be intentional, but rather involuntary[28]. He was convinced that the actions performed do not, in principle, mean anything if we do not know the mental state of the action's subject[29]. While explaining these views, Etienne Gilson stated: "It may be that the works of such men are indeed evil, but how can they be responsible for it if they cannot know it?"[30]. Ryszard Palacz, on the other hand, noted: "Abelard claimed that someone who cannot use his reason and freedom cannot be accused of guilt and violating rights, and has nothing in himself that would be subject to punishment"[31].

[23] K. Siemieński, *Doktryna etyczna Piotra Abelarda*, Studia Filozoficzne 182 (1981) no. 1, p. 155; S. Menzinger, *Finzioni del diritto medievale*, p. 29.
[24] K. Siemieński, *Doktryna etyczna*…, p. 156.
[25] S. Menzinger, *Finzioni del diritto medievale*, p. 30.
[26] P. Abelard, *Rozprawy. Etyka*…, p. 183. On the importance of ignorance in behaviour according to Abelard, see A. Domańska, *Koncepcja czynu moralnego*…, p. 48.
[27] P. Abelard, *Rozprawy. Etyka*…, p. 215.
[28] S. Menzinger, *Finzioni del diritto medievale*, p. 30.
[29] Por. S. Menzinger, *Finzioni del diritto medievale*…, s. 30:
[30] E. Gilson, *Historia filozofii chrześcijańskiej w wiekach średnich*, transl. S. Zalewski, Warszawa 1987, p. 149.
[31] R. Palacz, *Abelard*, p. 97.

2.1.2. St. Thomas Aquinas

The topic of an involuntary act appears in the moral philosophy of St. Thomas. He maintained that human judgment is the effect of a rational decision. Its freedom is closely connected to cognitive power, which he associated with the intellect. In his view, the possession of the intellect also assumed the possession of free will. It should be noted that he understood free choice integrally, and assuming the proper functioning of both cognitive power (reason) and rational desire (will)[32].

It should be recalled that the subject of our attention is only one aspect of his anthropology, namely, the issue of the will's involuntariness. The Angelic Doctor considered this as he reflected on the issues of violence, fear, desire, and ignorance. We are only interested in the issue relating to ignorance. According to St. Thomas, generally speaking, ignorance deprives a person of proper discernment, thus leading to a limitation of the voluntariness of the act. In his concept, in addition to the accompanying ignorance, he also distinguished the ignorance that precedes the act of will, maintaining that the occurrence of the latter may be associated with involuntariness. It cannot be ruled out, he argued, that the subject may desire what he would not want if he had the missing knowledge[33].

In Thomas's view, there is also a thread following freedom's defect. He argued that this occurs when the act does not pursue the intended goal, while the failure to achieve the intended goal is not indirectly wanted (*indirettamente voluta*). In this hypothesis, the defect of freedom depends mainly on the functioning of the intellect's sphere[34].

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[32] I. Andrzejczuk, *Od etyki Arystotelesa do filozofii moralnej Tomasza*, Warszawa 2021, p. 60-61.

[33] I. Andrzejczuk, *Od etyki Arystotelesa do filozofii moralnej Tomasza…*, s. 65-66.

[34] S. Th., I q.62, a.8 ad 3: „Liberum arbitrium sic se habet ad eligendum ea quae sunt ad finem, sicut se habet intellectus ad conclusiones. Manifestum est autem quod ad virtutem intellectus pertinet, ut in diversas conclusiones procedere possit secundum principia data: sed quod in aliquam conclusionem procedat praetermittendo ordinem principiorum, hoc est ex defectu ipsius. Unde quod liberum

Thomas also addressed the problem of the causality of the choice of evil, the cause of which lies in the sphere of the intellect. While addressing this issue, his argument ran as follows: the will does not seek evil directly, for two reasons: first, evil has no being (*entità*); second, the will tends to the good; the good, in turn, is presented to it by the intellect. Hence, the defectiveness of the will in striving for good is generated by the defectiveness or imperfection of the functioning of the intellect. The source of the defectiveness of the intellect is an imperfect perception of the good's nature. In the concept of this outstanding thinker of the Middle Ages, the intellect is the source of a bad choice in the sphere of will[35].

The presented arguments show that regarding an involuntary act, the aforementioned medieval thinkers assigned an important role to improperly functioning reason. This role is also emphasized today. An example is the observation made by Lisa Feldman Barrett, who noted that, as a rule, in legal systems, the category of a rational person is considered the standard. This assumption, in her opinion, results from cultural conditions[36]. Taking this fact into account, but also considering the research purpose of this study, we want to focus on the approach to the category of the intellect and its participation in decision-making processes in non-canonical sciences. We are convinced that the understanding of the category of reason in the ecclesiastical law has a canonical character: anthropological and legal. The subject of our special attention will be brain research and its results in medical and psychological sciences.

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arbitrium diversa eligere possit servato ordine finis, hoc pertinet ad perfectionem libertatis eius: sed quod eligat aliquid divertendo ab ordine finis, quod est peccare, hoc pertinet ad defectum libertatis"; F. Bergamino, *La razionalità e la libertà della scelta in Tommaso D'Aquino*, Roma 2020², p. 98-99.

[35] F. Bergamino, *La razionalità*…, p. 203-207; I. Serrano del Pozzo, *Debilidad de la voluntad y dominio racional: el problema de la incontinencia y la continencia en la filosofía de Tomás de Aquino*, Pamplona 2012, p. 207-209.

[36] L. Feldman Barret, *How Emotions Are Made. The Secret Life of the Brain*, Dublin 2008, p. 226.

2.2. An Involuntary Act in Modern Medicine and the Psychological Sciences

Consideration of the results of research in medicine and the psychological sciences require the presentation of certain methodological assumptions.

2.2.1. Methodological Assumptions

When being aware of the importance of the intellect in the area of human actions, as was previously mentioned, we will attempt to show the current results of brain research, while taking into account the option of determining those processes occurring in the brain outside the volitional sphere. In justifying the purposefulness of this intention, we would like to recall Łukasz Kurek's view. Kurek maintains that, in philosophical discourse on the phenomenon of free will, one cannot ignore empirical hypotheses regarding the functioning of the brain[37].

Therefore, the question arises: How do representatives of modern medical and psychological sciences, especially the neurobiological sciences, perceive the indicated problem? It seems that this question should be profiled even more precisely: What are the results of research on the functioning of the brain in the matter we are interested in, namely, the matter of the involuntary aact? When considering this problem, it is necessary to make a certain methodological remark. Since this study is an article, the intended purpose will not be an exhaustive presentation of the specific problem, but only its outline. Therefore, it seems important to, first of all, draw attention to the challenge(s) facing current canon studies regarding the existence of an involuntary act.

[37] Ł. Kurek, *Problem wolnej woli z perspektywy nauk empirycznych*, Logos i Ethos 1 (30)(2011), p. 123.

2.2.2. An Involuntary Act in Medical and Psychological Research in relation to the Functioning of the Brain and Its Canonical Implications

The literature indicates that people and their behaviors are usually influenced by a wide range of determinants. The main determinants are considered to be: genes, as well as environmental and cultural influences[38]. We, however, are interested exclusively in the brain embodying systemic reason, and in research on it; more specifically, the subject of our considerations is the problem of determining human action in this sphere, without the participation of consciousness.

An interesting topic has surfaced in modern medical and psychological publications. Covert emotional regulation processes have been defined by Sander L. Koole and Klaus Rothermund as processes that an individual carries out without their conscious insight or overt intention. These processes are intended to modify the quality, intensity, and duration of an emotional response[39]. Romana Kadzikowska-Wrzosek claims that psychologists have already provided evidence of an occurrence of actions aimed at achieving a specific goal without the participation of consciousness. This was reflected, among others instances, in the *Zeigarnik effect*, which manifests itself in the fact that "the cognitive system remains involved in the process of achieving the goal, regardless of the fact that at the conscious level this process has been interrupted"[40]. A team led by Gordon B. Moskowicz talks about the hidden will[41]. In addition, in studies devoted to this issue,

[38] R. Kadzikowska-Wrzosek, *Determinizm i nieświadoma wola a podmiotowość*, Psychologia Społeczna 21 (2012) no. 7, p. 141 (p. 140–150).

[39] R. Kadzikowska-Wrzosek, *Determinizm i nieświadoma wola a podmiotowość…*, s. 146.

[40] R. Kadzikowska-Wrzosek, *Determinizm i nieświadoma wola a podmiotowość…*, s. 143.

[41] G.B. Moskowitz, P. Li, E.R. Kirk, *The implicit volition model: On the preconscious regulation of temporarily adopted goals,* Advances in Experimental Social Psychology Journal 36 (2004), p. 317–413; R. Kadzikowska-Wrzosek, *Determinizm…*, p. 143.

the term *unconscious will*[42] is used, indicating that hidden motives can generate automatic or secret actions[43].

It should also be noted that, in modern cognitive science, there have appeared hypotheses in which automatic behaviors are not excluded. According to Marta Glinka, automatic behaviors are generated as a result of the sequential activation of the transmitter. She described these mechanisms as follows: "It is based on the previously strengthened connections between the neurons recognizing the stimulus and the neurons evoking the appropriate behavior (unconscious action). Voluntary responses require the participation of executive system neurons, which perform all the operations necessary to implement consistent behavior"[44]. When referring to the issue of involuntary actions, Feldman Barrett noticed that, in the brain network of neurons, everything is not always under control[45]. This trend is also reflected in the view of Maria Jakymowicz, who maintains that human functioning is largely generated by mechanisms and processes over which the person has no conscious control[46]. In her concept, she distinguished between the categories of primary and secondary unconsciousness. In her opinion, primary unconsciousness contains what has never been reflected on; secondary unconsciousness,

[42] P. Anselme, *Unconscious will as a neurobehavioral mechanism against adversity*, Neuroscience and Biobehavioral Reviews 169 (2025), p. 10 (p. 1-14). Unconscious--will-as-a-neurobehavioral-mechanis_2025_Neuroscience---Biobehavi.pdf [access 17.01.2025].

[43] R.M. Ryan, E.L. Deci, *Self-Regulation and the Problem of Human Autonomy: Does Psychology Need Choice, Self-Determination, and Will?*, Journal of Personality 74 (2006), p. 1573: „(…) we defined automatic behaviors as those that are pushed by controlled processes and whose occurrence is not easily brought into the realm of active choice. (…) Such behaviors become automatized because they afford efficiency, given the limitations of conscious processing capacities. Such a distinction is still needed for interpreting nonconsciously prompted actions, their mal leability and their meaning".

[44] M. Glinka, *Rola komórek glejowych w procesach poznawczych*, in: *Próby kognitywistyczne*, A. Gut, Z. Wróblewski (ed.), Lublin 2012, p. 75 (p. 73-84).

[45] L. Feldman Barret, *How Emotions…*, p. 225.

[46] M. Jakymowicz, *Psychologiczne podstawy podmiotowości. Szkice teoretyczne, studia empiryczne*, Warszawa 2008, p. 20.

alternatively, concerns conscious and immediate contents that soon disappear from the field of consciousness. In Jakymowicz's opinion, however, they do not disappear from the mind, instead remaining there in a latent form.

According to Jakymowicz, "The scale of unconscious information processing and its automatic impact on functioning is unimaginable (…) for the average person"[47]. Jakymowicz's view is not shared by Kadzikowska-Wrzosek, who argues that knowledge about the determinants of human behavior and the interactions between them requires great caution when using categories of generalization[48]. This observation seems to be confirmed by Richard M. Ryan and Edward L. Deci, who argue that most human behaviors are not automatic. However, these researchers did not rule out the autonomy of certain life functions[49].

In response to the presented materials, a certain observation should be made. Apart from the terminology used in publications, from the canonical point of view, we are interested in, not so much the scale of the phenomenon, but rather in the occurrence of actions thaat exists in the sphere of the intellect without the participation of the will, because this indicates the possibility of the appearance of involuntary acts, which holds a certain theoretical and legal significance. Therefore, it must be strongly emphasized that there is no doubt that not ruling out the occurrence of such a phenomenon in the brain sphere carries certain repercussions in canonical marital law. As noted in the Introduction, the dominant theory in this area is the theory of a legal act, which does not assume the legal effectiveness of actions (activities) without the participation of the will. This raises the question: Does using this category undermine this theory?

The analyses carried out show that the intuition of some medieval thinkers (such as Peter Abelard and St. Thomas Aquinas) regarding the existence of a specific category of involuntary acts (which are

[47] R. Kadzikowska-Wrzosek, *Determinizm*…, s. 141.
[48] R. Kadzikowska-Wrzosek, *Determinizm*…, p. 141.
[49] R.M. Ryan, E.L. Deci, *Self-Regulation*…, p. 1573-1580.

absent or have been forgotten in modern doctrine) is reflected in contemporary medical and psychological research on the functioning of the brain. This indicates the possibility of such a phenomenon occurring in the brain sphere, without the participation of the will. It should be emphasized once again that the scale of this phenomenon is not important for our considerations, but the very fact of its existence is. For this reason, the category of an involuntary act should become present in canonical reflection. In other words, it should not be omitted. In connection with this, the question should be asked once again: Does invoking the category of an involuntary act undermine the application of the theory of a legal act based on the concept of voluntarism? When asking this, we should also be aware of the fact that there are currently many opinions that criticize voluntarism. Moreover, Feldman Barrett, while critically referring to this concept, noted that in it, the will was also mixed into the categories of the mind and brain[50]. There are many thinkers who place free will in the brain[51]. In this regard, it should be emphasized that canon law (as an autonomous field of knowledge) has the right to define the tools and develop the theories it uses in reflecting on man and the reality surrounding him.

In an attempt to respond the previously posed question regarding the appropriateness of applying the theory of a legal act, several hypotheses from the area of substantive law should be considered. First of all, it should be stated that the occurrence of an involuntary act should be perceived in terms of a defect of the will, because – in this case – we are dealing with a man's act (*actus hominis*), and not with a human act (*actus homanus*)[52], which is manifested in the fact that there is a discrepancy between the manifestation of the will and its real existence (in the hypothesis of interest to us, this will does

[50] L. Feldman Barret, *How Emotions…*, p. 224: „The legal system, with its essentialist view of the mind and brain, mixed up volition".

[51] F. Crick, *Zdumiewająca hipoteza, czyli nauka w poszukiwaniu duszy*, transl. B. Chacińska-Abrahamowicz i M. Abrahamowicz, Warszawa 1997, p. 349-354.

[52] Z. Perz, *Actus humanus. Teologiczne aspekty działania moralnego*, Warszawa 1999.

not exist at all). It should also be clarified that, in this case, we can speak of a certain analogy to total simulation in the form of *simulatio voluntatis* (the lack of a positive act of will), in relation to which the rotal judicature made a distinction between *voluntas simulandi* and *simulatio voluntatis*. As a side note, it should be emphasized that Carl Holböck, when discussing rotal judgments from 1909-1946, at one point writes about "De conscientia defectus consensus", where he basically discusses can. 1085 CIC/1917[53] in relation to the simulation of marriage[54].

However, it seems that this observation is not enough. We should refer to the concept of error as the next part of the discussion, because this defect is related to the functioning of reason, reflected in the disruption of the cognitive sphere, which is characterized by a certain inadequacy with reality[55]. According to the assumptions of the canonical concept, an error in itself does not generate the invalidity of the act, because the mechanism of its operation is that there is an involuntary discrepancy between the internal will and the external manifestation[56]. This principle is reflected, among others, in the content of can. 1099 CIC/1983[57], which states that error does not, by itself, determine the will. It should therefore be noted that, if these is this assumption, the category of *actus involuntarius* does not violate the principle of the legal act theory.

Continuing in this line of thought, it would also be appropriate to address the issues of the insufficient use of reason (can. 1095, 1°

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[53] *Codex Iuris Canonici Pii X Maximi iussu digestus Benediicti Papae XV auctoritatae promulgatus-25.01.1917,* AAS 9 (1917), pars II, p. 1-593.

[54] C. Holböck, *Tractatus de jurisprudentia Sacrae Romanae Rotae*, Graetiae-Vindobonae-Coloniae 1957, p. 151-152.

[55] I. Granado Hijelmo, *Error*, in: *Diccionario general de Derecho canónico*, J. Otaduy, A. Viana, J. Sedano (ed.), vol. 2, Pamplona 2012, p. 661.

[56] G. Moscarello, «*Error qui versetur circa id quo substantiam actus constituit» (can. 126)*, Roma 2001, p. 13.

[57] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; Polish tekst: *Kodeks prawa kanonicznego promulgowany przez papieża Jana Pawła II w dniu 25 stycznia 1983 roku*. Legal status of May 18, 2022. Updated Polish Transaltion, Poznań 2022.

CIC/1983), the grave lack of discernment in judgment (can. 1095, 2° CIC/1983), as well as ignorance (can. 1096 CIC/1983). It should be noted that the Apostolic Exhortation *Amoris Laetitia* (no. 302) does not exclude "imputability and responsibility for an action can be diminished or even eliminated (sic!, emphasis G.D.), as a result of ignorance"[58]. In the case of the above-mentioned hypotheses, the matter becomes more complicated. It should be noted that, an involuntary act may indeed affect the functioning of reason or discernment, but this has no bearing on the volitional sphere. This argument should go even further, asking about the influence of the subconscious mind on decision-making freedom. And in this case, the matter seems to be open.

To summarize this section, it should be stated that, from the perspective of the theory of a legal act, the first two hypotheses concerning simulation and error did not pose any major interpretational difficulties; however, they pile up in relation to the lack of sufficient use of reason, a serious lack of evaluative discernment, ignorance, as well as the issue of the influence of the subconscious mind on decision-making freedom. It seems that these hypotheses also fit into the assumptions of this theory based on voluntarism, because, in the case of an involuntary act, there is a lack of will.

In addition to those problems in the area of substantive law, the category of *actus involuntarius* also raises other questions and generates certain problems related to the methodology used in legal disciplines, including canon law[59]. Reflection on the discussed subject raises the question of the nature and limits of the possibilities of the tools used by canon law to assess the factual state of the cases being decided, especially in the scope of the individual's freedom of decision. As it is known, in the process of declaring the invalidity

[58] Franciscus, *Adhortatio Apostolica «Amoris Laetitia»-19.03.2016*, AAS 108 (2016), p. 435 (hereinafterAM).

[59] M. Nacci, *I principia generali del diritto nell'argomentazione canonica: brevi cenni storici*, in: *Logica e Diritto: tra argomentazione e scoperta*, P. Gherii (ed.), Roma 2011, p. 356.

of a marriage, the evidence is based on the facts present in the case. Michel Taruffo aptly observed that it is not about the facts themselves, but rather about the facts described and interpreted by the parties and witnesses[60]. In this context, Abelard's observation seems to be accurate, namely, as a rule, we evaluate external behaviors. Therefore, the possibility of adequately assessing the internal state of an individual in the case of an involuntary act in the area of brain functioning raises serious doubts. A question arises: To what extent, by the tools used, are experts are able to determine with certainty – in specific circumstances – an involuntary act can be said to have occurred? This question generates a folow-up one: Do we have effective tools that allow us to clearly distinguish the state of determination from the state of auto-determination? It is true that this thesis can be supported by systemic principles of the need to achieve moral certainty in adjudication or by the assumption of legal truth about marriage. Despite this point, these systemic theses still do not dispel certain doubts about the sufficiency of the tools used.

Finally, it should be noted that, when operating with the category of legal truth about marriage, we should be aware of its limitations, in the sense that we should not absolutize it. The already-mentioned Apostolic Exhortation *Amoris Letitiae* (no. 301) calls for individual discernment regarding certain irregular situations. However, in this case, we must be convinced that human discernment is also limited in the context of the possibility of an involuntary act. Karl Rahner made the following reflection regarding the expression of human religious acts. It seems that his observation can also be applied to all (human) inner cognitive experience. He stated: "The individual and their most profoundly inner character of acts (…) (which really belongs to their essence) is absolutely inaccessible, in a direct way, to the external experience (…). Hence, there is the constant possibility and relentless danger of taking, for these facts, what emanates from the superficial layers of the human personality and has only, for a cursory view,

[60] M. Taruffo, *Il concetto di «Prova» nel diritto processuale*, in: *Linguaggi e concetti nel diritto*, P. Gherii (ed.), Roma 2013, p. 183

the semblance of acts (…) in the true sense of the word"[61]. As a result, it seems that Abelard's thesis is still relevant, that the whole truth about man and his actions is known only to God. Objectively, this sphere remains a mystery for the human being. This thesis should also be applied to the phenomenon of marriage.

Conclusions

In this study, the issue of the value of an involuntary act, which was the subject of reflection by some medieval thinkers, was re-examined. Attempting was made to address it in the field of canon law, especially in the area of marital law. The main goal of the research exploration was to seek an answer to the question: Does the invocation of the category of *actus involuntarius* in marital canon law undermine the theory of a legal act that has been used in canon law so far? Based on the analyses carried out, we can certainly draw a positive conclusion, expressed in the thesis stating that this theory has not been questioned. On the contrary, the analysis of the category of an involuntary act has undoubtedly deepened the reflection on the complexity of the mechanisms of its functioning, especially in the scope of the invalidity of a legal act. Therefore, it should be noted that there is no doubt that the results of research on the human brain indicate that involuntary acts, i.e. those that exist in the sphere of reason, are undertaken without the participation of the will.

At this point, it should be recalled that the theory of a legal act is of a voluntaristic nature, therefore, the volitional sphere plays a decisive role in the decision-making process. In the case of *actus involuntarius*, there is a lack of will, because the will is not determined. In argumentation, it should be noted that according to systemic solutions, matrimonial consent is an act of will (can. 1057 §§ 1-2 CIC/1983). Hence, if there is a lack of will in the decision being made, and this is the case with *actus involuntarius*, then we encounter the most

[61] K. Rahner, *O możliwości wiary dzisiaj*, transl. A. Morawska, Kraków 1983, p. 158.

radical category of invalidity of the act, which is its non-existence (*ineixistentia actus iuridici*); more precisely, in this case, there is the non-existence of *consensus* (*inexistentia consensus*), which involves the non-existence of a marriage (*inexistentia matrimoni*). It should be emphasized that the specificity of the examined hypotheses (simulation, error, the lack of the use of reason, the lack of evaluative discernment) is that these acts have the physiognomy of consent's defects. Substantially, however, the consent expressed by the spouses is not defective, but it will not come into being. As a result, if there is no efficient cause of marriage, then the marriage will not come into being. To support this thesis, we would like to recall Grzegorz Erlebach's observation, when, in referring to systemic solutions, he maintained that various doctrinal classifications may occur in legal systems. On the one hand, the figures of invalidity may be distinguished in different ways, while on the other hand, the degrees of invalidity of individual figures of the invalidity of an act may vary[62].

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[62] G. Erlebach, *Il «capo di nullità» secondo la giurisprudenza della Rota Romana*, Quaderni dello Studio Rotale 19 (2009), p. 134-136: „Sono possibili, infatti, varie classificazioni dottrinali, a seconda del criterio di distinzione che viene adoperato o del modello dottrinale di riferimento. Perciò le figure di nullità possono essere individuate in diversi modi. Inoltre, vari possono essere i gradi di profondità d'individuazione delle singole figure di nullità".

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