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**Waginizm jako przyczyna nieważności małżeństwa
w świetle kan. 1084 KPK z 1983 r.**

Vaginismus as the marital impediment (can. 1084 CIC of 1983)

Introduction

Sexual disorders in women are a broad problem that is being dealt with by numerous specialists in a range of various disciplines, starting from medicine and gynaecology, through psychology and sexology and finishing with legal sciences, including the canon law. While describing disorders of this kind, we can use a continuum, the beginning of which are dissatisfactions (physiological changes together with emotional frustration), subsequently disfunctions (pathological reactions - both physical and affective), ending with sexual disorders (physical pathologies and the disfunction of sexual organs and also mental disorders)¹.

According to research and the assessments of specialists, disorders in the sexual realm may affect even 40 to 50% of women, whereas the detectability and the percentage of women subjected to treatment is low. In many cases, a person suffering from a disfunction in this realm frequently does not realize the occurrence of irregularities or is not able to overcome embarrassment and seek the aid of a specialist. An element which is also a problem is the access to these specialists who are not numerous².

Sexual disfunctions include various disorders due to which the female patient is not able to participate in sexual intercourse in the way desired by her. This may demonstrate

¹ Cf. M. RAWIŃSKA, A. CZYŻKOWSKA, Z. LEW-STAROWICZ, *Klasyfikacja, etiologia oraz prawidłowe diagnozowanie zaburzeń seksualnych u kobiet – ZSK (FSD – Female Sexual Disorders). Czynniki biologiczne, psychoseksualne oraz kontekstualne*, *Medycyna Ogólna i Nauki o Zdrowiu*, 4 (2012), p. 334.

² Cf. M. STEFANKIEWICZ, S. ŚLĄSKI, *Diagnoza zaburzeń seksualnych u kobiet – adaptacja testu*, *Studia Psychologica* 10 (2010), p. 315.

itself by a decrease of interest, lack of contentment, an insufficient physiological reaction which is necessary during intercourse or the inability to control or reach orgasm³.

A frequent symptom which accompanies women in sexual disorders is pain associated with sexual intercourse, which is a matter that is diagnostically and therapeutically difficult⁴. Most frequently it is a core symptom of two main disorders associated with painful intercourse (dyspareunia) and vaginismus^{5,6}. These diseases are frequently the cause of sexual impotence in women. Vaginismus⁷, which is a disorder that hinders sexual intercourse or makes it impossible⁸, from the perspective of its cause may occur in two variations: as organic vaginismus and non-organic (i.e. psychogenic) vaginismus.

The first of them is caused by congenital or acquired anatomic deficiencies or organic problems of the reproductive organs. The second one, in turn, is based on disorders in the functions of genital organs, with an absence of clear anatomic changes in their scope, and the reasons are to be sought in the woman's mentality⁹.

In the canon perspective, the disease entity we are discussing may become the cause of an impediment to marriage or of the inability to assume the essential obligations of marriage. Therefore, when is vaginismus the cause of nullity of marriage in accordance with can. 1084 of the Code of Canon Law?¹⁰

³ Cf. *Międzynarodowa Statystyczna Klasyfikacja Chorób i Problemów Zdrowotnych, Klasyfikacja zaburzeń psychicznych i zaburzeń zachowania w ICD-10*, Kraków-Warszawa 2000, p. 162.

⁴ Cf. B. WRÓBEL, *Current views on etiology, diagnosis and the treatment of pain connected with sexual intercourse at women*, *Ginekologia Polska* 1 (2009), p. 38.

⁵ It is worth to know that the first description of vaginismus in literature comes from the year 1834 (Huguier), and the person who coined the term „vaginismus” was an American gynaecologist, Marion Sims (1862). In the literature of the 19th and the beginning of the 20th century it was believed that it is the result of women's ignorance (Faure and Sireday 1909), Cf. Z. LEW-STAROWICZ, *Seksuologia sądowa*, Warszawa 2000, p. 83.

⁶ Cf. B. WRÓBEL, *Ocena występowania bolesnego współżycia u kobiet w praktyce ginekologicznej*, *Ginekologia Polska*, 11 (2008), p. 763.

⁷ Such a name is present in The International Statistical Classification of Diseases and Related Health Problems ICD-10.

⁸ Cf. Z. LEW-STAROWICZ, *Leczenie czynnościowych zaburzeń seksualnych*, Warszawa 1985, p. 188; Z. LEW-STAROWICZ, A. DŁUGOŁĘCKA, *Edukacja seksualna*, Warszawa 2006, p. 180.

⁹ Cf. H. STAWNIAK, *Niemoc płciowa jako przeszkoda do małżeństwa*, Warszawa 2000, p. 183; H. STAWNIAK, *Przeszkoda niemocy płciowej*, [in:]: W. GÓRALSKI (ed.), *Przeszkody małżeńskie w prawie kanonicznym*, Warszawa 2016, p. 135.

¹⁰ It would be easiest to perform a simple division and claim that organic vaginismus is the cause of the occurrence of an impediment to marriage, whereas psychogenic vaginismus is the cause of inability, due to causes of a mental nature, to assume the essential obligations of marriage, due to the mental origin of the vaginismus. Unfortunately, however, such a simplified division cannot be performed, despite the fact that some authors suggest such a division. J. M. Pinto Gómez believes that psychogenic vaginismus causes the inability, due to matters of a mental nature, to assume the essential obligations of marriage, Cf. H. STAWNIAK, *Niemoc płciowa jako przeszkoda do małżeństwa*, op. cit., p. 210.

1. The definition of sexual inability

In order to answer this question it is necessary to briefly recall that vaginismus, in the broad and the canon sense, may be the cause of the impediment to marriage which is referred to as sexual inability¹¹. Within the meaning of the canon law, sexual inability should be understood as the inability to matrimonial sexual intercourse, which is based on a congenital or acquired, broadly understood, deficiency (in this case occurring on the side of the woman) precluding sexual intercourse which, by nature aims at giving birth to children. In order to understand the justification for the introduction of this impediment, it is necessary to recall that marriage is directed at giving birth to children and raising them, and this is its highest capstone. However, impotence cannot be confused with the notion of infertility which, as the inability of fertilization and conception of offspring, as such, does not impede marriage and does not cause its nullity. This is because in such a case the spouses are able of having intercourse, but due to the existing infertility there is no conception, irrespectively of their will. The basis for the existence of the impotence impediment is divine natural law¹². Therefore, the Church does not dispense from this impediment¹³.

2. The attributes of sexual inability

The inability to have matrimonial sexual intercourse should be antecedent, permanent, doubtless and absolute or relative. The first attribute of impotence (in this case caused by vaginismus) is, therefore, its antecedence. It is considered in opposition to posteriority

¹¹ Canon 1084 n. 1 of the CIC: „Impotentia coeundi antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive absoluta sive relativa, matrimonium ex ipsa uis natura dirimit”.

¹² In the newly published monograph there is quite extensive criticism of such a perspective on the problem. The author, in a straightforward way, talks about a mistake of the current code and demonstrates its inconsistency referring to the description of what the partnership of conjugal life is supposed to be (can. 1055 § p.1), with subsequent norms. Moreover, it is stated that the law referring to the impediment of impotence is too rigorous and there is a need for its verification (Moneta), and moreover, it also focuses too strongly on the matrimonial sexual intercourse and it formulates it too biologically (Häring). In marriage law, the existence of this impediment is justified by the nature of marriage. However, as it seems, the nature of marriage does not require the ability to have sexual intercourse in every case (marriages in which people voluntarily resign from having sexual intercourse, marriages between elderly people, so-called Joseph’s marriage). In the end of his chapter devoted to the impediment of sexual inability, H. Stawniak postulates regulating the problematics of *impotentia coeundi* within the scope of can. 1098 and, thus, abolishing this impediment in the canon marriage law, Cf. H. STAWNIAK, *Przeszkoda niemocy płciowej*, op. cit., p. 150 -156.

¹³ Cf. J. KRZYWKOWSKA, *Przeszkoda niemocy płciowej w świetle wykładni kan. 1084 Kodeksu Prawa Kanonicznego z 1983 roku*, *Studia Prawnoustrojowe* 21 (2013), p. 35-37.

which - importantly - cannot anymore influence the validity of marriage. Antecedent - within the understanding of the doctrine and jurisprudence - should be understood as existing before and in the moment of expressing matrimonial consent. Antecedence „before” expressing consent means that it existed already in the pre-matrimonial period. And the expression „in the moment” of expressing consent emphasizes that even the moment after the fact of entering into marriage is already qualified as posterior. To sum up, it has to be stated that in order to consider the existence of the impediment of sexual inability, one must be convinced of its emergence before, or at least in the moment of concluding the matrimonial contract. Of course, in case of vaginismus, most frequently it is very difficult to define whether the disease was antecedent or posterior. In practice, the adoption of a presumption of law is proposed. If the doubt referring to a person’s ability to have sexual intercourse emerged soon after the celebration of marriage (e.g. during the attempt of its consummation), it should be supposed that the impotence had been antecedent. And if these doubts emerged after some time, it is presumed that the impotence was posterior. However, it has to be remembered that in the process evidence hearing every argument against that rebuts the above presumption¹⁴.

The element which is helpful in this matter is the differentiation between organic and functional impotence performed by M. F. Pompedda who points to the fact that in case of organic impotence caused by congenital or acquired anatomic deficiencies, according to this canonist, the presumption is always in favour of the antecedence, except for a situation in which the cause impacting the occurrence of impotence emerged after the fact of entering into the partnership of life. However, in case of functional impotence, if it demonstrates itself already in the moment of the attempt of the first matrimonial sexual intercourse and there is no need to attribute its emergence to a cause which arose after contracting marriage, it should be presumed that the impotence was antecedent¹⁵.

To conclude, it has to be stated that sexual inability of a posterior nature does not constitute impediment, although it may be the entitlement to submit a request for papal dispensation from validly contracted marriage, if it has not been consummated¹⁶.

The second attribute of impotence is its permanency. The difficulty of defining this attribute consists i.a. in the fact that its medical definition is different than that of the

¹⁴ H. STAWNIAK, *Przeszkoda niemocy płciowej*, op. cit., p. 136.

¹⁵ IBID.; See also W. SZAFRAŃSKI, *Przeszkoda impotencji w prawie kanonicznym*, Włocławek 1964, p. 89-91.

¹⁶ Cf. J. KRZYWKOWSKA, *Przeszkoda niemocy płciowej w świetle wykładni kan. 1084 Kodeksu Prawa Kanonicznego z 1983 roku*, op. cit., p. 38.

canon law. From the medical point of view, a person suffers from impotence - in this moment - and that is enough to say that this person is an impotent. If the disease is curable, i.e. the ability to sexual intercourse may be restored, it is, therefore, not permanent, from the medical point of view in this moment this person is also an impotent. This matter is perceived differently from the perspective of the canon law. Due to the fact that impotence is the foundation for the emergence of the impediment of sexual inability, it has to be permanent in the moment of contracting marriage - permanent within the understanding of the Church doctrine and jurisprudence¹⁷.

This „permanency” has got technical and legal meaning and it requires thorough clarification. Impotence is permanent when there is no possibility to remove it, i.e. it cannot be cured. At this stage the canon law notion is compliant with the medical one. The difference consists in the fact that the Church legislator considers impotence permanent also when it may be cured, but only with the use of means that are morally not acceptable or extraordinary, i.e. ones that come down to surgical interventions or therapies that are very dangerous for health and life. Similarly, impotence is permanent when its treatment would require using means that are risky, very expensive and unavailable for an ordinary person. The relativity of the permanency of sexual inability, on one hand, shows that the impediment of impotence may more frequently take place in persons from poor countries than in those from rich ones, and on the other hand, the development of medicine and the possibility to apply modern solutions results in the fact that the number of cases of permanent impotence is decreasing. Moreover, there are also many authors who claim that objectively there is only temporary impotence and that there is no permanent sexual inability. However, such an opinion may be true from the medical point of view on the notion of impotence. And in case of impotence considered in the context of canon law, such an opinion is false, because the notion of the permanency of impotence is qualified with taking into consideration a concrete person, place, time, the extraordinariness of means and their ethical aspect¹⁸.

The third attribute of the impediment of impotence is its absoluteness or relativity. Both of its forms result in the nullity of marriage, however, differentiation is recommended not only from the theoretical side but also from the practical one. The absolute form of sexual inability takes place when a person is not able to have sexual intercourse with any person of the opposite sex, in contrary to relative impotence in case

¹⁷ H. STAWNIAK, *Przeszkoda niemocy płciowej*, op. cit., p. 137.

¹⁸ *IBID.*, p. 137-138.

of which this person is able to have sexual intercourse with persons of the opposite sex but is not able to have sexual intercourse in marriage with his or her partner. In such a case the person is not an impotent due to absolute inability, but due to relative one. The most frequent source of sexual inability defined this way is a cause of mental or psychological nature¹⁹.

The last attribute of impotence is its doubtlessness. According to can. 1084, n. 2: „If the impediment of impotence is doubtful, whether by a doubt about the law or a doubt about a fact, a marriage must not be impeded nor, while the doubt remains, declared null”. The presented fragment of the code indicates that only a doubtless impediment may be enforced in reference to some persons, impeding the establishment of a partnership of conjugal life. The rationale of such a legal solution is understandable and sufficiently justified because the entitlement to contract marriage and to choose the spouse is a basic right of a human and, therefore, until there is moral certainty of the existence of a fact or of circumstances which make a person unable to have sexual intercourse, the norm cannot limit this fundamental right. It should be noticed that an element which is in favour of such an approach is also the presumption of law about the ability of every man and every woman to have matrimonial sexual intercourse, whereas the impediment is a lack and a limitation of the right. To conclude, it should be noticed that only in really certain cases it is possible to limit someone’s subjective entitlement which has its foundation in the natural law, i.e. the right to contract marriage. The legislator’s position is that this doubtless right has advantage over doubtful law or fact, therefore, *matrimonium non est impediendum*²⁰.

3. The variety of diagnoses in the context of can. 1084 of the CIC

After the necessary introduction referring to the attributes of the impediment of impotence, let us move to discussing its types in the context of can. 1084 of the CIC. We have already mentioned that impotence is divided into organic and functional, however, for general order it is necessary to, moreover, state that sexual inability may be divided into that on the side of the man and that on the side of the woman. In the present study it is obvious that the subject of considerations is supposed to be impotence on the

¹⁹ IBID., p. 138.

²⁰ IBID., p. 139-140.

side of the woman who is an impotent when she suffers from organic or functional vaginismus²¹.

At this stage of the considerations, the following question seems justified: In a situation when a woman suffers from one of the above mentioned diseases, is she always impotent in the canon sense? First let us focus on organic vaginismus because here the case seems easier to judge and to provide a concrete answer to the question posed above.

3.1. The absence of the vagina and the problem of the formation of an artificial vagina

In the common opinion of the doctrine and the jurisprudence it is necessary to consider a woman impotent if she has no vagina (organic vaginismus) in case of both - when this deficiency is congenital and when it occurs as a result of surgical procedures, i.e. under the influence of factors related to injuries or diseases. The necessity of the existence of the vagina was always associated with an essential element of matrimonial sexual intercourse, in this organ two bodies become one flesh, and the special function of this organ was based on taking the masculine penis in and absorbing the sperm²².

Therefore, the matter is simple in a situation when the absence of the vagina is diagnosed²³, but what about a situation when this deficiency was replaced by an artificial vagina? Is a woman - who did not have a vagina from birth, or this deficiency occurred in a later period, and by way of a surgical operation specialised surgeons formed this organ in her in any way - is able, or should she rather be considered unable to validly contract marriage? This problem was taken up by few canonists, although this matter seems to be very significant, not only due to the absence of the vagina, but also due to the cases of the

²¹ IBID., p. 140-142.

²² IBID., p. 142-143.

²³ The congenital absence of the vagina is most frequently caused by the aplasia (failure of development despite the formation of the primordium) of the Müllerian ducts (which develop into the female genital organs), and very rarely by agenesis (a lack of the organ and of the primordium). However, in both cases it coexists with the absence of an active uterus. The absence of the vagina may also be the clinical manifestation of vaginal atresia. The estimative frequency of occurrence of defects of the vagina is 1 in 4-20 thousand female infants. These defects are the second - after gonadal dysgenesis - reason for primary amenorrhea. The congenital absence of the vagina most frequently occurs in the form of the Mayer-Rokitansky-Küster-Hauser syndrome (Müllerian agenesis) in which the absence of a vagina is the consequence of the aplasia of the Müllerian ducts and is connected with the absence of the uterus, the presence of a rudimentary uterus (uterus rudimentarius) or the presence of rudimentary horns of the uterus near the lateral pelvic walls, Cf. Z. FRIEBE, K. KAPCZUK, *Wady wrodzone żeńskich narządów płciowych*, [in:] G.H. BRĘBOWICZ, *Położnictwo i ginekologia*, vol. 2, Warszawa 2013, p. 593-597.

so-called sex reassignment which have been increasingly frequent in the recent years. It has to be noticed that the authors taking up this significant problem are not unanimous regarding the possibility of the emergence of the impediment of impotence due to an artificial vagina. However, most of them expressed the opinion that such a surgery performed before contracting marriage does not cause inability to marriage when sexual intercourse is possible. Whereas, if the surgery was performed after contracting marriage, the marriage is invalid and may be convalidated. This opinion is generally associated with the conviction of many canonists who, in this matter, point to the mentioned type of surgical operation, differentiating means which are ordinary, morally acceptable and safe for health and life from means which are extraordinary, not morally acceptable and dangerous. In reference to the first case, since an operation was performed then, irrespectively of the means that were used, the woman is able to have matrimonial sexual intercourse, i.e. the marriage is valid. However, it is necessary to point to the fact that in this case one emphasizes only the dimension of the full understanding of this sexual intercourse and also the fact that one omits the whole dimension of the full understanding of this sexual intercourse, and also one omits the matter of meeting the legal requirements referring to female organs, in connection with the matter (discussed in science) of directing the matrimonial sexual intercourse *per se* at giving birth to offspring. In the second case the matter is also not unequivocal. The marriage could have been contracted invalidly because there was the impediment of sexual inability which was permanent from the point of view of canon law. A person who underwent an expensive and extraordinary surgery stopped being an impotent in the canon sense because the impediment ceased and, therefore, the marriage may be convalidated²⁴.

An element which is significant in the above dispute is the reply of the Congregation for Divine Worship and the Discipline of the Sacraments of 1 August 1972 provided to the bishop of the diocese of Canada which states that a vagina constructed of plastic material is insufficient, whenever it is not capable of normal matrimonial sexual intercourse which, itself, is directed at giving birth to children. These facts indicate that an artificial vagina implies the certainty of the existence of the impediment of sexual inability. Therefore, such a woman, and especially a man who wants to reassign his sex, cannot be allowed to contract marriage²⁵.

²⁴ H. STAWNIAK, *Przeszkoda niemocy płciowej*, op. cit. p. 143-144.

²⁵ IBID., p. 145; Cf. G. DZIERŻON, *Wpływ organicznej impotencji kobiecej na nieważność małżeństwa w świetle wyroku Roty Rzymskiej c. P.V. Pinto z 27.10.1995 r.*, *Ius Matrimoniale* 5 (2000), p. 214.

To sum up, it has to be stated that whenever the absence of the vagina occurs in a woman²⁶, and in the clinical diagnosis there is the so-called aplasia or agenesis, regardless of whether this absence was replaced with an artificial vagina or not, the woman is an impotent, and the marriage contracted by her (with meeting the conditions of antecedence, permanency, and doubtlessness) is invalid. The matter seems to be similar in case of atresia, where the vagina is present but it is completely obliterated.

3.2. Hypoplasia of the vagina and its excessive tightness

The matter of the hypoplasia and excessive tightness of the vagina in the case when normal sexual intercourse between spouses was not possible, was solved analogically. It has to be said that absolute or relative impotence could occur in such a situation. But also, in such a case, *a priori* it is impossible to declare the inability to matrimonial sexual intercourse. It is also impossible to adjudicate the nullity of marriage due to the impediment discussed in this case. It is, however, possible to consider instrumental sexual inability in a woman in case of an infantile vagina when this organ is not capable of taking in the masculine penis and the sperm. This is because hypoplasia usually precludes penetration which is an essential element of matrimonial sexual intercourse. However, if there is a situation in which the vagina is closed from the internal side, e.g. due to the removal of the uterus, the fallopian tubes and the ovaries, there is no impediment of sexual inability in the woman, but the woman is only infertile²⁷.

3.3. Transverse and longitudinal vaginal septa

Another group of female organic defects which may cause an impediment of sexual inability in a woman are transverse²⁸ and longitudinal²⁹ vaginal septa, including hymen

²⁶ In the psychological aspect, the absence of the vagina and of the uterus which makes normal intercourse and having offspring impossible, is extremely difficult to accept for the woman. Usually, after the initial shock, there is a prolonged period of depression. The female patients have lower self-esteem, they question their femininity, they doubt the possibility for a heterosexual relationship, Cf. Z. FRIEBE, K. KAPCZUK, *Wady wrodzone żeńskich narządów płciowych*, op. cit., p. 598.

²⁷ Cf. H. STAWNIAK, *Przeszkoda niemocy płciowej*, op. cit., p. 145-146.

²⁸ Transverse septa are the atresia of genital organs at a small distance, which transversely closes their lumen. This atresia may be congenital or acquired as a result of morbid processes taking place in the genital organs. The most frequent of them include inflammations leading to the damage of the epithelium covering the organs and hormonal disorders leading to the occurrence of inflammations and ulcerations through the reduction of the

atresia. However, it seems that defects of this kind do not cause the impediment of sexual inability in a woman due to the fact that usually they are not permanent. It is possible to remove them with the help of a non-invasive surgical operation³⁰ and in this case it is rather necessary to consider temporary or curable sexual inability³¹.

The summing up of the part referring to the influence of organic vaginismus as the reason of sexual inability, may be the words of a valued canonist, G. Dzierżon, which confirm the above conclusions; G. Dzierżon, following the line of thought of M. Pompèda, states that the impotence of a woman may be considered in case of the occurrence of one of three situations: the absence of the vagina, the too small size of the vagina or the inaccessibility of the vagina. This is because these organic anomalies make the performance of a natural penetration by a man impossible³².

4. Psychogenic vaginismus

After discussing the organic defects which cause vaginismus, let us now move to the considerations referring to psychogenic vaginismus³³ and its influence on the emergence of the impediment of sexual inability. Even the definition, itself, implies that this disease may cause, or not, an impediment, due to the fact that it „precludes or hinders the insertion

immunity of the vaginal mucous membrane, Cf. SZ. BANASZEWSKI, *Wady wrodzone narządów płciowych i ich następstwa*, [in:] T. PISARSKI, *Położnictwo i ginekologia, Podręcznik dla studentów*, Warszawa 2002, p. 42. These septa are most frequently located at the top and middle limit of the 1/3 length of the vagina. The septa may be complete (completely closing the vaginal lumen) or partial (with a small opening in the middle). Such septa may hinder normal intercourse, or even make it impossible. Partial septa usually do not demonstrate any symptoms because the opening allows for the outflow of the vaginal secretions and of the menstrual blood. However, in case of complete septa or the hymen atresia above the level of the septum, a stasis hematoma develops as a result of the accumulation of menstrual blood. Cf. Z. FRIEBE, K. KAPCZUK, *Wady wrodzone żeńskich narządów płciowych*, op. cit., p. 599.

²⁹ Longitudinal septa most frequently occur at the whole length of the vaginal lumen, as a result of which this is referred to as a longitudinal vaginal septum or a double vagina, Cf. SZ. BANASZEWSKI, *Wady wrodzone narządów płciowych i ich następstwa*, op. cit., p. 41.

³⁰ Cf. Z. FRIEBE, K. KAPCZUK, *Wady wrodzone żeńskich narządów płciowych*, op. cit., p. 600.

³¹ Cf. K. GRACZYK, *Aspekty medyczno-prawne impotencji względnej i psychiatrycznej*, *Studia Włocławskie* 8 (2005), p. 314.

³² Cf. G. DZIERŻON, *Wpływ organicznej impotencji kobiecej na nieważność małżeństwa w świetle wyroku Roty Rzymskiej c. P.V. Pinto z 27.10.1995 r.*, op. cit., p. 213-214.

³³ An extensive and precise definition of vaginismus has been included by a remarkable sexologist, S. Kratchvil, in his book; according to him, „Vaginismus is the reflexive, tight contraction of the vaginal entrance muscles and of other pelvic floor muscles which preclude or hinder the insertion of the penis to the vagina. It has got the nature of a defence reflex caused by the actual, expected or only imagined attempt of penetration. Sometimes this is also accompanied by the reflexive squeezing of thighs together and bending the spine like in opisthotonus. Usually this phenomenon is associated with phobia referring to defloration, sexual intercourse or any kind of vaginal penetration”, Cf. S. KRATOCHVIL, *Leczenie zaburzeń seksualnych*, Warszawa 2002, p. 125.

of the penis to the vagina”³⁴. In the first case, there is no doubt referring to the occurrence of the impediment of impotence because the woman does not have the ability to have matrimonial sexual intercourse, precluding the penetration by the man and, thus causing a lack of possibility to take the sperm in³⁵. However, in the second case, the situation is not that simple and clear anymore³⁶.

While considering the problematics of the impediment of sexual inability due to psychogenic vaginismus, it is impossible not to mention that in medical literature we find a record informing that primary vaginismus usually precludes any penetration, in contrary to secondary vaginismus where tolerance to certain kinds of penetration is possible³⁷. The situation, therefore, seems similar to that described above.

In medical literature we can also find the description of four degrees of advancement of vaginismus³⁸: the most difficult cases, severe cases, less difficult cases and mild cases³⁹. In the first three cases we are dealing with the situation when a woman is certainly not able to have sexual intercourse and take the sperm in, therefore, there is the impediment of sexual inability, whereas in the fourth case the situation may be twofold - she is either able or not.

Similar conclusions have also been reached by H. Stawniak who, following medical professionals, performs a division of vaginismus into higher and lower vaginismus. In case of higher vaginismus, the masculine penis may be inserted *in vaginam mulieris* but it is taken out with difficulty and pain. In case of lower vaginismus even inserting the penis

³⁴ IBID., M. BEISERT, *Psychologia zaburzeń seksualnych*, [in:] H. SĘK (ed.), *Psychologia kliniczna*, Warszawa 2014, p. 219.

³⁵ Cf. W. GÓRALSKI, *Małżeństwo kanoniczne*, Warszawa 2011, p. 113.

³⁶ In the reflection it is possible to follow two paths mentioned by S. Paździor in his publication *Przyczyny psychiczne niezdolności osoby do zawarcia małżeństwa w świetle kan. 1095*, Lublin 1999, p. 287, but this will be the subject of our considerations in the second part of the article.

³⁷ Cf. M. STEFANKIEWICZ, S. ŚLĄSKI, *Diagnoza zaburzeń seksualnych u kobiet – adaptacja testu*, *Studia Psychologica* 10 (2010), p. 322.

³⁸ Four degrees are differentiated in defining the state of advancement of vaginismus. According to Arentewicz and Schmidt, in the most difficult cases even gynaecological examinations are impossible and in order to perform them the female patient must be sedated. In severe cases inserting a finger is impossible. In less difficult cases it is possible to insert a finger but in any case it is not possible to insert the penis. In mild cases inserting the penis is sometimes possible, but it always turns out to be painful, Cf. S. KRATOCHVIL, *Leczenie zaburzeń seksualnych*, op. cit., p. 126; Cf. E. MAŁACHOWSKA, S. JAKIMA, *Cechy osobowości partnerów w związkach nieskonsumowanych*, *Seksuologia Polska* 5 (2007), p. 42. In the first two cases we are definitely dealing with absolute vaginismus; as for the third case, in reference to the matrimonial sexual intercourse, the vaginismus is also absolute, whereas the fourth case refers to relative vaginismus conditioned by other factors. Cf. Z. LEW-STAROWICZ, *Zaburzenia seksualne*, [in:] Z. LEW-STAROWICZ, V. SKRZYPULEC (eds.), *Podstawy seksuologii*, Warszawa 2010, p. 189).

³⁹ Cf. Z. LEW-STAROWICZ, *Zaburzenia seksualne*, op. cit., p. 189.

is impossible and then we are dealing with functional impotence, if this condition is permanent.⁴⁰ Therefore, in the situation of higher vaginismus the impediment of sexual inability does not occur but rather this is a situation which fits within can. 1095 n. 3 of the CIC.

While analysing psychological and medical literature referring to psychogenic vaginismus it is easy to notice that the persons specialised in the treatment of this disease consentaneously claim that vaginismus of this kind is a disorder in case of which the effectiveness of treatment is high, reaching 80% of cases, and some, like Kratochvil⁴¹ or Lew-Starowicz, believe that this effectiveness even reaches 100%⁴². The most significant element in effective treatment is the motivation of the female patient herself and her personal decision directed at undertaking broadly understood therapy and exercises⁴³.

A question which is justified here is the following: Is there discrepancy in the definition of the permanency of psychogenic vaginismus among medical specialists and canonists? This is because it seems that treatment⁴⁴ which is based on pharmacotherapy, psychotherapy or training should not be and is not extraordinary, expensive, dangerous for health and life or even risky. It is, therefore, difficult to speak about the permanency of this disease. Although, in some situations, in case of such an approach, there may be problems associated with the moral acceptability of some of the proposed methods of therapy (e.g. using the so-called dilators⁴⁵ or vibrators⁴⁶).

⁴⁰ Cf. H. STAWNIAK, *Przeszkoda niemocy płciowej*, op. cit., p. 148.

⁴¹ Cf. S. KRATOCHVIL, *Leczenie zaburzeń seksualnych*, op. cit., p. 131.

⁴² Cf. Z. LEW-STAROWICZ, *Seksuologia sądowa*, Warszawa 2000, p. 84.

⁴³ Cf. S. KRATOCHVIL, *Leczenie zaburzeń seksualnych*, op. cit., p. 129.

⁴⁴ The recommended treatment methods: pharmacotherapy (analgesic medications, muscle relaxant medications, anxiolytic medications), surgical methods based on defloration, desensitisation, hypnosis and individual psychotherapy. However, the methods which have gained particular recognition and popularity are training methods, the effectiveness of which is the highest and the treatment time is shorter in comparison to other methods of psychotherapy, Cf. Z. LEW-STAROWICZ, *Leczenie nerwic seksualnych*, Warszawa 1991, p. 205.

⁴⁵ Exercises based on extending the vagina are performed with the use of the so-called dilators, smooth pipes tapering towards the end, of various sizes. The man should be gradually introduced into the exercises. If only the exercises are effective, the man may try to perform careful penetration, Cf. M. JONES, *Zaburzenia seksualne*, [in:] J. RYBAKOWSKI, F. RYBAKOWSKI (ed.), *Psychiatria*, vol. 2, Wrocław 2005, p. 394.

⁴⁶ According to a renowned sexologist, the training method which, besides medications and psychotherapy, and potentially the surgical method, is very effective, should be composed of the following phases: sexual education, learning to control vaginal muscles, relaxation, controlled penetration of the vagina with a finger, subsequently with a dildo or vibrator, and subsequently - proper penetration during sexual intercourse, Cf. Z. LEW-STAROWICZ, A. DŁUGOŁĘCKA, *Edukacja seksualna*, p. 181.

Conclusions

To sum up the opinions about the high percentage of the effective treatment of non-organic vaginismus, it is difficult not to agree with the opinion of D'Advack who, in a straightforward way, wrote about the twilight of the existence of the impediment of sexual inability⁴⁷. And one can even go a step further, following authors who are not at all sparse, who claim that due to the development of medicine and the possibility to apply modern means, the numbers of permanent impotence are decreasing. Some even say that objectively there is only temporary impotence and that there is no permanent sexual inability. Although it is difficult to agree with such an opinion in the field of the definition of the permanency of impotence as seen from the canon point of view⁴⁸.

To sum up, the considerations related to can. 1084 of the CIC lead to the conclusion that the qualification of the permanency of the impediment of impotence in reference to vaginismus, whether organic or functional, is one of the difficult tasks of experts, and later of the ecclesiastical judge. Therefore, an element which is extremely important, and even essential, is the presence of experts in these fields⁴⁹.

⁴⁷ Cf. H. STAWNIAK, *Przeszkoda niemocy płciowej*, op. cit., p. 151.

⁴⁸ IBID., p. 138.

⁴⁹ IBID., p. 150, See also T. ROZKRUT, *Komentarz do Instrukcji procesowej „Dignitas connubii”*, Sandomierz 2007, p. 279; Cf. A. GOŁĘBIOWSKA, *Opinia biegłego sądowego i analiza prawna przyczyn niezdolności do zawarcia małżeństwa (kan. 1095 KPK z 1983)*, Warszawa 2008, p. 146.