Ius Matrimoniale
29 (2018) No. 1
DOI:10.21697/im.2018.29.1.06

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Poważny brak rozeznania oceniającego (kan. 1095 n. 2 KPK) w świetle wyroku Trybunału Roty Nuncjatury Apostolskiej w Hiszpanii c. Ponce Gallén z dnia 25 marca 2007 r.

Grave defect of discretion of judgment concerning (can. 1095 n. 2 of the CIC) under sentence of the Tribunal of the Rota of the Apostolic Nunciature in Spain c. Ponce Gallén of 25 March 2007

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1. Case status

The parties to the case got to know each other when the woman (plaintiff) was 16 and the man (defendant) was 22.[1] Soon, they started to meet but their relationship was stormy. The plaintiff broke with the defendant because he fell in a bad company, abused alcohol and took drugs. After some time, the parties reconciled but met only sporadically. Then they parted again for the same reasons as before. Soon, the plaintiff became aware she was pregnant and she felt obliged to marry the defendant. The parties married on 22/12/1990. They lived together 7 years and have 2 children. After the breakup of the relationship the plaintiff filed a lawsuit for separation with a civil court.[2]

On 16/03/1998, the plaintiff filed a lawsuit for proclamation of invalidity of her marriage with an ecclesiastic court. The court admitted the lawsuit by a decree given on 14/05/1998. In his response to the lawsuit, dated on 10/07/1998, the defendant objected the petition of the plaintiff and declared his active participation in the process.

The decree of 04/09/1998 set the following formula of doubt: „Is it known that the marriage contracted between the parties is invalid because of a grave defect of discretion of

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[1] The judgment was published on Spanish Web portal „El derecho" (http://www.elderecho.com), case EDJ 2007/15185 (hereinafter cited as DEC. C. PONCE GALLÉN, 25.03.2007, EDJ 2007/15185, n. 1, p. 1.
[2] Cf. IBID., n. 1, p. 1

judgment or inner freedom, and/or inability to undertake or fulfill essential obligations of marriage, while it was being contracted, on the part of one of both of the spouses?"[3].

The instruction of the case was ordered by the decree of 14/10/1998. The defender of the marriage bond submitted his questions to the parties and witnesses. The list of witnesses was approved by the decree dated on 25/11/1998. After completion of the evidential step and publication of the files, the evidential proceeding was closed by the decree of 20/10/1999. The defender of the marriage bond objected the pronouncement of invalidity of the marriage. The attorneys of the parties made their pleas. The tribunal of the first instance gave its judgment on 18/02/2000, dismissing all the causes deliberated as part of the case.[4]

On 01/03/2000, the plaintiff appealed against the judgment of the court of the first instance to the Tribunal of the Apostolic Nunciature's Rota in Spain. The plaintiff's attorney petitioned for the addition of a new cause of invalidity on 28/02/2000. The court session held on 08/02/2001 established the adjudicating panel for the second instance. Copies of the files were made available to the defendant and to the defender of the marriage bond.[5]

The decree of 28/02/2002 determined the formula of doubt: „In the second instance, should we uphold or change the judgment of the metropolitan court in (…) of 18/02/2000, which stated that invalidity of marriage had not been proven either because of a lack discretion of judgment or inner freedom, or an inability to undertake essential obligations of marriage, by one or by the both parties. [The question] In the first instance was whether it was known that the marriage was invalid because of „a general fear" on the part of the plaintiff"[6].

The plaintiff provided new evidence in her letter of 03/11/2003, which was admitted by the decree of 12/11/2003. On 28/10/2004, the plaintiff advised the court of the change of her attorney and petitioned for adding the new evidence to the case files. After hearing the defender of the marriage bond, the court admitted the evidence by the decree dated on 01/12/2004.

On 17/03/2005, the plaintiff sent in the petition for waiving the psychological opinion about the defendant in the second instance. The court granted the petition by the decree dated

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[3] „Si consta o no, en el caso, de la nulidad del matrimonio celebrado entre… por causa de grave defecto de discreción de juicio o libertad interna y/o, incapacidad para asumir-cumplir obligaciones esenciales del matrimonio, ambos capítulos en ambos contrayentes o en cualquiera de ellos, al momento de contraer". IBID., n. 2, p. 1.

[4] Cf. IBID.

[5] Cf. IBID., n. 3, p. 2

[6] „Como en segunda instancia: Si se ha de confirmar o reformar la sentencia del Arzobispado de… de fecha 18 de febrero de 2000, en cuanto declara que no consta la nulidad de este matrimonio, ni por causa de grave defecto de discreción de juicio o falta de libertad interna en los contrayentes, ni por causa de incapacidad de los mismos para asumir las obligaciones esenciales del matrimonio. Como en primera instancia: Si consta o no la nulidad de este matrimonio por el capitulo de miedo reverencial sufrido por la esposa". IBID.

on 31/03/2005. Once the evidence was complete, the decree of 31/05/2005 ordered publication of the files and the evidential procedure was closed on 13/06/2005.

The plaintiff's attorney sent in his remarks on 30/06/2005, the defender of the marriage bond submitted his *animadversiones* on 15/09/2005 and the defendant's attorney delivered his response on 28/08/2005. Then, the files were submitted to the court for judgment.

The Tribunal of the Roman Rota pronounced in its judgment of 11/10/2005 that the second instance had proven invalidity of the marriage because of the lack discretion of judgment on the part of the plaintiff. Judgments regarding the other causes deliberated in the second instance were negative.[7] The „general fear on the part of the plaintiff", considered in the first instance was dismissed.[8]

The case files were handed over to the next instance of the Tribunal of the Spanish Rota and a new adjudicating panel was appointed on 24/03/2006. The decree of 08/03/2006 set the following formula of doubt: „In the third instance, should the judgment of the previous adjudicating panel of the Rota on the marriage, dated on 11/10/2005, invalidating the marriage because of the defect of the matrimonial consent (the grave defect of discretion of judgment on the part of the plaintiff), be upheld or changed? In the second instance, as an appellate and subsidiary case, should be the judgment of the previous adjudicating panel of the Rota on the marriage, dated on 11/10/2005, stating that the invalidity of marriage because of the „general fear on the part of the plaintiff" had not been proven, be upheld or changed?"[9].

In the third instance, the plaintiff's attorney accepted the formula of doubt on 26/05/2006 and asked the judges to rely on the evidence collected in the second instance. The decree of 30/05/2006 closed the evidential procedure. The plaintiff's attorney submitted his remarks. On 02/06/2006, the defender of the marriage bond presented his *animadversiones* that were responded to by the plaintiff's attorney on 02/09/2006. The case files were handed over to the judges on 12/09/2006.[10]

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[7] The judges recognized the following causes as unproven: the gravge defect of discretion of judgment on the part of the defendant; the psychic inability to undertake essential obligations of marriage by the plaintiff; the psychic inability to undertake essential obligations of marriage on the part of the defendant. Cf. IBID.

[8] Cf. IBID.

[9] „Como en Tercera Instancia: Si se ha de confirmar o reformar la sentencia del Anterior Turno Rotal en la causa de nulidad de matrimonio …, de fecha 11 de octubre de 2005, en cuanto declara que sí consta la nulidad de este matrimonio por defecto de consentimiento matrimonial, por grave defecto de discreción de juicio por parte de la esposa. Como apelación y con carácter subsidiario, y en segunda instancia: Si se ha de confirmar o reformar la sentencia del Anterior Turno Rotal en la causa de nulidad de matrimonio …, de fecha 11 de octubre de 2005, en cuanto declara que no consta la nulidad de este matrimonio por temor reverencial padecido por la esposa". IBID., n. 4, p. 2

[10] Cf. IBID.

2. Legal status

In the *in iure* part of the judgment, the ponens referred to the following matters: the grave defect of discretion of judgment in the case-law of the Roman Rota,[11] canon 1095 n. 2 of the CIC,[12] matrimonial consent,[13] the legal content of the concept of „matrimonial covenant”[14], and inner freedom.[15]

Regarding the grave defect of discretion of judgment in the case-law of the Roman Rota, the ponens, referring to the doctrine, mentions volitional maturity underlying the free choice as one of the essential ingredients of a person's discretion of judgment. The freedom of choice should not be determined by negative elements that affect the person's will, making it defective. Such negative factors may be rooted not only in external factors leading to coercion but also in inner factors depriving the person of the freedom of choice[16].

The case-law, identical to the doctrine – Ponce Gallén continues – recognizes existence of defects of matrimonial consent resulting directly from act of the will. In this sense, a person who cannot express their act of the will underlying marriage, because the person is not free to make a choice, is recognized as „unable”. Without this freedom there cannot be a truly human act. It is not enough to prove that the person acted under negative inner impulses: it has to be demonstrated that the person was unable to resist the impulses.[17]

In his further argumentation, the editor of the pronounced refers to can. 1095 n. 2 of the CIC where the legislator stressed that the defect of discretion of judgment has to be „grave” and affect mutually given and accepted essential rights and obligations of marriage. The Church explains: „The deep community of marital life and love, established by the creator and governed by his rights, is bound through the matrimonial covenant, i.e., through an irrevocable personal consent. Thus, the institution, permanent also in social terms, is established through God's will by a personal act by which the spouses mutually give and accept each other”[18].

[11] Cf. IBID., n. 5, p. 2-3
[12] Cf. IBID., n. 6, p. 3
[13] Cf. IBID., n. 7, p. 3
[14] Cf. IBID., n. 8, p. 3
[15] Cf. IBID., n. 9, p. 3-4
[16] Cf. IBID., n. 5, p. 2.
[17] Cf. IBID., n. 5, p. 2-3; cf. DEC. C. DI JORDI of 19.12.1961, RRDec. 53 (1961), p. 610-620; cf. DEC. C. BONET of 18.12.1967, RRDec. 59 (1967), p. 856-862; cf. DEC. C. BEJAN of 7.02.1968, RRDec. 60 (1968), p. 65-76; cf. DEC. C. ANNÉ of 31.01.1970, RRDec. 62 (1970), p. 97-111; cf. DEC. C. EWERS of 27.05.1972, RRDec. 64 (1972), p. 329-339; cf. DEC. C. DAVINO of 12.12.1974, RRDec. 66 (1974), p. 781-788
[18] GAUDIUM ES SPES, n. 48; cf. DEC. C. PONCE GALLÉN, 25.03.2007, EDJ 2007/15185, n. 6, p. 3

Another matter of concern for the ponens is the matrimonial consent. An irrevocable and personal consent is a human act through which the spouses establish their matrimonial covenant. The teaching of the Second Council of Vatican has inspired the contemporary canon law in terms of the matrimonial consent. This is particularly evident in can. 1057 of the CIC: „§ 1. The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent. § 2. Matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage"[19].

Next, Ponce Gallén proceeds to the legal content of the concept of „matrimonial covenant". The definition is provided in can. 1055 § 1: „The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized"[20].

The matrimonial consent, as an act of the will, has to be given consciously and voluntarily, based on human intellectual and volitional maturity. To be intellectually mature, a spouse-to-be needs to be able to not only think speculatively but also gain practical knowledge, as demonstrated by their actions. This criterion was established by St. Thomas Aquinas: *„Secundum hoc autem differunt intellectus speculativus et practicus. Nam intellectus speculativus est, qui quod apprehendit, non ordinat ad opus, sed ad solam veritatis considerationem, practicus vero intellectus dicitur, qui hoc quod apprehendit, ordinat ad opus"*[21]. In the context of the matrimonial consent, the ponens concludes that the ability to gain practical knowledge consists in a simple evaluation of an idea conceived as part of speculative thinking. This practical knowledge finds manifestation in the „mutual giving and accepting of each other", irrecoverably and faithfully, for lifetime partnership and love „to the good of the spouses and the procreation and education of offspring". Also, the practical judgment prompting a person to make a specific choice requires a forethought because the decision concerns an indissoluble and irrevocable lifetime partnership.

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[19] Cf. DEC. C. PONCE GALLÉN, 25.03.2007, EDJ 2007/15185, n. 7, p. 3

[20] Cf. DEC. C. PONCE GALLÉN, 25.03.2007, EDJ 2007/15185, n. 8, p. 3

[21] SUMMA THEOLOGIAE I q. 79 art. 11. „For it is the speculative intellect which directs what it apprehends, not to operation, but to the consideration of truth; while the practical intellect is that which directs what it apprehends to operation.". ŚW. TOMASZ Z AKWINU, *Suma Teologiczna*, t. 6, *Człowiek*, P. BEŁCH (transl and expl.), 2nd ed., London 1980, p. 79.

In addition to the maturity of cognition or intelligence, the act of the will requires a maturity of the will or an ability to make a choice, which assumes the existence of both a freedom to act (nor not to act) and a freedom to discern (choose one of possible different alternatives). Therefore, according to the ponens: *„ad maturitatem voluntatis non sufficit tantum libertas exercitii, id est contrahendi vel non contrahendi, sed prorsus necessaria est libertas specificationis, obiecto consensus proportionata, quae contrahentem capacem reddat eligendi id, quod obiectum formale consensus constituit"*[22].

The last matter reviewed by Ponce Gallén in the judgment concerned is the inner freedom: one of the ingredients of the necessary and proportional discretion of judgment required for giving the matrimonial consent. This freedom is essential to the manifestation of a truly human act of the will, which has to be proportional to the personal and social rank and meaning of the matrimonial consent. It would be wrong to separate the inner freedom from the discretion of judgment and treat the former only as a defect of the matrimonial consent opposed to the discernment of values.

It should be assumed – continues the ponens – that, given human sophistication and the variety of situations, it is not easy to draw a demarcation line between the lack of necessary inner freedom and an external coercion producing irresistible inner impulses. This constatation justifies the understanding of a defect of the inner freedom as a defect of the matrimonial consent. A person may experience a limitation of their ability to make a choice by internal,[23] external[24] or mixed factors. Accordingly, it is difficult to determine the cut-off point for the loss of inner or external freedom. The canonistic doctrine elaborates on these factors in the context of their various forms and sources.

According to the ponens, it is not always easy to determine to what extent pressures from the family or community can affect the personality of a person. Such pressures can make an important contribution to the person's will essential to the making of a choice so important as whether to get married or not. Also, the lack of an essential degree of freedom may be a consequence of a person's inability to think independently: they may have not enough strength to oppose such external pressures.[25]

Although the result [of an „external pressure" and of an „internal weakness"] can be identical (no freedom and, as a consequence, a defect of the matrimonial consent), there is

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[22] DEC. C. STANKIEWICZ of 31.05.1979, RRDec. 71 (1979), n. 4, p. 308
[23] Deficient personality; impulses driving misguided acts. Cf. DEC. C. PONCE GALLÉN, 25.03.2007, EDJ 2007/15185, n. 9, p. 3
[24] Threats, coercion, pressure from outside. Cf. IBID.
[25] Cf. IBID.

a legal difference. The person driven by fear (coerced or threatened) actually gives their marital consent but the consent may be recognized by virtue of law as insufficient to bring about legal consequences (for protection of personal freedoms). On the other hand, the „weak" person does not exercise a free and conscious „human act" (the psychological process is strongly deficient), so the matrimonial consent does not exist.[26]

3. Factual status

The defender of the marriage bond in the third instance did not object the upholding of the judgment given by the previous adjudicating panel of the Rota. Regarding the process held in the first instance, the ponens pointed at discrepancies between the evidence and the forensic psychologist's opinion.

The judgment of the tribunal of the first instance highlighted difficulties in evaluating the evidence, caused by discrepancies between the testimonies of the parties and witnesses. The court even started to doubt their credibility and veracity.[27]

The ponens paid much attention to the psychological opinion from the first instance. The forensic expert diagnosed the plaintiff with narcisstic personality (F60.8, ICD-10) and histrionism (F60.4, ICD-10) as current conditions. Based on the case files, the expert concluded that the plaintiff could have these personality disorders when she was getting married. In addition, the expert noted the following circumstances affecting the woman: the sense of loneliness in pregnancy, religious beliefs, young age, parents' objections against the groom, social and cultural environment. According to the expert, the woman could be afraid and under a significant psychological and social stress, so she got married to get rid of these discomforts.

The expert stated that some psychological traits of the woman's profile, such as the personality disorders, are typically chronic and could exist when she was getting married. The current traits of the disturbed personality of the woman could reflect her mental condition of that time. According to the expert, the concept of „maturity" is evolutional and refers to a specific age. It is difficult to determine whether her maturity corresponded to her age. The ponens does not agree fully with this last statement of the expert. According to Ponce Gallén, the level of maturity of a person cannot be determined if we lack knowledge about behaviors of the person in specific circumstances. But if we deal with a party to a legal process and we

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[26] Cf. IBID., n. 9, p. 4
[27] Cf. IBID., n. 10, p. 4

know about their activities in such circumstances from case files, we can evaluate the maturity of the person during the period concerned.

According to the expert, the plaintiff was not affected by a total lack of discernment or knowledge as to essential obligations of marriage. The discretion of judgment could be just slightly deficient because of the social pressure and the psychic condition of the both parties. Based on earlier arguments of the expert, the ponens is not surprised with, but does not share, this opinion. The expert concluded that the parties passed through variable states of maturity dependent on their ages while they were getting married and their ability to establish a marital bond was limited.

According to the ponens, the psychologist's opinion about the woman is not explicit in its part concerning the lack of inner freedom in the discernment of essential obligations of marriage. Ponce Gallén believes that, the relevant evidence should have been supplemented and another forensic expert should have been asked for an opinion in the first instance of the process.

While commenting on the case in the second instance, the ponens focused on testimonies of the parties and witnesses. The supplementation and review of the evidence enabled the judges of the second instance to clear the doubts expressed in the judgment of the first instance. In addition, the second instance found out why the testimonies of the parties and witnesses from the first instance were inconsistent: the discrepancies resulted from mutual resentment of the parties who held a parallel trial before the civil court. In addition, the plaintiff's petition submitted to the court of the first instance contained information questioned by the defendant.

The second instance heard again the plaintiff (twice), the defendant and three new witnesses. New psychological feedback was obtained, including a psychiatric opinion from the head physician of the mental health center of the municipal hospital in N.

The ponens referred to the following facts described in the testimonies. According to the plaintiff, she was reared in a good family atmosphere, received religious education, her childhood and adolescence were normal. However, the early childhood was full of conflicts. She was under a strong influence of her mother. She opposed her authoritarian father. When she was 16, she met, and bonded with, the defendant. Their engagement was full of conflicts, resentments, breakups and reunifications. After the last breakup it turned out that the woman was pregnant. The parties had never planned to get married. She was discontent on the pregnancy. She was anxious about the new situation and she feared the reaction of her parents. The formation of the matrimonial consent in the women was also influenced by the

defendant who started to insist on getting married immediately after hearing about the pregnancy. The plaintiff opposed this plan because she did not love the defendant and wanted to rear the child by herself. The woman's mother did not help her at that time. Following her religious beliefs, the mother saw the marriage as the only possible solution. She wanted to make preparations for the marriage and wedding before the plaintiff's father becomes aware of the pregnancy. However, the father got the information earlier and called a priest, his acquaintance, to ask for help in fast organization of the wedding. Notwithstanding all these plans, the plaintiff told repeatedly her mother that she did not want to marry the defendant, last time on the day before the wedding. The mother said that the recalling of everything and the giving birth out of wedlock by her daughter would be a great annoyance to her. The ponens notes that the plaintiff communicated her objection clearly but finally she gave up and got married with the defendant against her will.[28]

During the second hearing, the plaintiff told about facts from her childhood that she had described as full of conflicts. She stressed that she never considered the defendant as her fiancé, though she had escaped with him from her home for three days. She described the reaction of her mother to that event as impulsive and violent. She testified, for the first time, that the parents of the parties met without participation of the bride and groom and set a date and place for the marriage. The plaintiff was sent by her parents to another town. All preparations for the marriage and wedding, even the trying of the wedding dress, were done without her involvement. All that was done this way to avoid gossips and a scandal in the community. On the wedding day, the woman, crying, told her mother that she acted against herself, for the sake of her father. Thereby, according to the ponens, she expressed her will contrary to the matrimonial consent. Her behavior had to appear normal but, in fact, she opposed everything she did.

During the hearing in the second instance, the defendant explained that his testimonies given in the previous instance were affected by strong anger against the plaintiff arising from the civil process of divorce, from the process for proclamation of invalidity of the marriage in the first instance and from what the plaintiff said to the contrary of his views.

The testimonies given by the plaintiff's parents confirm the facts and circumstances both preceding and accompanying the wedding ceremony. The parents confirm that the plaintiff did not want to marry the defendant because she did not love him. They admit that

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[28] Cf. IBID., n. 11, p. 5

after becoming aware of the pregnancy they did not see any solution other than the marriage for their daughter.

The mother confirmed the testimonies of her daughter and her husband concerning conflicts in the years of juvenescence of the daughter, the consequences of the pregnancy for the family, and the plaintiff's fear of her father. The mother admitted that she and her husband pressed their daughter to marry the defendant although they knew about her animosity towards the defendant. The mother confirms that her husband wanted their daughter to get married quickly and discreetly, at 7 AM. This is why he called the priest whom he knew and asked for help in quick getting through formalities.

The plaintiff's father testified about himself that he was a very austere, violent and irritable person. When he saw how the daughter behaved, he took her to a psychologist. He confirmed that the plaintiff had histrionic personality disorders. He was very much surprised by the news about the pregnancy. He was concerned about the possible defamation in his community and perceived the entering into a canonic marriage by his daughter as the only available solution. He did not left her any other option. He said the plaintiff was 17 when she got pregnant, she was not financially independent, and the parties would have never married but not for the pregnancy. He admitted that it was him who decided to have the parties married. All preparations, even the trying of the wedding dress, were handled by the plaintiff's mother. He said there was a similar situation in their more distant family and, then, the plaintiff called her female relative to dissuade her from the pending marriage.

Another witness, a woman unrelated to the parties by blood, confirmed the main facts from the testimonies of the plaintiff and some facts from the testimonies of her parents.[29]

The aforementioned psychiatric opinion from the head physician of the mental health clinic of the municipal hospital in N. was attached to the case files.[30] The psychiatrist confirmed that the plaintiff had experienced a nervous crisis associated with a loss of consciousness during her studies. The psychiatrist accompanied the plaintiff at the hospital, where she was diagnosed for a histrionic personality disorder classified as „F. 60,4, 301.50 DSM-IV TR"[31]. According to the ponens, a photocopy of the epicrisis written by the doctor who attended the plaintiff during her stay at the hospital would be more valuable as evidence.

Also, the case files contain a private psychological opinion about the plaintiff, given by psychologist D. on 08/10/2004. According to the psychologist, the plaintiff was

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[29] Cf. IBID.

[30] The head physician is the plaintiff's uncle. See IBID., n. 12, p. 6.

[31] IBID.

psychically and emotionally immature, had an asthenic, fearful and dependent personality, and she experienced a transient reactive neurosis at the time of entering the marriage. All that was intense enough to have a major effect on her mental ability to make a free decision on the contracting of the marriage. According to the ponens, this opinion makes it possible to draw conclusions about likely psychic anomalies in the plaintiff at the time of expressing the matrimonial consent. However, the probative value of this private opinion depends on the content of the psychological opinion produced by the forensic expert of the Tribunal of the Rota.[32]

The opinion the forensic expert of the Tribunal of the Rota was given based on the psychological examination of the plaintiff and on the case files. This psychologist concluded that the plaintiff was psychically unstable, which had an important effect on her behaviors and on the decision to get married. The instability was a consequence of a significant psychological and emotional immaturity originating from the plaintiff's lack of stabilization in her family, school and social environments. From the psychological point of view, dependence, fear and respect for the parents could be the only motivation that drove the plaintiff to getting married. She could not oppose her parents and their determined attitude though she told them about what she was going through. In addition, the plaintiff was influenced by social and religious considerations.[33]

The adjudicating panel of the second instance recognized the parties and the evidence as credible. The pieces of evidence (testimonies and documents) complement one another and make it possible to arrive at a „moral certainty". The judgment highlighted the following facts: the plaintiff had a disturbed personality; the parties did not plan to get married; the pregnancy of the 17 years old plaintiff was unplanned; the plaintiff was dependent on her mother and on her authoritarian father; the plaintiff did not want to get married but felt coerced; the plaintiff planned to stay a single mother; the plaintiff agreed to the marriage against her will. According to the judges of the second instance, all that substantiates the claim that the plaintiff was deprived of the free will while deciding about a fundamental change to her life. The plaintiff had a sense of this, so her matrimonial consent was affected by the grave defect of discretion of judgment. The circumstances and events that followed within 2 years from the wedding are a clue confirming that the parties did not plan for living

[32] Cf. IBID.
[33] Cf. IBID., n. 13, p. 6

together during the engagement and the woman got married against her will with a person whom she did not love.[34]

4. Resolution

The last part of the judgment contains the sentence in which the third-instance adjudicating panel of the Rota decided that the invalidity of marriage had been proven (…) because of a grave lack of discretion of judgment on the part of the plaintiff. Regarding the „general fear on the part of the plaintiff" as a cause, the judges withheld their opinion whether the existence of the cause had been proven.[35]

5. Comment

1. This judgment of the Tribunal of the Apostolic Nunciature's Rota in Spain is an example of an insightful investigation into a case of a grave lack of discretion of judgment as to mutually given and accepted essential rights and obligations of marriage (can. 1095 n. 2 of the CIC). Considering the difference between the judgments of the metropolitan court in (…) (the first instance) and by the adjudicating panel of the Spanish Rota (the second instance) on the grave lack of discretion of judgment on the part of the plaintiff, the case had to be reviewed by another adjudicating panel of the Rota (the third instance).

While considering the case, the auditors focused on the explanation of the discrepancies between the testimonies of the parties and witnesses. It was determined that the differences resulted from mutual animosity of the parties, from the ongoing civil process of divorce, and the defendant's disagreement with the content of the plaintiff's petition. The inner freedom of the plaintiff's decision on getting married was evaluated in detail. According to the judges, the plaintiff contracted the marriage against her will, under influence of external factors and as a consequence of deficiencies of her personality.

An interesting fact of the case is the ponens's referral to the psychological opinion given by the forensic expert in the first instance. The ponens questioned the opinion and criticized the auditing judge for not ordering a new psychological opinion. Another thing deserving attention are Ponce Gallén's detailed considerations on the lack of the discretion of

[34] Cf. IBID., n. 14, p. 6
[35] Cf. IBID., p. 6

judgment, particularly the lack of the inner freedom, contained in the *in iure* part of the judgment.

2. The judgments were based on a number of causes: four in the first instance (the grave defect of discretion of judgment on the both parties and the psychic inability to assume essential obligations of marriage on the both parties), and five in the second instance (the former four plus the general fear on the part of the plaintiff). No canon of the Canon Law Code sets a limit on the number of possible causes of invalidity, which can be considered as part of a single process.[36] However, it would be reasonable to assume that it should not be too large. It is often the case that parties to a process, whose knowledge of the canon law is superficial, suggest more than one cause of invalidity of their marriage. Hence the importance of the role of the court vicar who defines the formula of doubt after hearing the parties and the defender of the marriage bond.[37]

Most cases reviewed by ecclesiastic courts are based on one or two causes. Then, judges can pay more attention to the cause(s) than it was possible in the present case (investigating five causes). Note at this point that the dismissal of one cause does not deprive the party concerned the right to initiate a new litigation based on another cause. If the formula of doubt is too extensive, the parties involved the process get distracted, and problems arise with the collection of evidence,[38] with the editing of his remarks by the defender of the marriage bond, with the formulation of the line of defense and, finally, with the editing and giving of the judgment.

3. Compatibility of causes of invalidity of marriage is an important subject that tends to be omitted in the formulation of the formula of doubt.[39] In the present judgment we have a list of causes: the lack of discretion of judgment and the psychic incapacity on the both parts. According to the review of judgments of the Tribunal of the Roman Rota made by R. Sobański, the subject of compatibility of these two causes of invalidity of marriage is treated differently. „In some cases, marriages are proclaimed invalid because of the lack of discretion of judgment and inability to undertake obligations of marriage. (…) we have Rota's judgments in which the recognition of invalidity because of the lack of discretion of judgment

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[36] CIC, can. 1676 § 5: „The formula of doubt should define causes for questioning the validity of marriage".
[37] Cf. IBID., can. 1676 § 2
[38] „… the evidential procedure should care not to lose sight of any of the causes, which can easily happen when one of the causes appears to be poowerful to the judges: by recognizing the evidence underlying the cause they omit evidence for other causes or recognize the causes as „redundant" (which leads to negative judgments for such causes)". R. SOBAŃSKI, *Orzekanie nieważności małżeństwa z dwu (lub więcej) tytułów wadliwego konsensu*, Ius Matrimoniale 5 (2000), p. 142.
[39] Cf. IBID.

inhibited the proceedings from passing on to the deciding on the inability to undertake essential obligations of marriage. Still others, where the lack of discretion of judgment was not proven, proceeded to, and are based on, the inability to undertake essential obligations of marriage"[40].

Ponce Gallén did not refer to the compatibility of the causes consisting in the lack of discretion of judgment and the psychic incapacity in the present judgment.[41] He focused on the grave defect of discretion of judgment and on the coercion („general fear"). He considers the two causes incompatible. This opinion of the ponens was reflected in the very formula of the doubt in the third instance. It was clearly noted that the „general fear" as the cause was considered as a cause subsidiary to the lack of discretion of judgment.[42]

Regarding the lack of discretion of judgment, the plaintiff agreed to contract the marriage while she did not have the legally required ability to decide about herself, which precluded the making of a free and conscious decision (a „human act")[43]. In the case of coercion, the giver of the marital consent makes such decision because they wish to free themselves from the coercion by the only means available: by getting married. However, by virtue of law, this act of the will is defective and invalid.

This incompatibility of the two causes, the grave defect of discretion of judgment and the coercion, is also reflected in the judgment of the second instance. The first cause was recognized as proven, the other one as unproven. Finally, in the third instance, the first cause was recognized and the other was simply dismissed.

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[40] Cf. IBID., p. 147-148.

[41] There was no such need because none of the causes was proven in the first instance and the second instance proved just the existence of the grave defect of discretion of judgment on the part of the plaintiff.

[42] „Como en Tercera Instancia: Si se ha de confirmar o reformar la sentencia del Anterior Turno Rotal en la causa de nulidad de matrimonio …, de fecha 11 de octubre de 2005, en cuanto declara que sí consta la nulidad de este matrimonio por defecto de consentimiento matrimonial, por grave defecto de discreción de juicio por parte de la esposa. Como apelación y *con carácter subsidiario*, y en segunda instancia: Si se ha de confirmar o reformar la sentencia del Anterior Turno Rotal en la causa de nulidad de matrimonio …, de fecha 11 de octubre de 2005, en cuanto declara que no consta la nulidad de este matrimonio por temor reverencial padecido por la esposa". IBID., n. 4, p. 2.

[43] Cf. IBID., 25.03.2007, EDJ 2007/15185, n. 9, p. 3-4; cf. DEC. C. STANKIEWICZ of 26.03.1990, RRDec. 82 (1990), n. 20-22, p. 234-236; cf. DEC. C. ERLEBACH, Ponente. *Novae Aureliae, Nullitatis matrimonii (F. I.)., P.N. 18.461*; cf. W. GÓRALSKI, *Poważny brak rozeznania oceniającego co do istotnych praw i obowiązków małżeńskich (kan. 1095 n. 2 KPK) w świetle wyroku Roty Rzymskiej „coram" Erlebach z 16 października 2008 r.*, Ius Matrimoniale 18 (24) (2013), p. 223; cf. W. GÓRALSKI, *Gravis defectus discretionis iudicii w opublikowanych wyrokach Roty Rzymskiej z 2005 r. : część I*, Ius Matrimoniale 25 (2014) No. 3, p. 65-66; cf. W. KRAIŃSKI, *Orzekanie o nieważności małżeństwa z tytułu symulacji całkowitej wraz z innymi tytułami nieważności małżeństwa w obrębie zgody małżeńskiej w wyrokach Roty Rzymskiej*, Studia Gdańskie 27 (2010), p. 225.