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# Niezdolność do podjęcia istotnych obowiązków małżeńskich z przyczyn natury psychicznej (kan.1095, n. 3 KPK) w świetle wyroku Roty Rzymskiej c. Stankiewicz z dnia 27 lipca 2010r.

## *Incapacitas assumendi* (can. 1095, n. 3 CIC) in the judgment of the Roman Rota c. Stankiewicz of 27 July 2010

## Introduction

The judgment of the rotal turnus c. Stankiewicz (the remaining judges were K.E. Boccafola and A.Arellano Cedillo) of 27 July 2010 was made in the third instance (negative) in the case referring to the nullity of marriage contracted on 30 August 1991 in one of the parishes of the Diocese of Koszalin-Kołobrzeg between Aleksja, the petitioner, and Amadeusz, the respondent[1]. The parties knew each other from childhood because the mother of the respondent was a paediatrician and she frequently treated the petitioner and her brother. With time, the parties became friends and subsequently they got engaged. However, as the date of the wedding was approaching, Aleksja was thinking about breaking up the engagement with Amadeusz due to his dependence on his family and subjecting to his mother's will. However, when everything was prepared to the wedding ceremony, Aleksja, convinced by her father, decided to abandon her initial idea and she contracted marriage (the wedding reception, attended by numerous guests, lasted two days).

The newlyweds had a happy honeymoon in Germany and after that they started family life together, which lasted nearly eight years; this relationship resulted in the birth of their daughter. Over the years, the joint life of the spouses deteriorated, according to the petitioner - due to the feeling and the dependence of the respondent on his mother. This resulted in difficulties in the relationship between the spouses, at the same time causing

[1] EXC.MO P. D. ANTONIO STANKIEWICZ, *Coslinen.-Colubregana. Nullitatis matrimonii*, RRD 102 (2010), p. 326-339.

misunderstandings and mutual alienation between them, which led to separation and civil divorce. The parties did not reach agreement despite the efforts undertaken to that end by the petitioner's father.

For the purpose of regulating her civil status at the forum of the Church, on 21 February 2000 the petitioner addressed the Diocesan Tribunal of Koszalin-Kołobrzeg asking for the establishment of the nullity of her marriage on the ground of the respondent's incapacity to assume the essential obligations of marriage, in accordance with can. 1095, n. 3 of the Code of Canon Law (hereinafter: CIC). After the acceptance of the libellus on 15 March 2000 and determining the formula of the doubt and after conducting the proof instruction (the hearing of the parties and of their witnesses), and subsequently after the acceptance of the psychological opinion drawn up on the basis of the case files, on 29 May 2000 the Tribunal made the judgment establishing the nullity of marriage *ob incapacitatem viri*[2].

After receiving the case files (in accordance with can. 1682 § 1 of the CIC), with the decree of 19 July 2001, the Metropolitan Tribunal of the Archdiocese of Szczecin-Kamień did not confirm the judgment of the first instance but took the case for investigation (in the second instance) according to the ordinary proceeding. Without supplementing the proof instruction, on 4 September 2001 a negative judgment was made (*non constare de nullitate*)[3].

After the petitioner filed an appeal, the case was directed to the Tribunal of the Roman Rota (in the third instance) where - after the translation of the case files (into Italian) which lasted quite a long time - the petitioner was granted *gratuitum patrocinium* and a patron was assigned to her *ex officio,* and also a court expert's opinion - created on the basis of the case files - was accepted; moreover, the proof instruction was supplemented. After the exchange of defence briefs (from the side of the petitioner and the defender of the marriage bond), on 19 May 2008 the formula of the doubt was determined („Whether in the investigated case the nullity of marriage is known on the ground of the man's incapacity to assume the essential obligations of marriage for causes of a psychic nature"). On 27 July 2010 the rotal turnus c. Stankiewicz made a negative judgment, i.e. one which did not establish the nullity of marriage on the challenged ground[4].

[2] IBID., p. 326-327.
[3] IBID., p. 327.
[4] IBID., p. 327 and 339.

## 1. The legal motives of the judgment

The quite extensive disquisition of the ponens begins from the statement that - in accordance with the Pastoral Constitution on the Church *Gaudium et spes* of the Second Vatican Council - when a man and a woman contract marriage which is valid before the Church, they should mutually give and accept each other in an irrevocable covenant in order to create the partnership of conjugal life, established by the Creator and governed by His laws[5]; this partnership is, by its nature, ordered to the good of the spouses and to bearing and raising offspring and it is associated with rights and obligations which constitutively belong to this partnership (can. 1055 § 1; can. 1057 § 2; can. 1135 of the CIC).

This mutual, personal giving and acceptance of the contractors, which inseparably bonds them with a perpetual and exclusive bond (cf. can.1134 of the CIC), by its nature requires them to be capable - in this covenant, i.e. in the act of the will (cf. can. 1057 § 2 of the CIC) – to assume the essential obligations of marriage.

These obligations, as the judgment declares, influence the partnership of life in a more significant way than matrimonial rights, although the point are equal rights and obligations which emerge out of marriage in those things which refer to the partnership of conjugal life (cf. can. 1135 of the CIC). Nevertheless, the Canon Law does not put emphasis on the capacity to assume the essential obligations of marriage, assigning a nullifying power to its lack, similarly as in case of a grave defect of discretion of judgment concerning the same rights (can. 1095 n. 2 of the CIC). Perhaps this happens due to the fact that according to the general rule, and therefore, due to the human innate tendency, rights are unhesitatingly accepted and observed[6].

And, as we read further in the judgment, the capacity to assume the essential obligations of marriage, as was authoritatively clarified during the revision of marriage law, is required for the validity of marriage relevantly to the norm of natural law which the Canon Law only codifies and clearly presents[7]. Therefore, in this understanding, the provision of can. 1095, n. 3 of the CIC clearly states that the persons who are incapable of contracting marriage are those who - for causes of a psychic nature - are incapable of assuming the essential obligations of marriage.

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[5] *Konstytucja duszpasterska „Gaudium et spes”*, in: *Sobór Watykański II. Konstytucje, Dekrety, Deklaracje*, Pallotinum 1967, n. 48.

[6] Here there is a reference to the following work: DE LIEBS, *Lateinische Rechtsregeln und Rechtssprichwörter*, Darmstadt 1988, p. 103.

[7] Cf. Communicationes 15 (1983), p. 231.

Subsequently, the ponens states that there is no doubt about the fact that the incapacity to assume the essential obligations of marriage remains in strict association with the incapacity to fulfil them; it is acknowledged that their fulfilment depends on assuming them. This is due to the fact that a person who is truly incapable of assuming these essential obligations of marriage is also incapable of fulfilling them[8]. Therefore, during the codification of marriage law, incapacity in reference to various obligations of marriage was usually defined using various terms, the following of which were especially adopted: „to assume or fulfil"[9] or „to assume and fulfil" these obligations[10]. This discrepancy may be found in the doctrine and jurisprudence even today[11].

Stankiewicz notices that when it comes to a consistent view on consensual incapacity, some believe that it is necessary to differentiate forms of incapacity to undertake true matrimonial consent - whether due to the lack of the sufficient use of reason (can. 1095, n. 1 of the CIC) or due to the lack of proper discretion of judgment (can.1095, n. 2 of the CIC) – from those forms of incapacity which - with the assumption that the entity has the capacity to undertake matrimonial consent - come from the fact that the entity is incapable of fulfilling the essential obligations of the matrimonial covenant, in accordance with the *nemo ad impossibile se obligare potest* principle. The reason of this kind of incapacity of fulfilling obligations is of no significance if there is true incapacity[12].

The editor of the rotal judgment continues by saying that it is acknowledged that the legal power of the above mentioned rule of law which results in the incapacity to become obliged, however, exceeds the limits of purely positive law, because it makes it impossible to undertake obligations in accordance with the principle of natural law which is the basis for the new canon (1095 n. 3 of the CIC)[13]. However, according to the judgment, „this incapacity does not refer to obligations of marriage perceived *in seipsis*, which the Creator wisely bonded with the partnership of conjugal life between a man and a woman, but it only refers to rendering these obligations, i.e. their fulfilment or performance"[14].

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[8] Cf. Communicationes 3 (1971), p. 77.
[9] Cf. Communicationes 9 (1975), p. 42.
[10] Cf. Communicationes 33 (2001), p. 236.
[11] EXC.MO P. D. ANTONIO STANKIEWICZ, *Coslinen-Colubregana…*, judgment cited, p. 328-329.
[12] Here the ponens referred to the following work: U. NAVARRETE, *Capita nullitatis matrimonii in Codice I.C. 1983*: *Gressus historicus versus perfectiorem ordinem systematicum*, in: K. LÜDICKE, H. MUSSINGGHOFF, H. SCHWENDENWEIN (ed.), *Iustus Iudex. Festgabe für Paul Weseman*, Essen 1990, p. 271.
[13] Cf. IBID., p. 270.
[14] „Haec tamen *impossibilitas* [underlining in the text] non respicit ad obligationes coniugales in seipsis consideratas, quas Creator consortio vitae coniugalis inter virum et mulierem sapienter indidit, sed ad earum praestationem tantum seu adimpletionem vel exsecutionem". EXC.MO P. D. ANTONIO STANKIEWICZ, *Coslinen-Colubregana…*, judgment cited, p. 329.

As for the fulfilment of obligations of marriage, the ponens states that it is necessary to bear in mind the principles of the Catholic doctrine about the true capacity to undertake them, i.e. life in a faithful, inseparable and fertile covenant of matrimonial love, unless a serious mental anomaly makes the fulfilment of some essential obligation impossible already in the contraction of marriage. According to the Catechism of the Catholic Church: „Jesus has not placed on spouses a burden impossible to bear, or too heavy (Matt 11:29-30) - heavier than the Law of Moses. By coming to restore the original order of creation disturbed by sin, he himself gives the strength and grace to live marriage in the new dimension of the Reign of God. It is by following Christ, renouncing themselves, and taking up their crosses (Mark 8:34) that spouses will be able to «receive» (Matt 19:11) the original meaning of marriage and live it with the help of Christ. This grace of Christian marriage is a fruit of Christ's cross, the source of all Christian life"[15].

However, on the other hand, as Stankiewicz notices, the incapacity to fulfil obligations usually refers to the scope of the consequences of marriage *in facto esse* and most frequently affects the conjugal state already after contracting marriage. Therefore, not observing the obligations of marriage does not constitute a criterion deciding on the incapacity to assume them, unless it existed already in the constructive moment of marriage *in fieri.* This is because if the incapacity to fulfil obligations emerged only after contracting marriage, then it does not „extend its power back" to the time of contraction of the relationship and, therefore, it cannot constitute the cause of incapacity to assume obligations in the genetic moment of the matrimonial covenant, because only incapacity existing in that very moment invalidates marriage[16].

Subsequently, the editor of the judgment mentions that, nevertheless, we should not ignore the things which took place after contracting the marriage because the fulfilment of the obligations of marriage during the time of duration of the matrimonial partnership constitutes very important evidence in favour of the capacity to assume these obligations in the moment of contracting marriage. And counterwise, the lack of fulfilment of the essential obligations of marriage, as has already been said, not necessarily implies assuming them in an invalid way, although the persistent and continuous lack of their fulfilment lasting after the contraction of

[15] *Katechizm Kościoła Katolickiego*, Pallotinum 2012, n. 1615.

[16] „Sed alia ex parte incapacitas adimplendi in ambitu effectuum matrimonii *in facto essse* de more operatur et statum, coniugalem, nuptiis iam celebratis, plerumque afficit. Quare obligationum coniugalium inobservantia critrium decretorium incapacitatis assumendi non constituit, nisi momento constitutivo matrimonii *in fieri* iam fuerit in actu. Si enim incapacitas adimplendi post nuptias tantum eruperit, vim suam ad tempus celebrati matrimonii non retroahit, nec ideo causam praestare potest incapacitatis assumendi momento genetico foederis matrimonialis, quae nuptias tantum invalidat". EXC.MO P.D. ANTONIO STANKIEWICZ, *Coslinen-Colubregana…*, judgment cited, p. 330.

marriage may provide evidence in favour of the incapacity to assume these essential obligations which existed already in the act of expressing the matrimonial consent[17].

The further part of the judgment states that, however, in ordinary conditions of life the negligence in the fulfilment of the obligations of marriage, carelessness or explicit and obvious infringements in reference to those obligations, easily lead to the collapse of marriage, which also results from many other causes that not at all depend on the incapacity to assume those obligations[18].

Therefore, as we read in the judgment, in cases referring to the nullity of marriage *ob incapacitatem assumendi* of one or both of the contractors, it is necessary to take into consideration the teaching of the Magisterium, i.a. those of John Paul II, included in his speech to the Roman Rota of 5 February 1987. Back then, the Holy Father said that the breakdown of the matrimonial partnership can never constitute evidence in favour of the incapacity of contractors who could have neglected or improperly used the natural and supernatural means available to them, or could have not accepted the necessary limitations and burdens in matrimonial life due to, for example, obstacles in the realm of unawareness, or due to small pathologies which do not infringe essential human freedom or, finally, shortcomings in the moral order[19].

*Incapacitas assumendi,* the ponens continues, as is clearly stated by the provision of can. 1095, n. 3 of the CIC, refers only to essential obligations of marriage, and not to other obligations, even ones which are very significant for the wellbeing of the matrimonial partnership. This is because the point are intersubjective obligations that result from justice, which receive their legal nature from the formal object of matrimonial consent, defined by the essential properties of marriage, by elements and by what marriage is ordered to (can.1055 § 1; can.1056 and can.1061 of the CIC), and they receive their specification from

[17] „Inficiandum non est quin *adimpletio obligationum* matrimonialium tempore convictus coniugalis magni momenti argumentum constituit pro capacitate assumendi eas tempore initi matrimonii. E contra, obligationum coniugalium inadimpletio, ut supra dictum est, haud necessario implicat invalidam earum susceptionem, etiamsi obstinata et continua earum inobservantia, post nuptias forte protracta, haud spernendum argumentum praebere possit probationi in favorem incapacitatis assumendi eas iam operante in actu praestationis consensus matrimonialis". IBID.

[18] „Sed in ordinario vitae coniugalis cursu neglegentia in observandis obligationibus matrimonialibus, incuria vel patens et manifesta earum transgressio, quae ad naufragium matrimonii facile ducunt, ut plurimum ex aliis causis derivantur, quae ab incapacitate assumendi eas minime pendent". IBID.

[19] IOANNES PAULUS II, *Allocutio ad Rotam Romanam* (05 February 1987), AAS 79 (1987), p. 1454, n. 7; See also W. GÓRALSKI, *Dialog sędziego z biegłym w sprawach o nieważność małżeństwa z tytułu niezdolności psychicznej w świetle przemówienia papieża Jana Pawła II do Roty Rzymskiej z 5.II.1987 r.*, in: M.M. GRZYBOWSKI (ed.), *Mazowieckie Studia Kościelne*, t. 1, Płock 1990, p. 28-29.

the essential goods of marriage, and the rotal judgments frequently strive to present this direction[20].

As for the constitutive nature of the essential obligations of marriage, there are representatives of the doctrine who assume that the provision of can.1095, n. 3 of the CIC refers rather to many incapacities to assume the essential obligations of marriage than only to its one form. This is because such incapacities refer to concrete and defined obligations and not to obligations determined only in a general way.

By referring to U. Navarrete, the then dean of the Roman Rota notices that the assumption of a specific nature of an obligation which someone cannot fulfil implies that given incapacity is also specifically determined. *Per se,* particular specific incapacities of this kind should be treated as reasons which, themselves alone, and independently from others, imply the nullity of marriage, therefore, they should be treated as autonomous grounds for nullity with all legal consequences, above all when it comes to the necessity for two judgments compliant in the *nullitatis matrimonii*[21] process. However, as we know, as Stankiewicz mentions, at the canon forum, in the establishment of nullity of marriage due to incapacity to assume the essential obligations of marriage, which is also the situation in the case investigated by the rotal turnus, generally and commonly the specific obligation which a given party, considered incapable, was not able to assume, is not indicated[22].

According to the judgment, in accordance with can. 1095, n. 3 of the CIC, the incapacity to assume the essential obligations of marriage may originate only from causes of a psychic nature, and not from other causes, e.g. from moral shortcomings or from reasons of a physical nature (i.a. due to deportation or life imprisonment). This is because this incapacity is an obstacle for assuming the obligation validly due to a defect of mental power, of a volitional nature, from the side of the contractor, in reference to his or her future actions which imply the fulfilment and observance of obligations[23].

According to the judgment, causes of a psychic nature in the canon-court perspective refer to the mental structures and the dynamic actions of a human, which govern the way of human procedure; these actions, due to the occurring mental anomaly which introduces a pathological condition, make it impossible to assume one or several essential obligations of

[20] Here there is a reference to DEC. C. STANKIEWICZ of 27 February 2003, RRD 95 (2003), p. 109-111, ff. 5-8; See also J. HERVADA, *Studi sull'essenza del matrimonio*. Milano 2000, p. 327.
[21] U. NAVERRETE, *Capita nullitatis matrimonii* …, op. cit., p. 272.
[22] EXC.MO P.D. ANTONIO STANKIEWICZ, *Coslinen-Colubregana…*, judgment cited, p. 331.
[23] „Haec enim incapacitas impedit, quominus obligatio valide assumatur ob defectum potestatis psychicae, indolis volitivae, ex parte contrahentis super actiones suas futuras, quae obligationum adimpletionem et observantiam implicant". IBID.

marriage, irrespectively of the nosographic type of this anomaly and its functional or organic nature.

Stankiewicz concludes this thought by saying that, therefore, although the text of can. 1095, n. 3 of the CIC uses the statutory expression „for causes of a psychic nature", nevertheless, as it is always underlined in the jurisprudence, „these causes should demonstrate a pathological nature, otherwise the meaning of the canon would be broad – i.e. it would include everything that is related to human, whether to the human physical-mental conjunction or to the interiorization in his or her socialising process"[24]. Therefore, in accordance with art. 9 § 2, n. 3 of the Instruction „Dignitas connubii", the incapacity to assume the essential obligations of marriage for causes of a psychic nature is verified when the betrothed who is incapable (to assume the essential obligations of marriage) is burdened with not only a serious difficulty, but also with the inability to undertake actions which are adequate for the obligations of marriage[25].

In the further course the editor of the judgment notes that due to the fact that there are various types of mental pathologies which may cause the incapacity to assume the essential obligations of marriage, the judge should use the support of one or several court experts in order to recognize (or not) the fact of incapacity and to learn its real nature, unless due to the circumstances this seems clearly unnecessary (can. 1680 of the CIC and art. 203 § 1-2 of the Instruction „Dignitas connubii"). It can, therefore, happen that e.g. in the case files it is impossible to find any sign of a mental disorder - whether before contracting marriage, or during the course of the long duration of the matrimonial partnership of the parties, to prove the supposed incapacity of the party[26].

The ponens recalls that the court experts, in their conclusions, should not only indicate the psychiatric name of the disorder, i.e. mental anomaly, diagnosed during examinations in the party supposed to be incapable (to assume the essential obligations of marriage) but, above all, the beginning of that anomaly, the nature, the severity, the diagnosis (cf. art. 209 § 1 of the Instruction „Dignitas connubii") and its influence on the capacity to assume the essential obligations of marriage (cf. art. 209 § 2, n. 3 of that Instruction)[27].

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[24] Here the ponens quoted the following fragment of the judgment of C. COLAGIOVANNI 20 March 1991: „Illae causae debent esse *indolis pathologicae* [underlining in the text], uti iurisprudentia Nostri Fori semper intellexit, secus redactio canonis tam late pateret ut comprehenderet quidquid ab homine procedit, sive ex complexione physico-psychica, sive ex inerioratione in suo processu socializationis". RRD 82 (1991), p. 177, n. 13.

[25] *Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii* (25 January 2005), Città del Vaticano 2005.

[26] EXC.MO P.D. ANTONIO STANKIEWICZ, *Coslinen.-Colubregana…*, judgment cited, p. 331-332.

[27] IBID., p. 332.

The judgment mentions that due to the fact that a court expert's assessment of the fact causing the nullity of marriage refers to past time (until the moment of contracting marriage), the historical assessment orders to not only limit oneself to scientific criteria and methods, but also to accept certain suppositions referring to the essence of the case. Therefore, the judge, in order to fulfil his assignment accurately, as the person considered the *peritus peritorum*, is obliged to consider not only the results delivered by the court experts, even if they are unanimous, but also the remaining circumstances of the case, and in the motives of the decision that are mentioned in the judgment, he is supposed to include the reasons why he accepted or rejected the court experts' conclusions (can. 1579 § 1-2 of the CIC and art. 212 § 1-2 of the Instruction „Dignitas connubii")[28].

## 2. The factual motives of the judgment

Applying the above presented motives *in iure* to the investigated case, the ponens moves to the profound analysis of the gathered evidence material. In reference to can. 1611, n. 1 of the CIC („The sentence must decide the controversy deliberated before the tribunal with an appropriate response given to the individual doubts"), in the beginning, he mentions that, above all, it is necessary to investigate whether in the period of contracting marriage with the petitioner, the respondent actually was incapable of assuming the essential obligations of marriage due to causes of a psychic nature, or not.

In reference to the judgment of the Tribunal of first instance, Stankiewicz notices that the judges came to the conviction that there is a lack of evidence allowing to declare that the respondent had *capacitas assumendi*, despite the fact that the opinion of the court expert psychologist (cf. can. 1574 and 1680 of the CIC and articles 203 § 1 and 209 of the Instructions „Dignitas connubii"), drawn up on the basis of the case files, included evidence elements in favour of the respondent's capacity to assume the essential obligations of marriage. Namely, the court expert stated that only certain traces of the dependent personality of the man cannot be the grounds for deducing his incapacity to assume these obligations. What is more, according to the court expert, it is the petitioner who is not capable of creating appropriate mental conditions allowing her marriage to exist as a partnership according to the understanding of the Church. This is indicated by her procedure after contracting marriage (at any cost she aimed at achieving success and gaining a dominant position in matrimonial life,

[28] IBID.

and she also adopted an attitude which did not have the capacity for interpersonal agreement and accepting the other person without demanding that person to fulfil certain conditions)[29].

As we read in the c. Stankiewicz judgment, by performing a deeper analysis of the evidence material and, above all, taking into consideration the opinion of the above mentioned court expert about the respondent's capacity to assume the essential obligations of marriage, the judges of the Tribunal of second instance came to a completely different conclusion and found that the nullity of marriage was not proven on the challenged ground of nullity. According to the judges of the mentioned Tribunal, the witnesses from the side of the petitioner (her parents and relatives) did not express full judgment in their testimonies and turned out to be biased to the „disadvantage" of the respondent, namely, they repeated the accusations of the petitioner, especially in terms of financial matters, those referring to professional work, the apartment and loans, whereas they said little about the attitude of both of the spouses in reference to their essential matrimonial obligations in shaping the matrimonial partnership as a sacrament. There are also several witnesses who shed light on the „mental normality" of the respondent, above all, on his conciliatory attitude towards his wife and his exemplary relationship with their daughter[30].

However, as we read in the judgment, the parents and the relatives of the respondent refused to appear in court, which makes it more difficult to prove the challenged ground of nullity, nevertheless, it does not exclude such a possibility. The defender of the marriage bond in the rotal instance stated that the man's alleged incapacity to assume the essential obligations of marriage cannot be declared because in the case files there is a complete lack of its cause. Stankiewicz emphasizes that, actually, neither the petitioner nor the witnesses introduced by her, nor the court experts are able to indicate a serious personality anomaly of the respondent or his serious immaturity, which would make him incapable of assuming and fulfilling the essential obligations of marriage.

The judgment mentions that an element which speaks against the claim of the petitioner are also the circumstances of matrimonial life which peacefully lasted eight years, and the decline of the matrimonial partnership was rather caused by reasons which occurred after contracting marriage, and not by the respondent's mental incapacity to maintain this partnership. To the opposite, the patron appointed *ex officio* to the petitioner, basing on the petitioner's very good testimonies of credibility and also taking into consideration the numerous ambiguities which emerged in reference to the credibility of the respondent,

[29] IBID., p. 333.
[30] IBID.

definitely claims that the case files sufficiently indicate the respondent's incapacity. This is because during the process conducted at the appeal level he, himself, unexpectedly wrote that he upholds the ground of nullity, adding that „he has no motives for presenting witnesses and he asks for adjudicating the case based on the evidence material from the previous instance"[31]. According to the patron of the petitioner, this position of the respondent does not at all undermine his credibility.

Stankiewicz continues, saying that in accordance with the statement of the petitioner, the core of the man's incapacity to assume the essential obligations of marriage was supposed to be the fact that he was dependent on his parents in everything, especially on his mother. While defining this dependence more specifically, in her testimony the petitioner claimed that she considers her marriage as contracted invalidly because she lived through eight years as if she was completely alone. At her side she did not have a partner and a father who would be able to secure the existence of his family, a person who would be capable of making decisions. She added, that the respondent never became detached from his home of origin, he did not „come out from the shade of his parents' care"; he not only did not detach from their care (the care of the mother or the father) but, above all, from their influence on the significant matters of his life. The petitioner also stated that they (the petitioner and the respondent) never formed a true family because he was not capable of that due to the fact that his heart remained with his parents and not at the side of his daughter and the petitioner. Also due to this fact, the petitioner expressed her strong conviction that the respondent was not capable of assuming and fulfilling the essential obligations of marriage, mentioning that he was not capable of overcoming the difficulties of life, and wherever he faced difficulties, there his mother also appeared. Further, the petitioner testified that in the period when they were engaged she was „in some way" in love with the respondent, at that time the respondent seemed to her to be an appropriate candidate to become her husband. And it would be further that way, she added, if it was not for his mother who held everything in her hands; however, the respondent was not able to choose between his mother and the petitioner. Moreover, she mentioned, that such an attitude of the respondent was also reflected in his home life, in which he had more esteem for his mother, and similarly for other members of his family[32].

As was noted in the judgment, in her testimony the petitioner characterized that imperial nature of the respondent's mother by describing her as a person who is despotic,

[31] „Sostengo il titolo di nullità. Non ho motivi per presentare testimoni e chiedo di giudicare la causa in base al materiale probatorio della precedente istanza". IBID., p. 334.
[32] IBID., p. 334-335.

distant, without a warm personality, very decisive, everything had to focus around her (she expressed her opinions loudly; she contributed to the breakdown of her older son's marriage in a similar way as in reference to the marriage between the petitioner and the respondent; when the petitioner visited the respondent's family home she was exposed to the attacks of his mother)[33].

The judgment mentions that the testimonies of the petitioner's brother (J.) had a similar tone. He presented the special bond between the respondent and his mother; according to the witness, everyone perceived this bond as something unnatural. Everything in the family depended on the respondent's mother, she had the role of someone like an owner, she was „the alpha and the omega". She enjoyed esteem in the town due to the fact that she was a doctor, she was in a way deified. The witness added that before the marriage between the parties the respondent did not differ from his peers at all, but the problem started because the respondent was completely dependent on his mother[34].

The ponens notices that also the petitioner's mother, in her testimony, emphasized the dependence of the respondent on his mother. According to the witness, the father of the respondent only played the role of a prompter, whereas the respondent's mother was the one who spoke loudly; the respondent did not deicide about himself and without his parents he was unable of making a decision autonomously. Moreover, the witness stated that for his parents the respondent was always the little son" who always turned only to them with his problems; in the marriage between the parties the petitioner had to make decisions for the respondent, whereas in job-related matters and in other issues the respondent asked his parents for advice and faithfully observed that advice[35].

Above this, the judgment mentions that the petitioner's mother also considered the respondent as incapable of carrying out his own decisions or implementing ones which were already undertaken, as well as unable of changing the employment sector obtained thanks to the petitioner[36].

As we read in the judgment, another witness, the petitioner's father, expressed the conviction about the respondent's incapacity of conducting matrimonial life due to excessive dependence on his parents; he also considered the respondent incapable of assuming the essential obligations of marriage and unable of rising to the challenge in every phase of life. The witness also mentioned that the respondent did everything together with his brother, he

[33] IBID., p. 335.
[34] IBID.
[35] IBID.
[36] IBID., p. 336.

was very closely bonded with his parents, he was not practical, he always remained in the shadow of his mother, he was not self-reliant, he was unable of carrying out his intentions, his mother was always most important for him, then there was his family of origin, then his daughter and only in the end - his wife[37].

The respondent's schoolmate (I.) confessed to the judge that after graduating from high school the respondent studied at the Technical Institute together with his brother and after a year of those studies the respondent started studying at a military school with this schoolmate. The schoolmate also said that if the respondent was capable of assuming the essential obligations of marriage, he would not be dependent on his family of origin[38].

However, subsequently the ponens underlines that the respondent denied the testimonies of the petitioner and her witnesses and in a decisive way proved his capacity to assume the essential obligations of marriage. Above all, in reference to his pre-marital relationship with the petitioner he claimed that he was the one who proposed marriage first, loving her and confessing this love to her, and she accepted this proposal; also the parents of the parties had a positive attitude towards the parties' intention of spending life together. In that period the parties had sexual intercourse. Nobody exerted pressure on them to get married, they also did not ask anyone for advice in this scope, they only talked about this with their parents. The ponens notes that the respondent was well prepared to marriage and was aware of the essential obligations of marriage and of his own capacity to assume them, this is because he testified that he knew those obligations and together with his fiancée they participated in a premarital course; and anyway, he declared to the judge that he was capable of assuming the essential obligations of marriage[39].

The respondent also testified that the celebration of marriage and the wedding reception took place in a happy and joyful atmosphere. Right after the wedding the parties started living in the house of the petitioner's parents, after that they went on a honeymoon to Germany; in that period the respondent was content. Due to her health condition, the petitioner was not able or she could not meet the expectations of her husband in the area of intimate intercourse, although the cause of that was not known; sexual intercourse took place rarely in that period, and after the return from the honeymoon it turned out that the petitioner was pregnant[40].

As for the cause of the breakdown of the marriage, in the judgment we read that the respondent had a difficulty with its proper indication. Therefore, he confessed that

[37] IBID.
[38] IBID.
[39] „Io ero capace di assumere e di adempiere gli obblighi matrimoniali". IBID., p. 337.
[40] IBID.

the petitioner was first to break the matrimonial partnership and he does not know the reason of that course of events; perhaps a matter which played a role here was his lack of financial possibilities in reference to his wife's expectations. In consequence, as the respondent claimed, another man appeared. One day the petitioner made the decision about the division of goods, which the respondent considered as acceptable. The respondent realized that in certain matters referring to their house, the deciding party was the petitioner's father. The petitioner filed for divorce which was granted on 22 December 1999[41].

When it comes to the relationship between the parties and their parents, the judgment quotes a fragment of the testimony of the respondent who claimed that his parents live in sacramental marriage; the respondent's father is retired and his mother is a paediatrician, she runs a private doctor's office and also works in a Public Health Centre. The respondent described his father as a person who is very familial, affectionate, consistent, and he described his mother as a person who would do everything for her family, a person who is consistent in her actions, who yields when she sees that she is not right, but otherwise - one who is very firm.

When it comes to the ability to decide, especially make more significant decisions, the editor of the rotal judgment quotes the following response of the respondent: „When it was necessary to make a decision, I consulted the matter with the petitioner and with my parents, but I also personally analysed the matters"[42]. After the breakdown of the marriage the respondent started living at his parents.

Referring to the opinion of the court expert (psychologist) who participated in the first instance, appointed *ex officio*, the ponens notices that in few but meaningful words, as has been mentioned above, she does not dare to conclude the man's incapacity to assume the essential obligations of marriage (due to some signs of the respondent's dependence). This court expert stated that the analysis of the evidence material indicates that both parties, i.e. not only the respondent, engaged their parents in the matters of their marriage, and that there are traces of the parents' interference at various moments of the duration of that relationship which demonstrate various intensity and „depth", including intimate life. She added that the respondent, as a less active party, subjected to his wife in marriage, was bonded with his

[41] IBID.

[42] „Quando era necessario prendere le decisioni mi consultavo con l'Attrice e con i miei genitori, ma anche io stesso riflettevo sulle questioni". IBID., p. 337-338.

parents and his family also emotionally; in his family he sought understanding, support and the confirmation of his worth[43].

The judgment states that this assessment of the court expert referring to the respondent's mental capacity to assume the essential obligations of marriage was fully shared by the rotal court expert (prof. D'A), a psychiatrist. He found this opinion well justified, after a careful examination conducted with special meticulousness and accuracy. In his extensive report, also drawn up on the basis of the case files, while discussing the personality of the respondent, this court expert stated that the assessment of his personality appears to fully correspond with the style of life conducted by him and the strategy of behaviours revealed in certain events. Indeed, the court expert assumed that the man demonstrates traces of a dependent personality but, at the same time, the expert stated that this does not mean that the man is incapable of assuming the essential obligations of marriage.

The ponens underlines that after studying the case files, the mentioned rotal court expert defined the personality of the respondent as slightly passive and dependent (since youth). He added that „traces" of this kind are not sufficient for making a diagnosis of a true and proper personality disorder, without taking into consideration aspects that are only peripheral. As such, they should be considered as occurring in a degree which is not serious and not sufficient to limit and/or deprive of the basic mental abilities, such as: a critical attitude, judgment and assessment of events or the ability to express and shape matrimonial consent. We read in the judgment that, according to the opinion of the court expert, in the investigated case we are not dealing with a mental anomaly of the respondent, especially a serious anomaly, but only with traces of personality which deviates from standard, but these traces do not have any real consequence and/or ground which infringe the capacity to assume or fulfil obligations such as: faithfulness, permanent and fundamental commitment, the responsibility of being a father and a husband. According to the court expert, those traces of the passive-dependent personality which are demonstrated by the respondent are the cause of behaviours which aim i.a. at seeking existential strategies and behaviours directed at evading serious responsibility, with the simultaneous preference of „conveying" burdens and tasks to others; therefore, they are the expression of the attitude of rather an average person than that of a leader, which, however, undoubtedly, is not a sufficient reason of moral inability to establish a healthy, matrimonial interpersonal relationship[44].

[43] IBID., p. 338.

[44] „Nam sub respectu psychiatrico, ut Peritus explicat «i tratti della personalità *passivo-dipendente* [underlining in the text], quali riscontrati nel Convenuto, sono causa di atteggiamenti tendenti, tra l'altro, a ricercare

The judgment states that conclusions of this kind may be calmly accepted at the canon-juridical forum about the respondent's mental capacity to assume the essential obligations of marriage, because they are the effect of the application of psychiatric scientific knowledge, contemporarily widely accepted and agreed with, and as such they demonstrate the full degree of scientific certainty.

The sentence *„Negative, seu non constare ..."* finishes the judgment[45].

### 3. Final remarks

The presented c. Stankiewicz judgment constitutes an interesting example of a decision in a difficult case filed by the petitioner *ob incapacitatem assumendi* on the side of the respondent. Having two divergent judgments: a positive and a negative one, which were made in previous instances, the rotal turnus had to profoundly analyse the case in order to learn the full truth about the relationship challenged in terms of nullity.

While proceeding to decide in the case, the judges had to, above all, realize that the partnership of conjugal life, in its natural structure, is strictly bonded with rights and obligations which - in the moment of contracting marriage - require the contractors to have mental and sexual capacity to assume actions which are strictly bonded with these rights and obligations throughout the whole duration of matrimonial life.

In the *In iure* part of the judgment, a remarkable and experienced judge, the dean of the Tribunal of the Roman Rota, presented a range of topics referring to *capacitas/incapacitas assumendi*. By embedding can. 1095, n. 3 of the CIC in natural law, he emphasized the necessity to take into consideration both the capacity, itself, to assume the essential obligations, as well as its lack. At the same time he points to the relationship occurring between the capacity to assume these obligations and the capacity to fulfil them, underlining their strict connection (the capacity to assume *obligationes matrimonii essentiales* implies the capacity to fulfil them; and whoever is incapable of assuming the obligations is, thus, incapable of fulfilling them). The ponens considers incapacity as the inability to fulfil obligations, i.e. to render them in the partnership of conjugal life. It was necessary to recall

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le strategie esistenziali e comportamenti finalizzati a un disimpegno da responsabilità gravose preferendo, quando possibile, di delegare ad altri oneri ed incombenze. Un atteggiamento quindi più da *gregario* che da *leader* [underlining in the text], ma per questo certamente non causa sufficiente a porre il soggetto nell'impossibilità morale di instaurare una sana relazione interpersonale coniugale»". IBID., p. 339.

[45] IBID.

that the mentioned incapacity must not be in any way identified with difficulty, even serious difficulty, which was pointed out by John Paul II in 1987.

An element which should be underlined next is the statement of the rotal ponens, according to which the fulfilment of the essential obligations of marriage may actually take place only after contracting marriage, i.e. in the partnership of conjugal life. However, in case of not fulfilling these obligations in marriage *in facto esse,* one should not draw the conclusion about the existence of *incapacitas assumendi* in the moment of contracting marriage; this kind of inference is completely not authorized. Nevertheless, it is not excluded that the constant lack of fulfilment of the essential obligations by a spouse may indicate his or her *incapacitas assumendi* existing already in the act of expressing matrimonial consent.

The judge investigating a given case is, therefore, obliged to determine when the incapacity emerged, however, he cannot succumb to the temptation to automatically „transfer" the condition which emerged during the course of duration of the matrimonial partnership (e.g. one of the parties became addicted to alcohol) to the moment in which the parties expressed the matrimonial consent. At this point one may ask: Is it not possibly the case that many judges succumb to the temptation of such a gross simplification? The judge should not forget that the breakdown, itself, of the partnership of conjugal life can never determine the existence of the incapacity to assume the essential obligations of marriage in the moment of contracting marriage[46].

What is significant is drawing attention to the fact that in the investigation regarding whether the alleged incapacity existed already in the period of contracting marriage, one should not completely ignore determining whether a given spouse fulfilled the *obligationes matrimonii essentiales*. This is because, in accordance with logical thinking, fulfilling these obligations in the matrimonial partnership is definitely an argument in favour of capacity in this scope existing *in actu consensus matrimonialis*.

The presented judgment recalled that can. 1095, n. 3 of the CIC mentions the „essential" obligations of marriage, i.e. obligations which result from the purposes and the essential properties of marriage[47]. Therefore, as was underlined by Stankiewicz in another judgment of his (of 27 February 2003), this refers to obligations which imply: *bonum prolis*,

[46] The following fragment of the c. Stankiewicz judgment of 27 February 2003 is significant: „Validitati enim nuptiarum non obstat merum factum defectus coniugalis consortii, sed incapacitas tradendi vel acceptandi ius et officium ad illud". RRD 95 (2003), p. 109, n. 4.

[47] Cf. R. SZTYCHMILER, *Istotne obowiązki małżeńskie*, Warszawa 1997, p. 239-243 and 244-264.

*bonum fidei*, *bonum sacramementi* and *bonum coniugum*, and these obligations constitute an essential formal object of the matrimonial covenant[48].

An element which is of special practical importance is the constatation adopted in the judgment, according to which, although the nullity of marriage *ob incapacitatem assumendi* results in the contractor's incapacity to assume even only one essential obligation of marriage (e.g. observing matrimonial faithfulness), the given particular obligation is not indicated at the canon forum.

An element which is important is the fact recalled by the ponens, that the mentioned incapacity may be caused only by a cause of a psychic nature, i.e. the condition of a mental anomaly causing a pathology which makes fulfilling the essential obligations of marriage impossible. It is necessary to repeat after the ponens and underline with emphasis, that only a pathologic state - i.e. one which makes it impossible to assume (and fulfill) even one essential obligation of marriage - may be the source of *incapacitas assumendi*, which is also emphasized by the Instruction „Dignitas connubii". It seems that this is frequently forgotten in matrimonial processes when a pathological state, i.e. incapacity, is clearly confused with serious difficulty of a character-related nature. Undoubtedly, the element which should be the necessary help for a judge is the report of the court expert.

While referring to this issue, the then dean of the Roman Rota recalls what a judge is supposed to ask the court expert about and what the court expert should describe. An important element is recalling that the point is determining the status of capacity/incapacity of a given spouse in the period of contracting marriage by that spouse. What is also important is the remark referring to the critical assessment of the opinion of the court expert (or court experts) from the side of the judge. And again, one can pose questions: Is it sometimes not the case that the judge, *peritus peritorum*, succumbs to the temptation of „blind" trust to the opinion of the court expert? Does the judge always confront the received court expert reports with all the circumstances of the case?

The contents of the judgment included in its *In facto* part are equally significant and instructive. This part skilfully - with taking into consideration the principia explicated in the „legal motives" - assesses the gathered evidence material. The most important matter for the rotal turnus here was recognizing the respondent's capacity/incapacity in the period in which he contracted marriage with the petitioner. A certain difficulty in this assessment was, surely,

[48] DEC. C. STANKIEWICZ of 27 February 2003 …, judgment cited, p. 109.

the circumstance of the refusal of providing testimonies from the side of the witnesses presented by the respondent.

An element which should be considered significant and, at the same time, fully appropriate, is the fact that the judges took an attitude towards the judgments of the Tribunals of previous instances. Therefore, above all, attention was rightly pointed to the fact of the unjustified considering of the respondent as incapable of assuming the essential obligations of marriage by the Tribunal of first instance when the opinion of the court expert (drawn up on the basis of the case files) seemed to almost unambiguously deny that. Moreover, the rotal turnus referred with acclaim to the different decision made by the Tribunal of Appeal which, taking into consideration precisely the mentioned opinion of the court expert in the first instance and the non-convincing testimonies of the witnesses of the petitioner party, did not „find" *incapacitas assumendi* in the man. Especially, that in the light of the testimonies of some of the witnesses, the respondent made the impression of being a conciliatory person in reference to his wife and a good father.

The rotal judges, similarly as the defender of the marriage bond in this instance, did not notice any serious mental anomaly in the respondent in the period of contracting marriage. Above all, however, they noticed that the unfortunate final of the matrimonial partnership which lasted eight years had a completely different ground than the man's incapacity to assume the essential obligations of marriage, and these causes occurred after contracting marriage. The respondent's dependence on his parents, and especially on his mother, which was articulated by both, the petitioner and by her patron, as well as by the witnesses, and which was supposed to be the cause of his *incapacitas assumendi* was not considered as pathological by the turnus.

The fragments of testimonies of the petitioner and of her witnesses quoted in the c. Stankiewicz judgment do not include anything which would indicate the occurrence of some serious mental anomaly in the respondent. Moreover, in the statements of these persons mentioned in the judgment it is not difficult to sense clear bias in reference to the respondent and preconceived describing of his behaviours which were supposedly to indicate helplessness, a lack of self-reliance and consistency in action as well as a lack of engagement in family life.

An element which was not without significance for the *„Non constare"* rotal judgment were undoubtedly the quite extensively quoted testimonies of the respondent (who was considered credible), who not only denied the statements of the petitioner but also presented facts indicating his *capacitas assumendi* in the period of contracting marriage. Moreover,

the respondent indicated the proper cause of the breakdown of the marriage (a lack of financial possibilities in reference to the wife's expectations and the appearance of another man in her life).

The element which shed a broad stream of light on learning the truth about the marriage was the opinion (drawn up on the basis of the case files) of the court expert (a psychiatrist) appointed *ex officio* in the rotal instance. Fully agreeing with the earlier mentioned opinion of the court expert who participated in the first instance, prof. D'A. assumed that the respondent demonstrates „traces of dependent personality", adding that this absolutely does not entitle to consider him incapable of assuming the essential obligations of marriage (in the moment of contracting marriage). According to the expert, these „traces" of passivity and dependence did not deprive the man of *capacitas assumendi*, this is because he maintained the basic mental abilities necessary to undertake matrimonial consent.

The attention of a person reading the rotal judgment should also not miss the important statement of its author who - in accordance with what was recalled by John Paul II (in his speech to the Roman Rota of 5 February 1987) - mentioned that the conclusions of a court expert may be safely accepted at the canon-juridical forum.

There is no doubt that the presented judgment of the Tribunal of the Roman Rota c. Stankiewicz constitutes an example of the proper, professional taking of an attitude in reference to the formula of the doubt defined in the beginning of the process.