

## **Psychological impediments to marriage – forensic and psychiatric opinions. Part II.**

Przemysław Cynkier

Institute of Psychology, Faculty of Christian Philosophy,  
Cardinal Stefan Wyszyński University in Warsaw

### **Summary**

Episcopal courts adjudicate in proceedings for declaring a marriage void and in these cases psychiatrists and psychologists are appointed as experts. Expert judgment requires the expert to follow a specific substantive approach when preparing the expertise, as well as knowledge of canon legal provisions. Canon law makes validity of a relationship dependent on fulfillment of premises of a valid marriage at the time of the marriage, thus accepting the possibility of an invalid marriage. The so-called consensual and indirectly mental incapacity to marry is dealt with in canon 1,095, which says that the following are incapable of contracting marriage: (1) those who lack the sufficient use of reason; (2) those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted; and (3) those who are not able to assume the essential obligations of marriage for causes of a psychic nature. Episcopal courts use terminology that is not found in psychiatry or clinical psychology. However, specific psychopathological conditions stand behind specific formulations in the Code, and they should be taken into account by experts in their analyzes. In proceedings before common courts, only mental illness and mental retardation are taken into account, and no specific disorders are mentioned in Church legislation, which means that experts must consider a wide range of mental dysfunctions in their assessments.

**Key words:** marriage, canon law, psychiatric expertise

### **Introduction**

Expert psychiatrists and psychologists appointed by episcopal courts are primarily involved in cases related to the declaration of an invalid marriage. Opinions in this type of cases require the expert to take a specific substantive approach to the preparation of expertise, as well as knowledge of legal regulations applicable in canon law. Proceedings before an episcopal court are clearly different from the proceedings before a civil court. Experts face various expectations in each of these institutions.

In common law, the institution of marriage was not defined. In the Church law, according to canon no. 1055 of the Code of Canon Law, “the matrimonial covenant is a partnership of the whole of life established between a man and a woman and which is ordered by its nature to the good of the spouses and the procreation and education of offspring” [1, p. 262]. According to canon 1057 n. 1, the consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent. It is the agreement between the parties that makes the prospective spouses conclude a legally sanctioned relationship between a woman and a man. The definition contains not only the nature of this relationship, but also the goals that should guide it. According to n. 2 of the said canon, matrimonial consent is understood as 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 [1]. Although an act of the will is mentioned here, in reality this act should be the result of a serious and deep decision-making process, the analysis of which belongs to an expert. The content of canon 1057 should provide the expert with a certain basis which they shall refer to in their specialist work, which sometimes faces difficulties. They result from a somewhat different understanding of certain terms and definitions or treatment of mental disorders than in clinical psychiatry. The key task of an expert is to determine whether from the psychiatric or psychological perspective all the conditions had been fulfilled by the prospective spouses.

There is no institution of a non-existent marriage in canon law. Marriage is either invalid or valid and that is why episcopal courts only deal with cases of invalid marriage (and not annulment of marriage). If the marriage was concluded in accordance with the essential requirements of canon law, i.e., the premises for the valid conclusion of this relationship (freedom from matrimonial impediments, correct matrimonial consent, preservation of marriage conclusion form), it cannot be annulled in any way [2].

### **Incapacity to establish marriage**

Canon law, specifying the conditions of a valid marriage, makes the validity of relationship dependent on fulfillment of these conditions at the time of the marriage. Thus, it accepts the possibility of entering into an invalid relationship. The Code of Canon Law lists many impediments which, if they occur on the day of the marriage, make it invalid. Some of them are called ‘diriment impediments’ [1–3].

An impediment resulting from mental illness or mental retardation in Polish law, finds its counterpart in the sphere of matrimonial agreement in canon law – as a ‘consensual incapacity’. Under the canon law, the institution of dispensation is used to revoke the marriage bans. In the system of canon law, in addition to matrimonial impediments, there is also an institution of the ban of marriage, absent in Polish law [2].

Canon 1095 deals with the consensual, and indirectly mental, incapacity to marry. It says that the following are incapable of contracting marriage: “(1) those who lack

the sufficient use of reason; (2) those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted; and (3) those who are not able to assume the essential obligations of marriage for causes of a psychic nature”. The canon does not explicitly mention mental illness, mental retardation or any other specific mental disorder. Each of its points constitutes, however, an independent cause of incapacity to marry [1, 2, 4].

### Forensic experts

In Poland, the most common reason for which cases are filed to declare a marriage invalid, is inability to assume the essential obligations of marriage for causes of a psychic nature (can. 1095 n. 3). Can. 1095 n. 1 or n. 2 is definitely used less frequently [5]. Questions to experts are formulated on the basis of the content of canon 1095 and may relate to one, two or all canon points.

The Code of Canon Law, referring to the role of forensic experts, indicates in can. 1574 that their help should be used whenever an opinion is needed based on their experience or knowledge, which is to confirm a fact or learn the true nature of some matter. On the other hand, canon 1680 of the Code of Canon Law requires the judge to use the assistance of one or more experts when there is a need to clarify the psychological condition of concerned parties [6]. Although the provisions of the code do not specify the specialties of experts, in fact episcopal courts appoint psychologists or psychiatrists. Canon 1578 n. 2 states that experts should clearly indicate “by what documents or other suitable means they gained certainty of the identity of persons, things or places, by what manner and method they proceeded in fulfilling their function entrusted to them, and above all on which arguments they based their conclusions”. In this way, experts were given the opportunity to choose the most appropriate – in their opinion – examination methods. They also have the option of reaching for various sources of information about spouses, which could be useful in formulating conclusions [7]. The construction of this canon clearly refers to the regulations in force in common courts, where the court expects the expert’s arguments to be based on case materials, to be comprehensible and clear so that the court could trace the expert’s way of thinking. Only then is it possible to assess the expertise in terms of its reliability and later also its relevance.

The expert is therefore required to conduct specialist examinations (psychiatric, medical, psychological, case file analysis) and present final conclusions for procedural purposes. The opinion is to be based on the principles of science and should be carried out according to scientific methods. The expert should demonstrate not only theoretical knowledge of matter, but also a practical approach to the analyzed problem. He should also not exceed his competences, above all he cannot comment on the invalidity of the contested marriage [8].

Increasingly, attention is paid to the need to establish cooperation between experts (if there are several of them) and the Church judge, which in proceedings for the

declaration of an invalid marriage is particularly important due to the progress in the development of biological, medical and psychological sciences [6].

### **Stipulations of canon 1095**

In cases of incapacity to marry (according to can. 1095), the judge is not to omit asking the expert whether one or both parties suffered from a particular 'habitual' or transient 'anomaly' at the time of the marriage; how serious this anomaly was; when, why and in what circumstances it occurred and manifested itself [8].

In cases related to "the lack of sufficient use of reason" (can. 1095, n. 1), the court expert is to answer whether the anomaly seriously disturbed the use of reason at the time of the celebration of the marriage; and with what intensity and by what symptoms it manifested itself [8]. This canon refers to all mental disorders that deprive a person of their ability to perform 'human acts'. It is about people who are deprived of so-called moral accountability, i.e., they do not have self-awareness of committing a grave sin [1]. The following are mentioned among these states: mental illness, mental retardation, states of loss of consciousness, consumption of alcoholic beverages and others. Schizophrenia is the most common type of illness of this type. The difficulty is to determine the extent to which a particular clinical condition occurred at the time when the marriage was concluded and how it affected the disposition of the prospective spouse [4, 9]. In addition to assessing changes in behavior that result from the presence of symptoms, cognitive disorders should also be taken into account. Although the term "use of reason" gives rise to a suspicion that it is about the reduction of intellectual abilities, the legislator did not restrict to them the catalogue of psychological abnormalities that the expert should take into account in his assessments.

### **Case 1**

The Episcopal Court received the request of a man to annul his marriage, which had been concluded three years earlier. According to the testimonies of the witnesses as well as the plaintiff and the defendant, they had met in a special school two years before the wedding. Initially, they maintained friendly contacts and then they got engaged. During the engagement they did not have sexual contacts. Both families accepted their relationship. Only one of the relatives remarked: "they have some mental deficiencies, especially the defendant, she should not get married". Both prospective spouses declared, however, love for each other and the intention to start a family, and also to have children. They went to wedding with pleasure. None of them worked, they lived off their pensions. They both claimed that they married voluntarily and for love, they honestly vowed. As witnesses claimed, everything went well between them until the marriage was concluded. After the wedding, they lived with the wife's parents. Her mother interfered in their relationship and directed her daughter's behavior. The defendant avoided sexual relations and, as a result, the marriage was not

consumed, mainly because of her fear of pregnancy. After a month, the couple moved to her husband's parents. They lived there for a week, after which the wife began to go to her parents more often. Finally, after half a year, she definitively moved to her parent. One year after the wedding, the Civil Court dissolved their marriage by divorce without apportioning blame or liability.

Both sides of the proceedings applied for examination by an expert. The wife claimed among others that there had never been any sexual contact between them, because "grandmother forbid it, so there wasn't any". According to her, "in a marriage you must not argue, live well, husband must listen to his wife and wife must listen to her husband, you must sleep in one bed". The plaintiff, on the other hand, stated that "a Catholic marriage is a marriage for a lifetime, one goes with a wife to church, one has to set up a family, have children. You can divorce from your church marriage". "I did not want sex, because my wife started to refuse". The expert did not find any mental illness in the subjects. He recognized each of them as having mild mental retardation and found that they were both married as emotionally and intellectually unprepared persons who had obvious difficulties in creating a community. None of them was able to properly assess the function and scope of marriage, understand its nature, which resulted from their low mental level and accompanying functional disorders.

In cases conducted on the basis of can. 1095 n. 2, i.e., due to "lack of discretion of judgment", the expert is to indicate what was the impact of the anomaly on the ability of rational assessments and the possibility of making major decisions autonomously (freely). In particular, he is to pay attention to the sense of inner freedom of the prospective spouse and his/her independence in life choices [8].

This point essentially refers to the assessment of the possibility of giving consent to marriage, which is understood as the cause of marriage ('consensus'). The prospective spouse's consent is required to be not fraught with any defects. The prospective spouse must be fully oriented and fully critically accept all the "properties of marriage": indissolubility, unity and faithfulness and building a partnership of life and love. If, at the time of the marriage, the future spouse is unable to accept and critically evaluate at least one of these properties, his/her matrimonial consent is invalid [1, 2]. This is particularly about situations in which a given person has an adequate level of cognitive abilities, as to marriage, but there is no recognition as to its value and the seriousness of the important rights and obligations that are shared and accepted when marrying. Admittedly, he/she has sufficient intellectual potential that allows him/her to rationally assess the relationship (e.g., he/she knows the rights and duties of spouses, can describe what the marriage is like), but is not able to internalize the principles of Church marriage. He/she cannot attribute the "properties of marriage" to himself/herself, his/her views, attitudes, preferences or desires. Such a person is thus deprived of the ability to make a critical evaluation which should be done through judgment and reasoning.

The legislator wishes to draw attention to the psychological process of the prospective spouse's attempts to make a practical judgment in the context of a marriage contract. It consists in noticing by the future spouse not only the values of marriage,

but also difficulties, inconveniences, sometimes the necessity to give up their own plans to maintain a relationship. In addition to a general knowledge about the essence of marriage at a cognitive level, the prospective spouse is expected to refer it to himself/herself and also take into account the spouse's presence in the process. Therefore, for example, he/she is expected to accept certain imperfections of living together, show tolerance towards his/her spouse, be able to withstand crises and protracted conflicts. Mental diseases, mental retardation and addiction to alcohol and drugs are most frequently mentioned among the factors that reduce "discretion of judgement" [6].

"Discretion of judgement" may be missing if one of the three following options is met: (1) lack of sufficient intellectual cognition of the object of matrimonial consent; (2) lack of critical discernment; (3) lack of internal freedom. If the expert finds that at the time of the marriage, the prospective spouse's personality was not fully integrated, it means that he/she was then incapable of properly grasping the very nature of living together. No one is able to learn, let alone assess the essence and meaning of a marriage contract, if he or she does not have the capacity to critically judge, reason, compile individual assessments and create a proper, autonomous judgment on that basis. Experts are to assess when psychic disorders which prevent proper "discretion of judgement" developed, for example, in the case of psychosis it may be caused by a so-called lack of internal freedom [4]. This is the case when the patient is motivated to be active not by his own involvement, or a rational assessment of the situation, but by experiences of a psychotic nature that distort the image of the world around him, and above all of those close to him.

When adjudicating on the basis of this option of can. 1095, psychologists have more competences than psychiatrists, because there is a great need to analyze motivational processes [6, 10].

## Case 2

One of the questions that was addressed to the expert was as follows: was the subject able to make a free and reasonable choice (an appropriate assessment regarding marital rights and obligations)? In a lawsuit a man filed to the Episcopal Court, he asked for annulment of his marriage concluded eleven years earlier. He reported that he had met his future wife at the age of 18, she was 4 years older than he. During the four-year relationship before the marriage ceremony – as he claimed – the defendant could find out about his immature nature. Before, as well as after the marriage, he repeatedly cheated on his wife. Contacts with other women were fleeting and limited to sex only. The defendant and the plaintiff's family tried to influence his behavior, but to no avail. After the marriage, the plaintiff had to force himself to have intimate contact with his wife, he was more and more indifferent towards her until finally their intimate relationship ceased. He claimed that the women he was dating were younger, more attractive and more appealing than his wife. During marriage, he graduated, took up work and duly fulfilled his professional duties. His wife accused him of never being

able to count on him, she had to deal with running the house herself, and she did not have emotional support. He fully agreed with her opinion about him. He also stated in the lawsuit that he had decided to marry in spite of his parents as he wanted to move out from them. Even before he got married, he assumed that he would cheat on his wife. In his opinion, cheating on his wife led to the breakup of the marriage. He wrote about his wife that she was mature to marriage, verbal, thoughtful and responsible.

Testimony of the defendant and other witnesses indicated that since the beginning of their acquaintance, the plaintiff showed a two-fold behavior. On the one hand, he was described as conflict-free, sympathetic, cultural, honest, intelligent, hard-working. On the other hand, the witnesses confirmed his excessive interest in other women and small emotional involvement in marital relations. His wife claimed that she knew that he was cheating on her during the engagement, but she thought that after the wedding it would cease. The interview carried out during the examination proved that the plaintiff obtained higher education without any problems, was a reliable employee, did not enter into legal conflicts, did not suffer from severe somatic diseases, did not undergo any psychiatric treatment, did not abuse alcohol or use drugs. He claimed that during the engagement he was young and wanted to meet other women. He got married because he wanted to break free from parental supervision. During the marriage, he also maintained intimate relations with other women – “I wanted to prove myself a man”. In his opinion, he was immature to marry and to start a family.

The expert did not recognize mental retardation or mental illness. He stated that the plaintiff before and after the marriage showed features of mental immaturity (including emotional instability, low self-esteem, excessive focus on the self, own expectations and own desires, irresponsibility, limited ability to plan and predict the consequences of actions, superficiality of relations) which made free and rational choice difficult for him (in canonical proceedings, the intensified symptoms of mental immaturity may form the basis for deciding that marriage was invalid). The plaintiff had a proper assessment of a marital relationship at an intellectual level, but he was unable to fully apply the attributes of marriage to his own person and change his life preferences.

In matters related to the “inability to assume the essential obligations of marriage” (can. 1095, n. 3), the expert is to indicate the type and severity of the psychological reason for which the party was unable to perform these duties [8].

This canon speaks directly about psychological incapacity to lead a married life. When entering into marriage the prospective spouse must be mentally able to take all –without exception – matrimonial duties. A mental disorder must be permanent in this case, unlike in the case of incapacity to conclude a marriage contract, where even a transient condition is enough [1, 6, 11]. The forensic expert faces a difficulty deciding what specific duties are envisaged here and what might be a possible influence of the spouse’s mental state on the possibility of taking them.

The scope of essential matrimonial duties was specified neither in the Code of Canon Law of 1983 (can. 1095 n. 2 and 3), nor in the Code of Canons of the Eastern Churches of 1990 (can. 818, n. 2 and 3) [12]. Roman Rota decisions most often

mention the obligation of spouses to live together, the obligation of an interpersonal relation, obligation of a permanent, faithful, reciprocal and lifelong relationship, the obligation to maintain a heterosexual and intimate relationship, the obligation to give birth and raise children [13].

Szytchmiller's duties of the spouses include all the duties that condition the realization of the good of the spouses (*bonum coniugum*) and good of offspring (*bonum prolis*). Both concepts are understood broadly: duties serving *bonum coniugum* are the duty of unity (fidelity), life-longness, nurturing the mutuality of matrimonial life; duties serving *bonum prolis* are: the obligation to engage in intimate relations open to give life, the obligation to take on every conceived life, the obligation to raise children and responsibilities associated with it [12].

Gręźlikowski [4] lists three groups of matrimonial duties: (1) for the good of the spouses (fidelity, intimate relations, indissolubility, proper matrimonial interpersonal relationships, mutual help and responsibility, contributing to the common good, striving for mutual perfection and sanctity); (2) related to having offspring (intimate relationship aimed at giving birth and bringing up children, acceptance of conceived children); (3) referring to the upbringing of offspring (general education, physical education, religious education). Matrimonial duties are to be characterized by reciprocity, consistency, continuity and exclusivity [4].

In the case of the discussed canon, it deals with various psychical dysfunctions which make it impossible to establish an interpersonal relationship in the marriage [14]. These dysfunctions include: medical disorders, mental disorders, personality disorders, alcoholism, drug addiction, various sexual anomalies, personality immaturity, emotional immaturity, extreme egoism, hysteria, but also, for example, increased aversion to the opposite sex [4]. Among psychological disorders, endogenous psychoses play an important role: delusional syndromes, schizophrenia and affective disorders that affect intellectual and cognitive, emotional and decision-making abilities [6, 11]. It is recognized that in the case of schizophrenia, paranoia or other types of psychotic disorders, the affected person does not respect the rights of the other person. It happens that he/she imposes his/her will, assigns being right only to himself/herself, makes others submit to his/her will. These type of persons themselves are subject to psychotic experiences in their actions, decisions or views, which may be incomprehensible or unacceptable for the healthy spouse [11].

### Case 3

The Episcopal Court received the request of a man who filed for annulment of a marriage concluded eight years earlier (lasting for seven years). In the justification he wrote that he had met his future wife two years before the wedding. After 1.5 years, they became engaged. During the engagement, the defendant claimed that she was unfit for marriage but did not specify why. He already at that time noticed that she drank too much alcohol, almost every day she drank a beer. When they got married,

he was 24 and she was 31 years old. She got drunk on their wedding. From the beginning of the marriage this problem intensified and drinking alcohol became a source of marital misunderstandings. My wife drank alcohol more and more often and reached for stronger drinks. She promised to limit her drinking but was unable to keep her word. Due to the use of alcohol, she neglected her household duties, she could not be contacted, she was not interested in family life, her husband, she neglected her professional work. She tried to commit a suicide, she underwent detoxification. Witnesses reported that since the beginning of the marriage, it was clear that the defendant had a problem with drinking alcohol. Alcohol abuse led to conflicts between spouses and complications at work.

During the examination, the defendant reported that she had been abusing alcohol since the age of 22, had been on a bender for several months. During her sobriety, she experienced severe withdrawal symptoms, which she relieved while drinking alcohol. Later on (already during the marriage), she experienced epileptic seizures and transient psychotic disorders. It required detoxification in hospital conditions. There was a reduction in alcohol tolerance. She became aggressive after drinking alcohol. She claimed that due to alcohol abuse she had problems at work, her marriage broke up. She felt addicted to alcohol and therefore made attempts at addiction treatment. The expert excluded her mental illness and mental retardation, while he recognized alcohol dependency syndrome, which began to appear even in the pre-marital period (she was about 22 years old). In the expert's opinion, the symptoms of addiction had a significant impact on her social functioning and, consequently, family status. Since the beginning of her acquaintance with the plaintiff, she concentrated her behavior on drinking alcohol, gradually limiting other activities. The symptoms of alcohol dependency syndrome made her unable to take and fulfill her important duties in marriage. Symptoms occurred before the marriage and only increased during the marriage. They were of a chronic and persistent character, which made it impossible for her to establish a full and real relationship with her husband and to take care of the well-being of the good of marital relationship.

According to Kołakowski [10], the biggest difference in relation to secular law is the possibility of inferring the mental incapacity to marry because of personality disorders. Deep personality disorders are supposed to result in incapacity to lead a married life due to incapacity to establish appropriate emotional contacts, live with another person, egocentrism, neglecting children and family [10]. Two types of personality disorders have been distinguished based on the Roman Rota decisions: (1) sexual personality disorder which excludes exclusivity (faithfulness) and a natural way of completing matrimonial consent, and (2) personality disorders outside the sexual sphere that manifest themselves in various areas of life and which consequently make it impossible to establish a proper relationship between spouses [6].

The jurisprudence of Church courts also takes into account severe neurotic disorders that may constitute incapacity to lead a married life. As for the so-called psychological immaturity, it can be considered in the context of incapacity to give consent to mar-

riage, as well as incapacity to perform matrimonial duties [10]. Among the features of emotional immaturity, nullifying the ability to fulfill important matrimonial duties, are: excessive self-interest, egoism, difficulties in deferring gratification, possessiveness, tendency to avoid responsibility, or withdrawal from the relationship in the face of life difficulties [6]. Increasingly, the dependency of prospective spouses on families of origin is indicated, which requires an expert analysis of complicated family systems and accompanying mental problems, and especially emotional ones, in newlyweds [15].

Criteria for incapacity to undertake matrimonial duties are included in the so-called attributes of qualified incapacity: severity (the extent of pathology causing incapacity to take and fulfill a significant marriage obligation), pre-existing (the disorder should have occurred before the wedding or at the latest at the time of the wedding), permanence (presence or absence of the disability at the time of the marriage), and absoluteness (disability to fulfill duties also in relation to another partner) [13].

Points 2 and 3 of canon 1095 of the Code of Canon Law describe two variants: (1) the subject, due to mental disorder, was unable to enter into matrimonial agreement (most often also into matrimonial cohabitation); 2) the subject despite mental disorders was able to marry, but he proved unable to undertake essential matrimonial duties. For example, mental state in the remission of endogenous mental illness may deprive the prospective spouse neither of the ability to sufficiently use reason, nor the ability to marry, but may deprive him of the ability to live in marriage [10].

Analysis of court files provides not only information on the relationship between spouses, mutual emotional attitude, personality traits, or commitment to a relationship, but it is also a source of data on the course of engagement and marriage (data on education, employment, fulfilling professional duties, relations with other people, public reputation). This part of the material should be considered extremely valuable for the expert, because in many cases it shows how the spouses got acquainted, how this acquaintance developed, why they decided to get engaged, and how they fulfilled the duties of everyday life. Of course, this is only “circumstantial“ information, indirect about a given person. However, careful insight allows for a more complete picture of process parties, especially in the context of their practical view of the relationship (an aspect that is often overlooked) [16]. An important goal of the opinion is to determine mental condition of the prospective spouse before the marriage, during the marriage and at present. Does he or she suffer from any kind of sexual, psychological or somatic disorder? Was he or she undergoing any treatment because of that reason and was it effective? A valuable material is the medical documentation and the results of various consultations from which the spouses possibly benefited. Sometimes it is necessary to appoint other experts: a psychologist, a gynecologist or a sexologist [17]. Gręźlikowski [4] points out that judicial decisions cannot remain outside the orbit of the latest and verifiable disciplines of knowledge.

### Recapitulation

Both the universal and the canon system assign a special value, which the law is obliged to protect and support, to the durability of marriage. It is true that in the civil law it is noted that marriage is not indissoluble, but the situation in which marriage annulment would take place is considered exceptional. In the Catholic Church, marriage was raised to the rank of a sacrament. On the other hand, in the case of episcopal courts, cases concerning annulment of a marriage concluded in an invalid manner are the most common. Proceedings in this regard are based on the provisions of canon 1095, which contains three variants of incapacity to marry, and each of them can be considered independently or in conjunction with one other.

Although episcopal courts use terminology that is not found in psychiatry or clinical psychology, specific code formulations refer to specific psychopathological states that should be considered by experts in their analyses. Experts' research aims to determine the ability of the prospective spouse to make one of the most important life decisions, which should be preceded by a deep reflection on his/her own priorities, preferences, attitudes towards people, involvement in a specific relationship, but also on his/her own defects or mental problems. These assessments should be based on rational premises. The task of the expert is to check whether the person had the psychic potential that allowed for it.

Expressing matrimonial consent by prospective spouses in a responsible and mature way is a causative factor in the conclusion of a valid relationship. The expert shall take into account whether the consent was free from any defect and, if not, for what reason and to what extent this defect affected that consent. To some extent it may resemble the content of Article 15 of the Family and Guardianship Code, however, it is not the same.

While in civil law a mental illness and mental handicap was indicated as an impediment to marriage and the threat to marriage or health of offspring was taken into account, in canon law, the incapacity to undertake essential matrimonial duties was mentioned as an essential element, however, without a strictly defined psychopathological connotation. This obliges experts to include practically all psychological dysfunctions (also personality disorders, neurotic states, or addictions) in their assessments. Sexual disorders, which might also not allow to perform duties in a Catholic marriage, are also taken into account. Such cases are not met by the experts in civil proceedings. In addition, it is somewhat surprising that the Code of Canon Law has not yet specified significant matrimonial duties, and court proceedings are based on the Roman Rota verdicts.

These differences may lead to a situation in which in the civil court there will be no grounds for annulment of a marriage, while in the episcopal court the marriage will be considered invalid. Divergent decisions do not have to arise from ignorance or negligence of experts appearing in two parallel proceedings, but they are an expression of different ranges of expert competences and different legal regulations to which

experts should adapt. Both legislations, however, are unanimous in case of a situation in which the court is obliged to decide on the validity of the conclusion of marriage; then it is necessary to analyze the facts in a very insightful manner [18].

### References

1. Kołakowski S. *Ocena psychicznej zdolności do zawarcia małżeństwa*. In: Gierowski JK, Szymusik A. ed. *Postępowanie karne i cywilne wobec osób zaburzonych psychicznie*, 1<sup>st</sup> edition. Krakow: Jagiellonian University Medical College; 1996. P. 259–270.
2. Góralski W. *Studia nad małżeństwem i rodziną*. Warsaw: Cardinal Stefan Wyszyński University Press in Warsaw; 2007.
3. Majchrzyk Z, Ciszewski L, Cynkier P. *Osobowość nieprawidłowa (makiaweliczna) jako możliwa przyczyna niezdolności do zawarcia ważnego małżeństwa*. Post. Psychiatr. Neurol. 2000; 9(1): 175–184.
4. Gręźlikowski J. *Przed nami małżeństwo*. Włocławek: Duszpasterstwo Rolników Publishing House; 2002.
5. Malecha P. *Polski wymiar sprawiedliwości widziany przez pryzmat Sygnatury Apostolskiej*. In: Rozkrut T. ed. *Orzecznictwo rotalne w praktyce sądowej Kościoła*, 2<sup>nd</sup> edition. Tarnow: Biblos Publishing House; 2010. P. 11–50.
6. Ziomek R, Piłsiewicz JZ. *Problem psychicznej niezdolności kontrahenta w kanonicznym prawie małżeńskim*. Post. Psychiatr. Neurol. 2000; 9(1): 171–174.
7. Drogowski M. *Ewolucja tytułów kodeksowych i przyczyn natury psychicznej niezdolności do zawarcia małżeństwa w okresie minionych 25 lat*. Psychiatr. Pol. 2010; 44(4): 497–503.
8. Rozkrut T. *Tytuł VII: Dowody*. In: Rozkrut T. ed. *Komentarz do Instrukcji procesowej „Dignitas connubi”*, 1<sup>st</sup> edition. Sandomierz: Diocesan Publishing and Printing House in Sandomierz; 2007. P. 229–296.
9. Sobański R. *Wyrok Sądu Metropolitalnego w Katowicach z 20.11.1997 r. z tytułu braku konsensu spowodowanego chorobą psychiczną*. Ius Matrimoniale. 1999; 4(10): 249–255.
10. Kołakowski S. *Psychiczna zdolność do złożenia oświadczenia woli zawarcia małżeństwa oraz wyrażenia zgody na leczenie – różnice i podobieństwa*. Post. Psychiatr. Neurol. 2000; 9(1): 161–170.
11. Żurowski M. *Niezdolność do podjęcia obowiązków małżeńskich z przyczyn psychicznych*. Prawo Kanoniczne. 1986; 29(3–4): 153–162.
12. Borucki J. *Istotne obowiązki małżeńskie w świetle przepisów prawa kanonicznego i polskiego*. Studia Włocławskie. 2005; 8: 252–268.
13. Majchrzyk Z. *Osobowościowe i psychiczne przesłanki niezdolności do małżeństwa w świetle nowych uregulowań kodeksu prawa kanonicznego z 1983 r.* Post. Psychiatr. Neurol. 2000; 9(1): 143–169.
14. Sobański R. *Wyrok Sądu Metropolitalnego w Katowicach z 29.12.2005 z tytułu niezdolności – z racji psychicznych – powoda do podjęcia istotnych obowiązków małżeńskich*. Ius Matrimoniale. 2006; 11(17): 179–184.
15. Cynkier P, Majchrzyk Z. *Nadmierna zależność małżonka od rodziny generacyjnej jako źródło trudności w podjęciu istotnych obowiązków małżeńskich*. Ius Matrimoniale. 2013; 18(24): 101–123.

16. Cynkier P. *Uwarunkowania środowiskowe związku przedślubnego i małżeństwa a opiniowanie w sprawach o stwierdzenie nieważności małżeństwa przed Sądem Biskupim*. *Ius Matrimoniale*. 2014; 25(2): 63–89.
17. Cynkier P, Majchrzyk Z. *Czy jest możliwe przygotowanie osoby z zaburzeniami histrionicznymi do małżeństwa – studium przypadku*. In: Sztychmiller R, Krzywkowska J. ed. *Jak przygotować do małżeństwa?*, 1<sup>st</sup> edition. Olsztyn: University of Warmia and Mazury Press in Olsztyn; 2013. P. 327–338.
18. Cynkier P, Majchrzyk Z. *Rozbieżności w ocenie nieważności małżeństwa z powodu choroby psychicznej w orzecznictwie sądów kościelnych i cywilnych – analiza przypadku*. *Ius Matrimoniale*. 2011; 16(22): 343–366.

Address: Przemysław Cynkier  
Institute of Psychology, Faculty of Christian Philosophy  
Cardinal Stefan Wyszyński University in Warsaw  
01-938 Warszawa, Wóycickiego Street 1/3, building 14