

REASONS FOR A TOTAL SIMULATION OF MARITAL CONSENT IN JUDGEMENTS *PRO NULLITATE* OF THE METROPOLITAN TRIBUNAL IN KRAKÓW PASSED BETWEEN 2010 AND 2020

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Abstract

The article deals with the important element inherent in proving the invalidity of marriage on the grounds of total simulation of marital consent (Canon 1101 § 1), which is the reason for simulation. I analyse all the decisions *pro nullitate matrimonii* of the Metropolitan Tribunal in Kraków handed down in the years 2010-2020. In the first part, the importance of *causa simulationis* at the instruction stage in the canonical process is presented. The essential part of this study is devoted to *causa celebrandi* and *causa simulandi* occurring in the presented jurisprudence. I also propose some legal and pastoral measures that may help to eliminate instances of invalid marriages, concluding that the *causa simulandi* is an important aid for judges to achieve moral certitude about the nullity of a marriage for the reasons stated above.

Keywords: procedural canon law, canon law process, *causa celebrandi*, *causa simulandi*, Metropolitan Tribunal in Kraków

Introduction

Our life experiences and judicial practice show that there are situations where during a wedding ceremony the contractants verbalise their marital consent, but in fact the nuptial knot is not tied. This occurs when the prospective spouses only say the words of the marriage vows, but internally (i.e., factually) they exclude marital consent. In so doing, they give rise to a dissonance between the externally manifested acts and the attitude of their will. Canonical doctrine refers to such an exclusion as simulation, as there is an intended insincerity between what the prospective spouse

demonstrates when he or she expresses an act of will to marry and what they actually desire.

This article presents the issue of total simulation of marital consent (Canon 1101 § 2). Such a simulation involves the awareness of the invalidity of the marriage contracted by the simulating person only ostensibly, who in so doing wanted to achieve a different goal, alien to the marriage itself. In order to prove the invalidity of such a marriage two requirements must be fulfilled: the presumption of marriage validity has to be refuted (Canon 1060) and the presumption of the concert between “the internal consent of the mind” (actual will) and the words or signs actually expressed (Canon 1101 § 1).

The present paper examines all judgements *pro nullitate matrimonii* that were passed between 2010 and 2020 by the Metropolitan Tribunal in Kraków on the grounds of total simulation of marital consent. The article aims to outline the reasons why prospective spouses resolve to simulate and the motives why judges attain moral certitude about the invalidity of a particular marriage. For reasons of space I find it impossible to provide more information on the marriages in question, and the present synthesis can contribute to further reflection in the milieu of canonists.

As the vast majority of the judgements analysed here pertain to the cases of people who are still alive, only the essential information on the processes in question will be provided. This decision is dictated by the need to protect the identity of the parties involved by making it as difficult as possible to link the facts established during the trial and later cited in the sentence to the identity of the participants.

1. The significance of a reason for proving a total simulation of marital consent

A marriage can be found invalid on the grounds of total simulation if two reasons are ascertained. One is the so-called *causa celebrandi vel contrahendi* – a sufficiently grave reason for which someone wants to have a wedding ceremony to enter into a marriage of convenience, or “for show” only, which he or she does not really want. *Causa contrahendi* is translated as the reason for concluding a marriage, while *causa celebrandi* denotes the reason for the external expression of marital consent during the wedding ceremony. It seems that it is more appropriate to use the phrase *causa*

celebrandi, since the true intention of the simulating person is the “ceremony” of marriage, or its “celebration”. The person does not intend to actually “conclude” marriage, as the formula *causa contrahendi* might falsely indicate.

The other is the so-called *causa simulandi* – a reason for which someone simulates, that is, does not actually want the marriage to which he or she has overtly consented. The existence of this reason and its superiority to the *causa celebrandi* constitute a serious premise for the invalidity of a marriage. However, proving only the reason for simulation is not sufficient to pronounce a marriage invalid if the existence of a positive act of will excluding the marriage itself is not proven. The judges of the Tribunal of the Roman Rota point out that these two causes “always compete with each other” and that *causa celebrandi* “is in opposition” to *causa simulandi* [Glinkowski 2004, 55-56].

It may happen that for some the same circumstance or fact will sufficiently justify externalised marital consent, while for others it will justify simulation – that is, exclusion of marriage. This will be the case, for example, when some prospective spouses by reason of fear simulate their marital consent, so fear is taken to be the *causa simulandi*, but others are driven by fear into giving marital consent, so fear occurs in them as the *causa celebrandi* and is an autonomous cause of nullity of marriage. In conclusion, we can say that the same reason(s) can prompt prospective spouses so that one time they actually enter into marriage, and another time they simulate it [ibid., 56].

As one judge of the Rota notes, it may happen that when the prospective spouse’s goal becomes the chief purpose of “concluding” marriage, and getting married only serves their goal, the reasons for expressing marital consent and for simulation can merge into one cause.¹

What is more, canon doctrine and jurisprudence point to the connection between personal goals (*finesoperantis*) and the ends of the work (*fines operis*) on the one hand and the reason for expressing marital consent and the reason for a complete simulation of marital consent. In processes concerning nullity by reason of *simulationis totalis*, special attention should be paid to the prospective spouse’s intention (*finis operantis*), i.e., the reason

¹ Sent. c. Bruno of 3 July 1976, SRRD 68 (1976), p. 269.

for which he or she wants to articulate marital consent (*causa celebrandi*). If this intention goes against the end of the work (*finis operis*), i.e. marriage, this intention becomes the reason for marital consent simulation (*causa simulandi*). The ends of the work (marriage) – are regulated in Canon 1055 § 1: the welfare of the spouses and “the procreation and education of offspring” (the good of the offspring). A person who only wants to achieve a goal that is totally incompatible with the essence of marriage and performs a positive act of will excluding the ends of marriage cannot validly enter into such a marriage [Góralski 2016, 127-28].

2. *Causa celebrandi* in the judgements of the Metropolitan Tribunal of Kraków

2.1. Inability to withdraw from a plan to marry

The first case of this kind involves parties whose premarital acquaintance lasted a year, during which the parties met once a week. After a brief acquaintance, the parties started a sexual relationship, as a result of which the woman (the petitioner) became pregnant. The subject of marriage cropped up only by reason of the woman’s pregnancy. Wedding preparations were hasty, she was little involved in them, but in preparation for the wedding she received the sacrament of confirmation. The parties were married when the petitioner was 19 and the respondent was 23. Afterwards they moved into the petitioner’s parents’ house. For two years they lived in one room, and after renovating part of the house, the husband moved to that part, but she stayed in the part previously occupied by them. Five years after the marriage, the man went to Scotland for work, and his wife was also with him for some time. Formally, their marital bond lasted seven years. The parties obtained a divorce without adjudication of guilt. The petitioner admitted to simulating and justified here express marital consent as resulting from her desire to save her face and avoid suspicion (which was legitimate, anyway) that she had engaged in sexual intercourse and become pregnant with a man to whom she had no deeper emotional attachment.²

Another case involves parties whose premarital acquaintance lasted five years. The parties met in the woman’s (respondent’s) hometown, which is

² Sent. c. Molendys dated 17 February 2010, ref. L.I.N.194/06, Wyroki Sądu Metropolitalnego w Krakowie [hereinafter WSMK] 2010 (unpublished).

also where the petitioner's family came from. Before the wedding, the couple were seen as normal young people in love. They were married when the man was 24 and the woman was 25. After the marriage, for about a year the parties lived and worked in their hometowns, meeting at weekends when the husband came to the respondent's family home. When he found a job closer to his wife's town, he moved there. The woman's parents decided to build a house for the couple in their town. After a dozen or so months of cohabitation, the respondent became involved with a married man. Formally, the parties' conjugal life lasted four years. The parties obtained a divorce without adjudication of guilt. The respondent admitted to having simulated and she indicated the reason for her express marital consent: "The reason I was meeting with the petitioner was because everything was set for the wedding, and I didn't want to hurt him or my family."³

The next case involves parties whose premarital acquaintance lasted two years. A year after they met, they moved in together in a flat owned by the woman (petitioner). Both parties worked at different pharmaceutical companies. A few months before the wedding, the woman changed jobs, where she began dating another man. The parties were married when the petitioner was 25 years old and the respondent was 28. Formally, the parties' marital bond lasted five years. The parties obtained a divorce without adjudication of guilt. The woman admitted to having committed a simulation, and indicated the reason for her express marital consent, which was her inability to withdraw from her arrangements to marry the respondent in the time when she was emotionally involved with another man.⁴

Another case involves parties whose pre-marital acquaintance lasted only a few months, at which time the parties engaged in sexual intercourse, and then two months before the wedding they moved in together, into the woman's (respondent's) family home. The man was much in love with the respondent and insisted that their relationship be concluded with the sacrament of marriage as soon as possible. The parties were married when the man was 24 and she was 29. Shortly after the marriage (about two months), the petitioner moved out of their home. Formally, the parties'

³ Sent. c. Bogdał dated 5 May 2010, file ref. no. L.I.N.147/07, WSMK 2010 (unpublished).

⁴ Sent. c. Molendys dated 3 November 2010, file ref. no. L.I.N.41/07, WSMK 2010 (unpublished).

marital life lasted a year. The parties obtained a divorce without adjudication of guilt. The respondent admitted to having committed a simulation and indicated the reason for her express marital consent, which was fear of the consequences of withdrawing from the promise to marry, especially that her parents approved of both her plans to marry and the petitioner himself as an ideal candidate for her husband.⁵

The next case involves parties whose pre-marital acquaintance lasted two years. From the beginning, the parties engaged in sexual intercourse, as a result of which the woman (respondent) became pregnant. The parties were married when the man was 23 and she was 20. Formally, their marital bond lasted two years. The parties obtained a divorce without adjudication of guilt. The respondent admitted to having committed a simulation and indicated the reason for her express marital consent, which was the desire to meet the expectations of her relatives, the inability to resist their pressure and the attempt to defend the good image of her family in the local community.⁶

The next case involves parties whose pre-marital acquaintance lasted ten years. They did not live together before marriage, although from the second year of their acquaintance they undertook sexual intercourse. They started discussing marriage after about four years of their acquaintance. A year before the wedding, they became formally engaged. Although the two families, having good friendly relations, wanted the couple to legalize their long acquaintance, no one urged them to marry. The woman (petitioner) was very much in love with the man and convinced that he loved her back. However, as it turned out shortly before the wedding, the respondent had already established an intimate relationship with another woman. The parties married when they were both 26 years old. Formally, their marital life lasted two years. They obtained a divorce with an adjudication of guilt of the respondent. He admitted to having committed a simulation and indicated the reason for his express marital consent: "I met another woman when preparations for the wedding with the petitioner were very well underway. My acquaintance with the petitioner had already lasted for many years, and that's why I couldn't get to telling her I didn't want to marry her."⁷

⁵ Sent. c. Molendys dated 10 November 2010, file ref. no. L.I.N.134/08, WSMK 2010 (unpublished).

⁶ Sent. c. Molendys dated 5 October 2011, file ref. no. L.I.N.180/06, WSMK 2011 (unpublished).

⁷ Sent. c. Rapacz dated 16 January 2013, file ref. no. L.I.N.110/08, WSMK 2013 (unpublished).

Next is a case involving a couple whose pre-marital acquaintance lasted three years. From the beginning, the parties engaged in sexual intercourse. The woman (petitioner) also cohabited with the man in his flat. In this time, there were only sporadic and minor disagreements between them. They decided to marry about a year in advance. However, a few weeks before the scheduled wedding, the petitioner met another man with whom she also engaged in sexual intercourse. She tried to somehow deal with the situation she found difficult, too, but she was prevented by the advanced stage of wedding preparations. The parties were married when she was 24 and he was 33. Formally, the parties' marital bond lasted a year. They obtained a divorce without adjudication of guilt. The petitioner admitted to having feigned marital consent and confessed why she did that: "I regret to confess that I did not say the words of the marriage vow sincerely; I said them for the peace of mind, not for the sake of marriage."⁸

Another case relates to a couple whose pre-marital acquaintance lasted several months. The parties met at a time when the woman (respondent) was in a relationship with another man, but she struck up a relationship with the respondent, nonetheless. Very quickly, this relationship gained intensity, also sexually, and only three months after the relationship started, the woman became pregnant. For that reason, the petitioner and the respondent's relatives decided that marriage would be the optimal solution. However, the woman did not want to marry him, and she made that clear to several people. The parties married when the petitioner was 26 and she was 20. The wedding and the reception took place in a peaceful atmosphere, although some witnesses say the respondent did not behave as brides are expected to. After the marriage, the parties moved into the respondent's mother's home. As they both claim, they never established any community, did not consummate their marriage, and two weeks after their marriage, following a domestic brawl during which the woman was beaten by her relatives, the petitioner moved out of their shared dwelling. Formally, their marital life lasted two years. The parties obtained a divorce with an adjudication of the respondent's guilt. The respondent admitted to having committed a simulation and showed the reason for her express marital consent, which was the fear of the consequences of withdrawing from the promise to marry, all the greater because her family had urged her

⁸ Sent. c. Rapacz dated 5 February 2013, file ref. no. L.I.N.105/10, WSMK 2013 (unpublished).

to marry. Furthermore, in the opinion of the judges, the reasons for the respondent's feigned marital consent were the following: the respondent's unplanned pregnancy, the reluctance of her mother and relatives toward her partner, and the pressure they put on the respondent, despite her explicit declarations of unwillingness to marry the man – this pressure correlated with the motive for marriage.⁹

Next is a case relating to parties whose pre-marital acquaintance lasted five years. The parties met in a circle of horse-riding enthusiasts. A shared passion and mutual affection brought them together very quickly. At first, they would correspond with each other, then meet regularly, and over time they started making plans for the future. Such a close relationship between the parties and their shared plans were welcomed by the respondent's parents. A year after the parties met, the man (petitioner) was transferred to the reserve at his own request and thus left the military sports club of which he had been a member. He then moved to another town and moved into the woman's home. Then, after a few months of living together, the parties moved again to a different town, taking up residence in her parents' home. Her parents decided to build a horse-riding centre, which they intended to include a house for the couple. With the prospect of pursuing a shared passion, the parties became very committed to this investment. Two years before the canonical marriage, the couple had their first son, and a year later the parties contracted civil marriage. A few months later, a second son was born. Then, after a year, they entered into canonical marriage, when they were both 28 years old. However, just a few weeks after the wedding, the respondent became involved with another man. Formally, their marital bond lasted two years. They obtained a divorce without adjudication of guilt. The case file contains no information of the respondent's admission of simulation. However, in the judges' opinion, the respondent, being unable to go back on the promise of marriage given to the petitioner, feigned marital consent, as evidenced by her abandonment of the family – her husband and two sons – a few weeks after her promise to continue in a lifelong relationship.¹⁰

Another case involves parties whose pre-marital acquaintance had lasted since childhood, as they were peers living in the neighbourhood.

⁹ Sent. c. Rapacz dated 29 May 2013, file ref. no. L.I.N.200/10, WSMK 2013 (unpublished).

¹⁰ Sent. c. Rapacz dated 19 June 2013, file ref. no. L.I.N.4/06, WSMK 2013 (unpublished).

The parties' close relationship prior to their engagement lasted about four years, for at least half of which the parties lived in the respondent's parents' house. The parties were married when they were both 27 years old. After that the couple continued to live in the respondent's parents' house, where they had their own space to live. The couple's promising marriage turned out to be an unfortunate and unstable relationship. Formally, the parties' marital life lasted a year. They obtained a divorce without adjudication of guilt. The woman denied the man's claim that she had committed acts of disloyalty before marriage and marital infidelity, but she testified on the subject of simulation: "I knew I didn't want to be his wife. The whole thing was forced. I made the biggest mistake of my life."¹¹

Next is a case involving a couple whose pre-marital acquaintance lasted three years. The couple met while the man (respondent) worked as a taxi driver. A closer acquaintance developed between the parties. They were seen in their environment as a normal couple of young people in love. They started a sexual relationship, and after a year of acquaintance, they rented a flat and moved in together. After two years they married. The woman (petitioner) was 27 at the time, and the respondent was 29. However, a few months after the marriage, the petitioner moved out of the shared flat and started a relationship with another man. Formally, the parties' marital life lasted four months. They obtained a divorce without adjudication of guilt. The woman admitted to having committed a simulation and declared that the reason for her express consent to marriage was the desire to protect her own reputation, as it would have been damaged had she, in the last days before the wedding, withdrawn from the joint arrangements and cancelled the wedding.¹²

The next case (heard at second instance) concerns parties whose pre-marital acquaintance lasted four years with an interruption caused by the man's (respondent's) stay in the UK. The parties established a close relationship very quickly, they often met and also willingly engaged in sexual intercourse. During the man's stay abroad, the couple met twice. In addition, they were in touch by phone and Internet. The respondent saw the petitioner as a good candidate for a wife. The couple were married when she

¹¹ Sent. c. Molendys dated 9 April 2014, file ref. no. L.I.N.146/10, WSMK 2014 (unpublished).

¹² Sent. c. Molendys dated 19 October 2016, file ref. no. L.I.N.44/14, WSMK 2016 (unpublished).

was 26 and the respondent was 28. After three months, the respondent stopped seeing the petitioner. Formally, the parties' marital bond lasted a year. They obtained a divorce without adjudication of guilt. When asked about the reasons why the marriage failed, the respondent stated categorically that the reason was that she had become involved with another man. The woman admitted to having committed a simulation, citing her inability to withdraw from her previous engagements for reasons of reputation as the reason for her express marital consent.¹³

The next case involves parties whose pre-marital acquaintance lasted a year. Soon after they met, affection between them quickly developed. After six months' acquaintance, the man (respondent) proposed to the woman in the presence of her parents. The proposal was accepted by the petitioner. The parties set a date for the wedding and started preparing for it. They decided that afterwards they would live in the petitioner's hometown, where her parents had begun building a house, which was going to be made available to the parties. They were married as planned. Both were 29 years old at the time. After the wedding, as planned, the parties moved into the petitioner's parents' home. However, a few months after the wedding, the respondent moved out of the petitioner's place to live back in his mother's home. Later, the parties would still visit each other at their parents' homes – the petitioner urged her husband to start living together, but he was not interested in building marital unity. Formally, their conjugal life lasted four years. They obtained a divorce without adjudication of guilt. After obtaining a divorce, the respondent became involved with another woman. The case file contains no information of the respondent's admission of a simulation. However, in the opinion of the adjudicating panel, the petitioner points to a series of events connected with the respondent's involvement with another woman (his neighbour) still before the marriage, which in the judges' opinion make up a coherent and logical narrative. The respondent's commitment to marrying the petitioner was so advanced that he was unable to back out of his plans to marry her.¹⁴

¹³ Sent. c. Rapacz dated 7 December 2016, file ref. no. L.II.N.195/14, WSMK 2016 (unpublished).

¹⁴ Sent. c. Rapacz dated 13 December 2017, file ref. no. L.II.N.141/14, WSMK 2017 (unpublished).

Next is a case involving parties whose pre-marital acquaintance lasted two years. They built a closer relationship, which turned out to be turbulent and difficult. They also took their relationship a step further by engaging in sexual intercourse, which led to conception. The woman (petitioner) saw the man as a good candidate for a husband and father, and the strong feelings she had for him made her even idealize him. The couple were married when she was 25 and he was 27. Six months later, a baby was born. Soon afterwards, the parties' marital unity felt apart quickly. A dozen or so months after the wedding, the respondent – under the pretext of renovations carried out on the house – commanded the petitioner to leave with the child, so she moved to her parents' place. After that, the parties never restored their marital community. Admittedly, they tried to establish a marital relationship a few years after their marriage – they went on holiday together and even attempted cohabitation. Unfortunately, they were unable to save their marriage. Formally, the parties' marital bond lasted five years. They obtained a divorce without adjudication of guilt. The respondent admitted to having committed a simulation and justified his express marital consent by the petitioner's blackmailing him and her mother pressurising him to marry her daughter.¹⁵

2.2. Gaining material goods

The first case of this kind involves parties whose premarital acquaintance lasted a year. They met online. After living in the U.S. for eight years, the respondent (a Korean man) came to Poland at the invitation of the woman (petitioner). She made her flat available to the respondent, and they started living together. He made a very good impression on the woman and her relatives. He also came across as an enterprising man. After a four-month stay in Poland, the respondent went to Korea, where he underwent a catechumenate and was baptised in the Catholic Church. A month before the wedding, the petitioner travelled to Korea to see the respondent, and the parties were married there. The woman was 33 at the time, and he was 36. After the marriage, the couple moved into her flat in Poland and lived off her salary, as the man could not find employment, and he quickly lost the job he had managed to find. When she was four months pregnant, the respondent

¹⁵ Sent. c. Molendys dated 17 October 2017, file ref. no. L.I.N.112/13, WSMK 2017 (unpublished).

went to Korea to, as he stated, find work there and provide for the family. However, his departure proved to be the end of their life together, since he would not return to Poland, and the petitioner would not go with the child to Korea. In addition, even casual correspondence failed between the parties. The respondent was not interested in the fate of the petitioner and their child. Nor did he provide for the child. Formally, the parties' marital union lasted a year. They obtained a divorce with an adjudication of guilt of the respondent. The respondent did not take part in the trial, so the judges based their convictions on the testimony of the petitioner and her witnesses, who testified that the respondent promoted himself as a wealthy man, but in fact his only achievements at the age of almost forty were his studies completed in the USA. Not only that: he treated his baptism in the Catholic Church only as a step to winning the woman. In addition, she stated that the man had shown an unusual interest in the financial sphere of their marriage from the first days of their marriage. Ultimately, the petitioner gave up on the marriage when he became convinced that he would not be able to lay his hands on the petitioner's property. In the case at hand, we are dealing with a situation where a contractant's goal became the main purpose of sacramental marriage, and marriage was only a means to achieve this goal – the *causa celebrandi* and the *causa simulandi* concurred in a single cause.¹⁶

Another case involves parties whose pre-marital acquaintance lasted five years. Shortly after making acquaintance, they established a close (and sexual) relationship. The man (respondent) proposed to the woman, and she accepted. The couple decided to marry, although their marriage plans were met with disapproval from those in the petitioner's environment. They readily showed their reluctance, advising the woman against entering into a formal relationship with the respondent. The petitioner, however, was in love with the man and idealized him. The respondent's behaviour, which he manifested prior to the marriage, was alarming. He often abused alcohol and was aggressive toward the petitioner. The parties, however, married when the woman was 23 and he was 32. After numerous quarrels, the petitioner ordered the respondent to move out of her family home, where the parties moved in after marriage. Formally, their marital union lasted two years. They obtained a divorce without adjudication

¹⁶ Sent. c. Bogdał dated 5 January 2011, file ref. no. L.I.N.35/08, WSMK 2011 (unpublished).

of guilt. The respondent neither expressly objected to the petitioner's claim of simulated marital consent nor confirmed it. However, he admitted to deceiving, abusing, and harming the petitioner. The witnesses pointed out that the marriage had been concluded at a very specific time – when the respondent had nowhere to live and nothing to live on, as he was in debt from his previous business. Owing to his marriage to the petitioner, he was able to live in her family home, as her mother did not consent that the parties should live in her place unmarried. In the case in question, the judges also pronounced the marriage invalid on the grounds that the man was incapable of undertaking the essential marital duties for psychological reasons.¹⁷

2.3. Gaining accommodation

The only case of this kind concerns parties whose pre-marital acquaintance lasted two years. They met while the man (petitioner) was doing his obligatory military service. With his service complete, the parties continued their acquaintance by correspondence due to the distance separating them. Sometimes he came to visit the woman's family home, where the couple spent time in the presence of her mother and sisters. The man stated that after they had been meeting for a year, the respondent's mother forced him to make a decision to marry her. However, the petitioner did not come to the engagement ceremony that the respondent's mother had planned, and as a result she showed up at his home and persuaded him to get married, promising to bear all the costs associated with the wedding ceremony. As the petitioner came from a poor family and such a deal seemed very convenient to him, he agreed to the respondent's mother's proposal. The petitioner also hoped that by formalising the relationship he would eventually get an assignment for an independent flat. After a year-long acquaintance, the parties entered into a civil contract. Six months later, they also celebrated a canonical marriage, submitting to the persuasion of the woman's mother. The man was 23 and the woman was 20. Six months later, the petitioner moved into the respondent's family home. However, the parties could not run a separate household, as everything was managed by the woman's mother. We learn from the petitioner's testimony that the parties also had to sleep in the same bed with his mother-in-law, who thus prevented them from having children. However, the marriage was consummated

¹⁷ Sent. c. Molendys dated 22 May 2019, file ref. no. L.I.N.175/16, WSMK 2019 (unpublished).

by the parties, which was supposedly done in secret when the mother-in-law was away. Sexual intercourse between the parties was sporadic. The petitioner was disappointed the most by the fact that the respondent's mother would not sign his housing application, which prevented him from moving out with the respondent to an independent accommodation. According to the man, the respondent was controlled by her mother in every way and unable to oppose her. After four months of cohabitation and less than a year of marriage, the petitioner moved out from the woman's flat. The man wanted to persuade the woman to move out of his mother-in-laws' place, but he failed several times. Formally, the parties' marital union lasted three years. They obtained a divorce without adjudication of guilt. The petitioner admitted to having committed simulation: "I only cared about the housing application. I thought the church wedding was a comedy."¹⁸ In this case, too, the *causa celebrandi* and the *causa simulandi* converge in a single reason, which was the desire to gain accommodation.¹⁹

2.4. Legalization of residence

The only such case relates to parties whose pre-marital acquaintance lasted a year. Even in this period, when the respondent (a Vietnamese man) saw that the petitioner had become emotionally involved in their relationship, he began to neglect her. He would often leave her alone and meet his friends, telling her plainly that business and work were far more important to him than her. The parties initially concluded a civil contract and then a canonical marriage. The woman was 20 at the time, and he was 37. Immediately after the wedding, the respondent became even more indifferent to the petitioner. His indifference to both the petitioner and their children quickly grew and even escalated into acts of aggression – first mental and then also physical – towards her and their children. Formally, the parties' conjugal life lasted nine years. They obtained a divorce without adjudication of guilt. The respondent's admission of simulation is missing from the file. However, witnesses interviewed in the case stated unanimously that the respondent treated the petitioner and the relationship with her instrumentally, taking advantage of her naivety and affection to marry her and thus make it possible for him to stay in Poland and conduct

¹⁸ Sent. c. Molendys dated 9 October 2013, file ref. no. L.I.N.101/10, WSMK 2013 (unpublished).

¹⁹ Ibid.

his business. The parties' marriage was intended to serve the respondent only as a means to an end, which was to legalize his stay in Poland. In this case, the defender of the bond posed a major objection against declaring the marriage invalid on the grounds that it would have been sufficient for the man to enter into a civil contract (as he did) to obtain a visa, without having to contract a canonical marriage. However, as the judges noted, the argument would be valid only if the respondent were familiar with the Polish legal system. In light of the evidence, the judges came to the conclusion that the respondent was completely unfamiliar with the relationship between Polish state law and canon law. He was a follower of Buddhism, in which marriage is performed according to the forms customary in the local community, including the religious form, in accordance with the secular law of the country in which the followers of that religion currently reside [Czapnik 2014, 354-55]. Thus, it can be assumed that for the respondent, the marriage was only "fully" celebrated in canonical form, which is why he agreed to it and even strove to obtain it. Also in this case, the possibility of legalized residency became both a reason for marriage and a reason for simulated marital consent.²⁰

2.5. The possibility of emigration

The first case in this category relates to a total simulation committed by both parties. Their pre-marital acquaintance lasted five years. The woman (petitioner) admitted to having committed a simulation. He cites facts to support his admission – the lack of deeper feelings for the man before the marriage and the subsequent failure to pursue a lifestyle appropriate to spouses. As the reason for both the express marital consent and its complete simulation, she recalled her desire to help the respondent realise his emigration plans and to make her travel opportunities easier. The respondent, referring to the petitioner's claim, maintained that she knowingly collaborated with him to carry out the plan to enter into a marriage of convenience. The respondent was actively involved in the opposition movement against communist totalitarianism. Fearing persecution, he entertained the idea to leave for the U.S., where his sister was already living. At a U.S. consulate, he was told that if he did not submit a certificate that he had entered into a "church wedding", he would be refused a visa. Facing

²⁰ Sent. c. Rapacz dated 13 July 2016, file ref. no. L.I.N.140/07, WSMK 2016 (unpublished).

these difficulties, the respondent decided to enter into a sham marriage with a friend of the same age. The marriage was not preceded by a period of engagement or an appropriate ceremony. The parties were not seen by others as a couple in love. In addition, the respondent's mother testified that she found out about the planned wedding two weeks before it took place. The parties entered into both a canonical marriage and a civil contract on the same day. They were both 25 at the time. After the wedding, the parties and their families and friends met at a party at the petitioner's parents' home, but they never lived together and unanimously declared that they had not consummated the marriage. Formally, the parties' marital bond lasted a year. The parties were granted a divorce without an adjudication of guilt. Shortly afterwards, the respondent left for the U.S. There he met a woman with whom he entered into a civil contract. Also in this case, the desire to emigrate to the U.S. became both the reason for the marriage and the reason for the complete simulation of marital consent by both parties.²¹

The next case involves parties whose pre-marital acquaintance lasted three months. They met in Greece having fled Poland with the intention of emigrating to the United States. The parties were a couple and engaged in sexual intercourse. Having found out that married couples are more likely to get an emigrant visa to the U.S., the couple decided to contract a marriage of convenience. Since civil contract formalities could take several months, the parties decided to celebrate a canonical marriage in Greece, which they were allowed to without any preparation in a short period of time. The man (petitioner) was 22 at the time, and the woman was 19. After the wedding, the two often quarrelled. After arriving in the U.S., the parties, in accordance with emigration regulations, moved in together, but conflicts between them continued. The respondent went to Poland after a year, from where she returned the following year six months pregnant. The petitioner claimed the child as his own so that the respondent and the child would be covered by health insurance. When the respondent needed the status of a single mother required to receive a scholarship, she filed for divorce. The parties were no longer living together at the time. Formally, their conjugal life lasted five years. The petitioner admitted to having committed a simulation. The evidence shows the obvious reason

²¹ Sent. c. Bogdał dated 8 March 2017, file ref. no. L.I.N.147/13, WSMK 2017 (unpublished).

for both the express marital consent and the reason for the complete simulation of marital consent: the desire to increase the chances of emigrating to the United States.²²

3. The *causa simulandi* in the judgements of the Metropolitan Tribunal of Kraków

3.1. Lack of love

In the first of such cases, the woman (petitioner) stated that the information about her pregnancy with a man she never loved was very difficult for her. She refused to tell anyone about her pregnancy. At a critical time in her life, she wanted to abort the baby, but the respondent told her that if she did, the local community would learn about it.²³

In the next case, the respondent stated that she took her marriage vows insincerely, because even before the wedding she had understood she did not love the petitioner and did not want to tie herself to him with the marriage knot. Also, the petitioner stated that already before the marriage, the respondent had become cold and distant toward him. She would not take part in marriage preparations. In addition, the petitioner testified that during her parents' blessing the respondent "stood petrified", during the wedding she "was having fun because she had to", after the wedding she refused to consummate the marriage, and her overall attitude made it clear to him that she did not feel bound by any marriage.²⁴

Next is a case where the woman (respondent) testified that her early enthusiasm for the petitioner had waned considerably or, if anything, was superseded by an overwhelming reserve. However, when she became pregnant, the respondent consented to marriage, which she did under pressure from both her own and the petitioner's family. The painful experience of a miscarriage a few weeks before the wedding only intensified her reluctance to the planned marriage. The respondent stated: "While taking the marriage vows, I said 'I do', but in my heart I felt otherwise and was against it. I did it against myself, without love."²⁵

²² Sent. c. Bogdał dated 12 July 2017, file ref. no. L.I.N.172/14, WSMK 2017 (unpublished).

²³ Sent. c. Molendys dated 17 February 2010.

²⁴ Sent. c. Molendys dated 10 November 2010.

²⁵ Sent. c. Molendys dated 5 October 2011.

In the next case, the man (respondent) described the parties' pre-marital relationship in this way: "Even before the wedding, I was contemplating dissolution of my marriage to the petitioner because I did not love her."²⁶ The respondent gave some details of his behaviour after the marriage, which was indicative of total simulation: "For about five months after the wedding, I perfectly concealed the lie uttered in the church. However, after the child was born, I confessed everything to the petitioner. I would run away from my wife to my colleagues and friends."²⁷ Also, the respondent's mother testified that her son was under pressure from her and from the petitioner who blackmailed him, and that he clearly communicated his aversion to her and the plan to marry her. In the case in question, the judges also declared the marriage invalid owing to his inability to undertake the essential marital duties by reason of psychological obstacles, both in the man and in the woman.²⁸

3.2. Leading a "double life"

In the first case of this kind, the woman (respondent) testified that a few months before her marriage to the man (petitioner), she became emotionally and sexually involved with a married man (her co-worker). Shortly after her marriage, she reverted to the intimate relationship with that man, being unfaithful to her husband, and eventually abandoned the petitioner, broke off the marital union, and started living in an informal relationship with her colleague: "At first, I was in love with the petitioner, but when I met my workmate, I already knew that I didn't love the petitioner."²⁹ In the case at hand, the judges also considered the marriage invalid due to the respondent's exclusion of fidelity. This decision deserves some criticism. Consistently with canonist doctrine and rotal jurisprudence, it is impossible to reason that the respondent had no marital will (total simulation) and at the same time had it, albeit defective (partial simulation), and, consequently, the marriage cannot be declared invalid based on both total simulation and either of the partial kinds of simulation [Sobański 2000, 146].

²⁶ Sent. c. Molendys dated 17 October 2017.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Sent. c. Bogdał dated 5 May 2010.

In the next case, the woman (petitioner) testified that after she changed jobs a few months before her marriage, she met a man at work and struck up a relationship with him. At first, they were just friends, but friendship evolved into emotional involvement, and eventually went beyond standard relations between work colleagues, and three months before her planned marriage to the respondent, she engaged in sexual intercourse with her workmate. Under such circumstances, the petitioner started having second thoughts about her planned marriage to the respondent. She also shared these doubts with the respondent, who shortly before the planned wedding resolved to move out of the flat he shared with the petitioner. Nonetheless, on account of his emotional involvement with the petitioner and hoping that she would break off the relationship with her lover, he resolved to carry on with the wedding ceremony. The marriage was not successful. Faced with a marital crisis, the respondent suggested that his wife should see some specialists, but she would not. Instead, she became involved with the other man and broke off marital relations with her husband.³⁰

Next is a case where the man (respondent) admitted that he had become emotionally involved with another woman six months before the wedding and had sexual intercourse with her a month before they married. This acquaintance was carefully concealed from those around them. As the respondent's feelings for another woman grew, there was a change in his behaviour toward the petitioner, who was already his fiancée at the time. The respondent's reserve grew, and he became cold toward her, he avoided discussing their future together and preparations for marriage. The woman noticed this process and even wanted to put off the wedding date, but she never did, after all. After the wedding, the respondent's indifferent attitude toward the petitioner intensified, he was not keen on building a real marital union with her. When the man's relationship with another woman came to light a year after the wedding, the parties' marital unity was definitely broken, and the respondent moved out and lived with his lover. The respondent not only confessed to his pre – and post-marital cohabitation with another woman and living a parallel life with her, but also that his taking the marriage vows was not sincere. After the parties divorced, the respondent entered into a civil contract with his lover.³¹

³⁰ Sent. c. Molendys dated 3 November 2010.

³¹ Sent. c. Rapacz dated 16 January 2013.

In another case, the woman (petitioner) admitted that a few weeks before her marriage, she met another man with whom she had sexual intercourse. Both before and after her marriage, she maintained a close emotional and intimate relationship with this man, with whom she subsequently entered into a civil contract. She told him she loved him and felt more comfort in his company than with the respondent. Those who knew the truth about their relationship advised the petitioner against getting married, but she disobeyed them and on the very second day after her wedding met her lover and had sex with him. Afterwards, she regularly committed marital infidelity. After three months of cohabiting with the respondent, when her infidelities transpired, she left him and moved in with her lover.³²

In the next case, the woman (respondent), as a teenager, started a close relationship with a man. This was not liked by her close ones, especially her mother, as this man's conduct, his liking for alcohol and the people that surrounded him would not make him come across as a man of good reputation. The respondent, wanting to spite her partner, struck up a relationship with the petitioner, with whom she became pregnant three months into their acquaintance. A few days before the wedding, the respondent's former partner arrived at her parish chancellery and stated that the parties' marriage could not take place because the respondent was emotionally involved with him. The parish priest then called the parties and the respondent's mother to clarify the matter, and proposed that the parties postpone the wedding. In the presence of the petitioner and her mother, the petitioner swore by the holy cross and declared that her partner's statement was not true. For this reason, the parties decided not to reschedule the wedding. After the petitioner moved out of their home following a domestic row just two weeks after their marriage, moved out of their shared home; after a few weeks, the respondent fled her mother's home, too, and moved in with her partner. She came to her family home to collect her belongings assisted by police officers. The respondent entered into a civil contract with her partner.³³

In another case, the parties made efforts to promote their horse-riding centre before the wedding. A photojournalist – whom the woman (respondent) had been meeting a few months before the wedding, cheating

³² Sent. c. Rapacz dated 05 February 2013.

³³ Sent. c. Rapacz dated 29 May 2013.

on the petitioner – participated in the production of this advertisement. Witness statements show that she was very much in love with him. A few weeks after the wedding, she ran away from the petitioner. She did not accept his proposal to resume marital relations, nor did she respond to her parents’ attempts to save the parties’ marital bond. The case file has no information of her admission to a simulation; rather, she seems to accuse the petitioner of simulating marital consent. She claims that when she was pregnant and later took care of their children, the petitioner started an affair with one of the female employees of the horse-riding centre, who is now his wife by civil law, as a result of which he was no longer interested in marrying the respondent, and entered into it solely out of fear of the reaction of his friends and family, especially the respondent’s parents. Such a claim by the respondent, in the opinion of the adjudicating panel, should be considered uncritical and naive, for the respondent claims: “The situation [the petitioner’s alleged affair with a female employee] was known to almost everyone except me and my parents.”³⁴ It is hard to envisage a situation where in the small and closed environment of the stud farm the life partner of the owners’ daughter is having an affair with one of the employees, and this escapes the attention of only the owners and their daughter, and that employee tries to take advantage of this kind of knowledge. The judges assumed that the respondent – having found herself torn between her emotional and intimate relationship with a newly acquainted man and her life achievements to date and the arrangements she had made – resolved to falsify her marital agreement, which she only confirmed with the decisions she made shortly after the marriage.³⁵

In the next case, the woman (petitioner) became emotionally closer to her colleague at work a few months before her planned wedding: “I became infatuated with him, we met before the wedding every day at work and after work.”³⁶ This relationship resulted from her disappointment with the respondent. The state of disappointment, she said, evoked her aversion to and even disgust with the respondent.³⁷

³⁴ Sent. c. Rapacz dated 19 June 2013.

³⁵ Ibid.

³⁶ Sent. c. Molendys dated 19 October 2016.

³⁷ Ibid.

In the next case, the woman (petitioner) started a close relationship with another man a few months before her planned marriage to the respondent. She voiced her objections to the respondent about getting married but did not tell him directly that she was emotionally involved with someone else. The respondent expressly rejected the proposal to give up the wedding ceremony. The petitioner lacked the courage and determination to break up and took what she thought was the safe course of action: she went through with the wedding while opposed to its legal consequences. The judges also said that the petitioner's willingness to simulate was confirmed by the fact that their marital union was very short – less than three months.³⁸

In the last case of this type, the woman (petitioner) presented a coherent picture of the entire “double life” allegedly led by the respondent. Two years before they married, the respondent's neighbour's husband committed suicide. There were rumours in the respondent's neighbourhood that he and his neighbour were joined by more than just a neighbourly acquaintance. In addition, some neighbours linked the neighbour's suicide to the respondent himself. According to witnesses, the respondent's relationship with the widow continued, which the respondent's mother did not approve of, as she did not think the neighbour would make a suitable daughter-in-law, hence her enthusiasm for the petitioner and the parties' matrimonial plans. After their marriage, the respondent showed an ostentatious lack of interest in the petitioner and in marrying her, and he took every opportunity to exempt himself from living together with her. After parting with the petitioner, the respondent was quick enough to have another woman at his side, who turned out to be his neighbour. Thus the judges concluded it would be extremely naive to claim that his appearance with the above-mentioned woman was a pure coincidence.³⁹

3.3. Aversion to the person

In the only case of this kind, the woman's aversion to the man (petitioner) was combined with fear. Rotal jurisprudence often cites situations where simulation-triggering aversion occurs in conjunction with fear as a cause of simulation. Considering the fact that a prospective spouse is afraid of something or someone (fear), he or she expresses marital consent

³⁸ Sent. c. Rapacz dated 7 December 2016.

³⁹ Sent. c. Rapacz dated 13 December 2017.

only externally, while feeling repulsion (aversion) towards the person to be married. In this case, the woman testified: “On the night before the marriage, I was afraid to tell my dad that I didn’t want to marry the petitioner. I knew I didn’t want to be his wife when those odd scenes of jealousy started.”⁴⁰ Her testimony shows that in view of the petitioner’s mounting suspicions about her alleged infidelities, she found it impossible to live with him. However, she was afraid to tell her close ones about this because of her long acquaintance with the man and the pressure her family was putting on her to sort out the situation caused by the parties’ cohabitation. To sum up, the judges came to the conclusion that the respondent “withdrew” her marital consent, as it became apparent to her that she was tying the knot with a jealous paranoid.⁴¹

Summary

The wealth of reasons for total simulation of marital consent in the *pro nullitate* sentences of the Metropolitan Tribunal of Kraków from 2010 to 2020, presented in this study, demonstrates the importance of proving the reason for simulation in arguing for nullity of marriage. This is because one can hardly speak of total simulation of marital consent being proved if the *causa* of the simulation was not clearly demonstrated. Therefore, in each of the judgements presented, proving the specific reasons for simulation contributed to judges’ moral certitude allowing them to declare a marriage invalid by reason of total simulation of marital consent.

It is worth noting that most of the characteristics of total simulation are variable, as they depend on the specific case. It is possible to give examples of circumstances or reasons prompting a prospective spouse to employ total simulation, but no exhaustive list can be provided. Human life goes before the law, which causes jurisprudence to evolve constantly regarding the issue of total simulation. Each case is different, just as each person is unique, hence the church judiciary is required to handle each case individually.

Proving the invalidity of a marriage on the grounds of total simulation of marital consent turns out to be challenging. This is evidenced by the fact that between 2010 and 2020, 161 judgements were issued

⁴⁰ Sent. c. Molendys dated 9 April 2014.

⁴¹ Ibid.

in the Metropolitan Tribunal of Kraków, of which only 20 processes led to a declaration of nullity.

Therefore, it becomes even more interesting to find out what circumstances, including the reasons for simulation, must be revealed during proceedings to convince the judges that a given marriage is invalid. The answer to this question can be found in this study, as it identifies specific reasons for simulation exemplified with cases handled by the Metropolitan Tribunal in Kraków.

The insights offered here throw a new light on the role of premarital instruction and high school catechesis on the sacrament of marriage. As it happens, we are puzzled by situations where the reason for simulation was typically that the culprit was leading a “double life” having, at the same time, given express consent, which was caused by the person’s inability to withdraw from plans to marry. Therefore, more attention should be given to preparation leading directly to marriage, since it is often when the lack of sincerity can be manifested by either of the prospective spouses.

In addition, in the cases analysed above, pursuit of self-interest, the absence of love between the prospective spouses, or only one party either loving or detesting the other – all can have the prompt at least one party to completely simulate marital consent. Our examination of the judgements at hand may evoke the impression that the parties, when talking about the love that was allegedly between them, often reduced the feeling to infatuation or just being in love. On the other hand, sometimes one can hardly discern the love that the Church preaches – love understood as responsibility for another person or being there for another person [Pastwa 1999, 97-102]. This may be because prospective spouses, for diverse reasons, earlier in their lives did not learn what true love is and had a vague understanding of it.

In some cases, invalid marriages can possibly be avoided by having a properly directed pastoral conversation with the prospective spouses, a properly filled in prenuptial form, or simply honesty between the couple themselves and between them and the priest.

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