

## ***ERROR IN PERSONA* (CANON 1097 § 1 CIC/83) IN LIGHT OF DOCTRINE AND JURISPRUDENCE**

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### **Abstract**

Canon 1097 of the 1983 Code of Canon Law, like Canon 1083 § 1 of the 1917 Code of Canon Law declares that error of person (*error in persona*, rendered as *error circa personam* in the previous Code) nullifies a marriage. Traditionally understood 'person' is about physical identity, but in the broader sense, adopted especially after the judgement of the Roman Rota c. Canals of 21 April 1970, the identity of a person consists of her qualities: ethical, moral, social, etc.

The aim of the present study is to show error of person (as the reason for the nullity of a marriage) as construed by doctrine and jurisprudence; in particular, it concerns the notion of the person as the object of error. In the first part, the position of doctrine is discussed; the second part deals with the position of the judiciary. Both in doctrine and jurisprudence, the dominant view is that the person identifies herself in her physical dimension.

*Error in persona*, a title of nullity of marriage, which is rare, should be used in accordance with the intention of the legislator, who made significant changes in the post-Conciliar Code of Canon Law, abolishing the legal figure of *error redundans in errorem personae* and introducing *error qualitatis directe et principaliter intentae* and *deceptio dolosa*.

**Keywords:** marriage, nullity of marriage, error of person, quality of person

### **Introduction**

Among titles of nullity of marriage that are associated with error – as to fact or law (Canons 1097-1099 of the 1983 Code of Canon Law<sup>1</sup>) – we

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<sup>1</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text available at: [https://www.vatican.va/archive/cod-iuris-canonici/cic\\_index\\_en.html](https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html) [henceforth: CIC/83]; legal state as of 18 May 2022.

find error concerning the person (*error in persona*) regulated by Canon 1097 § 1 of the 1983 Code of Canon Law,<sup>2</sup> similarly to Canon 1083 § 1 of the 1917 Code of Canon Law. This error renders a marriage invalid.<sup>3</sup> This disposition reflects the traditional principle concerning the invalidating power of error concerning the substance of the act (Canon 126 CIC/83) [Teti 2006, 43-44]. *Error in persona* (called error *circa personam* in CIC/17), and therefore *error facti*, refers to the material object of the marriage act (the contractants themselves), the invalidity of marriage, therefore, stems

<sup>2</sup> *Codex Iuris Canonici Pii X Pontificis Maximi iussu digeatus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 1-593 [henceforth: CIC/17].

<sup>3</sup> Referring to the origins and rich history of the legal figure of *error facti*, as well as rotal jurisprudence, Grzegorz Erlebach reminds us that it was Emperor Gratian who already distinguished between *error personae*, *fortuna*, *condicionis* and *qualitatis*, and attributed marriage-nullifying power only to error concerning the person and error as to the condition. As regards *error personae*, he claimed that this error occurs when a woman believes she is marrying Virgil, but in fact she is marrying Plato. The aforementioned father of canon science did not accept the voiding capacity of error concerning a quality, except for error concerning slaves. The issue of *error facti* with regard to marital consent was first accentuated by Peter Lombard, whose findings were the same as Gratian's, but he distinguished *error circa qualitatem* (concerning nobility) as a quality also intended. He defined the state of the contracting party in error with the verb *putare* 'to judge, think', and the state of having an intention with the verb *petere* 'aim at something'. In the latter case, the absence of a specific quality also nullified marital consent. Saint Thomas Aquinas introduced the phrase *error redundans in errorem personae*, but the relevant text did not make it certain whether he meant an individuating quality or not ("a specific son of the king" or "son of the king").

Much later, Thomas Sánchez exerted a major influence on the development of doctrine by asking when *error qualitatis* is reduced to *error personae*, saying that this was the case only in the case of an identifying quality (*qualità individuante*). This stance became a point of reference for the further development of canon science.

Saint Alphonsus Liguori assumed that error about a quality of the contractant (*error causam dans contractui*) is immaterial, which supports the well-established opinion that error concerning a quality of the person has a nullifying capacity if the quality pertains to the substance. He formulates three rules: the first concerns a condition, the second concerns an identifying quality, and the third speaks of nullity of a marriage in the case of error about a quality of the person, intended directly and principally. Over time, the third rule was commonly accepted.

The doctrine of error about the person made its way into rotal jurisprudence, starting with the following sentences: c. Mori dated 30 November 1910, c. Sincero of 27 May 1911, and c. Perathoner dated 2 January 1913, undergoing a natural evolution [Erlebach 2009, 62-63].

from natural law [Viladrich 1998, 128]. The invalidating effect of this error is attributed to the nature of marriage as a juridic act placed vis-a-vis a person as marriage is founded on union of persons.

*Error facti* can also apply to qualities of the person (*error in qualitate personae*). In contrast, Canon 1083 § 2 CIC/17 granted invalidating capacity to error about a quality of the person only if it could be reduced to error about the person (*error redundans*) [Coronata 1957, 134], or involved enslavement *sensu stricto*, while Canon 1097 § 2 CIC/83 attributes this capacity to error about a quality of a person, intended directly and principally, and to error caused by deception about a quality that may seriously disrupt the “partnership of conjugal life” (Canon 1098).

Now, when we think about *error in persona* (Canon 1097 § 1), this error persists when one of the parties shows a prior intention to marry a certain person, but it turns out that the party, unknowingly, enters into this union with another person [Gasparri 1932, 17-18]. A substantial error, as already mentioned, concerns the substance of the act and nullifies a marriage, because the consensual will is directed towards a person other than the one intended (there is no exchange of marital consent, hence the contract is devoid of substance).

The goal of the present study is to show error concerning the person (as a title of nullity of marriage) as construed in doctrine and jurisprudence. We are concerned here, in particular, with the notion of the person as the object of error.

### **1. The concept of person in respect of *error in persona* in doctrine**

The first authors who commented on Canon 1083 § 1 of the 1917 Code of Canon Law unanimously held that error about the person could be verified if and only if someone intended to contract marriage with a specific person whom they in fact did not know, while in the meantime another person stood before the priest, and they, being thus misled, tied the knot with this party. Of essence, then, was solely the notion of a person in here physical identity, hence in the strict sense [ibid.].

This “classical” interpretation of error concerning the person is invariably recognized by the vast majority of representatives of doctrine, who, after the new Code was promulgated, commented on Canon 1097 § 1 of that

codification [Giacchi 1973, 48; Franceschi 1994, 593-95]. In their opinion, ‘person’ means the same thing in both Codes – a physical person – thus making it impossible to assume that there has been a cultural evolution of the concept of person, as presumed by some canonists. It goes without saying, as the former underscore, that if the legislators wanted to attribute a broader meaning to the notion of person, they would not use the phrase *error in persona*, but the phrase *error in personalitate*. Besides, they made a clear distinction between *persona* (§ 1) and *qualitas* (§ 2) in the cited canon [Bonnet 1985, 69-70].

Arturo C. Jemolo concluded that Canon 1083 § 1 CIC/17 may be applied extremely rarely (when marriage is concluded by proxy or in the case of extraordinary similarity of people) [Jemolo 1993, 87]; a similar interpretation was proposed by Pietro Gasparri [Gasparri 1932, 19] or Franciscus X. Wernz and Petrus Vidal [Wernz and Vidal 1946, 600].

This stance was reaffirmed, years later, by Pope John Paul II in an address to the Roman Rota on 29 January 1993, stating that it would be something arbitrary and even entirely inappropriate and gravely culpable to attribute the wrong meaning to the wording used by the legislator, sometimes suggested by disciplines distinct from canon law. The pope added that in interpreting the CIC/83 “one cannot hypothesise about a break with the past as in 1983 there had been a leap into a totally new reality”; especially regarding error about the person (Canon 1097 § 1 CIC/83). He also added that as regards terms introduced by the legislator, they cannot be attributed meanings that are “alien to canonical tradition”. Thus, the term ‘person’ used in Canon 1097 § 1 can have one and only meaning with respect to marriage.<sup>4</sup>

However, doctrine had earlier asked whether the interpretation of Canon 1097 § 1 CIC/83 regarding error as to the person should be narrowed down solely to the physical identity criterion, and whether this norm should not be construed in keeping with a more global and holistic vision

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<sup>4</sup> John Paul II, *Allocutio ad Rotam Romanam diei 29 ianuarii 1993*, AAS 85 (1993), p. 1259-260; English text available at: [https://www.vatican.va/content/john-paul-ii/en/speeches/1993/january/documents/hf\\_jp-ii\\_spe\\_19930130\\_roman-rotam.html](https://www.vatican.va/content/john-paul-ii/en/speeches/1993/january/documents/hf_jp-ii_spe_19930130_roman-rotam.html). Jose M. Serrano Ruiz notes that canonical tradition does not differ substantively in respect of the concept of person, but rather on the attribute identifying a person [Serrano Ruiz 2000, 155]. See also D’Auria 2007, 284-85, or Funghini 2003, 159-61.

of the human person, considering that the legal concept of person is somewhat different in the new Code [D'Auria 2001, 266; Moneta 1970, 46]. This issue gained prominence mainly in the context of the novel, personalistic concept of marriage, delineated by the Second Vatican Council and adopted by the post-conciliar Code in 1983. This is because 'person' could no longer be understood, as was claimed, as solely a physical being, but one constituted by physical, legal, moral and social qualities [Gullo 1986, 363-64].

It should be noted that representatives of this new doctrinal direction [Mostaza Rodríguez 1988, 322], albeit definitely in the minority (represented by Gualtiero Ricciardi, Manuel Calvo Tojo, Paolo Moneta, Enrico Vitali, Salvatore Berlingò), raise objections to the term 'physical person', stressing that the human person is not "composed" only and predominantly of the physical, or somatic, element; granted, it "extends" to all the qualities that radically and decisively impact the subject's personality, making him or her morally and existentially an individual who is substantially different from the one appearing while giving marital consent [Moneta 1994, 148].

One of the prominent representatives of the circles favouring a wide interpretation of the term 'person' (Gualtiero Ricciardi) maintains that error concerning the person, which invalidates a marriage, should be interpreted in light of *Vatican II's* construal of the person and marriage; therefore, it must not be limited to error about the prospective spouse's physical identity, but should be extended to the essential elements that identify him or her in their totality. Treating the person here as the subject of the marriage contract, error about the person should therefore be understood as error concerning the object (*error in obiecto*), and should not be limited to error about the identity of the object (*error in identitate obiecti*) or, as specified by Roman law, error about the body (*error in corpore*). The error in question is also error about the substance of the object (*error in substantia obiecti*), i.e. error concerning the essential qualities of a person in her spiritual, moral and social dimensions [Ricciardi 1986, 68-69; Góralski 2014, 219-20].

The French canonist Gaston Candelier assumes that nowadays the person should be understood substantively as personality. Error about personality entails error concerning the material object of the marriage contract, that is, error as to what constitutes the substance of the act – in the application of Canon 104 CIC/17 a marriage contracted under such an error is invalid. Marriage invalidity is due to natural law, since the contracting

party's error about a constitutive quality of personality (the party marries a person who differs substantially from the one he intends to marry) [Candelier 1984, 121; Franceschi 1996, 254].

Many representatives of doctrine do not accept the position advocated by the above-mentioned circles favouring the extensive interpretation of 'person', pose this fundamental question: Was Canon 1083 § 1 CIC/17 not altered by Canon 1097 § 1 CIC/83? One of them, Héctor Franceschi replies it is obvious that only a favourable terminological alteration was made in the new canon – if a broad interpretation of the term 'person' was allowed previously, this cannot be done now, especially if one considers the motives for which a preposition was changed (from *circa personam* to *in persona*). When in doubt about extending the meaning, one should adhere to a strict interpretation (according to Canon 18 CIC/83) [Franceschi 1994, 593-94].

For this purpose, Canon 96 was referenced: "By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition, insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way." Mario F. Pompemma, considering this disposition of the canon, asks whether the theoretical equivalence between the concept of person and the concept of personality is tenable. His reply is that a person remains the same also if, at some point in her life, she becomes ill or commits an act (e.g., a serious offence), and such circumstances clearly do not affect the person's further existence. At the same time, Pompemma (being critical of the view of this "innovative" option) reminds us that the new direction in doctrine and jurisprudence – definitely in the minority – opposes the term 'physical person' and emphasizes that the human person is not exclusively and primarily constituted in a dominant way by the physical (somatic) element, but extends to all those qualities that radically and determinately affect her personality, so that they make the person inherently different – morally and existentially – from the one appearing to the environment while giving marital consent. Pompemma states unambiguously that *error in persona* can only be verified with regard to the physical identity of the other party [Pompemma 1984, 56].

As observed by Andrea D'Auria, who seems to uphold the traditional understanding of the concept of person, if *error in persona* might have occurred from time to time, it seems that now it may occur extremely

rarely: when marrying by proxy, when there is a significant similarity between persons, or when one of the parties has never been seen by the other contractant [D'Auria 2007, 278; Pompedda 1984, 56]. D'Auria asks whether it is possible to make a theoretical proposition about the equivalence between the concepts of person and personality. His answer is similar to the above-cited Pompedda [D'Auria 2007, 290].

In the discussion of the understanding of 'person', the majority camp is represented also by Urbano Navarrete. Considering Canon 96 CIC/83 ("By baptism one is incorporated into the Church of Christ"), and Canons 97 § 1, 98 § 1-2 and 100, an eminent Spanish canonist (later a cardinal) makes it clear that if the term 'person' throughout the Code of Canon Law has the meaning [...] of the subject to whom we attribute the duties and rights proper to a Christian in his individual identity, leaving aside any other quality [...], there are no grounds for assigning different meanings to the same term ('person') in Canon 1097, considering that the legislator does not provide any element that could support a different interpretation of the same noun" [Navarrete 1998, 371; Navarrete 1993, 648].

Antoni Stankiewicz notes that the attempt to expand the "figure" of the physical person with respect to marriage is unacceptable if one takes into account the principles underlying interpretation of ecclesiastical law (Canon 17 CIC/83).<sup>5</sup>

## **2. The concept of person in respect of *error in persona* in jurisprudence**

Regarding case law, the traditional concept of person, or in the strict sense (in her physical identity) was already found in the judgement c. Sincero dated 27 May 1911 in the matter of an error that occurred as a result of "substituting" one person for another when the marriage was contracted.<sup>6</sup> Such an interpretation of *error in persona* was applied in subsequent rotal rulings. They emphasize that the phrase *in persona*, used in Canon 1097 § 1 CIC/83, should be interpreted in the traditional spirit (the prevailing opinion).

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<sup>5</sup> Decision c. Stankiewicz dated 22 July 1993, "Ius Ecclesiae" 6 (1994), p. 6. See also Ricciardi 1986, 81.

<sup>6</sup> Decision c. Sincero dated 17 May 1911, SRRD 3 (1911), p. 178, no. 14.

The problem of the lack of invalidating capacity of error about a quality of the person with regard to the so-called common qualities, which are proper to many people (under the 1917 Code), troubled canonists when more and more cases of error as to a quality of the person took place, fall outside the limited scope of Canon 1083 § 2 CIC/17. At that time, just like in doctrine, the scope was gradually extended with a new interpretation of the notion of person, understood as “something more” (equivalent to personality) than ordinary physical identity.

Of crucial importance was the judgement of the Roman Rota *c. Canals* dated 21 April 1970. The error of a woman who entered into a marriage without knowing that the other party had previously entered into a civil union with another woman and had three children with her was qualified as *error redundans*. The rotal turnus criticised the traditional interpretation of *error redundans*, considering that it was impossible to retain the restrictive traditional concept of person, who should be treated more holistically and integrally, rather than solely in her physical identity. The ruling paved the way for the formulation of the new Canon 1097 § 2 in the post-conciliar 1983 Code [Catozzella and Sabbarese 2021, 165, 205, 718; Góralski 2001, 185-97].

As regards tribunals of lower jurisdiction, we can cite here the judgement of the Regional Ecclesiastical Tribunal Trivento *c. Mazzoni* dated 20 October 1992.<sup>7</sup> The ruling sought to “reduce” error concerning a quality of a person to error as to the person. It was stated that in the case of an objectively essential quality, it is necessary to cite not Canon 1097 § 2 CIC/83, but Canon 1097 § 1, § 2 would apply only to the qualities intended *directe et principaliter*. The distinction between the two paragraphs of the canon would not concern error about the person’s physical identity (§1) and error as to qualities (§2), but error as to an essential quality would be covered by §1, and error about secondary qualities by §2. In the first case, the objective meaning of the quality entailing an invalidating error would be fundamental, but in the second case, such would be only the subjective intention of the person in error, which can possibly invalidate a marriage.<sup>8</sup>

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<sup>7</sup> Decision *c. Mazzoni* dated 20 October 1992, “Il Diritto Ecclesiastico” 104 (1993), no. 2, p. 295-99.

<sup>8</sup> *Ibid.*, p. 296.



As for rotal jurisprudence, we find sentences favouring a broader interpretation of the concept of person, in which equivalence can be seen between a person's quality and identity, which individualise the person – they define and distinguish them from any other. To illustrate, only some rulings can be cited here.

In the case *Kabgayen* (Rwanda), both in diocesan instance and before the Roman Rota (turnus c. Davino), a sentence was passed on 26 March 1987 declaring the nullity of a marriage *ob errorem in persona*, when the object of the man's error was the woman's virginity. The rotal judges assumed that the woman's virginity (quality), which constitutes an important value, especially in African peoples, in the eyes of the petitioner identified the respondent (he thought she had become a different person than the one he intended to marry).<sup>9</sup>

Sentence c. Defilippi dated 6 March 1998 finds that a person as the subject of rights and duties is not identified only by a physical criterion, but also by other elements, i.e., qualities that are highly important in the 1983 Code (e.g., regarding rights and obligations, baptised and unbaptised persons or clerics and lay people are defined differently). As for marriage, considering its very unique nature and the fundamental relevance of the prospective spouses' consent, which no human authority can make complete, it cannot be denied that the mutual identification between the contractants occurs not so much based on physical reality, but rather according to the image that one has of the other on the basis of the qualities that set them apart. Some of these qualities are of secondary importance and common to all, while others are crucial – whether for the assessment of the party or in objective terms – for judging the prospective spouse. The petitioner, who “identified” her future husband based on his personal qualification as a physician, was unconscionably sensitive to any physical ailment, so she found in him the assurance of being healthy. She requested marriage annulment by virtue of *incapacitas assumendi* (Canon 1095, 3<sup>o</sup> CIC/83) and by reason of error about the person (Canon 1097 § 1 CIC/83). The ruling was positive only for error concerning the person. We find the following statement: “Unquestionably, according to the jurisprudence of our Apostolic Tribunal, it is not only a subjective but also a common recognition that for the realisation

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<sup>9</sup> Decision c. Davino dated 26 March 1987, RRD 79 (1987), p. 153-59; Góralski 2000, p. 195-206.

of the community of marital life, the medical profession and consequently an appropriate complex of other male qualities are highly important, whereby a woman intends to individualize her future husband.”<sup>10</sup>

Marriage nullity by reason of *error in persona* was recognized in the *Bar-en* case c. Bartolacci, dated 14 July 2016.<sup>11</sup> Let us discuss this ruling in some more detail.

This union, concluded after four years of acquaintance, lasted only five months, because the spouses’ life together proved unhappy from the outset due to a sudden change in the woman’s disposition – from gentle and obedient to gruff and even life-threatening. The man filed a complaint on account of both parties excluding indissolubility of marriage and the woman’s incapacity to assume the essential obligation of marriage. After the meandering course of the case in previous instances, the *rotal turnus* ruled that the petitioner had incurred error of person with regard to the defendant, since before the marriage his fiancée appeared to him completely different from what she proved to be immediately after the marriage – in all spheres of life that were very important to him.

In the *In iure* part of the judgement, it was stated that the error about the person concerned material identity, that is, the mental identity of the person. It follows that the prospective spouse expressed consent to marry a third party, who was utterly different from the one he intended to marry.<sup>12</sup> If marital consent should be addressed to the person who one is marrying, then it is something obvious that error concerning the physical identity of that person invalidates the marriage, and this happens

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<sup>10</sup> “Sine dubio, iuxta N.A.T. iurisprudentiam non tantum subiectiva, sed etiam ex communi hominum aestimatione magni momento sunt per perducenda comunione vitae coniugalis condicio medici et consequenter complexus aliarum qualitatatum viri, quibus mulier contendit a se individuam esse personam futuri mariti.” Decision c. Defilippi dated 6 March 1998, RRD 90 (1998), p. 165, no. 24. See also Ricciardi 1986, 81. The position assumed by the *rotal turnus* c. Defilippi was criticised by Charles J. Scicluna, who expressed his belief that saying that error in some aspect identifying a person can be reduced to error of person specified in the code norm would be too radical a departure from the legislator’s intent; it would be something highly inappropriate to ignore the just autonomy of the two titles of nullity, referred to in Canon 1097 CIC/83 [Scicluna 2001, 15].

<sup>11</sup> Decision c. Bartolacci dated 14 July 2016, RRD 108 (2016), p. 185-90.

<sup>12</sup> Here, the ponens (relator) cited the decision c. Funghini of 23 November 1988, RRD 80 (1988), p. 641, no. 8.

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by natural law alone, since the very object of consent is lacking. We also find the following statement (taken from the sentence c. Defilippi dated 8 March 1998, RRD 90 (1998), p. 155, no. 10: “The person, as commonly accepted, is something physically defined, which is individualised on the basis of her physical identity. However, when we view this in light of canon law, the person, as the subject of rights and obligations, is not identified only according to the physical criterion, but also on the basis of other elements, that is, qualities [...]. As for marital covenant, considering its very unique nature and the fundamental relevance of the prospective spouses’ consent, which no human authority can make complete, it is unquestionable that the mutual identification between the contractants occurs not so much based on physical reality, but rather according to the image that one cherishes of the other based on the qualities that define them.”<sup>13</sup>

It was noted in the “In fact” section that the petitioner “fell in love” with the respondent, captivated by her numerous moral qualities, and this is what led him to marry her. Those qualities individualised her as a future wife of the man (he wanted to marry her as a person possessing these qualities), which was also unanimously confirmed by witnesses.

After their marriage was celebrated, the respondent’s behaviour towards her husband changed completely. She was no longer a quiet and shy person as her disposition changed radically: she became aggressive, forbidding her husband to take care of his father. Living in community with his wife for about five months, the petitioner was going through a spell of great anguish, unable to understand this sudden change in his wife’s temperament, who had become an entirely different person relative to the one she was during the three years of engagement. On numerous occasions, she stayed out without a reasonable excuse; at other times, she gave incoherent

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<sup>13</sup> “Persona iuxta communem omnium sensum interpretationem est quid physice definitum, quod scil. individuatur ex eius physica identitate. Attamen, si sistimus in ipso campo iuridico-canonistico, persona utpote subiectum iurium et obligationum non identificatur tantum criterio physico, sed etiam ex aliis elementis seu qualitatibus [...]. Quod attinet ad foedus coniugale, sive attenda eius peculiarissima natura, sive prae oculis habito fundamentali momento consensus personalis nubentium qui a nulla humana auctoritate suppleri potest, negari nequit mutuum identificationem inter contrahentes fieri non tantum iuxta utriusque realitatem physicam, sed potius iuxta imaginem, quam unusquisque de altro recipit ex qualitatibus quibus ille se ornatum probat.” Decision c. Bartolaci dated 14 July 2016, RRD 90 (1998), p. 187, no. 3.

answers; however, the most alarming thing was her aggressive and impetuous behaviour, neglect for her household chores, unfair accusations against her husband having an affair with a family friend who provided nursing assistance to his father. This change was so obvious that the petitioner was under the impression that he was dealing with a different person. He would not sleep at night because his wife tried to injure him with a knife. In addition, she claimed that she was having visions that someone wanted to “charm” her. When the man woke up at night, he saw her standing and watching him; he felt completely terrorized. There were also times when the respondent wished him a fatal accident, saying that she would not bury him in the cemetery, but would bury him under separate trees, “split into pieces.” It would happen that she threw his belongings onto the pavement and even attempted to attack him with a knife.

The petitioner’s testimony was confirmed by all witnesses, and the judges found that at stake were facts demonstrating the woman’s mental state. They also concluded that almost from the beginning of their marital union “the man saw that the respondent had no complex of moral qualities which would enable him to identify her.”<sup>14</sup> That was why, having verified these personality traits he found essential, he first asked for a separation and marriage annulment.<sup>15</sup>

The ruling contains a significant statement that there are plenty of royal decisions that, under the 1983 Code, recognize that nowadays people should be more fully evaluated not only in the physical aspect, but also in existentially, in accordance with ethical, moral, social, and religious qualities, or a quality that is inherently necessary for the exercise of the essential rights and obligations of the marriage contract.<sup>16</sup>

The ponens emphasises that the petitioner did not marry the respondent merely as a physical person, but as having a personality with qualities that he himself considered essential for a successful married life to attain *bonum coniugum*, for a happy relationship for himself, the woman and children. The woman, instead, lacked that personality which was naturally needed to exercise the rights and obligations essential to marriage. The case at hand

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<sup>14</sup> “Fere ab initio convictus coniugalis vir perspexit mulierem haud praeditam esse illo moralium dotum complexu per quem identificavit Convantae personam.” *Ibid.*, p. 189, no. 6.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

involved not just a mere change in the woman's character in relation to her previous conduct, but also facts demonstrating her specific mental state and allowing her to be individualised by the man as a person.<sup>17</sup>

The final disposition of the judgement reads: "Quapropter, si prae oculis habeantur facta adducta ab Actore, confirmata a testibus, confestim, moralis certitudo Actorem inductum fuisse in errorem" *circa personam* [my emphasis]. Conventae, nam ipsa ante matrimonium Actori apparebat alia ac diversa prorsus a muliere qualem, immediate post celebratum vinculum, se ostendit in omnibus rationibus agendi, quae summi momenti erant pro viro."<sup>18</sup>

However, the vast majority of rotal jurisprudence speaks against "broadening" the scope of the concept of person to include moral, social, intellectual qualities and characteristics, etc.

The sentence c. López Illana of 8 May 2002 concerned, among other things, the *error in persona* title of nullity with regard to a marriage contracted under the CIC/17. Citing the work of Gommar Michiels [Michiels 1955, 5], the ponens elucidates the concept of person, saying that legally the human being is referred to as *persona* as a subject capable of having rights and duties. Thus, legal personality is a legal state, that is, the capability of acquiring and possessing certain subjective rights; legally, a human being is a person insofar as he is capable of assuming rights and obligations. He or she is an active subject of rights and a passive subject of obligations determined by objective law and stemming from other subjective rights. For this reason, the person with regard to whom an error can arise can be no other than a natural person (Canon 96ff. CIC/83). The *ius connubii*, which is the natural right of the prospective spouses, is proper only to the human person – the physical person – not the person "framed" by thought and mind or some moral and social or particular identity of a person.<sup>19</sup>

The rotal judge adds that the currently applicable Canon 1097 § 1 replicates the previous Canon 1083 § 1. However, the two use different formulations: *error circa personam* versus *error in persona*, both referring

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<sup>17</sup> Ibid., p. 190, no. 7.

<sup>18</sup> Ibid.

<sup>19</sup> Decision c. López Illana dated 8 May 2002, RRD 92 (2002), p. 299, no. 11.

to the physical person (the subject of rights and obligations).<sup>20</sup> According to the ponens, former Canon 1083 § 2 has now been supplanted by Canon 1097 § 2 together with Canon 1098.<sup>21</sup>

A similar stance was assumed by the rotal turnus c. Stankiewicz in the ruling of 22 July 1993. It states that the concept of “person” who can be erroneously perceived has no other meaning than “physical person.”<sup>22</sup> “For it cannot be supposed,” the relator stresses, “that the canonical legislator intended, contrary to canonical tradition (Canon 6 § 2), to also ascribe legal significance to a person perceived also as an individual possessing moral qualities, or in terms of his internal structure, or even attributed power to error about the personality of the other contractant.”<sup>23</sup>

An extensive explication of the word ‘person’ occurring in Canon 1097 § 1 CIC/83 (meaning only physical identity) and polemics with authors advocating an opposite view were found in the sentence c. Funghini dated 5 April 1997.<sup>24</sup>

The case at hand (heard in third instance) involved the alleged *error in persona* of a woman who stated that during her married life she noticed that her husband utterly lacked in qualities she believed he had had before their marriage (seriousness, maturity, responsibility, desire to bear offspring). In her opinion, the respondent turned out to be a totally different person vis-a-vis the one he was during the period of their engagement.

The rotal turnus fully shared the position of the judges of second instance, who expressed the belief that the petitioner did not see her “dream

<sup>20</sup> The work of Navarrete 1998, 365 was referenced here. According to Pompèdda, examination of the phrases *error circa personam* and *error personae* makes it clear that the latter wording, used in the 1983 Code, narrows down the phrase *error circa personam* (it indicates the person in her physical aspect more clearly). See Góralski 2001, 192-93.

<sup>21</sup> This claim can hardly be agreed with, for Canon 1097 § 2 stipulates that the quality of the person must be intended.

<sup>22</sup> Decision c. Stankiewicz dated 22 July 1993, “Ius Ecclesiae” (1994), p. 613, no. 6. See also decision c. Caberletti of 25 October 2002, “Ius Ecclesiae” 16 (2004), p. 189, no. 6.

<sup>23</sup> “[C]um nullum ad rem cogi potest argumentum Legislatorem contra traditionem canonicam (Canon 6 § 2) significationem iuridicam personae tribuere voluisse etiam individuo qualitatibus moralibus ornato, vel eius intimae structurae, vel immo intendisse vim erroris in personalitate alterius contrahentis.” Decision c. Stankiewicz dated 22 July 1993, p. 614, no. 6.

<sup>24</sup> Decision c. Funghini dated 5 April 1997, “Periodica” 88 (1999), no. 2, p. 391-434.

husband” in the respondent, with whom she wanted to establish marital community, which had “nothing to do” with *error in persona*.

Of special interest to us is the very extensive argument in the *in iure* section, where the concept of person (the subject of rights and obligations) is presented, canonical tradition and rotal jurisprudence (“person” in the physical sense) are cited, where the judges engage in a polemic against “novel” views (recognizing the legal relevancy of a contractant’s “moral physiognomy”), and where the position of the Roman Rota (reflecting tradition) is presented [Góralski 2001, 184-95].

In the ponens’ conclusions we also read that if in Canon 1097 § 1 of the 1983 Code the noun “person” had a broader meaning (comprising also the mental, moral and intellectual qualities of the subject), the second paragraph would be redundant, since it would not stipulate error of any other kind. Besides, it would make Canon 1098 CIC/83 on deceitful misrepresentation unnecessary. For in both cases, the manner of error about the person (Canon 1097 § 1 CIC/83) would be fully exhausted by a simple error about a common quality affecting somehow a personality of some kind [ibid., 196].

## Conclusion

The outcome of the work of the Pontifical Commission for the Revision of the Code of Canon Law, supported by the *De matrimonio* Team of Consultors, was, for example, a substantial reform of the area of the impact of error on the validity of marital consent. Canon 1097 § 1 CIC/83 reproduces from 1083 § 1 CIC/17 only the disposition that error about the person causes the invalidity of a marriage (only the specification of error was modified: *error circa personam* was replaced by a more appropriate phrase, *error in persona*).

As Navarrete notes, the term *persona* in the 1983 Code refers only to physical persons (not legal persons) and technically denotes a human being who through baptism becomes a subject of rights and obligations in the Church. However, pursuant to Canon 17 CIC/83, “ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.” The word

‘person,’ occurring more than a hundred times in the 1983 Code, in each case denotes the subject of rights and duties in his or her identity [Navarrete 1993, 662].

Marriage-wise, the word ‘person’ appears six times (Canons 1073, 1086, 1090, 1097, 1124, 1149 § 3). In all these places, the noun was used in the same sense (subject of rights and obligations captured by its identity). The meaning of ‘person’ is the same in Canon 1097, just as in Canon 1083 § 1 of the 1917 Code [Funghini 2003, 147]. This was recalled by Pope John Paul II on 29 January 1993, precisely with respect to the phrase *error in persona* in particular, emphasizing the significance of canonical tradition, as mentioned above; it is also emphasized by renowned representatives of doctrine. The same is also suggested by the position of the consultants of the *De matrimonio* Team of the Pontifical Commission for the Revision of the Code of Canon Law (the phrase *error in persona* was unanimously adopted) [Catozzella and Sabbarese 2021, 205].

If the noun ‘person’ were to have a wider meaning in Canon 1097 § 1, the noun ‘person’ would be broader, encompassing also the mental, moral and intellectual qualities of the subject, the second paragraph of this canon would be superfluous, since it would not stipulate error of any other kind. Moreover, it would render Canon 1098 (deceitful misrepresentation) unnecessary.

*Error in persona*, a title for nullity of marriage that seldom occurs, should therefore be applied in keeping with the legislator’s intention, who made significant changes in the post-conciliar Code of 1983, suppressing the legal figure of *error redundans in errorem personae* and introducing *error qualitatis directe et principaliter intentae* and *deceptio dolosa*.

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