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RATUM ET NON CONSUMMATUM. AN OUTLINE OF THE PROCEDURE

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Summary. *Ratum et non consummatum* is an administrative process which aim is to achieve the extraordinary grace of abolition of a valid and sacramental, but not consummated marriage. The process consists of two phases. The first phase takes place at the diocesan ecclesiastical tribunal. In this phase, the process consists of hearings of the claimant and the witnesses, and usually also includes creation of an expert report. The second phase takes place in the Roman Rota.

Key words: non-consummated marriage, Church, dispensation, administrative process

The article treats about the *ratum et non consummatum* which is an administrative process. The process consists of two phases. The first one takes place at the diocesan ecclesiastical tribunal and the second – in the Roman Rota.

DESCRIPTION AND THE INTERROGATION PHASE

A possibility of dissolution of a ratified but non-consummated marriage is a fruit of gradual doctrinal and normative process which has been evolving in the Church since the Late Middle Ages. The expression "non-consummated marriage" helped to recognize the value of essential accomplishment of fullness and perfection at which the marriage aims, namely that the husband and wife become one flesh, as well as it undoubtedly contributed at the legislative level of the Church to the awakening of awareness that the Church herself was entrusted with a supreme authority which is to be used for the good of God's people. The Teaching of the Church holds in these matters abiding conviction that it is the Pope who has this supreme authority and who exercises it regarding marriages between 2 baptized people or between a baptized and a non-baptized party. In the sentence 16/12/1972 n° 299 of the diocese: Florentina was preserved the historical review of the praxis of granting a dispensation from a non-consummated marriage[1].

[1] III – De dispensatione matrimonii rati et non consummati: 29. – In iure. – Statuit Codex: «Matrimonium non consummatum inter baptizatos... dissolvitur... per dispensationem a Sede Apostolica ex iusta causa concessam, utraque parte rogante vel alterutra, etsi altera sit invita» (can.

The canonical norm dealing with a dissolution of a ratified but non-consummated marriage is included in these documents in the Code of Canon Law of 1983, can. 1697–1706[2] and in other documents that were issued by the

1119). Ita definitur Romani Pontificis potestas solvendi – improprie «dispensandi» – matrimonium ratum non vero consummatum. Profecto difficultas maxima a theologis opponebatur de matrimonii indissolubilitate, quae ipso naturali iure fundata «in matrimonio christiano potiorem obtinet firmitatem ratione sacramenti» (can. 1013, § 2). At propter istinctionem repetitam inde a schola Bononiensi, ab ipso Gratiano scilicet, inter matrimonium initiatum et matrimoniumperfectum, quod unice uti absolute indissolubile tenendum est, inde ab initio saec. XIII admissa est praefata potestas. Immo non deest qui tenet iam Alexandrum III usum fuisse hac potestate in decretali quadam episcopo Ambianensi missa (cfr. J. Dauvillier, Pierre le Chantre et la dispense de mariage non consommé: Etudes ... Pierre Petot, Paris 1959, pp. 5 ss.). Sed praesertim inde a Martino V usus in praxim deducitur, etsi fateantur octores principalem rationem non inveniri nisi in ipsa Romanorum Pontificum praxi propter utilitatem idelium, dum, admissa potestate Papae in dispensatione voti solemnis religionis, quod fortius adhuc vinculum inducit, nihil impedire videatur quominus pontifex et in casu matrimonii rati et non onsummati ipsum obligationis fundamentum tollat. Ita statuit Commissio a Clemente VIII constituta ad difficultatem solvendam, et Benedictus XIV resumpsit conclusiones eius definiens: «Cessat indissolubilitas matrimonii in aliis omnibus casibus extra professionem religiosam, in quibus Summus Pontifex iustis et gravissimis de causis censet eius dissolutioni esse locum, ita suadente Traditione, ita exposcente observantia, ita demum convincente continuata plurium saeculorum praxi Sedis Apostolicae, e quibus interpretatio iuris divini optime colligi potest» (Quaestiones canonicae, Qu. 546, n. 36; cfr. adhuc qu. 24, 108). Patet revera Pontificem interpretem infallibilem in rebus fidei et morum errare non potuisse tum in exercitio potestatis quaesibinon competeret, tum in authentica interpretatione propriae auctoritatis, et quidem per multa saecula, agnoscendo uti legitimas uniones quae revera non essent nisi polygamicae, tum denique in ipsa organisatione officiali talis instituti (cfr. H. I. Feye, De impedimentis et 802 dispensationibus matrimonialibus, Lovanii 1893, n. 601). Ita praerequisitum exigitur ad dispensationem impetrandam. 30. – Profecto, haec potestas solvendi matrimonium non est potestas ordinaria iuris mere ecclesiastici, sed potestas ministerialis seu vicaria Dei, ex quo requiritur ad eius usum validum causa iusta.

[2] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25 Jan 1983), AAS 75 (1983), pars II, p. 1–317 [henceforth quoted as CIC/83]. Can. 1697. Only the spouses, or one of them even if the other is unwilling, have the right to petition for the favor of a dispensation from a marriage *ratum et non consummatum*. Can. 1698 § 1. Only the Apostolic See adjudicates the fact of the non-consummation of a marriage and the existence of a just cause to grant a dispensation. § 2. Only the Roman Pontiff, however, grants the dispensation. Can. 1699 § 1. The person competent to accept a libellus seeking a dispensation is the diocesan bishop of the domicile or quasi-domicile of the petitioner, who must arrange for the instruction of the process if the petition is well founded. § 2. If the proposed case has special difficulties of the juridical or moral order, however, the diocesan bishop is to consult the Apostolic See. § 3. Recourse to the Apostolic See is available against a decree by which a bishop rejects a libellus. Can. 1700 § 1. Without prejudice to the prescript of can. 1681, the bishop is to entrust the instruction of these processes either in a stable manner or in individual cases to his tribunal, that of another diocese, or a suitable priest. § 2. If a judicial petition to declare the nullity of the same marriage has been introduced, however, the instruction is to be entrusted to the same tribunal. Can. 1701 § 1. The defender of the bond must always intervene in these processes. § 2. A legal representative is not admitted, but because of the difficulty of a case, a bishop can permit the petitioner or the respondent to have the assistance of a legal expert. Can. 1702. In the instruction each spouse is to be heard, and the canons on the collection of proofs in the ordinary contentious trial and in cases of the nullity of marriage are to be observed insofar as possible, provided that they can be reconciled with the character of these

Congregation for Sacraments (for Divine Worship and the Discipline of the Sacraments). Some of them can be found in the sentence Sentenza 22/04/1975 n° 60[3].

The procedure "super rato" is generally considered to be an administrative process because the foundation of the process is not a protection of some right (law) but a request to be granted a certain pardon (grace). In order to obtain a dispensation one cannot implement the law; it is solely the matter of having a possibility to ask for pardon in order to obtain the dispensation from a ratified but non-consummated marriage[4]. It is the Pope who grants this pardon on ground of His supreme authority and after his consideration.

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processes. Can. 1703 § 1. There is no publication of the acts. If the judge perceives that the proofs brought forward seriously hinder the request of the petitioner or the exception of the respondent, however, he is prudently to inform the interested party. § 2. The judge can show a document introduced or a testimony received to a party who requests it and set a time to present observations. Can. 1704 § 1. When the instruction has been completed, the instructor is to give all the acts along with a suitable report to the bishop, who is to prepare a votum on the veracity of the fact of the non-consummation, the just cause for the dispensation, and the suitability of the favor. § 2. If the instruction of the process has been entrusted to another tribunal according to the norm of can. 1700, the observations in favor of the bond are to be made in the same forum; the votum mentioned in §1, however, pertains to the entrusting bishop, to whom the instructor is to hand over a suitable report together with the acts. Can. 1705 § 1. The bishop is to transmit to the Apostolic See all the acts together with his votum and the observations of the defender of the bond. § 2. If supplemental instruction is required in the judgment of the Apostolic See, this requirement will be communicated to the bishop with an indication of the points on which the instruction must be completed. § 3. If the Apostolic See replies that non-consummation has not been established from the materials presented, then the legal expert mentioned in can. 1701, § 2 can inspect the acts of the process, though not the votum of the bishop, at the tribunal to consider whether any grave reason can be brought forth in order to resubmit the petition. Can. 1706. The Apostolic See transmits the rescript of the dispensation to the bishop who will notify the parties about the rescript and also as soon as possible will order the pastor both of the place where the marriage was contracted and of the place of baptism to note the granting of the dispensation in the marriage and baptismal registers.

[3] 29. – In iure. – Iuridicae disciplinae, qua N. S. A., ex habituali potetate, a Summo Pontifice, sui Pontificatus exordio, Exc.mo N. O. Decano delegata, de inconsummatione subordinate videt, memoria nostra praesunt, praeter Codicis I. C. praescripta et «Normas» S.R. Rotae proprias (A. A. S., XXVI, pp. 449–491) eiusque iurisprudentia, etiam quae sequuntur documenta, a S. Congregatione de disciplina Sacramentorum, ex exclusivo quo pollet iure (cann. 249, § 3; 1962; et 1963, § 1), ordine promulgata: a) Decretum Catholica doctrina, diei 7 maii 1923, ubi continentur «Regulae servandae in processibus super matrimonio rato et non consummato», necnon «Praecipuorum actorum formulae, quae utiliter et opportune adhibentur in his causis» (A. A. S., XV, pp. 389–436); b) «Normae» diei 27 martii 1929 «ad praecavendam dolosam personarum substitutionem» (A. A. S., XXI, pp. 490–493); c) Instructio Provida Mater diei 15 augusti 1936 pro «Tribunalibus Dioecesanis in pertractandis causis de nullitate matrimoniorum», in qua iterum urgentur «Normae» diei 27 martii 1929 (A. A. S., XXVIII, 347 pp. 313–361); d) demum Instructio diei 7 martii 1972 «de quibusdam emendationibus circa normas in processu super matrimonio rato et non consummato servandas»; quae emendationes inductae fuerunt, ita in eius prooemio, «ad magis animarum bono favendum per sollecitiorem huiusmodi processum instructionem et definitionem» (A. A. S., LXIV, pp. 244–252).

[4] CIC/83, can. 1697.

The interrogation is open on ground of a request sent by one or both parties of the marriage. The request must be addressed to the Holy Father, sent through the diocesan bishop and singed by hand.

It is necessary to describe in a brief manner the history of the marriage and to mention in detail all reasons which have prevented the marriage to become consummated and which ultimately lead to the request for granting this dispensation. The request should contain general information, such as: the date, the place, the diocese, the address, paper documents: baptism certificate, marriage certificate, baptism certificates of children born before the marriage, documentation of a divorce procedure, documentation dealing with separation process or nullity of marriage as well as other useful documentation of physical, moral or medical character, police statements, private letters.

It is very important to be very attentive during gathering of testimonies, events or documentation in order to verify the truth, but it is allowed to use other helpful means as well.

The right to open the interrogation has the bishop of the diocese, to which belongs the prosecutor according to his or her canonical or temporary address. In rare cases it is possible to ask the Chancellot of Roman Rota for moving the competence of the court to the place where it would be possible to gather more evidence and documentation providing the bishop into whose competence the case belongs, agrees with it.

Before the interrogation takes place the bishop shall verify his competence for the process and shall use the extrajudicial instruments to make sure that the request is legitimate. This part of the process is very important since it allows to find out if the case doesn't belong to complicated cases.

If the instructor finds out that the request contains no evidence, he or she will deny the request by a formal decree and will mention the valid reasons for such a decision. One can issue an appellation against such a decision addressed to the Apostolic See[5].

Complicated cases[6], objective difficulties of moral or legal characteristic which might appear in these circumstances might demand from a bishop to address first The Apostolic See.

The interrogation might be led by the bishop himself on authority of his office. He can also appoint the diocesan court or an appropriate priest. The proper choice of an instructor is of a great importance since the good results depend on his abilities and experience. The delegation can be issued permanently or *ad actum*.

The rightful process in case of a non-consummated marriage does not require presence and the office of a legal representative as it is in other cases of dispensation of marriage. The help of a legal expert is used if necessary.

[5] See CIC/83, can. 1699 § 3.

[6] Can 1699 – § 2. If the proposed case has special difficulties of the juridical or moral order, however, the diocesan bishop is to consult the Apostolic See.

The presence of the defender of the bond is obligatory.

The diocesan phase finishes by issuing three documents: 1) the statement of the advocate of the marriage; 2) the account of the instructor; 3) the votum of the bishop.

The defender of the bond: he or she has to follow strictly the results of the interrogation, has to examine the legitimacy of the whole procedure as well as to value the evidence. He or she may conclude the annotation by asking for completing the interrogation.

The instructor: after receiving the annotations from the advocate of the marriage, he or she will write a detailed account about the whole interrogation and will attach whole documentation gathered before. His or her task is to present the whole documentation to the bishop so that the latter one will be able to prepare his votum.

The votum of the bishop: has to contain evidence of the non-consummated marriage which would allow to grant the pardon and dispensation. After a short description of the non-consummated marriage, the bishop has to present in detail all the reasons on which grounds the dispensation should be granted.

ACCORDING TO THE LAW

A ratified and consummated marriage cannot be unbind by any human power and for no reason, except for death[7]. But a non-consummated marriage between two baptized people or one baptized and another non-baptized party might be unbind by the Roman High Priest out of legitimate reasons if requested so by both or just one party, even if the other party does not agree[8].

Legislation recognizes a ratified and non-consummated marriage and a ratified and consummated marriage where the condition for proclaiming a marriage for consummated is performing in a fully human way a sexual intercourse which in itself enables to conceive a child, towards which the marriage is naturally oriented and through which husband and wife become one flesh[9].

A marital act which makes the marriage consummated is the first sexual intercourse if it fulfills these conditions: 1) a sexual act between husband and wife must be performed after a legal conclusion of the marriage; 2) which means after a legal church ceremony of conclusion of a marriage; 3) the sexual act between husband and wife must be a "marital act"; 4) the sexual act between husband and wife must be performed in a human way.

A marital act is, according to can. 1061 § 1 an act between husband and wife which enables a conception of a child and in which both become one flesh.

[7] CIC/83, can. 1141.
[8] CIC/83, can. 1142.
[9] CIC/83, can. 1061, § 1.

To express this reality there is a traditional scheme in CIC/83 though it is less "gentle" in comparison to the formulation of canon mentioned before[10].

According to this scheme, the man has to do: 1) "erectio"; 2) "penetratio activa in vaginam"; 3) "eiaculatio seminis in vagina". The woman has to do: 1) "penetratio passive"; 2) "receptio seminis in vagina"[11].

There are two main problems in this area.

On one hand there is a problem with the anticonception and on the other hand the problem of IVF. And so there is a question if the marriage is consummated after using anticonception or after performing IVF.

Regarding the anticonception, it all depends on what exactly is being used. A marriage is not consummated if there has been used a condom (there is no "penetration" nor "eiaculatio in vagina") or if the sexual intercourse has been interrupted by husband who would detach from his wife before orgasm in order to ejaculate „extra vagina". In other cases a marriage has been consummated.

Regarding the IVF a marriage is not consummated when it comes to a direct IVF[12].

In other cases is the sexual intercourse between husband and wife regarded as a marital act and so a marriage is regarded as consummated.

Possible sexual intercourses and cohabitations which had place before the conclusion of a marriage have no influence on the actuality of consummation of a marriage.

The term a consummated marriage is a bond in a human way – *humano modo*, not only on a physical level, but on a moral and a psychological too.

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[10] J.F. Castańo, *Il Sacramento del Matrimonio* 3rd ed., Tipolitografia Pioda, Roma 1994, vol. I, p. 150.

[11] Sentenza 20/06/1970 n° 141: 5. – Quod demum spectat subordinatam tractationem inconsummationis 701 matrimonii, si disceptatur de inconsummatione propter defectum eiaculationis veri seminis, causa huius defectus determinanda et probanda est. Quoties, uti in praesenti causa, defectus eiaculationis non tribuitur inhabilitati viri producendi verum semen testiculare, sed usui onanistico matrimonii, per se matrimonium esset inconsummatum, si reapse probetur numquam inseminationem intra vaginam mulieris accidisse. Sed attenta certa penetratione veretri maris in vaginam, cum difficile sit, aut fere impossibile ostendere ne minimam quidem partem seminis fuisse tali usu pravo in organum femineum depositam, dubium prudens superari nequit. Praeterea, cum non deceat quasi in praemium tanti criminis dispensationem pontificiam impetrare, tale matrimonium consummatum censetur. Quin immo, art. 11 Regularum servandarum a S. C. de Sacramentis die 7 maii 1923 datarum, in paragrapho prima statuit causam non posse institui si constiterit coniuges devitasse matrimonii consummationem ex detestabili onanismi vitio. Providetur exceptioni in paragrapho secunda citati art. 11, si nempe «orator significet se criminis nullimode fuisse participem, sed depravatos alterius coniugis mores passum esse».

[12] The following cases are considered to be direct artificial insemination: 1) before orgasm the husband pulls out and the ejaculation happens "extra vagina" after which physicians, with their devices, insert semen "in vaginam"; 2) a conjugal act is modified by condom, in which semen is captured which physicians then insert "in vagina"; 3) physicians obtain semen by puncture, it means without a conjugal act, and then they insert it "in vagina". J.F. Castańo, *Il sacramento...*, vol. I, p. 155.

To make a marriage consummated the marital sexual intercourse must be perfomed in a human way (*humano modo*) (can. 1061 § 1). It is a formulation which the Second Vatican Council used in the Pastoral Constitution of the Church in the Modern World *Gaudium et spes* (no 49)[13]. It says that the marital act is supposed to be wanted, which means free and conscious[14]. Namely in the past, there was a conviction in the jurisprudence and in the teaching of legal science that a marriage becomes consummated even if the marital sexual intercourse was performed: 1) by violence, which means against the will of one of the party; 2) under the influence of drugs or narcotics; 3) while intoxicated by alcohol[15].

This opinion was even approved as valid by the Decree of the Sacred Officium issued on the 2nd of February 1949[16]. The second Vatican Council issued changes in

[13] Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes* (7 Dec 1965), AAS 58 (1966), p. 1025–1115. The biblical Word of God several times urges the betrothed and the married to nourish and develop their wedlock by pure conjugal love and undivided affection. Many men of our own age also highly regard true love between husband and wife as it manifests itself in a variety of ways depending on the worthy customs of various peoples and times. This love is an eminently human one since it is directed from one person to another through an affection of the will; it involves the good of the whole person, and therefore can enrich the expressions of body and mind with a unique dignity, ennobling these expressions as special ingredients and signs of the friendship distinctive of marriage. This love God has judged worthy of special gifts, healing, perfecting and exalting gifts of grace and of charity. Such love, merging the human with the divine, leads the spouses to a free and mutual gift of themselves, a gift providing itself by gentle affection and by deed, such love pervades the whole of their lives: indeed by its busy generosity it grows better and grows greater. Therefore it far excels mere erotic inclination, which, selfishly pursued, soon enough fades wretchedly away. This love is uniquely expressed and perfected through the appropriate enterprise of matrimony. The actions within marriage by which the couple are united intimately and chastely are noble and worthy ones. Expressed in a manner which is truly human, these actions promote that mutual self-giving by which spouses enrich each other with a joyful and a ready will. Sealed by mutual faithfulness and hallowed above all by Christ's sacrament, this love remains steadfastly true in body and in mind, in bright days or dark. It will never be profaned by adultery or divorce. Firmly established by the Lord, the unity of marriage will radiate from the equal personal dignity of wife and husband, a dignity acknowledged by mutual and total love. The constant fulfillment of the duties of this Christian vocation demands notable virtue. For this reason, strengthened by grace for holiness of life, the couple will painstakingly cultivate and pray for steadiness of love, large heartedness and the spirit of sacrifice.

[14] F. Bersini, *Il nuovo diritto canonico matrimoniale*, LDC, Torino–Leumann 1985, p. 24.

[15] May the aforesaid approach of the Pre-council canonical teaching and jurisprudence does not astonish the reader, because an opinion was in force that in marriage a marital party acquires "ius in corpus" of the other marital party; therefore if the party is taking part in a conjugal act, he or she is doing nothing else, only taking, what belongs to him or her. Nowadays this approach is complemented by the "personalistic" understanding of the marriage and also by the "sacramental" understanding of the marital bond. Therefore if a marital bond is to be an image of the relationship of Christ and the Church, it is necessary that a conjugal act is done consciously and voluntarily.

[16] The mentioned Decree was not published in "Acta Apostolicae Sedis". Its text, however, can be found in *Periodica* 38 (1949), p. 220.

this matter and today one can be certain that a marriage becomes consummated when the marital sexual act was performed consciously and freely[17].

The evidence of no consummation in a marriage can't be based only on the proclamation of both, husband and wife, but it is necessary to confirm it by certain criteria – arguments. These arguments are set by The Congregation of Sacraments and are as follows: a moral argument, a physical argument, an argument per coartata tempora and a random argument[18].

A moral argument is an indirect evidence and all its power lays in the declaration on oath of both parties who as the only ones have a direct experience with the matter of their non-consummated marriage. Their declarations ought to be taken as an evidence providing that there are no doubts about their credibility. Testimonies are important in order to support the declarations of both parties.

Witnesses are asked questions not only about the matter of non-consummated marriage but also from whom, when and in which circumstances were they given the information. In this matter references on credibility, on moral qualities and practising of faith of both parties and witnesses are of a special importance. Those references must be requested beforehand from parish priests, or other priests, religious and active believers who know those persons well. Allegations, testimonies and the interrogation are conducted according to the regulations of a legal process. After making the oath judges are asked questions. These questions are formulated in a way to allow answering easily and exactly according to can. 1564 CIC/83. Presence of a medical doctor during the

[17] It is important to note that if conjugal act was carried out in fear, the marriage is considered to be consummated. Bersini, *Il nuovo diritto*, p. 24.

[18] Sentenza 20/02/1973 n° 31: 11. – C) De pontificia dispensatione super matrimonio rato et non consummato. – Ut evulgati iuris est, dum matrimonium ratum et consummatum morte dumtaxat dissolvitur (can. 1118), matrimonium, contra, non consummatum frui potest Sedis Apostolicae dispensatione, dummodo iusta intercedat causa (can. 1119). Pro eiusmodi itaque gratia impetranda duo omnino in comperto sint oportet: factum scil. inconsummationis, iuridice probatum, et iusta causa. 12. – Quoad factum inconsummationis seu incapacitatis consummandi matrimonium ex parte viri, recolere praestat illud in eo consistere quod vir naturali modo copulam, una simul immissivam (non vero appositivam) et, partialiter saltem, seminativam, perficere non valuerit. Nam, iuxta pernotum S. O. decretum, die 12 februarii 1941 latum, inconsummatio est a limine excludenda, si «vir aliquo saltem modo, etsi imperfecte, vaginam penetret, atque immediate in ea seminationem saltem partialem naturali modo peragat». Iuridica vero inconsummationis probatio apud Nos tripliciter adstruitur, videlicet: a) argumento ex coarctatis temporibus, si scil. constet coniugibus possibilitatem defuisse copulam canonicam instituendi (can. 1015, § 2); b) argumento physico, si nempe constet de physica mulieris integritate vel de physica viri incapacitate ad copulam perfectam perficiendam; c) argumento demum morali, si scil. moraliter constet, actis et adiunctis ad unum conspirantibus, copulam inter coniuges reapse defuisse.

Nostris in causis tertium hoc argumentum haud semel unicum manet. 13. – Iusta autem causa multiplex esse potest: probabilis impotentia viri, impossibilitas reconciliationis, dissociatio animorum, aversio, transitus ad alias nuptias et his similia. Si tamen constet de impotentia viri, sed dubium tantum superest de eius perpetuitate, N. S. A. alienum non est a consilio SS.mo praestando pro dispensatione.

interrogation of a woman, who is either the one issuing the request or the invited party to the interrogation, is not obligatory but is highly recommended.

A physical argument is based on an expert's report about a physical construction of genitals, above all of a woman, but in some cases of a man too. A medical examination of a woman states the integrity of her genitals or the fact of vaginal defloration, the examination of a man checks his possible impotance[19] which would not allow a marriage to be consummated[20].

[19] Sentenza 26/01/1988 n° 8: B) De Inconsummatione: 8. – Si autem, impotentiae probatio, ex actis et probatis, impossibilis sit, Tribunal Apostolicum Romanae Rotae, ex concessione Summi Pontificis, subordinate de inconsummatione inquirere potest ad diiudicandum utrum, nempe, SS.mo consilium praestandum sit pro gratia super matrimonio rato et non consummato concedenda (cf. can. 1697 et can 1698 § 2; Instr. Provida Mater, art. 206 § 1; Instr. S. C. de Sacramentis diei 7 maii 1923, in AAS, vol. XV [1923], 380–413; diei 27 martii 1929, ibid., vol. XXI, [1929], 490–493; diei 3 martii 1972, ibid., vol. LXIV, [1972], 244–252; B. Marchetta, Scioglimento del matrimonio canonico per inconsumazione e clausole proibitive di nuove nozze, ed. CEDAM, Padova 1981, pp. 332 et 342–344; cf. etiam ARRT Dec., vol. LVI [1964], 834–836, coram De Jorio; vol. LXIII [1971] 857, n. 5 coram Bejan; et pp. 941–942 coram Lefebvre). 9. – Matrimonium ratum et consummatum inter baptizatos nulla auctoritate humana solvi potest (cf. can. 1141), eo quod indissolubilitate gaudet absoluta tam intrinseca quam extrinseca. Matrimonium vero ratum et non consummatum etiam inter baptizatos, etsi indissolubilitate intrinseca polleat, non est absolute indissolubile et, potestate ministeriali, a Summo Pontifice solvi poterit si requisitae adsunt conditiones. Huiusmodi matrimonia, docet Pius PP. XII, «sebbene intrinsecamente siano indissolubili, non hanno perň una indissolubilitŕ estrinseca assoluta, ma, dati certi necessari presupposti, possono... essere sciolti, oltre che in forza del privilegio Paolino, dal Romano Pontefice in virtů della sua potestŕ ministeriale» (cf. Allocutio ad Tribunal Apostolicum Romanae Rotae, diei 3 octobris 1941, in Discorsi e Radiomessaggi di Sua Santitŕ Pio XII, III, Tip. Pol. Vat., p. 213). 10. – Licet concessio dispensationis super matrimonio rato et non consummato sit actus administrativus (cf. Litt. SCS diei 15 iunii 1952, in B. Marchetta, Op. cit., p. 342), «nihilominus propter rei gravitatem, factum a quo pendet potestas Romani Pontificis iubetur explorari formis processualibus adhibitis proinde ac in causis iudicialibus» (cf. Wernz –Vidal, Ius Canonicum, T.V: Ius matrimoniale, ed. altera, Romae 1928, p. 739, nota 41). 11. – Quod capacitatem iuridicam petendi dispensationem spectat, can. 1697 statuit: «Soli coniuges, vel alteruter, quamvis altero invito, ius habent petendi gratiam dispensationis super matrimonio rato et non consummato». Celebrato autem matrimonio «si coniuges cohabitaverint, praesumitur 19 consummatio, donec contrarium probetur» (cf. can. 1061 § 2). Cum, igitur, in casu cohabitationis coniugum, consummatio polleat, ut ita dicamus, favore iuris, inconsummatio probanda est certis atque invictis argumentis ac documentis. Ast, non requiritur, ut argumenta et documenta illa sint decretoria. Sufficit, ut de inconsummatione constet morali saltem cum certitudine, quae nempe excludit omne rationabile dubium. Inconsummatio probari potest triplici argumento, videlicet: a) per coarctata tempora (si partes umquam insimul fuerunt post nuptias aut defuit tempus aptum ad consummandum matrimonium); b) argumento physico (ex peritiis medicorum); et, tandem; c) argumento morali (ex confessione coniugum, attestatione testium, documentis, circumstantiis ceterisque praesumptionibus, ad mentem can. 1679 collato cum can. 1536 § 2). 12. – elementum necessarium ad gratiam seu dispensationem elargiendam, praeter factum inconsummationis, est iusta causa. Etenim, «Ut Apostolica Sedes dispensationem largiatur, duo sibi constare necesse est: matrimonium revera non fuisse consummatum et iustam exstare causam pro dispensatione concedenda» (cf. Decr. Catholica Doctrina, diei 7 maii 1923, in AAS, vol. XV, [1923], 389, et vide can. 1142). Notetur etiam, testificationem «septimae manus», uti aiunt, non amplius requiri. Numerus testium discretioni iudicis relinquitur. Argumentum morale permagni ponderis est ad certitudinem moralem de inconsumma-

Regarding a physical argument work of one or more legal experts – according to each case – is of a fundamental importance and is always done based on the instructor's conduct according to can. 1576.

A legal expert is to bring veracious evidence based on a medical examination stating if a marriage has been consummated on a physical level. A request to undergo a medical examination must be issued accordingly and with a great sensitivity. This examination takes place only in those cases where this kind of evidence is really inevitable. If there is a moral evidence overcoming any doubts, according to his own consideration the instructor might proclaim a medical examination for unnecessary.

An argument per coarcata tempora is called after its root word and implies a fact of physical and moral inability of the married couple to perform a sexual intercourse.

It happens in cases as follows: when husband and wife after the wedding do not live together in one household; presence of other people; lack of time, inappropriate environment, or when the wedding was done in haste or in prison or through a proxy.

An argument of a silent condition – in this case there is no full and autonomous evidence; it is rather an argumentation about evidence and postulates which can be used for strenghtening or completing the evidence. These could be events, documentation or circumstances from a life of the married couple which would support the postulation about non-consummated marriage.

In the sentence of Roman Rota *coram* Di Felice (RRD LXXI, the 4th of April 1979, the sentence No 54, p. 161, art. 4) it is written that it is possible to state appropriately a fact of a non-consummated marriage on grounds of a moral evidence taken from the interrogation of both parties, from their credibility attested by credible witnesses. The fact that the woman is no longer in state of integrity which was caused by an action of another man is no impediment. A physical evidence has an important role to support the statements of both parties because it is an evidence which "aims to complete the evidence by legal statements of both parties, by statements of the witnesses *of the seventh hand* and other witnesses"[21]. "Other evidence and ancillary evidence are used as well,

tione adipiscendam (cf. Instr. diei 3 martii 1972, supra citatam, ad II, b). 13. – Iustam causam quod respicit, non requiritur ut sit gravis, quippe quae in generali principio «salutis animarum» breviter contrahi potest (cf. Pius XII, loc. cit., p. 215). De cetero, ipse Summus Pontifex de sufficientia causae iudicat. Ast, inter causas, quae communiter recipiuntur, sequentes enumerari solent, nempe: a) «animorum dissociatio quin effulgeat futurae reconciliationis spes; b) si quis aliud matrimonium equidem nullum deinde inierit a quo se aliter liberare nequeat, v.g. matrimonium civile; c) probabilis impotentia cum periculo incontinentiae» (cf. B. Marchetta, *op. cit.*, pp. 17–18).

[20] Sentenza 23/04/1970 n° 84, DE INCONSUMMATIONE: 11. – In iure. – Cum de impotentiae perpetuitate non constat, sed moraliter constat de facto inconsummationis matrimonii, ex iusta causa vinculum a Sede postolica solvi potest, utraque parte rogante vel alterutra (can. 1119).

[21] *Instructio S. Congregationis de disciplina Sacramentorum*, the 7th of May 1923, point 65.

such as: documentation as other evidence and indications and presumptions as ancillary evidence"[22]. These tools serve to prove credibility of parties.

On grounds of can. 1701 § 1 an intervention of the advocate of marriage is always necessary in order to be granted the dispensation from a ratified but non-consummated marriage. The legislator in can. 1701 § 1 requires from the interrogator, after the interrogation is concluded, to present the whole documentation with an appropriate report to the bishop. The bishop shall issue a verdict – according to objective truth – about the fact of non-consummating a marriage as well as about a lawful cause for the dispensation and granting the pardon.

The presumption of the marital act (can. 1061 § 2).

The legal establishment of the presumption is regulated by Canons of the procedural law (can. 1584–1586). In the process a presumption is taken as evidence. On ground of can. 1061 § 2, if it is possible to prove "cohabitation" between husband and wife, it will be taken as evidence that between them there was performed a marital act which would make their marriage consummated (can. 1584).

Who will be able to prove in the marital process "cohabitation" of the married couple after the conclusion of the marriage, is not obliged to prove that such a marriage has been consummated.

However, who states that a marriage between a married couple living in "cohabitation" has not been consummated by performing a marital act must prove such a statement (can. 1585).

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RATUM ET NON CONSUMMATUM. ZARYS PROCEDURY

Streszczenie. *Ratum et non consummatum* to proces administracyjny, którego celem jest uzyskanie nadzwyczajnej łaski od małżeństwa ważnie zawartego a niedopełnionego. Proces składa się z dwóch faz. W pierwszej – w trybunale diecezjalnym – ma miejsce przesłuchanie stron i świadków oraz sporządzenie ekspertyzy. Druga faza zachodzi w Rocie Rzymskiej.

Słowa kluczowe: małżeństwo niedopełnione, Kościół, dyspensa, proces administracyjny

[22] *Ibidem*.