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THE INFLUENCE OF ANTISOCIAL PERSONALITY ON DISCRETIONARY JUDGEMENT REGARDING ESSENTIAL MATRIMONIAL RIGHTS AND OBLIGATIONS

Although it is still challenging to pinpoint the nature of can. 1095 of the 1983 Code of Canon Law of 1983,¹ the purpose of its adoption against the background of the entire regulations on matrimony seems more than clear. It was primarily to provide a clear set of conditions on who can contract marriage validly. It was probably less important to provide a list of specific diseases or disorders, as this belongs to the domain of ecclesiastical jurisprudence. It was more important to confirm the nature of the matter in normative terms and to offer guidance to the future case-law of ecclesiastical tribunals [Greszata 2002, 23].

1. The concept of incapability of a person to express matrimonial consent

According to the teachings of the Second Vatican Council, marriage is a deeply human reality that cannot be confined only to the external and formal sphere but should embrace the entire person with all the manifestations of his or her internal richness and their full and authentic commitment. Therefore, the moment of contracting marriage must be a true and deeply human act and not just a mere external formality. This act of matrimonial consent (*consensus matrimonialis*) is, according to the concii-

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¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [henceforth cited as: CIC/83].

liar teaching, a completely personal act through which the contracting parties make a reciprocal offering and accept each other.²

Can. 1057 § 1 CIC/83 provides that a marriage can be contracted by persons who are legally capable. However, general legal capacity acquired with baptism does not suffice to contract marriage because the marriage covenant (sacrament) requires capability for marriage in order to make it valid. This capability includes both freedom from diriment impediments that incapacitate a baptised person (can. 1073) to perform *ius nubendi* (can. 1058) as well as a natural, or mental, capability to consent (can. 1095) [Góralski 2011, 44-45].

An act of matrimonial consent which, according to the canonical and theological tradition, and pursuant to can. 1057 § 1, is fundamental to marriage, but it is also a human act that requires the contracting parties to be able to give matrimonial consent and dispose of its content. A characteristic feature of matrimonial consent is not only its content, but also a specific set of attributes that go beyond the scope of the couple's decision. For a valid marriage to be contracted, it is not enough for the consent to cover only the best interest of the spouses and the interest of their offspring. It is also absolutely necessary for each party not to exclude, by their positive act of will, the unity and indissolubility of marriage. It is about the capability to make a conscious, prudent and unconstrained decision regarding matrimony. Consequently, any incapability in this respect means a natural inability to marry [Góralski and Dzierżon 2001, 53].

The issue of person's mental capacity to marry is gaining in importance in the case-law of the Roman Rota. Both canonists and Rotary judges, based on divine revelation and ecclesiastical law, endeavour to provide a more precise qualification of the parties required by the legislator for a valid marriage, also taking into account the spiritual faculties, i.e. reason and will. When determining the requirements to be met by the contracting parties for valid marriage consent, the ecclesiastical jurisprudence seeks inspiration in other fields of science. Medical sciences are especially

² Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio Pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes* (7.12.1965), AAS 58 (1966), p. 1025-1116 [henceforth cited as: GS], no. 48.

helpful, especially psychology, psychiatry, and sexology [Kosowicz 1988, 9].

The problem of incapability of giving matrimonial consent was particularly vocal after the Second Vatican Council, during which much attention was paid to human rights. The Dogmatic Constitution on the Church *Lumen Gentium*³ and in the Pastoral Constitution on the Church in the Modern World *Gaudium et spes* emphasised the importance of marriage and the family in the life of the Church.

To determine the degree of maturity of a person intending to marry is somewhat challenging. However, it is not about full maturity but only the adequate, or minimum (canonical), level of maturity required by law to marry.⁴

For the correct understanding of the incapability to give matrimonial consent, there are three principles that must be taken into account that were adopted positively by the ecclesiastical legislator and rely on natural law. The first one is contained in can. 1057 § 1 and provides that matrimonial consent cannot be replaced by anything else, “A marriage is brought into being by the lawfully manifested consent of persons who are legally capable. This consent cannot be supplied by any human power.” The second one is contained in can. 1057 § 2 and defines matrimonial consent, “Matrimonial consent is an act of will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage.” Finally, the third one contained in can. 1055 § 1 explains marriage, “The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament” [Góralski 2011, 43-45].

Given the content of the aforesaid canons, matrimonial consent, as the underlying cause of marriage, is an indispensable element for its existence,

³ Idem, *Constitutio dogmatica de Ecclesia Lumen gentium* (21.11.1964), AAS 57 (1965), p. 5-75 [henceforth cited as: LG].

⁴ Cf. Decision of the Metropolitan Tribunal in Katowice c. Sobański of 12 December 1996, “Ius Matrimoniale” 8 (1997), p. 229.

and no human authority can replace or supplement it. This is a central principle of matrimonial law that forms the foundation of the entire discipline regarding matrimonial consent. In fact, the legislator sanctions every case of the lack of consent by nullifying the contracted marriage as such [Gajda 2000, 35].

The mental capacity to enter marriage is based on the fact that the only and necessary factor constituting marriage is the parties' consent (*consensus matrimonialis*) through which the man and woman offer themselves to each other and accept themselves. Marriage can be said to be born in and out of matrimonial consent. It is essentially a human act: not because it comes from man but because it can be attributed to the person as a rational being equipped with reason and will that operate and liaise harmoniously [Góralski and Dzierżon 2001, 148].

Matrimonial consent, as the ecclesiastical legislator puts in can. 1057 § 2, is an act of will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage. Such an act is possible only if the contracting parties have a certain psychological ability that manifests itself in specific action to be taken. They are: a) a theoretical knowledge of the contracting parties of the nature of marriage as a community of the entire life, as provided in can. 1096 § 1; b) discretionary judgement (made by reason and will) of both reasons to accept and refuse a particular marriage; this judgement helps compare the two types of arguments, thus leading to a decision on assuming or not assuming responsibility (by the contracting party) for the choice of entering that marriage; c) free choice, i.e. free from necessity (e.g. driven by pathological factors, such as neurotic obsession) and not compelling the will to accept a specific marriage [Góralski 1991, 17-22].

Accordingly, persons entering marriage must possess an intra-personal capability which includes discretionary judgement (*discretio iudicii*), internal freedom (*libertas interna*) and the fulfilment of the obligations of marriage. These three conditions for the matrimonial reality to exist are contained in can. 1095, 1^o-3^o which highlights the requirements of natural law. This canon lists just three aspects that underlie incapability to marry; they highlight various reasons that may affect reason, will, and control of

one's own actions [Góralski and Dzierżon 2001, 54-56]. The canon reads that those are incapable of contracting marriage who: a) lack sufficient use of reason; b) suffer from a grave lack of discretionary judgement concerning the essential matrimonial rights and obligations to be mutually given and accepted; c) because of causes of a psychological nature, are unable to assume the essential obligations of marriage.

In this way, for the first time in the history of the Church's legislation on marriage, a norm had been used employing natural law to define a natural, or psychological, inability to marry (*incapacitas*). On the one hand, the party not having the necessary capability required for the proper operation of reason and will (can. 1095, 1°-2°) and, on the other, the inability to assume the essential obligations of marriage (can. 1095, 3°) result not only in the nullity of marriage but even the absence of matrimonial consent. Therefore, all three hypotheses set out in the canon render the legal act non-existent [Góralski and Dzierżon 2001, 18].

When it comes to the first two forms of incapability (can. 1095, 1°-2°), they refer to the internal elements of the entire human act or, more specifically, to matrimonial consent, i.e. reason and will. Speaking of the third type of incapability (can. 1095, 3°), unlike the first two, it goes beyond the person and refers to the content of matrimonial consent. In other words, the lack of sufficient use of reason and a grave lack of discretionary judgement render the person incapable of matrimonial consent by affecting the integrity of *actus humanus*, while the incapability to assume essential marriage obligations, although it does not deprive the person of the ability to perform the human act of matrimonial consent, prevents the performance of the content of this consent [ibid.].

The incapability to give matrimonial consent regulated in the aforesaid canon is a special incapability as it differs from any other legal incapacity. So, no special intelligence is required nor a psychological condition free from any defects; similarly, no full and absolute maturity of judgement is necessary; finally, the ability to embrace all aspects of life, including marriage life, is not expected. It is enough to demonstrate sufficient use of reason; it is enough to be free from a grave lack of discretionary judgement regarding the essential rights and obligations of marriage; finally, it is

enough to be able to assume (and fulfil) the essential obligations of marriage [ibid., 57].

It should be emphasised that law in general, especially canon law, should, naturally and in relation to human acts, limit itself to the minimum requirements as regards the effects and legal consequences of these actions, in particular in the domain of marriage. After all, the right to marry cannot be denied to those who are not cognizant of the entire system of canon law on marriage affairs: unversed individuals also have the natural right to marry. The same spirit was adopted in can. 18 CIC/83 which reads provides that laws which restrict the free exercise of rights are to be interpreted strictly [ibid., 56-58].

2. The impact of antisocial personality on a grave lack of discretionary judgement

In can. 1095, 2°, the ecclesiastical legislator provides that those are incapable of entering marriage who suffer from a grave lack of discretionary judgement concerning the essential matrimonial rights and obligations to be mutually given and accepted.

In the process of developing a decision, the first step is to get to know the practical matrimonial reality through critical reflection. The latter is followed by a value judgement, i.e. consideration of alternatives to the subject of this reflection. Finally, a decision to take action is made through the operation of will, and it always follows the value judgement [Góralski 2000b, 74-75].

By engaging both reason and will, discretionary judgement assumes a harmonious relationship not only between these two human faculties but also within each of them where this “architectural” correlation should be tested and lead to the final *fiat* of the decision of matrimonial consent [ibid.].

Discretionary judgement is therefore an indispensable element of matrimonial consent – that *actus humanus* which involves both reason and will. To undertake conjugal commitments embedded in such an act, it is necessary not only to know marriage affairs theoretically but also to be able

to consider and make totally free choices effectively and critically [Góralski and Dzierżon 2001, 156].

To express consent – as the causative factor of any contract – the contracting party is required not only to use reason to a sufficient degree but also display a certain level of maturity of judgement or, in other words, understanding proportional to the nature of the contract. Consequently, also when entering into a marriage contract, consent will only be expressed validly if the contracting party is mature enough to judge in a manner corresponding to the nature of the marriage contract. That is why, the Code of Canon Law regards those who are affected by a grave lack of discretionary judgement on the essential matrimonial rights and obligations to be mutually given and accepted as incapable to marry. Someone may display sufficient use of reason, yet they may lack discretionary judgement [Góralski 1986, 165].

Already in the Middle Ages, there was a widespread belief, for example voiced by Panormitanus, that the causative factor of matrimony is consent and not a physical relationship. This means that in the absence of mental maturity, and despite the existence of physical maturity, a marriage is contracted invalidly even if bodily intimacy occurred. In this context, the opinion expressed by Nicholas de Tudeschis is among the most insightful in mediaeval jurisprudence. He argued that the ordinary use of reason is not enough to express matrimonial consent because even children can do it. In contrast, the contracting parties are expected to use such a degree of reason that would allow them to understand the type and significance of the commitment *quod potuerit discernere vires matrimonii* [Zubert 1985, 45].

The contracting parties give and accept their mutual essential matrimonial rights and jointly assume the essential matrimonial obligations. These rights and obligations are at the very core of a marriage covenant. A contracting party who is unaware of that core is unable to contract it validly [Szytmiler 1997, 271-73]. The theoretical knowledge of the said rights and obligations is not enough. If a contracting party ignores them in their recklessness or is mentally or morally immature, then he or she is incapable to enter into a valid marriage covenant. Therefore, of great importance in entering marriage is adequate mental maturity because the commitments made and assumed rights bind the spouses for life. De-

ficiencies in this regards may be varied and graded. Therefore, in order to tell that someone is incapable to marry, the legislator requires the lack of discretionary judgement to be grave [Gajda 2000, 134-39].

In can. 1095, 2°, the legislator requires the contracting parties not only to be sufficiently cognizant of marriage reality but also to exhibit a certain degree of maturity of judgement (*discretio iudicii*), in other words, a judgement proportional to the nature of the contract. Moreover, it is necessary to draw a distinction between cognitive ability, which is ordered towards the perception of the actual state of affairs, and the ability of critical assessment, which occurs through judgement and reasoning. The human spiritual faculties – reason and will acting together – take part in making such a judgement. This practical judgement is preceded or at least determined by the very action of the person [Góralski 2000a, 84-85].

Matrimonial consent as an act of will (can. 1057 § 2) and the causative factor of marriage (can. 1057 § 1) is a human act (*actus humanus*); therefore, it requires the contracting party to display an adequate operation of his or her mental faculties and free action of will. Such an act, significantly different from the act of man (*actus hominis*), assumes a mental, or psychological, ability that makes it attributable to man as the one who governs their own actions. In its structure, *actus humanus* encompasses, for example, the capability of discretionary judgement (*discretio iudicii*), which, from a negative angle, is referred to in can. 1095, 2° [Góralski and Dzierżon 2001, 147-48].

As regards the search for criteria, or well-defined boundaries of the aforesaid proportionality of judgement in relation to the essential matrimonial rights and obligations, then, as opposed to the view of Saint Thomas Aquinas who says that the degree of judgement necessary to enter into a marriage contract may be lower than that in other contracts, the case-law of the Roman Rota seems to demand a higher degree of maturity of judgement compared to other contracts. Moreover, the said case-law even accepts that the degree of judgement required to enter marriage should not only go beyond the comparable degree required to assume other contracts or even to take religious vows but also the one required for the existence of capacity to perform act in law. However, another approach of the Roman Rota should also be noted, namely one that accepts the sufficiency of such

a degree of marital judgement as necessary to enter into other contracts or to ensure legal capacity [Góralski 2000a, 85].

Discretionary judgement may be lacking if one of the following three possibilities occurs: a) a lack of sufficient intellectual cognition as to the object of matrimonial consent; b) a lack of adequate judgement proportional to matrimonial affairs, i.e. a lack of critical knowledge corresponding to the conjugal bond; c) a lack of internal freedom, i.e. the ability to consider at a degree that allows sufficient assessment of the motives and freedom of will from any internal impulses [ibid., 85-86]. These are the three elements that comprise the concept of *discretio iudicii*, of which the first two allude to the cognitive sphere and the third one to volitional ability [Góralski and Dzierżon 2001, 157].

Sufficient intellectual cognition of the essential matrimonial rights and obligations related to that legal act is, in fact, something natural and obvious. First, in a general sense, can. 126 regards an act as invalid when performed as a result of ignorance or of error which concerns the substance of the act, or which amounts to a condition sine qua non; on the other hand, with regard to the domain of marriage, since positive law contains other norms, can 1096 § 1 which determines the minimum knowledge of marriage and can. 1095, 1° which finds a person who lacks sufficient use of reason incapable of entering marriage. The aforementioned lack of sufficient knowledge may be relevant in dimensions: the general one and the one concerning marriage [ibid., 158].

Intellectual cognition, as the first element of *discretio iudicii* or, in other words, mental maturity and volitional determination, assumes that the contracting party has both sufficient use of reason (without it, he or she would not be able to understand the essential rights and obligations of marriage) and a minimum of knowledge about marriage. The other element is more characteristic of the structure of discretionary judgement. It embodies the ability to make a critical assessment its content in the decision-making process of giving matrimonial consent. For discretionary judgement is more than mere acquaintance with the essential matrimonial rights and obligations. Although intelligence is the ability to learn the truth, it also includes a critical capacity to judge and contemplate, to put it differently, to confirm or deny some reality and to combine judgements

with a view to arriving at a new judgement based on them. Making judgements and stimulating will to act is in the exclusive domain of that critical capacity. A decision-making process, which is of a psychological nature, encompasses experience, comprehension, the practical sense of handling matters, critical reflection, and value judgement. While in learning about a specific reality, in this case marriage reality, there is only a possible way of action that emerges, in practical, or otherwise critical, reflection, the perceived way of action and its motives and consequences are subject to assessment, just as other possible alternatives along with their motives and consequences. This reflection is followed by a value judgement which validates that the perceived action is really good or better or worse than alternative choices. Ultimately, in the final decision, there is a transition from cognition to action through confirmed judgement, still a decision will always follow the value judgement when it conveys acceptance or rejection of action based on the said judgement. Decision, which is shaped in the process of reflection and selection, is sometimes made and implemented through an act of will [Góralski 2013, 223-27]. This critical ability is the “strength” of judging, contemplating and formulating judgements that should lead to a logical conclusion [Idem 2000b, 111].

Since marriage is a contract that entails to serious and lifelong obligations, to assume them, the contracting party is required, apart from having some theoretical knowledge about marriage, to consider and assess their obligations effectively and critically. Critical assessment should cover the meaning of the essential matrimonial rights and obligations as such and for the contracting party in the ethical, religious, social, and legal aspects and in other relevant dimensions. The critical assessment of the essential matrimonial rights and obligations is there for the contracting party to be able to critically assess their bearing not only on a specific moment (matrimonial consent) but also on the future married life [Żurowski 1985, 5-6].

When it comes to the very subject of discretionary judgement, it refers to the essential matrimonial rights and obligations to be mutually given and accepted. Essentially, it is the formal content of matrimonial consent that comes into play. Consent will only be given validly if the party is able to assess its content properly and to make a free choice. Therefore, if it is found, with the assistance of experts, that at the time of contracting

marriage personal and interpersonal integrity was seriously disturbed, this means that the contracting party was unable to understand the very nature of community of life, which implies certain rights and obligations; in other words, he or she was unable to perform a critical assessment of that community, hence was incapable of entering into a marriage contract. *Discretio iudicii matrimonio proportionata* was apparently missing. In such a case, the content of matrimonial consent could not be chosen voluntarily, since the contracting party did not have the ability to perform discretionary judgement, i.e. the correct assessment of which missing component results from personality disturbances or disorders [Góralski 2000a, 86].

It is crucial to determine what causes a grave lack of discretionary judgement. After all, it should be determined what kind of deficit of cognitive and judgemental abilities or decision-making abilities occurred. No doubt, it is experts who play the key role in assessing the nature of the deficit, its type and consequences. They indicate when there was a disturbance of harmony in the personality structure that prevented proper discretionary judgement. It can be caused by various factors that trigger instability, evocativeness, affective variability, the inability to face even minor failures in a state of emotional tension. They often reduce and, in extreme cases, even hinder the desired process of seeking prudent judgement [ibid., 87].

Can. 1095, 2°, which mentions a grave lack of discretionary judgement does not, unlike can. 1095, 3°, points to the causes of *gravis defectus discretionis iudicii*, which leaves room for relevant case-law that can fill in the gap. However, if a discretionary judgement proportional to marriage cannot exist, if the contracting party reveals cognitive or volitional deficiencies that prevent a psychological process leading to matrimonial consent, it should be assumed that reasons for the absence of *discretio iudicii* should be sought among mental disorders affecting either cognitive or volitional capacity [ibid., 46].

3. Attributes of antisocial personality as a reason for the lack of discretionary judgement

A personality disorder that induces deficiencies in both the cognitive and volitional dimension is psychopathic personality. Psychopathic perso-

nality causes incorrect behaviour and impedes or even makes it impossible to adapt to the social environment. It is a deviation in the sphere of emotions, drives, will, imagination, the manner and speed of responding to external stimuli and the manner of experiencing and sensing them. Psychopaths are deprived of affective abilities, e.g. mercy, shame, honour, conscience, are often impetuous and violent in action, hard-faced and curt towards others. Such a personality disorder may also involve the development and persistence of emotion and desire syndromes, instability and excessive susceptibility to the influence of other people or current social setting. Frequently recurring phenomena are a decline of higher feelings, affective immaturity, mental disharmony, and maladjustment. All these seriously affects the cognitive and volitional sphere of the contracting party, thus depriving him or her of proper *discretio iudicii* required for the act of matrimonial consent [Kowalski 2003, 67-68].

People with such a disorder follows their own rules of conduct that are often in conflict with applicable legal standards and are prone to ill-judged behaviours and decisions. No doubt, this kind of psyche prevents discretionary judgement as to the essential matrimonial rights and obligations. Psychopathy as a psychological pathology seriously disrupts the spiritual abilities of the person as well as disturbing the cognitive, evaluative, critical, contemplative, and volitional activity.

Among antisocial personality traits that prevent discretionary judgement to the extent that makes it impossible to give matrimonial consent validly, there is psychopathic impulsivity. After all, discretionary judgement does not only cover the awareness of the content of matrimonial consent but also involves its critical assessment, that is, whether a person can meet the assumed obligation of serving the other for the whole life. Psychopathic impulsivity disturbs the process of reflection and critical assessment of the content of matrimonial consent. A psychopath makes hasty decisions and lacks empathy. They lack the ability of critical judgement which enables practical decision-making once a thing has been cognised. This is, but not only, because the psychopathic personality misses the necessary internal harmony or this harmony is severely disturbed; if this is so, there is no ability to critically assess the cognized thing, which prevents the person from conscious determination of content and decision [Paździor 2009, 83].

One of the reasons disrupting proper discretionary judgement due to psychopathy is the serious lack of affective ability that goes with it. The emotional sphere is a key component of human personality. Some special symptoms of disturbance in this area, also recognised by the Roman Rota based on the psychiatric doctrine, are immoderate self-love, jealousy, lack of independence and responsibility, aggressiveness, and mythomania. Serious deficiencies in affective life stemming from a disorganised personality structure can seriously disrupt the ability of discretionary judgement, thus making the person incapable of free choice due to insufficient assessment of the motives and internal freedom. This is the case with individuals who are unable to control their emotions and desires and are unable to offer themselves truly and oblatively; the evolution of instincts, feelings and desires in these individuals is a continuous process. In this way, immaturity in the affective sphere can cause a grave lack of discretionary judgement of the essential matrimonial rights and obligations [ibid., 85].

Psychologists emphasise that the psychopathic personality reveals a frequent disharmony between affective and sensual and intellectual and rational faculties. A mentally fit person, despite the fact that, in general, one of these abilities prevails in his or her psyche, can, in principle, control him or herself and is able to maintain an elementary balance in mutual cooperation. However, the imbalance between the aforesaid abilities in the psychopathic personality has an impact on the internal freedom of a person [Aleksandrovskiy 1997, 211].

Discretionary judgement is also influenced by the fact that psychopaths adopt different attitudes: they are guided by their own rules of conduct that are often in conflict with legal standards. For this reason, psychopaths' behaviour does not fall under legal standards, and their actions, without a sense of guilt, can be directed against life and health of other people. A psychopath contracting marriage usually has their own vision of the nature and purpose of matrimony, contrary to God's will and determination. Such an attitude seriously hinders, and sometimes even prevents, a psychopathic personality from performing a proper critical assessment and exercise free choice regarding marriage.

Psychopaths are aggressive, deceitful, unscrupulous, and extremely selfish. This deprives a psychopath of the possibility of taking free acts and a critical assessment of their own behaviour, thereby limiting or eliminating the ability to have interpersonal relationships in marriage. A mind is sometimes affected by obscurity to such an extent that the content of matrimonial consent cannot be assessed critically. The critical ability is seriously reduced or completely absent [Kosowicz 2000, 168-69].

When getting married, psychopaths very often harm the other person and make them unhappy. A seriously affected person is not able to live a married life because they are hysterical, wilful and ignorant of the other person's needs. They cannot understand that their attitude hurts the other party; they cannot tell the boundary between rights and obligations. They are not able to critically assess what is give-and-take in marriage, and, therefore, they cannot desire the community of life established by the Creator. It manifests itself in the lack of proper co-existence with the other person, regardless of the conditions or setbacks. This is due to the abnormal operation of the mind. What follows is a psychological inability arising from the spiritual faculties of man [Idem 1988, 110].

Speaking of the antisocial personality of a woman, infantilism is clearly noticeable, as experts confirm. For this reason, there is a grave lack of judgement of the essence of marriage covenant [Paździor 2009, 99-100]. The psyche of persons affected by antisocial personality resembles that of ten-year-old children. Both are irresponsible, have a poor understanding of others, and their thinking is very substantive. Some of these similarities surface in an interview with the famous bank robber, Willy Sutton, "Willy, why did you rob all these banks?" "Well, they keep money there" [Rosenhan and Seligman 1994, 106].

Authors studying the symptoms of psychopathic behaviour list the following traits inherent in psychopathy: impulsivity, uncontrolled aggression, inability to predict, inability to have insights, lack of guilt and remorse, inability to learn lessons from previous experiences, wrong assessment of social situations, obsessional neurotic lies, a tendency to abuse alcohol combined with an unusual sensitivity to intoxicants, suicidal impulses, etc. The traits, sets of traits and general psychological properties listed above and related to the psychopathic personality can be reduced to

two structurally most important elements of this type of personality: 1) inability to establish contacts with other people based on deeper emotional relationships, and 2) the so-called anxiety deficit [Pospiszyl 1985, 14].

Antisocial personality follows a fixed pattern of distorted thinking, feeling and acting that cause people to get engaged in harmful and often violent acts without a sense of guilt. A person with this kind of personality strives to satisfy his or her immediate interests while fully or significantly ignoring laws or social consequences [Wolman 1966, 128].

Such individuals may differ in terms of certain personality traits. However, they share emotional coldness and even hostility or at least total indifference towards others [Masiak 1989, 286].

Most people with antisocial personality exhibit “underdeveloped” conscience [Voloshyna 2000, 84]. They know the good and bad and can discuss moral issues in a smart way, but they are unable to acknowledge that these moral principles apply to them. From the intellectual point of view, they are ready to accept the Christian code of morality, but they do not feel guilty if they do not observe it. It is very difficult for them to understand the meaning of sin. Pursuing their own goals is superior to sinning [October 2009, 93].

The development of antisocial personality may be the cause of a grave lack of discretionary judgement. Such people reveal serious intellectual deficits, both innate and acquired. Their reasoning is flawed; they have their own goals [Wolman 1966, 50-65] and adjust other areas of life to attain them. The sacrament of marriage does not alter this hierarchy of values. They do not attach much importance to the essential matrimonial rights and obligations. When deciding to contract marriage, they do not think about whether they are capable of meeting its obligations. The symptoms of a grave lack of discretionary judgement are evident in the approach to both the interest of the spouses and of their offspring. In addition, this type of disturbed personality entails a lack of control over decision-making because the aspect of will is significantly distorted.

Conclusions

Not every lack of discretionary judgement entails incapability to give matrimonial consent. Marriage is invalid only due to a grave lack of *discretio iudicii*. This gravity of lack of discretionary judgement is assessed in two ways: in its internal (it is pivotal to demonstrate a psychological anomaly that, as a cause or at least a secondary cause, can be considered adequate to produce the incapability effect) and external dimension, that is, in relation to the essential matrimonial rights and obligations because it is not necessary for the contracting parties to be able to assess all possible and individual consequences of their matrimonial consent as unclear, distant and not always foreseeable.

Given the above analysis, the antisocial personality can be said to lead to incapacities that render the effective assumption and performance of the content of matrimonial consent ineffective.

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The Influence of Antisocial Personality on Discretionary Judgement Regarding Essential Matrimonial Rights and Obligations

Summary

Recognition is an indispensable element of marital consent, which is a human act, assuming the action of mind and will. Not only the theoretical knowledge of marriage is necessary to undertake marriage obligations, but also the ability to reflect skillfully and critically, make a choice in a completely free way.

Critical evaluation should include an assessment of the importance of the main marital rights and obligations both for him/herself and for the nupturient in the ethical, social, legal and individual dimension. In the critical assessment of important marital rights and obligations, the nupturient is able to critically assess them not only in relation to a given moment (marital consent), but also in relation to the future marital life. The choice is to be balanced (*electio ponderata*) and motivated. When, however, in the case of a dissocial personality there is a disruption of internal harmony of its authorities, which undoubtedly affects the ability to critically evaluate, it may significantly hinder or even prevent the conscious determination of his position towards a specific marriage.

If a human being with a dissocial personality, or in other words a psychopathic personality, undertakes a marriage despite this, this step is not based on a prudent decision. In a person affected by this lack of harmony, the ability to evaluate and critically judge is so strongly violated that it is unable to comprehend the elements and relationships in the marriage to be concluded. Therefore, her will cannot be focused on the natural and Christian dimension of marriage.

Key words: discretion of judgment, a dissocial personality, matrimonial consent, marriage

Wpływ osobowości dyssocjalnej na rozeznanie oceniające co do istotnych praw i obowiązków małżeńskich

Streszczenie

Rozeznanie oceniające jest nieodzownym elementem zgody małżeńskiej, która stanowi akt ludzki, zakładając działanie umysłu i woli. Do podjęcia zobowiązań małżeńskich jest niezbędne nie tylko teoretyczne poznanie małżeństwa, lecz także zdolność umiejętnego, krytycznego zastanawiania się oraz dokonywania wyboru w sposób całkowicie wolny.

Krytyczna ocena powinna obejmować ocenę znaczenia istotnych praw i obowiązków małżeńskich, jakie mają one zarówno same w sobie, jak i dla nupturienta w aspekcie etycznym, społecznym, prawnym i w indywidualnych istotnych wymiarach. W krytycznej ocenie istotnych praw i obowiązków małżeńskich chodzi przy tym o to, by nupturient potrafił krytycznie je ocenić nie tylko w odniesieniu do danego momentu (powzięcia zgody małżeńskiej), lecz

także w odniesieniu do przyszłego życia małżeńskiego. Wybór ma być wyważony (*electio ponderata*), umotywowany. Gdy natomiast w przypadku osobowości dyssocjalnej ma miejsce zakłócenie harmonii wewnętrznej jego władz, co niewątpliwie wpływa na zdolność do krytycznej oceny, danej osobie może to znacznie utrudnić, a nawet uniemożliwić świadome zdeterminowanie swego stanowiska wobec konkretnego małżeństwa.

Jeżeli osoba z osobowością dyssocjalną, czy inaczej mówiąc, psychopatyczną, podejmuje się mimo to zawarcia małżeństwa, krok ten nie jest oparty na rozważnej decyzji. U osoby dotkniętej takim brakiem harmonii zdolność wartościowania i krytycznego osądzania jest tak mocno naruszona, że nie jest ona w stanie pojąć elementów i relacji w małżeństwie, które ma zawrzeć. Dlatego jej wola nie potrafi się ukierunkować na naturalny i chrześcijański wymiar małżeństwa.

Słowa kluczowe: rozeznanie oceniające, osobowość dyssocjalna, zgoda małżeńska, małżeństwo

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