

GRZEGORZ LESZCZYŃSKI

Uniwersytet Łódzki

[gleszczynski@wpia.uni.lodz.pl](mailto:gleszczynski@wpia.uni.lodz.pl)

ORCID: <https://orcid.org/0000-0003-4189-5165>

## *INTENTIO PRAEVALENS* AS A MEANS OF PROOF TO EXCLUDE MARITAL FIDELITY

**Abstract.** The article seeks to address the question of whether *intentio praevalens* constitutes the fundamental principle for evaluating the impact of the reason for contract a marriage and the reason for simulating marital consent on the validity or invalidity of the marriage. This means that it is important to determine which of the indicated reasons prevails in the assessment of the marriage.

**Keywords:** marriage; simulation; validity; nullity

### INTRODUCTION

The 1983 Code of Canon Law, in cases of nullity of marriage, places four basic means of proof at the disposal of the Court. These include statements of the parties, the testimony of witnesses and the expert opinion. Their probative value depends on the type of case, that is, the motive that causes the nullity of marriage. Consequently, there are cases in which the primary evidence is an expert opinion, for example, in cases of the matrimonial incapability due to the mental incapacity causing the invalidity of the matrimonial consent (see can. 1095, 3<sup>o</sup>). In other situations, there will be witness testimonies. It should be noted that in the Code of Canon Law the legislator has placed the declarations of the parties in the first place among the various means of proof. This means that the examination of the parties is the primary evidence in the contentious process, which also includes the process of nullity of marriage.

It is difficult to prove cases brought under the exclusion of marital fidelity. Two legal presumptions have to be overcome. One is the compatibility between the internal disposition of the will and its external expression in words and signs, according to can. 1101 § 1 CIC/1983. On the other hand, the second relates to the validity of the marriage, in accordance with can. 1060 CIC/1983.

In such cases it is assumed that both direct and indirect proof. A direct proof is a party's admission of simulation, confirmed by the testimonies of trustworthy witnesses which they had knowledge at an unsuspecting time. On the other hand, an indirect proof is any circumstance which accompanies the marriage and its aftermath. It is like a *causa simulandi* that prompted the counterparty to exclude the marital fidelity. In cases involving the exclusion of marital fidelity, the jurisprudence points to four means of proof: Judicial confession, witness testimony, reason for simulation and circumstances.<sup>1</sup> In accordance with can. 1536 § 2 CIC/1983 "in cases which regard the public good, however, a judicial confession and declarations of the parties which are not confessions can have a probative force which the judge must evaluate together with the other circumstances of the case; the force of full proof cannot be attributed to them, however, unless other elements are present which thoroughly corroborate them."<sup>2</sup> In order to be proven, the exclusion of marital fidelity must be based on a well-defined and specified motive, the so-called simulated cause (*causa simulandi*).<sup>3</sup>

## 1. CAUSA CELEBRANDI VS CAUSA SIMULANDI

There are certain motives and subjective goals that, in the phenomenon of simulation, anticipate a positive act of will that excludes marital fidelity.<sup>4</sup> As Pedro Juan Viladrich notes, this is very important for evidential purposes, although it is not in itself a positive act of exclusion, but it clarifies the biographical scenery that presupposes the possibility of a positive act of exclusion. However, these motives can influence the nupturient either in a positive way, becoming the cause of the marriage (*causa celebrandi*), or in a negative way, becoming the cause of the exclusion of an essential element or property of the marriage, in this case the exclusion of marital fidelity (*causa simulandi*). The same motivation, such as an emotional relationship with a lover, can lead to a real marriage, because the contractor thinks that his new "marital state" will serve as an opportunity to break the ties that bind him to another person. This, in turn, can become a cause

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<sup>1</sup> Cf. G. LESZCZYŃSKI, *Exclusio boni fidei jako symulacja zgody małżeńskiej*, Łódź 2004, p. 189.

<sup>2</sup> Can. 1536 § 2: "In causis autem quae respiciunt bonum publicum, confessio iudicialis et partium declarationes, quae non sint confessiones, vim probandi habere possunt, a iudice aestimandam una cum ceteris causae adiunctis, at vis plenae probationis ipsis tribui nequit, nisi alia accedant elementa quae eas omnino corroborent."

<sup>3</sup> Cf. G. LESZCZYŃSKI, "Causa simulandi" a wykluczenie dobra wierności małżeńskiej, "Ius Matrimoniale" 32 (2021), no. 2, p. 5-20.

<sup>4</sup> LESZCZYŃSKI, "Causa simulandi," p. 6.

of simulation, as the contractor will exclude his spouse's right to exclusive sexual acts due to the existing relationship with another person.<sup>5</sup>

The reason for the simulation is different from contracting the marriage, because it must be stronger than it.<sup>6</sup> It must not only be sufficiently serious but above all proportionate in relation to the object of the exclusion, namely the marital fidelity. In evaluating each case, the judge must compare the two causes and ensure that the *causa simulandi* outweighs the will to marry.<sup>7</sup>

## 2. INTENTIO PRAEVALENS

The question of the relationship between the reason for the marriage and the reason for the exclusion of fidelity is related to the determination of the intention prevailing in the expression of the consent to the marriage by the counterparty. This is not about the presence of two acts of will<sup>8</sup> but rather about indicating, as Sabattani noted in his decision of 13 November 1959, whether, at the time of the matrimonial consent, the reasons for the marriage, i.e. *causa celebrandi* or *contrahendi*, or the reason for simulation, otherwise *causa simulandi*, was more important in the evaluating counterparty's mind.<sup>9</sup> In fact, as *coram* Funghini stated in his decision of 23 October 1991, it is important to know what was the *intentio praevalens* of the counterparty at the time of the marriage.<sup>10</sup> Wojciech Góralski

<sup>5</sup> Cf. P.J. VILADRICH, *Konsens małżeński. Sposoby prawnej oceny i interpretacji w kanonicznych procesach o stwierdzenie nieważności małżeństwa*, Warszawa 2002, p. 271-272.

<sup>6</sup> Dec. *coram* Ewers of 19.04.1972, "Rotae Romane Decisiones" 64 (1972), p. 180. "Causa simulationis autem est ratio qua quis matrimonium contrahere positive nolens aut non ita seu essentialibus qualitibus non praeditum, tamen inductus fuerit ad proferendum ore quod corde non teneret."

<sup>7</sup> Cf. L. Świto, *Exclusio boni prolis jako tytuł nieważności małżeństwa*, Olsztyn 2003, p. 95.

<sup>8</sup> Cf. L. DE LUCA, *L'esclusione del "bonum coniugum"*, [in:] *La simulazione del consenso matrimoniale canonico*, Città del Vaticano 1990, p. 137. "E' noto che la dottrina e la giurisprudenza canonistica sono solite distinguere nei casi della c.d. simulazione due atti di volontà: la *voluntas matrimonium celebrandi* e la *voluntas simulandi*, le quali volontà a loro volta presupporrebbero due distinte «causae». Ora, tale distinzione tra le due volontà è puramente teorica, giacché la stessa dottrina e la giurisprudenza canonistiche finiscono per dover riconoscere che la nullità del matrimonio si verifica quando la volontà contraria alla «substantia matrimonii» non si *accompagna* soltanto alla «voluntas matrimonialis». Ma «penetri» in essa giacché solo in questo caso se ne produce la distruzione."

<sup>9</sup> Dec. *coram* Sabattani of 13.11.1959, "Rotae Romane Decisiones" 51 (1959), p. 503. "Inquirendum est ideo utrum matrimonium in sua substantia vitiatum revera praevaluerit, et quidem per positivam intentionem, utrum in aestimatione nupturientis maius momentum habuerint causae contrahendi an simulandi [...]."

<sup>10</sup> Dec. *coram* Funghini of 23.10.1991, "Rotae Romane Decisiones" 83 (1991), p. 607.

notes, commenting on the above-mentioned decision by *coram* Funghini, that if at the moment of consenting to the marriage a spouse intends, by a positive act of will, not to accept the duty of fidelity and claims that he would be ready to give up the marriage rather than enter into it with the duty of fidelity, it must be assumed that he has entered marriage invalidly. If the other party foresees and decides that he or she will have occasions in the future to breach the duty of fidelity, then the marriage is valid because he or she has never rejected the duty of fidelity.<sup>11</sup>

It is not easy to prove the exclusion of marital fidelity. As Martha Wegan notes, it is difficult to determine whether, at the time of the matrimonial consent, the other party had such a strong exclusionary will to observe fidelity or merely the will to default on the commitment made.<sup>12</sup> The denial of this right is certainly possible in theory,<sup>13</sup> but in practice, in a concrete case, it is very difficult to prove, because it is a purely internal act. Therefore, in case of doubt, it is always assumed that only the exclusion of the will to fulfil an obligation has taken place, not the exclusion of the commitment, which is necessary for the exclusion of fidelity.<sup>14</sup>

### 3. THE CLOSER GROUND OF THE MARITAL FIDELITY

The jurisprudence, when speaking of the cause of exclusion of fidelity, distinguishes between closer and further cause.<sup>15</sup> The difference between the two is that proximate cause has a direct effect on the simulative will of the counterparty, whereas proximate cause has only an indirect effect because it is not a specific motivation driving the counterparty's behaviour.<sup>16</sup>

It is difficult to determine the closer ground, since there are as many cases of the exclusion of fidelity as there are reasons for the will of the spouse occurred at a given moment of giving marital consent. According to the *coram* Bruno decision of 15 June 1990, the most likely proximity is a relationship with a person

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<sup>11</sup> Cf. W. GÓRALSKI, *Matrimonium facit consensus*, Warszawa 2000, p. 302.

<sup>12</sup> Cf. M. WEGAN, *L'esclusione del "bonum fidei" nella più recente giurisprudenza della Rota Romana*, "Apollinaris" 61 (1988), p. 103.

<sup>13</sup> Dec. *coram* De Jorio of 13.07.1968, "Rotae Romane Decisiones" 60 (1968), p. 555.

<sup>14</sup> Cf. W. GÓRALSKI, *Kanoniczna zgoda małżeńska*, Gdańsk 1991, p. 175.

<sup>15</sup> Dec. *coram* Ragni of 4.07.1995, "Rotae Romane Decisiones" 87 (1995), p. 455-456; Dec. *coram* Pomepedda of 22.10.1996, "Rotae Romane Decisiones" 88 (1996), p. 633.

<sup>16</sup> See more on this: M.G. AIXENDRI, *La exclusión del bonum fidei y su prueba. Doctrina y jurisprudencia*, "Ius Canonicum" 51 (2011), p. 207-234. E. SZPAK, *La natura del bonum fidei nella giurisprudenza rotale*, "Revista Universitas Canonica" 32 (2015), p. 39-56.

whom the spouse does not wish to abandon, despite the ongoing marriage.<sup>17</sup> Similarly, as we read in Merciec's *coram* decision of 16 December 1972, the closer ground for the exclusion of fidelity may become an aversion to the person of the spouse or to the marriage itself.<sup>18</sup>

#### 4. THE FURTHER GROUND OF THE MARITAL FIDELITY

The further cause lies either in the personality disorder of the person concerned,<sup>19</sup> or in the culture of freedom itself, which so influences the will of the contracting party that it leads him to enter into marriage with the reservation of the right to lead an open, free life, unbound by the obligation of fidelity.<sup>20</sup> Over the years, psychosexual abnormalities, such as homosexuality,<sup>21</sup> nymphomania,<sup>22</sup> or satyriasis<sup>23</sup> have been included among the main personality disorders that could constitute grounds for excluding of marital fidelity. The anomaly as such does not cause the nullity of the marriage, but it may become the cause of the incapacity of the subject to fulfil the essential matrimonial rights and duties (can. 1095, 2°). Similarly, the presence of an abnormality in a spouse does not lead to the exclusion of marital fidelity but may become a reason for the exclusion. The jurisprudence prior to the 1983 Code of Canon Law accepted this possibility, since the very understanding of fidelity no longer referred to acts of a marital nature, but to the right to the body.<sup>24</sup> Therefore, the denial of this right, or the failure to pass it on to anyone, is considered an exclusion of fidelity. With

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<sup>17</sup> Cf. Dec. *coram* Bruno of 15.06.1990, "Rotae Romane Decisiones" 82 (1990), p. 516-517.

<sup>18</sup> Dec. *coram* Mercieca of 16.12.1972, "Rotae Romane Decisiones" 64 (1972), p. 785.

<sup>19</sup> Dec. *coram* Bruno of 24.07.1985, "Rotae Romane Decisiones" 77 (1985), p. 407.

<sup>20</sup> Cf. Dec. *coram* Bruno of 15.06.1990, "Rotae Romane Decisiones" 82 (1990), p. 516-517.

<sup>21</sup> Cf. G. DZIERŻON, *Niezdolność do zawarcia małżeństwa jako kategoria kanoniczna*, Warszawa 2002, p. 177-181; W. GÓRALSKI, *Homoseksualizm a zdolność do powzięcia zgody małżeńskiej*, [in:] *Tożsamość seksualna nupturientów a zdolność do zgody małżeńskiej*, ed. B.W. Zubert, Opole 1988, p. 53-72; A. STANKIEWICZ, *Homoseksualizm jako przyczyna nieważności małżeństwa według najnowszej jurisprudenencji rotalnej (1956-1976)*, "Prawo Kanoniczne" 22 (1979), no. 3-4, p. 179-198; H. STAWNIAK, *Niemoc płciowa jako przeszkoda do małżeństwa*, Warszawa 2000, p. 269-284.

<sup>22</sup> Cf. S. VILLEGGIANTE, *Ninfomania e causa di nullità matrimoniale*, "Il Diritto Ecclesiastico" 71 (1960), s. 162-184; Dec. *coram* Anné of 17.01.1967, "Rotae Romane Decisiones" 59 (1967), p. 29.

<sup>23</sup> Cf. S. PAŹDZIÓR, *Przyczyny psychiczne niezdolności osoby do zawarcia małżeństwa w świetle kan. 1095*, Lublin 1999, p. 265.

<sup>24</sup> Dec. *coram* De Jorio of 30.10.1963, "Rotae Romane Decisiones" 55 (1963), p. 717.

the promulgation of the 1983 Code of Canon Law,<sup>25</sup> as a result of the specification of the norm contained in can. 1095, 3°, homosexuality is no longer considered as a simulation but as a psychological incapacity to fulfil the essential matrimonial rights and duties.<sup>26</sup> Nevertheless, homosexuality as such is still one of the further grounds that can affect the will of the subject which makes the exclusion of marital fidelity possible.

The same applies to bisexuality, especially in a form in which the homosexual tendency is not dominant in the subject. According to the *coram* Bruno decision of 15 June 1990, one way of excluding fidelity is to reserve the right to maintain a same-sex relationship after marriage.<sup>27</sup> This means that both homosexuality and bisexuality can be grounds for exclusion of marital fidelity.

Both nymphomania, in women, and satyriasis, in men, are characterised by an excessive sex drive and an uncontrollable tendency to have sexual relations with multiple partners. Therefore, the anomaly makes it impossible to fulfil the obligation of marital fidelity. This anomaly therefore relates primarily to can. 1095, 3° CIC/1983, which states that one of the causes of incapacity to reach matrimonial consent is a psychic nature.

Nymphomania and satyriasis, sometimes in the form of hyperlibido and erotomania, which means that the person affected by one of these abnormalities is aware of what marriage is and of the obligations arising from it, but is unable to control his sexual instincts and is incapable of forming a true community of married life.<sup>28</sup> Hence, according to the decision of *coram* Bruno of 15 December 1972, there is no point in proving that a person has excluded marital fidelity because of the above-mentioned anomaly, when it is easier to prove that he or she was incapable of undertaking and fulfilling the obligation of fidelity.<sup>29</sup> This does not mean that in the past there were no rotal decisions referring to nymphomania and satyrisms as reasons for excluding fidelity. In fact, there have been very few.<sup>30</sup>

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<sup>25</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, "Acta Apostolicae Sedis" 75 (1983), no. 2, p. 1-317.

<sup>26</sup> Cf. Dec. *coram* Stankiewicz of 24.11.1983, "Rotae Romane Decisiones" 75 (1983) p. 681-683; Dec. *coram* Pompedda of 19.10.1992, "Rotae Romane Decisiones" 84 (1992), p. 494-495.

<sup>27</sup> Dec. *coram* Bruno of 15.06.1990, "Rotae Romane Decisiones" 82 (1990), p. 516.

<sup>28</sup> See STAWNIAK, *Niemoc płciowa*, p. 244.

<sup>29</sup> Dec. *coram* Bruno of 15.12.1972, "Rotae Romane Decisiones" 64 (1972), p. 765.

<sup>30</sup> Dec. *coram* Lefebvre of 26.04.1958, "Rotae Romane Decisiones" 50 (1958), p. 278.

## 5. SEXUAL PERVERSION AND THE FREE PERSONALITY

The analysis carried out so far indicates that psychosexual abnormalities are considered by jurisprudence to be of a psychic nature, causing incapacity to assume the essential duties of marriage. The reason for the exclusion of fidelity is not to be found in the psychosexual disorder of the counterpart, but rather in the personality in general, formed in a culture of sexual freedom, which manifests itself in the general moral depravity of man, which can reach perverse stages.<sup>31</sup>

Sexual perversion has traditionally been defined in terms of violating externally imposed criteria for natural and normal sex. It is a form of psychosexual abnormality that means of achieving abnormal sexual satisfaction. A depraved personality, sometimes called perverse in jurisprudence, is a personality formed in modern society, open to any form of love, free in its expression and behaviour.<sup>32</sup> According to the decision of *coram* Ragni of 9 December 1982, modern society has lost the sense of the exclusivity of the spouses and the permanence of the marital relationship. Moreover, the media's image of fidelity and marriage has little to do with Church teaching, which presents marriage as a permanent and exclusive relationship. The image of women presented in these media does not focus on their dignity but, on the contrary, presents them as objects of erotic desire and unethical behaviour.<sup>33</sup> This perception of women is certainly not conducive to the formation of a correct understanding of the duty of fidelity and, moreover, shapes the personality of modern man, who is open to experiencing his sexuality in a free, sometimes even depraved way. Sexual experiences cause an increasing desire for sexual excitement in people who cultivate the idea of free love. On the other hand, as the sex drive increases, the desire becomes more frequent and stronger.<sup>34</sup> The result is a habitual response to certain situations, and

<sup>31</sup> Dec. *coram* Colagiovanni of 15.10.1980, "Rotae Romane Decisiones" 72 (1980), p. 650.

<sup>32</sup> Dec. *coram* Stankiewicz of 14.11.1985, "Rotae Romane Decisiones" 85 (1985), p. 486.

<sup>33</sup> Dec. *coram* Ragni of 9.12.1982, "Rotae Romane Decisiones" 74 (1982), p. 596. "Praeterea, series quotidiana facinorum sexualium quae media communicationum socialium offerunt praesertim uti vilipendium matrimonialium obligationum, plane demonstrat quam erroneam ac damnosam esse opinionem circa *mulierem*, obiectum (non subiectum) iuris consideratam, seu obiectum libidinis factam, rem eroticam tantum pictam, i.e. dignitate humana omnino orbatam. Neque omitti potest inquirere quo mentis ac voluntatis habitu, ex tam prava schola sociali, imbutus exstet circa perpetuitatem ac exclusivitatem iuris coniugalis iuvenis qui ad nuptias contrahendas accedit, si, olim baptizatus, rectam doctrinam ac praxim christianam secutus non sit et asseclam fuisse immoralium et amoralium dictaminum de quibus supra, imminentibus nuptiis ac immediate postea qualificetur, uti inferius videbimus."

<sup>34</sup> See R.F. BAUMEISTER *et al.*, *Is There a Gender Difference in Strength of Sex Drive? Theoretical Views, Conceptual Distinctions, and a Review of Relevant Evidence*, "Personality and Social Psychology Review" 5 (2001), no. 3, p. 242-273.

such a person not only takes advantage of opportunities for sexual experience, but seeks them out. Therefore, if someone has been living an immoral life for a long time without even thinking about marriage, there is no reflection and no desire to change one's life and the current relationship. In such situations, the exclusion of fidelity becomes an opportunity to maintain a lifestyle to which the person has become accustomed and integrated. Therefore, according to the jurisprudence of Rota, it must be considered, that the depraved or even perverse personality is also the reason for the exclusion of the marital fidelity.

## 6. CIRCUMSTANCES

In cases where fidelity is excluded, the circumstances of the marriage, especially those dating from the marriage contract, are important evidence. The circumstances should be such as to leave no doubt as to the intention of the simulant. In addition, they should indicate the facts which show that the simulant has excluded a right and not merely a breach of the duty of fidelity to his spouse. These circumstances, which reveal the facts of the pre-marital and post-marital periods, form the judicial presumptions which enable the judge to express a clear opinion on the validity or nullity of a given marriage.

The facts available to the judge relate to both the pre-marital period and the post-marital period. In accordance with can. 1586 The judge is not to formulate presumptions which are not established by law unless they are directly based on a certain and determined fact connected with the matter in dispute. They must be certain, defined and relevant to the merits of the case. This means that the judge, in assessing the testimony of the parties and witnesses, must make a comparative analysis of that testimony and find certain, definite and consistent facts regarding the exclusion of fidelity. It is therefore not sufficient to indicate that the contractor cheated on his wife without specifying places, circumstances or names, nor is it sufficient to give a general or hearsay opinion without specific reference to the facts.

It is worth noting that the decision of *coram* Mattioli of 29 March 1957,<sup>35</sup> is often ambiguous in its evidential construction. Wojciech Góralski thinks that when a party breaches marital fidelity in one case the marriage may be valid, but not in another. In fact, the validity or invalidity of a marriage depends on whether, at the time of consenting to the marriage, the contracting parties excluded the right to marital acts or merely fulfilled an assumed obligation. Adultery alone, as a post-marital fact, cannot exclude the right to marital acts. It is therefore

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<sup>35</sup> Dec. *coram* Mattioli of 29.03.1957, "Rotae Romane Decisiones" 49 (1957), p. 261.



necessary to refer to facts which prove the exclusion of the fidelity, not the adultery itself, i.e. the marital infidelity.<sup>36</sup> Similarly, the maintenance of an intimate relationship with a person with whom the contracting party was involved before the marriage, in accordance with the *coram* Wynen decision of 12 February 1951, does not prove that there is an exclusion of fidelity. This does not prove the exclusion of the fidelity of the marriage, but the very mentality of the person of the contracting party, his personality, and his openness to extramarital relations, because in one case, as Martha Wegan notes, the marriage may be valid, and in another it may not be.<sup>37</sup>

Facts that can be interpreted in an ambiguous manner can take on their definite meaning, as stated in the decision of the *coram* Raad of 28 October 1974.<sup>38</sup> Thus, the facts should be such that they cannot be explained by post-marital motives, but only by the intention of the contracting parties at the time when they gave their marital consent.<sup>39</sup>

The judge's proper analysis of the facts allows him to make the presumptions he formulates in relation to each particular marriage. The presumptions developed by case law certainly help.

Over the years, jurisprudence has developed presumptions in order to understand the true will of the counterparty at the time when the counterparty expresses an act of marital consent.<sup>40</sup> An important criterion is undoubtedly the *intentio praevalens*, which makes it possible to understand whether, when entering into marriage, the contracting parties really wanted to enter into marriage in accordance with their integral understanding, or whether they excluded the good of fidelity by a positive act of will.<sup>41</sup> It was criticised by *coram* De Jorio in the decision of 30 October 1963.<sup>42</sup> The distinction between a will that excludes the right to marital acts and a will which only excludes marital fidelity is a very useful one, although it is difficult to verify. Because it gives the judge the opportunity to determine the intensity of the will, to the exclusion of the good of fidelity.

An important presumption developed by the jurisprudence is to relate the occasional adultery committed to the actual exclusion of fidelity. It states that post-marital infidelity, however frequent, does not constitute proof of the exclusion of the right to the exclusivity of conjugal acts, but merely an abuse of that

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<sup>36</sup> Cf. GÓRALSKI, *Kanoniczna zgoda*, p. 175-176.

<sup>37</sup> Cf. WEGAN, *L'esclusione del "bonum fidei,"* p. 104.

<sup>38</sup> Dec. *coram* Raad of 28.10.1974, "Rotae Romane Decisiones" 66 (1974), p. 714.

<sup>39</sup> Cf. GÓRALSKI, *Kanoniczna zgoda*, p. 176.

<sup>40</sup> Dec. *coram* Ewers of 11.10.1969, "Rotae Romane Decisiones" 61 (1969), p. 941.

<sup>41</sup> Dec. *coram* Funghini of 23.10.1991, "Rotae Romane Decisiones" 83 (1991), p. 607.

<sup>42</sup> Dec. *coram* De Jorio of 30.10.1963, "Rotae Romane Decisiones" 55 (1963), p. 718.

right conferred on the spouse at the time of marriage. Another equally important presumption of *coram De Jorio* is that the maintenance of an extramarital relationship with a person with whom the spouse was involved before the marriage may be evidence not only of the exclusion of fidelity, but even of the exclusion of the attribute of unity of the marriage bond. Such a fact, however, can be interpreted exactly the opposite, and according to some ponens, an ongoing extramarital relationship with a person close to the counterparty before marriage is not evidence of the exclusion of fidelity, but only of a failure to fulfil the commitment of fidelity.

### CONCLUSIONS

*Intentio prevalens* is one of the main proofs of simulated marital consent, including the exclusion of marital fidelity. In fact, in order to speak of an exclusion of the right of fidelity of the spouse, it is necessary to prove in court that the intention to simulate marital consent was stronger and outweighed the intention to enter into marriage.

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## INTENTIO PRAEVALENS JAKO ŚRODEK DOWODZENIA WYKLUCZENIA WIERNOŚCI MAŁŻEŃSKIEJ

### Streszczenie

Artykuł jest próbą odpowiedzi na pytanie, czy *intentio praevalens* jest podstawową zasadą oceny wpływu przyczyny zawarcia małżeństwa i przyczyny symulacji zgody małżeńskiej na ważność, czy też nieważność, zawarcia małżeństwa. Oznacza to, że istotne jest ustalenie, która ze wskazanych przyczyn ma charakter przeważający w ocenie zawieranego małżeństwa.

**Słowa kluczowe:** małżeństwo; symulacja; ważność; nieważność