



ISSN: 2941-430X

Ecclesiastical judgement

Judgement 1st instance – published 2026

Aachen matrimonial case,
lack of matrimonial consent c. 1101 § 2 CIC/1983

*Diocese of Aachen, Ecclesiastical Court
Archdiocese of Cologne, External Office Essen*

Schlagwörter: *Kirchliches Eherecht, Rechtsprechung, Ehenichtigkeit, Totalsimulation, Ehekonsens, Aufenthaltsrecht, Scheinehe, c. 1101 §2*

Keywords: *Church marriage law, Judgment, Nullity of marriage, Simulatio totalis, marital consent, residency law, marriage on paper, c. 1101 §2*

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Marriage Nullity Case A.A. – N.N. (First Instance, 12 July 2010)

On 12 July 2010, the Diocesan Tribunal of Aachen rendered a first-instance judgment declaring the nullity of the marriage contracted in 2004 between A.A. and N.N. before a civil registrar. The tribunal reached moral certainty that the marriage was invalid due to the lack of genuine matrimonial consent on the part of the husband, in accordance with canon 1101 §2 of the 1983 Code of Canon Law (CIC), specifically total simulation of consent.

Procedural History and Jurisdiction

The plaintiff, A.A., initially sought a dissolution of the bond **in favorem fidei** on 2 June 2009. Subsequently, on 5 March 2010, he consented to the reclassification of the case as a marriage nullity process. The acts from the **in favorem fidei** procedure were incorporated into the present case file. Jurisdiction of the Aachen tribunal was established pursuant to can. 1673 nn. 1 and 2 CIC, based on the place of marriage celebration and the domicile of the plaintiff.

The libellus was admitted on 22 March 2010, and at the joinder of issues on 6 April 2010 the doubt was formulated as follows: whether it was established that the marriage contracted in 2004 was null due to a lack of matrimonial consent on the part of the man under can. 1101

§2 CIC. The respondent, N.N., declined participation and was therefore declared absent from the process. A collegiate tribunal was duly constituted, and a defender of the bond participated throughout the proceedings.

Factual Background

Both parties were Buddhists at the time of the marriage. The evidence demonstrated that the civil marriage was arranged as a **pro forma** union with the sole purpose of enabling N.N., a cousin of the plaintiff, to obtain permanent residency in the Federal Republic of Germany. N.N. had entered Germany on a temporary tourist visa and resided with the plaintiff's parents, assisting in their family business.

At the time of the marriage, A.A. had already been in a stable relationship with another woman, B., with whom he had cohabited since late 2003. The tribunal established that A.A. and N.N. never cohabited as spouses, never consummated the marriage, and never intended to establish a conjugal life. Once the immigration objective was achieved, the marriage was civilly dissolved in 2009. Shortly thereafter, A.A. entered into a civil marriage with B., a Roman Catholic, with whom he had a child baptized in the Catholic Church.

Canonical Doctrine on Matrimonial Consent

In its legal reasoning, the tribunal recalled the foundational principle articulated in can. 1057 §1–2 CIC: marriage is brought into being by the consent of legally capable parties, expressed in the manner prescribed by law, through an irrevocable covenant by which a man and a woman mutually give and accept each other. Such consent cannot be supplied by any human authority, including the Church, nor can the liturgical celebration compensate for an absence of true internal consent.

The tribunal emphasized the presumption of validity under can. 1101 §1 CIC, according to which internal consent is presumed to correspond to its external manifestation. However, this presumption is rebuttable. Where a positive act of the will excludes marriage itself, the case constitutes total simulation (**simulatio totalis**) as defined in can. 1101 §2 CIC. In such

cases, the party externally expresses consent while internally intending no marital bond whatsoever.

Evidentiary Evaluation and Moral Certainty

The tribunal reiterated the evidentiary standard required by can. 1608 §1 CIC: a declaration of nullity may only be issued when the invalidity of the marriage is established with moral certainty, excluding any reasonable doubt. Absent such certainty, the presumption of validity under can. 1060 CIC must prevail.

In the present case, the tribunal found the evidence exceptionally clear and concordant. The plaintiff's testimony was consistent and corroborated by multiple witnesses, including his current civil spouse, his parents, and his brother. All testified independently that the marriage was deliberately contracted as a sham, solely for immigration purposes, and with the explicit understanding that it would be dissolved once its objective was fulfilled. The absence of marital cohabitation and consummation further reinforced the conclusion that no conjugal life was ever intended.

The respondent's refusal to participate did not undermine the probative value of the evidence, as the available testimonies converged unequivocally on the same factual narrative. The defender of the bond submitted observations but did not succeed in introducing reasonable doubt regarding the existence of genuine consent.

Decision and Effects

Based on the totality of the evidence, the tribunal reached moral certainty that the marriage was invalid from its inception due to total simulation of consent on the part of the husband. Accordingly, it declared the nullity of the marriage under can. 1101 §2 CIC.

In conformity with can. 1684 CIC as then in force, the tribunal noted that the judgment did not yet grant the parties the right to contract a new canonical marriage, pending further procedural requirements. Procedural costs were set at €200 and borne by the plaintiff.

Concluding Assessment

This judgment represents a paradigmatic case of total simulation, characterized by explicit pre-marital intent to exclude marriage itself. The tribunal's reasoning demonstrates a rigorous application of canonical doctrine on consent and proof, offering a clear illustration of how *moral certainty* may be achieved through coherent testimonial evidence in cases involving so-called "marriages of convenience."