Ecclesiastical judgement

Judgement 1st instance – published 2025

Münster matrimonial case, lack of judgement c. 1095, 2° CIC/1983

Diocese of Münster, Ecclesiastical Court

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EPISCOPAL ECCLESIASTICAL COURT

OF THE DIOCESE OF MÜNSTER

JUDGMENT

in the matrimonial case

A.A. - N.N.

"IN THE NAME OF THE FATHER AND OF THE SON AND OF THE HOLY SPIRIT. AMEN!"

At the session of the Ecclesiastical Marriage Court on 2023 in the consultation room of the Episcopal Ecclesiastical Court in Münster, the duly appointed judges

Diocesan judge — as President,

Diocesan judge — as 2nd judge and relator,

Diocesan judge — as 3rd judge,

in the marriage annulment case

of the

A.A., Plaintiff,

and the

N.N., Respondent,

pronounced the following judgement:

It is certain,

that the agreements concluded in 2002 between the

marriage between the parties is null and void.

The following persons were involved in these proceedings:

as a marriage defence lawyer;

as actuary, the official notary.

I. Background and process history

The Roman Catholic parties to these proceedings, A.A., born in Kosovo in 1970, and N.N., born in Kosovo in 1979, were married in a civil ceremony before the registrar of the Kosovo civil registry office in 2001 (6). The church marriage took place in 2002 in the Catholic Church (4). The marriage has been legally divorced since 2009 by judgement of the court (5-7).

On 29 April 2022, A.A. filed an action with the Episcopal Ecclesiastical Court of Münster - Essen branch office - for a declaration that the marriage entered into in church was invalid (1-3). The action was admitted on 10 May 2022 (11). The court of the Church of Münster has jurisdiction based on the Plaintiff's place of residence.

The Court was appointed in 2022 and the question of trial was determined as follows:

"Is it established that the marriage concluded between A.A. and N.N. in 2002 in the Catholic Church of Kosovo is null and void due to the absence of the requirements for marriage on the part of the man pursuant to can. 1095, 2° CIC?" (18)

At the evidentiary hearing, the Plaintiff (28-34) and two witnesses (59-61,70-74; 62-64,77-80) were questioned in canonical form. The Respondent's absence from the trial was established in 2022 (21).

The defence counsel for the marriage bond commented on the evidence on 2022 (88-92). His statements were given to the Plaintiff together with the decree on the disclosure of the files of 2022 for his information (93). After the Plaintiff had inspected the files in 2022 (94), the files were closed in 2022 (95).

Instead of further comments, the defender of the bond 2022 referred to his pleading of 2022 (96).

II Legal situation

1. Absence of the conditions for marriage according to can. 1095, 2° CIC

Can. 1057 § 1 CIC states as a condition for a valid marriage the legal capacity of the spouses to marry. This norm corresponds to the provision of can. 124 CIC, according to which a valid legal act may not lack anything that is essential to it. For a legal act to be valid, it must be performed by a person authorised to do so.

In can. 1095 CIC, the ecclesiastical legislator has described the concept of legal incapacity to marry that exists for reasons of a psychological nature.

According to can. 1095, 2° CIC, anyone who suffers from a serious lack of judgement with regard to the essential obligations arising from the form of marriage is not in a position to enter into a valid marriage. This refers to the inability of the spouses to make a responsible life decision for themselves by entering into marriage. More precisely, it refers to the inability to understand / comprehend / grasp the impending marriage as a comprehensive and binding life partnership (canon 1055 § 1 CIC) and thus as a lifelong community of destiny and - as a consequence - to perceive the marriage in its scope and weight as a binding life decision. The judgement required for a legally binding life decision is therefore far more than a purely conceptual-abstract recognition (*cognitio conceptualis*) of what marriage is (in general, in abstracto). The spouses must know themselves sufficiently and have an idea of their future life and the underlying values. The will of the partners to marry must, as it were, arise from the

centre of their person (K. Lüdicke, MK, 1095, 41st edition, July 2006, para. 7). Each of them must be able to recognise whether "the specifically planned marriage means a real good for them here and now, which they value above all else and therefore strive for and affirm with all their strength" (RR of 29 May 1979 c. Egan, vol.67, p.238, n.7). With their decision to marry, the partners are not aiming at a factual third party, a right to something or an obligation to something; the aim is the spouses themselves, their way of being with each other and shaping their lives in a common destiny for the realisation of their mutual good (cf. canon 1055 § 1 CIC and canon 1057 § 2 CIC) and as a contribution to the success of their lives. This is the true meaning of marriage, its *finis operis*.

In order to make a life decision responsibly, there must also be adequate freedom to weigh up the reasons for and against marriage (cf. SRR of 25 February 1941 c. See, vol.33, pp.145-152, nn.2-12). Anyone who enters into marriage driven by fears, supposed consideration, conformity and subordination is not in a position to make a binding and legally accountable life decision. If freedom is revoked from the outside, this is another ground for nullity (compulsion and fear or compulsion to honour).

The core of the ground for nullity "incapacity to marry" is therefore the lack of sufficient recognition and understanding of marriage as a lifelong binding union of destiny, and/or the lack of sufficient inner freedom to decide in favour of or against marriage.

2. Rules of evidence

Evidence of a spouse's lack of mental capacity for marriage at the time of the marriage is provided by collecting his or her behaviour, statements, reactions, any findings of illnesses and therapy findings about him or her, from which an overall picture of his or her mental situation at the time in question emerges.

The probative value of the party statements must be assessed by the court together with the other evidence (witness statements, possibly documents).

When examining whether the image of a personality to be gathered from the file material allows the conclusion to be drawn that the requirements for marriage are not met, the court will generally make use of an expert opinion in accordance with can. 1574 CIC. It may not be necessary to commission such an expert opinion if the relevant statements of expert

witnesses are available or if the proven circumstances at the time of the marriage make it possible to establish with certainty that the requirements were not met.

A marriage can only be declared null and void if the court can establish a moral certainty that excludes any reasonable doubt that the partner in question did not possess the psychological conditions necessary for a valid marriage at the time of the marriage. Otherwise, it must adhere to the presumption established by law, which speaks in favour of the validity of every duly concluded marriage bond (canon 1060 CIC).

III Evidence

A) Credibility

The Plaintiff received a favourable impression testimony (35). The witnesses fully supported his credibility (74.14; 80.14). The witnesses' statements are conclusive. The auditor did not raise any objections to their use.

B) Evidence

1. Plaintiff A.A. has lived in Germany since the age of 20 (2). He comes from a Kosovar family living in **, about 30 kilometres from the Albanian border (29.5). The family, in which he is the second oldest, originally had seven children (29.5). His father was educated and a teacher of French and Latin (29.5; 79.10). Cultural tradition is very important in his family (2; 29,5). His parents wanted him to be married by the age of 20 and spent many years looking for a wife for him (2). However, after completing his military service in the former Yugoslavian army, he went to Germany in July 1990 (2; 29.5; 70.2; 73.10), first to Hamburg and then to Bochum in 1993 (29.5). The arrangement of a marriage by the parents of the bride and groom was an expression of a tradition in which A.A. had grown up (31.6). His family was of the opinion that he had to marry for the sake of the family and the marriage. He did not see this as a compulsion, but as an expression of tradition (28-29:3).

2. A.A. wanted to get married (2). During a holiday home, he was introduced to a young, Catholic Kosovan woman as a future wife who lived about 30 km away (29,5). He could well imagine a marriage and family with her (2). In accordance with cultural customs, there was no

direct contact between them, but there was telephone contact (2; 29,5). So that he could see her, it was arranged that he drove past her parents' house and he once sat down in an ice cream parlour, which she entered to buy ice cream. (29,5). He also managed to send her a photo of him (29-30,5). Both felt affection for each other (2; 29.30,5; 72,9; 79,9). According to tradition, A.A.'s father finally went to the young woman's father to obtain his consent for his daughter to marry A.A.. However, he was rejected three times (2; 29:5; 71:5; 72:9; 79:9), and on the third occasion the young woman's father was no longer even prepared to let A.A.'s father into his house (29:5). In addition, the young woman's brother returned all the gifts and scolded her by the door of the house where A.A.'s family lived (30:5). He also refused to speak to A.A. and demanded that he never contact his sister again (30.5). In fact, A.A. had another telephone conversation with the young woman, in which no acceptable solution with the consent of her family emerged and they therefore said goodbye to each other (30.5). A.A. was deeply hurt by his father's negative attitude (2).

3. Only a short time later, later in 2001, N.N. was referred to him as his future wife (2). Someone from his family knew her family, but not N.N. (30.5; 71.3; 78.3). The fathers also knew each other (28.3). A.A. refused to see N.N. once, however, under the impression of grief over the end of his acquaintance with the other young woman (30.5). However, at the persuasion of his family, he finally travelled to N.N.'s parents' house, where he was received by her family. N.N. poured the coffee so that he saw her for the first time (30.5; 71.3; 78.3). When he was told that it was up to A.A. and his family whether the marriage was possible, he gave his consent (30:5; 31:6; 78:3). His family influenced him to marry, as he was already of (advanced) marriageable age (71:65; 78:6). She recommended the marriage with the argument that N.N. was a pretty girl (72.6). In the situation of pain over the loss of the acquaintance with the other woman, A.A. felt indifferent about marriage, but at the time he went along with it in the hope that a feeling of attachment and love would still develop (2). The engagement took place three days later (2; 28,3). Until then, A.A. had not even visited N.N.'s parents' house on his own initiative (78.4). The engagement meant that the parents discussed the marriage arrangements of their children, who were not present themselves (28.3; 31.5). However, the mother had noticed A.A.'s lack of conviction and asked him on the morning of the engagement day to tell her if he did not want to marry N.N., as her family had not yet turned up. However, A.A. replied that he was as good as his word (30-31.5; 31.6). After the parents reached an

agreement, A.A. returned to Germany. In the meantime, an appointment was made for a meeting of the parties and their families (71.2) at N.N.'s house to put on the engagement rings and hand over the engagement gifts (31.5). The parties did not see each other again until the civil wedding ceremony and did not sit next to each other at this meeting at the lunch table, but separately (31.5). They then met at the church wedding (28:3; 31:5). This means that they had only seen each other a few times before the church wedding and were never alone (79:7), but always in the company of their families (31:5; 78:4). Only on the wedding night were they alone (31.5; 78.4). Although there had been telephone contact, the telephone was with N.N.'s relatives, with whom A.A. spoke more than with herself (31.5).

4. According to his statement, A.A. was uncertain about the person of N.N. and life with her. He hoped that their life together would be a success (31,6). He had agreed to her as his future wife and felt bound by his word. He had the attitude:

"Not knowing your future wife and letting the families arrange the marriage was in keeping with the tradition I grew up in. [...]. I was not the first in this situation. It was in keeping with tradition. N.N.'s and my marriage was embedded in a very old custom that had stood the test of time. I was convinced that a marriage in accordance with tradition established a life in peace and protected against aggression and tragedy" (31-32,6).

If he had stayed in Kosovo, he would have married much earlier (32.7). He explained the importance of marriage for him:

"It was clear to me that I was getting married to start a family. You get married because you want to start a family. Marriage also means a change in your position in society. A married man is accorded respect and recognition. By getting married, he shows that he is a reliable member of society. That was also important to me" (32,7).

5. About a week after the wedding, A.A. returned to Germany, while N.N. stayed at his parents' house. About three months later, he spent a week at his parents' house. Six months after the wedding, N.N. had a visa that allowed her to enter Germany. However, the parties remained estranged, and A.A. felt no love for N.N., just as he felt no longing for her even when they were separated. She turned out to be barely educated (72.8; 74.13; 82). The marriage was only consummated a few times. When N.N. became pregnant and gave birth, A.A. took her to

the hospital, but then travelled home (32.9). At N.N.'s request, A.A. was deprived of custody of their daughter in 2006 or 2007 (29.4).

6. In his presentation of the evidence, the defence counsel summarised all relevant statements and concluded:

"The Plaintiff's marriage was obviously an arranged marriage prepared by the Plaintiff's family. The Plaintiff had no opportunity to speak to his wife alone until the wedding night. The marriage took place because the family felt it was time to get married and the Plaintiff felt he was in keeping with tradition. There was no free decision to marry and no understanding of what a marriage is. In this respect, the marriage defence counsel has no objection to a positive judgment on the plea discussed" (92).

7. the overwhelming majority of the information on the cause of action comes from the Plaintiff A.A. However, the statements of his brother and sister-in-law, who were heard as witnesses, confirm the core of his testimony. Furthermore, there is no doubt as to the credibility of the Plaintiff and the credibility of his statement. The defence counsel for the marriage relationship has correctly summarised the evidence. After the Plaintiff's attempt to marry a woman with whom he had established a certain personal relationship, in accordance with tradition, had failed without the two of them ever having seen each other alone , he complied with the parents' arrangement and entered into a marriage with N.N. without any personal contact. However, this acceptance can only be understood to a certain extent as a passive-resignative act and as an uninvolved letting things happen. At the same time, A.A. was convinced of the correctness of the Albanian-Kosovar marriage tradition, according to which the families arrange the marriage of a couple and the groom himself has only a very limited right to participate. As things stand, it can in no way be said that A.A. agreed to marry N.N. against or without his will. Rather, he had a deep respect for the traditions of his people and great trust in the correctness of the traditional way of acting, which he assumed would be conducive to the success of the marriage. However, marriages are entered into and lived in concrete historical situations and thus in current social structures. Albanian-Kosovar customs are an expression of the rural, pre-industrial tradition of a "pastoral society" not characterised by codified laws (see Karl Kaser, Hirten, Kämpfer, Stammeshelden. Ursprünge und Gegenwart des balkanischen Patriarchats, Vienna 1992). Their rules developed in times when no state was yet able to protect the lives and herds of nomadic or semi-sedentary herdsmen (cf. ibid.,

p. 293). Among other things, they served to structure and socially organise the multi-family household or the extended family system (see Rahel Bösch, Kosova: Situation der albanischen Frauen - Rückkehrperspektive für alleinstehende Frauen und Mütter. Themenpapier der SFH, Bern, March 2001, p. 5). In the context of this milieu - integrated into the extended families into which the marriages were fitted - these arrangements will have made sense and fulfilled their purpose. However, they are doomed to failure in a pluralistic, technologised, individualistic Western world and in view of an understanding of marriage that is characterised by equality and partnership in the gender relationship. The Plaintiff obviously did not choose and he did not decide when he married N.N.. He did not oppose the arrangement and he respected the families' actions. The marriage was an expression of an accepted letting things happen. It is fitting that there can be no question of the parties getting to know each other and that this was obviously of no significance, as it was not about the establishment of a marriage as a community of two people, but about their integration into the family unit. The defence counsel for the marriage bond states quite correctly: "There was no free decision to marry and no understanding of what a marriage is" (92). Against this background, the trial question cannot be answered in any other way than in the affirmative.

IV. After detailed consultation, the following is adopted

JUDGMENT

It is **certain**,
that the marriage concluded between **A.A.** and **N.N.** on 2002 in the Catholic Church of Kosovo is null and void due to the absence of the requirements for marriage on the part of the man pursuant to can. 1095, 2° CIC.

The costs of the proceedings are set at € 200 and are to be borne by the plaintiff.

Münster, 2023

signed signed signed

(President)	(2nd judge) and rapporteur)	(3rd judge)
	signed	(Notary public)

The costs set by the court have already been paid.

Information on legal remedies

An appeal may be lodged against this judgement declaring the annulment of the defendant's marriage within 15 days of receipt of the judgement to the

Archbishop's Ecclesiastical Court Cologne
P.O. Box 101127
50451 Cologne

or to the Court of the Apostolic See, the **Romana Rota**.

The appeal must be sent to our court, but must then be submitted to the court of appeal within one month at the latest.

This can be done, for example, in the form: "*I hereby lodge an appeal against the judgement of the Episcopal Ecclesiastical Court of Münster in the marriage case ... which I will pursue with the Archbishop's Ecclesiastical Court of Cologne*."

The Defender of the Bond and the party who feels aggrieved by this judgement are entitled to appeal.

The judgement of our court is only applicable, i.e. the partners only have the right to remarry if no appeal has been lodged within the specified period.

If an appeal is lodged, the right to remarry depends on the outcome of the appeal proceedings.

Münster, 2023

signed

(Notary)

Matches the original.

Münster, 2023

(Episcopal notary)