

two months after the canonical celebration of the marriage!); while, on the contrary, the petitioner and the witnesses inform us that the separation was decided by the respondent himself in the month of October, 1985, because he had already fostered a relationship with another woman.

The man, in fact, after severing, at least *de facto*, the marital bond with the petitioner, established, in accord with his character, a conjugal relationship with another woman, by whom he in fact fathered two children.

8 – Therefore, according to the undersigned Auditors of the *turnus*, the hypothesis We mentioned above was verified in our case on the respondent's part, and it was expressed in this way by the tribunal of first instance: "It is obvious to this Court that the error of the respondent regarding the indissolubility of marriage did determine his will at the time of marriage (canon 1099) and therefore it vitiated his matrimonial consent and was tantamount to an exclusion, albeit virtual and implicit, of an essential property of marriage (canon 1101, §2), namely indissolubility (canon 1056)."

9 – Therefore, having weighed everything stated in law and in fact, the undersigned Auditors of the *Turnus*, having examined all the acts and the first instance sentence, and having considered the observations of the deputy defender of the bond, decided to respond to the proposed preliminary question as follows:

Affirmatively to the first, that is, the sentence pronounced in first instance by the local metropolitan tribunal on 17 March 2001 must be immediately confirmed. The man, however, is prohibited from marrying again without consulting the local ordinary.

This decree shall be notified to all those who have interest in this case with respect to proper effects of the law.

Given in Rome, at the Seat of the Tribunal of the Roman Rota, on 1 April 2004.

Ioannes Baptista DEFILIPPI, *Ponens*  
Robertus M. SABLE  
Aegidius TURNATURI



## Deceit

Decision of the Roman Rota  
*coram DEFILIPPI*  
4 December 1997 (Medellin, Colombia)<sup>1</sup>

### 1 – The Facts

1 – On 7 January 1989, Lorenza, twenty one years of age at the time, and Graziano, four years her senior, celebrated marriage in Medellin.

The young people, because they were living in the same area of Medellin city, met each other as they were growing up. Gradually their friendly relationship turned into courtship, and in about four years they decided to marry.

The girl had grown up in a family that was firmly attached to the Catholic Church. She too had internalized her beliefs in such a way that her entire manner of thinking and acting, whether in respect to religious worship or her conduct, were influenced by the education she had received.

Graziano also, although some of his relatives after renouncing the Catholic Church had embraced some separated Christian confession, seemed stable in his profession of the Catholic faith so that he showed interest in the same religious celebrations and was agreeable to celebrate marriage and to establish family life with his spouse.

The conjugal life, quite peaceful at the beginning, was unexpectedly disturbed after some months because the man, after giving up the celebrations

<sup>1</sup>Decision c. DEFILIPPI, 4 December 1997, in *RRT Dec.*, 89 (1997), pp. 853-865. English translation by Rev. Augustine MENDONÇA, JCD. Translated and published with permission of the Dean of the Roman Rota.

and principles of the Catholic Church's doctrine, professed adherence to some other Christian confession, and tried to force his wife into joining the same confession as well. On the other hand, Lorenza, recognizing that she had been intolerably deceived with regard to a matter of utmost importance, when she saw the firm rejection of the Catholic Church by her husband, left him and returned to her parents. Then a civil separation was sanctioned by the civil court.

2 – On 26 March 1990, the woman presented her petition before the Regional Ecclesiastical Tribunal of Medellin, alleging that her marriage was null in accord with the norm of c. 1098, because she had contracted marriage deceived by fraud perpetrated by her husband with regard to his Catholic faith in order to obtain her consent.

The tribunal she approached, after admitting the *libellus*, joined the issue in accord with the request of the petitioner and proceeded to the instruction of the case. The man was interviewed judicially, but denied the alleged ground of nullity. Then, after completing everything that had to be completed, the tribunal of first instance, on 6 March 1992, pronounced a decision favourable to the wishes of the petitioner.

In accord with the norm of c. 1682, §1, the sentence together with the other acts of the trial was transmitted to the higher ecclesiastical tribunal of Colombia, which, by its decree of 26 November 1992, did not confirm the decision of the preceding tribunal, rather submitted the case to an ordinary examination in the new grade of trial. After joining the issue properly, and having carried out a supplementary instruction of the case and after completing everything that should be completed, the appeal tribunal, on 16 December 1993, overturned the decision of the first grade, and thereby pronounced a negative decision.

The woman did not acquiesce, rather she interposed an appeal before Our Apostolic Tribunal. By his decree of 29 December 1994, the Dean constituted the *Turnus*. After completing all preliminary formalities, the joinder of issues took place on 19 June 1995 according to the following formula: *Whether there is proof of nullity of marriage in the case due to deceit perpetrated by the respondent man in accord with the norm of c. 1098 of CIC*.

Although both parties were given equal opportunity, no supplementary instruction was requested by them. Therefore, the debate on the case between the *ex officio* advocate of the petitioner and the defender of the bond specially

deputed for this case took place. While the respondent, through his letter of 30 May 1995, reiterated his denial that he had perpetrated the deceit, and expressed his hope "of a wise response to be able to have my union approved in the eyes of God."

Finally, the task befalls the undersigned Auditors today to define the cause in the third grade of jurisdiction and in accord with the doubt stated above.

## 2 - IN IURE

## 2 – THE LAW

3 – Veluti petram angularem, super qua extruitur tota pertractatio canonica de matrimonio, praebet can. 1057, §1, CIC: "Matrimonium facit partium consensus inter personas iure habiles legitime manifestatus, qui nulla humana potestate suppleri valet." Nam consensus partium "est unica, totalis et adaequata causa efficiens matrimonii, seu est absolute necessarius ac per se sufficiens ad matrimonium constituendum" (Z. Grochowski, *De exclusione indissolubilitatis ex consensu matrimoniali eiusque probatione*, Neapoli, M. D'Auria, 1973, p. 21).

Qui consensus nuptialis, supposita nubentium habilitate requisita iure sive naturali sive positivo, significat eorum mutuam autodonationem, cum sit, sub ductu facultatis intellectivae, "actus voluntatis quo vir et mulier foedere irrevocabili sese mutuo tradunt et accipiunt ad constituendum matrimonium" (can. 1057, §2), seu "totius vitae consor-

3 – The corner stone on which the entire canonical treatment of marriage is structured is presented in c. 1057, §1: "The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent." For consent of the parties "is the sole, total and adequate cause of marriage, that is, consent is absolutely necessary and per se sufficient to constitute marriage" (Z. Grochowski, *De exclusione indissolubilitatis ex consensu matrimoniali eiusque probatione*, Neapoli, M. D'Auria, 1973, p. 21).

The nuptial consent, which presupposes the *habilitas* of the contractants required by natural and positive law, signifies their mutual self-giving, because it is, under the direction of the intellect, "an act of the will by which a man a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage" (c.

tiuum indole sua naturali ad bonum coniugum atque ad prolis generationem et educationem ordinaturum" (can. 1055, §1). Consequenter, rite consensu inter se mutuo commutato, "vir itaque et mulier, qui foedere coniugali 'iam non sunt duo, sed una caro' (Mt. 19:6), intima personarum atque operum coniunctione mutuum sibi adiutorium et servitium praestant, sensumque suae unitatis experiuntur et plenius in dies adipiscuntur" (Const. past. Gaudium et spes, n. 48).

Quae mutua autodonatio, ut reapse coniugalis sit, requirit ut uterque contrahens adaequatam imaginem sui alteri praebeat, quae realiti corrispondeat. Secus si quis aliquam speciem suiipsius donaret, quae revera substantialiter differt a veritate, vitiaretur obiectum consensus alterius partis, quod realitati non corresponderet; immo consensus inadaequatus vitiatusque esset praesertim ex parte illius, qui de se imaginem substantialiter diversam a realitate praeberet, cum haec agendi ratio contradiceret genuinae autodonationi coniugali (cf. coram Burke, decisio diei 25 octobris 1990, in RRT Dec., 82 [1990], pp. 723 s., nn. 5s; coram De Lanversin, decisio

1057, §2); that is, "the partnership of the whole of life ordered by its nature to the good of the spouses and the procreation and education of offspring" (c. 1055, §1). Consequently, when there is a proper mutual self-exchange between the parties through their consent, "the man and the woman, who, through their conjugal covenant, 'are no longer two but one flesh' (Mt 19:6), through the union of their persons and tasks, offer each other support and service, and experience the sense of their unity and daily grow more mature" (Past. Const. Gaudium et spes, 48).

To be really conjugal, this mutual self-gift requires that each contractant offer to the other an adequate image of self, which corresponds to reality. Otherwise, if one were to give some appearance, substantially different from the truth, the object of consent of the other party would be vitiated and would not correspond to reality. Indeed, the consent would be inadequate and defective especially on the part of the person who presents an image of self that is substantially different, because such a behaviour would be contrary to genuine conjugal self-giving" (cf. decisions c. Burke, 25 October 1990, in RRT Dec., 82 [1990], pp. 723 ff, n. 5 ff; c. De Lanversin, 17 March

diei 17 March 1993, in ibid., 85 [1993], p. 156, n. 13).

Inter causas, quae provocare possunt vitium consensus ob plus minusve gravem defectum genuinae autodonationis coniugalis, annumerandus est dolus.

4 – Sicut perspicue Nos docet Exc.mus Decanus, "gia il diritto romano, secondo la definizione di Labeone, considerava dolo 'omnis calliditas, fallacia, machinatio ad circumveniendum, fallendum, decipiendum alterum adhibita', e quindi il proposito deliberato di nuocere altrui, col quale un atto si compie, cioè ogni malvagia simulazione o dissimulazione della realtà dei fatti ... Anzi in Romani, per distinguere il dolo giuridico da quelle malizie più semplici in uso nel commercio quotidiano, come le lodi esagerate della propria merce, usavano aggiungervi l'epiteto di *malus*" (M.F. Pompedda, "Annotazioni sul diritto matrimoniale nel nuovo Codice canonico," in Studi di diritto matrimoniale canonico, Milano, Giuffrè Editore, 1993, p. 223).

Iuxta doctrinam et iurisprudentiam canonicam, dolus definiri potest tamquam "deception alterius deliberate et fraudulenter commissa, qua hic inducitur ad ponendum determinatum actum iuridicum" (G.

Deceit: Decision *coram Defilippi*

1993, in RRT Dec., 85 [1993], p. 156, n. 13).

Deceit must be counted among those causes which can provoke defect of consent through a more or less grave defect of genuine conjugal self-gift.

4 – As the Dean clearly teaches us, "already the Roman Law, according to the definition given by Labeo, considered deceit as 'all cunning, fraud, trickery used for concealing, misleading, deceiving another person', and therefore, a deliberate intention to harm another, with which the act is performed, that is to say, every act of simulation or dissimulation of the factual reality ... Even Romans, in order to distinguish juridic deceit from the those simple tricks used in daily commerce, such as exaggerated praise of one's merchandise, used to add the epithet of bad (*malus*)" (M.F. Pompedda, "Annotazioni sul diritto matrimoniale nel nuovo Codice canonico," in Studi di diritto matrimoniale canonico, Milano, Giuffrè Editore, 1993, p. 223).

According to canonical doctrine and jurisprudence, deceit can be defined as "deception of another person perpetrated deliberately and fraudulently, by which this person is induced into placing a determined

Michiels, *Principia generalia de personis in Ecclesia*, Parisiis-Tornaci-Romae, Desclée, 19552, p. 660).

Ideo dolus duplíciter sumi potest, videlicet ex parte decipientis et ex parte decepti. Sub primo adspectu inspicitur tamquam machinatio, fallacia et calliditas alterius decipiendi causa; quae deceptio, "dicitur 'positiva' (faciendo aliquid vel dicendo quo alter in errorem inducitur) vel 'negativus' (simulando aliquid vel reticendo, ut confirmetur et ad finem proprium adhibeatur alterius error fortuitus)" (coram Ragni, decisio diei 27 aprilis 1993, in RRT Dec., 85 [1993], p. 290, n. 4).

Ex parte autem decepti dolus sumitur tamquam eventus deceptio-nis, in errore deceptivo seu doloso substiens. Sub hoc respectu dolus distinguitur in "dolum causam dan-tem seu determinantem" et "dolum incidentem": "prior tunc habetur, quando dolus ita determinat vol-untatem agentis ut sine errore per dolum alterius excitato negotium nullatenus fuisse possum; alter vero, quando non influit in ipsam determinationem agentis, etsi forsitan influit in secundaria negotii mo-menta, it ut negotium etiam sine errore per dolum alterius excitato

*juridic act*" (G. Michiels, *Principia generalia de personis in Ecclesia*, Parisiis-Tornaci-Romae, Desclée, 19552, p. 660).

Therefore, deceit can be considered under its two aspects, namely on the part of the one deceiving and of the one deceived. Under the first aspect, it is regarded as trickery, lie and cunning used for the purpose of deceiving another person; and this deception "is called 'positive' (by doing or saying something by which another is led into error) or 'negative' (by simulating or concealing something so that the accidental error of another person is confirmed and used for personal gain" (decision c. Ragni, 27 April 1993, in RRT Dec., 85 [1993], p. 290, n. 4).

On the part of the person deceived, deceit is regarded as the effect of deception. It consists in deceptive or fraudulent error. Deceit is distinguished into "causative or determining deceit" and "incidental deceit," under this aspect; "the former [causative deceit] occurs when deceit determines the will of the agent in such a way that without the error caused by the deceit of another the contract would not have been entered into; the latter [incidental deceit] occurs when it does not influence the decision of the agent itself, although perhaps it influences the

positum fuisse, etsi forsitan sub aliis conditionibus agenti minus onerosis" (Michiels, *Principia generalia*, p. 661).

secondary aspects of the contract, so that the contract would be entered into even without the error caused by the deceit of another, though perhaps under some other conditions less onerous to the agent" (Michiels, *Principia generalia*, p. 661).

Praeterea ex eo quod deter-minet errorem "substantialem" an "mere accidentalem," dolus habet "substantialis" an "accidentalis." Ut cumque "nullum adest dubium 'quin error dolo alterius in intel-lectu agentis provocatus, qua talis, iisdem regatur principiis ac error mere fortuitus', et ratio 'fundatur in intrinseca erroris, qua talis, natura et nullatenus mutatur, prout origo eius vel causa efficiens, a qua excitatur, sit diversa'" (Michiels, *Principia generalia*, p. 663). Quare 'si error, per dolum sic dictum substantialem in mentem agentis excitatus, substan-tialis sit seu "versetur circa id quod constituit substantiam actus vel re-cidat in condicionem sine qua non," actus ab agente positus ipso iure est nullus' (ibid.). E contra, 'si error, per dolum sic dictum accidentalem in mentem agentis excitatus, sit mere accidentalis', tunc 'actus ab agente positus ex se, seu solius erroris ratione habita, est validus, nisi aliud iure caveatur. Sed tunc intervenit aliis infirmitatis titulus, deceptioni iniustiae qua tali specifice proprius' (ibid.). Ita enim error, ex dolo pro-

Moreover, from the manner in which it determines "substantial" or merely "accidental" error, deceit is either "substantial" or "accidental." In any case, "there is no doubt that 'the error provoked in the intellect of the agent by the deceit of another, as such, is governed by the same prin-ciples as the merely accidental error', and the reason 'is based on the in-trinsic nature of error as such, and it is in no way changed, just as its ori-gin or efficient cause, by which it is caused, is different' (Michiels, *Prin-cipia generalia*, p. 663). Therefore, 'if the error, caused in the mind of the agent through the so-called substan-tial deceit, is substantial or "concerns that which constitutes the substance of the act or redounds to condition sine qua non," the act placed by the agent is null by law itself' (ibid.). On the other hand, 'if the error, caused in the mind of the agent by the so-called accidental deceit, is merely accidental', then 'the act posited by the agent is ex se or solely by reason of error is valid, unless provided oth-erwise by law. But then arises some other title of the defect specifically

veniens, iure coërcetur etiamsi non sit substantialis, ratione nempe deceptionis. Nam in dolo accidentaliter quoque, qui errorem accidentalem provocat, nedum aequitas canonica, sed ipsa iustitia exigit ut iniustitia dolo illata resarcatur" (coram Stankiewicz, decisio diei 27 ianuarii 1994, in RRT Dec., 86 [1994], pp. 62-63, n. 13).

proper to unjust deception as such' (*ibid.*). Thus, the error caused by deceit is in fact limited by law even if it is not substantial, namely by reason of deception. For, even in accidental deceit, which gives rise to accidental error, not only canonical equity but justice itself demands that the injustice caused by deceit be repaired" (decision c. Stankiewicz, 27 January 1994, in RRT Dec., 86 [1994], pp. 62-63, n. 13).

5 – Quam ob rem, can. 125, §2, normam generalem statuit ad remedium afferendum effectibus dolii accidentalis: "Actus positus ... ex dolo, valet, nisi aliud iure caveatur; sed potest per sententiam iudicis rescindi, sive ad instantiam partis laesae eiusve in iure successorum sive ex officio."

5 – For this reason, c. 125, §2 provides the general norm to remedy the effects of accidental deceit: "An act placed ... out of malice is valid unless the law provides otherwise. It can be rescinded, however, through the sentence of a judge, either at the instance of the injured party or the party's successors in law, or ex officio."

Because marriage is a juridic act which cannot be rescinded by the sentence of a judge in virtue of indissolubility, special provision is made in c. 1098: "A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the partner which by its very nature can gravely disturb the partnership of conjugal life."

The above norm per se seems to be "of ecclesiastical law, and not

vero iuris naturalis, uti quidam auctores et quedam decisiones Nostri Fori, perrarae quidem, affirmarunt, quae matrimoniis ante novi Codicis promulgationem initis non videtur applicari posse. Nam influxus doli in matrimonialem consensum directe et immediate ex errore motivato promanat et tantum indirecte ex actione dolosa. Ceterum in can. 9 sancitur: 'Leges respiciunt futura non praeterita, nisi nominatim in eis de praeteritis caveatur'" (coram BRUNO, decisio diei 19 novembbris 1993, in RRT Dec., 85 [1993], p. 674, n. 3).

Attamen ex iis quae supra animadvertisimus, aliud propugnandum esset si dolus provocavisset errorem substantialem: quod exprimere videtur ipsa Pontificia Commissio Codici Iuris Canonici authentice interpretando in responso privato quod dederat Archiepiscopo Friburgensi die 8 februarii 1986: "La Consulta è incline a ritenere il disposto del can. 1098 di diritto meramente positivo, e pertanto non retroattivo. Data comunque la grande varietà di casi che potrebbero cadere sotto la fattispecie ivi descritta, non si può escludere a priori che alcuni di essi possano configurare nullità derivanti dal diritto naturale, nel cui caso sarebbe legittima una sentenza affermativa. Corrisponde ai giudici, in possesso di tutti i possibili elementi, valutare se

of natural law, as some authors and some decisions of Our Tribunal, very rare indeed, have affirmed. It seems that this norm cannot be applied to marriages contracted prior the promulgation of the new Code. For, the influence of deceit on matrimonial consent directly and immediately flows from motivated error and only indirectly from fraudulent action. Moreover, it is sanctioned in c. 9: 'Laws regard the future, not the past, unless they expressly provide for the past'" (decision c. Bruno, 19 November 1993, in RRT Dec., 85 [1993], p. 674, n. 3).

However, from what we have noted above, the argument would have been quite different if deceit were to provoke substantial error. This seems to be the opinion of the Pontifical Commission for the Interpretation of the Code of Canon Law expressed in its private response to the Archbishop of Freiburg, dated 8 February 1986: "The Consultation is inclined to hold the view that the norm of c. 1098 is of merely positive law, and therefore, not retroactive. However, given the wide variety of cases which could fall under the types described therein, one cannot exclude a priori that some of them can cause the nullity deriving from natural law. In this case, an affirmative sentence would be legitimate. It is up to the judges, who are in pos-

nel caso concreto ci si trovi dinanzi ad un tipo di errore invalidante il consenso non per la disposizione positiva del can. 1098, ma per forza del diritto naturale, come si è verificato in alcune sentenze anteriori alla promulgazione del Codice" (cf. coram Stankiewicz, decisio diei 27 januarii 1994, pp. 65-66, n. 19).

Nostro tamen in casu, cum agatur de matrimonio, quod celebratum est sub regimine vigentis Codicis, nulla adest dubitatio, quin applicari possit commemoratus can. 1098.

6 – Ut ad normam can. 1098 matrimonium nullum declarari possit, requisita quae sequuntur simul verificanda sunt.

a) Imprimis requiritur ut quis, dolo deceptus, matrimonium ineat; scilicet: ut ipse consensum matrimonialem praestet propter dolosam deceptionem, seu ob errorem in quem incidit propter alterius partis dolum. "Idque obvenit - sicut explanatur in commemorata decisione coram Stankiewicz diei 27 januarii 1994 - si deceptio dolosa det causam matrimonio ineundo; secus enim pars decepta, hoc est seclusa deceptione, matrimonium nullatenus celebrasset. Non sufficit igitur dolus mere incidens, qui in determinationem contrahentis non influit, cum ipse,

session of all possible elements, to determine if, in a given case there is before them an error which invalidates consent not in virtue of the positive disposition of c. 1098, but in virtue of natural law, as it has been verified in some sentences pronounced prior to the promulgation of the Code" (decision c. Stankiewicz, 27 January 1994, pp. 65-66, n. 19).

In our case, because it involves a marriage celebrated under the regime of the present Code, there is no doubt that the above mentioned c. 1098 can be applied.

6 – In order to declare a marriage null on the basis of c. 1098, the following requisites should be verified simultaneously:

a) First of all it is necessary that a person contracts marriage as a result of fraudulent deceit; namely: that the person consents to the marriage because of fraudulent deception, or that the person is led into error by the deceit of the other party. "This occurs - as explained in the above mentioned sentence coram Stankiewicz of 27 January 1994 - if fraudulent deceit is the cause of contracting the marriage; otherwise the deceived party, that is, without the deception, would never have celebrated marriage. Therefore, merely incidental deceit which does not influence the

dolo omissio, matrimonium pariter inivisset. Si enim nupturiens non obstante deceptione matrimonium revera inire voluisse, dici nequit ipsum ex dolo incidenti reapse subiisse gravem libertatis laesionem atque iniustam, quae nullitatem consensus efficeret" (coram Stankiewicz, decisio diei 27 januarii 1994, p. 67, n. 22).

decision of the contractant is not sufficient, because, without deceit, he/she would have still contracted marriage. If in fact the contractant really wanted to contract marriage despite deceit, he/she cannot be said to have suffered serious and unjust violation of freedom from the incidental deceit, which would have caused the nullity of consent" (decision c. Stankiewicz, 27 January 1994, p. 67, n. 22).

b) Ex parte deceptoris requiritur ut dolus ponatur non solum ad alteram partem circumveniendam, fallendam et decipiendam, sed ea potissimum deliberata intentione ad obtinendum eius consensum matrimoniale. Textus canonis 1098 enim "ha voluto sottolineare l'intentionalità di colui che crea il dolo, quella cioè di indurre alcuno ad emettere il consenso matrimoniale." Scilicet "dapprima, quell'ad obtinendum consensum patrato' sottointende che oggettivamente un'opera di inganno, di artificio, di raggiro sia stata messa in atto per indurre qualcuno al matrimonio; altrimenti sarebbe basato stabilire e dire che l'uno o l'altro o entrambi i nubenti sono stati ingannati con dolo"; attamen "in secondo luogo, è affermato un nesso causale strettissimo tra questa opera oggettiva dolosa ... e la prestazione del consenso; e quindi ... non sarebbe ri-

b) On the part of the deceiver, it is necessary that the deceit is perpetrated not solely to cheat, mislead and deceive the other party but especially to obtain, with a deliberate intention, that person's matrimonial consent. In fact, the text of c. 1098 "is intended to emphasize the intentionality of the one who causes deceit, that is the intention to induce another person into eliciting matrimonial consent." That is to say, "first of all, the phrase 'perpetrated in order to obtain consent' implies that objectively an action of deceit, trickery and cheating may have been set in motion in order to induce someone to marry; in other words, it would be sufficient to establish and say that the one or the other or both contractants were deceived with fraud"; however, "secondly, a very strict causal link is affirmed between this objectively deceitful action ... and the presentation of consent; and

levante quello soggettivo di errore causato da dolo che non fosse stato attuato per ottenere, potremmo dire per carpire il consenso di qualcuno al matrimonio" (Pompedda, "Annotazioni sul diritto matrimoniale," pp. 228-229).

Ideo tantum dolus directus (non autem dolus indirectus) vim habet irritantem consensum. Quam ob rem "si dolus alios fines assequendos dirigatur, v.gr. ad proprium vel familiae honorem tutandum, nullum influxum in consensum exerceret, et matrimonium validum censemendum est" (coram Bruno, decisio diei 19 novembris 1993, pp. 674-675, n. 4a).

E contra, ratione habita eiusdem effectus, quem provocare potest in decepto sive dolus compartis sive personae tertiae, nihil refert, utrum talis dolus patratus sit a parte contrahente an ab alia persona (Communications, 3 [1971], p. 77).

Itemque "ad effectum nullitatis nihil ... refert utrum ad obtainendum consensum patratus sit dolus positivus, in faciendo vel dicendo aliquid consistens, quo alter in errorem inducitur (error commissivus), an dolus negativus, in reticendo vel simulando aliquid consistens (dolus

consequently ... the subjective error caused by deceit which might not have been perpetrated, we could say, to extract the consent of someone to marry, would have no relevance" (Pompedda, "Annotazioni sul diritto matrimoniale," pp. 228-229).

Therefore, only direct deceit (not indirect deceit) has the force to invalidate consent. For this reason, "if deceit is directed at achieving some other ends, for example, to safeguard one's own honour or that of the family, it will have no influence on consent, and the marriage must be considered as valid" (decision c. Bruno, 19 November 1993, pp. 674-675, n. 4a).

On the other hand, if its effect is considered, which the deceit of the partner or of a third party can provoke in the person deceived, it does not matter whether such deceit was perpetrated by the contractant or by some other person (cf. Communications, 3 [1971], p. 77).

"Similarly, as far as the effect of nullity is concerned ... it does not matter whether the deceit perpetrated in order to obtain consent is positive, consisting in doing or saying something, by which another person is led into error (dolus commissivus), or negative, consisting in

omissivus), quo alter confirmatur tantum in errore spontaneo. Cum enim agatur de qualitate essentiali pro instaurando consortio matrimoniali, qui caret illa qualitate non potest tacere simpliciter, quia hoc silentium esset dolosum (Communications, 9 [1977], p. 372)" (coram Stankiewicz, decisio 27 januarii 1994, pp. 67-68, n. 23).

c) Attenta propria verborum significatione in textu canonis patefacta (cf. can. 17), deceptio dolosa respicere debet aliquam qualitatem alterius partis, quam deceptus in matrimonium ducere intendit, quamvis nullo modo requiratur ut qualitas 'directe et principaliter intendatur', sicut in can. 1097, §2. Ideo ex perspicuo legis pracepto, vim invalidantem consensum non habet deceptio dolosa circa qualitatem cuiusdam tertiae personae, quamvis intime coniuncta sit cum altera parte.

d) Denique deceptio dolosa, ut vim irritantem in consensum habeat, non ad quamlibet qualitatem alterius partis verti debet, sed ad illam tantum, "quae suapte natura consortium vitae coniugalnis graviter perturbare potest." Ideo: "expresse exigitur qualitas obiective gravis,

concealing or simulating something (dolus omissivus), by which another person is confirmed in his or her spontaneous error. Because we are dealing with a quality necessary for establishing the matrimonial partnership, one who lacks that quality simply cannot be silent, because such silence would be deceitful (Communications, 9 [1977], p. 372)" (decision c. Stankiewicz, 27 January 1994, pp. 67-68, n. 23).

c) If we consider the proper meaning of the words disclosed in the text of the canon (cf. c. 17), the fraudulent deception should concern some quality of the other party, which the person deceived intends to include in marriage, although it is not at all necessary that the quality "is directly and principally intended," as stated in c. 1097, §2. Therefore, in light of the clear prescript of law, fraudulent deception concerning a quality of a third person, even if intimately related to the other party, does not have the force to invalidate consent.

d) Finally, to invalidate consent, the fraudulent deception should concern not any quality of the other party but only that "which by its very nature can gravely disturb the partnership of conjugal life." Therefore, "an objectively grave quality is required, which by its very nature

quae ex natura sua consortium coniugale perturbare possit adeo ut consortium vitae coniugalitatis sit ratio determinans talis gravitatis, in ordinem nempe ad qualitates connexas cum essentia, proprietatibus et finibus matrimonii" (coram Ragni, decisio diei 27 aprilis 1993, in RRT Dec., 85 [1993], p. 291, n. 5,5). Aliis verbis, textus legis criterium praecipue obiectivum extollere videtur, seu ipsam aptitudinem naturalem qualitatis ad inducendam gravem perturbationem consortii coniugalitatis. Quam ob rem, sicut explanatur in commemorata decisione coram Burke diei 25 octobris 1990, "de qualitate agatur oportet quae, iuxta criterion obiectivum (quod aliud non esse potest quam communis aestimatio, a iurisprudentia confirmata), sit in se significans et capax, si dolus circa eam patraretur, coniugalem vitam graviter perturbandi: exempli gratia, morbus valde quidem contagiosus, status praegnacionis ab alia parte inductus, propria condicio membra Ecclesiae Catholicae" (coram Burke, decisio diei 25 octobris 1990, p. 725, n. 12).

E contra praetermittendae sunt qualitates, fortasse magni momenti pro parte dolo decepta, quae tamen, sua natura, maritale consortium substantialiter non tangunt, ut sunt "qualitates ordinariae ac universales, ut vanitas vel egoismus, necnon im-

can disturb the conjugal partnership so that the partnership of conjugal life is the factor that determines such gravity, namely in terms of qualities connected with the essence, properties and ends of marriage" (decision c. Ragni, 27 April 1993, in RRT Dec., 85 [1993], p. 291, n. 5,5). In other words, the text of the law seems to emphasize in a special way the objective criterion, that is, the natural aptitude of the quality to cause serious disturbance in conjugal partnership. Therefore, as explained in the above mentioned decision coram Burke of 25 October 1990, "it should be a matter of a quality which, according to the objective criterion (which cannot be any other than common estimation, confirmed by jurisprudence), is in itself significant and, if the deceit is perpetrated concerning that quality, is capable of gravely disturbing conjugal life: for example, a very contagious disease, state of pregnancy induced by some other person; proper condition of a member of the Catholic Church" (decision c. Burke, 25 October 1990, p. 725, n. 12).

On the other hand, we should not overlook qualities that are perhaps of great value to the person deceived, which nevertheless, by their very nature do not substantially affect conjugal partnership, such as "ordinary and common quali-

perfectiones leves ac relativae, sicut pigritia vel defectus sensus iocationis ('sense of humour') ... opiniones circa res sociales vel politicas, etc." (ibid., p. 726, nn. 14 et 16).

ties, as vanity or egoism, as well as minor and relative imperfections, such as laziness, or lack of a 'sense of humour') ... opinions on social and political matter" (ibid., p. 726, nn. 14 and 16).

Attamen si ad statuendam aptitudinem qualitatis ad inducendam gravem perturbationem coniugii, praevalens est "criterium obiectivum," etiam "criterium subiectivum" decepti dolo perpendendum est. Agitur scilicet de qualitate "che non solo oggettivamente - come potrebbe far pensare la addizione, di dubbia fortuna in subiecta materia, 'suapte natura' -, ma anche e specialmente nella stima soggettiva dell'altra parte deve aver rilevanza, in modo da turbare gravemente la comunione di vita coniugale" (I.M. Serrano Ruiz, Ad can. 1098, in Commento al Codice di diritto canonico, Romae, PUU, 1985, p. 646). Nam "qualitate, quam alter nullius vel parvi momenti habet, alter, attentis peculiari mente, cultura et moribus societatis in qua degit, magnum pondus afferre potest. Congruenter animadvertisit Cl.mus Aloisius Chiappetta: 'Spetta al giudice la valutazione concreta della gravità, senza peraltro attenersi esclusivamente ai criteri e tenendo conto delle circostanze di ambiente e di cultura e del sentire comune, che rivestono anch'essi un carattere di oggettività relativa' (L. Chiappetta appropriately notes: 'The concrete evaluation of the gravity pertains to the judge, without tying himself exclusively to the objective criteria and taking into account the circumstances of the milieu and culture and common understanding, which endow them

petta, Matrimonio nella nuova legislazione canonica e concordataria: manuale giuridico-pastorale, Roma, Edizioni Dehoniane, 1990, p. 221, n. 636)"(coram Bruno, decisio diei 19 novembris 1993, p. 675, n. 4c).

[qualities subjectively grave] with a character of relative objectivity' (L. Chiappetta, Matrimonio nella nuova legislazione canonica e concordataria: manuale giuridico-pastorale, Roma, Edizioni Dehoniane, 1990, p. 221, n. 636)"(decision c. Bruno, 19 November 1993, p. 675, n. 4c).

Ita nullum dubium exstat quin nubentis religiosa condicio eiusdemque firma adhaesio fidei catholicae qualitas sit obiective magni momenti pro constituenda consortione vitae coniugalnis. Nam in professione eiusdem fidei, coniuges validum adiumentum sibi praestant ut consortium totius vitae ordinetur ad eorum genuinum bonum et ut servetur pax familiaris. Praeterea plena communio in re religiosa valde coniuges adiuvat pro efficaciter instituenda prole, praesertim in colenda religione. Attamen solum criterium "obiectivum" efficax non est ad statuendum utrum in casu concreto condicio religiosa turbare possit consortium vitae coniugalnis, nisi accedat criterium "subjectivum," quo pars, dolo decepta, sumnum momentum tribuat plenae communioni in re religiosa, qua ideo absente, graviter turbatur totius vitae consortium; dum e contra pro eo qui indifferens est circa fidem, nihil interest de condicione religiosa alterius coniugis, quae ideo vim non

There is, therefore, no doubt that the religious condition of one's partner and his or her firm adherence to the Catholic faith is a quality of objectively great importance for establishing the partnership of conjugal life. For, in professing the same faith, the spouses offer to each other valuable assistance in ordering the partnership of the whole of life to their own genuine good and to the promotion of peace in the family. Moreover, full communion in religious matters greatly helps spouses in the effective formation of their children, particularly in fostering religion. However, only an "objective" criterion is not efficacious in determining whether, in a concrete case, the religious condition can disturb the partnership of conjugal life, unless one also takes into account the "subjective" criterion, by which the deceived party attributes great value to the full communion in religious matters; in its absence, therefore, the partnership of the whole of life is gravely disturbed; while on the other hand, to the one who is indifferent

habet in consortium vitae coniugalnis turbandum.

7 – Probatio, quae utique considerari potest sive "directa" (seu procedens ex ipsius decepti ac deceptoris declarationibus tum iudicialibus cum extrajudicialibus, tempore insuspecto factis, quas testes fide digni ac documenta in iudicio confirmare valent), sive "indirecta" (seu ex agendi ratione dolum inferenti et dolo decepti) ad id ducere debet ut verificetur utrum in casu reapse perficiantur omnes condiciones statutae in can. 1098, de quibus diximus. Scilicet:

a) definiendum est quaenam fuerit qualitas alterius partis, circa quam deceptus dolo asserit se in errorum incidisse;

b) statuendum est sive momentum obiectivum illius qualitatis ad graviter perturbandum consortium vitae coniugalnis, sive momentum subiectivum quod deceptus dolo illi qualitati tribuit;

c) constabiliendum est num illa qualitas (vel eiusdem absentia) ante

about faith, the religious condition of the other spouse is of little interest, which, therefore, has no power to disturb the partnership of conjugal life.

7 – The proof can be either "direct" (that is, proceeding from both the judicial and extra-judicial declarations of the deceiver and of the one deceived, made at an unsuspected time. These declarations must be confirmed during the trial by trustworthy witnesses and documents). It can be "indirect" (that is, from the behaviour of the one who perpetrated the deceit and of the victim of deceit). This proof should lead to verification of whether, in the concrete case, all conditions stated in c. 1098, discussed above, are in fact fulfilled, that is to say:

a) define the quality of the other party about which the deceived person claims to have been led into error;

b) establish both the objective importance of that quality which has in fact the potential for gravely disturbing the partnership of conjugal life and the subjective importance attributed to that quality by the deceived person;

c) determine whether the person who claims to have been deceived

matrimonium reapse ignorata fuerit ab eo qui dicitur dolo deceptus; scil.: num ipse in errore versaretur;

d) colligendum est num ille error ab asserto deceptore dolose inductus sit et quidem ad extorquendum consensum alterius partis;

e) explorandum est utrum modus agendi illius, qui se deceptum esse contendit, postquam veritatem detexit, reapse congruens an discrepans fuerit cum thesi quam propugnat coram Tribunali Ecclesiastico. Nam si ille absque difficultate et repugnantia, vitam coniugalem prosecutus est, non veri simile est in casu perfici condiciones statutas in can. 1098. E contra omnino credibile reddit nullitatem matrimonii, ad mentem can. 1098, si assertus deceptus dolo, detecta veritate, valedixit alteri coniugi nec se dispositum praebuit reconciliationi, praesertim si ipse fervidus catholicus est, optime adhaeret Ecclesiae Catholicae et recte sentit de matrimonio eiusque proprietatibus.

by fraud was in fact unaware of the presence (or absence) of the quality before marriage, that is, whether the person deceived was indeed in error;

d) determine whether the error induced by the alleged deceiver was really meant to extract the consent of the other party;

e) investigate whether the behaviour of the person, who contends to have been deceived, after he or she had discovered the truth, was indeed consistent or inconsistent with the claim he or she defends before the ecclesiastical tribunal. For, if, after discovering the truth, she or he had continued to live conjugal life without any difficulty and repugnance, it is most unlikely that the conditions stated in c. 1098 are fulfilled in the case. On the other hand, the nullity of marriage is rendered entirely credible if, as soon as the truth about the desired quality is discovered, the one who claims to have been deceived by fraud abandons the spouse and rejects any attempts at reconciliation, especially if he or she is a devout Catholic, who adheres strictly to the Catholic teaching and has a correct understanding of marriage and of its properties.

### 3 – THE ARGUMENT

8 – Since two discordant sentences have been already pronounced on the alleged ground of nullity, the undersigned Auditors of the *Turnus* consider it necessary in the present instance to review the proofs available in the acts according to the schema reported above. We will certainly evaluate them critically in order to arrive at an appropriate and just conclusion.

9 – From what has been said repeatedly in the testimonies, the quality of the respondent, about which the petitioner claims to have been deceived and that too due to the deceit perpetrated by Graziano, was the sincere and firm adherence of the man to the Catholic Church, both in terms of participation in religious celebrations and of his assent to the principles of Catholic doctrine and ethics.

Because this matter has been quite clearly established with absolute certainty from all the testimonies, we must not dwell on it any further.

10 – The quality in question, as noted above, is “objectively” of great importance, because communion in religious matters is of utmost value for a peaceful continuance of the partnership of conjugal life whether it concerns the spiritual good of the spouses or the proper and efficacious formation of children.

Moreover, the Supreme Legislator of the Church himself, although he fosters “the ecumenical movement among Catholics,” cautions extreme prudence concerning this matter (c. 755); in fact, with respect to the proper celebration of marriages of Catholics with those who belong to “ecclesial communities which do not have full communion with the Catholic Church,” he reveals a mind that is not that favourable when he determines for such cases the norms that are to be faithfully observed in order to remove particularly the dangers of defecting from the faith, which would certainly be the greatest harm, and in order to have the children baptized and brought up in the Catholic Church (cf. c. 1071, §1,4°; c. 1124-1128; MP *Matrimonia mixta*).

11 – In our case, however, the full communion of the spouses with the Catholic Church was of utmost importance to the petitioner also because of personal reasons.

It is stated in the testimonies with one voice that Lorenza had received the best religious and moral formation in accord with the precepts of the

Church, so that when she grew up those principles had fully saturated her mind and behaviour. Therefore, when the petitioner established first a friendly and then a courtship relationship with the respondent, she clearly disclosed her intention to celebrate marriage and to constitute a family in accord with her Catholic faith. She revealed, even before Graziano, that her intention was absolutely irrevocable.

Because all testimonies agree on this matter, it is sufficient to refer to something concerning the second testimony of the petitioner's mother: "From her childhood Lorenza had taken a very beautiful approach with respect to her faith and her growth in spiritual life. I could say that on the part of Lorenza those bases had been developing while she lived at home, and in the college. That was her entire formation, especially in religious matters and in other areas as well. This formation had made her values shine in all aspects of her life. It has impacted her faith in the Catholic Church and her behaviour. It is an extraordinary faith."

We should not dwell on this matter any further because there is clear proof of the faithful and constant adherence of the petitioner to the Catholic Church and her intention to contract marriage with a man who was equally firm in his adherence to the Catholic faith.

She declared her intention in words and confirmed it by her behaviour, particularly when the irrevocable intention of her husband to ascribe himself to a certain non-Catholic Christian community came to light, she left him.

In fact, in light of the deeply rooted intention of the woman, perhaps the present case could have been aptly judged in accord with the norm of c. 1097, §2, that is, to the extent the petitioner might have regarded the firm adherence of the man to the Catholic faith as a quality "directly and principally" intended. However, this matter falls well beyond Our present task!

12 – On the other hand, the question of utmost importance, because of which the second instance tribunal pronounced a decision contrary to the wishes of the petitioner, consists in determining whether the quality desired by Lorenza was really absent in the respondent at the time of contracting marriage so that she was indeed led into error which was provoked fraudulently by the man in order to extract her matrimonial consent.

During the pre-nuptial period, the man was, without doubt, presenting himself to Lorenza as one who faithfully adhered to the Catholic Church. For all testimonies confirm that Graziano diligently accompanied Lorenza to celebrations of the Catholic religion and that he had the same feeling about the reasons on which the future conjugal life was to be established.

After the celebration of marriage, conjugal life was happy during the first few months because the respondent seemed to the petitioner to practice faithfully the same celebrations, the faith and the same ethics of the Catholic Church.

On the other hand, a few months later the respondent seemed, even to the petitioner, that he was least interested in the precepts of the Catholic Church and was reinforcing this through some signs that he was attending some other non-Catholic Christian confession, which he openly professed shortly thereafter. There arose quarrels between spouses when Lorenza learned of the man's new leanings in religious matters, and the conjugal life ruptured completely when the woman learned of the renunciation of the Catholic faith by the man.

The parties, however, disagree between themselves in defining the real religious condition of the man at the time the marriage was celebrated, that is, whether he was a strong Catholic then; or, while he was already leaning toward the non-Catholic Christian community or already uncertain about his personal adherence to the Catholic faith, he only feigned to be a Catholic in order to obtain the matrimonial consent of Lorenza, whose faith was well-known to him.

13 – The man firmly contends that he was constant in sincerely professing his faith; that is, at the time prior to marriage and during the first few months after the wedding celebration he had faithfully adhered to the Catholic Church. And he left the Catholic Church in October of 1989 in order to adhere to a certain Christian community separated from the Catholic Church.

Therefore, the respondent totally denies that he had perpetrated deceit in order to extract the nuptial consent of the petitioner, although he concedes that Lorenza had felt that she had been seriously deceived because of his change in religion, which had happened only after the wedding celebration.

After receiving the judicial declarations of the man, the tribunal of second instance, noting that he had been a Catholic at the time prior to marriage and that he had joined the evangelical religion only after the marriage, denies that there was in the case any deceit on the part of the respondent, and therefore, any basis for declaring the nullity of marriage on the alleged ground.

However, as we will point out shortly, the judges of the second instance do not seem to have considered the circumstances of utmost importance which clearly reveal that the pre-nuptial profession of Catholic faith on the part of the man was in fact only a sham in order to extract the nuptial consent of the spouse.

14 – In fact, the respondent himself, although unconsciously, contrary to what he had disclosed to the petitioner prior to marriage, reveals to Us from his own behaviour his personal inconsistency in religious matters. For, during the time prior to marriage and during the first few months after the marriage, he seemed to be a Catholic; then he professed some other Christian faith, which the petitioner and some witnesses call: "Church of Christ," others call it: "Pentecostal Church," some others call it "Evangelical," while the respondent himself then defined it as "simply Christian."

When interviewed judicially by the tribunal of first instance (on 20 May 1991), Graziano was still professing that religion.

Finally, on 25 May 1995, before the judicial vicar of the Ecclesiastical Tribunal of Medellin, from whom he had received the summons of Our Apostolic Tribunal for the joinder of issues, he declared: "Presently I have two children baptized in the Catholic Church, and my partner is Catholic, as I too am today."

Therefore, contrary to what he seemed to profess at the time of the wedding, he did not have a firm and genuine adherence to the Catholic Church, which, either objectively or especially subjectively for the petitioner, was a quality of utmost importance for living out her conjugal life according to the Catholic faith.

Moreover, those things which the respondent stated before the judge are refuted by his own written declaration in which, at the time of his defection from the Catholic Church, he explicitly admitted to the petitioner that his decision was "a process which took a very long time ... years!"

15 – The petitioner certainly declares in her judicial deposition that she considered the external adherence of the respondent to the Catholic faith both during the time prior to marriage and during the first eight months of conjugal life as faithful and constant, and that his defection from the Catholic Church and his adherence to the so-called "Church of Christ" was swift.

However, at the time of his defection from the Catholic Church, Lorenza received from the man himself the following significant declaration: "(Graziano) admitted to me that he was always sympathetic towards the evangelicals, who were very cultured people, very upright in every sense." She further adds: "He read the Bible very much, it was like a small blue pamphlet, I believe it was of the evangelicals."

In fact, after the separation of the spouses, the petitioner learned from her friend Beatriz Elena "of his sympathy towards the evangelicals, but that he was convinced that because of the love I had for him I would change my religion."

In her second deposition, commenting further on the above-mentioned written declaration of the respondent, in which he had agreed that his conversion to Protestantism had evolved through a long process, Lorenza logically concludes "that he was fostering those ideas for years. He concealed them from me and in that way he deceived me in order to marry me, because he already knew that if he did not profess to be a Catholic, I would never marry him."

Therefore, explaining more clearly those things which she learned from her friend Beatriz Elena after conjugal separation, Lorenza states: "I knew later that, when he was going to marry me, Graziano had already nurtured protestant ideas and that he disclosed this to a person called Beatriz Elena: that he was convinced that after marriage I was going to change my religion and he would turn me into a protestant, because the love between us was that strong."

Hence the petitioner, whose credibility has been confirmed by excellent testimonies, offers Us indications of so great value that we are able to conclude that the externally firm adhesion of the man to the Catholic Church was fraudulently feigned by him so that his very devout Catholic fiancée would not leave him but would agree to celebrate the marriage.

16 – The witness whom the petitioner just mentioned and who knows the respondent “from childhood,” was judicially interviewed twice.

In her first testimony she said the following things of great importance: “Graziano (during the pre-nuptial period) always went to Mass with her, he accompanied her to the Novena of Our Lady of Perpetual Help; he was like this prior to marriage, that is, an evangelical; but he was pretending to be a Catholic; after marriage I asked him why he married her if he was not a Catholic; and he told me that he thought he could make her change her religion.” Therefore, “he deceived her because he was an evangelical and pretended to be a Catholic just to marry her.”

In her second testimony, however, the witness states that the respondent had said that he was a faithful Catholic during the time prior to marriage: “She knew him to a good man, a Catholic practicing his religion, responsible, and so she decided to marry him ... He presented himself to her as a Catholic, both in his words and in his actions, he confessed to be a Catholic and he accompanied her to the Church.”

The witness, however, notes that during the time preceding marriage, the respondent professed to be a faithful Catholic lest Lorenza should decide not to marry him. Graziano was in fact not a firm Catholic, because the witness deduces from some indications that he had already adhered to certain protestant confession: “After they were married he told that he married her thinking that she would change her religion and convert to his religion, the evangelical. He went to worship where his mother went.” Indeed, “a few days after they were married, his mother sent a Bible to Lorenza as well as those pamphlets he had given to Lorenza in order to explain the religion.” Perhaps this fact, according to what has been reported by the petitioner, happened not a few days after the marriage, but after some months.

In any case, the witness informs Us that during the time prior to marriage the respondent, contrary to the truth, had feigned to be a firm Catholic in order to induce Lorenza into marrying him, and Lorenza had celebrated the marriage as a result of error fraudulently induced by the man.

17 – Even the mother of the petitioner, whose credibility is confirmed by excellent testimonies, and who was twice interviewed in court, states with utmost openness: “He deceived her ... he feigned himself to be a Catholic in order to be able to marry her.”

In her first testimony, the witness, who was already apprehensive even before marriage because of the different religious faiths in the respondent’s family, had then noted about Graziano “I never saw him going to confession.” However, after knowing the respondent’s adhesion to a non-Catholic Church, the mother of the petitioner observed: “His sister told me that Graziano ... when accompanying Lorenza to Mass he was striking his breast, was regretting the fact that he was not able to read Bible because he was crazy.” “She said that he married her as Catholic thinking that Lorenza was going to convert to his religion.”

Thus the witness concludes: “I think that if he married her as a Catholic, he did that in order not to lose her, and not for religious conviction.”

In her second testimony, the witness explains why already during the time preceding marriage she had somehow sensed that the respondent was not a faithful Catholic: “I saw Graziano as indecisive. I saw him quite biblical and for everything he was finding a biblical quotation and was defending the protestant faith of his mother ... Graziano was trying to defend the Pentecostals.” The witness, however, adds that immediately after the marriage, Graziano clearly professed personal adherence to Protestantism, noting: “According to me, it appeared to me too quick, that means he already in the process even before the marriage and what he did was that he concealed it from Lorenza. I heard that Graziano had said: I believe that after marriage Lorenza will change her religion.” According to the witness, therefore, Lorenza was fraudulently deceived because “she married Graziano because he told her that he was a Catholic, that he would remain a Catholic and would create with Lorenza a practicing Catholic home.”

18 – Also other witnesses confirm that the petitioner was fraudulently deceived by the respondent, because during the time prior to marriage he feigned his firm adhesion to the Catholic faith so that his fiancée would not cancel the marriage. It is evident from some indications (we have already spoken about them in the recently cited testimonies), which are more clearly interpreted during the time following the marriage in light of the swift public adherence of the man to some protestant Church, that he was in fact not a faithful Catholic already then (cf. Laura, Rosa, Marina, Elys, the father of the petitioner, Gustavo, Margarita).

19 – Therefore, if all testimonies are weighed carefully, everything that the respondent said in court concerning his sincere adhesion to the Catholic

faith during the time prior to marriage, from which he might have defected only after the marriage, is fully refuted. On the other hand, there is proof that during his courtship relationship with the petitioner, in fact to celebrate marriage with her, he had fraudulently feigned his firm profession of the Catholic faith. This he did because he knew that Lorenza would only marry a man who faithfully adhered to the Catholic Church: that she demanded both participation at religious celebrations and assent to the principles of Catholic doctrine and ethics. From the indications presented above it is evident that before the celebration of marriage the respondent had not firmly adhered to the Catholic faith because he was already then seriously considering the protestant religion professed in his family. Only a few months after the marriage, at an opportune moment, he declared his public adherence to that religion and rejected the Catholic faith.

For the rest, as the diligent advocate of the petitioner correctly observes, the change of religion occurs through a long and laborious process. If only a few months after the celebration of marriage the respondent, after rejecting the Catholic faith, embraced publicly some protestant community, one must necessarily conclude that already during the time preceding marriage he had worked through the process of rejecting the Catholic religion. But he never disclosed to the petitioner his religious condition, which, of its very nature and in view of the profoundly Catholic disposition of the woman, was going to seriously disturb the partnership of conjugal life. In fact, as we have noted, the respondent himself had admitted to the petitioner the long process of rejection of his religious faith in a written declaration made at the time Lorenza was considering terminating conjugal life.

**20** – Finally, the behaviour of the petitioner really confirms that all conditions required to declare the marriage invalid in accord with the norm of c. 1098 are verified in this case.

For, Lorenza, who not only showed herself during the time preceding marriage to be a staunch Catholic but also firmly stated that she would only marry a man who faithfully adhered to the Catholic Church mainly to bring up children properly and in the right way, was led into error concerning the religious condition of her spouse. For already then she considered Graziano to be a devout Catholic so that, because she was truly in love with him, she was confident and happy in making her decision to celebrate the marriage and to establish conjugal life. On the other hand, she was very upset when

she learned that the man was undoubtedly seriously considering joining the protestant religion of his family, and within less than ten months after the marriage she definitively terminated conjugal life when informed of the rejection of the Catholic faith by the man.

This behaviour of the woman, contrary to what she has been undeservedly reproached with by the tribunal of second instance, is of utmost importance if we regard her as an excellent Catholic, adheres fully to the doctrine of the Catholic Church concerning marriage and its indissolubility, and had celebrated marriage because of her strong love of the respondent.

In other words, the petitioner has confirmed through her behaviour that she had been intolerably deceived by the respondent, who feigned to her, in order to marry her, his firm adherence to the Catholic faith, while he already had the serious intention to join the protestant community of his mother. When the truth was discovered, Lorenza in fact definitively terminated all conjugal relationship with the respondent, despite his pleadings, nor was she ready for reconciliation, which led her mother to say: "The testimony which Lorenza has given in our family by separating from Graziano is a testimony of faith. She separated exclusively for the sake of her Catholic faith. She said: if Graziano deceived me in such a manner, I separate. She said that she was not going to have a home where there are religious differences and that was what she did not want."

**21** – Therefore, if all indications are carefully weighed, the decision of the second instance tribunal should be completely overturned as it did not consider all the elements present in the acts. On the other hand, the decision of the first instance is strengthened by the new arguments.

After having weighed carefully everything said in law and in fact, We the undersigned Auditors of the *Turnus*, sentence with respect to the proposed doubt by responding:

**Affirmatively**, that is, there is proof of invalidity of marriage in the case on the ground of deceit perpetrated by the man, according to the norm of c. 1098 of CIC.

Given in Rome, at the Seat of the Tribunal of the Roman Rota, on 4 December 1997.

Ioannes Baptista DEFILIPPI, *Ponens*  
Robertus M. SABLE  
Aegidius TURNATURI