

Corte di Cassazione, Sezione Prima Civile Ordinanza 4 gennaio 2023, n. 149

Canonical marriage - nullity - psychic incapacity - ecclesiastical judgment - deliberation - cohabitation after several years - public order

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The Court of Cassation, with Order No. 149/2023, once again intervened in the matter of the deliberation of ecclesiastical judgments of matrimonial nullity, establishing that cohabitation "as spouses" constitutes an essential element of the "marriage relationship" and, where it continues for at least three years from the date of its celebration, is capable of integrating a legal situation of "Italian public order". However, departing from a strict interpretation of this principle set out by the SS.U. (Judgments No. 16379/2014 and No. 16380/2014), this ruling opens up a further avenue in the wake of what has already been outlined in a previous judgment (Cass. Sent. No. 17910/2022), considering that cohabitation after three years is not an obstacle to the ecclesiastical judgment being considered in the presence of genetic defects in the "marriage act" when it is protected by nullity also in the Italian legal system.

In particular, the fact of living together for more than three years was not held to be an obstacle to declaring the civil validity in Italy of an ecclesiastic ruling in which the nullity of a canonical marriage was declared on the grounds of incapacity to contract due to a psychic cause, as this invalidating ground is also provided for in Italian law and cannot be remedied by the continuation of conjugal cohabitation before its discovery.

In the specific case at issue, in fact, the marriage had been declared null and void in accordance with Canon 1095 of the C.I.C., with particular reference to the serious defect of discretion as to the essential matrimonial rights and duties to be given and accepted (no. 2), as well as the incapacity to assume the essential obligations of marriage due to causes of a psychic nature (no. 3). According to the Supreme Court, these cases of nullity, provided for by Canon Law, find correspondence within the Italian legal system in the hypothesis of invalidity enshrined in Article 120 of the Civil Code, according to which a marriage may be challenged by any of the spouses who, although not interdicted, proves that they were incapable of understanding or willing, for any cause, even transitory, at the time of the celebration of the marriage.

In this perspective, the ruling under examination is part of the consolidated jurisprudential orientation on the matter, reiterating that in the case of the deliberation of an ecclesiastical sentence of matrimonial nullity, there is no public policy principle in the Italian legal system according to which the defect invalidating the marriage may only be invoked by the spouse whose consent is vitiated, the need to remove the matrimonial bond produced by an act tainted by a psychological defect being pre-eminent (Cass. No. 9044/2014, No. 4387/2000, No. 3002/1997, No. 6331/1988).

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