

# Ecumeny and Law

No. 1

Marriage covenant —  
paradigm of encounter  
of the *de matrimonio* thought  
of the East and West

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Part One

# Ecumenical Theological Thought



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## Marriage: The Project of Culture or Faith?

**Keywords:** marriage, culture, postmodern culture, theology of marriage

### 1. Light and Dark Sides of Today's Family

Among many sociological and political analyses, the type of diagnosis of a special significance for moral theology is, for obvious reasons, theological or, to be more precise, kairological one. It uses the data gathered by exact sciences, in this case psychosocial ones, to make comments based on those data, in a way reaching beyond the empirical dimension. Indeed, this dimension is essential and indispensable to make those comments, hence John Paul II in his enunciations many times reminds us about using exact sciences for defining what he calls Gospel discernment: the call and demands of the Spirit resound in the very events of history, and so the Church can also be guided to a more profound understanding of the inexhaustible mystery of marriage and the family by the circumstances, the questions and the anxieties and hopes of the young people, married couples and parents of today.<sup>1</sup> He himself made such a discernment numerous times in relation to the condition of the marriage and family. The most representative explanation of these comments is delivered by the papal exhortation *Familiaris Consortio*. Yet, it is advisable to first quote a part of the council constitution *Gaudium et Spes* to notice both a continuation of certain phenomena as well as their new faces. The Second

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<sup>1</sup> JOHN PAUL II: *Apostolic Exhortation "Familiaris Consortio"*, no. 4.

Vatican Council stated in its Pastoral Constitution on the Church in the Modern World, mentioning some of the hottest issues of modern times:

Yet the excellence of this institution [of marriage — P.B.] is not everywhere reflected with equal brilliance, since polygamy, the plague of divorce, so-called free love and other disfigurements have an obscuring effect. In addition, married love is too often profaned by excessive self-love, the worship of pleasure and illicit practices against human generation. Moreover, serious disturbances are caused in families by modern economic conditions, by influences at once social and psychological, and by the demands of civil society. Finally, in certain parts of the world problems resulting from population growth are generating concern. All these situations have produced anxiety of consciences.<sup>2</sup>

John Paul II in his exhortation *Familiaris Consortio* clearly at first showed some positive aspects of contemporary reality for the marriage and family as clear signs of the salvation through Christ operating in the world. Among them he mentioned:

- a more lively sense of personal freedom,
- attachment of greater importance to the quality of interpersonal relations in marriage,
- promotion of the woman's dignity,
- focusing on responsible parenthood,
- focusing on the upbringing of children,
- raising awareness of the need for tightening relations with other families with a view to bringing mutual spiritual and material assistance,
- fuller understanding of the Church's mission in the spirit of responsibility for building a more just society.<sup>3</sup>

At the same time, the Holy Father spoke about negative aspects of this marriage and family life condition, putting them in categories of basic value degradation symptoms. They are the consequences of rejecting God's love by Man. Among such phenomena he found:

- wrong understanding, both in theory and practice, of the spouses' independence in mutual relations,
- degradation of parental authority,
- practical difficulties in passing down values by families,
- ever increasing divorce rate,
- the plague of abortions,
- choosing sterilisation,

<sup>2</sup> VATICAN II: *Pastoral Constitution on the Church "Gaudium et Spes"*, no. 47

<sup>3</sup> Cf. JOHN PAUL II: *Apostolic Exhortation "Familiaris Consortio"*, no. 6.



- actual preservation of a mentality that opposes any conception of new life.<sup>4</sup>

By revealing the layer of negative phenomena, John Paul II, in a manner characteristic for him, indicated their genesis and fundamental cause:

At the root of these negative phenomena there frequently lies a corruption of the idea and the experience of freedom, conceived not as a capacity for realizing the truth of God's plan for marriage and the family, but as an autonomous power of self-affirmation, often against others, for one's own selfish well-being.<sup>5</sup>

The Pope was at the same time fully aware that apart from some internal causes, there are also external phenomena that contribute into promoting attitudes and behaviour which are in opposition to the culture for marital love and against life.

## 2. The Postmodernist Foundation of Culture

How to define this culture in the most concise and synthetic way? What common denominator of these changes do we find? If we wanted to define in a single word the period in which we are living, we could most probably use the term of "postmodernity." The word to some people may sound outmoded, whereas to others — weird. Yet the postmodernist world exists, disregarding our approval. And a characteristic feature of this world is departing from the uniform, monolithic social order for a new pluralistic one in terms of dissimilarity and diversity.

In such a world it is unimportant what is central or essential, but what becomes praiseworthy is cultural peripherality and alternativeness. Let us notice that what actually catches our attention is truly of marginal, secondary or trivial significance. But this is the point, and the purpose is to deprive the postmodernist Man a goal in life, to make him roam purposelessly in a world of emptiness devoid of any values. The point is to make the Man, instead of a wayfarer or a pilgrim on his way to his destination, a roamer, relishing just any shreds of pleasure.

Depriving the Man of the pilgrim's dimension, focused on the horizon of supernaturality and eternity, makes the same Man, and this may sound paradoxical, give up his responsibility for his temporality.

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<sup>4</sup> Cf. *Ibidem*.

<sup>5</sup> *Ibidem*.

Of particular interest, where we can see this resignation, is the area of marriage and family. The postmodernist culture (or the postmodern one), for which there are no axioms, thus rejects all that has been incontrovertible, true and certain so far. It rejects, for instance, the concept of human sexuality and as a consequence its sense.<sup>6</sup> It rejects the very concept of marriage.

Challenging the purpose of sexuality is currently accomplished within the so-called idea of “gender.” We can claim that it expresses itself in a thesis in which nothing results from nature but is a social-cultural product. Sex is then, a matter of choice. On the grounds of thus selected sex, one can build any combined configurations and relationships which one strives to attribute the role of marriage to. The idea or the ideology of “gender” arises then as a sign of objection to the hitherto, traditional culture recognizing biological sex and its natural roles and functions. The traditional model, in the opinion of followers of “gender” ideology and feminism, is the source of violence in the family, or in other words, the source of oppression. The Council of Europe Convention on preventing and combating violence against women and domestic violence, signed in December 2012 by the Polish government, contains an article mentioning that it is compulsory to fight tradition: “Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.”<sup>7</sup>

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<sup>6</sup> John Paul II in his *Evangelium Vitae* encyclical pointed at a phenomenon that lies at the foundation of the current chaos and confusion created by various ideologies — homosexual, transsexual and the ideology of gender: “Within this same cultural climate, the body is no longer perceived as a properly personal reality, a sign and place of relations with others, with God and with the world. It is reduced to pure materiality: it is simply a complex of organs, functions and energies to be used according to the sole criteria of pleasure and efficiency. Consequently, sexuality too is depersonalized and exploited: from being the sign, place and language of love, that is, of the gift of self and acceptance of another, in all the other’s richness as a person, it increasingly becomes the occasion and instrument for self-assertion and the selfish satisfaction of personal desires and instincts. Thus the original import of human sexuality is distorted and falsified, and the two meanings, unitive and procreative, inherent in the very nature of the conjugal act, are artificially separated: in this way the marriage union is betrayed and its fruitfulness is subjected to the caprice of the couple. Procreation then becomes the ‘enemy’ to be avoided in sexual activity: if it is welcomed, this is only because it expresses a desire, or indeed the intention, to have a child ‘at all costs’, and not because it signifies the complete acceptance of the other and therefore an openness to the richness of life which the child represents.” JOHN PAUL II: *Encyclical letter “Evangelium vitae”*, no. 23.

<sup>7</sup> COUNCIL OF EUROPE: Convention on preventing and combating violence against women and domestic violence, Art. 12, 1 — <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>.

We should uproot prejudices stemming from traditions, religions, hitherto culture, based on stereotypical roles of women and men. Such a basic stereotypical role for a woman is her motherhood, for a man, fatherhood. The struggle of the European Council perfectly fits here for the struggle idea of another European, Frederic Engels. The advocate of Marxist classicism said in 1884: “The first class opposition that appears in history coincides with the development of the antagonism between man and woman in monogamous marriage, and the first class oppression coincides with that of the female sex by the male.”<sup>8</sup>

As a consequence, “gender,” a new class struggle of a sort, challenges maternity. After all, the essence of the oppression of women lies in maternity and raising children, as Nancy Chodorow wrote in her book entitled *The Reproduction of Mothering*.<sup>9</sup>

One can remark, using common sense, and thus in a modernist way, that such thinking sounds like something absurd and abnormal. The point is, though, that we are living in times in which there is an ongoing destruction of terms, such as “normality,” “abnormality” or “pathology.” The new design of “normality” creates many new opportunities of defining the family. They are dominated by an open approach and instead of an institutional definition of the family, a private, voluntary social group bound with special ties, is defined as “normal.” This state of affairs does not exclusively belong to an idea or ideology, but it translates into legal and political structures, the result of which is the Charter of Fundamental Rights of the European Union issued in the year 2000. The destabilization of the term is accompanied by alternative forms of marriage or family life. And it is not just homosexual relations receiving so much publicity and aspiring to a fictitious right to the privilege of being defined as marriage; what is meant here is sanctioning divorces as normal, sanctioning “successive polygamy,” voluntary childlessness (“childfreeness”) of heterosexual couples (DINK — “*double income, no kids yet*”), of “mono parenting,” “free relationships,” “trial marriages,” or the so-called LAT — “living apart together” (partnership in which the individuals regard each other as life partners but live apart).

Such a culturally-expressed marriage signifies today a random relationship of selfish individuals whose goals are to satisfy their own desires. Such is the detached-from-nature picture of the cultural marriage, which in fact is not and cannot be a foundation for starting a family.

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<sup>8</sup> F. ENGELS: *The Origin of the Family, Private Property and the State*. II, 4: *The Monogamous Family*. <http://www.marxists.org/archive/marx/works/1884/origin-family/ch02d.htm>.

<sup>9</sup> N.J. CHODOROW: *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender*. Berkeley 1978.

### 3. Marriage in the Perspective of Faith

Such an image is opposed by the faith. The faith, let us remember, is a faith in something because of someone. This shows recognition of something as absolutely true, trustworthy, a recognition based on trust — in this case, trust in God.

The trust in God, in His word, reveals the truth about Man. And Blessed John Paul II tirelessly reminded us about it. Writing about Man, he meant that the Male and Female are the image of God. This simple statement gains significance as one makes an attempt at analysing the description of the Creation of Man — in biblical tradition, in both the descriptions of the Creation of Man. Despite stylistic differences, from both the descriptions we can gather a fundamental thesis about exceptional dignity of Man resulting from the fact of having been created “in the image of God,” as well as, which is essential, about the aspect of gift. The other fact allows us to notice that the man and woman are the image of God, not only in their individual existence but in their mutual, personal relationship. This is why in the words of the marital oath, this truth about the gift, mutual gift for each other, has been fundamentally confirmed.

The act of marital oath in the Catholic liturgy begins with a confession-declaration assuming the form of a dialogue: “I... (groom’s name) take you... (bride’s name) as my wife.” Subsequently, and almost symmetrically are uttered the words: “I... (bride’s name) take you... (groom’s name) as my husband.” In this dialogue we find a very deep and crucial anthropological truth that taking someone as a gift requires receiving the gift. A gift would not truly be a gift if the one who takes it did not, in a way, simultaneously offer himself/herself as a gift to the receiving person.

The problem is not trivial at all. This rhythmic of gift giving, of taking and giving oneself, as a gift makes the words of the marital oath meaningful and also justifies them. Without the logic of the gift, the words: “I take you...” would be very difficult to accept. An individual by taking another person makes him/her, in a way, an object of taking. This, however radically opposes the truth of human subjectivity and non-reducibility of the Man — a human person. Here, however, we are dealing with the fact that a human person: man/woman takes a woman/man, simultaneously giving himself/herself in exchange. This, in turn, univocally excludes the risk of perceiving a person as an object. On the contrary, it emphasizes, in a radical and unambiguous way, the subjectivity of the person.

Such a relationship contradicts the desire to exclusively exhaust oneself in pursuing sexual pleasures, desire to give up being open to the gift

of new life. The spouses who, owing to their faith, perceive their relationship as a mutual gift of themselves to each other, certainly discover the mystery of procreation, and this means the mystery of their participation in the creative work of God.

Blessed John Paul II ingeniously wrote: “the genealogy of the person is inscribed in the very biology of generation.”<sup>10</sup> Marriage is certainly about the element of sexuality, the element of instincts, physiology and anatomy of coition, but the conception of Man is not only about fertilization, not about a mere insemination. The genealogy of a person becomes part of this domain of biology. Unusual here is the word of genealogy, which comes from the word *genesis* and this signifies a creative act, the coming of God through human biology with a creative act. It plays a decisive role in perceiving a marital act as holy and simultaneously outlines the foundation for the holiness of Matrimony.

The perspective of faith very consistently guides an intelligent as well as faithful man towards the One who is a personal Giver of the gift of the spouses’ existence as well as the gift of new life. This is exactly why we can find in the last words of the marital oath the following message: “So help me Almighty God, the Only One in the Holy Trinity and all the Saints.” This is, in a way, synthetic for the deliberations of the human soul and intellect about the dignity and temporariness of human existence. It is also an expression of a desire for everlasting love, an expression of awareness of human insufficiency seeking support from God. The essential purpose and need to appeal for God’s love was best rendered by Karol Wojtyła in his drama entitled *The Jeweler’s Shop*:

9. Love — love pulsating in brows,  
in man becomes thought  
and will:  
the will of Teresa being Andrew,  
the will of Andrew being Teresa.  
[...]
11. How can it be done, Teresa,  
for you to stay in Andrew forever?  
How can it be done, Andrew,  
for you to stay in Teresa forever?  
Since man will not endure in man  
and man will not suffice.
12. Body — thought passes through it,  
is not satisfied in the body —  
and love passes through it.

<sup>10</sup> JOHN PAUL II: *Letter to Families “Gratissimam Sane”*, no. 9.

Teresa, Andrew, seek  
 a harbor for thought in your bodies  
 while they last,  
 seek the harbor for love.<sup>11</sup>

Words of the marital oath in Catholic liturgy are, in a large measure, a deep reflection on personal love. They show the meaning of love as a mutual gift that protects human subjectivity. They also show the dynamism of love inscribed in human hopes confronted with life's reality as well as uncertainty of human fortunes. Therefore, the gift of love striving to survive different life trails, should seek a "haven for love." Finding it in the Sacrament of Matrimony, which introduces the One who is Love into human love, is the most sensible and justifiable choice for human love.<sup>12</sup>

Struggle for the family is the subject of contention about the future of Man and mankind. It is a distinctive contention between contemporary culture and faith. Today, the truth about marriage, and the family growing from it, requires special protection and special promotion.

#### 4. The Biblical Paradigm of Truth about Marriage and Family

It is meaningful, then, with this aim, to find in our faith a special strengthening. We still retain within our memories and emotional domain the time of the birth of Christ. Christ came into this world, into a family, a family of its own era, living in its own culture, in times of political pressures. This was a marriage inscribed into the culture and cultural tradition of its time. A patriarchal marriage, where, to a large extent, the husband decided on the life of his wife. This is a marriage of two people, where about one of them, there is a suspicion of marital unfaithfulness (as Mary found herself expectant and Joseph did not want to expose her to public disgrace).<sup>13</sup>

<sup>11</sup> K. WOJTYŁA: *The Jeweler's Shop: a meditation on the sacrament of matrimony, passing on occasion into a drama*. [Original title: *Przed sklepem jubilera: medytacja o sakramencie małżeństwa przechodząca chwilami w dramat*]. Trans. B. TABORSKI. New York 1980. Available online: <http://web1.desales.edu/assets/salesian/PDF/JewelersShopsriptact1.pdf>.

<sup>12</sup> Cf. P. BORTKIEWICZ: "Analiza etyczna przysięgi małżeńskiej" [article in print].

<sup>13</sup> Cf. A. PACIOREK: *Ewangelia według świętego Mateusza. Rozdziały 1—13. Wstęp, przekład z oryginału, komentarz*. T. 1. Część 1. [Nowy Komentarz Biblijny. Nowy Testament]. Częstochowa 2005, pp. 91—96.

The Gospel author writes: “Joseph planned to send her away secretly.”<sup>14</sup> Then, he goes on to say that: “But after he had considered this,”<sup>15</sup> which suggests that the decision matured in Joseph’s soul, he resolved to put it into effect. The decision resulted from the fact that Joseph did not want to give his name to a Child who was not his own and at the same time wanted to avoid exposing Mary to public disgrace. A solution that appears here is that he planned to send her away secretly as he was a righteous man.

The sentence: “Joseph [...] was a righteous man,”<sup>16</sup> remains a key to the whole drama. The biblical righteousness is not only a clear abidance by the Law, but also finding God’s plan being put into effect in different events. Joseph, as a righteous man, was determined to do the will of God. Thus, not so much did he want to get rid of Mary as a troublesome burden, as he recognized that he could not “appropriate” a woman God decided to lay His hands on and who, therefore, should not be touched. He decided not to get involved in a mystery beyond his comprehension. He did not seek people’s advice and not being able to find a solution, he desired to humbly retreat and wait for God’s decisions in silence.<sup>17</sup>

It is worth taking a look at this crisis situation, at this young spouses’ drama from the perspective of a range of different opportunities to solve it. The first opportunity is the one provided by the culture. The Old Testament culture held the husband’s position as a privileged one. It is worth mentioning here that a man committed adultery only when he violated the property law of another man having sexual relations with an engaged girl or a married woman and also his female slave.<sup>18</sup> The woman’s position was always different as her unfaithfulness was always considered a violation of the property rights of her husband. Thus, in the light of the culture and current law, a husband suspecting his wife of marital unfaithfulness had a right to a decisive reaction. Another opportunity to solve the problem was offered by common sense enriched with sensitivity. It is here that Joseph’s decision comes a decision to send her away. Yet there was a third opportunity which became a fact: to help Joseph’s embarrassment, the Angel intervened, thus removing the doubts. Joseph trusted God in this crisis situation. Therefore, it was not the culture, or common sense, but faith that saved the marriage.

The trust in God revealed its saving power also in other critical situations in the Holy Family’s life. This was a marriage that went through

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<sup>14</sup> Mt 1:19.

<sup>15</sup> Mt 1:20.

<sup>16</sup> Mt 1:19.

<sup>17</sup> Cf. A. PACIOREK: *Ewangelia według świętego Mateusza...*, p. 97.

<sup>18</sup> Cf. Leviticus 19, 20—22.

problems at the time of their Baby's delivery, encountering unimaginable indifference. This was a marriage destined to forced immigration. This was simultaneously a married couple that was with each other and for each other, at difficult moments in everyday home life, in the temple.

In this way the Holy Family reminds us the truth about marriage perceived as love, that being subjected to trials, survives and expresses itself through the mutual being for each other, being a selfless gift, an ethos of personalism, giving testimony about the truth of Man in marriage. In this manner it reminds us that the fulfillment of love is eternity and holiness.

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Blessed John Paul II wrote in his encyclical on life: "In seeking the deepest roots of the struggle between the 'culture of life' and the 'culture of death', we cannot restrict ourselves to the perverse idea of freedom mentioned above. We have to go to the heart of the tragedy being experienced by modern man: the eclipse of the sense of God and of Man, typical of a social and cultural climate dominated by secularism, which, with its ubiquitous tentacles, succeeds at times in putting Christian communities themselves to the test. Those who allow themselves to be influenced by this climate easily fall into a sad vicious circle: when the sense of God is lost, there is also a tendency to lose the sense of Man, of his dignity and his life; in turn, the systematic violation of the moral law, especially in the serious matter of respect for human life and its dignity, produces a kind of progressive darkening of the capacity to discern God's living and saving presence."<sup>19</sup>

The above-quoted words refer to the whole area of contention between the culture of life and culture of death. A special focal point of the contention yet, was and has been the family growing from the institutional marriage of the man and woman. The modern culture featuring hedonism and moral permissiveness, supported by chaotic and destructive political activities seems to contradict the chance to save the traditional truth about marriage. Words of the blessed Pope let us, however, discover the unusually distinctive conjunction and dependence: sensitivity to God and sensitivity to another human being.

Any attempts at constructing a humanistic culture in separation from God, in activities denying His existence, mean creating a destructive culture. In its deepest sense, an anti-humanistic culture and, as such, doomed to self-destruction.

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<sup>19</sup> JOHN PAUL II: *Encyclical letter "Evangelium vitae"*, no. 21.



PAWEŁ BORTKIEWICZ

## Małżeństwo — projekt kultury czy wiary?

## Streszczenie

Kościół katolicki od wielu lat analizuje i prognozuje sytuację małżeństwa i rodziny w świecie współczesnym. Wyrazem tego były zwłaszcza wypowiedzi Soboru Watykańskiego II i bł. Jana Pawła II. Ukazują one blaski i cienie tej podstawowej wspólnoty życia społecznego. Cechą charakterystyczną owej analizy jest krytyczne zwrócenie uwagi na presję kultury na sposób rozumienia małżeństwa i rodziny. Kultura, naznaczona charakterystycznymi cechami postmodernizmu (oderwania od prawdy obiektywnej i normatywności) próbuje zrelatywizować samą koncepcję małżeństwa jako dowolnego związku. Wyrazem tego jest presja kultury (ideologii) *gender*. Kościół katolicki w swoim nauczaniu przypomina dobitnie prawdę o małżeństwie kobiety i mężczyzny, odczytywaną w perspektywie teologii stworzenia. Odślania w ten sposób wielkość i niewystarczalność miłości ludzkiej, odwołując ją do absolutu miłości w Bogu. W dialogu z Bogiem, który wyznacza ramy humanizmu chrześcijańskiego, można odnaleźć niezmienną wielkość małżeństwa kobiety i mężczyzny.

**Słowa kluczowe:** małżeństwo, kultura, kultura postmodernistyczna, teologia małżeństwa

PAWEŁ BORTKIEWICZ

## Le mariage — projet de culture ou de croyance?

## Résumé

L'Église catholique analyse et pronostique depuis de nombreuses années la situation du mariage et de la famille dans le monde moderne. Le IIe concile oecuménique du Vatican et Jean-Paul II le transmettaient dans leurs messages. Ils démontrent les lumières et les ombres de cette communauté primordiale de la vie sociale. Le trait caractéristique de cette analyse est l'attention portée sur la pression de la culture sur la façon de comprendre le mariage et la famille. La culture, marquée par des traits typiques pour le postmodernisme (détachage de la vérité absolue et la normativité) tend à relativiser la conception même du mariage comme une liaison quelconque. Cela se reflète dans la pression de la culture (idéologie) *gender*. L'Église catholique dans son enseignement rappelle catégoriquement la vérité sur le mariage de la femme et de l'homme, interprétée dans la perspective de la théologie de la création. Elle dévoile ainsi la grandeur et l'insuffisance de l'amour humain, en se référant à l'absolu de l'amour divin. Dans le dialogue avec Dieu, qui détermine le cadre de l'humanisme chrétien, on peut trouver la grandeur inchangeable du mariage de la femme et de l'homme.

**Mots-clés:** mariage, culture, culture postmoderne, théologie du mariage

PAWEŁ BORTKIEWICZ

## Il matrimonio — progetto della cultura o della fede?

## Sommarío

Da molti anni la Chiesa cattolica analizza e pronostica la situazione del matrimonio e della famiglia nel mondo contemporaneo. Ciò è stato particolarmente manifestato specialmente con le dichiarazioni del Concilio Vaticano II e del Beato Giovanni Paolo II che rilevano luci e ombre di questa comunità fondamentale della vita sociale. Tale analisi in particolar modo dimostra che la cultura incide su come vengono percepiti il matrimonio e la famiglia. La cultura, segnata dai tratti caratteristici del postmodernismo (allontanamento dalla verità oggettiva e dalla normatività), cerca di relativizzare lo stesso concetto del matrimonio come un legame qualunque. Ciò si manifesta con la pressione della cultura (ideologia) *gender*. La Chiesa cattolica nel suo insegnamento ricorda esplicitamente la verità del matrimonio tra l'uomo e la donna, interpretata nella prospettiva della teologia della creazione. In tal modo la Chiesa rivela la grandezza e l'insufficienza dell'amore umano, rapportandolo all'assoluto amore di Dio. Nel dialogo con Dio che definisce il quadro dell'umanesimo cristiano si può ritrovare la grandezza immutabile del matrimonio tra l'uomo e la donna.

**Parole chiave:** matrimonio, cultura, cultura postmoderna, teologia del matrimonio

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## Indissolubility of Marriage from Lutheran Perspective

**Keywords:** marriage, Lutherans, ecumenism, Catholic-Lutheran ecumenical dialogue

When comparing the Catholic and the Lutheran tradition, it is easy to notice the differences in both the theology and the practice of marriage. Among the numerous issues constituting the specifically Lutheran view of marriage, the issue of its indissolubility has particular significance.

Obviously, within a single article, it is not possible to offer a comprehensive presentation of this important and complex problem as met with in various churches and communities cultivating the Lutheran tradition. Therefore, we must resort to certain simplifications and concentrate on the main trend of the Lutheran tradition, considering especially the views of Martin Luther (1483—1546) himself and skipping the divergences in this matter among the Lutheran faithful.<sup>1</sup>

Taking into account the difficulties mentioned, I will start this reflection with showing the basic elements of the Lutheran conception of marriage (1). Next, I will present the Lutheran view of the indissolubility of marriage (2). Finally, I will point out to the presence of this issue in the ecumenical Catholic-Lutheran dialogue (3).

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<sup>1</sup> As a matter of fact, the churches following the Lutheran tradition differ in some moral and marital issues. Besides the majority of Lutheran churches associated in the Lutheran World Federation, there are also conservative churches of this tradition like, e.g., the Lutheran Church — Missouri Synod in the USA. Cf. P. JASKÓŁA: *Podstawy ekumenizmu*. Opole 2010, p. 117; T. TERLIKOWSKI: “Mężczyznę i niewiastę stworzył ich. Etyka seksualna Kościoła Luteranckiego Synodu Missouri.” *Przegląd Powszechny* 10 (2004): pp. 14—25.

## 1. The Elements of the Lutheran Conception of Marriage

The basic difference between the Lutheran and Catholic theology of marriage is in the fact that for Luther and the Lutheran tradition, marriage is not a sacrament in the strict sense, that is, it is not a sign bestowing grace but a “secular thing,” meaning some natural reality concerning all people.<sup>2</sup> Luther admits that the Fathers of the Church conceived of matrimony as of a sacrament. Initially, the reformer himself seemed to see it in the same way.<sup>3</sup> In the course of time, however, his views of justification led him to rejection of the sacramental character of marriage. Indeed, in his polemical work *The Babylonian Captivity of the Church* (1520), he questioned the sacramental character of marriage and the competences of the Pope and Church concerning it.<sup>4</sup>

On the one hand, this followed from the fact that, according to Luther, marriage was neither established by Christ nor given a promise of grace (the New Testament does not contain any clear confirmation of this truth), but it was established by God in the act of creating man and woman who are called to multiply the human race (cf. Gen 1:27). At the same time, Luther emphasized that there were two essential elements constituting every sacrament: the word of God, that is, being established by Christ, and including His promise of grace, and the visible sign — like water in the sacrament of baptism or bread and wine in the Eucharist. This ruled out some of the so-called sacraments, including marriage.<sup>5</sup> Thus, the words of the marriage vows, according to Luther, do not contain any matter that could testify to sacramental character of marriage. To be true, marriage was established by God, but in itself, according to the reformer, it does not bestow God’s grace to the human as the latter

<sup>2</sup> Luther did not write any systematic study on matrimony and family life. He formulated his views on these matters in the following writings: *A Sermon on the Estate of Marriage* (1519), *The Babylonian Captivity of the Church* (1520), *The Estate of Marriage* (1522), *Commentary on 1 Corinthians 7* (1523), *Wedding Book* (1529), *Large Catechism* (1530), *On Marriage Matters* (1530), *A Marriage Sermon on Hebrews 13:4* (1531). They are quoted here after the critical Weimar Edition: *Martin Luthers Werke. Kritische Gesamtausgabe*. Weimar 1883—1948, the so-called Weimarer Ausgabe (this edition is usually referred to as WA). Cf. J. MOTYKA: “Luter o rodzinie i w rodzinie.” W: *Z problemów reformacji*, t. 6. Red. E. OŁTARZEWSKA-WIEJA. Bielsko-Biała 1993, p. 88; C. MARUCCI: *Matrimonio e divorzio nella teologia di Martin Lutero*. In: G. LORIZIO, V. SCIPPA (eds.), *Ecclesiae sacramentum. Studi in onore di P. Alfredo Marranzini S.J.* Napoli 1986, pp. 38—40.

<sup>3</sup> Cf. M. LUTHER: *A Sermon on the Estate of Marriage*. WA 2, p. 168; C. MARUCCI: *Matrimonio e divorzio...*, p. 44.

<sup>4</sup> Cf. M. LUTHER: *The Babylonian Captivity of the Church*. WA 6, pp. 550, 553.

<sup>5</sup> Cf. *Ibidem*, p. 560; J. PELIKAN: *Tradycja chrześcijańska. Historia rozwoju doktryny*, t. 4: *Reformacja Kościoła i dogmatów 1300—1700*. Kraków 2010, p. 216.

receives it only owing to his or her faith in Jesus Christ. Religious faith, according to Luther, fulfills the same functions as the sacramentality of marriage.<sup>6</sup> Commenting on the Letter to Ephesians (5:32), Luther holds that the bond of Christ and the Church is a “mystery” while the marital bond is not.<sup>7</sup>

Therefore, his rejection of the sacramental character of marriage follows from Luther’s view of marriage as a “secular thing” or “secular state.” This does not mean at all that the reformer excluded marriage from God’s plan of salvation altogether, but that it was not established within the order of the New Testament. Thus, marriage belongs to the order of creation, not redemption. This view has its foundations in Luther’s teaching on the two kingdoms: the spiritual and the secular one. Both the realms (kingdoms) are spheres of God’s activity: in the secular one, He is the Lord of creation; in the spiritual one, He is the Lord of salvation. The spiritual kingdom is ruled only by Christ, the Saviour of mankind. Christ’s salvific activity aims at the “inner” man. The “outer” or “secular” sphere of life belongs to the kingdom of God as the Creator of the world. Keeping this sphere of life in order has been committed by God to secular rule. Institution of marriage also belongs to the latter order.<sup>8</sup> The secular character of marriage then does not by any means signify godlessness to Luther, but it means submitting it to the secular regiment of God. Essentially, due to its origin, marriage is “the work of God” which enjoys His care and blessing.<sup>9</sup>

When we confront the words of Luther concerning the marital bond and Christ’s covenant with the Church with the ideas of contemporary Evangelical theologians (e.g. K. Barth, J. von Allmen, O. Piper), we can

<sup>6</sup> Luther writes: “One cannot read anywhere that one who marries a woman receives grace.” M. LUTHER: *The Babylonian Captivity of the Church*. WA 6, p. 550. Cf. W. PABIASZ: *Małżeństwo i etyka seksualna w teologicznej refleksji Marcina Lutra*. Częstochowa 1993, p. 133.

<sup>7</sup> Cf. M. LUTHER: *The Babylonian Captivity of the Church*. WA 6, pp. 551—557; W. PABIASZ: *Małżeństwo...*, p. 133.

<sup>8</sup> Cf. A. SKOWRONEK: “Dwie teologie małżeństwa.” *Więź* 2 (1975), pp. 70—71; C. MARUCCI: *Matrimonio e divorzio...*, pp. 48—49; M. HINTZ: “Poglądy etyczne Lutra.” *Studia i Dokumenty Ekumeniczne* 1 (1997): 24.

<sup>9</sup> Cf. M. LUTER: *Duży Katechizm. Szóste przykazanie*. In: *Księgi Wyznaniowe Kościoła Lutherańskiego*. Bielsko-Biała 2003, p. 82; A. SKOWRONEK: “Dwie teologie...,” pp. 70—71. For the sake of the especial dignity of marriage, Luther criticizes all attempts at holding marriage in contempt which are based on the conviction that the state of virginity is superior to the state of marriage. Cf. *Wyznanie Augsburgskie*, XXVII. In: *Księgi Wyznaniowe...*, pp. 15—158; P. HOLC: “Małżeństwo w ‘Księgach Symbolicznych’ luteranizmu.” In: *Sakramentalność małżeństwa*. Red. Z. KIJAS, J. KRZYWDA. Kraków 2002, pp. 75—77. Luther himself entered marriage with an ex-Cistercian, Katherine von Bora (June 13, 1525). Cf. J. MOTYKA: “Luter o rodzinie...,” pp. 88, 99—102.

notice a remarkable development of the Lutheran doctrine concerning the matter. K. Barth, for example, sees marriage as a living sign of the covenant with God although he does not consider it as a salvific event — he only perceives its image in it.<sup>10</sup> At the same time, J. von Allmen is inclined to believe that, in the light of the classical text of Eph 5:21—32, one can regard marriage as *mysterium* and sacrament in a similar way as one can regard Christ and Church as sacrament.<sup>11</sup> Although such attempts at reinterpreting the Paulinian text which are undertaken by contemporary Protestant theologians do not mean clear acknowledgement of the sacramental character of marital bond, one can consider them as an attempt at including this reality in the dynamism of the history of salvation.<sup>12</sup>

At the end of the day, the contemporary Evangelical theology, though rejecting the sacramental character of matrimony, does not deny that it has certain “sacramental structure.” So, marriage is not a “secular thing” strictly speaking. Some theologians are even prone to acknowledge its sacramental character provided, however, that one accepts the scholastic distinction between the major sacraments (*sacramenta maiora*), entailing baptism and the Eucharist, and minor sacraments (*sacramenta minora*), entailing the rest of the Catholic sacraments.<sup>13</sup>

However, the fact that Luther regards marriage as a part of the order of creation, and not of grace and salvation, has definite implications.

While the Catholic theology recognizes marriage itself as a sacrament, that is, an effective sign bestowing grace, the Evangelical tradition perceives marriage as an earthly community of persons oriented to God’s word and sacrament which sanctify people.<sup>14</sup> According to Luther, marriage as a life’s relationship and institution does not mediate in sanctification and salvation. Husband and wife obtain grace and life, first of all,

<sup>10</sup> Cf. K. BARTH: *Die Kirchliche Dogmatik*, Vol. III/4. Zürich, 1945, p. 241; L. SCHEFF-CZYK: “La dottrina del matrimonio di Karl Barth sotto l’aspetto ecumenico.” In: IDEM: *Ecumenismo. La rapida via della verità*. Roma 2007, pp. 193—225.

<sup>11</sup> Cf. J. VON ALLMEN: “Maris et femmes d’après saint Paul.” *Cahiers théologiques* 29 (1951): 61.

<sup>12</sup> Cf. C. RYCHLICKI: *Sakramentalny charakter przymierza małżeńskiego. Studium teologiczno-dogmatyczne*. Płock 1997, pp. 278—280.

<sup>13</sup> Cf. J. DUSS-VON WERDT: “Teologia del matrimonio. Il carattere sacramentale del matrimonio.” In: J. FEINER, M. LÖHRER (eds.): *Mysterium Salutis*, Vol. VIII. Brescia 1975, p. 575; P. HOLC: “Małżeństwo...,” p. 81; F. COURTH: *I sacramenti. Un trattato per lo studio e per la prassi*. Brescia 1999, p. 466.

<sup>14</sup> “A Catholic believes — writes Fr. Alfons Skowronek — that it is through marriage that one is granted grace and becomes sanctified together with one’s spouse whereas an Evangelical believes that it is through word and sacrament that one receives grace — not through but in marriage.” A. SKOWRONEK: “Dwie teologie...,” p. 71.

due to the mediation of the proclaimed Gospel. Sanctification of marriage as a state comes only in the course of common life when realizing the two basic aims of marriage: marital intercourse and breeding children.<sup>15</sup> As a result, while, according to the Catholic doctrine, sanctity of marriage follows from its sacramental character, that is, its objective element — the sanctity of marriage, according to Luther, can only follow from subjective elements, that is, from a personal act of faith in God's word on marriage in the Scripture.<sup>16</sup>

Rejection of the sacramentality of marriage by Luther and regarding it as a part of the "secular" or "outer" order also leads, as a consequence, to making it independent of the Church law and dependent on the Civil Code. At the foundation of this position of Luther and the Lutheran tradition, there is a conviction that, as a result of original sin, marriage has lost its direct dependence on the Creator. Original sin makes it impossible for the human to come to know God's law. Therefore, there must be an appropriate authority, established by God, which shall interpret that law properly. This authority belongs to the state whose head is also a "minister of God" who should look after it that God's commandments are observed in the world. Consequently, marriage as a "secular thing" becomes subordinated to the secular rule, and not that of the Church.<sup>17</sup>

This doctrine was grounded by Luther elaborating his notion of the Church as an invisible spiritual community of the faithful. According to this conception, marriage cannot be "part" of the Church or be subject to her competence because, by its nature, it concerns the outer order. Only the very life in marriage belongs to Church management. Luther did not make a clear distinction between the range of competence in the secular and in the Church rule, but, in any case, he did not grant the state a complete and exclusive rule over marriage. On the one hand, he was absolutely opposed to the Church interfering in married couples' issues; on the other hand, however, he realized that their possible moral conflicts, which definitely belong to the inner range, can be solved only within the Church community. In this way, the Church should look after the salvation of the married couples. Marriage should also be established

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<sup>15</sup> Cf. K. KARSKI: *Symbolika. Zarys wiedzy o Kościołach i wspólnotach chrześcijańskich*. Warszawa 1994, p. 138; S. JANKOWSKI: "Kwestia nierozzerwalności małżeństwa w kontekście ekumenicznym." *Ateneum Kapłańskie* 139 (2002), B. 1: 132; J. MOTYKA: "Luter o rodzinie..." pp. 93—96.

<sup>16</sup> Cf. W.B. ZUBERT: "K. Suppan, *Die Ehelehre Martin Luthers (...)* (review)." *Prawo Kanoniczne* 17, nos. 3—4 (1974), p. 315.

<sup>17</sup> Cf. IDEM: "Prawno-historyczne przesłanki nowej wykładni kan. 1082 KPK." *Śląskie Studia Historyczno-Teologiczne* 10 (1977), p. 266.

in the presence of the community of the faithful. The ecclesiastic form of marriage, however, has no strict legal character, but its task is to stimulate the faith in the spouses as it is only owing to faith that married life can contribute to their sanctification.<sup>18</sup>

Following this general brief presentation of the Evangelical concept of marriage, we can set the question: What — having the above as the background — can we say about the dissolubility of marriage and acceptability of it being dissolved in the Lutheran tradition?

## 2. Indissolubility versus Acceptability of Marriage Dissolution

The Evangelical Lutheran Church teaches firmly that matrimony is a permanent bond established for a lifetime in accordance with Jesus' words: "What God has joined together, man must not separate" (Mt 19:6). This was also the stand of Martin Luther who considered marriage to be indissoluble by nature.<sup>19</sup> In this case, indissolubility of the bond follows from the essential value pertaining, in the light of the Bible, to God's faithful love. It is His love that the love of husband and wife blessed by God should become witness of. Thus, marriage appears as a whole life's community — however, not in legal but in existential categories: as a fulfillment of the plan of God the Creator.<sup>20</sup>

Divorce is abandonment of God's will and order. It is a great evil, and therefore it is accepted only as the final solution when the conjugal union breaks down for some important reasons.<sup>21</sup> In such a situation, the Evangelical Lutheran Church does not forbid the procedure of divorce but it leaves it to the civil court. She emphasizes at the same time that a human

<sup>18</sup> Cf. IDEM: "Prawno-historyczne przesłanki...", p. 265; A. SKOWRONEK: "Dwie teologie małżeństwa...", p. 71.

<sup>19</sup> Cf. K. KARSKI: *Symbolika...*, p. 139. This idea was expressed by Luther in the form of the act of contracting matrimony given in his *Wedding Book* (WA 30, III, pp. 74—80). Cf. W.B. ZUBERT: "Prawno-historyczne przesłanki...", p. 268, note 29.

<sup>20</sup> Cf. A. CONCI: "Matrimonio e divorzio nella tradizione protestante." *La Scuola Cattolica* 2009, no. 3: 450—452. Considering this, Evangelical theologians are critical about the views of the Roman Catholic theologians according to whom marriage is more susceptible to dissolution when sacramentality is not recognized. The Evangelicals emphasize that grounding indissolubility of marriage in the faithful love of God is not less obliging than seeking for its grounds in sacramentality of marriage. Cf. *Ibidem*, p. 451.

<sup>21</sup> Cf. B. TRANDA: "Ewangelicki pogląd na małżeństwo." *Przegląd Powszechny* 1996, no. 1, p. 33.



is personally responsible before God for the dissolving of his or her marriage, and the secular authority only states in public that the marital bond has been dissolved according with the Scriptures. In the Lutheran Church, remarriage is possible after the ruling of the divorce by a civil court.<sup>22</sup>

“Lutheranism, then — K. Karski writes — regards marriage as a life-long relationship, but it is not blind to the fact that many people are not able to remain faithful to the partner according with the marriage vows. This experience leads one to the conviction that the state legislation should allow for divorces, and that, generally, a wedding of the divorced in the Church should be possible.”<sup>23</sup>

It was exactly these fairly practical reasons that induced Luther to present a theoretical justification of the possibility of divorce. Initially, he based his views of divorce not on biblical arguments but on referring to the principle of lay character of marriage and on rejection of its sacramentality. However, when confronting the Catholic theology, which referred to texts of the New Testament for its doctrine of indissolubility of marriage, also Luther began searching for a theological confirmation of his opinion on this matter in the Holy Scripture.<sup>24</sup>

As far as understanding of clauses is concerned, Luther and his followers accepted their literal interpretation, that is, as exceptions from the principle of indissolubility. Such an exception and a basis for divorce is — according to the Holy Scripture — found, first of all, in adultery, which thwarts marriage.<sup>25</sup> In his works, *The Babylonian Captivity of the Church* (1520) and *On Married Life* (1522), Luther also added more reasons justifying divorce — which testified to his understanding of human weakness: impotence, being abandoned by one’s spouse, and the spouse’s constant refusal to fulfill the marital duty.<sup>26</sup>

<sup>22</sup> Cf. Ibidem, p. 33; W.B. ZUBERT: “Prawno-historyczne przesłanki...,” p. 268.

<sup>23</sup> Cf. K. KARSKI: *Symbolika...*, p. 139. We can add that Evangelical circles do not consider separation as a satisfactory solution of marital problems. To their mind, it is a partial solution, and one that is practically impossible to put into life because chastity is a unique gift of God received by few people. Cf. W.B. ZUBERT: “Prawno-historyczne przesłanki...,” pp. 266—267; B. TRANDA: “Ewangelicki...,” pp. 32—33.

<sup>24</sup> Cf. W.B. ZUBERT: “Prawno-historyczne przesłanki...,” p. 267.

<sup>25</sup> Cf. M. LUTHER: *A Sermon for the Sixth Sunday after Easter (Exaudi)* [May 8th, 1524]. WA 15, p. 561. Luther considered adultery as the greatest theft and robbery. Cf. M. HINTZ: “Poglądy...,” pp. 22—23.

<sup>26</sup> Cf. W. PABIASZ: *Małżeństwo...*, pp. 80—84; S. JANKOWSKI: “Kwestia nierozzerwalności małżeństwa...,” p. 133; A. BELLINI: “Il matrimonio in Lutero e Calvino.” In: V. MELCHIORRE (ed.), *Amore e matrimonio nel pensiero filosofico e teologico moderno*. Milano 1976, pp. 67—69. According to other reformers, one should count among the reasons justifying a divorce also mistreatment by the spouse, incompatibility, apostasy and heresy. Cf. J. WRÓBEL: “Małżeństwo w dokumentach Soboru Trydenckiego.” *Roczniki Teologiczne* (KUL) 54 (2007), B. 3, pp. 66—67.

Luther believed that the secular authority could inflict the capital punishment on the guilty spouse in all these cases. In this way, he interprets the above mentioned reasons for dissolubility of marriage in terms of civil death: the guilty spouse should be considered as dead. This opinion is part of Luther's general view of marriage as an interpersonal event. Consequently, any serious destruction caused in the relation with the spouse and God should be considered as killing of the marriage.<sup>27</sup>

It should be noted that the question of the reasons which justify dissolution of marriage is not always clearly presented. On the one hand, they are formulated on the grounds of the Holy Scripture. On the other hand, we can see the tendency to increase the number of the reasons which takes into account the existential factor, that is, the whole sphere of human co-existence. All this leads to the conclusion that Luther and his followers, and also the Orthodox Church, are marked by realism, that is, awareness that not all people can afford to meet the requirements of the Gospel teaching on marriage. This is why the Evangelical Lutheran Church allows for divorce as a lesser evil. It is not without significance for the development of the practice of divorce in Protestantism that sacramentality of marriage has been rejected and marriage has been left under the management of civil law.<sup>28</sup>

In answer to the reformers' views, the Council of Trent spoke against dissolubility of marriage, even in case of adultery. The Council confirmed the sacramental character of matrimony and the Church's competence in dealing with its issues.<sup>29</sup>

### 3. Indissolubility of Marriage from the Ecumenical Perspective

Issues concerning marriage, including its indissolubility, became subject of some of the theological ecumenical dialogues between Catholics and Christians of other denominations in the West. Considering the scope of our topic, we should pay attention especially to the document of

<sup>27</sup> Cf. M. LUTHER: *The Estate of Marriage*. WA 10, II, p. 289; W.B. ZUBERT: "Prawno-historyczne przesłanki...", p. 268; A. BELLINI: *Il matrimonio...*, p. 68; A. CONCI: *Matrimonio e divorzio...*, p. 456; C. MARUCCI: *Matrimonio e divorzio...*, pp. 53, 57.

<sup>28</sup> Cf. M. HINTZ: "Poglądy...", p. 23; A. BELLINI: *Il matrimonio...*, p. 71; S. JANKOWSKI: "Kwestia nierozzerwalności małżeństwa...", p. 134.

<sup>29</sup> Cf. THE COUNCIL OF TRENT: Session XXIV (1563), Can. 1—12. W: *Breviarium fidei. Wybór doktrynalnych wypowiedzi Kościoła*. Red. S. GŁOWA, I. BIEDA. Poznań 1998, pp. 504—506; L. BRESSAN: *Il canone tridentino sul divorzio per adulterio e l'interpretazione degli autori*. Roma 1973, pp. 193—199; Cf. J. WRÓBEL: "Małżeństwo...", pp. 72—78.

the Scholarly Commission of the Roman Catholic Church, the Lutheran World Federation and the World Alliance of Reformed Churches: *Theology of Marriage and the Problems of Mixed Marriages* published in 1976.<sup>30</sup>

All the authors of the document agreed that marriage is a lifelong obligation. At the same time, an essential difference between Roman Catholics, on the one hand, and the Lutherans and the Reformed Christians on the other, was noticed, for instance, in their view of the “sacramental” character when discussing divorce or remarriage.<sup>31</sup>

If the marriage has been validly contracted and consummated, the Roman Catholic Church considers it as “the sacrament or sign of the union of Christ with the Church, and thus, [...] indissoluble as this union.” “If in the end the continuation of conjugal life seems impossible,” the Catholic Church allows for physical separation. “But if the spouses decide to obtain a divorce, then the Catholic Church considers that it has not the right to view the second marriage which might follow as a Christian marriage or even as a valid one. That is, it denies that this second marriage, following upon a divorce, can represent the union of Christ with the Church, a union which lasts for ever.”<sup>32</sup>

As for the Reformation Churches, “even though they hold that marriage is a sign of the Covenant, they do not consider Christian marriage to be a sacrament in the full sense of the word.” To be true, they see the union of Christ and the Church as the prototype of Christian marriage, but this does not imply for them that, in case of a total disruption, a divorce should contradict the mystery of Christ. “That is why when it seems that the marriage cannot continue any longer, the Reformation Churches consider that the bond of marriage has been destroyed, a fact which is ascertainable, like death. Therefore, nothing remains of the first marriage that could prevent remarriage. This does not mean that in this way the Reformation Churches resign themselves to divorce; but once divorce exists, they would not consider themselves bound to hold that a new Christian marriage is always impossible.”<sup>33</sup>

<sup>30</sup> The Polish translation of the document: “Teologia małżeństwa a problem małżeństw międzywyznaniowych. Sprawozdanie końcowe Komisji Naukowej Kościołów Rzymskokatolickiego, Luterńskiego i Kalwińskiego za rok 1976.” W: *Ekumenia a współczesne wyzwania moralne*. Red. T. KAŁUŻNY, Z. KIJAS. Kraków 2009, pp. 199—241; W. HANC: “Problem małżeństw mieszanych oraz próby rozwiązań na przykładzie międzywyznaniowych dialogów.” *Studia Oecumenica* 3 (2003), pp. 90—91.

<sup>31</sup> Cf. “Teologia małżeństwa a problem małżeństw międzywyznaniowych...,” nos. 24—25.

<sup>32</sup> *Ibidem*, nos. 26—27.

<sup>33</sup> *Ibidem*, nos. 29—30. Cf. K. KARSKI: “Kwestie moralne w dokumentach dialogu katolicko-protestanckiego oraz Wspólnej Grupy Roboczej Światowej Rady Kościołów i Kościoła Rzymskokatolickiego.” W: *Ekumenia...*, pp. 108—109.

At the same time, the representatives of the Reformation Churches stated that they perceived certain events in the history of the Roman Catholic Church as confirmation of their convictions. They pointed to the fact that “at the Councils in Florence and Trent, the Catholic Church strengthened her notion of marriage dissolubility, on the one hand, however, on the other, she did not want to evaluate the position of the Orthodoxy on the issue.”<sup>34</sup>

We find similar arguments in the document of the official Catholic-Lutheran dialogue conducted at the world forum: *Facing Unity* (1984).<sup>35</sup> We read in it: “In the area of ethical decisions, it appears important that the Catholic Church right up to and including the Council of Trent did not condemn the practice of divorced persons remarrying in the Eastern Orthodox churches although it did reject this practice for itself.”<sup>36</sup>

Certain topics referring to dissolubility of marriage can be also found in local dialogue documents of Catholics and Evangelicals. One document is worth mentioning here first of all — on baptism and marriage (1972) — a result of the dialogue among the Roman Catholic, Lutheran and Reformed Church in France.<sup>37</sup> In its last point, the document takes up the issue of indissolubility and divorce, pointing to the differences between Catholics and Protestants in this matter.<sup>38</sup>

<sup>34</sup> “Teologia małżeństwa a problem małżeństw międzywyznaniowych...,” no. 32. Cf. K. KARSKI: *Kwestie moralne...*, p. 109.

<sup>35</sup> Cf. “Jedność przed nami. Raport Wspólnej Komisji Rzymskokatolicko-Ewangelicko-luterańskiej” (1984). W: *Blżej wspólnoty. Katolicy i luteranie w dialogu 1965-2000*. Red. K. KARSKI, S.C. NAPIÓRKOWSKI. Lublin 2003, pp. 283—345; K. KARSKI: *Kwestie moralne...*, p. 109.

<sup>36</sup> “Jedność przed nami...,” no. 65.

<sup>37</sup> Cf. COMITATO MISTO CATTOLICO-LUTERANO-RIFORMATO DI FRANCIA: “Battesimo e matrimonio. Dichiarazione e accordo dottrinale.” *EOe* (1972), vol. 2, pp. 261—268.

<sup>38</sup> Cf. *Ibidem*, pp. 267—268. Referring to this, another document is also worth mentioning, namely, the one signed by the Italian Episcopal Conference and the evangelical Churches of Waldenses (Union of the Methodist Church and the Waldenses’ Church) and published in 1993, titled: *Common text of pastoral directions for mixed marriages of Catholics, Methodists and Waldenses in Italy*. Cf. ASSEMBLEA GENERALE DELLA CONFERENZA EPISCOPALE ITALIANA — SINODO DELLE CHIESE VALDESI E METODISTE IN ITALIA: “Testo comune per un indirizzo pastorale dei matrimoni misti,” *EOe*, vol. 8, pp. 1000—1023. In 2000, this document was appended with a “Text on application” (“Testo applicativo”), which offers practical indications concerning civil aspects of the issue, celebration of mixed marriages, baptism and religious education of children. Cf. CONFERENZA EPISCOPALE ITALIANA — CHIESA EVANGELICA VALDESE: “Testo applicativo del Testo comune per un indirizzo pastorale dei matrimoni tra cattolici e valdesi o metodisti in Italia.” *EOe*, vol. 8, pp. 1024—1043. The project of the document on mixed marriages which is being prepared in Poland by the Churches assembled in the Polish Ecumenical Council — makes reference to the Italian document. Cf. *Małżeństwo chrześcijańskie o różnej przynależności wyznaniowej* (draft, version of March 9th, 2009, typescript, 4 pp.).

Thus, there exist serious divergences between Catholics and Protestants on the issue of indissolubility of marriage. Within the dialogue conducted, the sides did not manage to solve the controversial issues, but they limited themselves to juxtaposing the differences in views on marriage and its indissolubility. At the same time, they indicated the necessity of pastoral cooperation in relation both to mixed marriages and marriages within one denomination.<sup>39</sup>

Summing up, we should say that in the light of the Lutheran tradition, marriage is not a sacrament in the strict sense, but order established by God. The Evangelical Lutheran Church is for permanence of marriage, but in the situation of irreparable collapse of the bond, she accepts divorce and does not rule out a possibility of remarriage of persons divorced. The differences that exist in this matter are an object of the Catholic-Lutheran dialogue. The efforts taken up on the way of the ecumenical dialogue have not led to agreement in this issue so far, and they need to be continued.

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<sup>39</sup> Cf. "Teologia małżeństwa a problem małżeństw międzywyznaniowych...", no. 53; COMITATO MISTO CATTOLICO-LUTERANO-RIFORMATO DI FRANCIA: *Battesimo e matrimonio...*, pp. 267—268.

TADEUSZ KAŁUŻNY

## Nierozzerwalność małżeństwa w perspektywie luterńskiej

### Streszczenie

Pośród wielu zagadnień składających się na specyficzne dla luteranizmu postrzeganie małżeństwa znajduje się przede wszystkim kwestia jego nierozzerwalności. Opowiadając się za trwałością małżeństwa, w sytuacji nieodwracalnego rozpadu małżeństwa Kościół ewangelicko-luterński dopuszcza rozwody i nie wyklucza możliwości ponownego zawarcia związku przez rozwiedzionych. Gdy chodzi o rozumienie klauzul, Luter i jego współwyznawcy przyjęli ich dosłowną interpretację, czyli jako wyjątków od zasady nierozzerwalności. Takim wyjątkiem i podstawą do rozwodu jest przede wszystkim cudzołóstwo, które niweczy małżeństwo. Luter dodał jeszcze inne racje usprawiedliwiające rozwód, będące dowodem wyrozumiałości „dla ludzkiej słabości”. Rozpatrując zagadnienie nierozzerwalności małżeństwa w dokumentach dialogu katolicko-luterńskiego, na szczególną uwagę zasługuje opublikowany w 1976 roku dokument Komisji Naukowej Kościoła Rzymskokatolickiego oraz Światowej Federacji Luterńskiej i Światowej Federacji Kalwińskiej pt. *Teologia małżeństwa a problem małżeństw międzywyznaniowych*.

**Słowa kluczowe:** małżeństwo, luteranie, ekumenizm, katolicko-luterński dialog ekumeniczny

TADEUSZ KAŁUŻNY

## L'insolubilité du mariage dans la perspective luthérienne

## Résumé

Parmi de nombreuses questions concernant la perception du mariage, spécifique pour le luthérianisme, la place prépondérante est occupée par le problème d'insolubilité. L'Église luthérienne, en optant pour la durée du mariage, dans la situation de la désintégration irréversible du mariage, accepte des divorces et n'exclut pas la possibilité d'un nouveau mariage des divorcés. Quant à la compréhension des clauses, Luther et ses confrères ont admis une interprétation littérale, c'est-à-dire des exceptions du principe d'insolubilité. Une telle exception, et la base du divorce, est avant tout l'adultère qui détruit le mariage. Luther a ajouté autres causes justifiant le divorce, preuves de l'indulgence pour « les faiblesses humaines ». En analysant le problème d'indissolubilité du mariage dans les documents du dialogue catholique et luthérien, il faut accorder l'attention particulière au document publié en 1976 de la Commission scientifique de l'Église Catholique, de la Fédération mondiale Luthérienne et l'Alliance réformée mondiale, intitulé « La théologie du mariage et le problème des mariages mixtes ».

**Mots-clés:** mariage, luthériens, oecuménisme, dialogue oecuménique catholique-luthérien

TADEUSZ KAŁUŻNY

## L'indissolubilità del matrimonio nella prospettiva luterana

## Sommarìo

Tra le numerose questioni che compongono la particolare visione del matrimonio nel luteranesimo troviamo soprattutto la questione della sua indissolubilità. Pur sostenendo l'indissolubilità del matrimonio, nel caso di una rottura irreversibile del matrimonio, la Chiesa evangelica luterana permette il divorzio e non esclude la possibilità che i divorziati contraggano un nuovo matrimonio. Per quanto riguarda la comprensione delle clausole, Lutero e i suoi seguaci hanno ammesso la loro interpretazione letterale, cioè in quanto eccezioni alla regola dell'indissolubilità. Una simile eccezione e motivo di divorzio è soprattutto l'adulterio che distrugge il matrimonio. Per dimostrare che la Chiesa è comprensiva riguardo alla "debolezza umana", Lutero ha aggiunto altri motivi che giustificano il divorzio. Merita una particolare attenzione per lo studio del problema dell'indissolubilità del matrimonio, nei documenti che dimostrano il dialogocattolico-luterano, l'opera della Commissione di studio della Chiesa Cattolica Romana e della Federazione Luterana mondiale come pure dell'Alleanza Riformata mondiale, pubblicata nel 1976, intitolata "La teologia del matrimonio e i problemi dei matrimoni interconfessionali".

**Parole chiave:** matrimonio, luterani, ecumenismo, dialogo ecumenico cattolico-luterano

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## Marriage and Family under Tutelage of the Greek Catholic Church in Slovakia

**Keywords:** The Greek Catholic Church, tutelage, pastoral centre, marriage, family

### 1. The Book of Genesis on Marriage

Even the Book of Genesis, the first book of the Bible, speaks about mission of spouses: “Be fertile and multiply, and fill the earth!” (Gen 1:28) “That is why a man leaves his father and his mother and clings to his wife, and the two of them become one body” (Gen 2:24). Three, very important elements for functioning marriage, can be derived from this divine plan, and so: *to leave*, *to cling*, and *to become one body*. How can we understand it?

When talking about “leaving” one’s mother and father, it does not mean leaving parents to the mercy of fate. Leaving does not mean to put parents aside, as the real leaving is not only an external sign, but primarily, it is something inner that creates positive circumstances for growing of love among parents and children, as well as for growing responsibility of children to take care of their parents.

The second element of the divine plan is “clinging.” To cling to each other by love, of which the guarantee is God himself. This guarantee is passed on in the Sacrament of Marriage. If spouses really live in the sacrament of marriage, nothing and nobody can destroy them.

The confirmation of mutual clinging of a man and a woman means “to become one body.” And this is the third element of the divine plan.

In Hebrew, the word body does not refer only to corporeality, it also refers to the whole man as a person. Hence, to become one body means something more than physical union. It means that two persons share everything they possess, and not only body, material property, but also their thoughts, feelings, pleasures, sufferings, hopes, fears, success and failures. To become one body is not something that a married couple receives immediately; it is a long process which determines their role in their common married life.

## 2. Apostle Paul on Marriage

Everyday experience teaches us, and figures confirm<sup>1</sup> that even many Christian marriages do not follow the above mentioned elements — “to leave,” “to cling,” “to become one body.” The main reason is egoism, the result of which is “non serviam.” A man, who bears the fruit of the original sin, rather wants to be a king. And this is also reflected in marriage and family.

When reading the fifth chapter of the Letter to the Ephesians, it may seem that a man is supposed to decide, that is, he is thought to be a king: “As the church is subordinate to Christ, so wives should be subordinate to their husbands in everything” (Eph 5:24). It could be derived that He is the one, who should decide. Is it really so? We are warned against very tendentious understanding of this verse by the previous verse, which says: “[...] Be subordinate to one another out of reverence for Christ” (Eph 5:21). That is, women to men, but also men to women. St. Paul the Apostle also protects women, as within the Hellenistic culture a woman was subjugated to a man, according to the principle: “Man, father of family, is woman’s head.” Hence, a woman is supposed to be subordinated to her husband.

But St. Paul the Apostle clearly says: “Be subordinate to each other out of reverence for Christ. Wives should be subordinate to their husbands as to the Lord. For the husband is head of his wife just as Christ is head of the church, he himself is the saviour of the body. As the church is subordinate to Christ, so wives should be subordinate to their husbands in everything” (Eph 5:21—24). From his words, it can be seen that man is not woman’s head, as understood by the pagans, but Christ, and hence, the subjugation of a woman to a man arises from her radical subjugation to the only Lord, that is, to Christ.

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<sup>1</sup> In Slovakia, every second marriage ends up in divorce nowadays.



Subjugating to a man does not mean doing it by force, by bondage. It does not mean that woman is less worthy than man. It is surrendering to a service, typical of a Christian. Only a man freed from egoism is able to manage this. Christ is the head of the Church as the Saviour. That is, due to his sacrifice on the Cross. Thus, if women are to be subordinated to men, they have the right to expect their real love. Hence St. Paul the Apostle gave instructions to men: “Husbands, love your wives, even as Christ loved the church and handed himself over for her” (Eph 5:25). These words of St. Paul sounded revolutionary, as according to the pagan tradition, it was a duty of man to rule and not to love.

### 3. Significance of Marriage and Family According to *Familiaris Consortio*

Close relationship of man and woman, partnership and marriage, is one of the most important interpersonal relationships that do exist — it can be said, that it is perhaps the most important relationship of all interpersonal relations. For as it is said by the Second Vatican Council, “the well-being of the individual person and of human and Christian society is intimately linked with the healthy condition of that community produced by marriage and family” (GeS 47). “The future of humanity passes by way of the family” (FC 86).

Marriage and family arising from it form a part of the great divine plan. It is possible to discover and to know the real value and sense of marriage and family only in the light of this divine plan. Marriage and family were conceived in the paradise when God created man and woman and when he blessed them and charged them to take part in his creating love: “Be fertile and multiply and fill the earth” (Gen 1:28). The original sin of our great-grandparents seriously disrupted and harmed this divine institution of marriage and family.<sup>2</sup> However, with his death on the cross and with his Resurrection, Jesus Christ redeemed them, he even elevated marriage to the level of sacrament. Sacramental marriage is an image of love, with which Christ loves the church. “Spouses are therefore the permanent reminder to the church of what happened on the cross; they are for each other and for the children witnesses to the salvation in which the sacrament makes them sharers” (FC 13).

<sup>2</sup> Š. PALOČKO: “Prvotný hriech a jeho dôsledky.” In: *Zborník teologických štúdií*, no. 4. Ed. G. PAEA, P. TIRPÁK. Prešov 2008, p. 98.

In Christian marriage, human fact of marital love as a permanent state is elevated to the level of sacrament. Christ's love for the church is becoming the model for conjugal love. Christ never betrays his church, but he sacrifices himself. The sacrament is not only a transcendental addition to the natural marriage, as if they were two parallel components of a conjugal life, but it penetrates it throughout and elevates it to a completely new level. New horizons are opened for the whole natural essence of conjugal love, conjugal life. Spouses are not only connected by the sacrament, but also strengthened and not only marked, but also highlighted. Marriage and family, according to the plan of our heavenly Father, have become the tool of his love in the realization of the divine plan to redeem mankind.<sup>3</sup> In this plan family was given four basic tasks: "forming a community of persons, serving life, participating in the life and mission of the church, participating in the development of society" (FC 17).

However, it is important to point out value of marriage and family and their influence on physical and spiritual development of a man, a woman and children. The Christian faith has an immensely stabilizing role in marriage and family. The decline in faith weakens marriage stability. The Christian marriage is a sacramental "community in dialogue with God" (cf. FC 55). The main aspect of understanding is the promise of mercy which God gives to a man and to a woman, when baptised in faith they mutually promise a faithful love. God holds and carries, supports and heals fragile "yes" of spouses. Also, it is important to inform present-day world about the immense value of sacramental marriage and family cohabitation.<sup>4</sup>

At present, there is probably no other institution that is the target of so many attacks as marriage and family.<sup>5</sup> This "little church," as family is referred to in the church documents, faces many pressures, which are breaking the sole basis of family. The Christian family is rightly considered to be a "domestic church." It is a small community of faith, hope and love. The main reason, for which we consider family to be a small church is that Jesus Christ is present and He is at work in family. "For where two or three are gathered together in my name, there I am in the midst of them" (Mt 18:20). The ecclesiastical nature of the Christian family means that the whole secret of the church is realized there — the secret of God's meeting with a man and that of man with God.<sup>6</sup>

<sup>3</sup> K. RAŠLOVÁ, M. KOŠČ: *Psychológia a pastorácia 2*. Bratislava 1992, p. 76.

<sup>4</sup> M. DUDA: "Wartość rodziny wobec alternatywnych form życia małżeńsko-rodzinnego. Zarys problematyki." In: *Rodina nádej budúcnosti*. Košice 2008, p. 134.

<sup>5</sup> See KONFERENCIA BISKUPOV SLOVENSKA (CONFERENCE OF SLOVAK BISHOPS): *Pastoračný a evanjelizačný plán katolíckej cirkvi na Slovensku 2001—2006* (9—10.5.2001). Bratislava 2001, pp. 58—59.

<sup>6</sup> P. JANAČ: *Rodina na ceste k Otcovi*. Námestovo 1999, p. 16.

Nowadays, the church is trying to promote pastoral tutelage of marriage and family, in order for family to become what it should be. A family can become the real family only when it fulfils the basic tasks, which were given by God before ages. After all, it has its roots in the sacrament of marriage, from which it draws nourishment (cf. FC 55). All material, moral and spiritual supports which are given to a family at present, should serve as a help to a family to get to such a level on which God wants to have it.

Blessed John Paul II exhorted all people of good will to help families and marriages in current era: “It is therefore indispensable and urgent that every person of good will should endeavour to save and foster the values and requirements of the family. I feel that I must ask for a particular effort in this field from the sons and daughters of the church. Faith gives them full knowledge of God’s wonderful plan: They therefore have an extra reason for caring for the reality that is the family in this time of trial and of grace. They must show the family special love. This is an injunction that calls for concrete action” (FC 86).

#### 4. Pastoral Plan of the Catholic Church in Slovakia on Marriage and Family

Continuing the vision of the blessed Pope John Paul II, in regard to protection and support of family, the bishops of the Catholic Church in Slovakia took some action. After the Pastoral and Evangelising plan of the Catholic Church in Slovakia 2001—2006, the Conference of Slovak Bishops issued another pastoral plan under entitled *Pastoračný plán Katolíckej cirkvi na Slovensku 2007—2013* (The Pastoral Plan of the Catholic Church in Slovakia 2007—2013).

Content of this document is divided into six chapters. Apart from the introduction and the conclusions, there are: 1. “Signs of the times,” 2. “Pastoral orientation,” 3. “Family as a pastoral priority group,” 4. “The young as a pastoral group,” 5. “People in need as a pastoral group,” 6. “Ways of realization.” At the end, there is the Letter of Benedict XVI to the Slovak bishops, which was addressed to them during their visit *ad limam* in Vatican, in 2007.<sup>7</sup>

It is worth noticing that only the third chapter, dealing with the pastoral care of families, has the attributive “priority” added in its title.

<sup>7</sup> See KONFERENCIA BISKUPOV SLOVENSKA (CONFERENCE OF THE SLOVAK BISHOPS): *Pastoračný plán Katolíckej cirkvi na Slovensku 2007—2013*. (s. d. s. m. 2007), pp. 3—4.

It highlights the fact that as far as there would be sound and functioning families, the whole society will be sound and functioning. But as it is not so, family is really a priority group.

This third chapter with its title, “Family as a pastoral priority group,” deals in detail with topics, which are supposed to help in the pastoral care of families. The pastoral plan in this chapter offers instructions for the ways of family renewal in the tone of the new evangelisation; for dialogue with people of good will far from life of the church; for spreading of living Christ to half-hearted families; for guidance of families longing for the spiritual growth; for formation of spouses and others responsible for the family pastoral care, as well as for the way of systematic approach to the renewal of the pastoral care of family.

“Pastoral tutelage of family on the world level is coordinated by the Conference of Slovak Bishops Family and Youth Board which has been set up by the Conference of Slovak Bishops in order to direct operation and pastoral activities in this area.”<sup>8</sup>

“Situation of family in Slovakia, which has changed radically in the last decades, is building up completely new appeals to the family pastoral care and requires the process of a great revival. The tasks, which are necessary to be fulfilled in this process, go far beyond the possibilities of individual parishes or communities. They cannot be fulfilled without the help of diocese or without cooperation on the world level. Hence, it is necessary to work intensively on the fulfilment of the Pastoral and evangelical plan of the Catholic Church in Slovakia 2001—2006, that is, to work on its recommendation to build up the diocese family centres with permanent staff and with conditions for their running.”<sup>9</sup> Some dioceses have

<sup>8</sup> See KONFERENCIA BISKUPOV SLOVENSKA: *Pastoračný plán...*, p. 33.

<sup>9</sup> “4. 1. 3 Recommendations [...]. On the level of diocese and the level of Slovakia: j) to build up diocesan family centres with permanent staff and to create conditions for their proper running; k) to further develop and support certified dialogical methods for the pastoral care of families. Those are: marriage retreats, family communities which help to solve family problems through the eyes of faith, family meetings with a diocesan bishop, family conferences, congresses about family, courses, seminars, lectures. l) to find possibilities to open various forms of the Parent Academy, focusing on relationships among spouses and bringing up of children; m) within the frame of permanent priests formation, to lead the priests from parishes to openness towards pastoral care of families, to offer seminars relating to a practical pastoral care of family, new pedagogical and psychological knowledge, creative cooperation with the laymen in parishes as well as practical experience; n) to cooperate with governmental and non-governmental organisations, which are engaged in favour of families and family members on the level of diocese, deanery and parish in accordance with the principles of sound ethics.” KONFERENCIA BISKUPOV SLOVENSKA: *Pastoračný a evanjelizačný plán katolíckej cirkvi na Slovensku 2001—2006* (9—10.5.2001). Bratislava 2001, pp. 60—61.

already fulfilled this recommendation by launching such a centre [...].”<sup>10</sup> As far as the topic of this contribution here is to approximate the activities of the Greek Catholic Church in Slovakia, in favour of a more complete development of family, it would not be in vain to briefly introduce this local church to the readers first.

## 5. The Slovakian Greek Catholic Church

The Slovakian Greek Catholic Church<sup>11</sup> is a successor to spiritual heritage and legacy of Saints Cyril and Methodius. The representatives and members of this church stress that they come from a historically ancient cultural area of the Eastern Christianity.<sup>12</sup> The first favour to the Greek Catholics was already shown at the time of their origin. In 869, Pope Hadrian II consecrated liturgical books, which were brought to Rome by saint brothers Cyril and Methodius. By this act, and by the favour of Hadrian II, the Greek Catholic Church had Slovak liturgy in the language of its people 1,100 years earlier than all other nations. In that way, Slavic language became the standard language, the Great-Moravian Slavs (our ancestors) were ranked among culturally developed European nations.

The eparchy of Prešov was established by the papal bull *Relata Semper* by Pius VII, from September 22, 1818.<sup>13</sup> From the Eparchy of Prešov, two separated units had been separated — the Apostolic Exarchate of Prague (in 1996) and the Apostolic Exarchate of Košice (in 1997). On January 30, 2008, the Holy Father Benedict XVI established Greek Catholic Metropolis in Prešov. Monsignor Ján Babjak was named the first archbishop and metropolitan, previously local bishop in Prešov.

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<sup>10</sup> KONFERENCIA BISKUPOV SLOVENSKA: *Pastoračný plán...*, p. 42.

<sup>11</sup> The name “Greek Catholic” was fixed during the reign of Maria Theresa. Historical origins expresses basic features: rite, brought by the Greek missionaries, has a byzantine origin, and at the same time, it expresses the Catholic Church, universal and united with Rome, more specific, “not separated” from Rome. It is the Catholic Church of Byzantine-Slovak rite, spread not only in Slovakia, but also in other countries (Poland, Hungary, the Czech Republic and Moravia, Belarus, Romania, USA, Canada), whereas in a relation to Rome, they stand out as separate. See: *Kto sú gréckokatolíci?* Available online: [http://www.grkat.nfo.sk/Poprad/kto\\_su\\_greckokatolici.htm](http://www.grkat.nfo.sk/Poprad/kto_su_greckokatolici.htm). Accessed 4.3.2012.

<sup>12</sup> See J. HIRKA: “Svätý Otec v Prešove.” In: *Prešov sídlo gréckokatolíckeho biskupstva na Slovensku*. Prešov 1995, p. 4.

<sup>13</sup> F. ČITBAJ: “Pápeži a gréckokatolíci.” In: *Prešov sídlo gréckokatolíckeho biskupstva na Slovensku*. Prešov 1995, p. 8.

At the same time, the Apostolic Exarchate of Košice was erected to the Eparchy of Košice. Monsignor Milan Cautur, CSsR. was named a residential bishop, previously the Apostolic Exarchate of Košice.

The Eparchy of Bratislava, with the seat in Bratislava, was established by separation from the Eparchy of Prešov, by the Holy Father Benedict XVI. Monsignor Petra Rusnák was named the first Greek Catholic Bishop in Bratislava. Thus, with this new canonical organization of the Greek Catholic Church in Slovakia, the Holy Father Benedict XVI completed 190-year-old history of the Eparchy of Prešov. Besides, it is also a confirmation of almost 1,150-year-old history of the Greek Catholics on the territory of present-day Slovakia, which has been dated since the mission of Saints Cyril and Methodius, Slavic apostles.<sup>14</sup>

On April 28, 1950, the Greek Catholic Church, then in Czechoslovakia, was outlawed by the totalitarian regime and was not allowed to operate publicly. Its bishops, priests, and also many laypersons were imprisoned, persecuted and driven into an exile. Many of them died during those years, but they remained faithful to God, to the Catholic Church and to their conscience. After 18 years, the Greek Catholic Church was re-established by the government act on June 13, 1968.<sup>15</sup> Suffering of this church was also reflected in decimated number of believers, which, by the mercy of God and noble pastoral service of many priests, has been growing since then. Even more important is the fact that this church is preserving its identity in the way expressed by the encyclical letter *Ut unum sint*: “With regard to the Eastern Catholic Churches [...] this entire heritage of spirituality and liturgy, of discipline and theology, in their various traditions, belongs to the full Catholic and apostolic character of the Church.”<sup>16</sup>

Ancient tradition by which the Catholics of eastern rite in Slovakia were an integral part of the whole nation even at the times of Great Moravia and by which Christianity was adopted and developed with

<sup>14</sup> The Catholic Bishops in their Pastoral Letter on the First Advent Sunday 2010, instituted spiritual preparation for the year of 2013, when we will be celebrating 1150th anniversary of Saints Cyril and Methodius arrival to our territory. “The period of a two-year preparation for the year 2013 and the jubilee year itself, will be accompanied by many activities, already started in the Year of Christian Culture 2010, as for example, journey of Saint Cyril, Constantine relics through the diocese of Slovakia, several religious and cultural events, and we also hope in arrival of the highest shepherd — the Holy Father.” KONFERENCIA BISKUPOV SLOVENSKA: *Pastiersky list katolíckych biskupov Slovenska na Prvú adventnú nedeľu 2010* (28.11.2010). Available online: <http://www.kbs.sk/?cid=1290928923>. Accessed 25.2.2012.

<sup>15</sup> Institutionally, the Greek Catholic Church in Czechoslovakia started its activity on July 17, 1968 with the establishment of episcopal seat, temporarily in Košice.

<sup>16</sup> JÁN PAVOL II.: *Encyklika “Ut Unum Sint”* (22.5.1995) [further: UUS]. Available online: <http://www.kbs.sk/?cid=1117283791>. Accessed 12.2.2012.

the help of saint brothers Cyril and Methodius, has survived till the present days.<sup>17</sup>

The Greek Catholic Church is a part of the Catholic Church. United with the Catholic Church in the Holy Spirit, this local church has its own hierarchy, liturgy, discipline, with the same faith and sacraments. It preserves its own rite and cultural heritage, which is manifested in the way of life, in art, and in specific spirituality.<sup>18</sup>

## 6. Family Centre — *Sigord*

At present, there are three such centres, operating under the Greek Catholic Archdiocese: the Greek Catholic Pastoral Centre for the Young in Prešov; Bárka the Greek Catholic Centre for the Young in Jusková Vôľa; Gypsy centre in Čičava and Family Centre — *Sigord*.

In this chapter, I shall introduce the activity of Greek Catholic Church in Slovakia, performed for the protection and development of family through agility of the Family Centre — *Sigord* (further as “FC-S”).

### 6.1. From Its History

After the secondary school of forestry had been moved to Prešov, its premises were left unused. Monsignor Ján Babjak, archbishop and metropolitan, responded to the possibility of use and offered premises with an aim of launching a family regeneration centre (it is 15 km from Prešov). This initiative arose as a concrete step towards practical fulfilment of the Pastoral Plan of the Catholic Church in Slovakia 2007—2013, which is a fundamental directive for pastoral activity of the Catholic Church in Slovakia. There, the pastoral care of family is labelled as the priority task. Newly opened FC-S and its chapel were consecrated after necessary reconstruction of former secondary school of forestry, on November 14, 2008 by Monsignor Ján Babjak the founder of FC-S.<sup>19</sup> He also named three

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<sup>17</sup> *Nové kánonické usporiadanie Gréckokatolíckej cirkvi na Slovensku*. Available online: <http://www.grkatpo.sk/spravy/?zobrazit=text&id=931>. Accessed 6.3.2012.

<sup>18</sup> Cf. J. HIRKA: “Svätý Otec v Prešove.” In: *Prešov sídlo gréckokatolíckeho biskupstva na Slovensku*. Prešov 1995, p. 5.

<sup>19</sup> See *História*: <http://www.centrumsigord.sk/historia/>. Accessed 12.2.2012.

direct members of staff of the FC-S. ThLic. Peter Jakub, the Greek Catholic priest, was named the director of the FC-S. Mgr. František Sochovič, another Greek Catholic priest, was named its spiritual administrator and Mgr. Ľuboš Kohút cooperates with FC-S, at that time a parish priest in Abranovce. In this day and age, when the basic values of family are often denied, the FC-S has emerged as a indispensable facility of the Greek Catholic Church.<sup>20</sup>

## 6.2. The Role

The goal of the FC-S is: “Family renewed by God.” The way it tries to achieve it is intensified evangelical and pastoral activity. At the time of numerous societal, social, financial or spiritual pressures on family, the FC-S has been trying to offer the space for a possibility to leave routine of marriage and family relationships as well as relationship with God, to re-evaluate them and to draw a new strength and inspiration for family life. It feels with family, tries to recognize and meet its needs, especially spiritual ones. At the same time, it avoids only shallow solutions of problems. On the contrary, it encourages family to principles which are built on God. Mainly, FC-S’s aim is renewal and recovery of s family — basic cell of the Church and society.

FC-S tries to: bring into society awareness of family values; contribute to the renewal of family life and its traditions; help families to go through problems and difficulties they face; support families and develop family life, organise and provide educational and charity activity aimed at families; provide medical, legal, social and psychological help to childless couples.

Part of FC-S’s role is to help effectively in pastoral activity of the Church on the territory of the Archeparchy of Prešov in such a way that priests and families participating in family pastoral care would find new sources for inspiration and possibilities for their service in individual parishes.<sup>21</sup>

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<sup>20</sup> Besides Family Centre — *Sigord*, there are also other centres with the same role in Slovakia. These are: Diocesan Pastoral Family Centre in the diocese of Banská Bystrica, Family Centre Nitra, Family Centre Pezinok, Family Centre in Žilina, Help Centre for Family in Trnava, Family Centre — Poprad, Family Institute Košice.

<sup>21</sup> See *Poslanie*: <http://www.centrumsigord.sk/poslanie/>. Accessed 12.2.2012.



## 7. Activities of Family Centre — *Sigord*

*Praying SMS — link* — The Word of God encourages: “Carry each other’s burdens; that is how to keep the law of Christ” (Gal 6:2), as well as: “and pray for one another” (Jam 5:16).

In the FC-S, there is a prayer support, established for those who are going through difficulties, crises, or they have various noble desires and needs in their families. In fact, individuals or families can turn to this service in the form of SMS message (+421 (0)904 738 649), in which they describe their prayer intention. Then, a priest, while celebrating mass at least once a week, add them to their prayers. A volunteer prays in that intention an hour a day.

*Family liturgy* — Regularly, once a month this liturgy is celebrated in the chapel of FC-S. It is unusual because: the whole family has possibility to participate in the atmosphere and conditions accommodated to children (children songs and activities); homily focusing on formation and encouragement in a family life area; after a liturgy, prayer for children’s blessing and it is also possible to pray for adults, after a liturgy there is also a possibility to make use of the centre and the environment of Slanske vrchy for family recreation. The dates of the closest family liturgies are always published on the CPR-S web pages.

### **Courses for Spouses Organised in Cooperation with the Evangelical School of St. Nicholas and with the Evangelical School of St. Mark from Poland**

*The Ruth Course* — Marriage preparation is the only source of understanding God’s plan for marriage for many Christian marriages. However, it was prior to the marriage itself. For building up of a strong lifelong marital relationship, there is a need to look for God’s plan and to recognize it even during marriage. At the time when conflicts, difficulties or duties arrive, it is possible to discover beauty, and greatness of this sacrament. The Ruth Course offers possibility to experience a weekend of searching for God’s plan for marriage, and to experience happiness from a marital relationship. It is an evangelical course for spouses, which aims to strengthen, revive and heal marital relationship by the means of perception and turning towards God’s plan for a Christian marriage. It is a marriage course; hence married couples are participating in it without children.

*The Samuel Course* — The Bible tells the story of the Old Testament rabbi Eli, who was fostering a boy named Samuel, who, under his influence, became a great God’s man. Eli had his own sons, who are described

in the Bible as outrageous sinners, despised by all people and even Eli himself was ashamed of them (cf. 1 Sam 1—3). Certainly, bringing up of children is difficult and God, who gave us children, is the best instructor. Bringing up children then lies in responsible passing on of faith to one's own children.<sup>22</sup> The aim is not to spoil the intentions God himself has towards children. FC-S offers support and encouragement in the area of children's upbringing in the Samuel Course (only the previous participants of the Ruth Course are enrolled).

*Zachariah and Elizabeth Course* — the course is based on the story of the biblical couple Zachariah and Elizabeth (cf. Lk 1). They are the people who teach how to create unity in marital life and how to renew dialogue, since spouses would like not only to listen but also to understand again.

*Elkanah and Anna Course* — the course is based on the story of a married couple who lived during the “dark times” of religious and social life. Their marriage was constantly influenced by pressure of judging, humiliation and inner disappointment and grief because they could not have children. In spite of this, they did not stop to love each other. Therefore, God had chosen them as a tool for a great renewal of spiritual and social life (cf. 1 Sam 1). How is it possible to revive love and to fall in love once again? How can even a long-time marriage become a model and encouragement for the younger? The answer is offered in Elkanah and Anna Course.

*Jacob and Rachel Course* — At the moment of receiving the sacrament of marriage, God puts spouses on the common road leading to Him. This course enables spouses to look at a gift of this way from quite a different angle. It teaches them a new manner of how to win every-day difficulties and how, in a similar way like Jacob and Rachel (cf. Gen 29—31, 33, 35, 46, 48 ), in love and patience to wait for blessing, which God has for each marriage.

*New Life Course* — This course invites anybody who wants to be reborn in the Holy Spirit, and to renew his relationship with Jesus and with the Church. During the weekend course, one can find answers to questions: Who loves me all the time? Who does not hurt me? Who is the only solver of my problems? Who can teach me more? Who is waiting for me in the Church?

*David Course* — David Course is an ideological equivalent to the New Life Course, however, it is adjusted to young participants. Its goal is to pass on to our descendants, in young age, message about life with God and to lead children towards openness for accepting Jesus as the Lord of

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<sup>22</sup> L. PETRÍK: “Výchova detí v kresťanskej rodine.” In: *Slovo. Časopis gréckokatolíckej cirkvi*. Prešov 2003, roč. 35, č. 5, p. 26.

their lives, and towards openness for an active integration in the Church. Usually it takes place at the same time as the New Life Course, which enables the basic message of the Gospel to be received by the parents and children at the same time, but in a different way, appropriated and comprehensible to them.

*The “Bible and Money” Course* — “Leave God alone, we are talking about business!” How many times have we heard similar statements? It is not easy to build a bridge between the Word of God and the financial life, even for many Christians. In the Bible, there are two times more verses on money than verses about faith and prayer together. There are more associations between the Word of God and finances than we think. God will not tell us how much we have to invest into our saving account and into stock market, but he gives us divine principles, which will direct our finance management, including short-term, medium-term and long-term investments.

## 7.1. Spiritual Exercises

*Spiritual Exercises for the Greek Catholic priests and their wives* — Time of spiritual exercises is the time for active spiritual formation, but it is also the time of mutual sharing and enrichment for each person. Spiritual exercises for the priests and their wives is an opportunity for renewing priestly and marital vocations, for personal reflection and for a joint prayer. They are like an oasis full of refreshment and with a possibility to recover physically and mentally, too.

*Spiritual exercises for the divorced and then married non-religiously* — No man is outside the God’s interest. Even though the connecting channel and its intensity differ. People not married religiously also share God’s care. They are not excommunicated; they still belong to the Church, although they suffer from being separated from the sacrament of reconciliation and from the Eucharist. There is a difference between those who enchanted by sin turned away from God and left their partner, abandoned faithfulness and their basic responsibility towards their children, and those, who alone and humiliated found close person after a long time and live together in non-religious marriage. Jesus Christ is not coming to gather the right, but the sinners. We are all ill in spirit and we need God’s help. Nevertheless, the sin of the divorced is obvious, which marks them painfully. Hence, those who do not stop longing for God, do experience Jesus’ merciful look more, as His love is healing (cf. Jn 4).

## 7.2. Courses and Trainings

*Marriage Preparation Course* — The course lays down, besides many human requirements (dress, hall, music, etc.), one more criterion — quality preparation. It is realised in three forms: the evening, the daylong and the weekend. All meetings consist of nine thematic units. They are divided into presentation (lecture) and the communicative part (reserved for activities in pairs and discussions). Besides the topics, there is a space for joint dining, free time, liturgy, confession, and conversation.

*Marriage Evenings* — How to build a healthy marriage that lasts forever? Marriage Evenings course is aimed at all married couples who want to build strong and lasting bond, they want to improve their marriage, or they are overcoming troublesome period. It is good investment into marriage, which is exposed to numerous attacks of the present era. The course is aimed at married couples who decided not only to get through it, but to live it to the full. The course is based on an eight-meeting cycle, taking place once a week, during evening hours. Each meeting starts with a dinner in a nice environment, which is followed by a lecture. During the lecture (or after the lecture), couples have a possibility to talk together about the evening topic, as well as about important questions, which are not possible to discuss during an ordinary day. Everything takes place in an intimate and friendly atmosphere. The privacy of each couple is respected and a group discussion, or group divisions are not parts of the course. A couple is not required to tell anybody about their relationship. The course is based on Christian principles and is beneficial to all married couples. The topics of evenings are: building up the solid foundations, art of communication, problem solving, power of forgiveness, family, parents and parents-in-law, good sex, love in action, ceremonial dinner.<sup>23</sup>

Besides above mentioned activities, FC-S further offers: family parish trip, spiritual exercise for various states, spiritual renewal, summer and winter family camps (picnics, tourist trips, sledge, skiing, etc.), weekend visits for families with children, holiday weeks (two times during summer and once in winter) and also program for families during Easter and Christmas.

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<sup>23</sup> See *Aktivita Centra pre rodinu* — Sigord: <http://www.centrumsigord.sk/aktivita-centra-pre-rodinu-sigord/>. Accessed 14.2.2012.

## 8. Conclusions

In spite of many adversities, family has a significant place and role in society and the Church. It is confirmed by the words of the Second Vatican Council: “Knowing that marriage and the family constitute one of the most precious of human values, the Church wishes to speak and offer it help to those who are already aware of the value of marriage and the family and seek to live it faithfully, to those who are uncertain and anxious and searching for the truth, and to those who are unjustly impeded from living freely their family lives” (FC 1).

The words of the Second Vatican Council are valid also today. After all, it was not by accident that the Holy Father Benedict XVI entrusted a married couple Danilo and Anna Maria Zanzucchi with preparation of texts for 2012’s Stations of the Cross in Colosseum, which took place on April 6, 2012. Fourteen stations were dealing with the issue of family, and so at the time, when a lot of attention of the Church in the various levels and all over the world is devoted to it. The Zanzucchis claim: “Family does realise that it is the Church and that it has greater responsibility for the society: let us mention children alone.”<sup>24</sup>

We must not forget about the activities of blessed John Paul II, who right after being elected a Pope, set up the Papal Council for Family. He got involved in recognition and contribution of family in the Church and in society. Apart from this, at the same time, he summoned the synod to deal with the family issues. The result of this synod is well-known exhortation *Familiaris Consortio*, which is the most significant and the most complex interpretation, aimed at families, and which has inspired the work of all who are interested in family, Benedict XVI continued the work for family started by John Paul II.

Also *Pastoračný plan Katolickej cirkvi na Slovensku 2007—2013* (Pastoral Plan of the Greek Catholic Church in Slovakia 2007—2013) considers family a priority pastoral group. The Greek Catholic Church in Slovakia is interested in family and its good functioning. This is manifested in the way it offers its FC-S to families so as to change those unfunctional into functional, and to strengthen the functional ones in their mission even more and to be sanctified. All this is manifested by hundreds of couples who have made use of offers and services of the FC-S so far. All this happens in the unity with teaching of the Catholic Church on marriage and family.

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<sup>24</sup> See *Krížová cesta 2012: V centre je rodina*: <http://www.focolare.sk/node/227>. Accessed 7.4.2012.

MAREK PETRO

## Opieka duszpasterska małżeństw i rodzin w Kościele greckokatolickim na Słowacji

### Streszczenie

Małżeństwo i rodzina należą do planu Bożego, co potwierdza już Księga Rodzaju, pierwsza księga Pisma Świętego. Grzech pierworodny poważnie naruszył te Boże instytucje. Jezus Chrystus swoją śmiercią na krzyżu oraz zmartwychwstaniem dokonał również ich odkupienia. Ponadto małżeństwo podniósł do rangi sakramentu. Apostoł Paweł w Liście do Efezjan wskazuje na właściwe rozumienie relacji małżeńskich. „Nowy apostoł” Jan Paweł II potwierdza znaczenie małżeństwa i rodziny w adhortacji *Familiaris Consortio*. Dziś niestety instytucja ta w porównaniu z innymi instytucjami jest narażona na liczne i zmasowane ataki. Kościół w świecie współczesnym stara się położyć większy nacisk na duszpasterstwo małżeństw i rodzin. Plan pastoralny Kościoła katolickiego na Słowacji 2007—2013 traktuje rodzinę jako pierwszorzędną grupę, którą należy otoczyć szczególną troską duszpasterską. Częścią składową tego planu jest ustanawianie oraz działalność diecezjalnych ośrodków dla rodzin, spośród których na uwagę zasługuje działalność greckokatolickiego ośrodka dla rodzin. W ten sposób Kościół lokalny proponuje liczne formy wsparcia rodziny w celu jej głębszego oraz bardziej integralnego rozwoju.

**Słowa kluczowe:** Kościół greckokatolicki, opieka, ośrodki duszpasterskie, małżeństwo, rodzina

MAREK PETRO

## L'assistance pastorale envers les mariages et les familles orthodoxes de l'Église orthodoxe grecque en Slovaquie

### Résumé

Le mariage et la famille appartiennent au plan Divin, ce qui est approuvé déjà dans la Génèse, le premier livre de la Sainte Écriture. Le péché originel a sérieusement dérogé à ces institutions de Dieu. Jésus Christ, par sa mort sur la croix et sa résurrection a racheté, et bien plus encore il a exalté le mariage en lui donnant le statut du sacrement. L'apôtre Paul dans son Épître aux Ephésiens explique une bonne compréhension des relations conjugales. Le « nouvel apôtre », Jean Paul II, confirme la signification du mariage dans son exhortation *Familiaris consortio*. Aujourd'hui, malheureusement, cette institution, en comparaison avec les autres, est exposée aux nombreuses attaques massives. L'Église dans le monde moderne cherche à promouvoir le pastorat et protège de manière particulière le mariage et la famille. Le plan pastoral de l'Église catholique en Slovaquie 2007—2013 traite la famille comme le groupe de premier ordre, qui doit être entouré d'une sollicitude pastorale exceptionnelle. Une partie composante de ce plan est la création et le fonctionnement des centres diocésains pour familles, où l'attention est portée spécialement sur le fonctionnement du centre orthodoxe pour familles. Ainsi l'Église locale propose des formes diverses du soutien pour les familles visant son développement plus profond et plus intégral.

**Mots-clés:** Église Orthodoxe, soin, centre pastoral, mariage, famille

MAREK PETRO

## L'assistenza pastorale del matrimonio e della famiglia nella Chiesa greco-cattolica slovacca

### Sommario

Il matrimonio e la famiglia fanno parte del piano di Dio, il che viene confermato già nel Libro della Genesi, il primo libro della Bibbia. Il peccato originale ha gravemente compromesso anche queste istituzioni divine. Tuttavia, Gesù Cristo, con la sua morte in croce e con la risurrezione le ha redente, nonché ha elevato il matrimonio alla dignità di sacramento. L'apostolo Paolo nella Lettera agli Efesini indica una corretta comprensione delle relazioni matrimoniali. "Il Nuovo Apostolo" Giovanni Paolo II conferma il significato del matrimonio e della famiglia nella sua esortazione apostolica "Familiaris consortio". Purtroppo oggi quest' istituzione rispetto ad altre istituzioni si trova di fronte a numerosi e massicci attacchi, per cui nel mondo contemporaneo la Chiesa cerca di promuovere maggiormente l'assistenza pastorale del matrimonio e della famiglia. Il piano pastorale della Chiesa cattolica in Slovacchia per gli anni 2007—2013 considera la famiglia come l'istituzione che va circondata da una particolare cura pastorale. Tra gli elementi del piano troviamo la creazione e l'attività dei centri diocesani per la pastorale familiare, tra cui merita particolare attenzione l'attività del centro greco-cattolico. In questa maniera la Chiesa locale offre numerose forme di sostegno per uno sviluppo più profondo e integrato della famiglia.

**Parole chiave:** Chiesa greco-cattolica, assistenza, centro pastorale, matrimonio, famiglia





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## Issue of Acceptance of Teachings on Marriage by the Faithful of Christian Denominations in Selected Regions of Eastern Slovakia

**Keywords:** marriage, cohabitation, divorce, research

From the earliest times of Church, we can find evidence of problematic acceptance of Christian teachings on the matters of marriage (the Encratites, the Manicheans, the Waldesians, the Albigensians). It is confirmed mainly by proclamations of synods and councils. For instance, synod at Toledo in 400 AD and synod at Braga in 563 AD, put an anathema on anybody who dared to perceive marriage as something bad. In 1139, the Second Lateran Council pronounced those who denounced marriage heretics and in 1208, Pope Innocent III denounced the Waldesians teaching as heretical. Similarly, at present, Church teaching is not accepted unanimously by the followers, and hence it would be very useful for priests to perform and analyse the research on acceptance of Church teaching on marriage.

The aim of this contribution is to introduce certain aspects of the research on acceptance of Church teachings on marriage by the believers of religious denominations in selected regions of eastern Slovakia, which was carried out by Monika Holubová under my supervision. It follows the first nationwide research carried out by J. Matulník,<sup>1</sup> while we focused analysing the respondents' attitude towards cohabitation of a man and a woman, towards the divorce of those who entered church/

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<sup>1</sup> J. MATULNÍK a kol.: *Analýza religiozity katolíkov na Slovensku*. TF TU: Bratislava 2008.

sacral marriage and towards entering into mixed marriages. We deal with those issues from the point of view of the young and the elder, who we divide into two age groups, respectively 18—35 years old, and above 35. We also diversify the respondents according to their church membership/affiliation.

In order to reach our aims we put forward the following hypotheses:  
**Hypothesis no. 1:** We presume that less than 50% of the young people in eastern Slovakia, at the age of 18—35 who belong to one of the Christian churches, accept the life in a civil union without entering into a valid marriage.

**Hypothesis no. 2:** We presume that more than 50% of people in the group of persons above 35 years old reject civil unions of their children.

**Hypothesis no. 3:** We presume that in case of misunderstandings in marriage, divorce is tolerated by more than 50% of Christians from eastern Slovakia.

**Hypothesis no. 4:** We presume that in present-day eastern Slovakia more than 50% of Christians who belong to the Catholic Church, Evangelical Church as well as the Orthodox Church accept entering into mixed marriages.

In order to prove those hypotheses, we have chosen questionnaire method of research. The questionnaire consisted of 30 open-ended and closed-ended questions. The respondents' attitude towards marriage was revealed by the questions, which were used by Professor Jozef Matulník in his sociological research in 2008 *Religiosity, family and reproductive behaviour of inhabitants in Slovakia*. The wording of questions was the following:

Please, consider carefully whether you agree or disagree with the following statements regarding marriage:

- Marriage is an outdated institution.
- Marriage is a union of a man and a woman and it should be entered in for a lifetime.
- Strictly speaking, marriage should be ended when a man and a woman stop understanding each other.
- If spouses understand each other well and have children, they should find a way to remain faithful to each other.
- If spouses do not understand each other well and they do not have children yet, they should get divorced as soon as possible.
- It does not matter whether one lives in a marriage or not, what is important is whether “it works or not.”<sup>2</sup>

In each entry, the respondents marked one of the possible answers within the scale: *I fully agree, I rather agree, I rather disagree, I disagree*. To these

<sup>2</sup> Cf. *Ibidem*, p. 179.

questions, we added other questions for the proving of the put forward hypotheses.

Questions in the first part of the questionnaire were aimed at getting information about respondents — sex, age, family status, and place of permanent residence. In the central part, we focused on general opinions on the institution of marriage and we were trying to get the information on respondents' attitude towards marriage from the point of view of affiliation with one of the Christian churches. We were trying to find out extent of their knowledge about teachings on marriage according to their religious affiliation. The respondents marked a chosen answer with a circle.

The research was carried out from December 2009 to February 2010 in Prešov and Košice Regions, at three secondary schools, one university, three organisations of state administration, within five parish communities of the Catholic Church, two congregations of ECAV and within one Orthodox Church village. Overall, we sent out 264 pcs of questionnaire. From these, 223 pcs were returned filled in, which makes 84.45% returnability.

Research sample consisted of 223 respondents. The age group of 18—35 consisted of 117 respondents, which amounts to 52.5% of the set and the age group of above 35 was represented by 106 respondents, which amounts to 47.5% of the total sample.

Regarding church affiliation, the respondents were grouped as follows: Roman Catholics — 82 respondents, that is 36.8% of the group, Greek Catholics — 59 respondents, that is 26.5% of the group, Orthodox Church followers — 27 respondents, that is 12.1%, Evangelicals a.c. — 40 respondents, that is 17.9% of the sample and 15 respondents of other churches or religions, which amounts to 6.7% of the sample.

The research was performed in the regions of eastern Slovakia. According to districts, respondents were grouped as follows: 58.8% Vranov nad Topľou, 10.8% Svidník, 10.8% Prešov, 8.5% Humenné, 6.7% Michalovce, 2.2% Sobrance and 2.2% Poprad.

## Evaluation

After processing the questionnaire results, we verified whether the hypotheses put forward were proven or not. Hypothesis no. 1: “We presume that less than 50% of the young people in eastern Slovakia at the age of 18—35 who belong to one of the Christian churches, accept the life in a civil union without entering into a valid marriage” and hypoth-

esis no. 2: “We presume that more than 50% of people in the group above 35 years old reject civil unions of their children” were verified with the questions no. 8, 10, 12, 13, 19, 22.

The question “In your opinion, is marriage an outdated institution?” was answered with “I fully agree” or “I rather agree” by 78 respondents, that is 35% of people questioned. From that, in the age group of 18–35 it was 67 respondents (30%) and in the age group of above 35 only 11 respondents (5%). 145 respondents, that is 65%, rather disagreed or disagreed with obsolescence of the institution of marriage. From the lower age group, it is 50 people (22.4%) and 95 people (42.6%) from the age group of above 35 years old. That is, in our sample, marriage came out positively, but it is important to point out the fact that it was the young up to 35 years of age who agreed with the obsolescence of marriage even though they belong to one of the Christian churches.

TABLE 1. In your opinion, is marriage an outdated institution?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18–35		above 35	
							n	per cent	n	per cent
1. I fully agree	21 (26)	10 (17)	2 (7)	4 (10)	8	45	39	17.5	6	2.7
2. I rather agree	12 (15)	7 (12)	4 (15)	7 (18)	3	33	28	12.5	5	2.3
3. I rather disagree	30 (36)	15 (25)	14 (52)	15 (37)	2	76	30	13.5	46	20.6
4. I disagree	19 (23)	27 (46)	7 (26)	14 (35)	2	69	20	8.9	49	22.0
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

36.8% of the age group up to 35 years old and 42.6% of the older age group fully agreed or rather agreed with entering into a marriage for a lifetime. Regarding the affiliation to individual churches, the respondents from the Greek Catholic Church agreed the most and the respondents from ECAV the least.

TABLE 2. Marriage is a union of a man and a woman and it should be entered in for a lifetime

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18–35		above 35	
							n	per cent	n	per cent
1. I fully agree	42 (51)	34 (58)	20 (74)	12 (30)	2	110	52	23.3	58	26.0
2. I rather agree	28 (34)	19 (32)	4 (15)	13 (32)	3	67	30	13.5	37	16.6
3. I rather disagree	8 (10)	4 (7)	3 (11)	5 (13)	4	24	20	9.0	4	1.8
4. I disagree	4 (5)	2 (3)	0 (0)	10 (25)	6	22	15	6.7	7	3.1
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

With the sentence “It does not matter whether they live in marriage or not. It is important that they understand each other,” 161 respondents, that is 72.2%, fully agreed or rather agreed. From that, 106 respondents (47.5%) in younger group and 55 older respondents (24.6%). 62 people questioned (27.8%) rather disagreed or disagreed. From that, only 0.5% in the age category of 18—35 years of age and 22.8% in older category.

TABLE 3. It does not matter whether they live in marriage or not. It is important that they understand each other

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. I fully agree	32 (39)	20 (34)	6 (22)	10 (25)	5	73	64	28.7	9	4.0
2. I rather agree	32 (39)	15 (25)	8 (29)	25 (62)	8	88	42	18.9	46	20.6
3. I rather disagree	6 (7)	20 (34)	8 (30)	4 (10)	1	39	9	4.0	30	13.5
4. I disagree	12 (15)	4 (7)	5 (19)	1 (3)	1	23	2	0.9	21	9.4
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

Extramarital intercourse of married people is accepted only by up to 15% of our respondents, but 11.7% in the younger group.

TABLE 4. What is your opinion of extramarital intercourse of married people?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. I am not against it, it is not anything wrong	3 (4)	1 (2)	0 (0)	2 (5)	1	7	6	2.7	1	0.4
2. Why not? If a spouse is tolerant or he/she never finds out	14 (17)	6 (10)	3 (11)	2 (5)	1	26	20	9.0	6	2.7
3. I reject it because of possible troubles	16 (20)	15 (25)	2 (7)	8 (20)	1	42	22	9.9	20	9.0
4. I reject it, it is a betrayal	30 (36)	25 (43)	15 (56)	17 (42)	10	97	57	25.6	40	17.9
5. I reject it for fundamental reasons	19 (23)	12 (20)	7 (26)	11 (28)	2	51	12	5.3	39	17.5
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

Cohabitation of a man and a woman in a common household without entering into a sacred marriage is approved by 158 people questioned, which amounts to 70.8%. From that, 26% of the young and 9% above 35 years of age. This kind of life is not approved rather for economic reasons — 13.8%, at the same level within both the age groups. Cohabitation of a man and a woman is not approved by 4.5% of the respondents, approximately of the same share in both the age groups. 10.8% of the respondents expressed uncertainty, and so in the age group up to 35 years of age only 1.8% and 9% in the age group above 35 years of age.

TABLE 5. What is your opinion on cohabitation of a man and a woman in a common household without entering into a marriage?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18–35		above 35	
							n	per cent	n	per cent
1. I approve of it, because there is nothing wrong about it	19 (23)	21 (35)	13 (48)	16 (39)	9	78	58	26.0	20	9.0
2. I approve of it, if they want to get married	40 (49)	17 (29)	10 (37)	12 (30)	1	80	35	15.7	45	20.1
3. I do not know	6 (7)	11 (19)	1 (4)	3 (8)	3	24	4	1.8	20	9.0
4. I rather disagree, it may cause troubles	12 (15)	9 (15)	3 (11)	5 (13)	2	31	15	6.7	16	7.1
5. I do not approve it at all	5 (6)	1 (2)	0 (0)	4 (10)	0	10	5	2.3	5	2.3
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

Question no. 22 was aimed at examining respondents' attitude towards cohabitation of their son or daughter. 52% of the people questioned would not mind it at all, as far as other do it, too. Share was 30.5% in the age group up to 35 and 21.5% in the age group above 35. 27.8% of the respondents would mind if their daughter/son do it, but they would not interfere in their children's lives. 17.5% of the respondents would try to influence the decision of their son/daughter, but only 4% in the age group up to 35. Only 2.7% of the people questioned would try to prevent this way of living, even at the cost of a family conflict.

TABLE 6. What would be your attitude if your daughter/son wanted to live with her/his boyfriend/girlfriend in a common household without entering into a marriage?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. I would not mind it	46 (56)	31 (53)	12 (44)	20 (49)	7	116	68	30.5	48	21.5
2. I would rather be against it, but I would not interfere	23 (28)	15 (25)	8 (30)	11 (28)	5	62	39	17.5	23	10.3
3. I would be against it and I would try to influence it	10 (12)	12 (20)	5 (19)	9 (23)	3	39	9	4.0	30	13.5
4. I would be against it and I would interfere	3 (4)	1 (2)	2 (7)	0 (0)	—	6	1	0.5	5	2.2
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

The results show that 65% of the respondents are for the institution of marriage, 79.4% are for marriage for a lifetime, but at the same time, up to 72% agreed or rather agreed with civil union between a man and a woman, while they do not consider entering into a marriage as important for common life of a couple. They do not refuse extramarital intercourse for fundamental reasons, but rather on account of consideration for a partner, or they are afraid of troubles the betrayal may cause. 70.8% expressed positive attitude as a reaction to a direct question about civil union between a man and a woman. From the answer of our respondents, we found out their high rate of benevolence related to a planned cohabitation of their own children. On the basis of this we observed that the hypothesis no. 1 was not proven, as far as more than 50% of the young people in eastern Slovakia at the age from 18 to 35, who belong to one of the Christian churches, accept life in a civil union without entering marriage.

Hypothesis no. 2 was proven, because only 24.6% of the respondents above 35 agreed or rather agreed on a civil union between a man and a woman with the emphasis on mutual understanding, 29.1% approved of common households without entering into a marriage and 31.8% would not mind cohabitation of their son or daughter, or they would not interfere in it (Tables 3, 5, 6).

Hypothesis no. 3: We presume that in case of misunderstandings in marriage, divorce is tolerated by more than 50% of Christians from eastern Slovakia. Hypothesis was verified by the questions no. 11, 15, 20.

As much as 95 of the respondents, that is 42.6%, were of the opinion that marriage should be ended when spouses stop understanding each other. In the age group up to 35, 26.9% agreed on divorce and 15.7% agreed in the age group above 35.

TABLE 7. Marriage should be ended when spouses stop understanding each other

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. I fully agree	12 (15)	7 (12)	5 (19)	1 (3)	2	27	20	9.0	7	3.2
2. I rather agree	32 (39)	16 (27)	6 (22)	11 (27)	3	68	40	17.9	28	12.5
3. I rather disagree	35 (42)	20 (34)	15 (55)	23 (57)	8	101	42	18.9	59	26.5
4. I disagree	3 (4)	16 (27)	1 (4)	5 (13)	2	27	15	6.7	12	5.3
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

It is important to enter into a sacred marriage for 55.1% of the respondents. 21.5% of the young and 33.6% above 35 expressed a positive attitude.

TABLE 8. Is it, or would it be, important for you to enter into a sacred marriage?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. Yes	47 (57)	48 (81)	14 (52)	14 (25)	0	123	48	21.5	75	33.6
2. No	30 (37)	4 (7)	11 (41)	19 (47)	12	76	53	23.8	23	10.3
3. I do not know	5 (6)	6 (10)	2 (7)	5 (13)	3	21	13	5.8	8	3.6
4. Other	0 (0)	1 (2)	0 (0)	2 (13)	0	3	3	1.4	0	0
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

In the case of misunderstandings, 19.3% fully agreed, 23.3% rather agreed, 30.9% rather disagreed and 26.5% disagreed with divorce as a solution to all problems, including the situation when a couple has children. Share in both the age groups was approximately the same.



TABLE 9. Do you think that spouses should get divorced for the common good, including the well-being of children if their relationship does not work?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18–35		above 35	
							n	per cent	n	per cent
1. I fully agree	18 (22)	7 (12)	7 (26)	10 (25)	1	43	20	9.0	23	10.3
2. I rather agree	16 (20)	26 (44)	5 (19)	2 (5)	3	52	23	10.3	29	13.0
3. I rather disagree	27 (32)	15 (25)	6 (22)	16 (40)	5	69	35	15.7	34	15.2
4. I disagree	21 (26)	11 (19)	9 (33)	12 (30)	6	59	39	17.5	20	9.0
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

With regard to the fact that more than a half of the respondents expressed a negative attitude to divorce, and at the same time, more than a half of them is for entering into a sacred marriage, we conclude that hypothesis no. 3 was not proven. Even though the motive behind entering into sacred marriage does not have to correspond with the canonical requirements with regard to evaluation of other answers.

Hypothesis no. 4: We presume that in present-day of eastern Slovakia more than 50% of Christians who belong to the Catholic Church, Evangelical Church, as well as the Orthodox Church accept entering into mixed marriages. Hypothesis was verified with the questions 16, 17, 18 and 19.

The question “Do you know what does your Church teach about marriage?” met with the following responses: 103 respondents, that is 46.2% answered “I do not know” or “I rather know.” Division according to age was: 14.3% of up to 35 years old and 31.9% above 35 years of age. As much as 120 respondents, that is 53.8%, of which 31.9% above 35 answered negatively, “I do not know at all” or “I do not know exactly.”

TABLE 10. Do you think that you know what your Church teaches about marriage?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18–35		above 35	
							n	per cent	n	per cent
1. I know exactly	10 (12)	7 (12)	2 (7)	8 (20)	5	32	12	5.3	20	9.0
2. I rather know	20 (24)	26 (44)	8 (30)	13 (33)	4	71	20	9.0	51	22.9
3. I do not know exactly	33 (41)	25 (42)	15 (56)	16 (39)	3	92	69	31.0	23	10.3
4. I do not know at all	19 (23)	1 (2)	2 (7)	3 (8)	3	28	16	7.2	12	5.3
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

Regarding the question no. 17, we observed surprising results. As many as 178 respondents, that is 79.8%, equally in both age groups, answered that they would ignore teachings on validity of marriage in their Church and that they would enter civil marriage with a beloved partner. Only 13.5% would not enter marriage, which is invalid from the point of view of the Church. Of that, only 3.6% in the age group up to 35 and 9.9% above 35. The undecided in the both the groups amounted to 6.7%.

TABLE 11. What would you do if you found out that you could not enter valid marriage with a beloved partner because of the point of view of your Church?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. I would ignore it	67 (81)	52 (88)	20 (74)	31 (77)	8	178	98	44.0	80	35.8
2. I would not enter into marriage	12 (15)	6 (10)	5 (19)	4 (10)	3	30	8	3.6	22	9.9
3. I do not know	3 (4)	1 (2)	2 (17)	5 (13)	4	15	11	4.9	4	1.8
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

As much as 53 respondents, that is 23.7%, defined valid marriage from the point of view of their Church correctly, in comparison between the observed age groups 6.7% (18—35) to 17.0% (above 35). Other 170 respondents did not know how to define mixed marriage from the point of view of their Church.

TABLE 12. Do you know what a mixed marriage is from the point of view of your Church?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. Yes	19	16	5	10	3	53	15	6.7	38	17.0
2. No	63	43	22	30	12	170	102	45.8	68	30.5
Total	82	59	27	40	15	223	117	52.5	106	47.5

We think that this unawareness influenced answers in the following question no. 19, to which 153 respondents answered that they would not be against entering into mixed marriage of their children, and 26 respondents would try to explain future pitfalls of entering such marriage, whereas 44 respondents would be against it, in principle.

TABLE 13. How would you react if your child wanted to enter into a mixed marriage?

Responses	Church affiliation					Total	Age group			
	RC	GC	Or.	Ev.	other		18—35		above 35	
							n	per cent	n	per cent
1. I would not interfere	52 (63)	44 (75)	19 (70)	27 (67)	11	153	97	43.5	56	25.1
2. I would explain them the pitfalls	12 (15)	5 (8)	3 (11)	5 (13)	1	26	8	3.6	18	8.1
3. I am against it	18 (22)	10 (17)	5 (19)	8 (20)	3	44	12	5.4	32	14.3
Total	82 (100)	59 (100)	27 (100)	40 (100)	15	223	117	52.5	106	47.5

Hypothesis no. 4 was proven in our research. As much as 68.6% of the people questioned would not interfere with their children entering into a mixed marriage. With regard to the age groups, 43.5% in the age group up to 35 and 25.7% in the age group above 35. The believers from the individual churches in districts of eastern Slovakia accept entering into mixed marriages. This high percentage of approval may have been influenced by the fact that up to 76.3% of the respondents did not know how to define mixed marriage correctly (Table 12).

## Research results

Our attempt to examine the acceptance of teaching on marriage of particular Christian denominations by their believers (the above-described research sample) proved, similarly to the previous research regarding this issue, that the attitudes in question are varied. Majority of the respondents did not reject marriage as something outdated, but proportion of those who did reject it is in fact very high (35%), and this opinion was expressed mainly by the young people up to 35 years of age, who are in our research sample predominantly single.

As to religious affiliation, the respondents who agreed with the opinion that marriage is an outdated institution belonged to the Roman Catholic Church in 40% of cases. Positive attitude towards marriage of a man and a woman lasting for a lifetime was expressed by 177 respondents belonging to the Greek Catholic Church, which is 90%.

Free cohabitation of a man and a woman was accepted by 72% of the respondents belonging to ECAV. Divorce as a solution and as an interest of all was approved of by 42% of respondents, most of them in the Greek Catholic Church — 56%.

As much as 80% of the respondents would not mind cohabitation of their own children. Most of them (84%) belong to the Roman Catholic Church.

To enter into a marriage in a church is important for 55% of respondents. According to the church affiliation — 81% of the Greek Catholics consider it important. On the other hand, in case of the discovery that it is not possible to enter into a valid marriage with a beloved partner according to the church to which they belong, religious wedding ceremony would be ignored by 80% of the questioned, again, most of them (88%) were Greek Catholics.

On the basis of conclusion of our research, we have found that within the research sample marriage is considered a formal matter without deeper understanding of Christian teachings on marriage, which are introduced to the believers by individual churches.

PAVOL DANCÁK

### Zagadnienie akceptacji kościelnego nauczania o małżeństwie wśród wiernych wyznań chrześcijańskich w wybranych regionach wschodniej Słowacji

#### Streszczenie

Artykuł przedstawia niektóre aspekty badań nad akceptacją kościelnego (zwłaszcza katolickiego) nauczania o małżeństwie przez osoby deklarujące się jako wierzące i należące do religijnych denominacji (Kościołów i wyznań chrześcijańskich) w wybranych regionach wschodniej Słowacji. Badania te nawiązywały do pierwszych na całej Słowacji reprezentatywnych socjologicznych badań religijności, które przeprowadził prof. J. Matulník. Koncentrują się one rozpoznaniu przekonań respondentów co do: uznawanych za dopuszczalne form związku (kohabitacji) mężczyzny i kobiety, rozwodu sakramentalnie zawartego małżeństwa oraz zawierania mieszanych wyznaniowo małżeństw. Zapatrywania na te zagadnienia są rozpatrywane z punktu widzenia młodszych i starszych respondentów, których podzielono na dwie grupy wiekowe: 18—35 lat oraz ponad 35 lat z uwzględnieniem ich przynależności do Kościołów i wyznań chrześcijańskich.

**Słowa kluczowe:** małżeństwo, związek (kohabitacja) mężczyzny i kobiety, rozwód, badania

PAVOL DANCÁK

Le problème de l'acceptation de l'enseignement  
de l'Église sur le mariage parmi les fidèles des églises chrétiennes  
dans des régions est de la Slovaquie

Résumé

L'article présente certains aspects des études sur l'acceptation de l'instruction de l'Église (surtout catholique) sur le mariage par des personnes qui se déclarent croyantes et appartenantes à de différentes dénominations chrétiennes dans les régions choisies de la Slovaquie de l'Est. Ces recherches font écho de premières représentatives études sociologiques de la religiosité, menées par professeur J. Matulnik. Elles se concentrent sur l'analyse des opinions des répondants sur : des formes de cohabitation acceptables de l'homme et de la femme, le divorce du mariage contracté à l'église, des mariages mixtes religieusement. Les opinions sont classées selon l'âge des répondants, divisés en deux groupes : 18—35 ans et plus de 35 ans, en tenant compte de leurs appartenances aux Églises et communautés chrétiennes.

**Mots-clés:** mariage, liaison (cohabitation) de l'homme et de la femme, divorce, recherches

PAVOL DANCÁK

Il problema dell'accettazione dell'insegnamento della Chiesa  
sul matrimonio da parte dei credenti in alcune regioni dell'est  
della Slovacchia

Sommario

L'articolo presenta alcuni aspetti delle ricerche sull'accettazione dell'insegnamento della Chiesa (della Chiesa cattolica in particolare) sul matrimonio da parte delle persone che si dichiarano credenti e appartenenti a denominazioni religiose (Chiese e confessioni cristiane) in alcune regioni dell'est della Slovacchia. Le suddette ricerche fanno riferimento al primo rappresentativo studio sociologico sulla religiosità condotto in Slovacchia dal prof. J. Matulnik e si concentrano sulle opinioni degli intervistati che riguardano: forme di relazione (coabitazione) tra uomo e donna ritenute accettabili, scioglimento del matrimonio sacramentale e contrazione di matrimoni interconfessionali. Le suddette questioni vengono esaminate dal punto di vista degli intervistati giovani e anche più maturi, che sono stati suddivisi in due gruppi: intervistati della fascia di età di 18—35 anni e intervistati che superano i 35 anni, secondo la loro appartenenza alle Chiese e alle confessioni cristiane.

**Parole chiave:** matrimonio, relazione (coabitazione) tra uomo e donna, divorzio, ricerca



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And on the seventh day God finished His work  
which He had made;  
and He rested on the seventh day from all his work  
which he had made.  
And God blessed the seventh day, and hallowed it.  
(Gen 2:2—3)

## “Sunday belongs to the Lord and to us” — in Roman Catholic-Lutheran Families

**Keywords:** marriages of different denominations, families of different denominations, Catholics, Evangelical, the Lord’s Day

Celebrating the Lord’s Day by Christians goes beyond the regular participation in Sunday Eucharist or just refraining from work. In everyday language, the last days of the week, including Sunday, are called weekend, which means your own time for resting and entertainment, or running some errands you did not manage to do during the week. But from the point of view of faith, there is a fundamental difference between Sunday and days off work. Blessed John Paul II in his apostolic letter *Dies Domini* showed the whole richness of that day, reminding that Sunday is the day when we celebrate the work of the Creator and take part in His joyful rest. Sunday is also the day of the Risen Lord and the gift of the Holy Spirit. It is the day of new creation and the announcement of eternity. It is the day of the Church gathered in fraternal community in Eucharist — the feast of the eucharistic Word and Body. In that meaning Sunday becomes in a way “the soul” of all days, makes sense of our entire life<sup>1</sup> (cf. DD 12).

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<sup>1</sup> JAN PAWEŁ II: *List apostolski „Dies Domini”* (hereafter: DD). Katowice 1998.

Celebrating Sunday, each Christian family can and should strengthen its bond with the Risen Christ. Sunday is a great gift for the whole family, a chance to deepen the faith through participation in the Holy Mass. Therefore the Eucharist is the heart of the Lord's Day. When the family takes part in Sunday Eucharist, they testify to being a domestic Church. When they pray together, discuss religious subjects with children, read religious books or magazines, watch and listen to religious programmes, they show how they care about the genuine Christian celebration of the Lord's Day. Many families are proud of their beautiful custom of reading the Holy Scriptures on Sunday and praying rosary. They also hold discussions connected with Sunday readings and the sermon, and in the Lutheran Church deliberate on the postill. In that way the family, drawing strength from meeting Christ in the Sunday Eucharist, can live and testify to God's love in their life.

During the World Meeting of Families in Milan on 2nd June 2012, the Pope Benedict XVI spoke about his family who celebrated the Day of the Lord as follows:

The most important moment for our family was always Sunday, but Sunday really began on Saturday afternoon. My father would read out the Sunday readings from a book that was very popular in Germany at that time, which also included explanations of the texts. That is how we began our Sunday, entering into the Liturgy in an atmosphere of joy. The next day we would go to Mass. My home is very close to Salzburg and so we had plenty of music — Mozart, Schubert, Haydn — and when the *Kyrie* began it was as if Heaven was opening up. Then once we were at home, naturally our Sunday meal together was important. We sang a lot together. My brother is a fine musician; he was already composing pieces for all of us as a boy, and the whole family would sing them. My father would play the zither and sing. These were unforgettable moments. Naturally we would go on journeys and walks together. We lived near a forest and it was so enjoyable to walk and have adventures and play there. In a word, we were one in heart and soul, enjoying so many experiences together, even though times were hard, as this was during the war: first we had the dictatorship and then poverty. But the mutual love that we shared, our joy, even in simple things, was so strong that it enabled us to endure and overcome these things. I think it is very important to understand that even little things were a source of joy because they were an expression of warmheartedness. And so we grew up convinced that it was good to be human, because we saw God's goodness reflected in our parents and our brothers and sisters. And indeed when I try to imagine what heaven will be like, I think it must be like the time when I was a small boy. In this environment of trust, joy and love, we were happy, and I think that Heaven must be rather like those



early years. So in a way, I am hoping to return “home” when I “leave for the other part of the world”<sup>2</sup>.

A family celebration of Sunday can shape specific attitudes in everyday life. If we experience Sunday in the proper way, our eyes and heart are open not only to our own problems, but also to the needs of others. The participation in Sunday Eucharist obliges us to a particular testimony of love. It should bring to mind our parents, relatives, those in need of help, the old, the ill or the lonely. Sunday is the time for strengthening the mutual ties of love, and in inter-creed families, it is a time for exploring the other faith, which means learning mutual respect, tolerance and acceptance in the spirit of love and truth.

## 1. The Concern of the Church for Multidenominational Families

Our contemporary “pursuit of bread” and the irresistible temptation rather to have than to be makes many families facing serious problems with the proper celebration of Sundays and holy days, but mostly Sundays. When Pope Benedict addressed the families, he said: “Man, as the image of God, is also called to rest and to celebrate. [...] For us Christians, the feast day is Sunday, the Lord’s Day, the weekly Easter. It is the day of the Church, the assembly convened by the Lord around the table of the word and of the eucharistic Sacrifice [...]”<sup>3</sup>

In its concern for the family, the Church teaches them that Sunday is the day for the man himself. It is time for feast, friendship, solidarity, culture, nature, joy, sport. It is a family day, which is given to you to share the joy of the day, enjoy meetings, feel one in heart and soul, as well as to participate in the Holy Mass.

Churches look after marriages and families. Their main concern is to maintain the stability and indissolubility of the marriage bond and family. If the couple belongs to the same Church, their unity and their shared lives are fully protected. In case when they belong to different denominations, they are provided with a special pastoral care of the Church. John Paul II stressed the problem of couples of different denominations, addressing the

<sup>2</sup> *Światowe Spotkanie Rodzin z Ojcem Świętym Benedyktem XVI w Mediolanie* (2.6.2012). W: wdr. diecezja.krakow.pl (28.4.2013).

<sup>3</sup> BENEDYKT XVI: “Światowe Spotkania Rodzin w Mediolanie” (2.6.2012). *L’Osservatore Romano* (Polish edition) 2012, nb 8, pp. 2—5.

members of a plenary meeting of the Council for Promoting Christian Unity, in November 1981. He said: “[...] they experience a kind of tension which arises between loyalty towards their own community and loyalty towards the spouse. Such couples require a great pastoral gentleness.”<sup>4</sup>

The matrimony of people of different denominations might present some difficulties in retaining their faith and in Christian commitment both for the couples themselves and for their children. It might also affect the harmony of family life, which in consequence can lead to the break up of the family.

On 29th October 1999, the Polish city of Katowice hosted the Central Ecumenical Thanksgiving Service organized to celebrate the signing of the Common Declaration concerning Justification. The sermon was preached by the Head of the Evangelical Church of Augsburg Confession in Poland and the Chairman of Polish Ecumenical Council, Bishop Jan Szarek. In his speech, he emphasized the importance of the ecumenical dialogue, which helped to work out a common stance on Justification. The preacher also appealed to the representatives of the churches in Poland to issue a common proclamation concerning celebrating the Lord’s Day with dignity. It took twelve years the Polish episcopate Council for Religions Dialogue and the Polish Ecumenical Council to issue, on March 21, 2011, an announcement which read: “It has been decided to call a special ecumenical session concerning the celebration of feast days, especially the Lord’s Day. The session will take place in Kamień Śląski on 27th October this year, including the next Comission meeting.”

In the times when both family as well as other institutions are constantly under the influence of extensive, deep and fast social and cultural changes, there comes the need for those who believe in Christ to confirm that “marriage and family constitute one of the most valuable virtues of the mankind.”<sup>5</sup> Taking it into consideration, the Church does not stop “serving every man who cares about the future of matrimony and family.”<sup>6</sup> Without any doubt Sunday is the Lord’s Day for the majority of Christian Churches. Therefore special attention should be paid to the meaning of this day and everyone should be reminded that it is not only a day off, but the most important day for Christianity. In Poland, Churches concen-

<sup>4</sup> JAN PAWEŁ II: *Ekumeniczny wymiar życia rodzinnego* (To the members of plenary meeting of the Council for Promoting Christian Unity, 13.11.1981). W: *Nauczanie Papiejskie*. Red. E. WERON, A. JAROCZ. T. 4, cz. 2. Warszawa 1989, p. 274.

<sup>5</sup> Cf. JAN PAWEŁ II: *Adhortacja apostołska „Familiaris Consortio”* (hereafter: FC), 1. W: *Adhortacje apostołskie Ojca Świętego Jana Pawła II*. Red. M. ROMANEK. T. 1. Kraków 2006.

<sup>6</sup> Cf. *Konstytucja duszpasterska o Kościele w świecie współczesnym* (hereafter: KDK), 52. W: *Sobór Watykański II. Konstytucje. Dekrety. Deklaracje*. Poznań 1968.

trate in their ecumenical dialogue on the subject of Churches’ ecumenical reflection on Celebrations of the Lord’s Day.

In His apostolic letter *Dies Domini*, Pope John Paul II states that “the Lord’s Day — as Sunday was called from Apostolic times — has always been given special attention to in the history of the Church because of its close connection with the very core of the Christian mystery” (DD 1). The significance of this day led St. Jerome to say: “‘Sunday is the day of the Resurrection, it is the day of Christians, it is our day’. Since for Christians Sunday is ‘the fundamental feast day’, established not only to mark the succession of time but also to reveal time’s deeper meaning” (DD 2).

The Lord’s Day constitutes the core of Christian life. It is the day of spiritual intensification and rest from work, the day of worship, peace and reflection. If we did not understand the Lord’s Day this way, there would only be working days left for us. At the turn of the 1980s and 1990s, the Polish government intended to introduce the so-called four-shift system of work which would progressively eliminate Sundays as feast days. Workers, who gathered at the shrine of Our Lady of Charity and Social Justice in Piekary Śląskie, chanted loudly: “Sunday belongs to the Lord and to us.” For the first time this motto was used by Franjo Kuharic, the bishop of Zagreb, in his homily during the men’s pilgrimage in Piekary Śląskie in May 1978. Thanks to such attitude of the workers — Piekary pilgrims — workmen were exempted from this inhuman system, and Sunday became “the Lord’s and ours.”<sup>7</sup> In the second half of the 1970s there was an attempt to change the rhythm of the week by introducing a “working” Sunday in coal mining industry. The church of Katowice diocese responded at once by initiating a battle under the motto “Sunday belongs to the Lord and to us.”<sup>8</sup> There were hundreds of thousands of people gathered during the pilgrimages in Piekary Śląskie who, in spite of all difficulties and political repression, ignoring the obstacles, stood up for the defence of tradition and thereby religiousness, forming a barrier against foreign ideological influences.

The rhythm of resting every seventh day belongs, according to the Christian understanding, to the order of creation and arises from the biblical imperative. In that way you retain dignity and human independence,

<sup>7</sup> M. IREK-KOSZERNA, M. BĘDOWSKA (red.): *Sanktuarium Matki Sprawiedliwości i Miłości Społecznej w Piekarach Śląskich*. Piekary Śląskie 2010, p. 93.

<sup>8</sup> The expression was not only a popular symbol of disagreement about the planned changes in the organisation of work in the coal mining industry but also, in a more general sense, it helped in distinguishing of those who were our own people, from those who were strange in culture. Later, in 1980, it became one of the demands of the miners on strike. Cf. A. GRAJEWSKI: *Kościół na Górnym Śląsku wobec powstania NSZZ “Solidarność.”* *Śląskie Studia Historyczno-Teologiczne* 1994/95, vol. 27/28.

as well as the fundamental values of marriage and family. A redesccovery of that “day” is a grace which we should ask our Lord for, in order not only to fulfill the imperatives of faith in our lives but also to give a specific answer to the true and deep longing of every man. The time devoted to Christ is never a lost time, but time which we gain to give a deep human sense to our relations with others and our lives.

## 2. How Sunday and Other Religious Practices Are Celebrated in Cieszyn Silesia

The specificity of Cieszyn region was best illustrated by the character of John Paul II's visit to Skoczów on 22nd May 1995. This little town, the birthplace of St. Jan Sarkander,<sup>9</sup> was visited by the Pope in connection with the canonization of the saint, which had taken place the day before in Olomouc in Moravia in the Czech Republic. Before John Paul II celebrated the Holy Mass on the hill called Kaplicówka (Chapel Hill), he had paid a visit at the Holy Trinity Evangelical church. In his speech dedicated to the clergymen and congregation of two churches, he said: “The region where we are right now, I mean Bielsko region and Cieszyn Silesia, is known in Poland as a place of special ecumenical testimony. For ages it has been a place of harmonious coexistence between the members of the Catholic Church and the Evangelical Church and their intensive ecumenical dialogue. The dialogue is carried out with a deep conviction that so much joins us: that we are connected by a common faith in Christ and by our common motherland. Today's meeting with you is a perfect opportunity to express my gratitude that the ecumenical dialogue is permanently developed and deepened, and that it is reflected in many forms of constructive cooperation: both on the diocesan level and in parishes.”<sup>10</sup> In response to John Paul II's words, Rev. Paweł Anweiler, the bishop of the Evangelical-

<sup>9</sup> Jan Sarkander was born on 20th December 1576 in Skoczów, in the Duchy of Cieszyn. At the age of 12, after his father's death, he moved with his mother to Pribor in Moravia. He studied in Olomouc, Prague and Graz. On 19th March 1609, he was ordained deacon by cardinal Franc Dietrichstein, and three days later, in the same town, he took the holy orders from Bishop Jan Civalli. He was sent to seven parishes. His first parish was Opava and the last Holesov. On 17th March 1620, he died as a martyr. On 3rd November 1859 he was beatified by the Pope Pius IX and at the same time declared as saint patron of Cieszyn Duchy. Cf. J. BUDNIAK: *Jan Sarkander-Patron jednoczącej się Europy*. Bytom-Cieszyn 1995, pp. 43–136.

<sup>10</sup> JAN PAWEŁ II: “Przemówienie wygłoszone w czasie spotkania z wiernymi w kościele ewangelicko-augsbusrskim w Skoczowie.” W: *Drogowskazy dla Polaków ojca Świętego Jana Pawła II*, t. 3. Kraków 1999, p. 273.

Lutheran Cieszyn Diocese, said: “To be honest, in the past the coexistence between Catholics and Lutherans was not easy, but I believe that the present time gives ample evidence of ecumenical opening on each other. An excellent example can be found in Międzyrzecze, where the Lutheran church is shared between the Lutherans and the Catholics after the tragic loss of these latter’s old church (27—28 January 1993). According to the will of the Lord of the Church, Jesus Christ, we are called to dialogue and to convey before the throne of God our common prayers.”<sup>11</sup> Ending his speech, the Pope turned to the assembled with a wish: “Today’s Church feels impelled by its Master to intensify the ecumenical efforts so that the year 2000 finds us if not totally united, then at least less divided.”<sup>12</sup>

How do inter-creed married couples celebrate the Lord’s Day in the region of the greatest denomination variety in Poland, which means Cieszyn Silesia inhabited by about 50,000 Lutherans, where the presence of couples of different Christian churches has been a fact for ages? The still increasing number of such marriages (nowadays about 60—70 a year) is a proof that this phenomenon is really common in this region. However, the couples themselves, their families and friends notice some problems. The best illustration of the scale of the problem are the opinions given in a survey by the respondents — couples — about celebrating the Lord’s Day.

What will follow is the results of a research in which about 130 people of mixed denomination marriages participated; in the analysed cases they are Catholic-Lutheran couples.<sup>13</sup> The research showed that the majority of respondents, while being engaged, discussed the issue of celebrating the Lord’s Day (93.3% of respondents). Analysing their answers, you can state that generally the fact of getting married does not cause the spouses too many difficult and unsolved problems connected with religious practices. Just a few respondents came across some difficulties, such as bringing up children or participating in different religious practices, especially the Sunday Mass or Sunday Service. The last issue is solved in various ways. Most often, as they say, each of the spouses participates in the religious practices of their own church (60% couples), and some (20%) claim they attend the churches together but in turns — one Sunday the Catholic church, the other Sunday the Lutheran church.

<sup>11</sup> “Wystąpienie biskupa Diecezji Cieszyńskiej ks. Pawła Anweilera podczas spotkania z papieżem Janem Pawłem II w ewangelickim kościele Świętej Trójcy w Skoczowie.” *Kwartalnik Diecezjalny Diecezji Bielsko-Żywieckiej* 1995, nr 2, rocz. IV, pp. 121—122.

<sup>12</sup> JAN PAWEŁ II: “Przemówienie wygłoszone w czasie...” W: *Drogowskazy dla Polaków...*, p. 274.

<sup>13</sup> The researches were done in 22 Catholic and Lutheran parishes in Cieszyn Silesia. Cf. J. BUDNIAK: *Ekumenizm jutra na przykładzie Śląska Cieszyńskiego*. Katowice 2002, *passim*.

Last but not the least is the case of a young couple — he is a Catholic, she is a Lutheran. They live in a village and have been married for five years. Both graduated from high schools. While being engaged, they tried to search for aspects which join them in their faith, but not for the ones that separate them. Their wedding was in the Catholic Church, although before the ceremony they had hoped they would be wed by priests from the both churches. They decided to bring up their children in the Catholic religion, which the Lutheran wife entirely accepted. Moreover, they both take part in the religious practices of the Catholic Church. They are sure their marriage revived their faith. The husband is motivated by the positive attitude of his wife participating in the life of the Catholic Church. She inspires him to deepen his religious knowledge in order to explain to her all her doubts. The result of their generally trouble-free life is that the wife is going to convert from the Lutheran faith to the Catholic one.

The above mentioned survey, among others, included questions about conversion. On the basis of the research results and observation of people who changed their religious faith, either to Catholicism or Lutheranism, you could state that after some time those people, and finally all members of their families, became religiously indifferent and, what is more, their religious life disappeared totally. In the discussed region, people do not have very positive opinions about converts. There is a popular saying that “the converts are the worst,” as they change their original denomination and in due course do not take part in the life of neither Church.

According to the presented examples, people living in matrimonies of different denominations have various experiences connected with religious practices and mostly they are positive ones. Moreover, you can notice a certain regularity: The more the spouses are engaged in the religious life, the easier they find in themselves sympathy for the religious otherness of the partner, and total or considerable tolerance. Then their marriage revives their faith, becomes an impuls to deepen the faith, helps to bear their heavy burden. The development of the ecumenical movement led to great changes in the attitudes people had towards these marriages. Now they are accepted and taken for granted.

### 3. Sunday from the Point of View of the Lutheran Church

During the divine revelation at Sinai, God gave his people the Ten Commandments in which we read: “Remember the sabbath day, to keep it holy” (Ex 20:8). This commandment was interpreted in two versions

by the father of Reformation, Rev. Martin Luther: “Thou shalt sanctify the holy day,”<sup>14</sup> and “Remember the Sabbath day, to keep it holy.”<sup>15</sup> In the interpretation of the third commandment, in his *Large Catechism*, Luther explained that God should be praised and it should be done daily, but Sunday should be celebrated according to old traditions and “we also should continue in the same way, so that everything is done in harmonious order, and no one creates disorder by unnecessary innovation.”<sup>16</sup> In another place, while teaching how to keep the day holy, he asked a question: “What is meant by the commandment: Thou shalt sanctify the holy day? Answer: To sanctify the holy day is the same as to keep it holy. But what is meant by keeping it holy? Nothing else than to be occupied in holy words, works, and life. For the day needs no sanctification for itself; for in itself it has been created holy. But God desires it to be holy to you. Therefore, it becomes holy or unholy on your account, according as you are occupied on the same with things that are holy or unholy.”<sup>17</sup> That way Luther puts great responsibility on each single Christian. The Lutheran Church, using Luther’s Catechism, wants to pay special attention to the fact how the families celebrate the holy day, that is Sunday.

The Lutheran bishop, Paweł Anweiler, speaking of the holy day quotes this anecdote:

A boy turned to his mother with a question: “Mummy, does it mean that Sunday is a holy day because on Sunday people love one another more?” — “One should love every day” — his mother replied; “your daddy and mummy love you and your little brother as much on week days as on Sunday.”

“True, but you have no time to tell us about it,” answered the boy. “You have so much housework to do and daddy must leave for work early in the morning, and when he is back in the evening he is so tired. But on Sunday it is different; daddy takes me on his lap and tells me Bible stories, and then we go to church together. — Oh, on Sunday you love me much more.”

“True” — said the father — “Sunday is a holy day, a day in which we should be full of love. Our Lord donated this day to us in His great love, so that people, tired after the six days of work, could rest; so that fathers, who hardly ever see their children during the week, could talk to them and teach them how to love God and His Day. Because, my son, God is love, and Jesus Christ is love, and Sunday is the gift of His love, the Bible is the book which tells about His love. Fathers, moth-

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<sup>14</sup> *Mały i Duży katechizm dra Marcina Lutera*. Warszawa 1992, p. 25.

<sup>15</sup> *Ibidem*, p. 61.

<sup>16</sup> *Ibidem*, p. 62.

<sup>17</sup> *Ibidem*, p. 63.

ers and children should deeply love one another, for “who lives in love lives in God, and God in him.”<sup>18</sup>

This example shows how important Sunday is for the Lutheran community. Sunday which is “a holy day to praise our Heavenly Father and that way it is recognized as a special Resurrection day.”<sup>19</sup>

It is worth mentioning that Sunday and the holy day have also been defined in the German constitution as a day of rest from work and a day when we should strengthen our spirit. The rhythm of resting every seventh day belongs, according to the Christian understanding, to the order of creation. Evangelical Church in Germany together with the Working Group of Christian Churches, among them the Roman Catholic Church, came up with a new initiative: “Thank God — there is Sunday”. The chairman of the Council of Evangelical Churches in Germany, bishop Wolfgang Huber, explained the background of this initiative: “Sunday is the basic unit which belongs inseparably to our social culture. Sunday is the day of reverence, peace and reflection. Sunday is the day of dignity and freedom which are given to the man by our Lord. Thanks to these values, the picture of the true man is formed in our society, and we should continue it that way. Celebrating Sunday is a clear biblical imperative for Christians. In that way the dignity and freedom of the man are retained and basic values of our society are strengthened. If Sunday, as a free day, is given up, it means that every single man becomes just a consumer. Such a procedure would mean that a given institution deliberately denies the obligation of celebrating Sunday, which the constitution imposes upon state units.”<sup>20</sup>

## Conclusions

The Roman Catholic Church and Ecclesiastical groups take a lot of interest in retaining the Lord’s Day because it is an inherent part of the very essence of Christian existence. If a Christian does not celebrate Sunday, they lose their own identity. Sunday is an invitation to reflect upon your own identity. It is done through the participation in the Holy

<sup>18</sup> P. ANWEILER: “Dzień Pański w perspektywie luterańskiej.” W: *Świętowanie Dnia Pańskiego w ekumenicznej refleksji Kościołów*. Red. A. CZAJA, Z. GLAESER. Opole 2012, pp. 75—76.

<sup>19</sup> Ibidem, p. 76.

<sup>20</sup> In the author’s private archives, sign. JB/2012/EKD.



Mass, or the Service of the Word of God. If there is no Sunday Eucharist, or Service, Sunday is no more the Lord's Day. John Paul II said: “It is crucially important that all the faithful should be convinced that they cannot live their faith or fully participate in the life of the Christian community unless they take part regularly in the Sunday Eucharist assembly. The Eucharist is the full realization of the worship, which humanity owes to God, and it cannot be compared with any other religious experience. A particularly efficacious expression of this is the Sunday gathering of the entire community, obedient to the voice of the Risen Lord who calls the faithful together to give them the light of his word and the nourishment of his Body as the perennial sacramental wellspring of redemption. The grace flowing from this wellspring renews mankind, life and history” (DD 81).

During the Sunday assembly the unity is fully realized. Therefore, it should be a duty of the churches to make couples of different denominations aware that it is of real importance to participate in Sunday Holy Mass or Sunday Service together. They should be joined by the Church. In our times, when Europe becomes more integrated, the question of families of different denominations will concern all Polish citizens. It is necessary for the churches in Poland to work out a common position on this matter. What is more, they should aim at social education at a large scale to show the specificity of this kind of matrimonies. They should be reminded that “Sunday is a true school, an enduring programme of church pedagogy — an irreplaceable pedagogy, especially with social conditions now marked more and more by a fragmentation and cultural pluralism which constantly test the faithfulness of individual Christians to the practical demands of their faith” (DD 83). During the World Meeting of Families in Milan, Benedict XVI appealed to the families: “[...] despite the relentless rhythms of the modern world, do not lose a sense of the Lord's Day. It is like an oasis in which to pause, so as to taste the joy of encounter and to quench our thirst for God.”<sup>21</sup> That is why it is a genuine duty of the churches and Christian communities to make sure that the families of different denominations could duly and fruitfully experience Sunday.

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<sup>21</sup> *Benedykt XVI w Mediolanie: Niedziela świętem rodzin.* Available online: [www.opoka.org.pl](http://www.opoka.org.pl) Accessed 28.4.2013.

JÓZEF BUDNIAK

## „Niedziela jest Boża i nasza” — w rodzinach katolicko-ewangelickich

## Streszczenie

Dzień Pański stanowi centrum chrześcijańskiego życia. Za kardynałem Zagrzebia Franjo Kuharičem można przywołać stwierdzenie, że „niedziela jest Boża i nasza”. Niedziela to dzień duchowego wzmocnienia i odpoczynku od pracy, dzień nabożeństwa, spokoju i zamyślenia. Niedziela jest symbolem godności i wolności, którymi obdarza człowieka Bóg. Dzięki tym właśnie wartościom konstytuuje się obraz człowieka w naszym społeczeństwie; i tak powinno pozostać. Dla chrześcijan świętowanie niedzieli wynika jasno z biblijnego nakazu. W ten sposób zachowuje się godność i wolność człowieka oraz wzmacnia się fundament wartości naszego społeczeństwa. Bez takiego rozumienia Dnia Pańskiego pozostałyby jedynie dni robocze. Kościoły rzymskokatolicki i ewangelicko-augsburski przywiązują wielką wagę do zachowywania Dnia Pańskiego, bowiem jest on wpisany w samą istotę chrześcijańskiej egzystencji. Bez świętowania niedzieli chrześcijanin traci swoją tożsamość. Niedziela jest zaproszeniem do rozważania własnej egzystencji. Dokonuje się to poprzez uczestnictwo we mszy świętej czy w nabożeństwie słowa Bożego, bowiem jeżeli nie ma w niedzielę Eucharystii czy nabożeństwa, to przestaje ona być Dniem Pańskim.

Kościoły winny małżonkom osób o różnej przynależności wyznaniowej uświadamiać wagę wspólnego uczestnictwa w niedzielnej mszy świętej czy w niedzielnym nabożeństwie. Kościoł winien ich łączyć. W dobie jednoczącej się Europy problem rodzin o różnej przynależności wyznaniowej będzie w przyszłości dotyczył mieszkańców całej Polski. Dlatego potrzebą chwili staje się wspólne stanowisko Kościołów w Polsce oraz szeroko pojęta edukacja społeczeństwa ukazująca specyfikę tego typu małżeństw, którym należy przypominać, że „niedziela to prawdziwa szkoła, w której realizowany jest nieustannie program kościelnej pedagogiki. Pedagogiki nieodzownej, zwłaszcza w dzisiejszym społeczeństwie coraz silniej odczuwającym skutki kulturowego rozdrobnienia i pluralizmu, które nieustannie wystawiają na próbę wierność poszczególnych chrześcijan wobec określonych wymogów wiary” (DD 83). Troską kościołów i wspólnot chrześcijańskich jest to, aby niedziela była przez rodziny o różnej przynależności wyznaniowej godnie i owocnie przeżywana, bowiem jest ona Boża i nasza.

**Słowa kluczowe:** małżeństwa osób o różnej przynależności wyznaniowej, rodziny o różnej przynależności wyznaniowej, katolicy, ewangelicy, niedziela, dzień Pański

JÓZEF BUDNIAK

## „Le dimanche appartient à Dieu et à nous”— dans les familles catholiques et évangéliques

## Résumé

Le jour du Seigneur constitue le centre même de la vie chrétienne. On peut citer la formule de Franjo Kuharič, le cardinal de Zagreb : « Dimanche appartient à Dieu et

à nous ». Le dimanche est le jour du renforcement spirituel, du repos après le travail, le jour du service religieux, de la paix et de la réflexion. Le dimanche est le symbole de la dignité et de la liberté que Dieu offre à l'homme. Grâce à ces valeurs, l'image de l'homme se constitue dans notre société et elle devrait rester ainsi. Pour les chrétiens fêter le dimanche résulte directement du règlement biblique. De cette façon, on garde la dignité et la liberté de l'homme et en renforce le fondement des valeurs de notre société. Sans cette interprétation du Jour du Seigneur, il ne nous reste que des jours ouvrables. Les Églises catholique et luthérienne attachent de l'importance à l'observation du Jour du Seigneur, car il est inscrit dans l'essentiel de notre existence chrétienne. Sans fêter le dimanche le chrétien perd son identité. Le dimanche est une invitation à réfléchir sur sa propre existence. Cela s'exécute à travers la participation dans la messe où le service de la Parole de Dieu, car un dimanche sans messe ou service cesse d'être le Jour du Seigneur.

Les Églises devraient rappeler aux époux aux différentes appartenances religieuses de participer ensemble à la messe ou au service. L'Église devrait les unir. À l'époque de l'unification de l'Europe, le problème des familles avec des différentes appartenances religieuses concernera à l'avenir les habitants de toute la Pologne. C'est pourquoi une attitude commune des Églises en Pologne devient une nécessité, tout comme une éducation de la société, largement comprise, qui mettra en lumière la spécificité de ce type de mariages. Il faut les rappeler que dimanche est une Prairie école où on réalise continuellement le programme de la pédagogie de l'Église. Une pédagogie indispensable, surtout dans la société actuelle, qui ressent de plus en plus les résultats de la fragmentation culturelle et de la pluralité, mettant en danger la fidélité des chrétiens envers des exigences déterminées de la religion » (DD83). La préoccupation des Églises et des Communautés chrétiennes est de vivre de manière digne et efficace le Dimanche par les familles aux appartenances religieuses différentes, car il appartient à Dieu et à nous.

**Mots-clés:** mariages des personnes aux différentes appartenances religieuses, familles aux différentes appartenances religieuses, catholiques, évangéliques, dimanche, le jour du Seigneur

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## „Domenica è il giorno del Signore e nostro” — nelle famiglie cattolico-evangeliche

### Sommario

Il giorno del Signore è il centro della vita cristiana. Possiamo ricordare le parole di Franjo Kuharič, il cardinale di Zagabria, il quale ha detto: “La domenica è il giorno del Signore e nostro”. La domenica è il giorno di un rafforzamento spirituale, di riposo dal lavoro, è il giorno della messa, della pace e della riflessione. La domenica è il simbolo di dignità e di libertà che ci è data da Dio. È proprio grazie a questi valori che si costituisce l'immagine dell'uomo nella nostra società; il che è giusto. La celebrazione della domenica è un chiaro imperativo biblico. In tal modo vengono salvaguardate la dignità e la libertà dell'uomo e si rafforzano i valori della nostra società. Senza una simile comprensione del giorno del Signore ci sarebbero rimasti solo i giorni lavorativi. La Chiesa cattolica romana e la Chiesa evangelica augustea ritengono che sia molto importante celebrare il giorno del Signore, perché esso è iscritto nell'essenza stessa dell'esistenza cristiana. Il cris-

tiano che non celebra la domenica prende la propria identità. La domenica è un invito alla riflessione sulla propria esistenza. Ciò si coclude attraverso la partecipazione alla Santa Messa o al servizio della Parola di Dio. Se non si celebrano l'Eucaristia o letture della Parola di Dio, la domenica stessa non è più il giorno del Signore.

Le Chiese dovrebbero incoraggiare i coniugi di diverse confessioni a partecipare insieme alla Santa Messa domenicale o alla funzione di domenica. La Chiesa dovrebbe avvicinarli e unirli. Nel prossimo futuro, nell'Europa sempre più unita, il problema delle famiglia interconfessionali coinvolgerà anche tutti i residenti in Polonia. Per cui è necessario che la Chiesa raggiunga una posizione comune e che la società sia educata al riguardo affinché tutti ricordano che "la domenica è una vera e propria scuola, dove viene realizzato un continuo programma pedagogico della Chiesa — un programma insostituibile, soprattutto nella società di oggi, la quale sente in maniera sempre più forte gli effetti della frammentazione e del pluralismo culturale che mettono alla prova la fedeltà dei singoli cristiani verso le particolari esigenze della fede". È un proprio dovere della Chiesa e delle comunità cristiane incitare le famiglie interconfessionali a vivere debitamente e con dignità l'esperienza domenicale, perché la domenica è un giorno del Signore e nostro.

**Parole chiave:** matrimonio interconfessionale, famiglie interconfessionali, cattolici, evangelici, domenica, giorno del Signore

Part Two

Ecumenical Juridical  
Thought



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## The Matrimonial Covenant as the Nature of Things (of Marriage)

**Keywords:** nature of things, marriage, matrimonial covenant

Legal regulations concerning matrimony, both public ones and the ones within religious associations, belong to — as it was written by G. Radbruch — the situations in which, as in no other regulations, a materialistic definition of an idea and its dependence on legal reality emerges in a spectacular way.<sup>1</sup> This situation is caused by the fact that in marriage the birthrights and social rights, which are governed by their own, peculiar rules, clash. The law, not being able to control them, enters into an unceasing conflict with them.<sup>2</sup> For a long time legislators have been facing the necessity and possibility of spreading law regulations over a community of two people called marriage, which is ordered to procreation and upbringing of offsprings. Legal activity on this subject has to stand up to the natural conditions (the nature of things) of two people who form a community of life, which is always influenced by particular social and cultural factors. Social connections contribute to the determination of legislation, and simultaneously affect the legal structure of marriage, which largely strays from the natural foundations.<sup>3</sup>

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<sup>1</sup> Cf. G. RADBRUCH: *Filozofia prawa*. Warszawa 2009, p. 158

<sup>2</sup> Cf. *Ibidem*.

<sup>3</sup> For example, public law treats differently biologically the same relationship of a man and a woman — once as a matrimony and another time as an informal relationship (cohabitation). Moreover, differences concern the regulation of parental attitude that is shaped towards children born in marriage and illegitimate ones. An example of an increasing interference of regulations are those which are formed under the influence of spreading gender and queer theories.

Also the regulations in the Code of Canon Law of the Latin Church concerning matrimonial law several times refer to nature although they do not invoke the natural law distinctly. These code canons will constitute the point of reference for the following elaboration, whose aim is to point out the components, which might prove to be useful in the ecumenical dialogue.

## 1. Social Circumstances and Matrimonial Law

Changes occurring in the social structure contributed to the development of new regulations. These changes are observed in the transition from an organic family community to the community whose members start to lead more and more individualized lifestyle, which at the same time causes the loss of the community's original character. This phenomenon followed the rise of capitalist structures, in which the new reality made members of the family community engage in activities outside the family, which caused the state community develop, yet at the expense of the family one. The family ceased to be, as it had been before, an independent economic household and self-sufficient consumer environment. New structures emerged (services and work places, new housing estates and thus new relations going considerably beyond the family itself) connected with economic commitment of family members (gainful employment). The family was no longer organic and self-reliant. Its new model was formed, in which family relationships and bonds assumed the character of relations between particular family members. The previous economic functions of the family were taken over by the omnipresent economy. The consequence of this state of affairs was the elimination of former stabilizing foundations of the family community and the development of new, either women's or later youth's emancipation movements. Stabilizing family bonds focused on the collectiveness of aims of family life began to yield to a new family structure based on personal, psychological or philosophical ties. On account of the fact that these bonds were dominated by the principle of partnership, family and matrimony, which developed, were based on more and more rare relationships and connections, losing their public character in favour of private structure. The aftermath of this state of affairs is the fact that public institutions show less and less interest in the stability and continuance of marriage, since the effects of the activity outside marriage do not affect the very existence and functioning of a family as significantly as before. Scarce public interest in marriage and its insufficient social protection considerably contributed to its lesser stability and permanence.



Multifaceted and increasingly intricate development of conjugal and family life makes legislators lose control over them. Furthermore, law-makers are forced to deal with matrimony from many different points of view (as a moral and economic community, as an educational authority or a subject of social and population policy, as a secular, state and religious institution, but, on the other hand, also as a fundamental social, cultural and economic unit), the consequence of which is a hugely diverse way of its regulation. However, the multifaceted character of conjugal life forces such regulations, which will be capable of harmonizing its particular aspects.<sup>4</sup> Here appears a discord between the idea mentioned in the beginning and legal reality which has to take into account a certain average resulting from separate, individual cases, thus harmonizing the possibility of social coexistence of all the people who make up the conjugal and family community. This situation was highlighted as early as before the Second World War by G. Radbruch, who already noticed that contemporary matrimonial law was affected by crisis. It stemmed from the fact that the legal form of marriage, which was far from ideal, often made life difficult for the spouses. The ideal of marriage based on the eternal bond coming from erotic experience could not always translate into reality if it was not supported by strong family and parental interest. Thus, the range of tools enabling dissolving of a marriage (disintegration of conjugal life, temporary marriage, trial marriage) was widened.<sup>5</sup>

The fact that the Church of Christ came into being in the worldly order brought about the necessity of confronting community bonds existing in it and resulting from Christ's will with the law of public communities, in which the Church was developing. It adopted and accepted as its own the norms from the Roman law as long as they did not contradict the teachings of Church about matrimony.<sup>6</sup> A constant and unchanging component of Christian teaching about marriage was the principle of unity and indissolubility of marriage, to which Church law was subordinated. In Christian Europe the teaching of Church about matrimony constituted the only and indisputable source of regulations both at Church and public forum.<sup>7</sup> A uniform legal order on the issue of matrimony collapsed as a result of the Reformation and the above mentioned social changes aiming at the capitalist order. Contrary to Church matrimonial

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<sup>4</sup> Cf. A. SKOWRONEK: *Sakramenty wiary. Spotkania z Chrystusem w Kościele w profilu ekumenicznym*. T. 3: *Małżeństwo i kapłaństwo jako spotęgowanie chrześcijańskiej egzystencji*. Włocławek 1996, pp. 30—32; G. RADBRUCH: *Filozofia prawa...*, pp. 159—160.

<sup>5</sup> Cf. G. RADBRUCH: *Filozofia prawa...*, pp. 163—164

<sup>6</sup> Cf. B. KURTSCHIED: *Historia Iuris Canonici. Historia institutorum*. Romae 1951, pp. 79—83.

<sup>7</sup> Cf. G. DUBY: *Il matrimonio medievale*. Milano 1994.

law, which was based on an inviolable and unquestionable foundation of marriage expressed by its unity and indissolubility, public law in marital issues began to adjust to new life forms which were developing within marriage and family, losing sight of former ideas and principles.

However, one cannot dismiss the positive components of the changes that occurred in both church and public matrimonial law. Undoubtedly, church matrimonial law, also in response to movements emerging inside the church, has come a long way determined by the development of the theology of marriage, from regulations emphasizing the institutional elements of matrimony to defining it as a covenant, which determines the present regulation. A similar positive transformation can be observed in public legal orders, which under the influence of discovering human subjectivity in the period of Romanticism began to discern and understand marriage as a partnership of two equal people. The way to gaining the awareness of matrimonial covenant by Church was both long and difficult. Yet, the category of covenant with regard to matrimony can become a keystone around which one might seek solutions on the ground of ecumenical dialogue.

Unlike in the development of contemporary public matrimonial law, church matrimonial law did not have to make an effort to harmonize particular situations resulting from conjugal and family life. It remained faithful to the idea of unity and indissolubility of marriage, which, however, assumed different shapes in the consequences of life forms.

The history of Christian understanding of matrimony was affected over the centuries by ways of thinking alien to Christianity. Among them, Gnostic Manichean image of a human based on substantial dualism and, as a consequence, on antisomatism, contempt for human corporality. Moreover, Christian anthropological reflection was greatly influenced by the Roman view of the law of nature, which to a large extent emphasized the procreative character of marriage, and the Stoic philosophy, which devalued the elements of satisfaction and pleasure of conjugal life, thus suggesting rigorous frames of presenting it.<sup>8</sup>

The Christian concept of matrimony was greatly affected by the teaching of St. Augustine. What should be stressed is the fact that he distinguished three goods of marriage (offspring, fidelity and sacrament) and depicted marriage itself as a reflection of one and indissoluble love of Christ to his Church. On the other hand, unfortunately, Augustinian teaching about the goods of marriage together with his pessimism when it comes to the issue of human sexuality almost equal to that of an animal, contributed to the fact that for many centuries it was observed in Church

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<sup>8</sup> Cf. A. SKOWRONEK: *Sakramenty wiary...*, pp. 18—19.

that procreation was the main aim of matrimony.<sup>9</sup> The aspect of matrimonial covenant, whose Augustine was an unquestionable precursor, for many centuries did not assume the character which was given to it by the post-councilliar theology of marriage and the canon law reflecting it. Matrimonial covenant from his perspective did not refer to love association and complete unity between a man and a woman. It remained at the level of one and indissoluble *remedium concupiscentiae* as his only argument, aiming at the procreation.

Church law concerning matrimony did not follow St. Thomas's teaching about marriage, either. Drawing on the Augustinian theory about the three goods of matrimony and following St. Bonaventure, St. Thomas pointed out their role in connection with the overall image of a human and the value of his/her existence. Only complete existence in Christ gives meaning to human sexuality, incorporated in personal love of spouses, following the example of covenant between Christ and the Church.<sup>10</sup>

In case of church matrimonial law, similarly to public matrimonial law, one can observe a certain gap. St. Thomas's teaching about marriage and conjugal love directed eventually at God as the ultimate foundation and goal of a human was not expressed in appropriate legal articles, the example of which is the First Code of Canon Law. This kind of legislation was certainly influenced by the Protestant movements with their complete negation of the sacramental character of marriage and its presentation only in reference to the law of nature. The response to the Protestant understanding of marriage was the declaration of the Council of Trent about the sacramental nature of marriage and, at the same time, its participation in the order of grace.<sup>11</sup> The resolutions of this council affected further development of matrimonial law focused on protecting the basic elements of marriage and its sacramental character against the opposing tendencies to deprive it of its sanctity and dignity and making it equal to institutions established by a human, which are subject to the authority of a man. The external situation, to some degree, forced church legislation to introduce such regulations which will emphasize the sole jurisdiction of Church over matrimony and protection of its sanctity.<sup>12</sup>

<sup>9</sup> The Code of Canon Law 1917 stated clearly in can. 1013 § 1: *Matrimonium finis primarius est procreatio atque educatio proles; secundarius mutuum adiutorium et remedium concupiscentiae.*

<sup>10</sup> Cf. *Sent.*, IV, d. 26—42.

<sup>11</sup> Cf. *Sessio 24.* W: A. BARON, H. PIETRAS: *Dokumenty Soborów Powszechnych.* T. 4. Kraków 2004, pp. 715—719.

<sup>12</sup> Despite the opinions of German theologians of 19th century (F. Probst, F.X. Linsenmann), who regarded conjugal love as an objective goal of marriage, Pope Leon XIII in his encyclical *Arcanum divinae sapientiae* from 10th February 1880 stressed the hierarchical order of married life (in reference to Eph 5:23—24), in which a woman enjoys the

The teachings of Vatican II about matrimony contained in the Apostolic Constitution *Gaudium et Spes* (nos. 47—52)<sup>13</sup> caused the current matrimonial law of Church to create an order enabling personal development of spouses, whose relationship is demonstrated as the matrimonial covenant.<sup>14</sup>

## 2. The Nature of Things in Church Matrimonial Law

The Code of Canon Law in the regulation concerning matrimony, refers several times to the nature of things. These are canons which use the expression *natura sua* (can. 1061 §1,<sup>15</sup> 1134<sup>16</sup>), *natura* (can. 1084 §1,<sup>17</sup> 1098<sup>18</sup>), *naturalis* (can. 1055 §1<sup>19</sup>). The other canons in which the adjective *natural* (1071 §1.3, 1091 §1) was deployed use this expression in reference not to marriage, but to the responsibilities towards children from former marriage or born outside marriage. Additionally, in canon 1163 §2 and 1165 §2 marital impediments coming from the law of nature are

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same dignity as a man, demonstrating a connection between Christ and the Church. Cf. J. WRÓBEL: *Małżeństwo*. III: *W Kościele katolickim*. B. *Aspekt moralny*. W: *Encyklopedia Katolicka*. Lublin 2006. T. 11, pp. 1072—1073.

<sup>13</sup> Cf. U. NAVARRETE: *Structura iuridica matrimonii secundum Concilium Vaticanum II*. Roma 1988.

<sup>14</sup> Cf. CIC, can. 1055 § 1.

<sup>15</sup> A valid marriage between the baptized is called *ratum tantum* if it has not been consummated; it is called *ratum et consummatum* if the spouses have performed a conjugal act in a human fashion which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature (*ad quem natura sua ordinatur matrimonium*) by which the spouses become one flesh.

<sup>16</sup> From a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive (*vinculum natura sua perpetuum et exclusivum*). Moreover, a special sacrament strengthens and, as it were, consecrates the spouses in a Christian marriage for the duties and dignity of their state.

<sup>17</sup> Pre-existing and perpetual impotence excluding the possibility of an intercourse, whether on the part of a man or a woman, whether absolute or relative, nullifies marriage by its very nature (*ex ipsa eius natura dirimit*).

<sup>18</sup> A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature (*qualitatem, quae suapte natura consortium*) can gravely disturb the partnership of conjugal life.

<sup>19</sup> The matrimonial covenant, by which a man and a woman create a partnership of the whole of life and which is ordered by its nature to the good of the spouses (indole sua naturali *ad bonum coniugum*) and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

discussed. Yet, the code does not mention such impediments. Regulations concerning matrimony contained in the binding code do not state, unlike the previous code (can. 1068 §1), that the object regulated by the norm comes from the law of nature. Therefore, the current code does not contain clear codification of the law of nature in reference to conjugal issues. As the canons quoted above indicate, the object of legal regulation is justified by the very nature of marriage.

Contrary to the former one, in the code currently in force some significant changes occurred in connection with referring the object of regulation to the nature of things. The former code in canon 1068 §1 talked about the impediment of impotence, which makes marriage invalid by the law of nature. In the present code, statement of the invalidity of marriage due to this impediment results from the very nature of marriage. The new statement aroused a discussion among canonists and divided them into two groups, one recognizing the obstacle stemming from the natural law according to the canonistic tradition and the other not recognizing it. In the latter case, the obstacle of impotence is explained by either positive church resolution or the very nature of marriage, which, however, requires settling what belongs to the essence of marriage.<sup>20</sup> Nonetheless, the formulation referring to the nature of marriage does not exclude the statement that the impediment can originate from the natural law.

The alteration of the statement referring to the nature of marriage in the current canon 1084 §1 can also be discussed in another context. The task of the legislator is not to formulate regulations settling the issues of theological and philosophical nature, but to provide specific legal solutions. This solution is pronouncing the existence of the impediment of impotence. Deciding whether the obstacle comes from nature or the positive law depends on the current state of knowledge on this issue. Impotence as the subject of the norm has not appeared in the unerring teaching of Church magisterium yet. The formulation in which it is stated that it comes from the nature of marriage itself does not determine substantially (with regard to content) whether the norm originates from the natural law or not, but shows the source of its binding power.<sup>21</sup> This binding power results from, as far as the current state of knowledge is concerned, the marriage itself, which means that marriage itself justifies the existence of the impediment.

Under the influence of a personalistic view of marriage presented during Vatican II, deception by fraud of one of the nupturients was also men-

<sup>20</sup> Cf. H. STAWNIAK: *Niemoc płciowa jako przeszkoda do małżeństwa*. Warszawa 2000, pp. 135—144.

<sup>21</sup> Cf. R. SOBAŃSKI: *Nauki podstawowe prawa kanonicznego*. T. 2: *Teologia prawa kościelnego*. Warszawa 2001, p. 58.

tioned in the current code among the drawbacks of conjugal consent. The personalistic view of marriage shows that nupturients should express conjugal consent voluntarily after familiarizing themselves with its subject, so that there will not be a dissonance between the desired and actually existing subject. Deception concerns the attribute of a person, which may seriously disrupt the unity of conjugal life. It constitutes a new subject of legal regulation, at the same time arousing discussion about its origin. Most opinions point out its positive origin, although there are also those which indicate its connection with the natural law. Then, the reference to the nature of things in code formulations does not determine the legal natural or positive source of the norm. There is also a transitional view which acknowledges that in some cases deception by fraud may arise from the natural law. We encounter such a situation when the error, which arises from deception and which restricts the contractor's freedom, harms the essence of the legal act (essential error) causing its invalidity by its very nature as long as it assumes the form of the condition *sine qua non*.<sup>22</sup>

From the above canons that refer to the nature of things emerges the following image of marriage, which is liable to legal regulation: a) it is a matrimonial covenant, whose aim is, by nature, the good of the spouses; b) it is ordered by its nature to give birth to offspring; c) it is by its nature exclusive and perpetual (the only one and indissoluble); d) it comes into being as a result of voluntary decision of both sides, which is contradicted by deception by fraud concerning the attribute of a person, which, by its nature, can seriously disrupt the unity of conjugal life; e) it is invalid because of its nature when an impediment of impotence exists.

### 3. The Nature of Things

By the concept of a thing, whenever law refers to it in the expression “the nature of things,” one should understand each thing that is a subject to legal regulation. Marriage itself is also such a thing.<sup>23</sup> It is more difficult to define nature, the understanding of which is not consistent. It is connected mainly with the cognitive process which we use to learn about nature as well as with the doubt concerning defining the relation between nature and conclusions resulting from it and relevant for legal thinking and,

<sup>22</sup> Cf. W. GÓRALSKI: *Małżeństwo kanoniczne*. Warszawa 2011, pp. 188—189.

<sup>23</sup> In the systematics of the previous Code of Canon Law marriage was discussed in the book entitled *De rebus*.

as a consequence, for making law, which refers to it as its source. “Nature” can be generally regarded as a determining foundation which conveys the essence of a subject and its meaning as the essence of things (*essentia rei*). The essence and meaning of a subject express the essential character of existence.<sup>24</sup> Whenever law refers to the nature of things, it indicates that there is a certain specific material in it that is suitable for preliminary legal regulation, which should be taken into consideration when a given thing becomes its subject. These are factors which determine the content of legal norms. Among them are the elements thanks to which we can get to know the regularities governing a given thing, which, together with external determinants created by a man, constitute a whole liable to regulation.

It does not mean, though, that the range and extent to which the nature of things affects norms — if a legislator refers to it — will always be the same and expressed in this way. It depends above all on the measure of cognition of a given thing (the state of knowledge as for example with regard to deception with malice aforethought), but also on the legislator’s will to acknowledge the nature of things as a source of law made by him. Accepting the nature of things as a determinant of the content of legal norms outlines borderlines which he cannot trespass while establishing them. A legislator cannot establish norms whose content contradicts the nature of things. On the other hand, accepting the nature of things demonstrates these elements which should necessarily be included in the content of the established legal norms, at the same time constituting obligatory guidelines for them and defining the area of legal order.<sup>25</sup>

The above definition of the nature of things from the point of view of legal interest points out to its role in making law. This role does not come down to being a rule for the legislator and a model for the norms established by him in a technical sense. The objective of the nature of things is to give the “spirit” to the legal norms, which should reflect inherent obligation existing in things. Thanks to the nature of things, insight into the essence and meaning of things enables us to find out that in things there is also immanent obligation, which cannot be shown solely by the very essence and meaning of an object.<sup>26</sup> A legislator, referring to the nature of things in the process of creating righteous (material) law combines the elements which can be interpreted from the nature of things together with the purpose requirements of the established law.

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<sup>24</sup> Cf. A. Kość: “Pojęcie ‘natury rzeczy’ we współczesnej filozofii prawa.” *Prawo. Administracja. Kościół* 2—3 (2000), p. 37.

<sup>25</sup> Cf. *Ibidem*, pp. 38—40.

<sup>26</sup> Cf. *Ibidem*, p. 41. Thereby, the nature of things plays, to some extent, the role of a mediator combining “existence” and “obligation” and allowing to create norms which are a result of the “golden rule” and categorical imperative.

## 4. The Nature of Christian Marriage

The binding Code of Canon Law refers to the nature of marriage several times. It is a relationship exclusive and perpetual in nature that is directed at the good of spouses and the procreation of offspring. In such a definition of the nature of things one can find elements negatively determining law which cannot oppose them. These are the exclusiveness and perpetuity of the relationship. Therefore, the law cannot establish norms which allow betraying the unity and indissolubility of marriage. Elements positively determining matrimonial law will refer to the good of spouses and their offspring, the scope of which is virtually unlimited.

Can the nature of marriage defined this way be a footing in ecumenical dialogue if in the Protestant communities and in the Orthodox Church exists a possibility of re-entering into marriage? Trying to answer this question one should at the same time take note of the Catholic definition of the nature of marriage, which evolved in history and was finally reflected in legislation. The previous Code of Canon Law while discussing the nature of marriage did not refer to the good of the spouses, which originates from the nature of marriage itself. It also did not mention clearly the procreation resulting from the nature of marriage. Giving birth to offspring was rendered an objective of marriage and not something which comes from its very nature. Similarly, the unity and indissolubility of marriage was explained by the fact that matrimony is a sacrament. Comparing the previous codification to the binding one reveals that in the teachings of Church, based on the unchanging foundations of unity and indissolubility of marriage, a significant revolution has taken place, which is proved by the regulation currently in force.

When we talk about the legal nature of marriage, what we mean is Christian marriage. We do not mean a “natural marriage,” since according to the Catholic theology it is a part of divine order of creation and salvation. Luther’s negation of participation of Christian marriage in the order of salvation does not mean that marriage remains only in the secular domain. According to Luther’s teaching about two kingdoms, it is a divine institution through which God’s Kingdom is realized in the worldly life. Therefore, marriage is simultaneously human and divine reality, it is a sign by which God’s Kingdom enters this world. It appears that separating the order of creation from the order of salvation — even if Luther rejected the sacramental character of marriage<sup>27</sup> — does not have

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<sup>27</sup> M. Luther’s understanding of a sacrament refers to its being directly established by Christ. New Testament writings do not mention such a gesture of Christ towards marriage.



to be regarded as an alternative,<sup>28</sup> which gives a chance of ecumenical dialogue. Christian understanding of a sacrament clearly shows that it is a visible sign of invisible grace, in which through a material element such as a relationship of two people, God's reality descends on spouses, becomes present and realizes God's kingdom.

In Catholic, Orthodox and Protestant understanding of marriage there are differences. Theologians discuss the possibility of doctrinal rapprochement in the ecumenical field. Certain agreements have already been reached. One of them is accepting in 1976 by Joint Commission for Theological Dialogue between the Roman Catholic Church and Reformed Churches, a document in which marriage is commonly defined referring to the biblical category of covenant.<sup>29</sup> The common acknowledgement of the category of covenant for defining marriage emphasizes that in the understanding of both Churches, the conjugal bond between a man and a woman reflects the mystery of God's love in Jesus Christ to His Church and is the source of grace without which Christian marriage would be deprived of its foundation.

Applying the category of covenant to define matrimony, apart from the host of theological connotations, can also become a starting point for deliberations concerning the nature of things. With the current state of knowledge and theological awareness one can ponder upon the nature of marriage on the basis of this category. My intention is not to draw particular conclusions, since they require profound philosophical analysis concerning the notion of the nature of things and theological conditions of individual Christian religions, but to point out to certain elements which are contained in the concept of the nature of things (matrimonial covenant) and the consequences for the ecumenical dialogue resulting from it.

1. The nature of things, as it was described above, is quite an extensive realm and it is difficult to enumerate all the elements it comprises. It defines certain borderlines which cannot be trespassed and indicates the elements which should be contained in it. Finding out about these elements depends on the adopted cognitive methods and final acknowledgement. An example of broad depiction of the elements of marriage is the definition of what is understood by the good of the spouses (their rights and responsibilities, factors determining the ability to grasp them and, as a consequence, fulfill them) and the good of offspring (excluding having children causes the invalidity of conjugal agreement and means not only the will not to give birth to it but also the will excluding the right to conjugal acts, the obligation to protect the conceived life or the education itself).

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<sup>28</sup> Cf. A. SKOWRONEK: *Sakramenty wiary...*, pp. 41—42

<sup>29</sup> Cf. *Ibidem*, p. 43.

Positive determinants of the nature of marriage do not constitute a moot point in the ecumenical dialogue. Controversial issues emerge when one of the partners neglects their duty to take care of the spouse's or child's good, and at the same time the other side suffers as a result of it. The Catholic approach guards the unity and indissolubility of marriage. The Orthodox Church and Protestantism allow splitting of sides and re-entering into marriage.

2. The unity and indissolubility of marriage are for the Catholic faith the negative determinants of the nature of marriage. It means that one can never transcend them and establish law which would oppose the unity and indissolubility allowing opposite possibilities. In the Orthodox Church, which refers to the rule of *oikoumene* (appropriateness, understanding) there is a possibility of partners splitting up and re-entering marriage, though the second marriage is considered inferior to the first one. Remarrying is against the practiced religion but tolerated due to human weakness. Dispensation from the first marriage is supposed to fulfill the rule of preserving the indissolubility of marriage. The Protestant churches do not acknowledge the rule of indissolubility of marriage because they do not regard marriage as sacrament.

As far as the Orthodox Church is concerned, one should notice that although its practice with regard to the indissolubility of marriage contradicts the principle of indissolubility of marriage preached by the Catholic Church, the Council of Trent consciously did not condemn the eastern pastoral practice, allowing it to exist peacefully as a component of a particularistic Church form of Christian life.<sup>30</sup> The conciliar statement deprived of anathematism together with the unceasing Eucharistic unity of the Catholic and Orthodox Church allows one to assert that the former accepts the principle of economy existing in the Orthodox Church.<sup>31</sup>

Discussing the issue of indissolubility of marriage, one can venture to put together the positive and negative determinants of the nature of marriage as a covenant which reflects the unceasing God's covenant with the human originating in the act of creation. It is from this very act, directed at the order of salvation, that we decipher the divine purpose of the indissolubility of marriage, which does not have to be justified by its sacramental dignity. The order of creation indicates that marriage is indissoluble not because it is a sacrament, but because according to the Catholic and Orthodox teaching, it was raised to this dignity by Christ.

3. The sacramental character of marriage in the Catholic Church was solemnly declared at the Council of Trent. It is not accepted by the Protes-

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<sup>30</sup> Cf. *Ibidem*, p. 88.

<sup>31</sup> Cf. *Ibidem*.

tant communities, which does not mean that they acknowledge a secular character of marriage, as it was stated above. The very contract or liturgical form required to ensure its validity is not the sacrament of matrimony. If the nature of covenant is a constant bond created by the spouses for their own good and the good of their offspring, recognized by all Christian churches, it should be highlighted that the covenant itself, which personalizes the unceasing covenant between Christ and His Church, is the sacrament. Entering into marriage spouses not only receive the sacrament the moment a unity between them is created, but continually remain in it as in a relationship fulfilling God's covenant with Church.<sup>32</sup>

Reflections, the starting point of which constitute the statements of the Code of Canon Law referring to the nature of marriage, can be — together with biblical and theological deliberations — a reference point in ecumenical discussions. The Catholic Church does not establish law with regard to ecumenical commitment. The code regulations concern only the congregation of the Latin Church,<sup>33</sup> but the reasons of specific legal solutions, and especially the elements of their reference given in the regulations, can be searched for in the ecumenical dialogue, opening the way to further formulations.

<sup>32</sup> Cf. T. GAŁKOWSKI: "Instytucja małżeńska w świetle instytucjonalnej koncepcji Kościoła Soboru Watykańskiego II." *Łódzkie Studia Teologiczne* 20 (2011), pp. 89—102.

<sup>33</sup> Cf. Can. 1.

TOMASZ GAŁKOWSKI

## Małżeńskie przymierze jako natura rzeczy (małżeństwa)

### Streszczenie

Przepisy kodeksu prawa kanonicznego Kościoła łacińskiego w kwestii małżeństwa kilkakrotnie odwołują się do natury rzeczy. Sformułowanie to nie przesądza merytorycznie (co do treści) o prawnonaturalnym lub nie charakterze normy, wskazując jedynie na źródło pochodzenia normy wiążącej. Naturę można uznać za określającą podstawę, która oddaje istotę przedmiotu i treść jego znaczenia jako istotę rzeczy. Przy obecnym stanie wiedzy naturę małżeństwa można ująć w kategorii przymierza, co do której zgadzają się kościoły chrześcijańskie. W naturze przymierza znajdują się elementy negatywnie determinujące prawo regulujące związek małżeński, przeciwko którym prawo nie może stanowić norm (jedność i nierozzerwalność) oraz elementy pozytywne, których zasięg jest bardzo szeroki (dobro małżonków i potomstwa). Rozważania wokół natury rzeczy w obecnym stanie jej poznawalności stanowią (obok rozważań biblijno-teologicznych) element dialogu ekumenicznego. Tylko wspólne i współzależne rozpatrywanie wszystkich determinantów w odniesieniu do natury rzeczy stwarza szansę na porozumienie.

**Słowa kluczowe:** natura rzeczy, małżeństwo, przymierze małżeńskie

TOMASZ GAŁKOWSKI

## L'alliance matrimoniale comme nature des choses (mariage)

## Résumé

Les dispositions du code de droit canonique de l'Église latine concernant le mariage se réfèrent à la nature des choses à quelques reprises. Cette formule ne définit pas (sur le fond) le caractère juridique-naturel ou non de la norme, elle montre uniquement la source de la norme contraignante. On peut reconnaître en nature une base qui détermine l'essence de l'objet et le contenu de sa signification comme nature des choses. A l'état des connaissances actuel, la nature du mariage peut être définie dans les catégories d'alliance, sur laquelle toutes les Églises chrétiennes sont d'accord. Dans la nature de l'alliance se trouvent des éléments qui déterminent négativement le droit réglant le mariage, contre lesquels le droit ne peut pas constituer des normes (unité et indissolubilité), ainsi que des éléments positifs, dont la portée est très large (bien des époux et des enfants). Les réflexions sur la nature des choses dans l'état actuel de sa connaissance constituent (à côté des considérations bibliques et théologiques) un élément du dialogue oecuménique. Seule une considération commune et interdépendante de tous les déterminants par rapport à la nature des choses, est une chance de l'entente.

**Mots-clés:** nature des choses, mariage, alliance matrimoniale

TOMASZ GAŁKOWSKI

## Il patto coniugale come natura delle cose (del matrimonio)

## Sommario

Le norme del diritto canonico della Chiesa latina per quanto concerne il matrimonio, si riferiscono spesso alla natura delle cose. Detta formula non determina (quanto al contenuto) se la norma abbia o meno un carattere giuridico-naturale, limitandosi ad indicare la fonte di provenienza della norma vincolante. La natura può essere considerata come base che delinea l'essenza dell'oggetto e il contenuto del suo significato in quanto essenza delle cose. Considerando lo stato attuale della conoscenza, la natura del matrimonio può essere definita come patto coniugale, su cui sono d'accordo le Chiese cristiane. Nella natura del patto ci sono elementi che, in maniera negativa, determinano la legge che regola il matrimonio, contro i quali la legge non può stabilire norme (unità e indissolubilità), ma anche elementi positivi (come il bene dei coniugi e dei figli) la cui portata è molto ampia. Le riflessioni sulla natura delle cose allo stato attuale della sua conoscibilità sono (accanto alle riflessioni biblico-teologiche) un elemento del dialogo ecumenico. Solo una riflessione congiunta ed interdipendente sulle cause determinanti riguardanti la natura delle cose può portare ad un accordo.

**Parole chiave:** natura delle cose, matrimonio, patto coniugale

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Marriage Covenant in Catholic Doctrine:  
The Pastoral Constitution on the Church  
*Gaudium et Spes* — the Apostolic Exhortation  
*Familiaris Consortio* — the Code of Canon Law —  
the Code of Canons of the Eastern Churches

**Keywords:** Revelation, Catholic doctrine on marriage, Christian anthropology, theology of marriage, canon law, matrimonial law, covenant, marriage, marriage covenant, sacrament of Matrimony, conjugal love, family

## Introduction

“God Himself is the author of matrimony”<sup>1</sup> — pronounces one of the most important magisterial teachings of the Pastoral Constitution *Gaudium et Spes*.<sup>2</sup> Both its self-evident biblical roots as well as the whole prophetic-magisterial context of the Council Fathers’ statements, preceded by the desire for a contemporary illumination of the revealed truth,<sup>3</sup> seal the significance of this statement. And its message is obvious: every Catholic theologian, or canonist, speaking about the essence of the unbreakable nature of the bond between a man and a woman, ought to con-

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<sup>1</sup> VATICAN COUNCIL II: *Pastoral Constitution “Gaudium et Spes” on the Church* [further: GS], n. 48, 1

<sup>2</sup> Cf. A. MIRALLES: *El Matrimonio. Teología y vida*. Madrid 1997, p. 15.

<sup>3</sup> GS, n. 47, 3.

sider the doctrinal scope of the theology of the Covenant.<sup>4</sup> What premises determine such, and it is worth emphasizing — only right, epistemological approach? The Revelation and entire Catholic Tradition, as Fathers of the Second Vatican Council affirm it, proclaim that the Triune God placed, in the very central part of His plan of Creation, an unusual gift, the perfect gift of love of the Creator for the man. Here, from the personal divine-human love bond of God's Covenant with the man is born the "institutional," personal, inter-human bond: The marriage bond, a permanent relationship of the bride and groom, called upon to radiate the Spirit<sup>5</sup> and bring a special blessing into this world. This special sign of God's saving action (the primordial sacrament — as John Paul II calls it<sup>6</sup>) — reflecting the original unity of the nature and Grace, Creation and Covenant — combines in itself not only a personal, but also religious-spiritual dimension.

Since the dawn of history the transcendence has been an indispensable determinant of the essence of marriage.<sup>7</sup> It is true that the Catechism of the Catholic Church enhances marriage when it illustrates the relationship between the first bride and groom as the original divine-human covenant, in which marital love enters divine love to become a part of it.<sup>8</sup> Highly instructive here is the teaching of John Paul II, who on many occasions repeated that the *consortium totus vitae*<sup>9</sup> is born in the Covenant of Love, strictly following the logic of the Creation economy. God in His creative act, "in the image and likeness of God," brought "marital communion," so to speak, out of the mystery of the Trinitarian "We," and in this way, already in the First Covenant, permanently bound the relationship of a man and a woman with His Mystery.<sup>10</sup>

Thus, the simple, positive message of the Church teaching on Matrimony can be formed in the following way: A man and a woman through the marital Covenant of Love<sup>11</sup> are no longer two, but become

<sup>4</sup> See *Catechism of the Catholic Church* [hereafter: CCC], nn. 1601—1605.

<sup>5</sup> JOHN PAUL II: *The Redemption of the Body and Sacramentality of Marriage (Theology of the Body)*. Electronic Edition © Copyright 2006. Available online: [http://www.catholicprimer.org/papal/theology\\_of\\_the\\_body.pdf](http://www.catholicprimer.org/papal/theology_of_the_body.pdf), p. 41.

<sup>6</sup> *Ibidem*, pp. 49, 250.

<sup>7</sup> Cf. IOANNES PAULUS II: "Allocutio ad Romanae Rotae iudices" (30.1.2003). *Acta Apostolicae Sedis* [hereafter: AAS] 95 (2003) p. 394, n. 3.

<sup>8</sup> CCC, n. 1639.

<sup>9</sup> Code of Canon Law [hereafter: CIC 1983], can. 1055 § 1; Code of Canons of the Eastern Churches [CCEO], can. 776 § 1.

<sup>10</sup> JOHN PAUL II: *Letter to Families "Gratissimam Sane"* (2.2.1994) [hereafter: GrS], n. 8.

<sup>11</sup> Cf. IDEM: *Apostolic Exhortation "Familiaris Consortio"* (22.11.1981) [hereafter: FC], n. 11.

one,<sup>12</sup> so the newly formed personal “we,” substantially differs from any other relationship between two people. The negative message of this teaching should not be overestimated: Human will is too weak so as to autonomously initiate the existence of a new being.<sup>13</sup> Here comes into view a (hypo)thesis that can summarize the introduction to this work: The pivotal factor for a reliable presentation of marriage/the Sacrament of Matrimony and starting point for penetrating the *de matrimonio* Catholic doctrine should be the truth that the Triune God, Creator of the marriage institution, is a true Creator of every particular marital bond.

## 1. The Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* (December 7, 1965)

It may sound truistic today to remind us that the ecclesiological concept of the Second Vatican Council places Matrimony in the very centre of the theology of the Covenant. Indeed, even if the thesis that the “Covenant” is a hermeneutical key to all Council teachings on marriage<sup>14</sup> has been raised to the rank of obvious truths, we should not depreciate the voice of a well-known theologian, Archbishop Gerhard L. Müller, that the formation of a holistic marriage doctrine is still a matter of the future.<sup>15</sup> We cannot understand the remarks of the current Prefect of the Congregation for the Doctrine of the Faith in any other way, than as an invitation by Catholic theologians/canonists to conducting further, systematic studies on contemporary marriage magisterium, applying the ever-up-to-date demand for a “return to the sources.”

It is widely recognized and there is no doubt about it that nos. 47—52 of the Pastoral Constitution on the Church *Gaudium et Spes* constitute

<sup>12</sup> Gen 1, 27; 2, 24; see A. PASTWA: “‘Już nie są dwoje, lecz stają się jednością’”. Paradygmat antropologiczny wyznacznikiem prawnokanonicznego ujęcia natury węzła małżeńskiego.” In: “*Mężczyznę i niewiastę stworzył ich*”. *Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu*. Red. IDEM. Katowice 2012, pp. 134—152.

<sup>13</sup> This thesis has been particularly popularized by Matthäus Kaiser, a German theologian and canonist — M. KAISER: “Kirchliches Eherecht im Lichte kirchlicher Ehelehre.” *Theologie und Glaube* 79 (1989), pp. 276—277.

<sup>14</sup> Cf. J. HUBER: “Der Begriff „foedus” in Nummer 48 der Pastoralkonstitution „*Gaudium et spes*.” In: *Rezeption des Zweiten Vatikanischen Konzils in Theologie und Kirchenrecht heute. Festschrift für Klaus Lüdicke zur Vollendung seines 65. Lebensjahres*. Hg. D.M. MEIER, P. PLATEN, H.J.F. REINHARDT, F. SANDERS. Essen 2008, p. 279.

<sup>15</sup> G.L. MÜLLER: *Katholische Dogmatik: Für Studium und Praxis der Theologie*. Freiburg 2005, p. 767.

the most important “marital” sources among all documents of the Second Vatican Council.<sup>16</sup> It is here that the Council Fathers placed the essential exposition of the doctrine on the personal covenant of a man and a woman.<sup>17</sup> It is the truth but for its ascertainment an annex is necessary. The Italian theologian-liturgist Piero Barberi, when studying the *de matrimonio* Council documents, skillfully distinguished those which bear the features of strictly dogmatic enunciations. As it turned out, at least some of these last ones they were found in the constitution *Gaudium et Spes*. The presence of dogmatic statements in the pastoral constitution is justified by two premises. The first one is a general premise connected to the genesis of the document; the second one, of a specific nature, refers to the primary significance of passage no. 48 in the renewed marriage doctrine. As far as the first premise is concerned, the fact worth mentioning is that, at the first stage of its formation, the current pastoral constitution (*Gaudium et Spes*) was presented as a dogmatic constitution (among others, such a meaning was attached to it by the Council’s theological commission). As far as the significance of passage no. 48 of *Gaudium et Spes* is concerned, Piero Barberi quotes the authority of Karl Rahner<sup>18</sup> who shaped a viewpoint that this essential fragment of the Council teaching (entire no. 48), though formally belongs within the pastoral constitution, has the character of a doctrinal exposition.<sup>19</sup>

Not less interesting is the opinion of a renowned expert Otto Herman Pesch, on problems of marriage, especially pertaining to relations between key sources on the sacrament of Matrimony found in two constitutions: *Gaudium et Spes*<sup>20</sup> and *Lumen Gentium*.<sup>21</sup> According to the German theologian, we must not yield to the temptation of taking into account, in the theological-legal deliberation over the sacrament of Matrimony, only one of the mentioned constitutions. A thorough researcher should consider

<sup>16</sup> It is sufficient to quote the opinion of Karl Rahner, the greatest Catholic theologian of the 20th century: “Man wird es [GS 47—52] als einen der schönsten Texte des Konzils begrüßen dürfen” — K. RAHNER, H. VORGRIMMER: *Kleines Konzilskompodium*. Freiburg i. Br. 1979, p. 436.

<sup>17</sup> See N. LÜDECKE: *Eheschließung als Bund. Genese und Exegese der Ehelehre der Konzilskonstitution „Gaudium et spes“ in kanonistischer Auswertung. Forschungen zur Kirchenrechtswissenschaft*. Hg. H. Müller, R. Weigand. Bd. 7. Würzburg 1989.

<sup>18</sup> K. RAHNER: “La problematica teologica di una Costituzione pastorale.” In: *La Chiesa nel mondo contemporaneo. Commento alla Costituzione pastorale “Gaudium et Spes”*. Ed. E. Giammancheri. Brescia 1966, pp. 61—83.

<sup>19</sup> P. BARBERI: *La celebrazione del matrimonio cristiano. Il tema negli ultimi decenni della teologia cattolica*. Roma 1982, pp. 89—90.

<sup>20</sup> GS, nn. 47—52.

<sup>21</sup> VATICAN COUNCIL II: *Dogmatic Constitution on the Church “Lumen Gentium”* [henceforth: LG], n. 11,2.



the whole contents of the Second Vatican Council *magisterium* on marriage (and family). What is more, as we consider the sources in *Gaudium et Spes* and *Lumen Gentium*, we must also remember the time perspective of their origin. The succession in which those documents were made public is not without significance. For what reason? The fundamental contents present in the chronologically first dogmatic constitution, did not need to be repeated by the Council Fathers in another pastoral constitution. In short, it is worth remembering that almost a year before issuing the constitution *Gaudium et Spes*, the most important Second Vatican Council document, the Dogmatic Constitution on the Church *Lumen Gentium*, had already been adopted.<sup>22</sup>

Affirmation of the roughly presented here, epistemological-methodological axiom of the cohesion and complementarity of the “marital” sources of the Second Vatican Council,<sup>23</sup> allows us to form a general study question in the following way: What original contents on the marital covenant did the Council Fathers contain in the constitution *Gaudium et Spes* and the parallel constitution *Lumen Gentium*, as well as other documents of the Vatican II? At first, it is advisable to inquire what image of the “natural” covenant of persons (*matrimonium in fieri/matrimonium in facto esse*<sup>24</sup>) comes into appearance from the already mentioned no. 48 of the pastoral constitution?<sup>25</sup>

A synthetic record of the renewed Catholic *de matrimonio* doctrine is presented — already in its first opening — by the formula initiating no. 48 of the mentioned Council document: “The intimate partnership of married life and love has been established by the Creator and qualified by His laws, and is rooted in the conjugal covenant of irrevocable personal consent.” An exceptional benefit of that magisterial teaching lies in

<sup>22</sup> O.H. PESCH: *Das Zweite Vatikanische Konzil. Vorgeschichte, Verlauf — Ergebnisse, Nachgeschichte*. Würzburg 1994, pp. 141—147, 335—336.

<sup>23</sup> I expand on this topic in my work — A. PASTWA: „Komunia w Duchu”. Małżeństwo a Eucharystia w świetle norm kanonów 1065 § 2 i 1119 KPK.” *Ius Matrimoniale* 17 (2012), pp. 7—43.

<sup>24</sup> Adequacy of placing this issue in two discussed planes is enhanced — J. EDER: *Der Begriff des „foedus matrimoniale” im Ehe recht des CIC. Dissertationen. Kanonistische Reihe*. Hg. W. AYMANS, K.-Th. GERINGER, H. SCHMITZ. Bd. 3. St. Ottilien 1989, p. 65; J. HUBER: “Der Begriff „foedus“...,” p. 286.

<sup>25</sup> Suitable here could be the remark by Piero Barberi on the admitted order of doctrinal exposition in no. 48 of the Constitution, an exposition that was to harmonize with the *eo ipso sacramentum* principle (conveyed by the canonical tradition) as well as the *evectum code formula* (CIC 1917, can. 1012 § 1): „Il modo di procedere, evidente in sé [...], presenta prima il matrimonio „cosiddetto naturale” e successivamente il matrimonio cristiano sacramentale com „coronamento” del primo” — P. BARBERI: *La celebrazione del matrimonio...*, p. 123.

such a coordination of aspects of a dynamic and structural marriage that the image of the old materialistic-contract institution disappears completely. Chiefly thanks to the specification of the concept of “covenant”<sup>26</sup> in describing a personal act constituting marriage (*actus essentialiter amorosus*),<sup>27</sup> the external pressure of a welfare factor,<sup>28</sup> shaping the image of the marriage as an institution aiming at procreation (rendering “services” for the community of people),<sup>29</sup> marked with a distinctive, apersonal and sometimes even anti-personal stigma, has been definitely excluded. A premise for such an evaluation was given by a prior specification of the efficient cause of marriage, contained in the Pio-Benedictine *Code of Canon Law* (CIC 1917), in which the place of a mutual love devotion was taken by a contract with a peculiarly defined subject of a “right to the body” of the spouse.<sup>30</sup> Meanwhile, the concept of *foedus coniugii*, purposefully used in the quoted *Gaudium et Spes* passage,<sup>31</sup> allows for an integration of the unchangeable dimension of the institution (*institutum matrimoniale*), once and for all defined by the Creator and totally independent of human judgement,<sup>32</sup> with a non-abstract and original in its historical existential dynamism, event of a unity of persons — the “intimate partnership of married life and love” of the man and woman.

Replacing the old concept of *contractus* with *foedus*, certainly was not an exclusively symbolic measure.<sup>33</sup> And even though among subject experts

<sup>26</sup> Cf. G. MANTUANO: *La definizione giuridica del matrimonio nel magistero conciliare*. In: *L'amore coniugale. Annali di dottrina e giurisprudenza canonica*. Vol. 1. Città del Vaticano 1971, pp. 192—193.

<sup>27</sup> U. NAVARRETE: *Structura iuridica matrimonii secundum Concilium Vaticanum II. Momentum iuridicum amoris coniugalis*. Roma <sup>2</sup>1994, p. 146.

<sup>28</sup> Cf. O. GIACCHI: *Il consenso nel matrimonio canonico*. Milano <sup>3</sup>1968, pp. 345—346.

<sup>29</sup> Cf. A. STANKIEWICZ: “Rilevanza canonica della comunione coniugale.” In: *Vaticano II: bilancio e prospettive. Venticinque anni dopo (1962—1987)*. Eds. R. LATOURELLE, P. ADNÈS. Assisi <sup>2</sup>1988, pp. 775—776.

<sup>30</sup> CIC 1917, can. 1081 § 2.

<sup>31</sup> See B. HÄRING: *Pastorale Konstitution. Kommentar zum ersten Kapitel des zweiten Hauptteils*. In: *Lexikon für Theologie und Kirche. Das Zweite Vatikanische Konzil. Dokumente und Kommentare*. Bd. 3. Freiburg—Basel—Wien 1968, pp. 429—432.

<sup>32</sup> *Intima communitas vitae et amoris coniugalis, a Creatore condita suisque legibus instructa, foedere coniugii seu irrevocabili consensu personali instauratur. Ita actu humano, quo coniuges sese mutuo tradunt atque accipiunt, institutum ordinatione divina firmum oritur, etiam coram societate; hoc vinculum sacrum intuitu boni, tum coniugum et prolium societatis, non ex humano arbitrio pendet* — GS, n. 48,1.

<sup>33</sup> Of interest here could be the commentary of the acclaimed canonists Joseph Prader and Heinrich J.F. Reinhardt: “GS 48,1 verwendet anstatt “Vertrag” den biblischen Begriff “Ehebund” synonym mit dem Ausdruck “unwiderrufliches personales Einverständnis”. Der Vorschlag, das Wort “Vertrag” zu verwenden, wurde von den Vätern der Ostkirchen abgelehnt, weil in der orientalischen Tradition der sakramentale Charakter der Ehe in seiner mystischen Symbolik hervorgehoben wird und der Vertragsbegriff Schwierigkeiten

there is no agreement whether the intention of the Council Fathers was to transform the model of marriage (*ein fundamentaler Perspektivwechsel*<sup>34</sup>), one thing seems to be certain: The already mentioned measure was determined by deep philosophical grounds and the resulting-from-them willingness to alter the following paradigm — renunciation of the burden of neo-scholastic thought for the benefit of the affirmation of personalistic message in the teaching on marriage.<sup>35</sup> It is unnecessary to add that the substantial purpose was to finally overcome the image of a “cold” institution. Indeed, in this institution the personal good of a man and a woman, called upon to build their matrimonial *communio personarum*, the fundamental human relationship whose goals cannot be narrowed down to sexual-procreative functions,<sup>36</sup> was pushed into the far background. The foundation of covenant model assumptions signified a clear doctrinal declaration that in the act of entering into a marriage “contract” the primary goal is not to convey and justify formally defined rights but offer a mutual gift of a person to person.<sup>37</sup> Thus, we can safely assume that the inner truth of the marital love covenant’s act, and especially the thoroughness of a personal gift as well as its immanently implied irrevocability, constitutes a reference point for the outlined contents of *intima communitas vitae et amoris coniugal*s.<sup>38</sup>

Renunciation of the “contract model” certainly does not mean challenging the *matrimonium facit partium consensus* principle, or even the contractual nature of the marital consent.<sup>39</sup> Yet, due to the paradigm

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bereitet” — J. PRADER, H.J.F. REINHARDT: *Das kirchliche Eherecht in der seelsorgerischen Praxis*. Essen 2001, p. 7, fn. 3.

<sup>34</sup> N. LÜDECKE: *Eheschließung als Bund...*, p. 770.

<sup>35</sup> Heinrich Schmidinger, a known Austrian philosopher-personalist is simply of an opinion that we deal here with the most important and the most basic change of a paradigm in the whole Catholic doctrine — H. SCHMIDINGER: “Von der Substanz zur Person. Paradigmenwechsel im Katholizismus.” *Theologisch-praktische Quartalschrift* 142 (1994): 393—394; see also IDEM: *Der Mensch ist Person. Ein christliches Prinzip in theologischer und philosophischer Sicht*. Innsbruck—Wien 1994.

<sup>36</sup> See A. PASTWA: *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej*. Katowice 2007, pp. 16—31.

<sup>37</sup> M. KAISER: *Kirchliches Eherecht...*, pp. 275—279.

<sup>38</sup> GS, n. 48,1.

<sup>39</sup> In this regard, a well-balanced attitude is represented by a German canonist Sabine Demel: “Statt Vertrags- Und Bundesbegriff einander gegenüberzustellen, sollte man [...] vielmehr den Ehevertrag in der umfassenderen Dimension des Ehebundes eingebettet sehen und ihn als den rechtlichen und damit justiziablen »Tailaspekt des Ehebundes« [...] betrachten” — S. DEMEL: *Kirchliche Trauung — unerlässliche Pflicht für die Ehe des katholischen Christen?* Stuttgart 1993, p. 218, fn. 110; see also J.F. CASTAÑO: “Estne matrimonium contractus? (Quaestio disputata)”. *Periodica de re canonica* 82 (1993), pp. 431—476.

of the Covenant,<sup>40</sup> introduced by the pastoral theological constitution, it is increasingly difficult today to claim that the canonical marriage is a contract,<sup>41</sup> all the more so as the application of the *contractus* term in reference to the sacramental bond seems to be problematic.<sup>42</sup> Should we then not consider the Council Fathers' concept of *consensus personalis* as a specific manifest of a program return to neo-scholastic conceptual categories and a call to rejecting the inadequate, static vision of the will-consensus?<sup>43</sup> Especially when we penetrate the true meaning of such a magisterial decision: The semantically rich Council formula of "the personal consent" makes us interpret every consensual act of will in the marriage covenant as the *actus humanus*, and above all, the *actus amoris*.<sup>44</sup>

Also, other passages of no. 48 of the pastoral constitution contribute essential theological contents into the Catholic marriage doctrine. And what is worth emphasizing here, is that a consistent distinction of biblical connotations in them, go hand in hand with the leading significance attached to the concept of *foedus*.<sup>45</sup> Recalling Jesus' teaching on the "beginning," the Council Fathers remind us that man and woman through the marriage covenant "are no longer two, but one flesh."<sup>46</sup> The

<sup>40</sup> See A. PASTWA: "Sacramentalitas czwartym dobrem małżeństwa?" W: *Ars boni et aequi. Księga pamiątkowa dedykowana Księdzu Profesorowi Remigiuszowi Sobańskiemu z okazji osiemdziesiątej rocznicy urodzin*. Red. J. WROCEŃSKI, H. PIETRZAK. Warszawa 2010, pp. 391—395.

<sup>41</sup> See R. AHLERS: "Bund oder Vertrag. Zur Diskussion um den Ehebegriff." In: *Iustitia in caritate. Festgabe für Ernst Rößler zum 25 jährigen Dienstjubiläum als Offizial der Diözese Rottenburg—Stuttgart*. Hg. R. PUZA, A. WEISS. Frankfurt am Main 1997, pp. 193—207.

<sup>42</sup> Winfried Aymans, a distinguished canonist emphasized the inadequacy of the *contractus matrimonii* formula for the expression of the Christ-Church relationship (Eph 5:21—33), relationship that lies at the ontic foundations of the sacramental bond between a man and a woman. The blatant objectivism of outdated interpretations was incapable of conveying the truth about the Sacrament of Matrimony as immersed in the Church *communio*, a dynamic reality (*kirchliche Existenz* form) the Creator of which is God himself — W. AYMANS: "Gleichsam häusliche Kirche. Ein kanonistischer Beitrag zum Grundverständnis der sakramentalen Ehe als Gottesbund und Vollzugsgestalt kirchlicher Existenz." *Archiv für katholisches Kirchenrecht* [hereafter: AKKR] 147 (1978), p. 429; cf. J.F. CASTAÑO: *Estne matrimonium contractus?...*, pp. 472—476.

<sup>43</sup> See S. VILLEGIANTE: "L'amore coniugale e il consenso matrimoniale canonico (Lettera aperta a Pio Fedele)." *Ephemerides iuris canonici* 46 (1990), p. 95.

<sup>44</sup> Hence, of the first rank are the words of constitution *Gaudium et Spes: amor [coniugalis — A.P.] utpote eminenter humanus, cum a persona in personam voluntatis affectu dirigitur, totius personae bonum complectitur* — GS, n. 49,1.

<sup>45</sup> Cf. A. SARMIENTO: *Małżeństwo chrześcijańskie. Podręcznik teologii małżeństwa i rodziny*. Przeł. P. RAK. Kraków 2002, pp. 116—117.

<sup>46</sup> *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 servi-*

“unity of the two” (*una caro*)<sup>47</sup> comes into being in the covenant of love, following the logic of the economy of Creation. In an excellent commentary to this fragment of the Council doctrine John Paul II in his *Mulieris dignitatem* letter — explicitly quoting the theology of the covenant<sup>48</sup> — emphasizes the parallels making this passage of the constitution similar to the preceding one, namely the teaching on “a certain likeness between the union of the divine Persons, and the unity of God’s sons in truth and charity.”<sup>49</sup> There appear self-evident conclusions: Firstly, the mentioned biblical *locus theologicus* reveals the essence of identity of an individual person as a communion being. “This identity consists in the capacity for living in truth and love; even more, it consists in the need for truth and love as an essential dimension of the life of a person. Man’s need for truth and love opens him both to God and to creatures — it opens him to other people, to life ‘in communion’, and in particular, to marriage and to the family.”<sup>50</sup> Secondly, the teaching of the Catholic Church finds its most profound foundation in the fact that God in His work of creation “in the image of God,” shaped the “conjugal communion” out of the mystery of the Trinitarian “We,” and in his First Covenant permanently used the communion of the man and woman for this mystery.<sup>51</sup>

In the second opening of the constitution *Gaudium et Spes* authors present an image of the spouses’ sacramental covenant. “Christ, the Lord abundantly blessed this many-faceted love, welling up as it does from the fountain of divine love and structured as it is on the model of His union with His Church”<sup>52</sup> — claims the sentence opening the second paragraph of the no. 48 of the considered document. At this place, in concordance with the program exposition of the ecclesial dimension of the sacrament of Matrimony,<sup>53</sup> there immediately appears the redemptive-historical context of the theology of the Covenant: “For as God of old made Himself

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*tium praestant, sensumque suae unitatis experiuntur et plenius in dies adipiscuntur* — GS, n. 48, 1.

<sup>47</sup> Gen 1:27; 2:24.

<sup>48</sup> “If man is the image and likeness of God by his very nature as a person, then his greatness and his dignity are achieved in the covenant with God, in union with him, in striving towards that fundamental unity which belongs to the internal ‘logic’ of the very mystery of creation” — JOHN PAUL II: *Apostolic letter “Mulieris dignitatem”* (15.8.1988) [henceforth: MD], n. 10.

<sup>49</sup> GS, n. 24,3; MD, n. 7.

<sup>50</sup> GrS, n. 8.

<sup>51</sup> *Ibidem*.

<sup>52</sup> GS, n. 48,2.

<sup>53</sup> See R. ALFS: *Die außerordentlichen Formen der kanonischen Eheschließung im Licht der Lehre von Sakramentalität der Ehe. Eine Untersuchung zur ekklesiologischen Bedeutung der sakramentalen Eheschließung*. Würzburg 1993, pp. 458—477.

present to His people through a covenant of love and fidelity, so now the Redeemer of men and the Spouse of the Church comes into the lives of married Christians through the sacrament of Matrimony.”<sup>54</sup> The message of this fragment of the constitution should not, in the opinion of commentators, raise any doubts today. It is on the foundation of Baptism and the Living Faith<sup>55</sup> that the bond of the man and woman turns into a covenant “in the Lord”<sup>56</sup> — and as a sacrament, it not only does not stop playing its primary function of a sign of the love bond between God and people, but above all, opens — towards more advanced perfection of this task — onto Christ’s saving power and the grace of new consecration.<sup>57</sup> At this point, the Council theology of the marriage covenant reaches its climax: The central location of the marriage in the order of Creation finds a radical confirmation in the economy of Redemption.<sup>58</sup> The marital covenant of baptized individuals — already in the form of the Sacrament of New Covenant — reveals itself, in the whole dynamism of its mission, as the updating of *sacramentum Ecclesiae*, that is the mystery of personal unification with God in Jesus Christ.<sup>59</sup>

Essential in this regard are the words confirming a univocally ecclesiological profile of the whole *de sacramento matrimonii*<sup>60</sup> teaching, uttered in the dogmatic Constitution on the Church *Lumen Gentium*: “Christian spouses, in virtue of the sacrament of Matrimony, whereby they signify and partake in the mystery of that unity and fruitful love which exists

<sup>54</sup> GS, n. 48,2.

<sup>55</sup> K. HERZBERG: *Taufe, Glaube und Ehesakrament. Die nachkonziliare Suche nach einer angemessenen Verhältnisbestimmung*. Frankfurt am Main 1999, pp. 312—316. Synthetic remarks on the Council’s understanding of the faith are summed up by the author with a fitted conclusion about what “Matrimony in the Lord” is: “Glaube als Christusbegegnung, ist nicht nur individuell-soteriologisch zu deuten, sondern auch als mit der Taufe grundlegend eröffnete Teilhabe an der Sendung Christi zu qualifizieren und insofern als Moment der Christusbeziehung zu kennzeichnen. Individual-soteriologische und universale Dimension sind hier unterschieden, ohne zu trennen. Taufe und Glaube sind somit konstitutive Momente einer geschichtlich-ekklesialen Christusbeziehung, deren lebensgeschichtlich Realisierung in der sakramentalen Ehe geschehen kann” — *ibidem*, p. 316. See also Urs Baumann’s commentary in which he notices certain shortcomings of the Council thought in this subject — U. BAUMANN: *Die Ehe — ein Sakrament?* Zürich 1988, pp. 95—99.

<sup>56</sup> 1 Cor 7:39.

<sup>57</sup> Cf. FC, n. 13.

<sup>58</sup> See E. CORECCO: “Il sacramento del matrimonio: cardine della costituzione della Chiesa”. In: *Diritto, persona e vita sociale. Scritti in memoria di Orio Giacchi*. Milano 1984. Vol. 1, pp. 390—409.

<sup>59</sup> Cf. R. ALFS: *Die außerordentlichen Formen...*, pp. 470—473; K. HERZBERG: *Taufe, Glaube und Ehesakrament...*, pp. 303—311.

<sup>60</sup> Cf. R. ALFS: *Die außerordentlichen Formen...*, p. 470.

between Christ and His Church, help each other to attain holiness in their married life and in the rearing and education of their children.”<sup>61</sup> To sum up, the invaluable fruit of the Council teaching, briefly presented here, is — according to John Paul II — voicing the truth on the immanence and mutual intertwining of two orders in the marriage covenant: natural and supernatural. The Council Fathers’ consistence in understanding Matrimony, following key guidelines of the ecclesiological paradigm of unity<sup>62</sup> clearly indicates that “this insertion into the very mystery of the covenant of Christ with the Church” finds its thorough fulfillment in the family, for which, not coincidentally, the term “domestic church”<sup>63</sup> was coined.

## 2. The Apostolic Exhortation *Familiaris Consortio* (November 22, 1981)

In no. 11 of the Apostolic Exhortation *Familiaris Consortio* appeared a formula that should be considered crucial in the whole “marital” *magisterium* of John Paul II: “the covenant of conjugal love.” Suffice it to say that the mentioned formula confirms its importance in two “fields,” outlined by the natural marriage — sacrament relationship; the relationship, which, in the Catholic doctrine, is placed in the very centre of the teaching on the truth about raising, by Christ, of the marriage of baptized persons to the dignity of a sacrament.<sup>64</sup> Not losing sight of the whole spectrum of the idea<sup>65</sup> of the pope, creator of the original anthropological theology (“theology of the body”) and of the “marital,” ecclesiological theology (in the spirit of the Second Vatican Council), it is thus purposeful to inquire about his point of enhancing the *foedus amoris coniugalibus* words in the theological description of the marriage as such.

<sup>61</sup> LG, n. 11,2.

<sup>62</sup> See A. PASTWA: “Marriage in the light of the ecclesiological paradigm of unity.” Selected issues. *E-Theologos* 3/2 (2012), pp. 212—228.

<sup>63</sup> Ibidem; JOHN PAUL II: *Allocutio ad Romanae Rotae iudices* (30.1.2003)..., pp. 394—395, n. 4.

<sup>64</sup> See E. CORECCO: “Die Lehre der Untrennbarkeit des Ehevertrags vom Sakrament im Lichte des scholastischen Prinzips ‘Gratia perfecit, non destruit naturam’.” *AKKR* 143 (1974), pp. 379—442; D. BAUDOT: *L’inséparabilité entre le contrat et le sacrement de mariage. La discussion après le Concile Vatican II*. Roma 1987.

<sup>65</sup> As the limitations of this work allow only for a sketchy presentation of these problems I encourage you to read more in a monograph — A. PASTWA: “Przymierze miłości małżeńskiej”. *Jana Pawła II idea małżeństwa kanonicznego*. Katowice 2009.

A discerning, personalist discourse conducted in the no. 11 of the exhortation, communicates that the foundation upon which “the covenant grows is the genuine gift of a person.”<sup>66</sup> To aid us in unraveling the anthropological paradigm included in this last phrasing of (the logic of the “gift”),<sup>67</sup> comes the thought of Karol Wojtyła himself. Man/husband and woman/wife, as every personal subject, remain free and autonomously decide about themselves. And this means that each of them is non-transferable, *alteri incommunicabilis*.<sup>68</sup> “Indeed, in the natural order, it makes no sense to speak of a person giving himself or herself to another, especially if this is meant in the physical sense [...]. The person as such cannot be someone else’s property, as though it was a thing.”<sup>69</sup> But paradoxically what is impossible in the natural order can come about in the order of love.<sup>70</sup> In other words, the “structural” inaccessibility of the persons-spouses does not signify their withdrawing into themselves, but on the contrary, expresses their ontic openness and inclination to offer the marital gift of themselves to each other. We can say that the betrothed love “pulls them out” of their natural inviolability and inaccessibility.<sup>71</sup> Therefore, man and woman are capable of constituting their love reciprocity (communion-bound “we”),<sup>72</sup> and the “integrality,” defining the marriage communion (*totius vitae consortium*), finds its foundation in a mutual, total and decisive gift of the couple loving each other.<sup>73</sup>

<sup>66</sup> Cf. IOANNES PAULUS II: “Allocutio ad Sacrae Romanae Rotae Tribunalis Praeatos Auditores, Officiales et Advocatos coram admissos” (28.1.1982). AAS 74 (1982), pp. 451—452, fn. 6.

<sup>67</sup> T. STYCZEŃ: “L’antropologia della Familiaris Consortio.” *Anthropotes* 9 (1993), pp. 7—8.

<sup>68</sup> K. WOJTYŁA: *Love and Responsibility*. San Francisco 1993, p. 96. “*Persona est sui iuris et alteri incommunicabilis*, which we might freely render in the following way: A person is a being of its own and does not share its being with another. *Persona est sui iuris* expresses what I have called selfhood, *alteri incommunicabilis* expresses the resulting solitude of personal being” — J.F. CROSBY: *The Selfhood of the Human Person*. Washington 1996, pp. 24—25.

<sup>69</sup> K. WOJTYŁA: *Love and Responsibility...*, p. 96.

<sup>70</sup> “One person can give himself or herself, can surrender entirely to another, whether to a human person or to God, and such a giving of the self creates a special form a love which we define as betrothed love” — *ibidem*, pp. 96—97.

<sup>71</sup> IDEM: “Osobowa struktura samostanowienia.” W: *Osoba i czyn oraz inne studia antropologiczne*. Red. T. STYCZEŃ, W CHUDY, J.W. GAŁKOWSKI, A. RODZIŃSKI, A. SZOSTEK. Lublin 1994, pp. 421—432; cf. J.F. CROSBY: “The Personalism of John Paul II as the Basis of his Approach to the Teaching of ‘Humanae vitae’.” *Anthropotes* 5 (1989), pp. 54—62.

<sup>72</sup> “In its most profound reality, love is essentially a gift; and conjugal love [leads — A.P.] the spouses to the reciprocal ‘knowledge’ which makes them ‘one flesh’” — FC, n. 14.

<sup>73</sup> “The total physical self-giving would be a lie if it were not the sign and fruit of a total personal self-giving, in which the whole person, including the temporal dimen-



Although it is true that going beyond oneself towards the *communio personarum* is within the power of the human spirit,<sup>74</sup> it is also true that the husband and wife fulfill this communion in “truth and love” following the objective, unitive as well as procreative sense of their masculinity and femininity.<sup>75</sup> Here, John Paul II’s teaching sheds some light on a vital factor of the integral vision of marriage. Following the definition of the human body as a language/sign expression of a person, comes a fully justified statement that the “language of the body” (“femininity for masculinity,” “masculinity for femininity”) is both a “substance” as well as the very constitutive essence of the marital communion of persons.<sup>76</sup> In this context we are not surprised by the culminating point of this segment of the *Familiaris Consortio* teaching: “The only ‘place’ in which this self-giving in its entire truth is made possible, is marriage, the covenant of conjugal love.”<sup>77</sup>

Then what are the first conclusions that can be drawn from the teaching of the exhortation *Familiaris Consortio* on the “nature of the conjugal covenant, elevated into a sacrament”?<sup>78</sup> Firstly, the “covenant of conjugal love” formula brings the truth that is, unfortunately, not always promoted in the Catholic theology and canon law, on mainly, the moment of formation of the unbreakable “unity of the two.” The true creator of marriage is — each time and invariably — the Triune God Himself. It is He who endows the man and woman with the Grace of vocation to marriage and invites them to the Covenant of love with Himself; a Covenant built upon the foundation of a conscious and free choice made by the nupturients, expressed in the act of marital consent. The activity of God in constituting of the “sacred bond”<sup>79</sup> is most distinctly expressed — in a Christian marriage — by the direct influence of Christ, who places the love bond of baptized spouses in the very centre of His Covenant with the Church.<sup>80</sup>

Secondly, at this moment, apt is the conclusion that John Paul II’s definition of a marital covenant allows us to show, in the best possible manner, the internal relationship between the reality of marriage in the order

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sion, is present: If the person were to withhold something or reserve the possibility of deciding otherwise in the future, by this very fact he or she would not be giving totally. This totality which is required by conjugal love also corresponds to the demands of responsible fertility” — *Ibidem*, n. 11.

<sup>74</sup> C. CAFFARRA: “Matrimonio e visione dell’uomo.” *Quaderni Studio Rotale* 2 (1987), pp. 31—33.

<sup>75</sup> Cf. GrS, n. 8

<sup>76</sup> JAN PAWEŁ II: *Mężczyzną i niewiastą stworzył ich*. T. 4: *Sakrament...*, p. 70.

<sup>77</sup> FC, n. 11.

<sup>78</sup> *Ibidem*, n. 67.

<sup>79</sup> GS, n. 48,1.

<sup>80</sup> Cf. FC, 13; see A. SARMIENTO: *Małżeństwo chrześcijańskie...*, pp. 227—233.

of Creation (containing a hidden sacral character) and the same reality raised to the rank of a sign of the New Covenant (being a sacrament in a strict sense).<sup>81</sup> The following words from the exhortation can serve as a direct proof: “The sacrament of Matrimony has this specific element that distinguishes it from all the other sacraments: It is the sacrament of something that was part of the very economy of Creation; it is the very conjugal covenant instituted by the Creator ‘in the beginning’. Therefore, the decision of a man and a woman to marry in accordance with this divine plan, that is to say, the decision to commit, by their irrevocable conjugal consent, their whole lives to indissoluble love and unconditional fidelity, really involves, even if not in a fully conscious way, an attitude of profound obedience to the will of God, an attitude which cannot exist without God’s grace.”<sup>82</sup> In the other place, John Paul II adds: “Matrimony, moreover, while being a ‘displaying and conferring grace sign’, is the only one of the seven sacraments that is not related to an activity specifically ordered to the attainment of directly supernatural ends. For the aims of marriage are, not only predominantly, but also properly, ‘by their very nature’, the good of the spouses and the procreation and education of offspring.”<sup>83</sup>

All in all, the implications from the affirmation of the *foedus amoris coniugalis* formula reach much deeper. The deepening, in no. 13 of the Apostolic Exhortation *Familiaris Consortio*, of the truth that in the spouses’ mutual belonging to each other, the love relation between Christ and the Church, is sacramentally substantiated (in its whole dynamism)<sup>84</sup> — determines the most crucial, as it seems, contribution of John Paul II

<sup>81</sup> See J. MIRAS, J.I. BAÑARES: *Matrimonio y Familia*. Iniciación Teológica. Madrid 2007, pp. 90—97.

<sup>82</sup> FC, n. 68. In a speech to the Roman Rota of 2001, we can find the writer’s commentary to these words of the exhortation: “Consequently, the only way to identify the reality that was linked from the beginning with the economy of salvation and that in the fullness of time is one of the seven sacraments of the New Covenant in the proper sense, is to refer to the natural reality presented to us by Scripture in Genesis (1:27; 2:18—25). This is what Jesus did in speaking about the indissolubility of the marital bond (cf. Mt 19:3—12; Mk 10:1—2), and what St. Paul did in explaining the nature of the ‘great mystery’ which marriage has ‘in reference to Christ and the Church’ (Eph 5:32)” — JOHN PAUL II: “Allocutio ad Romanae Rotae tribunal” (1 Februarii 2001). AAS 93 (2001), pp. 363—364, n. 8 (English text available at: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2001/documents/hf\\_jp-ii\\_spe\\_20010201\\_rota-romana\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2001/documents/hf_jp-ii_spe_20010201_rota-romana_en.html)).

<sup>83</sup> JOHN PAUL II: “Allocutio ad Romanae Rotae tribunal” (1.2.2001)..., p. 364, n. 8. “The spouses participate in it as spouses, together, as a couple, so that the first and immediate effect of marriage (*res et sacramentum*) is not supernatural grace itself, but the Christian conjugal bond, a typically Christian communion of two persons because it represents the mystery of Christ’s incarnation and the mystery of His covenant” — FC, n. 13.

<sup>84</sup> R. ALFS: *Die außerordentlichen Formen...*, pp. 473—474.

into the development of the *de sacramento matrimonii* doctrine. Indeed, the aim is to originally develop the idea of Eucharistic analogy.<sup>85</sup>

In the papal teaching a new sense is attached to both the initial as well as final fragments of the “classical” passage of Eph 5:21—33 reach a deep meaning. These words, which the Pope narrows down to the initial verse, (sort of “common denominator”): “Be subordinate to each other out of reverence for Christ,”<sup>86</sup> express the essential truth of the Sacrament of Matrimony. Now, the mutual relation between the man and the woman (husband and wife) corresponding with the Christian vocation “in the mystery of Christ,” radically results from their mutual reference to the Redeemer and His Sacrifice. The point is, that we should not forget that the marriage is subjected to the logic of the Cross of Christ, which, often connected with pain and suffering, demands, from the married couple, a lot of effort and dedication.<sup>87</sup> In other words, human love between man and woman (husband and wife) facing the reality of sin, requires salvation.<sup>88</sup> As the vocation of Christian spouses is to experience *caritas* of the Redeemer, sacrificing His life on the cross,<sup>89</sup> then what undoubtedly serves the purpose, is their frequent participation in the Eucharist — “the best way to experience the Covenant.”<sup>90</sup> In short, the Sacramental Covenant in which the husband and wife “mutually bestow and accept each other”<sup>91</sup> — based on submitting the spouses to Christ (following the example of the Church) materializes through experiencing His Love.

The gift of new communion and, together with it, the whole wealth of love dynamism in the marriage covenant is the work of the Holy Spirit given to the bride and groom at the Sacramental ceremony.<sup>92</sup> Also here, John Paul II perceives essential parallels defining the mentioned analogy. The Spirit of Love acting both during the Liturgy of the Highest Sacrifice as well as during the liturgy of *sacramentum matrimonii* is but the Spirit of the Church. As the Eucharistic Body of Christ builds His Mysti-

<sup>85</sup> U. BAUMANN: *Die Ehe...*, p. 138. I cover this issue in detail in my book entitled — A. PASTWA: *Przymierze miłości małżeńskiej...*, pp. 149—156.

<sup>86</sup> Eph 5:21.

<sup>87</sup> Cf. JOHN PAUL II: “Allocutio ad Romanae Rotae tribunal” (1.2.2001)..., p. 362, n. 6.

<sup>88</sup> J. NAGÓRNY: “Małżeńskie przymierze miłości.” W: JAN PAWEŁ II: *Mężczyznę i niewiastę stworzył ich*. T. 4: *Sakrament. O Jana Pawła II teologii ciała*. Red. T. STYCZEŃ. Lublin 1998, p. 207.

<sup>89</sup> Cf. FC, n. 13.

<sup>90</sup> JEAN-PAUL II: *Discours aux membres du mouvement “Foyers des Equipes des Notre-Dame”* (23.9.1982). Available online: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1982/september/documents/hf\\_jpii\\_spe\\_19820923\\_foyers-equipes-notre-dame\\_fr.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1982/september/documents/hf_jpii_spe_19820923_foyers-equipes-notre-dame_fr.html), n. 3.

<sup>91</sup> GS, n. 48, 1.

<sup>92</sup> Cf. FC, n. 19.

cal Body,<sup>93</sup> because the Eucharist, by the Spirit of Christ gives life to the faithful and the whole Church,<sup>94</sup> so is the marriage (family) a “place” prepared by God, “in which new citizens of human society are born, who by the grace of the Holy Spirit received in baptism are made children of God, thus perpetuating the people of God throughout the century.”<sup>95</sup> Showing in the ecclesiological plan, the “deepest relationship” between the Sacrament of the Body and Blood of our Lord with “the first and vital cell” of the Church<sup>96</sup> leads to significant specifications. Well, we must consider incontrovertible the fact that the essential act of marital covenant (matrimonial consent) of baptized individuals: man and woman, is *in Spiritu Santo* an “ecclesial act” calling to life the sacramental reality: the “domestic church.”<sup>97</sup>

Quoting key statements of the Council Fathers on *Ecclesia domestica* (*domesticum sanctuarium Ecclesiae*),<sup>98</sup> John Paul II directly says that the Christian marriage (family) — ontically inscribed in the mystery of Christ — is an irreplaceable participant of the saving mission of the Church.<sup>99</sup> Therefore, the baptized spouses, by the power of the Sacrament, “not only receive the love of Christ and become a saved community, but they are also called upon to communicate Christ’s love to their brethren, thus becoming a saving community.”<sup>100</sup> While the participation of the Christian marriage (family) in the triple mission of Christ the Prophet, the Priest and the King, through the testimony of faith and evangelization and life “in dialogue with God” and “at the service of man,”<sup>101</sup> shows the true face of the “domestic church,” which in its sacramental dimension, puts into effect the universal *communio Ecclesiae*.

Into this original papal synthesis of modern sacramentology and ecclesiology, merges the teaching of the Catechism, showing us, on the basis of source references to the key passages of the Vatican II doctrine, the specificity of the sacrament of Matrimony: “Through these sacraments those already consecrated by Baptism and Confirmation for the common priesthood of all the faithful can receive particular consecrations. Those who receive the sacrament of Holy Orders are consecrated in Christ’s name ‘to feed the Church by the word and grace of God’ (*Lumen*

<sup>93</sup> Cf. LG, n. 3.

<sup>94</sup> Cf. J 6:53—58.

<sup>95</sup> LG, n. 11,2.

<sup>96</sup> VATICAN COUNCIL II: *Decree on the Apostolate of the Laity* “*Apostolicam Actuositatem*” [henceforth: AA], n. 11,4.

<sup>97</sup> FC, n. 21.

<sup>98</sup> LG, n. 11,2; AA, n. 11,3.

<sup>99</sup> “For this reason, Christian spouses have a special sacrament by which they are fortified and receive a kind of consecration in the duties and dignity of their state” — FC, n. 56.

<sup>100</sup> Cf. *Ibidem*, n. 49.

<sup>101</sup> *Ibidem*, n. 50.

*gentium*, n. 11, 2). On their part, ‘Christian spouses are fortified and, as it were, consecrated for the duties and dignity of their state by a special sacrament’ (*Gaudium et spes*, n. 48, 2).<sup>102</sup>

To sum up the remarks on the significance that John Paul II attaches to the *foedus* term for the description of marriage, the conclusion seems to be obvious: Sacramental covenant, perceived through the prism of “Eucharistic ecclesiology,” is by no means an abstract being, narrowed down to static-ontological category. On the contrary, this “covenant of conjugal love”<sup>103</sup> is a space for a redemptive Encounter and Dialogue. It is a substantial existential-historical reality, inscribed in the dynamism of the enlargement of the Mystical Body of Christ. This is exactly why, John Paul II consistently teaches that in the Gift of the Eucharist, in the Gift of divine *caritas*, the Christian marriage (family) discovers its foundation, as well as the Spirit revitalizing marital (family) “communion” and “mission.”<sup>104</sup>

### 3. The Code of Canon Law (January 25, 1983) and the Code of Canons of the Eastern Churches (October 18, 1990)

The biblical concept of “covenant” is a bridge between the theological and legal definition of marriage. The best proof for it is the usage of this concept in the key canons defining marriage in the 1983 and 1990 codes, especially used in reference to the *matrimonium in fieri*.<sup>105</sup> Indeed, considering everything, justified is connecting the *matrimoniale foedus* with the moment of constituting of the bond between the man and woman.<sup>106</sup> Suffice it to say that such a legislative decision, and no others, meets the demand for the affirmation of principles of the canonical tradition, namely the demand for the contract character of marriage (together with the supplementary nature of the personal and religious dimension of the marital consent)<sup>107</sup> as well the central position of the *eo ipso sacra-*

<sup>102</sup> CCC, n. 1535.

<sup>103</sup> FC, n. 11.

<sup>104</sup> Cf. *Ibidem*, n. 57.

<sup>105</sup> CIC 1983, cann. 1055 § 1, 1057 § 2; CCEO, can. 776 § 1.

<sup>106</sup> See in-depth analyses by GC in his known monograph (especially in the Chapter 3) whose pivot is one of the subtitles: “La relazione fra l’atto (‘foedus’) e il rapporto matrimoniale (‘consortium totus vitae’)” — G. LO CASTRO: *Matrimonio, diritto e giustizia*. Milano 2003, p. 83.

<sup>107</sup> “Wie eine eingehende Analyse des Konzilstextes zeigt, besagt der Begriffswechsel zwar nicht, daß die Idee des »Vertrags« völlig aufgegeben wurde, doch läßt sich

*mentum* rule in the system of marriage law of the Catholic Church.<sup>108</sup> At the same time, it is difficult not to notice the effects of the transplantation of the “covenant of conjugal love” formula (so clearly expressed in the *Familiaris consortio*), into the ground of law, the formula which, mainly in the aspect of the *matrimonium in facto esse*,<sup>109</sup> reveals the wealth of sacramental-ecclesiological contents.

This last statement carries crucial theological-legal implications. The point is that the Catholic *de sacramento matrimonii* doctrine exposition, whose assumption is to view the marriage covenant of baptized individuals through the prism of Christ’s covenant, entails raising and deepening a few related-to-one-another issues. A theologian-canonist faces today some uneasy questions: How to interpret, on the grounds of the canon law, the Council Fathers’ proclamation that “the Saviour of men and the Spouse of the Church comes into the lives of married Christians through the Sacrament of Matrimony”?<sup>110</sup> How are these specific and new contents, as they no longer refer to any individuals but the “communion of the two,” of permanent<sup>111</sup> participation of the spouses in Christ’s life expressed?<sup>112</sup> Moreover, the legislative measures adopted in the marriage code law provoke the following questions: Whether the formulation of canon 1055, in the code of 1983 draws us closer to the truth, with the crucial term of *evectum*, by no means opening our eyes (but in fact suggesting) that the contract creates the Sacrament.<sup>113</sup> Or is it that the hermeneutical effort should be focused more on the *ex Christi institutione* formula, consistent with the teachings of the constitution *Gaudium et Spes*

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nicht leugnen, daß der Begriff »Bund« theologisch geeigneter ist, um die personale und religiöse Wirklichkeit der Ehe zum Ausdruck zu bringen. Ja, er gewinnt auch diejenigen Elemente zurück und schließt sie mit ein, die aus dem Eheinstitut einen Vertrag »sui generis« machen — einen Vertrag, dessen Dauer und wesentliche Rechtswirkungen dem Willen der Vertragspartner entzogen sind” — L. GEROSA: *Das Recht der Kirche*. Paderborn 1995, p. 276.

<sup>108</sup> See W. GÓRALSKI: “Nierozdzielność ważnej umowy małżeńskiej zawartej między ochrzczonymi i sakramentu (kan. 1055 § 2 KPK i kan. 776 § 2 KKKW).” *Ius Matrimoniale* 12 (2007), pp. 7—33.

<sup>109</sup> Cf. CIC 1983, cann. 1063 nn. 3, 4, 1134; CCEO, can. 776 §§ 1, 2.

<sup>110</sup> GS, n. 48,2.

<sup>111</sup> Cf. R. BELLARMIN: *De controversis. Venetiis 1721*, Tit. 3: *De matrimonio, contro.* 2, c. 6; T. SÁNCHEZ: *De sancto matrimonii sacramento. Venetiis 1614*, lib. II, disp. 5, n. 7; PIUS XI: “Litterae encyclicae ‘Casti connubii’ (31.12.1930).” *AAS* 22 (1930), p. 583; see also A. PASTWA: “Teologiczny fundament sakramentalności małżeństwa ‘in fieri’ oraz ‘in facto esse’.” *Prawo Kanoniczne* [henceforth: PK] 46/3—4 (2003), pp. 65—85.

<sup>112</sup> FC, n. 13.

<sup>113</sup> See G. RIEDL: “Macht der Vertrag das Sakrament? Theologische Überlegungen zu einem heiklen Thema des kanonischen Eherechts (c. 1055).” *De processibus matrimonialibus* [henceforth: DPM] 13 (2006), pp. 93—105.

and the Catechism of the Catholic Church,<sup>114</sup> included in the rich contents of canon 776 §2, in the code of 1990. In simple terms, does the other choice not give us a chance for a fuller interpretation of the Council teaching in which the Christian marriage has been closely bound with the mystery of Christ<sup>115</sup> and as such recognized as one of the most important (fundamental) links of the sacramental fulfillment of the Church.<sup>116</sup>

It is proper to precede the reference to these issues with a remark of a general nature, both collections of canon law: the Latin one (of 1983) and Eastern one (of 1990), in the “conjugal covenant” term, in the same manner, univocally convey the consensual essence of marriage with the fundamental principle: *matrimonium facit partium consensus*. This principle states that only a conscious and voluntary act of personal, mutual gift and acceptance of man and woman,<sup>117</sup> which involves their whole natural ability to love,<sup>118</sup> is legally determinant in the constitution of marriage. Hence, a simple conclusion: The above mentioned God’s “communion-creating” action that initiates the marital “unity of the two,” entails as a *sine qua non* condition<sup>119</sup> a voluntary expression of the marital will by both nupturients.

The comparatist arrangement of marriage “definitions” in the codes of 1983 and 1990<sup>120</sup> clearly shows that the transcendental (religious) dimension of the “covenant of conjugal love” was more fully voiced in the codification for the Catholic Eastern Churches. Certainly, canon 1055 of the code of 1983,<sup>121</sup> introducing the concept of the *matrimoniale foe-*

<sup>114</sup> GS, n. 48,2; CCC, nn. 1612—1617.

<sup>115</sup> Cf. K.-H. SELGE: *Ehe als Lebensbund. Die Unauflöslichkeit der Ehe als Herausforderung für den Dialog zwischen katholischer und evangelisch-lutherischer Theologie. Adnotationes in Ius Canonicum*. Bd. 12. Frankfurt am Main 1999, pp. 280—292.

<sup>116</sup> Formal limitations allow us only for a brief outline of the subjects that require further deepened studies.

<sup>117</sup> CIC, can. 1057 § 2; CCEO, can. 817 § 1.

<sup>118</sup> Cf. J. HERVADA: *Diálogos sobre el Amor y el Matrimonio*. Pamplona 1975, p. 118.

<sup>119</sup> Cf. Z. GROCHOLEWSKI: “Sakrament małżeństwa: fundament teologiczny prawodawstwa kościelnego.” *PK* 40/1—2 (1997), pp. 177, 184.

<sup>120</sup> See J. PRADER: “Der Ehebegriff im orientalischen Kodex. Unterschiedliche Bestimmungen zwischen dem CCEO und dem CIC”. *AKKR* (1991), pp. 408—417; W. GÓRALSKI: “Sakrament małżeństwa w Kodeksie Kanonów Kościołów Wschodnich oraz w Kodeksie Prawa Kanonicznego z 1983 roku. Studium Porównawcze.” *Roczniki Nauk Prawnych* 3 (1993), pp. 5—16;

<sup>121</sup> “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized (§1); For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament (§2).”

*du*s, enhanced both the personal as well as religious aspect of the marital consent. But it is also obvious that some crucial aspects of the Council definition of the marriage covenant found themselves beyond the mentioned marriage-specifying canon. We should associate with this fact the recommendation of some representatives of the canonist doctrine<sup>122</sup> that apart from the basic normative regulation of canon 1055 § 1, “magisterial” contents of canons 1063 no. 3 as well as 1134 be consistently included into the orbit of the “defined,” in the Latin codification, Sacrament of Matrimony. Things are made clear by those canonists who petition that a more perfect (doctrinally “better polished”) normative definition of the Sacrament of Matrimony in canon 776 CCEO, be considered an indispensable determinant and aid in the interpretation of the analogical canon 1055 CIC.<sup>123</sup>

Leaving aside the complexities of the important discussion in the Catholic Church about the legal meaning of *ritus sacer*,<sup>124</sup> it is worth focusing on the very definition of marriage in canon 776 CCEO.<sup>125</sup> This canon, specifying, in paragraph 1, the natural marriage, does not merely enhance the personal aspect of the marriage covenant. Our attention is drawn to the original message of the religious aspect, which by no means is used up in the formula of canon 1055 CIC, stating that the marriage “has been raised by Christ, the Lord to the dignity of a Sacrament between the baptized.” Using here the words of the Pastoral Constitution on the Church (“established by the Creator and qualified by His laws”<sup>126</sup>) communicates an important idea, implied by the Economy of Creation: God actively par-

<sup>122</sup> R. ALFS: “Sakramentale Ehe als ‘Ereignisort’ gelebten Glaubens und Glaubensmangel als Ehenichtigkeitsgrund. Theologischer Anspruch und kanonistische Konsequenz.” *DPM* 5 (1998), pp. 28—29.

<sup>123</sup> B. PRIMETSHOFER: “Der CCEO und seine (möglichen) *Auswirkungen* auf das Recht der Lateinischen Kirche.” In: *Neue Positionen des Kirchenrechts*. Hg. K. LÜDICKE, H. PAARHAMMER, D.A. BINDER. Graz 1994, p. 173; K.-H. SELGE: *Ehe als Lebensbund...*, p. 286.

<sup>124</sup> Cf. The reference in the latest materials — C. VASIL: “Der ritus sacer und die priesterliche Segnung — Elemente der Form der Feier der Eheschließung gemäß c. 828 CCEO: intereklesiale und ökumenische Implikationen.” *DPM* 12 (2005), pp. 49—67; A. PASTWA: “Katechizmowe ujęcie formy zawarcia małżeństwa. Postęp czy regres doktrynalny?” *Theologos* 13/2 (2011), pp. 9—27.

<sup>125</sup> “The matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of the offspring (§1). From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace (§2); [...] (§3).”

<sup>126</sup> GS, n. 48, 1.



ticipates in the binding of the natural marriage covenant. In its turn, paragraph 2 of the 776 CCEO canon contains a statement that we could seek in canon 1055 CIC but to no avail. The words referring to the First and Second Divine Person remain crucial: “[...] in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace.” Briefly speaking, the hereby code description of the sacramental covenant of love can be explained in the following way: A valid marriage between baptized individuals is a sacrament by which God unites the spouses, as in the example of the perfect unity of Christ the Bridegroom and the Church His Bride. This characteristic consecration of the bride and groom carrying in itself a potential for encountering and remaining in unity with Christ (covenant “in the Lord”<sup>127</sup>) is the result of the Sacramental Grace. For these, spouses receive the Holy Spirit, who is “the seal of their covenant, the ever available source of their love and the strength to renew their fidelity.”<sup>128</sup>

To conclude, it is proper to state that the precise description of the religious dimension of the covenant of marriage love in the 1990 (CCEO) codification allowed the Catholic Church legislator to reach two vital, prophetic-didactic goals: Firstly, to show the Christ-Church relationship, rooted in the divine *Caritas*, as the icon for the communion-covenant of conjugal love (*communio caritatis*) being put into effect in the Christian marriage; secondly, to reveal the Trinitarian foundations of the Sacrament of Matrimony. From this viewpoint, the sacramental union of man and woman appears as a sign and tool for the participation in the life of the Persons of the Holy Trinity, or in other words, a relationship that in love finds its deepest foundation.

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<sup>127</sup> 1 Cor 7, 39.

<sup>128</sup> CCC, n. 1624.

ANDRZEJ PASTWA

Przymierze małżeńskie w doktrynie katolickiej:  
 Konstytucja duszpasterska o Kościele *Gaudium et Spes* —  
 Adhortacja apostolska *Familiaris Consortio* —  
 Kodeks Prawa Kanonicznego — Kodeks Kanonów Kościołów Wschodnich

Streszczenie

Autor już w samym tytule określa ramy ekspozycji ważnej kwestii teologicznej i prawnej: obecności we współczesnej katolickiej doktrynie *de matrimonio* pojęcia „przymierze małżeńskie”. Analiza najważniejszych „miejsc” źródłowych (w dokumentach Vaticanum II i w magisterium posoborowym) potwierdza wstępną hipotezę, że punktem wyjścia do zgłębiania wymienionej doktryny winna być prawda, że Trójjedyny Bóg-twórca instytucji małżeństwa jest prawdziwym kreatorem każdego, konkretnego związku małżeńskiego. W płaszczyźnie prawnokanonicznej ta prawda uzyskała dojrzały kształt w Kodeksie Kanonów Kościołów Wschodnich (1990). Znakomicie tu uwypuklony religijny wymiar przymierza miłości małżeńskiej pozwolił prawodawcy Kościoła katolickiego osiągnąć dwa istotne cele profetyczno-dydaktyczne: po pierwsze, ukazać zakonczoną w Boskiej *Caritas* relację Chrystus — Kościół jako ikonę realizowanej w chrześcijańskim małżeństwie komunii-przymierza miłości małżeńskiej (*communio caritatis*); po wtóre, odsłonić trynitarne podstawy sakramentu małżeństwa. W niniejszej optyce sakramentalny związek mężczyzny i kobiety objawia się jako znak i narzędzie uczestnictwa w Życiu Osób Trójcy Przenajświętszej, czyli związek, który w Miłości znajduje swój najgłębszy fundament.

**Słowa kluczowe:** Objawienie, katolicka doktryna o małżeństwie, chrześcijańska antropologia, teologia małżeństwa, prawo kanoniczne, prawo małżeńskie, przymierze, małżeństwo, przymierze małżeńskie, sakrament małżeństwa, miłość małżeńska, rodzina

ANDRZEJ PASTWA

L'alliance maritale dans la doctrine catholique:  
 La Constitution pastorale *Gaudium et Spes* et Exhortation apostolique  
*Familiaris Consortio*  
 Le Code du Droit Canonique — le Code des Canons des Églises Orientales

Résumé

L'auteur déjà dans le titre détermine le cadre d'exposition d'une question théologique et juridique importante : la présence dans la doctrine catholique contemporaine *de matrimonio* la notion de « l'alliance matrimoniale ». L'analyse des « lieux » de source (dans les documents de Vaticanum II et dans le magistère post-conciliaire) justifie l'hypothèse initiale que le point de départ pour l'étude de la doctrine mentionnée devrait être la vérité que Dieu trinitaire, le créateur de l'institution de mariage, est aussi le vrai auteur de chaque mariage concret. Dans le domaine juridique, cette vérité prend forme dans le

Code des Canons des Églises Orientales (1990). La dimension religieuse de l'alliance de l'amour conjugal, bien accentuée, a permis au législateur de l'Église catholique de réaliser deux objectifs prophétiques et didactiques : premièrement de montrer la relation Christ — Église, enracinée dans *Caritas* divine, comme l'image de communion-alliance matrimoniale, réalisée dans le mariage chrétien (*communio caritatis*); deuxièmement, pour dévoiler les bases trinitaires du fondement du sacrement de mariage. Dans cette optique l'union sacramentelle de l'homme et de la femme se montre comme un signe et un outil de participation dans la Vie des Personnes de la Trinité, donc une liaison qui trouve son fondement le plus profond dans l'Amour.

**Mots-clés:** révélation, doctrine catholique sur le mariage, anthropologie chrétienne, théologie du mariage, droit canonique, droit marital, alliance, mariage, alliance conjugale, sacrement de mariage, amour conjugal, famille

ANDRZEJ PASTWA

Il patto coniugale nella dottrina cattolica  
La costituzione pastorale sulla Chiesa *Gaudium et Spes* e l'Esortazione  
apostolica *Familiaris consortio* — Il Codice di Diritto Canonico —  
Il Codice dei Canoni delle Chiese orientali

Sommarío

L'autore già nello stesso titolo definisce il quadro di riferimento per la presentazione di un'importante questione teologia e giuridica, vale a dire la presenza del concetto di "patto coniugale" nella dottrina cattolica contemporanea *de matrimonio*. L'analisi dei più importanti "luoghi" delle fonti (nei documenti del Vaticano II e nel magistero post-conciliare) conferma l'ipotesi iniziale, secondo cui il punto di partenza per l'approfondimento della suddetta dottrina dovrebbe essere la verità che Dio Uno e Trino, creatore dell'istituzione del matrimonio, è il vero creatore di ogni unione matrimoniale. Sul piano giuridico-canonico questa verità ha assunto una forma matura nel Codice dei Canoni delle Chiese orientali (1990). La dimensione religiosa del patto dell'amore coniugale, qui messa in risalto perfettamente, ha permesso al legislatore della Chiesa cattolica di raggiungere due importanti scopi profetico-didattici: da un lato, il legislatore ha potuto dimostrare la relazione Cristo — Chiesa, radicata nella *Caritas* divina, come icona della comunione e del patto dell'amore coniugale realizzati nel matrimonio cristiano (*communio caritatis*), dall'altro lato, ha potuto rilevare i fondamenti trinitari del sacramento del matrimonio. In quest'ottica, l'unione sacramentale tra l'uomo e la donna si manifesta come segno e strumento della partecipazione alla Vita delle Persone della Santissima Trinità, ossia come unione che trova il suo fondamento più profondo nell'Amore.

**Parole chiave:** rivelazione, dottrina cattolica sul matrimonio, antropologia cristiana, teologia del matrimonio, diritto canonico, diritto matrimoniale, patto, matrimonio, patto matrimoniale, sacramento del matrimonio, amore coniugale, famiglia



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## The Mixed Marriages According to the Orthodox Canonical Legislation (3rd—7th Century)

**Keywords:** the mixed marriages, Privilegium Paulinum, oikonomia, wedding ceremony, interconfessional weddings, interreligious weddings

### Importance of Marriage for the Orthodox Christians

The *Constitutions of the Holy Apostles* — a work redacted in the 3rd and 4th centuries — refers also to the schismatics and the heresiarchs of the time who were teaching that “both marriage and giving birth to children [...] are ugly things, in order for them to make some faint-hearted people to receive their bad teaching as being worthy to be believed...”<sup>1</sup> But for us, the Orthodox Christians, “the wedding is legitimized — as the same Apostolic Constitutions were making more precise — and giving birth to children is honoured and pure, since for the multiplying of the human race in Adam and Eve was created the difference of sex... Any mating against nature is hated by us as something odious and brazen, indecent.”<sup>2</sup>

Consequently, only the marriage between opposite sexes, between a man and a woman, is allowed and blessed by God and by His Orthodox Church, and on no account are allowed and blessed the unions “against nature” which must be indeed looked upon as odious and brazen.

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<sup>1</sup> *Scrierile Părinților Apostolici împreună cu Așezămintele și Canoanele Apostolice* (The writings of the Apostolic Fathers along with Settlements and the Apostolic Canons). Trad. PR. I. MIHĂLCESCU. Chișinău 1928, p. 153.

<sup>2</sup> *Ibidem*, pp. 155, 176—177.

For Christians, marriage is both a divine institution (Gen. I, 2; II, 23—24), and a juridical-canonical one (19th Apostolic Canon). The two aspects, divine and human,<sup>3</sup> cannot be either ignored or separated, since a unilateral tackling or evaluation of the marriage institution and particularly of the mixed marriages creates some difficulties “both in the family life of the spouses and in society.”<sup>4</sup> And this is much more so today, when the free communication and the medley of populations, of different races and ethnogeny make entering into the mixed marriages inevitable.

The Orthodox Church has been confronted with the mixed marriages issue (μίχτοί γάμοι; *matrimonia mixta*) as far back as the Apostolic epoch, when her first members, converted from Jews and pagans, were entering into legal marriages, from the Roman law point of view, with the non-Christians.

The same epoch had to solve the practical issue of “knowing what is going to happen with the conjugal relation of two non-Christians, one of whom did convert to the Christian religion.”<sup>5</sup>

## Teaching of St. Paul the Apostle as a Foundation for Legislation

St. Paul acknowledged the truth that it often happened that only one of the spouses became a Christian. To the question asked by Corinthians as to whether or not such a mixed marriage — under the respect of the different faith of the spouses — should be annulled or should remain valid, the Apostle has given the answer which later became a standard for the Church (cf. I Cor VII, 12—16), and as a matter of fact his answer has also been paraphrased in the text of the can. 72 of the Council in Trullo, which in fact has established a principal canonical obligation, which is, as such, mandatory for the entire ecumenical Orthodox Church.

<sup>3</sup> See “Chambesy: II-e Conference Panorthodoxe Preconciliaire (3-12 sept. 1982).” *Epispepsis*, XIII (1982), nr. 279, pp. 11—12; TR. COSTEA: *Căsătoria din punct de vedere istoric, dogmatic și canonic* (Marriage in terms of history, dogmatic and canonical thesis). București, 1935, pp. 1—10; Cf. G. MANTUANU: *Matrimonio canonico e Matrimonio civile*. Padova 1968, pp. 146—147.

<sup>4</sup> See † V. TĂRGOVIȘTEANUL: “A doua Conferință presinodală pregătitoare a Sfântului și Marelui Sinod” (The second preparatory synodal conference of the Holy and Great Synod).  *Glasul Bisericii XLII*, (1933), nr. 4—5, pp. 237—238.

<sup>5</sup> L. STAN: “Căsătoriile mixte și ultimele măsuri luate de Vatican în privința lor” (Mixed marriages and the Vatican last measures taken against them).  *Studii Teologice XX* (1968), nr. 7—8, p. 488.

According to the Pauline teaching, the legal validity of this kind of mixed marriage is recognized, in principle, inasmuch as the marriage has been entered into before the respective spouse has been converted to the Orthodox Christian faith “and the Orthodox Church, in conformity with her spirit, cannot undo the family relations and exert coercion against the human feelings and against the free will within the moral limits...”<sup>6</sup>

This Pauline privilege, which is also invoked by the confessional theologies,<sup>7</sup> has thus made principled the applying of the dispensation by the Orthodox Church only to the particular case in which that respective marriage was entered into before one of the spouses was Christianized since, as far as the marriage of Christians with non-Christians is taken into account, St. Paul the Apostle has completely prohibited it (cf. I Cor VII, 39; II Cor VI, 14).

## Variety of Legal Provisions

The *Constitutions of the Holy Apostles* have also reasserted this teaching, making more pronounced the fact that the one who was baptized should no longer commit “the debaucheries of the villainous ones.”<sup>8</sup> As a matter of fact, the conception of the early Church was that, such mixed marriages — between a Christian and a non-Christian — have indeed been considered as debaucheries of the villainous ones, thus being prohibited and condemned.

The canon law scholars of the Orthodox Church also confirm the fact that “about such mixed marriages, namely those in which an Orthodox individual could enter into marriage with individuals who do not profess the faith of the Orthodox Church, St. Paul the Apostle does not speak,”<sup>9</sup> since he did not accept them.

<sup>6</sup> N. MILAȘ: *Canoanele Bisericii Ortodoxe însoțite de comentarii* (Orthodox canons accompanied by a commentary). Trad. De U. KOVINČIĆI ȘI, N. POPOVICI, vol. I, pt. 2, Arad, 1931, p. 448.

<sup>7</sup> See N. V. DURĂ: “Teologia Ortodoxă și teologiile confesionale în ecumenismul contemporan” (Orthodox theology and religious theologies in contemporary ecumenism). *Orthodoxia*, XXXVIII, (1986), nr. 3, pp. 61—88; IDEM: “Hotărârile celei de-a II-a Conferințe Panortodoxe Presinodale (3-12 septembrie 1982) privind impedimentele la Căsătorie” (Decisions of the Second Pan-Orthodox Conference Presinodale (3-12 September 1982) on impediments to marriage). *Mitropolia Banatului*, XXXIV (1984), nr. 7—8, pp. 404—416.

<sup>8</sup> *Scrierile Părinților Apostolici* (The writings of the Apostolic Fathers)..., p. 21.

<sup>9</sup> N. MILAȘ: *Canoanele Bisericii Ortodoxe...*, p. 449.

In the context of the Pauline teaching, the marriage entered into by an Orthodox Christian with an individual who professes another religious faith, has been, consequently, tolerated by the Church just by applying the canonical principle of dispensation. But this application of dispensation involves some consequences of a canonical-pastoral nature which the Orthodox Church — through her clergy, divinely instituted (bishops, priests, deacons) — must always take into consideration.

Within the answer given to the Corinthians, the Apostle to the Gentiles has made more precise that the husband or the wife who professes Christ has the moral obligation to bring up their children born from such a mixed marriage in the faith of the Orthodox Church. This mandatory character makes obvious the fact that “the Orthodox spouse must have not only full liberty in professing his/her faith and in committing good deeds in accordance with the teaching of Christ, but he/she must have the moral influence over the entirety of family life...”<sup>10</sup> But only the liberty of the husband and wife in professing their right (Orthodox) faith and in choosing their way of Christian living in accordance with the religious-moral law, established by our Saviour Jesus Christ, could make the children born from such a mixed marriage worthy of being “sanctified” and, *ipso facto*, of being filled with the Holy Spirit, since otherwise, as the Apostle to the Gentiles tells us, “they would be unclean” (I Cor VII, 14).

Although in the text of the canons we do not find the “mixed marriages” phrase — since it is a novel product of the canon law theory<sup>11</sup> — however, on this reality, numerous canons of the ecumenical Church of the first millennium refer to.

In conformity with the principal disposition enunciated by the text of these canons, marriage of the Orthodox with the heterodox is prohibited. Those who do not pay respect to this principal disposition are anathematized,<sup>12</sup> that is, excommunicated from the respective community or Church. However, the marriage of the Orthodox Christians with the heterodox has been permitted only then when the heterodox side was converting to “Orthodoxy” (canon 31 of Laodicea; canon 14 of the 4th Ecumenical Synod), that is, the heterodox was becoming subject of the

<sup>10</sup> Ibidem, p. 448.

<sup>11</sup> See N.V. DURĂ: “Al V-lea Congres Internațional al Societății de Drept a Bisericilor răsăritene” (The Fifth International Congress of the Law Society of Eastern Churches). *Ortodoxia*, XXXIV (1982), nr. 4, p. 619.

<sup>12</sup> IDEM: “Precizări privind unele noțiuni ale Dreptului canonic (depunere, caterisire, excomunicare, afurisire, și anatema) în lumina învățăturii ortodoxe. Studiu canonic” (Details of some notions of canon law (filing, defrocking, excommunication, fuckin and anathema) in the light of Orthodox teaching. Study canon), partea I, *Ortodoxia*, XXXIX (1987), nr. 2, pp. 84—135; partea a II-a *Ortodoxia* XXXIX (1987), nr. 3, pp. 105—143.



canon law of the Church by the Mystery of Baptism,<sup>13</sup> thus also becoming worthy of receiving the other Mysteries of the Christian initiation, Chrismation,<sup>14</sup> and Holy Communion.<sup>15</sup>

According to the disposition of the 63rd Apostolic Canon — in a Coptic version — a Christian may get married with a woman of another faith, but only under the condition that “the woman converts to Christianity [...]; if she refuses to do so, the husband has to depart from her. If any [of the spouses — our note] adopts the pagan or Judaic customs [...], he/she must give them up, in order for them not to be excommunicated.”<sup>16</sup>

Based on the canon 10 of Laodicea, “it is not proper to those who belong to the Church [that is, to the Orthodox Christians — our note] to mate, out of apathy [ἀδιαφόρως] their children with the heretics through the bond of marriage.”<sup>17</sup>

## Opinions Given by Canon Law Scholars

In accordance with the interpretation offered by some Orthodox canon law scholars<sup>18</sup> that respective canon prohibits the marriage of an Orthodox Christian with any individual anathematized by the Orthodox Church, or one whose heresy has been anathematized (cf. canon 1 of the 2nd Ecumenical Synod; canon 1 of St. Basil the Great; canon 45 of the *Holy Apostles*). In his commentary, the canonist is, however, much more

<sup>13</sup> See N. V. DURĂ: “Dispoziții și norme canonice privind administrarea Sfântului Botez” (Canonical provisions and rules regarding the administration of Baptism). *Orthodoxia*, XXXI, (1979), nr. 3—4, pp. 593—612.

<sup>14</sup> IDEM: “Rânduiești și norme canonice privind administrarea Mirungerii. Sfințirea Sfântului Mir pe teritoriul românesc, expresie elocventă a stării de autocefalie a Bisericii române de-a lungul secolelor” (Consecration of the Holy Myrrh on Romanian territory, eloquent expression of the status of autocephaly of the Romanian Church along centuries). *Mitropolia Moldovei și Sucevei*, LVII (1981), nr. 1—3, pp. 39—57.

<sup>15</sup> IDEM: “Rânduiești și norme canonice privind administrarea Sfintei Euharistii” (Canonical ordinances and rules concerning the administration of the Holy Eucharist). *Glasul Bisericii*, XXXVIII (1979), nr. 7—8, pp. 791—804.

<sup>16</sup> *Les 127 Canons des Apotres. Texte arabe*. Edit. și trad. J. PERIER, A. PERIER. Paris 1912, p. 97.

<sup>17</sup> Apud *Sintagma dumnezeieștilor și sfintelor canoane* (Phrase divine and sacred canons) (in Greek language). Eds. de G.A. RALLY și M. POTLY (*Sintagma Ateniană*), vol. III, Atena 1853, p. 180; Cf. N. MILAȘ: *Canoanele Bisericii Ortodoxe...*, vol. II, pt. I. Arad 1934, p. 88.

<sup>18</sup> See *Sintagma* (The Athenian phrase)...., p. 198; N. MILAȘ: *Canoanele Bisericii Ortodoxe...*, pp. 88—89.

categorical, while prohibiting — as a final judgment — the entering into marriage with a heterodox.<sup>19</sup> Yet, the Byzantine canonist based his affirmation on the texts of canon 23 of St. John the Faster and canon 72 of the Council in Trullo.

Based on the canon 23 of St. John the Faster (d. 595), “if an Orthodox gets married with a heretical woman, the wedding is to be without value, and the illegitimate marriage should be dissolved; and if they insist in remaining married, they must be anathematized.”<sup>20</sup> As a consequence, for St. John the Faster, the marriage with a heterodox is totally prohibited.

In accordance with the Apostolic order, those who did not renounce such a marriage were to be excommunicated by the Church. Those who “do not repent — as prescribed by the Apostolic Constitutions — you have to anathematize, separating them from the faithful, and make a public announcement about their removal from the Church of God, and command the faithful to completely stay away from them, and not to become companions with them either in word, or prayers, since they are adversaries and ill-willed to the Church, by spoiling the fold, by dishonouring the inheritance, and they call themselves wise while being totally wicked...”<sup>21</sup>

Following this Apostolic order, “The By-Laws for cases of bans and anathemas” of the year 1922<sup>22</sup> — which is still in force in our Church — provides that “in cases of deviation of any of the Orthodox Christian believers or clergy [...] in spite of having been used all the means, the ill thing was not removed, the Holy Council should be informed, by the Bishop of the Eparchy, in order for it to decide. The Holy Council, after deciding on the case brought to its attention, and finding no means for bringing back and straightening those who have deviated, will be empowered to give authorization for banning and anathematizing, with the exception to receive back in the assembly of the faithful the anathematized one who has fully repented” (Arts. II—III).

The Fathers of the Council in Trullo (Constantinople, 691—692), have totally prohibited the entering into marriage of an Orthodox Christian with a heterodox. On the ground of the canon 72, “an Orthodox man is not forgiven if he enters into marriage with a heretical woman (αἰρετική γυναίκα), neither the Orthodox woman is forgiven to get married to a heretical man (αἰρετικὸ ἄνδρ), but if someone is proved to have done something like this, the marriage is considered null and void, and the illegitimate wedding must

<sup>19</sup> *Sintagma* (The Athenian phrase)..., p. 181.

<sup>20</sup> N. MILAȘ: *Canoanele Bisericii Ortodoxe ...*, vol. II, pt. 2. Arad 1936, p. 216.

<sup>21</sup> *Scrierile Părinților Apostolici* (The writings of the Apostolic Fathers)..., p. 163.

<sup>22</sup> Ch. C. COSTESCU: *Colecțiunea de legiuiri bisericești* (Collection of laws, regulations), vol. III. București 1931, pp. 422—423.

be dissolved; [...] and if someone will break this decision of ours — the Holy Fathers of the Council in Trullo conclude — let him be anathematized.”<sup>23</sup>

Consequently, in accordance with the teaching of our Church, a marriage entered into between an Orthodox Christian and an individual of another faith is null and void, since it is an outrageous wedding, which does not transmit the grace of the Mystery of Matrimony and does not bear canonical effects either. Based on the principal disposition enjoined by the Holy Fathers of the 6th Ecumenical Synod in its second session (691—692)<sup>24</sup> those who infringe upon “the decided rules” are excommunicated (anathematized), that is, they are excluded from the Orthodox ecclesiastical community (cf. canon 72).

In accordance with the opinion of some Roman-Catholic canonists, “the canon 72 of the Council in Trullo — which for the first time was declaring that the religious marriage entered into between Orthodox and heretics is invalid — was not applied in the East, and much less in the West. As such, claim the canonists, the mixed marriages have been considered valid, even legitimate, if they were entered into under some conditions. The mixed religion has constituted an impediment only for the Orthodox side, which had to ask for a dispensation from the side of ecclesiastical authority.”<sup>25</sup>

In his commentary on the canon 72, Balsamon asserted that the Fathers of the Council in Trullo have also paid respect to the provisions of the civil law (ὁ πολιτικός νόμος)<sup>26</sup> of their time, which was prohibiting the marriage between Orthodox and heterodox. Without doubt, the Fathers of the Council in Trullo have taken into consideration the provisions of the State legislation of that time which also perpetuated the previous legislation created with the same concern by the Byzantine imperial authority. Therefore, the provision of the canon 72 of the Council in Trullo was applied at least in the East, since it was later expressed and enforced by the Byzantine imperial legislation.

<sup>23</sup> N. MILAȘ: *Canoanele Bisericii Ortodoxe...*, vol. I, pt. 2. Arad 1931, p. 446; Cf. *Sintagma Ateniană* (The Athenian phrase), vol. II, p. 471.

<sup>24</sup> The matter is about the second session of the 6th Ecumenical Synod, assembled at Constantinople in 691—692, which has given us 102 canons (see N.V. DURĂ: “The Ecumenical Council in Trullo (691—692). The Canonical Tradition’s Evidences from East and West.” *Kanonika* (1995), nr. 6, pp. 229—262; I.V. DURĂ: “Câteva precizări privind data și denumirile celei de a doua sesiuni a celui de-al VI-lea Sinod ecumenic (Quinisext sau Trulan)” (Some clarifications on the date and names of the second session of the 6th Ecumenical Council (Trulan or Quinisext)). *Biserica Ortodoxă Română* (1992), nr. 1—3, pp. 158—162.

<sup>25</sup> P. TOCANEL: “I Matrimoni misti dopo il Concilio Vaticano II negli schemi delle commissioni pontificie.” *Kanon* (Yearbook of the Society for the Oriental Churches), vol. VI, p. 119.

<sup>26</sup> See *Sintagma Ateniană* (The Athenian phrase), vol. II, p. 472.

The 31st canon of Laodicea (343—348)<sup>27</sup> provides that a mixed marriage between an Orthodox Christian and a heterodox individual could be tolerated only in the case in which the individual of other faith would solemnly promise (είγε επαγγέλοιτο) that he/she will accept and profess the Orthodox faith.<sup>28</sup> Therefore, with this meaning must be understood the word ἀδιαφώρας (out of apathy) from the text of the canon 10 of Laodicea Synod, which expressly prohibits “those who belong to the Church to allow out of apathy their sons to get married with the heretics through the bond of marriage.”<sup>29</sup>

On the ground of the two canons of the Synod from Laodicea (343—348), we may, therefore, conclude that, in principle, such a mixed marriage — between an Orthodox and a heterodox — is prohibited, but, by applying the canonical principle of dispensation, it could be entered into with the exception that the individual of a different faith solemnly promises to become an Orthodox Christian. Of course, such a marriage does not bear juridical-canonical effects until the materializing of the solemn promise made by the heterodox side.

## Children in Mixed Marriages

In giving expression to this reality of the early Church, the Fathers of the 4th Ecumenical Council (Chalcedon, 451) by the canon 14, have prohibited even “the readers and the cantors to get married with a heterodox wife. And those who have had children from such a marriage, if they have baptized their children with a heretical baptism, they must bring them in communion with the Catholic [Orthodox — our note] Church, and if they did not baptize them, they cannot baptize them with a heretical rite, and cannot marry them through wedding with a heretic, or a Jew, or a pagan, with the exception that the individual which gets married with the Orthodox promise to convert to the Orthodox faith.”<sup>30</sup>

Based on this canon, the children born within these prohibited marriages, in case that they have been baptized in the heretical rite, must accordingly be brought to Orthodoxy, since the heterodox baptism and

<sup>27</sup> In the text of the canon there is the provision: “It is not proper to enter into marriage with any heretics, or to give the sons or the daughters to heretics, but especially take them if they would promise to become Christians” (apud N. MILAȘ: *Canoanele Bisericii Ortodoxe...*, vol. II, pt. 1, p. 105).

<sup>28</sup> See *Comentariile lui Zonara și Balsamon* (Comments of Zonara and Balsamon). In: *Sintagma Ateniană* (The Athenian phrase), vol. III, pp. 198—199.

<sup>29</sup> N. MILAȘ: *Canoanele Bisericii Ortodoxe...*, vol. II, pt. 1, p. 88.

<sup>30</sup> *Ibidem*, vol. I, pt. 2, pp. 225—226.

wedding do not bestow on them the grace of God's Mysteries,<sup>31</sup> and, *ipso facto*, the consequences which are inherent to this.

But by the canon 14, the Fathers of the 4th Ecumenical Council have established a principal canonical disposition, on the basis of which an Orthodox can marry a heterodox only in the case when an individual would promise "to embrace the Orthodox faith."<sup>32</sup>

## Application of the Pauline Principle

In conformity with the canonical order of the ecumenical Orthodox Church concerning the criteria for contracting marriages with the heterodox — which have been established on the ground of "Pauline principle" (cf. I Cor VII, 12—16) — in the case in which two heterodox marry each other, and after getting married one of them embraces the Orthodox faith and the other one remains a heterodox, their marriage should not be dissolved (μη χωριζέσθε), if the spouses agree to further live on together.<sup>33</sup> As a matter of fact, in this sense also the Fathers of the Synod in Trullo made the pronouncement — who have confirmed both the canonical order and the ecclesiastical practice up until then, concerning the mixed marriages, by the text of the canon 72: "But if some, while finding themselves still in unfaith, and not being counted in the fold of Orthodox as yet, have been united by legitimate marriage, and then, one of them, by choosing the good, has come to the light of truth, and the other one keeps the bond of wandering, by not choosing to look at the divine rays, but the unfaithful wife consents to live with the faithful husband, or vice versa, the unfaithful one with the faithful one, let them not be disunited..."<sup>34</sup>

In order for them to justify and argue this attitude, the Fathers of the Synod in Trullo have invoked the so-called Pauline privilege (I Cor VII, 14), in accordance with which "the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband; otherwise

<sup>31</sup> See *Comentariul lui Aristen* (Comment of Aristen), in *Sintagma Ateniană* (The Athenian phrase), vol. II, p. 254; N.V. DURĂ: *Dispoziții și norme canonice privind administrarea Sfintei Taine a Botezului* (Canonical provisions and rules regarding the administration of Baptism), in *Ortodoxia*, XXXI (1979), nr. 3—4, pp. 593—612.

<sup>32</sup> Apud *Sintagma Ateniană* (The athenian phrase), vol. II, p. 251.

<sup>33</sup> For one's building up, see the texts of the canons: 14 of the 4th Ecumenical Council, 72 of the Council in Trullo, 10 of Laodicea, and 23 of St. John the Faster.

<sup>34</sup> Apud N. MILAȘ: *Canoanele Bisericii Ortodoxe...*, vol. I, pt. 2, pp. 446—447.

your children would be unclean, but now they are holy.<sup>35</sup> But if the unbelieving husband departs, let him depart,” says St. Paul the Apostle, since under such circumstances they are not “under bondage in such cases” (I Cor VII, 14—15).

For the Apostle to the Gentiles, the free consensus of the heterodox spouse, while not being forced by anyone, to live together with the spouse who became a Christian, constituted a peremptory proof that the conversion of the other spouse “was the expression of the free will and of a sincere desire; but at the same time, this circumstance could also serve as a proper means and as an urge for the other spouse to receive the right faith...”<sup>36</sup>

## Conclusions

In conclusion, from the text of Orthodox canonical legislation — corroborated with by the doctrine and Orthodox canonical practice — result the following orders:<sup>37</sup>

1. The mixed marriages of the Orthodox Christians with individuals of other faith, particularly with the pagans and the heretics (heterodox) are strictly prohibited by the Church.
2. The mixed marriage is valid only when out of a marriage entered into outside the Orthodox Church, therefore within a community of non-Christian religious faith or a heretical one, one of the spouses receives the Orthodox faith after marriage, and the other one, who remains in his/her previous faith, chooses to stay married with the spouse who embraced the Orthodox faith.
3. The children born from such mixed marriages must be baptized and brought up within the Orthodox Christian faith.
4. If the spouse of pagan or heterodox faith does not wish to stay in the marriage with the spouse who became an Orthodox Christian, then the marriage is dissolved and the Orthodox spouse is allowed to enter into another marriage with an Orthodox individual.
5. An Orthodox individual is allowed to enter into marriage with a heterodox individual, only if the last one promises to receive the Orthodox faith and makes good on his/her promise on the spot.

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<sup>35</sup> Ibidem.

<sup>36</sup> Ibidem, p. 448.

<sup>37</sup> Ibidem, p. 450.

NICOLAE V. DURĂ, TEODOSIE PETRESCU

## Małżeństwa mieszane według prawa kanonicznego Kościoła prawosławnego (II—VII wiek n.e.)

### Streszczenie

W świetle świadectw kanonicznych i ostatnich uchwał Kościoła prawosławnego, ogólne reguły dotyczące małżeństw mieszanych przedstawiają się następująco:

1. Małżeństwa międzywyznaniowe oraz z wyznawcami innych religii są zabronione.
2. Po zastosowaniu zasady *oikonomia*, małżeństwa mieszane mogą być tolerowane. Wówczas jednak ceremonia ślubna musi odbyć się w Kościele prawosławnym i być przeprowadzona przez prawosławnego duchownego.
3. Możliwości i formy zastosowania zasady *oikonomia* zależą od praktycznych potrzeb poszczególnych Kościołów prawosławnych, które mają prawo decydowania w konkretnych sprawach.
4. Dzieci pochodzące z małżeństwa mieszanych muszą być ochrzczone w Kościele prawosławnym.
5. Zgodnie z Przywilejem Pawłowym (1 Kor 7, 12—16), małżeństwo mieszane dopuszczone jest tylko w wypadku, gdy zostało zawarte przed nawróceniem jednego z małżonków na chrześcijaństwo.
6. Na podstawie kanonu 10 Synodu w Laodycei oraz kanonu 23 św. Jana Postnika małżeństwo osoby wyznania prawosławnego z osobą innej wiary jest zabronione.
7. Kanon 31 Synodu w Laodycei oraz 14. kanon IV Soboru Powszechnego zezwalają na małżeństwo między osobą wyznania prawosławnego i osobą innej wiary, pod warunkiem, że osoba odmiennego wyznania uroczyście przyrzeknie – podczas zawierania małżeństwa — że nawróci się na prawosławie.
8. Kanon 72 Synodu Trullańskiego (691—692), który usystematyzował ówczesną praktykę kanoniczną w kwestii małżeństw mieszanych, stanowczo zabraniał owych małżeństw pod groźbą ekskomuniki. Uznając je za nieważne, ten sam kanon nadawał Przywilejowi Pawłowemu moc powszechnie obowiązującego prawa, w takim sensie, że małżonek, który nawrócił się na chrześcijaństwo – po zawarciu małżeństwa „nie powinien rezygnować z własnej religii/oddzielnie od drugiego małżonka”.

Niedawno Rumuński Kościół Prawosławny zasugerował „ustanowienie nieustającego synodu czternastu kościołów autokefalicznych w celu większej spójności ich doktrynalnych i dyscyplinarnych uchwał”. Bez wątpienia taki nieustający synod wszechprawosławny mógłby pomóc zmierzyć się z wieloma trudnymi zagadnieniami stojącymi obecnie przed Kościołem prawosławnym, m.in. ważnym problemem małżeństw mieszanych, którego rozwiązanie zostało odroczone przez Wielki i Święty Sobór Wszechprawosławny. Niestety, ta realistyczna i pożyteczna decyzja naszego Kościoła nie została jeszcze wprowadzona w życie, zatem przyszły Wielki i Święty Sobór nie rozwiąże wielości problemów, które stoją dziś przed kościołem prawosławnym.

**Słowa kluczowe:** małżeństwo mieszane, Przywilej Pawłowy, *oikonomia*, prawosławie, różnica religii, różnica wyznania

NICOLAE V. DURĂ, TEODOSIE PETRESCU

## Les mariages mixtes conformes au droit canonique de l'Église orthodoxe (IIIe—VIIe siècle apr. J.-C.)

### Résumé

A la lumière des certificats canoniques et des dernières résolutions de l'Église orthodoxe, les règlements généraux concernant les mariages mixtes sont les suivants :

1. Les mariages interconfessionnels et interreligieux sont interdits.
2. Dans le cas où ils sont acceptables, c'est-à-dire l'oikonomie est appliquée, la cérémonie du mariage doit avoir lieu dans l'église orthodoxe et exercée par un prêtre orthodoxe.
3. L'application des possibilités et des formes d'oikonomie dépend des besoins pratiques des Églises orthodoxes locales, qui ont le droit de décider sur les questions spécifiques.
4. Les enfants nés du mariage interreligieux doivent être baptisés dans l'Église orthodoxe.
5. Selon le Privilège paulin (1 Cor 7, 12—16), le mariage interreligieux est acceptable uniquement dans la situation où il a été contracté avant la conversion au christianisme de l'un des époux.
6. Sur la base du canon 10. du concile de Laodicée du Lycos et du canon 23. du Saint Jean IV le Jeuneur, le mariage d'une personne orthodoxe avec une personne de religion différente est interdit.
7. Le canon 31. du concile de Laodicée du Lycos et le canon 14. du concile oecuménique, permettent le mariage entre une personne orthodoxe avec une personne de religion différente sous la condition que cette dernière promette solennellement pendant la cérémonie du mariage de se convertir à l'orthodoxie.
8. Le canon 72 du concile in Trullo (691—692), qui a systématisé la pratique canonique concernant le mariage interreligieux, a fermement interdit ces mariages sous peine d'excommunication. En les jugeant nuls et de nul effet, le même canon a mis en vigueur le Privilège paulin dans le sens que l'époux converti au christianisme après la conclusion du mariage « ne devrait pas résigner sa propre religion / se séparer de l'autre époux ».

Dernièrement l'Église orthodoxe roumaine a suggéré d'« établir le concile permanent de quatorze églises autocéphales dans le but de garder une cohérence plus grande de leurs résolutions doctrinales et disciplinaires ». Sans doute un concile permanent panorthodoxe pourrait affronter de nombreux problèmes difficiles, qui surviennent actuellement à l'Église orthodoxe, entre autres le problème grave des mariages interreligieux, dont la résolution a été prorogée par le Saint et grand Concile de l'Église orthodoxe. Malheureusement cette décision réaliste et utile de notre Église n'est pas encore mise en valeur, et, par conséquent, le futur Saint et grand Concile ne résoudra pas la multiplicité de problèmes qui se posent à l'Église orthodoxe.

**Mots-clés:** mariages interconfessionnels, Privilège paulin, oikonomie, cérémonie du mariage interconfessionnel, mariage interreligieux



NICOLAE V. DURĂ, TEODOSIE PETRESCU

## I matrimoni misti secondo la legislazione canonica ortodossa

### Sommario

Considerando le testimonianze canoniche e le ultime disposizioni della Chiesa ortodossa possiamo constatare quanto segue:

1. Il matrimonio interconfessionale o interreligioso non è consentito.
2. Nel caso in cui esso sia tollerato, data l'applicazione dell'oikonomia, la cerimonia del matrimonio deve essere celebrata nella Chiesa ortodossa dal sacerdote ortodosso.
3. Le possibilità e le modalità di applicazione dell'oikonomia dipendono dalle necessità pratiche di ogni Chiesa ortodossa locale, la quale ha il diritto di giudicare un determinato caso in maniera individuale.
4. I figli nati da tale matrimonio devono essere battezzati ed educati nella fede ortodossa.
5. Secondo il *Privilegium Paulinum* (I Cor. VII, 12—16) il matrimonio misto è consentito solo nel caso in cui sia stato celebrato prima che uno dei due coniugi non battezzati abbia ricevuto il battesimo.
6. Secondo le disposizioni del canone 10 di Laodicea e del canone 23 di San Giovanni IV il Digiunatore, è vietato il matrimonio di un cristiano ortodosso con una persona di un'altra fede.
7. I canoni 31 di Laodicea e 14 del IV concilio ecumenico consentono il matrimonio tra un cristiano ortodosso e una persona eterodossa a condizione che il/la coniuge giuri solennemente — nel contrarre il matrimonio — di convertirsi all'Ortodossia.
8. Il canone 72 del Concilio Trullano (691—692) — che ha reso omogenea la prassi canonica riguardante i matrimoni misti — proibisce severamente di contrarre simili matrimoni sotto minaccia di scomunica. Considerandoli nulli, lo stesso canone attribuisce al *Privilegium Paulinum* il potere di una legge universalmente vincolante, nel senso che il coniuge diventato cristiano — dopo aver contratto il rispettivo matrimonio — “non dovrebbe abbandonare la sua fede/separarsi dall'altro coniuge”.

Non molto tempo fa la Chiesa ortodossa rumena ha suggerito “l'istituzione di un sinodo permanente delle quattordici Chiese autocefale con lo scopo di garantire una maggiore coerenza delle disposizioni dottrinali e disciplinari”. Senza dubbio un simile permanente sinodo panortodosso potrebbe risolvere numerosi problemi che la Chiesa ortodossa deve affrontare, tra cui, in primo luogo, il problema dei matrimoni misti la cui soluzione definitiva durante il Grande e Santo Sinodo è stata rimandata ad altro tempo. Purtroppo questa proposta realistica e salutare della nostra Chiesa non è stata ancora messa in pratica e le problematiche discusse durante il Grande e Santo Sinodo non potranno mai avvicinarsi e risolvere la moltitudine dei problemi che l'Ortodossia di oggi deve affrontare.

**Parole chiave:** matrimonio interconfessionale, *Privilegium Paulinum*, oikonomia, nozze interconfessionali, nozze interreligiose



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## Situation of Canonical, Mixed Catholic-Orthodox Marriages in Slovakia in the Historical and Contemporary Context

**Key words:** ecumenism, Eastern Catholic Churches, law, marriage

### 1. The Ecumenical Movement as a Part of the Catholic Way of Life

The issue of finding ways to recapture the lost unity, otherwise than, for example, by unionism, can mainly be found in the teaching of the Church of the second half of the previous century. Also, one is able to trace an obvious development. Some principles in *Mystici corporis*<sup>1</sup> encyclical by Pope Pius XII state that delusion and schism, although formally existing, do not disturb completely belonging to the Church of Christ entered into by baptism. Therefore, we cannot perceive non-Catholic Christian as the unbaptized. They bear not only his name on their forehead forever, but also his indelible image on the soul, because of baptism. On the basis of baptism, not united Christians are therefore subjects and members of the church. These separated brothers are part of mystical body of Christ, “an unconscious desire and wish,”<sup>2</sup> growing desire for unity, which can be seen in separated brothers, is the piece of work of Holy Spirit<sup>3</sup> according to the same encyclical.

<sup>1</sup> See *Acta Apostolicae Sedes* 1943.

<sup>2</sup> *Ibidem*, p. 243.

<sup>3</sup> Instruction of the HOLY OFFICE: *De motione oecumenica*, 20.12.1949. AASK 1950.

The Second Vatican Council began a new season in the life of the Catholic Church. In a special way it suggested a relationship to those Christian denominations which are not in full communion with the Church. Ecumenical principles are posted mainly in the decrees of *Orientalium Ecclesiarum Eastern Catholic Churches*, also in *Unitatis Redintegratio*, about ecumenism. The Doctrinal Constitution on Church *Lumen Gentium* (further: LG), but also other documents of this council, as for example declaration of the Second Vatican Council *Dignitas Humanae* on religious freedom, are permeated by the ecumenical spirit. A special chapter of the ecumenical movement in the middle of the Catholic Church are ecumenical activities of the last popes, especially activities of John Paul II, whose pontificate is marked by generous and unceasing desire for ecumenism among all Christians, or even in a broad sense including the entire humanity. Well known are his numerous speeches and ecumenical meetings. In a special way, he addressed the idea of unity with the Eastern Orthodox Church. His encyclicals are full of ecumenical spirit and some of them are devoted to the problem of ecumenism directly. These encyclicals are *Slavorum Apostolori* of 2 June 1985 and *Ut unum sint* of 25 May 1995. He concentrates on this issue in many apostolic letters and speeches. There are innumerable statements by dicasteries of the Apostolic See, especially of Eastern congregation, which are devoted to ecumenical movement. The milestone of all these activities was the edition of both codes: *Code of Canon Law* from 1983, *Code of Canons of Eastern Churches* from 1990<sup>4</sup> and also *Directory for Implementation of the Principle and Norms about Ecumenism* of the Pontifical Council for Promoting Christian Unity from 25 March 1993.

### Documents of the Second Vatican Council on ecumenism

Teaching of the Second Vatican Council about ecumenism is contained mainly in *Lumen Gentium*, *Orientalium Ecclesiarum* and *Unitatis Redintegratio*. The principles of this doctrine can be summarized as follows:

1. In legal terms, members of the Church of Christ are only those who are validly baptized. *Lumen Gentium* 14 calls baptism “the gateway to the Church.” It means that there is a declared difference between those who are baptized, and those who are not baptized. It means baptism by water in this case. It also says that non-Christians can be saved if they look for God by honest heart and try to live according to the voice of conscience (LG 16). This fact, however, cannot be legally captured.
2. The council also speaks of invisible membership in the Church of Christ, when it mentions bonds of faith, hope and love between God and believer (LG 14).

<sup>4</sup> Codex Iuris Canonici (CIC), Codex Canonum Ecclesiarum Orientalium (CCEO).

3. Requirements for the external membership to Church of Christ in addition to baptism are: *vinculum liturgicum* (the practice of worship and sacraments), *vinculum symbolicum* (true confession of the same faith), *vinculum hierarchicum* (deference to Peter, Apostles and their successors) (LG 14).
4. The Church of Christ exists in the Catholic Church that remains on this earth as a visible company led by the successor of St. Peter and the Bishops (LG 8).
5. Even outside the Catholic Church, so in other Christian churches, we can find more or less elements of true Christ's Church. First, it is through baptism that we are all united in Christ's Church. But as Council says, we can find fullness of the means of salvation only in the Catholic Church.
6. Finally, it should be noted that the Council declares the need of exclusiveness for human salvation (LG 14).<sup>5</sup>

The Eastern Catholic churches stand in the centre of the Catholic Church as its part. Their legitimacy historically stems from contracts, from which arose the individual unions, but also the existence of several hundred [documents]. The legitimacy of the Eastern Catholic Churches, legal re-treat the Second Vatican Council, which published special document *Decree about Eastern Catholic Churches*<sup>6</sup> to solve this problem.

## 2. Decree about the Eastern Catholic Churches

This document legally declares not only place of these ecclesial communities in the middle of the Catholic Church, but also defines their role, which they should play inside this community.

Right at the beginning the decree states: "The Catholic Church has in high esteem institutions, liturgical rites, ecclesiastical traditions and way of life of the Eastern Churches.... Diversity in the Church not only do no harm to its unity, but rather makes it obvious."<sup>7</sup> It means that the universal Church realizes its versatility through Eastern Catholic Church. This fact is even more accentuated in constatation claiming that "local churches are the same in terms of worthiness, so that none of them has priority over the other for their ceremony and they all have the same

<sup>5</sup> See J. DUDA: *In the service of God's Kingdom*. Serafin 1997, pp. 180—181.

<sup>6</sup> See *Documents of the Second Vatican Council II*. Trans. Stanislav POLČIN. Rome 1970. Decree about the Eastern Catholic Churches.

<sup>7</sup> See *ibidem*.

rights and the same obligations, also as to message of the Gospel around the whole world (cf. Mk 16:15) administered by the Roman Pope.”<sup>8</sup> Document about Eastern Catholic Churches not only declares this coequality between all the local Churches, but also orders: “to make arrangements everywhere for the protection and development of all the local churches [...],<sup>9</sup> so Church takes these communities under its special protection. The council considers heritage of Eastern Christians as a heritage of the whole Church of Christ and also declares that “Eastern and Western churches have the right and obligation to behave according to their own provisions recommended by the venerable antiquity and more suited to the nature of their followers and apparently provides a good of souls more effectively.”<sup>10</sup> These words give legal guarantee to these thoughts: “Let all Eastern Christians know and believe, that they can and also must keep their lawful liturgical rites and their way of life and that they should not bring the changes, only in case if it is necessary because of their organic evolution.”<sup>11</sup>

Special chapter which exposes the office of Eastern patriarchs gives respect to these words. The legal status of this establishment is analysed by Code of Canons of Eastern Churches from 1990. This institution has always enjoyed big respect and authority in the East. A special chapter about office of patriarch should give a special respect to the previous words, or even to the entire decree. This office is a separate legal guarantee that not only declares their ideas into real form, but in the person of patriarch’s special legal protection. Most meetings between various ceremonies are during the celebration of sacraments. Therefore, this document pays special attention to this issue. It clearly accepts the sacramental discipline of Eastern churches; it especially pays attention to the sacrament of confirmation, which can be also celebrated by priests, according to Eastern tradition. It specifically notes, “that every priest of Eastern rite can give this sacrament together with baptism, or without, to all believers from every kind of rite, also the Latin rite.”<sup>12</sup> It is sure that it is the same by contraries and it is also sure that they should keep prescriptions of particular law. The decree also sets out the role of the Eastern Catholic churches to “help create the unity for everyone, but especially the Eastern Christian.”<sup>13</sup> This applies to helping the unity with Eastern non-Catholic churches. This task is given by the following communities

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<sup>8</sup> Ibidem.

<sup>9</sup> Ibidem.

<sup>10</sup> Ibidem.

<sup>11</sup> Ibidem.

<sup>12</sup> Ibidem.

<sup>13</sup> Ibidem.

logically, because liturgical identity and often common tradition is the best vision of constructive dialogue. It is, therefore, necessary to know source principles, which have to be kept and are stated by this decree: This decree alleviates old rules about taking separated Christians to community with Catholic Church: “[...] it should not be asked for more than is required by simple confession of Catholic faith.”<sup>14</sup> The same rule speaks about priests, who come to unity with Catholic Church: “[...] they can do the function, which is connected with their sanctification according to a rule, which sets the competent ecclesiastical authority.”<sup>15</sup>

This decree solves the participation in holy matters in absolutely new way. The emphasis is again put on the need for salvation and the good of souls:

May be granted to Eastern Christians, who are without fault (*bona fide*) separated from the Catholic Church, the sacrament of Penance, Holy Communion and last rites, if they really want to and are properly prepared. Also Catholics may even ask these sacraments from non-Catholic priests, in case if they kept valid sacraments in their Churches, any time the need or mutual benefit advise in that way and approach to the Catholic priest is physically or morally impossible.<sup>16</sup>

These who are without fault are kind of condition for us, which makes problem in our circumstances, because the current Orthodox Christians in Eastern Slovakia are almost all original Greek Catholics and left communion of Catholic Church in previous years. However, it seems that this rule can be applied to them, because of next generation, which is out of this communion without its own fault. We should think about this milder practice, which is built on: 1) the validity of the sacraments, 2) thinking about sincerity (*bona fides*), 3) the need for salvation, 4) the absence of their own priest, 5) eliminate danger, which should be avoided and apparent agreement with heresies.<sup>17</sup> Also, based on the same principles, are legitimate reasons for accepting the complicity of Catholics and Eastern separated brothers on sacred actions, things and places. It is about so-called *communicatio in sacris extrasacramentalis*. The council allows this more conservative practice, but yet it must be observed, which should be respected.<sup>18</sup>

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<sup>14</sup> Ibidem.

<sup>15</sup> Ibidem.

<sup>16</sup> Ibidem.

<sup>17</sup> Ibidem.

<sup>18</sup> Ibidem, fn. 34.

### 3. The Code of Canons of the Eastern Churches and Ecumenism

Ecumenical principles put forward by the Second Vatican Council Decree about Eastern Catholic Churches found their own legal anchoring in CCEO. Ecumenical character is actually an essential feature of both codes: CIC 1983 and CCEO. But CCEO because of its formal structure<sup>19</sup> emphasizes its eastern orientation. Even at the ceremonial start of work on the Eastern Church Code 18.3.1974, Pope Paul VI indicated in which direction should Codification Commission move: “[...] canon law of the Eastern Catholic Churches should be in line with the intentions of the fathers of the Second Vatican Council as well as by purely Eastern tradition. [...] The pope in this speech emphasized the care for the salvation of souls as highest goal and extremely redemptive impetus to the restoration of Christian life, which Second Vatican Council wished and promoted. He ordered the Code to meet the requirements of today’s life and real conditions of time and places, which are always changing so fast, and to keep the connection with tradition and fully adapted to the special role that touches believers of Eastern Churches, also supports the unity of Eastern Christians according to a principles of decree of ecumenism.”<sup>20</sup>

The current law so absolutely left its own asperity, which was detrimental to any kind of contact between Catholic and Orthodox Church, because it considered schismatic on account of the split. It also touched the relations between Orthodox and Greek Catholics, because Catholic Church of Eastern rite as a legal part of Catholic Church was governed by the same law. Code of Canons of the Eastern Churches significantly addresses the members of the Eastern Catholic Churches with a challenge to care in a special way and to promote the unification of all the Eastern Churches, so ecumenical activity towards the Orthodox Church is the responsibility of our church and community. This support should be practiced through prayer and exemplary life at first, trueness of Church to old Church religious traditions of the Eastern Churches, a better knowledge of each other, cooperation and brotherly care about material and spiritual matters.<sup>21</sup> At the same time, however, code points to “maintain face”

<sup>19</sup> CCEO uses for division titles, heads, articles and canons, which is typical for the collection of canons in the East.

<sup>20</sup> See *Kodeks kanoniv schidnich cerkov, latinsko-ukrainske vidannja*. Rome 1993, p. 28 (author’s translation).

<sup>21</sup> CCEO, can. 903: *Ad Ecclesias orientales catholicas speciale pertinet munus unitatem inter omnes Ecclesias orientales fovendi precibus imprimis, vitae exemplo, religiosa*



during this open and ambitious dialogue and to protect from danger of lie, irenicism, indifferentism and exaggerated zeal.<sup>22</sup> Ecumenism therefore does not mean abandoning the principles of Catholicism and membership in Catholic Church. It does not try to indicate that these things do not matter. To avoid these risks, it is necessary to keep the rules, which are set out by CCEO in the next canons:

Heralds of God's word, the person in charge of the media, also all of us who work as teachers or directors of Catholic schools and separate higher institutes should take care to explain the real content of teaching and preaching the Catholic Church and other religious communities of Christian ecumenism.<sup>23</sup>

CCEO separately asks principals of Catholic schools, hospitals and other institutions to "take care of other Christians, which visit or live there, to get spiritual help from their own ministers and to receive the sacraments."<sup>24</sup> In connection with common participation in the holy stuff, Catholics should keep the forms, which are prescribed by law. It also wishes to "do every activity where they can collaborate with other Christians together, not separately. Namely: Works of charity and social justice, the defense of the dignity of the human person and his/her fundamental rights, peace ambition, national day of remembrance and saints-day."<sup>25</sup> Although it may seem that the Code of Canons of the Eastern Churches mentions the objective issue very generally, it is really important to say that the details of these principles contained in the code are analysed by the Directory for practicing norms of ecumenism from 1993, about

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*erga antiquas traditiones Ecclesiarum orientalium fidelitate, mutua et meliore cognitione, collaboratione ac fraterna rerum antimorumque aestimatione.*

<sup>22</sup> CCEO, can. 905: *In opere oecumenico persolvendo praesertim aperto ac fidenti dialogo et inceptis cum altis christianis communibus servanda est debita prudentia evitatis periculis falsi irenismi, indifferentismi necnon zeli immoderati.*

<sup>23</sup> CCEO, can. 906: *Quo clarius innotescat christefidelibus, quid reapse doceatur et tradatur ab Ecclesia catholica et ab aliis Ecclesiis vel Communitatibus ecclesialibus, diligenter operam dent praesertim praedicatorum verbi Dei, ii, qui instrumenta communicationis socialis moderantur, atque omnes, qui vires impendunt sive ut magistri sive ut moderatores in scholis catholicis, praesertim autem in institutis studiorum supertorum.*

<sup>24</sup> CCEO, can. 907: *Curent moderatores scholarum, nosocomiorum ceterorumque similium institutorum catholicorum, ut alii christiani ea frequentantes vel ibi degentes a propriis ministris adiumentum spirituale consequi et sacramenta suscipere possint.*

<sup>25</sup> CCEO, can. 908: *Optandum est, ut christefideles catholici servatis normis de communicatione in sacris quodvis negotium, in quo cum aliis christianis cooperari possunt, non seorsum, sed coniunctim pesolvant, cuiusmodi sunt opera caritatis ac socialis iustitiae, defenso dignitatis personae humanae eiusque iurium fundamentalium, promotio pacis, dies commemorationis pro patria, festa nationalita.*

which we are going to discuss in the following pages. It is important to realize that these norms create a spirit moving the ecumenism, determining the size of its freedom, but also setting boarders. Code of Canons of the Eastern Churches<sup>26</sup> gives the basic rule in canon 670, which sets conditions for Catholic believers to be part of divine service of non-Catholic Christians. The only designated condition is to respect the grade of unity with the Catholic Church. On the basis of the same canon it is possible to provide non-Catholic Christians with buildings, churches or cemeteries where they could decently perform divine services, but only with agreement of eparchial bishop.<sup>27</sup> Even this rule is quite general — it clearly means that relatively to a grade of unity, Orthodox Churches are the closest ones to the Catholic Church. Canon 671<sup>28</sup> clearly says that the sacraments are valid for Catholics committed to a Catholic priest. However, if the need arises or it is encouraged by real spiritual use and the danger of mistake is eliminated at the same time, it is allowed to take sacrament of Penance, Eucharist and the last Sacrament for those Catholic believers, who cannot take it from a Catholic priest because of physical or moral problems. But it is necessary for these sacraments to be valid in accordance with mentioned priests.

## 2. Legalizing Greek Catholics and Orthodox Mixed Marriages in the Historical Process

It was necessary to mention this historical process, because in fact it influenced the conclusion of mixed marriages between Orthodox and Greek Catholics. We have no information how it was in the early years of the Greek Catholic Church. However, we can predict that mixed marriages between Greek Catholics and Orthodox on the territory of Eastern Slovakia were just very few, because of union or Greek Catholic Church was generally accepted. Even in the new situation, after the Eastern Christians joined, we can predict that during the conclusion of marriages *ritus sacer* was still necessary, that is a special church ceremony. This custom was introduced by Ceasar Leo VI (d. 912). The same Ceasar entrusted

<sup>26</sup> Henceforth CCEO.

<sup>27</sup> CCEO, can. 670 § 2: *Si christianis acatholicis desunt loca, in quibus cultum divinum digne celebrent, Episcopus eparchialis usum aedificii catholici vel coemeterii vel ecclesiae concedere potest ad normam iuris particularis propriae Ecclesiae sui iuris.*

<sup>28</sup> CCEO, can. 671 § 1: *Ministri catholici sacramenta licite solis christefidelibus catholicis ministrant, qui pariter eadem a solis ministris catholicis licite suscipiunt.*

to the Church the right and responsibility for the legal status of marriage.<sup>29</sup> The period after 1646, when there was the conclusion of Union, transpired after the Council of Trent, which introduced the duty of using legitimate forms, but the obligation of special church ceremony was not part of it.<sup>30</sup> As a result of it, also receiving the assessments was different in the various of Eastern Catholic churches. In Eastern Slovakia, we can predict that after Zamość Province Council of the Union in 1720, there was adopted the obligation of keeping assessments of Trent Council. We can also predict that at that time were considered as valid also that marriages of Greek Catholics, which were legalised by an Orthodox priest.

In 1917 there was edited the Code of Canon Law for Latin Church. Even though its first canon contains a clause which is valid just for Latin Church, *lacuna iuris* was because of its own right the reason that Greek Catholic Church in Slovakia was widely used. From this perspective, it started to find valid only this type of mixed marriage between Orthodox and Greek Catholic side which were legalised by a competent priest of Catholic Church under dispensation of competent local hierarchy. Mixed marriage between Orthodox and Greek Catholics was in this case at the same level as mixed marriage between Catholic and Protestant. Marriage of Catholics with the Orthodox side which was legalized by an Orthodox priest, was considered as not valid, because there was not any lawful Catholic canonical form. Complex matrimonial law for the Eastern Catholic Church was promulgated in 1949 in the *motu proprio* of Pope Pius XII. *Crebrae allatae sunt*. In significant ways, this *motu proprio* was based on the provision of the Pio-Benedictine Code of 1917. Special provisions, which were valid for Eastern Catholic Churches were reflected mainly in the form legalizing marriage. Even though this canonical collection contained complex matrimonial law of the Eastern Catholic Churches, the Greek Catholic Church in Slovakia failed to bring it to life, because of 1950 when the absolute liquidation of the Greek Catholic Church started.

The situation of Greek Catholics after liquidation of their Church was more than absurd. They became at one time administratively Orthodox because of decision of Communist authorities, without their own volition and without their own opinion. In this same absurd situation it became possible for them to legalize marriages. We have to emphasise that for Greek Catholics the awareness of their own catholicity was very strong. The “old bearded men,” presented to them as their bishops, were for most Greek Catholics something quite alien and unacceptable. They

<sup>29</sup> S. HRACUNIAK: *Prawosławne pojmowanie małżeństwa*. Białystok 1994, p. 62.

<sup>30</sup> COUNCIL OF TRENT: Decree *Tametsi* (11.11.1563), ses. XXIV, n. 1. In: U. NOWICKA: “Kanoniczna forma zawarcia małżeństwa.” W: *Prawo kanoniczne*. Warszawa 2009, p. 248.

did not have their own priests, because they were either in prison or in exile behind the Czech border, or converted to Orthodoxy, but they also were not their priests. At that time the Roman Catholic Church was closest to them. The situation became more absurd, when Bishop of Košice Joseph Čársky, under the pressure from the Communist regime gave rules to his priest, which meant that during legalizing marriages of Greek Catholics they have to use those church regulations that affected the mixed marriages between Catholics and Orthodox.<sup>31</sup> It should be add that these positions from the state side or from side of the Roman Catholic Church were not accepted by Greek Catholics. Most of them entered into marriages secretly, by Roman Catholic priests, who did not respect these illegal practices, or later by Greek Catholic priests, who returned from exile and were working in blue-collar civil jobs performing sacraments secretly for Greek Catholics at their own risk. Finally, many Catholics lived only in civil marriages and sacramental marriages entered into after 1968, when the Greek Catholic Church was restored again. The same difficult situation existed for the Greek Catholic believers who stayed in their churches and they left Orthodox priests to perform sacraments. They were mostly believers in the villages who had no choice but to stay in their parish churches. If they legalized marriages with the Roman Catholic, they had to legalize their marriages in Roman Catholic churches according to Catholic procedure, because of the law. Marriage in their churches, which were occupied by Orthodox Church were not valid.

The situation changed a bit after restoring the Greek Catholic Church. Believers had the opportunity to define their canonical situation. Some Greek Catholics who had been living 18 years into the Orthodox Church accepted this situation and stayed Orthodox. Many others had been getting sacraments from Orthodox Church during the liquidation of the Greek Catholic Church, but after restoring did not want to come back. The hierarchy of the Greek Catholic Church in Slovakia did not apply any canonical sanctions to believers who stayed Orthodox. But their marriages with Catholics had to be legalised according to a dispensation for mixed marriages.

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<sup>31</sup> Verbatim quote: "I note Clergy that after 28 April 1950 all former Catholics should be considered Orthodox, because they are considered such by the state government. As a result, they are applied in proportion to the Roman Catholics laws (regulations) applicable on the ratio between the different faiths. Many clerics failed to comply with these rules, which were of great inconvenience. I recall spiritual, in that its action was aware of it." F. VNUK: *Tempered bonds*. Matica of Slovakia 2001, p. 179.

## 5. Mixed Marriage of Catholic and Orthodox Side Today

Today we use the provisions of the Code of Canons of the Eastern Churches and the ecumenical regulations of directory during the celebration of mixed marriages. The Code of Canon Law of the Latin Church from 1983 solves the issue of mixed marriage between Roman Catholic and Orthodox side in a similar way. Ecumenical directory emphasizes special competent authorities of every bishop or regional episcopal conferences in the pastoral and canonical issues in connection with the celebration of sacramental marriage. It deals with specific problems, which concern the mixed marriages.<sup>32</sup> According to these rules, we of course celebrate marriages, which are legalized between Greek Catholic and Orthodox followers in the territory of Greek Catholic Church in Slovakia.

### 5.1. The Conditions Required by Law upon Legalising Mixed Marriages

Mixed marriage is defined by canon 813 of the Code of Canons of Eastern Churches and code 1124 of Canon Law of Latin Church from 1983. These are general provisions which define marriage as a bond that bring together baptized people, woman and man, one of them is a part of Catholic Church and another one is baptized and belongs to another ecclesial community, not being the Catholic Church. This category also includes marriages which are entered into by and between Greek Catholics and the Orthodox Church members. Basic provision says that this kind of marriage is prohibited without previous agreement of the competent ecclesiastical authority who can be for example competent eparchial bishop. They must have some sides for legalising marriage in the Catholic Church that has the agreement of a local hierarch, which means eparchial bishop or protosyncl or some of another syncl.<sup>33</sup> To obtain this agreement some other conditions must be met:

- The Catholic side has to provide a declaration that it is willing to remove the danger of apostasy from the faith.
- Do everything for children, to their baptism and bringing up in the Catholic Church.

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<sup>32</sup> Cf. the Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, Trnava 1974, p. 104.

<sup>33</sup> *Protosyncl or syncl* in the Eastern Catholic Churches is general vicar and vicar in accordance with the law of the Latin Church.

- Non-Catholic side has to be acquainted with the promise of Catholic side.

For us, this procedure is called the signing of guarantee, which is sometimes considered as written guarantee of non-Catholic side, which will not hinder the Catholic baptism and education of children. This guarantee would not take the form of promise.<sup>34</sup> This promise would not apply to verbal forms. The whole issue is to be decided by discussion on premarital meetings and present the result in written form to the local hierarch. It is his job to consider the whole case. For him a clear signal is also a pronounced rejection of non-Catholic side.<sup>35</sup> If this mixed marriage is legalized and the Catholic side does not fulfill its promise, and despite all ambitions, children are not baptized and educated in Catholic Church, a Catholic parents are liable to canon law. However, they have to transfer their children to the Catholic faith.<sup>36</sup> The role of this commitment is to create a Christian atmosphere in the family, and also refer to other members of the family for specific values of the Catholic faith.<sup>37</sup>

## 5.2. The Form of Entering into Marriage between Catholic and Orthodox Side

For sake of completeness we have to mention more of other regulations, which affect the form of entering into mixed marriages between Catholic and Orthodox side. Regarding the form of entering into marriage, the canon 781 § 2 from the Code of Canons of the Eastern Churches clearly requires legalize marriage in Catholic Church, including sacramental,<sup>38</sup> hierarch, local priest or priests authorized by them as well

<sup>34</sup> Cf. CCEO, can. 814; CIC 1983, can. 1125.

<sup>35</sup> Cf. The Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 108.

<sup>36</sup> Cf. The Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 109.

<sup>37</sup> Ibidem.

<sup>38</sup> Cf. CCEO, can. 781: *Si quando Ecclesia iudicare debet de validitate matrimonii acatholicorum baptizatorum:*

1° *quod attinet ad ius, quo partes tempore celebrationis matrimonii tenebantur, servetur can. 780, § 2;*

2° *quod attinet ad formam celebrationis matrimonii, Ecclesia agnoscit quamlibet formam iure praescriptam vel admissam, cui partes tempore celebrationis matrimonii subiectae erant, dummodo consensus expressus sit forma publica et, si una saltem pars est christifidelis alicuius Ecclesiae orientalis acatholicae, matrimonium ritu sacro celebratum sit.*

as two witnesses for the side that belongs to some non-Catholic Eastern Church and the side that belongs to Greek Catholic Church. Sacramental means that there have to be a priest who will accept the matrimonial agreement and bless the marriage.<sup>39</sup> Catholic form of legalizing marriage have to be between Catholic and Orthodox side during the celebration of marriage, because of validity. So if a Catholic enters into a marriage legalized by a Protestant priest without dispensation from the Catholic form, this kind of marriage is null and void.

Another case is when a Catholic Christian enters into marriage legalised by a Protestant priest according to forms of the Orthodox Church. In this case there must be dispensation from the form, which is given by Apostolic See. The marriage between Greek Catholic and Orthodox side is valid when there is a dispensation from the form and legalised by Orthodox priest. In the case that marriage is entered into without this dispensation, the marriage is valid but illegal.<sup>40</sup> This ecumenical prescription affects only marriages which are enclosed between Catholics and followers of Orthodox Church.

Exemption from the forms of entering into marriage is therefore reserved by law only for Apostolic See, or, in the patriarchal churches, for the patriarch, who can give exemption only for very serious reasons.<sup>41</sup> Catholic law also prohibits double religious ceremony, or the way in which marriage agreement says or restores first by Greek Catholic official, and then by Orthodox official or also in a different order. It is also forbidden to act this religious ceremony in such a way that is performed by a Catholic priest and Orthodox priest in the same time.<sup>42</sup> But Orthodox Christian, according to the same law, can be a witness during entering into marriage in accordance with the rules of Catholic Church and the Catholic may be a witness to the marriage, which administers the Orthodox Church.<sup>43</sup> The question is, if Catholic priest or deacon, who is invited to the celebration of the sacrament of marriage, can perform some liturgical function. This situation is solved by the Directory, which is used for performing the principles and norms about ecumenism since 1993. From these forms it is clear, that if there is a dispensation from the form<sup>44</sup> dur-

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<sup>39</sup> Cf. CCEO, can. 828 § 1: *Ea tantum matrimonia valida sunt, quae celebrantur ritu sacro coram Hierarcha loci vel parochi loci vel sacerdote, cui ab alterutro collata est facultas matrimonium benedicendi, et duobus saltem testibus secundum tamen praescripta canonum, qui sequuntur, et salvo exceptionibus, de quibus in cann. 832 et 834, § 2.*

<sup>40</sup> Cf. Paragraph 8.1.4 of this work.

<sup>41</sup> Cf. CCEO, can. 835.

<sup>42</sup> Cf. can. 839, also the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 112.

<sup>43</sup> Cf. as above, p. 98.

<sup>44</sup> Cf. CCEO, can. 835 as above, p. 111.

ing the celebration of mixed marriage, which is celebrated by Orthodox priest, the Catholic priest or deacon can be involved in the liturgy of marriage<sup>45</sup> and can also say the prayers and added prayers, read the Holy Scripture, say a short homily and bless the couple.<sup>46</sup> In a similar way also an Orthodox priest may be involved in the celebration of marriage sacrament, which is celebrated by Catholic priest.<sup>47</sup>

For the sake of completeness it has to be said that mixed marriages between baptized Greek Catholics and baptized Orthodox Christians, which were legalised by an Orthodox priest and therefore were legalized without observing the prescribed canonical forms are valid pursuant to the decree of the Congregation for Eastern Churches *Orientalium Ecclesiarum* from 21 November 1964 and from 22 February 1967 for the faithful of the Latin Church *Crescens matrimoniorum*. However, the sacramental ceremony has to be a required way of marriage to its validity.<sup>48</sup> But other rules of Canon Law remain in force and they should be maintained, which means that permission is necessary to maintain a canonical form under the rules of canon law.<sup>49</sup> It is necessary to point out the difference between Code of Canon Law from 1983 and Code of Canons of the Eastern Churches. According to the Code of Canon Law of the Latin Church from 1983, canon 1127 § 2 the local Ordinary can give dispensation from preserving of canonical form in certain limited circumstances, but in accordance with the Code of Canons of the Eastern Churches this dispensation may be granted by Apostolic See or by patriarch for patriarchal church, but only for very serious reasons.<sup>50</sup> Ceremony for receiving sacramental marriage is the one which is performed in accordance with

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<sup>45</sup> Cf. the Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 98.

<sup>46</sup> Cf. as above, p. 112.

<sup>47</sup> Ibidem.

<sup>48</sup> Cf. CCEO, can. 781: 2<sup>o</sup> *quod attinet ad formam celebrationis matrimonii, Ecclesia agnoscit quamlibet formam iure praescriptam vel admissam, cui partes tempore celebrationis matrimonii subiectae erant, dummodo consensus expressus sit forma publica et, si una saltem pars est christifidelis alicuius Ecclesiae orientalis acatholicae, matrimonium ritu sacro celebratum sit.*

<sup>49</sup> Cf. CCEO, can. 834, and *Orientalium Ecclesiarum*. Stanislav Polčín: *Documents of Second Vatican Council*. Rome 1972, p. 21.

<sup>50</sup> Cf. CIC, can. 1127 § 2: *Si graves difficultates formae canonicae servandae obstant, Ordinario loci partis catholicae ius est ab eadem in singulis casibus dispensandi, consulto tamen Ordinario loci in quo matrimonium celebratur, et salva ad validitatem aliqua publica forma celebrationis; Episcoporum conferentiae est normas statuere, quibus praedicta dispensatio concordi ratione concedatur; CCEO, can. 835: *Dispensatio a forma celebrationis matrimonii iure praescripta reservatur Sedi Apostolicae vel Patriarchae, qui eam ne concedat nisi gravissima de causa.**



valid provisions of the liturgical books and valid customs.<sup>51</sup> Adjudicating sides of Catholic and non-Catholic marriages are governed by the principles set out in canon 780 and canon 781 of the Code of Canons of the Eastern Churches. For marriage between Greek Catholic and Orthodox side there is a principle, which means that this marriage is governed not only by divine law, but also by canon law.<sup>52</sup> This means that marriage of Catholic side is bounded by the Code of Canons of the Eastern Churches. But the law also accepts the competence of Orthodox canon law in the case when a marriage is blessed by Orthodox priest.<sup>53</sup>

### 5.3. The Sacrament of Marriage between Couple of Orthodox Denomination Celebrated by Catholic Priest

Code law also allows granting the sacrament of marriage to two Orthodox Christians in Catholic Church, but only if this power is wielded by local hierarch to minister and only in case when engaged couple cannot contact the minister of their church without serious damage. They have to ask for this service voluntarily, without any barrier between couple, which would have defended to enclose this marriage. But Catholic priest who gives the sacrament to this kind of marriage has to notify the competent authority of the non-Catholic church before he blesses the marriage.<sup>54</sup>

<sup>51</sup> Cf. CCEO, can. 836: *Extra casum necessitatis in matrimonii celebratione servantur praescripta librorum liturgicorum et legitima consuetudines.*

<sup>52</sup> Cf. CCEO can. 780 § 1: *Matrimonium catholicorum, etsi una tantum pars est catholica, regitur iure non solum divino, sed etiam canonico salva competentia auctoritatis civilis circa effectus mere civiles matrimonii.* § 2. *Matrimonium inter partem catholicam et partem baptizatam acatholicam salvo iure divino regitur etiam:*

1° *iure proprio Ecclesiae vel Communitatis ecclesialis, ad quam pars acatholica pertinet, si haec Communitas ius matrimoniale proprium habet;*

2° *iure, quo pars acatholica tenetur, si Communitas ecclesialis, ad quam pertinet, iure matrimoniali proprio caret.*

<sup>53</sup> Cf. CCEO, can. 780.

<sup>54</sup> Cf. CCEO can. 833 § 1: *Hierarcha loci cuilibet sacerdoti catholico facultatem conferre potest matrimonium christifidelium alicuius Ecclesiae orientalis acatholicae, qui sacerdotem propriae Ecclesiae sine gravi incommodo adire non possunt, benedicendi, si sua sponte id petunt et dummodo nihil validaee vel licitae celebrationi matrimonii obstet.* § 2. *Sacerdos catholicus, si fieri potest, antequam matrimonium benedicit, auctoritatem competentem illorum christifidelium de hac re certiore faciat.*

## 6. The Orthodox Church and Ecumenism

Ecumenism is in a legal sense a bilateral act. On the one hand, there are principles which are determined by law of Catholic Church, now clearly defined and anticipating some reaction or response from the Orthodox Church. The announcement by the Orthodox Church in Slovakia, which was published as Canon Law of the Orthodox Church, shows very serious document for our ecumenical relations in Slovakia in this zone.<sup>55</sup> The importance of this publication stems from the fact that this canon law is relatively new, published at the end of 1997. The original work was published in Greek in 1991, and in 1993 this work was approved by the Sacred Synod of the Greek Orthodox Church. It is rather a comment on the rules of Orthodox law and the practical behaviour of the Orthodox Christian. It seems that this law was promulgated also by Orthodox Church of Slovakia and the Czech Lands. I emphasize these facts, therefore, so it is clear that it can be officially considered a theological — legal opinions of the Orthodox Church in Slovakia.

A characteristic feature of this canonical works is, that the theme of ecumenism which we are interested in does not occur in the canon law of the Orthodox Church. The only chapter in this book that deals with relations with other churches and religions is the chapter entitled as “Relations of Church<sup>56</sup> and its members to the other religions and members of the other faith.”<sup>57</sup> The author of this publication divides these relations into the two categories: the first group consists of those who are not Christians, but belong to other non-Christian religions or to no religion at all (atheists). The second group are Christians who under these rules deviate from the Orthodox faith.<sup>58</sup>

We are interested in what Orthodox canon law thinks about relation to non-Orthodox Christians, or even to us Catholics. Based on these rules, the Orthodox Christian cannot have any relationship with members of other faith if it stems from indifference to truth and its purpose is to gain “personal benefit.” Communication with members of other faith is permitted if it is based on true love and its goal is to help members of other faith. If this relationship comes from true Christian love and is inspired by it, the relationship is not only allowed, but also necessary.<sup>59</sup>

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<sup>55</sup> P.I. BOUMIS: *Canonic law of Orthodox Church*. Prešov 1997, p. 240.

<sup>56</sup> Understood as Orthodox.

<sup>57</sup> *Ibidem*, p. 210.

<sup>58</sup> *Ibidem*, p. 211

<sup>59</sup> *Ibidem*.

In the next section, we differentiate relations between Orthodox people and members of other faith into:

a. Relationships during divine service.

b. Relationships outside the divine service.

Ad. a. Any communication or relationship with heretics (and by law of Orthodox Church also with Catholics) is forbidden during the divine service. In the next part, “Canon Law of Orthodox Church” precises this prohibition: Common prayer and participation in sacraments are forbidden, sacraments of members of other faith (also Catholics) are not valid, member of other faith who is cleric cannot baptise the Orthodox follower and also non-Orthodox follower cannot be a godfather of Orthodox follower, and Orthodox believer cannot be godfather to member of other faith. Mutual participation in the liturgy and communion are forbidden. According to the Canon Law of the Orthodox Church the priesthood of members of other faith (also Catholics) is not valid and it does not have any spiritual power. Orthodox cannot be ordained by member of other faith or reversely. As to the marriage, in the economy of salvation it is legally celebrated by Orthodox cleric. It is not possible for members of other faith (also Catholics) to be witness on Orthodox or mixed marriages ceremonies.<sup>60</sup>

Ad. b. According to the Canon Law of the Orthodox Church, temples of members of other faith cannot be used for celebrating of divine service, only in special cases, but for members of other faith it is allowed to celebrate divine services in Orthodox temples in times of war. Participation of theologians in a conference is allowed for members of other faith, but it does not means that there can be some concessions in question of the rules of faith. It is also allowed to write form of comunication with heretics in form of circular letters, but it is not allowed to ex change celebrating letters.<sup>61</sup>

Canon Law of the Orthodox Church specifies how the communication with members of other faith should look like: Relations to Orthodox members of other faith are first of all determined by their attitude to Orthodox teaching and the Church. It means that at the beginning, real heretics have to be determined by competent ecclesiastical authorities, because it is not possible to leave every Christian decides and characterize another Christian or heretic (rule 13 of the First and Second Council). Rule 6 of Second General Council says: “The heretics are considered those who are fired

<sup>60</sup> Ibidem, pp. 212—213.

<sup>61</sup> Ibidem, p. 214.

and excommunicated from the Church.” These words are in need of further clarification, because no one knows whether this view applies to Catholics or not. Bull of Excommunication in 1054 were taken away by Pope Paul VI and Patriarch Athenagoras. The Canon Law of the Orthodox Church sheds some light because of the following fragment: “The above words apply also to the schismatic, but much milder.”<sup>62</sup> It is possible that it concerns also Catholics. It is sure that these rules should be formulated clearly also for the specific situation of the Orthodox Church in Slovakia, according to the above rule.

### 6.1. Mixed Marriages between Orthodox and Catholics in Assessment of the Canon Law of the Orthodox Churches

It is interesting to point out the relationship of the current Canon Law of the Orthodox Church to marriage entered into by Orthodox and Catholics. Within Orthodox Church a mixed marriage, that is a marriage between Orthodox and non-Orthodox side, has its own regulations.

We can mention a basic principle from a publication the Canon Law of the Orthodox Church, which says that marriage between Orthodox and heretics (understood as Catholics) is prohibited, but especially rule 72 of Fifth and Sixth General Council defines:

It is not decent to be an Orthodox man married to heretical woman, and also Orthodox woman to be married to heretical man. If it will be seen, made by anyone, it will not be considered as fixed and it is necessary to sever this unlawful cohabitation. (Compare also rule 21 (29) of the Cartagena Council and rules 10 and 31 of Loadicea Council).

Nowadays the Church [understood as Orthodox — the author’s note] in economy accepts marriages with heterodox people (mixed marriages) on condition that children will be baptized in the Orthodox faith.<sup>63</sup>

From the mentioned factors it can be concluded that the Slovakian Orthodox Church in its current phase of development is still remote from ecumenical understanding, in the sense understood by the Catholic Church. Legal documents of the ecumenical character similar to the Cath-

<sup>62</sup> Ibidem, p. 214.

<sup>63</sup> P. I. BOUMIS: *Canonic law of Orthodox Church*. Prešov 1997, p. 119.

olic ones do not exist. We can only hope that the ecumenical dialogue between churches will yield positive results in this respect.

## Conclusions

Marriage is one of those interpersonal relations that belong to the most sensitive and intimate parts of human life. This study is an attempt to analyse the ecumenical openness of the Catholic Church towards the Orthodox Church, with an emphasis being put on situation between Greek Catholics and the Slovak Orthodox Church followers in Slovakia in this sensitive and deeply human area. In present times of globalization and large migrations of population associated with the opening of the borders, we cannot ignore the fact that mixed marriages are also entered into, including marriages between Greek Catholics and Orthodox. Catholic Church created the ecumenical coexistence for these marriages, as a part of its legal system after Second Vatican Council. Therefore, there was given an extraordinary authority to ecumenical marriage. This situation also applies to the territory of the present-day Slovakia, where Greek Catholic and Orthodox Church live in peace. Basic ecumenical principle says that chances of cooperation are given according to a grade of common faith. This implies a serious fact that the Orthodox and the Catholic Church are the closest in this case. Identical ritual facet and shared history of the Orthodox and Greek Catholics in Slovakia speak volumes about about this potential ecumenical responsiveness toward marriage. Today, the ecumenical dialogue is not developing. This stems mainly from the fact that the Orthodox Churches and also Slovakian Orthodox Church are unfriendly to ecumenism. They see it as a betrayal of the faith proclaimed by ancestors. It relates also to marriages which are entered into between Orthodox and Greek Catholics. This situation triggers a new need for spiritual ecumenism, or prayer in this intention. Convergence of Catholics and Orthodox is a process which has its end in the final unification. It will help every facet of life, also the ecumenical marriages which are entered into by Orthodox and Catholics.

FRANTIŠEK ČITBAJ

## Sytuacja kanonicznych małżeństw mieszanych katolików i prawosławnych w Słowacji w kontekście historycznym i współczesnym

### Streszczenie

Niniejszy artykuł analizuje zagadnienie małżeństw mieszanych katolików i prawosławnych na Słowacji. Jednocześnie ukazane w nim zostały kanoniczny rozwój wspomnianych małżeństw w historycznym kontekście różnych okresów i najnowszej historii, przy uwzględnieniu współczesnego kanonicznego sposobu rozwiązywania problemu małżeństw mieszanych pomiędzy katolikami i wyznawcami prawosławia. W tym kontekście na uwagę zasługuje fakt, że Kościół katolicki wobec ekumenizmu i małżeństwa ekumenicznego, które jest zawierane pomiędzy katolikami i prawosławnymi, stworzył pewien system kanoniczny. Jest on prawnie wiążący, a jednocześnie w swej istocie otwarty. Kościół prawosławny na Słowacji nie wypracował dotychczas takiego spójnego systemu odnośnie do małżeństw mieszanych pomiędzy katolikami a prawosławnymi. Stanowisko Cerkwi Prawosławnej na Słowacji jest w tym względzie bardzo rygorystyczne, a prawosławne prawo kanoniczne zabrania zawierania takich małżeństw. Surowość prawa łagodzą zasady oikonomii, jednak zależne są one od indywidualnych czynników duszpasterskich.

**Słowa kluczowe:** ekumenizm, Katolickie kościoły wschodnie, małżeństwo

FRANTIŠEK ČITBAJ

## La situation des mariages canoniques mixtes des catholiques et des orthodoxes en Slovaquie dans le contexte historique et moderne

### Résumé

L'étude présente soumet à l'analyse la question des mariages mixtes des catholiques et des orthodoxes en Slovaquie. Elle démontre également le développement canonique des mariages mentionnés dans le contexte historique des époques différentes, ainsi que le temps moderne, en prenant en considération la méthode canonique de résoudre les problèmes des mariages mixtes entre les catholiques et les orthodoxes. Dans ce contexte il faut noter que l'Église catholique a créé un certain système canonique envers l'oecuménisme et le mariage oecuménique, contracté entre les catholiques et les orthodoxes. Il est en vigueur et en même temps il est particulièrement ouvert. L'Église orthodoxe en Slovaquie n'a pas encore élaboré un système cohérent en ce qui concerne des mariages mixtes entre les catholiques et les orthodoxes. L'opinion de l'Église orthodoxe en Slovaquie est très rigoureuse sur ce point, le droit canonique interdit de contracter ces mariages. La sévérité du droit est adoucie par les principes d'oikonomie, mais ils dépendent des décisions individuelles des prêtres.

**Mots-clés:** oecuménisme, Églises Orthodoxes et Catholiques, mariage

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## La situazione dei matrimoni canonici misti tra cattolici e ortodossi in Slovacchia nel contesto storico e contemporaneo

### Sommario

Il presente lavoro analizza la problematica del matrimonio misto tra i cattolici e gli ortodossi in Slovacchia. Nel contempo presenta il loro sviluppo canonico nel contesto storico di diverse epoche come pure nella storia recente, considerando anche il metodo canonico per risolvere i problemi dei matrimoni misti tra i cattolici e gli ortodossi. In tal contesto merita di essere ricordato che la Chiesa cattolica ha creato un certo sistema canonico quanto all'ecumenismo e al matrimonio ecumenico contratto tra i cattolici e gli ortodossi, il quale è legalmente vincolante ma anche, nella sua essenza, particolarmente aperto. La Chiesa ortodossa in Slovacchia non ha ancora sviluppato un simile sistema coerente per i matrimoni misti cattolico-ortodossi. La posizione della Chiesa ortodossa in Slovacchia è molto rigorosa a questo riguardo e il diritto canonico ortodosso non consente di contrarre tali matrimoni. La severità della legge viene moderata dai principi dell'oikonomia, che dipendono però dai fattori pastorali individuali.

**Parole chiave:** ecumenismo, Chiese cattoliche orientali, matrimonio





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## On the Concept of the Sacramentality of Marriage in the Czechoslovak Hussite Church

**Keywords:** Marriage, sacraments, Czechoslovak Hussite Church, Catholic Church, Church wedding, State wedding, divorce

### Introduction

It might seem provocative to speak about the meeting of western and eastern tradition based on the example of the Czechoslovak Hussite Church, because its early history is affected by a split of these traditions.

In order to facilitate the understanding of the actual concept of the sacramentality of marriage in this church, I would like to offer a short overview of its religious evolution, followed by the presentation of current concept of the sacramentality of marriage. The article concludes with open-ended questions connected with the undertaken topic.

### 1. Short Overview of Religious Evolution of the Czechoslovak Hussite Church

The Czechoslovak Hussite Church belongs neither to Protestant churches nor has a historic connection with the Hussite movement of the 15th century — it has been founded in 1920 by Catholic priests. Its ori-

gin is connected with the movement of reform among Catholic priests as reaction to the religious situation of the Catholic Church affected by the specific form of religious life in the Habsburg Monarchy called Austro-Catholicism at the turn of 19th and 20th centuries. Those priests formed an organisation called Unity of Catholic Clergy in 1902, forbidden by Catholic bishops in 1907 (in connection with a well-known encyclical by Pius X *Pascendi Dominici Gregis*),<sup>1</sup> restored after the First World War and once more forbidden in 1920. Radical group of the Unity led by Karel Farský seceded from the Catholic Church in January 1920 and founded an independent Czechoslovak Church (who took the attributive Hussite in 1971).<sup>2</sup>

At the beginning, the church tried to obtain the international acknowledgement from the Serbian Orthodox Patriarchate. Three priests were presented for obtaining episcopal consecration in Serbia, and in 1921 only one of them was ordained in Beograd — and elected the Bishop of Olomouc, Matěj Pavlík, who took (as a monk) the name Gorazd. The Patriarchate sent to Czechoslovakia his delegate, bishop Dositej. Mutual contacts were interrupted after the publication of the *Czechoslovak Catechism* (*Československý katechismus*) written by Karel Farský and František Kalous, whose formulations were sometimes not compatible even with the Christian faith. It caused a deep disagreement in the Czechoslovak church, which ended by coerced leaving of the pro-Orthodox group<sup>3</sup> and subsequently doctrinal crisis in the Czechoslovak Church.<sup>4</sup> This crisis has been overcome finally after the Second World War, especially by the *Fundamentals of Faith* officially accepted in 1958, and thus the Czechoslovak Church became a member of the World Council of Churches in 1961.<sup>5</sup>

The church became very close in form to free Evangelical churches — there was a very visible symbol of it in authorisation of women to the charge of parish priest at the end of 1940s. In 1971, the Church took the attributive “Hussite” and it deepened its self-understanding as reformed church of Hussite orientation. The evolution has been emphasized by the first election of a woman to the charge of bishop — Jana Šilerová for the diocese of Olomouc in 1999.

<sup>1</sup> P. MAREK: *Český katolicismus 1890—1914. Kapitoly z dějin českého katolického tábora na přelomu 19. a 20. století*. Olomouc 2003, pp. 388—399.

<sup>2</sup> Ibidem, pp. 423—484; P. MAREK: *České schisma. Příspěvek k dějinám reformního hnutí katolického duchovenstva v letech 1917—1924*. Rosice 2000, pp. 29—94.

<sup>3</sup> And this is why these events are called Orthodox crisis.

<sup>4</sup> This crisis is sometimes called Unitary crisis.

<sup>5</sup> J.R. TRETERA: *Konfesní právo a církevní právo*. Praha 1997, pp. 306—307.

## 2. Actual Understanding of the Sacramentality of Marriage

The Czechoslovak Church still observes all the seven sacraments, among them the sacrament of marriage. On the other hand, the question of concept of sacramentality of marriage was only side theme of the church's theological reflection.

The sacramentality of marriage, according to actual valid documents,<sup>6</sup> consists of the followings elements:

### Essence (*materia*)

- union of one man and one woman for ever;
- consecration by the Holy Spirit for being an image of God and his instrument for transmission of human life and conceiving a family.

### Form

- mutual promise of spouses in the Christian community in front of God's face;
- symbolical communion from chalice.

These essential elements are completed by liturgical elements.

### Rite

- prayer, readings from the Holy Scripture;
- request for consecration and benediction of the bound;
- solemn declaration of spouses, witnesses and of the priest;
- exchange of wedding rings;
- benediction.

It is evident that such a definition of the sacramentality of marriage is under big influence of Aristotle's *hylomorphism*.

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<sup>6</sup> *Základy víry církve československé husitské* (Fundamentals of the Faith of the Czechoslovak Hussite Church). Available online: <http://www.csh.cz/view.php?id=1>. Accessed 24.4.2012. Questions no. 337 and 338; *Agenda: obřadní příručka Církve československé husitské, 1. část* (Agenda: Liturgical Manual of the Czechoslovak Hussite Church, Vol. 1). Praha 2006.

### 3. Open-Ended Questions Connected with Actual Understanding of the Sacramentality of Marriage

#### 3.1. Ecumenical Connections

The analysis of the valid documents shows very clearly that such a description of the sacramentality of marriage is very narrow: it is completely peculiar to the typical rite of the Czechoslovak Hussite Church itself. The texts do not say anything about the sacramentality of the other marriages.

As a starting point we can (and must) use an analysis of the ecclesiology of the Czechoslovak Hussite Church — the *Fundamentals of Faith* even start with ecclesiological texts. Let us quote some questions from them:

**6. What is the God's Church?**

The God's Church is formed by justified sinners being in personal communion with God in Jesus Christ and in fraternity of common life in local Christian churches which are ever renovated by the Holy Spirit and by the liturgical communion of the Lord's Supper.

**8. Is the God's Church visible in the world?**

The God's Church is visible in the world, because it is a communion of visible men in the local churches.

**16. What is the expression of disunity of the God's Church?**

The disunity of the God's Church finds expression in variety of organised churches (institutions).

**17. How many such churches there are?**

There are many such churches: Czechoslovak, Protestant, Orthodox, Roman-Catholic and others.

**18. Are the organised churches identical with God's Church?**

Organised churches are neither singularly nor in their sum identical with God's Church, but the God's Church lives in them as spiritual communion and as fraternity of common life in Christ as in the local Churches.

**20. What is an organised church?**

Organised church is union of God's Church and church organisation.

**21. What is the difference between God's Church and church organisation?**

God's Church is communion of living persons in Christ led by the Holy Spirit and animated by love, whereas church organisation covering a part of God's Church is human handwork using church law.

The texts show very clearly the adoption of the Protestant concept of the invisible God's Church and of its many local visible representations.

Therefore, also the Czechoslovak Hussite Church is one of the visible representations of the unique invisible Church.

Thus, it is totally understandable that the Czechoslovak Hussite Church acknowledges sacramental marriages “concluded” in other Christian Churches without having estimated them — at least in practice.<sup>7</sup> But this approach causes difficulties in the case of churches who use very clear doctrine, which estimates sacramentality and/or validity of marriages in the other churches (e. gr. Catholic, Orthodox).

### 3.2. Intra-Church Implications

There are in the inner church life several practical areas connected with the concept of sacramentality of marriage.

#### Question of Sacramentality of “Half-Christian Marriages”

It is possible to state — from the Catholic point of view — that the description of the essence of marriage underlines first of all natural elements of marriage and to a lesser extent supernatural ones. The description of the form of marriage is closely connected to the liturgical practice of the Czechoslovak Hussite Church.

The practice of the Church is driven by a traditional rule: At least one of the spouses has to be a member of the Church. The spouses are considered as ministers of the sacrament. And this practice is connected with common opinion that also the marriage of a member of the Church with non-baptised person is a sacrament, if it is celebrated in the Church in the prescribed form.

This meaning is expressed also in one of non-approved texts *Pastoral Rules Regarding Sacraments* prepared for the 8th Council<sup>8</sup> by its Committee for Pastoral Work and Education in September 2010: The membership in the Czechoslovak Hussite Church of at least one of the spouses is a condition for entering into the sacrament of marriage.<sup>9</sup>

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<sup>7</sup> We miss an explicit expression of this principle in the official texts of the Czechoslovak Hussite Church. It is possible to find such expression in one of the proposals for the 8th Council *The Czechoslovak Church in Relationship to the Ecumenism. Proposal of the Committee for Ecumenical and Foreign Affaires*, article 5.6 on p. 6. Available online: <http://www.csh.cz/snem.php?part=2#part>. Accessed 25.4.2012.

<sup>8</sup> The 8th Council of the Czechoslovak Hussite Church took place in several sessions in the decade 2001—2010.

<sup>9</sup> Available online: <http://www.csh.cz/snem.php?part=2#part>. Accessed 25.4.2012.

If the spouses themselves administer the sacrament, how is it possible, that a non-baptised person can impart other sacrament than the baptism? We cannot find answer to this question in any text of the Church.

The observance of sacramentality of “half-Christian” marriages poses important questions, too. Is it really a sacrament for the whole couple, or only for the member of the Church? The common meaning affirms the second possibility — but without basis in any text by the Church.

From the point of view of a Catholic, I can affirm that the question of sacramentality of “half-Christian marriages” remains theologically unsolved, the same relates to the state of theological discussion in the Catholic Church in the mid-20th century.

### **Question of Sacramentality of Marriages Legalised by the Civil Form**

The practice of the celebration of marriages in the Czechoslovak Church remained in the tradition of the Catholic Church: The church weddings were taken for granted until the recent years, even in the time of Communist regime since 1950 with the state requirement of obligatory civil weddings. The faithful came regularly after the civil weddings to the church for celebration of sacramental weddings, although there is no formal obligation of this practice in the legislation of the Church.

In the last decades the number of only civil marriages is going to increase also among members of the Church. According to the doctrine and practice of the Church, such marriages are not sacramental. On the other hand, the church usually does not deny the full access to sacraments for those members. Are such marriages really considered valid and lawful? It is not possible to find any text giving the answer to this question.

It is necessary to note that in this area the common practice has surpassed the theory.

### **Question of Connection between Sacramentality and Indissolubility of Marriage, Especially of Remarried Divorced Members**

We cannot find any texts regarding the question of connection between the sacramentality and the indissolubility of marriage in the basic and official texts by the church. But, in fact, there are relatively many broken marriages among the members of the Czechoslovak Hussite Church, and consequently, many remarried divorced members too, even between the clergy. Moreover, there are numerous members who do not conclude any marriage after the break-up of their marriage (only in fact, or also by civil divorce) and live in “free union” with person of the opposite and sometimes even of the same sex. This applies to the clergy, too.

That is why the preparation of the 8th Council included request of resolving this question. We can regret that the approved texts of the council do not

offer answer to it. But, we can consider the tendencies in the non-approved texts *Pastoral Rules Regarding Sacraments* prepared for the 8th Council by its Committee for Pastoral Work and Education in September 2010:<sup>10</sup>

In the case of divorced members it is not necessary to obtain dispensation, but to receive the sacrament of penance. In the case of divorced cleric a special pastoral care is necessary before the new weddings, performed by a bishop.

It is necessary to note that in this area the common practice has also surpassed the theory.

## Conclusion

The concept of the sacramentality of marriage in the Czechoslovak Hussite Church stems from the Catholic tradition of the early 20th century and is affected by the Protestant ecclesiology adopted by the Czechoslovak Church. Some aspects of the concept are not clearly elaborated and the common practice often outstrips the theory.

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<sup>10</sup> *Pastorální pravidla ke svátostem. Návrh pastoračně výchovného výboru VIII. sněmu ČČSH. Září 2010.* Available online: <http://www.csh.cz/snem.php?part=2#part>. Accessed 25.4.2012.

DAMIÁN NĚMEC

### Pojęcie sakramentalności małżeństwa w Czechosłowackim Kościele Husyckim

#### Streszczenie

Artykuł rozpoczyna się prezentacją religijnej i naukowej ewolucji Czechosłowackiego Kościoła Husyckiego, który został erygowany przez kapłanów katolickich w 1920 roku. Pokazuje, że koncepcja sakramentalności małżeństwa w tym Kościele pochodzi z tradycji katolickiej początku XX wieku, ale następnie kształtowany był przez eklezjologię protestancką przyjętej w tym kościele. Na podstawie oficjalnych tekstów Kościoła, autor artykułu przedstawia zasady celebracji małżeństwa sakramentalnego ukazując przy tym, że niektóre aspekty tego pojęcia nie są klarownie wypracowane i ogólna praktyka poprzedza tutaj często teorię, a mianowicie: kwestia sakramentalności „pół-chrześcijańskich małżeństw”, kwestia sakramentalności małżeństw zawartych tylko w formie cywil-

nej i stosunek między sakramentalnością i nierozzerwalnością małżeństwa w przypadku ponownych ślubów po rozwodzie.

**Słowa kluczowe:** Małżeństwo, sakramenty, Czechosłowacki Kościół Husycki, Kościół Katolicki, ślub kościelny, ślub cywilny, rozwód

DAMIÁN NĚMEC

## La notion du sacrement dans l'Église tchécoslovaque hussite

### Résumé

L'article commence par la présentation de la dramatique évolution religieuse et scientifique de l'Église tchécoslovaque hussite, érigé par des prêtres catholiques en 1920. Il montre que le concept de sacrement du mariage dans cette Église provient de la tradition catholique dans sa forme au début du XXe siècle, mais il a été transformé sous l'influence de l'ecclésiologie plus ou moins protestante, acceptée par cette Église. À partir des textes officiels de cette Église, l'auteur présente les exigences liées à la célébration du sacrement de mariage. Cependant il prouve aussi que certains aspects de cette notion ne sont pas clairement élaborés et que la pratique générale précède relativement souvent l'instruction, à savoir: la question du sacrement des « mariages demi-chrétiens », la question des sacrements des mariages contractés civilement, le rapport entre le sacrement et l'insolubilité du mariage avant tout dans le cas des nouveaux mariages après le divorce.

**Mots-clés:** mariage, sacrements, Église tchécoslovaque hussite, Église catholique, mariage à l'église, mariage civil, divorce

DAMIÁN NĚMEC

## Il concetto della sacramentalità del matrimonio nella Chiesa hussita cecoslovacca

### Sommario

L'articolo comincia con la presentazione di una drammatica evoluzione religiosa ed accademica della Chiesa hussita cecoslovacca, fondata nel 1920 dai preti cattolici. Dimostra che il concetto della sacramentalità del matrimonio in quella Chiesa proviene dalla tradizione cattolica dell'inizio del secolo XX, ma è stato in seguito influenzato dall'ecclésiologia più o meno protestante adottata da detta Chiesa. Sulla base dei documenti ufficiali della Chiesa hussita cecoslovacca vengono presentati i suoi requisiti stabiliti per la celebrazione del matrimonio sacramentale. L'articolo dimostra inoltre che alcuni aspetti dello stesso concetto non sono stati elaborati chiaramente e che la pratica generica precede spesso la teoria. Ciò riguarda in particolare la questione della sacramentalità dei « matrimoni per metà-cristiani », della sacramentalità dei matrimoni celebrati solo con rito civile e il rapporto tra la sacramentalità e l'indissolubilità del matrimonio per quanto concerne soprattutto i nuovi matrimoni contratti dopo il divorzio.

**Parole chiave:** matrimonio, sacramenti, Chiesa hussita cecoslovacca, Chiesa cattolica, matrimonio religioso, matrimonio civile, divorzio



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## Marriage in Catholic and Lutheran Approach as a Paradigm for Polish Legislator

**Keywords:** marriage, family, Catholic Church, Evangelical Church of the Augsburg Confession in Poland, Legislative initiative, legislator, paradigm

### 1. Respect for Christian Values in Europe: Diagnosis of a Situation

In this day and age, it is easy to notice that the Christian roots of Europe are not only denied, but also under a constant attack to the point of being systematically destroyed. This has been performed by, for instance, eradicating Christian values from the life of European societies. The Pope John Paul II, in his attempt to diagnose the situation of the Old Continent at the beginning of the 21st century, wrote: “Numerosi sono i segnali preoccupanti che, all’inizio del terzo millennio, agitano l’orizzonte del Continente europeo [...]. Tra i tanti aspetti [...] vorrei ricordare lo smarrimento della memoria e dell’eredità cristiane [...]. Non meravigliano più di tanto, perciò, i tentativi di dare un volto all’Europa escludendone la eredità religiosa e, in particolare, la profonda anima cristiana, fondando i diritti dei popoli che la compongono senza innestarli nel tronco irrorato dalla linfa vitale del cristianesimo.”<sup>1</sup>

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<sup>1</sup> JOHN PAUL II: “Post-Synodal Apostolic Exhortation *Ecclesia in Europa*” (28.6.2003). *Acta Apostolicae Sedis* [hereafter AAS] 9 (2003), pp. 649—719, here n. 7: “There are many troubling signs which at the beginning of the third millennium are clouding the horizon of the European continent [...]. Among the aspects of this situation [...], I would

Although the nations of Europe are aware of their spiritual, religious and moral heritage and they have all due respect for diversity of beliefs,<sup>2</sup> there are trends in legislation of the European states that make the mission of promoting their own values by the Christians difficult. It must be noticed here that law does not intrude on the proclamation of the Gospel, as a matter of fact the Christian churches enjoy freedom in this respect. The point is that the system of values which used to form an axiological ground for common legal regulations in Europe, has been deprecated.<sup>3</sup>

A telling example here is the fact that marriage and family are denied their due places in the legal systems of many European countries.<sup>4</sup> It is increasingly acceptable for marriage to be allowed between persons of the same sex.<sup>5</sup> Also new regulations are made for legal substitutes of marriage such as quasi-marriage forms of cohabitation of a man and a woman or of same-sex couples.<sup>6</sup> These legal institutions are similar to marriage in the way they are contracted and terminated. The partners have the same rights and duties as the husband and wife do.<sup>7</sup> Another alarming tendency can be noticed in family law, namely the substitution of the role of parents in upbringing children by the state-run institutions or local government institutions.<sup>8</sup> All these examples lead to conclusion that the situation is worrying.

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like to mention in a particular way the loss of Europe's Christian memory and heritage [...]. It is no real surprise, then, that there are efforts to create a vision of Europe which ignores its religious heritage, and in particular, its profound Christian soul, asserting the rights of the peoples who make up Europe without granting those rights on to the trunk which is enlivened by the sap of Christianity.”

<sup>2</sup> See, e.g.: Treaty Establishing a Constitution for Europe, *Official Journal of the European Union* (16.7. 2004), C 310 vol. 47 EN, art. II-82, and the Preamble to the document.

<sup>3</sup> On the matter in Polish circumstances, see, e.g.: P. KROCZEK: “Prawo świeckie jako bariera komunikacyjna dla niektórych treści nauczania Kościoła o małżeństwie i rodzinie.” W: *Rodzina podmiotem wychowania i kreatorem komunikacji społecznej*. Red. N. PIKUŁA. Kraków 2010, pp. 331—344.

<sup>4</sup> See K. BAGAN-KURLUTA, M. STUS: “Stosowanie klauzuli porządku publicznego w Polsce w odniesieniu do europejskiego ustawodawstwa partnerskiego.” *Kwartalnik Prawa Publicznego* 1—2 (2005), pp. 227.

<sup>5</sup> See, e.g., art. 30 section 1 of Dutch *Burgerlijk Wetboek*, (Civil Code): “Een huwelijk kan worden aangegaan door twee personen van verschillend of van gelijk geslacht” (“A marriage can be contracted by two persons of opposite or same sex”). Available online: <http://www.wetboek-online.nl/wet/BW1.html> (accessed 29.1.2010); for more examples, see: *Związki osób tej samej płci*. Red. B. BRÓZDA, K. ŚMIESZEK. Warszawa 2009.

<sup>6</sup> In France such a norm is expressed in *Pacte civil de solidarité* (PACS) Loi n° 99—944 du 15 novembre 1999 relative au pacte civil de solidarité (NOR: JUSX9803236L).

<sup>7</sup> See more: M. PILICH: “Związki quasi-mażeńskie w polskim prawie prywatnym międzynarodowym.” *Państwo i Prawo* 2 (2011), p. 84.

<sup>8</sup> See, e.g., Rozporządzenie Ministra Edukacji Narodowej z dnia 10 sierpnia 2009 r. (Dziennik Ustaw Rzeczypospolitej Polskiej [hereafter Dz.U.] (Dz.U. is the Journal of Laws of the Republic of Poland) 2009, no. 131 item 1079), § 4 section 1.

## 2. Consequences of the Double Belonging of Christians

In the face of the status quo, Christians must not be indifferent. Christianity, of course, does not order a priori hostile attitude towards a state and its law or unfriendly stance to the political administrative structures on a higher than state level such as the European Union. The religion in question instructs the faithful to practice their faith and at the same time to be loyal to secular authorities (cf. Rom 13:1—7; 1 Tm 2:1—4; 1 P 2:13—17). Such a stance is possible because Christians have never identified themselves with a particular state, or a political system. Christianity is a universal religion in such a sense that it can be successfully practiced in any political-economical-social conditions or circumstances.<sup>9</sup>

This conciliatory policy of Christianity does not mean that the Christians would remain unresponsive or insensitive towards the hostile values promoted by some secular legal regulations. Quite the contrary, the defense of the rights of the faithful, who are simultaneously the state citizens, is the task of Christ's disciples. They must not lose their identity only because of the fact that they are citizens. Because of their task of giving testimony to God in the pagan world, they must not separate faith and a public activity in practice of their life. Such a division would be unnatural and it can do a lot of harm to the identity of Christians. The division in question can be also a threat to salvation: "Therefore, everyone who confesses Me before men, I will also confess him before My Father who is in Heaven. But whoever denies Me before men, I will also deny him before My Father who is in Heaven" (Mt 10: 32—33).

In Poland, both the state and the Catholic Church, as well as the state and the Protestant ecclesial communities, are mutually connected. The source of such connection is, first of all, the fact that the faithful are at the same time Polish citizens and all the faithful together constitute almost an entire population of Poland.<sup>10</sup>

It is certain that a faithful-citizen should be engaged in life of the two societies to which he/she belongs. What is more, every Catholic and every Lutheran must be engaged in the process of building human organizations.<sup>11</sup> Participation in life of both the secular and the religious

<sup>9</sup> R. SOBAŃSKI: *Europa obojga praw*. Katowice 2006, p. 35.

<sup>10</sup> Główny Urząd Statystyczny: *Mały rocznik statystyczny Polski 2010*. Warszawa 2009, p. 130.

<sup>11</sup> J.-R. ARMOGATHE, O. CHALINE: "Między dwiema społecznościami: Kościół Chrystusowy a współczesne państwa." *Communio* 3 (135) 2003, p. 14.

community is also connected with obedience and appliance of the regulations that come from the two systems of law: the civil and the church one.<sup>12</sup>

There is another duty that arises from the participation in question. Members are to take care to maintain coherence between the values that form the foundations of the two mentioned systems of law. Engaging the faithful in the process of making state law is a way of fulfilling the duty.

### 3. Concern about Marriage and Family as an Ecumenical Task

An important task for all the European Christians, who are expected to have as their ambition not only to bear witness to Christ before their co-believers, but also in the presence of all people of good will (cf. can. 748 § 1 CIC<sup>13</sup>), is to make an effort to be more and more effective in fulfilling the special obligation to permeate and perfect the temporal order of things with the spirit of the Gospel (cf. can. 225 § 2). The necessity of ecumenical cooperation seems to be very urgent and its area can be described as cooperation for protection, defense, and increase of significance of Christian values in the process of drafting state law.

The very special area of cooperation must be the care for marriage and family. The Catholic Church believes that these institutions constitute one of the most precious human values.<sup>14</sup> An expression of this belief is a constant and expanding care for the institutions visible in numerous papal enunciations on the matter. Three of them must be mentioned: apostolic adhortation *Familiaris Consortio* of John Paul II from 1981, *Charter of the*

<sup>12</sup> The duties and the rights of the Church faithful are contained in church laws, both universal (especially in the Code of Canon Law from 1983), and particular laws. The Catholics are to observe them with great diligence (can. 209 § 2). The universal right and duties of a citizen are contained in the sources of binding law of the Republic of Poland (art. 87 Constitution 1997). The general order to observe the norms of Polish law is in art. 83 of the cited Constitution: "Everyone shall observe the law of the Republic of Poland."

<sup>13</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*. AAS 75 (1983), part II, pp. 1—318; English translation, e.g.: *Code of Canon Law Annotated: Prepared under the Responsibility of the Instituto Martín de Azpilcueta*. Eds. E. CAPARROS, M. THÉRIAULT, J. THORN, H. AUBÉ, 2nd edn., rev. and updated of the 6th Spanish language edition, Montréal 2004. All cited canons are taken from the Code.

<sup>14</sup> JOHN PAUL II: *Apostolic Exhortation "Familiaris Consortio"*. 22.11.1981. AAS 74 (1982), pp. 81—191, here n. 1.

*Rights of the Family* from 1983,<sup>15</sup> the Letter to Families *Gratissimam Sane* by John Paul II written in the Year of the Family in 1994.<sup>16</sup>

Quite similar stand, valuing marriage and family, can be seen in the Evangelical Church of the Augsburg Confession in Poland. Lutheran theology praises marriage and expresses care for its condition.<sup>17</sup> The Church teaches that all difficulties and hardships that marriages and families face in the modern world, realize that Christianity must strive very hard to fulfill God's plan for marriage.<sup>18</sup> Translating this church teaching into legal regulations, the Lutheran legislator in the internal law of the Church says: "One of the basic duties and rights of the Church is providing education of its members to lead life in marriage and family" (§ 113 of *Pragmatyka Służbowa Kościoła Ewangelicko-Augsburskiego w Rzeczypospolitej Polskiej* — hereafter abbreviated as PS<sup>19</sup>).

Considering that both Catholic and Lutheran side are really engaged in efforts for the good of marriage and family, it can be concluded that ecumenical cooperation in this area is possible and needed.

## 4. Paradigm for the State Law

### 4.1. The Meaning and Function of Paradigm

A paradigm in this article is understood as a specific pattern of values, rules and legal solutions needed for the processes of drafting law. The usage of the paradigm drives the legal order to coherency with Christian values. Factual base for a paradigm can be found in the Preamble to the Constitution of the Republic of Poland of April 2, 1997,<sup>20</sup>

<sup>15</sup> *Enchiridion Vaticanum*, no. 9, pp. 538—552.

<sup>16</sup> JOHN PAUL II: *Letter to Families "Gratissimam Sane"* (2.2.1994), AAS 86 (1994), pp. 868—925.

<sup>17</sup> See: *Stanowisko Kościoła Ewangelicko-Augsburskiego w RP wobec małżeństwa*. Available online: <http://www.luteranie.pl/pl/?D=358>. Accessed 16.3.2012.

<sup>18</sup> J. МОТУКА: "O chrześcijańskie małżeństwo." In: *Kalendarz Ewangelicki 1997*. p. 147.

<sup>19</sup> Synod Kościoła Ewangelicko-Augsburskiego w Rzeczypospolitej Polskiej: *Pragmatyka Służbowa Kościoła Ewangelicko-Augsburskiego w Rzeczypospolitej Polskiej. Tekst jednolity przyjęty na 10. sesji XII Synodu Kościoła Ewangelicko-Augsburskiego w RP w dniach 14-16 października 2011*. Available online: <http://www.luteranie.pl/pl/files/file/ps.pdf>. Accessed 10.3.2012.

<sup>20</sup> Dz. U. 1997 n. 78 item 483, as amended.

where the significance of the Christian heritage of the Polish nation is underlined.

The existence of the paradigm would be visible in the outcome of the work of the legislator. The paradigm will show him directions for new legislations by pointing out what values are to be protected, fostered and developed. The realization of the paradigm is quite similar to the functions of the rules of law, but their action is moved to the meta-level comparing to the rules of law.

Of course the point is not to impose the Christian worldview on the state legislator as the only possible he can represent and respect. The legislative body enjoys in Poland, as well as in other modern states, rightful autonomy. It stems from the fact that the body represents all citizens who are sometimes not members of any Christian religious community. According to the Polish Constitution from 1997, public authorities in the Republic of Poland are impartial in religious matters (art. 25 section 2; see also art. 53 section 7). But the point is that the legislator must recognize the Christian value system as the most represented in Poland, a fact that demands respect and wide presence in legislative thinking and legislative action.

## 4.2. Factors shaping legislative action

There are many factors that interfere with the legislative process. Three of them are especially worth mentioning in the context of the article.

### 4.2.1. Legislative Initiative

Legislative initiative is a right to propose to the legislating body a new legislation and make this body examine the proposal.<sup>21</sup> In Poland, the right to propose a legislation belongs to Members of Parliament (Sejm), the Senate, the President of the Republic of Poland and to the Council of Ministers (art. 118 § 1 Constitution 1997). With the right to introduce legislation is also granted a group of at least 100,000 citizens with the

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<sup>21</sup> S. WRONKOWSKA: *Podstawowe pojęcia prawa i prawoznawstwa*. Poznań 2005, p. 32.

right to vote in general election (art. 118 § 2 of the 1997 Constitution). Special act of law regulates the course of legislative action in this respect.<sup>22</sup>

#### 4.2.2. Initiating Legislative Action

It must be noticed that there are some other forms of actions that serve and help in promoting specific directions of legislation. The Christians can, as individuals or in organized groups, by different forms of their political and social activity, promote specific legal solutions. It can be done by propagating in the society views and opinions that will be in accordance with the teaching of the Church or by lobbying among the Deputies for specific legal solutions.

#### 4.2.3. Compulsory Nature of the Agreements between the State and the Church or Other Religious Organizations

Another possible way of forcing Polish legislator to respect the Christian paradigm is created by norms contained in the Constitution 1997 in art. 25 section 4 and section 5. Generally speaking, they order to respect bilateral rule in mutual relations between the state and the religious communities. The rule in question is observed by the compulsory nature of the agreements between the state and the Church or other religious organizations.

As the section 4 of the cited article orders, the relations between the Republic of Poland and the Catholic Church are determined by international treaty concluded with the Holy See. Other churches and religious organizations, the Evangelical Church of the Augsburg Confession in Poland included, do not have international recognition, as the Holy See does. As a consequence, the relations between them and the state are regulated by a special law (art. 25 section 5 of the 1997 Constitution).<sup>23</sup>

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<sup>22</sup> Ustawa z dnia 24 czerwca 1999 r. o wykonywaniu inicjatywy ustawodawczej przez obywateli (Dz.U. 1999 n. 62 item 688).

<sup>23</sup> In the case of the mentioned Lutheran Church it is: Ustawa o stosunku Państwa do Kościoła Ewangelicko-Augsburskiego w Rzeczypospolitej Polskiej (Dz.U. 1994 n. 73 item 323, as amended).

## 5. The Areas for Cooperation between Catholics and Lutherans

To achieve a mutual cooperation for the sake of marriage and family on a practical level between the Christian churches, after bringing to attention the complexity and importance of the problem, there must also be some kind of encouragement for the members of the communities in question. It can be based on a sense of community of Christ's believers and identity of values preserved by the two churches. The values are visible in a consensus of the inner regulations of the Catholic and the Lutheran Church concerning heterosexuality of marriage, indissolubility of marriage, and the role of parents in upbringing children.

### 5.1. Heterosexuality of Marriage

Heterosexuality of marriage derives clearly from natural law. The Holy Scripture confirms the character of marriage. God created man and woman and said to them: "Be fruitful, and multiply, and replenish the earth" (Gen 1:27—28; 2:18; 2:23—24).<sup>24</sup>

Based on this, the Catholic Church defines marriage in its law as a covenant, by which a man and a woman establish between themselves a partnership of their whole life (can. 1055 § 1, cf. can. 1057 § 2). Exactly the same does the Evangelical Church of the Augsburg Confession in Poland. § 107 no. 1 of its PS states that "Małżeństwo jest darowaną przez Boga człowiekowi możliwością życia mężczyzny i kobiety. Jest ono przymierzem dwojga osób, mężczyzny i kobiety, zobowiązanych do wspólnego życia we wzajemnej miłości, odpowiedzialności, dzieleniu brzemion, zaufaniu, modlitwie, doskonaleniu się"<sup>25</sup> (§ 108 PS).

The characteristics of the marriage is even more visible in the aims of the institution. One of them is the procreation and upbringing of children (can. 1055 § 1). A marriage and the marital love itself are directed to this aim by the virtue of the nature (LG 50, cf. § 111, and § 112 PS).

<sup>24</sup> W. GÓRALSKI: "Prawo Boże jako źródło kościelnego prawa małżeńskiego w Kodeksie Prawa Kanonicznego Jana Pawła II." In: *Studia nad małżeństwem i rodziną*. Warszawa 2007, p. 17.

<sup>25</sup> "A marriage is a possibility of cohabitation of a man and a woman given by God. It is a covenant of two persons, a man and a woman, who are obliged to live in love, responsibility, mutual support, trust, prayer and striving for perfection."



## 5.2. Indissolubility of Marriage

According to Christians, the essential property of marriage, apart from unity, is indissolubility. In Catholic teaching, indissolubility has its source in the nature of the bond (cf. Mt 19:4—8). In sacramental marriage, the property acquires a distinctive firmness (can. 1056).<sup>26</sup> There is a unique bond between indissolubility of marriage and its sacramentality. Indissolubility helps to better understand sacramentality of a Christian marriage; on the other hand, looking from the theological point of view, sacramentality is a definitive foundation (but not the only one) of indissolubility of marriage.<sup>27</sup> In practice, the indissolubility means that the sacramental marital bond is a lifelong one and cannot be dissolved neither by any side nor both the sides, nor by any human power (can. 1141).

Contemporary teaching of the Evangelical Church of the Augsburg Confession in Poland accurately presents the thought of Martin Luther. He considered marriage as an indissoluble bond by its own nature.<sup>28</sup> The feature in question derives, according to him, not from sacramentality of marriage, which, *nota bene*, was denied by Luther, but rather the source of indissolubility of marriage is the love of God. The love of God is faithful and the same should be the love of those who are blessed by God.<sup>29</sup>

Lutheran law in Poland stands in the position of biblical indissolubility of marriage (§ 145 PS), and the legislator calls marriage “an irreversible covenant” (§ 108 PS). It is directly said in one of the articles of PS that the essential properties of marriage are unity and indissolubility and in Christian marriage they acquire a characteristic of firmness by virtue of divine institution and God’s authority (§ 107 no. 2 PS).<sup>30</sup>

<sup>26</sup> Briefly about sacramentality of a marriage, see, e.g.: B. FERDEK: “Nauczanie Kościoła katolickiego o nierozzerwalności małżeństwa w aspekcie dogmatyczno-historycznym.” *Symposium* 14 (2010), pp. 28—33; and about the legal aspect of the issue, see, e.g., T. PAWLUK: *Prawo Kanoniczne według Kodeksu Jana Pawła II*, vol. III, *Prawo małżeńskie*. Olsztyn 1996, pp. 32—46.

<sup>27</sup> The International Theological Commission: *Propositions on the Doctrine of Christian Marriage*, n. 2.2. Available online: [http://www.vatican.va/roman\\_curia/congregations/cfaith/cti\\_documents/rc\\_cti\\_1977\\_sacramentomatrimonio\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_1977_sacramentomatrimonio_en.html). Accessed 29.1. 2010.

<sup>28</sup> See the marriage vows written by M. Luther in: *Martin Luthers Werke. Kritische Gesamtausgabe*. Weimar 1883—1948, Band 30, III, pp. 74—80. About the sacramentality of marriage in the contemporary Lutheran thought, see: T. KAŁUŻNY: “Nierozzerwalność małżeństwa w optyce luterańskiej.” *Symposium* 14 (2010), pp. 64—65.

<sup>29</sup> Cf. A. CONCI: “Matrimonio e divorzio nella tradizione protestante.” *La Scuola Cattolica* 3 (2009), pp. 450—452.

<sup>30</sup> It must be noticed that Lutheran Churches have sometimes quite opposite views on the marriage issues.

It is true that when marriage is broken and terminated by the verdict of Polish law court (*nota bene*, the Evangelical Church of the Augsburg Confession in Poland does not provide its own process of the termination of marriage), the Church accepts the situation as an outcome of human sin and hard-heartedness (§ 145 PS). The church in question recognizes the second marriage as a valid one.<sup>31</sup>

In summation, it can be said that in terms of content, the teachings of the two churches about indissolubility of marriage are quite coherent. There is even an opinion, though it seems slightly exaggerated, that the viewpoint of the two Christian churches on permanence and stability of marriage is simply the same.<sup>32</sup> The facts that the two churches start from different premises and different are the legal consequences of the indissolubility of marriage, cannot do the harm to the mutual cooperation between the members of the communities for the sake of the indissolubility of marriage.

### 5.3. The Role of Parents in Upbringing Children

The right of parents regarding the upbringing of their children derives from natural law. Due to the fact that the right in question is primal and native, no one can appropriate it. It can be said that the right is a confirmation of human and parental dignity.<sup>33</sup>

Building on this, the Catholic Church teaches that parents have primal and unalienable right to as well as an absolute priority in upbringing of their children. They must be recognized as the first and the main tutors. Such an argument is clearly set out in CIC 1983 in can. 793 § 1: “Parents [...] have both the obligation and the right to educate their children.” A similar idea is expressed in can. 1136: “Parents have the most grave obligation and the primary right to do all in their power to ensure their children’s physical, social, cultural, moral and religious upbringing.”

The teaching of the Lutherans is quite similar. According to them, parents have moral obligation that comes from divine law, to bring up

<sup>31</sup> About the grounds of M. Luther’s stance on the issue, see: T. KAŁUŻNY: “Nierozzerwalność małżeństwa w optyce luterańskiej.” *Symposium* 14 (2010), pp 67–70.

<sup>32</sup> J. МОТУКА: “Trwałość małżeństwa a rozwód.” In: *Kalendarz Ewangelicki* 1974. Warszawa 1975, p. 56.

<sup>33</sup> J. KRUKOWSKI: “Ochrona prawna rodziców do moralnego i religijnego wychowania dzieci. Wprowadzenie do problematyki.” *Biuletyn Stowarzyszenia Kanonistów Polskich* 19 (2006), p. 51.

and educate their children in faith and in Christian life (§ 73 PS; see also § 151 no. 4 PS). Norms of PS order the ministers of the Church to continually encourage parents to take a special care to religiously educate their children (§ 88 no. 2 PS).

## 6. Conclusions

Teachings of the Catholic Church and of the Evangelical Church of the Augsburg Confession in Poland about marriage and family are in terms of content very similar. There are areas of the teaching, such as heterosexuality of marriage, indissolubility of marriage or the role of the parent in the upbringing of children, which are almost identical.

In the face of the contemporary threats to marriage and family that are visible in Europe today, the Christian communities are called to initiate an ecumenical dialogue and practical action to promote their common Christian paradigm of marriage and family.

PIOTR KROCZEK

### Małżeństwo w nauczaniu katolickim i luterańskim jako wzór dla polskiego prawodawcy

#### Streszczenie

Obecnie można zauważyć wiele różnorodnych czynników zagrażających małżeństwu i rodzinie. Jednym z nich są przepisy prawne tworzone bez odniesienia do chrześcijańskich korzeni cywilizacji europejskiej. W obliczu takiej sytuacji, wspólnoty chrześcijańskie są wezwane, aby rozpocząć ekumeniczny dialog zmierzający do aktywnego propagowania wspólnego chrześcijańskiego paradygmatu małżeństwa i rodziny, który mógłby stanowić wzór dla państwowego prawodawcy. W warunkach Polski jest to możliwe, ponieważ treści nauczania Kościoła katolickiego i Kościoła Ewangelicko-Augsburskiego w Rzeczypospolitej Polskiej dotyczące tego tematu są bardzo zbliżone. Istnieje także wiele prawnych możliwości skutecznego przeprowadzenia takiego działania, np. inicjatywa ustawodawcza.

**Słowa kluczowe:** małżeństwo, rodzina, Kościół katolicki, Kościół Ewangelicko-Augsburski w Rzeczypospolitej Polskiej, inicjatywa ustawodawcza, prawodawca, paradygmat

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## La mariage dans l'enseignement catholique et luthérien comme modèle pour le législateur polonais

### Résumé

Actuellement on peut observer de nombreux facteurs différents qui menacent le mariage et la famille. Parmi eux, on note des règlements juridiques, créés sans rapport aux racines chrétiennes de la civilisation européenne. Face à une telle situation, les communautés chrétiennes sont appelées pour entamer un dialogue oecuménique visant à propager un paradigme chrétien commun du mariage et de la famille, qui pourrait constituer un modèle pour le législateur national. En Pologne cette démarche est possible parce que les enseignements de l'Église catholique et de l'Église luthérienne en République Polonaise sont très rapprochés. Il existe également de nombreuses possibilités juridiques d'exécuter efficacement cette action, p.ex. l'initiative législative.

**Mots-clés:** mariage, famille, Église catholique, Église luthérienne en République Polonaise, initiative législative, législateur, paradigme

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## Il matrimonio nella Chiesa cattolica e luterana come esempio per il legislatore in Polonia

### Sommario

Attualmente si possono osservare numerosi fattori differenti che minacciano il matrimonio e la famiglia, tra cui le leggi emanate senza alcun riferimento alle radici cristiane della civiltà europea. Di fronte a tale situazione le comunità cristiane sono chiamate a cominciare un dialogo ecumenico mirato a propagare in maniera attiva il loro comune paradigma del matrimonio e della famiglia, il quale potrebbe fungere da modello per il legislatore statale. Ciò in Polonia è possibile in quanto i contenuti dell'insegnamento della Chiesa cattolica e della Chiesa evangelica augustea polacca a questo riguardo sono molto simili. Ci sono inoltre diverse possibili vie legali per procedere efficacemente con tale attività, come per esempio l'iniziativa legislativa.

**Parole chiave:** matrimonio, famiglia, Chiesa cattolica, Chiesa evangelica augustea in Polonia, iniziativa legislativa, legislatore, paradigma

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## Free State Declaration of Non-Catholic Persons<sup>1</sup> before Celebrating Canonical Marriage

**Keywords:** marriage, free status, natural law, divorce

One of the results of a valid marriage contraction is the existence of a mutual bond, which in its nature is perpetual and exclusive, while in a Christian marriage the spouses are supported by sacramental grace and somehow consecrated to perform their duties and the state.<sup>2</sup> A study of the free state of a person is related not only to the circumstances connected with a marriage contraction, but also with e.g. an adult's permission for baptism ("having a marital past") or to enter into a community with the Catholic Church.

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<sup>1</sup> In this work non-Catholic persons imply those who are not baptised as well as those baptised outside the Catholic Church who have never been officially accepted. Apart from the following study there are also schismatics and apostates to consider.

<sup>2</sup> CIC, can. 1134: "From a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive. Moreover, a special sacrament strengthens and, as it were, consecrates the spouses in a Christian marriage for the duties and dignity of their state." CCEO, can. 776 § 2: "From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an undetectable union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace."

## 1. Free State as a Prerequisite for Contracting a Marriage out of the Divine Law

One of the basic activities of a legal-pastoral feature, to which a priest is obliged to, is a preparation of the contracting parties to a canonical marriage and the examination of their free state. The role of the priest as a servant to a marriage reality, which came into being out of the God's will, demands a diligent analysis of the circumstances and has a significant role to form a marriage alliance. "God himself is the author of marriage" (CCE, n. 1603 and GS 48). "The vocation to marriage is written in the very nature of man and woman as they came from the hand of the Creator" (CCE 1603). The Church implements the unity and indissolubility of marriage, that is, "a partnership of the whole of life" (CIC, can. 1055 § 1,<sup>3</sup> CCEO, can. 776 § 1<sup>4</sup>), that is, its crucial attributes of divine law, stating that "unity, indissolubility, and openness to fertility are essential to marriage. Polygamy is incompatible with the unity of marriage; divorce separates what God has joined together" (CCE, n. 1664, CIC, can. 1056,<sup>5</sup> CCEO, can. 776 § 3<sup>6</sup>).

If "all persons who are not prohibited by law can contract marriage" (CIC, can. 1058, CCEO, can. 778), there is a need to declare standards limiting this permission and find them within the divine norms, in its natural and positive dimension, but also in the law established by human authority including the one established within the religious community and a secular authority.

Those kind of standards are linked with the free state confirmation of a person, with a possibility to contract a marriage with him/her.

Therefore, the subject of the pre-marriage canonical investigation is to determine the free state of both contracting parties (among others), that is, a statement that is at odds with reality, which according to the law,

<sup>3</sup> CIC, can. 1055 § 1: "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized."

<sup>4</sup> CCEO, can. 776 § 1: "The matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of the offspring."

<sup>5</sup> CIC, can. 1056: "The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament."

<sup>6</sup> CCEO, can. 776 § 3: "The essential properties of marriage are unity and indissolubility, which in a marriage between baptized persons obtain a special firmness in virtue of the sacrament."

hinders a possibility to contract a marriage because of the existence of marital bonds.

On the other hand, the marriage knot is likely to come into being not only in case of a marriage contraction (as the canonical form by the baptized persons), but also when it was contracted as “a valid, objective marriage also contracted by those unbaptized.”<sup>7</sup>

The aim of the priest or other person responsible for the analysis of a marital case is to determine the truth about the free state of a candidate before a marriage contraction takes place. The words of John Paul II, uttered in the context of the court service, are pertinent to the analysis of the person’s status “the criterion that inspires the deontology of the judge is his love for the truth. First and foremost, therefore, he must be convinced that the truth exists. The truth must therefore be sought with a genuine desire to know it, despite all the inconveniences that may derive from such knowledge. It is necessary to resist the fear of the truth that can, at times, stem from the dread of annoying people. The truth, which is Christ himself (cf. Jn 8:32, 36), sets us free from every form of compromise with interested falsehoods.”<sup>8</sup>

The papal statement emphasises beyond doubt that there is, in fact, a duty to investigate the truth carefully, sometimes diligently. The superficial treatment of the case, having pseudo-pastoral motive, is according to John Paul II unjust: “[...] the judge who truly acts as a judge, in other words, with justice, neither lets himself be conditioned by feelings of false compassion for people, nor by false models of thought, however widespread these may be in his milieu. He knows that unjust sentences are never a true pastoral solution, and that God’s judgement of his own actions is what counts for eternity.”<sup>9</sup>

The duty of the Church is to affirm the marriage as a permanence (among others), despite the individual, social and territorial circumstances connected with the contraction, with respect to the rule that a marriage is respected by the law. That is why the analyses of the free state of the contracting parties are supposed to dismiss a legal presumption pertaining to the marriage validity (CIC, can. 1060, CCEO, no. 779<sup>10</sup>).

<sup>7</sup> F. BĄCZKOWICZ: *Prawo kanoniczne. Podręcznik dla duchowieństwa*. T. 2. Opole 1958, p. 222.

<sup>8</sup> JOHN PAUL II: *Address of Pope John Paul II to Members of the Tribunal of the Roman Rota — 29.01.2005*, no. 5. Available online: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2005/january/documents/hf\\_jp-ii\\_spe\\_20050129\\_roman-rot\\_a\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2005/january/documents/hf_jp-ii_spe_20050129_roman-rot_a_en.html). Accessed 4.2.2013.

<sup>9</sup> *Ibidem*.

<sup>10</sup> CIC, can. 1060: “Marriage possesses the favour of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven.” Similarly CCEO in can. 779.

This legal-pastoral activity demands the knowledge of the whole marital law system.

## 2. Marital Law System

The Marital law system of the Catholic Church embraces three groups of regulations: the regulations being the declaration of the divine law (natural and positive), the rules of religious community as well as the rights of the civil law.

A normative question should be asked about the free state of the contracting parties. According to the contemporary legal state of the Catholic Church, it stems from the regulations included in the Code of Canon Law from 1983, but also in the Code of Canons of the Eastern Churches from 1990, together with its authentic reading and the instruction *Dignitas connubii*.<sup>11</sup>

The essential rule pertaining to this matter was promulgated in can. 780 and 781 CCEO, which merely correspond to can. 1059 CIC from 1983.

This canon says:

Can. 780. § 1. Even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the competence of civil authority concerning the merely civil effects of such a marriage. (= can. 1059 CIC)

§ 2. In addition to divine law, marriage between a Catholic and a baptized non-Catholic is also regulated by:

1° the law proper to the Church or ecclesiastic community to which the non-Catholic belongs, if that community has its own matrimonial law;

2° the law that binds the non-Catholic, if it is an ecclesiastic community, if proper matrimonial law is lacking.

Can. 781. If the Church must judge the validity of a marriage between baptized non-Catholics:

1° there is to be concern for the law by which the parties were bound at the time of the celebration of marriage in the light of can. 780, 2;

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<sup>11</sup> PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS: „*Dignitas connubii*”. *Instructio servanda a Tribunalibus Dioecesanis et Interdioecesanis in pertractandis causis nullitatis matrimonii*, 25.1.2005, *Civitas Vaticana* 2005 abbreviation DC). There is a debate pertaining to the topic of „*Dignitas connubii*”, whether it is an instruction or it contains statutory elements.



2° with regard to the form of the celebration, the Church recognizes any form prescribed or admitted by the law to which the parties were subject at the time of the celebration of the marriage, provided that the consent be expressed in a public form and, when at least one of the parties is a baptized member of an Eastern non-Catholic church, the marriage be celebrated with a sacred rite.

Latin Code of canon law skips in its regulations the necessity to refer to an own right of non-Catholic religious communities. It points out and determines the dependency between the canon law of the Catholic Church and the divine role together with the civil law. Since the promulgation of the Code of Canons of Eastern Churches, in accordance with the Code rules in law reading, it was stated that due to a loophole in Latin Church, can. 780 and 781 of Eastern Code are also applied to Latin Church<sup>12</sup> (see the juxtaposition of codes in Table 1) As a formal confirmation of this interpretation, which can be read literally and without any references, the inscription of the aforementioned eastern canons to the Instruction of the Papal Council of legal text matters *Dignitas Connubii* from 25 of January 2005, is addressed to Latin Church tribunals (DC, art. 2 § 2 and art. 4 § 1) and applies those decisions to the non-baptised marriages (DC, art. 4 § 2).

When analysing the footnotes, there is a reason to state that the system of the Catholic law orders, when necessary, to investigate the validity of a marriage knot contracted outside the Catholic Church in the light of the regulations embedded in tree-element law, always embracing the divine law. Furthermore, the system covers the marital law and the civil law of its members in reference to those who identify themselves with a religious community — unless the contracting parties are non-religious or when a particular communion “canonizes” civil regulations about marriage. In other cases, the civil law has a significance for the civil consequences of the marriage, not the validity of the knot. In case when the two norms of the three systems collide with each other, the divine law has the priority over the law of civil, religious community.

The same principle also applies to the interpretation of divorce practices in non-Catholic religious communities and civil society. Catholic interpretation of divine law does not allow for dissolution of marriage, the environment, beyond the well-defined reasons (marriage unconsummated, *privilegium Paulinum*, *privilegium fidei*). It is not possible to consider it as an invalid or terminated marriage because of the conclusion that the actions and solutions (declaration of invalidity) took place outside the Catholic Church.

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<sup>12</sup> See L. ADAMOWICZ: *Lex — natura — Ecclesia. Międzyreligijne, międzywyznaniowe i międzyobrzędkowe normy prawa kodeksowego Kościoła katolickiego*. Lublin 2004, p. 184.

TABLE 1. Church regulations applicable in case of a marriage between a Catholic and a non-Catholic

CIC/83	CCEO	DC
1	2	3
<p>Can. 105 9. — Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by canon law, without prejudice to the competence of civil authority concerning the merely civil effects of the same marriage.</p>	<p>Can. 780. § 1. Even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the competence of civil authority concerning the merely civil effects of such a marriage.</p>	<p>Art. 2. § 1. A marriage between Catholics, even if only one party is a Catholic, is governed not only by divine law but also by canon law, without prejudice to art. 3, § 3. Art. 3. § 3. Causes concerning the merely civil effects of marriage belong to the civil magistrate [...].</p>
	<p>§ 2. In addition to divine law, marriage between a Catholic and a baptized non-Catholic is also regulated by: 1° the law proper to the Church or ecclesial community to which the non-Catholic belongs, if that community has its own matrimonial law; 2° the law that binds the non-Catholic, if it is an ecclesial community, if proper matrimonial law is lacking.</p>	<p>Art. 2. § 2. A marriage between a Catholic party and a baptized non-Catholic party is also governed: 1° by the proper law of the church or ecclesial community to which the non-Catholic party belongs, if that community has its own marriage law; 2° by the law used by the ecclesial community to which the non-Catholic party belongs, if that community lacks its own marriage law.</p>
	<p>Can. 781. If the Church must judge the validity of a marriage between baptized non-Catholics: 1° there is to be concern for the law by which the parties were bound at the time of the celebration of marriage in the light of can. 780, 2; 2° with regard to the form of the celebration, the Church recognizes any form prescribed or admitted by the law to which the parties were subject at the time of the celebration of the marriage, provided that the consent be expressed in a public form and, when at least one of the parties is a baptized member of an Eastern non-Catholic Church, the marriage be celebrated with a sacred rite.</p>	<p>Art. 4. § 1. § 1. Whenever an ecclesiastical judge must decide about the nullity of a marriage of baptized non-Catholics: 1° in regard to the law by which the parties were bound at the time of the celebration of the marriage, art. 2, § 2 is to be observed; 2° in regard to the form of celebration of marriage, the Church recognizes any form prescribed or accepted in the Church or ecclesial community to which the parties belonged at the time of the marriage, provided that, if at least one party is a member of a non-Catholic Eastern Church, the marriage was celebrated with a sacred rite.</p>

Table 1 continued

1	2	3
		§ 2. Whenever an ecclesiastical judge must decide about the nullity of a marriage contracted by two unbaptized persons: 1° the cause of nullity is heard according to canonical procedural law; 2° however, the question of the nullity of the marriage is decided, without prejudice to divine law, according to the law by which the parties were bound at the time of the marriage.

In the light of the above-mentioned canonical regulations, it should be recalled that there is the presumption of validity of the marriage, and therefore also contracted by non-Catholics as part of their religious community, or in the case of undeclared religious attitudes as civil liability.<sup>13</sup> After the implementation of the regulations contained in the *mottu proprio Omnium in mentem*,<sup>14</sup> it does not apply to married people who in any way depart from the Catholic Church.

The valid marriage bond has the value of permanence, but not everyone has the sacramental dignity which is an important prerequisite for the absolute indissolubility.

A multitude of possible situations raises the problem of the determination of free non-Catholics who have married outside the Catholic Church, and, after obtaining a divorce or other analogous authorization, apply for the right to marry a Catholic.

When analysing systems of some non-Catholic marriage law of religious communities, we can find a convergent or similar laws to those of the Catholic Church or the regulations contradicting them.

Similar rules are embedded in “Pragmatics Uniforms” of Lutheran Church in Poland. § 109 provides that: “Evangelical marriage, even if only one side was of this creed, is subject to the law of God and the law of the Evangelical Church of the Augsburg Confession, maintaining competence of the Civil Law.” However, § 137 provides that: “a member of another Church who wants to get married in the Church, the Evangelical-Augs-

<sup>13</sup> CIC, can. 1060 and CCEO, can. 779, quoted above.

<sup>14</sup> BENEDICTUS XVI: *Litterae apostolicae motu proprio datae “Omnium in mentem” quaedam in Codice Iuris Canonici immutantur*, 26.10.2009, AAS 102 (2010), pp. 8–10. The regulations were first applied on 8.4.2010.

burg, an Evangelical clergyman is obliged to inform about the principle and the possibility of obtaining a dispensation of his Church.”

The same document requires the presence of the ordained clergyman of that Church (§ 122, 134—137). The position of the Evangelical Church of the Augsburg Confession in Poland, expressed in § 145 “Pragmatics,” confirms “the biblical position of the indissolubility of marriage. However, when a marriage breaks and divorce is obtained from the court, it takes note of the status quo as a result of human sin and hard-heartedness,” and thus allows for a new marriage, provided that “the divorced person wishing to join the new marriage, is required to obtain a dispensation from the Bishop of the Evangelical Church of the Augsburg Confession, who takes the position after obtaining an opinion of the proposal by the proper pastor” (§ 147).

However, the doctrine of the Evangelical Reformed Church states that the marriage is regarded only in a civil form; “marriage belongs to the order established by God. [...] Reformed Church does not see the nature of the sacrament in it, but surrounds it with great seriousness and respect. Because it is not the matter of sacrament, every form of a public relationship is valid and gives it an inseparable character. Therefore, the marriage legalised by a registrar is considered as rightful and inseparable. The total and irrevocable way out of the family home, joining the spouse and the creation of the one, is an act of obedience to the universal divine law, whether one considers the legislator that does not approve him. However, great importance is attached to the act of the Church, which is to make the deposit liabilities and the mutual promises in the name of God and in the presence of the congregation. Marriage is inseparable from the judgment of God — what God has joined together, let not man put asunder. It is worth to remember that this is the rule, not the rule of law, and that it concerns the unity of husband and wife, not a contract between them. If for some reason the unity of marriage breaks up, upholding the contract may be a pure fiction, sometimes very harmful, because it is not a relevant factor for marriage. The Church does not approve of relationship breakdown, but in some cases allows for termination of the contract as a legal form, or divorce, if the overriding principle of love requires it. However, it is always unique and similar to the disaster.<sup>15</sup>

In the doctrine of the Orthodox Church, we find an affirmation of belonging to the natural order of marriage and its subordination to the divine law. The valid marriage can be contracted only in the presence of

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<sup>15</sup> EVANGELICAL-REFORMED CONFESSION: *Sacrament*. Available online: [http://reocities.com/Athens/parthenon/4032/dok\\_sakrament.html](http://reocities.com/Athens/parthenon/4032/dok_sakrament.html). Accessed 4.2.2013.

a priest (“sacred rite”). Even if the party is Catholic, the Catholic dispensation from canonical form is only required *ad licitatem*. Orthodox theology emphasizes the indissolubility of marriage, though, because of the “human weakness,” it allows the “blessing of the wedding photo,” and authorization of a new marriage, which, however, is not entered in connection with the Eucharist, but as a penitential ceremony. The Orthodox Church has never allowed the fourth marriage.<sup>16</sup>

Anglican Churches, in turn, recognize marriage as a union permanent and lifelong. Generally their law do not require *ad validitatem* religious celebration, considering the form of civil marriage sufficient. The problem of divorce, which became the cause of the schism of Henry VIII, is currently evolving towards complete liberalization of divorce and entry into new marriages of divorced persons.<sup>17</sup>

In monotheistic communities of non-Christian religions, the natural origin of the institution of marriage and its permanence are emphasized.

In Islam, there are two problems — the practice of polygamy and divorce. Legal standard for the number of wives appears in the Holy Book. Islamic reformers of the modern era particularly refer to the passage of the Quran speaking about the number of wives. Sura says about it in 4, 3: “get married, therefore, with women who are good to you — with two, three, or four.”<sup>18</sup> In their view, it is a limitation of polygamy. With a restriction that a normal person cannot be equally fair in their feelings towards four wives. Quran in this Sura goes on to state: “But if you fear that you will not be fair, then only marry one..”<sup>19</sup> If there will be a brave person, the Quran leaves the matter to his conscience.<sup>20</sup>

When it comes to marriage life, Sura 58, 3—4 speaks of punishment for divorce, namely, those divorced must free a slave while the person who does not have such possibility should fast for two months. Sura 2 says about the divorce law, 227—228 — saying that the men should take their wives back and be reconciled to them.<sup>21</sup> In verses 236 and 237 of Surah 2 it is said that men do not commit sin when giving the women a divorce, if they are not touched and have no obligations towards them.<sup>22</sup> Quran condemns and prohibits divorce, thereby protecting family life and prevents

<sup>16</sup> S. HRYCUNIAK: *Prawosławne pojmowanie małżeństwa*. Białystok 1994. See also the monograph of U. NOWICKA: *Stwierdzenie stanu wolnego wiernych prawosławnych na forum Kościoła katolickiego*. Warszawa 2012.

<sup>17</sup> J. PRADER: *La legislazione matrimoniale latina e orientale. Problemi interecclesiali, interconfessionali e interreligiosi*. Rome 1993, pp. 86—87.

<sup>18</sup> Quran 4, 3.

<sup>19</sup> Quran 4, 3.

<sup>20</sup> Cf. W. PAŁUBICKI: *Małżeństwo i rodzina w religiach świata*. Gdańsk 1995, p. 82.

<sup>21</sup> Quran 2, 229.

<sup>22</sup> Cf. Quran 2, pp. 236—237.

its disintegration, however, it provides for the institution of separation, which may result in actual dispersing of a married couple.<sup>23</sup>

In Judaism, marriage is a private consent between a man and a woman, and therefore the presence of a rabbi or other clergy is not necessary, although it is accepted that a rabbi participates in the ceremony, including for this reason that the civil law of many countries requires the presence of a priest for the recognition of the effects of marriage.<sup>24</sup> Religious law also prohibits polygamy, but it was never widespread. The State of Israel, although it prohibits it, allows men to have several wives, but without the right to marry another. Judaic law also allows divorce, even in the case of marriage with a person who is not a Jew. Therefore, to enter into another marriage, the divorce is not necessary.<sup>25</sup>

Finally, when it comes to people who do not declare their affiliation to any religion, they are subject to divine law and the provisions contained in this system. That is why the civil law is subject to consistency with the divine law. For example, in the Polish legal system we find reasons (positive and negative, that is, excluding the circumstances), that do not conflict with divine law, with the exception of bigamy,<sup>26</sup> which is understood only in the context of the civil marriage bond.

From the above, necessarily brief presentation, a variety of rules on marriage indissolubility is seen as well as various regulations of the existing forms of marriage and polygamy. Examination of the free state of the contracting parties may therefore be very difficult in a typical, pastoral situation.

The similar situation is in civil law where the legal capacity to marry a foreigner is tested according to the laws of the country of origin and the country's legal marriage.

In ecumenical and interreligious dialogue the reciprocity is expected in the recognition of the principles based on which unmarried persons are religiously mixed. The Catholic Church must examine the status of a free-state person in the light of the law and in the context of the divine law while non-Catholic community should allow its followers to marry those Catholics who have a canonical permission.<sup>27</sup>

<sup>23</sup> Cf. W. PAŁUBICKI: *Małżeństwo i rodzina w religiach świata...*, p. 83.

<sup>24</sup> See *Małżeństwo*. Available online: <http://www.jewish.org.pl/index.php/pl/bwi-kalendarz-i-cykl-iyicia-mainmenu-68/140-masieo.html>. Accessed 4.2.2013.

<sup>25</sup> See *Małżeństwo mieszane*. Available online: <http://www.the614hcs.com/40.461.0.0.1.0.phtml>. Accessed 4.2.2013.

<sup>26</sup> Art. 13 the law from 25 of February 1964 — *Kodeks rodzinny i opiekuńczy*, OJL. 1964 no. 9, item 59 with further modifications.

<sup>27</sup> See E. ZICCARDI: *Il matrimonio nelle confessioni religiose. Il matrimonio di culto cattolico, acattolico, islamico e il giudizio di nullità del matrimonio*. Experta Edizioni 2006.

### 3. Free State Investigation

Free state investigation of the contracting parties is one of the fundamental obligations stemming from can. 1085<sup>28</sup> and from can. 1066<sup>29</sup> CIC. It can be done at various levels of the Church, from the pastoral care of the parish, the diocesan administration and the judiciary to the Holy See.

#### 3.1. The Competence of the Local Ordinary and the Parish Priest

According to can. 1115<sup>30</sup> and 1070<sup>31</sup> CIC, the priest to examine the legal capacity to marry is the pastor of the parish in which “at least one of the contracting parties has a domicile or quasi-domicile or monthly stays, and when it comes to the migrant, in the parish, where he is currently staying,” or other but “with the permission of their Ordinary or their pastor.” However, “if the premarital exam has not been conducted by the pastor, who should assist at the marriage, but otherwise, he has a duty to inform the right pastor about the result of an authentic document.”

In each of these cases, the criterion of contracting parties to the Church *sui iuris* should be also taken into account, as pastor-territorial competence has an impact only in case when at least one of the contracting parties belongs to his Church *sui iuris*.<sup>32</sup>

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<sup>28</sup> CIC, can. 1085: “§ 1. A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage. § 2. Even if the prior marriage is invalid or dissolved for any reason, it is not on that account permitted to contract another before the nullity or dissolution of the prior marriage is established legitimately and certainly.”

<sup>29</sup> CIC, can. 1066: “Before a marriage is celebrated, it must be evident that nothing stands in the way of its valid and licit celebration.”

<sup>30</sup> CIC, can. 1115: “Marriages are to be celebrated in a parish where either of the contracting parties has a domicile, quasi-domicile, or month long residence or, if it concerns transients, in the parish where they actually reside. With the permission of the proper ordinary or proper pastor, marriages can be celebrated elsewhere.”

<sup>31</sup> CIC, can. 1070: “If someone other than the pastor who is to assist at marriage has conducted the investigations, the person is to notify the pastor about the results as soon as possible through an authentic document.”

<sup>32</sup> CIC, can. 1109, CCEO, can. 829. Another issue is the competence of the Ordinary and parish personnel.

The competence and duties of the pastor in this area should be further specified by the Conference of Bishops or the appropriate authority in the Eastern Catholic Churches.<sup>33</sup>

Conference of the Polish Episcopate in the Instructions for the preparation of marriage in the Catholic Church of 1986<sup>34</sup> orders to carefully investigate the issue<sup>35</sup> and to find obstacles in the context of discussing the marriage bond, that is “to draw attention that the divine law has a special significance. Pastors are particularly responsible for ensuring that the faithful, being in good or bad faith, do not engage in a new relationship if they are bound by a prior marriage bond of ecclesiastical or natural law. This applies even when there is doubt as to the validity of previously contracted marriage (can. 1060).

If the priest has a reasonable doubt about the unmarried, he should stick to preaching the announcement at the previous place of residence, and question witnesses. Only in the absence of other evidence, a supplementary oath of the parties can be used.”<sup>36</sup> The command includes both pastoral operations for the contracting parties, who are Catholic, as well as for non-Catholics.

In the case of unmarried Catholic’s confirmation, baptism certificate determines recent status (which is issued not earlier than six months prior to delivery of documents<sup>37</sup>), unless it contains an entry for the canonical

<sup>33</sup> CIC, can. 1067: “The conference of bishops is to establish norms about the examination of spouses and about the marriage bans or other opportune means to accomplish the investigations necessary before marriage. After these norms have been diligently observed, the pastor can proceed to assist at the marriage.” CCEO, can. 784: “In the particular law of each church *sui iuris*, after consultation with the eparchial bishops of other Churches *sui iuris* exercising power in the same territory, norms are to be issued concerning the examination of the parties and other means for inquiries which are to be carried out before the marriage, especially those which concern baptism and the freedom to marry, which are to be diligently observed so that the celebration of the marriage can proceed.”

<sup>34</sup> Polish Bishops’ Conference: *Instrukcja Episkopatu Polski o przygotowaniu do zawarcia małżeństwa w Kościele katolickim*. In: *Dokumenty duszpastersko-liturgiczne Episkopatu Polski 1966—1993*. Red. C. KRAKOWIAK, L. ADAMOWICZ. Lublin 1994, pp. 151—227. (hereafter referred to as *Instrukcja*)

<sup>35</sup> *Instrukcja*, no. 42: “The discernment is to determine: [...] 2. free status of those who intend to get married, [...] 5. if there is no breaking of any obstacles that would prevent the conclusion of an important relationship” and in no. 46: “Deciding on unmarried homeless have to be carefully followed, or people who do not have either a permanent or temporary residence and migrants who move from place of birth after reaching the age of maturity (12-, 14-years old) in a remote site and after a short stay in the new location with a desire to marry.”

<sup>36</sup> *Instrukcja*, no. 52.

<sup>37</sup> *Instrukcja*, no. 44: “Metric for the full discharge is not only the evidence of baptism, but if it is recent, i.e. issued not earlier than six months ago, it is the statement of the unmarried.”



marriage,<sup>38</sup> ecclesiastical or civil or death certificate of a spouse, diocesan decree concerning the alleged death of the spouse,<sup>39</sup> the judgment annulling the invalidity of the marriage,<sup>40</sup> the papal rescript of dispensation *super matrimonio rato sed non-consummato* or the dissolution of marriage on the basis of the privilege of the faith, or rescript to use St. Paul's privilege by the local Ordinary.<sup>41</sup> Definitely, the opinion that all the above procedures can be used also for non-Catholics and non-baptized should be supported.

If a Catholic in his earlier relationship lived only the civil marriage, the pastor recognizes his free state in the canonical and pastoral conversations, without the need for trial. Concerns in this area, resulting on the ground of can. CIC 1686,<sup>42</sup> dispelled the answer of the Pontifical Council

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<sup>38</sup> *Instrukcja*, no. 98: "Imprint of baptism is also one of the evidence-free state. Therefore, baptism certificate has to be recent and must include all the annotations that should be made in the book of baptisms. [...] In addition, in the book of the baptized the dissolution of an unfulfilled marriage should be noted or declaration of nullity of marriage on the basis of the final judgment of the church of the court of first resort, a ban on joining a new marriage in the case of physical disability or mental disability. If baptism book did not have any notes, this should be noted in the document of baptism."

<sup>39</sup> *Instrukcja*, no. 55: "As a proof of death, the spouse should be required to present an authentic document of the Church or the secular power of the document confirming the death of that person. It is not enough to present the civil document of the alleged death but it is required, in accordance with can. 1707, a trial on the alleged death of a spouse. This difference in treatment of documents stems from the fact that the Church bases its process on different criteria. In all cases, the ecclesiastical court decree widowhood should be given, especially when the death of a spouse cannot be proved by official church or laity documents. There is a need to collect all possible documents as well as a form should be considered, containing 11 questions to witnesses on finding the missing deceased and present it to the decision of the diocesan curia."

<sup>40</sup> *Instrukcja*, no. 53: "If one of the parties had a church wedding, a new marriage may proceed only after the submission of a final judgment and a genuine ecclesiastical court, stating the invalidity of first marriage (can. 1684). This is also where it becomes a final judgment adjudicating the invalidity of a marriage based on the shortened process, which is based on documents (can. 1686—1688)."

<sup>41</sup> *Instrukcja*, no. 54: "If the parties have obtained a dispensation from the Pope of not consummated marriage, to enter into a new relationship, notice of the authentic papal rescript are required to provide (can. 1706). The same official statement is required in cases where the previous marriage was dissolved on the basis of the so-called St. Paul's privilege. Then the decree of the local Ordinary is required, which states that there are conditions to take advantage of this privilege." It would be interesting if the unbaptized, who left the baptized, after some time, would ask to be baptized or as an unbaptized person would like to conclude a marriage with another person belonging to the Catholic Church. In my opinion, the single status is indisputable, but a moral and pastoral aspect should be questioned.

<sup>42</sup> CIC, can. 1686: "After receiving a petition proposed according to the norm of can. 1677, the judicial vicar or a judge designated by him can declare the nullity of

for Legislative Texts of 11 July 1984, stating that if a person required to maintain the canonical form of marriage had only a civil union or tried to contract it with a non-Catholic minister, declaration of invalidity is not required, even through the documentary trial, but it is enough to examine the case in the ordinary course of the investigation.<sup>43</sup> Polish Bishops' Conference has decided that, in this situation, local ordinary should be contacted in order to receive the appropriate authorization.<sup>44</sup>

The question is whether an analogous procedure should be applied by a non-Catholic priest. An affirmative answer can only refer to the eastern non-Catholics who are committed to marriage *coram ministra sacro*. However, both in this case as in every other, when the marriage party is non-Catholic (baptized or unbaptized, and apostate), the pastor should refer the matter to the local ordinary, who is competent to grant dispensation from the impediment of the religious difference,<sup>45</sup> of permission to

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a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except for the citation of the parties and the intervention of the defender of the bond.”

<sup>43</sup> Pontificia Commissio Codici Iuris Canonici Authentice Interpretando: *Responsa ad proposita dubia* (can. 1686 CIC), 26.06.1984. AAS 76 (1984), pp. 746–747. In CCEO, this interpretation is to be found in the text of can. 1372 § 2: “However if it is the case of one who would have been obliged to observe the prescribed form for the celebration of marriage required by law, but who attempted marriage before a civil official or a non-Catholic minister, the prenuptial investigation mentioned in can. 784 suffices to prove his or her free status.” So is also *Instruktion “Dignitas connubii”* in art. 5 § 3: “However, in order to establish the free state of those who, while bound to observe the canonical form of marriage according to can. 1117, attempted marriage before a civil official or non-Catholic minister, it is sufficient to use the premarital investigation in accordance with can. 1066–1071.”

<sup>44</sup> *Instrukcja*, no 52: “Pastors should also be aware that the bond obstacle does not arise if the Catholics — required to maintain the legal status of marriage — tied together only by a civil contract to the civil registrar. However, pastor preparing for religious marriage of Catholics who have previously entered into a civil union with another person than the one person you wants to enter marriage in the Church is obliged to request the authorization of the local Ordinary. It is necessary to determine whether the previous relationship does not have any obligation to the other party or to the children (can. 1071 § 1, n. 3), and therefore that a civil union, which has broken-up, or even been solved by civil act of divorce could become an important validation of a marriage performed by ordinary power. The validation of this fact will cause obstacles to the marriage bond and is sometimes observed only in the acts of the curia.”

<sup>45</sup> CIC, can. 1086 § 1: “A marriage between two persons, one of whom has been baptized in the Catholic Church or received into it and the other of whom is not baptized, is invalid” and can. 1078 § 1: “The local ordinary can dispense his own subjects residing anywhere and all actually present in his own territory from all impediments of ecclesiastical law except those whose dispensation is reserved to the Apostolic See.”

be cross-married<sup>46</sup> or of an apostate, what should consider the free state declaration of the parties. If a person submits a document, used by the Orthodox, to the new marriage, it is considered to be insufficient to determine the status of a free and refer the case to the court of the Church.<sup>47</sup>

It is implied by the *Instruction* 88: “[...] when dealing with the usual formalities before the wedding, the pastor completing the protocol of personal discernment brides, pays attention to the fact of baptism of the non-Catholic party as well as his/her free state. When the free state of the non-Catholic is doubtful, all records of the case should be sent to the diocesan curia, as a need for further clarification and to make a decision. Accidents of this type may occur in the non-Catholic divorced or further comprising re-marriage, and with foreigners. In this case, after consultation with the diocesan curia, the pastor directs the case to court of the Church, which must be considered individually.” The certificate of being unmarried should be also delivered by non-Catholic party (when possible), even if it is free to ask for the entrance into the full communion with the Catholic Church,<sup>48</sup> but in this case the standard to apply to the local Ordinary is relevant.

A situation, in which one of the contracting parties is in danger of death, is an exception. In such a situation, according to can. 1068 CIC (can. 785 § 2 CCEO), “in danger of death and if other proofs cannot be obtained, the affirmation of the contracting parties, even sworn if the case warrants it, that they are baptized and are prevented by no impediment is sufficient unless there are indications to the contrary.”<sup>49</sup>

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<sup>46</sup> CIC, can. 1124: “Without express permission of the competent authority, a marriage is prohibited between two baptized persons of whom one is baptized in the Catholic Church or received into it after baptism and the other of whom is enrolled in a Church or ecclesial community not in full communion with the Catholic Church.”

<sup>47</sup> See *Supremum Signaturae Apostolicae Tribunal: Quaesitum. Responsio in re particulari de investigatione praevia ad matrimonium celebrandum*, 3.1.2007, Prot. N. 38964/06 VT, *Periodica* 97 (2008), fasc. 1, pp. 45—46; *Supremum Signaturae Apostolicae Tribunal: “Declaratio” sull’ammissione dei fedeli della Chiesa ortodossa romana alla celebrazione di un nuovo matrimonio nella Chiesa cattolica*, 20.10.2006, Prot. N. 37577/05 VAR, *Communicationes* 39 (2007), n. 1, pp. 66—67.

<sup>48</sup> Polish Bishops’ Conference: *Instrukcja Episkopatu Polski w sprawie duszpasterstwa małżeństw o różnej przynależności kościelnej*. In: *Dokumenty duszpastersko-liturgiczne Episkopatu Polski 1966—1993*. Red. C. KRAKOWIAK, L. ADAMOWICZ. Lublin 1994, pp. 247—262, no. 5: “If marriage coincides with the adoption of the full unity of the Church, there is a need to: a) instruct the non-Catholic party to ask the pastor for the necessary documents (baptismal certificate and a free-state certificate), in the case of inability to obtain these documents, sworn testimony of witnesses must be drawn.”

<sup>49</sup> CIC, can. 1068: “In danger of death and if other proofs cannot be obtained, the affirmation of the contracting parties, even sworn if the case warrants it, that they are baptized and are prevented by no impediment is sufficient unless there are indications to the contrary.” Similarly CCEO, can. 786 § 2.

It follows that while the pastor is the first chronologically, the official representative of the Church, he is responsible for reviewing the status of free contracting parties, practically, except for two contracting parties. The Catholics who have never in any form concluded a marriage and, if widowed, never ultimately decide on the establishment of the free contracting parties but should always refer to the Ordinary of the place and to proceed in accordance with his decision or according to the judgement of the tribunal of the Church. Understanding of the legal position of the contracting, non-Catholic parties requires from the parish priest at least to perceive the problem as to the status of free non-Catholic. This problem can be resolved, however, at least on the diocesan level and not only according to the legal standards of the Catholic Church, but also on the basis of non-Catholic communion standard.

### 3.2. Church Tribunal Competence

Ecclesiastical jurisdiction to examine the free contracting parties who do not belong to the Catholic Church was most clearly expressed in the Instruction *Dignitas connubii*. This manual, by repeating the standard written in can. CIC 1671 (the can. CCEO 1357), first states that “marriage cases of the baptized belong to the ecclesiastical judge by proper right,”<sup>50</sup> allows the ecclesiastical judge to “hear only those causes of the nullity of marriage of non-Catholics, whether baptized or unbaptized, in which it is necessary to establish the free state of at least one party before the Catholic Church, without prejudice to art. 114,”<sup>51</sup> that is, after the submission of the plaintiff’s complaint.

In the case of consummated marriage between two baptized, there is the only way to recognize those unmarried persons, as “the sacramental bond of marriage for a consummated marriage cannot be dissolved by any human power nor by any cause other than death.”<sup>52</sup>

<sup>50</sup> DC, art. 3 § 1.

<sup>51</sup> DC, art. 3 § 2.

<sup>52</sup> CCEO, can. 853. Editors of this canon are more precise in the eastern Code than in Latin can. 1141, which reads: “A marriage that is *ratum et consummatum* can be dissolved by no human power and by no cause, except death.” It is not specified whether that is a sacramental knot (between two baptized persons), making this canon imprecise. Compare CIC, can. 1055: “§ 1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of

Catholic tribunal should act in this case according to its own procedural rules (or CCEC CIC), both in terms of identifying the properties, as well as the entire procedure. This is due to the written instruction *Dignitas connubii*: “Whenever an ecclesiastical judge must decide about the nullity of a marriage contracted by two unbaptized persons: 1° the cause of nullity is heard according to canonical procedural law.”<sup>53</sup> However, the substantive law should apply the law of their own religious community to which non-Catholic party belonged (baptized or unbaptized) at the time of the prosecuted marriage. The Instruction is clear that “whenever an ecclesiastical judge must decide about the nullity of a marriage of baptized non-Catholics,”<sup>54</sup> the invalidity of the marriage is governed by and subject to the law of God, on the basis of the law that is subject to both parties during the marriage, in particular “in regard to the form of celebration of marriage, the Church recognizes any form prescribed or accepted in the Church or ecclesial community to which the parties belonged at the time of the marriage, provided that, if at least one party is a member of a non-Catholic Eastern Church, the marriage was celebrated with a sacred rite.”<sup>55</sup>

This requires the expertise of a judge of the Church in the field of jurisprudence and statements of the tribunals<sup>56</sup> and other dicasteries of the Holy See<sup>57</sup> as well as non-Catholic marriage law of religious communities. The judge in this case must be particularly sensitive to the precise application of the rules of substantive law, not to be tempted to treat marriages “in a Catholic way” by non-Catholics. Certainly, the determination of formula will be fruitful (*concordantio dubii*) with the causes of nullity, which unquestionably derived from the divine law.

In the catalogue of creating marital obstacles, two examples may be found in the natural law: kinship in a straight line and in the second stage the sideline (can. 1091 CIC and 808 CCEO),<sup>58</sup> physical inability (can.

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offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized. §2. For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament.”

<sup>53</sup> DC, art. 4 § 2 no. 1.

<sup>54</sup> DC, art. 4 § 1 no. 1.

<sup>55</sup> DC, art. 4 § 1 no. 2.

<sup>56</sup> A series of decisions are given by e.g. J. PRADER: *La legislazione matrimoniale latina e orientale. Problemi interecclesiali, interconfessionali e interreligiosi*. Rome 1993.

<sup>57</sup> For instance Papal Commission of the reading of the validity of matters embedded in the Legal Canonical Code, an answer to can. 1103 CIC, 23.4.1987, AAS 79 (1987), p. 1132, on the coercion as a marriage fault.

<sup>58</sup> CIC, can. 1091 § 4: “A marriage is never permitted if doubt exists whether the partners are related by consanguinity in any degree of the direct line or in the second degree of the collateral line.” Similarly CCEO, can. 808 § 3.

1084 CIC and 801 CCEO)<sup>59</sup> and one of the divine positive law: obstruction of the marital bond (can. 1085 CIC and 802 CCEO).<sup>60</sup>

In addition, the legislature, discussing the marriage consensus, posted some rules rooted by jurisprudence and canon lawyers in the natural law. These canons: 1095 CIC (818 CCEO), especially no. 3 — inability to fulfill the essential obligations of marriage for psychological reasons, 1098 CIC (821 CCEO) — deceitful misrepresentation, 1103 CIC (825 CCEO) — coercion.

Can. 1095 CIC (818 CCEO) states: “the following are incapable of contracting marriage: 1. those who lack the sufficient use of reason; 2. those who suffer from a grave defect of discretion of judgement concerning the essential matrimonial rights and duties mutually to be handed over and accepted; 3. those who are not able to assume the essential obligations of marriage for causes of a psychic nature.” Paździór justifies: “[...] at the basis of the contemporary regulations there is a rule that says that no one can commit to thing he cannot fulfill. The principle was expressed by Romans in words *ad impossibile nemo tenetur*. Decree-makers of rules made a rule: *Nemo potest ad impossibile obligari*. [...] The aforementioned quote stems from the natural law.”<sup>61</sup>

The interpretation of the can. 1098 CICI<sup>62</sup> and can. 821 CCEC<sup>63</sup> raises more problems. When asked if *deceptio dolosa* will make a nullity title that derives from the natural law, the court replied in the affirmative jurisprudence of the Roman Rota. In the judgment of C. Burke of 25 October 1990, Ponens highlights such standards or natural origin.<sup>64</sup>

<sup>59</sup> CIC, can. 1084 § 1: “Antecedent and perpetual impotence to have intercourse, whether on the part of the man or the woman, whether absolute or relative, nullifies marriage by its very nature.” Similarly CCEO, can. 801.

<sup>60</sup> CIC, can. 1085 § 1: “A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage.” CCEO, can. 802 does not include the final clause *quamnam non consummati*.

<sup>61</sup> S. PAŹDZIÓR: *Przyczyny psychiczne niezdolności osoby do zawarcia małżeństwa w świetle can. 1095*. Lublin 1999, p. 25; M. FĄKA: “Niezdolność do przyjęcia istotnych obowiązków małżeńskich jako tytuł nieważności małżeństwa.” *Prawo Kanoniczne* 25 (1982) nos. 1—2, p. 246.

<sup>62</sup> CIC, can. 1098: “A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life.”

<sup>63</sup> CCEO, can. 821: “A person contracts invalidly who enters marriage deceived by fraud, perpetrated to obtain consent, concerning some quality of the other party which of its very nature can seriously disturb the partnership of conjugal life.”

<sup>64</sup> “Dec. c. Burke 25.10.1990 about Madraspolitan and Mediapolitan. About the validity of a marriage.” *Ephemerides Iuris Canonici* 49 (1993) nos. 1—3, pp. 256—260. See W. GÓRALSKI: “Podstępne wprowadzenie w błąd (can. 1098 CIC) (na podstawie

However, as regards can. 1103 CIC<sup>65</sup> and can. 825 CCEO<sup>66</sup> addressing the issue of coercion and fear in the context of nullity of marriage, doubts were resolved by the response of the Pontifical Council for the Interpretation of Legislative Texts on November 25, 1986.<sup>67</sup> According to its response, the invalidity of the marriage because of coercion is rooted in the natural law norms.<sup>68</sup>

In the era of facilitated communication and frequent contacts between people of different cultures and faiths, the jurisdiction in such cases will certainly be more frequent in the Polish church tribunals and the more recent it is, as already quoted, the Pope's statement that it is a matter of belief that truth exists and it is possible to discover it in the canon law.<sup>69</sup>

### 3.3. The Issues within the Competence of the Holy See

Apart from the possibility of an appeal and asking the Holy See for clarification or resolution of specific concerns regarding the free state of the contracting parties,<sup>70</sup> a number of issues regarding the marital bond are within the exclusive competence of the Holy See. They are only listed as they indirectly relate to the subject.

Only the Bishop of Rome may grant dispensation from the marriage not consummated (even non-Catholics and non-baptized)<sup>71</sup> and terminate

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wyroku Roty Rzymskiej c. Burke z 15 X 1990 r.)” *Prawo Kanoniczne* 38 (1995) nos. 1–2, pp. 3–11.

<sup>65</sup> CIC, can. 1103: “A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it.”

<sup>66</sup> CCEO, can. 825: “A marriage is invalid if it is entered into due to force or grave fear inflicted from outside the person, even when inflicted unintentionally, which is of such a type that the person is compelled to choose matrimony in order to be freed from it.”

<sup>67</sup> AAS 79 (1987), p. 1132.

<sup>68</sup> L. ADAMOWICZ: *Lex — natura — Ecclesia...*, pp. 84–88.

<sup>69</sup> JOHN PAUL II: *Address of Pope John Paul II to Members of the Tribunal of the Roman Rota* — 29.01.2005, no. 5.

<sup>70</sup> CIC, can. 1707 § 3 pertaining to the alleged death: “The bishop is to consult the Apostolic See in uncertain and complicated cases.”

<sup>71</sup> CIC, can. 1142 (CCEO, can. 862): “For a just cause, the Roman Pontiff can dissolve a non-consummated marriage between baptized persons or between a baptized party and a non-baptized party at the request of both parties or of one of them, even if the other party is unwilling.” And CIC, can. 1698: “§ 1. Only the Apostolic See adjudicates the fact of the non-consummation of a marriage and the existence of a just cause to grant a dispensation. § 2. Only the Roman Pontiff, however, grants the dispensation.”

a marriage on the basis of privilege of non-sacramental faith.<sup>72</sup> It is worth remembering that only the Magisterium of the Church is to interpret the natural, divine and the positive law.<sup>73</sup> The Supreme Court of the Apostolic Signature, in addition to resolving issues of jurisdiction, has the power of “deciding by decree cases of the nullity of marriage in which the nullity appears evident”<sup>74</sup> and to dispense from procedural laws.<sup>75</sup>

## Conclusions

The legislature in the can. 776 § 1 of the Code of Canons of the Eastern Church pointed out that “the matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of the offspring.” Every person has the right to marry. However, with the right to marry there is a common obligation of every human person accepting the natural order that has been entered in the nature of the person and the marriage. One of the elements of the natural order is a free-state requirement of the contract-

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S. CONGREGATIO PRO SACRAMENTIS: *Litterae circulares „De processu super matrimonio rato et non consummato”*, 20.12.1986, *Monitor Ecclesiasticus* 112 (1987), pp. 423—429; BENEDICTUS XVI: *Litterae Apostolicae motu proprio datae “Quaerit semper” quibus Constitutio apostolica “Pastor bonus” immutatur atque quaedam competentiae a Congregatione de Cultu Divino et Disciplina Sacramentorum ad novum Officium de processibus dispensationis super matrimonio rato et non consummato ac causis nullitatis sacrae Ordinationis, apud Tribunal Rotae Romanae constitutum, transferuntur*, 30.8.2011, AAS 103 (2011), pp. 569—571.

<sup>72</sup> CIC, can. 1149 (CCEO, can. 860): “A non-baptized person who, after having received baptism in the Catholic Church, cannot restore cohabitation with a non-baptized spouse by reason of captivity or persecution can contract another marriage even if the other party has received baptism in the meantime, without prejudice to the prescript of can. 1141.” CONGREGATIO PRO DOCTRINA FIDEI: *Normae de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei*. Civitate Vaticana 2001; IOANNES PAULUS II: *Constitutio apostolica „Pastor bonus”*, art. 53.

<sup>73</sup> CIC, can. 747.

<sup>74</sup> DC, art. 5 § 2: “However, the Apostolic Signatura enjoys the faculty of deciding by decree cases of the nullity of marriage in which the nullity appears evident; but if they require a more detailed study or investigation the Signatura is to remit them to a competent tribunal or another tribunal, if need be, which is to handle the cause according to the ordinary procedure of the law.”

<sup>75</sup> DC, art 1 § 3: “Dispensation from procedural laws is reserved to the Apostolic See (cf. can. 87; Pastor bonus, art. 124, no. 2).”



ing parties. Among the multitude of modern concepts, the only acceptable, from the point of view of the doctrine of the Catholic Church's, is the affirmation of the absolute indissolubility of consummated marriage between two baptized persons. The Church, as guardian of marriage and safeguard of the human rights, perceives and recognizes the dignity of marriage contracted by any person with respect for the natural order, regardless of time, place and circumstances of its conclusion. Sacramental grace, which is a gift of God to the baptized spouses, strengthens and consecrates the call to ensure that the union of a man and a woman become *Totius vitae consortium*, fruitful mutual love and fertility.

Recognizing the validity of marriages outside the Catholic Church and being faithful to Christ's teaching on marriage, the Church cannot agree to the resolution against the divine law, whether in the civil law, or on the basis of positive law in religious communities.

In his last speech to the Roman Rota Court staff John Paul II exhorted: "In the name of what they claim to be pastoral requirements, some voices have been raised proposing to declare marriages that have totally failed null and void. [...] The objective juridical and moral gravity of such conduct, which in no way constitutes a pastoral valid solution to the problems posed by matrimonial crises, is obvious. Thanks to God, there is no lack of faithful people who refuse to let their consciences be deceived. Moreover, many of them, despite being personally involved in a conjugal crisis, are not prepared to solve it except by keeping to the path of truth."<sup>76</sup>

It seems that the careful examination is always on the path of truth. It is hard to see why it is only now that the careful examination enters the path of truth.

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<sup>76</sup> JOHN PAUL II: *Address of Pope John Paul II to Members of the Tribunal of the Roman Rota* — 29.01.2005, no. 3.

LESZEK ADAMOWICZ

## Stwierdzenie stanu wolnego niekatolików przed zawarciem małżeństwa kanonicznego

### Streszczenie

Tematem analiz jest problem stwierdzenia stanu wolnego osób nie będących katolikami, którzy deklarują wolę zawarcia małżeństwa kanonicznego z osobą należącą do Kościoła katolickiego. Każdy człowiek ma prawo do zawarcia małżeństwa. Z prawem do

zawarcia małżeństwa związany jest obowiązek wspólny dla każdej osoby ludzkiej akceptacji porządku naturalnego, który został wpisany w naturę osoby oraz w małżeństwo. Jednym z elementów porządku naturalnego jest wymóg stanu wolnego stawiany nupturientom. Wśród wielości współczesnych koncepcji jedyną do zaakceptowania, z punktu widzenia doktryny Kościoła katolickiego, jest afirmacja nierozzerwalności absolutnej dopełnionego małżeństwa dwojga ochrzczonych. Kościół, stojąc na straży małżeństwa oraz na straży praw osoby ludzkiej dostrzega i uznaje godność małżeństwa zawieranego przez każdego człowieka z poszanowaniem porządku naturalnego, niezależnie od miejsca, czasu i okoliczności jego zawarcia. Uznając ważność małżeństw zawieranych poza Kościołem katolickim, jednocześnie Kościół nie może, będąc wiernym nauce Chrystusa o małżeństwie, godzić się na jego rozwiązywanie wbrew prawu Bożemu czy to w prawie cywilnym, czy to w prawie stanowionym w niektórych wspólnotach religijnych.

Autor analizuje stan wolny jako jeden z warunków do zawarcia małżeństwa wynikający z prawa Bożego, umiejscawiając to prawo na szczycie systemu prawa małżeńskiego, a następnie omawia zasady badania stanu wolnego, a w szczególności kompetencje duszpasterza (proboszcza) i ordynariusza miejsca, kompetencje sądu kościelnego oraz kwestie będące w wyłącznej kompetencji Stolicy Apostolskiej.

**Słowa kluczowe:** małżeństwo, stan wolny, prawo naturalne, rozwód

LESZEK ADAMOWICZ

## La constatation du statut de célibataire des non-catholiques avant de contracter le mariage canonique

### Résumé

L'objectif des analyses est la constatation du statut de célibataire des non-catholiques, qui déclarent la volonté de contracter le mariage canonique avec une personne appartenant à l'Église catholique. Chaque homme a le droit de contracter le mariage. Avec le droit à contracter le mariage est lié le devoir commun pour chaque être humain d'accepter l'ordre naturel, qui est inscrit dans la nature humaine et dans le mariage. Un des éléments de l'ordre naturel est l'exigence du statut de célibataire, posée aux nupturients. Parmi la multitude des conceptions modernes, la seule acceptable selon la doctrine de l'Église catholique est l'affirmation de l'indissolubilité absolue du mariage accompli de deux personnes baptisées. L'Église, tout en gardant le mariage et les droits de la personne, aperçoit et reconnaît la dignité du mariage, contracté par chaque homme avec le respect de l'ordre naturel, indépendamment du lieu, temps et circonstances du contrat. En reconnaissant la validité des mariages contractés hors de l'Église catholique, l'Église ne peut pas, tout en restant fidèle aux instructions de Christ concernant le mariage, accepter sa dissolution ni au niveau de la loi civile, ni au niveau de la loi canonique de certaines communautés religieuses.

L'auteur analyse de statut de célibataire comme une des conditions de contracter le mariage, qui résulte de la loi divine, en la plaçant à la tête du système de la loi conjugale, et ensuite il présente les principes d'étudier l'état célibataire ; en particulier les compétences du prêtre (curé), l'ordinaire local, du tribunal ecclésiastique et des questions restant sous la responsabilité exclusive du Saint-Siège.

**Mots-clés:** mariage, état de célibataire, loi naturelle, divorce

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LESZEK ADAMOWICZ

## L'appurazione dello stato libero dei non cattolici prima della contrazione del matrimonio canonico

### Sommario

L'oggetto della presente analisi è il problema dell'appurazione dello stato libero delle persone non cattoliche che dichiarano la volontà di contrarre il matrimonio canonico con una persona appartenente alla Chiesa cattolica. Ognuno ha il diritto di contrarre il matrimonio. A tale diritto è legato l'obbligo comune ad ogni persona di accettare l'ordine naturale proprio della natura umana e del matrimonio. Uno degli elementi dell'ordine naturale è il requisito dello stato libero, che deve essere assolto dai nubendi. L'unica interpretazione accettabile dal punto di vista della dottrina della Chiesa cattolica, vista la moltitudine delle idee contemporanee, è l'affermazione dell'assoluta indissolubilità del matrimonio tra due persone battezzate. La Chiesa, in quanto custode del matrimonio e dei diritti umani, vede e riconosce la dignità del matrimonio contratto da ogni persona con il rispetto per l'ordine naturale, a prescindere dal tempo, dal luogo e dalle circostanze in cui esso è stato contratto. La Chiesa, riconoscendo la validità dei matrimoni contratti al di fuori della Chiesa cattolica stessa, non può tuttavia, data la fedeltà all'insegnamento di Cristo sul matrimonio, accettare la sua dissoluzione contro la legge di Dio, sia in base al diritto civile, sia in base al diritto di alcune comunità religiose.

L'autore analizza lo stato libero come una delle condizioni per contrarre il matrimonio derivante dalla legge di Dio, ponendo la stessa legge in cima al sistema del diritto matrimoniale, e quindi discute i principi di valutazione dello stato libero, in particolare la competenza del ministro (parroco), dell'ordinario locale, del tribunale ecclesiastico, nonché le questioni di esclusiva competenza della Santa Sede.

**Parole chiave:** matrimonio, stato libero, diritto naturale, divorzio



Part Three

# Reviews



*Oltre la divisione. L'intuizione ecumenica e il dialogo interreligioso,*  
A. Pacini, Milano 2011, 288 pp.

“My prayer is not for them alone. I pray also for those who will believe in me through their message, that all of them may be one, Father, just as you are in me and I am in you. May they also be in us so that the world may believe that you have sent me” (J 17:20—21). Christ prayed during the Last Supper. Nevertheless, by the pure human businesses, which have dominated God’s will, original Christian unity is missed, and the diversity of East Churches seems to have easy acceptance. There are two different attitudes towards it, represented by a modern individual: On the one hand, it meets with rejection and contempt, and what is more, in the most extreme cases, even with the persecution of those who profess other religions; on the other hand, religious indifference and relativism, which are blurring all kinds of differences, can be found in often repeated statement that there is only one God, and it makes no differences in which form He is worshiped. None of these attitudes is correct and none of them is the true witness of proper understanding of existing differences.

Ecumenism is an attempt to answer existing divisions and Jesus Christ’s prayer for unity. It is defined as an aim to restore all Christians to unity, according to different ecclesiastic needs and given moment’s conditions, but always through the dialogue. As John Paul II used to say: Ecumenism is the grace of truth, which cannot be achieved in other way besides the dialogue and common prayer.

*Oltre la divisione. L'intuizione ecumenica e il dialogo interreligioso*, published in Milan in 2001, edited and prefaced by Andrea Pacini, is dedicated to ecumenism. The book comprises articles by eight authors.

The birth of ecumenism, first on the evangelical ground in the Catholic Church, and then in the Orthodox one, is the theme of the first

part of this definitive work on the topic (pp. 15—103). Ricardo Burigana points out the great evangelic protagonists of the period in question (pp. 17—47), especially Nathan Soderblom, a Swedish Lutheran bishop, and a Dutch theologian, Wilhelm A. Visser't Hooft, leading the reader through the path of ecumenism, starting from First World Ecumenical Committee, which was held in Edinburgh in 1910, and is thought to be the leading event for the modern ecumenical movement, to the 1948, when the World Council of Churches was established during the First General Assembly in Amsterdam. The Catholic Church did not have its own representatives in this body (there were 551 delegates, 147 churches from 44 countries, according to the author of the text), but ecumenical efforts are not really conspicuous in the proceedings of the Assembly.

The second article, written by Andrea Pacini, is devoted to the Catholic Church's roots of ecumenism (pp. 49—73). The author analyses the acts of unification made by Pope Leon XIII, regarding Orthodox Church as well as the Evangelical one. The author also acknowledges the influence of Benedictine Monasticism, especially Lambert Beauduin's contribution to the development of ecumenism. Pacini ends his considerations by presenting the popes: Pius XI's and Pius XII's magisterium. The last article of part one, authored by Adalberto Mainardi, renders the birth of ecumenism in Orthodox Church (pp. 77—103). The author discusses another important point in development of this movement, starting from 1900, and, on the one hand, showing the active involvement of the Orthodox Church in the ecumenical dialogue, and on the other hand, the difficulties and restrictions connected with it.

Part two (pp. 105—202) describes the maturation stage of ecumenical movement (*La maturazione del movimento ecumenico*). As the first part, this one is also divided into three separate articles, which are dedicated to three Christian denominations and the most renown of their ecumenical protagonists. To start with, Angelo Maffei puts a special emphasis on the figure of Pope Paul VI, whose pontificate started during the Second Vatican Council. Author writes about Pope's humble demeanour and the ability to acknowledge the Catholic Church's guilt for the religious persecutions and splits. The author analyses fragments of Paul VI's encyclicals, and he stresses the fact of the mutual removing of the excommunication by Pope Paul VI and Patriarch Atenagoras. Valeria Martano presents the patriarch's consistent ecumenical involvement and his constant dedication to it. Finally, Matthias Wirz writes about brother Roger's, the famous founder of Taizé ecumenical testimony, his teaching, life and practice. This article helps the reader to find the main, typical feature of ecumenical movement maturation, that is interpenetrating and cooperation between theological point of view, personal experience as well as the one caused



by formal and institutional Church activity. Part three (pp. 209—279) of the book goes beyond the typical understanding of ecumenism, which is indeed very interesting. This part is dedicated to the issue of international dialogue with Hinduism and Buddhism (*Esploratori del dialogo interreligioso*). The first article (pp. 205—225), written by Giuseppe Rizzardi, is dedicated to life and work of Louis Massignon, a French scientist and a connoisseur of Muslim culture and religion, who has made a great contribution to the greater Catholic Church tolerance towards Muslims. The next article, written by Paolo Trianni, presents life and philosophy of two French clerics: Jules Monchanin, a Catholic priest, and Henri Le Saux, a Benedictine monk, the founders of the first Christian monastery that respected ascetic traditions of India, whose activity contributed to the development of dialogue between Christianity and Buddhism. Antoni Montanari, a renown expert on Far-East spirituality describes the dialogue with Buddhism (pp. 255—279). It seems to be a shame that there is no reference to the dialogue with the fifth of the biggest monotheistic religions of the world — Judaism.

The academic value of the work in question cannot raise any objections. Paying tribute to those who dedicated their lives to struggle for unity is important not only for historical knowledge, but for future actions as well. Nevertheless, the title of the publication indicates a more comprehensive content. First of all, the omission of Pope John Paul II is quite disappointing (there are only few aspects of his activity enumerated in the introduction to the thesis). He was a great ecumenist, whose gestures, words and deeds, especially at the beginning of his pontificate, were the evidence of a great opening towards other religions and the expression of the desire for unity and world peace. It would also be valuable to indicate the most important actions of the Roman Curia Dicasteries (especially ecumenical documents published by them), permanently involved in dialogue with other churches and religions (the Pontifical Council for Promoting Christian Unity, the Pontifical Council for Interreligious Dialogue and other numerous committees). However, their omission does not diminish the value of this thesis, which needs to be treated as a historical one. If so, it would seem legitimate to indicate this in the book.

The content of each of the individual chapters should satisfy not only the average reader, but in addition, every expert in ecumenical movement's theory and practice. Authors, who developed the above mentioned issues, ponder upon them with true erudition, and what is even more impressive, with great objectivity. They are not afraid of tackling difficult issues, and criticizing matters which deserve it. The work can be perceived not only as a source of information on ecumenism, but also about the life and spirituality of this movement's greatest champions. Skilful intermingling

of these two aspects is undoubtedly another advantage of this publication. Therefore, it is difficult to imagine dealing with ecumenical activity (whether still studying or delving into the essence of the practice), without careful reading of this thesis.

*Urszula Nowicka*

*Gläubigkeit und Recht und Freiheit. Ökumenische  
Perspektiven des katholischen Kirchenrechts.*  
Hg. Wolfgang Bock. Vandenhoeck & Ruprecht.  
Göttingen 2006, 140 pp.

The discussed monograph deserves the undivided attention of readers. *Gläubigkeit und Recht und Freiheit...* starts with a description of the ecumenical urge present at the Second Vatican Council, and then makes an attempt at summarizing John Paul II's pontificate in terms of the Pope's ecumenical activity, at the same time evaluating the results of the current dialogue between Protestant churches and the Roman Catholic Church.

Other reasons for going to this book are the following: (1) the collection of distinguished authors, (2) the book's origin. The author of the Foreword Wolfgang Bock, a judge of the Regional Court of Justice, informs the readers that the genesis of the monograph goes back to the initiative from the mid-1960s, namely the one undertaken by Hans Dombois (d. 1997) at the Forschungsstätte der Evangelischen Studiengemeinschaft (FEST) in Heidelberg — Kirchenrechtlichen Arbeitsgemeinschaft. It is from this initiative that the Arbeitsgruppe Kirchenrecht und Staatskirchenrecht emerged, a team of renowned experts on Protestant Church Law and Canon Law, Protestant and Roman-Catholic theology, as well as German constitutional law on state-church relations. Contents of the book constitutes documentation of a meeting of the mentioned study team that took place on June 24—25, 2005. What is truly worth focusing on is a source quoted and discussed in the Foreword, that is the *Communio Sanctorum*. Doctrinal context of that document was pondered on in Germany by the said study team consisting of representatives of the Protestant (VELKD) and the Catholic churches (DBK).

A framework for the interesting study by Wolfgang Lienemann, a professor of ethics at the Faculty of Theology, University of Bern, entitled “Glaube und Vernunft in der Moraltheologie” (pp. 1—24) is the encyclical teaching of John Paul II, more particularly: *Veritatis Splendor*, *Evangelium Vitae* and *Fides et Ratio*, especially referring to the problem of the faith-reason relation. Precisely measured paces of the philosophical-theological discourse — in consecutive segments: philosophy vs. theology (II), freedom vs. law (III), freedom from truth (IV), conscience vs. truth (VI) — lead the author to identifying the shared areas of the Protestant and Catholic understanding of the conscience (crucial ethical-moral issue in doctrines of the mentioned churches). These areas are well conveyed by the *Veritatis Splendor* passages: “Conscience is not an independent and exclusive capacity to decide what is good and what is evil” (VS 60) and “The Church puts herself always and only at the service of conscience” (VS 64). Unfortunately, there appears a fundamental difference: It is difficult to assume on the basis of the Protestant doctrine that “a principle of obedience vis-à-vis the objective norm” (VS 60) has been inscribed into conscience, especially as confronted with the Trent Council formula quoted in the encyclical: “The faithful are obliged to acknowledge and respect the specific moral precepts declared and taught by the Church in the name of God, the Creator and Lord” (VII. *Lehramt and Gehorsam*, p. 17).

Other obstacles in the progress of the ecumenical dialogue, this time from the canonistic perspective, are emphasized by two subsequent sources. The title “Gläubigkeit und Recht und Freiheit. Kanonistische Thesen zum Pontifikat Johannes Paul II. in ökumenischer Absicht” introduces the analyses conducted with rigorous methodological discipline by Norbert Lüdecke, professor of Canon Law at the Catholic-Theological Faculty of the University of Bonn (pp. 25—52). He who recognizes Church law as *quantité négligeable*, voluntarily abolishes the hermeneutical key to understanding of the Catholic Church (II. “Zur Lage der Ökumene,” p. 29). This precious observation, corroborated by the author’s desideratum of including canonistics (*korrekte Kanonistik*) into the ecumenical dialogue agenda, precedes the presentation of seven theses constructed around the title triad of: faith, law, and freedom. Even though conclusions are not generally optimistic (for example *Dogmatisierung der Rechtsgrundlagen und Verrechtung der Glaubenslehre* — p. 41), still — as it was presented in the Introduction — disregarding this “key structure” (triad) in bilateral studies would signify persevering in the illusions for ecumenical perspectives (p. VI).

Georg Bier, professor of Canon Law at the Faculty of Theology, University of Freiburg, in his article “Das Verhältnis zwischen Primat und

Episkopat” performs an important analysis of the Catholic understanding of the Pope’s primacy — in the context of a question asked in the subtitle “Anknüpfungspunkt für einen ökumenischen Konsens über den Petrusdienst?” (pp. 53—76). In view of canonistic evaluation, John Paul II considered the mentioned issue as a personal ecumenical challenge of the highest importance (p. 53). He expressed this in the *Ut Unum Sint* encyclical, in his teaching on service/office of unity: “When the Catholic Church affirms that the Office of the Bishop of Rome corresponds to the will of Christ, she does not separate this office from the mission entrusted to the whole body of Bishops, who are also ‘vicars and ambassadors of Christ’. The Bishop of Rome is a member of the ‘College’, and the Bishops are his brothers in the ministry. [...] I am convinced that I have a particular responsibility in this regard, above all in acknowledging the ecumenical aspirations of the majority of the Christian Communities and in heeding the request made towards me to find a way of exercising the primacy which [...] is nonetheless open to a new situation” (no. 95). Unfortunately, the reality (legislation and ecclesial practice) as shows the example of the Pope-bishops relationship (“hierarchical gap”) as well as the manner the papal primacy power is exercised (“synodal and collegial responsibility-structures [...] are only weakly developed” — p. 74), is still far from perfect.

Michael Plathow, professor of Systematic Theology at the Heidelberg University, stresses a tension that was easily noticeable, from the Protestant perspective, in the John Paul II’s pontificate — namely a kind of contradiction between the Pope Pilgrim’s pastoral creed (with the “leading” ecumenical prayers in Assisi, in 1986 and 2002) and the codification of canonical legislation (Code of Canon Law). In his article “Unabgegoltene: Seelsorge und Recht im Pontifikat Johannes Paul II” (pp. 77—98), the author emphasizes a distinctive advantage of the latter factor (*Dominanz des Kirchenrechts*). The effect is, among others, Roman Catholic Church’s centralization, the ontological and temporary priority of “universal Church” in relation to particular churches (cf. Richard Puza), a depreciating absence of *sensus fidelium* in the Code of Canon Law (“whole people’s supernatural discernment in matters of faith” — *Lumen Gentium*, 12), and finally not recognizing Protestant churches as the Church of Jesus Christ in the *Dominus Iesus declaration* (*dogmatische und juristische inkludierte Exklusivismus des römisch-katholischen Kirchenverständnis* — p. 91).

Another perspective is offered by Heinrich J.F. Reinhardt, professor of Canon Law at the Faculty of Theology, Ruhr-University Bochum, in an article entitled “Perspektiven der katholischen Kirchenverfassung” (pp. 99—115). Excellent canonistic reflection is focused on these aspects of

the Catholic Faith and Order, which are of the *ad extra* nature, that is oriented towards Christian confessions and positively reveal the opportunities and limits for an ecumenical dialogue. The ecclesiological alteration of the paradigm: replacing by Council Fathers the hitherto *est* with *subsistit* in no. 8 of the constitution *Lumen Gentium* — resulted in opening the Catholic Church on the *fratres seiuncti plenam communionem cum Ecclesia catholica non habentes*. In the legal-canonistic dimension, a substantial effect of this alteration are words of can. 11 (CIC): “[...] merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it [*Jurisdiktionsfreistellung*].” In reference to the churches of the Reformation this results in recognizing the jurisdiction of the hierarchy of these churches over their faithful ones. There is the following rule: “all non-Catholic Christians substantiate their Christian existence in their own confessions and are bound by their own laws” (p. 104). The author, expert on *ius matrimoniale* mentions two substantial facts: (1) the mentioned rule has been included in can. 780 of the Code of Canons of the Eastern Churches (and let us add: into article 2 paragraph 2 of the *Dignitas Connubii* instruction of 2005); (2) in canon marriage law there is a new developing branch defined as interconfessional, interritual or interecclesial marriage law. Not less important for ecumenism turns out to be defining the outline of the mentioned term *fratres seiuncti*: it pertains to heretics or schismatics as far as reaching the second generation (first generation remains under the jurisdiction of the Catholic Church and under the regulations of the penal canon law). For the same reasons we cannot oversee a sentence from the *Dominus Iesus* declaration, pertaining to non-Catholic Eastern Churches: “The Churches which, while not existing in perfect communion with the Catholic Church, remain united to her by means of the closest bonds, that is, by apostolic succession and a valid Eucharist, are true particular Churches” (art. 17). At the last point of the article (V. “Wege zur Kirchengemeinschaft”), the author considers realistic such an optimistic scenario of the ecumenical dialogue which will lead to unions between churches as well as a transformation of the current jurisdictional primacy of the Pope into “primacy of love” (p. 115).

There have been few documents, as Johanna WM-Armstrong mentions in the article “Die Anerkennung der Taufe zwischen den christlichen Kirchen — Eine ökumenische Zwischenbilanz” (pp. 117—132) that have given such a strong impulse to the ecumenical dialogue as the “Lima Document”: *Baptism, Eucharist and Ministry* (approved by the Faith & Order Commission in 1982). The potential of the elaborated declaration of convergence (*Konvergenzerklärung*) of the mutual recognition of Baptism validity has not been fully used, though. What was not successful in Germany at the stage of praxis in the Protestant-Catholic dialogue, did

not bring about expected fruits in relations to Orthodox Churches (*grundsätzliche ekklesiologische Bedenken gegen den Prozeß der ökumenischen Taufanerkennung* — p. 127). This does not release us from the ecumenical efforts, focused on emphasizing the significance of Baptism, not as a one-time event, but a process of Christian initiation.

This reviewed book, rich in theological-ecumenical as well as ecumenical-legal argumentation, being a courageous (not a non-critical) summary of the condition of the ecumenical dialogue, will definitely catch the attention of not only specialists but a wide spectrum of readers as well.

*Andrzej Pastwa*





Dietmar Konrad: *Der Rang und die grundlegende Bedeutung des Kirchenrechts im Verständnis der evangelischen und katholischen Kirche.*

Jus Ecclesiasticum. Beiträge zum evangelischen Kirchenrecht und zum Staatskirchenrecht.

Bd. 93. Mohr Siebeck. Tübingen 2010, 516 pp.

As a rule, a promising title is something that helps an extensive monograph to fight its way to the prospective audience. Such is the case of the discussed book by Dietmar Konrad. However, with a single reservation: the author of *Der Rang und die grundlegende Bedeutung des Kirchenrechts im Verständnis der evangelischen und katholischen Kirche* (The Status and the Fundamental Meaning of the Church Law in the Understanding of the Protestant and the Catholic Church) (doctoral dissertation, the Faculty of Law, Ruprecht Karl University of Heidelberg; supervisor: Professor Jörg Winter) made sure that the reader is also favourably surprised with the book's content.

The monograph's back cover conveys information that Dietmar Konrad concentrates on "possibilities and limits of the development of an ecumenical church law." A glance at the table of contents (*Inhaltsübersicht* preceding *Inhaltsverzeichnis*) leaves no room for doubt. What testifies to the real value of this monograph is a well-thought-out and executed with an expert-like flourish, idea of a triptych: *Katholisches Kirchenrecht — Evangelisches Kirchenrecht — Ökumenisches Kirchenrecht* (which — for the reason emphasized at the beginning — should be indicated in the (sub) title!). Even if the purpose announced in the Introduction is to verify/falsify the thesis by the Protestant Church in Germany (EKD), promulgated in a well-known document from 2001: *Kirchengemeinschaft nach evange-*

*lischem Verstandnis*, that the special status of church law in the Catholic Church represents an obstacle for ecumenism (p. 1), the very structure of the work, together with the 116 pages long Part Three: “Ecumenical Church Law,” and, concluding this part (and in a way the entire work, since there is no overall conclusion), Concluding remarks (in subsequent subtitles: “A. Existenz eines Ökumenisches Kirchenverfassungsrechts nur de lege ferenda”; “B. Gemeinsames Einheitsverständnis als Basis eines ökumenischen Kirchenrechts”; “C. Rechtliche Begleitung des ökumenischen Dialogs”; “D. Ansatzpunkte für ein sich herausbildendes Ökumenisches Kirchenrecht” renders the author’s aim to go beyond the self-defined borders the best way. In short, the author’s conclusion is optimistic, and at the same time not devoid of realism (be it in affirming the different ecclesiological bases of both denominations) delineation of the possibilities of overcoming impasse in ecumenical dialogue — with a substantial role the ecumenical church law has to act (“insgesamt kann für ein ökumenisches Kirchenrecht eine verhalten positive Prognose erstellt werden” — p. 475). Indeed, one has to notice that in the background the author skillfully and relatively promptly debunks the EKD’s thesis (hence the return to the question “Rang des Kirchenrechts als Hindernis für die Ökumene?” in the last point of the monograph is artificial and unnecessary — pp. 475—476). What reinforces a noticeable methodological order of the discourse is an assumption realized consistently throughout the entire work: Rank and significance of the Church law cannot be considered separate from the ecclesiological profile/constitution of the respective Church (p. 2).

Faithful to this assumption, in Part One, the author states that since in the canon law reformed in the spirit of Second Vatican Council (p. 16) defining the Church as *Communio* was to be of key importance (here the author accurately quotes the famous speech by Paul VI to the International Congress of Canon Law in Milan, on September 17, 1973), it is worth throwing a light on the present-day progress in realization of this directive. First and foremost, the ecumenical opening by the fathers of the Vatican II, the symbol of which is the famous change of *est* into *subsistit in* in ecclesiological formula of the constitution *Lumen Gentium*: “This Church, constituted and organized in this world as a society, subsists in the Catholic Church” (LG 8,2), marks a starting point of deepened analysis of *communion* model functioning in the *Ecclesia catholica* (1. *Gemeinschaft der Gläubigen*, 2. *Hierarchische Gemeinschaft*, 3. *Gemeinschaft der Teilkirchen*), endowed with the ordinance of the issue: The communion with the ecclesial Communities separated from the Catholic Church? (pp. 17—39). Then, in the chapter committed to rank and significance of the canon law, the author investigating Klaus Mörsdorf (“der Mörsdorfsche Ansatz von der rechtlichen Struktur von Wort und Sakrament”) and

his student's idea indicates the Word of God, the Sacrament and also the charisma (in the service of the first two, as their necessary complement) — so the sources of giving shape to that *una realitas complexa* (LG 8,1), which is the *Communio*-Church in its two complementary dimensions: *communio fidelium* (anthropological plane) and *communio ecclesiarum/communio hierarchica* (structural plane). It is precisely towards those two dimensions of Church *communio* that the reader's attention is directed in the last chapter of the part in question, when — after revealing the meaning of *ius divinum* as well as similarities and differences between the canon law and state law — the author focuses on the issue of the reception of council ecclesiology and Catholic understanding of the Church in Code of Canon Law. Critical remarks in this section of the work are not scarce (let us add: they are conceptualized on the basis of reliable, state-of-the-art bibliography). For instance, in the same vein as the author previously accurately itemized some ideological “tilt” of the very Klaus Mörsdorf's theory towards *communio hierarchica* (p. 58), establishing that not only did the Vatican Council put emphasis on apostolic succession, infallibility and particular meaning of the Magisterium, but also stressed “the whole peoples' supernatural discernment in matters of faith” (LG 12,1), the current analyses are recapitulated by the author in the following words: “[...] a normalization of the *sensus fidelium* as the source of divine revelation is lacking” (p. 96; powerful statement which cannot be softened by the previous remark: “das Kirchenrecht muss im Hinblick auf den *sensus fidelium* [...] auch dem hohen Stellenwert von Gewohnheitsrecht gerecht werden” — p. 64). Other critical comments, such as ascertainment that the Code decreased the ecumenical mission of the whole Church and its members to the activity of Catholic authorities (pp. 148—149), or the remark focusing on nonexistence of a separate chapter committed to ecumenism in the Code of Canon Law (the so-called “local ecumenism” did not find its place in the regulations concerning: the parish (cc. 515—552), the homily (cc. 762—772), the catechesis (cc. 773—780) or religious instruction (c. 804), are at least partially contrasted with an optimistic hypothesis that c. 844 of the Code of Canon Law can be perceived as “evolutionary norm,” which conveys a chance for ecumenism within the scope of mixed marriages (“Es ist daher davon auszugehen, dass bei einem weiteren Fortschreiten des ökumenischen Dialogs, eine wechselseitige Eucharistiegemeinschaft zwischen katholischen und evangelischen Christen durch c. 844 § 4 nicht verhindert wird” — p. 170).

While the Canon Law of the Catholic Church is a substantial part of its constitution, the relation between the Church and the church law is in the Evangelical understanding much more complicated — the author emphasizes already at the beginning of Part Two (p. 175). Detailed anal-

yses of the concept of the Church (*Kirchenbegriff*) in Lutheran *ecclesiology* and reformed *ecclesiology*, together with rendering disparities in those approaches (*Vergleich lutherisches und reformiertes Kirchenverständnis*), prove that in the first chapter. At the end of the chapter — together with a slightly too short comparative depiction of the Catholic approaches (“Vergleich evangelisches und katholisches Kirchenverständnis”) — in the concept of “Church of the Word” a specific note of Evangelical ecclesiology is presented (*Die evangelische Kirche ist hingegen eine Kirche des Wortes, Kirche liegt bereits dann, aber auch nur dann vor, wenn die Wortverkündigung beziehungsweise die Verwaltung der Sakramente, die auch besondere Formen des Wortes Gottes sind, in ordnungsgemäßer Weise erfolgt* — pp. 217—218). Consequently, as the author demonstrates in the second chapter, emphasizing the response character of Church law — mainly based on the Barmen Theological Declaration (1933), but also taking into consideration works of such authors as: Johannes Heckel, Erik Wolf and Hans Dombois — is just *antwortendes Kirchenrecht*. Indeed, the contemporary interpretation of 3rd and 6th thesis of Barmen on the relationship of the evangelical message (*Botschaft*) and order (*Ordnung*), entirely reveals the ancillary function of the law in relation to confession of faith, proclaiming the word and administering the sacraments (*bekennendes Kirchenrecht*) — which, however, should not be confused with the sacralization (*Botschaft = Ordnung*) of church law (“das Kirchenrecht ist immer nur insofern “bekennendes Kirchenrecht”, als es “antwortendes Kirchenrecht” ist und eine menschliche Antwort auf die Verkündigung und das Bekenntnis des Glaubens darstellt” — p. 242). In the third chapter, the author — differentiating between three basic Constitution of the Protestant Church types: the Evangelical-Lutheran Church of Bavaria (*episkopal-konsistoriale Kirchenverfassung*), the Evangelical Reformed Church (*presbyterial-synodale Kirchenverfassung*), Evangelical Church in Baden (*konsistorial-synodale Kirchenverfassung*) — analyses practical conclusions stemming from recently formulated paradigms of ecclesiology and the Church law in such areas as: church leadership and communities (*Amt*), preaching and *sacramental law* (*Amtshandlungen*), and finally, fundamental rights (*Grundrechte*).

The climactic, and as it was previously noted, final part of the monograph begins with a pertinent delineation of three research planes, correlated with the three versions of understanding of the notion of “ecumenical church law” (*Ökumenisches Kirchenrecht*). Having conducted the analyses of interecclesiastical Catholic regulations concerning the relations with the Protestant Church and parallel Evangelical regulations, the author competently explores the remaining two research planes: (1) a question whether in the face of dissimilar ecclesiology it is possible

to establish a common ecumenical law, connecting two churches, and then he focuses on the issue of *ius commune universale* (that is the issue of common legal principle, being the result of interchurch agreements, and located within four areas: Church's Evangelizing Mission, Baptism, Eucharist and Ministry) — as a common basis and a source of the ecumenical church law; (2) the role of the following agreements: the Lima Declaration of 1982 and the Joint Declaration on the Doctrine of Justification of 1999 (*Lehrkonsense und deren kirchenrechtliche Verbindlichkeit*), as well as the Charta Oecumenica of 2001 (*Kirchenrechtliche Selbstverpflichtungen*). As to the latter, the author, for instance, regards ecumenical wedding rite of 1971: *Gemeinsame kirchliche Trauung. Formular C*, developed by the Evangelical Church in Baden and the Archdiocese of Freiburg, as a good sign of future agreements of the Churches of both denominations. Two other areas of possible and necessary agreements are: an ecumenical religious instruction (*ökumenischer Religionsunterricht*) and an ecumenical labour law (*ökumenisches Arbeitsrecht*).

What distinguishes this monograph, let us repeat it once again, is an “ecumenical” optimism which is not devoid of realism. The justification for those inspirations, but also for new ones can be — according to the Evangelical author (p. 393) — derived from the words of John Paul II: “[...] the quest for Christian unity is not a matter of choice or expediency, but a duty which springs from the very nature of the Christian community” (*Ut unum sint*, no. 49,2).

*Andrzej Pastwa*



Józef Budniak: *Jednoczeni w różnorodności.  
Tradycja cyrylo-metodiańska jako paradygmat  
procesu pojednania. Kościołów, kultur i narodów.*  
Wydawnictwo Uniwersytetu Śląskiego.  
Katowice 2009, 295 pp.

The Cyrillo-Methodian tradition in Poland, unfortunately, does not attract the interest of researchers, not only among historians and scholars of Slavic Studies, but also among theologians. There are many reasons nowadays why less and less researchers refer to the inspiring “Slavic thought” of John Paul II. Apart from the old truth that *Slavica non leguntur*, there exists deeply rooted element of emotional irritability dating back to the times of partitions. The official policy of the Tsar made good use of the Slavophil ideology praising the activities of the saints Cyril and Methodius and was a useful cover for the imperialist and pan-Slavonic program. Hence, we can say echoing J. Klinger, the tendency to minimize the Cyrillo-Methodian issue in Polish historiography was almost a patriotic duty. It might be enough to mention the idea of the famous Slavist, Aleksander Brückner.

Fr. Józef Budniak, as a theologian, breaks a kind of scholarly indifference and with his dissertation joins the group of those researchers who, in the Cyrillo-Methodian tradition, perceive the timeliness of its message today. This sensibility wins Fr. J. Budniak great recognition.

The book by Fr. Professor Józef Budniak, PhD should be recognized as one of the most important among his achievements to date. It is the result of many years of hagiographical and ecumenical research run by Fr. Budniak. Probably the creation of the study was inspired by John Paul II after He had declared Cyril and Methodius co-patron saints of

Europe, together with Saint Benedict (1980). The particular justification of this act is to emphasize the real value that comes from the spiritual unity of the Old Continent which is formed on the basis of two traditions: eastern (Greek) and western (Latin-Roman). The fact that John Paul II declared the Brothers from Salonica co-patrons of Europe played an important role in the processes of integration of cultures, nations and churches of the Old Continent.

Fr. Józef Budniak shows the two saints, Cyril and Methodius against the background of the history of Bohemia and Moravia (cf. chapter 1 and 2). He presents the essence of message that the Cyrillo-Methodian tradition conveys (cf. chapter 3). The author pointed to its role in the process of reconciliation of European churches, cultures and nations (cf. chapter 4), and to its creative permeating into the life of churches, cultures and Christian communities (cf. chapter 5), as well as its reception and ecumenical meaning (cf. chapter 6). The fundamental part of the discussed book has been preceded by the Introduction (pp. 7—18) and ended with the Conclusion (pp. 231—238). The Conclusion is followed by the “Calendar of selected Cyrillo-Methodian events” (pp. 239—248), “List of abbreviations” (pp. 249—252), “Bibliography” (pp. 253—274), “Index of personal names” (pp. 275—282), a summary in Czech language (pp. 283—284) and in German (pp. 285—286) and “Table of contents” in Polish (pp. 287—289), in Czech (pp. 290—292) and in German (pp. 293—295).

In our times, when Europe becomes more and more united — as we know, the process of European unification has not been yet concluded, when the Christians deciphered anew the Christ’s call coming from the High Priest’s Prayer: “All of them may be one,” new important paradigms are being searched for. Paradigms which will help us to discover, understand and accept the values on which it will be possible to build the unity between churches, cultures and nations. It is good that Fr. Józef Budniak resorted to one of the most important paradigms in the widely understood process of reconciliation. He emphasized it again and pointed to the values which can serve the integration of churches, cultures and nations of Europe. Who else but the Brothers from Salonica represented the beginnings of the Slavic Christian thought: theological, philosophical and mystical. In their missionary work they skilfully combined the unity of faith with the respect for cultural identity of nations, in the spirit of respect for every single human being. Saints Cyril and Methodius, Apostles of the Slavs, the architects of the Church, especially in the region of Moravia, showed by the means of their activities and apostolic enthusiasm that it is possible to create and maintain the identity of national cultures together with their spiritual wealth and uniqueness in the Chris-



tian community, in the spirit of respect and peace. Their missionary activity is an example of Christian receptiveness and Christian universalism. This activity fed two trends: the western one — through allegiance to the Holy See that gave them its acceptance for their mission, and the eastern one — with the Church of Constantinople, which was their origin.

The work of Cyril and Methodius has a timeless theological, cultural and ecumenical value. It also constitutes a unique paradigm for the process of reconciliation of churches, cultures, countries and nations. Velehrad in turn has become an important European centre of Christian thought, which influences the religious life revival and the integration processes in the religious and socio-political sense. In His speeches, John Paul II often emphasized that for its proper functioning, Europe must breathe with two lungs: eastern and western. Fr. Budniak likes to add that between these lungs there is a heart, and the heart is Velehrad.

The Cyrillo-Methodian tradition is an important religious, cultural and social heritage in Europe, concerning the Slavic nations in particular. It is worth to discover it again and again and present its timeless value. Therefore, Prof. Józef Budniak wins recognition for his scientific work in which he explores the essential elements of this tradition and shows how many positive aspects it brought and can still bring into the social life of churches, countries and nations. There is no doubt that the study he presented is highly original and creative. Starting with the title and the subtitle which define the problem of the dissertation, then through its structure, it has to be stated that all the elements are not only constructed properly, but also clarify precisely the undertaken issue. This, of course, proves what a mature scholar the author is and how perfect his academic skills are. He proved himself to be a great specialist in this field. From the title page of the book we learn that the publisher's referee was the best expert in the Cyrillo-Methodian tradition in Poland, Fr. Leonard Górka, PhD, a professor at the Catholic University of Lublin. It means that before the book was published, its content was consulted with the best experts on this issue, which gives the author credit for his scholarly wisdom, prudence and should turn the readers' attention to his work. He wanted his book to have an objective formal value as well as factual value.

What we got is a simply exemplary study which has been Fr. Budniak's coping stone of his academic career. To sum up, J. Budniak's book is the result of persistent work and conscientious reflection. Even without explicit verbal statements, the work is an excellent tool serving the ecumenical work of rapprochement between Christians, nations and cultures. The reconciliation process is simply impossible when there is no understanding of distinct values and sensitivity among believers. This is the very message of Fr. J. Budniak's work. The work of the theologian from

Cieszyn who is really sensitive to the problems of the Polish-Moravian frontier, is in my opinion, a pioneering work in the Polish language. This publication is an important step in further research concerning the Cyrillo-Methodian tradition.

*Zygryd Glaeser*

*Mężczyznę i niewiastę stworzył ich*  
*Afirmacja osoby ludzkiej odpowiedzi nauk teologicznych na*  
*ideologiczną uzurpację genderyzmu (He Created Them Male*  
*and Female. Human Being Affirmation as an Answer*  
*of Theological Teachings to the Usurpation*  
*of the Gender Ideology)*

Editor A. Pastwa. „*Studia Teologiczne i Humanistyczne*”  
2012, vol. 2/3, 191 pp.

The surrounding reality, defined by many as the reality of pluralistic worldview, is reflected, among other things, in glorifying human individualism and subjectivism. One form of manifestation of those ideas is the *gender* ideology. In this context, what seems especially interesting and at the same time extremely useful, from the point of view of the Catholic Church doctrine, is taking up a topic of *gender* ideology in the issue of *Studia Teologiczne i Humanistyczne* (Theology and Humanities Studies). There are as many as twelve articles in the afore-mentioned issue.

In the first study, entitled “Płaszczyzny konfrontacji antropologii teologicznej z ideą gender” M. Machinek concentrates on a matter fundamental for contemporary Christian anthropology, which is the problem of discrepancy between the Christian outlook on human sexuality and the *gender* doctrine. Already at the beginning of his considerations, the author pointed to the fact that the latter trend offers the world a completely different anthropology, culture and politics. According to M. Machinek, this significant *novelty* originates from the fundamental assumption of this ideology stressing the value of cultural sex. Juxtaposing Christian vision of sexuality with the concept disseminated by *gender* ideology, M. Machinek refers to G. Falkovitz’s standpoint setting

it against the *gender* ideology vision elaborated by J. Butler. He demonstrated a number of shortcomings in J. Butler's approach. The said defects are the following: negation of generative sexual diversity, trivialization of human body, as well as negation of dualist anthropology. Having such assumptions at hand, M. Machinek compared the premises of the Christian theological anthropology with the ideas of *gender* ideology in three areas concerning the vision of human beings, ethics and society, as well as politics. Concluding his ruminations, the author proves a complete separateness of the *gender* doctrine from the assumptions of the Christian anthropology.

In the second article, "Ecce homo — Ku antropologii teocentrycznej," J. Szymik, opposing *gender* ideology, demonstrates the anthropological principles developed by popes John Paul II and Benedict XVI. Referring to those outstanding theologians' contemplations of Man and his fate, he presents a vision of the Man based on Christocentrally-oriented anthropology. According to his opinion, such Christology is "the foundation and constituent of correct anthropology." Based on such an assumption, he acknowledges atheistic humanism to be incorrect. Summarizing his exposition of Christian teaching, he emphasizes the fact that in the period of crisis only the Christocentrally-oriented anthropology is capable of protecting the Man as a integral being.

Krzysztof Wieczorek in his article "Między agorą a wiecznikiem. Granice negocjowalności prawdy" approached the subject, defined in the title of the periodical, from a different angle. In his investigation, the author looks for the origin of *gender* ideology in the doctrine of the revolutionary lifestyle changes of the 1960s and 1970s. He believes that their immediate results within the area of anthropology and culture are: loss of Man's ability to accept his own sexuality, increased sense of threat, devaluation of natural axiological environment, truth relativization process and human freedom absolutization as well as the idea of unrestricted plasticity of human nature. According to K. Wieczorek, a reflection upon this phenomenon should not be restricted only to increasing the wave of criticism. Looking for an effective antidote against this phenomenon, he inclines towards a thesis which perceives opting for truth to be the correct choice. By opting for truth, he means practicing faith and testifying to Christian truth.

The subject T. Gałkowski is interested in the next study was the problem of the image of the human being and law according to the *gender* theory. Reflecting upon thus defined subject, he put under investigation the doctrine of various trends of *gender* ideology, ranging from the *post-gender* theory, through *trans-gender* and *multi-gender theories* finishing with the *gender queer* theory. Analysing the doctrinal premises of each of

those particular theories, he demonstrated that the listed trends of *gender* ideology head towards radical changes both in the sphere of social relations and within the area of culture as well. According to the author, the gender theories present in contemporary civilization push us towards an ultimate definition of human nature, regardless of the natural sexuality. Advocates of *gender* ideology believe that new legislative processes, disregarding socio-cultural circumstances, are to contribute, to a large extent, to creating a new reality.

In the next article titled “Trzy fale feminizmu” A. Nogal gives his attention to the problem of feminist movement’s evolution. Reflecting on this phenomenon, she demonstrates that three stages of feminism transformation can be distinguished, stages which she refers to as the waves. Within this context, she points out: emancipation feminism, socio-economic feminism, as well as contemporary feminism expressed, on the one hand, in *gender* feminism, and on the other hand, in difference feminism. Demonstrating the evolution of feminist movement’s ideas, the author does not opt for *gender* ideology, but she stresses the value of difference feminism proving its positive approach towards human sexuality and women’s experience. According to her opinion, suggestions put forward by representatives of this trend to a large extent widen the horizon of public discourse adding feminine aspect to it.

We encounter a phenomenological approach to human sexuality in W. Wójcik’s article entitled “Seksualność a płeć. Wychowanie do pełni człowieczeństwa.” According to the author, an in-depth comprehension of human sexuality is not possible without approaching this phenomenon from an external perspective of philosophizing. Already in the Introduction to his ruminations, W. Wójcik proves that from a genetic point of view the source of the demonstrated train of thought is the vision of the Man developed by Karol Wojtyła. He characterized human sex in his discourse as “the most basic characteristic of human existence within the scope of fertility, humanization of the world and being free — through building and executing unity.” The author believes that upon reflecting on human sexuality three fundamental fragmentary criteria, allowing for its definition, can be distinguished. Among those he lists: a biological criterion, socio-cultural criterion, inner feeling of sexual affiliation, sexual preferences, as well as recognition of sexual desires. However, W. Wójcik regards such listing as insufficient. Therefore, he opts for introducing an additional criterion, which is a spiritual one. Having such assumptions at hand, he proves that human degradation is a consequence of reducing human sexuality strictly to the biological or cultural sphere. He believes that such forms of reductionism as naturalism or connected to *gender* ideology lead to serious disturbance in the realization of humanity.

Hence, concluding his considerations, he emphasizes that only marriage is a proper environment allowing people to reach complete humanity.

In his article entitled “Kobiecość w kontekście męskiej idealizacji i anty-kobiecej cywilizacji. Spór o tożsamość kobiety w antropologiach filozoficznych i religijnych” M. Rembierz reflects upon the phenomenon of femininity from the anthropological point of view. He begins his considerations by clarifying the fact that asexual world does not exist. Radically repudiating anthropological standpoints aiming at obliterating axiological disparity occurring between a male and a female, he bases his reflections on views of such outstanding philosophers as M. Scheler, J. Tischner, P. Evdokimov, J. Ortega y Gasset, E. Levinas and K. Wojtyła (John Paul II). According to M. Rembierz, the opinions of those philosophers and theologians on the issue of the virtue of a woman are complementary; for a common keystone of those standpoints is a principled premise saying that perceiving a woman not only in a close relationship with a man, but also her relationship to the world. The author of the study is aware of the fact that such a vision of a woman based on such anthropological assumptions is flatly defied by the representatives of radical feminist movements. Nevertheless, according to M. Rembierz, its presentation is crucial for a constructive dialogue with that environment.

In the next study entitled “Ojcostwo jako postawa i zobowiązanie moralne,” M. Wojewoda concentrates on the issue of fatherhood crisis, taken into consideration from both the cultural and ethical points of view. According to the author, it manifests itself in: the crisis of the idea of adulthood, negation of the idea of imitation, as well as in the negation of perceiving fatherhood as a moral assignment and life vocation.

The last three articles published in the presented issue of *Studia Teologiczne i Humanistyczne* are of legal character, that is they concern canon law. Those were devoted to the issue of marriage.

The first of them is entitled “‘Już nie są dwoje, lecz stają się jednością’”. Paradygmat antropologiczny wyznacznikiem prawnokanonicznego ujęcia natury węzła małżeńskiego.” The author of the article, A. Pastwa, refers here to a pertinent diagnosis of the surrounding environment, permeated with relativism and subjectivity, expressed by John Paul II in allocutions to the Roman Rota from 1999 to 2002, and particularly in the Letter to Families *Gratissimam Sane* (1994). According to A. Pastwa, when reflecting upon marriage, we cannot ignore the metaphysical dimension of the Man and marriage bond. Flatly opposing *gender* ideology, he proved that marriage is a primary reality towards which the Man is naturally inclined. He proved, in his considerations that the canon law marriage bond results from and remains within a close relation to its natural anthropological dimension.

On the other hand, E. Szczot in the article entitled “Równość męża i żony w prawie kanonicznym” synthetically presented the outlook of the Catholic Church, from the biblical times to the 1983 Code of Canon Law, on the subject matter defined in the title. She substantiated the fact that the Church discipline contained both in the post-ecumenical council files and the codification of 1983, emphasizes in particular the equality of husband and wife in marriage, simultaneously stressing the complementarity of spouses. According to the author, such an approach of the Church towards marriage is contrary to the sex equality policy supported by European states and related to the idea of reconciling occupational and family roles of men and women.

In the last study “Przymierze małżeńskie a ideologia *gender*: kontekst praktyki kanonicznej,” L. Świto proved what influence the *gender* theories can have on marriage life and its breakup, and as a consequence on canon law nullity of a marriage. In his ruminations, he demonstrated the fact that in such instances marriage annulment cases can be held based on the following legal grounds: partial simulation, deceitful misleading, serious lack of understanding of the essential rights and duties in marriage, incapacity to assume essential marriage duties due to psychological causes related to disorders of sexual identification and sexual incapacity.

In the presented studies, representatives of various disciplines of humanities in a multifaceted way subjected the assumption of *gender* ideology to analysis in a comprehensive way and proved that those do not correspond with the fundamentals of Christian anthropology. The message embedded in the presented issue of *Studia Teologiczne i Humanistyczne* clearly suggests that despite such a diverse approach to the Man, taking up discussion with the representatives of the *gender* idea is not only possible but also crucial for the well-being of the Man and the society.

Ginter Dzierżon





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