Ecumeny and Law

Vol. 2

Sovereign Family

Wydawnictwo Uniwersytetu Śląskiego · Katowice 2014

The publication is also available online at:

Baza Czasopism Humanistycznych i Społecznych
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The Value-Oriented Meaning of the Family and Its Contemporary Transformations

Keywords: family, family values, family transformations, crisis of values, crisis of family

Values as a theme of sociological reflections

Man creates values, and values contribute to the creation of a human being; that is, they shape human personality, attitudes, aspirations in life, as well as behavioural patters which are either preferred or actualised in practices of private and public life. One may therefore say, as Maria Gołaszewska aptly puts it, that "all undertaken decisions, life pursuits, interpersonal conflicts, assume a necessity to be in favour of certain values, and remaining passive in this particular aspect of human existence is tantamount to one's resignation from aspirations, to the rejection of one's manhood."[1] There is no social life, understood both in its individual and collective dimensions, beyond the sphere of axiology. We are always entangled in the world of values.

Values belong to the order of culture. Culture, in turn, can be defined as a typically human manner of existence. Thusly understood, culture is very frequently associated with a looking-glass in which individuals may

[1] M. Gołaszewska: "Internalizacja wartości w sytuacji estetycznej. Szkic z pogranicza estetyki i antropologii filozoficznej." In: *Wartości a sposób życia*. Ed. M. Michalik. Wrocław 1979, p. 163. Translation mine.

display their images by means of reflecting on their own constructions: literature, music, folkways, religious beliefs, condition of families, as well as attitudes referring to children and elderly persons, strong and weak people, one's friends and individuals of similar interests, and, finally, to the authorities and political engagement as such. Andrzej Tyszka expresses a similar view when he appropriately observes that "culture is a cult of values."[2] In this sense, culture is a framework which is depended upon each time when members of a given community and parties to a given societal interaction are in a position to draw their interpretations from the inter-subjectively shared and traditionally safeguarded pool of knowledge (values) in order to arrive at *modus vivendi* and, consequently, aim to realize their particular objectives on that very basis.[3]

Following in the footsteps of reflections typical of the classical sociology in Poland, one may refer to a definition that was verbalized by Jan Szczepański a number of years ago: "a value is any material or ideal object, any idea or institution, any imagined or tangible object which individuals — or social groupings — are willing to respect, to ascribe importance to it, and to treat achieving it in terms of a compulsion."[4] When elaborating upon Szczepański's definition, one is tempted to say that an individual, who is in possession of those valuable objects, does not want to be deprived of them at any cost, and prizes these items as his/her own possessions, as something obvious and natural; that is, as these parts of one's social personality and cultural identity that do not evoke any doubts. In this particular sense, Janusz Mariański is also right when he concludes his exposition of sociological theories of values with the following passage: "[…] sociology most frequently tends to understand values in terms of items that evoke positive emotions, concentrate human desires and aspirations, function as important or desirable objects in human life, comprise the most desired goals to be attained, or, finally, constitute treasured objects of one's daily pursuits."[5]

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[2] A. Tyszka: *Kultura jest kultem wartości*. Komorów 1999.

[3] See J. Habermas: *The Theory of Communicative Action*, Vol. 2: *Lifeworld and System: A Critique of Functionalist Reason*. Boston 1985.

[4] J. Szczepański: *Elementarne pojęcia socjologii*. Warszawa 1970, pp. 97—98. Translation mine.

[5] J. Mariański: *Wprowadzenie do socjologii moralności*. Lublin 1989, p. 165. Translation mine.

The axiological crisis and directions of axiological transformations

Studies concerning axiological systems and their transformations may be considered to constitute a comfortable vantage point for investigating the courses of changes affecting societies and cultures. In this context, one may postulate that the condition of Polish society can be characterized as facing a period of important cultural transformations, an age marked by a specific "turning point" in history. The task of discarding the manacles of collectivist mentality — as characterized by submissive attitudes towards the state, holding on to the feeling of slave innocence, and distrust expressed in interpersonal relationships — is neither easy nor fast, especially when one recognizes that these attitudes were forged during the times of socialism. At the very same time, watching TV news seems sufficient enough to notice numerous and terrifying examples of axiological crisis.

The condition of contemporary, inherently globalized society may be defined in terms of "axiological warpedness." The term, needless to say, is a metaphor standing for changeability, instability, dynamics, dispersion, or — in some cases — for the act of chasing something away, especially when it is done in brutal, ruthless, fierce, or irrecoverable ways.

The feeling of stability with reference to social order is being undermined by ongoing processes of diversification (both in terms of cultural contents and distances), homogenization of mass culture, the rise of new relationships among different types of values, and the intensified differentiation among axiological systems and hierarchies. Concurrently, the critical awareness that norms, values, symbols, behavioural patterns have relative characters is, as Peter L. Berger teaches us, no longer limited to elitist groups of intellectuals and, consequently, becomes a socially disseminated fact of culture.[6] At the same time, one observes that tendencies of subjectivist, utilitarian, or relativist descents are being disseminated, which is not only being justified by various pragmatic considerations, but also recognized as theoretically grounded foundations that call for a widespread social acclaim.

When the all-encompassing sphere of morality is taken into account, axiological crisis is tantamount to, on the one hand, becoming liberated from the immutability and durability of values and, on the other hand, to the individualization and, what is even more significant, the subjectivization of values. In this particular context, cultural relativism

[6] P.L. Berger: *Invitation to Sociology. A Humanistic Perspective*. New York 1963.

is becoming an autotelic value. The disappearance of commonly shared aspirations results in the erosion of commonly understood and universally accepted symbolic repertoires which otherwise may serve as bases for interpersonal relationships. In this context, culture comprises an array of behaviours ranging from "the internal unification of values by means of reciprocal understanding and common aspirations" to "states of dispersion and conflict."[7] When conceived as a ramification of the disappearance of community in terms of norms and values, as well as the decrease in commonly understood and shared symbolic devices, the latter process undermines mechanisms responsible for the formation of collective identities and paves the way for the aforementioned condition of "axiological warpedness."

Accelerated social and cultural changes do not take place in a univocal, unambiguous manner. On the one hand, one may observe robust process of tradition and institutionalization which result in the reinforcement of traditional social structures, the attenuation of social change's pace, and new generations' adaptation to already existing values, norms and behavioural patterns. However, on the other hand, one may also notice accelerating processes of individualization giving rise to the societal circulation of provisional roles and social statuses. This is also evident as a threat of anomie designating the in-depth disintegration of values, norms and social ties. Yet, at the same time, the very same process may be positively associated with chances to shape one's life project in an autonomous, self-reliant and responsible way (self-directedness).[8]

Contemporary transformations in culture are very often characterized by their historically unparalleled pace of change and the omnidirectional character of their axiological references and symbolic interpretations. These features can be subsumed under the umbrella term of "warpedness." Liberty, Equality and Fraternity, conceived of as the leading symbolic figures of modernity, are now being dethroned by the features of multiplicity, latitude and tolerance which are put forward as values orchestrating the direction of contemporary changes taking place in culture.[9] Knowledge is fragile, and the ethos, which is being tailored specifically to changeable socio-cultural contexts, loses the certitude of cognitive, axiological and religious criteria. Changeability seems to constitute the sole long-lasting value. Likewise, the individualization of human choices, selfishness of motivations, and subjectivization of moral judgments may be

[7] P. Rybicki: *Struktura społecznego świata*. Warszawa 1979, p. 134. Translation mine.

[8] J. Mariański: "Moralność katolików w procesie przemian." In: *Religia. Kościół. Społeczeństwo. Wyniki badań socjologicznych w 12 diecezjach 1996-2006*. Eds. W. Zdaniewicz, S.H. Zaręba. Warszawa 2006, pp. 47—48.

[9] Z. Bauman: *Modernity and Ambivalence*. Cambridge 1993.

all interpreted as basic difficulties restraining individuals from bending over backwards to build a lasting community of values and persons, the shared construction which is based upon attitudes of engagement, responsibility and personal sacrifice. This is, in the main, the reason for the crisis of the natural family in the contemporary culture.

One is in a position to distinguish the following aspects of axiological transformations taking place within contemporary cultures:

Social differentiation which postulates that variegated spheres of social life (e.g. family, economy, work, culture, science, politics, religion, etc.) are becoming independent of one another in such a way that they keep on relating with one another, but remain autonomous in normative and behavioural senses. In this way, families are made independent or — as some are willing to put it — liberated from the religion-related spheres of social life and pious norms and values that exert influences upon the shape of family life. Moreover, the aforementioned dissonance taking place between religion and human activities in various spheres of the quotidian matters is best visible (and easily verifiable) in the context of morality attributed to society and everyday social life.[10]

Deinstitutionalization stressing that the institutional world is perceived as being artificial, fossilized, impersonal, or inadequate to challenges of the contemporary era. As a consequence, one may observe the intensification of claims made with respect to the autonomous character of social institutions which, in turn, are conceived as being subjected to agential choices taken with reference to multidirectional changes in individuals' life projects. When conceived as a legal institution, the family (or marriage) is being subjected to processes of delegitimation. Traditional families are, consequently, endangered by the rise of alternative forms which — in spite of being handicapped by weak, ill-defined and labile structuration — may still undermine the privileged status of natural families in culture and practices of day-to-day life.

Cultural pluralism which is perceived as a basic rule rendering order and organization to contemporary societies. When seen as a dominant value, pluralism in culture is treated — together with changeability referred to as a purely autotelic value — in terms of modernity's main indicator. The axiological multiplicity gains the upper hand over the sphere of universal values that are endowed with stable and inter-generational character. Pluralism forces us to choose from a huge pool of values that regulate diversified spheres or emotional (family-related) existence. Since the con-

[10] "Blaski i cienie polskiej religijności. Z ks. prof. dr. Władysławem Piwowarskim rozmawia Józef Wołkowski." In: *Oblicza katolicyzmu w Polsce*. Ed. J. Wołkowski. Warszawa 1984, p. 33.

temporary cultural repertoire is not willing to display life projects favouring traditional families and marriages, undertaken choices are very often unsupportive, or even hostile, to the family as such. "The sign of our times is the radical pluralism, the one which remains tolerant towards contradictory norms and values and, consequently, leaves one with an impression that everything is acceptable."[11]

Structural individualism paves the way for an incoming wave of radical privatization which affects individuals' decisions and prepares a foreground for uncertainty, ambivalence and risk, chaos and contingency. Rather than being inherited, existential patterns are constructed "under the compulsion" of taking decisions without a facilitation of existential certitude arising from having firm legitimating values at one's disposal. Making choices is no longer seen as a chance, but rather as the "heretical imperative," to use Peter L. Berger's words.[12] The imperative, normatively speaking, is being reinforced by "the rule of alternation" conceived as a cultural pattern postulating the means and conditions to be applied in order to move across a wide range of different (very frequently contradictory) axiological systems, or different personality types.[13] The imperative to take choices single-handedly is represented as the structurally forced individualization with reference to the family understood both as a value and a life project. "As opposed to being brought up within the boundaries of a given tradition which is endowed with its self-evident importance and rules of functionality, one is constantly forced to choose from a plethora of options or preferences. When the 'marketplace of *Weltanschauung*' is entered, everyone is in a position to spot things that match his/her current needs or desires."[14] This is especially evident when one is motivated by a (post)modern lifetime strategy suggesting how to avoid the emotional mortgage by dodging everything that seems settled "once and for all."

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[11] J. Mariański: *Młodzież między tradycją a ponowoczesnością*. Lublin 1995, p. 31. Translation mine.

[12] P.L. Berger: *Der Zwang zur Haresie. Religion und pluralistichen Gesellschaft*. Frankfurt am Main 1980, p. 30.

[13] P.L. Berger: *Invitation to Sociology…*, pp. 25—28.

[14] J. Mariański: *Religijność społeczeństwa polskiego w perspektywie europejskiej. Próba syntezy socjologicznej*. Kraków 2004, p. 61. Translation mine.

Family as a value, and family-related values

The family, as far as the European tradition is concerned, has been customarily conceptualized as a community, the salient form of social life, a primary social group, and a centre for giving life and providing its members with a culture of life that exerts a decisive influence upon the formation of an individual's social personality. In this particular case, socially expected paths of personal development are defined by means of tradition, folkways and norms of religion. Needless to say, the family — together with all kinds of family-related social actions, its stability and religion-based aspects — takes part in the construction of a natural and taken-for-granted social world, the primary cultural reality that comes to create the basic "system of symbolic reference," both in cases where individuals have had experiences with living in families, as well as in cases where they have been contesting it. Diverse biographies are justified by the consecration of religion-related social roles, individual personality traits, or aberrancy of social situations. At this point, it has to be mentioned that attempts to avoid guidelines of family morality, even if these actions assumed statistically significant forms, did not used to challenge the quintessential characteristics of the family. This is how one can define the significance of the traditional model of family in terms of a value.

Pro-family attitudes and orientation at family-related considerations are endowed with significant consequences as far as the construction of individual personality is concerned. The family, as the Polish sociological output teaches us, has been seen as a form of extended personality, or a reference group in the context of which an individual could construct his/her biography. The historical experiences of Polish nation (i.e. the lack of sovereign political institutions in the 19th century and at the beginning of 20th century), vibrant traditions of national culture, as well as the harsh realities of existence in the totalitarian regime aiming to subordinate individuals to the state paved the way for the robust status of family values within the historically well-entrenched cultural hierarchies. As opposed to the communist state's official policymaking, the family was socially considered as a "secure haven," a "cultural niche," or a "stronghold" keeping the intimacy of life and freedom of thought intact. It was perceived as a functional alternative with reference to the enslaved world of official institutions and the reality of superficial actions taking place on the arena of public life. Having been born out of the partitions, the concept of family as a "stronghold" came back to the public discourse after the Second World War due to the Catholic Church's undertakings

whose primary objective was to protect Polish culture against the organized and systematic secularization of statist character.[15]

When the situation of "axiological warpedness" is observed, the traditional family is shedding its privileged status in structures of social world. It is observed as the delegitimization of its meaningfulness as a primary group, social institution, and an environment in which one's social personality matures. Moreover, a belief is being disseminated according to which the traditionally conceived family is no longer viewed as a salient social institution. On the contrary, it is frequently seen as something dispensable. Hence, traditional frameworks rendering order to interpersonal relationships have ceased to exist, and nowadays individuals face the necessity to choose from a plethora of possibilities aiming to exert changes in these relations.[16] We all live in the world of contradictory interests connected to the family, work, love, and finally, to an individual's freedom to achieve goals single-handedly. The postulate is highlighted by the process of subsuming European legal regulations within the horizon of cultural changes encompassing the increases in cohabitation, number of homosexual relationships with adoption rights, various forms of monoparental families, births out of wedlock, and number of divorces. The enumerated phenomena clearly emphasise the crisis of the traditional family, especially when one considers the fact that non-orthodox family models are not only legally sectioned, but also openly accepted.[17]

In the light of conceptions postulated by western demographers, the traditional family will be disappearing, and forms of the nuclear family will be converted into fragile cohabitation-like relationships just to reach the stage of a "hybrid"; that is, a free relationship in which partners will be in a position to live separately and remain strongly differentiated. This specific type of relationship is known as LAT: "Living Apart Together."[18] Furthermore, the crystallization of cultural patterns postulates that the

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[15] See D. Olszewski: "Kulturowe zakorzenienie myśli religijnej i teologicznej na przykładzie sytuacji panującej na ziemiach polskich w XIX wieku." *Studia Theologica Varsaviensia* 18 (1980), p. 134.

[16] Cf. A. Giddens: *Sociology*. Cambridge 2009. See also U. Beck, E. Beck-Gernsheim: *The Normal Chaos of Love*. Cambridge 1995.

[17] A. Kwak: *Rodzina w dobie przemian. Małżeństwo i kohabitacja*. Warszawa 2005, p. 54.

[18] K. Slany: *Alternatywne formy życia małżeńskiego w ponowoczesnym świecie*. Kraków 2002; S. Wierzchosławski: "Rodzina w okresie transformacji demograficznej i społeczno-ekonomicznej." In: *Rodzina w zmieniającym się społeczeństwie*. Red. P. Kryczka. Lublin 1997, p. 78; H.-J. Hoffman-Nowotny: "The Future of the Family." In: *European Population Conference 1987: Issues and Prospects — Plenaries*. Helsinki 1987.

marriage ceases to constitute a condition for socially acceptable sexual intercourses, and living together in a shared household is no longer a clear-cut criterion for defining families.

The family tends to be more appreciated by those individuals who have already started their families and feel responsible for them.[19] However, when the European perspective is taken into account, the last decades have shown a decrease in the number of marriages. Hence, one may observe that "the willingness to enter into marriages," as demographers put it, is decreasing throughout the Europe, though with certain notable exceptions (e.g. Poland). Concurrently, individuals who wish to legalize their marriages decide to do it later; that is, when they are in their 30s (approx.). Although family is still considered as one of the most important values, the youth decide to start their own families later due to the initial willingness to secure their social position and economic status. While having been observed for a couple of decades in well-developed, western countries, the tendency could be attributed to the deferred readiness to start professional careers, as well as the corporate labour discipline enforcing occupational mobility and temporal availability. Furthermore, demographers observe similarities between models of career development that characterize both sexes, which, as a result, lead to the increase in occupational competition between males and females. As a consequence, a tendency to remain single is becoming more visible.

The aforementioned direction of social processes seems to be acknowledged by statistical data, detailed sociological research, as well as systematic, longitudinal studies (e.g. the sociological survey-based studies conducted by the Public Opinion Research Center — CBOS). The studies show that the majority of Poles (63%) are willing to accept decisions aiming to defer marriage, which is linked to the acceptance of cohabitation. "The social understanding of the family is becoming more comprehensive. In the last couple of years respondents have been more willing to associate family with a cohabitating couple either raising a child (increase from 71% up to 78%) or not having their own children (increase from 26% to 33%). The same applies to the number of respondents who associate family with a couple of homosexuals rising a child (increase from 9% to 23%) and a couple of homosexuals having a childless, informal relationship (increase from 6% to 14%)."[20]

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[19] D. Wadowski: *Podstawy i charakter więzi społecznych w regionie środkowo-wschodniej Polski*. Lublin 2014, p. 148.

[20] "The family, when conceived of as a basic social structure, is subjected to diversified transformations in the period of intensified changes. Preferred and realized family models are being transformed. The same applies to relationships within the family and the social understating of the family. The reasons are manifold: increase in num-

As regards male respondents, marriage-related anxieties are a consequence of one's preferred lifestyle which is characterized by a tendency to avoid long-term emotional commitments (45%), economic difficulties in providing for one's family (33%), or housing difficulties (29%). The same amount of male respondents (29%) indicate difficulties with finding a proper partner. One in four respondents (approx.) is willing to justify their opinions by a belief that men, as a rule, prefer informal relationships to marriages. A similar group of male respondents are afraid of a potentially toxic relationship or parental duties (24% of indications in both cases). One-fifth (19%) claim that their attitudes are motivated by an assumption that marriages interfere with professional careers. As much as 12% claim that they are demotivated by a general aversion to fatherhood.

Female respondents, in turn, are mostly afraid of unsuccessful marriage (41%). They are also more willing, as compared to male respondents, to indicate both problems with finding a proper partner and unfavourable housing situation (34% of indications in both cases). More than one-fourth refer to an unfavourable economic situation (28%), or being used to personal freedom and unrestricted lifestyle (27%). One-fifth (21%) accept informal relationships and, what is particularly interesting in this comparison, 15% of female respondents are distantiated from motherhood and parental duties, and as many as 11% emphasise anxiety associated with parental responsibilities.

It is symptomatic that a slightly bigger number of female respondents (15%) distance themselves from the role of a mother, than male respondents when the case of fatherhood is taken into account (12%). This statistics could be supplemented by conclusions drawn from studies conducted within the EVS (European Values System) framework which are concerned with the correlation taking place between having children and one's life satisfaction. As the studies show: "Poles' attitudes are similar to other Easter Europeans' attitudes in a way that Polish respondents claim that having children is a factor deteriorating life satisfaction, rather than elevating it. Furthermore, when both male and female respondents' viewpoints are compared, it may be observed that raising children cannot compensate for the lack of a partner. When perceived in the context of individuals remaining in informal relationships, the negative influence

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bers of divorces, separations, and monoparental families, tendencies to delay marriages and procreation, unwillingness to have children, increase in the number of one-person households, or dissemination of informal relationships, which is postulated by certain social groups. There is, however, one constant element in the social understanding of the family. No matter how diversified its meaning is, the family continues to be the primary value of everyday life and it is still endowed with a great significance for Poles." See *Meaning and Understanding of Family* (CBOS BS.33/2013).

of having children on life satisfaction is more experienced by males than females, which is also typical of Poland."[21]

Furthermore, the aforementioned studies show that more than a half of Poles (54%) emphasise their attachment to the institution of marriage; the same percentage of respondents are willing to support the formalization of cohabitation (it includes 15% who claim that it is imperative for cohabitees to formalize their relationships). On the other hand, 39% of respondents claim that marriage is a positive choice, but no one can be forced to it. The CBOS survey conducted in the same year (though not in the same month) indicates that family happiness has been indicated as the most important value for many years (82% of positive indications). The second value in the ranking is reserved for health which is chosen by 74% of respondents. What seems especially interesting is the fact that family happiness is most frequently indicated by well-educated respondents who relate it to the value of work, friendship, and having an interesting life.

From the perspective of the aforementioned studies, the percentage of respondents (37%) who claim that the marital status is less significant for people who love and trust each other is particularly interesting. Only few respondents (5%) are against the legalization of informal relationships or are indifferent to the issue (4%).

Poles are accustomed to canonical marriages. More than one-fourth of respondents (28%) are willing to accept the supremacy of concordat marriages; that is, an ecclesiastical ceremony which is automatically associated with secular consequences of legal character. Concurrently, a similar percentage of respondents (27%) claim that although getting married in a register office could be sufficient enough, one should complete the ceremony by organizing a church wedding. One in eleven (9%) claims that canonical marriages have no special significance, and one in three (33%) is indifferent to the problem. In some Polish cities, e.g. Warsaw and Wałbrzych, canonical marriages are taken more frequently than marriages in a registry office.

Poles are almost equally divided in terms of opinions concerning living without having a steady partner. Less than half of respondents (49%) reject the pattern, whereas two-fifths (44%) accept it. The majority of Poles (61%) are not willing to say that being a single person is more attractive than living in a marital union.[22]

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[21] J. Konieczna-Sałamatin: "Dzieci jako czynnik szczęścia rodzinnego. Polacy na tle Europejczyków ze Wschodu i z Zachodu." In: *Wartości i zmiany. Przemiany postaw Polaków w jednoczącej się Europie*. Ed. A. Jasińska-Kania. Warszawa 2013, p. 61. Translation mine.

[22] "Aktualne problemy i wydarzenia" (CBOS 31.1—6.2.2013). After: Polish Press Agency.

The number of marriages is decreasing, and the so-called "balance of marriages" is characterized by a negative tendency. The tendency took place for the first time in 1994, and back then it was caused by the rise in male mortality rate and the increasing number of divorces.[23] At this point, one may compare the following figures: 233.2 thousand of marriages in 1991, and 206.5 thousand in 2011.[24] The gap amounts to 26.7 thousand.[25] Beyond any doubt, the tendency is motivated by a number of reasons. As far as the Polish context is concerned, one may indicate economic difficulties and the insufficient number of available houses. Yet, the inclination is also discernible in societies that enjoy far better economic standings. One, therefore, is inclined to say that the problem is far more profound and it touches upon the most fundamental values comprising moral condition, human attitudes and these life orientations which mirror ideas characterizing contemporary culture.

The diminishing marriage rate is concomitant with the increase in the number of extramarital births, and the phenomenon of couples' cohabitation in marital and childbearing age. Countries with low marriage rates are simultaneously characterized by high rates of extramarital births. This is especially applicable to Iceland, Sweden, Denmark, Norway, and the former GDR (German Democratic Republic). The same applies to Poland, where the number of extramarital births has been systematically increasing since the mid-1980s. Furthermore, the tendency is related to the growth in the number of births given by women that belong to the youngest age cohort (15—19 years of age). The number of extramarital births increased from 16% in 2004 to 22% in 2012. The figures tend to be higher in urban districts (23.6%) than in countryside areas (18%).[26] When great urban districts are taken into consideration (the case of Łódź), the figure amounts to 30%, and in the district of Gryfice the relevant figure is as high as 50%.[27] The maximum number of extramarital births is noticed in the western Greater Poland (the Lubuskie Province), the borderline region of Lower Silesia, and the northwest part of Warmia and Masuria.[28]

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[23] The termination of marriages in Poland is mostly a result of spouses' death. Almost 80% of martial relationships are terminated by a spouse's death, predominately by a husband's death.

[24] A. Rajkiewicz: "Polskie małżeństwa i rodziny oraz gospodarstwa domowe w świetle statystyki." *Małżeństwo i rodzina* 2 (2004), pp. 11—14.

[25] *Mały Rocznik Statystyczny GUS*. Warszawa 2012.

[26] "Podstawowe informacje o rozwoju demograficznym Polski do roku 2012." In: *Rocznik Demograficzny 2012*. Warszawa: GUS, Departament Badań Demograficznych, 2013, p. 6. Available at: www.stat.gov.pl. Accessed 1.8.2013.

[27] P. Szukalski: *Urodzenia pozamałżeńskie w Polsce*. Łódź 2013.

[28] Z. Brzozowska: "Przestrzenne zróżnicowanie urodzeń pozamałżeńskich w Polsce w latach 2002—2010." *Studia Demograficzne* 2 (2011). Available at: www.sd.pan.pl. Accessed 1.8.2013.

The persistently small number of births has not been able to guarantee the linear interchangeability of generations for 20 years. The drop in the number of births has been noticed since 1989.[29] Concomitantly, long-term social forecasts (up to the year 2060) show a dramatic social situation in which for every 1,000 people reaching production age, there will be 670 pensioners.[30]

When approached from the axiological perspective, the directions of family-related transformations can be summarized by the two main tendencies:

1. The transformation leading from the family conceived as an institution, through the family as a community (*communio personarum*), to alternative forms of family and marriage.

2. The transformation from the great family, through the nuclear family, to the culture of single persons.

One may refer to numerous statistical breakdowns which describe the condition of contemporary families in a more or less detailed ways. Yet, these statistics merely display figures which camouflage transformations affecting culture and social mentality. Demographic crunch is, first and foremost, the crisis of values, the crisis of man considered as a value, and, finally, the crisis of family conceived of as a natural environment of upbringing.[31]

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[29] "Podstawowe informacje o rozwoju demograficznym…," p. 4.

[30] "A forecast issued by Social Insurance Institution postulates that if Polish women do not start to give birth to a bigger number of children, the population of Poland will decrease from 38.3 million to 30.56 million. It would be an equivalent to the provinces of Subcarpathia, Warmia-Masuria, Świętokrzyskie, Podlachian, Opole and Lubusz being depopulated. These regions are jointly inhabited by 8.1 million.

Base scenario: The Social Insurance Institution estimated the population of Poland with reference to a scenario depending on the number of lifeborn children. The base scenario postulates that the total fertility rate (TFR), which presently amounts to 1.3, will be slightly increasing. It will amount to 1.56 in 2060. Yet, even this scenario predicts that the Polish population will decrease from 38.3 million to 32.3 million.

Pessimistic scenario postulates, as previous years teach us, that the TFR will be oscillating around 1.4—1.2. What does it mean? It means that 20 percent of the Polish population will disappear.

Optimistic scenario states that with the TFR amounting to 1.9, the Polish population will decrease to 34.3 million.

Yet, the bad news are yet to come. It is sufficient to say that according to the Social Insurance Institution for every 1,000 employed people there are 270 pensioners. In 2060 the relevant number will increase to 670." See: http://wiadomosci.wp.pl/kat,1342,title,Polakow-bedzie-coraz-mniej-prognoza-spadku-ludnosci-o-8--mln,wid,15876335,wiadomosc.html?ticaid=111153. Accessed 7.8.2013.

[31] W. Świątkiewicz: "Rodzina jako wartość społeczna." In: *W trosce o rodzinę*. Ed. W. Świątkiewicz. Katowice 1994.

Apart from the decrease in tendencies to marry, the crisis of family as a traditional value is indicative of attempts to undermine its significance as a primary, long-lasting foundation of human existence. This is especially typical of subsuming families within the framework of labile rules characterizing the contemporary, "warped" world of values. Yet, one has to remember that the crisis of family is not tantamount to various crisis-related phenomena that have been taking place in families from time immemorial. Despite their propensity for raising reservations concerning social anxiety, family-related pathologies used to trigger relevant coping mechanism and, as a result, did not undermine the very sense of standing by the concept of family.

As far as the post-war history of Poland is concerned, pathological phenomena have nowadays become amplified by an entirely new problem, an obstacle to which the Polish society is helplessly unprepared. This refers to unemployment of long-lasting consequences, which affect both parents (or monoparental families) and exerts destructive influence with respect to traditionally reinforced patterns of fulfilling social roles, mutually held emotional references, and life aspirations.[32] The crisis of Polish families is intensified by the general pauperization, harsh social stratification, and the egoistically driven consumerism which disseminates lifestyle models that are both ruled by the visualization of social status's symbols[33] and powered by delusive advertising as well as pressures exerted by the public opinion. As a consequence, the stratification-related functions of Polish families are getting stronger. Sociological studies, as well as various press articles, seem to point to the tendency showing that economic functions of families — related mostly to securing their members' material needs — are being overemphasised. This is accomplished at the expense of reducing the significance of functions concerned with education, upbringing, acculturation, and the reinforcement of social ties as manifested by building emotional bonds, facilitating personal development, and the actualization of the family's common good.[34]

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[32] L. Dyczewski: *Rodzina. Państwo. Społeczeństwo*. Lublin 1994; J. Mariański: *Etos pracy bezrobotnych*. Lublin 1994; Z. Tyszka: "Rodziny wielkomiejskich bezrobotnych ze średnim i wyższym wykształceniem." *Roczniki Socjologii Rodziny* (1993); Pełnomocnik Rządu ds. Rodziny i Kobiet: *Raport o sytuacji polskich rodzin*. Warszawa 1995; A. Kurzynowski (ed.): *Rodzina w okresie transformacji systemowej*. Warszawa 1995.

[33] H. Bojar: "Rodzina i życie rodzinne." In: *Co nam zostało z tych lat. Społeczeństwo polskie u progu zmiany systemowej*. Ed. M. Marody. London 1991.

[34] One may refer to a sociological survey conducted in 1995 in the Katowice Province in which respondents were asked to indicate the most important functions of the family. "Safeguarding material needs" enjoyed the first place in the ranking of provided answers (71%). In turn, the role of families in leisure and relaxation was indicated least frequently (15.6%). The same applies to "procreation and educational functions" (25%).

Magazines for teenagers contain articles in which young people criticize their parents for shedding the original sense of family which is lost in everyday pursuits focused upon a need for elevating one's economic status or realizing professional success at the expense of household presence. A home is merely becoming a house filled with (or packed with) tenants whose primary objective is concerned with the frantic search for their individual objectives. In this context, family members' co-presence merely means dwelling next to each other and living by the illusion of actuality of values that have already been deferred. This is inevitably related to individualization and the separation of a household's space, which paves the way for the attenuation of emotional ties within the family.

Sociological researches instance a plethora of statements in which parents complain about time deficiency, especially with respect to "commonly shared life" understood in cultural, religious or social ways.[35] Likewise, parents are seldom in a position to provide affirmative answers to questions related to their children's interests. Such attitudes are fostered by contemporary patterns of participation in mass media culture, especially the ones concerned with television or the Internet. At the same time, one observes the increase in time span devoted to work. Needless to say, diverse forms of earning extra money may result in the distortion of borders between professional activities and family existence, between private and public temporal spaces. The process disorganizes the structure of family time which was previously sanctioned by social and religious norms. In addition to that, the aforementioned tendency may exert significant changes concerning a household's spatial organization. In this particular context, the child is sometimes perceived as a kind of "means" facilitating the realization of one's unfulfilled plans and ambitions. At the same time, depositing one's aspirations in children is treated as a specific defensive mechanism carried from one generation to another.

Families are, first and foremost, expected to accept an individual's "self," which is not concomitant with the readiness to sacrifice oneself for the sake of other family members. When seen as a product of family existence, common good gives way to the power of selfishness and

51% claimed that families are, first and foremost, responsible for providing "sense of safety" for their members. 48% indicated "providing children with relevant education," 46% indicated the role of families in "safeguarding an atmosphere of love and friendship," and 40% were willing to say that the family should "take care of children and elderly people." See: "Monitoring społeczny województwa katowickiego." The research conducted by Pracownia Badań Społecznych for Voivodeship Office in Katowice.

[35] W. Świątkiewicz (ed.): *Wartości a style życia rodzin. Socjologiczne badania rodzin miejskich na Górnym Śląsku*. Katowice 1993.

egocentrism that demand acceptance and justification.[36] One may also indicate an asymmetry taking place within cultural patters regulating emotional processes. Family violence — which is presently an extensively covered topic of public debates — is one of the most extreme signs of the aforementioned inequalities. It strongly affects children's mentality which becomes characterized by a belief concerning the natural "right" of the older (the stronger) to exert domination across dimensions of social life. Needless to say, the belief is reproduced in adult life.

Some studies seem to suggest the problem of a culturally-defined generation gap which could be attributed to the fact that extraordinarily strong bond between grandparents and grandchildren is observed in the context of weaker ties taking place between parents and their own children.[37] Hence, one may observe that values legitimizing the significance of intergenerational ties are being swayed, which is also represented by attitudes towards the elderly persons who are handed over to social welfare institutions with unnerving easiness.[38]

Family as a value, and family-related values, still enjoy a relatively high acclaim in the contemporary Polish society. However, the acclaim is more related to attitudes and declared or preferred values, rather than lifestyles taking place in the sphere of realized and experienced values. The EVS (European Values System) studies on homogamy of marriages indicate that "marital homogamy is most frequently related to such spouses' characteristics as **religion**, ethnicity, nationality, place of residence, and to such indicators of social status as education and occupational position."[39] The studies are concluded by the following passage: "inhabitants of northwest Europe are more willing to value the community of religious beliefs, than one's social background or the fact of having similar political views. These respondents have probably spiritual community in their minds, which is easily subsumed within the post-materialist system of values."[40] At the same time, the region of northwest Europe is characterized by "the lowest number of marriages and, concurrently, the biggest numbers of divorces as well as people who are completely indifferent to marriage."[41]

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[36] E. Budzyńska: "Wychowanie prospołeczne w rodzinie." In: *W trosce o rodzinę…*

[37] M. Tyszkowa: "Jednostka a rodzina: interakcje, stosunki, rozwój." In: *Rodziny polskie u progu lat dziewięćdziesiątych*. Ed. Z. Tyszka. Poznań 1991.

[38] W. Świątkiewicz (ed.): *Więzi międzypokoleniowe w rodzinie i w kulturze*. Katowice 2012.

[39] G. Kacprowicz: "Małżeństwo jako obszar przemian zachowań i wartości Europejczyków." In: *Wartości i zmiany. Przemiany postaw Polaków w jednoczącej się Europie*. Warszawa 2013, p. 48. Translation and emphasis mine.

[40] G. Kacprowicz: "Małżeństwo jako obszar przemian zachowań…," p. 48.

[41] Ibidem, p. 37.

When analysed from the perspective of studies conducted by the Institute of Catholic Church Statistics, one may see that the last two decades witnessed a new direction of changes affecting both Polish society's mentality, as well as declared value orientations. These transformations are represented by attitudes towards having children and family. The significance of these beliefs is currently exposed to the risk of breakdown, which, in turn, results in visible scuffs on the traditional Polish culture. These new changes are represented mostly by young, well-educated professionals who live in big urban districts.[42] These individuals are responsible for forging new value orientations that will indicate a fate of Polish culture in the future. As Mariański puts it: "adolescents' and adults' pro-family awareness is marked by an eclectic combination of the Catholic and secular value systems."[43]

Many contemporary countries are based more on individuals than families. It is postulated that individuals are more mobile, adaptive and responsive to new behavioural patterns. They can be also manipulated in a much more convenient way. Under such circumstances, the status of families becomes diminished, and their problems are perceived as private dilemmas which the state does not have to take care of. Nowadays, the aforementioned model of family transforms very dynamically in Poland. Adolescents are mostly interested in becoming independent, but not for the sake of having their own families. Being independent, self-reliant, having a regular economic status are first-rate needs that, when fulfilled, are hard to be rejected freely. As a result, alternative forms of marriage and family are becoming more popular. Families, in turn, are subsumed within the sphere of political economy in which they are subjected to tensions implicit in it. Socialization, among other objectives, aims "to prepare individuals to exist in a standardized, fragmentized and inconsistent world. On the other hand, families face postulates referring to individual, personalized 'persons.' As we can see, the family has been entrapped, since it is a sphere divided between two incompatible grammars of self. By shaping autonomous and self-reliant individuals, the family will fail because these individuals would not be able to cope with expectations of organized society. Being authentic in terms of identity is tantamount to being maladaptive. Conversely, by shaping individuals who fit into large social organizations, the family is doomed to create neurotics whose usefulness is limited to the virtue of adaptation. These people, when being

[42] W. Świątkiewicz: "Między rodziną a życiem publicznym — ciągłość i zmiana orientacji na wartości." In: *Postawy społeczno-religijne Polaków 1991—2012*. Eds. Ł. Adamczuk, E. Firlit, W. Zdaniewicz. Warszawa 2013.

[43] J. Mariański: *Małżeństwo i rodzina w świadomości młodzieży maturalnej*. Toruń 2012, p. 96.

confronted with a compulsion to fulfill objectives, tend to demonstrate insufficient degree of practically-oriented autonomy and trust."[44]

Historically speaking, in Poland one could experience the practical realization of a state philosophy that aimed at the subordination of families and the justification of state interference in the most intimate aspects of family life. Yet, the state polity can neither substitute families, nor replace it as far as their natural functions are concerned. Consequently, political structures carry the responsibility of assisting families by means of implementing policies focused upon social help, housing, taxation, education, an individual's salary, etc. The benefit of social welfare should be applied to the spheres which families cannot provide for. The rules should foster and facilitate one's agency, which indicate that families are in possession of rights to "self-reliant, responsible action and farseeing care."[45] As St. John Paul II teaches us: "[…] the family is a social reality which does not have readily available all the means necessary to carry out its proper ends, also in matters regarding schooling and the rearing of children. The State is thus called upon to play a role in accordance with the principle mentioned above. Whenever the family is self-sufficient, it should be left to act on its own; an excessive intrusiveness on the part of the State would prove detrimental, to say nothing of lacking due respect, and would constitute an open violation of the rights of the family. Only in those situations where the family is not really self-sufficient does the State have the authority and duty to intervene."[46] Regardless of a polity, families face a task of protecting their status in established forms of culture and social structure, as well as safeguarding their rights with reference to obligations held by state or self-government institutions towards it. Needless to say, the rule of subsidiary paves the way for granting families with right to pro-family policies implemented by various authorities. The future of every society depends upon the condition of family. The aforementioned demographic data clearly prove the thesis. State-wide, region-wide or district-wide social relationships and their role in reinforcing families are not indifferent to this matter. A debate on the condition of family is, at the same time, a dispute concerning the fate of a polity, nation or society.[47]

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[44] Z. Bokszański: *Tożsamości zbiorowe*. Warszawa 2005, p. 220. Translation mine.

[45] See W. Ockenfles: *Kleine Katholische Soziallehre. Eine Einführung*. Trier 1990.

[46] St. John Paul II: *Apostolic Exhortation "Familiaris Consortio" of Pope John Paul II to the Episcopate, to the Clergy and to the Faithful of the Whole Catholic Church on the role of the Christian Family in the Modern World*. Available at: http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html (accessed 29.4.2014).

[47] W. Świątkiewicz: "Rodzina jako wartość społeczna." In: *W trosce o rodzinę…*

The family-related debates are nowadays public disputes concerning the construction of society and the sphere of commonly shared values. These elements are indispensable in order to see beyond the horizon of the present day. When concluding his analyses concerning the transformation of contemporary families, Anthony Giddens postulates that the future of families depends on a personal ability to provide a "golden means" balance between individual autonomy and interpersonal obligations arising from the fact of having a fixed relationship.[48]

Family can be regarded as a stable foundation of social life. Hence, it is little wonder that the diminution of families is not conducive to any attempts to construct social order. Concurrently, the lack of family-grounded support for political transformations that take place in the contemporary Poland creates mental barriers that hinder their societal acceptance. These transformations, consequently, will be perceived in the light of possible or real unemployment, loss of social privileges, deepening stratification, or difficult expectations that enforce radical changes in one's personality. It is sufficient enough to listen to casual conversations in order to discern groups of dissatisfied people who yearn for the reality of the People's Republic of Poland and treat it as a depository of lost chances and unfulfilled dreams or successes. Hence, it is our duty to heal Polish families and protect them against the conditions of "axiological warpedness" by implementing wise cultural and social policies. Threats to families are, as a matter of fact, threats to human beings and, consequently, to the whole society seen as a macrostructure. Axiological consensus will be conditioned by the extent to which family-based moral socialization accentuates the ethos of personalism which is communal, altruistic, as well as indifferent to egocentrism, selfishness, relativism and fashionable, postmodern tendencies towards individualization and subjectivism.[49] "The community values are responsible for the potential of social self-organization, the ability to perform actions that reach well beyond the perimeter of familiar individuals, beyond the temporal perspective of our grandchildren and grand grandchildren (most people are not familiar with their own grand grandchildren). Power exercised upon the world of values is the authority exerted over the temporal perspective. Conflicted and fragmented communities are unable to execute long-term projects whose benefits can be postponed. The ability to construct long-term benefits is a pillar of our civilization" (Andrzej Zybertowicz).

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[48] A. Giddens: *Sociology…*

[49] K. Olbrycht: *Prawda, dobro i piękno w wychowaniu człowieka jako osoby.* Katowice 2002; J. Mariański: "Rodzina a przekaz wartości moralnych." In: *Rodzina. Społeczeństwo. Gospodarka Rynkowa*. Ed. J. Kroszel. Opole 1995.

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Wojciech Świątkiewicz

The Value-Oriented Meaning of the Family and Its Contemporary Transformations

Summary

1. Values as a theme of sociological reflections

There is no social life, understood both in its individual and collective dimensions, beyond the sphere of axiology. We always remain entangled within the world of values. Values belong to the order of culture. Culture is a cult of values

2. The axiological crisis and directions of axiological transformations

Studies concerning axiological systems and their transformations may be considered to constitute a comfortable vantage point for investigating the courses of changes affecting societies and cultures. In this context, one may postulate that the condition of Polish society can be characterized as facing a period of important cultural transformations, an age marked by a specific "turning point" in history. The condition of contemporary, inherently globalized society may be defined in terms of axiological *warpedness*.

3. Family as a value, and family-related values

When the situation of *axiological warpedness* is observed, the traditional family is shedding its privileged status in structures of social world. It is observed as the de-legitimization of its meaningfulness as a primary group, social institution, and an environment in which one's social personality matures. Moreover, a belief is being disseminated according to which the traditionally conceived family is no longer viewed as a salient social institution. On the contrary, it is frequently seen as something dispensable.

When approached from an axiological perspective, the directions of family-related transformations can be summarized by enumerating two main tendencies:

— The transformation leading from the family conceived as an institution, through the family as a community (*communio personarum*), to alternative forms of family and marriage.
— The transformation from the great family, through the nuclear family, to the culture of single persons.

Regardless of a polity, families face a task of protecting their status in established forms of culture and social structure, as well as safeguarding their rights with reference to obligations held by state or self-government institutions towards it. The future of

every society depends upon the condition of family. The aforementioned demographic data clearly prove the thesis. State-wide, region-wide or district-wide social relationships and their role in reinforcing families are not indifferent to this matter. A debate on the condition of family is, at the same time, a dispute concerning the fate of a polity, nation or society.

Wojciech Świątkiewicz

Famille en tant que valeur et ses transformations contemporaines

Résumé

L'homme établit les valeurs, et les valeurs constituent l'homme : sa personnalité, ses attitudes, ses aspirations de la vie, les modèles de comportements et d'activités sociales dans la vie privée ou publique qui sont choisis et réalisés par lui. La vie sociale n'existe pas hors de la sphère axiologique, aussi bien au niveau individuel que collectif. On est toujours impliqués dans un système de valeurs. Les valeurs appartiennent au champ culturel, et la culture est un culte de valeurs.

Les études des systèmes de valeurs et de leurs transformations constituent un plan très avantageux pour des réflexions sur le vecteur des changements de la société et de sa culture. En ce qui concerne la condition contemporaine de la société polonaise, on peut dire qu'elle se trouve à une étape importante des transformations de la culture, à une sorte de « tournant de l'histoire ». On peut attribuer à la condition culturelle de la société contemporaine vivant à l'ère de la mondialisation le nom d' « un gauchissement axiologique ».

À l'époque de cet ébouriffage axiologique, une famille naturelle commence à perdre sa place privilégiée dans les structures de l'espace social. Sa raison d'être, en tant que groupe élémentaire et institution sociale ou encore milieu où mûrit toute personnalité sociale, est soumise à la délégitimisation. On répand la conviction que dans le monde moderne, la famille saisie d'une façon traditionnelle devient moins importante, et peut-être même inutile.

L'orientation des changements de la famille contemporaine perçus dans la perspective des mutations axiologiques peut être divisée en deux tendances principales :

— de la famille en tant qu'institution, en passant par la famille en tant que communauté (*communio personarum*), jusqu'aux formes alternatives du mariage et de la famille ;
— de la culture d'une famille nombreuse, en passant par la famille nucléaire (regroupant deux adultes mariés ou non, avec ou sans enfants), jusqu'à la culture du célibat.

Sans distinction du régime politique qui est au pouvoir, le devoir de la famille est de protéger sa position dans la culture et dans la structure sociale, ses droits mais également la garantie des obligations que les institutions du pouvoir étatique ou local doivent lui assurer. Le futur de toute société dépend de la condition de ses familles. Les données démographiques que l'on a rapportées prouvent cette thèse d'une façon lucide. La manière dont les relations sociales seront formées à l'échelle de l'État, de la commune ou de la région n'est point sans importance ; non plus la question si ces relations favoriseront la famille et le foyer. Le différend concernant la forme de la famille n'est en réalité qu'un différend sur la forme de l'État, de la nation et de la société.

Mots clés : famille, valeurs familiales, mutations de la famille, crise des valeurs, crise familiale

Wojciech Świątkiewicz

La famiglia come valore e le sue trasformazioni contemporanee

Sommario

L'uomo crea i valori e i valori contribuiscono alla creazione dell'uomo; la sua personalità, gli atteggiamenti, le aspirazioni di vita, i modelli di comportamento come pure le attività sociali, preferiti e realizzati nella pratica della vita privata o pubblica. Non c'è vita sociale fuori della sfera assiologica, sia nella dimensione individuale, sia collettiva. Siamo sempre coinvolti nel mondo dei valori. I valori appartengono all'ordine della cultura. La cultura è il culto dei valori.

Gli studi sui sistemi di valori e sulle loro mutazioni costituiscono un piano conveniente di riflessione sulle direzioni delle trasformazioni della società e della sua cultura. Della condizione contemporanea della società polacca possiamo dire che si trova in una fase importante di trasformazione della cultura, ad uno specifico "punto di svolta nella storia". La condizione culturale della società contemporanea dell'era della globalizzazione può essere chiamata "deformazione assiologica".

In una situazione di deformazione assiologica della cultura la famiglia naturale inizia a perdere il suo posto privilegiato nelle strutture del mondo sociale. Il senso della sua esistenza come gruppo fondamentale e istituzione sociale, ambiente di maturazione della personalità sociale, è sottoposto a delegittimazione. È diffusa la convinzione secondo la quale la famiglia concepita in modo tradizionale non diventa nella società moderna l'istituzione più importante, ma forse è addirittura inutile.

Le direzioni delle trasformazioni della famiglia contemporanea, affrontate nella prospettiva dei mutamenti assiologici, possono essere ricondotte a due correnti principali:

— dalla famiglia come istituzione, attraverso la famiglia come comunità (*communio personarum*) fino alle forme alternative di matrimonio e di famiglia.
— Dalla cultura della famiglia grande, attraverso la famiglia piccola (nucleare) fino alla cultura dei single.

A prescindere dal sistema di governo instaurato, il compito della famiglia è la protezione della sua posizione nella cultura e nella struttura sociale; la salvaguardia dei suoi diritti ma anche la garanzia degli obblighi che gravano sulle istituzioni dell'autorità statale o auto-governativa nei suoi confronti. Il futuro di ciascuna società dipende dalla condizione delle sue famiglie. I dati demografici sopraccitati documentano in modo chiaro tale tesi. Non è quindi indifferente come saranno formati i rapporti sociali su scala statale, comunale o regionale; e se essi saranno propizi alla famiglia e allo spirito familiare. La disputa sulla forma della famiglia è in sostanza una disputa sulla forma dello stato, del popolo e della società.

Parole chiave: Famiglia, valori familiari, cambiamenti della famiglia, crisi dei valori, crisi della famiglia

Ecumeny and Law, vol. 2 (2014)
pp. 33—48

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The Charter of the Rights of the Family and the Yogyakarta Principles Two Worlds

Keywords: The Charter of the Rights of the Family, Yogyakarta Principles, gender, sexual orientation, protection of children, concept of man

1. Introduction

Not longer than a dozen or so years ago the discussion related to the gender outlook on the sexes would have been exclusively academic. The attempts of a radical, political implementation of gender postulates, aimed at redefining matrimony and family, made the discussion emerge in the very middle of the dispute over the shape of social life. It was soon made obvious that the process does not only focus on modifying and naturally developing the views related to the essence of matrimony and family, but is also an attempt to replace their meaning with a new one, based on the idea of gender. It is diametrically different from the one conceived in the bosom of the Judeo-Christian culture.

The Catholic Church belongs to the unquestionable critics of the idea of gender, which was repeatedly stated, both on the local and global plane. What evokes particular objection is the political implementation of the so-called gender studies, which exhibits traits of an ideological expansion. The concern for a stable and sound family has always been one of the main social tasks of the Church. The critics of the Church's standpoint, first of all representatives of the feminist communities, accuse

it of being "family-centric."[1] The expression of the Church's firm inclination towards family was the publication of the Charter of the Rights of the Family, published by the Holy See in 1983 (hereinafter referred to as the Charter),[2] the postulates of which are to a large extent coherent, at least at the level of fundamental principles, with the widely accepted and protected by the law of many countries idea of matrimony and family.

As the Holy See was publishing the Charter of the Rights of the Family, one of the most serious issues was the instability of family, the sign of which was the intensifying scourge of divorces, but also popularization of various forms of living together without formally entering into marriage. A serious threat for marriage and family was also the popularization of the anti-natal mentality, so the increase in instances of abortion and popularization of contraceptives. Those threats not only have not been eliminated but also joined by new, different ones, so far only sporadically and marginally encountered in social space. These can be determined as an attempt to redefine and consequently belittle the family as a fundamental social unit. Furthermore, they are not limited to popularization and promotion of relationship models, but are reflected in implementation of changes in law and educational programmes. Their expression are e.g. the Yogyakarta Principles (hereinafter referred to as the Principles).[3] The aim of this article is not an in-depth analysis of the both mentioned documents, but an indication, based on the comparison of a selected document, of a diametric difference of the principles and postulates they comprise.

[1] This notion is used e.g. by Professor Magdalena Środa, for whom it constitutes almost a synonym of a social pathology. In her comment, delivered on July 12, 2012, Środa claims that: "The more family-centric the society is, the less civic society we have" ("Im bardziej rodzinocentryczne społeczeństwo, tym mniej społeczeństwa obywatelskiego"). Cf. http://wyborcza.pl/1,76842,12185403,Rodzina_nepotyzmem_silna.html (accessed 14.2.2014).

[2] The Holy See: Charter of the Rights of the Family (October 22, 1983) — http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html (accessed 14.2.2014). This document was the fruit of the synod of bishops, the subject of which was family and which was held in 1980. The outline of the Charter was formulated in the 1981 exhortation *Familiaris Consortio* (no. 46) that concluded the proceedings.

[3] The Yogyakarta Principles: on the application of international human rights law in relation to sexual orientation and gender identity — http://www.yogyakartaprinciples.org/principles_en.htm (accessed 15.1.2014).

2. Gender revolution

When in 1983 the Holy See was publishing the Charter of the Rights of the Family, the gender ideology was a stream of thought known exclusively to a narrow group of specialists and observers. On the international grounds, popularization of the gender ideology and the anthropological-social vision it represents has to be, undoubtedly, ascribed to international conferences committed to women's matters, organized under the auspices of the UN, and especially the third of those conferences, which was held in Beijing in 1995. In the documents of that conference the term gender appears still in the context of men and women equality. Creating, implementing and supervising, accompanied by the interested parties, policies and programmes sensitive to the issues of cultural sex identity (gender)[4] was one of the main objectives determined therein. Omitting the radical postulates related to e.g. the right to abortion and ideological narrowing, such meaning of gender could be accepted within the context of the Christian family vision. The ambiguity of the term gender and avoiding its explicit, internationally accepted definition[5] by its proponents, caused the issue of man and woman equality to be connected with a claim for the equality of all other "sexes," as well as people characterized by a "fluid" sex, and consequently, subservient to this claim.[6]

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[4] United Nations: "Beijing Declaration." In: *Report of the Fourth World Conference on Women Beijing, 4—15 September 1995*. New York 1996, p. 3, n. 19.

[5] Definitions of the gender ideology sprouted in the outcome of an extremely harsh criticism of the Polish Episcopate's pastoral letter read out on the Holy Family Sunday 2013. The Polish Secretary of State and Government Representative for Equal Treatment Agnieszka Kozłowska-Rajewicz in her statement, published on December 20, 2013, claims that "both in politics and law, both in Poland and abroad, *gender* is related to the equal treatment of women and men," and accusation which suggests promoting it means "destroying family, sexualizing children, freedom of choosing ones sex, or neglecting matrimony" are the effects of ignorance and ill will of its opponents and critics. See http://www.rownetraktowanie.gov.pl/aktualnosci/oswiadczenie-w-sprawie-niepra wdziwych-interpretacji-pojecia-gender (accessed 26.5.2014). Unfortunately, both the content of the Principles and some European Union documents firmly contradicts such belittling of the problem.

[6] Dale O'Leary, presenting the evolution process of the term gender, states that since it is originally meant to mean a socio-cultural construction of sex, conducting binary transgressions of such categories as man/woman or natural/unnatural seems unavoidable. See D. O'Leary: *The gender agenda. Redefining equality*. Lafayette 1997, pp. 89—94. For Judith Butler, believed to be the author of the *queer theory*, so the theory of individualized and fluid sexual identity, the binary, masculine-feminine sex scheme is oppressive and should be subjected to deconstruction. See J. Butler: *Uwikłani w płeć. Feminizm i polityka tożsamości*. Warszawa 2008, pp. 50—53.

Presumably, the majority of the society took no notice of the press release from 29 June 2013, which informed that during the 22nd Session of the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE), the resolution calling for the acceptation of the Yogyakarta Principles was rejected (in ratio 23 to 4).[7] However, this hardly known document deserves a more meticulous analysis, since it clearly unveils the idea of social changes, which the gender ideology proponents aim at. It renders expectations and claims, which organizations connected with the gender ideology formulate in societies worldwide. Their recent, offensive and very often aggressive presence in the public sphere is not accidental. It is the effect of a consistently realized plan of action, the goal of which is to win influence over the international legislative and opinion-forming bodies. Mobilizing and enlarging the group of proponents who, taking into consideration their number could win majority in democratic elections, remains effective only if utilized as a long-term strategy. In order to achieve faster results, the gender ideology proponents concentrated on influencing the legislature (the so-called top-bottom strategy). The first step in this strategy is to place gender activists on influential posts in the UN, EU or other international institutions (or non-governmental organizations these institutions support). Under pressure from groups comprising such people, resolutions, bills and recommendations, which initially do not have the power of codified law, are compiled. Putting them to a vote and adopting by more and more influential bodies causes them to become sets of guidelines for governments. As a result particular countries and societies have to face "international standards," and even ready-made legal requirements, over the shape of which they have no influence, and the implementation of which is often related with, e.g. subsidies in some sphere of social life. Very often groups of people derived from non-governmental organizations, despite the lack of any democratic legitimacy, are also asked to supervise the process of implementing the gender model of social relations into life by particular countries.[8]

[7] The initiative to reject the project of the resolution was supported, among others, by the Polish delegates. According to the legal evaluation of the *Ordo Iuris* Institute for Legal Culture, the Yogyakarta Principles threaten the Polish constitutional order, among others, in the principles: of social justice (article 2), of protection of matrimony and family (articles 18 and 71), of equality in the face of law (article 30), of religious freedom (article 53, passage 1) and the rights of parents that stem from it (article 53, passage 3). Additionally, the Principles are in contradiction to the impartial outlook of the country (article 25, passage 2) — http://www.ordoiuris.pl/zgromadzenie-parlamentarne-obwe-odrzucilo-dokument-promujacy-polityczne-cele-lgbt,3278,i.html (accessed 15.1.2014).

[8] This strategy is an element of an entire set of strategies connected with the political correctness. See M. Kacprzak: *Pułapki poprawności politycznej*. Radzymin 2012, pp. 127—231.

The Yogyakarta Principles can be perceived as a classic example of the top-bottom strategy. They were passed by a body of 29 lawyers from 25 countries, acting on behalf of a coalition of non-governmental organizations. Some of those were special UN observers for equality, which means that it was not a small group manifesto that could be perceived as marginal.[9] The claim expressed by the Principles signatories is total: the aim at formulating "binding international legal standards with which all States must comply."[10] The document does not comprise detailed justification of such standpoint, but at the same time decrees that it stems directly from the human rights. It is supposed to constitute a "further development" of human rights within the scope of sexual identity and sexual preferences. In the document the classic human rights are referred to very often and therefore it contains a set of statements, the justness and truthfulness of which leave no room for doubt. The means in which these human rights were connected with the claims put forward by the gender ideology proponents in fact brings about a subordination of all fundamental human rights to the gender identity and sexual orientation.

These two terms appear in the entire document so often that it is beyond any doubt that they constitute the most important reference points. They were defined in the Preamble to the Principles. The term sexual identity is determined as "deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means)."[11] Based on this "personal feeling" the term sexual preferences is defined as "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender."[12] Gabriele Kuby claims that such a wide definition

[9] Amid the co-authors and signatories of the Principles is also a Pole, Professor Roman Wieruszewski, director of the Poznan Human Rights Centre, vice-chairman of Scientific Council of the Institute of Legal Studies, member of Scientific Committee of the EU Fundamental Rights Agency.

[10] The Yogyakarta Principles. Introduction. Professor Roman Wieruszewski believes that the aim of the Principles is not striving for a particular treatment of this issue, or promoting defined patterns of behaviour or anything similar — R. Wieruszewski: "Zasady Yogyakarty — geneza i znaczenie." In: *Zasady Yogyakarty. Zasady stosowania międzynarodowego prawa praw człowieka w stosunku do orientacji seksualnej oraz tożsamości płciowej*. Ed. K. Remin. Warszawa 2009, p. 19. However, the total awaiting for the general recognition of the gender view together with the repeated claims for penalization of the opposite stances explicitly belies such opinion.

[11] The Yogyakarta Principles. Preamble.

[12] Ibidem.

of sexual orientation does not exclude any preference or sexual activity, including pedophilic, incestuous, polygamous, polyamoric (simultaneous relationship with several partners), and even zoophilic.[13] Both definition leave no room for terms "man" and "woman," but only "the human sex assigned at birth," which, however, is deprived here of any meaning. The entire document, in which the word gender appears a dozen or so times on every page, does not include references to men and women, and instead includes the term "everyone," which is devoid of a clear sexual reference. Alternatively, the document mentions the "person's gender identity." Without additional justification in the Principles, it is claimed that despite the contrary opinions "a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed."[14] In the Principles the new understanding of sex and the notion of sexual orientation, which it is based on, was not only elevated to become one of the most fundamental personal features, but also its recognition and protection became the reference point for all other values.[15]

The size of the claim directed at the governments of countries worldwide specifies the issue of sexual orientation or sexual identity discrimination included in the Principles. It is supposed to denote every possible "discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights."[16] According to this definition all moral criteria related to the sexual sphere, formulated, e.g. within the context of Christian faith, would not only constitute a different conception,

[13] See G. Kuby: *Globalna rewolucja seksualna. Likwidacja wolności w imię wolności*. Kraków 2013, p. 102. The pedophile orientation seems to be, at first glance, ruled out owing to an introduction of a limit of sexual contacts into the Principles. Still it is very vaguely defined as a limit "the age of consent to sexual activity" (the Principles, 6a). If the society approved the lawfulness of the sexual intercourse with children, as it was demanded in the 1980s by, for instance, the German Green Party, it would not require any changes in the content of the Principles. Pedophilia would constitute yet another sexual identity.

[14] The Yogyakarta Principles, 18.

[15] Hanna-Barbara Gerl-Falkovitz asks whether the gender view accepts any valuing which would be free from the gender category. Maybe an attempt to reason beyond the gender categories has to be perceived as politically incorrect and pre-Englightenment. Cf. H.-Gerl-Falkovitz: *Frau — Männin — Menschin. Zwischen Feminismus und Gender*. Kevelaer 2009, p. 193.

[16] The Yogyakarta Principles, 2.

but also would need to be determined as a sign of illegitimate discrimination.

What the definitions included in the Yogyakarta Principles really mean, in relation to the matrimony and family, will be presented below, in a comparison with the corresponding fragments of the Charter of the Rights of the Family.

3. The most threatened rights of the family

The period of over 20 years that separated the Charter of the Rights of the Family from the Yogyakarta Principles was a period of growing dissonance between the prevalent vision of matrimony and family, based on the personalistic vision of human being, and the gender understanding of these fundamental institutions. The comparison of fragments of both documents, displays how diametrically different these two visions are, and consequently the concepts of human being and society, which stem from them.

Perception of the sexes and the family

In harmony with the notion included in the Charter, the family "is based on marriage, that intimate union of life in complementarity between a man and a woman which is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony and is open to the transmission of life."[17] Family as such, despite the fact that its substantial shape has changed together with the evolution of cultures, remains a natural relationship, which is primary in relation to the country or any other community. Hence, it has its own inalienable rights,[18] and other extramarital relationships cannot be treated equally with the matrimony of a man and a woman, on which a family is based.[19]

Within the context of the Principles the very understanding of sex as masculinity and femininity (together with knowledge regarding e.g.

[17] The Charter of the Rights of the Family, Preamble B.
[18] The Charter of the Rights of the Family, Preamble D.
[19] The Charter of the Rights of the Family, article 1c.

the hormone differences, brain, psyche, etc.) has to be acknowledged as a form of illegitimate differentiation, thus a deed of discrimination. The two-sex dichotomy is replaced with "different sex" and "various sexes."[20] The consequence of many equal sexes is the claim that "families exist in diverse forms."[21] The extent to which this claim strays away from the classic family concept is visible in the shape of the recommendation offered to the state authorities, which result from it: "[States shall] ensure that laws and policies recognize the diversity of family forms, including those not defined by descent or marriage."[22] Any relationship, based on a defined sexual orientation, deserves, according to the Principles, to be given the status of a matrimony (and family) together with the entire scope of social privileges. It would mean a complete thwarting of the exceptionality of a family, which owing to the natural fertility is capable of giving beginning to a new life and raise citizens.

The right to start a family

The Charter formulates essential conditions that the right to start a family is guaranteed: the prohibition to discriminate refers both to men and women, able to start a family, who after reaching a proper age decide to do so. Whatever "legal restrictions to the exercise of this right, whether they be of a permanent or temporary nature, can be introduced only when they are required by grave and objective demands of the institution of marriage itself and its social and public significance."[23]

According to the declaration, included in the Principles, "everyone has the right to found a family, regardless of sexual orientation or gender identity."[24] It represents the claim to recognize the marriage of same-sex person, as well as, at least theoretically, also other relationships, corresponding with e.g. the preferences of bisexual people, or those who declare "fluid" sexual orientation. Furthermore, the statement that "no status, such as marriage or parenthood, may be invoked as such to prevent

[20] Kuby points to a certain contradictions in the content of the Principles. On the one hand the plasticity and changeability of sexes and sexual orientations is postulated, whereas on the other hand every non-heterosexual orientation is regarded as invariable and not apt for any therapy. See G. Kuby: *Globalna rewolucja seksualna*..., p. 104.

[21] The Yogyakarta Principles, 24.

[22] The Yogyakarta Principles, 24b.

[23] The Charter of the Rights of the Family, article 1a.

[24] The Yogyakarta Principles, 24.

the legal recognition of a person's gender identity,"[25] in fact it means the permission to adopt children by people who live in non-heterosexual relationships, which anyway was clearly formulated in the Principles: "[States shall] take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity."[26]

The right to life

Leaving aside the dubiousness of the two key notions, the statement included in the Principles: "everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity,"[27] could be easily also embedded in the Charter, since it is unarguably true. Similarly, it is no use having objections towards the postulate that declares the right of every person to "the highest attainable standard of physical and mental health, without discrimination,"[28] which is connected with the above statement. However, the interjection included in the last postulate, according to which "sexual and reproductive health is a fundamental aspect of this right,"[29] has to arouse justified controversies. The notion of sexual or reproductive health, which sounds favourably, contains in the international discussion the rights to abortion and subsidized contraception, financed from the society's health insurance contributions. The implementation of international developmental programmes dedicated to the developing countries, is often related to the readiness to introduce a strict birth control behind the facade of the concern for the reproductive health.

Such situation is not new, therefore in the Charter the Holy See demanded: "in international relations, economic aid for the advancement of peoples must not be conditioned on acceptance of programmes of contraception, sterilization or abortion."[30] As it is emphasized, "human life must be respected and protected absolutely from the moment of

[25] The Yogyakarta Principles, 3.
[26] The Yogyakarta Principles, 24a.
[27] The Yogyakarta Principles, 4.
[28] The Yogyakarta Principles, 17.
[29] Ibidem.
[30] The Charter of the Rights of the Family, article 3b.

conception,"[31] and "abortion is a direct violation of the fundamental right to life of the human being."[32]

The right to freedom of conscience

The enormous discrepancy between the both analysed documents concerns the freedom of conscience and the rights to raise children that it is related to. In the Charter, within the context of the freedom of religion, the right to the freedom of conscience is declared. With reference to family it means that e.g. a condition for entering into a marriage cannot be the demand for conversion.[33] Additionally, parents posses the right to organize the religious life of their family, "the right to profess publicly and to propagate the faith, to take part in public worship and in freely chosen programmes of religious instruction, without suffering discrimination."[34]

On the surface, the statement inscribed in the Principles, which claims that "everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity,"[35] sounds alike. However, its elaboration does not leave room for doubt. It suggests that whoever in the name of freedom of thought, conscience and religion dares to call the LBGTQ[36] communities' claims into question has to face consequences. An instance of discrimination would be e.g. referring, by a given country, to the freedom of conscience and religion as a justification of rules of law, programmes or practices contradictory with the gender outlook on sexual orientation or gender identity.[37] Expressing, practicing and promoting manifold opinions, beliefs and convictions concerning issues related to sexual preferences or identity by the citizens, would be rationed by the country in a way that, according the Principles, would not infringe the human rights.[38] It is even better explained by Principle 2: "Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination [on

[31] The Charter of the Rights of the Family, article 4.
[32] The Charter of the Rights of the Family, article 4a.
[33] The Charter of the Rights of the Family, article 2b.
[34] The Charter of the Rights of the Family, article 7.
[35] The Yogyakarta Principles, 21.
[36] LBGTQ is an acronym that stand for Lesbian, Bisexual, Gay, Transgender, Queer.
[37] Ibidem.
[38] The Yogyakarta Principles, 21b.

the basis of sexual orientation or gender identity — M.M.] whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination."[39] It means that all other human rights, including the freedom of conscience and religion, are valid as long as they do not call into question the gender outlook on sex. To put it another way, the sexual orientation and gender identity and the rights they are connected with, are the most significant reference point, and simultaneously the verification criterion of all other human rights.

The parents' right to raise children and rights of the child

The afore-mentioned challenging of the right to freedom of conscience and of religion by the gender outlook proponents, develops into calling into question parents' right to raise children in harmony with their conscience. Naturally, it is hard to reject the claim for such a state legal system, which would in all its actions or decisions regarding children perceive the wellbeing of child as the paramount criterion. However, adding here the Yogyakarta Principles and demanding at the same time "the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests,"[40] means not only a free access for the same-sex couples, or other relationships based on a free selection of sexual orientation, to the adoption of children, but also e.g. the prohibition to refuse accepting a babysitter for a child based on his/her sexual orientation. Since, according to the Principles, also education should be organized in a spirit of "understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities,"[41] all school curricula that are critical towards the gender outlook on sex would not be tolerated. In practice it would mean an imposed system of education, which would be deprived of the religious formation (since such, at least in the case of Christianity, calls into question the gender approach). As opposed to those claims the Charter demands the freedom for parents to select such schools for their children that are not against their own

[39] The Yogyakarta Principles, 2.
[40] The Yogyakarta Principles, 24c.
[41] The Yogyakarta Principles, 16c.

moral and religious beliefs. "In particular, sex education is a basic right of the parents and must always be carried out under their close supervision, whether at home or in educational centres chosen and controlled by them."[42]

4. Conclusions

Leaving aside the tedious promotion of such notions as sexual identity and sexual orientation, present in almost every sentence of the Yogyakarta Principles, this document includes a multitude of statements, with which everyone who identifies himself with the spirit and letter of the Charter of the Rights of the Family would automatically agree. Despite this fact, as it was proved by the afore-mentioned examples, both documents present so diametrically dissimilar systems of values and different visions of matrimony and family that without exaggeration they can be perceived as voices of two disparate cultural "worlds." For it is not about a peculiar "report of discrepancy," accompanying a basic agreement on ethical and axiological foundations, but about a diametric contradiction related to the very foundations of thinking about sex, matrimony and family. The Principles postulate a radical re-reading of the present human rights codices, as a part of which the sexual identity and orientation will not only be included but also will become the reference point and interpretation key or even the criterion for the binding power of other fundamental rights. The attempt to put the Principles to the OSCE vote, shows that gender community aspirations, clearly declared, are to make the Principles a set of recommended guidelines, which with the passing of time would become the binding law.

In light of the Principles, the proponents of the Charter have to be classified as "perpetrators of human rights violations related to sexual orientation or gender identity," who, as it is emphasised, "should not be left unpunished."[43] In connection with the repeated, aimed at many countries,

[42] The Charter of the Rights of the Family, article 5c.

[43] The Yogyakarta Principles, 29. According to the Principles "[States shall] undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity" (The Yogyakarta Principles, 1c). Taking into consideration the fact that any forms of differentiation are perceived as discrimination, what could be subjected to penalization would not only be such statements as, e.g. homosexuality is an psycho-sexual disorder, but also that a matrimony of a woman and a man is a unique relationship. What

appeal to utilize "all means possible" to implement the Principles at the legal plane and support them in culture and social life,[44] the proponents of the classic definition of a family, critical towards the idea of gender and its ideological implementation in culture, have to prepare themselves for quite difficult times. To conclude, it is worth recalling one of the last Pope Benedict XVI's comments, which he delivered less than one month before he stepped down from office. As the Pope stated, "the shadows that hide God's plan," having in mind above all "the tragic anthropological reduction that reproposes the age-old hedonistic materialism, but to which a 'technological Prometheanism' is added."[45] In a clear opposition to this outlook the "the Church reaffirms her great 'yes' to the dignity and beauty of marriage as an expression of the faithful and generous bond between man and woman, and her no to 'gender' philosophies, because the reciprocity between male and female is an expression of the beauty of nature willed by the Creator."[46]

deserves attention is the postulate which suggests that such manifestations of discrimination should be countered also in the private life.

[44] These claims are emphasized by the additional recommendations, which crown the Principles. The recipients of the recommendations are global institutions, respective UN agencies, or the World Health Organization (WHO), non-governmental and humanitarian organizations, as well as mass media and entities administering funds. These institutions are called to, if possible, eliminate all instances of behaviour or initiatives contradictory with the letter of the Principles, and also promote "the acceptance of diversity of human sexual orientation and gender identity" — The Yogyakarta Principles. Additional Recommendations, o).

[45] Benedict XVI: *Address to Participants in the Plenary Meeting of the Pontifical Council "Cor unum"*, 19.1.2013 — http://www.vatican.va/holy_father/benedict_xvi/speeches/2013/january/documents/hf_ben-xvi_spe_20130119_pc-corunum_en.html (accessed 14.2.2014).

[46] Ibidem.

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Marian Machinek

The Charter of the Rights of the Family and the Yogyakarta Principles Two Worlds

Summary

In the current hot debate of the Polish feminist community they further the opinion that the word *gender* is a notion that describes the domain of scientific research on the cultural dimension of sex and similarly conditioned masculine and feminine role, and therefore has nothing to do with an ideology. The Yogyakara Principles analysis, however, completely contradicts this viewpoint. While in this 35-page-long document, passed in 2006, the word *gender* is omnipresent and appears a dozen or so times on every page, striking seems the lack of such words as "man" and "woman." This document contains a re-reading of the fundamental human rights within the context of sexual identity and orientation, while the two notions are so strongly emphasised that they can be perceived as a reference point and interpretation key, or even a criterion for the existence

of other fundamental human rights. Utilizing e.g. the right to the freedom of conscience and religion or the right to raise children in harmony with ones conscience is dependent on the approval of the gender outlook on sex. The document expresses clear claims for making equal the rights of relationships based on various sexual orientations with those of a married couple based on a relationship of a man and a woman, with emphasis on the right to have children through adoption or assisted reproductive technology. The juxtaposition of these claims, in the article, with the Charter of the Rights of the Family, published in 1983, showed a diametric discrepancy between the Christian and gender vision of matrimony and family, not only in the issues of secondary importance but also with reference to those fundamental ones.

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Charte des droits de la famille face aux principes de Yogyakarta Deux mondes

Résumé

Au cours du débat qui se déroule intensément en Pologne, les milieux féministes propagent l'opinion que le terme de « genre » est lié à un champ d'études en sciences sociales s'occupant de l'aspect culturel du sexe et désignant les différences non biologiques entre les hommes et les femmes et, en tant que tel, n'a rien en commun avec l'idéologie. Cependant, l'analyse des principes de Yogyakarta est en pleine contradiction avec une telle constatation. Ce qui surprend dans ce document adopté en 2006, c'est bien une absence quasi absolue des mots homme et femme, tandis que le terme omniprésent de « genre » y apparaît une quinzaine de fois sur chacune des 35 pages. Ce document contient une nouvelle interprétation des droits de l'homme présentée dans le contexte de l'identité de genre et de l'orientation sexuelle, et en plus, ces deux notions y sont hissées au rang de traits de personnalité si importants que l'on peut les considérer comme un point de repère et un moyen d'interprétation, et voire comme un critère déterminant l'application des autres, aussi fondamentaux, droits de l'homme. L'exercice, par exemple, du droit à la liberté de conscience et de religion ou encore de celui permettant d'élever les enfants selon sa propre conscience se trouve sous la dépendance de l'acceptation de la vision « genriste » du sexe. Ce document revendique explicitement aussi que les États égalisent les droits des couples basés sur diverses orientations sexuelles et ceux du mariage basé sur la relation d'un homme et d'une femme, tout en soulignant l'importance des droits qui permettent d'avoir des enfants grâce à l'adoption ou grâce aux techniques de la procréation assisstée. La comparaison, présentée dans cet article, de ces revendications avec la Charte des droits de la famille publiée en 1983 révèle une énorme différence entre la vision chrétienne du mariage et de la famille et celle liée à la conception genriste. Ces différences concernent non seulement les questions secondaires, mais également celles qui sont fondamentales.

Mots clés : Charte des droits de la famille, principes de Yogyakarta, genre, orientation sexuelle, protection des enfants, conception de l'homme

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La Carta dei Diritti della Famiglia ed i Principi di Yogyakarta Due mondi

Sommario

Nell'intenso dibattito in corso in Polonia, gli ambienti femministi propagano l'opinione secondo la quale il termine gender (genere) indica il campo di ricerche scientifiche sulla dimensione culturale del sesso ed ugualmente sui ruoli maschili e femminili condizionati, e come tale non ha nulla in comune con l'ideologia. Tuttavia l'analisi dei Principi di Yogyakarta contraddice completamente tale affermazione. Con l'onnipresente, in questo documento approvato nel 2006, parola gender che appare più di una decina di volte su ciascuna delle oltre 35 pagine, colpisce la mancanza quasi completa delle parole "uomo" e "donna". Il documento contiene una rilettura dei diritti fondamentali dell'uomo nel contesto dell'identità e dell'orientamento sessuali, ma comunque entrambe le nozioni vengono sollevate in esso al livello delle caratteristiche talmente importanti di una persona da poter essere riconosciute come punto di riferimento e chiave interpretativa, e persino come criterio di validità di altri diritti fondamentali dell'uomo. L'esercizio, ad esempio, del diritto alle libertà di coscienza e di religione oppure al diritto di educare i figli secondo la propria coscienza, viene subordinato all'approvazione della visione "gender" sul sesso. Il documento esprime anche rivendicazioni chiare di uguagliamento da parte dello stato dei diritti delle coppie basate su diversi orientamenti sessuali con i diritti del matrimonio basato sull'unione di un uomo e una donna, sottolineando il diritto di avere figli mediante l'adozione o la tecnica della procreazione assistita. Il confronto di tali rivendicazioni, incluso nell'articolo, con la Carta dei Diritti della Famiglia pubblicata nel 1983 presenta una differenza diametrale tra la visione cristiana e quella gender del matrimonio e della famiglia, non solo nelle questioni di importanza secondaria, ma rispetto alle problematiche fondamentali.

Parole chiave: Carta dei Diritti della Famiglia, Principi di Yogyakarta, gender (genere), orientamento sessuale, tutela dei figli, concezione dell'uomo

Ecumeny and Law, vol. 2 (2014)
pp. 49—60

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Reflection on the Family at the Beginning of the 21st Century

Keywords: family, man, future, education

Introduction

A look at any subject of reflection is in the first place conditioned by the observing subject's vantage point. This rule can be applied also to such an important phenomenon as the family. While considering family it is crucial to take into account the situation of an individual being a member of family and community. In this contribution, we are not going to analyse the situation of the observing subject who participates in changes nor the causes of the present position of family, but — on the basis of the available analyses — we will focus our attention on changes in family and on its future in relation to its role and meaning. Examination of philosophical and theological inclinations shows that a social issue can be linked to the opening future as far as "a person's ability to constantly retrieve their own past belongs among theirattributive dimensions and on its basis a person can construct projects of their future."[1]

[1] F. Mihina: "Kríza 'konca storočia' alebo philosophiae pro futuro?" In: *Filozofia výchovy a problém vyučovania filozofie*. Bratislava 1998, p. 24.

Social changes and the family

After the Second World War, social circumstances were characterized by a fortunate conjuncture of family life, unprecedented increase in natality, economic growth and higher standard of living amongst different classes of society, particularly in the USA and in the countries of Western and Northern Europe. Middle and Eastern Europe were, in turn, influenced by the totalitarian socialism. Christianity and spiritual life of families were suppressed and the role of family in the society was ideologized. Among the families of East and West European societies with an actual possibility of "a new family in a new family house," the new concept of nuclear family has started to be perceived as a standard way of family life in modern society.[2]

Sociologist I. Možný offers an overview of the changes which have had an impact on family in the second half of the 20th century, and which have led to the current problems:[3]

1. Decrease in the number of multigenerational families has caused discontinuity of generations and change in family structure. The changes relate to the sizes of families. Multi-member families occur rarely, and this causes long-term decrease in birthrate. Age of an average mother giving birth is more advanced.
2. Changes in sexual behaviour. Traditional family had a monopoly in legitimate delivery and socialization of children, which lasted for a relatively long period. Modern technologies have enabled the more efficient separation of pregnancy from sexual intercourse with the help of different kinds of contraception. The age of legitimate parents becomes more advanced and the number of children born out of the wedlock is also growing.
3. Liberalization and legalization of cohabitation causes decrease in marriage rate. In traditional family the choice of a partner was influenced by the family, the Church, and the community. At present, this influence is declining and an individual alone chooses a future partner, as well as a form of this relationship.
4. Secularization, which is a process that reduces the influence of churches on family and promotes secular way of life and atheistic notions. In traditional system, under the influence of Christian teachings,

[2] Cf. I. Možný: *Sociologia rodiny.* Praha 2002, p. 44.

[3] Cf. Idem: *Společnost a rodina*. Praha 2008, pp. 20—23. Cf. M. Potočárová, L. Baranyai: "Rodina a výchova." In: *Európske pedagogické myslenie od moderny po súčasnosť*. Eds. B. Kudláčová, A. Rajský. Trnava 2012, p. 143.

it was possible to end a marriage of two people only in exceptional cases. At present, marriage is perceived as civic contract which can be renounced by any of the two parties. It causes divorce boom of various measure and range.

5. Family has lost a number of its traditional roles and spheres of influence due to development of different specific institutions. It is mainly school that took over the role of family regarding education and upbringing of children. Also, the mass media cancelled monopoly of family in socializing of children and the young. They form their opinions and attitudes towards values and the proper lifestyle.
6. The role of woman has changed in a way that a woman is employed and wants to achieve success at work, she does not have enough time for maternity. Lifetime maternity changes into a short episode in her lifetime. As a result of education, qualification and financial situation and security of family, women get employed as do men. Marriages with two breadwinners seem common and they are a natural result of this trend.

The changes which influenced family have created a situation in which previously successful solutions are insufficient, and this fact is linked with helplessness and opening of new possibilities. Potočárová introduces three striking causes of problems and difficulties for family at present:

1. Changes in personal disposition of a postmodern person; changes in personalities of spouses, parents and other people, who form the family.
2. Changes on a social scale.
3. Changes in the character of family, in understanding of the marriage, the role of partnership and parenthood.

The changes in the life of family have caused the changes in organization of marriages, namely

1. From hierarchical to egalitarian relationship between partners.
2. From normatively defined roles to a relationship where individuality and individual roles of partners are respected.
3. The emphasis is put on what one can gain from marriage, what can be taken from the relationship rather than on giving, offering, devoting to each other.[4]

The changes in family and understanding of marriage are not the issues of the present study. On the contrary, these changes have accompanied mankind throughout the history. The real issue is their qualitative dimension, that is whether these are changes for better of worse. When Aristotle criticizes Plato's totalitarian reforms of family life, the central issue is whether Plato's suggestions are good or bad for *polis*, that is for

[4] Cf. M. Potočárová, L. Baranyai: "Rodina a výchova…," pp. 147—148.

society, since one can live one's life only in community and society, meaning with others. According to Aristotle, diversity of families is conditioned by providing them with basic needs for life, reproduction and raising children. Family, where relationships are given by love,[5] cannot provide basic needs sufficiently and hence, it joins the *komé* (village, family community, city district) and with more *komai* creates *polis*, which is a complete and perfect community, almost self-sufficient with regard to providing for the needs.[6] The aim of joining in the first place is to survive, not to gain.

Christianity also caused changes in understanding of marriage by emphasising morally pure life, freedom and responsibility. The *Epistle to Diognetus* says: "For Christians are not distinguished from the rest of the mankind either in locality or in speech or in customs. They bear their share in all things as citizens, and they endure all hardships as strangers. Every foreign country is a fatherland to them, and every fatherland is foreign. They marry like all other men and they beget children; but they do not cast away their offspring. They have their meals in common, but not their wives […]. They obey the established laws, and they surpass the law in their own lives […]. In a word, what the soul is in a body, the Christians are in the world."[7]

If we witness transformations of family and marriage, these changes must be assessed exactly as they were once by Aristotle, that is from the point of view of a particular entirety. The third enumerated cause of these changes appears to be the most problematic: the emphasis is put on personal benefits from marriage, on taking from the relationship rather than on giving oneself to each other. The paradox is that unwillingness to share with the other leads to poverty, as the involved parties lose the benefits of the synergistic effect. Different structures of families and households are connected with variegated social and economic results. Risk of poverty is higher among the so-called flatmates than among married couples; divorce and living separately are associated with poverty, too. This situation seems risky mainly for women but also for the single-parent families. Even a working person has higher poverty rate than a family with both parents, where only one parent works. Young people face smaller risk of poverty if they live with their parents, and also children in single-parent families face higher risk of poverty.[8] This issue was linked to personalists in the 20th century, where the central topic is *persona* actualising themselves in *communio personarum*. For subject, it is necessary to reflect

[5] Cf. Aristoteles: *Politika*. Vol I. Bratislava 2009, pp. 24—28.

[6] Cf. Ibidem, pp. 2—4.

[7] *List Diognetovi*. In: *Liturgia hodín*. Vol. II. Vatican 1988, pp. 813—814.

[8] Cf. *The Future of Families to 2030*. Ed. Organisation for Economic Co-operation and Development Organisation for Economic Co-operation and Development. Paris 2011, p. 17.

pro futuro basic demand of love, to be "together with others," to act with them and, in that way, make up a community of people, the realization and completion of subject's being depends on.

Changes in family structures and family relationships have an impact on informal networks in taking care of elderly people: not having children can mean higher dependency on professional care at older age. The divorced, separated and re-married have bigger difficulties in keeping long-term relationships with their children, which will lead to lower ability to provide informal care within family network. The data show that all the above-mentioned changes in the structure of households and families will continue and will be even faster in the course of next 20 years, hence the issue of family needs deep reflection and decisive action. There are changes which influence lives of man and family in a positive way and changes with negative influence, fundamental and accidental changes, therefore it is important to rediscover meaning of family. Based on the sociological research, it is relevant to point out the most serious dangers concerning the stability of marriage and family and at the same time to explain possibilities of social support for families.

On 22 October 1983, the Holy See issued the Charter of the Rights of the Family to international institutions and authorities responsible for family issues. The charter addresses mainly governments and is offered as a model and foundation for changes in laws regarding family policy. It emphasises social dimension of human rights which concern the individual as well as the family. Family is rendered as a community of love and solidarity, unique as far as educational opportunities and possibilities for passing cultural, ethical, social, spiritual and religious values are concerned, important for development and success of its own members and the whole society as well.

In the present Slovak legislation, family is defined as a unit based on monogamous marriage. In the amended Family Act No. 36/2005 Coll. it is stated that marriage is a union of a man and a woman under the protection of society; the main aim of marriage is family and upbringing of children, family based on marriage is a basic unit of the society, and the society protects all forms of family. Parenthood is appreciated as a role of men and women. The society offers not only its protection to parenthood, but also the necessary care, mainly material support for parents and help in carrying out parents' rights and duties.[9] Family has always been in every condition a primary source of providing for child's biological needs and guiding its development towards an integrated person, able to live in society and to pass its culture on.

[9] Cf. J. Gabura: *Sociálna práca s rodinou*. Bratislava 2006, p. 5.

Family and education

Amongst different socializing influences participating in forming an individual in the course of life, family plays a decisive and irreplaceable role. It influences a person from the earliest age when it is most likely to influence them. This influence is very intense, emotional, personal and long-lasting. As the smallest social unit, the family makes up the most important relationship system of reference for most of people, where many important aspects of psychical development of all its members, especially children, take place. Its role is to provide conditions for the development and support of the members on biological, social, psychological and spiritual level.

From the psychological point of view, in the modern society, family is a shelter and it offers stability that is necessary for the individual's balance in a dynamically changing society. Within a family, people relieve tension from other social relationships, they look at it as a source of strength. Those who are successful leave responsibility and decision-making to other family members, usually to spouses, whereas the unsuccessful ones compensate the lack of their authority within the family by exerting their control in other spheres of life. The world of family has become the most private place, most valued sovereign authority for family members. In a modern family, an individual who established family is thought of as a sovereign. The modern society claims the right to interfere with internal affairs in case the rights and health of individual members are threatened.

According to Zygmunt Bauman, the family is an important and unique environment for upbringing and education of the youth. The scholar takes into consideration some properties and roles of the family which have changed with the development of the society, but it has maintained some basic features, which clarify the meaning of family:

a. Family is a form of long-term coexistence approved by society.

b. Family consists of people mutually connected by blood kinship, marriage or adoption, as accepted by prevailing custom.

c. Family members usually live under one roof.

d. Family members cooperate within division of roles accepted by society, where one of the most important roles is nurturing and education of children.[10]

Family is generally considered to be the basic unit of social organization, but it is difficult to define it properly. Family is an institutional-

[10] Cf. Z. Bauman: *Úvahy o postmoderní době*. Praha 1995, p. 47.

ized social unit, in which some of the members are interconnected by a consanguineous or an adoptive parent-child social relationship. The second group of members function in a mother-father relationship; the third group, which is not always present, is a siblings relationship. All of them are socially sanctioned, more or less lasting social relationships.

The notion in question is not to be seen as an abstract construct of a lawmaker, but it is a complex and extensive establishment. Despite the natural character of family life, it is also the biggest experiment of the mankind. Within family the education takes place in a father-mother-child triangle; all the attempts to diminish this relation by resembling it to the master-subject relationship, a sage vs. an unwise person, a teacher and a pupil, lead us away from the original source of education, that is *fillia* — love, friendship, favour. Originating from *fillia* 'cosmos character' of family following each custom and each historical form of community, means to protect from damage caused by all our decisions and thoughts, all our plans which do not count with unconquerability, incomprehensibility, no subjectivity of being. Upbringing is not only an education, but rather a process of learning to live.[11]

Education as such originates in the area of love, friendship, favour and care; therefore, the need to be educated belongs to the essence of a person, as Eugen Fink, a German philosopher and pedagogue, claims: "Human being is essentially co-determined by original phenomenon of education." To educate means to confirm that man cannot live without another man. Unlike original *paidea*, modern thinking has lowered education to the level of necessary evil, which helps to change a word into brand and reduce education to the role of a tool, like a hammer, which can be put aside when the work is finished. If one tries to put education aside, it leads to delay, separation and alienation from life and from oneself.[12]

Christianity brought very important optimism into education. Evil in the world does not originate in metaphysical principle, but it originates in a personal and free decision of man who rejects God. God is not a subject to necessity. He is Love, and man is given second chance in Jesus Christ. Man is created in the image of God. Christian education does not accept division of society and totalitarian features of Plato's education, because Christ does not care only about the chosen Jews or educated Greeks, but He takes care about all the people. Christ's coming to the world is the highest expression of God's educational effort. Jesus Christ — *Logos*, is an

[11] Cf. A. Rajský: "Ideál a ideály európskeho človeka v procese dejín vlastného sebanazerania (antropologicko-teologický context)." In: *Európske pedagogické myslenie od antiky po modernu*. Ed. B. Kudláčová. Trnava 2010, pp. 35—67. Cf. J. Michálek: *Topologie výchovy*. Praha 1996, pp. 68—79.

[12] Cf. A. Rajský: "Ideál a ideály…," p. 54.

example and authority, aim and sense, "I am the way, the truth and the life" (Jn 14, 6). The first Christian thinkers introduce Christ as the only Educator and Teacher. The whole universe, the work of creation and salvation, every man and the entire mankind is included in a universal process of education, which is salvation leading to the excellence of a person living with God. Knowledge is not sufficient when we want to act right, God's grace is necessary, too. Education of a Christian is *imitato Christi*.[13]

Family is the first natural educational environment. In family, man experiences his first joys, sufferings, desire to work as well as he/she gains an ability to give. According to Jacques Maritain, the function of the family is twofold: biologically-creative and psychologically-educational. The natural unity of these two functions has a positive impact on children and parents. The first experiences tend to have long-lasting effect on a person. Therefore, the good or bad example of parents accompanies man for the rest of his/her life. Maritain considers moral education of children to be the special role of the family.[14] The basic justification of the distinguished position of family is love which makes man capable of internal acceptance of values and leads him/her to respect ethical standards. It is impossible to talk about education without authentic conjugal and parental love. Love is not a matter of training or learned science, love is a gift — from man or God.[15] There are many forms of love within a family: conjugal, parental, filial and sibling. Variety of educational suggestions by father, mother and other family members is important as well. Their roles differ, but they enrich a child emotionally and spiritually. Family love is a prototype of any love as a life attitude. Considering religion, it has a significant position in the family,[16] because love is from God and it is love to God that creates an atmosphere for integral education of man.[17] Integral humanism is theocentric and it respects freedom of man as well as transcendenal grace, because it is grace that unifies people with God. The biblical message is the massage of salvation which is provided for a person living in the history, since it is in such a earthly circumstances that a person should testify about transcendental world where they belong.[18] Family may be a subject to various deviations. Maritain warns against an

[13] Cf. W. Jaeger: *Wczesne chrześcijaństwo i grecka paideia*. Bydgoszcz 1997, p. 103.

[14] Cf. J. Maritain: *Pour une philosophie de l'education*. Paris 1959, pp. 118—120.

[15] Cf. Idem: *Education at the Crossroads*. New Have 1943, pp. 117—121.

[16] Cf. M. Rembierz: "Dom rodzinny jako przestrzeń wychowania intelektualnego — wzrastanie w mądrości, czy utwierdzanie się w dziedziczonych uprzedzeniach i stereotypach?" In: *Jaka rodzina, takie społeczeństwo. Wspólnototwórczy wymiar wychowania integralnego*. Ed. M.T. Kozubek. Katowice 2012, p. 240.

[17] Cf. J. Maritain: *Pour une philosophie...*, p. 120.

[18] Cf. Idem: *Křesťanský humanismus*. Praha 1947, p. 254.

overtly authoritative approach of parents and against neglecting any of their responsibilities (economic, social, educational, etc.). He recommends a purposeful deepening of family relations, because family breakdown leads to demoralization and subjectivity of upbringing.[19] In the article 17 of *Familiaris consortio* introduces a concept of family where education is conditioned by an intimate community of life and love. Family is given the mission to "guard, express and provide love as a living echo, and a real participation in God's love towards mankind and in Jesus Christ's love toward Church, His bride."[20]

If we want to raise person towards respecting life, we must educate him/her to actual understanding of and living in freedom. Education towards the actual living in freedom must take place in family, school and other educational institutions, but again, "the most important is man and his moral authority, which is the result of true nature of principles and their identity with his deeds."[21] Education within a family has its special, primary importance in culture and in education towards actual humanity. Holy Father emphasises the importance of this upbringing, claiming that family "fulfills its mission of spreading the Gospel in upbringing children. By a word and example, every day contacts and decisions, actual expressions and signs, parents teach their children the authentic freedom which is realized by unconditional self-giving and develops respect towards others, sense of justice, attitude of cordial accepting of others, dialogue, service full of devotion and solidarity, as well as all the other values which help to accept life as a gift."[22] A role of not lesser importance belongs to teachers and tutors: "It depends on them whether the young, educated to actual freedom, are able to keep and spread ideals of life and form attitude of respect and service in every person in family and society."[23]

The aim of the integral education is a preparation of man for life in the society. Man is a social being and belongs to various social groups (family, school, work, profession, nation, politics, religion, etc.). Upbringing must reflect the social character of human being and lead children as well as youth to cooperation with other people. Maritain rejects individualism and sociologism.[24] Extreme individualism minimized the role of social bonds of the individual and his/her responsibility towards other people. Maritain perceives freedom in an abstract and unilateral way.

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[19] Cf. Idem: *Pour une philosophie…*, p. 42.

[20] Ioannes Paulus II: *Adhortatio apostolica "Familiaris consortio"*, 22.11.1981, n. 17.

[21] Idem: "W imię przyszłości kultury. Przemówienie w UNESCO." Paris, 2.6.1980. In: Idem: *Wiara i kultura*. Rzym 1986, p. 72.

[22] Idem: *Litterae encyclicae "Evangelium vitae"*, 25.3.1995, n. 92.

[23] Ibidem, n. 98.

[24] Cf. J. Maritain: *Pour une philosophie…*, pp. 31—34.

The correctly interpreted freedom is a responsible one which does not collide with requirements of social life. For the sake of social life, spiritually mature man freely chooses the necessary constrains. From the personalistic point of view, social life does not represent a threat to a person, but rather enriches him/her by various relationships and updates their integrity. The threat to man and his freedom comes from some concepts of social life put forward by sociology.[25] Maritain warns against collectivism which assumes the full right in axiological sphere. Utilitarianism and pedagogical pragmatism lead to upbringing which ignores internal needs and individual aspirations of man. The purpose of social life is not the restriction but development of human being. The dynamic character of social life requires continual adaptation of changing human relations which causes a temporal tension between an individual and community, but it does not represent a denial of individual freedom. The adequate upbringing is mostly threatened by various anthropologic deviations, the absence of the goal of education, improper understanding of it, pragmatism, sociologism, intellectualism and voluntarism.[26]

Conclusions

Deliberation over the future of family is connected to upbringing in its narrowest sense, whereas it is necessary to bear in mind that "the most important thing is to touch human reality in its most distinctive point — the point, which man's experience refers to and from which man cannot step back without destroying himself/herself."[27] The point of no return is a deed, a good deed carried out by man.[28] At the beginning of the 21st century, family still has a relevant mission: to do good, and hence, the education cannot be restricted to matters of Plato's shadow, but it must aim at asking questions longing for the truth and voice of conscience, on duty, on freedom and responsibility, suffering, guilt, hope, troubles, meetings, work, that is to the whole basic experience through which essence and meaning of man is uncovered.

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[25] Cf. S. Kowalczyk: *Wprowadzenie do filozofii J. Maritaina*. Lublin 1992, p. 51.
[26] Cf. J. Maritain: *Pour une philosophie…*, pp. 17—39.
[27] K. Wojtyła: *Osoba i czyn oraz inne studia antropologiczne*. Lublin 1994, p. 70.
[28] Cf. Ibidem, p. 60.

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Reflection on the Family at the Beginning of the 21st Century

Summary

When thinking about family it is important to consider the situation in which man is the observing subject, that is a member of a family and a community. In this contribution, on the basis of available analyses, we focus our attention on changes in family and on its future in relation to its role and meaning. Contemplation of the future of family is connected to the upbringing in its most basic sense, to which man's experience refers and from which man cannot step back without destroying himself.

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Réflexion sur la famille au début du XXIe siècle

Résumé

L'une des plus importantes parties de la réflexion sur la famille est bien l'analyse de la situation où l'homme, étant membre d'une famille et d'une communauté, occupe la position d'un sujet observant. Dans le présent article, tout en s'appuyant sur les analyses qui ont été faites dans ce domaine jusqu'à présent, l'auteur porte son attention sur les changements s'opérant dans un milieu familial et sur le futur de la famille, y compris sa mission et son sens. Les questions concernant le futur de la famille sont strictement liées à l'éducation perçue comme celle dont le sens renvoie à ses origines et qui est déterminée par la plus élémenataire expérience existentielle et axiologique de l'homme. Ici, il s'agit du sens dont l'homme ne peut pas se détacher, sinon il anéantirait lui-même.

Mots clés : famille, homme, futur, éducation

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Riflessione sulla famiglia agli inizi del XXI secolo

Sommario

Una parte molto importante della riflessione sulla famiglia è la ponderazione della situazione in cui l'uomo si trova come soggetto che osserva, da membro della famiglia e della società. Nel presente articolo, partendo dalle analisi condotte finora nella letteratura su tale materia, concentriamo l'attenzione sui cambiamenti che hanno luogo nella famiglia e sul futuro della famiglia riguardo alla sua missione e al suo senso. Le osservazioni sul futuro della famiglia sono strettamente legate all'educazione, intesa nel suo significato originario e più appropriato, che indica l'esperienza esistenziale ed assiologica dell'uomo più elementare, significato che nessun uomo può rinnegare in alcun modo, perché altrimenti annullerebbe se stesso.

Parole chiave: famiglia, uomo, futuro, educazione

Ecumeny and Law, vol. 2 (2014)
pp. 61—73

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Pastoral Counselling of Multi-Religious Families Based on Examples from Bielsko-Żywiec Diocese

Keywords: ecumenism, ecumenical ministry, dialogue, family, multi-religious

There are two tasks which ecumenism faces; one of them is to restore the unity of Christians, and the other — to reconstruct the unity in the "Roman Catholic Family itself." It is the work of renewal and reform of the Church, so that "her life gave a truer and distinct testimony of what Our Lord had taught us, and what He had established and the Apostles handed down to us." In the course of history, the term ecumenism, as well as all of its variations, has become blurred and has got many meanings and connotations. Nowadays, in an adjective ecumenical, three intertwined concepts can be found: universal-missionary element of a global scale; everything that concerns the Church, and finally, issues concerning families belonging to different denominations.

In one of his pastoral letters written on the occasion of the Week of Prayer for Christian Unity, Bishop Tadeusz Rakoczy said that "ecumenism is a vocation to make individual Christians united. Those who were baptised are obliged to unite and not divide […]. The one who rejects ecumenism, does not accept the Lord's Prayer, […] that all may be one."[1]

The sociocultural processes in Bielsko-Żywiec diocese cannot be discussed without taking into consideration the specific historical background of that region. This diocese has considerable merits as far as the ecumenical movement is concerned, and its beginnings in Cieszyn Silesia go many centuries back. However, history shows that the character of

[1] *List z okazji Tygodnia Ekumenicznego*, 8.1.2003. In: the author's private archives, ref. JB E/03.

religious relationships was quite remote from today's picture marked by mutual respect, tolerance, brotherhood and engagement in common devotion to the faith. "There can be no ecumenism worthy of the name without a change of heart. For it is from the renewal of inner life of our minds, (28) from self-denial and an unstinted love that desires of unity take their rise and develop in a mature way"[2] (DE, 7).

On 9 May 1992, during the canonical assumption of the bishop's office in Bielsko-Żywiec diocese, Bishop Tadeusz Rakoczy expressed his gratitude towards the representatives of the Evangelical Church of the Augsburg Confession for their presence during the celebrations. On this occasion, he offered them "sincere and fraternal ecumenical cooperation in the diocese in the spirit of the Second Vatican Council. I hope, we will only look at the things which unite us. May the grace of God Almighty support our efforts to build unity."[3] Thus, ecumenism found its place in the works of the newly nominated bishop, who called his programme "the hermeneutics of the heart."[4] In this, he referred to the decisions made by the Second Vatican Council which developed the concept of the "'hierarchy' of truths" (DE, 11) and presented it as a hermeneutic rule of interpreting faith's dogmas existing in the Roman Catholic Church. On the one hand, the rule can play a significant role in rebuilding communion between Churches and Christian Communities. On the other hand, it does not mean the change of the deposit of faith but looking for new, fuller forms of expression.[5]

From the point of view of the ecumenical reflection, Christians must learn to distinguish between the deposit of faith and the way of formulating the truths of faith.[6] Here comes the need for the proper hermeneutics understood as an art of interpretation and proper tradition of the truths in Scripture and Church documents, that is liturgical texts, council documents, writings of the Fathers and Doctors of the Church, documents concerning the teachings of the Church, as well as documents and writings concerning ecumenical issues.[7] Hermeneutics is not only the skill

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[2] Vatican Council II: *Decree on Ecumenism "Unitatis redintegratio"*, 21.11.1964. *Acta Apostolicae Sedis* [further: AAS] 57 (1965), pp. 90—107.

[3] "Słowo Księdza Biskupa Tadeusza Rakoczego podczas ingresu do katedry św. Mikołaja w Bielsku-Białej." *Kwartalnik Diecezjalny* [further: KD] 1 (1992), p. 26.

[4] Ibidem, p. 27.

[5] Ioannes Paulus II: *Litterae Encyclicae "Ut unum sint"*, 25.5.1995. AAS 87 (1995), pp. 473—517, n. 38.

[6] Pontificium Consilium ad Christianorum Unitatem Fovendam: *Directory for the Application of Principles and Norms on Ecumenism*, 25.3.1993, n. 181 — http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/documents/rc_pc_chrstuni_doc_25031993_principles-and-norms-on-ecumenism_en.html.

[7] *Ekumeniczny wymiar formacji pastoralnej.* Trans. S. Rabiej. Opole 1998, no. 11.

to interprete texts. It is not only the art of explaining and reinterpreting formulas and documents from the past. Both understanding and interpretation concern also real human beings who believe in a different way, live according to slightly different rules and follow their own way to the ultimate fulfilment. Ecumenical hermeneutics is first of all hermeneutics of individuality, which lets you go beyond your "own" truth only. It helps you try and understand the other "as yourself" (see Mt 22, 39).[8] Thus, it can be described as community hermeneutics.

According to John Paul II, "aspiration for unity must be present in everyday life of the Churches and Church Communities, as well as in the individual faithful,"[9] but particularly in families belonging to different religions.

In January 1993, Bishop Tadeusz Rakoczy addressed his first ecumenical pastoral letter to the faithful of his diocese on the occasion of the Week of Prayer for Christian Unity. In the letter, he pointed out to the duties of the Christians, and how vital it is for all followers of Christ to understand that the unification of churches is a fundamental, and yet extremely effective sign of reconciliation in multidenominational families, between people and nations. The contemporary world continually calls the divided Christians to pray and work for the sake of the unity. The Ordinary emphasised that all representatives of different Christian communities living in his diocese compose one family. He also encouraged people to pray for the unity, to ask the "Holy Spirit to support our Churches with its power and help us to open our hearts to the breath of his life-giving grace."[10] If we want to strenghten the bonds between the Catholics and the Protestants in this specific region, we must encourage them to join in common actions and in everyday cooperation in the parishes and diocese; to emphasize the necessity of the dialogue of love and truth; to learn about other spritual traditions and share them. On the common way to the unity, the recommendations of the Second Vatican Council are followed. The Council paid its attention to the faithful by saying: "[…] the stronger their bond with the Father, the Son and the Holy Spirit is, the easier will they be able to deepen their fraternity" (DE, 7).

In his letter for the Week of Prayer for Christian Unity in January 1998, Bishop Rakoczy, addressing the faithful, asked them to become the champions of unity, which should be manifested in such gestures as reach-

[8] W. Hryniewicz: *Hermeneutyka w dialogu*. Opole 1998, p. 17.

[9] Jan Paweł II: "Skarb w glinianych naczyniach." *OsRomPol* 3 (2003), p. 18.

[10] T. Rakoczy: "List do wiernych w związku z Tygodniem Ekumenicznym." KD 1—2 (1993), p. 23.

ing out to the neighbours, apologizing, forgiving.[11] These words were his appeal to become open to other man. He also showed the necessity of dialogue and the unity of hearts in the prayer which should lead us to the full communion between Christians.

The Church on its way to reconciliation

What is the role of the Church on the way to reconciliation? The bishop gives the answer in another ecumenical pastoral letter in January 2004, saying that we believe in "one, holy, Catholic and apostolic Church." "The Church is the visible sacrament of the redemptive unity, and from its very nature — a tool of peace. The division of Christianity, arguments between sisters and brothers in faith are against the nature and the mission of the Church. This situation demands that the Christians show more and more engagement in the work for the unity. It is our duty because we have had the task from the Apostles down to the present day, through all the generations of Christians."[12]

How peculiar the Cieszyn region is in this respect, is best shown in the character of John Paul II's visit in Skoczów on 22 May 1995. 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 […] 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 which is carried out with a deep conviction that so much joins us — that we are joined 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."[13]

In this diocese the problem of mixed religions has certainly a different dimension than in other parts of the country. Much earlier than in

[11] The author's private archives, ref. nr JB E/98.

[12] Ibidem, ref. nr JB E/2004.

[13] Jan Paweł II: "Przemówienie wygłoszone w czasie spotkania z wiernymi w kościele ewangelicko-augsburskim w Skoczowie." In: *Drogowskazy dla Polaków Ojca Świętego Jana Pawła II*. Vol. 3. Ed. M. Czekański. Kraków 1999, p. 273.

other regions — as Lutheranism came to this area already in the first half of 16th century — members of the Catholic and Protestant churches got married to one another, and that way marriages of people of different religions, generally known as mixed mariages,[14] are formed. As such, they should be treated with special pastoral counselling (CIC, can. 1128). These marriages have a historically established tradition and further generations are raised in the spirit of tolerance and mutual acceptance of the religious diversity. The process of raising in the spirit of tolerance starts from the childhood.[15]

Both the Catholics and the Protestants can rely on each other in hard times. Therefore, noone was surprised when a building of a Catholic church was rented to the Protestants, who in this particular place did not have their own church. Also Protestants are willing to let the Catholics use their church. An excellent example of the latter can be found in Międzyrzecze, where a fire destroyed the Catholic church on 25—26 January 1993.

On 7 February 2006, the diocesian curia in Bielsko-Biała was the seat of a nationwide conference of diocesian chaplains responsible for Catholic families. Father Piotr Jerzy Badura presented the ecumenical situation in Bielsko-Żywiec diocese, paying special attention to the issue of mixed marriages. The speaker emphasised that "such family is a basic school of ecumenism, respect for the other religion, acceptance for other Christians. It is also a way to find the other Church, its history, tradition and doctrine."[16] The participants of the conference, with great interest, listened to a couple's (she — a Catholic, he — a Protestant) testimony of their ecumenical life. In their speech, they said: "We are aware of our differences, and we know why they exist, but it is not our task to decide whose fault it is, or to try to solve theological problems. We also know that the division of the Church, which also affects us, is a really painful problem. The desire to repair it has already taken a lot of time, but we trust that one day it will be done according to Christ's will." Answering the question what the unity between Churches depends on, the couple said: "Above all, they should love each other and Our Lord; they should

[14] Cf. *Codex Iuris Canonici* [then: CIC], can. 1128.

[15] An example of a mixed marriage is the family of the famous ski jumper, Adam Małysz, who being a Protestant himself, got married to a Roman Catholic. The wedding took place in the Protestant church but they decided to baptise their child in the Catholic church as, according to their opinion, the child should be brought up in their mother's confession because she takes the bigger part in this process. Cf. A. Szarlik: "Bo ja cię kocham. Wywiad z Adamem i Izabelą Małysz." *Pani* 9 (2006), pp. 19—21.

[16] A. Świeży-Sobel: "Ekumenizm w praktyce." *Gość Niedzielny* [Bielsko—Żywiec] 6 (2006), p. 1.

not look for things which divide them but tenderly cherish everything that joins, and not start to criticize from the very beginning."[17]

If we want to ask which elements in the work of ecumenism, in constructing the unity in multi-religious families, are the most successful, the answer is — the prayer. According to the teaching of the Second Vatican Council, "the unity which has so far joined the Catholics with their separated brethern should urge them to a common prayer as it is desirable that they are joined in prayer" (DE, 8). Thus, the most fundamental task for the ecumenical pastoral work is to get involved in the prayer and in that way help the process of unity. In prayer we are closer to Christ and our brothers and sisters. Prayer helps us overcome all obstacles. It helps to create a community heading towards one destination. It unites the disciples of Christ in many aspects — in confessing one faith, in worshipping Our Lord and in fraternal harmony of the God's family.

Ecumenical pastoral care of marriages of mixed religions

The mission of preaching the Gospel of Salvation to all creation depends on the testimony the Church gives to the world through her life. On the one hand, the testimony expresses the historical dimension of the Church based on the Apostles' testimony, on the other hand, it is a clear invitation to faith directed to all who are outside the Church. The meaning of the testimony applies not only to the Church as a whole, but to everyone who believes in God. In fact, it is the Christians who through their holy life are the sign of holiness and unity of the Church. In reality, to fulfill the task, the Christians must show mature faith based on the cooperation with God's grace. This cooperation leads to the revival of life through penance which assumes humility; through the sense of justice which paves the way to true unity; and through love which is the reflection of Christ's love full of tolerance, respect and kindness. In such situation, the unity between the disciples and their Lord in love makes the glory and dignity of the Lord real in the world. The first Christians experienced such unity. The unity was already present in the Church, and it became a fact. It was the miracle of the Holy Spirit and it can still be its miracle today if we willingly become the subject of its action.

The fact that we understand this truth is of real importance in the ecumenical pastoral counselling of marriages between the faithful of dif-

[17] Ibidem.

ferent denominations and their families. It shows that the unity of the Church is based on the "representing" presence of the "Lord's Kingdom" whose space is still open for the unfulfilled unity. Therefore, the *communio* of the Christian churches is a unity open towards the future. Where the Church will seriously deal with its "temporality," there such forms of church life will come into being. Consequently, this will let other Christian churches structually partake in it. In that way the mutual acceptance will be socially successful.

As far as the multidenominational families are concerned, we must be aware of the fact that they are families which should be given special ecumenical pastoral care. Therefore, priests of different confessions are requested to cooperate in this field. Their task is to reduce the problems which may arise because of the religious differences. Another task is to strenghten the spouses in their own religious traditons and piety, and to maintain the ties with their respective churches. Moreover, preparing young people for marriage is also of great importance — they must be informed about the difficulties they may encounter in their marriage because of the difference of religions. If they take up the decision to enter into such a marriage, they should be helped to overcome difficulties.

The Church itself highlights a number of ideas how to help these couples. First of them concerns pastoral rules of the mixed marriages counselling, which means they should be based on true cooperation between the priests of both confessions. Their activities should concentrate on strenghtening the spouses in their own religion, and should teach them respect for their partner's religion. The spouses must be aware that the sacrament (church marriage) which has united them, is the foundation of their life and faith.

Another form of pastoral counselling concerns the issue of agreement in which Church they should enter into marriage and raise children. In that question, the priests should see to it that the celebration of a sacramental marriage is conducted according to the canon form and under provided conditions. It is permitted that in some circumstances the withdrawal of the form can be accepted. The future couple is also free to choose the church in which they may enter into their marriage. It is said that on request of the bride and groom, the Catholic priest may be present during the celebration if the wedding is concluded with a dispensation in the Protestant Church.

As to issue of baptism and raising children, it is said that bringing them up in different religions will be considered a kind of handing down upon them the split of the Churches. It is an argument in favour of choosing only one Church for the holy baptism. The Catholic party should do their best to have the children baptised and brought up in their Church.

Nevertheless, it is said that the parents are responsible for passing along the faith to their children. Their proper behaviour can also be the beginning of the ecumenical dialogue in the family, and they may share "the richness of their faith" with each other. The religious affiliation of the children to the same Church should correspond with their open attitude towards the other Church.[18]

The following rules are vital in the ecumenical pastoral work of families: encouraging the faithful to pray for the unity of Christians and to participate in common services and other forms of parish activities; acquiring more knowledge about respective Churches; reminding parents that a child, despite their affiliation to one of the Churches, should be educated about the spiritual richness of the other Church through participation in celebrations, services and common visits in the other church. There are parishes (e.g. Brenna) in Cieszyn Silesia where the parish priests — Catholic and Protestant — visit the multidenominational families together. First, they pray together, and then, have a discussion on different subjects with the members of the family. The ecumenical ministry understood as such can be a device to strenghten the love between the spouses. Their love, on the other hand, is an example of ecumenical love and a sign of unity for the divided Church. In reality this kind of ministry is a form of faith dialogue in the family.

If we raise the question what criteria should be taken into account when choosing a life partner, among the most important ones are mentioned love and deep affection, then the positive personality traits like kindness, understanding, patience and, last but not least, the faith and mutual trust. These are the values that should characterize each multidenominational family.

Ecumenical ministry in the light of the Evangelical Church of Augsburg Confession

What is the experience of the ecumenical ministry in the Evangelical Church of Augsburg Confession? Unfortunately not good, the same concerns other Churches. The formal and legal basis for the ecumenical ministry should be appropriate regulations in *Zasadnicze Prawo Wewnętrzne Kościoła Ewangelicko-Augsburskiego* (*Fundamental Inner Law of the Evan-*

[18] *Wiara, modlitwa i życie w Kościele Katolickim. Uchwały I Synodu Diecezji Katowickiej 1972—1975*. Katowice-Rzym 1976, pp. 235—238.

gelical Church of Augsburg Confession) and in *Pragmatyka Służbowa Kościoła Ewangelicko-Augsburskiego* (*Official Practice of the Evangelical Church of Augsburg Confession*).[19] In *Zasadnicze Prawo Wewnętrzne Kościoła Ewangelicko-Augsburskiego,* there is no article to be found about the ecumenical ministry.

In *Pragmatyka Służbowa Kościoła Ewangelicko-Augsburskiego,* there is a chapter entitled "The Ecumenical Activity," with two subsections: "Serving the Church's Unity" and "In Holy Communion (*communio in sacris*)." Except paragraph 187, the others refer to liturgical practice and theological responsibility for ecumenism. Paragraph 187, which does not mention the ecumenical pastoral activities at all, reads as follows: "The Evangelical Church of Augsburg Confession in the Republic of Poland encourages its clergy to be open, honest and ecumenically sagacious. It encourages full tolerance and respect for the Christians of other religious beliefs, in the neighbourhood relations, in church activity, in religious education, in preaching, in publications and ecclesiastical press. We expect the same from our ecumenical partners."

It can be assumed that the record about ecumenical ministry can be found in the chapter "The Sacramental Ministry of the Church," in the subsection "The Holy Baptism," in § 74. It says about the godparents: "Godparents should be members of the Evangelical Church of Augsburg Confession, or members of a Church which we are in altar and pulpit community with; it is allowed that one party is of another Christian confession."

Prior to administering baptism, the Lutheran priest is obliged to have a pastoral talk with the child's parents and godparents, which should be regarded as a form of ecumenical ministry. The chapter "Ministry of Marriage and Family" also says about the form of ecumenical ministry in the subsection "Marriages of Various Confessional, Religious and Ideological Affiliation." This form refers only to actions connected with entering into a marriage. In the case of mixed marriages, the role of the Lutheran priest is limited and further care of such couples depends only on the personal ideas and responsibility of the local priest. According to Fr. Marek Uglorz, PhD, a professor at the Christian Theological Academy in Warsaw, "priests have not been provided with pastoral role. Everyone who thinks that anything concerning the ecumenical ministry could be drawn from *Pragmatyka Służbowa Kościoła Ewangelicko-Augsburskiego,* is mistaken. In the chapter "'Towards the House of Mourning'", we will not find any

[19] Cf. *Zasadnicze Prawo Wewnętrzne Kościoła Ewangelicko-Augsburskiego*. In: *Zbiór przepisów prawnych Kościoła Ewangelicko-Augsburskiego w Rzeczypospolitej Polskiej*. Bielsko-Biała 1999, passim; *Pragmatyka służbowa Kościoła Ewangelicko-Augsburskiego*. W: *Zbiór przepisów prawnych…*, passim.

references to ecumenical actions, though it often happens that during the funeral of a Lutheran, we have to address a member of the other Church with some comforting words."[20]

The ministry of families of different religions depends on the local priest who "has to find an adequate Roman Catholic partner, or a partner of any other Church involved. Thus the ecumenical ministry should be the subject of special care of the priests of the Churches parishes of which are in the same environment if the ministry is to be carried out in a responsible and honest way, and free of any suspicions of cryptomission. A pastoral construction of a common house where all tenants feel the responsibility for its future should take into consideration not only the ecclesiological models which are special for each religion, but also fulfill specific pastoral targets typical for all Churches. These targets, which integrate not only people, but are integrated theologically and ecumenically, can bring blessed fruit which may save the children of God and make them happy."[21]

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There is still a long way to go for the ecumenical ministry of the multidenominational families before it becomes a fully-fledged unit in the pastoral work of the Churches. There is a constant need for ecumenical education, for learning the Church's teachings, for information about the achievements in the ecumenical dialogue. Tolerance, respect, acceptance, humbleness and love, and common testimony are values which are indispensable in the pastoral counselling of religiously mixed families. These values should continually be developed in multidenominational families, and in due course the families will become "fundamental schools of ecumenism."

[20] Cf. M.J. Uglorz: "Duszpasterstwo ekumeniczne w Kościele ewangelicko-augsburskim." In: *Ekumenizm w duszpasterstwie parafialnym*. Ed. J. Budniak. Katowice 2007, p. 45.

[21] Ibidem.

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Pastoral Counselling of Multi-Religious Families Based on Examples from Bielsko-Żywiec Diocese

Summary

The area of Bielsko-Żywiec diocese is inhabited by about 50,000 members of the Evangelical Church of Augsburg Confession. This fact has indisputable merits in the ecumenical movement, especially in pastoral counselling of marriages of different Christian denominations. In Cieszyn Silesia, the beginnings of the movement go many centuries back. Nevertheless, history shows that the religious relationships were totally different from the present ones, which are full of respect, tolerance, brotherhood, and engagement in the common faith testimony. The Catholic and Protestant Churches have a shared ecumenical activity, where the first place is reserved for the pastoral counselling of multidenominational.

There is still a long way to go for the ecumenical ministry of the multidenominational families before it becomes a fully-fledged unit in the pastoral work of the Churches. There is a constant need for ecumenical education, for learning the Church's teachings, for information about the achievements in the ecumenical dialogue. Tolerance, respect, acceptance, humbleness and love, and common testimony are values which are indispensable in the pastoral counselling of religiously mixed families. These values should continually be developed in multidenominational families.

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Prêtrise des familles multiconfessionnelles à l'exemple de la diocèse de Bielsko-Żywiec

Résumé

Le terrain de la diocèse de Bielsko-Żywiec est habité par une société de presque cinquante mille personnes appartenant à l'Église évangélique de la Confession d'Augsbourg, ce qui a de grands mérites pour l'activité œcuménique, et surtout pour celle liée à la prêtrise des mariages de différentes appartenances religieuses. En Silésie de Cieszyn, ce mouvement a été commencé il y a quelques centaines d'années. Néanmoins, l'histoire montre que le modèle des relations confessionnelles était tout à fait différent de celui d'aujourd'hui qui se distingue par un respect mutuel, la tolérance, la fraternité et l'engagement commun visant à témoigner de la foi. Les Églises catholique et évangélique exercent ensemble une activité œcuménique où la première place occupe la prêtrise des familles mixtes.

Il faut encore beaucoup de temps et d'efforts avant que la prêtrise œcuménique des familles multiconfessionnelles ne devienne un élément de l'activité pastorale des Églises qui jouirait de tous ses droits. Il est nécessaire d'assurer une éducation œcuménique continue ainsi que de chercher à connaître l'étude sur les Églises et sur les acquisitions dans le domaine du dialogue œcuménique. La tolérance, le respect, l'acceptation, l'humi-

lité et l'amour ainsi qu'un témoignage commun sont bel et bien les valeurs indispensables dans la prêtrise des familles de différentes appartenances religieuses.

Mots clés : œcuménisme, prêtrise œcuménique, dialogue, famille, caractère multiconfessionnel

Józef Budniak

La pastorale delle famiglie multireligiose sull'esempio della diocesi di Bielsko-Żywiec

Sommario

Il territorio della diocesi di Bielsko-Żywiec è abitato da quasi cinquantamila membri della Chiesa evangelico-augustea; ciò ha meriti rilevanti per il movimento ecumenico ed in particolare nella pastorale dei matrimoni di persone di diversa appartenenza confessionale. Gli inizi di tale movimento nella Slesia di Cieszyn risalgono ad alcuni secoli fa. Ciò nonostante la storia mostra che il modello delle relazioni tra le confessioni era distante dall'immagine contemporanea caratterizzata dal rispetto reciproco, dalla tolleranza, dalla fratellanza e dall'impegno nella testimonianza comune della fede. Le Chiese cattolica ed evangelica conducono un'attività ecumenica comune dove al primo posto si trova la pastorale delle famiglie miste.

Davanti alla pastorale ecumenica delle famiglie multireligiose c'è ancora un lungo cammino da fare prima che diventi una particella con pieno diritto dell'attività pastorale delle Chiese. Occorre un'educazione ecumenica continua, l'acquisizione della conoscenza dell'insegnamento sulle Chiese e sulle conquiste nel dialogo ecumenico. La tolleranza, il rispetto, l'accettazione, l'umiltà e l'amore nonché la testimonianza comune sono i valori necessari nella pastorale delle famiglie di confessione diversa.

Parole chiave: ecumenismo, pastorale ecumenica, dialogo, famiglia, multireligiosità

Ecumeny and Law, vol. 2 (2014)
pp. 75—88

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The Cultural, National and Religious Identity of the Inhabitants of the Polish-Belarusian Borderland: Historical Experiences as a Factor in Shaping the Contemporary Podlasie Region

Keywords: cultural identity, national identity, religious identity, Podlasie

1. Introduction

People living in areas along the contemporary border between Poland and Belarus differ in terms of their religious, cultural and ethnic affiliation. Poles and Belarusians, that is Catholics and members of the Orthodox Church, live on both sides of the border together. Difficult historical experiences have influenced the contemporary relations between these two communities. On the one hand, there is much mutual distrust between the two communities (especially among the older generation); while on the other hand, mutual prejudices and stereotypes are becoming increasingly less prevalent among the younger part of the population of the borderland Podlasie region. This change is manifested in, for example, the growing number of mixed marriages which were rare several decades ago or which were even considered unthinkable in some communities.

This article is aimed to present the specific character of religious and ethnic relations in areas along the border between Poland and Belarus based on the example of Podlasie which — within today's borders —

is a frontier encompassing a large part of north-eastern Poland, the Masuria on the north and west, the Mazovia on the west, and the Lublin Polesie region on the south. Nowadays, Drohiczyn, a historic capital of Podlasie, is a very small town (with a population of slightly over 2,000) as a result of many historical tragedies, wars and acts of destruction. In administrative terms, the part of Podlasie located within the borders of the Republic of Poland today belongs to the territory of three provinces: the Podlasie Province, the Mazovia Province and the Lublin Province. The lack of administrative structure encompassing the whole region is a reflection of historical events. At the same time, however, it weakens the region's position nationally by blurring its specificity and the role it has played in the Polish history.

This article outlines the history of ethnic and religious relations in the Podlasie region in the context of changing historical circumstances, and it presents the contemporary state of these relations as well as prospects related to identity changes taking place in Polish society.

2. Podlasie — a multi-religious and multi-ethnic region

The name of this region, which has been a borderland between Poland and Belarus since the end of the Second World War, expresses its historical, religious and ethnic character. Contemporary Polish language users are not aware of the etymology of the name Podlasie, and they mistakenly trace its origin to the word *las*, that is 'forest', as they think it denotes land 'covered by forests' or lying *pod*, that is 'under', forests. However, from the linguistic perspective, such an explanation of the name's origin is completely unjustified. In fact, the original Old Ruthenian name *Podlasze* (*Podlaszsze*) described land *pod Lachami*, that is 'under Poles', which means the borderland between Poland and Rus' that was colonised by Polish settlers coming from eastern Mazovia. The Polonisation of the Old Ruthenian term has led to the development of its today's form. Nonetheless, the coexistence of people differing in terms of language, ethnicity and religion, which has lasted since the medieval colonisation of the Podlasie primeval forest, is still reflected in this name.[1]

[1] *Sokołów Podlaski. Dzieje miasta i okolic*. Ed. G. Ryżewski. Białystok—Sokołów Podlaski 2006, p. 45; A. Jabłonowski: *Polska XVI wieku pod względem geograficzno-statystycznym*. Warszawa 1909, p. 1.

2.1. The First Republic (Polish-Lithuanian Commonwealth) — the period of peaceful coexistence

Conflicts between Poland and Rus' from the medieval period, that is when Podlasie really was a borderland, ended completely as the Kingdom of Poland and the Grand Duchy of Lithuania (where, despite the name, most of the population were Ruthenians) formed subsequent unions, which led to the creation of a multi-ethnic and multi-religious Commonwealth. However, as Poles, who were connected with the Catholic Church, had cultural primacy in this vast country, there were also certain inequalities regarding relations between particular ethnic and religious groups in the Commonwealth starting from the 16th century. The dominance of Polish and Catholic culture in the First Republic caused the cultural deprivation of the Ruthenian people, who were connected with the Orthodox Church of the Kyivan Metropolitanate. This cultural disadvantage manifested itself in the poverty of Ruthenian material and artistic culture and in the secondary role of the Ruthenian language, which was virtually absent from the public life. These inequalities, which heralded later conflicts in the area of Podlasie, caused many representatives of the Ruthenian elites to become Polonised in terms of Polish language and culture, that were very common among them, and religion, which was manifested in relatively numerous conversions to Catholicism.

Another manifestation of taking a moderate path was the establishment of the Uniate Church, that is a Church which was united with Rome but retained Eastern Christian tradition and rite. This Church, originating from the creation of the Union of Brest in 1596, became the main community protecting Ruthenian culture and language in the Commonwealth although it did not manage to avoid certain Latinising tendencies. The Union of Brest was very successful in the Podlasie region and, thus, the religious differences between Poles and Ruthenians (Belarusians) inhabiting those lands disappeared almost completely in the last period of the Commonwealth.[2]

It is necessary that attention be drawn to a fact which is often passed over in silence in the contemporary ecumenical discourse — the Union of Brest, which was to unite the Catholic Church with the Orthodox Church in the Polish-Lithuanian Commonwealth, was formed on the initiative of Orthodox bishops who feared Moscow's growing power and, conse-

[2] E. Beszta-Borowski: *Dzieje parafii katolickiej Narodzenia NMP i św. Mikołaja w Bielsku Podlaskim*. Ed. M. Składanowski. Drohiczyn 2012, p. 206.

quently, of the Archdiocese of Kiev becoming dependent on the Russian Orthodox Church, which was gaining increased significance. By creating the Union of Brest, Orthodox bishops in the Commonwealth wanted to clearly dissociate themselves from Moscow and emphasise the importance and historical status of the Orthodox Church of the Kyivan Metropolitanate. It is precisely because the Union of Brest was in fact a manifestation of the Orthodox Church's independence from Moscow in the Commonwealth that Russian policy after the partitions of Poland was directed with particular force against the union.

2.2. The historical and political origins of contemporary conflicts

The Podlasie region experienced the mentioned religious and ethnic policy of Russia in the 19th century. As a result of a formal division of this territory into two parts: the western part which belonged to the Kingdom of Poland (actually controlled by Russia) and the eastern part which became directly incorporated into Russia, the activities of this partitioning power varied in form over time.[3] However, as for the dimension of the ethnic policy which is outlined in this article, the objectives of these activities were always the same. First, Russians aimed to Russify Ruthenian (Belarusian) people, who belonged to the Uniate Church, to the largest extent possible and to strengthen the antagonisms between these people and Poles, who belonged to the Latin Catholic Church. Secondly, the aim of Russian policy was to put an end to the Uniate Church and completely Russify the Orthodox Church in the territory of the former Polish-Lithuanian Commonwealth.[4] Thirdly, various activities were carried out which were directed against Polish culture and the Latin Church which was identified with this culture. The history of Podlasie in the 19th century shows that the objectives of Russian cultural and religious policy were met with considerable resistance. Resistance from Poles mostly manifested itself in uprisings — the November Uprising (1830—1831) and the January Uprising (1863—1865). Ruthenians expressed their resistance through numerous acts of defending the Uniate Church performed both

[3] Ibidem, p. 116

[4] J. Maroszek: "Dziedzictwo unii kościelnej w krajobrazie kulturowym Podlasia 1596—1996." In: *Czterechsetlecie zawarcia Unii Brzeskiej 1596—1996*. Eds. S. Aleksandrowicz, T. Kempa. Toruń 1998, pp. 78—80.

by the clergy and the laity who did not agree to become forcibly incorporated into the Orthodox Church.

Although there were many manifestations of the sometimes heroic resistance from people living in Podlasie,[5] it should be noted that the balance of the cultural and religious policy which was implemented by Russian invaders and which was interrupted by the outbreak of the First World War in 1914 shows that it was effective as far as its main objectives are concerned. Belarusians living in the area of Podlasie became strongly Russified. Although they retained their local language (not the modern Belarusian language, which, to a large extent, is a result of the work carried out by Belarusian national activists at the turn of the 20th century that, in fact, is not used in speech) and traditions that were distinct from Russian customs, Belarusian people largely lost their sense of being separate from Russians in terms of culture as well as their own cultural heritage, which had its origins in the historic capital of Rus' and the original centre of Ruthenian Christianity — Kiev. In accordance with the plans of the Russian occupation authorities, the Uniate Church in Podlasie became completely destroyed[6] (it only survived in areas that were controlled by Austria-Hungary before the First World War), and the Orthodox Church in the territory of the former Polish Republic became fully subordinated to the Russian Orthodox Church. (As a result of this subordination, even the efforts made by the government of the Second Polish Republic (1918—1939) that were aimed to gain autocephaly for the Polish Orthodox Church, granted by the Patriarch of Constantinople, turned out to be ineffective as, in the realities of the communist rule, it had to be granted again by the Patriarch of Moscow in 1948).[7] Finally, after Poland regained independence in 1918, it became clear how big the scale of destruction of the Latin Church in Podlasie was — especially in material terms — during the period of Russian persecution. The awareness of this fact fuelled ethnic and religious antagonisms created by Russians as Poles who lived in Podlasie regarded Belarusian Orthodox people not only as successors to Russian invaders but also the main beneficiaries of their anti-Polish policy (the tsarist government handed over the lands and property that had been seized from the Catholic Church to the Orthodox Church as a part of repressive activities undertaken after subsequent uprisings aimed to regain independence).

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[5] E. Likowski: *Dzieje Kościoła Unickiego na Litwie i Rusi w XVIII i XIX wieku*. Warszawa 1906, p. 101; E. Beszta-Borowski: *Dzieje parafii katolickiej Narodzenia NMP i św. Mikołaja w Bielsku Podlaskim…*, pp. 210—216.

[6] W. Kłobuk: "Trzy kasaty unii kościelnej: 1795, 1839, 1875 — różnice i podobieństwa." *Zeszyty Naukowe KUL* 34 (1991) 1—2, pp. 3—5.

[7] M. Krzysztofiński, K. Sychowicz: "W kręgu 'Bizancjum'." *Aparat represji w Polsce Ludowej 1944—1989* 1(6) (2008), p. 82.

Although the Second Polish Republic was affected by ethnic and religious conflicts, these were mostly centred in the areas of Volhynia and Podolia, that is the western part of contemporary Ukraine.[8] Such conflicts often turned into armed clashes and disputes that were resolved by force by Polish law enforcement bodies. Meanwhile, in Podlasie there were almost no such incidents because the national consciousness of Belarusian people living there was relatively weak. And while Ukrainian nationalism was able to develop throughout the 19th century in areas of western Ukraine (Galicia) which was controlled by Austria-Hungary, Russification policy that was implemented by the tsarist authorities impeded any manifestations of national and cultural emancipation of Belarusians and Ukrainians living in the Russian Empire. For this reason neither Podlasie nor eastern Ukraine, which was part of the USSR during the interwar period, displayed strong nationalistic tendencies; also, they did not witness a development of large-scale social movements for the revival of Belarusian and Ukrainian national cultures. (This problem reverberates in the contemporary political and cultural situation in Ukraine and Belarus. As for Ukraine, there is a strong division into western regions, where the Ukrainian language and active nationalist tendencies prevail, and eastern regions, which are heavily Russified. As regards Belarusians, they have been really strongly Russified — it has even gone so far that the Belarusian language and symbols of Belarusian cultural and national separateness have been almost completely eliminated from the public life).

Serious conflicts between Polish and Belarusian people in Podlasie arose when the Second World War broke out and when eastern parts of the Second Polish Republic were invaded by the Red Army which, under the Molotov-Ribbentrop Pact, crossed the Polish border on 17 September 1939.[9] Belarusians living in the occupied territories showed support for the invading occupation forces. Additionally, both under the Russian (1939—1941) and German occupation following the German attack on the Soviet Union (1941—1944), Belarusian people sometimes fought with Polish partisans.

After the Second World War ended, much of the eastern parts of the Second Polish Republic became incorporated into the USSR. Most of the region of Podlasie (except for the areas of Brest and Grodno) remained

[8] After the Polish-Bolshevik War, the lands of today's Ukraine were divided between the Second Polish Republic and Soviet Ukraine under the Treaty of Riga in 1921; Soviet Ukraine became incorporated into the USSR in the following year.

[9] K. Krajewski, T. Łabuszewski: *"Łupaszka", "Młot", "Huzar". Działalność 5 i 6 Brygady Wileńskiej AK (1944—1952).* Warszawa 2002, pp. 261—262; K. Podlaski: *Białorusini, Litwini, Ukraińcy.* Białystok 1990, p. 26.

within Polish borders. Thus, Podlasie once again became a borderland. The ethnic and religious antagonisms that were created by Russian invaders in the 19th century, which especially made themselves felt during the Second World War, were used for the purpose of internal policy by the Polish communist authorities.[10] In order to antagonise the region's inhabitants and reduce the importance of the Catholic Church, which was the only social force that retained real independence, the authorities favoured the activity of the Orthodox Church in Podlasie by means of various administrative decisions and gained loyalty from Orthodox hierarchs in return (for example, the Orthodox Church openly supported the martial law declared by General Wojciech Jaruzelski on 13 December 1981 that was aimed at suppressing the Solidarity movement, which had strong ties with the Catholic Church).[11] At the same time, the Polish communist authorities, in accordance with the guidelines given by Moscow, firmly opposed to any forms of revival of Belarusian national culture in Podlasie (attempts to revive Ukrainian culture met with similar opposition in the south-eastern part of Poland), which could, in their opinion, negatively influence the relations between Poland and Soviet Russia as well as disturb the image of post-war Poland as an ethnically uniform state. In this way communist policy directed towards people living in Podlasie, on the one hand, antagonised Catholics and members of the Orthodox Church and, on the other hand, reduced the possibility of the development of Belarusian culture and national consciousness.

3. Contemporary ethnic and religious relations

The historical experiences that are outlined in this article, in particular the cultural and religious policy implemented by Russian invaders in the 19th century, as well as the activity of the communist authorities towards the inhabitants of Podlasie, which was in a way a continuation of this policy, have led to the development of the today's ethnic and religious situation in this peculiar region of Poland.

[10] M. Krzysztofiński, K. Sychowicz: "W kręgu 'Bizancjum'…," pp. 86—87, 103.

[11] K. Podlaski: *Białorusini, Litwini, Ukraińcy*. Białystok 1990, pp. 22—23; M. Krzysztofiński, K. Sychowicz: "W kręgu 'Bizancjum'…," pp. 84—85.

3.1. The main characteristics of contemporary ethnic and religious relations

Since the democratic changes in 1989, people living in Podlasie, similarly to the whole Polish society, have been enjoying the freedom of religion and the freedom to express their own ethnic background. Transformations related to the collapse of the communist regime have led to the development of church institutions and organisations that uphold national traditions in Podlasie.

As far as religion is concerned, it should be noted that both Catholic and Orthodox structures have developed considerably in the Podlasie region. As for the Orthodox Church, such church structures as Bractwo Młodzieży Prawosławnej (The Fellowship of Orthodox Youth) or Fundacja im. Księcia Konstantego Ostrogskiego (Prince Konstanty Ostrogski's Foundation) also often have a national character. After the fall of communism in Poland, the Orthodox Church started to strongly emphasise its independence from the Russian Orthodox Church and its connection with national minorities, in particular the Belarusian and Ukrainian minorities, which is not only manifested in religion but also in culture.

The Polish state's policy after 1989, which was favourable towards national minorities, made it possible to develop Belarusian education as well as social and cultural organisations in Podlasie. Road signs with bilingual place names near Hajnówka, where Orthodox Belarusians constitute a vast majority, are a characteristic symbol of Belarusian activity in this area.[12] (It is a kind of paradox that road signs bear inscriptions in both Polish and Belarusian while local people do not really use the Belarusian language, somewhat artificially created by Belarusian national activists at the turn of the 20th century, but they speak a local language, which sometimes differs from place to place. It seems that these bilingual road signs are not so much a means of conveying information as a reflection of efforts to strengthen and manifest Belarusian national identity, which is also symbolised by a language, even if it is not used in practice).

[12] "Podlaskie. Dwujęzyczne tablice z nazwami miejscowości w gminie Orla". Available at: http://wiadomosci.gazeta.pl/wiadomosci/1,114873,10359051,Podlaskie__Dwujezyczne_tablice_z_nazwami_miejscowosci.html (accessed 10.11.2013).

3.2. Changes in the identity of the contemporary society of the Podlasie region

The revival of the religious and cultural activity of Orthodox Belarusians in Podlasie is accompanied by other phenomena that are characteristic of the whole contemporary Polish society. Social changes intensify the secularisation process, weaken the position of religious institutions and reduce the importance of the sense of ethnic and religious belonging. Material goods and the lifestyle that is typical of the Western world are becoming much more important for today's young generation of Poles compared to their attachment to a religious or national community. For this reason also the negative experiences of the past are losing their importance; such experiences used to fuel antagonisms between Polish and Belarusian inhabitants of Podlasie for many decades.

As for religion, these tendencies are reflected, apart from the widespread weakening of religiousness, in an increasing number of religiously mixed marriages which are entered into both in the Catholic and the Orthodox Church. While in the middle of the 19th century such marriages were still a rarity due to a high degree of social separation and mutual distrust between the Catholic and Orthodox populations, nowadays religious affiliation is becoming increasingly less important for young people who intend to get married. This redefinition of values has also made both the Catholic Church and the Orthodox Church liberalise their pastoral and canonical practice related to marriages.[13]

In the context of Polish culture, attention should be paid to another factor in the transformation of religious relations — in terms of religion Podlasie is a unique region because of the considerable significance of the Orthodox Church (still being a minority church, though), which is almost non-existent in other parts of the country. As Podlasie is one of the least economically developed regions of Poland, many young people are leaving this area in pursuit of better educational and employment opportunities. For young members of the Orthodox Church, breaking out of one's own ethnic and church community often means cutting almost all ties with tradition and religious practice, which represents a serious challenge to the contemporary Polish Orthodox Church.

[13] M. Składanowski: "Małżeństwa mieszane wyznaniowo — ekumeniczna szansa i życiowe problemy. Perspektywa teologiczna i duszpasterska." *Studia nad Rodziną* 15 (2011) 1—2, p. 58; S. Ulaczyk: "Zespół bilateralny katolicko-prawosławny. Spojrzenie historyczne z nutą optymizmu na przyszłość." In: *Ekumenizm w posoborowym półwieczu. Sukcesy i trudności katolickiego zaangażowania na rzecz jedności chrześcijan*. Eds. M. Składanowski, T. Syczewski. Lublin 2013, p. 53.

As for ethnicity, apart from the above-mentioned activity of social and cultural minority organisations, one can observe an increasing Polonisation of the young generation of Podlasie's inhabitants of Belarusian descent, which manifests itself in that the local language is almost never used at home, whereas Polish is a dominant language, and the young generation wants it to become introduced to both pastoral and liturgical practice in the Orthodox Church. As is the case with other minority groups in Poland, national traditions are becoming reduced to certain elements of folklore in the public mind and, at the same time, they have almost completely disappeared from the daily lives of families and local communities.

4. Prospects

In conclusion, a hypothesis can be formed that the prospects for the development of identity among people living in the Podlasie region might be influenced by two opposing factors: (1) the activity of the Orthodox Church which — despite some tendencies towards its Polonisation that are noticeable in diaspora communities outside Podlasie — emphasises its connection with Belarusian national minority; and (2) the intensifying social changes which lead to the disappearance of Podlasie's cultural separateness from other parts of Poland.

As for the first factor, it should be noted that the Orthodox Church consciously chose to identify with minority groups after 1989, thus aiming to gain social support for its activity from the Belarusian and Ukrainian national movements. This path, however, has a serious disadvantage: it fosters Polish society's beliefs that the Orthodox Church is identified with otherness or even that it is the enemy of "Polishness." For example, it is worthwhile to mention the controversial event of 2013 — the Orthodox Church, based on an agreement concluded with the Polish government, demanded to be given land located in Drohiczyn, which had been taken away from the Catholic Church by the tsarist authorities and handed over to the Orthodox Church as part of persecutions after the January Uprising (1863). The fact that the 150th anniversary of this uprising fell in 2013 has caused a stir in society. It is in this context that the Orthodox Church is putting herself in the role of a successor as well as the main beneficiary of Russian persecution of Poles by demanding to be given property which was taken away from Polish people by the Russian invader, even though it emphasises its independence from Moscow on

different occasions.[14] Therefore, one might think that the activities of the Orthodox Church that are aimed to strengthen ties with Belarusian people in Podlasie contribute to the deepening of the social and cultural isolation of the Orthodox faith and — in a long-term perspective — might be destructive for this Church.

As for the second of the above-mentioned factors, it must be stated that the religious and national factor is becoming considerably less significant in the life of the region's inhabitants both as a result of the emigration of young people from Podlasie and as a consequence of modernisation processes. This is accompanied by the disappearance of historical consciousness which manifests itself in the lack of knowledge about significant events in the history of the region and the lack of a sense of its separateness from the other regions of Poland. There is certainly a positive side of this trend — the memory of events which used to be a source of ethnic and religious conflicts in the past is disappearing. At the same time, however, the cultural and religious diversity in Podlasie is also disappearing; within today's Polish borders Podlasie is a region with a unique tradition of multiculturalism which can boast the fact that both Poles and Ruthenians, Catholics and members of the Orthodox Church, as well as Latin Catholics and members of the Uniate Church coexisted there in peace for many centuries until the period of the partitions. The disappearance of historical consciousness makes it impossible for Podlasie's past — both the period of peace and that of conflicts — to still be a point of reference for building contemporary civil society, which is to be based on mutual tolerance and respect for all the inhabitants of this land.

[14] *Dobra kościelne w Drohiczynie na przestrzeni wieków a współczesne prawa własności*. Available at: http://www.drohiczynska.pl/?action=news&id=1688 (accessed 10.11.2013).

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Marcin Składanowski

The Cultural, National and Religious Identity of the Inhabitants of the Polish-Belarusian Borderland: Historical Experiences as a Factor in Shaping the Contemporary Podlasie Region

Summary

This article is aimed to present the specific character of religious and ethnic relations in areas along the border between Poland and Belarus based on the example of Podlasie region. The article outlines the history of ethnic and religious relations in the Podlasie region in the context of changing historical circumstances and it presents the contemporary state of these relations as well as prospects related to identity changes taking place in Polish society.

Marcin Składanowski

Identité culturelle, nationale et religieuse des habitants de la région frontalière entre la Pologne et la Biélorussie. Experiences historiques en tant que facteur formant la Podlachie contemporaine

Résumé

L'objectif de l'article est de présenter le caractère particulier des relations religieuses et ethniques dans la région frontalière entre la Pologne et la Biélorussie à l'exemple de la Podlachie. Le texte décrit l'histoire des relations ethniques et religieuses en Podlachie dans le contexte des circonstances historiques changeantes, et il présente l'état contemporain de ces relations ainsi que les perspectives liées aux changements identitaires qui se produisent dans la société polonaise.

Mots clés : identité culturelle, identité nationale, identité religieuse, Podlachie

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L'identità culturale, nazionale e religiosa degli abitanti della zona di confine polacco-bielorussa. Le esperienze storiche come fattore nella formazione della regione contemporanea della Podlachia

Sommario

L'articolo ha lo scopo di presentare la natura particolare delle relazioni religiose ed etniche nei territori della zona di confine polacco-bielorussa sull'esempio della regione

della Podlachia. Il testo presenta la storia delle relazioni etniche e religiose nella Podlachia, nel contesto delle circostanze storiche che cambiano, e presenta la situazione contemporanea di tali relazioni come pure le prospettive legate ai cambiamenti di identità in corso nella società polacca.

Parole chiave: identità culturale, identità nazionale, identità religiosa, Podlachia

Part Two

Ecumenical Juridical Thought

Ecumeny and Law, vol. 2 (2014)
pp. 91—104

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Family as a Sovereign Institution

1. Introduction

Family based on a solid marital foundation, understood as "a community of persons: man and woman as spouses, parents, children and relatives,"[1] and constituting one of the most precious human values, remains the Church's centre of interest and great care. Over the last decades, due to many profound and rapid changes that have affected the society and culture,[2] family has had to face numerous problems and challenges. Nevertheless, while various social groups visibly try to annihilate or distort the family, the Church feels naturally obliged to undertake measures aimed at raising people's awareness about the God's plan for this social institution, as well as concerning the protection of its identity and the demand for its due rights. The Charter of the Rights of the Family,[3] that was elaborated based on the request of the Synod of Bishops from the year 1980 and presented by the Holy See on the 22 October 1983, serves as an expression of the above-mentioned aspirations. The norms included in the document are "a prophetic appeal in favour of the institution of family, which requires to be respected and protected against the usurpation of all kinds."[4]

[1] Jan Paweł II: *Adhortacja apostolska "Familiaris consortio"* (22.11.1981). Częstochowa 1982, n. 18.

[2] Ibidem: *Wprowadzenie*.

[3] Karta Praw Rodziny przedłożona przez Stolicę Apostolską wszystkim ludziom, instytucjom i władzom zainteresowanym misją rodziny w świecie współczesnym (22.10.1983). Warszawa 1983.

[4] Ibidem: Wprowadzenie.

Sovereignty is one of the most basic features attributed to family, as stated by the Holy See in the already mentioned Charter of the Rights of the Family, as well as by John Paul II in his *Letter to Families* promulgated on the 2 February 1994.[5]

The sovereignty of family ultimately relies on the marital foundation based on the nuptial bond which takes its origin in the act of sovereign power of a man and a woman, by which the inseparable union of life and love is created. This exceptional and momentous power can be regarded exclusively in relation with this unique bond. The power enables the transition from the initial duality of individuals to the union.[6] Consequently, marital union is the expression of the extraordinary, specific, exclusive and autonomous power of a man and a woman: a power to establish the most primary legal bond. The common *ius connubii* emerges as a "sovereign power to create the first and basic social institution, which is marriage."[7] Sovereign, so total and indivisible power of a man and a woman to establish this socially momentous union, cannot be restricted or repealed by any political authority whatsoever.

Benedict XVI emphasises that every marriage is a result of a voluntary decision of a man and a woman and their freedom constitutes the expression of a natural ability inherent for their masculinity and femininity. This occurs by virtue of God's plan who created them man and woman and bestows on them the ability to ultimately unite their natural and complementary human dimensions.[8]

2. Sovereignty of the family with respect to the nation, the state and other communities

Family, as stated in the Charter of the Rights of the Family, relies on a deep and complementary union of a man and a woman which is based on an inseparable bond of marriage concluded voluntarily and publicly and is far more powerful than an ordinary legal unit. It forms the com-

[5] Jan Paweł II: *List do Rodzin* (2.2.1994). In: *Prawa rodziny — prawa w rodzinie. Jan Paweł II o małżeństwie i rodzinie. Wypisy z nauczania Ojca Świętego*. Ed. T. Jasudowicz. Toruń 1999, n. 17.

[6] P.J. Viladrich: "Rodzina suwerenna." *L'Osservatore Romano* 28 (1997), p. 53.

[7] Ibidem.

[8] Benedykt XVI: "Piękno prawdy o małżeństwie, objawionej przez Chrystusa. Przemówienie do pracowników Trybunału Roty Rzymskiej" (27.1.2007). *L'Osservatore Romano* (Polish edition) 38 (2007), no. 5, p. 31.

munity of love and solidarity, unique when it comes to the possibility to teach and transmit cultural, ethical, social and spiritual values, indispensable for the development and well-being of its own members as well as of the society.[9] Family founded on the inseparable bond of marriage between a man and a woman expresses, according to Benedict XVI, the relational and communal dimension, favourable for the person's dignified birth, coming of age and full development.[10]

As John Paul II states in *Letter to Families*, a family-institution expects the society to recognize its identity and accept its unique social subjectivity. At the same time, as the union of love and life, the family is the most "founded" and "*sovereign* [emphasis in the text — W.G.] in its unique way," albeit conditioned in certain aspects.[11] Benedict XVI perceives a family based on marriage in like manner as a fundamental social institution, the basic unit and pillar of the society, whereas it applies both to believers and non-believers; the institution of family — according to God's plan — is irreplaceable.[12]

The sovereignty of the family, which ultimately relies on the marital foundation and marital fertility,[13] should be accepted by all the institutions, both social and ecclesiastical. Neither the Church nor the State can create any relationship similar to family, for their authority is restricted to the recognition of the sole right of spouses (making sovereign decisions) to establish a family as well as all kinds of family ties. A real need exists for the spouses to be fully conscious of their sovereign power attributed uniquely to them in order to benefit — in front of different social and ecclesiastical instances — from the rights and duties resulting from their power and stated in the Holy See's Charter of the Rights of the Family presented to all persons, institutions and authorities concerned with the mission of the family in today's world. As Joan Carreras notices, this particular document comprises basic rights and duties of the family, which express its particular sovereignty.[14] The fact that the addressees of this power should be conscious of their sovereignty appears crucial in this sense.

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[9] Karta Praw Rodziny..., Wstęp, pp. B i E.

[10] Benedykt XVI: "Rodzice bądźcie przykładem wiary, nadziei i miłości. Homilia podczas Mszy św. na zakończenie V Światowego Spotkania Rodzin." *L'Osservatore Romano* (Polish edition) 37 (2006), nos. 9—10, p. 16.

[11] Jan Paweł II: *List do Rodzin*..., n. 17.

[12] Benedykt XVI: "Jesteście młodym obliczem Kościoła i ludzkości. Spotkanie z młodzieżą na stadionie Pacaembu" (10.5.2007). *L'Osservatore Romano* (wyd. polskie) 38 (2007), nos. 7—8, p. 20.

[13] J. Carreras: "Familia." In: *Diccionario General de Derecho Canónico*. Vol. 3. Eds. J. Otaduy, A. Viana, J. Sedano. Pamplona 2012, p. 919.

[14] Ibidem, p. 921.

Recognition of the family's sovereignty as an indispensable link between a sovereign person and a sovereign nation and state seems to be an essential task. The sovereignty of family, indispensable for the human development and for the achievement of their life goals, aims at fulfilling the mission, as well as tasks and objectives that cannot be completed by any other community. In this way, it naturally leaves behind the sovereignty of the nation and state. Each of these communities, as well as the European or international community, remains conditioned by the family's existence.[15] It is emphasised in the Charter of the Rights of the Family that the family, a natural union, is "prior to the State or any other community."[16]

In his *Letter to Families*, John Paul II points out that the union between the family and the nation or an ethnic group is nearly organic and based mainly on the participation in culture. Parents give birth to their children also for the nation, so that they become its members and participate in its historical and cultural heritage. From the very beginning, family's identity derives from the foundation constituted by the identity of the nation that it belongs to. By participating in the nation's cultural patrimony, the family contributes to a specific sovereignty resulting from its own culture and language. These are culture and language that assure the spiritual sovereignty not only of the nation, but also of the family. The family is very organically linked to the nation, and nation to family.[17] As John Paul II stated in Nowy Targ on 8 June 1979, "the nation depends on the shape of the family, because that is what a human being depends on."[18]

As far as the relation between the family and the state is concerned, John Paul II admits that it is partly analogical and partly different (compared to the family-nation link). The state differs from the nation because of its less "family-type" structure, as it is organized as a political system, more "bureaucratic" in its shape. Nevertheless, the state system does possess its own "spirit" as far as it corresponds to the nature of a "political community" legally aiming towards the common good. Family remains in a close relationship with the "spirit," linked to the state on the basis of the principle of subsidiarity. The social reality is in fact shaped by the family, which does not possess the means indispensable to fulfill

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[15] Cf. G. Sołtyk: *W kręgu oddziaływania myśli Stefana Kardynała Wyszyńskiego i nauki Jana Pawła II*. Available at: http://www.warszawa.mazowsze.pl/panel/soltyk.htm (accessed 29.10.2012), p. 1.

[16] Karta Praw Rodziny..., Wstęp, p. D.

[17] Jan Paweł II: *List do Rodzin*..., n. 17.

[18] Jan Paweł II: *Homilia w czasie Mszy św.* (accessed 8.6.1979). In: *Jan Paweł II. Pielgrzymki do Ojczyzny 1979, 1983, 1987, 1991, 1995, 1997. Przemówienia, homilie*. Ed. J. Poniewierski. Kraków 1997, p. 161.

its own goals, among others in the area of education and upbringing. Consequently, the state has been established to intervene according to the rule that a self-sufficient family should be granted the possibility to function autonomously. The state's excessive interventionism might prove detrimental and might show the lack of respect towards the family, being a sharp violation of its rights. The state's right and duty is to intervene only when a family is really incapable of assuring its self-sufficiency. Moreover, the state's assistance to the family is expressed in many other areas of everyday life.[19]

In the Apostolic Exhortation *Familiaris consortio*, John Paul II remarks that every family and society "have complementary functions in defending and fostering the wellbeing of each and every human being," but "society — more specifically the State — must recognize that the family [according to the teaching of Vatican II — W.G.] is a 'society in its own original right'[20] and so society is under a grave obligation in its relations with the family to adhere to the principle of subsidiarity."[21] Public authorities, as the document states in its further part, in the conviction that the wellbeing of the family is an indispensable and essential value of the civil community, "must do everything possible to ensure that families have all those aids — economic, social, educational, political and cultural assistance — that they need in order to face all their responsibilities in a human way."[22]

The principle of subsidiarity in relation to family has been clearly defined among others by the Second Plenary Synod in Poland (1991—1999) which concluded that bigger communities, states in particular, are obliged to "provide help and support to the institution of family, but they are not allowed to block its autonomy and initiative, usurp its rights or else interfere in its life."[23]

Moreover, in *Letter to Families* it is emphasised that all possible efforts need to be undertaken in order to recognize the family as a primordial community and, to some extent, sovereign one. This sovereignty of the family is indispensable for the good of the society. After all, a really sovereign and spiritually powerful nation is always made up of powerful families, aware of their own vocation and mission in the history. The family is at the heart of all those issues and tasks: relegating it to the subordinate and secondary role as well as excluding from its proper position

[19] Jan Paweł II: *List do Rodzin*..., n. 17.

[20] *Deklaracja "Dignitatis humanae" Soboru Watykańskiego II*, n. 5.

[21] Jan Paweł II: *Adhortacja apostolska "Familiaris consortio"*..., n. 45.

[22] Ibidem.

[23] *I Polski Synod Plenarny (1991—1999).* Pallotinum 2001, p. 36; Cf. Karta Praw Rodziny..., Wstęp, p. I.

in society would mean causing a great harm to the growth of society as a whole.[24]

In the Apostolic Exhortation *Familiaris consortio*, John Paul II mentions that the family, which "in God's plan is the basic unit of society and a subject of rights and duties before the State or any other community, finds itself the victim of society, of the delays and slowness with which it acts, and even of its blatant injustice." That is why "the Church openly and strongly defends the rights of the family against the intolerable usurpations of society and the State."[25] In his speech addressed to the participants of the Plenary Assembly of the Pontifical Council for the Family, John Paul II said that "whoever destroys this basic tissue of the social organism [the family — W.G.], without any respect of its identity and questioning its tasks, deeply harms the society and causes damages which are often irreparable."[26]

A failure of the state to respect the identity and sovereignty of the family is expressed among others in the distortion of the institution of marriage by replacing it with "a surrogate or artificial cultural creation."[27] As P.J. Viladrich aptly mentions, the presently initialized — "in the name of individual freedom and ideological pluralism" — reforms of the marital and family law constitute in fact "the state's abuse which enters the sphere of sexual intercourse and marriage and gradually deprives a person of their natural sovereignty."[28] It is visible that in this way, a "secular dogma" of the state's sovereignty is being promoted. On the one hand, this action heads towards supporting the cultural politics aimed at eliminating the unequivocal definition of marriage and family in legal systems, while on the other, towards the audacious recognition of different kinds of cohabitation, relationships and bonds (homosexual included) as marriage and family "under the pretext that it is indispensable to grant legal assistance — which is the expression of state's sovereignty — without prejudice to every occurrence being a social fact."[29]

The Holy See's Charter of the Rights of the Family states that "public authorities must respect and foster the dignity, lawful independence, privacy, integrity and stability of every family."[30] In the Apostolic Exhortation *Christifideles laici* John Paul II emphasised that Christians should

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[24] Jan Paweł II: *List do Rodzin*..., n. 17.

[25] Jan Paweł II: *Adhortacja apostolska "Familiaris consortio"*..., p. 84 (n. 46).

[26] "Rodzina jest instytucją naturalną i niezastąpioną." *L'Osservatore Romano* (Polish edition) 18 (2005), no. 2, p. 35.

[27] P.J. Viladrich: *Rodzinna suwerenna*..., p. 56.

[28] Ibidem; Cf. Jan Paweł II: *List do Rodzin*..., p. 151 (n. 16).

[29] P.J. Viladrich: *Rodzinna suwerenna*..., p. 56.

[30] Karta Praw Rodziny..., art. 6 a.

safeguard the family, being "the primary place of 'humanization' for the person and society," and make it aware of its own identity as well as help the family to become a more active promoter of its own development and participation in the social life.[31] Benedict XVI pointed out again in 2007 that public administration and the Church should cooperate for the good of the human beings, being simultaneously the good of married couples and the family.[32]

During the Fifth World Meeting of Families in Valencia on the 8—9 July 2006, Benedict XVI emphasised the importance and positive outcomes of actions undertaken in favour of marriage and family by various family Church associations. With reference to the Apostolic Exhortation *Familiaris consortio* of John Paul II, he encouraged "all Christians to collaborate cordially and courageously with all people of good will who are serving the family in accordance with their responsibilities."[33] The responsibility for supporting the family and providing stimulus and spiritual food in order to strengthen its integrity, mainly in critical moments, belongs in this way equally to ecclesiastical communities.

The sovereignty of the family in relation to the state, as John Paul II remarks, becomes visible among others in the area of child's upbringing: the process which is "the family's basic aim and primordial task," in the fulfillment of which "parents cannot be replaced by anybody — and nobody is allowed to deprive the parents of their primordial task."[34] By completing their educational mission, parents benefit from the aid of other people and institutions, mainly the Church and the state, whereas it should always be achieved through a proper interpretation of the principle of subsidiarity. The subsidiarity supports and completes parental love and corresponds to the family's good. All other participants of the educational process act to some extent in the parent's name, on the basis of their consent and to some extent even on their "commission."[35] The sovereignty of parents is expressed in the fact that they possess the right to bring up their children in accordance with their own convictions.[36]

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[31] Jan Paweł II: *Adhortacja apostolska "Christifideles laici"* (30.12.1988). Watykan [s.a.], n. 40.

[32] Benedykt XVI: *Rodzina oparta na małżeństwie dobrem człowieka*. Available at: http/www.opoka.org.pl/aktualnosci/news.php?id=19836&s=opoka (14.9.2007).

[33] Jan Paweł II: *Adhortacja apostolska "Familiaris consortio"*..., n. 86.

[34] Jan Paweł II: *Homilia w czasie Mszy św.* (21.06.1983). In: *Jan Paweł II. Pielgrzymki do Ojczyzny 1979, 1983, 1987, 1991, 1995, 1997. Przemówienia, homilie*. Ed. J. Poniewierski. Kraków 1997, p. 323.

[35] Cf. Jan Paweł II: *List do Rodzin*..., n. 16; H. and I. Díaz: "La recepción de la 'Familiaris consortio' en las experiencias de las Iglesias locales." *Familia e vita* 17 (2012), no. 1, pp. 56—57.

[36] Cf. Art. 48 ust. 1 Konstytucji RP z 2 kwietnia 1997 r.

However, the principle of the family's autonomy does not exclude the intervention of public institutions into the domain of parental authority when the latter is being performed in an improper way, acting against the child's wellbeing. Such intervention of the guardianship court, undertaken either *ex officio* or upon request (as provided by the Polish legislation), aims at preventing the further deterioration of the child's situation in the family.[37]

3. Rights of the family stemming from its sovereignty and their protection

Family, being in its nature a primary and sovereign social subject, thereby possesses its own fundamental rights. In *Letter to Families*, John Paul II states that the recognition of sovereignty of the family as institution and of its multiple determinants "make it possible to consider *the rights of the family* [emphasis in the text — W.G.] which are closely linked to the rights of the person," the family being a communion of persons. The family's self-realization will depend in large part on the correct application of the rights of its members.[38]

While some of these rights are directly connected with the family, other relate to it only in an indirect manner. Nevertheless, both types are not simply "the sum total of the rights of the person," since the family is more than the sum of its individual members. It is a community of parents and children, and at times a community of several generations.[39] "The truth about an individual as a person is based on the fact that he/she is first of all not a citizen, but a member of a family (son, brother, father or husband)."[40]

In the Apostolic Exhortation *Familiaris consortio*, John Paul II emphasised that the family is a subject of rights and duties "first from the state and subsequently from any other communities." The following rights has been classified as the rights of the family: the right to exist and progress as a family, that is to say, the right of every human being, even if he or she

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[37] H. Bzdak: "Sprawowanie władzy rodzicielskiej a dobro dziecka." In: *Matrimonium spes mundi. Małżeństwo i rodzina w prawie kanonicznym, polskim i międzynarodowym. Księga pamiątkowa dedykowana ks. prof. Ryszardowi Sztychmilerowi*. Eds. T. Płoski, J. Krzywkowska. Olsztyn 2008, p. 408.

[38] Jan Paweł II: *List do Rodzin*..., n. 17.

[39] Ibidem.

[40] P.J. Viladrich: *Rodzina suwerenna*..., p. 52.

is poor, to found a family and to have adequate means to support it; the right to exercise its responsibility regarding the transmission of life and to educate children; the right to the intimacy of conjugal and family life; the right to the stability of the bond and of the institution of marriage; the right to believe in and profess one's faith and to propagate it; the right to bring up children in accordance with the family's own traditions and religious and cultural values, with the necessary instruments, means and institutions; the right, especially of the poor and the sick, to obtain physical, social, political and economic security; the right to housing suitable for living family life in a proper way; the right to expression and to representation, either directly or through associations, before the economic, social and cultural public authorities and lower authorities; the right to form associations with other families and institutions, in order to fulfill the family's role suitably and expeditiously; the right to protect minors by adequate institutions and legislation from harmful drugs, pornography, alcoholism, etc.; the right to wholesome recreation of a kind that also fosters family values; the right of the elderly to live and die with dignity; the right to emigrate as a family in search of a better life.[41]

The above-mentioned rights of the family have been developed in the Charter of the Rights of the Family (in its 12 articles). In each article, after a general wording of a given right, a detailed definition thereof is provided in relevant subsections. The document mentions the following rights (in their general form): the right of every human to the free choice of their state of life and thus to marry and establish a family or to remain single (Art. 1); the right to contract the marriage exclusively by free and full consent duly expressed by the spouses (Art. 2); the right of the spouses to found a family and to decide on the spacing of births and the number of children to be born (Art. 3); the right to respect and protect the human life absolutely from the moment of conception (Art. 4); the original, primary and inalienable right of the parents to educate their children (Art. 5); the right of the family to exist and to progress as a family (Art. 6); the right of the family to live freely its own domestic religious life under the guidance of the parents, as well as the right to profess publicly and to propagate the faith, to take part in public worship and in freely chosen programmes of religious instruction (Art. 7); the right of the family to exercise its social and political function in the construction of society (Art. 8); the right of the family to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever (Art. 9); the right of the family to a social and economic order in which

[41] Jan Paweł II: *Adhortacja apostolska "Familiaris consortio"*..., n. 46.

the organization of work permits the members to live together, and does not hinder the unity, wellbeing, health and the stability of the family, while offering also the possibility of wholesome recreation (Art. 10); the right of the family to decent housing, fitting for family life and commensurate to the number of the members, in a physical environment that provides the basic services for the life of the family and the community (Art. 11); the right for the families of migrants to the same protection as that accorded to other families (Art. 12).[42]

4. Summary

The family, the basic unit of social life founded on marriage, possessing its own identity and sovereignty and its own fundamental rights, forming a community of persons serving life, participating in the development of society as well as partaking in the life and mission of the Church,[43] constitutes the environment in which the Church comes to fruition[44].

As Pope John Paul II states, the Church "finds in the family, born from the sacrament, the cradle and the setting in which she can enter the human generations, and where these in their turn can enter the Church."[45]

The Second Vatican Council assured a proper understanding of the values of the institution of family by emphasising that "the wellbeing of an individual person and of human and Christian society is intimately linked with the healthy condition of that community produced by marriage and family."[46] It is also significant that a few meaningful Pontifical Magisterium's documents on the subject of marriage and family were published after Vatican II. Moreover, a dynamic development of family ministry in the post-Vatican II period as well as the birth of numerous pro-family organizations constitute meaningful facts. Undoubtedly, the family has found itself at the heart of the modern Church's interest.[47]

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[42] Karta Praw Rodziny..., art. 1—12.

[43] Cf. Jan Paweł II: *Adhortacja apostolska "Familiaris consortio"*..., n. 17.

[44] Cf. D. Tettamanzi: "La familia comunità salvata e comunità salvente per la nuova evangelizzazione." *Familia et vita* 17 (2012), no. 1, p. 44.

[45] Jan Paweł II: *Adhortacja apostolska "Familiaris consortio"*..., n. 15; Cf. kann. 795 i 1136 KPK.

[46] *Konstytucja "Gaudium et spes" Soboru Watykańskiego II*, n. 47.

[47] Cf. R. Sztychmiler: "Prawa rodziny w prawodawstwie i nauczaniu Jana Pawła II." In: *Zagadnienia praw rodziny. XII Dni Praw Człowieka w Katolickim Uniwersytecie Lubelskim*. Ed. J. Rebeta. Lublin 1997, pp. 60—61.

In the era of numerous attacks on the identity and sovereignty of the family, the Church is obliged to fulfill a momentous task, being also a challenge, to definitely protect the revealed teaching on marriage and family. Especially that — as it has been stated by P.J. Viladrich — "the sovereignty of the family is an explosive charge capable of destroying every socio-economic system based on the alienation of an individual."[48]

[48] P.J. Viladrich: *Rodzina suwerenna*..., p. 57.

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Wojciech Góralski

Family as a Sovereign Institution

Summary

Family, being the basic social unit and having its own identity, sovereignty, as well as its own fundamental rights, is a community conducive to life and the mission of the Church that, at the same time, constitutes the environment in which the Church actualizes herself. As John Paul II claims, "the Church thus finds in the family, born from the sacrament, the cradle and the setting in which she can enter the human generations, and where these in their turn can enter the Church. (*Familiaris consortio*, 15).

The properly understood value of the family was heralded for example by Vatican II which emphasized that "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" (*Gaudium et spes*, 47). It also seems telling that a few significant post-Vatican II documents have been published by the papal Magisterium dealing with the topics of family and marriage. As another meaningful phenomenon there can be quoted the development of post-conciliar priesthood of families, as well as the establishment of manifold pro-family organizations. There can be no doubt as to the fact that family remains the contemporary Church's centre of interest.

In this age of various usurpations directed at identity and sovereignty of the family, the Chuch faces an extremely challenging task to decisively defend the revealed teaching on marriage and family.

Wojciech Góralski

Famille en tant qu'institution souveraine

Résumé

La famille comme une cellule essentielle de la vie sociale possédant son identité et sa souveraineté ainsi que ses propres droits fondamentaux, constituant un groupe de gens qui vivent en communion, servant la vie, contribuant au développement de la société, participant à la vie et à la mission de l'Église, constitue justement le milieu où cette Église se concrétise. Comme le constate Jean-Paul II, l'Église « trouve dans la famille, née du sacrement, son berceau et sa place où Elle pénètre dans les générations humaines, et elles — dans l'Église » (FC, 15).

La juste compréhension de la valeur de l'institution de la famille vient, entre autres, avec le IIe Concile du Vatican soulignant que « le bonheur d'une personne ainsi que celui de la collectivité humaine et chrétienne est strictement lié à la bonne condition de la communauté conjugale et familiale » (GS, 47). Ce qui est également significatif, c'est qu'après le Concile Vatican II, on a publié quelques documents importants du magistère de pape concernant le mariage et la famille. Le développement dynamique de la prêtrise des familles dans l'après-concile et la naissance de plusieurs organisations ecclésiastiques défendant les intérêts des familles sont également d'une grande importance. Il est hors de doute que la famille s'est trouvée au centre des intérêts de l'Église contemporaine.

À l'époque où les attentats à l'identité et à la souveraineté de la famille deviennent de plus en plus fréquents, l'Église se sent obligée de défendre fermement l'enseignement révélé sur le mariage et la famille.

Mots clés : famille, souveraineté, Église

Wojciech Góralski

La famiglia come istituzione sovrana

Sommario

La famiglia, cellula elementare della vita sociale, che possiede una sua identità e sovranità come pure i propri diritti fondamentali, che crea una comunità di persone, che è al servizio della vita, che contribuisce alla crescita della società e che partecipa alla vita ed alla missione della Chiesa, costituisce l'ambiente in cui tale Chiesa si realizza. Come afferma Giovanni Paolo II, la Chiesa "trova nella famiglia, nata dal sacramento, la sua culla e il luogo nel quale essa può attuare il proprio inserimento nelle generazioni umane, e queste, reciprocamente, nella Chiesa" (FC, 15).

La comprensione adeguata del valore dell'istituzione della famiglia fu proclamata tra l'altro dal Concilio Vaticano II, che sottolineava che "il bene della persona e della società umana e cristiana è strettamente connesso con una felice situazione della comunità coniugale e familiare" (GS, 47). È anche significativo il fatto che, dopo il Vaticanum II, furono pubblicati alcuni documenti rilevanti del magistero pontificio in materia di matrimonio e di famiglia. Sono eloquenti anche lo sviluppo dinamico della pastorale della famiglia nel periodo post-conciliare, come pure la creazione di molte organizzazioni ecclesiastiche per la famiglia. Non ci possono essere dubbi sul fatto che la famiglia si è trovata al centro degli interessi della Chiesa contemporanea.

In un'epoca in cui si moltiplicano gli attentati all'identità ed alla sovranità della famiglia, dinanzi alla Chiesa si presentano il compito rilevante, e nel contempo la sfida, di difendere con decisione l'insegnamento rivelato sul matrimonio e sulla famiglia.

Parole chiave: famiglia, sovranità, Chiesa

Ecumeny and Law, vol. 2 (2014)
pp. 105—114

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The Charter of the Rights of the Family in the Context of Theology of Law

Keywords: teology of law, Charter of the Rights of the Family

The following considerations, first of all, require an explanation what theology of law is as well as revealing its legally valid form of existence as a way of looking at, interpreting and understanding the phenomenon of law as human reality. I realize that dealing with law from theological perspective will not be approved of by lawyers, not so much because of the possibility of a different look at law but as far as its usefulness for jurisprudence and established law is concerned. Theology of law has its opponents who emphasise that combining theology and law is inconsistent and thus impossible due to the problematic — for secular minds — the main notion of theology, which is God. In such an approach one can first and foremost notice the lack of acceptance of theological cognition in today's world, in which purely intellectual cognition becomes a model for all cognition. Therefore, it is a negation of the possibility to comprehend reality which goes beyond intellectual rationalism. It is, however, not noticed that theological rationalism displays a type of receptiveness to what cannot be explained by intellectual rationalism. An additional motive which denies the possibility of looking at law from the standpoint of theology is positivism (including legal positivism), which rejects the existence of absolute and unquestionable reality, transcendental, cultural and ahistorical values.[1]

[1] A. Comte wrote: "The word *law* has to be removed from the language of politics in the same way as the word *cause* from the language of philosophy. One of these

Theology of law

What is theology of law then and in what way should it be practised so that its sense and meaning for law can be noticed? People involved in theology of law define it as a discipline which deals with the legal experience of the human being in the light of Divine Revelation. One can pose a question whether Revelation says something about law but not in the context of the community of believers of the Old and the New Jerusalem. Theology tells us about God who revealed Himself to the human being as the Creator, Saviour and Redeemer. Revelation discusses the created world and its relation to its Creator. Consequently, the whole reality of the created world together with all the products of human activity become the object of theological cognition.

One of the dimensions and products of human life is the law. A person lives for it, creates it and on this account he/she is the object of theology of law and, as a consequence, so is the law itself. Thus, theological anthropology plays the main role in theology of law. The answer to the question concerning the human being is at the same time the answer concerning his/her relations with another human being, including the normative ones. This is hardly a novelty, since law is always perceived in the light of the one for whom it is created. What is new is the attitude in which law is perceived in the context of the human being as he/she was created by God in His own image, saved and redeemed by Him.

An essential quality of theology of law is its specific theological, ecclesiological look at law as one of the elements of human life on the way leading to salvation. Sustaining its continual reference to the source, which is Divine Revelation, theology of law can retain its epistemological meaning as one of the forms of human cognition, which broadens and complements its other forms.[2]

In the proper approach to the theology of law guilt lies partially on the side of theology itself, which assumes some idea of God. The starting point of considerations should be the word of God, revealing Himself and speaking to the person. This word always remains the good news, it is a promise which arouses hope and gives the power of conduct, which is the source of consequences for theology of law. If the object of theo-

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theological-metaphysical terms is immoral and anarchic, and the other — irrational and sophistic" (author's translation); *Rozprawa o duchu filozofii pozytywnej. Rozprawa o kształcie pozytywizmu*. Warsaw 1973, p. 544.

[2] Cf. F. D'Agostino: "La teologia del Diritto positivo: Annunzio Cristiano e Verità del Diritto." In: *Evangelium vitae e diritto. Acta Symposii internationalis in civitate Vaticana celebrati 23—25 mai 1996*. Libreria Editrice Vaticana 1997, p. 123.

logical cognition is some idea of God, then as a consequence the object of interest of theology of law will be some *lex* understood in a static way as the explicit will of God. This way of looking at law was reflected in the issue of verifiability of references of the established law to the natural moral law.

However, the theological character of such deliberations was lost on the way, since they often ended in dispersing in different theories of the natural law. These theories then constituted epistemological references for deliberations about law.

Nonetheless, if the word of God, whose acceptance is to serve salvation, remains at the starting point, *lex* will be expressed in a dynamic way as a promise (*diateke*, *testamentum*), addressed at a particular person in a historic moment and striving to come true.[3] Thus, the word of God will raise hope and give strength to pursue defined goals. Then, this promise will allow looking at the established law in a broader light. It gives a starting point in order to go beyond what is considered correct and what is the result of legislative compromise. Such an approach, however, focused on content analysis of a legal relation may face an accusation that theology wants to fill the established law with content. At this moment its usefulness becomes extremely dubious. However, a more appropriate approach of theology of law to law itself is also feasible. Its point of reference should be not only content analysis of a legal relation but the very intersubjective, social relation of obligation, provided that one does not identify juridical pertinence with prescriptivism semantically or in terms of content. The content dimension of a legal relation is the outcome of the rational drawing up of the relation itself. Therefore, the juridical pertinence should not be reduced to prescriptivism, since this reduction would indicate that it is prescriptivism that forms the basis of social life and not that the co-existence of people in a community is the basis of prescriptivism, which in turn can be of moral or legal character. Focusing only on the content aspect of a legal relation makes law a rather static reality due to explicit legal solutions.

Therefore, the starting point of theology of law ought to be a legal relation or as a matter of fact its protagonists, that is the people creating it in the aspect of obligation and filling it with content. This legal relation becomes the object of reference for the details of Revelation, through which theology of law interprets the situation of the person. Theology of law interprets the situation of the human being in the light

[3] Cf. Idem: "Teologia del diritto alla prova del fondamentalismo." In: *Ius divinum. Fondamentalismo religioso ed esperienza giuridica, a cura di F. D'Agostino*. Ed. Idem. Torino 1998, pp. 113—115.

of the revealed truth, analyses and shows the person the potential of living in a community, which surpasses his own ingenuity. Thus, theology of law does not sacralise earthly values but thanks to relating them to a different form of cognition, imparts their new understanding, contributes to broadening horizons and changing current paradigms. It is a hermeneutical category of understanding a legal relation and a certain cognitive form whose conclusions might become an inspiration for legislative activity.[4]

The starting point of theology of law is law itself, which is a value in the life of a person aspiring to salvation. Law is a value because it shapes and expresses a binding force of interpersonal relations. The role of theology is interpreting these relations from a new angle, which is a hermeneutical reference point for intellectual deliberations. In theological approach to law one can notice a different vision of basic legal concepts: the legal system can open itself to a legal experience; the presentation of marriage can go beyond the rigid frames of a contract and open to marital covenant and unity; sanity is joined by personal responsibility; instead of talking about following legal procedures one can emphasise administering justice; a human being can become the subject of law.

Hermeneutical categories for theology of law in the Charter of the Rights of the Family

The Charter of the Rights of the Family proclaimed by the Holy See 30 years ago is an example of such theological look on law. The Introduction of the document explains it "is not an exposition of the dogmatic or moral theology of marriage and the family […] nor is it a code of conduct for persons or institutions concerned with the question […]. The Charter is also different from a simple declaration of theoretical principles concerning the family" (2).[5] The document does not specify its character but only gives the aim of its publication. It is "presenting to all our contemporaries, be they Christian or not, a formulation — as complete and

[4] Cf. T. Gałkowski: "Etyczne i teologiczne implikacje dla teorii prawa i praktyki prawniczej." In: *Prawoznawstwo a praktyka stosowania prawa*. Eds. Z. Tobor, I. Bogucka. Katowice 2002, pp. 271—283.

[5] I quote the text of the Charter of the Rights of the Family after: http://nccbuscc.org/laity/marriage/charterfamily.shtml (accessed 12.6.2013). Quoting the fragments of the Introduction to the Charter I give the numbers of its particular paragraphs in brackets.

ordered as possible — of the fundamental rights that are inherent in that natural and universal society which is the family" (2).

In the presentation of the aim one can already see certain elements characteristic of thinking about law — since the Charter talks about inherent rights, which go beyond positive and conventional statements. For the Charter presents, as far as it is possible, complete and ordered fundamental rights of the family. The foundation of this belief is the fact that "the rights enunciated in the 'Charter' are expressed in the conscience of the human being and in the common values of all humanity. The Christian vision is present in this Charter as the light of Divine Revelation which enlightens the natural reality of the family. These rights arise, in the ultimate analysis, from that law which is inscribed by the Creator in the heart of every human being" (3).

The document, whose subject is expressing the fundamental rights of every family, "reflects the Church's thinking in the matter" (2). In its wording, since it talks about every family, be it Christian or not, the Charter does not impose at the starting point its own solutions discussing Christian or Catholic rights of the family. The starting point is the law which exists between the persons who make up the family. However, the description of the legal relations which are formed within the family was complemented by the image of the family and the relationships between its members, which were in the Creator's plan when he decided to make the person in His own image and concluded that it was not good for the person to be alone. These rights were inscribed by the Creator in the heart of every human being. Therefore, the Charter states clearly that the basis of understanding the fundamental rights of the family in a complete and ordered way is finding out who the human being is and what the common values of mankind are. The content of the Charter of the Rights of the Family exemplifies applying theological categories to the rights each family is entitled to. The family and legal relations of obligation were presented in the light of the truth about the human being and the family, which were interpreted according to God's plan and shown in Divine Revelation. The rights of the family presented in the Charter are the result of their theological interpretation, but on the other hand they are also a certain suggestion for legislation which refuses to understand and establish them in this way. In the Introduction to the Charter we read that it contains "postulates and principles for legislation to be implemented [and] offers to all who share the responsibility for the common good a model and a point of reference for the drawing up of legislation" (4). The fact that the Charter expresses the postulates and principles directed at legislators means that it was noticed that the legal solutions proposed by modern legal trends and legislative solutions were inadequate

to social life. Discussing the Charter of the Rights of the Family from the perspective of theology of law one can see in it, so to speak, a product of theological examination of the rights of the family. On the other hand, the rights expressed in the Charter remain in a way removed from those existing in the civil legislation because they are the result of their interpretation in the light of what we learn about family relations from the Revelation. They would remain unchanged no matter if there existed the same, similar or contradictory to them, laws in civil legal orders or not. The element holding together the rights of the family contained in the Charter and the rights of the civil order is the fact that the former ones were drawn and offered to the "quarters and authorities concerned" (1) due to the inadequacy of international and public laws in relation to the truth about the human being and the family preached by the Church. One can state with full conviction that in such a situation they are the outcome of presenting them in a theological perspective. Otherwise, without referring them to civil laws (public and international) at the starting point one could not talk about any theology of law in the proper sense.

Let us look at the theological indicators of the rights of the family which are included in the Charter and their possible influence or implications on the rights of the family established in the civil orders. I will limit myself to the statements contained in the Preamble.

In point A the Charter uses the wording contained in other kinds of legislative documents, such as the rights of a person, the rights of an individual. However, it additionally states that these rights, having a social dimension, find an innate expression in the family. Referring to what was previously said in the Introduction, one should emphasise that these rights "arise, in the ultimate analysis, from that law which is inscribed by the Creator in the heart of every human being." It means that on this account they deserve to be strongly defended "against all violations and respected and promoted in the entirety of their content." Additional motivation indicated by the origin of the rights of the family appeals to us not to treat them selectively and in limited scope but to protect them in their integrity. Theological source of the rights of the family points out that the person can have faith in the word of God, which assures that the earthly order is not arbitrary in character but is watched over by Providence. Therefore, the activity of the person does not come down to choosing conventional solutions and giving in to social trends.

What is emphasised in point B is the indissolubility of the marriage, which is the foundation of a profound and complementary relationship between a man and a woman. The theological source stressing the indissolubility of marriage indicates that there is sense in the marital union, which is expressed in stability, thereby aiming at the opportunity of sus-

tained mutual shaping of the spouses. It is a certain indication for the public or international legislation not to establish laws that allow disintegration of a marriage too easily and not to be guided in their regulations by laxism when judging whether the marital union disintegrated completely, but to raise hope for the possibility of improvement in the relationship which is breaking up.

In point C, a belief that only marriage was entrusted with the mission of transmitting life is highlighted. Thus, it is emphasised that nobody irrespective of the spouses can influence the possibility of giving birth to offspring by them or make it conditional to anything; human life is a value which cannot be manipulated and which should be protected from the very conception, regardless of the way it originated. In such an approach one can see an appeal that every conceived life should have parents in the already formed family environment, in which parents will take care of extensive development of their child. The postulate contained in this fragment of the Charter also suggests that civil legislative should establish such laws which will enable childless parents to adopt children and which will protect the "unwanted" children.

In point D it is stressed that the family is a natural society, prior to the state. It means that the truth about the family and its rights is not dependent on any public authority. Every public authority ought to seek the truth, act in the truth and according to the truth about the family, which is independent of its legislative whims. This look at the family is at the same time some form of trust in the public authority, which can comprehend the earthly order and establish laws which will express it. It manifests faith in the human reason, also the legislative one, not devoid of autonomy and the ability to express itself in an objective and universal way. The law which will lose its objectivity and universality relating to what results from outlaw reasons of existence shall not deserve respect.

In the point that follows (E) there comes a significant statement which says that the family "constitutes a community of love and solidarity," thus being "much more than a mere juridical, social and economic unit." Such wording emphasises the fact that the family cannot be perceived solely from the point of view of social or economic rights that it is entitled to, since the family is not merely a legal entity. Although this phrasing expresses the equality of the persons remaining in a legal relation which cannot yield to any form of subordination, it highlights other than legal and much deeper bond uniting the family members. This statement stresses that the smallest and most basic form of life, which is the family, is founded on the values of solidarity and compassion. Thus, public legislation — as long as the above values are promoted by the state as well as by the extralegal elements strengthening marriage — receives assistance

in ensuring the stability and proper functioning of the marital unity. One cannot summarise marriage in legal formulas and simultaneously create such laws that would thwart the values of solidarity. Consequently, we read at the same point that it is the family who decides about teaching and passing down the cultural, ethical, social, spiritual and religious values. Public legislation can neither limit these possibilities nor direct them in such a way that the family would be restricted or deprived of what it considers right for its members.

Solidarity ties, which the person learns first of all in the family, make him contribute to the development of every man and the society (which will be discussed in points F, G) perceiving another person not only as the subject of legal relations, but above all as a human being with his/her dignity. Theological approach gives this attitude an additional dimension of seeing in the person someone created in the image of God Himself, who is the God of dialogue, personal God and God capable of sacrifice, but also demanding God. This new and broader in meaning image of the person complements the extremely dispassionate picture of the human being who is the subject of law. For such persons and their families legislation can modify the laws, institutions, social and economic programmes, which negatively influence "the fundamental needs, wellbeing and the values of the family" (point J), especially in the situations (the Charter mentions the situation of poverty) which "prevent them from carrying out their role with dignity" (point K).

The Charter of the Rights of the Family with its theological attitude to the family and its protagonists is an inspiration for the public legislation. It presents the plan of God instilled in human nature concerning marriage and the family (point L). We must realize that in the secularized world raising the issue of the family in order to promote what it is meant to be in the plan of God is incompatible with the image of the world. However, next to the "official" picture of reality it demonstrates prophetically different, deeper, broader and strengthened by God's plan image of the human family. The principles expressed in the Charter are "a prophetic call in favour of the family institution" (Introduction, 4). Opening oneself to faith, sometimes even not fully conscious, gives the opportunity to understand better the things created by the human and for the human. To be able to propose and promote the Christian image of the family, theology of law should not as much invoke the details of Revelation, but through them appeal to the identity and tradition of the society shaped largely by the values which Revelation conveys and which became the part of this society's life. Accepting the values of the family and ensuring its rights in the public and international legal acts of the highest importance does not safeguard the family from the process

of re-definition, though. The Charter of the Rights of the Family shows these values which, protected by the public legislator, guarantee the existence and the proper functioning of the family. "The Charter offers to all who share responsibility for the common good a model and a point of reference for the drawing up of legislation and family policy, and guidance for action programmes" (Introduction, 6).

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Tomasz Gałkowski

The Charter of the Rights of the Family in the Context of Theology of Law

Summary

The author in his article analyses the content of the Charter of the Rights of the Family in theological perspective. First, he emphasises the specificity of theology of law, whose reference point are the persons creating a relation in the obligation aspect (proper relation). This relation is subject of the new understanding in the light of the details of Revelation. They constitute hermeneutical categories for theology of law in the Charter of the Rights of the Family. Next, the author analyses its particular points from the angle of these categories. In his conclusions he emhasises that opening oneself to faith gives the possibility of fuller understanding of the things created by the human being (including law) and for the human being.

Tomasz Gałkowski

Charte des droits de la famille dans la perspective de la théologie juridique

Résumé

Dans son article, l'auteur analyse le contenu de la Charte des droits de la famille dans la perspective théologique. Tout d'abord, il souligne la spécificité de la théologie juridique dont le point de départ sont les personnes qui forment une relation dans un aspect de devoir (relation juridique). Cette relation juridique est interprétée à la lumière des données de la Révélation. Dans la Charte des droits de la famille, elles constituent des catégories herméneutiques pour la théologie du droit canonique. Ensuite, l'auteur analyse ses points particuliers juste à la lumière de ces catégories. Dans la conclusion, il souligne qu'une attitude ouverte à l'égard de la foi donne la possibilité de mieux comprendre les choses créées par l'homme (y inclus le droit) et pour l'homme.

Mots clés : théologie juridique, Charte des droits de la famille

Tomasz Gałkowski

La Carta dei Diritti della Famiglia nella prospettiva della teologia del diritto

Sommario

Nel suo articolo l'autore analizza il contenuto della Carta dei Diritti della Famiglia in prospettiva teologica. In primo luogo sottolinea la specificità della teologia del diritto il cui punto di partenza è rappresentato dalle persone che creano relazioni nell'aspetto relativo ai doveri (relazione legale). Tale relazione legale è sottoposta a lettura alla luce dei dati della Rivelazione. Essi costituiscono le categorie ermeneutiche per la teologia del diritto nella Carta dei Diritti della Famiglia. Successivamente l'autore analizza i suoi singoli punti alla luce di tali categorie. Nelle sue conclusioni sottolinea che l'aprirsi alla fede da' la possibilità di comprendere più pienamente le cose create dall'uomo (tra cui il diritto) e per l'uomo.

Parole chiave: teologia del diritto, Carta dei Diritti della Familia

Ecumeny and Law, vol. 2 (2014)
pp. 115—130

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Institution of the Family according to the Teaching of the Orthodox Church

Keywords: family, Catholic Church, Orthodox Church, marriage

The year 1994 was declared by the United Nations the Year of the Family and, at the same time, the UN resolution established on 15 May as the International Family Day to be observed worldwide. This eventful moment was genuinely an "important one," but perhaps "slightly festive,"[1] too. However, it is certain that, by this act, the member states of the world have finally realized, all in the same vain, a deep crisis of this institution of divine and man-made law. Of course, ignorance, refusal or failure to observe the religious, spiritual and moral values of the families have had negative effect not only upon the basic social unit as an institution, but also on the environment in which the family thrives. Indeed, "the family planning, abortion, drugs, alcohol, prostitution, violence, all degrade the institution of family, diminishing the fullness of its manifestation."[2]

Family, which accompanies the human being over his/her entire existence — has proved to be one of the "oldest and most stable forms of human community."[3] The term itself comes from Latin *familia* which, in turn, is derived from *famulus* signifying a "servant."[4] To the Romans, this

[1] I. Chelaru: *Căsătoria şi divorțul. Aspecte juridice civile, religioase şi de drept comparat*. Iasi, p. 7.

[2] Ibidem.

[3] B. Dumitru Moloman: *Căsătoria civilă şi religioasă în dreptul român*. Bucharest 2009, p. 13.

[4] As cited in G. Guțu: *Dicționar latin-român*. Bucharest 1983, p. 461.

term originally encompassed all servants (slaves) living under the same roof. Subsequently, the term began to describe the entire community or house, which included the master of the house (*pater familias*), wife, children and servants (slaves). By extension of meaning, "the Roman family came to include both paternal relatives (*Agnati*) and maternal ones (*Cognati*), becoming synonymous with *Gens*," that means "a community of people related through blood bonds."[5]

In antiquity, the factor of cohesion and unity of the family was "the religion of the house and of the forefathers."[6] In Christianity, this factor is due to the religious marriage, because its sacredness is obtained through the grace acquired by the sacrament of marriage. As a matter of fact, through the sacrament of wedding, the marriage becomes — according to St. John Chrysostomos — "the mystical icon of the Church" (PG. LXIV, 387), because through this sacrament of the Church, the natural (normal) and free bond between a man and a woman, which represents all humanity, is sanctified and raised to the dignity of spiritual union between the Church and Christ (cf. Eph. V, 28—32).

Family — whose origin lies in the social, communitarian nature of the human stated by God upon his creation (Gen. I, 27—28) — is founded through marriage, meaning through the bond between freely consenting spouses. According to Roman law, it is a relationaship of a man and a woman that "consists in the community of life, which is indissoluble (*viri et mulieris coniunctio, individuam consuetudinem vitae continens*)."[7] In other words, this inextricable connection involves both a monogamous form of marriage and its durability throughout lifetime of both spouses, hence the indissoluble character of marriage, and *ipso facto*, of the family.

In the Orthodox Church, the indissoluble character of marriage and the fact that the spouses are co-sharers of the gifts with which they were endowed by God, are attested by the liturgical gesture made by the priest during the Holy Matrimony Service, when he touches with each of the wedding crowns — a sign of honour of their marital fidelity as well as of them being worthy of dignity before God and men — the forehead of these two (the bride and groom), calling their name, so it can really be said that "each one carries his own crown because he is united with the other one, as it is united with that of the other one."[8] It actually refers to the monogamous unity, which the biblical text also gives eloquent testimony about (cf. Mt. XIX, 5; I Cor. VII, 2, Eph. V, 21—33).

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[5] B. Dumitru Moloman: *Căsătoria civilă*..., p. 13.

[6] Ibidem.

[7] *Justiniani Institutiones*, lb. I, IX, 1, trans. by V. Hanga. Bucharest 2002.

[8] D. Staniloae: *Teologia dogmatică ortodoxă*. Vol. III. 2nd edn. Bucharest 1997, p. 133.

According to the teaching of the Orthodox Church, the family, which results from the marital relationship between a man and a woman blessed by God through His priests, before the Holy Altar, during the administration of the Holy Sacrament of Marriage — is destined to last for the lifetime of both spouses. It stems from the commandment of Christ the Saviour that says: "therefore what God has joined together, let no one separate" (Mt. XIX, 6). Also, following St. Paul's testimony, it is God who commanded "to those married" that the wife should not separate from her husband (but if she does separate, let her remain unmarried or else be reconciled to her husband), and that the husband should not divorce his wife (I Cor. VII, 10—11). Therefore, the Church does not allow dissolution of the bond between spouses, or divorce (apart from cancellation), "except for similar moral reasons such as death of the body, unfaithfulness (adultery) and any other forbidden physical relations (Mt. XIX, 9)."[9] Thus, their marital relationship — consecrated through the Sacrament of Marriage — can only come to an end through their bodily death (cf. Mt. XIX, 6, I Cor. VII, 10—11).

Following the teaching of the same Orthodox Church, the family, as well as marriage, must be based only on the bond of one man and one woman, just as the word of Scripture provides (cf. I Cor. VII, 2). Therefore, the Orthodox Church not only does not allow "the relationship between man and several women,"[10] but it considers woman a human being equal in honour and in dignity with man, because she was created after "the image of God" as well, and as the Apostle of the Nations said "there is no longer male and female; for all of you are one in Christ Jesus" (Gal. III, 28). That is why it has to be emphasised that only the Christianity — for the first time in human history — recognized that women have the same dignity as man,[11] preceding in this way by about two millennia the feminist movements claiming equal social rights of men and women.

According to the teaching of the Christian Orthodox Faith, the family is "a divine institution,"[12] because it was established in Paradise along with the creation of the first parents, Adam and Eve — and therefore, it appeared as such at simultaneously with the human race. Consequently, the family is "the first form of communal life," on which, in fact, "all other forms of communal life" are based.[13] But, for the Orthodox Church, the

[9] Firmilian, Archbishop of Craiova, and Joseph, Bishop of Ramnic and Arges: *Învățătura de credință creştină ortodoxă*. Craiova 1952, p. 429.

[10] Ibidem, p. 428.

[11] Ibidem, p. 400.

[12] Ibidem, p. 428.

[13] Ibidem, pp. 429—430.

family is "the first environment of man's moral growth," actually considered by the Church as indispensable for "the welfare of the society"[14] (the human society). But the same teaching of the Christian Orthodox Faith tells us that the family established by God in Paradise has also a natural origin, since it derives from the human nature itself.

In line with the teaching of the Orthodox Church, the foundation act of the family institution has a threefold[15] purpose, that is:

1. "A helper as his partner, for the ease of life" (cf. Gn. II, 18).
2. Giving birth to children, to multiply the human race and the faithful of the Holy Church (cf. Gn. I, 28).
3. "Physical moderation," seen as a remedy against fleshly passions or as a "protector against lust" (Mt. XIX, 6).

The same "teaching of the Orthodox Christian Faith" concludes that "all these are for the glory of God,"[16] that is, in other words, these have only one aim, the glorification of God, the Father, the Son and the Holy Spirit.

As for the purpose of marriage, we may say that they find their ground state in the divine law. For example, about "the mutual help of the spouses," the Book of Genesis, Chapter II, verse 18, says that: "the Lord God said, 'It is not good that the man be alone'," so "He made him a helper as his partner." "The man was so from the very beginning created to live life in society (in community), and not for a self-centred one in which he is not aware that he has to give, not to *alterum non laedere* (harm the others), and *cuique tribuens*[17] (to give to each what one ought to have)." However, the basic unit of any society, the family, is what gives to the spouses the possibility and necessity, obviously, to work together for the needs of its members, to help each other, as spouses, and share their joys and sorrows.

Giving birth to children — which perpetuates the human race — is regarded by the Orthodox Church as a gift from God that makes the woman and mother "no longer to remember the anguish because of the joy of having brought a human being into the world" (Jn XVI, 21).

As for the physical moderation, it has the gift to contribute effectively to the protection of "spouses' morality,"[18] thus preserving the character of "holiness" of the relationship that spouses have acquired through the Sacrament of Matrimony.

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[14] Ibidem, p. 430.

[15] Ibidem, p. 429.

[16] Ibidem.

[17] *Justiniani Institutiones*, lb. I, I, 3.

[18] Firmilian, Archbishop of Craiova, and Joseph, bishop of Ramnic and Arges: *Învăţătura de credinţă creştin ortodoxă*..., p 401.

Following the teaching of the Orthodox Church, "in addition to parents and children, the family also includes other relatives, however distant they may be," and "all the relatives have to love, respect and help one another, and this way of life to enter into the life of the whole human community (society), which is nothing else but the great family of the human race"[19] in which all people have a common Father and they are brothers through Christ our Lord.

In the perception of secular world, the term marriage expresses only a state and a contract legitimised in front of secular authorities between a man and a woman. This understanding derives from the Latin *matrimonium* and indicates a civil marriage, not a religious one. That is why *matrimonium* does not find its expression in the Romanian language as wedding, that is the Sacrament of Matrimony, but only as marriage, is the state based only on the contract. Of course, the Sacrament of Matrimony also has a constitutive element with a contractual nature to it, namely, the consent of the spouses, but, besides this, the Sacrament of Matrimony (the wedding) has first of all the blessing of the Church, which the betrothed receive through the priest who officiates the sacrament. However, through this blessing, the couple's consent is "consecrated by the Church and the Divine Grace descends upon it," and "the contract is raised to the rank of Sacrament." Therefore, any consent or agreement — without the blessing of the Church — "is not considered a sacrament, but only a natural institution."[20]

It was considered by the Roman jurists a simple natural institution, who claimed that from *jusnaturale* […] *descendit maris atque feminae coniugatio* (the natural law derives and the union between a man and a woman), which they called *matrimonium* (matrimony) and *liberorum procreatio et educatio*[21] (the conception of children and their education). For the Roman law, the link between a man and a woman through marriage, whereby results the family institution, has its basis only in the natural law, and not in the divine one.

The fact that the relationship between a man and a woman has its first and foremost reason in the divine law, is also attested by Scripture which says that God created "man" in his "image": "male and female he created them and God blessed them, and God said to them: Be fruitful and multiply, and fill the earth and subdue it" (Gen. I, 27—28). The same scriptural text tells us that according to these laws (divine and natural), "man will leave his father and mother and be joined to his wife, and the

[19] Ibidem, p. 431.

[20] N. Chițescu et al.: *Teologia dogmatică şi simbolică*. Vol II. Cluj-Napoca 2005, p. 259.

[21] *Justiniani Institutiones*, lb. I, II,…, p. 12.

two will become one flesh" (Eph. V, 31), in order to multiply (cf. Gn. I, 28), for their mutual help (cf. Gn. I, 2, 18) and remedy against passions, or "protection against lust" (I Cor. VII, 2).

In Christianity, *matrimonium* is also a *nuptia* (matrimony), that is a marriage, but a holy one, a sacralised one, through the blessing of the priest, by which the spouses (male and female) become the basic "unit" of the Church, the depository of Christ's grace.

Cives Romani (Roman citizens) ended a lawful wedlock (*iustas nuptias*) if married *secundum praecepta legum*[22] (according to the law). So, likewise the first Christians did not marry according to the "new covenant" — brought by the Lord Jesus Christ — if it was not consistent with the principles set out or provided by its text. However, among other things, this law requires that such a Christian religious marriage (Wedding) has to be officiated by the priests of the Church. Therefore, in the Orthodox Church, the marriage is not concluded through "the consent of spouses," in terms understood and expressed by the Roman law, namely *consensus fecit nuptias*" (Modestin). Resultantly, as an Orthodox theologian noted, "considering marriage completed only through the consent of the spouses, as in Catholicism, where the priest is only a witness, only means to see the marriage as a natural liaison."[23]

The fact that, since the apostolic age, those who officiated the marriages were bishops and priests is shown to us thanks to a post-apostolic Father, St. Ignatius, who in his *Epistle to St. Polycarp* (2nd century) taught that "those who marry should bring into effect their relationship only with the approval of the bishop" (Chapter V, 2). That this was the reality in the Pre-Nicene Church, is attested to us by the Fathers of Neo-Cezarea Council (315) in canon 7, in which it is expressly mentioned the *presbyter* (priest) also as the person that officiates the Sacrament of Matrimony.

In the Orthodox Church, the celebrant of the marriage is therefore a bishop or a priest, but Christ himself is the one who seals "the natural link" between a man and a woman who marry freely and not forced by anyone. Moreover, according to the teachings of the Orthodox faith, the grace being only "the work of Christ," "the unseen celebrant" of the Sacraments is Christ.[24]

God, being the one who, through the Sacrament of Matrimony blesses and unites the bride and groom is also certified by the liturgical tradition of the Eastern Church. For example, during the engagement, after the priest puts the wedding rings in the hands of the nupturients — he reads

[22] Ibidem, lb. I, X, pp. 26—27.
[23] D. Staniloae: *Teologia dogmatică ortodoxă*..., p. 131.
[24] Ibidem, p. 14.

the prayer, "Lord, our God…" in which he invokes the Lord to bless "the engagement of thy servants" (N), "to strengthen" the word that they gave "and to unite them with the Holy Union of Thee" because "You from the beginning created the male and the female and from You the woman joins the man to support him and for the existence of the humankind."[25] The same reality is stated within the prayer that the priest pronounces during the service of the Holy Matrimony (wedding) after having previously prayed to God to remember his "servants" (the marrying couple) and to bless them.[26] Among other things, during this prayer, the priest utters the words "Thyself, Lord, lay thy hand from the height of thy holy habitation and unite your servants (N) because by Thee the man joins his woman, and unite them in one mind, crown them in one body, give them […] good children."[27]

So it is God who blesses and unites them into one thought and crowns the bride and the groom in one body. Therefore, everything happens in the presence of God and His uncreated grace, the priest being only the servant of the Lord, which invokes this presence and through the power that was given to him, administers the Sacrament of Matrimony.

Some Orthodox dogmatist theologians say that by the first four sacraments of the Church, that is Baptism, Confirmation, Eucharist and Confession, "man is placed in a direct relationship with Christ and only indirectly in a service relationship with other people," but through "the Sacrament of the Matrimony, man is first placed into a close relationship with his neighbour and through the Extreme Unction it is given help for his body."[28] About the grace received through the four Sacraments the theologians say that the man's salvation depends on them, and that their are used "fully through priesthood and marriage."[29] However, the fact is that this valorisation is only possible with a marriage sanctified and raised to the rank of Sacrament of the Church, that is a matrimony having its original, holy character, from the Edenic state, strengthened and then sanctioned by Christ at the Wedding in Cana of Galilee, attested by St. Augustine, who said that "Christ strengthened in Cana what He has instituted in Paradise."[30]

In the second half of the previous century, some Orthodox theologians also claimed that "the state of marriage is the natural state," but

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[25] *Molitfelnic*. Bucharest 2006, p. 83.

[26] Ibidem, p. 93.

[27] Ibidem, p. 94.

[28] D. Staniloae: *Teologia dogmatică ortodoxă*…, p. 118.

[29] Ibidem, p. 119.

[30] St. Augustine. In: Gospel according to Jn IX, 2, cited in D. Staniloae: *Teologia dogmatică ortodoxă*…, p. 123.

it is not, at the same time, founded by the Lord. He only raises it to a higher level making it a sacrament. Therefore, we say that the Sacrament of Matrimony is founded by the Saviour. It is true that in the Holy Scripture, clarify the theologians, we find no fragment that would directly make us see when and how the Lord established this Sacrament, but the attitude that he has towards the matrimony and how he speaks about it, along with the Apostles, clearly shows that it is a sacrament. It was the consideration for the marriage, that made the Lord attend the wedding in Cana of Galilee. The Holy Fathers say that this participation was made in order to sanctify the matrimony.[31] Yet, according to the words of the Holy Fathers of the Orthodox Church, the Lord Jesus Christ participated — together with his disciples — in the matrimony taking place in Cana of Galilee "to sanctify the cause of human birth," meaning "the bodily birth" because "it behooved — wrote St. Cyril of Alexandria — to be there for the One who had to renew human nature itself and make it better, to bless not only those who were born, but to prepare the Grace also for those who were to be born later and make their origin holy."[32] Moreover, according to the teachings of Orthodox faith, the matrimony — from which the Family results — has fallen from its original purity "because of the original sin,"[33] and this fall has had negative consequences on the family. But, it was restored by the Lord Jesus Christ by raising the value of the matrimony to the rank of Sacrament.

According to St. Paul, the union between the spouses must have as a model the spiritual connection between Christ and His Bride, the Church (Eph. V, 32). In fact, only then we can say that the Sacrament of Matrimony is great "in Christ and in the Church (εἰς Χριστὸν καὶ εἰς τὴν ἐκκλησίαν)." Therefore, only the matrimony that is made in Christ (I Cor. VII, 39) may share the divine grace, which is the unseen part of the sacrament, while the spouses' consent and the words that the priest pronounces when he puts the wedding crowns on the heads of the spouses are the visible part.

In the opinion of some Orthodox theologians, the scriptural text according to which, through matrimony a man and a woman "shall become one flesh" (Mt. XIX, 5, Eph. V, 31), "should not be interpreted literally, but morally in the sense that the man and the woman share the joys and sorrows, as if they were one person"[34] that by the mutual love

[31] N. Chițescu et al.: *Teologia dogmatică şi simbolică*..., p. 260.

[32] St. Cyril of Alexandria: *Commentary on the Gospel according to John*, II, v. 1. In: PG LXXI, 223—226.

[33] Metropolitan PhD Nicolae Mladin et al.: *The Orthodox Moral Theology*. Vol. II. Alba Iulia 2003, p. 290.

[34] Ibidem, p. 297.

between the spouses, and their devotion to each other, promised before the Holy Altar, have the vocation to keep "on a moral-Christian basis the obedience of woman to man — according to the divine will — without impairing the human dignity of woman."[35]

The leadership in the family belongs to man (Eph. V, 22—23), yet "the woman is not a slave, but a companion of man [sic!], sharing with him the parental authority,"[36] because "spouses are in an equal relation, with common authority towards children."[37] Such a concept concerning the relationship between a man and a woman and the "parental authority," appears evidently revolutionary compared to the Roman one, that was reaffirmed even by the jurists of the last Roman emperor and the first Byzantine emperor, Justinian the Great (527—565), to whom *jus potestatem* (the legal power) of parents claimed over the born children *ex iustis nuptiis* (from a lawful marriage) was proper only for *civium romanorum*,[38] which were the only who had the capacity to be *patres familias*.[39] The same Roman-Byzantine juridical doctrine stated in respect to children resultant of a marriage that they were *in tua potestate* (in your power) that means in the power of *pater familias*. Also in his power was "that which is born by your son and his wife, the nephew and the niece (your nephew and niece) […] as well as the grandson and granddaughter and so on. The child born by your daughter — the Institutions of Justinian's specified — is not in your power, but in the power of the child's father (*in tua potestate non est, sed in patris eius*)."[40]

For the Orthodox theologians, "the right of existence of the family and the rights of the parents over the children has a divine origin." And, in their view, these rights lie in "the fact that in the early history of mankind it was God who founded the family" (Gen. I, 28).[41]

The State is entitled to intervene in the institution of family, because it is a part of the society. This intervention would be required — claim the theologians — especially when "the family found itself in a very poor condition and cannot fend for itself," or when within the family serious infringement of the mutual rights have taken place, because "the duty of the state is to defend the violated right."[42]

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[35] Ibidem.
[36] Ibidem, p. 290.
[37] Ibidem.
[38] *Justiniani Institutiones*, lb. I, IX, 2.
[39] Ibidem, I, X.
[40] Ibidem, lb. I, X, 3.
[41] Metropolitan PhD Nicolae Mladin et al.: *The Orthodox Moral Theology…*, 2003, p. 290.
[42] Ibidem, p. 297.

The human society — and its forms of institutional organization, such as the state — certainly have the obligation to help each and every family, regardless of its religious denomination, because the human rights and their legal and social protection[43] primarily relate to the basic unit's, that is the family's, members. However, this intervention should be not displayed in areas such as, for example, the Christian religious education,[44] where the state is likely to commit acts of interference into the "internal forum" area. Or, *de internis non judicat praetor*, because it can affect both the freedom of conscience and religious freedom, two of the fundamental freedoms.[45]

Christian Orthodox moralists say that the parents exercise their "natural right" of parental authority over children "until the full age," that is until they are eighteen years old.[46] According to scripture, this author-

[43] See also N.V. Dură: "Drepturile şi libertăţile fundamentale ale omului şi protecţia lor juridică. Dreptul la religie şi libertatea religioasă." *Ortodoxia* LVI (2005), nos. 3—4, pp. 7—55; Idem: "The European juridical thinking, concerning the human rights, expressed along the centuries." *Acta Universitatis Danubius. Juridica* 2 (2010) (VII), pp. 153—192; Idem: "Dreptul la demnitate umană (dignitas humana) şi la libertate religioasă. De la 'Jus naturale' la 'Jus cogens'." *Annals of Ovidius University: Law and Administrative Sciences* 1 (2006), pp. 86—128; Idem: "Les droits fondamentaux de l'homme et leur protection juridique." *Annals of Dunarea de jos Galati University*. Fascicle XXII: *Law and Public Administration* 2 (2008), pp. 19—23; Idem: "The Rights of the Persons who lost their Autonomy and their Social Protection." *Journal of Danubius Studies and Research*, vol. II, 1 (2012), pp. 86—95.

[44] N.V. Dură: "Instruction and Education within the themes of some International Conferences. An evaluation of the subjects approached by these from the angle of some Reports, Recommendations and Decisions." International Conference: *Exploration, Education and Progress in the third Millennium*. Galaţi, 24—25 April 2009, vol. II, pp. 203—217.

[45] Idem: "'Conştiinţa' în percepţia Teologiei şi a Filosofiei." *St. Apostle Andrew Theological Review*, XIII, 1 (2009), pp. 27—37; Idem: "The Theology of Conscience and the Philosophy of Conscience." *Philosophical-Theological Review* 1 (2011), pp. 20—29; Idem: "Proselytism and the Right to Change Religion: The Romanian Debate." *Law and Religion in the 21st Century. Relations between States and Religious Communities*. Eds. S. Ferrari, R. Cristofori. Ashgate Publishing Limited, England 2010, pp. 279—290; Idem: "About the 'Religious' Politics of Some Member States of the European Union." *Dionysiana*, III, 1 (2009), pp. 463—489; Idem: "Despre libertatea religioasă şi regimul general al Cultelor religioase din România." *Annals of Ovidius University of Constanta, Theological series* 1 (2009), pp. 20—45; Idem: "The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania." *Dionysiana* II, 1 (2008), pp. 37—54; Idem: "'Privilegii' şi 'discriminări' în politica 'religioasă' a unor State membre ale Uniunii Europene." *Annals of Ovidius University: Law and Administrative Sciences* 1 (2007), pp. 20—34; Idem: "Law and Morals. Prolegomena (I)." *Acta Universitatis Danubius. Juridica* 2 (2011), pp. 158—173; Idem: "Law and Morals. Prolegomena (II)." *Acta Universitatis Danubius. Juridica* 3 (2011), pp. 72—84.

[46] Metropolitan PhD Nicolae Mladin et al.: *The Orthodox Moral Theology...*, p. 290.

ity must manifest itself first of all through the feeling of love of parents towards their children (Titus II, 4). However, by the virtue of this natural love, parents have the duty to give them shelter, to feed them, to provide them with clothes, and to offer them a good education for body and soul, because, according to scripture: "whoever does not provide for relatives, and especially for family members, has denied the faith," meaning the faith of Church in Christ, "and he or she is worse than an unbeliever" (I Tim. V, 8, II Cor. XII, 14).

The teaching of the Orthodox Church on faith was formulated and expressed in those *oroi* or *definitiones fidei* with a dogmatic content, and generally in all of her synodal decisions both on morals and Christian cult and its organizing and directing forms, including those that have an administrative and disciplinary character, known as κανονὲς (*regulae*). These decisions were preserved and transmitted both through the written text and tradition, in all its manifestations, that is dogmatic, canonical, and liturgical one.

However, regarding family the Church's teaching was expressed in the same way, and its formulation experienced the same threefold aspect of manifestation (dogmatic, canonical, and liturgical), even if its doctrine often has an inter- and multidisciplinary content. But Orthodox theologians — whether they are dogmatist, canonists or liturgists — have the same poinview on marriage and family, since the teaching of the Church is uniform in this respect, just as it was confirmed by the encyclical of the patriarchs of the Orthodox Churches in 1848, addressed to "all the bishops and Orthodox Christians, true sons of the Church, One, Holy, Catholic and Apostolic Church,"[47] which remained normative regarding the teaching of the Orthodox faith.

Among other things, this encyclical stated that "the preaching of the gospel […] should be heralded properly (unaltered) by all and forever to be believed, as it was disclosed by our Saviour to His holy divine disciples, [who] having become seeing and hearing teachers, sounded like strong trumpets worldwide, and, finally, unaltered, as it was delivered to us by many great holy fathers of the Catholic [universal, ecumenical] Church […] who repeated the same idioms and taught us in the Councils" (§ 1).

The same patriarchs of the Orthodox Churches reaffirm us that "our Orthodox faith is not from the people and through man, but through

[47] The encyclical was signed by the hierarchs present at the Council of Constantinople on 6 May 1848, namely, the patriarchs and bishops of the Greek Patriarchate of Constantinople, Antioch and Jerusalem. The full text of this encyclical was translated from Greek into Romanian by Professor Theodore M. Popescu (Faculty of Orthodox Theology in Bucharest) and published in the *Romanian Orthodox Church Review* in 1935 (pp. 545—688).

the revelation of Christ, which was preached by the divine Apostles, reinforced by the Holy Ecumenical Councils, and transmitted through succession by the great wise Teachers of the world and it was confirmed by the shed blood of the saints martyrs" (§ 20).

In the same Encyclical, it is stated that "for us [Orthodox Christians] they never could introduce new things, neither the patriarchs nor the councils [or dare to] change our dogmas and liturgies or anything else, [because] the defender of the religion is the very Head of the Church who wants that the religion be eternally unaltered, the same with this of his Parents" (§ 17). Therefore, the Eastern Orthodox Church — composed of its three constituent elements, that is clergy, laity and monks[48] — remained, as it is testified in the text of the Encyclical of the Patriarchs of the Orthodox Churches, in 1848, loyal to the teachings formulated and strengthened by its councils, through their decisions with dogmatic, canonical and liturgical content, and about family, and, *ipso facto* matrimony.

We also need to emphasise the fact that the teaching of faith of the Orthodox Church about family — both based on Revelation as well as on its expression and its formulation by its competent authorities, collegial-synodal or individual (Church hierarchy), over the centuries — does not differ in its essence from the teachings of the Catholic Church, because both of them have as their source the Holy Scripture and the Holy Tradition. In fact, even the traditionalist Orthodox dogmatist theologians admit that "the sacrament of marriage officiated in the Roman Catholic Church is recognized as such by the Orthodox Church, since the Matrimony is considered a sacrament in the Latin Church."[49]

The same Orthodox theologians believe that if "two pagan spouses" want to convert to Orthodoxy, "they are not obliged to receive the Sacrament of Matrimony/Marriage since they receive the Baptism. Through Baptism they enter in communion with Grace which cleanses them of all sins and makes them sons of God […]. This means that their marital bond was raised to a higher state of holiness, and therefore, it is no longer necessary to receive the Sacrament of Matrimony. It is not a mistake if they receive it, but — those dogmatist theologians concluded — it is not necessary."[50]

Undoubtedly, we could conclude that, within our theological, ecumenical dialogue, the original teaching of faith of the Orthodox Church concerning family can be a source of documentary information, a first-

[48] See also N.V. Dură: "Monahii, al treilea element constitutiv al Bisericii." *Romanian Orthodox Church* CXXI, 7—12 (2003), pp. 469—483.

[49] N. Chițescu et al.: *Teologia dogmatică şi simbolică*…, p. 262.

[50] Ibidem.

class one, and it can serve as a common platform for our theological debates, which must certainly be guided by the desire for the restoration of our ecclesial unity — that existed before the regrettable Schism of 1054 — animated by the ecumenical spirit of our times.

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Nicolae V. Dură, Teodosie Petrescu

Institution of the Family according to the Teaching of the Orthodox Church

Summary

The teaching of faith of the Orthodox Church about family — both based on Revelation as well as on its expression and its formulation by its competent authorities, collegial-synodal or individual (Church hierarchy), over the centuries — does not differ in its essence from the teachings of the Catholic Church, because both of them have as their source the Holy Scripture and the Holy Tradition. Therefore, we could say that, within our theological dialogue, the authentic teaching of faith of our Churches concerning family can serve as a common platform for our theological debates, which must be certainly guided by the desire for the restoration of our ecclesial unity — that existed before the regrettable Schism of 1054 — animated by the ecumenical spirit of our times.

Nicolae V. Dură, Teodosie Petrescu

Institution de la famille à la lumière de l'enseignement de l'Église orthodoxe

Résumé

L'enseignement de l'Église orthodoxe sur la famille, basé sur la Révélation ainsi que sur son expression et formulation effectuées à travers des siècles par les autorités compétentes de l'Église : autorités collégiales et synodales ainsi qu'individuelles (hiérarques religieux), ne diffère pas dans son essentiel de l'enseignement de l'Église catholique à propos de cette matière parce que pour les deux Églises l'Écriture et la Sainte Tradition constituent la source de leur enseignement. Par conséquent, on peut dire que dans le cadre du dialogue théologique l'enseignement authentique de nos Églises sur la famille peut faire fonction de plateforme pour nos débats théologiques.

Bien évidemment, il faut qu'ils soient dirigés par le désir de renouveler l'unité ecclésiastique qui existait avant le déplorable schisme de 1054 et qui devrait être ranimée par l'esprit œcuménique de notre époque.

Mots clés : institution de la famille, œcuménisme, schisme d'Orient

Nicolae V. Dură, Teodosie Petrescu

L'istituzione della famiglia alla luce dell'insegnamento della Chiesa ortodossa

Sommario

L'insegnamento della fede della Chiesa ortodossa sulla famiglia, basato sulla Rivelazione e sulla sua espressione e formulazione nel corso dei secoli da parte delle autorità competenti della Chiesa: collegiali-sinodali o individuali (gerarchi ecclesiastici), non si differenzia nella sua essenza dall'insegnamento della Chiesa cattolica in tale materia, perché entrambe le Chiese hanno come fonte del proprio insegnamento le Sacre Scritture e la Sacra Tradizione. Pertanto si può affermare che, nell'ambito del dialogo teologico, l'insegnamento autentico della fede delle nostre Chiese sulla famiglia può servire come piattaforma per i nostri dibattiti teologici.

Essi devono essere naturalmente guidati dal desiderio di rinnovare l'unità ecclesiastica che esisteva prima del deplorevole Scisma del 1054 e animata dallo spirito ecumenico dei nostri tempi.

Parole chiave: istituzione della famiglia, ecumenismo, Grande Scisma d'Oriente

Ecumeny and Law, vol. 2 (2014)
pp. 131—143

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The Rights of the Family in the Vision of the Evangelical Church

Keywords: family, the Evangelical-Augsburg Church in Poland, *Zasadnicze Prawo Wewnętrzne*, *Pragmatyka służbowa*, Martin Luther, the Book of Concord, *Liber Concordiae*

1. Introduction

The Lutheran instructions about the family are the Bible-based teachings. The Bible, due to *sola scriptura* principle, is according to Lutheranism the only reliable and trustworthy authority.[1] It is a foundation of faith and Christian life. It is a source of dogma, a touchstone of orthodoxy, and the ultimate judge of all theological questions and problems.[2] The Bible is *norma normans non normata* of the church teaching.[3]

The spectrum of teaching of the Lutheran Churches[4] is presented in many church documents.[5] They are gathered mainly in *The Book of Concord* (*Liber Concordiae*).[6] The collection is the hard core of doctrinal

[1] M. Uglorz: *Od samoświadomości do świadectwa wiary. Wprowadzenie do dogmatyki ewangelickiej*. Warszawa 1995, pp. 125—127.

[2] Ibidem, pp. 88—98; a good introducition to the Lutheran theology is provided by S.D. Paulson: *Lutheran Theology*. London 2011.

[3] P. Jaskóła: *Wyznania chrześcijańskie bez jedności z Rzymem*. Opole 2008, p. 79.

[4] For more about the Lutheran Churches, see P. Jaskóła: *Wyznania chrześcijańskie bez jedności z Rzymem*. Opole 2008, pp. 57—90.

[5] For a short introduction to the issue, see L. Ullrich: "Corpus Doctrinae." In: *Lexikon der Reformationszeit, Lexikon für Theologie und Kirche. Kompakt*. Eds. K. Ganzer, B. Steimer. Freiburg-Basel-Wien 2002, col. 175—176.

[6] The first edition in German was in Dresden in 1580 (eds. M. Stöckel, G. Bergen). For the full title of the edition, see Bibliography.

and disciplinary teaching extracted from Martin Luther's doctrine.[7] All the books have been recognized as authoritative in Lutheranism since the 16th century. The special place among them occupies *The Augsburg Confession*. As it was said, *The Augsburg Confession* remains the basic definition of what it means to be a Lutheran.[8] All the books from the mentioned *corpus doctrinae* are *norma normata*, because they are subordinate to the Bible.[9]

It seems that also some other documents issued by the Lutheran Churches, or at least some parts of them, are not only of theological but also of legal significance. It is because they touch upon not only theological matters, but also disciplinary ones.[10] In case of the Evangelical-Augsburg Church in Poland, a special emphasis must be placed on PS[11] and ZPW.[12]

All citations from the books are taken from the English edition *The Book of Concord, or, the Symbolical Books of the Evangelical Lutheran Church. Translated from the Original Languages, with Analyses and an Exhaustive Index*. Ed. H.E. Jacobs. Philadelphia 1911; Polish translation: *Księgi Wyznaniowe Kościoła Luterańskiego*. Bielsko-Biała 1999; see also: *Wyznania wiary protestantyzmu. Tom zawiera także wyznania wspólnot religijnych XIX i XX wieku wywodzących się z dziedzictwa reformacji. Wybor tekstów zródłowych*. Ed. L. Sadko. Kraków 1995.

The mentioned English version consists of the following essential parts: "The General Creeds" (pp. 23—28), "The Augsburg Confession" (pp. 30—68), "The Apology of the Augsburg Confession" (pp. 69—302), "The Smalcald Articles" (pp. 303—354), "The Small Catechism" (pp. 355—378), "The Large Catechism" (pp. 379—486), "The Formula of Concord" (pp. 487—671).

[7] W. Niemczyk: "Teologia ksiąg wyznaniowych." In: *Księgi Wyznaniowe Kościoła Luterańskiego…*, Bielsko-Biała 1999, p. 19.

[8] R. Kolb, Ch. P. Arand: *The Genius of Luther's Theology: A Wittenberg Way of Thinking for the Contemporary Church*. Grand Rapids 2008, p. 16.

[9] P. Jaskóła: *Wyznania chrześcijańskie bez jedności z Rzymem*. Opole 2008, p. 79.

[10] As it is in case of P. Melanchthon's, *A Treatise on the Power and Primacy of the Pope*. Treatise Compiled by the Theologians Assembled at Smalcald in 1537 and added as an apendix to *The Smalcald Articles*; a short explanation of relation between law and Gospel, see P. Jaskóła: *Wyznania chrześcijańskie bez jedności z Rzymem*. Opole 2008, p. 80.

[11] PS = *Pragmatyka Służbowa Kościoła Ewangelicko-Augsburskiego w Rzeczpospolitej Polskiej (The Official Policy of the Evangelical-Augsburg Church in Poland)*. Tekst jednolity opracowany na 10 sesję XII Synodu Kościoła Ewangelicko-Augsburskiego w RP w dniach 14—16 października 2011 r. Available at: http://www.luteranie.pl/pl/files/file/ps.pdf. Accessed 10.3.2012.

[12] ZPW = *Zasadnicze Prawo Wewnętrzne Kościoła Ewangelicko-Augsburskiego w Rzeczpospolitej Polskiej z dnia 26 października 1996 r. z późniejszymi zmianami (The Essential Inner Law of the Evangelical-Augsburg Church in Poland)*. Tekst jednolity opracowany na 10 sesję XII Synodu Kościoła Ewangelicko-Augsburskiego w RP w dniach 14—16 października 2011 r. Available at: http://www.luteranie.pl/pl/files/file/zpw.pdf. Accessed 10.3.2012.

In case of ZPW the situation is quite simple. The document in question is titled "law" ("prawo"). In § 82 ZPW there is a date of the law coming into effect, and in the next § 83 ZPW derogation norms of the previous version of the law are established.

It can be presumed that also PS is of legal significance. There are some arguments in support of that opinion. First, the redaction of PS is typical of legal texts. The document is divided into smaller units (paragraph and numbers); also formulations of sentences and its language indicate clearly that the text is a normative document. Second, the collegial body of the Evangelical Church, that is, Synod of the Church ("Synod Kościoła") in Poland "approved" ("zatwierdził") PS at the 4th session of the X Synod, and the unified text of the document was "drawn up" ("opracowany") for the 10th Session of the XII Synod in 2011.

It must be mentioned that the Synod is the highest power in the Church (§ 58 no. 1 ZPW). The Synod is "an embodiment of the Church and exponent of all rights of the Church" (§ 58 no. 1 ZPW).[13] The body has legislative power and competences, because it is entitled to enact all church laws, and to decide in all general matters of the Church, in the limits of the law [ZPW] (§ 58 no. 2 ZPW).

Although there is no word "promulgation" used in PS — promulgation, of course, belongs to the essence of a law[14] — one can justly presume that the mentioned "approval" is some kind of promulgation. The document in question can be found on the web page of the Evangelical-Augsburg Church in Poland. The very fact can be understood as a kind of publication of PS.

The law states that "Evangelical family, being part of the Church, is a community of the saints and it is obliged to build itself into a spiritual house and reinforce itself in faith by the Word of God, sacraments, and prayer" (§ 111 PS).[15] It follows that all regulations must come from the teaching of the Church and be coherent with it. It must be underlined that there is no bill of rights of the family in documents of Evangelical Church.[16] In the present paper, PS will be mainly analysed, of course in

[13] § 58 no. 1 ZPW: "[Synod] jest on uosobieniem Kościoła i wyrazicielem wszystkich praw Kościołowi przysługujących."

[14] Cf. *Decretum magistri Gratiani*. In: *Corpus Iuris Canonici*, vol. 1. Lipsiae 1979, col. 1—1424, here: D. IV, c. 3.

[15] § PS 111: "[…] rodzina ewangelicka, będąc cząstką Kościoła, jest społecznością świętych, zobowiązana do budowania się w dom duchowy i umacniania w wierze przez Słowo Boże, sakramenty i modlitwę."

[16] As it is in case of the Catholic Church. The authorities of the Church have issued such a document, see Pontificio Consiglio Per la Famiglia: "Carta dei diritti della famiglia." *Enchiridion Vaticanum*, 9, pp. 538—552; Polish edition: Karta Praw Rodziny: przedłożona przez Stolicę Apostolską wszystkim ludziom, instytucjom i władzom zainteresowanym misją rodziny w świecie współczesnym. Katowice 2008.

the light of the general Lutheran doctrinal and disciplinary teaching. This method, it is assumed, will bring to light the rights of the family in the vision of the Evangelical Church, which is the aim of the paper.

2. Rights regarding contracting marriage

Because family is built on marriage, the right that should be examined is the right to marry. The Evangelical Church believes that "God ordained marriage to be a help against human infirmity."[17] Martin Luther was of the opinion that the union of a male and a female belongs to natural rights. "But since natural right is immutable, the right to contract marriage must always remain. For where nature does not change, that ordinance also with which God has endowed nature does not change, and cannot be removed by human laws."[18]

The right in question can be interpreted from the Father of the Reformation's opposition to the ban on contracting marriage by the priests. According to Luther "private judgment of the Popes, both prohibit the contraction of marriages, and dissolve them when contracted; and this is to be done openly contrary to the command of Christ, Matt. 19:6: what God hath joined together, let not man put asunder";[19] and also "priests would have done wrong in contracting marriages, yet this disruption of marriages, these proscriptions, and this cruelty, are manifestly contrary to the will and Word of God."[20] In one word: "the right to contract marriage cannot be removed by statutes or vows."[21]

But, on the other hand, there is no obligation to marry. Law states that "marriage is a possibility, given by God to humans, for man's and woman's life. It is a covenant of two persons in which a man and a woman are obliged to lead common life in mutual love, responsibility, sharing burdens, trust, prayer, and striving for perfection" (PS § 107 no. 1).[22] The cited article speaks about the possibility of contracting marriage, not the compulsion or pressure of entering into marriage.

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[17] AC (=*the Augsburg Confession*) XX, 15.

[18] Ap (= *the Apology of the Augsburg Confession*) XXIII, 9.

[19] Ap XXIII, 23.

[20] Ap XII, 71.

[21] Ap XXIII, 7.

[22] § 107 no. 1 PS: "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."

It must be added that the right in question is not an absolute one. In § 108 of PS, the Church authorities declare that a marriage comes into existence by consent of persons, a man and a woman, who are legally capable (§ 108 PS). By the act, the persons in irrevocable covenant mutually give and accept each other for the purpose of establishing a marriage (§ 108 PS). To accomplish such a great deed as contracting marriage, the persons undoubtedly must have a certain level of freedom to get married validly.

In Lutheran thought, the detailed legal regulations of marriage do not belong to the religious community, but to the civil authorities.[23] It seems that in the system of norms in the Lutheran Church there are no norms *in sensu stricte* of marriage law, created in endogenic way, such as norms that regulate the legal ability of contracting marriage, the conditions of validity of marriage consensus, etc. There is even an opinion that "legal ability of candidates to Evangelical marriage is determined not by own law of the Church, but state law."[24] It seems that the judgement is not right, because it is exaggerated. One can argue that § 116 PS orders that the duty of the pastor is to check ability of contracting marriage not only according to documents issued by the registry office,[25] but also documents required by PS such as a certificate of baptism with annotation of confirmation and free state.[26] Luther also ordered that marriages must not be contracted in secret. According to him, valid is only the marriage contracted officially, publicly, in presence of witnesses and the Church. To the essence of marriage belongs its declarative character.[27] As it is seen, the Lutheran Church provides some regulations about validity of marriage, which, of course, have an influence on realization of *ius connubii*.

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[23] P. Holc: "Małżeństwo w 'Księgach Symbolicznych' luteranizmu." In: *Sakramentalność małżeństwa*. Red. Z.J. Kijas, J. Krzywda. Kraków 2002, pp. 78—79.

[24] P. Majer: "Uznanie małżeństwa kanonicznego w prawie państwowym." *Annales Cannonici* 6 (2010), p. 74, fn. 19.

[25] In Poland it is Urząd Stanu Cywilnego, see, e.g., art 41 § 1 ustawy z dnia 25 lutego 1964 r. *Kodeks rodzinny i opiekuńczy* (Dz.U. nr 9 poz. 59 z późn. zm.), and, for example, art. 54, art. 55, art. 56 ustawy z dnia 29 września 1986 r. — *Prawo o aktach stanu cywilnego* (Dz.U. nr 36 poz. 180 z późn. zm.).

[26] § 116 PS: "[…] obowiązkiem proboszcza jest sprawdzenie zdolności prawnej do zawarcia małżeństwa narzeczonych zgłaszających zapowiedzi, na podstawie ich oświadczeń pisemnych oraz przedłożonych przez nich dokumentów według obowiązujących przepisów: a) świadectw Chrztu Św. z adnotacją o konfirmacji i stanie cywilnym, b) wystawionych przez Urząd Stanu Cywilnego dokumentów stwierdzających zdolność prawną do zawarcia małżeństwa, c) dodatkowych dokumentów określonych przez niniejsze Prawo lub porozumienia między Państwem a Kościołem."

[27] WA 30 III 207, 12.

3. Rights regarding pastoral care

The next group of rights is the one that concerns pastoral care over the families. Luther in *The Tables of Duties*, a part of *The Small Catechism*, ordered that bishops, pastors, and preachers must be apt to teach, holding fast to the Word as they have been taught, that they may be able by sound doctrine both to exhort and to convince the gainsayers.[28]

According to Philipp Melanchthon, all the sermons in Lutheran Churches are to treat certain topics, such as: repentance, the fear of God, faith in Christ, the righteousness of faith, and many others. But on the proposed list there are also subjects that concern families, such as: marriage, education and instruction of children.[29]

ZPW in § 36 no. 2 prescribes that the pastor is to take pastoral care of the whole parish. Even the members of the Church, who are abroad, are to be, but only in special circumstances, surrounded by pastoral care of the Church (§ 6 no. 1 ZPW).

That duty creates certain rights for the members of the Church. First of all, marriages and families have the right to receive pastoral care from the Church. Lutheran law orders that the ministers of the Church are obliged to extend pastoral care to certain groups of parishioners like: families, the poor, the orphans, the old, the handicapped (§ 63 PS).

The families are entitled to a special care in time of mourning for the members of the family (§ 63 PS). The parish office is to come to aid in organizing the funeral (§ 154 PS). The ministers are obliged to show special attention to mixed marriages and marriages that stay away from the Church (§ 63 PS).

4. Rights regarding ministers' families

According to the Lutheran teaching, marriage and family are deeply rooted in state and civil society. The main responsibility for wellbeing of the families belongs to the civil authorities.[30]

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[28] SC (= *the Small Catechism*), Appendix 3, 2.

[29] Ap XV, 43.

[30] See more: A. Skowronek: *Małżeństwo i kapłaństwo jako spotęgowanie chrześcijańskiej egzystencji. Sakramenty wiary. Spotkania z Chrystusem w Kościele. W profilu ekumenicznym*. Vol. 3. Włocławek 1996, pp. 40—45.

But in PS an exemption is made for ministers' families, because "ministers (bishops, priests and deacons) are entitled to company flat that guarantees decent living for the family and organization of office space" (§ 200 PS).[31] If the minister stays in his own house the parish is obliged to participate in the costs of living (§ 200 PS).

The rules have their roots in the teaching of Martin Luther. In the already cited *The Tables of Duties* he ordered that the hearers own their pastors: "let the elders that rule well be counted worthy of double honor, especially they who labor in word and doctrine. For the Scripture said, 'Thou shalt not muzzle the ox that treadeth[32] out the corn'. And, 'The laborer is worthy of his reward' (1 Tim. 5:17, 18). Obey them that have the rule over you, and submit yourselves: for they watch for your souls, as they that must give account, that they may do it with joy and not with grief; for that is unprofitable for you (Heb. 13:17)."[33]

5. Rights regarding members of family, especially children

The analysed law gives many rights and duties of the particular members of the family like parents, children, or siblings. For instance, the law states that parents and children have general duty to love and support one another (§ 111 PS). The law also states that parents have special obligation that arises from the missionary order of Jesus Christ, to lead their children in the community of the Church by sacrament of baptism, teaching of the Word of God, and religious upbringing (§ 111 PS). The legislator § 112 PS orders that the children have the duty to venerate parents by showing them respect, obedience, love, and by taking care of them in their old years and illness. The siblings have the right and duty to live in harmony, and family love, and to show mutual help (§ 112 PS).

But most of the rights are connected with children. Of course, the rights of children are the reflection of the duties of the parents, and the ministers of the Church.

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[31] § 200 PS: "[…] duchownym (biskupom, księżom i diakonom) przysługuje mieszkanie służbowe, zapewniające godne warunki życia rodziny oraz urządzenie gabinetu pracy."

[32] Sic!

[33] SC, Appendix 3, 3.

5.1. Baptism

The first and foremost right the children have is the right to be baptized. Luther said that the doubts or the questions about the infant baptism were suggested by the devil, through his sects, to confuse the world.[34] Also, that the baptism of infants is pleasing to Christ is sufficiently proved from His own work.[35]

According to § 69 no. 1 PS, children should be baptized in the first six weeks since birth. It seems that the addressees of the norm are mainly parents. If the parents fail to fulfill the duty in question and postpone the baptism longer than one year, the ministers are to see the family and to ask about the causes of such nonfeasance, and to talk to them pastorally (§ 69 no. 1 PS).

The Lutheran law mentions nothing about the protection of freedom of children to choose baptism. PS only orders that "the children who are to be baptized in a more advanced age are to be prepared individually for receiving the sacrament (§ 72 no. 1 PS).[36] The legislator does not determine the meaning of the term "in a more advanced age" ("w starszym wieku"); nor the possibility of opposition of the children against receiving the sacrament in question is regulated.

In case of mixed marriages, the legislator provided special regulations. The norms resolve issues of contracting such marriages, and of special pastoral care for the marriages. They order that the Evangelical part of marriage must take care of "giving the house the Evangelical character,"[37] which is seen particularly in upbringing children in the Evangelical Church.

5.2. Religious upbringing and education

As St. Paul taught: "Fathers, do not provoke your children to anger, but raise them up in the discipline and instruction of the Lord" (Eph. 6:4). Because of the duty, the children have the right to be educated in religion especially in the first years of life. The legislator gives some

[34] LC (= *The Large Catechism*), IV, 47.

[35] LC IV, 49.

[36] § 72 no. 1 PS: "[…] dzieci, które mają być ochrzczone w starszym wieku należy osobno odpowiednio przygotować do chrztu."

[37] § 133 PS: "[…] nadania domowi ewangelickiego charakteru."

pastoral examples of making it happen: praying and singing with children, telling the biblical stories, reading Evangelical papers for children, Sunday school, but a special place is reserved for taking part in the church services. In the second preface to *The Large Catechism* Martin Luther wrote that "it is the duty of every father of a family at least once a week to examine his children and servants, and to ascertain what they know of it [the catechism], or have learned, and, if they be not familiar with it, to keep them faithfully at it,"[38] and also "let every father of a family know that it is his duty, by the injunction and command of God, to teach these things to his children, or have them learn what they ought to know."[39]

According to the Church legislative body, everything possible must be done to "strive for giving the important moments in life of the child a religious character" (§ 88 no. 2 PS).[40] Responsible for the realization of the right are parents and godparents who are to be constantly encouraged to fulfill the duty.

It should be mentioned that the duty of education is extended also to the members of the parish council ("rady parafialnej"). According to § 88 no. 5 ZPW the organ must be particularly involved in "the care for education and upbringing of the children and the youth."[41]

The right in question is to be extended in time. Also in the later years the parents and the godparents must by word and example shape the positive attitude of the child to church teaching, church services, parish life and Church life (§ 89 PS). It is underlined in the law that children have the special right to find in the life of their parents a unique and special pattern of honest, pious life, full of the virtues like: righteousness, love, fidelity and trustworthiness (§ 112 PS). It is worth adding that law also mentions the obligation of the parents to provide not only upbringing, but also an education for their children (§ 111 PS).

6. Conclusions

In summary, it must be said that the Evangelical-Augsburg Church in Poland does not formulate the bill of rights of the family. But, it has

[38] LC, 2nd preface, 4.

[39] LC V, 87.

[40] § 88 no. 2 PS: "[…] dążyć do nadania ważniejszym momentom życia dziecka charakteru religijnego."

[41] § 88 no. 5 ZPW: "[…] troska o chrześcijańskie wychowanie dzieci i młodzieży."

enacted some rights of the family. They are rooted mainly in the *corpus doctrinae* of Evangelical Churches. The Church in question formed some regulations about the family in PS and ZPW. In the two laws one can find concrete and clear-cut regulations; unfortunately, they are scattered among the two texts.

One can say that the regulations in question are not rights, but rather pastoral clues, because there are no sanctions for the behaviour opposite to the norms. In a different matter than family, the regulations from PS are formed into norms with sanctions, like it is in case of § 151 no. 2 PS[42] (rigor of marriage of pastors with women of Evangelical faith), or § 105 PS[43] (protection of the seal of confession).[44]

Generally, it can be said that the vision of the Evangelical Church regarding the rights of family is not extensive. The Church law deals only with basic matters and the Evangelical legislator did not try to regulate and give some norms for modern issues concerning family. The law that the legislative body of the Church enacted is mainly focused on the religious and spiritual side of life. Neither PS nor ZPW cover today's important problems like: child abuse, unemployment, *in vitro* fertilization, or other bioethical issues.

[42] § 151 no. 2 PS: "[…] duchownemu pod rygorem skreślenia go z listy duchownych Kościoła nie wolno zawierać małżeństwa z osobą przynależącą do innego Kościoła, z wyjątkiem osób przynależących do kościołów pozostających z Kościołem Ewangelicko-Augsburskim w RP we wspólnocie ołtarza i ambony."

[43] § 105 PS: "[…] duchowni, zgodnie ze ślubowaniem ordynacyjnym, są zobowiązani do zachowania tajemnicy spowiedzi, a także tajemnicy rozmów duszpasterskich pod rygorem utraty urzędu."

[44] See § 261 PS for the list of disciplinary punishments.

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Piotr Kroczek

The Rights of the Family in the Vision of the Evangelical Church

Summary

The paper deals with the topic of rights of the family in teaching and law of the Evangelical-Augsburg Church in Poland. The Church in question, above the doctrinal statements, issued two documents, titled: *Zasadnicze Prawo Wewnętrzne*, which contains the essential norms for the Church, and *Pragmatyka służbowa*, which is a collection of regulations and rules of church service and pastoral care. In the paper, the two documents are analysed in perspective of the rights of family. The main conclusion is that the vision of the Evangelical Church regarding the rights of family is not extensive and deals only with basic matters not taking into consideration modern issues concerning family.

Piotr Kroczek

Droits de la famille dans l'optique de l'Église évangélique de la Confession d'Augsbourg dans la République de Pologne

Résumé

L'article aborde le sujet concernant les droits de la famille dans l'enseignement et dans le droit de l'Église évangélique de la Confession d'Augsbourg dans la République de Pologne. Cette Église a publié, outre l'enseignement doctrinal, deux documents à caractère normatif : *Droit Interne Fondamental* qui comprend les réglementations les plus importantes concernant cette Église et *Pragmatique de service* qui contient les règlements concernant principalement l'activité pastorale. Ces deux documents ont été analysés sous l'angle des droits de la famille.

La conclusion majeure qui découle de nos études, c'est que la vision évangélique des droits de la famille ne se focalise pas sur ces droits d'une façon vaste, mais elle concerne uniquement les droits fondamentaux. Elle passe sous silence les questions contemporaines qui concernent la famille.

Mots clés : famille, Église évangélique de la Confession d'Augsbourg dans la République de Pologne, *Droit Interne Fondamental*, *Pragmatique de service*, Martin Luther, *Liber Concordiae*

Piotr Kroczek

I diritti della famiglia nell'ottica della Chiesa Evangelico-Augustea nella Repubblica di Polonia

Sommario

L'articolo tratta l'argomento dei diritti delle famiglie nell'insegnamento e nel diritto della Chiesa evangelico-augustea nella Repubblica di Polonia. Tale Chiesa, oltre all'insegnamento dottrinale, ha pubblicato due documenti di natura normativa: *Zasadnicze Prawo Wewnętrzne* [Diritto Interno Fondamentale] che include le norme più importanti riguardanti tale Chiesa e *Pragmatyka służbowa* [Prammatica del servizio] che include le leggi riguardanti principalmente il servizio pastorale. Questi due documenti sono stati analizzati dal punto di vista dei diritti della famiglia.

La conclusione principale che scaturisce dalle ricerche eseguite è che la visione evangelica dei diritti della famiglia non racchiude in modo ampio i diritti menzionati, ma riguarda solamente i diritti fondamentali. Tralascia le problematiche contemporanee che riguardano la famiglia.

Parole chiave: famiglia, Chiesa Evangelico-Augustea nella Repubblica di Polonia, *Diritto Interno Fondamentale*, *Prammatica del servizio*, Martin Lutero, *Liber Concordiae*

Ecumeny and Law, vol. 2 (2014)
pp. 145—156

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Pastoral Vision of the Rights of the Family in the Catholic Church

Keywords: marriage, family, theology, canon law, pastoral care, conference of bishops, diocese

The Catholic Church, thanks to her long experience, offers a clear vision of marriage and family. Based on it, I will try to present the pastoral vision of the rights of the family in the Catholic Church: first, very shortly, its doctrinal basis; then, the canonical norms constituting the foundation for pastoral care; finally, the concrete means of care existing in the Czech Republic.

1. Doctrinal basis of the pastoral vision

1.1. Historical overview

The topic of family and marriage was very important during the entire history of the Catholic Church, it has been frequently and seriously reflected on, and therefore, there are numerous official Church documents, both on the universal level and on the particular level.[1] Over the

[1] Many documents are collected in the edition *Enchiridion Familiae. Magisterio pontificio y conciliar sobre el matrimonio y la familia*, which is available online on the web-

last decades there have been several important Church documents regarding family which explain not only the doctrinal basis of the marriage and the family, but also general pastoral guidelines.

1.2. The Second Vatican Council

First of all, it is necessary to evoke the immense importance of the Second Vatican Council and of its Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, promulgated on the 7 December 1965, the first constitution of an ecumenical council dedicated to the pastoral questions. The second part of the document entitled "Some Problems of Special Urgency" as well as the entire second chapter named "Fostering the Nobility of Marriage and the Family", are dedicated to the topic of matrimony.

1.3. Post-conciliar documents

1.3.1. *Familiaris consortio* (1981)

The most important post-conciliar document for the pastoral care of family is the apostolic exhortation *Familiaris consortio* by the pope John Paul II on the role of the Christian family in the modern world from the 22 of November 1981, which represents fruits of the synod of bishops held on 26—28 October 1980 in Rome.

This document presents a very rich vision of marriage and family in a really concise way. Part One "Bright Spots and Shadows for the Family Today" brings an analysis of the contemporary situation of marriage and family in the light of the Gospel, Part Two "The Plan of God for Marriage and the Family" presents theological reflection on family, the most

page: http://www.enchiridionfamiliae.com/. It is possible to find there more than 2,000 documents divided into different categories and sufficiently supplemented with cross-references between documents and by indices of councils, popes, authors, places, topics, editions and editors. Only a part of the documents is dedicated especially to the topic of matrimony — such special documents were published mostly in the 20th century.

lengthy Part Three "The Role of the Christian Family" treats the function of marriage and family in the Church and in the society, and the final Part Four "Pastoral Care of the Family: Stages, Structures, Agents and Situations" deals with the practical questions of the service of the Church for the good of families and their members, but also for persons living out of marriage and family.

1.3.2. Subsequent documents

The exhortation *Familiaris consortio* has been followed by several important documents of the Pontifical Council for the Family:

Charter of the Rights of the Family from the 22 October 1983 — expression of the concept of marriage in the juridical language (the 30th anniversary of this document gave stimulus for the 2nd International Conference on Ecumenism and Law held on 18—19 April 2013 in Brenna).

Preparation for the Sacrament of Marriage from the 13 May 1996 — detailed plan for preparation including a description of the role of different persons who take part in it.

Vademecum for confessors concerning some aspects of the morality of conjugal life from the 12 February 1997 — special documents for confessors offering guidelines, that is practical moral and pastoral indications and instructions.

The Family and Human Rights from the 9 December 1999 — a detailed essay on marriage and family (especially from the point of view of the social doctrine of the Church) on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, which was adopted by the UN General Assembly on the 10 December 1948.

Family, Marriage and "De facto Unions" from the 21 November 2000 — a profound reflection on the "de facto unions" analysing their causes, comparing them with matrimony and offering concrete pastoral means.

Family and Human Procreation from the 13 May 2006 — vast reflection on the vocation of human to transmission of life within his/her natural sexuality with its various aspects, moral and social consequences.

It is important to add that the mentioned documents create the doctrinal and pastoral basis for the whole Catholic Church, that is for all its *Ecclesiae sui iuris*, not always going under the name of "rites."

2. Canonical norms giving pastoral guidelines

2.1. Strong pastoral orientation of the new codes of canon law

In contrast to the previous Code of Canon Law from 1917, there are many pastoral mentions and guidelines in the present Code of Canon Law (further CIC) from 1983 in can. 1063—1072 and in the respective code for the Eastern Catholic Churches, the Code of Canons of Eastern Churches (further CCEO) in can. 783—789. This difference has been emphasised very clearly in the Apostolic Constitution *Sacrae disciplinae leges* introducing the Code of 1983:

> From this there are derived certain fundamental criteria which should govern the entire new Code, both in the sphere of its specific matter and also in the language connected with it. It could indeed be said that from this there is derived that character of complementarity which the Code presents in relation to the teaching of the Second Vatican Council, with particular reference to the two constitutions, the Dogmatic Constitution "Lumen gentium" and the Pastoral Constitution "Gaudium et spes". [...]
>
> After all these considerations it is to be hoped that the new canonical legislation will prove to be an efficacious means in order that the Church may progress in conformity with the spirit of the Second Vatican Council, and may every day be ever more suited to carry out its office of salvation in this world.

We can express it otherwise: the Codes are strongly pastorally oriented, more than the previous canon legislation.

2.2. Principles of pastoral care on families in the new codes

Canons 1063 and 1064 of CIC, and similarly can. 783 of CCEO repeat very shortly the rules for pastoral care of marriages and families given in *Familiaris consortio* nos. 65—75: preparation for marriage, joyous celebration of weddings and continuous help for couples. It also emphasises the role of Christian community, especially of the spiritual pastors, namely of local ordinaries. On the other hand, it acknowledges the limitations of

spiritual pastors. Therefore, it includes the very important duty for ordinaries (and consequently for parish priests): to use the contribution of experts, that is of lay persons.

2.3. Stress on the significance of parent in the education

With the regard to family, the Codes emphasize the role of parents in the education of children. Canons 793 and 1136 of CIC and can. 627 of CCEO express clearly the primary right and duty of parents to determine the education of their children. This indispensable role of parents has to be acknowledged and supported both by the civil society and by the Church and its institutions. Unlike general concepts, emphasising the role of the State, can. 796 presents schools as a means of principle assistance to parents in fulfilling the function of education; therefore can. 797 guarantees to parents the right of free choice of schools and can. 798 binds parents to entrust their children to those schools which provide a Catholic education.

2.4. Special pastoral care

On the other hand, the Codes offer rules for special pastoral care only exceptionally: generally in CIC in can. 383 for diocesan bishops and in can. 528 for parsons; in CCEO we find the same rules in can. 192 and in can. 289; they are obliged to take care especially of persons who cannot take advantage of the ordinary pastoral care in parishes.

Regarding families, there are very important changes regarding mixed marriages. First the Codes include the profoundly modified legislation on mixed marriages shortly after Vatican II council facilitated its celebration. Further they promulgated totally new and special norm in can. 1128 of CIC and in can. 816 of CCEO: spiritual pastors are obliged to render their care not only to the Catholic spouse, but to both parts of mixed marriages, that is to the non-Catholic, too.

3. Concrete means for the pastoral care in the Czech Republic

Regarding the requirements of the universal Church, it has to be stated that the pastoral practice in the Czech Republic is not sufficient at the beginning of 21st century, more than 20 years after the collapse of the Communist regime.

3.1. General view of development of institutions for assistance

The pastoral care/service of the Catholic Church was very limited in the time of the Communist regime (1948—1989). After the collapse of the regime, the actual practical challenges had an utmost importance in the pastoral work of the Church; among them the question of marriage and family. Therefore, the people of the Church first undertook the practical activities in favour of family. The development was unequal: quicker in the eastern part of the nowadays Czech Republic, in Moravia (1990—1992); slower in the western part, Bohemia (1994 onwards). Consequently, it was necessary to create instruments for coordination of local and regional activities. In 1996, the Czech Conference of Bishops established a common institution — the National Centre for Family, slightly more oriented on logistic help: monitoring of the actual situation and trends, support of pro-family activities, foreign contacts and the "import of experiences" from abroad, professional help and education of co-operators. Then, the institutions oriented to the influence in the civil society came to being, organised on the secular bases, not as Church organisations, for instance Movement of Fathers, Centre for Hope and Help, Association of Surrogate Families, Pro-Life-Movement, Committee for Defence of Parents Rights.

3.2. The institutional basis of the pastoral care of the family

3.2.1. On the level of the Bishops' Conference

In the Czech Republic, there is a special body inside the Czech Bishops' Conference: the Council for Family, as consultative body, with an active representation of dioceses.

As an effective instrument for the pastoral care, the Czech Bishops' Conference founded the National Centre for Family in 1996, which has been registered as a non-profit civil association. The centre aims to monitor social conditions of family, to promote pro-family activities, to offer experiences from abroad and to assure the international co-operation. In the pastoral care, it serves as the centre of coordination and information for centres, in particular dioceses of the Catholic Church.

As a supplement we can mention the Commission for Justice and Peace of the Czech Bishops' Conference, which is focused on the social questions connected with the situation of marriage and family, especially linked with the social and legal conditions of their life.

3.2.2. On the level of dioceses

In the Czech Republic currently each diocese has its own centre devoted to family. The development was unequal. In the eastern part of the Czech Republic, Moravia and Silesia (and in the Moravian Church Province, too) such centres were erected very quickly: in the Archdiocese of Olomouc in 1990 as the Centre for Family and in the Diocese of Brno in 1992 as the Centre for Family and Social Care. In 1996, the new diocese of Ostrava-Opava was established by separation (*dismembratio*) of a part of the Archdiocese of Olomouc; in 1999 the Centre for Family and Social Care was founded there.

In the western part of the Czech Republic, Bohemia (and in the Czech Church Province, too), the first centre was founded in the Archdiocese of Prague in 1994, in the other dioceses only after the establishment of the National Centre for Family in 1996. Almost all of them share the name Centre for Family, with the exception of the Diocese of České Budějovice in the Southern Bohemia, where the name is Diocesan Centre for Family. Some dioceses allowed to register their centres by the State as

non-profit civil associations, or dioceses founded beside their centres for family (in registers as Church institution) different Centres for Family and Social Care as non-profit civil association, because such civil institutions can better co-operate with similar civil associations, with communal and regional political representatives and they can gain easier financial support from public funds.

3.3. Preparation for marriage

The basic problem is the preparation for marriage. At the beginning of the 1990s, there was no common scheme, or at least common outlines, for this preparation, both on the level of particular dioceses and on the level of the newly established bishops' conference (in 1990).

First, it was necessary to collect experiences. This process has been complicated by considerable differences between particular regions of the state (reduced in fact by the splitting of the former Czechoslovakia at the end of 1992) and by quick social changes, leading to the creation of social environment very similar to other developed countries of the West.

Thanks to gained experiences, both positive and negative one, and to very important contribution of the National Centre for Family (and of experts, especially in the matter of pastoral theology), it was possible to prepare national directory for this preparation. Existence of such directory is foreseen in the apostolic exhortation *Familiaris consortio* from 1982, no. 66, and in the document of the Pontifical Council for the Family *Preparation for the Sacrament of Marriage* from 1996, nos. 4 and 14. Only in 2010 has been published a document of the Czech Bishops' Conference with the title *Preparation for marriage*. It states an existence of big defects, especially in the immediate preparation, which must be consequently very often linked with the immediate preparation. The document encourages pastors to realize common courses together with lay experts, especially in the phase of the immediate preparation, and to provide common courses for the betrothed at least in bigger cities, certainly with the collaboration with parsons. It is necessary to add that — unlike in Poland and other countries — there are usually no common courses of preparation for marriage in parishes or bigger circumscriptions. The preparation is in rule given to individual couples.

But it is not enough to offer directory and practical help for the preparation of marriage, since it is necessary to include this topic in the whole strategy of catechesis. Actually, it is planned by the Sub-commission for

Catechesis of the Czech Bishops' Conference to include the remote and the immediate preparation into an integral plan of catechesis, divided in two different parts: classes of religion in the school, more or less oriented on the knowledge of religious phenomena, and parish catechesis oriented to the formation of religious attitudes: the proximate preparation should be included into the parish catechesis. The integral plan ought to be prepared and fulfilled in 2017.

Practical realization is mainly connected with activities of the above said diocesan centres for family; all of them organize courses of preparation for marriage, generically called "School of relationship," as improvement of the immediate preparation, and simultaneously, as beginning of the immediate preparation. The most elaborated network exists in the Archdiocese of Olomouc: there are branches in all *vicariates forane*.

3.4. Special pastoral care

Apart from the preparation for marriage, the centres for family offer special programmes oriented at different topics connected with the life in marriage and family: programmes for mothers, for men, consultant service for parents, meetings for couples (including refreshment and renovation of the marital relationship, both on the material and spiritual level), meetings for seniors and regular community meetings of seniors. The counselling in the field of psychology, pedagogy and psychotherapy has proven to be very helpful.

Very sad phenomenon of the contemporary times is the fact that notable percentage of marriages suffers the breakdown in the Czech Republic, including the Christian and the civil ones. Therefore, it is very important to develop consultant service for couples in troubles and special pastoral care for divorced persons without the partnership relation (mainly women — single mothers) and persons who remarried.

The alone-living persons must not be: widowed persons and persons without family — this offer exists in the centres encompassing bigger populations (Olomouc, Brno, Prague).

Last but not least, there has to be mentioned a very interesting activity of the Archdiocese of Olomouc: pilgrimages of singular *vicariates forane* to important sacral places of the archdiocese directed on prayers for family and spiritual vocations with participation of the archbishop, once a month subsequently for singular *vicariates forane*. It reminds us of the decisive role of the prayer and of the spiritual effort in all domains of our lives.

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Damián Němec

Pastoral Vision of the Rights of the Family in the Catholic Church

Summary

Starting from a short summary of the doctrinal basis and of the direction of the canon law, the author shows main lines of the pastoral vision of the rights of the family in the Catholic Church. Further he presents a concrete realisation of the mentioned vision in the Catholic Church in the Czech Republic.

Damián Němec

Vision pastorale des droits de la famille à l'Église catholique

Résumé

En commançant par un court résumé contenant une base doctrinale et des indications canoniques, l'auteur présente les lignes principales de la vision pastorale des droits conjugaux à l'Église catholique. Ensuite, il présente une réalisation concrète de cette vision dans les conditions de l'Église catholique dans la République tchèque.

Mots clés : mariage, famille, théologie, droit canonique, prêtrise, conférence des évêques, diocèse

Damián Němec

La visione pastorale dei diritti della famiglia nella Chiesa cattolica

Sommario

Partendo da un breve riassunto della base dottrinale e delle indicazioni canoniche l'autore presenta le linee principali della visione pastorale dei diritti del matrimonio nella Chiesa cattolica. Nel seguito viene presentata la realizzazione concreta di tale visione nelle condizioni della Chiesa cattolica nella Repubblica Ceca.

Parole chiave: matrimonio, famiglia, teologia, diritto canonico, pastorale, conferenza dei vescovi, diocesi

Ecumeny and Law, vol. 2 (2014)
pp. 157—169

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Legal Protection of the Institutional Value of Marriage

Keywords: family and marriage, Charter of the Rights of the Family, human rights, cohabitation, transsexualism, in vitro fertilization

Marriage is an accepted formal union between a man and a woman. Its importance is recognized and it enjoys approval and continues to be a desirable and expected relationship both at the level of an individual and in its social aspects. Marriage is a manifestation of permanent and legal bond between two people, created of their own free will, in order to achieve the common good of the spouses and their offspring. Therefore, marriage is an institution leading to establishing a family as a basic unit of social life, and consequently, it is a subject of interest and concern of many entities, including the state and the Church.

The contents of Art. 1 of the Charter of the Rights of the Family declares that every man and every woman, after reaching marriageable age and having the necessary capacity, has the right to marry and that a marriage contracted according to the law should be protected by public authorities, which shall not place it on a par with extramarital relationships. However, in observing the social transformations taking place in our times and new styles of quasi-marital life under the influence of various intellectual trends which question the traditional views on marriage and the family, there arises a question of whether the law actually protects the institutional value of marriage. This article is, therefore, an attempt to answer the question of whether, and to what extent, the institution of marriage is protected by public authorities. The search for

an answer to this question involves an analysis of both Polish and the European law.[1]

1. The Polish law

The institution of marriage protected by law

At first glance, the Polish legislation apparently protects the institution of marriage. An expression of this protection is provided, first of all, in Art. 18 of the Constitution of the Republic of Poland, which clearly specifies that marriage is a union of a man and a woman.[2] Also, as it explicitly follows from Art. 1 and 23 of the Family and Guardianship Code, a marriage can be concluded only by a woman and a man, and a family is established by contracting marriage.[3] In the light of the norms quoted, neither cohabitation, that is — as commonly adopted in the literature, and[4] judicatory[5] — the permanent community of a man and a woman characterised by their living together, management of their common household and physical intercourse — nor a relationship formed by same-sex partners, nor sharing household among students or unions of multiple relations living in communes can be regarded as a marriage.[6] In no

[1] L. Świto: "Ideologia gender a różnica płci w aspekcie prawa do rodziny — zarys regulacji prawnych." *Studia Warmińskie* 49 (2012), pp. 255—270.

[2] Art. 18 of the Constitution specifies that "Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland."

[3] Art. 1 § 1 of the Family and Guardianship Code: "A marriage is concluded when a man and a woman are both present before the head of the registry office and make a statement that they take each other in marital union." Art. 23 of the Family and Guardianship Code: "Spouses have equal rights and obligations in marriage. They are obliged to live together, assist each other and remain faithful, and to work together for the good of the family their marriage has created."

[4] M. Nazar: "Konkubinat a małżeństwo — wybrane zagadnienia." In: *Księga jubileuszowa Profesora Tadeusza Smyczyńskiego*. Ed. M Andrzejewski. Toruń 2008, pp. 219—237; T. Smyczyński: "Czy potrzebna jest regulacja prawna pożycia konkubenckiego (heteroseksualnego i homoseksualnego)." In: *Prawo rodzinne w Polsce i w Europie. Zagadnienia wybrane*. Ed. P. Kasprzyk. Lublin 2005, pp. 462—467.

[5] See Judgement of the Supreme Court of 16 May 2000 in case IV CKN 32/00, OSNC 2000, No. 12, item 222; Judgement of the Supreme Court of 5 March 2003 in case III CZP 99/02, OSNC 2003, No. 12, item 159; Judgement of the Supreme Court of 12 January 2006 in case II CK 324/05, Mon. Praw. 2006, No. 4, p. 172.

[6] Systematization of quasi-marriages as alternative lifestyles was taken by: R. Rubin: "Alternative lifestyles revisited, or whatever happened to swingers, group marriages, and

aspect does the Polish legislation apply any analogy concerning married couples to these forms of living together.[7]

However, this apparently obvious (and commonly accepted in the doctrine) position reveals certain doubts upon a more thorough analysis, which require reflection on whether the Polish law has remained a monolith in this regard, and whether the first signs of a departure can be observed in this area. This question has gained particular meaning in the aspect concerning the possibility of legal acknowledgement of homosexual relationships on the same level as heterosexual cohabitation.

Approval of same-sex cohabitation in the judgement of the Appellate Court in Białystok

Doubts in this regard were raised by the Judgement of the Appellate Court in Białystok of 23 February 2007, which explicitly ruled that "the notion of cohabitation should be understood as a stable, actual, personal and material community of two persons. In the above-mentioned aspect, gender is of no significance. There are no grounds to apply separate principles in mutual settlements in the homosexual cohabitation than those applied with regard to the heterosexual cohabitation."[8] Although this ruling met with voices of criticism in the press,[9] in aspect of the importance of the court in formulating this thesis, and the fact that this view was expressed by the judge and having a significant effect on the interpretation and application of legal regulations directly in life — it cannot be considered non-existent.

Approval of the same-sex partnership in the Tenancy and Housing Benefits Act

Doubts regarding the efficient protection of marriage have also been raised by some legislative changes that do not directly refer to the institu-

communes?" *Journal of Family Issues* 22 (2001), pp. 711—726; A. Kwak: *Rodzina w dobie przemian. Małżeństwo i kohabitacja*. Warszawa 2005, pp. 70—96.

[7] Although in certain dimensions, cohabiters are granted rights similar to those vested in spouses.

[8] Case I Ca 590/06, OSA 2007, No. 1, item 10.

[9] *Kodeks rodzinny i opiekuńczy. Komentarz*. Ed. H. Ciepła. Warszawa 2009, p. 56.

tion of marriage, yet due to their regulation indirectly affect the image of marriage and family.

An example is the Tenancy and Housing Benefits Act of 2 July 1994. Insofar as Art. 8.1 of this Act used the term of a person remaining in "conjugal life,"[10] with the moment of its repealing and entry into force of the Act on Protection of the Rights of Tenants, Municipal Residential Resources and on the Amendment to the Civil Code of 21 June 2001,[11] Art. 691 § 1 uses only the notion of "common life," without the adjective "conjugal." Although the Supreme Court in its ruling of 21 May 2002[12] still recognized that the term "common life" cannot be used in any other meaning than to denote the link binding two persons remaining in such relations as spouses, it is difficult to categorically exclude that in the future the term "common life" will be extended to include the common life of non-heterosexual pairs.

Approval of same-sex cohabitation in the local law

The practice of applying the extended interpretation referring to the term "common life" can be also found in the acts of local law, which ensure a specific "approval" of same-sex cohabitation. For example, homosexual cohabitation was approved by the authorities of Warsaw, by granting in 2004 the right to use free rides by city transport to the employees of the City Transport and their partners[13] and in 2007 the Municipal Social Welfare Centre in Chorzów also sanctioned the right of a homosexual pair to seek social assistance.[14]

Transsexualism

While considering the issue of protection of the institution of marriage in the Polish law, we must refer to the problem of transsexual-

[10] Dz.U. 1998 nr 120 poz. 787.

[11] Dz.U. 2005 nr 31 poz. 266.

[12] Case III CZP 26/02, OSNC 2003 nr 2 poz. 20.

[13] Resolution No. XLIII/1040/2004 of the Council of the Capital City of Warsaw of 16 December 2004 as amended

[14] "Sytuacja prawna i społeczna osób LGBT w Polsce." *Gazeta Wyborcza* (Katowice supplement) of 17 June 2007.

ism.[15] In light of Art. 1 § 1 of the Family and Guardianship Code, it is beyond all doubt that a difference in the gender of marriage candidates as shown on their birth certificates is of significant importance for contracting a marriage, and it must occur during the conclusion of marriage. This means that neither transexualism itself nor a possible medical and legal sex "change" create — as a matter of principle — a barrier to effectively contract a marriage if a transsexual marries a person of an opposite sex than that stated on a transsexual's birth certificate. However, a serious problem emerges when the procedure of sex change of one of the spouses takes place during the marriage.

The Supreme Court in its ruling of 11 June 1989,[16] having the force of the rule of law, expresses the opinion that the change of gender does not affect, by itself or automatically, an already contracted marriage as a legal institution. Consequently, it cannot provide a basis to correct or make null and void a birth certificate or a marriage certificate, since it occurred after those documents had been made, or to cancel the marriage, since the Family and the Guardianship Code does not provide for such a basis of annulment. Also, it cannot be claimed that as a result of sex-change operation of one of the spouses, the marriage was not contracted, since — as emphasised in the literature[17] — this difference existed when the marriage was concluded. A change in the sex of one of the spouses can be analysed only in the context of circumstances indicating the existence of the breakdown of marriage/cohabitation, thus the premises justifying divorce or separation. However — in case of the lack of such a will of the parties — nothing will change in the status of marriage. This means that in the light of the law in force, it cannot be excluded that unions of two women or two men with the legal status of marriage, enjoying full protection under this title will *de facto* appear in Poland.

Children adoption

Finally, the example of the lack of protection in the Polish law of the institution of marriage as a union of a man and a woman, legitimated

[15] Understood as a variety of disorders related to gender identification and role, manifesting in disagreement between a psychological feeling of gender and a biological body build (see K. Imieliński, S. Dulko: *Przekleństwo Androgyne. Transseksualizm: mity i rzeczywistość*. Warszawa 1988, pp. 118—119).

[16] Case III CZP 37/89, OSNCP 1989 nr 12 poz. 188.

[17] H. Chwyć: *Zawarcie małżeństwa w prawie polskim. Poradnik dla kierowników Urzędów Stanu Cywilnego*. Lublin 1998, p. 11.

by their bonds of matrimony, are the regulations concerning adoption, as well as the lack of any regulation concerning application of the in vitro fertilization method.

The norm of Art. 115 § 1 of the Family and Guardianship Code provides that joint adoption can be made only by spouses. Therefore, neither heterosexual cohabitants nor persons remaining in homosexual relations can adopt jointly.[18] However, against all appearances, it does not mean that homosexual pairs cannot jointly bring up an adopted child, since in the light of Art. 114 § 1 of the Family and Guardianship Code, each person with full legal capacity may individually adopt a child.

Even more "parenthood possibilities" are provided in this regard by the in vitro fertilization method, which in Poland is regulated only by principles of medical practice, the Medical Ethics Code and general requirements concerning health care institutions. Polish clinics specialising in artificial fertilisation do not require their future parents to remain in a formal relationship. This means that if the conception of a child to a pair other than homosexual is not in conflict with the conscience of the physician conducting the procedure — there is no basis to prevent such a procedure. The possibilities in this extent are additionally broadened so far that in the Polish law there is no prohibition on trading in reproductive cells and there are also no regulations which would specify the right to make arrangements concerning the embryo. Therefore, clinics can treat the embryo arbitrarily and, for instance, may implant them to any selected persons applying for such a procedure. Thus, in view of the lack of legal regulations in this matter, potential possibilities of abuse are, basically, unlimited. This means that the heterosexual idea of parenthood is not subject in the Polish law to such protection as it would result from its assumptions.

2. The European law

The European Convention on Human Rights

Even more doubts as to the efficient protection of the institution of marriage can emerge while analysing the European law. Although the

[18] Judgement of the Supreme Court of 30 March 1962 in case 3 CR 124/62, OSNCP 1963 nr 2 poz. 47.

European Convention on Human Rights made on 4 November 1950,[19] mentioning the right to contract a marriage and set up a family explicitly specifies in Art. 12 that this is the right vested in a man and a woman,[20] this type of statement is not included in the Treaty of Lisbon[21] ratified in 2009, or especially, in the Charter of Fundamental Rights[22] making up an integral part of this Treaty. This document, as a set of fundamental human rights, providing an official interpretation of values of the contemporary Western culture towards gender differentiation of people, merely specifies in Art. 9 that the right to marry and the right to establish a family are guaranteed in accordance with the national laws governing the exercise of these rights. While taking into account the fact that legislations of European states permit registration of partnership unions of same-sex persons[23] or contracting a homosexual marriage,[24] or even legalisation of the adoption of a child of a partner from the previous relationship,[25] the provision of Art. 9 of the Charter of Fundamental Rights explicitly legitimates homosexual relationships, providing in an obvious manner departures from the "traditional" formula of marriage specified in the abovementioned Convention of 1950.

[19] In the version encompassing amendments by Protocols No. 3, 5 and 8 and after supplementation with Protocol No. 2, Dz.U. 1993 nr 61 poz. 284.

[20] The European Convention on Human Rights, Art. 12: "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

[21] The Treaty of Lisbon signed on 13 December 1997 in Lisbon is an international agreement, providing for, among others, a reform of the European Union institutions. In relation to states-parties to the Treaty, including Poland, it became effective on 1 December 2009 (Dz.U. 2009 nr 203 poz. 1569). Its structure includes The Treaty of the European Union (TUE) and the Treaty Establishing the European Community (TWE).

[22] The Charter of Fundamental Rights was passed and signed on 7 December 2000 during the summit of the European Council in Nice. The document was made binding by the Treaty of Lisbon. The Charter was accepted by all EU countries except the United Kingdom, the Czech Republic and Poland, which reserved restriction of its protection for their citizens.

[23] For instance, in Denmark, the Netherlands, France, Germany, Portugal, the United Kingdom, the Czech Republic, Hungary, Slovenia and Austria, see C. Opalach: "Rodzina wobec adopcji dzieci przez pary homoseksualne...". In: *Idea gender...*, Ed. M. Machinek, p. 142.

[24] For instance, in the Netherland, Belgium and Spain, see ibidem.

[25] For instance, in Germany, France and Sweden, see ibidem.

The Resolution of the European Parliament

The fact that contemporary European legislation sanctions same-sex relationships and the lifestyle model for such relationships, it also results explicitly from the Resolution of the European Parliament passed in Strasbourg on 16—19 January 2006. In this resolution, the European Parliament urged Member States to ensure respect, dignity and protection for same-sex partners as the rest of society, as well as to end discrimination faced by same-sex partners in such fields as inheritance rights, property arrangements, tenancy right, pensions, tax, social security, etc. The call was addressed to the European Commission to pressure Member States into carrying out such education, as well as applying administrative, judicial and legislative means to effectively fight against homophobia.[26]

European judicial decisions in Strasbourg

While mentioning the acts of the European laws, we cannot omit the role of judicial decisions issued by the European Commission of Human Rights and the European Court of Human Rights in Strasbourg, which have significantly shaped this law in practice. In this judicial practice, over the last dozen years, a trend towards broadening the sphere of rights of homosexual and transsexual relationships in the aspect of broadly understood family life can be clearly observed, and this is despite the fact that for a long period the Commission unambiguously held the position that homosexual and lesbian pairs do not fit into the notion of "family life."[27]

The case of X.Y.Z. v. the United Kingdom concerning a refusal to register a post-surgery transsexual as a parent of a child born by his partner as a result of artificial insemination should be regarded as characteristic demonstration of those trends.[28] In this case, the Commission by the ruling of 22 April 1997 expressed the opinion that although there was not any common European standard with regard to parental rights of transsexuals, and consequently, there were no basis to impose on the state an obligation to formally recognise as the father of a child a person who is not a biological father, yet the notion of "family life" should not be

[26] S. Ewertowski: "Karta Praw Podstawowych UE w kontekście gender mainstreaming." In: *Idea gender...*, p. 191.

[27] M. Nowicki: *Europejski Trybunał Praw Człowieka*. Vol. 2. Kraków 2002, p. 593.

[28] Application No. 21830/93, RJD 1997-II.

limited only to families based on marriage and it can include other real relationships.[29] Therefore, if a transsexual lives as in a traditional family relationship with a partner representing his former sex, legal recognition of such a relationship should be presumed.[30]

The judgement of the European Court of Human Rights of 22 January 2008 in case E.B. v. France[31] is also equally characteristic. In this judgement, the Tribunal recognised[32] that the refusal to grant a request to adopt a child on account of her sexual orientation violates Art. 14 in conjunction with Art. 8 of the European Convention of Human Rights and ordered France to pay to the applicant €10,000 for non-pecuniary damage. It should be mentioned that, in this case, the applicant E.B. who applied for the adoption, remained in a permanent and publicly disclosed homosexual relationship and her partner "did not feel committed to the adoption."[33]

The above-presented perspective of the European Court of Human Rights as regards legal and family regulations does not leave any doubt as to the direction of further evolution of the European law and the course of transforming legal orders of individual Member States of the European Union.

Conclusion

Pursuant to the postulate of Art. 1 of the Charter of the Rights of the Family, the right to marry and establish a family is one of the fundamental human rights, which should be protected in legislative acts of the legal systems in force. However, an analysis of the order of Polish and European law leads to the conclusion that although each of them includes a declaration referring to the protection of marriage and family, they do not ensure this protection.

Although the Polish law appears to be a quite strong anchor of the "traditional" family concept (especially as compared to regulations of other European countries), it clearly reveals echoes of intellectual trends

[29] M. Nowicki: *Europejski Trybunał Praw Człowieka*..., p. 771.

[30] Ibidem, p. 594.

[31] Application No. 43546/02.

[32] Completely different than in Judgement of 26 February 2002 in case Frette vs. France, Application No. 36515/97.

[33] M. Nowicki: *Europejski Trybunał Praw Człowieka. Wybór orzeczeń 2008*. Warszawa 2009, p. 161.

requesting an extension of the sphere of marital and parental rights of homosexual partners. Given the lack of legal regulations concerning such a significant domain as in vitro fertilization, as well as the lack of any norms governing the social status of transsexual persons after the sex-change surgery, the question of whether the status quo of the family will remain in the Polish legislation in an unchanged form raises serious doubts.

Nevertheless, a high degree of relativism concerning the protection of the institution of marriage is observed in the European law, which not only has explicitly extended the notion of "family life" to include any forms of relationship, but also sees the guarantee of the concept of equality in the pluralism of the concepts and models of the family. The redefinition of marriage and the family in the European law has already become a fact and its acquisition into legal orders of other Member States (even those as conservative as Poland) may only be a question of time.

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Lucjan Świto

Legal Protection of the Institutional Value of Marriage

Summary

The Charter of the Rights of the Family states that the right to marriage and family is one of the fundamental human rights, which should be protected by legislation within legal systems. This paper attempts to assess how the institution of marriage is protected by the public authorities under European and Polish law. An analysis of the Polish and European legal systems shows that although each of them declares protection of the marriage and family, neither actually provides such protection.

Although the Polish law appears to be a quite strong anchor of the "traditional" family concept (especially as compared to regulations of other European countries), it clearly reveals echoes of intellectual trends requesting an extension of the sphere of marital and parental rights of homosexual partners. Given the lack of legal regulations con-

cerning such a significant domain as in vitro fertilization, as well as the lack of any norms governing the social status of transsexual persons after sex-change surgery, the question of whether the status quo of the family will remain in the Polish legislation in an unchanged form raises serious doubts.

Nevertheless, a high degree of relativism concerning the protection of the institution of marriage is observed in the European law, which not only has explicitly extended the notion of "family life" to include any forms of relationship, but also sees the guarantee of the concept of equality in the pluralism of the concepts and models of the family. The redefinition of marriage and the family in the European law has already become a fact and its acquisition into legal orders of other Member States (even those as conservative as Poland) may only be a question of time.

Lucjan Świto

Protection juridique de la valeur institutionnelle du mariage

Résumé

La Charte des droits de la famille stipule que le droit au mariage et à la famille est l'un des droits fondamentaux de l'homme qui devrait être protégé dans les actes législatifs des systèmes juridiques en vigueur. Le présent article essaye de répondre à la question dans quelle mesure l'institution conjugale est protégée par le pouvoir public dans les actes en vigueur du droit européen et polonais. L'analyse de l'ordre juridique polonais et européen conduit à la conclusion qu'ils n'assurent point cette protection bien que chacun d'entre eux contienne les déclarations concernant la protection du mariage et de la famille.

Le droit polonais apparaît toujours, surtout par rapport aux réglementations des autres pays européens, comme un bastion soilde de la conception « traditionnelle » de la famille. On peut toutefois y apercevoir les échos des courants intellectuels exigeant l'élargissement de la sphère des pouvoirs conjugo-parentaux des partenaires homosexuels. Étant donné l'absence des solutions légales concernant un domaine si important comme la procréation in vitro et l'absence de quelconques normes réglementant le statut social des personnes transsexuelles après l'opération de « changement de sexe », la question si le statu quo de la famille ne subira aucune modification dans la législation polonaise fait naître des doutes sérieux.

Cependant, le plus grand relativisme lié à la protection de l'institution conjugale figure dans le droit européen qui n'a pas seulement élargi d'une façon univoque et directe la notion de « vie maritale » tout en acceptant différentes formes d'unions mais, qui plus est, aperçoit le garant de l'idée de l'égalité dans le pluralisme des conceptions et des modèles familiaux. La redéfinition du mariage et de la famille dans le droit européen est déjà devenue un fait, et son introduction dans le système législatif de certains pays membres (même dans ceux, comme la Pologne, qui passent pour conservatifs) n'est probablement qu'une question de temps.

Mots clés : famille et mariage, Charte des droits de la famille, droits de l'homme, concubinage, transsexualisme, *in vitro*

Lucjan Świto

Tutela legale del valore istituzionale del matrimonio

Sommario

La Carta dei Diritti della Famiglia stabilisce che il diritto al matrimonio ed alla famiglia è uno dei diritti fondamentali dell'uomo che deve essere tutelato negli atti legislativi vigenti nei sistemi giuridici. L'articolo presentato è un tentativo di risposta alla domanda riguardante la misura in cui l'istituzione del matrimonio è tutelata dall'autorità pubblica negli atti vigenti del diritto europeo e polacco. L'analisi eseguita dell'ordine giuridico polacco ed europeo porta alla conclusione che, sebbene ciascuno di essi contenga dichiarazioni che parlano della tutela del matrimonio e della famiglia, quella tutela non viene da loro garantita.

Il diritto polacco, specialmente sullo sfondo delle norme degli altri paesi europei, appare ancora come un baluardo abbastanza saldo della concezione "tradizionale" della famiglia; vi si possono comunque scorgere già chiaramente gli echi delle correnti di pensiero che esigono l'espansione della sfera dei diritti matrimoniali-genitoriali dei partner omosessuali. Considerata la mancanza di norme giuridiche riguardanti un campo così essenziale come la procreazione in vitro, come pure dinanzi alla mancanza di qualsivoglia norma che regoli lo status sociale delle persone transessuali che hanno subito l'intervento di "cambiamento di sesso", la domanda se lo status quo della famiglia rimarrà in forma invariata nella legislazione polacca, suscita seri dubbi.

Il relativismo più grande nella tutela dell'istituzione del matrimonio si manifesta però nel diritto europeo che, non solo ha esteso esplicitamente la nozione di "vita familiare" a tutte le forme di legami, ma vede addirittura nel pluralismo delle concezioni e dei modelli della famiglia il garante dell'idea di uguaglianza. La ridefinizione del matrimonio e della famiglia nel diritto europeo è ormai diventata un dato di fatto e la sua acquisizione negli ordini giuridici dei vari paesi membri dell'Unione Europea (anche di quelli che sono ritenuti abbastanza conservatori come la Polonia) può essere ormai soltanto una questione di tempo.

Parole chiave: famiglia e matrimonio, Carta dei Diritti della Famiglia, diritti umani, concubinato, transessualismo, *in vitro*

Ecumeny and Law, vol. 2 (2014)
pp. 171—191

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The Right to Found a Family and the Right to Parenthood Remarks on Articles 2 and 3 of the Charter of the Rights of the Family

Keywords: marriage, family, canon law marriage and family, the Charter of the Rights of the Family, the right to found a family and the right to parenthood, the responsible parenthood, the family's sovereignty

Family is a basic social unit, a subject of rights and duties.[1] This enunciation, included in no. 46 of the post-synodal apostolic exhortation *Familiaris Consortio* — never ageing and still the most important post-conciliar document of the papal *de matrimonio ac familia* magisterium[2] — precedes a well-known announcement: the Holy See will undertake the work of deepening the issues in question and will prepare the Char-

[1] John Paul II: *Apostolic exhortation "Familiaris consortio"* (November 22, 1981) [further: FC], n. 46.

[2] "In his Apostolic Exhortation Familiaris consortio, Pope John Paul II insisted on proposing the divine plan in the basic truths of married love and the family" — Synod of Bishops. III Extraordinary General Assembly: *Pastoral Challenges to the Family in the Context of Evangelization. Preparatory Document*. Vatican City 2013 [The Church's Teaching on the Family] — http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20131105_iii-assemblea-sinodo-vescovi_en.html (accessed 28.12.2013); A. Pastwa: "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." *Ecumeny and Law* 1 (2013), pp. 107—112.

ter of the Rights of the Family.[3] If we were supposed to trace the successive topics of the chapter entitled "Participating in the Development of Society"[4] "The Family as the First and Vital Cell of Society," "Family Life as an Experience of Communion and Sharing," "The Social and Political Role," "Society at the Service of the Family," "The Charter of the Family Rights" — then the wide context that unveils the internal connection of the family with the society would allow us to comprehend the importance of the 1980 Synod of Bishops directive and the very decision John Paul II makes to substantialize the directive.[5] The Synodal Assembly's initiative, crowned with the announcement of the Charter of the Rights of the Family (hereinafter CRF),[6] by the Holy See in 1983, engraves its name in "bulky letters" in the idea of optimizing the cooperation between a family and the society, through mutual support and development[7].

The Introduction of the document clearly implies that it declares the truth, indicated by a righteous mind (*recta ratio*) and interpreted in the light of the Revelation: The rights included in the Charter arise from that law which is inscribed by the Creator in the heart of every human being. "In some cases they recall true and proper juridically binding norms; in other cases, they express fundamental postulates and principles for legislation to be implemented and for the development of family policy. In all cases they are a prophetic call in favour of the family institution, which must be respected and defended against all usurpation."[8] It is worth paying attention to this "manifesto" note for two reasons. The first one seems obvious: the word in question sheds light onto the rudimentary aim of the CRF. It is: "presenting to all contemporaries, be they Christian or not, a formulation — as complete and ordered as possible — of the fundamental rights that are inherent in that natural and universal society which is the family."[9]

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[3] FC, n. 46.

[4] Cf. FC, nn. 42—45.

[5] While the subject of the debate in the synodal auditorium were already the "rights of family" (14 times — listed in no. 46 of the exhortation), the justification of this Papal decision leaves no room for doubt: "Acceding to the Synod's explicit request, the Holy See will give prompt attention to studying these suggestions in depth and to the preparation of the Charter of Rights of the Family, to be presented to the quarters and authorities concerned" — FC, n. 46.

[6] The Holy See: Charter of the Rights of the Family (October 22, 1983) — http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html (accessed 28.12.2013).

[7] Cf. FC, n. 46.

[8] Pontifical Council for the Family: Charter of the Rights of the Family. Introduction — http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html (accessed 28.12.2013).

[9] Ibidem.

However, there is yet another reason, which in turn substantiates the interest in the subject matter meaning of the Introduction. The context of the above quoted words allows us to better understand the importance of Bishop Professor Antoni Stankiewicz's (until recently the Dean of the Roman Rota) statement, who emphasises the particular normative significance of the three points of the document's preamble.[10] Firstly, in point B we read: "the family is based on marriage, that intimate union of life in complementarity between a man and a woman which is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony and is open to the transmission of life." In turn, point C states that "marriage is the natural institution with which the mission of transmitting life is exclusively entrusted." Finally, point D of the preamble renders a clear, emphatic message: "the family, a natural society, exists prior to the State or any other community, and possesses inherent rights which are inalienable."[11]

The recommendation of an outstanding canonist, included in the study, published in the commemorative Book and dedicated to the respected domain expert Professor Wojciech Góralski,[12] could not have left the arrangement of this study unaffected; it influenced it to such an extent that the subheadings of chapters 2 and 3 include words from the Preamble, which are brilliantly harmonized with the "title" articles 2 and 3 of the CRF. Therefore, the structure of the study is as follows: (1) The origins of the family: "the free and full [matrimonial] consent,"[13] (2) Exclusiveness of the "mission of transmitting life"[14]: the responsible parenthood; (3) Sovereignty of the family: protection/promotion of its "inherent rights which are inalienable."[15]

[10] A. Stankiewicz: "Familia e filiazione in diritto canonico." In: "*Finis legis Christus*". *Księga pamiątkowa dedykowana ks. prof. W. Góralskiemu z okazji 70 rocznicy urodzin*. Eds. J. Wroceński, J. Krajczyński, T. 1. Warszawa 2009, pp. 189—190.

[11] The Holy See: Charter of the Rights of the Family. Preamble— http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html (accessed 28.12.2013).

[12] See a flagship publication, directly referring to the title of this volume — W. Góralski: "Family as a Sovereign Institution" (pp. 91—104, in the present volume).

[13] CRF, Article 2.

[14] CRF, Preamble C.

[15] CRF, Preamble D.

1. The origins of the family: "the free and full [matrimonial] consent"

Article 2 of the CRF is introduced by means of the following main sentence: "Marriage cannot be contracted except by free and full consent duly expressed by the spouses." A valuable development of this maxim can be found in the closing point C of Art. 2: "The spouses, in the natural complementarity which exists between man and woman, enjoy the same dignity and equal rights regarding the marriage." When it comes to the content both sentences are almost identical with the subject matter meaning of point B of the Preamble, which — in the wake of Antoni Stankiewicz's footsteps — should be acknowledged as the first essential[16] of the legal depiction of the family: "the family is based on marriage, that intimate union of life in complementarity between a man and a woman which is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony and is open to the transmission of life."[17]

A more comprehensive context of the doctrinal words "the free and full [matrimonial] consent"[18] defines — which the footnote to Art. 2 suggests — a very informative passage of the *Familiaris consortio*.[19] It concerns the well-known beginning of exhortation no. 19: "The first communion is the one which is established and which develops between husband and wife: by virtue of the covenant of married life, the man and woman 'are no longer two but one flesh' and they are called to grow continually in their communion through day-to-day fidelity to their marriage promise of total mutual self-giving."[20]

What stems from the mentioned texts? Every, and first and foremost, canon law reflection over matrimony must be based on a metaphysical vision of the human being and marriage knot.[21] The acceptance of this

[16] A. Stankiewicz: "Familia e filiazione in diritto canonico...," pp. 189—189; see also D. Martin: "La Carta dei Diritti della Famiglia: le sue origini e la sua originalità." In: *La famiglia e i suoi diritti nella comunità civile e religiosa*. Roma 1987, pp. 99—107.

[17] CRF, Preamble B.

[18] CRF, Article 2.

[19] The element that attests to the importance of the mentioned document in the entire post-conciliar *de matrimonio* magisterium is statistics: while the *Gaudium et spes* constitution is quoted in the CRF 16 times, the *Familiaris consortio* exhortation as many as 41 times (in 54 footnotes).

[20] FC, n. 19; cf. Vatican Council II: *Pastoral Constitution on the Church "Gaudium et spes"* [further: GS], n. 48,1.

[21] It is difficult to overestimate John Paul II's thought provided for consideration to the Church's justice system workers in penultimate address to the Roman Rota of 2004: "an authentically juridical consideration of marriage requires a metaphysical vision of

assumption does not allow us to ignore the fundamental truth, which states that the marriage is the primary reality, towards which the personal nature of a human being existing as a person-man and a person-woman inclines. John Paul II, in the famous 2001 address to the Roman Rota, taught: "The bond is caused by consent, that is, by an act of the man's and the woman's will, but this consent actualizes a power already existing in the nature of man and woman. Thus, the indissoluble force of the bond itself is based on the natural reality of the union freely established between a man and a woman."[22] Since the "partnership of the whole of life" (*consortium totius vitae*) — as the collections of the Catholic Church's laws define matrimony: "Latin" (CIC)[23] and "Eastern" (CCEO)[24] — is embedded in nature, the capacity to enter marriage and live in it should be within reach of every human being — on account of the fact that he or she is a human being. To conclude: contracting marriage is the subject of the natural law, one of the so-called human rights, in other words the basic rights, characteristic of every human being. We are aware that the canonical legal order defines this law by the means of a notion *ius connubii*.[25]

The study of canon law owes to the outstanding experts Klaus Lüdicke[26] and Remigiusz Sobański[27] the popularization of a significant statement which stipulates that the two principles rooted in the human nature: the right to contract marriage (*ius connubii*) and the matrimonial

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the human person and of the conjugal relationship. Without this ontological foundation the institution of marriage becomes merely an extrinsic superstructure, the result of the law and of social conditioning, which limits the freedom of the person to fulfill himself or herself" — John Paul II: *Allocutio ad Rotam Romanam habita* (January 29, 2004), Acta Apostolicae Sedis [further: AAS] 96 (2004), p. 352, n. 7 (English text — http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/january/documents/hf_jpii_spe_20040129_roman-rota_en.html); see more — A. Pastwa: "*Amor benevolentiae — ius responsabile*: oś interpersonalnego projektu małżeńsko-rodzinnego." In: *Miłość i odpowiedzialność — wyznaczniki kanonicznego przygotowania do małżeństwa*. Eds. A. Pastwa, M. Gwóźdź. Katowice 2012.

[22] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001). AAS 93 (2001), p. 362, n. 5 (English text — http://www.vatican.va/holy_father/john_paul_ii/speeches/2001/documents/hf_jp-ii_spe_20010201_rota-romana_en.html).

[23] Code of Canon Law (promulgated: January 25, 1983), can. 1055 § 1.

[24] Code of Canons of the Eastern Churches (promulgated: October 18, 1990), can. 776 § 1.

[25] Cf. CIC, can. 1058; CCEO, can. 778; see also J.I. Bañares: "Comentario al c. 1058." In: *Comentario exegético al Código de Derecho canónico*. Eds. Á. Marzoa, J. Miras, R. Rodríguez-Ocaña. Vol. 3/2. Pamplona 32002, pp. 1067—1075.

[26] K. Lüdicke: *Münsterischer Kommentar zum "Codex Iuris Canonici."* Essen (Lfg. Juli 2006), Einführung vor 1095/1—2.

[27] R. Sobański: "Wyznaczniki kanonicznego prawa małżeńskiego." In: *Małżeństwo w prawie świeckim i w prawie kanonicznym*. Ed. B. Czech. Katowice 1996, p. 187.

consent (*consensus matrimonialis*), constitute pillars of the canon system of the matrimonial law; it can be straightaway added that this system solution is — in a broader vista of legal culture — an exemplar of civilization progress and the highest respect for the human dignity.[28] Only such exposition of system principles constitutes an indispensible starting point for taking up the still topical postulate to work out an authentic juridical anthropology of marriage.[29] So that there are no doubts — this thesis is worth presenting in the form of a strict supposition: the sole "program" positioning within the plane of the metaphysical axis of reflection on dual unity of the human couple (anthropological paradigm)[30] is insufficient, as one way or another the beforehand unraveling should be committed to the issue of the methodological nature. It is connected with the contemporary radical opposition of the two above-mentioned principles — which in fact manifest itself in denying the traditional *favor matrimonii* in the name of *favor libertatis* or *favor personae*.[31] Meanwhile, the teaching of popes John Paul II and Benedict XVI[32] demonstrates a mistake in such reasoning. Moreover, the teaching also serves the purpose of understanding the truth that achieving personal values (and well-being) of an individual does not "oppose" the protection of the institutional wellbeing which is the matrimony,[33] a genuine and compound reflection emerges, which in fact is *ius connubii*.[34] To some degree Benedict XVI spells it out

[28] This truth is also touched upon by the broad passage of the already mentioned address to the Roman Rota of 2001 — John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), pp. 361—363, nn. 5—7.

[29] Benedict XVI: *Allocutio ad Tribunal Rotae Romanae in inauguratione Anni Iudicialis* (January 27, 2007). AAS 99 (2007), p. 89; cf. G. Erlebach: "Problem wymiaru antropologicznego i prawnego w rozumieniu zgody małżeńskiej." *Ius Matrimoniale* 4 (1999), pp. 9—11.

[30] A. Pastwa: "Kanonické manželství v proudu personalistické obnovy." *Studia theologica* 15/4 (2013), pp. 108—113.

[31] Cf. John Paul II: *Allocutio ad Romanae Rotae tribunal* (January 28, 2002). AAS 94 (2002), p. 344, n. 7.

[32] Cf. Ibidem; Idem: *Allocutio ad Rotam Romanam habita* (January 29, 2004), pp. 349—350, nn. 2—3; Benedict XVI: *Allocutio ad sodales Tribunalis Rotae Romanae* (January 22, 2011). AAS 103 (2011), pp. 109—110.

[33] Suffice it to say that John Paul II indicated an institutional tool for effective harmonizing: derived sometimes from *ius connubii*, sometimes from *consensus matrimonialis* — and, therefore, remaining in tension — legal instructions. This tool — a hermeneutic key for the interpretation of detailed matrimonial law regulations (especially arranging seemingly contradictory canonical norms) — is the rule of *favor matrimonii*. It is a peculiar rule of the canonical system of the marriage law referring to both of the mentioned fundamentals, a rule that expresses the inseparable nature of matrimony.

[34] See H. Franceschi: *Riconoscimento e tutela dello* "ius connubii" *nel sistema matrimoniale canonico*. Milano 2004; O. Fumagalli Carulli: *Il matrimonio canonico tra principi astratti e casi pratici*. Milano 2008, pp. 19—33.

when he states that: "The right to contract marriage presupposes that the person can and intends to celebrate it truly, that is, in the truth of its essence as the Church teaches it. No one can claim the right to a nuptial ceremony. Indeed the *ius connubii* refers to the right to celebrate an authentic marriage."[35]

A consistent clarification of the "adequate" anthropology[36] theses, offered by the afore-mentioned popes, renders a firm foundation for the reintegration of the Catholic teaching *de matrimonio*. It makes no sense to challenge the fact that *ius connubii* directly evokes promotion of these personal ethical and spiritual values, which the conciliar and post-conciliar personalism line of thinking does not connect with an abstractly perceived institution, but the matrimonial and family *communio personarum* (precisely the one from the description in no. 19 of the *Familiaris consortio*). The true image of *ius connubii* is only emphasised by the *fieri* and *facto esse* plane proximity logic of a matrimony as per the analogy: both sides of the same medal[37] — which itself is an enormous achievement of the matrimonial personalism thought (and worth adding: a sign of a departure from the old legalistic and quasi-a priory perception of matrimony). The programmatic emphasis of the person's dignity connected with this logic (together with the communion dimension embedded in its ontic structure) allows us to correctly identify the "spheres" of *ius matrimoniale*, in which John Paul II — the author of two large codifications: CIC and CCEO, planned a special legal protection of not longer an abstract institution, but the freedom of people contracting marriage.

It is even more obvious, if we accept the simple consequences of fact that the matrimonial consent: the personal *par excellence* (so rational and free) deed of love covenant — defines both the project of marital community of fate (*consortium*),[38] as well as the dynamics of a man and woman's transformation, of personal and impersonal character and realized in harmony with the project ("wife's husband" — "husband's wife"). Therefore, the matrimonial consent (literally: a voluntary, mutual [marital] consent), exposed in Art. 2 of the CRF, cannot be any longer perceived in a different way than an act of personal growth, directed on the wellbe-

[35] Benedict XVI: *Allocutio ad sodales Tribunalis Rotae Romanae* (January 22, 2011), pp. 109—110 (English text — http://www.vatican.va/holy_father/benedict_xvi/speeches/2011/january/documents/hf_ben-xvi_spe_20110122_rota-romana_en.html).

[36] Cf. John Paul II: "Discorso del Santo Padre ai docenti e studenti del Pontificio Istituto Giovanni Paolo II per Studi su Matrimonio e Familia" (May 31, 2001). *Anthropotes* 17 (2001), p. 185.

[37] Cf. A. Pastwa: "Il matrimonio: comprensione personalistica e istituzionale." *Ius Ecclesiae* 25 (2013), pp. 394—396.

[38] K. Lüdicke: *Die Nichtigerklärung der Ehe. Materielles Recht*. Beihefte zum Münsterischen Kommentar. Bd. 62. Essen 2012, pp. 35—36.

ing of the spouses, offspring, family, church and universal community.[39] It is impossible to appropriately present the true nature of the marital consent and the "partnership of the whole of life" it gives beginning to, without invoking the last sentence of Art. 2 of the CRF: "The spouses, in the natural complementarity which exists between a man and a woman, enjoy the same dignity and equal rights regarding the marriage."[40] The same thought is rendered by an important, quoted in the CRF, standard of the marital law: "Each spouse has an equal duty and right to those things which belong to the partnership of conjugal life."[41] Klaus Lüdicke rightly defines this formula of marital rights equality, as a fundamental structure[42] of the marital communion described by the Church legislator, by the means of a term *consortium*. It concerns an all-spanning community of fate, in which the mutual acceptance of the other person in his masculinity/her femininity and making the other person an inseparable companion on the shared path,[43] mean essentially the axiological confirmation of the matrimonial partner as a person, specifically — a free, equal entity and a co-author of the "the unity of the two."[44] Matrimony perceived in such way is a community of people characterized by an equal dignity and equal rights (even if those are modified by a sexual differentiation), which translates into the matrimonial life practice: co-designing, co-deciding and co-acting in everything.[45]

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[39] In this holistic perspective of matrimony (including its transcendental dimension) it is hard not the share the opinion of an outstanding Roman Rota auditor José María Serrano Ruiz: "Non si può dimenticare che il matrimonio canonico è fondamentalmente il risultato di una scelta religiosa all'interno di una comunità nella quale si è cresciuti e maturati nella fede; perciò essa non può essere indifferente al modo con cui questa fede dev'essere vissuta nella comunione di intimità che il matrimonio richiede" — J.M. Serrano Ruiz: *L'ispirazione conciliare nei principi generali del matrimonio canonico*. In: *Matrimonio canonico fra tradizione e rinnovamento. Il codice del Vaticano II*. Vol. 6. Bologna [2]1991, p. 74; see also Idem: "Famiglia e pluralismo religioso: note introduttive. Presupposti e prospettive nel sistema canonico." In: *Tutela della famiglia e diritto dei minori nel codice di diritto canonico*. [Atti del XXIX Congresso Nazionale di Diritto Canonico Canonico, Trieste 7—10 Settembre 1998]. *Studi Giuridici*. Vol. 53. Città del Vaticano 2000, pp. 89—106.

[40] CRF, Article 2c.

[41] CIC, can. 1135; cf. CCEO, can. 777.

[42] K. Lüdicke: *Münsterischer Kommentar...*, 1055/18.

[43] Cf. R. Bertolino: *Matrimonio canonico e bonum coniugum. Per una lettura personalistica del matrimonio cristiano*. Torino 1995, pp. 95—97.

[44] John Paul II: *Letter to Families "Gratissimam sane"* (February 2, 1994) [further: GrS], n. 8.

[45] K. Lüdicke: "Matrimonial Consent in Light of a Personalist Concept of Marriage: On the Council's New Way of Thinking about Marriage." *Studia Canonica* 33 (1999), pp. 489—492.

2. Exclusiveness of the "mission of transmitting life": the responsible parenthood

Following Bishop Professor Antoni Stankiewicz's valuable recommendation,[46] it is right to touch upon yet another dictum, a vital one in terms of the basic rights of the family. A clear reference point, in the attempt to comprehensively approach the subject in this part of the study, is fundamentally expressed in point C of the Preamble: "marriage is the natural institution to which the mission of transmitting life is exclusively entrusted."[47] It is worth confronting this crucial rule with the sentence opening Art. 3 of the CRF, which is as follows: "The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born, taking into full consideration their duties towards themselves, their children already born, the family and society, in a just hierarchy of values and in accordance with the objective moral order which excludes recourse to contraception, sterilization and abortion." Automatically an issue of methodical character arises — how to understand such statements as: "is a natural institution," "in harmony with the natural order."

It seems difficult not to agree with the theorem which stipulates that what is invaluable in deliberating over this issue is the example of the "matrimonial" lecture offered by the pope — the teacher of Personalism.[48] John Paul II's *de matrimonio et familia* teaching is where the epistemological indication of the insufficiency of the a priori sentences such as: "since that is why the nature 'tells' us"[49] sounds most audibly. This papal teaching goes out to meet the postulates of recognized authors, such as Pedro-Juan Viladrich, with a view to consistently utilizing, in the study of the institution of matrimony (and that is a particular requirement of our times), a serious and genuine anthropology of the human act, meaning of human sexuality, the nature of matrimonial consent and the very matrimony, concordant with the Magisterium, canonical tradition, as well as uniform and standing judicial decisions of the Roman Rota.[50] It means

[46] A. Stankiewicz: "Familia e filiazione in diritto canonico…," p. 190.

[47] CRF, Preamble C.

[48] I propose and substantiate this thesis in detail in the monograph: "*Przymierze miłości małżeńskiej*". *Jana Pawła II idea małżeństwa kanonicznego*. Katowice 2009.

[49] See A. Pastwa: *Istotne elementy małżeństwa. W nurcie odnowy personalistycznej*. Katowice 2007, pp. 23—31.

[50] P.-J. Viladrich: *Konsens małżeński. Sposoby prawnej oceny i interpretacji w kanonicznych procesach o stwierdzenie nieważności małżeństwa*. Trans. S. Świaczny. Warszawa 2002, p. 45.

that it is necessary to discard the "spoiled fruit" of the neo-Scholasticism in the spiritually naturalistic depictions related to the institution of matrimony, deploying a "catch-all" that suggests that the "pure" biological nature of a human being is directly normative, precisely a priori defines what is a moral obligation and what is law.

These issues hold a prominent place in the already quoted famous John Paul II's address to the Roman Rota of 2001, which bears a very meaningful title: "Marriage and the family are inseparable."[51] These are the words, among others, which Cardinal Professor Peter Erdö refers to in the commentary to the: "Pastoral Challenges for the Family in the Context of Evangelization,"[52] a Preparatory Document for the recent Synod on the Family, 5—19 October 2014. According to an outstanding Hungarian canonist, this fragment of the papal Personalism teaching allows us to better understand what the statement which claims that the marriage exists "according to natural law"[53] means. Such an opinion of the outstanding expert cannot be treated as something else but an additional encouragement to analyse this unusually interesting speech — especially in terms of the poorly examined issue: natural matrimony — the nature of matrimony.[54]

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[51] Unfortunately though, in the Polish issue of *L'Osservatore Romano*, the title word "inseparable" (*nierozdzielne*) was replaced with a — confusing in this context — word "indissoluble" (*nierozerwalne*) — Jan Paweł II: "'Małżeństwo i rodzina są nierozerwalne'. Przemówienie do pracowników i adwokatów Roty Rzymskiej" (February 1, 2001). *OsRomPol* 22/4 (2001), p. 33.

[52] See footnote 2.

[53] "The Document, therefore, assumes the existence of the created universe's call to personal freedom, assumes that the laws of nature represent the rules of how the universe functions, but that these are not without reference to and consequences for human persons' free acts. Looking to the universe or within the depth of our hearts then, we discover the Creator's face and listen to His voice that challenges us. 'The natural character of marriage is better understood when it is not separated from the family. Marriage and the family are inseparable', as Blessed John Paul II said in his address to the Roman Rota in 2001 (no. 5), 'because the masculinity and femininity of the married couple are constitutively open to the gift of children'" — P. Erdö: "Osservazioni sotto l'aspetto canonistico-pastorale sul 'documento preparatorio' della III Assemblea Generale Straordinaria del Sinodo dei Vescovi." In: *Conferenza stampa sulla preparazione della III Assemblea Generale Straordinaria del Sinodo dei Vescovi, 5 novembre 2013*, n. 3 — http://press.vatican.va/content/salastampa/en/bollettino/pubblico/2013/11/05/0722/01618.html (accessed 28.12.2013).

[54] Almost all (let us add: numerous) commentaries to this papal speech focus on the issue of the relation: natural matrimony and sacramentality — see for example G. Bertolini: "Fede, intenzione sacramentale e dimensione naturale del matrimonio. A proposito dell'Allocuzione di Giovanni Paolo II alla Rota Romana per l'Anno Giudiziario 2001." *Il diritto ecclesiastico* 112 (2001), pp. 1405—1447; M. Gas i Aixendri: "Essenza del matrimonio cristriana e rifiuto della dignità sacramentale. Riflessioni alla luce del recente discorso del Papa alla Rota." *Ius Ecclesiae* 13 (2001), pp. 122—145.

Our attention is riveted by the following passage of the speech, crucial for the proper emphasis of the aforesaid matter: "Many misunderstandings have beset the very idea of 'nature'. The metaphysical concept […] has been particularly neglected. There is a tendency to reduce what is specifically human to the cultural sphere, claiming a completely autonomous creativity and efficacy for the person, at both the individual and social levels. From this viewpoint, the natural is merely a physical, biological and sociological data to be technologically manipulated according to one's own interests."[55] It is precisely here, where the careful reader will identify a pivot of the entirety of the subject issues touched upon in this papal speech. It is dedicated to a diagnosis of a dangerous civilization phenomenon — wearing the robes of the *gender* idea[56] — the characteristic sign of which is a contrast between culture and nature. According to the pope, the digging of such ideological "ditch," which we are witnesses of, brings about deplorable consequences, namely, "deprives the culture of any objective foundation, leaving it at the mercy of will and power. This can be seen very clearly in the current attempts to present *de facto* unions, including those of homosexuals, as comparable to marriage, whose natural character is precisely denied."[57] This thread of the papal Magisterium was further developed by Benedict XVI, who in his *Caritas in veritate* encyclical indicated the sinister consequences of separating culture from the human nature. In this way "cultures can no longer define themselves within a nature that transcends them, and man ends up being reduced to a mere cultural statistic. When this happens, humanity runs new risks of enslavement and manipulation."[58]

Based upon the truth about a person and his/her sex — within the clear and firm presenting of the metaphysical *persona humana* structure — the Pope concludes his magisterial lecture with a statement: "The ordering to the natural ends of marriage — the good of the spouses and the procreation and education of offspring — is intrinsically present in masculinity and femininity. […] In this sense, the natural character of marriage is better understood when it is not separated from the family. Marriage and the family are inseparable, because the masculinity and femininity of the married couple are constitutively open to the gift of children."[59]

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[55] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), n. 3.

[56] See: "'Mężczyzną i niewiastą stworzył ich'. Afirmacja osoby ludzkiej odpowiedzią nauk teologicznych na ideologiczną uzurpację genderyzmu." Ed. A. Pastwa. *Studia Teologiczne i Humanistyczne* 2—3 (2012).

[57] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), n. 3.

[58] Benedict XVI: *Encyclical Letter "Caritas in veritate"* (June 29, 2009) [further: CV], n. 26.

[59] John Paul II: *Allocutio ad Romanae Rotae tribunal* (February 1, 2001), n. 5.

When we base the scientific *de matrimonio* analyses on an impartial (barely outlined here) anthropological paradigm, it creates a good foundation: firstly for the understanding where the exclusiveness of the matrimonial-family "mission of transmitting life" comes from, and secondly, for grasping the very conciliar roots of the idea of responsible parenthood. Within the first issue, for sure directing the thoughts towards the problem of protecting and disseminating the truth about "the unity of the two"[60] in the following aspects: ontological, axionormative and legal-canonical,[61] what proves very instructive is a sentence derived from the rotal allocution of 2001: "The scope of action for the couple and, therefore, of their matrimonial rights and duties follows from that of their being and has its true foundation in the latter. In this way, therefore, man and woman, by virtue of that most unique act of will which is marital consent, freely establish between themselves a bond prefigured by their nature."[62]

The insight into the nature of the notion "responsible parenthood" is yielded by the two first sentences of a well-known paragraph of the *Gaudium et spes* constitution: "Parents should regard as their proper mission the task of transmitting human life and educating those to whom it has been transmitted. They should realize that they are thereby cooperators with the love of God the Creator, and are, so to speak, the interpreters of that love. Thus they will fulfill their task with human and Christian responsibility, and, with docile reverence toward God, will make decisions by common counsel and effort. Let them thoughtfully take into account both their own welfare and that of their children, those already born and those which the future may bring."[63] And even if it is not the proper place to conduct — in fact a vital and legally relevant[64] — an explanation of this and further passages of the Council fathers' teaching, following the papal Magisterium, it is important to clearly establish that God inscribed in the humanity of man and woman the vocation: the capacity and responsibility of love and matrimonial-family communion.[65] So the obligation of the Church, in the service of the man and the society at large, is — referring to the "sign of the times" — affirmation of a natural (institutional)

[60] GrS, n. 8.

[61] A. Pastwa: "'Stworzył mężczyznę i niewiastę' (zamiast wstępu)." In: "'Mężczyzną i niewiastą stworzył ich'. Afirmacja…," p. 10.

[62] Ibidem.

[63] GS, n. 50, 2.

[64] I touch upon this subject more broadly in the article: "'Odpowiedzialna prokreacja' personalistyczną inkarnacją 'bonum prolis? Vir Ecclesiae deditus'." In: *Księga dla uczczenia Księdza Profesora Edwarda Góreckiego*. Ed. W. Irek. Wrocław 2011, pp. 205—226.

[65] Cf. FC, n. 11.

purposefulness of matrimony: *ordinatio ad bonum prolis* by the means of a consistent preaching of the principle of responsible parenthood.

A proper conclusion of the CRF standards analysed within this point are Benedict XVI's words, addressed to the Participants of the International Congress on the 40th Anniversary of the Encyclical *Humanae vitae*: "Concern for human life and safeguarding the person's dignity require us not to leave anything untried so that all may be involved in the genuine truth of responsible conjugal love in full adherence to the law engraved on the heart of every person."[66]

3. Sovereignty of the family: protection/promotion of its "inherent rights which are inalienable"

The agreements that were reached, consistent with the teaching of the current papal Magisterium — for instance with Benedict XVI's enunciation in the quoted *Caritas in veritate* encyclical that claims that the foundation of the society is a married couple, a man and a woman, who accept each other mutually, in distinction and in complementarity: a couple, therefore, that is open to life[67] — constitute a good reference point for the interpretation of the following CRF standards. The content of point D of the preamble emits a clear, emphatic message: "the family, a natural society, exists prior to the State or any other community, and possesses inherent rights which are inalienable." The complement of this positive message can be found in Art. 3 of the CRF: "The family has a right to assistance by society in the bearing and rearing of children. Those married couples who have a large family have a right to adequate aid and should not be subjected to discrimination."[68]

However, it is not all. What is crucial for maintaining the holistic character of the reflection conducted here is also accommodating for: a context of the negative note placed slightly earlier in the same CRF article and the "magisterial" stance already expressed in no. 46 of the apostolic exhortation *Familiaris consortio* (in the immediate vicinity of

[66] Benedict XVI: *Address to Participants in the International Congress Organized by the Pontifical Lateran University on the 40th Anniversary of the Encyclical "Humanae vitae"* (May 10, 2008) http://www.vatican.va/holy_father/benedict_xvi/speeches/2008/may/documents/hf_benxvi_spe_20080510_humanae-vitae_en.html (accessed 28.12.2013).

[67] CV, n. 15; cf. Paul VI: *Encyclical Letter "Humanae vitae"* (July 25, 1968), nn. 8—9.

[68] CRF, Article 3c.

the announcement of the intention to compile the Charter). The passage in question excerpted from the Charter is as follows: "The activities of public authorities and private organizations which attempt in any way to limit the freedom of couples in deciding about their children constitute a grave offense against human dignity and justice."[69] Words of the exhortation resound equally explicitly: "the family, which in God's plan is the basic unit of society and a subject of rights and duties before the State or any other community, finds itself the victim of society, of the delays and slowness with which it acts, and even of its blatant injustice. For this reason, the Church openly and strongly defends the rights of the family against the intolerable usurpations of society and the State."[70] The both outlined contexts: positive and negative, guide us towards the "sovereign family."[71]

The mentioned idea, which can be resolutely defined as the crowning of the post-conciliar *de matrimonio ac familia* Magisterium — conceptually (*implicite*) present in the CRF texts — acquires its full shape in the Letter to Families *Gratissimam sane* (1994). It is precisely this document in which the pope and the Church legislator depict an invaluable, also from the point of view of the canonical law, image of a twofold relation: the family and the society, the family and the Church. The depiction of the family as a community of love and life ("community of human life," "community of persons united in love"[72]), the smallest social unit and an institution fundamental to the life of society — is accompanied by a firm statement: "the family is a firmly grounded social reality. It is also, in a way entirely its own, a sovereign society."[73] A conclusion comes to mind immediately: "Every effort should be made so that the family will be recognized as the primordial and, in a certain sense 'sovereign' society! The 'sovereignty' of the family is essential for the good of society. A truly sovereign and spiritually vigorous nation is always made up of strong families who are aware of their vocation and mission in history. The family is at the heart of all these problems and tasks. To relegate it to a subordinate or secondary role, excluding it from its rightful position in society, would be to inflict grave harm on the authentic growth of society as a whole."[74]

Leaving aside the twists and turns of the distinctions conducted within the scope of the teachings of the canonical family law about the rights of the family (*diritto della famiglia*) and rights of the family members (*dir-*

[69] CRF, Art. 3a.
[70] FC, n. 46.
[71] GrS, n. 17.
[72] GrS, n. 6
[73] GrS, n. 17.
[74] Ibidem.

itti di famiglia),[75] it is worth indicating a noticeable change in the legal-canonical presentation of the family. While the characteristic element for the traditional presentation is claiming that from the legal point of view matrimony and family, although connected with each other, constitute different realities,[76] the revived outlook of the Catholic Church on the matrimony-family relation, is well rendered in Swiss canonist's Gabrieli Eisenring assertion: matrimony is the first form of the family.[77]

If we were able to span the new doctrinal line of the legal-canonical depiction of the family with the realization of the "constitutional principle"[78] inscribed in can. 226 § 1 CIC[79] (and parallel in can. 407 CCEO) then we owe a lot to the perspicacity of John Paul II's thought, who in an original lecture achieved a creative agreement of two notions: "domestic Church" and "sovereign family" — notions expressing a central place of a family in the Church and the society.[80] Here, we are exposed to the firm logic of the papal discourse. If the very moment of constituting the matrimonial covenant is not only the sign of the participation of the Church in Christ's love, and if *sacramentum* spans the entire love dynamics of the matrimonial-family communion of people, then it is hard to call

[75] "In coerenza con il concetto di [diritti di famiglia — A.P.], appare chiaro che l'analisi deve vertere sui diritti e doveri reciproci dei coniugi; sui diritti e doveri dei genitori nei confronti dei figli; sui diritti e doveri dei figli verso i genitori" — P. Bianchi: "Il 'diritto di famiglia' della Chiesa." *Quaderni di Diritto Ecclesiale* 7 (1994), p. 286; cf. F.J. Castaño: "Famiglia e rapporti familiari nel diritto della Chiesa." In: *La famiglia e i suoi diritti nella comunità civile* e *religiosa. Atti del VI Colloquio Giuridico (Roma, 24—26 aprile 1986)*. Eds. T. Bertone, A. Severgnini. Roma 1987, p. 89.

[76] Emphasizing these differences refers, first and foremost, to the actual jurisdictional separation of the Church and state authority: "L'istituto matrimoniale, trattandosi dei battezzati, è di esclusiva competenza della Chiesa. […] Invece l'istituto della famiglia, sorta dal matrimonio, sotto il punto di vista giuridico cade quasi esclusivamente sotto la competenza dell'autorità civile" — U. Navarrete: "Diritto Canonico e tutela del matrimonio e della famiglia." In: *Ius in vita et in missione Ecclesiae. Acta Symposii Internationalis Iuris Canonici occurrente X anniversario promulgationis Codicis Iuris Canonici diebus 19—34 Aprilis 1993 in Civitate Vaticana celebrati*. Città del Vaticano 1994, p. 993.

[77] G. Eisenring: *Die eheliche Gemeinschaft und das Kindesverhältnis in der katholischen Rechtsordnung. Beitrag zu einem Systematisierungsversuch eines Familienrechts in der Kirche*. Freiburg—Schweiz 1992, p. 23; cf. J. Vries: "Die christliche Familie aus kanonistischer Sicht." In: *"Iuri Canonico Promovendo". Festschrift für Heribert Schmitz zum 65. Geburtstag*. Hg. W. Aymans, K.-Th. Geringer. Regensburg 1994, pp. 100—103.

[78] A. Stankiewicz: *Familia e filiazione in diritto canonico…*, p. 195.

[79] "The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law."

[80] Cf. J. Carreras: "La giurisdizione della Chiesa sulle relazioni familiari." In: *La giurisdizione della Chiesa sul matrimonio e sulla famiglia*. Ed. Idem. Milano 1998, pp. 1—2.

into question the importance of the family dimension of the sacramentality of the matrimony.[81]

Hence, the fruit of matrimony is not the "abstract" *status coniugalis*, but the vivid ecclesiological reality: *Ecclesia domestica*.[82] Therefore, confirmation is bestowed upon Joan Carreras's intuition, who on the basis of John Paul II's *de familia christiana* teaching proposes the following thesis: defining the family as a "sovereign" community gives the reader a clear announcement that only the family is possible to and has the power to create authentic family relations, which are the basis for constructing the society and the Church.[83] In such a case it seems difficult not to share the opinion of Pedro-Juan Viladrich,[84] an experienced examiner of the issue, who claims that we have to do whatever is possible to make sure that the idea of a "sovereign family" finds a prominent place in the Catholic Church's doctrine.

[81] "La dimensione familiare della sacramentalità del matrimonio deve fondarsi [...] su di una considerazione più completa della stessa realtà sacramentale del matrimonio, in cui appaia sempre più l'inscindibile nesso reale tra matrimonio e famiglia nell'economia della creazione, che non può non trovare totale riscontro in quella della redenzione" — C.J. Errázuriz: "La rilevanza canonica della sacramentalità del matrimonio e della sua dimensione familiare." *Ius Ecclesiae* 7 (1995), p. 565.

[82] Vatican Council II: *Dogmatic Constitution on the Church "Lumen gentium"*, n. 11,2; cf. E. Corecco: "Il matrimonio nel nuovo Codex Iuris Canonici. Osservazioni critiche." In: *Studi sulle fonti del diritto matrimoniale canonico*. Padova 1988, p. 129.

[83] J. Carreras: *La giurisdizione della Chiesa sulle relazioni familiari*..., p. 39.

[84] P.J. Viladrich: "La famiglia sovrana." *Ius Ecclesiae* 7 (1995), pp. 539—550.

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Andrzej Pastwa

The Right to Found a Family and the Right to Parenthood Remarks on Articles 2 and 3 of the Charter of the Rights of the Family

Summary

Family is a basic social unit, a subject of rights and duties. This enunciation, included in no. 46 of the post-synodal Apostolic Exhortation *Familiaris consortio* — never ageing and still the most important post-conciliar document of the papal *de matrimonio ac familia* Magisterium — precedes a well-known announcement: The Holy See will undertake the work of deepening the issues in question and will prepare the Charter of the Rights of the Family (CRF). Analyses of this study, assuming a very broad doctrinal range, refer not only to the "title" of articles 2 and 3 of the CRF, but also to points B, C, D of the document's preamble, which harmonize with their normative overtone. Therefore, the structure of the study is as follows: 1. The origins of the family: "the free and full [matrimonial] consent"; 2. Exclusiveness of the "the mission of transmitting life": the responsible parenthood; 3. Sovereignty of the family: protection/promotion of its "inherent rights which are inalienable."

Andrzej Pastwa

Droit à la fondation d'une famille et à la parentalité Remarques en marge des articles 2 et 3 de la Charte des droits de la famille

Résumé

La famille est la cellule de base de la société et le sujet des droits et des obligations. Cette énonciation, incluse dans l'Exhortation apostolique post-synodale *Familiaris consortio* (no 46) — étant toujours actuelle et restant le plus important document du magistère de pape de *matrimonio ac familia* paru dans l'après-concile — précède l'annonciation éclatante : le Saint-Siège se chargera d'approfondir la problématique mentionnée ci-dessus et d'élaborer la Charte des droits de la famille. Les analyses de la présente étude, prenant en considération un vaste contexte doctrinal, se réfèrent non seulement aux articles « éponymes », mais aussi aux points — qui harmonisent avec leur message normatif — B, C et D de la Préambule de la Charte. La structure de l'étude se présente de manière suivante : 1. À l'origine de la famille : « consentement conjugal volontaire et mutuel » ; 2. Exclusivité « de la mission de donner la vie » : parentalité responsable ; 3. Souveraineté de la famille : protection/promotion de leurs « propres droits intranférables ».

Mots clés : mariage, famille, droit canonique : conjugal et familial, Charte des droits de la famille, droit à la fondation d'une famille et à la parentalité, parentalité responsable, souveraineté de la famille

Andrzej Pastwa

Il diritto di costituire una famiglia ed alla genitorialità Osservazioni a margine degli artt. 2 e 3. della Carta dei Diritti della Famiglia

Sommario

La famiglia è la cellula fondamentale della società, soggetto di diritti e doveri. Tale enunciazione, inclusa nel 46 numero dell'esortazione post-sinodale *Familiaris consortio* — che continua a non invecchiare e ad essere il documento post-conciliare più importante del *magistero pontificio* de matrimonio ac familia — precede un annuncio clamoroso: la Sede Apostolica intraprenderà l'opera di approfondimento della succitata problematica ed elaborerà la Carta dei Diritti della Famiglia (CDR). Le analisi del presente studio, che considerano per principio un ampio contesto dottrinale, fanno riferimento non soltanto agli articoli, specificati nel titolo, 2. e 3. della CDR, ma anche ai punti B, C, D del Preambolo della CDR che armonizzano con la loro implicazione normativa. La struttura dello studio è di conseguenza la seguente: 1. Alle origini della famiglia: "il consenso matrimoniale volontario e reciproco"; 2. L'esclusività della "missione di trasmettere la vita": la genitorialità responsabile; 3. La sovranità della famiglia: tutela/promozione dei suoi "diritti intrinsechi, inalienabili".

Parole chiave: matrimonio, famiglia, diritto canonico matrimoniale e familiare, Carta dei Diritti della Famiglia, diritto di costituire una famiglia e alla genitorialità, genitorialità responsabile, sovranità della famiglia

Ecumeny and Law, vol. 2 (2014)
pp. 193—203

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The Right to Freedom of Spouse Choice and Religious Upbringing of Children (CRF, Articles 2 and 7)

Keywords: religious freedom, marriage, conjugal consent, education of offspring

Despite the fact that from the announcement of the Charter of the Rights of the Family over 30 years have past, the meaning of its contents and the timelessness of its subject matter remain momentous and it can be safely claimed that this document will never lose its value, precisely because it refers to family which has been named "the engine of world and history" by Pope Francis. We can claim that the document in question is not a lecture of dogmatic or moral theology about marriage and family, but it shows the main ecclesiastical opinion towards its contents. Neither is it a code of behaviour which is written for particular people or institutions nor the declaration of simple theoretical rules relating to the family. The purpose of the Charter is to show all modern Christians and non-Christians, all — orderly gathered — elementary rights of this natural and universal society called family.[1] Among the catalogue of those elementary rights, we can also find the right to freedom to spouse choice and religious upbringing of children, which is written down in the articles no. 2 and no. 7 of the Charter.

[1] Santa Sede: Carta dei diritti della famiglia (24.11.1983). *Enchiridion Vaticanum* 9, p. 538.

1. The foundations of religious freedom

Speaking about the first fundamental rule of religious freedom, it should be noted that freedom is not only a value for the human being, but it is also one of the most significant elements of his/her concept and nature — as Pope John Paul II said in the proclamation delivered during the International Day of Peace in 1981 — This is the hallmark of human being saved in his inside.[2] This is the source of Man, ontologically free in the deepest meaning, who has the associated possibility of the implementation and the use of the freedom during his/her entire daily life.[3] This freedom encompasses also the marriage and family both of which have their rights such as the right to the religious freedom, which includes the freedom of professed religion, and the personal choice of each family cannot be discriminated or privileged on that field. The essence and the meaning of this law was perfectly described by John Paul II, in the speech for the International Day of Peace which took place on the 1 January 1988 or the ones addressed to the diplomatic corps on the 9 January 1989 or many numerous occasions: "The right to the religious freedom is so strictly connected with the other rights that it can be legitimate to claim that respect for the religious freedom is the test of the respect for the other elementary rights […]. If the country respects the right to the religious freedom, this can be a sign that it will respect other elementary rights as it is the implicit recognition of the kind of legal order which transcends the political dimension of our existence."[4]

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[2] Giovanni Paolo II: *Per servire la pace, rispetta la libertà*. Messaggio per la celebrazione della XIV Giornata Mondiale della Pace (1.1.1981), n. 5, http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jpii_mes_19801208_xiv-world-day-for-peace_it.html (accessed 2.4.2013).

[3] Cf. H. Skorowski: "Chrześcijańskie rozumienie wolności." Referat wygłoszony podczas III Zjazdu TNFS w Kutnie (12.6.2010), http://www.tnfs.pl/aktual/Skorowski-2010.pdf, p. 1 (accessed 2.4.2013).

[4] Giovanni Paolo II: *La libertà religiosa, condizione per la pacifica convivenza*. Messaggio per la celebrazione della XXI Giornata Mondiale della Pace (1.1.1988), AAS 80 (1988), pp. 278—286; Giovanni Paolo II: *Discorso ai Membri del Corpo Diplomatico accreditato presso la Santa Sede* (9.1.1989), n. 6, http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19871208_xxi-world-day-for-peace_it.html (accessed 2.1.2013).

2. The freedom of spouse choice

2.1. The freedom from coercion in choosing a spouse

It is claimed in Art. 2 that the marriage must be contracted by mutual consent which is expressed in an appropriate form. This is neither the new rule nor the new authorization given or established in the Charter of the Rights of the Family. The essence of this rule had been underlined in the Conciliar Constitution *Gaudium et spes* no. 48, which next has become an elementary foundation of the whole marriage law system contained in CIC 1983, which can. 1057 § 1 reads: "the consent of the parties legitimately manifested between persons qualified by law makes marriage; no human power is able to supply this consent." The marital consent as a cause of marriage is a basic element of its existence, and no human authorities can replace this element in any way.[5] The fact that this is the act of will creates a necessity for this act to be performed freely and consciously, in other words, without any coercion.[6] The concretization of this assumption is the freedom from any form of the coercion in the choice of the person for the future spouse, underlined in the Charter of the Rights of the Family. This freedom must be respected despite the fact of the existence of many differences between the cultural circles in the managing of children's decisions. There is a need to take a look into the marriage in the Indian culture where marriages are traditionally arranged in almost all types of communities living in India. Nowadays, except for the middle high class living in the cities, arranged marriages are still widely practiced. Marriages entered into out of love are seen as insane acts of passion. Parents control not only their adult children, but also the whole society structure and the caste system by the institution of the arranged marriage. The Charter of the Rights of the Family underlines the freedom from any form of the coercion in choosing the person for the future spouse. It is worth pointing that the essence of freedom is often understood from the negative side, as the freedom from any coercion and compulsion, but from the side of Catholic social teaching this dimension is not the only one. In the Catechism of the Catholic Church it can be read: "Freedom is the power, rooted in reason and will to act or not, to do this or that, and so to perform deliberate actions on one's own responsibility. By free will one shapes one's own life. Human freedom is a force for

[5] W. Góralski: *Kanoniczna zgoda małżeńska*. Gdańsk 1991, p. 18.
[6] Cf. J.F. Castaño: *Sacramento del matrimonio*. Roma 1990, pp. 118—119.

growth and maturity in truth and goodness; It attains its perfection when directed towards God our beatitude" (no. 1731). Thus, the issue of freedom in spouse choice has a need to point not only to the freedom from coercion, but also to the possibility in choice and decision-making, as well as the particular action and the decision about a human being. This freedom "to" — the freedom in the positive aspect — the spouse choice must also be seen in the aspect of the religious freedom.

2.2. The spouse freedom to the range of the religious profession

The religious freedom should first and foremost express the freedom to the spouse choice no matter what religion they profess. Without any doubt, current in this aspect are imminent dangers and difficulties which can be the consequence of religiously or professionally mixed marriages. The most significant and important in marriage and family is unity, because it is the basic element of peace and full communion, and the problems may appear because of the differences in profession or religion, most of all, in the religious upbringing of children.[7] Secondly, marriage needs to be a communion of life and love. The differences in aspects of professed religions are not conducive to building of this communion in the most significant cases, which can bring misunderstandings, especially after the period of first spurts of love when the newly-weds meet the reality of marriage and family life.[8] Finally, the Catholic spouse will be living with the awareness of fulfilling his/her obligations arising from his faith because they have their source in the Divine Law.[9] From the legal side, they have been regulated by the establishment of the orders for such a marriage, specifically by the introduction of a dispensation or the permission of the local Ordinary and deposit the guarantee.[10] On the one hand, they express the Church's concern and its precarious attitude towards mixed

[7] Konferencja Episkopatu Polski: *Instrukcja w sprawie duszpasterstwa małżeństw o różnej przynależności kościelnej* (11.3.1987), n. IV, 3. In: *Dokumenty duszpasterskoliturgiczne Episkopatu Polski (1966—1998)*. Eds. Cz. Krakowiak, L. Adamowicz. Lublin 1999, pp. 251—252.

[8] Cf. P.M. Gajda: *Prawo małżeńskie Kościoła katolickiego*. Tarnów 2000, pp. 207—208.

[9] Cf. Ibidem, p. 208.

[10] These include a declaration of the Catholic party that he or she is prepared to remove dangers of defecting from the faith and a sincere promise to do all in his or her power so that all offspring are baptized and brought up in the Catholic Church — Code of Canon Law, can. 1125, n. 1.

marriages, but on the other, the respect and the appreciation of the rule of freedom in spouse choice, which had been acknowledged before, no matter which religion, if any, they profess. Secondly, as it is underlined in the Charter of the Rights of the Family: "Therefore, to impose as a priori condition for marriage a denial of faith or a profession of faith which is contrary to conscience, constitutes a violation of this right. This is one of the most important facts. In the conciliar declaration on religious freedom no. 10, it can be read that: that Man's response to God in faith must be free […]. The act of faith is of its very nature a free act." This is the first reason why the religious systems that agree on the marriage with followers of the other religions only after the condition of faith change, are not acceptable. The second reason is that it is not acceptable for the one spouse to make such a condition towards the other. It constitutes the violation of religious freedom, because its subject is the sphere of personal religious beliefs according to the requirements of personal conscience.

Pope John Paul II in his Message for the XXXII International Day of Peace in 1999 said that "the religious freedom is the heart of Human Rights" and that "this right is inviolable to the extent that it calls for the recognition of free human being decision of changing religion if his/her personal conscience says so."[11] But only in that case. Once again there is a need to underline the aspect which has been show in the Charter of the Rights of the Family, that is not: "to impose as a priori condition for marriage a denial of faith or a profession of faith which is contrary to conscience." Each human being is obliged to follow the voice of his/her conscience and cannot be forced to act against it. And this is why — continues the pope — no one can be forced to accept a specific religion, regardless of the circumstances and motivations." Certainly, the above is not a case of legitimate marriage. If someone abandoned one's faith or embraced the spouse's faith due to marriage, but against their conscience or subject to coercion, it first of all means that his/her freedom was limited, and secondly, it undermines the value of such a fate. The acceptance of the other spouse's faith without the inner conviction, under a threat of the marriage being impossible, would not be valid.

So neither wife nor husband have the right to force the other party to change their religion or profession or to embrace or dismiss a religion or a profession. Despite the superiority of the husband's rights in some cultures, there is a need to underline and recall that both spouses have the same dignity and rights within the marriage. The woman is equal to

[11] Giovanni Paolo II: *Nel rispetto dei diritti umani il segreto della pace vera*. Messaggio per la celebrazione della XXXII Giornata Mondiale della Pace (1.1.1999), n. 5, http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_14121998_xxxii-world-day-for-peace_it.html (accessed 4.4.2013).

the man in terms of personal dignity,[12] because she was created by God and has the same nature as the man.[13] It can be inferred from the description of the act of creation: God, during the creation of the human being as a man and a woman has given them the gender differences which complement each other. In the other words, the man and the woman have a different structure of the body and the mind but complement and strongly need each other, as they are irreplaceable in their roles.[14] It grants us with confidence to talk about their equal dignity and rights. A spouse is not entitled to do any more than the other one in the marriage. It means that both of them are obliged to the same. The faithfulness is also mutual, which concerns any other right or obligation. This is a result of the unity created by them and the human being dignity itself, regardless of their origins, financial status, race, nationality or the profession and religion. Pope John XXIII wrote in the encyclical *Pacem in terris* that the human being, even if he/she makes mistakes, always retains the inherent dignity and is unable to dispose of it.[15] Therefore, there is a need to talk about spouses equality also in terms of their religious freedom.

3. The freedom of religious practice and the religious upbringing of children

There is one more aspect connected to the religious freedom of spouses and family founded by them. It needs to be stressed that the issue of religious freedom concerns not only the inner, but also the outer sphere of life. This is because of the fact that religion involves not only inner acts

[12] Sacrosanctum Concilium Oecumenicum Vaticanum II: *Constitutio pastoralis "Gaudium et spes" de Ecclesia in mundo huius temporis* (7.12.1965), n. 49, AAS 58 (1966), pp. 1069—1070; Ioannus Paulus II: *Adhortatio Apostolica de familiae christianae muneribus in mundo huius temporis "Familiaris consortio"* (22.11.1981), n. 22, AAS 74 (1982), p. 107; Ioannus Paulus II: *Epistula Apostolica "Mulieris dignitatem" de dignitate ac vocatione mulieris* (15.8.1988), n. 6, AAS 80 (1988), p. 1662; Catechismus Catholicae Ecclesiae, n. 2334.

[13] Cf. S. Paszkowski: *Rodzina bogatą wspólnotą życia i miłości. Zarys teologii małżeństwa i rodziny.* Wrocław 2000, p. 23.

[14] Konferencja Episkopatu Polski: *List na XXVII niedzielę zwykłą zapowiadający obchody XII Dnia Papieskiego, 14.10.2012 r.* (accessed 23.6.2012), http://episkopat.pl/dokumenty/listy_pasterskie/4581.0,Jan_Pawel_II_Papiez_Rodziny.prn (accessed 4.4.2013).

[15] Ioannus XXIII: *Litterae Encyclicae "Pacem in terries" de pace omnium gentium in veritate, iustitia, caritate, libertate constituenda* (11.4.1963), AAS 55 (1963), p. 259.

directed to the God, but also the material, visible ones being the profession of the faith.[16] The subject of religious freedom is therefore the public practice of worship, as well as the daily testimony based on the relevant principles of the faith. Thus, in the Art. 7 of the Charter of the Rights of the Family it is claimed that "every family has the right to live freely its own domestic religious life under the guidance of the parents, as well as the right to profess publicly and to propagate the faith, to take part in public worship and in freely chosen programmes of religious instruction, without suffering discrimination."[17] The Man as a social being has the right to the public profession of his/her faith, and particularly to building temples and being materially concerned about their decor and furnishing. A follower also has a right to organize processions and other religious celebrations, wearing religious symbols in public, and also to religious education and upbringing of children without suffering any discrimination because of that.

Unfortunately, these basic rights and freedoms are infringed in many places all over the word. The report published in 2012 *The International Religious Freedom* describes the frightening data concerning very frequent violations of those rights. It has turned out that Christians are the most persecuted religious group in the world. There are the "blasphemy laws" in Pakistan and Iran, under which insulting Muhammad is punished by the death penalty. More and more often the mass media bring the shocking information on this topic. In 2011 the widely known case concerned a man who was punished by the Islamic fundamentalists, even though the court found the accusations against him ungrounded. The man was hiding but the Muslims kidnapped his son and his daughter-in-law, who were forced to recite Muslim prayers. The information was announced from the mosque loudspeakers that they have renounced Christ. Eventually, this time the tragedy was managed to be avoided, but many other cases did not have a happy ending. John Paul II underlined that "even in cases where the State grants a special juridical position to a particular religion, there is a duty to ensure that the right to freedom of conscience is legally recognized and effectively respected for all citizens, and also for foreigners living in the country even temporarily for reasons of employment and the like." That is why the spouses have inalienable right to profess their religion according to their conscience, and as parents they have rights to organize the religious life of their children in their own way. In this regard, the parental responsibility comes from the natural law and

[16] Cf. H. Skorowski: *Chrześcijańskie rozumienie wolności...*, p. 8.

[17] Cf. Sacrosanctum Concilium Oecumenicum Vaticanum II: *Declaratio de libertate religiosa* "*Dignitatis humanae*" (7.7.1965), n. 5, AAS 58 (1966), p. 933.

it cannot be limited by school or other institutions, unless the parents brought up their children in the spirit that is contrary to the fundamental principles of ethics and morality. Parental rights are so basic and inalienable that only in cases of violation of natural law or morality the authorities have the right to interfere with them by restricting or suspending them in any way.[18] Catholics are obliged by the canon law to the Catholic upbringing of children who, in turn, exercise their rights under the parental authority. There is a need to remember that the Charter of the Rights of the Family is addressed to everyone — either Christians or non-Christians, that is why upon discussing this law there is an additional need to keep in mind the freedom of human being in general to the religious formation of their family and children due to their own conscience. Organizing the religious family life must include the parental freedom to choose the education programme for their children, so that is why the situation in which anyone imposes the certain system of education, incompatible with parental conscience, is inadmissible. Therefore, the obligation to respect the family rights concerns everyone, be it an individual person or a civil authority

Conclusion

The principles contained in the Charter of the Rights of the Family, are covered by other documents that have been issued by both Church and secular authorities (states and international organizations). The above also applies to issues enlarged upon in the present article: the freedom of spouse choice and religious upbringing of children.[19] It stems from the fact that those rights are inalienable, granted to humans on the basis of their natural dignity. Compliance with them is necessary, and the wide range of duties of the Church and the State towards human being surely encompasses it.

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[18] H. Misztal: "Gwarancje prawa międzynarodowego i polskiego w zakresie uprawnień rodziców do religijnego wychowania dzieci." In: *Studia z prawa wyznaniowego*. Eds. A. Mezglewski, W. Janiga. Lublin 2000, pp. 10—11.

[19] Just as examples are the Universal Declaration of Human Rights of 10.12.1948, the International Covenant on Civil and Political Rights of 16.12.1966, the International Covenant on Economic, Social and Cultural Rights of 16.12.1966, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 25 November 1981, the Convention on the Rights of the Child of 20 November 1989, the Constitution of the Republic of Poland of 1997.

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Ioannes Paulus II: *Epistula Apostolica* "*Mulieris dignitatem*" *de dignitate ac vocatione mulieris* (August 15, 1988). *Acta Apostolicae Sedis* 80 (1988), pp. 1653—1729.

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Urszula Nowicka

The Right to Freedom of Spouse Choice and Religious Upbringing of Children (CRF, Articles 2 and 7)

Summary

Among the catalogue of elementary rights contained in the Charter of the Rights of the Family, we can find the right to freedom of spouse choice and religious upbringing of children. These are neither new rights nor new freedoms given or established in the Charter, but an ecclesiastical opinion towards their contents that expresses the natural rights of an individual. The freedom from coercion in choosing the spouse expresses the foundation assertion of the entire marriage law system that the marriage must be contracted by mutual consent. And closely related to it is the freedom to practice one's own religion and the religious upbringing of children. The above rights and freedoms are the subject of analysis in this study.

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Droit à la liberté de choisir son conjoint et d'élever religieusement ses enfants (Charte des droits de la famille, Articles 2 et 7)

Résumé

Le catalogue des droits de la famille inclus dans la Charte des droits de la famille englobe le droit à la liberté de choisir son conjoint et d'élever religieusement ses enfants. Ce ne sont ni des droits nouveaux ni de nouveaux pouvoirs donnés ou institués dans la

Charte, mais la pensée de l'Église dans ce domaine exprimant les droits naturels de l'être humain. La liberté de choisir son conjoint est exprimée par l'idée fondamentale de tout le système du droit conjugal confirmant que le mariage peut être contracté uniquement par consentement mutuel. Cependant, la liberté de pratiquer sa propre religion et d'élever religieusement ses enfants y est strictement liée. Dans le présent article, ces droits constituent l'objet de notre analyse.

Mots clés: liberté de religion, mariage, consentement conjugal, éducation des enfants

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Il diritto alla libertà di scelta del coniuge e all'educazione religiosa dei figli (CDR, Artt. 2 e 7)

Sommario

Il catalogo dei diritti della famiglia, incluso nella Carta dei Diritti della Famiglia, comprende il diritto alla libertà di scelta del coniuge e all'educazione religiosa dei figli. Non sono diritti nuovi, né nuove facoltà date o stabilite nella Carta, ma il pensiero della Chiesa in tal campo, che esprime i diritti naturali della persona umana. La libertà dalla costrizione della scelta del coniuge esprime la premessa fondamentale di tutto il sistema del diritto matrimoniale, secondo la quale il matrimonio può essere contratto solamente con il consenso reciproco. Rimangono invece strettamente legate ad esso la libertà di praticare la propria religione e dell'educazione religiosa dei figli. Tali diritti sono oggetto di analisi nel presente articolo.

Parole chiave: libertà religiosa, matrimonio, consenso matrimoniale, educazione dei figli

Ecumeny and Law, vol. 2 (2014)
pp. 205—225

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The Right to Work and Family Wage Some Reflections on Article 10 of the Charter of the Rights of the Family from the Polish Perspective

Keywords: employment, work, right to work, family wage, fair remuneration

The right to work and family wage has its source in Art. 10 of the Charter of the Rights of the Family.[1] It contains the right of each family to a "social and economic order in which the organization of work permits the members to live together, and does not hinder the unity, well-being, health and the stability of the family, while offering the possibility of wholesome recreation." The article is further extended by two points and it specifies remuneration and the work of the mother at home in the following way:

a. "Remuneration must be sufficient for establishing and maintaining a family with dignity, either through a suitable salary, called a 'family wage', or through other social measures such as family allowances or

[1] Carta dei Diritti della Famiglia presentata dalla Sant Sede a tutte le persone, istituzioni ed autorità interessate alla missione della famiglia nel mondo di oggi (22.10.1983). *Communicationes* 15 (1983), no. 2, pp. 140—152. All the English quotations from the Charter of the Rights of the Family are cited after: http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html. The proclamation of the Charter of the Rights of the Family on 22 October 1983 realized the wish of the Synod Fathers who convened in Rome in 1980 to deliberate on the role of a Christian family in the contemporary world.

the remuneration of the work at home of one of the parents; it should be such that mothers will not be obliged to work outside the home to the detriment of family life and especially of the education of the children."

b. "The work of the mother at home must be recognized and respected because of its value for the family and society."

This entry in the Charter introduces a postulate which refers to, among others, the so-called family policy addressed mainly to all national governments, public institutions, but also to families and all men and women. It calls for establishing a "pro-family" policy and strengthening the subjective and autonomous nature of a family.[2] It is to guarantee a greater protection of a family, strengthen it, appreciate it and acknowledge it as a subject.

1. The right to work

In his encyclical *Laborem exercens* (henceforth LE) of 1981 John Paul II reminded that: "Work is one of the characteristics that distinguish the human from the rest of creatures, whose activity for sustaining their lives cannot be called work. Only human is capable of work, and only human

[2] In the exhortation *Ecclesia in Europa* of 28 June 2003 John Paul II quoted the Synod Fathers who postulated that: "In all events it will be necessary to encourage, assist and support families, both individually and in associations, who seek to play their proper role in the Church and in society, and to work for the promotion of genuine and adequate family policies on the part of individual States and the European Union itself." See Ioannes Paulus II: *Adhortatio apostolica post-synodalis "Ecclesia in Europa", vivente nella sua Chiesa, sorgente di speranza per l'Europa* (28.6.2003). AAS 95 (2003), pp. 649—719, n. 91. All the English quotations from *Ecclesia in Europa* are cited after: http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_20030628_ecclesia-in-europa_en.html. As the initiators of the Charter of the Rights of the Family, the Bishops' Synod held in 1980 pointed out that the families themselves should be the first to ensure that positive laws and public institutions do not infringe laws and duties of a family, but that they support and defend them. The Synod warned that families should also become more aware of their role as the co-authors of the so-called "pro-family policy" and they should take responsibility for changes in their society. Otherwise, they will become first victims of the evil at which they looked indifferently (see Ioannes Paulus II: *Adhortatio apostolica de Familiae christianae muneribus in mundo huius temporis "Familiaris consortio"* (22.11.1981). AAS 74 (1982), pp. 81—191, n. 44). The concerned Synod also observed a grave problem that the family, which is the subject of laws, state's duties and other communities, falls prey to society, its indolent interventions and gross injustice.

works […]."[3] Work is also a fundamental dimension of Man's existence on earth (LE 4). The primary and basic value of work is Man — the subject of it, and work is inherent to human nature. It is not a punishment for disobedience but on the contrary. The Man's thinking nature is its primary source.[4] It is the human mind that directs him/her to work. Work enables Man to achieve means of living and sustaining life.[5] The Catechism of the Catholic Church of 1992 teaches that in work "the person exercises and fulfils in part the potential held by his/her nature. […] labour stems from Man himself, its author and its beneficiary. Work is for Man, not Man for work"[6] (CCC 2428).

A Polish researcher and specialist in labour law, Teresa Liszcz, explains that the two following elements constitute the right to work: the right to obtain an employment and the right to keep it (protection of employment stability). The right to financial benefits from public funds for the unemployed complements the right to work.[7] The Constitution of the Republic of Poland from 1997 guarantees equal rights regarding employment and remuneration in Art. 33, and Art. 67 point 2 stating that: "A citizen who is involuntarily without work and has no other means of support, shall have the right to social security, the scope of which shall be specified by statute."[8] The Labour Code of 1997 in Art. 10 §1 includes the following entry relating to labour law: "Everyone has the right to choose their work freely."[9] However, this right is not subjective in its nature and does not allow a claim for establishing an employment relationship even if the employer has a job vacancy. Also the employee's difficult situation

[3] Ioannes Paulus II: *Litterae encyclicae de labore humano, LXXXX expleto anno ab editis litteris encyclicis* "*Laborem exercens*" (further LE) (14.9.1981). AAS 73 (1981), pp. 577—647. All the English quotations from *Laborem exercens* are cited after: http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens_en.html.

[4] S. Wyszyński: *Duch pracy ludzkiej. Myśli o wartości pracy*. Warszawa 2000, p. 35. The Polish edition was first published in 1946. The English edition came out under the title *Work*, published by Scepter in 1960, and was translated by J. Ardle McArdle. See also: Gn 2, 15; Gn 3, 19. In the Second Letter to Thessalonians St. Paul urged "not to let anyone eat if he refused to work" (2 Th 3, 10) and "to go on quietly working and earning the food that they eat" (2 Th 3, 12).

[5] S. Wyszyński: *Duch pracy ludzkiej…*, p. 35.

[6] All the English quotations from the Catechism of the Catholic Church (further CCC) are cited after: http://www.vatican.va/archive/ENG0015/__P8D.HTM.

[7] T. Liszcz: "Prawo pracy a rodzina." In: *Prawo pracy a rodzina. Układy zbiorowe pracy*. Ed. T. Liszcz. Warszawa 1996, p. 23.

[8] Quoted after: http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (accessed 25.9.2013).

[9] *The Labour Code. Kodeks Pracy. Bilingual edition*. Trans. A. Jamroży. Warszawa 2012, p. 15.

at home does not grant him/her a subjective right to work.[10] Liszcz points to the fact that having a family to support or being the single breadwinner does not constitute a premise for a greater protection of employment stability.[11] In Poland, no binding laws provide for family preferences or any other privileges granted upon employment. The employment policy is based on the principle of equal treatment. The Act of 20 April 2004 on the promotion of employment and labour market institutions[12] in Art. 19c states the following: "The employment agency cannot discriminate the person for whom it searches employment or other gainful work on grounds of sex, age, disability, race, religion, ethnic origin, nationality, sexual orientation, political beliefs and religion or due to membership to a trade union." The principle of equal treatment denotes absence of any kind of discrimination resulting from Convention no. 111 of the International Labour Office of 1958 and directives of the European Union.[13]

In 1994 on the occasion of the International Day of Families, pope John Paul II addressed a letter to families in which he wrote: "Unemployment is today one of the most serious threats to family life and a right-

[10] T. Liszcz: "Prawo pracy a rodzina…," p. 23.

[11] Ibidem, pp. 25—26.

[12] The Act of 20 April 2004 on the promotion of employment and labour market institution, J.L. 2013, item 674. All the quotations are taken from the English translation prepared by Ministry of Labour and Social Policy, Warsaw 2012.

[13] Convention no. 111 of the International Labour Office with regard to discrimination in the field of employment and occupation (adopted in Geneva on 25 June 1958, effective on 15 June 1960) reads: "1. For the purpose of this Convention the term discrimination includes: a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies. 2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination. 3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment." See: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_85_en.pdf (accessed 10.9.2013). Also: Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, OJ L 204, p. 23 and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, p. 16.

ful cause of concern to every society."[14] Therefore, he emphasised that national and international institutions responsible for the direction of employment policy should pay attention to the basic issue which is having a job, that is "suitable employment for all who are capable of it."[15] The opposite of this desired situation is unemployment, which is evil in all cases and can become a social disaster if it reaches a certain level. The problem of unemployment is especially painful when it concerns young people who cannot find a job despite appropriate cultural, technical and vocational preparation. As Pope observes, although they are truly willing to take up a job and ready to accept responsibility for the economic and social development of the community they end up frustrated.[16]

The teaching of the Church related to unemployment is also included in the Catechism of the Catholic Church where we read: "Unemployment almost always harms its victim's dignity and threatens the equilibrium of his life. Besides the harm done to him/her personally, it entails many risks for his/her family" (CCC 2436,2).

Joblessness is one of the most important socio-economic and moral problems that are present in almost all countries in Europe and all over the world. Unemployment, in the common understanding of the word, should be understood as a lack of gainful employment on the job market for people seeking it. In his encyclical *Laborem exercens* John Paul II defines unemployment as "the lack of work for those who are capable of it" (LE 18). There are different types of unemployment.[17] It can be voluntary and involuntary. Nowadays, the involuntary unemployment is more frequent. Voluntarily unemployed people think that it is better to use the help provided by the government or other people than to take up a legal job, or they even prefer to work illegally. Involuntary unemployment applies to situations when people want to work, they are capable

[14] Ioannes Paulus II: *Littere Famillis ipso volvente Sacro Familliae anno MCMXCIV "Gratissimam sane"* (2.2.1994). AAS 86 (1994), pp. 868—925, n. 17. All the English quotations from *Gratissimam sane* are cited after: http://www.vatican.va/holy_father/john_paul_ii/letters/documents/hf_jp-ii_let_02021994_families_en.html.

[15] LE 18.

[16] Ibidem. John Paul II emphasized that "the obligation to provide unemployment benefits, that is to say, the duty to make suitable grants indispensable for the subsistence of unemployed workers and their families, is a duty springing from the fundamental principle of the moral order in this sphere, namely the principle of the common use of goods or, to put it in another and still way, the right to life and subsistence" (LE 18).

[17] On the subject of different types of unemployment see W. Ratyński: *Problemy i dylematy polityki społecznej w Polsce*. Vol. 1. Warszawa 2003, pp. 33—38; M. Szylko-Skoczny: "Problemy społeczne w sferze pracy." In: *Polityka społeczna. Podręcznik akademicki*. Eds. G. Firlit-Fesnak, M. Szylko-Skoczny. Warszawa 2008, pp. 217—220, 223—225.

and ready to take up a job, but they cannot perform it due to some factors beyond them. Lack of employment results in depriving people of means of living and it hinders their development. It is also a reason of many personal and family problems and entails high social costs.[18] What is more, joblessness and the precarious nature of employment threaten human dignity. They create situations of injustice and poverty that often lead to despair, crime and violence and may even result in an identity crisis, as emphasised by Pope Benedict XVI.[19]

Today, we can echo Cardinal Stefan Wyszyński's words, as written his 1946 *Duch pracy ludzkiej* (*The Spirit of Human Labour*), that "joblessness became a profession. Millions of people all over the world were willing to work but did not have any opportunity for it. The whole humanity felt a deep inappropriateness of such a state of affairs."[20] Unemployment is an overwhelming problem and there seems to be no accessible solution for it. People would like to introduce some changes but they are unable to do so. In present times young people are the greatest victims of the economic crisis and lack of workplaces which it entails. Over 20% of Europeans between 15 and 24 who are willing to take up a job remain jobless. A few million of young people are not even able to enter the job market and the unemployment rate in this age group has stabilized at an all-time high level. The statistics show that in Spain and Greece there are 40% of unemployed young people, whereas in Poland, Hungary, Italy and Sweden — over 20%. If young people find a job, more and more often the contract is for a specified period of time. In this respect Slovenia and Poland are on the first place with over 60% of the employed people under 25 who have fixed-term contracts.[21] At the beginning of one's professional career a temporary job is acceptable but in the case of young

[18] The Official Statement of the Social Council at Metropolitan Archbishop of Poznań on the subject of unemployment of 6 May 2006. In: The Social Council at Metropolitan Archbishop of Poznań: *Oświadczenia 2005—2008*..., p. 34.

[19] See: http://www.polskieradio.pl/5/3/Artykul/477379,Papiez-o-etyce-pracy-zamach-na-godnosc-czlowieka (accessed 26.8.2013). For the complete text of the Message on the Occasion of the Second National Congress for the Family in Ecuador (9—12 November 2011) see: http://www.vatican.va/holy_father/benedict_xvi/messages/pont-messages/2011/documents/hf_ben-xvi_mes_20111101_familia-ecuador_en.html.

[20] S. Wyszyński: *Duch pracy ludzkiej*..., p. 23. The original reads: "[...] bezrobocie stało się zawodem. Miliony ludzi na świecie objawiało wolę pracy; nie mieli jednak możności pracy. Ludzkość cała czuła jakąś głęboką niestosowność tego stanu."

[21] B. Wyżnikiewicz: "Bezrobocie młodych koszmarem Europy." Available at http://biznes.pl/wiadomosci/unia-europejska/bezrobocie-mlodych-koszmarem-europy,5562167,news-detal.html (accessed 10.9.2013). See also Central Statistical Office, Demographic Surveys and Labour Market Department: "Materials for the press conference on 22 March 2013." Available at http://www.stat.gov.pl/cps/rde/xbcr/gus/PW_kwart_inf_aktywn_ekonom_ludnosci_4kw_2012.pdf (accessed 10.9.2013).

people it becomes a standard regardless of seniority. Upon termination of an employment contract employers offer another one, often forcing consent for low remuneration in return for a vague promise of permanent employment. Internships and vocational practices often turn into prolonged periods of unpaid employment. More and more often we can talk about a lost generation or a generation of the unemployed.[22] This varied group of young people is bound together by the uncertainty of tomorrow that prevents them from planning, whereas low remuneration does not allow to lead a fair life. The Latin term *precarius* means "depending on the will or request," and a "precariat" is a class of people caught between wealth and poverty, devoid of material security and always in danger of a social fall. Guy Standing, the author of *Precariat*, claims that in front of our eyes a new social class is being born, namely a global class.[23]

In the last few decades work was an obligation, a right, today it is often a privilege and perhaps in some regions it may even become a miracle. In such a situation no one can seriously think of starting and raising a family. The words of Pope John Paul II, addressed to the representatives of governments present at the occasion of the 68th Session of the International Labour Conference in Geneva in 1982, seem to be a suitable response to such a state of affairs. The pope said: "I refuse to believe that mankind today, with its prodigious scientific and technical prowess, is incapable of the kind of creative effort, inspired by the very nature of human work and solidarity among all living beings, which will yield fair and effective answers to the essentially human problem of employment."[24]

2. Family wage or fair remuneration?

In the 20th century the right to work and a proper remuneration was included in many international and national documents. The Universal

[22] "Pracodawcy: Unia psuje młodzież i rynek pracy." Available at: http://www.centrumrekrutacyjne.pl/p/pracodawcy-unia-psuje-mlodziez-i-rynek-pracy,131.html (accessed 10.9.2013). See: "Stop umowom śmieciowym." Available at: http://www.solidarnosc.org.pl/pl/strona-glowna/stop-umowom-smieciowym-4.html (accessed 28.8.2013).

[23] See: G. Standing: *Prekariat*. Available at: http://www.praktykateoretyczna.pl/prekariat/01_Prekariat_Rozdz.1.pdf (accessed 26.8.2013).

[24] John Paul II: "The Speech for the 68th Session of the International Labour Conference, Geneva, 15th June 1982, no. 12." For the Polish text see *L'Osservatore Romano* 7—8 (1982), pp. 3—5; the English text quoted from: http://www.mop.pl/doc/pdf/inne/przemowienie15-6-1982.pdf (accessed 25.9.2013).

Declaration of Human Rights[25] of 1948 in Art. 23 states that "1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." Article 25 of the Declaration states that "1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his/her control."

The European Social Charter[26] drawn up in Turin in 1961 includes, among others, entries on remuneration, employment and protection of the family. Article 4.1 of the Charter states: "With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: 1. to recognize the right of workers to a remuneration such as a will to give them and their families a decent standard of living."[27] Thirty five years later in the Revised European Social Charter[28] of 1996 Art. 4 stated: "All workers have the right to fair remuneration sufficient for a decent standard of living for themselves and their families," and Art. 27: "All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities." The subject of family wage was also included in the International Covenant on Eco-

[25] The United Nations General Assembly: The United Nations Universal Declaration of Human Rights, adopted and proclaimed 10 December 1948 in Paris. The Polish text at: http://libr.sejm.gov.pl/tek01/txt/onz/1948.html (accessed 10.9.2013). All the English quotations from the Universal Declaration of Human Rights are cited after: http://www.unic.org.in/items/Other_UniversalDeclarationOfHumanRights.pdf.

[26] See A. Świątkowski: *Karta Praw Społecznych Europy*. Warszawa 2006, pp. 132—139. See also the Community Charter of Fundamental Social Rights of Workers proclaimed by the Council on 8—9 December 1989 in Strasbourg, which includes the right to employment and remuneration: *Charte Communautaire des Droits Socieux Fondamentaux des Travaillers*, also called *Strassbourg Charte*. On this subject see also: J. Szczot: "Fundamental Rights on the Labour Market in EU." In: *Współczesny rynek pracy wobec wyzwań XXI wieku*. Eds. W. Chomicz, J. Szczot. Konin 2013, p. 31.

[27] Quoted after: http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm.

[28] See the Revised European Social Charter at: http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/escrbooklet/Polish.pdf (accessed 10.9.2013). All the English quotations from the Charter are cited after: http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm

nomic, Social and Cultural Rights[29] proclaimed by UN in 1966. Art. 7 reads:

> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
> (a) Remuneration which provides all workers, as a minimum, with:
> (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant.

The Treaty of Lisbon of 13 December 2007 in Title IX. Employment, Art. 147 (ex Art. 127 TEC) refers to the concern of the European Union for a high level of employment and attention to the application of the principle of equal pay.[30] The Charter of Fundamental Rights of the European Union[31] in Art. 15 guarantees freedom to choose an occupation and the right to take up a job. Point 1 reads: "Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation." The Con-

[29] The International Covenant on Economic, Social and Cultural Rights adopted by General Assembly resolution 2200A (XXI) of 16 December 1966. The Covenant was adopted by the United Nations General Assembly on 16 December 1966 and opened for signature in New York on 19 December 1966. In accordance with the provisions of Art. 27 § 1 it came into force on 3 January 1976. Poland ratified the Covenant on 3 March 1977, the ratification document was presented to the Secretary-General of the United Nations on 18 March 1977 and the Covenant came into force in Poland 18 June 1977. See: http://libr.sejm.gov.pl/tek01/txt/onz/1966a.html (accessed 28.08.2013). All the English quotations are cited after: http://www.ptpa.org.pl/public/files/akty_prawne/InternationalCovenantonEconomicSocialandCulturalRights.pdf.

[30] Article 147 (ex Art. 127 TEC) reads: "The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected. 2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities." Article 157 (ex Art. 141 TEC) reads: "1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. 2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer." See: The Consolidated Version of the Treaty on the Functioning of the European Union at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0047:0200:EN:PDF (accessed 10.9.2013).

[31] Charter of Fundamental Rights of the European Union (2010/C 83/02). All the quotations are from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF (accessed 28.8.2013).

stitution of the Republic of Poland of 1997 in Art. 65 guarantees that the minimum remuneration for work and setting its level is specified by statue.[32]

A considerable majority of families, not only the Polish ones, have the means to maintain their families from the work performed by their adult members.[33] It was already written in the Old Testament that workers should be paid what is due to them without delay (Pr 3, 27).[34] As early as in first centuries of Christianity the right of the worker to fair remuneration was emphasised. The Code of Canon Law promulgated in 1983, the same year the Charter of the Rights of the Family was proclaimed, includes canons that refer to fair remuneration. In Canon 231 § 2 we read as follows: "Without prejudice to the prescript of can. 230 § 1 and with the prescripts of civil law having been observed, lay persons have the right to decent remuneration appropriate to their condition so that they are able to provide decently for their own needs and those of their family. They also have a right for their social provision, social security, and health benefits to be duly provided."[35] Canon law does not define which remuneration is fair and with regard to employment, remuneration and social protection it points to legal norms that are binding in the faithful's country of residence and in the social teachings of the Church.

The Catechism of the Catholic Church defines fair remuneration as "the legitimate fruit of work" (CCC 2434). In order to establish a level of fair remuneration both needs and the amount of work have to be taken into account. As expressed by the Second Vatican Council in the Pastoral Constitution *Gaudium et spes* (GS 67),[36] "remuneration for labour is to be such that man may be equipped in the means to cultivate worthily his

[32] In Poland the binding law is Act of 10 October 2002 on minimum wage, Dz.U. 2002 nr 200 poz. 1679, see also: Dz.U. 2012 nr 0 poz. 1026. See also: Convention no. 131 of the International Labour Office of 1970 on stipulating minimal remuneration and recommendation 135; J. Kropiwnicki: "Płaca minimalna w Polsce a standardy międzynarodowe." *Ethos* 4 (1995), pp. 122—132.

[33] T. Liszcz: "Prawo pracy a rodzina"..., p. 23.

[34] The Polish version reads: "Pracownikom nie odmawiaj zapłaty, gdy masz możność działania. Nie mów bliźniemu: 'Idź sobie, przyjdź później, dam jutro — gdy możesz dać zaraz.'" Quoted from *Biblia Tysiąclecia* at: http://biblia.deon.pl/rozdzial.php?id=541 (accessed 30.9.2013).

[35] The English version of the Code of Canon Law is quoted after: http://www.vatican.va/archive/ENG1104/__PV.HTM. See the commentary on this canon in: D.L. Barr: "Formation and remuneration for Church Service." In: *New Commentary on The Code of Canon Law*. Eds. J.P. Beal, J.A. Coriden, T.J. Green. New York, N.Y./Mahwah, N.J. 2000, pp. 302—303.

[36] All the quotations from *Gaudium et spes* (further GS) are cited after http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html.

own material, social, cultural, and spiritual life and that of his dependents, in view of the function and productiveness of each one, the conditions of the factory or workshop, and the common good." Moreover, in the Catechism the Church teaches that "Agreement between the parties is not sufficient to justify morally the amount to be received in wages" (CCC 2434). The refusal of the pay or delaying it may be a gross injustice.[37]

In his encyclical *Laborem exercens* pope John Paul II wrote about a just remuneration understood as an amount sufficient to establish and maintain a family and provide for its future. Such remuneration can be realised through family wage, that is a wage paid to the head of the family which is sufficient for its needs without the other spouse having to take up a job outside the home or without the help of other social measures, such as family allowances or maternal pay for a woman solely devoted to her family.[38] A remuneration is a just one when it makes the fairness of the employer-employee relationship real. Notwithstanding the types of means of production, the relation between an employer and an employee is based on salariat,[39] that is an appropriate remuneration for the performed work. The Pope emphasised that a "just wage is the concrete means of *verifying the justice* of the whole socio-economic system and, in any case, of checking that it is functioning justly."[40] In John Paul II's understanding of the term, a just remuneration is the one which accounts for primacy of the subject, of the person, before the material and work. An employee should

[37] Cf. A. Zwoliński: *Grzechy wołające*. Kraków 2012, pp. 291—300.

[38] LE 19.

[39] "Salariat" is a social class of workers, mainly white-collar workers, who earn a salary. See W. Kopaliński: *Słownik wyrazów obcych i zwrotów obcojęzycznych*. 17th, extended edition. Warszawa 1989, p. 451. The term was used by Pope Pius XI in his encyclical *Quadragesimo anno* of 15 May 1931 on reconstruction of the social order and its adjustment to the Law of the Gospel, on the 40th anniversary of the publication of Leon XIII's encyclical *Rerum novarum*. See: AAS 23 (1931), pp. 177—228, no. 65. In no. 68 of the encyclical we read: "The just amount of pay, however, must be calculated not on a single basis but on several, as Leo XIII already wisely declared in these words: 'To establish a rule of pay in accord with justice, many factors must be taken into account'." In no. 69 we read: "For they are greatly in error who do not hesitate to spread the principle that labour is worth and must be paid as much as its products are worth, and that consequently the one who hires out his labour has the right to demand all that is produced through his labour. How far this is from the truth is evident from that we have already explained in treating of property and labour." All quotations from: http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html.

[40] LE 19. For more see J. Wratny: "Koncepcja płacy sprawiedliwej a niektóre aktualne problemy prawa prawcy i polityki płac w Polsce." *Ethos* 4 (1995), pp. 133—141; L. Dyczewski: "Płaca sprawiedliwa i słuszna." *Ethos* 4 (1995), pp. 113—121.

be remunerated for his role in the production of goods not only for what he produced.[41] The truth about this primacy belongs to the legacy of the Church and "the primacy of person over things" should be emphasised and enhanced (LE 12).

In his encyclical *Centessimus annus*[42] proclaimed in 1991, John Paul II urged that: "A workman's wages should be sufficient to enable him to support himself, his wife and his children. 'If through necessity or fear of a worse evil the workman accepts harder conditions because an employer or contractor will afford no better, he is made the victim of force and injustice'" (CA 8). What is more, society and the state should guarantee such wage levels that they are sufficient to provide for the worker and his family and also allow for making some savings. In this respect the role of trade unions is very important as they conclude contracts and negotiate minimum salaries and working conditions (CA 15). Teresa Liszcz considers a respectful and suitable standard of living, based on family wage, to be a threshold level needed for a four-person household in a given country to lead a decent life which should not go down below a certain level.[43] In Poland, the so-called social minimum, stipulated by the Institute of Labour and Social Matters, is taken as a measure of this level.[44] In western countries fair minimal wage is defined in relation to an average salary or gross national income per capita. In his attempt to define family wage Jerzy Wratny observes that such criteria are only met by remuneration which is verified as regards to its capability to provide sufficiently for family needs. According to international and European standards such a premise, compliant with conditions of family wage, is met by fair remuneration. It can be assumed that fair remuneration is by its definition also family wage.[45] Article 4 of the European Social Charter states the right to fair remuneration for work. The Committee of Independent Experts of the Council of Europe attempted to set out the level of fair remuneration, taking the average wage as its starting point. According to the experts, fair remuneration should be 68% of the national average wage.[46]

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[41] For more see J. Wratny: "Płaca rodzinna (szkic zagadnienia)." In: *Prawo pracy a rodzina. Układy zbiorowe pracy*. Ed. T. Liszcz. Warszawa 1996, pp. 43—44.

[42] Ioannes Paulus II: *Litterae encyclicae "Centessimus annus"* (further CA) (1.5.1991). AAS 83 (1991), pp. 793—867. All the quotations from *Centessimus annus* are cited after: http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html.

[43] T. Liszcz: "Prawo pracy a rodzina…," p. 29.

[44] See Z. Jacukowicz: "Płaca godziwa a minimum socjalne." *Ethos* 4 (1995), pp. 142—153, 145—147.

[45] J. Wratny: "Płaca rodzinna…," pp. 42—43.

[46] See: Ibidem, pp. 48—49. In Poland the average wage in the first quarter of 2013 amounted to 3,612.51 PLN. See: http://www.zus.pl/default.asp?p=1&id=24 (accessed

Unfortunately, Poland ratified Article 4 of the European Social Charter[47] with the exception of point 1 relating to the right to fair remuneration. Guarantees provided by Polish legislation focus on defining the minimal wage which is not identical with fair remuneration. In 1996 an important amendment to the Labour Code was introduced in Art. 13 stating that "Employees have the right to a respectful remuneration for work. The conditions for exercising this right are specified by the provisions of labour law, as well as by the state remuneration policy, in particular by specifying the minimum remuneration for work."[48] The above-mentioned provision guarantees the employees the right to such remuneration which will provide for their needs and maintaining their family. The right to a fair remuneration consists of five elements:

1. The right to such remuneration which will provide for an appropriate standard of living for employees and their families. The appropriate standard of living should be understood as a fixed ratio of the minimum wage to the average wage in a given country. This indicator should amount to at least 68% of the average gross wage or 66% of the national income per capita. Also, social benefits for family, e.g. family allowance or tax relief, constitute fair remuneration.
2. The right to a greater amount of remuneration for overtime work, subject to exceptions.
3. The right of all employees, men and women, to equal remuneration for work of an identical value.
4. The right to a reasonable period of notice in case of termination of an employment contract.
5. The right to protection of remuneration for work prior to deductions, provided that the deductions are made in accordance with the conditions and within amounts stipulated in national legislation or labour agreements or arbitration awards.[49]

28.8.2013). From 1 January 2013 on the minimum wage is 1,600 PLN. The index adds up to about 44%.

[47] Poland ratified the European Social Charter on 25 June 1997.

[48] *The Labour Code*…, p. 14.

[49] See J. Wratny, D. Kotowska, B. Skulimowska, J. Szczot: *Kodeks pracy. Tekst ujednolicony Ustawy z komentarzem i przepisami wykonawczymi oraz orzecznictwem Sądu Najwyższego*. 7th edn. Warszawa 2001, p. 22.

3. Final remarks: thirty years after the Proclamation of the Charter of the Rights of the Family

1. If it is true that Man is destined for work and called to it and, most importantly, work is "for Man" and not "Man for work" (LE 6), any other arrangement of work in Man's life may turn against him.
2. Flexible forms of employment (so-called flexicurity[50]), strongly advocated in the EU policy (i.e. in the European Employment Strategy 2020), contribute to popularization of "junk contracts" which do not provide employees, mostly young people, with any means to support themselves or establish a family. The commonly used term "junk contracts" refers to all kinds of employment, apart from "full-time jobs," which are performed under the so-called civil-law agreements. "Junk contracts" have a negative connotation and they do not give any stability of employment.
3. On the one hand, it is emphasised that there should be a high level of employment and it should grow in the EU countries (Strategy Europe 2020[51]), but on the other hand, there is still a substantial level of unemployment.
4. In present times most families need two salaries to maintain their family and provide for its needs. The minimum wage does not meet the requirements of family wage. For decades in Poland the minimum wage has not met the criterion of fairness.
5. In Poland employees do not have any right to raise claims against an employer relating to calculating remuneration higher than the minimum wage, which would guarantee fairness in accordance with Art. 13 of the Labour Code.
6. Lack of nursery schools, kindergartens or the necessity to provide care for small children and the elderly members of the family make it difficult to reconcile family responsibilities with those at work, and more and more women are forced by economic conditions to take up a job outside the home at the expense of their family.

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[50] See: "*Flexicurity* na polskim rynku pracy." Available at: http://flexicurity.biz/pobr/PORADNIK_03.pdf (accessed 10.9.2013); J. Gmurczyk: "Flexicurity w Danii i Polsce, wnioski i rekomendacje, 2012/3 Analiza." Available at: http://www.pte.pl/pliki/1/100/Flexicurity_w-_Danii_i_Polsce.pdf (accessed 10.9.2013). The Europe 2020 strategy names *flexicurity* model as the main tool in combating labour market segmentation and long-term unemployment.

[51] See "Strategia na rzecz inteligentnego i zrównoważonego rozwoju sprzyjającemu włączeniu społecznemu Europa 2020." Available at: http://www.mg.gov.pl/files/upload/8418/EUROPA_PL.pdf (accessed 10.9.2013).

7. "No one can be at the same time a good Catholic and a true socialist," taught pope Pius XI in his encyclical *Quadragesimo anno* in 1931. Assessing socialism pope John Paul II points to its basic, anthropological mistake: "Socialism considers the individual person simply as an element, a molecule within the social organism, so that the good of the individual is completely subordinated to the functioning of the socio-economic mechanism" (CA 13). Moreover, socialism maintains that the wellbeing of an individual can be realized without taking into account his free choice and responsibility for good and evil. Therefore, supporting the poor needs to be combined with creating possibilities for economic development, and thus supporting the development of family. Providing social benefits for the poor, in the long run, does not guarantee a better life but only provides for their current needs, still leaving them in the same place (and then joblessness becomes problematic because it turns into a profession, as written by Cardinal Wyszyński).
8. "Economic phenomena are closely connected with the entirety of human life. An economic crisis creates the atmosphere of uncertainty and temporality, which negatively affects not only the growth of family, but also establishment of its forms."[52] Only economic freedom which is properly realized (the state should foster economic development) will give hope and the basis for full and productive employment, and thus enable to reach family wage.
9. Analysing Art. 10 of the Charter of the Rights of the Family from the current socio-political and economic situation in Poland it needs to be noted that law is realized to a small extent. Employees' remuneration remains generally at a low level, lack of employment stability does not help with establishing a family, and women's work at home does not meet with social respect and recognition. In western countries of the European Union and also gradually in Poland programmes are being implemented to reconcile family roles with the professional ones, that is by introducing flexible working hours. A positive change for the benefit of a family is an extended maternity leave (since 2013), the introduction of additional maternity leave (since September 2014) and parental leave (26 weeks).
10. The latest Document of the Polish Bishops' Conference, prepared by the Council for Social Issues and entitled "W trosce o człowieka

[52] C. Strzeszewski: *Kryzys gospodarczy a rodzina*. Poznań 1936, p. 9. The original version reads: "Zjawiska gospodarcze pozostają w ścisłym związku z całokształtem życia ludzkiego. Kryzys gospodarczy stwarza atmosferę niepewności, tymczasowości, która fatalnie odbija się nie tylko na rozwoju, ale i powstawaniu form życia rodzinnego." Trans. A. Bysiecka-Maciaszek.

i dobro wspólne" (Warsaw 2012), does not mention, in any way, the subject of fair remuneration or family policy. In fact, nowadays in Poland the term "family wage" is no longer used. It was substituted with the commonly used term "fair remuneration" or "minimal wage," ignoring the remuneration rate in relation to the family supported by an employee. Certain changes introduced for the benefit of a family are not connected with the realized postulates but rather with a bad demographic situation in Europe and Poland which forces governments to take up some actions.

Translated by Anna Bysiecka-Maciaszek

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Elżbieta Szczot

The Right to Work and Family Wage Some Reflections on Article 10 of the Charter of the Rights of the Family from the Polish Perspective

Summary

The article analyses Art. 10 of the Charter of the Rights of the Family, proclaimed by the Holy See in 1983, which states that remuneration for work should be sufficient for establishing and maintaining a family. The article presents different terms used to define "remuneration" as included in the Universal Declaration of Human Rights of 1948, the European Social Charter of 1961 and the Revised European Social Charter of 1996, the Constitution of the Republic of Poland of 1997, John Paul II's encyclicals *Laborem exercens* of 1981 and *Centessimus annus* of 1991. It presents labour law and the dilemma whether remuneration should be a family wage or a fair remuneration. In Poland the term "family wage" is not used.

Elżbieta Szczot

Droit à l'emploi et au salaire familial Réflexions sur l'article 10 de la Charte des droits de la famille du point de vue de la Pologne

Résumé

Dans l'article, on a présenté l'analyse du contenu de l'article 10 de la Charte des droits de la famille annoncée par le Saint-Siège en 1983, où l'on a mentionné que la rémunération du travail devrait être suffisante pour que l'on puisse fonder une famille et l'entretenir. Dans cet article, on a dénoté les différents termes se référant à la notion de rémunération et inclus dans la Déclaration universelle des droits de l'homme de 1948, la Charte sociale européenne de 1961 et la Charte sociale européenne révisée de 1996, la Constitution de la République de Pologne de 1997, les encycliques du pape Jean Paul II *Laborem exercens* de 1981 et *Centesimus annus* de 1991. On a présenté le droit au travail et les dilemmes concernant la question si le salaire devrait être une rémunération familiale ou convenable. En Pologne, la notion de « salaire familial » n'est pas utilisée.

Mots clés : emploi, travail, droit au travail, salaire familial, rémunération convenable

Elżbieta Szczot

Il diritto all'assunzione ed al salario familiare Riflessioni sull'art. 10 della Carta dei Diritti della Famiglia dalla prospettiva polacca

Sommario

Nell'articolo è stata presentata l'analisi del contenuto dell'art. 10 della Carta dei Diritti della Famiglia, proclamata dalla Sede Apostolica nel 1983, in cui è stato definito che la remunerazione del lavoro deve essere sufficiente per poter fondare e mantenere una famiglia. Sono stati indicati vari termini usati per la nozione di remunerazione, e scritti nella Dichiarazione Universale dei Diritti dell'Uomo del 1948, nella Carta Sociale Europea del 1961 e nella Carta Sociale Europea Riveduta del 1996, nella Costituzione della Repubblica di Polonia del 1997, nelle encicliche del pontefice Giovanni Paolo II *Laborem exsercens* del 1981 e *Centessimus annus* del 1991. Sono stati presentati il diritto al lavoro ed i dilemmi se il salario debba essere una remunerazione familiare o conveniente. In Polonia la nozione di "salario familiare" non è usata.

Parole chiave: Assunzione, lavoro, diritto al lavoro, salario familiare, remunerazione conveniente

Ecumeny and Law, vol. 2 (2014)
pp. 227—246

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Protection of the Family in the Family Policy of the State: Legal, Social and Economic Aspects

Keywords: family, family policy, family law, family benefits, legal protection of the family

Family is one of the oldest institutions constituting a natural social group. It is a universal institution, found in all epochs and cultures[1] and its significance and value have been acknowledged since the time immemorial, when it was treated as an entirety, "and only against the background of which the individual may act more strongly."[2]

As a basic unit of social life, created for upbringing children and for mutual assistance of spouses, the family is subject to protection and care provided by the state. Recognising the importance of functions fulfilled in the society, the state supports the family using various means within the family policy followed.[3]

[1] For more on this issue, see F. Adamski: *Rodzina. Wymiar społeczno-kulturowy*. Kraków 2002, pp. 67—137.

[2] J. Bystroń: *Dzieje obyczajów w dawnej Polsce. Wiek XVI—XVIII*. Vol. 2. Warszawa 1960, p. 121.

[3] According to K. Głąbicka, the term "family policy" should not be identified with the term "pro-family policy." The latter is a colloquial term which is not found in the literature of social policy. It is of an evaluative nature — the social policy of the state towards the family can be considered the pro-family policy if it fulfils clearly established aims that the state wants to achieve as regards creating conditions for the development of the family and for satisfying living and cultural needs of the family (K. Głąbicka: *Polityka społeczna państwa polskiego u progu członkostwa w Unii Europejskiej*. Radom 2004, p. 93).

According to the predominant theory,[4] "family policy is the entirety of legal norms, actions and means launched by the state in order to create appropriate living conditions for the family; its founding, proper functioning and fulfilling by it all socially important roles."[5] It can be also defined as a "sphere of purposeful activity concerning the creation of conditions favouring the founding and functioning of families and exerting an influence on the functioning of the entire society."[6]

The family policy in Poland has various measures at its disposal, through which it achieves the assumed objectives. The state pursues this policy first of all using such instruments as: legal measures, cash benefits, benefits in kind, benefits in the form of services, while the law plays here a fundamental role. Legal norms governing both family relations and relations of the family with the state and other institutions, but also — through normalization of various aspects of the family functioning — are aimed at its protection.

Regulations concerning broadly understood protection of the family in the Polish law are included in numerous legal acts. The essential one is the Constitution of the Republic of Poland of 2 April 1997.[7]

Analysing the provisions of the Constitution in the context of regulations aimed at protection of the family, it should be clearly emphasised that the Constitution explicitly specifies that marriage is a union of a woman and a man and declares that — as well as the family, motherhood and parenthood — marriage is placed under the protection and care of the state (Art. 18). It grants the parents the right to rear their children in accordance with their own convictions, considering that limitation or deprivation of parental rights are an exceptional situation, which can be affected only in cases specified by statute and only on the basis of a final court judgement. It recognises that parents have the right to bring up their children according to their own convictions. Such upbringing should respect the degree of maturity of a child as well as his/her freedom of conscience and belief and also his/her convictions (Art. 48). It refers the above-mentioned directive to the right to ensure to children a moral and religious education (Art. 53). It imposes on the state an obligation to take

[4] The literature of the subject has presented family policy in various ways (for more on this issue, see M. Szyszka: *Polityka rodzinna w Polsce 1990—2004*. Lublin 2008, pp. 39—46).

[5] S.B. Kamerman: "Rodzina: problemy teorii i polityki." In: *O polityce rodzinnej: definicje, zasady, praktyka*. Materiały z Zagranicy, t. 2, Instytut Pracy i Spraw Socjalnych. Warsaw 1994. This definition corresponds to the definition provided by A. Kurzynowski: *Problemy rodziny w polityce społecznej*. Warszawa 1991, pp. 8—9.

[6] B. Paradowska-Balcerzak: *Rodzina i polityka rodzinna na przełomie wieków*. Instytut Pracy i Spraw Socjalnych. Warszawa 2004, p. 16.

[7] Dz.U. 1997 nr 78 poz. 483 z późn. zm.

into account the welfare of the family in its social and economic policy. Families finding themselves in difficult material and social circumstances, particularly those with many children or a single parent, are entitled to special assistance from public authorities (Art. 71). The state ensures protection of the rights of the child — everyone has the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and depravation. A child deprived of parental care shall have the right to care and assistance provided by public authorities (Art. 72).

Beside constitutional provisions, regulations intended for protection of the family are also directly included in the family law, indirectly in the material civil law, in the civil procedure, in the labour law, in the material and procedural criminal law and in the criminal punishment law. Implementation of the constitutional principles of family protection also depends on regulations incorporated in several other normative acts, primarily in the field of tax, security or tenancy law.

The Family and Guardianship Code[8] is the fundamental legal act governing family relationships in Poland. Without going into details concerning the legal dimensions of family protection due to the limitations of space, suffice to say that the provisions of the Family and Guardianship Code govern such sensitive areas of family life as the issues concerning the contracting and annulment of a marriage, material relations between spouses, maintenance obligations, child origin, relationships between the families and children, institutions of adoption, care and guardianship. Family protection measures set forth in the provisions of the Family and Guardianship Code are based on such principles as: principle of the child's good (this is the dictate to be guided by the criterion of the best protection of the child's interests in activities of public and private institutions: social welfare, courts, administrative authorities, legislative bodies — Art. 56, 109, 114 of the Family and Guardianship Code); the principle of autonomy of the family in relation to external influence, including the state (nobody without a justified reason should interfere in family matters; the principle of the primacy of the family in rearing children; the principle of monogamy (marriage is a union of one man with one women); principle of the secular character of the family law (authority of state bodies to settle family cases); the principle of equality of spouses in their mutual relations and towards children; principle of durability of marital unions.

[8] The Family and Guardianship Code Act of 25 February 1964 (Dz.U. 1964 nr 9 poz. 59 z późn. zm.); hereinafter FGC.

As regards the civil law,[9] the following issues should be emphasised in the matter under discussion, among others, the provisions concerning minors in legal transactions and principles of inheritance law. The interest of the family is protected, among others, by statutory inheritance in cases when a last will is absent. By statute, the children and the spouse of the testators have priority entitlement to the inheritance (Art. 932—933 CC). In situations when the last will omits the family members, the law provides for a protective institution — legitim. Family members excluded from inheritance are then entitled to claim a sum of money specified in legal regulations from the inheritor (Art. 991 CC).

The civil procedure also includes regulations affecting the position of the family. The example here is statutory exemption from payment of court costs for persons applying for paternity proceedings,[10] as well as the possibility of appearing in these cases in the capacity of the plenipotentiary of the proper representative for the social welfare of the municipal authority, as well as the social organisation aimed at providing support to the family.

The Labour Code[11] upholds the interests of the family, in particular, through protection of motherhood and protection of women's health. The provision of Chapter VIII "Protection of women's work" (Art. 176—189 LC) specifies, among others, that pregnant women cannot be employed to do overtime work, night work, or be delegated to work outside of her usual workplace without her consent. The employer is obliged to transfer to another work position a woman employed to do the work prohibited to be performed by pregnant women, and in cases that the social health care institution establishes that, due to the condition of her pregnancy, she should not perform her previous work. The employer is obliged to release the pregnant employee from work to undergo medical checks recommended by the doctor and related to pregnancy. Additionally, the provisions of the Labour Code provide a guarantee to maternity leave by the employee and for granting a parental leave.

The family is also protected within the general terms of penal law. In this area, the state does not only aim at protection of significant attributes of the family, but also cares about a specific model of behaviours and an appropriate level of relations occurring within it. The Penal Code[12] contains such provisions that aim both at penal protection of

[9] The Civil Code Act of 23 April 1964 (Dz.U. 1964 nr 16 poz. 93 z późn. zm.); hereinafter CC.

[10] As set forth in Art. 96.1 and Art. 96.2 of the Court Costs in Civil Cases Act of 28 July 2005 (Dz.U. 2005 nr 167 poz. 1398).

[11] Act of 26 June 1974 (Dz.U. 1974 nr 24 poz. 141 z późn. zm.); hereinafter LC.

[12] Act of 2 June 1997 (Dz.U. 1997 nr 88 poz. 553); hereinafter PC.

the personal status of the family (prohibition of bigamy — Art. 206 PC, prohibition of organising adoption against the provisions of the act — Art. 211a PC), as well as protection of the procreation function of the family (penalization of termination of the pregnancy without the consent of the mother — Art. 153 PC, and with consent of the mother, but in violation of the Family Planning, Protection of the Human Foetus and Conditions for Permissibility of Abortion Act of 7 January 1993[13] — Art. 152 PC, defining the crime of infanticide during the delivery and under the influence of its course — Art. 149 PC), and the protection of the guardianship and upbringing function (the crime of abandoning a child under 15 years of age or a person who is helpless by reason of his mental or physical condition — Art. 210 PC, crime of abducting a child under 15 years of age — Art. 211 PC, crime of exposing a person under his care to an immediate danger of loss of life or a serious impairment of health — Art. 160 PC) as well as the protection of the functioning of the family (prohibition of abuse — Art. 207 PC, prohibition of incest — Art. 201 PC, prohibition of sexual abuse of children — Art. 197 § 3.2 PC, Art. 199 § 2 and 3 PC, Art. 200 PC, prohibition of using children in pornography — Art. 202 PC, prohibition of child prostitution — Art. 204 PC, prohibition of inducing a minor to drink alcoholic beverages — Art. 208 PC, penalisation of maintenance payment avoidance — Art. 209 PC).[14] Also (originally), the solutions adopted in the amended Act of 10 June 2010 are intended for increasing the efficiency of counteracting domestic violence.[15] By recognising that domestic violence breaches fundamental human rights, including the right to life and health and respect for personal dignity, while public authorities are obliged to ensure equal treatment to all citizens and respect for their rights and freedoms, the above-mentioned act is also aimed at initiating and supporting activities consisting in improving social awareness as regards causes and results of domestic violence.

The Code of Criminal Procedure[16] also contains provisions aimed at the protection of the family. This can be demonstrated by the existence of the right to refuse to testify, which the next of kin of the accused is entitled to (Art. 182 § 1 CCP), as well as the existence of the right to decline to answer a question if such an answer might expose the next of kin to liability for an offence or fiscal offence (Art. 183 § 1 CCP).

[13] Dz.U. 1993 nr 17 poz. 78 as amended.

[14] For more about the legal and penal protection of the family see S. Hypś: *Ochrona rodziny w polskim prawie karnym*. Lublin 2012.

[15] Dz.U. 2010 nr 125 poz. 842.

[16] The Code of Criminal Procedure Act of 6 June 1997 (Dz.U. nr 89 poz. 555); hereinafter CCP.

The concern of the legislator about maintaining family ties in case of separation caused by serving an imprisonment sentence can be found in regulations of the criminal punishment law. For the sake of illustration, the Executive Penal Code[17] in Art. 105 § 1 clearly provides that the convict should be allowed to maintain links first of all with the family and other close friends through visits, telephone calls, parcels and money orders, and in justified cases, upon a consent of the director of the penitentiary facility, also through other means of communication. Solutions adopted in the Act of 7 September 2007 on Serving a Custodial Sentence beyond the Penitentiary Facility in the System of Electronic Monitoring[18] are also aimed at maintaining the links with the family of the person sentenced for unconditional imprisonment. Pursuant to Art. 6.1 of this Act, the penitentiary court can allow the convict to serve a custodial sentence not longer than one year in a system of electronic monitoring.[19]

During the period of imprisonment of any of its members, the family can rely on the support of the state within the aid provided from the Post-penitentiary Assistance Fund.[20] Such an aid can be used by a family of an imprisoned person by no more than for three months as of the day of placing the convict in the penitentiary facility or in the remand centre. However, this period can be extended up to six months in case of particular circumstances, such as disease or temporary unfitness to work.

Apart from the *stricte* normative layer, the family is also the subject of care of the state in its economic and social dimensions.

The above-mentioned cash benefits in the form of allowances and relief can be granted to individual families obligatorily or discretionarily (through the social welfare system). Benefits in kind include material goods delivered to families (clothes, fuel, food, etc.), while benefits in the form of services are provided by various institutions. Those services are provided through social infrastructure, e.g. day nurseries, kindergartens, school common rooms, etc.[21]

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[17] The Executive Penal Code Act of 6 June 1997 (Dz.U. 1997 nr 90 poz. 557); hereinafter EPC.

[18] Consolidated text Dz.U. 2010 nr 142 poz. 960.

[19] Serving the sentence in this system requires the convict to stay in the flat established by the court as the place of serving the sentence, and can leave it only at precisely specified hours and in a precisely specified purpose, e.g. to perform work. The behaviour of the convict is supervised by the probation officer.

[20] Pursuant to Art. 43 of the EPC, the Post-penitentiary Assistance Fund is a state special purpose fund. It is managed by the Minister of Justice. Revenues of the Fund mainly consists of the funds originating from a deduction of 20% of remuneration that convicts are entitled to. The aim of the Fund is to aid the imprisoned persons released from penitentiary facilities and remand centres and their families.

[21] B. Balcerzak-Paradowska: "Polityka państwa wobec rodziny." In: *Polityka społeczna w latach 1994—1996*. Ed. S. Golinowska. Report of the Institute of Labour and Social Affairs 1996, No. 11, Warszawa 1996.

The following family policy instruments have been prevalent over the last 30 years:

— cash benefits in the form of allowances: allowances for a disabled child, childcare during the parental leave, single parent supplement, new school-year allowance, taking up learning by a child outside the place of residence, new-born allowance;
— funds making it possible to reconcile one's professional career with family life in the form of maternity leave and allowance, parental leave and allowance, guardianship allowance;
— tax credits consisting in joint taxation of spouses and single parents, tax exemption of family benefits;
— social services — mainly educational services and health care: state day nurseries, kindergartens, primary schools, junior secondary schools, educational and cultural facilities, special schools, post-primary schools, special education centres, state health care.[22]

Thus, the social character of family policy has been prevalent, expressed by focusing principal solutions on families living in difficult situations and at the risk of dysfunction.

Currently, the state perceives the need to conduct family policy which first of all would increase the birth rate in the Polish society. The pronatalist trend is clearly exposed, for instance, by the Governmental Population Council in "Assumptions for Poland's population policy in 2013." Pursuant to this study, the population policy in Poland should currently accomplish four fundamental aims: (1) create conditions favouring establishment of families, first of all through contracting marriages and realization of procreation plans; (2) create conditions favouring integration in the aging society — reducing the risk of exclusion of elderly, dependent and disabled people; (3) undertake actions aiming at improvement of the health condition of population and reducing the mortality rate; (4) specify directions and principles of migration policy of Poland in times of European integration.[23] With reference to the first of the enumerated aims, it should be emphasised that the following priority specified in point I.1.2 has been adopted: "Promotion of gender equality and social equality and striving for ensuring conditions for free choice of allocation of roles of

[22] After: G. Firlit-Fesnak, M. Szylko-Skoczny (eds.): *Polityka społeczna: podręcznik akademicki*. Warszawa 2008, pp. 196—197. For more on the issue of family policy in Poland in 1990—2004 see M. Szyszka: *Polityka rodzinna w Polsce 1990—2004*. Lublin 2008.

[23] For more on this issue, see Government Population Council, Assumption of Poland's population policy 2013 (project) (*Założenia polityki ludnościowej Polski 2013 (projekt)*), http://www.stat.gov.pl/cps/rde/xbcr/bip/BIP_zalozenia_polityki_ludnosciowej_Polski_2013_projekt_luty_2013.pdf (accessed 20.5.2013).

women and men in the family,"[24] including taking up activities aimed at reducing the stereotype concerning the allocation of roles in the family.[25]

However, family allowance remains one of the basic benefits for families with children,[26] the purpose of which is to aid the family with the costs of bringing up a child and to provide partial compensation in the form of the family tax credit,[27] as well as benefits from social welfare, which are directed at helping families in difficult situations. In this context, it should be noted that the doctrine has been emphasising for long that the care for the economic condition of Polish families should be a fundamental priority of the family policy. The poverty of families not only has an impact on the birth rate, but also directly and destructively affects the construction of the society, creating such negative phenomena as, among others, discrimination of children and youth resulting from unequal educational opportunities, preserving the inheritance of social impairment of parents, or the emergence of various family dysfunctions.[28]

Family policy, although it *expressis verbis* refers to the family, does not define this term. The definition of a family is one of the disputable issues in the literature, while the attempts to define the notion of a family depends on whether the subject of the analysis is the family in its legal-family model, the family in the social model, or the family in the pedagogical perspective. For example (taken from the extensive litera-

[24] Pursuant to the guidelines concerning accomplishment of tasks specified in the Commission Communication of 3 March 2010, entitled *Europe 2020: A strategy for smart, sustainable and inclusive growth* [COM(2010) 2020] a free choice of role allocation in the family is to be an element, among others, of actions aimed towards an increase in employment rate, reduction of poverty, focused on ensuring social cohesion and fight against social exclusion, but also a significant instrument in conditions of aging societies and implementation of the principle of solidarity between generations. Guidelines in this matter were provided, among others, in Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States [Official Journal L. of 24.11.2010].

[25] Government Population Council: *Assumptions of Poland's population policy…*

[26] The Family Benefits Act of 28 November 2003 (consolidated text: Dz.U. 2006 nr 139 poz. 992 z późn. zm.).

[27] It is a solution consisting in deducting a specific amount from the income tax for each child (after deducting health insurance premiums). The government introduced a very complex rule specifying the amount of this deduction. This is "an amount constituting 1/6 of the amount reducing the tax specified in the first rate band […] for each calendar month in which the taxpayer held power, function or provided care (to a minor child)." Consequently, the amount of the tax reduction changes every year. Reduction, both in nominal and real dimension, of the child allowance means a lower compensation of costs of their upbringing, therefore reduction of support for families bringing up children.

[28] See B. Balcerzak-Paradowska: "Ubóstwo rodzin w Polsce." In: *Współczesne rodziny polskie — ich stan i kierunek przemian*. Ed. Z. Tyszka. Poznań, 2004, p. 351.

ture), it should be indicated that according to Z. Zaborowski, a family is "an educational group, with parents bound by mutual relations and relations with children, having specific positions and roles to accomplish the norms and values that they recognize."[29] For B. Tobiasz-Adamczyk, a family is a group of persons bound by marriage, consanguinity, affinity or adoption links — in comparison to other social communities, it is distinguished by the intimacy of relations uniting its members and durability of emotional links.[30] In the opinion of M. Przetacznikowa, "a family is one of the most important primary groups, that is such that are characterised by close and direct contact of their members: they establish close emotional relations and are bound by permanent and personal links based on cooperation and solidarity."[31] Z. Tyszka points out to the fact that a family is considered, first of all, as a sociological category, creating a specific community, the members of which are bound by links of marriage, kinship, relation or adoption.[32] J. Rembowski, in turn, claims that a family is "a group which consists of a man and a women bound by marriage, their offspring (own or adopted) and in some cases of other persons, most frequently the closest relatives."[33] M. Ziemska, on the other hand, says that "a family is a small social group consisting primarily of spouses and their children. It constitutes an entirety, subject to dynamic transformations related to the course of life of individuals it is composed of. It is based on existing social traditions and develops on its own.[34] According to S. Kawula, a family is "a social group, in which the first ethical and moral forms, distinction between good and evil, classification of persons, objects and phenomena takes place."[35] In the opinion of M. Jurczak "a family is a basic educational unit, made up of spouses or spouses and children, and also the relatives of both spouses. A family plays a significant role in the society. Full equality of both spouses exists in the family. They should cooperate for its good and satisfaction of its needs. A particular obligation of spouses is to care for children and to raise them properly."[36]

Consequently, the notion of family itself is not — as results from the foregoing — a uniform term. It refers both to groups, which are composed only of parents and their children, as well as a broader group of persons

[29] J. Szczepański: *Elementarne pojęcia socjologii*. Warszawa 1963, p. 34.

[30] B. Tobiasz-Adamczyk: *Wybrane elementy socjologii zdrowia i choroby*. Kraków 1998, p. 68.

[31] The view provided in: J. Rembowski: *Rodzina w świetle psychologii*. Warszawa 1986, p. 91.

[32] Z. Tyszka: *Socjologia rodziny*. Warszawa 1976, p. 74.

[33] J. Rembowski: *Rodzina w świetle…*, p. 94.

[34] M. Ziemska: *Rodzina a osobowość*. Warszawa 1977, p. 28.

[35] S. Kawula: *Funkcja opiekuńcza współdziałania rodziny*. Białystok 1988, p. 147.

[36] M. Jurczak: *Leksykon. Wyrazy trudne, ważne i ciekawe*. Warszawa 1977, p. 59.

linked by descent from a common ancestor (blood ties) or bound by the common living "under one roof."[37] Sociology applies the term of a small (nuclear) family, including parents and their children, and an extended family including a broader circle of relatives, especially grandparents with independent siblings belonging to the common household.[38]

The literature of the subject is still dominated by the thesis that the foundation of the family, both from the sociological and legal perspectives, is a couple consisting of a man and a woman, and not a same-sex couple.[39] However, there are views that the traditional terminology nowadays has become too narrow to specify new social units, which are more and more frequently occurring (no legal bond relationships, e.g. cohabitation, the LAT type relationships, i.e. Living Apart Together — persons not living together, or DINKS, i.e. Double Income No Kids — childless pairs of separate incomes, or homosexual relations, sometimes also bringing up children); consequently, such definitions of a family are proposed that take into account the changing dynamics of this institution and the growing role of "family unions."[40] This broad perspective, treating a family as "universal social institution,"[41] describes a family as "strengthened in the tradition of all cultures, ritualized by a set of human actions directed at satisfying the needs of its members (mainly sexual, procreation and socialisation ones)[42] through which its understanding is not limited to the legalised union of a woman and a man by law.[43]

A legal definition of the notion of family does not exist in the effective legal order. The great majority of legal acts cover the family spouses, their common children, children of the other spouse, adopted children, foster children, children under the (legal) care, and sometimes other children brought up and maintained if their parents have died or cannot maintain them, or have been deprived of or restricted in their parental authority. Such an interpretative direction results from the regulations of the Family and the Guardianship Code (further FGC), in which the notion of family is based on the links of marriage, kinship or affinity. Pursuant to Art. 27

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[37] T. Smyczyński: *Prawo rodzinne i opiekuńcze* (*Family and Guardianship Law*). Warszawa 2005, p. 1.

[38] F. Adamski: *Socjologia małżeństwa i rodziny. Wprowadzenie*. Warszawa 1982, p. 19.

[39] B.M. Kałdon: "Rodzina jako instytucja społeczna w ujęciu interdyscyplinarnym." *Forum Pedagogiczne UKSW* 2011, no. 1.

[40] A. Matusik: *Polityka rodzinna w Polsce*. Available at: http://spolecznieodpowiedzialni.pl/files/file/p5wwcq2dewv2b7zu7irxaab4d3kom2.pdf (accessed 10 March 2013).

[41] T. Szlendak: *Socjologia rodziny: edukacja, historia, zróżnicowanie*. Warszawa 2010, p. 95.

[42] Ibidem.

[43] A. Matusik: *Polityka rodzinna…*

FGC, a family is established in a formalized way, as a result of a woman and a man contracting the marriage. Persons living in actual relationships (cohabitations) can exercise common parental authority over common minor children, but this type of relationship does not constitute a family in the meaning of FGC provisions.

However, the actual common life of a woman and a man following a formalized marital bond, can be considered a manifestation of a family life in other regulations effective in the Republic of Poland.[44] A broader concept of family is provided by the Tax Ordinance Act of 29 August 1997[45] and Art. 691 CC.[46] Certain legal acts can contain the notion of "the nearest, close member of a household" while this term — as a rule — is given a sense corresponding to the purposes of the act in which it is used. To interpret both the notion of family as well as a related term of "a member of household," the purposive interpretation is used in principle.[47] For instance, it should be indicated that a family according to the Social Welfare Act[48] (Art. 6.14) is understood as related or unrelated persons living in an actual relationship, living together and keeping a common household.

The issue concerning the notion of family in the light of the abovementioned Act on Counteracting Domestic Violence seems to be particularly interesting. The act under discussion, although it uses the term

[44] Thus A. Matusik: *Polityka rodzinna*…, after J. Ignatowicz, M. Nazar: *Prawo rodzinne*. Warszawa 2010, pp. 22—23.

[45] Dz.U. 1997 nr 137 poz. 926 as amended. K. Święch points out that the definition of family has not been formulated for the purposes of the tax law. The legislator formulates construction elements only for particular acts of detailed tax law, which directly or indirectly establish the legal position of the members of the family. However, it should be noticed that on the ground of regulations traditionally included into the matter of general tax law, namely the Tax Ordinance Act, the term "family" is used to specify the conditions governing liability for tax obligations of persons considered to be members of the family. Nevertheless, the universal definition of family that could be applied in the entire tax law system has not been defined. The members of family who are jointly and severally liable for the tax obligations, in accordance with the tax ordination provisions, also include persons actually living with the tax payer if other statutory premises of this liability are satisfied (K. Święch: *Pozycja rodziny w polskim prawie podatkowym*. Warszawa 2013, p. 16).

[46] Art. 691 § 1 provides as follows: In case the tenant of the housing unit dies, the tenancy relation is succeeded by: the spouse not being the joint tenant of the unit, children of the tenant and his/her spouse, other persons towards whom the tenant was obliged to provide maintenance, and the person remaining in *de facto* cohabitation with the tenant.

[47] See Judgement of the Supreme Court of 13 April 2005 IV CK 648/04, OSNCP 2006/3/54.

[48] The Social Welfare Act of 24 March 2004 (consolidated text: Dz.U. 2009, nr 175 poz. 1362 as amended).

"family" both in the title and in the text, also does not define this term.[49] In Art. 2.1, it is only indicated that whenever the act refers to a "member of the family," it should be understood as the next of kin in the meaning of Art. 115 § 11 of the Penal Code, as well as any other person cohabiting or managing a common household.

Pursuant to Art. 115 § 11 CCP, the next of kin is a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation as well as his spouse, and also a person actually living in cohabitation. Thus, in the light of indicated Art. 115 § 11 CCP, not all persons bound with blood ties are members of the family towards one another in the meaning provided above. This status will not be enjoyed by persons having relations in further branch lines (aunts, uncles, nieces, nephews, cousins), since they do not belong to the above-mentioned catalogue.[50] According to the above definition, the members of the family would be persons living in cohabitation, even if this cohabitation concerns persons of the same sex. In the said regulation, the legislator does not use the term being the Polish equivalent of "cohabitation" — that is *konkubinat* (in relation to which the Polish judicatory[51] and the doctrine[52] is still dominated by the view that this means a relationship between a man and a woman), but it applies a subjectively broader term. In the light of linguistic interpretationalism, there are no grounds to claim that cohabitation can only unify persons of different sex, which means that the term "cohabiting persons" also refers to cohabitation of homosexual couples.[53]

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[49] M. Tomkiewicz: "Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego — teoria i rzeczywistość." *Studia Warmińskie* 2012, no. 49, pp. 271—285.

[50] See e.g. Judgement of the Supreme Court of 5 February 1971, in case IV KR 253/70, LexPolonica nr 322409; Judgement of the Administrative Court in Kraków of 23 April 1992, in case II Akr. 37/92, KZS 1992 nr 3—9 poz. 54.

[51] See Judgement of the Supreme Court of 16 May 2000 in case IV CKN 32/00, OSNC 2000 nr 12 poz. 222; Judgement of the Supreme Court of 5 March 2003 in case III CZP 99/02, OSNC 2003 nr 12 poz. 159; Judgement of the Supreme Court of 12 January 2006 in case II CK 324/05, *Monitor Prawny* 2006 nr 4, p. 172.

[52] M. Nazar: "Konkubinat a małżeństwo — wybrane zagadnienia." In: *Księga jubileuszowa Prof. dr hab. Tadeusza Smyczyńskiego*. Ed. M. Andrzejewski. Toruń 2008, pp. 219—237; T. Smyczyński: "Czy potrzebna jest regulacja prawna pożycia konkubenckiego (heteroseksualnego i homoseksualnego." In: *Prawo rodzinne w Polsce i w Europie. Zagadnienia wybrane*. Lublin 2005, pp. 462—467.

[53] The thesis that "cohabitation" can also apply to the common life of homosexual pairs, and consequently that persons remaining in relations of this type have the status of the next of kin can be found, e.g. in: S. Spurek: *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz*. Warszawa 2008, p. 62; J. Majewski: "Komentarz do art. 115 § 11 k.k." In: *Kodeks karny. Część ogólna. Komentarz*. Vol. I. Ed. A. Zoll. Kraków 2004, pp. 1437—1447; M. Kulik: "Komentarz do art. 115 § 11 k.k." In: *Kodeks karny. Komen-*

While referring to the term "persons living under the same roof or managing a common household," it can be easily noted that this wording is highly imprecise. First of all, replacing the conjunction "and" with "or" means that also persons who only live together (without managing a common household) or who only manage a common household without living together will be a member of the family for each other.[54] Undoubtedly, the intention of the government redaction of the above-mentioned Art. 2.1 was to cover by the said protection a wide circle of persons who did not fit the definition of the next of kin included in Art. 115 § 11 of the Penal Code, and who often fell victim to domestic violence which, above all, concerned divorced spouses living under one roof, or members of the cohabitant families living with them. However, the provision specifying that members of the family are also persons living under the same roof or managing a common household leads to a conclusion that is absurd in its significance, namely, that a group of students living together in a rented flat should be also considered members of a family,[55] as well as any lodgers in a family home.[56]

The subject matter of a family makes an important part of the social policy, and currently it is difficult to imagine a modern, democratic state which does not have a policy towards such a significant social unit as the family. In this context, as well as in the light of comments presented above, it would appear that family policy in Poland meets the standards specified in Art. 9 of the Charter of the Rights of the Family presented by the Holy See in 1983. Pursuant to its contents, families have the right to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever.

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tarz praktyczny. Ed. M. Mozgawa. Warszawa 2010, pp. 232—233; J. Giezek: "Komentarz do art. 115 § 11 k.k." In: *Kodeks karny. Część ogólna. Komentarz*. Ed. J. Giezek. Warszawa 2007; *Kodeks karny. Część ogólna. Komentarz*. Ed. J. Giezek. Warszawa 2007, pp. 730—735; A. Marek: *Kodeks karny. Komentarz*. Warsaw 2007, pp. 316—317; A. Michalska-Warias: "Komentarz do art. 115 § 11 k.k." In: *Kodeks Karny. Komentarz*. Ed. T. Bojarski. Warszawa 2011, pp. 222—225.

[54] During legislative works concerning the Act on Counteracting Domestic Violence in its reading of 2005, representatives of the government expressed doubts whether it would be possible that given persons only managed a common household without living together, but these doubts did not affect the final version of the article under discussion (see shorthand notes of the meeting of the Commission of Social Policy and Family and the Commission of Justice and Human Rights of 29 June 2005. In: Archive of the works of Sejm of the Republic of Poland of 4th term of office, www.sejm.gov.pl).

[55] K. Dudka: "Środki zapobiegawcze stosowane wobec sprawców przemocy w rodzinie." WPP 2006, no. 2, pp. 44ff.

[56] M. Tomkiewicz: *Bezpieczeństwo rodziny…*, p. 278.

a) Families have the right to economic conditions which assure them a standard of living appropriate to their dignity and full development. They should not be impeded from acquiring and maintaining private possessions which would favour stable family life; the laws concerning inheritance or transmission of property must respect the needs and rights of family members.
b) Families have the right to measures in the social domain which take into account their needs, especially in the event of the premature death of one or both parents, of the abandonment of one of the spouses, of accident, or sickness or invalidity, in the case of unemployment, or whenever the family has to bear extra burdens on behalf of its members for reasons of old age, physical or mental handicaps or the education of children.
c) The elderly have the right to find within their own family or, when this is not possible, in suitable institutions, an environment which will enable them to live their later years of life in serenity while pursuing those activities which are compatible with their age and which enable them to participate in social life.
d) The rights and necessities of the family, and especially the value of family unity, must be taken into consideration in penal legislation and policy, in such a way that a detainee remains in contact with his or her family and that the family is adequately sustained during the period of detention.

However, after analysing the provisions of the Charter of the Rights of the Family and solutions adopted in the contemporary family policy carried out by the state, it should be concluded that it is the problem of the subjectivity of the family that makes them substantially different. According to the Charter of the Rights of the Family, the subject of the family policy should be the family as a whole, and not its individual members. Such subjectivity of the family is difficult to be found either in principles or in specific normative regulations of the Polish family policy.

The family does not occur as a subject on a legal plane. The thesis prevailing in the doctrine is that law — particularly criminal law — only protects individual rights of people forming a family, and not a family understood as a community. In the opinion of H. Waśkiewicz, a family does not have existence that would be independent of specific persons living in this family.[57] Also, A. Grzejdziak voices his opinion in a similar spirit. According to him, "although, undoubtedly, a family constitutes an organised social entity, legal regulations do not grant it a legal status.

[57] See H. Waśkiewicz: "Prawa człowieka a prawa rodziny." *Chrześcijanin w świecie* 1985, no. 139, p. 52

It is family members who are the subject of legal relationships, and not the family as an organised entity."[58]

The existing state of affairs somehow "blurs" the traditional, culturally and historically conditioned concept of family, introducing, implicitly, its "mental redefinition." Behind the facade of supporting the family, various forms of mutual coexistence are more and more intentionally protected, including — pursuant to the gender perspective of LGBT movement — same-sex relationships.

For that reason, the current family policy is not a policy that would perceive the family in a comprehensive perspective and would be used for full protection of all aspects of the family life. Consequently, it should be explicitly declared that the family should be treated as an autonomous community, stressing at the same time its unique character based on marriage between a woman and a man, which cannot be replaced by any other interpersonal relations. Thus, the family, although it is of a social value with an established constitutional position, is not a subject of state protection and support adequate for this position.

The central point of the contemporary axiology of law — and consequently, the family policy — should include protection of the individual goods of any given person, accompanied by the protection of the family as a subject with its own, autonomous rights, which are not only a sum of rights of individual persons making up the family.[59]

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[58] A. Grzejdziak: "Prawo do wychowania w rodzinie." In: *Prawa i wolności obywatelskie w Konstytucji RP*. Eds. B. Banaszak, A. Preisner. Warszawa 2002, p. 464.

[59] S. Hypś: *Family protection*…, p. 267.

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Małgorzata Tomkiewicz

Protection of the Family in the Family Policy of the State: Legal, Social and Economic Aspects

Summary

The article concerns the subject matter of contemporary family policy in Poland, analysed in the context of Art. 9 of the Charter of the Rights of the Family. It contains a synthetic analysis of legal regulations, the subject of which is the broadly understood protection of the family, as well as indicates other measures through which the state will achieve the assumed objectives of this policy.

It demonstrates that although *prima facie* it would appear that the family policy in Poland accomplishes standards specified in the quoted standard of the Charter of the Rights of the Family, there are significant differences between these matters. According to the Charter of the Rights of the Family, the subject of the family policy should be the family as a whole. However, it is not treated in this way by the Polish state. The family is not a subject on a legal plane, and subjectivity of the family can hardly be found either in the assumptions or in specific normative regulations of the Polish family policy. The existing state of affairs leads to certain "blurring" of the traditional, culturally and historically conditioned concept of the family, introducing, implicitly, its "mental redefinition." Behind the facade of providing support for the family, various forms of common coexistence have started to enjoy increasingly more open protection, including — pursuant to the gender perspective of LGBT movement — same-sex relationships.

This publication advances the thesis that the current family policy is not a policy that perceives the family in a comprehensive perspective or could be used for full protection of the entire family life. Consequently, one must explicitly opt for treating a family as an autonomous community, stressing at the same time its unique nature, based on the marriage between a woman and a man, which cannot be replaced by any other interpersonal relationships.

The central point of the contemporary axiology of law — and consequently, family policy — should be the protection of individual goods: the protection of individual goods of any given person, accompanied by the protection of a family as a subject with its own, autonomous rights, which are not only a sum of rights of individual persons making up a family.

Małgorzata Tomkiewicz

Famille en tant que sujet de protection dans la politique familiale polonaise Aspect juridique, social et économique

Résumé

L'article aborde la problématique de la politique familiale contemporaine en Pologne analysée dans le contexte de l'article 9 de la Charte des droits de la famille. Il contient une analyse synthétique des solutions légales dont le sujet est, au sens large du mot, la

protection de la famille, et il présente d'autres moyens à l'aide desquels l'État réalise les buts fixés de cette politique.

Quoiqu'il paraisse que la politique familiale en Pologne réalise les standards définis dans la norme mentionnée de la Charte des droits de la famille, l'article dénote qu'il existe des différences fondamentales dans ces deux matières. Suivant la Charte des droits de la famille, le sujet de la politique familiale devrait être la famille en tant qu'un tout. Cependant, elle n'est pas traitée de cette façon par l'État polonais. La famille ne figure pas comme le sujet sur la surface juridique, et il est difficile de trouver une telle subjectivité de la famille aussi bien dans les principes que dans les réglementations normatives concrètes de la politique familiale polonaise. Un tel état de choses aboutit à une certaine « dilution » de la conception d'une famille traditionnelle, conditionnée culturellement et historiquement tout en introduisant sa redéfinition « mentale » d'une façon entendue. En se servant du nom du soutien à la famille, on protège avec de plus en plus d'assurance différentes formes de coexistence, y inclus — conformément à l'optique genriste du mouvement LGBT — les unions monosexuelles.

La publication avance la thèse que la politique familiale contemporaine n'est pas une politique qui apercevrait la famille d'une façon globale et qui assurerait une protection complète de tous les aspects de la vie familiale. En l'occurrence, il faut se déclarer pour le traitement de la famille comme une communauté autonome ayant ses propres droits, tout en soulignant qu'il s'agit d'une communauté unique dans son genre basant sur le mariage d'une femme et d'un homme et ne pouvant pas être remplacée par d'autres unions interpersonnelles.

Il faut qu'au centre de l'axiologie juridique contemporaine — et ce qui s'ensuit, aussi de la politique familiale — soit placée, à côté de la protection des biens individuels de chaque homme, la protection de la famille en tant que sujet de ses propres droits autonomes qui ne sont pas uniquement une somme des droits individuels des personnes qui la constituent.

Mots clés: famille, politique familiale, droit familial, prestations familiales, protection juridique de la famille

Małgorzata Tomkiewicz

La famiglia come soggetto di tutela nella politica familiare polacca: aspetto legale, sociale ed economico

Sommario

L'articolo riguarda la problematica della politica familiare contemporanea in Polonia, analizzata nel contesto dell'art. 9 della Carta dei Diritti della Famiglia. Contiene l'analisi sintetica delle norme giuridiche il cui oggetto è la tutela della famiglia nella sua concezione ampia ed introduce altre forme di mezzi con i quali lo stato realizza gli obiettivi prefissati di tale politica.

Indica che, sebbene *prima facie* potrebbe sembrare che la politica familiare in Polonia realizzi gli standard specificati nella norma menzionata della Carta dei Diritti della Famiglia, invece in entrambi i materiali sono presenti differenze sostanziali. Secondo la Carta dei Diritti della Famiglia l'oggetto della politica familiare dovrebbe essere la famiglia nel suo complesso. Tuttavia non è trattata in tal modo dallo stato polacco.

La famiglia non è un soggetto sul piano giuridico e tale soggettività della famiglia è difficile da trovare sia nelle premesse, sia nei regolamenti normativi concreti della politica familiare polacca. Una situazione simile porta ad un certo "offuscamento" della concezione tradizionale, condizionata culturalmente e storicamente, della famiglia introducendo implicitamente la sua ridefinizione "mentale". Sotto la facciata dell'aiuto alla famiglia vengono difese sempre più audacemente molteplici forme di coesistenza comune, tra cui anche — secondo l'ottica gender del movimento LGBT — i legami di due persone dello stesso sesso.

La pubblicazione presenta la tesi secondo la quale la politica familiare attuale non è una politica che scorge la famiglia nel suo complesso e che servirebbe alla tutela piena di tutti gli aspetti della vita familiare. Pertanto occorre esprimersi esplicitamente in favore del trattamento della famiglia come comunità autonoma che ha i suoi diritti, sottolineando nel contempo che è una comunità unica nel suo genere, basata sul matrimonio di una donna e di un uomo, che non può essere sostituita da nessun altro legame interpersonale.

Il punto centrale dell'assiologia contemporanea del diritto — e quindi anche della politica familiare — accanto alla tutela dei beni individuali di ciascun uomo, dovrebbe essere la tutela della famiglia come soggetto dei propri diritti autonomi che non sono unicamente la somma dei diritti singoli delle persone che la creano.

Parole chiave: famiglia, politica familiare, diritto familiare, oneri familiari, tutela giuridica della famiglia

Ecumeny and Law, vol. 2 (2014)
pp. 247—267

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The Christian Family in the Light of the Nomocanonical Legislation Printed in Romanian Language in the 17th Century

Keywords: the Nomocanon, canonical legislation, marriage, family

In the Preface to the Nomocanon of Govora, Meletius the Macedonian, the abbot of the Govora Monastery (in the then Romanian country, today's Romania), wanted to make more precise that "the divine Nomocanons do not leave the incompetent ones [uneducated] as pagans [the unknowing ones — the author's note], and that the respective clergyman, who "will keep firm and with judgment and with agreement the teachings of the Church," will save both "himself" and "those who will listen to him."[1] Therefore, in the view of a theologian and canonist Meletius the Macedonian (a Romanian to the south of Danube river) who has drew up and printed this Nomocanon, the very act of Salvation — personal and collective — is conditioned by the guarding and the proper confessing the teaching of the Orthodox faith, to which the Nomocanons were bringing a considerable contribution.

According to the testimony left by the Nomocanon of Govora, "in conformity with God's teaching […] no one [should] defeat the priest" as far as the knowledge and the confessing of the teaching of Orthodox faith

[1] Meletius the Macedonian: Preface to all the leaders of the Holy Church — *Pravila bisericească de la Govora* (*The Nomocanon from Govora*), diortosită de pr. Gh. I. Petre-Govora, Casa de Presă şi Editură Tribuna, Rm. Vâlcea 2004, p. 15.

is concerned. "And of the simple men [unlearned as far as the theology is concerned], neither the boyars, nor the low ones [the ordinary men], should conquer [overcome] the priest, in order for the unenlightened ones to be raised to the light [by the priest]."[2] Thus, the priest was required both in matters of Orthodox faith and as far as the canonical and nomocanonical legislation and doctrine was concerned, to be "the light of the world," that is, a teacher, the marriage and the Christian family which results from it included.

As far as the Christian teaching on the unity and indissolubility of the spouses resulting from the Matrimony is concerned, the Nomocanon stressed that "the woman has no power over her body. Likewise, the husband has no power over his body […]. Since they both are a body, because that which was united by God, the man should not divide. Therefore, division [separation, i.e. divorce] should not be at all between the husband and the woman."[3]

But, what also has to be mentioned is the fact that the Nomocanon of Govora — which is in fact a nomocanon with articulated ascetic-monastic content — accepts the second marriage, but prevents the priest from "going to the wedding reception when the second marriage is performed [so]. If he will go to bless them at the church, he shall not go to their houses, to that second marriage."[4]

The Nomocanon of Govora vehemently condemns the rigorism of the old times Novations (Cathars), who were condemned by the Fathers of the First Ecumenical Synod (in accordance with canon 8): "The one who is disgusted by the Marriage to get married, or the second woman with her husband, or the second husband with his woman, and if someone will say that they are not competent […] let them be anathema some like them" — the Nomocanon concluded.[5] Also, in conformity with the words of the Govora Nomocanon, "the woman, if she leaves her husband, if she hates to mate with her husband, but she wishes to behave as a prostitute, let him be anathema. The woman, if she does not obey her husband and does not behave as he wants, as the Apostle [Paul] speaks, let her be anathema."[6] Most certainly, these excerpts from the text of the Nomocanon of Govora are illustrative as far as the view of its makers on Marriage and, as a consequence, on the relation between the two sexes (husband and wife) is concerned.

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[2] *Pravila bisericească de la Govora* (*The Nomocanon from Govora*)..., p. 20.
[3] Ibidem, p. 25.
[4] Ibidem, p. 60.
[5] Ibidem, p. 63.
[6] Ibidem, p. 65.

We also find in the Nomocanon of Govora the teaching concerning the "mixed marriages,[7] that is the marriages contracted between Christians and non-Christians and vice-versa. In accordance with the Nomocanon, "it ill behoves the faithful Christian to marry the non-Christians, and if this will happen, anyhow, the Apostle Paul speaks about this that the unbelieving woman is saved by her faithful husband and the unbelieving husband by the faithful woman. Therefore — the Nomocanon concludes — it is not proper to separate them," but "the faithful husband [must pray] for his unbelieving woman […] until God will bring her back into the true faith, likewise, the faithful woman for her unbelieving husband."[8]

As it may be noticed, the Nomocanon duplicates almost word for word the text of the First Epistle to the Corinthians, chapter 7, verses 12—14, where we are told that "if any brother has a wife who does not believe, and she is willing to live with him, let him not divorce her. And a woman who has a husband, who does not believe, if he is willing to live with her, let her not divorce him. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband; otherwise your children would be unclean, but now they are holy."

The enunciated principles by the Pauline text concerning the mixed marriages which in fact are also asserted by the canonical legislation from the first millennium (in conformity with can. 14 of the Fourth Ecumenical Council; 72 of the Synod in Trullo; 10, 31 of Laodicea; 21 of Carthage) are, thus, reasserted by the text of the nomocanonical legislation printed in Romanian language in the 17th century.

In the text of the three Nomocanons printed in the Romanian language, a special place is occupied by the Impediments to Marriage, and this reality proves the fact that those who prepared the Nomocanons were aware not only of the importance of knowing and respecting them, but also by the consequences of lack of respect toward them for the children born of a wedding of whose parents have ignored their kinship relationships and, by the fact itself, the kinship degrees and the impediments to marriage.

Among other things, the Nomocanon of Govora also demanded, the parents "to raise their sons in the fear of God," and to advise them to pay respect to the impediments to marriage, since those from the same kinship degrees should "avoid to marry among themselves, up until the fourth degree of kinship. And if possible even in the fifth one, they should not marry amongst their cousins, because they are mixed blood."[9] There-

[7] See, N.V. Dură: "The Mixed Marriages in the light of the Orthodox canonical teaching and practice." *Ortodoxia* XL (1988), no. 1, pp. 92—113.

[8] *The Nomocanon from Govora*…, pp. 72—73.

[9] Ibidem, p. 26.

fore, in accordance with the Nomocanon of Govora, consanguinity produced an impediment to marriage up until the fourth degree (the first-degree cousins), but even the fifth degree was considered an impediment (the second-degree cousins).

On the three kinships: physical (resulted from giving birth and becoming an in-law), religious or spiritual (resulting from assisting as godparent at the baptism and at the matrimony ceremony), and the moral one (resulting from the religious betrothal ceremony, adoption or affiliation act or guardianship act), the Nomocanon of Govora provided that "among them marriage should not take place,"[10] that is, the administering of the Holy Wedding was forbidden to the persons in a prohibited kinship degree, which has resulted from the three kinds of kinships (physical, religious and moral). But, we find this kind of prohibitions in some of the Byzantine nomocanons, as well as, for instance, the one written and printed by Matthew Vlastares in the year 1335, and which also was widely used in the Romanian countries, as it is in fact confirmed by the Nomocanon of Govora. Of course, these kinship degrees and impediments provided by this nomocanon peremptorily attest to the truth that its writers have closely followed the Nomocanon of Matthew Vlastares.

In the Romanian nomocanons from the 17th century we find the same kinds of kinship provided by the canonical ecumenical legislation of the first millennium,[11] yet their classification differs. For instance, in accordance with the Nomocanon of Târgovişte, the kinship is divided "into five rows: first is the blood one. The second is by becoming related as in-laws, that is of two families. The third is of the third relation, which is to become related as in-laws of three families. The fourth is of the Holy Baptism. The fifth is about the spiritual sons, that is the child he takes without him understanding the holy prayers and becomes truly his son as much as are his children" (The Straightening of the Law = SL, rule 190).[12] Consequently, the Great Nomocanon distinguishes five kinds of kinships.

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[10] Ibidem, p. 84

[11] That is, the blood kinship (natural), religious and moral kinship. For the blood kinship, see the following canons: 19 Apostolic, 54 in Trullo, 75 and 87 of St. Basil the Great, 11 of St. Timothy of Alexandria, etc. For the religious (spiritual) kinship, see the canons: 31, 53, 59, 78, 88 and 95 of the Synod in Trullo, 1, 47, 91 of St. Basil the Great. For the moral kinship, see the canons: 98 of the Synod in Trulo, 22 of St. John the Faster, etc.

[12] In some texts of the Great Nomocanon, in the marginal notes there appear the words: "to Matthew" (*Îndreptarea Legii* — hereinafter: The Straightening of the Law (SL)). Ed. Pelerinul român, Oradea 2002, pp. 1082—1083. In our opinion, these words come to indubitably confirm the fact that the writers of the Nomocanon of Matei Basarab have had as the main source the Syntagma of Matthew Vlastares, which has also made more precise the canonical doctrine concerning the kinship.

According to the Roman law definition, *Nuptiae sunt conjuctio maris et feminae consortium omnis vitae, divini et humani juris communication*[13] (Marriages are the connections between a man and a woman, a unity for the whole life, a mutual participation in the divine and human law). This definition of the famous Roman jurisconsult Modestin (2nd century AD) on the "matrimony" was in fact adopted by the Byzantine jurists and canonists who have assertedt hat this is the "relation (συνάφεια) between a man and a woman and the community (συγκλήρωσις) of the whole life,"[14] but by adding the clarification that it isa "Holy Mystery" instituted by our Saviour Jesus Christ at the wedding from Cana in Galilee (in accordance with the Gospel of John, chapter II).

Yet, we find the contents of the definition given by Modestin (II ec.) even in the text of the canon 1055 of the Code of Canon Law published in 1983. According to this canon, "a man and a woman establish between themselves a partnership of the whole life [*totius vitae consortium*]" by *matrimoniale foedus* (the matrimonial covenant) which "is ordered by its nature [*sua naturali*] to the good of the spouses and the procreation and education of offspring." The same canon mentions that this *matrimonial foedus* "has been raised by Christ the Lord to the dignity of a Sacrament (*ad Sacramenti dignitatem*) between the baptized." And the canon adds that "for this reason, a valid matrimonial contract [*matrimonialis contractus validus*] cannot exist between the baptized without it being by the fact a Sacrament" (can. 1055).[15] But, as a canonist of the Catholic Church pointed out, until now the theologians and the canonist of the Latin Church "failed to resolve a troubling problem resulting from the Church's teaching, enshrined in canon 1055 § 2, that the marital contract and the marital sacrament are inseparable in the marriages of the baptized. If the total absence of faith in one or both parties to a marriage prevents them from entering a sacramental marriage, it also prevents them from entering into a valid marriage."[16]

The Great Nomocanon printed in Târgovişte, the capital of the Romanian country, in the year 1652 — which took over Modestin's definition from the Byzantine jurists and canonists defined the marriage as the mating a husband and of a woman, "that is involvement, or involvement and

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[13] Modestin, lib. I, reg. (I, I Dig. de ritu nupt. 23, 2), apud N. Milaş: *Dreptul bisericesc oriental*. Trans. D.I. Cornilescu şi V.S. Radu. revised by I. Mihălcescu. Bucureşti 1915, p. 473.

[14] Apud L.P. Marcu: "Dreptul familiei." In: *Istoria Dreptului romanesc*. Vol. I. Bucureşti 1980, p. 505.

[15] Apud Codex Juris Canonici, Libreria Editrice Vaticana, 1989.

[16] J.P. Beall: "Commentary of the Canon 1055." In: *New Commentary of the Code of Canon Law*. Eds. J.P. Beall et al. New York 2000, p. 1248.

inheritance for their whole life, and for the righteous man drawing near to God" (SL, rule 203). But, as it may be noticed, the only new element brought into the Nomocanon's definition is the clarification of the relation between the right man and God, which is in complete agreement with the spirit of the Orthodox Christian teaching. In other words, we may say that the definition of marriage — given by the Roman and Byzantine jurists — was fully Christianized.

In fact, the same Nomocanon continued to make more precise that "the marriages acknowledged as legal are those which are contracted according to the divine Nomocanons; the husband should be in accordance with the law and the woman acceptable for the husband, that is the young man to be over 14 years of age and the young lady to be over 12 years of age" (SL, rule 203).

In the same vein, based on the provisions written down in the Straightening of the Law, that is in the Great Nomocanon, only the marriages entered into in conformity with the dispositions provided by the nomocanons, which for writers of the Great Nomocanon have a divine character — are legal, that is, in conformity with the "law."

Regarding the canonical age for marriage — 14 years for husbands and at least 12 years for the female — the Great Nomocanon did not do anything else but repeat the provisions of the alphabetical Syntagma of Matthew Vlastares. As a matter of fact, in the marginal note to the rule 203 from the Nomocanon of Târgovişte, the name Matthew is mentioned, which is no other than Matthew Vlastares, whose alphabetical Syntagma was employed also by the writers of the Great Nomocanon.

The Christian religious marriage — that is the Wedding Mystery — was always preceded by the entering into the religious engagement, which also born the juridical-canonical consequences. Thus, the fiancé could "complain to the judge […] against the one who would have sworn […] his fiancée, and even for the oath of an engaged daughter he may complain to the judge against her father and her fiancé and even against his father-in-law, as long as her oath, that is of the daughter, passes to all others, and maybe each one of these men of the daughter, one by one, may go to complain at the judge and to admonish the curser, and this one to understand when will be the curser to know all of them and how she is engaged" (The Romanian Teaching Book = RTB, chapter 46, 7).[17] Consequently, in accordance with the Nomocanon of Vasile Lupu, not only her fiancé, but also her father and her father-in-law, could complain to the "judge" against the defiling or offenses brought against his fiancée by

[17] *Cartea Românească de învățătură* (The Romanian Teaching Book, hereinafter: RTB), 1646. Bucureşti 1961, p. 154.

a "curser" who should have been "reproved," that is, punished, but on the condition that this one would have known that she was engaged.

Based on the canon 14 of the Fourth Ecumenical Synod — which prohibited those from the class of the clergy (inferior and superior) "to marry a heterodox woman" and their children to marry "a heretic […], except for the case that a person who wants to become a relative (through marriage) with the Orthodox one has promised to convert to the Orthodox Faith" — the Nomocanons also have maintained the different religious faith as an impediment to marriage. But, even though at that time were not allowed the marriages between the faithful belonging to diverse Christian denominations,[18] but only the marriages between Orthodox and heterodox or non-Christians, which, according to can. 14 of the Fourth Ecumenical Synod (at Chalcedon, 451), were "the heretic," "the Jews" (sic!) and "the pagan," however, the repetition — even a partial one — of this canon of the Ecumenical Synod's text remains a proving testimony for the fact that such marriages also have taken place in the Romanian countries in the 17th century. But this reality fully attests to the spirit of great religious tolerance[19] which was animating the Romanians of the time, who were educated in the humanist-Christian spirit,[20] the biblical and patristic origin, which was asserted in olden times — at the European level — by the exponents of the older times Romanians, such as, for instance, St. John Casian[21] (+435) and Dionysius Exiguus[22] (+545), the father of the canon law of the first Christian millennium.

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[18] On this kind of marriages — which are also a part and parcel of the "mixed marriages" — see N.V. Dură: *The mixed marriages…*, pp. 92—113.

[19] See I.V. Dură: "La tolerance religieuse en Valachie et en Moldavie pendant la seconde moitie du XVIIe siecle." *Irenikon* LVII (1984), 1, pp. 52—58; 2, pp. 176—195.

[20] See, N.V. Dură: *Valorile religios-creştine şi 'moştenirea culturală, religioasă şi umanistă a Europei." "Laicitate" şi "libertate religioasă."* Ed. Vasiliana '98, Iaşi 2005, pp. 19—35; Idem: "Christianity in Pontic Dacia. The 'Scythian Monks' (Daco-Roman) and their Contribution to the Advance of Ecumenical Unity and the Development of the European Christian Humanist Culture." *Revue Roumaine d'Histoire* (1—4) 2003, pp. 5—18.

[21] See C. Mititelu: "Saint John Casian the Founder of Occidental Monasticism." *Christian Researches* VI (2011), pp. 32—49.

[22] See in details the works of Professor Rev. Nicolae V. Dură: "Strămânul Dionisie Exiguul şi opera sa canonică. O evaluare canonică a contribuţiei sale la dezvoltarea Dreptului bisericesc." *Ortodoxia* XLI (1989), 4, pp. 37—61; Idem: "Un daco-roman, Dionisie Exiguul, părintele dreptului bisericesc apusean" *Studii Teologice* XLIII (1991), 5—6, pp. 84—90; Idem: "Denis Exiguus (Le Petit) (465—545). Precisions et correctifs concernant sa vie et son oevre." *Revista Espanola de Derecho Canonico* L (1993), pp. 279—290; Idem: "Dionisie Exiguul şi Papii Romei." *Biserica Ortodoxă Română* CXXI (2003), 7—12, pp. 459—468.

Among other things, the Nomocanon of Vasile Lupu prohibited the adopter to marry the adopted daughter, arguing that "it is a Nomocanon that neither this one nor his son might marry the one they have nourished and have raised now" (RTB, rule 42, 11). Thus, the Nomocanon was allowing neither the one who has adopted nor his son to marry the adopted daughter, by considering that they were within a degree of moral kinship, which was an impediment to marriage. But, it may also be learned from this interdiction that the writers of the Nomocanon mentioned the same impediments to Marriage, on the grounds of adoption, which had also been provided by the nomocanonical (Byzantine) legislation,[23] according to which "the legally adopted one enters with her adopting father into the same kinship relation as the one given to her by her blood relatives."[24]

The Great Nomocanon mentions as well a family relationship which established "that catching of brotherhood," that is of the "family relationship equal to the one which is founded by the act of being born from the same mother."[25] In the south-east European Orthodox space, this kind of family relationship was known as "cross brotherhood,"[26] and it had — similarly to adoption — a character of moral kinship. This "cross brotherhood," which was born or was established "between two individuals who belonged to the same sex and with no family relationship among them," have been blessed by the Church and it enjoyed a certain divine service.

The Great Nomocanon, which has categorically prohibited both the practice and the order of the ritual of the "blood brotherhood," recounts to us that this was done by oath taken "on the Holy Gospel, and many time with priestly prayers," in order for the adherents to become "fully brothers in the Holy Church, and after that […] they were leaving the brotherhood […] and were getting married and they were getting united into wedding […]. That is why, seeing that the divine Fathers considered that it is a dishonest thing and as it is not proper to be done, they have cut off this practice and prohibited it. Therefore, as the writers of the Great Nomocanon made more precise — they have mended and have ordered that […] catching into brotherhood to be prohibited, and if they will come to do it, then it should be considered untrue, as if it had been never done, it has to be counted as this […]. But as many as are making

[23] Cf. Basilicale, XXVIII, 4, 24; 5, 8; M. Vlastares: *Sintagma Alfabetică*. B, 8 (published in the *Athenian Syntagma*, vol. VI, p. 136).

[24] N. Milaş: *Dreptul bisericesc oriental…*, p. 507.

[25] I.N. Floca: *Drept canonic orthodox. Legislaţie şi administraţie bisericească*. Vol. II. Bucureşti 1990, p. 80.

[26] Ibidem, p. 81.

them brothers nowadays, let them undergo penance, and the priest who will read prayers for them, if they catch them, let him be punished [sic] by defrocking" (rule 210).

Accordingly, those who were going on to doing that "catching of brothers" or "cross brotherhood" were harshly punished, but the Nomocanon does not make more precise how they were punished and by what kind of punishments. On the other hand, it is made more precise that the priest who accepts to read the customary prayers for that religious ritual were deprived the grace of priesthood, that is defrocked.[27]

The Nomocanon of Vasile Lupu prohibited the "kidnapper" to get married with the "kidnapped daughter," since "the wedding done after the kidnapping is not good at all, it is a thing which is as if it was not done, […] and if he has kidnapped and married her, that wedding is not good at all, since he will be reproved as a kidnapper" (RTB, rule 32, 9 and 11). The marriage entered into after the act of kidnapping was illegal, and the kidnapper was punished by the Nomocanon with the capital punishment, since "the only punishment for the kidnappers — as the Nomocanon provides — is death" (rule 32, 2).[28]

We find out from the Matei Basarab's Nomocanon that marriage between individuals found on different social positions was prohibited. For instance, "slaves might not marry their masters" (SL, rule 199). Likewise, "neither the prince's officer nor his son might marry the poor one whose master he is, up until his function will cease," and "neither the fiddler, who plays the violin or the lute in the market place and at the wedding might marry the daughter of a good man or of the boyar, since this kind of men are the mockery of God and men" (SL, rule 200).[29] Of course, these interdictions properly render the mentality of the epoch not only as far as the categories and the social positions are concerned, but also of some professions, such as the one of bandsman or fiddler, considered to be unworthy before God and men. And, unfortunately, some reminiscences of this mentality seem to be residual up until today.

The Nomocanons from the 17th century[30] — printed in the Romanian language — provided some dispositions regarding the dowry of the

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[27] Concerning the punishment of defrocking, see in great details at N.V. Dură: "Clarifications concerning some notions of the Canon Law." Part I. *Ortodoxia* XXXIX (1987), 2, pp. 84—135; Part II. *Ortodoxia* XXXIX (1987), 3, pp. 105—143.

[28] RTB, p. 129.

[29] The Straightening of the Law (SL). Bucureşti 1962, p. 211.

[30] As far as the juridical and canonical institutions regulated by these Nomocanons, see at large at Cătălina Mititelu: "Elements of matrimonial law in the Romanian Nomocanons, printed, from the 17th century." *Dionysiana* 1 (2008), pp. 412—419; Idem:

young woman, by specifying even the conditions under which she might lose it. For instance, the Nomocanon of Iassy (1646) provided that "the woman who has committed fornication" shall not lose "only the dowries," but "the gift offered by her husband, also, and he will take all of them back […] if he will leave her" (RTB, gl. 16, 1—2). Hence, in case of a wife, the conjugal infidelity was harshly punished as it is proved by the above case, in accordance with which the woman who was proved to be unfaithfull was losing not only the dowry brought by her to marriage, but also the gift received by her from her husband.

The same Nomocanon provided that, when "the husband will catch the wife commiting adultery," the woman was losing "the entire dowry she may be having," even when it "will be found that the woman is not wedded to the husband, but will live illegally and they will be able to leave each other at any time" (RTB, rule 16, 3). Yet, this text remains an obvious proof that the wife proved to be unfaithful was losing her dowry even when she was not religiously married to the man with whom she lived. In fact, the Nomocanon of Iassy provided that "the woman who loses her dowries will not be allowed to ask from her man not even something to eat, because she has committed adultery" (RTB, rule 16, 5).

On the other hand, the Nomocanon of Vasile Lupu also provided the sanctions against the husband guilty of conjugal infidelity. For instance, the Nomocanon says that "when a husband commits adultery, then his wife will leave him and will take with her the entire dowries, those which are hers and those given to her as gifts by the husband, clothing and other things" (RTB, rule 16, 7).

The Matei Basarab's Nomocanon — known also as *Pravila cea Mare* (The Great Nomocanon) — also paid due attention to the procedure regarding the guarding and the transfer of the spouses' dowry. For instance, in the rule 265 — suggestively titled "On the pricing of the dowries and un-pricing; and for the outside dowries" — it is provided that the husband who is proven to have done damage to the goods brought by his wife as dowry, "is obliged to pay her. The interest and the damage of the dowries, taken by the husband, are his obligation. Even though

"Elements of successional right in the Romanian Book for teaching and the Straightening of the Law" In: *Omagiu profesorului N.V. Dură la 60 de ani*. Ed. Arhiepiscopiei Tomisului, 2006, pp. 1442—1446; Idem: "Some Aspects concerning the Individuals in the Nomocanon of Vasile Lupu and in the Straightening of the Law." *Analele Universității OVIDIUS Constanța*/Seria Drept şi Ştiințe Administrative 1 (2005), pp. 235—241; Idem: "The successional regime in the Romanian Book for teaching and the Straightening of the Law." *Analele Universității OVIDIUS Constanța*/Seria Drept şi Ştiințe Administrative 1 (2004), pp. 157—163; Idem: "Elements of Penal Law in the Romanian Nomocanons printed in the 17th century." *Dionysiana* 1 (2010), pp. 419—430.

the husband is poor, he has to pay for the dowry he has taken" (SL, rule 265).

According to the Christian teaching, the goal of marriage is to establish and consequently give birth to children. That is why we cannot talk about marriage without referring to the materialization of its major goal, that is the perpetuation of the human race,[31] which is done by giving birth to children resulted from marriage which gives life and full consistence to a family.

The Nomocanons always related to marriage, by its foundation and finality, to family, which obviously presupposes the existence of children, to whom they have expressly referred, since they categorically prohibited the child from complaining to the judge for bad treatments experience by him/her from his parents, grandparents, or even his/her other relatives. "Neither the son nor the grandson up until the eight degree will be able to ask for judge — provided the Nomocanon of Vasile Lupu — to reprove his father or his uncle and other faces like these, because they have sworn at him or have beaten him, as long as the judge believes as father and the uncle and the others as them have sworn at them and have beaten them to teach them and not because of wickedness. This is to be understood when the beating and the hurting will be in the measure, since if they overcome the measure, then the one who has beat or hurt will be bodily reproved, and it depends on the will of the judge to legislate whether or not it is in the measure or if it is harmful" (RTB, rule 43, 19—20).

Consequently, a child could be reproved and even punished with beating both by his father and by his grandfather and his relatives, since, in the view of this epoch, they were considered as being part of the instructive process of him. However, it must be remarked the fact that the writers of the Nomocanon have been animated by a retributive spirit of human origin, since they have left it to the "judge's" latitude to evaluate whether the bodily beating and hurting have not gone beyond measure. In case he had found out that these punishments were administered to the child "not for instructing," but out of "wickedness," the judge would have been obliged to "bodily" punish their authors, that is they had to undergo corporal punishments, which were, incidentally, another form of valid manifestation of violation of human rights.[32]

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[31] The biblical account tells us that God made "husband and wife" and "blessed them, saying: be fruitful and multiply, fill the earth and subdue it…" (Gen. I, 27—28).

[32] See at large at N.V. Dură: "The main organisms and international organizations with preoccupations and attributions in the field of promoting and insuring the juridical protection of human rights." *Dionysiana* I (2007), pp. 18—25; Idem: "The rights of the Persons who lost their autonomy and their social protection." *Journal of Danubius Studies and Research*, II, 1 (2012), pp. 86—95.

With regards to the relation between parents and children, the Nomocanon of Govora (1640) had additionally asserted that all the children were obliged — by divine commandment — to honour their father and their mother (Exodus, 20, 12; Eph. 6, 1—2), since, in conformity with Christ's Law, the one "who strikes his father or his mother shall surely be put to death […] whoever kidnaps one of the children of Israel and overcomes and sells him, and he is found with him, let him surely die" (Exodus, 21, 15; 17). Merciless with the "son" who told "his parents bad words, and without justice," the Nomocanon provided that this should be punished by death. Under the terms of the Nomocanon, "he has to die by death, since his parents have given him light and life — the Nomocanon (n.n.) argued. But if he regrets his deeds, he should be given a canon of penance after years, in order for him to be forgiven by his father and his mother, and if he has taken a club in his hand to strike his father, let his hand be cut. If the son disgusts his mother, it would have been better for him not to have been born."[33] These are, certainly hard words pronounced by the Nomocanon against children who have not paid respect to their parents or have not honoured them. And, despite this, this evil was not broken off, as it may be found out — in singular or isolated cases — not even in our days, and from this derives the obligatory character of human society not to be satisfied barely with the provisions of penal law, but to try to propagate the religious-moral values in the area of secular school.

The Nomocanon of Iassy (1646) also talked about the obligation of children to pay respect to their parents. In the case in which a child dared to offend his parents, his/her father could "urge the judge to reprove his son who has sworn at him, even if the oath was a little one" (RTB, rule 43, 22). At the father's request, the judge could thus punish the son who offended him, regardless of the weightiness of the insult, which was called by the Nomocanon an "oath." But the same Nomocanon of Iassy makes an explicit reference to the demotion from the parental rights, which could have taken place in two situations: (a) when the father has not cared for the ill son and has sent him to a hospital establishment (usually a monastic one), where there were some people suffering from Black Death, or cholera patients, etc.; (b) when he has sent or urged his own daughter to fornicate. With regards to the first situation, the Nomocanon was providing that "the one who sends his ailing son to the hospital, that one will lose his parental power over his son"; (RTB, rule 9, 15). It is likewise interesting to mention the fact that this Nomocanon was making more precise that, in case in which the respective son killed his father, "the one who kills his father shall not be reproved as a killer who

[33] *The Nomocanon from Govora*…, p. 25.

commits a quick homicide." However, the Nomocanon added the clarification that "thus in this way should suffer this son as the one who shall send his father to hospital" (RTB, rule 9, 16).

Therefore, we find out of these provisions of the Nomocanon that the legislator of the time was condemning the father who exhibited such a behaviour as compared to his son with the demotion from the parental power. Moreover, in case the son had killed his father who would had thrown him into such a hospital establishment, he would not have been punished for murder committed against his father, but for murder committed under the urge of wrath, which is expressed by the Nomocanon through the syntagma "quick murder." But, the same legislator wanted to make more precise that the same punishment will be undergone by the son who sends his ailing father into such a hospital establishment.

Of course, in those provisions of the Nomocanon we have to see the concern of the legislator for respecting the human dignity, particularly for the natural and fundamental right of man, which is the right to enjoy a respectful treatment even in the situation when one is sick, be he young or aged. This concern — which additionally had been an object of legislation by the two basic institutions of the Byzantine Empire, the State and the Church — was, hence, reasserted by the Nomocanons printed in the Romanian language and appeared in their texts. Yet, this thing makes fully evident the fact that the Romanian legislator, of that respective epoch, was animated by the desire to assert the necessity of respecting the image of God in man, and, by the fact itself, of the human dignity, even though the mentality of the respective epoch was grasping and expressing it in a way completely different from the one we perceive today[34].

Cosidering the second of the enumerated situations, in which one of the parents was demoted from his/her parental power, because he/she sent away his/her daughter or urged her to fornicate. In this case, the Nomocanon of Visile Lupu provided that the "fornication done with the parents' permission is worse and a thing full of shame and of a greater shame than the one done among strangers. Therefore, any father who sends his daughter to fornicate, first shall lose his parental power and to have pressure from the judge as to give her more diligently all the dowries she has from her father and to get separated from him as if she was never his daughter. Secondly, all the goods he has let them be taken from him, all of them to be taken by the reigning prince, as long as he lives. If he dies, then they will be of those who will be his inheritors; the third

[34] See, N.V. Dură: "The right to human dignity (dignitas humana) and to religious liberty. From 'Jus naturale' to 'Jus cogens'." *Analele Universităţii Ovidius*. Seria: Drept şi Ştiinţe Administrative 1 (2006), pp. 86—128.

let him be sent to forced labour, to be tormented for all his life" (RTB, rule 30, 1). From this text, which is still of relevance today, especially for those who are called to watch over the moral health of human society, we may retain the following things: (a) the prostitution which was committed by children with parents' permission was much more worthy to be condemned than the one which was done among strangers; (b) any father who sent or urged his daughter to turn to prostitution was demoted from the parental power and obliged by the "judge" to give her all the goods that made up her dowry; (c) form such a father all of his wealth was confiscated and it was taken into possession of the reigning prince. After his death, his wealth was given to his inheritors; (d) the respective father was punished by life imprisonment.

The authors of the same Nomocanon kept adding the clarification that "these new Nomocanons give teaching to the father who would sent his daughter to turn to prostitution to be decapitated. Likewise, the same reproof should undergo the brothers who would make their sisters to act as prostitutes, or some other relatives of theirs who are consanguineous, which reproof should be taken into account for such a great sin, as it is kept by the Byzantines' Nomocanon up until today, even though at some places they are reproved by the prison throughout their life or a number of years and they were carried on the donkeys and beating them while naked on all the narrow streets; but their true reproof is death" (RTB, rule 30, 2).

We can also learn from this text that the creators of the Nomocanon of Vasile Lupu knew well both the old Byzantine legislations and the new Nomocanons, such as the one of Matei Vlastares (14th century) and the one of Manuel Malaxos (16th century) which they have fully used in its text. Moreover, we find out that the authors of the Nomocanon adopted the disposition provided by these nomocanons concerning the punishment for the father who would make his daughter turn to prostitution, namely, the capital punishment by decapitation. Even more so, they reasserted the punishment provided by these nomocanons for the brothers or for other blood relatives who have contributed to the "prostitution" of the daughter. In fact, they demanded that the rules provided by the "Byzantines' Nomocanon," according to which the "pimps" were punished by death, were still in force. Therefore, we ought to keep in mind that they have not accepted the life imprisonment and their humiliation, that is "the carrying on a donkey, completely naked," and being beaten in public, as it was practiced in some places, but they have subscribed to the death punishment provided by the Byzantine legislation.

We may also learn from the same Nomocanon that the mother who sold her daughter for money to be a prostitute, was punished, but not in

the same manner as her father. "That mother who sells her daughter for money to fornicate with somebody — provided the Romanian Teaching Book — let her nose be cut; and if it is found out that she did not make a deal to take money, but only agreed with the will of her daughter, then she will be reproved in accordance with the judge's will; but if the mother has committed a big mistake because of great need or because of poverty, she shall not be strictly reproved as long as the judge shows mercy while seeing her poverty and her need" (RTB, rule 30, 3). The daughter's mother was, therefore, punished with the cutting of her nose. But, even in the case in which she has not contributed to the fall of the daughter into the sin of fornication, she was punished in accordance with the consideration of the "judge." Finally, in the case she pushes her daughter into prostitution for poverty reasons, the mother was not punished "so strictly" that is in conformity with the law, but with a certain understanding of reality by the judge.

Amongst the Romanians from the 17th century, the dissolution of marriage was done only "in cases of grave misunderstandings, after the sponsors and the relatives failed in their attempt to reconcile them,"[35] since, in that time, the divorce was not a fashion or a usual thing as it is today.

Since, at the time, the marriage was usually orchestrated by the parents, its dissolution was considered not only a defiance of their will — which more often than not led to enmity and revenge among families — but also to an encroachment of the divine commandment, which has established the monogamous character of marriage.[36] Therefore, it is no wonder the fact that the Nomocanons printed in Romanian language in the 17th century speak about "the wrath ordered on those who disunite the husband from the woman, and the woman from the husband, with no word for blame" (SL, rule 213).

In reminding that "the couples are made by God's commandment," the Great Nomocanon commanded: "let them not become disunited without guilt, or to take gifts, or other interest or bribe. And the one who will be proven guilty for the dissolution of the legal marriage, that one is called Antichrist, because Christ and our God commands us to leave our father and our mother and get united with our women and to become one body with them. And the Lord only has put law that the man should not be powerful to disunite the husband and the woman without guilt. And the one who will disunite without guilt, only to take bribe or gifts,

[35] L.P. Marcu: "Despărţirea şi recăsătoria." *Istoria Dreptului romanesc*. Vol. I, p. 514.

[36] See I. Chelaru: *Căsătoria şi divorţul. Aspecte juridice, civile, religioase şi de drept comparat*. Iaşi, f.a., pp. 237—287.

that man is not only Satan, he is also the Antichrist, and a lawbreaker, as he would trespass the God's law, and he is an enemy against His commandments, which will fall suddenly from this life and will inherit eternal labour" (SL, rule 213).

Thus, from the beginning, the Great Nomocanon made more precise that the unions through marriage are done by God's commandment, from where come the obligations for the judges — civil or ecclesiastical — not to give a verdict for its dissolution without the foundation provided by the Divine law and canon law. Therefore, the Nomocanon interdicted the judges from pronouncing a divorce sentence just to have undue gains (money, goods etc.). Even more so, those who were admitting the divorce with no strong reason were called "Antichrists," and they were not even considered human beings, but devils, breakers of the divine law, enemies to God's law, and because of these things they will inherit the eternal torments.

It may also be learnt from the analysed text that, in the Great Nomocanon's makers' conscience, the marriage of husband with the wife was ordered by God, and it cannot be undone by men. Indeed, in conformity with the teaching of faith of the Orthodox Church,[37] this relationship or union for life of the two — willed by God — shall cease for only two reasons, which are physical death and moral death (adultery). This is why, in this text of the Great Nomocanon we must notice, in fact, the affirmation of the doctrine of the Orthodox Church concerning the marriage and its indissolubility. Depicted by this teaching of Orthodox faith into a full unity, in accordance with the image of relationship between Christ and His Church (Eph. 5, 31—32), — the Christian Marriage — on which the Christian Family is founded — cannot be, however, undone except for the "sin of adultery for which one of the spouses is guilty," and by "death," but this one only "temporarily, […] since they shall be again united, for eternity, in the life hereafter."[38]

The same Nomocanon makes reference to the dissolution of marriage by that *libellum repudii*, that is by having announced by one of the spouses that he/she is no longer willing to remain in the conjugal connection, or by that *divortium ex consensu*, when both spouses reached a common agreement (*communi consensu*) for undoing the marriage (cf. SL, rule 213).

In the Great Nomocanon (*Pravila cea Mare*), printed in the year 1652, the book which the husband sends to his spouse with the goal of "leaving his wife" is edited in three languages: Latin, Greek, and Romanian.

[37] See *Învățătura de credință ortodoxă*. Craiova 1952, p. 162.

[38] *Învățătura de credință creştină ortodoxă*. Publishing House IBMBOR, 1982, p. 284.

"*Repudium* in Latin and in Greek it is called *diazighion*, and in Romanian it is called the book for separation of husband and of wife" (SL, rule 213). Yet, the fact that this "separation book" is named in three languages, might be not only a proof that the Great Nomocanon's authors have used the Byzantine nomocanons, but an obvious proof that they very fluent in the three languages, that is Latin, Greek, and Romanian.

Both methods of divorce — inherited from the Roman and Byzantine worlds[39] — have not been accepted by the Church, and it was required an insistent and of a long duration step from her part until "she succeeded to determine the Greek-Roman civil legislation to take position as against this kind of undoing the marriage."[40] Indeed, only during the emperor Justinian's reign "*divortium ex consensu* was officiated and at the same time was decided that only for some reasons, on the base of some judicial sentence, marriage can be undone."[41]

That these methods of divorce — provided by the Roman law — have continued to be applied, is confirmed even by a Novel[42] of the same emperor Justinian, from the year 566, by which the old law was reactivated, "in conformity with which the marriage could have been undone by accord (κατα συναινέσιν). Three more centuries needed to pass before the opinion of the Church on divorce was fixed in the Greek-Roman civil legislation."[43] Indeed, only in the Collections from the 9th and 10th centuries, that is in the *Prohiron*, published in the year 870, commissioned by the emperor Basil I the Macedonian — by which have been restored "those parts of the Roman-Byzantine law, which have been mutilated or removed by the *Eclogue* issued by 130 years before"[44] — and in the *Basilicals* — the monumental Roman-Byzantine law collection published in the years 910—911 — was also introduced in the state legislation the canonical doctrine of Orthodox Church on divorce, in conformity with which "the divorce by mutual accord was allowed only for a justified cause (εὔλογιος ἀιτία) when especially the spouses were striving for a life more perfect, which […] consisted in their retreat to monastery."[45]

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[39] See *Codex Justinianus*, V, 17, 9.

[40] N. Milaş: *Dreptul bisericesc oriental…*, p. 518.

[41] Ibidem.

[42] In fact, by the Justinian's Novels was done "the step from the old Roman law to the proper Byzantine law, their great majority being redacted in the Greek language or only in the Greek language and less in the Latin language" (I.N. Floca: *Drept canonic orthodox…*, vol. I, p. 101).

[43] N. Milaş: *Dreptul bisericesc oriental…*, p. 518.

[44] I.N. Floca: *Drept canonic orthodox…*, vol. I, p. 103.

[45] N. Milaş: *Dreptul bisericesc oriental…*, p. 519.

We can clearly see from this concise presentation that the Christian family was perceived and expressed by the authors of the nomocanonical legislation printed in the Romanian language in the 17th century, in conformity with the precepts of faith teaching and of the legislation and canonical doctrine of the Eastern Orthodox Church, which have found in the Roman and Byzantine law their juridical sources and foundation. Yet, exactly these things do make of the three Nomocanons (of Govora, 1640, of Iassy, 1646, and of Târgovişte, 1652) a documentary reference source for those who wish to know one of the old Christian institutions, namely the Family, which takes life through the religious Marriage, that is through the Christian Wedding, by which the spouses (the husband and the wife) receive "la grace sacramentelle," which "ne s'identifie pas a la grace sanctifiante."[46] Finally, we can say that these Nomocanons help us to understand better not only the Eastern Church's official teaching on Family and, *ipso facto*, on Marriage, from that epoch (17th century), but to take into consideration also the contemporary challenges regarding these ancient juridical and canonical institutions.

[46] Jean-Philippe Revel: *Traité des Sacrements*, vol. I, Les Editions du Cerf, Paris, 2005, p. 149.

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Cătălina Mititelu, Bogdan Chiriluță

The Christian Family in the Light of the Nomocanonical Legislation Printedi n Romanian Language in the 17th Century

Summary

In the Nomocanons of Govora (1640), Iassy (1646) and Târgovişte (1652), that is in the three nomocanons written and printed in the Romanian language in the 17th century — which are, in fact, representative for the apogee of the juridical-canonical medieval culture from the Romanian countries — the juridical-canonical institution of the Family and, consequently, the Marriage — the one which gives life to it — have received from their authors a special attention.

A close examination of the three Byzantine nomocanons texts — even a succinct one — made obvious the fact that for the Romanian society of the respective epoch (the fifth and sixth decades of the 17th century) the Family was one of its juridical-canonical institution, where from we can also notice the evident preoccupation of the then theologians, canonists, and jurists to put in hand of their contemporaries not only a canonical or nomocanonical guide concerning the rights and the obligations of their members, but a theological exposition with regard to the teaching of the Eastern Church on the Family and its constituent element, the matrimony, with all the conditions and impediments which have been provided by both the canonical Legislation of the Eastern Church from the first millennium and by the norms of the Roman and the Byzantine law.

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Famille chrétienne à la lumière des Nomocanons imprimés en roumain au XVII^e siècle

Résumé

Dans les Nomocanons de Govora (1640), ceux de Jassy (1646) et ceux de Târgoviște (1652), c'est-à-dire dans les trois Nomocanons écrits et imprimés en roumain au XVII^e siècle qui sont représentatifs pour l'apogée de la culture juridico-canonique médiévale des États roumains, les auteurs dirigent une attention particulière sur l'institution conjugale à caractère juridico-canonique et sur le mariage même. L'analyse approfondie de ces trois « Nomocanons byzantins » permet de constater que pour la société roumaine de cette époque-là (c'est-à-dire des années cinquante et soixante du XVII^e siècle), la famille était une des institutions juridico-canoniques dont les théologues, canonistes et juristes prenaient un soin particulier. Son but était d'offrir aux gens d'alors non seulement des vade-mecum canoniques ou nomocanoniques concernant « les droits » et « les obligations » des membres de familles, mais également une présentation théologique de famille conforme à l'enseignement de l'Église orientale sur ce sujet, y compris les conditions et les empêchements au mariage établis par la législation canonique de l'Église orientale du premier millénaire, ainsi que par les normes du droit romain et byzantin.

Mots clés : nomocanons, droit byzantin, droit romain, institution conjugale

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La famiglia cristiana alla luce dei Nomocanoni stampati in lingua rumena nel XVII secolo

Sommario

Nei Nomocanoni di Govora (1640), ed anche nei Nomocanoni di Jassy (1646) e Nomocanoni di Târgoviște (1652), ossia nei tre Nomocanoni scritti e stampati in lingua rumena nel XVII secolo che sono rappresentativi per l'apogeo

giuridico-canonico della cultura medioevale degli stati rumeni — l'istituzione giuridico-canonica della famiglia e di conseguenza, anche del matrimonio — godono della particolare attenzione degli autori. Un attento esame di questi tre "Nomocanoni bizantini" permette di affermare che, per la società rumena dell'epoca rappresentata (ossia la quinta e la sesta decade del XVII secolo), la famiglia era una delle istituzioni giuridico-canoniche a cui prestavano particolare cura i teologi, i canonisti e i giuristi. Il suo fine era quello di offrire alle persone contemporanee delle guide, non solo canoniche o nomocanoniche, riguardanti i "diritti" e i "doveri" dei membri delle famiglie, ma anche di presentare teologicamente la famiglia in conformità con l'insegnamento della Chiesa Orientale in tal merito, inserendovi le condizioni e gli ostacoli stabiliti al matrimonio, sia da parte della legislazione canonica della Chiesa Orientale del primo millennio, sia da parte delle norme di diritto romano e bizantino.

Parole chiave: nomocanoni, diritto bizantino, diritto romano, istituzione del matrimonio

Ecumeny and Law, vol. 2 (2014)
pp. 269—286

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Civil Effects of Entering Into Canonical Marriage according to Laws of the Slovak Republic

Keywords: cooperation, Church and state, democratic society, marriage, canon law, law 36/2005 Z.z.

Introduction

From the times of Constantine the Great the phenomena of Christ's Church and state authority exist side by side. Both institutions, the religious and earthly one, take care of human good. State emphasizes the temporal wellbeing, while Church the eternal one. To the category of wellbeing belongs organized marriage, so it is not strange that both the Church and the State establish institutions that support marriages. Over the centuries the marriage has been developing in our continent, the phenomenon that is typical for Europe and its culture. Today, we are able to properly define European marriage phenomenon and also specify its defining characteristics and differences from other types of marriage.

Considering the practical aspects of the state's and the Church's involvement in the European type of marriage, we deal with a number of different situations. Over the centuries there have been seasons in solemnization of marriage where the secular element dominated, and seasons where religious element dominated. Today's situation in European countries is favourable for the Church and the state cooperating not only in the field of solemnization of marriages, but also during the actual married life. The presented article focuses on Slovakia in discussing various marital

circumstances. The territory of the nowaday's Slovak Republic was a part of different historical states. First, it was a part of Great Moravia, later for almost one thousand years Austria-Hungary, and finally Slovakia became a part of the Czechoslovak Republic, to eventually become a part of the independent Slovak Republic. All these eras had a great impact on the lives of and also on development of marriage institution. In this day and age, in a new-born Slovak democracy even the Church has a new position, also toward institution of marriage. We will discuss these circumstances both historically and from a present point of view.

Marriage as a phenomenon of the Church and a temporal discipline

The Catholic Church treats marriage in two ways: either religiously or judicially. In the former case marriage is a part of God's plan, so we can see it as a natural part of human being. Thanks to it, humans, basically out of their own naturalness, seek their own anti-poles, and founds marriage and family. To this category belongs the other side of marriage concerning a legal contract between two baptized and *ipso facto*, is a sacrament, which means that it is in special God's attention and source of spiritual gifts for a married couple. It is also shown in can. 1055 §1 CIC 1983 and can. 776 §1 CCEO.[1] The second side is a juridical one, which says that only those Catholic marriages are valid, and also in the case when only one of partners is Catholic, and when couples were married in the Catholic Church in valid legislation. So when Catholic is married only in civil form, marriage is invalid. It is necessary to say that today the Catholic Church, in spite of that fact does not look on civil marriage in negative way or disapprovingly. Pope John Paul II in his great exhortation *Familiaris consortio* writes that Catholics which from whatever reasons accepts only civil marriage cannot be compared to those couples who are living together without alliance.[2]

[1] CIC 1983: 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. 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 indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace.

[2] Ján Pavol II: *Familiaris consortio*, n. 82. There are increasing cases of Catholics who for ideological or practical reasons, prefer to contract a merely civil marriage, and

Today's Catholic legislation looks approvingly at cooperation of political community, that is the state, during contracting and the marriage of Catholics. It is explained in can. 1059 CIC and can. 780 § 1 CCEO, where it is literally said that marriage of Catholics, even if only one of the partners is Catholic, is a subject of not only God's, but also canonical law, in uninterrupted powers of civil authority, related to civil effects of marriage. It results from the fact that even political community has natural interest in developing married life and family.[3] For those Catholics who contract marriage in the Church the acknowledgement of its validity in terms of valid civil system of laws has a huge meaning. It is related to methods of marital community property and their relationship to give birth to children, which provides civil law.

Current system of laws of the Slovak Republic in its present code on family considers valid a marriage that: was contracted in agreement with current form described in the law 36/2005 Z.z. in *est de jure*, that with civil laws are accepted for valid only marriages entered into according to both civil and canonical form. Those forms are used by registered churches and religious communities in the territory of the Slovak Republic.

Why to contract marriage in the Church?

It is a legitimate question that has a logical substantiation. If the Church, in accordance with the words of the Pope John Paul II improves her attitude towards marriages contracted only in the civil way, why then the Church insists on the necessity of Catholics' marriages to be officiated in the Church? The answer is simple. As an external and internal sign of God's presence, the Church has a mission to help people with achieving their temporal goals and the eternal end. In view of classical canonistics, this eternal end is *salus animarum*, "the salvation of souls." Marriage as a basis of family, so the most natural environment in which man lives,

who reject or at least defer religious marriage. Their situation cannot of course be likened to that of people simply living together without any bond at all, because in the present case there is at least a certain commitment to a properly-defined and probably stable state of life, even though the possibility of a future divorce is often present in the minds of those entering a civil marriage.

[3] CIC 1983 can. 1059, CCEO can. 780: 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.

plays an important role in human life and also among the methods of salvation. The participation of spiritual means mediated by the Church is necessary from the beginning of its creation.

Enlarging on it, we can focus on the first sight of marriage creation, than we will tell why the religious rite is important. The Pope gives many reasons to explain it. He demonstrates that the preparation to contracting the marriage contains pre-marital disquisition about single life of engaged couples and their free will to enter into the marriage and barriers to marriage as well. Failing to meet those conditions can badly disturb future life of married couples. The preparation to marriage contains strict advices concerning the life of a married couples, its advantages and disadvantages. Future husband and wife are at least theoretically prepared to situations which await them in marriage. It turns over attention to important religious and sacramental facets of marriage contracted under the authority of Church rites. As a sacramental act, the rite of contracting marriage is contained in the liturgy, which grows into the source of the saint power of future husband and wife. The sacramental rite is therefore not only blessing for newly-married couple, but also passing graces, from the source which is the creator of marriages himself. No less important is the social meaning of the Catholic rite of marriage. Not only saint servant and witnesses are attending the rite, but also parents, siblings, friends and other church-goers, which pray for newly-married couples, too. That is how the new marriage is created on the secret of the Christ and the Church.[4]

Forms of historical progress of contracting marriage

The form of contracting marriage undergoes its evolution in the Christian Europe. This evolution was followed by different law systems which the land of current Slovakia has been conformed to. In the end of the first millennium, Slovakia was a part of the Great Moravia, and for the most of the next millennium, it was a part of the Kingdom of Hungary. What cannot go unnoticed is that in the first centuries of its existence the Church accepted a valid civil form of contracting marriage, in terms of Roman Empire's system of laws. The Church during that time "canonised" the civil form of contracting marriage, and so the marriage entered into within

[4] Cf. John Paul II: *Familiaris consortio*, n. 67: Christian marriage normally requires a liturgical celebration expressing in social and community form the essentially ecclesial and sacramental nature of the conjugal covenant between baptized persons.

the scope of Roman law was accepted as valid in terms of canon law as well. In the early times of Christianity, there appeared a phenomenon that Christians contracted their marriages only in terms of Roman laws. We can meet that phenomenon at time of persecution but also long after the Church gained its freedom. On the other hand, it does not mean that the Church, in the field of marriage, is not interested in those who became Christians as a result of their baptism. The Church more and more often applied evangelical teaching to the life of Christian married couples and the Christian family. That is why the Church never considered the marriage as a private matter of those Christians who were entering into it. Even in the first centuries, priests and thinkers were developing catechism on marriage on the basis of evangelical doctrine and guidance of St. Paul. Participation of the Church in the future life of the married couples was progressively being expressed by engaged couples asking for the tentative permission of the bishop.[5]

Later, the Church began to partake in the process of officiating the marriage. In that time common opinion was expectation of Christ's second arrival, which was obvious during the time of persecution, when establishment of virginity and sexual abstinence were stressed and strongly preferred. On the other hand, the fight against the heathendom forced Christians to differ in their lifestyles and the way they married. The evolution of marriage lead to the celebration thereof during the Holy Eucharist. In the beginnings of the organised Church, the seven sacraments were turned into two major ones: the baptism and the Eucharist. The baptism was connected to the confirmation and the Eucharist to the reconciliation, marriage and holly orders. After the future husband and wife fulfilled all the requirements specified by civil law, during the Eucharistic liturgy they received the blessing from their bishop and Eucharist. With those acts the marriage became a sacrament and gained its meaning for the eternity. This tradition continues in the Latin Church, where the marriage is usually celebrated during the liturgy. Nevertheless, the Church respected civil marriage for long years. The command that every marriage needs to be celebrated with a special religious ceremony came from the emperor Leo VI († 912). The same emperor entrusted the Church with law and responsibility for legal status of marriage. From that time on, the marriage in Eastern Churches was officiated only with a church form. The Church gradually emancipated itself from the heathen meaning of marriage and adjusted it to the image of Christ, and so it remains to the present day. We meet different meanings of some aspects of marriage in the teaching of the Church and in the teaching of liberalized world. The Catholic mar-

[5] S. Hracuniak: *Prawosławne pojmowanie małżeństwa*. Białystok 1994, pp. 37—50.

riage is in confrontation with its civil form. The blessed Pope John Paul II claims that the Church, follower of Christ, is not always accorded to the view of the majority.

Desacralisation of marriage by the state executive

Until the 16th century, so until the Reformation, Church had been the only one who remained empowered to officiate the marriage in Slovakia. But under the pressure of Reformation, marriage was not considered sacral and also in the Kingdom of Hungary, where Slovakia belonged, it was under the pressure of humanism and it started to be more of a social affair and also the state started to play its role in institution of marriage. Under the influence of these trends, there were brought new elements into marriage, which were contrary to traditional church teachings. The institution of divorce affected them very deeply and was sharply untolerated in our country for a few centuries. The answer of the Church to desacralisation of marriage by Lutherans was the Council of Trent in 1563 which established that only those marriages are valid which are concluded before a priest and two witnesses in compliance with the standards and form established by the Church. But, it did not ceased to be only legal form of cohabitation between man and woman in the end of this evolution. However, the political community offered its own alternatives to marriage, which relate to jurisprudence of the so-called civil marriage.

The civil marriage represents a liberalized form of canonical marriage. At first, it is about weakening the unity and indissolubility of marriage, which are the most important characteristics according to Catholic doctrine. Particular forms of civil marriage differ in various countries, and this "civil union" adapts to liberal, social and political needs and requirements of a given country. On the other hand, many elements of civil marriage keep the character of the canonical marriage. For example monogamy, equality of spouses, free choice of engaged couple to contract marriage, the presence of two witnesses, permanent nature of marriage.[6] The latest trends in civil legislations of many countries, however, go to extremes. They concern the promotion of gay and lesbian relationships on the same level as marriage, which were legalized in many countries of Europe and America.

When we consider the further development of marriage celebration in Slovakia, we can see that we are trying to copy the all-European trend.

[6] Cf. J.R. Tretera: *Cirkevní právo*. JK 1993, p. 171.

Former Austria-Hungary, that included Slovakia, was one of the Catholic countries of Europe. In spite of arrival of the Reformation, the Catholic Church in Austro-Hungary maintained the important impact.

After the the Austria-Hungarian compromise of 1867, the Catholic Church in our country lost a huge part of the social authority. Based on the laws issued in 1868, many religious schools were nationalized, a large part of the competence of ecclesiastical courts was eliminated, and they were only given the powers in matters of Catholic marriages. On the 1 October 1894, civil marriages and state registries were established in the territory of Austro-Hungary. The Kingdom of Hungary started to accept only these marriages that were contracted by the civil authority and only official notes which were from civil state registers.[7] Religious marriages and registers started to be important only in the religious aspect.

The situation started to be more serious after the collapse of the Austro-Hungarian Empire. The request for separation of the Church from the state was offered in the years 1918—1920 during the National Assembly of the Czechoslovak Republic. The request was not accepted because of the lawgivers from Slovakia. However, facultative civil marriage was established. It was a similar to the one which is currently in force in Slovakia. The state recognized as valid also religious and civil marriage. It is interesting that the religious and civil marriage was in fact considered to be inseparable. Facultative civil marriage meant kind of amendment for Slovakia, which was in accordance with the laws of the Kingdom of Hungary, where civil marriage was rated, but in the countries of Czech Republic, this civil marriage invalidated the religious marriage. Acceptance of the priest was not recognized as a barrier to marriage.[8]

Legislative practise in the communist Czechoslovakia and in the present-day Slovak Republic

In the February 1948, in the reborn Czechoslovak Republic, as in other countries of the Soviet sphere of influence after the Second World War, the communist totalitarian regime was established. The result of itwas a totally different social climate, created on the basis of the ideology of Marx and Lenin, which did not envisage a place for religion or the Church. The whole system of laws was subordinated to the communist

[7] Cf. J. Krajčí: *Historické reflexie konfesijných vzťahov*. Banská Bystrica 2006, p. 128.
[8] Cf. J. Špirko: *Cirkevné dejiny IV*. Faximilné vydanie, pp. 468—469.

ideology. A significant number of laws was gradually accepted that either restricted or totally denied any manifestations of religiousness.

One of the most hurtful points of the totalitarian law was § 178 of the Criminal Code about so-called obstruction of the control over the churches and religious communities. According to this law, churches were entirely under the control of state authorities. Two years in prison threatened everyone who, in the understanding of this law, counteracted or interfered with the duty of the state controller over the churches and religious communities. Theoretically, it was a violation against the law of economic security of the churches and the religious communities number 218/1949 Zb., but in praxis this assessment was applied to innumerable spheres of church-goers' lives who, on the basis of this law, were persecuted and imprisoned. The real aim of this law was not the economic security of churches and religious communities, but the communist authorities' control over their activities. Based on the principle inscribed in the Art. 7 no. 1 of this law, the duty of religious activities was restricted by the "state agreement." So, basically, it was the permission of communist state clerk given to a specific parish that was a basis of performing spiritual activities. The priests who were active without the state agreement were punished in terms of the valid law.

When it comes to contracting marriage, communist legislative treated the religious form of officiating marriage as nonexistent. Entering into marriage in the churches and the religious communities was tolerated in secret, but according to the § 137 of the Criminal Code and after absolving the civil form of contracting marriage. Religious marriage did not have any effect on the civil legislation and was only tolerated by the state administration. Logically, after the restoration of democracy in 1989, the communist system of laws had to be amended and adjusted to value standards of democratic state. Between the first legislative changes of the restored democratic state we may count an amendment of totalitarian justice system, but particularly the changes in the field of a conscience and a religious belief. Legislation change in the form of contracting marriage happened in the time of the Czechoslovak federation with law number 234/1992 Zb. that changed the law on family number 94/1963 Zb., which resulted in religious marriages being legitimized according to the civil code. The legality of marriages based on canon law was later introduced into the Civil Code of the Slovak Republic. Then, the necessity to contract marriage in front of a register office clerk was obviated and a possibility to choose religious form of entering into marriage was provided, of course all within the law.

Basic law agreements between civil and canon law

1. Nowadays in the Slovak Republic we may consider marriage as legislatively mixed (and based mostly on law 36/2005 Z.z. on family, and also, in terms of canon marriage law, on both codes of John Paul II). The state not only limits its authority to recording and registering of the contracted marriages, but also meets the requirements of civil-law way of the officiating valid marriages in terms of the civil law. It relates to those marriages that are contracted in the church. Because the marriage is a mixed matter, the church in matters of marriage does not only accept its competences, but also, in our circumstances, where the contracting of marriage has also a civil-law consequences, respects in its legislation upon officiating marriage also the civil-law decree and follows administrative requirements of the state.[9]
2. Next canonical axiom says that the Church accepts competence of civil law to the point where this law is not in conflict with the natural God's law and canonical one. For example, the Church will never accept civil legislation that allows abortion, even if this option is a part of the civil legislation of the Slovak Republic. If we discuss marriage, due to the mentioned axiom, the Church accepts consequences of the civil law concerning the civil consequences of the marriage,[10] so to the rights and duties of the married couple, with connection to the upbringing of offspring and the status of the parents or to its relationship to the common acquisition of the possession. On the other hand, the Church does not accept institution of the divorce, which originates in the civil law, as well as cannot accept homosexual relationships as marriages. All these laws, even though they are a part of a legislation in many countries stand in sharp contrast to the teaching and against moral and juridical axioms of the Church.

[9] Fundamental agreement between the Slovak Republic and the Holy See: Čl. 1: Slovenská republika uznáva právo Katolíckej cirkvi v Slovenskej republike (ďalej len "Katolícka cirkev") a jej členov na slobodné a nezávislé pôsobenie, ktoré zahrňuje najmä verejné vyznávanie, hlásanie a uskutočňovanie katolíckej viery, slobodu pri plnení poslania Katolíckej cirkvi, vykonávanie jej kompetencií ustanovených kanonickým právom, vykonávanie vlastníckeho práva k jej finančným a materiálnym prostriedkom a spravovanie jej vnútorných vecí. Čl. 2: Svätá stolica garantuje, že Katolícka cirkev využije všetky vhodné prostriedky na mravné formovanie obyvateľov Slovenskej republiky v prospech spoločného dobra podľa princípov katolíckej náuky v súlade s právnym poriadkom Slovenskej republiky.

[10] Cf. D. Salachas: *Il sacramento del matrimonio nel Nuovo Diritto Canonico delle Chiese orientali*. Bologna 2003, p. 54.

The basic values applying to contracting civil marriage in the Slovak Republic and canon law

As a civil legislation in the law about a family number 36/2005 and as both of the codes of the John Paul II in their introductions define legitimate institution of marriage, in which they indicate its fundamental characteristics: Marriage as a covenant between a man and a woman created to give birth to children and provide their upbringing. In the civil legislation there is a visible elementary advancement, because previous totalitarian family law, provided by the law number 265/1949 Sb. and 94/1963 Zb., did not define the concept of marriage. From the introduced religious and civil legislation stems that marriage is only a covenant between a man and a woman, so there cannot be a valid marriage between two persons of the same sex. Moreover, not every cohabitation of a man and a woman can be considered a marriage. Because there is another assessment which says that the marriage has to be contracted in a way foreseen by law. From thus contracted marriage result legal consequences for married couples and their offspring relating to personal and proprietary relationships.[11] In the civil law on a family number 36/2005 Z.z. we deal with a concept of family. It is defined as a community of parents and children. Those are personal values and so it comes as no surprise that also in this point both civil and religious legislation meet. John Paul II in his apostolic exhortation literally mentions the family as one of the most valuable treasures of the mankind.[12] The Catholic and the civil legislation meet in another part as well. It is part relating to the coequality of a man and a woman, husband and wife in marriage. The theological interpretation takes into accounts the natural differences between a man and a woman. The equality of husband and wife is limited by these natural differences. The equality of husband and wife in the religious and civil legislation results from the Christian origins of our culture and the God's appearance. The Catholic marriage creates a coequal communities between husbands and wives while respecting different natural features of a man and a woman who, being mutually complemental, realizes the ideal of full service. The axioms of this kind see marriage as an equal community of a man and a woman, and we can find them in the teaching of St. Paul the Apostle, who in his Epistle to the Ephesians says: "Submit to one another out of reverence for Christ. Wives, submit to your husbands as to the Lord. […] Husbands,

[11] Cf. B. Pavelková, G. Kubíčková, V. Čečotová: *Zákon o rodine, komentár s judikatúrou*. Šamorín 2005, p. 13.

[12] John Paul II: *Familiaris consortio*, no. 1.

love your wives, just as Christ loved the Church and gave himself up for her [...]."[13] In order to emphasise this aspect of canonical and civil marriage, it is good to remind that members of our cultures come into contact with culture of Islam, in which woman is totally subordinated to the man and his will. On the other hand, equality of a man and a woman in the marriage also means the ban to any domestic physical or mental violence, which the spouses may inflict on each other. Marriage is in both the legislations (civil and canonical) also the foundation of the family, that is the community life of parents and children.

Legal form of contracting marriage: obligatory civil marriage

According to Slovak law and canon law, valid marriage can only occur between a man and a woman and it is virtually the only form of cohabitation of a man and a woman which is regulated by law. According to the Slovak legal system, marriage may be contracted in two ways. It can be officiated in front of a state authority, particularly a mayor or a member of local council. Such a marriage has only the civil effect. It may also be contracted in front of the member of the Church or religious community in terms of its own canonical law. Then, it has not only civil, but also canonical effect. Thanks to the agreement between the government of the Slovak Republic and the Holy See the sacred marriage can be contracted which is valid even according to civil legislation.

However, there still remains a question if there could be a marriage officiated only in a sacred form without acknowledgement from a register office. It is interesting that neither canon nor civil-legal literature in Slovakia discuss this issue. The lawmaker only claims that marriage is valid according to civil law of the Slovak Republic and "contracted with agreeing declaration of the engaged couple" according to sacred dictation, or according to valid civil legislation. This issue is not discussed further. Therefore, the situation remains unclear. Even the opinions of the civil-law attorneys are sometimes divergent. There are opinions that it is possible, according to valid legislation, to contract a sacral marriage without its registration in the register office. Others point at the statutory text of family law number 36/2005 Z.z. that does not mention different option than a civil registration of a marriage. Fortunately, the law number 154/1994 Z.z. on register offices explains in its § 27 that a member of the

[13] Full text: Eph 5, 22—33.

Church contracting a marriage is obliged to provide a register office with a memorandum of marriage not later than three days after the marriage was contracted.

Due to the legislation currently in force and the lack of other legal amendments of civil law in this field, we may say that theoretically it is possible to contract sacral marriages without their registration in the register offices. However, such marriages have no civil-legal effect. It is for example connected to property rights relations, or relations towards alternative heirs, as well as those between parents and children. This implies that such a religious marriage would be against civil rights in case of cohabitation, therefore a non-binding co-existence of a man and a woman. Additionally, such procedures appear as signs of speculation, which would put the Church in a bad light. Based on the civil legislation, the Church ensures the holdback principle of civil and glorious contracting of marriage. The publicity of contracting marriage is ensured by the presence of two witnesses who have to assist in the ceremony of marriage.[14]

The priest who conducts the rite of marriage is entrusted with a great responsibility consisting in the fact that during the ceremony not only the canonical, but also civil-law requirements have to be met. His duty is to prepare documents and charts which are needed during the marriage ceremony. If the bride and groom are not baptized in the parish where the marriage has to be contracted, they have to provide the priest with their certificates of birth that were issued not earlier than six months before the priest has to check the comments section of the said certificates. The entering into marriage is added to those comments, or his consecration, if he was consecrated, as a deacon or presbyter, and a monastery profession etc. On the basis of the certificates of birth and in cooperation with the bride and groom they will prepare a marriage memorandum. If a widow or a widower is willing to enter into marriage a certificate of death of a wife or a husband has to be provided. If the death of the spouse cannot be proven by the said document, a process concerning the dead spouse has to be officiated according to can. 1383 CCEO, so can. 1707 of the CIC 1983.

The marriage memorandum has to be prepared and edited according to the preliminary version thereof. None of the columns of memorandum can be erased or simplified. The press for effectuation of civil memorandum are mostly taken from the register of the place, where marriage is to be contracted. The priest in the field of civil-law system has to adopt and

[14] Cf. B. Pavelková, G. Kubíčková, V. Čečotová: *Zákon o rodine, komentár s judikatúrou*. Heureka 2005, p. 16.

work system of the register office employees. It is worth to notice that the Church, according to canons 1117 CIC and 834 § 1 CCEO, demands that the juridical form of contracting marriage remains each time, if at least one of the spouses going to enter into marriage is baptized in or accepted to the Catholic Church.

Besides, it is a necessary and serious duty of the person going to get married that he or she performs every action required, for a marriage to be valid. In cooperation with register office he or she has to prepare a memoranda that register office asks for, fill them in and, after contracting of the marriage and signing by nupturients and witnesses, deliver them during three subsequent days to the register office. It has to be remembered that according to civil law, marriage has to be contracted in the register office of the spouses' abode. During the ceremony, because of its civil effects, the engaged couple is required to present these documents in the church: certificates of birth, ID cards, certificates of death of the widow's or widower's dead spouse. In case of divorced persons, the documents of divorce must be presented. Because marriage is going to be officiated according to religious laws too, civil divorce documents must also be shown, including the judgement of the ecclesiastical court of the second instance declaring the previous marriage as null and void. If it is marriage dissolved by secular authority and previously legalized by it, they need to enter into the new marriage in front of the Church license of the local ordinary or the local hierarch.[15]

[15] CCEO: can. 984 § 1. Besides the Roman Pontiff, a hierarch is understood to mean, first of all, a patriarch, a major archbishop, a metropolitan who presides over a Church *sui iuris*, and an eparchial bishop, as well as one who for a time succeed these in governance in accordance with the law. § 2. Besides the Roman Pontiff, local hierarchs are the eparchial bishop, the exarch, the apostolic administrator, as well as those who for a time legitimately succeed them in governance in their absence, also the protosyncellus and the syncellus; however, the patriarch, the major archbishop, the metropolitan who is head of a Church *sui iuris*, as well as those who for a time succeed them in governance in accordance with the law, are local hierarchs only with regard to the eparchy which they govern, with due regard for can. 101. § 3. Major superiors in institutes of consecrated life, who have ordinary power of governance, are also hierarchs, but they are not local hierarchs. CIC 1983: can. 134 § 1. In addition to the Roman Pontiff, by the title of ordinary are understood in the law diocesan bishops and others who, even if only temporarily, are placed offer some particular church or a community equivalent to it according to the norm of can. 368 as well as those who possess general ordinary executive power in them, namely, vicars general and episcopal vicars; likewise, for their own members, major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right who at least possess ordinary executive power. § 2. By the title of local ordinary are understood all those mentioned in §1 except the superiors of religious institutes and of societies of apostolic life.

According to civil law, the engaged couple in front of ecclesiastical servant have to make a mutual statement that they know each other's health and there are not circumstances which should prevent contracting the marriage between them. At the same time they have to agree on their common surname. Surnames they can choose from are the other spouse's one, or they can retain their own surnames. At the same time they should declare which surname their children will have.

In order for the marriage to be valid in terms of civil law, it has to be legalised in the church or in a religious community registered in the Ministry of Culture of the Slovak Republic. Marriage contracted in an unregistered church or religious community is not valid according to the civil law. For sake of completeness we would like to introduce the list of all the registered churches and religious communities in the Slovak Republic (in alphabetical order): Apostolic Church, Bahá'í Community in Slovak Republic, Baptists, Seventh-day Adventist Church, Church of Brothers, Czechoslovak Hussite Church, Church of Jesus Christ of Latter-day Saints, Evangelical Methodist Church, Evangelical Church of the Augsburg Confession, Greek Catholic Church, Christian Communities, Jehovah's Witnesses, New Apostolic Church, Eastern Orthodox Church, Reformed Church, Roman Catholic Church, Old Catholic Church, Central Union of Jewish Religious Communities in the Slovak Republic.[16] There is no possibility of contracting marriage in other, unregistered churches and religious communities in the Slovak Republic.

Canonical consequences stemming from the termination of cohabitation between spouses previously married in the church and later civilly divorced

Not only religious, but also civil legal system supports permanence of the marriage institution. However, while the Catholic Church speaks of genuine indissolubility of marriage, civil legal system recognizes and uses the institution of divorce, which in fact means the termination of marriage. The increasing number of divorces and entering into new cohabitation by the believers, and also contracting only a civil marriage is contrary to confession of the baptized believers, who should "marry into Christ." According to statistics, nowadays more than 40% of marriages in Slo-

[16] See: http://www.culture.gov.sk/posobnost-ministerstva/cirkvi-a-nabozenske-spolocnosti-/registrovane-cirkvi-a-nabozenske-spolocnosti-f9.html.

vakia ends up in divorce. Additionally, the number of divorces has been increasing over the recent years. Many divorces take place between Catholic previously legalizing their marriages in the Church. This is why the both types of marriage — religious and civil one become a dilemma of conscience amongst the divorced believers. Despite the fact that the society considers their marriage to be dissolved, from the point of view of canon law it remains valid. Canonical consequence is the loss of ability to receive the sacraments, especially the Eucharist. Their situation is considered as a severe infringement of the indissolubility of marriage, and if they live in the new relationship legelized as a civil marriage, this position is considered as advowtry.

But the Church considers divorced Catholics as its members and is willing and trying to help them. The Church allows "the innocent side" to receive the sacrament, but only if there is no sexual relationship. In practice in Slovakia, the innocent side requests the permission to accept sacraments referring to his or her own parish priest, or other priest who knows their situation well. This permission is usually granted without any problems. But it cannot be obtained in the internal forum in this situation of the Church.

The second way is resolving their case by the ecclesiastical court. In practise, it means that the injured party can ask the Catholic court for a declaration of invalidity of marriage. Nowadays, this way solution is relatively widespread. Each diocese of the Latin and the Greek Catholic eparchy has set up its own tribunals and helps believers to deal with matrimonial cases.

Conclusions

Although the present-day liberal communities try to introduce new untypical forms of marriage, such as the "marriage" of homosexual couples, it remains certain that classical European marriage between a man and a woman is only natural way of cohabitation that enables the human being to realize his or her humanity fully. According to the new trends, the Catholic Church and Slovak society have to fight, too. The fact that the current legal system recognizes the Catholic Church marriages as valid, is not only because of the change of communist totalitarian laws, but it also influences very positively the lives of normal people. This is supported by the fact that civil legislation in the law 36/2005 Z.z. on family echoes the rules of canon law and also supports the positive trends in community of

Slovakia. It does not change the fact that civil legal system enables divorce of married couples. However, there exists a positive trend indicating the cooperation between the Church and the state in order to achieve the common goal also in other social and political institutions in Slovakia.

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František Čitbaj

Civil Effects of Contracting Canonical Marriage according to the Laws of the Slovak Republic

Summary

The beginning of democracy after 1989, and consequently the beginning of independent Slovak Republic brought new atmosphere into the life of the entire society. It was reflected in the relationship between Church and the state. While communistic regime during four decades fought against all religions, new democratic society is looking for new ways of cooperation between the Church and the state. It reflected in many

areas. The first concrete result of this cooperation is recognition of those marriages that were entered into in Church and also according to system of law in Slovak Republic. This legislation is in law 36/2005 Z.z. It is the result of mutual negotiations between the Government of the Slovak Republic and the Holy See and its result is interstate agreement on development of cooperation between state and the Catholic Church in the Slovak Republic. It was accepted on 24 November 2000. This agreement in that time included valid legislation, under which, the civil legislation recognized as valid those marriages that were contracted according to canon law. It began new circumstances and legal structures that are theme of this paper.

František Čitbaj

Effets civils de la conclusion du mariage canonique selon le droit de la République slovaque

Résumé

En 1989, toute la société slovaque a subi d'énormes changements qui ont influencé les relations entre l'État et l'Église, ou encore les conclusions des mariages. Après 1948, quand les communistes se sont emparés du pouvoir en Tchécoslovaquie, l'État communiste a établi un système où seulement les mariages civils étaient considérés comme légitimes. Cependant, les mariages religieux étaient acceptés à contrecœur. Les gens qui travaillaient dans la gestion budgétaire ou dans l'enseignement ne pouvaient pas conclure de mariages religieux sous la menace d'un licenciement. C'est juste après 1989 que la situation a changé. En 2001, on a conclu un accord international entre le gouvernement de la République slovaque et le Saint-Siège qui, encore que ne soit pas un concordat, réglementait les questions fondamentales dans les relations État-Église. Sur sa base, la conclusion du mariage selon le droit canonique a les effets civils inclus dans la législation de la République slovaque, dans la loi sur la Famille no 36/2005 Z.z.

Mots clés : coopération, Église et État, société démocratique, mariage, droit canonique, loi sur la Famille no 36/2005 Z.z.

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Effetti civili della contrazione del matrimonio canonico nell'ordine giuridico della Repubblica Slovacca

Sommario

Il 1989 diede inizio in tutta la società slovacca ad enormi trasformazioni che si ripercossero anche sui rapporti tra lo stato e la Chiesa, come pure sull'istituzione della contrazione dei matrimoni. Dopo il 1948 lo stato comunista, in cui i comunisti in Cecoslovacchia presero potere, instaurò un sistema in cui erano considerati legali soltanto i matrimoni contratti secondo il diritto civile. Si guardava con avversione invece alla contrazione dei matrimoni ecclesiastici. Le persone che lavoravano nel cosiddetto settore

pubblico o nel sistema scolastico non potevano contrarre matrimoni ecclesiastici perché rischiavano di perdere il lavoro. Dopo il 1989 la situazione cambiò. Nel 2001 è stato stipulato tra il governo della Repubblica Slovacca e la Sede Apostolica un accordo internazionale che, anche se non era un concordato, regolava le problematiche fondamentali ed i problemi nei rapporti stato-Chiesa. In base allo stesso la contrazione del matrimonio secondo il diritto ecclesiastico ha effetti civili previsti nella legislazione della Repubblica Slovacca, nella legge sulla Famiglia n. 36/2005 Z.z.

Parole chiave: collaborazione, Chiesa e stato, società democratica, matrimonio, diritto canonico, legge sulla Famiglia n. 36/2005 Z.z.

Ecumeny and Law, vol. 2 (2014)
pp. 287—301

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Law and Pastoral Care: Reflections of Three Popes[1]

Keywords: law, canon law, pastoral care, Roman Rota, Apostolic Signatura

During various discussions on the subject of the presence of law in the Church community over the post-conciliar period, a new trend appeared negating the need for any statutory law, suggesting that because the Church as a community is based on a foundation, namely Christ, and is therefore ordered by the commandment of love of God and neighbour, it does not need any other legislation. In this context it is worth looking at, only to a certain extent, statements made by recent popes on the topic of relations between law and pastoral care.

1. John Paul II's concept of canon law

1.1. The Pope's vision of law

Reflecting on the John Paul II's pontificate in relation to the law, it is impossible not to ponder the thoughts of the Pope regarding the law in general, and particularly the ecclesiastical law.

[1] This article is an extended version of the paper: "Prawo i duszpasterstwo: konflikt czy zbieżność celów?" In: *Księga pamiątkowa ku czci śp. Ks. prof. Antoniego Kościa*. Lublin 2012, pp. 999—1010.

John Paul II frequently spoke about the inviolability of human dignity, which "in the first place should be protected by concern for morals, and then by the law."[2] In this way, the Holy Father showed the proper relationship: the primacy of morality over the law, the latter should be inspired by the former on an anthropological basis. The primacy of the human person and his inalienable rights etched in the heart of every man should impose modern legal systems with the need to "recognize them as earlier than the state legal system and provide the opportunity to use them." The law, necessarily existing in society, is associated with the concept of a "law-abiding state," whose mission is to "enable people to realize their transcendent purpose for which they were called," and to the "obligations of the state that require it to provide them with adequate legal recognition." In this regard, the Holy Father also reminded that "respect for religious freedom is not only a criterion of consistency of the legal system, but also of the free society."[3]

Caring for the personalistic nature of legal systems is something the Holy Father reiterated. First of all, during the annual meeting of the Diplomatic Corps accredited to the Holy See, by his own appearances and by appearances of his representatives at the UN forum, at the European Parliament, and at other international organizations, and also by the way of meeting with a couple of statesmen, politicians and diplomats. Also, the Pope's meetings with lawyers usually provided an opportunity to respond to major topics related to both theory, as well as specific legal practice (e.g. meeting with Catholic lawyers in Italy for the protection of minors on 6 December 1996,[4] or also a meeting with police commanders from countries belonging to the European Union on 2 April 1996, which drew attention to the duties of police forces in the social services[5]).

The Pope's call for the respect of human rights, which are the foundation of statutory law, was heard throughout all continents during his

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[2] Giovanni Paolo II: *Discorso ai Membri del Corpo Diplomatico Accreditato presso La Santa Sede*. 9.1.1989, n. 7, in: http://www.vatican.va/holy_father/john_paul_ii/speeches/1989/january/documents/hf_jp-ii_spe_19890109_corpo-diplomatico_it.html (accessed 6.7.2012).

[3] Ibidem.

[4] Giovanni Paolo II: *Messaggio ai partecipanti ad un Convegno organizzato dall'Unione Giuristi Cattolici Italiani*, 6.12.1996, in: http://www.vatican.va/holy_father/john_paul_ii/messages/pont_messages/1996/documents/hf_jp-ii_mes_19961206_catholic-jurists_it.html (accessed 16.7.2012).

[5] John Paul II: *Address of His Holiness John Paul II to the Heads of the Police Forces from the Member Nations of the European Union*, 2.4.1996, in: http://www.vatican.va/holy_father/john_paul_ii/speeches/1996/april/documents/hf_jp-ii_spe_19960402_police-forces_en.html (accessed 16.7.2012).

numerous papal pilgrimages and was spoken almost directly to those who make the laws and implement them.

In particular, it is worth noting the Pope's concern for the respect of the rights of the family, of women and children, of the right to life, of the right to freedom of expression and freedom of religion, and finally, for a just law for peoples of poor and heavily indebted countries.

The internal law of the Catholic Church, of course, held a special place in the teachings of John Paul II. During many papal statements to the employees of the Roman Curia, especially to the Court of the Roman Rota, as well as in a number of different documents, the Holy Father pointed out that the purpose of canon law "is in no way intended as a substitute for faith, grace and the charisms in the life of the Church and of the faithful. On the contrary, its purpose is rather to create such an order in the ecclesial society that, while assigning the primacy to faith, grace and the charisms, at the same time renders easier their organic development in the life both of the ecclesial society and of the individual persons who belong to it."[6] The Code of Canon Law "is to be regarded as an indispensable instrument to ensure order both in individual and social life, and also in the Church's activity itself."[7]

The Holy Father, commenting on canonical law, often referred to the Second Vatican Council, claiming the occasion of the promulgation of the new Code of Canon Law that "the kind of tool that the Code is, fully agrees with the nature of the Church, which is especially presented in the teachings of Vatican II, taken as a whole, with particular emphasis on the ecclesiological doctrine. Thus, in some way, this Code can be seen as a big conveyor belt that moves this doctrine into a canonical language, namely into the conciliar ecclesiology. It can be concluded that the Code is considered as a complement to the teachings of Vatican II, presented in a special way when it comes to two constitutions: dogmatic and pastoral."[8] And further, "It should be wished, that the new canonical legislation will become an effective instrument, which will help the Church be able to embody the spirit of Vatican II, and more so will appear suitable for the redemptive task of the Church, carried out in this world." Finally, the Holy Father encouraged "all the loved children, given to the provisions of (i.e. legal standards), with a sincere heart and willingness to fulfill, strengthened by hope, that the discipline of the Church will regain power,

[6] Ioannes Paulus II: *Constitutio apostolica "Sacrae disciplinae leges,"* 25.1.1983, AAS 75 (1983) p. XI.

[7] Ibidem.

[8] Giovanni Paolo II: *Discorso per la presentazione ufficiale del nuovo Codice di diritto canonico*, 3.2.1983, in: http://www.vatican.va/holy_father/john_paul_ii/speeches/1983/february/documents/hf_jp-ii_spe_19830203_nuovo-codice_it.html (accessed 16.7.2012).

and therefore, the salvation of souls will also be obtained with the help of the Blessed Virgin Mary, Mother of the Church, who provides a better support."[9]

The character of service of canon law in relation to the salvific mission of the Church, in the most concise manner and referring to the ancient roots, is expressed in the final sentence of can. 1752 from the Code of Canon Law for the Latin Church and in Art. 308 in the Instruction *Dignitas connubii*,[10] which state: *salus animarum in Ecclesia suprema semper lex esse debet*.

With equal care, the Pope referred to the codification made by himself, the first in the 2000-year-old history of the Church, the common law for the Eastern Catholic Churches. In the apostolic constitution *Sacri Canones* from 18 October 1990, he wrote, "From the beginning of the codification of the canons of the Eastern Churches there was the firm will of the Roman Pontiffs for promulgation of two Codes; one for the Latin Church, the other for the Eastern Catholic Churches. This would clearly show the observance of that which results in the Church by God's Providence — that the Church itself, gathered in the one Spirit breathes as if through its two lungs — of the East and of the West — and that it burns with the love of Christ in one heart having two ventricles."[11] And further, "The Code of Canons of the Eastern Churches which now comes to light must be considered a new complement to the teachings proposed by the Second Vatican Council, and by which at last the canonical ordering of the entire Church is completed. This is accomplished with the previously issued Code of Canon Law of the Latin Church promulgated in 1983 and the apostolic constitution concerning the Roman Curia in 1988, which is added to both Codes as the chief instrument of the Roman Pontiff for 'the communion, which binds together the whole Church' (apostolic constitution *Pastor Bonus* 2)."[12]

Therefore, within the Pope's view of the law, one can notice a particular concern for the unity of humans and the Church community, for the servant nature of the law in relation to the human person and their dignity, and for the salvific mission of the Church.

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[9] Ibidem.

[10] Pontificium Consilium de Legum Textibus: *Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii "Dignitas connubii."* Typis Vaticanis 2005.

[11] Ioannes Paulus II: *Constitutio apostolica "Sacri canones,"* 18.10.1990, AAS 82 (1990), pp. 1033—1044; here from p. 1037.

[12] Ibidem, pp. 1038—1039.

1.2. Speeches to the Court of the Roman Rota

In his speech made on 18 January 1990, Bl. John Paul II said, "The pastoral spirit, which the Second Vatican Council strongly insisted on in the context of the theology of the Church as communion, was set forth especially in the dogmatic constitution *Lumen gentium*. This spirit characterizes every aspect of the Church's being and activity. The Council itself in the decree on priestly formation expressly directed that in teaching canon law attention is to be paid to the mystery of the Church, according to the dogmatic constitution on the Church (OT, no. 16). This applies *a fortiori* to its formulation, as well as to its interpretation and application. The pastoral nature of this law, that is its function within the salvific mission of the pastors of the Church and the all People of God, thus finds a solid basis in conciliar ecclesiology according to which the visible aspects of the Church are linked inseparably to the invisible ones — forming a single unified whole — comparable to the mystery of the Incarnate Word (LG, no. 8). On the other hand, the Council did not fail to draw many practical consequences from this pastoral character of canon law, by taking concrete measures to ensure that canonical laws and structures might always be more suited to the welfare of souls" (cf. CD, passim).[13]

He went on to say, "From this standpoint, it is opportune to pause to reflect on a mistaken idea. Perhaps it is an understandable one, but not thereby less harmful, for unfortunately it often conditions one's view of the pastoral nature of Church law. This distortion lies in attributing pastoral importance and intent only to those aspects of moderation and humanness in the law which are linked immediately with canonical equity (*æquitas canonica*) — that is holding that only the exceptions to the law, the potential non-recourse to canonical procedures and sanctions, and the streamlining of judicial formalities have any real pastoral relevance. One thus forgets that justice and law in the strict sense — and consequently general norms, proceedings, sanctions and other typical juridical expressions, should they become necessary — are required in the Church for the good of souls and are therefore intrinsically pastoral."[14]

"The juridical and the pastoral dimensions are inseparably united in the Church, pilgrim on this earth. Above all, they are in harmony because of their common goal — the salvation of souls. But there is more. In effect, juridical-canonical activity is pastoral by its very nature. It consti-

[13] Ioannes Paulus II: *Alocutio ad Romanae Rotae Praelatos, auditores, officiales et advocatos anno iudiciali ineunte*, 18.1.1990, AAS 82 (1990) pp. 872—877, n. 2.

[14] Ibidem, n. 3.

tutes a special participation in the mission of Christ, the shepherd (*pastore*), and consists in bringing into reality the order of intra-ecclesial justice willed by Christ himself. Pastoral work, in its turn, while extending far beyond juridical aspects alone, always includes a dimension of justice. In fact, it would be impossible to lead souls toward the kingdom of heaven without that minimum of love and prudence that is found in the commitment to seeing to it that the law and the rights of all in the Church are observed faithfully."

"It follows from this that any opposition between the pastoral and the juridical dimensions is deceptive. It is not true that, to be more pastoral, the law should become less juridical. Surely, the very many expressions of that flexibility that have always marked canon law, precisely for pastoral reasons, must be kept in mind and applied. But the demands of justice must be respected also; they may be superseded because of that flexibility, but never denied. In the Church, true justice, enlivened by charity and tempered by equity, always merits the descriptive adjective pastoral. There can be no exercise of pastoral charity that does not take account, first of all, of pastoral justice."[15]

Regarding the application of procedural law, the Pope said: "Canonical procedural law also shares the pastoral character of Church law. In this regard, the words of Paul VI in his last discourse to the Roman Rota remain as contemporary and effective as ever: 'You are well aware that canon law as such and consequently procedural law of which it is a component in its inspiration is part of the plan of the economy of salvation — since the salvation of souls (*salus animarum*) is the supreme law of the Church" (28 January 1978).[16] "[…] A fair trial is a right of the faithful (see c. 221), and at the same time it is required for the public good of the Church. Canonical procedural norms are thus to be observed by all involved in a trial as means of justice leading to substantive justice."[17]

Finally, in his last speech to the employees of the Rota, Pope John Paul II warned, "In my annual Addresses to the Roman Rota, I have referred several times to the essential relationship that the process has with the search for objective truth. It is primarily the Bishops, by divine law judges in their own communities, who must be responsible for this. It is on their behalf that the tribunals administer justice. Bishops are therefore called to be personally involved in ensuring the suitability of the members of the tribunals, diocesan or inter-diocesan, of which they are the Modera-

[15] Ibidem, n. 4.

[16] Paulus VI: *Alocutio ad Tribunalis Sacrae Romanae Rotae Decanum, Praelatos Auditores, Officiales et Advocatos, ineunte anno iudiciali*, 28.1.1978, AAS 70 (1978) pp. 181—186; here from p. 182.

[17] Ioannes Paulus II: *Alocutio*, 18.1.1990, n. 7.

tors, and in verifying that the sentences passed conform to right doctrine. Sacred Pastors cannot presume that the activity of their tribunals is merely a 'technical' matter from which they can remain detached, entrusting it entirely to their judicial vicars."[18]

"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."

"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 judgment of his own actions is what counts for eternity."[19]

"The judge must then abide by canonical laws, correctly interpreted. Hence, he must never lose sight of the intrinsic connection of juridical norms with Church doctrine. Indeed, people sometimes presume to separate Church law from the Church's magisterial teaching as though they belonged to two separate spheres; they suppose the former alone to have juridically binding force, whereas they value the latter merely as a directive or an exhortation. Such an approach basically reveals a positivist mindset, which is in contradiction with the best of the classical and Christian juridical tradition concerning the law. In fact, the authentic interpretation of God's Word, exercised by the Magisterium of the Church (cf. Second Vatican Council, Dogmatic Constitution on Divine Revelation *Dei verbum*, n. 102), has juridical value to the extent that it concerns the context of law, without requiring any further formal procedure in order to become juridically and morally binding."[20]

2. The teaching of Pope Benedict XVI

In his first meeting with the Roman Rota on 28 January 2006, Holy Father Benedict XVI said, "During this first meeting with you, I would

[18] Cf. CIC, cann. 391, 1419, 1423 § 1.

[19] Ioannes Paulus II: *Alocutio ad Tribunal Rotae Romanae iudiciali ineunte anno*, 29.1.2005, AAS 97 (2005), pp. 164—166.

[20] Ibidem, n. 6.

rather focus on what is the fundamental point of law and pastoral care: on the love of truth. […] The canonical proceedings for the nullity of marriage are essentially a means of ascertaining the truth about the conjugal bond. Thus, their constitutive aim is not to complicate the life of the faithful needlessly, nor far less to exacerbate their litigation, but rather to render a service to the truth. Moreover, the institution of a trial in general is not in itself a means of satisfying any kind of interest but rather a qualified instrument to comply with the duty of justice to give each person what he or she deserves. Precisely in its essential structure, the trial is instituted in the name of justice and peace. In fact, the purpose of the proceedings is the declaration of the truth by an impartial third party, after the parties have been given equal opportunities to support their arguments and proof with adequate room for discussion. This exchange of opinions is normally necessary if the judge is to discover the truth, and consequently, to give the case a just verdict. Every system of trial must therefore endeavour to guarantee the objectivity, speed and efficacy of the judges' decisions."[21]

And further, "Just as the dialectic of the proceedings leads us to understand the criterion of the search for the truth, so it can help us grasp the other aspect of the question: its pastoral value, which cannot be separated from love for the truth. Indeed, pastoral love can sometimes be contaminated by complacent attitudes towards the parties. Such attitudes can seem pastoral, but in fact they do not correspond with the good of the parties and of the Ecclesial Community itself; by avoiding confrontation with the truth that saves, they can even turn out to be counterproductive with regard to each person's saving encounter with Christ. The principle of the indissolubility of marriage forcefully reaffirmed here by John Paul II (cf. addresses: 21 January 2000, in ORE; 26 January 2000, p. 1; 28 January 2002, in ibid.; 6 February 2002, p. 6) pertains to the integrity of the Christian mystery. Today, unfortunately, we may observe that this truth is sometimes obscured in the consciences of Christians and of people of good will. For this very reason, the service that can be offered to the faithful and to non-Christian spouses in difficulty is deceptive: it reinforces in them, if only implicitly, the tendency to forget the indissolubility of their union. Thus, the possible intervention of the ecclesiastical institution in causes of nullity risks merely registering a failure."

"However, the truth sought in processes of the nullity of marriage is not an abstract truth, cut off from the good of the people involved. It is a truth integrated in the human and Christian journey of each of the faithful. It is very important, therefore, that the declaration of the truth

[21] Benedictus XVI: *Alocutio ad Tribunal Rotae Romanae*, 28.1.2006, AAS 98 (2006) pp. 135—138; here from p. 136.

is reached in reasonable time. Divine Providence certainly knows how to draw good from evil, even when the ecclesiastical institutions neglect their duty or commit errors. It is nonetheless a grave obligation to bring the Church's institutional action in her tribunals ever closer to the faithful. Besides, pastoral sensitivity must be directed to avoiding matrimonial nullity when the couple seeks to marry and to striving to help the spouses solve their possible problems and find the path to reconciliation. That same pastoral sensitivity to the real situations of individuals must nonetheless lead to safeguarding the truth and applying the norms prescribed to protect it during the trial."[22]

In his address to the employees of the Roman Rota in 2011, Benedict XVI referred to the words of Bl. Pope John Paul II from 1990, and his earlier speeches, by saying, "The post-conciliar discussion on canon law was centred on the relationship between law and pastoral care. The well-known assertion of the Venerable Servant of God, John Paul II, whose opinion was that 'it is not true that, to be more pastoral, the law should be less juridical' (cf. Address to the Roman Rota, 18 January 1990, n. 4), expresses the radical surmounting of an apparent antithesis. 'The juridical and the pastoral dimensions', John Paul II said, 'are united inseparably in the Church, a pilgrim on this earth. Above all, one aspect of their harmony emerges from their common goal: the salvation of souls' (ibid.). At my first meeting with you in 2006 I tried to highlight the authentic pastoral meaning of causes of the nullity of marriage founded on love for the truth."[23]

However, in his exhortation *Sacramentum caritatis*,[24] Pope Benedict wrote: "When legitimate doubts exist about the validity of the prior sacramental marriage, the necessary investigation must be carried out to establish if these are well-founded. Consequently, there is a need to ensure, in full respect for canon law, the presence of local ecclesiastical tribunals, their pastoral character, and their correct and prompt functioning. Each Diocese should have a sufficient number of persons with the necessary preparation, so that the ecclesiastical tribunals can operate in an expeditious manner. I repeat that 'it is a grave obligation to bring the Church's institutional activity in her tribunals ever closer to the faithful'. At the same time, pastoral care must not be understood as if it were somehow in conflict with the law. Rather, one should begin

[22] Ibidem, p. 138.

[23] Benedictus XVI: *Alocutio ad sodales Tribunalis Rotae Romanae*, AAS 103 (2011), pp. 108—113.

[24] Benedictus XVI: *Adhortatio apostolica postsynodalis "Sacramentum caritatis" ad Episcopos, sacerdotes, consecratos consecratasque necnon christifideles laicos de Eucharistia vitae missionisque Ecclesiae fonte et culmine*, 22.2.2007, AAS 99 (2007), pp. 105—180.

by assuming that the fundamental point of encounter between the law and pastoral care is love for the truth: truth is never something purely abstract, but "a real part of the human and Christian journey of every member of the faithful." Finally, where the nullity of the marriage bond is not declared and objective circumstances make it impossible to cease cohabitation, the Church encourages these members of the faithful to commit themselves to living their relationship in fidelity to the demands of God's law, as friends, as brother and sister; in this way they will be able to return to the table of the Eucharist, taking care to observe the Church's established and approved practice in this regard. This path, if it is to be possible and fruitful, must be supported by pastors and by adequate ecclesial initiatives, nor can it ever involve the blessing of these relations, lest confusion arise among the faithful concerning the value of marriage."

"Given the complex cultural context which the Church today encounters in many countries, the Synod also recommended devoting maximum pastoral attention to training couples preparing for marriage and to ascertaining beforehand their convictions regarding the obligations required for the validity of the sacrament of Matrimony. Serious discernment in this matter will help to avoid situations where impulsive decisions or superficial reasons lead two young people to take on responsibilities that they are then incapable of honouring. The good that the Church and society as a whole expect from marriage and from the family founded upon marriage is so great as to call for full pastoral commitment to this particular area. Marriage and the family are institutions that must be promoted and defended from every possible misrepresentation of their true nature, since whatever is injurious to them is injurious to society itself."[25]

In addition, in 2007, Pope Benedict XVI, in a message to the participants of a training course in the field of canon law of marriage and its process said, "The Church's marriage law is not there to complicate the lives of the faithful. Its only aim is to serve the truth."[26]

Finally, in a speech to the staff of the Supreme Tribunal of the Apostolic Signatura, Benedict XVI, citing the exhortation *Sacramentum caritatis*, evoked the pastoral nature of ecclesiastical tribunals.[27]

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[25] Ibidem, n. 29.

[26] The Pope recalls this message to participants of a training course in the field of canon law of marriage and the process at the Pontifical University of the Cross on 17—21.9.2007, Catholic News Agency, 21.9.2007, time: 17:27: *Benedykt XVI: kościelne prawo małżeńskie to służba prawdzie*, in: http://system.ekai.pl/kair/?screen=depesza&_scr_depesza_id_depeszy=383770 (accessed 16.7.2012).

[27] Benedictus XVI: *Allocutio ad Plenariam Sessionem Supremi Tribunalis Signaturae Apostolicae*, 4.2.2011, AAS 103 (2011), pp. 115—118.

In an interview with Peter Seewald, Benedict XVI explained the relationship between the order of love and the legal order of the Church, by bluntly claiming that "ecclesiastical penal law functioned until the late 1950s; admittedly it was not perfect — there is much to criticize about it — but nevertheless it was applied. After the mid-1960s, however, it was simply not applied any more. The prevailing mentality was that the Church must not be a Church of laws but, rather, a Church of love; she must not punish. Thus the awareness that punishment can be an act of love ceased to exist. This led to an odd darkening of the mind, even in very good people. Today we have to learn all over again that love for the sinner and love for the person who has been harmed are correctly balanced if I punish the sinner in the form that is possible and appropriate. In this respect there was in the past a change of mentality, in which the law and the need for punishment were obscured. Ultimately this also narrowed the concept of love, which in fact is not just being nice or courteous, but is found in the truth. And another component of truth is that I must punish the one who has sinned against real love."[28]

3. Pope Francis to canonists

The pontificate of Pope Francis is accompanied by an unusual interest, including in the context of the anticipated and expected reforms in the Church, especially in its institutional functionality and better implementation of the mission — the saving mission of the Church. Therefore, the public interest tracks papal statements on this subject. On 8 November 2013 and 24 January 2014, the Pope met with the staff of the two apostolic tribunals: the Supreme Tribunal of the Apostolic Signatura and the Tribunal of the Roman Rota.

During the first meeting, at the end of his speech, the Pope pointed out the link between evangelization and ecclesiastical justice, pointing to the icon of the Good Shepherd who seeks the lost sheep, "One final observation, which is very important in regard to those who are involved in the ministry of justice in the Church. They act on behalf of the Church; they are part of the Church. Therefore, it is always necessary to keep in mind the effective connection between the action of the Church, which evangelizes, and the action of the Church, which administers justice. The service of justice is an undertaking of the apostolic life: its exercise requires that

[28] *Benedykt XVI w rozmowie z Peterem Seewaldem, Światłość świata. Papież, Kościół i znaki czasu*. Kraków 2011, pp. 37—38.

we keep our gaze fixed on the icon of the Good Shepherd, who bends down to the lost and wounded sheep."[29]

In turn, to the employees of the Tribunal of the Roman Rota, Francis stated that there is no contradiction between pastoral care and the law of the Church, and "The juridical dimension and the pastoral dimension of the Church's ministry do not stand in opposition, for they both contribute to realizing the Church's purpose and unity of action. In fact the judicial work of the Church, which represents a service to truth in justice, has a deeply pastoral connotation, because it aims both to pursue the good of the faithful and to build up the Christian community. Such activity constitutes a peculiar development of the power of governance, turned toward the spiritual care of the People of God, and is therefore fully inserted in the journey of the mission of the Church. It follows that the judicial office is a true *diakonia*, that is a service to the People of God in view of strengthening the full communion between individual members of the faithful, and between them and the ecclesial body. Furthermore, dear Judges, through your specific ministry, you offer a qualified contribution in confronting emerging pastoral themes."[30]

Drawing the silhouette of the ecclesiastical judge, he noted that, "In his work he is also guided by the intent to safeguard truth, respecting to the law, without overlooking the delicacy and humanity proper to a pastor of souls." The Pope drew attention to the pastoral ministry aspect of the judge, "As an expression of the pastoral concern of the Pope and Bishops, the judge is required not only to have proven competence, but also to have a genuine spirit of service. He is the servant of justice called to treat and judge the condition of the faithful, who with confidence turn to him, by imitating the Good Shepherd who cares for the wounded lamb. That is why he must be inspired by pastoral charity; […]. Love — St. Paul writes — 'binds everyone together in perfect harmony' (Col 3:14), and constitutes the soul as well as the function of the ecclesiastical judge."[31]

These statements made by Bl. John Paul II, Benedict XVI, and the current pontiff, Francis, lead to a clear conclusion: the law in the Church only makes sense in the pastoral context, that is both of these aspects of

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[29] Franciscus: *Discorso ai partecipanti alla Plenaria del Supremo Tribunale della Segnatura Apostolica*, 8.11.2013, in: http://www.vatican.va/holy_father/francesco/speeches/2013/november/documents/papa-francesco_20131108_plenaria-segnatura-apostolica_it.html (accessed 14.3.2014).

[30] Franciscus: *Address to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year*, 24.1.2014, in: http://www.vatican.va/holy_father/francesco/speeches/2014/january/documents/papa-francesco_20140124_rota-romana_en.html (accessed 14.3.2014).

[31] Ibidem.

the activity of the Church have a common goal: the salvation of souls, which must always be the supreme law.

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Leszek Adamowicz

Law and Pastoral Care: Reflections of Three Popes

Summary

The theme of the article is to present the relationship between canon law and the pastoral activity of the Catholic Church. The author cites a number of statements made by popes: John Paul II, Benedict XVI and Francis, on the subject, contained in doctrinal documents, speeches to employees of the Tribunal of the Roman Rota, and other bodies, as well as on other occasions. Quoted statements lead to a clear conclusion: the law in the Church only makes sense in the pastoral context, that is, both of these aspects of the activity of the Church have a common goal: the salvation of souls, which must always be the supreme law.

Leszek Adamowicz

Droit et prêtrise : réflexions des trois papes

Résumé

L'objectif de l'article est de présenter les relations entre le droit canonique et l'activité pastorale de l'Église catholique. L'auteur rapporte une quantité de propos des papes : de Jean-Paul II, de Benoît XVI et de François concernant ce sujet et étant inclus dans les documents doctrinaux, dans les exposés adressés aux travailleurs du Tribunal de la Rote romaine et à d'autres groupes, ainsi que dans d'autres circonstances. Les propos cités

aboutissent à la conclusion qui ne laisse aucune place au doute : c'est-à-dire qu'à l'Église, le droit a un sens uniquement dans le contexte pastoral, alors les deux aspects de l'activité de l'Église (le droit et la prêtrise) ont un but commun : salut des âmes qui doit être toujours le droit le plus important.

Mots clés : droit, droit canonique, prêtrise, Rote romaine, Signature apostolique

Leszek Adamowicz

Diritto e pastorale: riflessioni di tre pontefici

Sommario

Il tema dell'articolo è la presentazione della relazione tra il diritto canonico e l'attività pastorale della Chiesa cattolica. L'autore cita una serie di asserzioni dei pontefici: Giovanni Paolo II, Benedetto XVI e Francesco sull'argomento, incluse nei documenti dottrinali, nei discorsi ai componenti del Tribunale della Sacra Rota e ad altri membri, ed anche in altre occasioni. Le asserzioni citate guidano ad una conclusione esplicita: il diritto nella Chiesa ha senso esclusivamente nel contesto pastorale ossia entrambi questi aspetti dell'attività della Chiesa (diritto e pastorale) hanno un fine comune: la salvezza delle anime che deve essere sempre la legge suprema.

Parole chiave: diritto, diritto canonico, pastorale, Rota Romana, Segnatura Apostolica

Part Three

Reviews

Ecumeny and Law, vol. 2 (2014)
pp. 305—308

Intelektualne i duchowe dziedzictwo Cyryla i Metodego Historia i aktualność tradycji cyrylo-metodiańskiej (Intellectual and Spiritual Heritage of Cyrill and Methodius History and Topicality of Cyrillo-Methodian Tradition) Eds. Józef Budniak, Andrzej Kasperek Polska Akademia Nauk. Studio NOA. Katowice 2014, 198 pp.

The reviewed multi-author monograph contains articles by eleven authors (nine Poles, one Slovak and one Czech) who look at intellectual and spiritual heritage of Slavonic faith prophets and patron saints of Europe, Sts. Cyrill and Methodius, seen from different viewpoints and by representatives of various denominations: Roman Catholic, Greek Catholic, Orthodox and Protestant.

The editors Józef Budniak and Andrzej Kasperek stress the three important facets in the introduction, which are "*in principio* Slavonic Christian thinking: theological, philosophical and mystical aspect." Despite the divergence in cultures, tendencies and positions, they create unity in issues of faith. According to all the authors, mission of the Thessaloniki Brothers contributes greatly to the whole European civilisation and allows to understand that East and West in the process of spiritual integration of Europe need to breathe with both lungs. Józef Budniak in his article "The Solun Brothers — Cyrill and Methodius in liturgy and prayer" (pp. 13—28) emphasises that St. Pope John Paul II confirmed the above-mentioned necessity, inspired by Russian philosophers V.S. Solovjov (1853—1900) and V.I. Ivanov (1866—1949) (V.I. Ivanov in 1926 in his confession of faith in St. Peter's Basilica in Rome said: "Now I can breathe with both lungs." "Lettera a Charles du Bos." In: *Corrispondenza da un angolo all´altro*. Milano 1976, pp. 112—113).

Zygfryd Glaeser in his study "The Significance of Cyrillo-Methodian Tradition for the Unity of Europe in the Light of John Paul II's encyclical *Slavorum Apostoli*" (pp. 29—48) confirmed a prominent place of this tradition in the process of European cultural improvement. Leonard Górka in the contribution "Slavic Theology of Liberty in the Light of the Evangelistic Work of Saints Cyrill and Methodius" (pp. 49—61) speaks about Slavonic theology, which "combines Greek-Byzantine theology with the Latin one." The author emphasises the Solun Brothers' inculturation in mission commitment. Jan Górski in the article "The Relevance of the Solun Brothers' missionary method" (pp. 63—70) claims that we should call Sts. Cyrill and Methodius "pioneers in mission methodics," which constitutes the basis for understanding cultural-geographical context. Piotr Kroczek in an article titled "Ecumenism as Factor that Shapes Legislative Decisions" (pp. 71—78) presents his thought on ecumenism as the role of the Catholic Church and he does it in the context of canon law. According to Kroczek, it is important "to find what unites the Catholic Church with other Christian churches." Danuta Kocurek in the article titled "The Mission of the Solun Brothers — Cyrill and Methodius in School Books" (pp. 83—95) analyses the Solun Brother's mission through the prism of social-educational handbooks from different periods of history, because the missionary activity of Sts. Cyrill and Methodius is constantly the subject of research of scholars representing various fields (historians, linguists, educators, didactics and cultural studies scholars). She warns: "It is necessary to create a manual that would help modern young people to understand the Sts. Cyrill and Methodius mission as unique contribution to the concept of universal values (dialogue, integration), so Europe will not forget the benefit of Slavs in culture and ecumenism." Adam Palion in his article "The Heritage of Cyrillo-Methodian Tradition in Katowice Archdiocese" (pp. 97—108) highlights the spiritual and intellectual potential of brothers from Thessaloniki, as well as their merit in the "appreciation for the dignity of the human, evangelistic activities and ecumenical contribution." He argues that there are many testimonies commemorating the mission of Sts. Cyrill and Methodius and their students at the Katowice Archdiocese. This fact has been documented by churches, chapels, altars, names of mountains, the participation of Poles in Slavic congresses and Slovanic meetings in Velehrad, but also by prayers for Christian unity, ecumenical meetings, by returning to the authority of the Gospel and bringing unity into diversity. Piotr Rygula in his article titled "Cyrill and Methodius's Contribution into the Process of Forming European Identity" (pp. 109—123) argues that the Solun Brother's mission brought about the "contact of the Greek-Byzantine and Roman cultures." It shows Nomocanon, adjusted in the second half of the 9th century by

Photios, patriarch of Constantinople, which St. Methodius translated into Old Slavonic language in a way that respects the cultural identity of the Slavs, who were situated under his jurisdiction. Krzysztof Wieczorek, in an article "What Next with the Tower of Babel? The Solun Brothers and Breaking Language Barriers" (pp. 125—141) is a historic reminescence of the biblical description of human pride in the Old Testament, and New Testament's look at Pentecost in Jerusalem and significant words of St. Paul (cf. Col. 3: 11) underlining that there is no Greek or Jew etc. In this perspective Sts. Cyrill and Methodius created new language with the aim to make "Jesus Christ clear and close to the hearts of Slavs. Evangelism among the Slavs became a way to gain souls for heaven." In Part Two of the monograph the readers find two contributions: by the Bishop of Nitra and Professor of Church History Villiam Judák (the Slovak Republic) and by Professor Paul Ambroz from Palacky University in Olomouc (the Czech Republic).

In the contribution titled "The Cult of Cyrill and Methodius in Slovakia after 1990 as a Living Continuity of Christian and National Values" (pp. 145—164) Bishop Judák deals with the values which remain the fountain of spiritual powers rejuvination for the Slovaks and other Slavs. The emphasis is put on the importance of the Cyrillo-Methodian tradition (in Roman-Catholics, Greek-Catholics, the Orthodox and Protestants), which is perfectly illustrated by the activity the University of Trnava in the 17th century (1635), also by Košice, evangelical press in Banská Bystrica, Banská Štiavnica and in Levoča, religious songs collected in *Cantus Catholici* and evangelical *Tranosc hymnal*, numerous literary works, pilgrimages to Velehrad and to Nitra. In Nitra exists the first Christian Church and, in proximity of the city (in Močenok), St. Gorazd was born, the first Slovak priest, well-educated, faithful, reliable man anointed by St. Methodius as his successor in episcopal office. According to Judák "it is almost impossible to remove Christ and Christianity from the Slovak history," which is also visible today (new temples dedicated to Sts. Cyrill and Methodius are being built, Gorazd's Močenok, Nitra's culture celebrations). Also, St. John Paul II had great merits in the revival of acknowledgement of the Solun Brothers.

Pavol Ambros in his reflections entitled "Is There a New Vision of Cyrillo-Methodian Tradition? On the Margins of Contemporary Discussion about Continuity and Discontinuity in the Czech Church and Society" (pp. 165—179) meditates about particularism and universalism of the Solun Brothers and stresses the fact of other standpoints of more opinions in the tradition of East and West, but also emphasises the validity of it for current global culture (G. Fedotov, R. Jakobson, T. Špidlík). The author establishes his vision into the specific environment of brotherly nations

of Czechs and Slovaks in long-time and recent history, in the totalitarian period as well as in today's secular Czech environment. The Pope St. John Paul II sent in 1985 a letter addressed to Czech and Slovak priests in which he reminded them the duty to develop universalism of respect to Sts. Cyrill and Methodius. According to Ambros "there exists the continuity of reciprocal enrichment of particular and universalistic orientations." Even after 1150 years we can say that the mission of the Solun Brothers contributes to the political and cultural structure of Central Europe. At the same time, he points that behind "the current religious tourism the cultural hedonism of obsolescent generation of Europeans is also hidden, some kind of camouflage of pilgrims and tourists looking for the beauty of the unique, particular and universal."

To conclude the review of this 198-pages-long monograph, it seems orderly to present the effort of the authors of all eleven contributions to give their personal view on the Cyrill and Methodius's mission theme in unique way. All studies offer not only the wealth of thought, but also point out to continuous topicality of the Solun Brothers, which can be beneficial to individual readers as well as for current multicultural European society.

Saints Cyrill and Methodius were not afraid of the otherness of culture, because they understood that the way of inculturation brought not only mutual, but also universal benefit. However, this type of understanding is preceded by respect and love for every human. Individual studies have the potential to impress those interested in the topic, but also generally open for dialogue.

Helena Hrehova

Ecumeny and Law, vol. 2 (2014)
pp. 309—312

Urszula Nowicka: *Stwierdzenie stanu wolnego wiernych prawosławnych na forum kościoła* (Certifying Unmarriedness of the Orthodox Faithful in the Roman Catholic Church) Warszawa 2012, 424 pp.

In 2012, the academic press of the Cardinal Stefan Wyszyński University in Warsaw published a study written by the university's researcher in the Department of Canon Law, Urszula Nowicka, PhD, entitled *Stwierdzenie stanu wolnego wiernych prawosławnych na forum kościoła* (Certifying Unmarriedness of the Orthodox Faithful in the Roman Catholic Church). Although the title suggests a legal term and may not be easily connected with the widespread understanding of ecumenism, it provides evidence for the openness between the Roman Catholic Church and the Orthodox Church when the members of the Orthodox Church turn to the Catholic Church to assess their free state (the fact of being unmarried), which usually happens when they want to enter into matrimony in the Catholic Church. However, the approach of the Catholic Church, and the author's herself, to the issues presented in the book, creates an appropriate ecumenical climate.

The discussed study has been divided into three parts, each of them including two chapters. Each chapter has been crowned with conclusions.

In the first part, the author deals with preliminary issues without which further discussions would be incomprehensible. The first chapter shows the very nature of marriage and the differences in understanding its indissolubility by both Catholic and Orthodox Churches. Another important preliminary issue (Chapter Two) is the question of the Catho-

lic Church competence in the marriage of the faithful Orthodox. The author stresses, based on the resolutions of the Second Vatican Council, the right of the Orthodox Church to govern itself according to its own discipline. The authority of the Catholic Church over the marriage of the non-Catholics has been based on can. 1671 CIC/83, can. 1357 CCEO and Instruction *Dignitas connubii* (art. 3 § 2), which can be followed only when the faithful Orthodox turn to the ecclesiastical judge to ask permission to be married in the Catholic Church. The competence of a particular tribunal — according to the author of the study — stems from the procedural law or the authorization of the Apostolic Signatura.

After the basic issues have been presented, the author takes up the subjects delineated by the main topic of the study (Chapters Three and Four). In the second part, the author deals with the Orthodox divorce verdicts (this is how they were named, as the term "dissolution" of marriage is inadequate) and their effects in the Catholic Church forum. At the beginning of chapter three, after presenting the basics of the Orthodox divorce ritual, the author speaks of the causes of the ritual and the procedure of deciding in a given case, based on the judicial documents of the following Orthodox Churches: four Patriarchates (Moscow, Serbian, Romanian and Bulgarian), five European autocephalous Orthodox Churches (Cypriot, Greek, Polish, Albanian, Czech and Slovak) as well as the autocephalous Orthodox Church in America. The author also mentions the principle of *oikonomia*, which is of special importance in the Orthodox faith and helps to justify some reasons for a divorce or another marriage licence. Chapter Four speaks about the procedure of establishing by the Catholic Church the free status of the faithful Orthodox after a church divorce if they want to marry a Roman Catholic. First, the insufficiency of documents concerning the free status of the members of the Orthodox Church has been stressed. In such case there occurs the necessity to state it — according to the guidelines of the Apostolic Signatura — in a regular judical process based on standard judicature of the Roman Rota. Nowicka based her considerations on some selected judgements of the Rota. She also dealt with the case of the nullity of marriage pronounced by the Orthodox Churches. In order to do it, she took the example of the norms in force in this matter in the Serbian Patriarchate and the Cypriot Orthodox Church. However, these judgements require an entire court verification. Therefore, the verdicts concerning the nullity of marriage pronounced by the Orthodox Churches must meet the conditions mentioned by the author if they are to be accepted in the non-judical Catholic canon forum in the future, which, no doubt, would be a really great ecumenical achievement.

Part Three (Chapters Five and Six) deals with the other issue of the study, that is the establishment, in the Catholic Church, of the free status of the faithful Orthodox who earlier were bound by a civil marriage contract. In Chapter Five, concerning the substantive law, such marriages have been described and discussed and special attention has been paid to the fact if the marriage was celebrated with a "sacred rite." The author of the study points out that in the Orthodox doctrine (at least in the Russian Orthodox Church) an opinion can be found that a marriage which was celebrated without the church rite should be recognized as a valid but non-sacramental one. From the Catholic point of view, when assessing a civil marriage, it is important that the canon form is observed when the marriage is celebrated. The procedure of establishing the free status of the above-mentioned persons who got married in the magistrate and want to get married to a Roman Catholic in the Catholic Church, as discussed in Chapter Six, has been based on the decisions of the Apostolic Signatura, mostly unpublished. They show an evolution in the matter of setting requirements. In the past, regular or shortened legal proceedings were necessary, or there was a dispensation from the obligatory trial after which the verdict of the first instance was approved by the Apostolic Signatura. Since 2007, it has been enough to give such declaration during the prematrimonial investigation carried out by the ordinary, or parish priest after a consultation with the ordinary. Only in two cases the Apostolic Signatura demands that the trial is brought to court: when there is a doubt whether the failure in the conduct of the sacred celebration was due to a serious difficulty, which, according to the Signatura, brings up the question whether the special form of entering into marriage should be applied, or when there is a doubt if one of the parties of the civil marriage belongs to the Orthodox Church. At this point it should be mentioned that the Orthodox Churches do not recognize the special form of entering into marriage. However, if the Catholic Church is to assess such a bound, this possibility cannot be passed over (see the author's thorough reflections, pp. 336—351).

The study has been based on rich biographical foundations (39 pages thereof, including 232 source texts). Both the source texts and references present the norms and works of both parties — Catholic and Orthodox.

The author of the study presents the teaching, norms and practice of the Orthodox Churches with great respect; however, with a Catholic point of view in the background. This can be noticed by numerous and subtle analyses of real situations, legal regulations and their interpretations.

Nowicka's study is a methodologically and substantively valuable work on the matrimonial law on the ground of Orthodox and Catho-

lic Churches. Moreover, without any doubt it can be perceived as a novelty not only in Poland, but also in the European teaching of the canon law. The reader is attracted by the clarity and excellent narration of the book. The author deserves special recognition and gratitude for all her hard work on the book.

Edward Górecki

Ecumeny and Law, vol. 2 (2014)
pp. 313—315

Juan Jose Perez-Soba: *Amore: introduzione a un mistero* Amore umano, 13. Cantagalli Siena 2012, 430 pp.

The author of the discussed extensive monograph is Juan Jose Perez-Soba, who, first of all, is a priest in the diocese of Madrid. As a theologian, Perez-Soba specializes in moral fundamental theology at the Theological Department of the Ecclesiastical University San Damaso in Madrid, which is an academic institution existing within the structure of the Papal Institute of John Paul II in Rome and Valencia. The author is already renowned for publishing several monumental works on the subject of love, for instance *Estudio de la interpersonalidad en el'amor en San Tome de Aquine* (PUI Mursia 2001), as well as a volume entitled *L'amore principio di vita sociale. "Caritas aedificat"* (Cantagalli 2011). The book we are about to review has been pronounced The Book of the Year 2013 by the experts and media.

Discussing the content of Perez-Soba's monograph, we have to start with a general outline of its topic area, which boils down to the "dialogue" about love with a contempory human. Both the "Death of God" philosophical-theological movement and "liberation theology" of the 1960s addressed love in an inappropriate way. Only Jürgen Moltmann's "theology of hope" established a comprehensive way of developing the more holistically understood "theology of love."

The work is composed of six parts, each of them very extensive. First two comprise "a general view" on the issue of love in philosophy, theology and everyday life. The author derives all his conclusions from the theology of creation because "God saw everything that he had made, and behold, it was very good" (Genesis 1:31). Therefore, it is also a departurepoint of undestanding "the theology of marriage and family." The last part — according to the author — includes important "distinctions"

and "differences" resulting from the emotional sense of love, "love for the truth" and "love for good life choices" (p. 56).

Additionally, the third part, speaking content-wise, is devoted to specific problems conditioning understanding of love in life. What is at stake here is the "experience of the beginnings of love" (p. 75). These are the decisive factors when it comes to a proper or deformed vision of God's love (or lack thereof) and different forms of "loving thy neighbour."

For us, it is the fourth part that is crucial (pp. 137—196), since the author presents therein the integral anthropology of love in marriage and family by developing the truths already known from John Paul II's "*Man and woman he created them*" *(Genesis 1:27)* John Paul II. The author, however, reinterprets the Pope's message by referring to many interesting, and often already forgotten, thinkers such as Dionysius the Areopagite, Richard of St. Victor, Maurice Necdonelle and Livio Melina. The most interesting and novel way of presentation refers to the spousal love, described as "friendship with sustainable presence" (p. 174). The chapter ends with a meticulous analysis of "the need to develop the everyday language of love" (182ff.).

The fifth and the sixth parts are devoted to the basics of the theology of love. These parts are quite lengthy, too. Starting from "the necessary love for the truth," the author concludes with the descriptions of the exemplary Christocentric love. Here is the excerpt from one of such descriptions: "Love is fascinating. No one can escape it. If one deforms it, one, at the same time, loses a sense of one's own identity, hope, sense of life and true happiness."

Moreover, the book deserves our attention for two more reasons. Firstly, because of its systematic rendition of the basic and forgotten, in a great cultural chaos, concepts related to love.

Secondly, the author is rightly faithful to the assumption that "love is a mystery." And when, in the fourth part, he talks about the spousal love, his arguments are of a particular type. Marriage is a true and proper vocation. "Two Christians are married, constantly noticing in their history of love the call from the Lord, and hence recognize the vocation to create out of the two elements, masculine and feminine, one — the unity of body and life. The sacrament of marriage strengthens this love by the grace of God, by embedding it in God, and thanks to this gift, with the certainty of the vocation, one can be sure and fearless to cope with everything together!

The conclusion of this very comprehensive monograph may be as follows: Also young people need today this moral and spiritual basis in order to build well, but unfortunately this basis is no longer provided by families or social tradition. What is even worse, the nowadays soci-

ety puts individual rights in the first place rather than family and interpersonal ties which last until difficulties are encountered. This is why one often speaks about spousal and family relations in a superficial and incorrect way. This is why *Love: Introduction to the Mystery* is so much needed. It is definitely indispensable in the way offered by Juan Jose Perez-Soba.

Alojzy Drożdż

Ecumeny and Law, vol. 2 (2014)
pp. 317—320

Beziehung leben zwischen Ideal und Wirklichkeit
Eds. W. Krieger, B. Sieberer
Edition Kirchen — Zeit — Geschichte. Linz 2010, 198 pp.

The human is a family being, and his/her vocation is to live within the family, the way to which is through marriage. However, as we read in the Pastoral Constitution on the Church *Gaudium et spes*: "Marriage […] is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen" (GS, n. 50). For it is a value, which decides about the inner construction of marriage and allows it to become an "intimate partnership of married life and love" (GS, n. 48).

The love of a husband and a wife, the source of proper relations which enrich their mutual bond, gives then a beginning to a family life. It makes two people who are joined in an unbreakable bond of matrimony seek their complement in each other and a child. Owing to it, a marital community exists. For it, the "us" is more important than "me" or "you." In the light of this community, a mutual wellbeing and giving oneself as a gift to the spouse also is of a particular value. This gift is of an utmost value when it becomes a matter of mature will, and not only a matter of emotions; it reveals itself as a desire for mutual affiliation and service to a chosen person. For he chooses her for herself, to give her everything, not only for sexual values or a play on emotions. The personal matrimonial love can be solid only when it is not subordinate to changeable sensuality or emotionality, even though it creates a possibility of revealing a whole depth of their wealth, which is available between two human beings who desire their mutual good.

We might look with anxiety at the increase, especially in Western Europe, of unfavourable social-cultural processes, the alarming consequence of which is the matrimonial love degradation that destroys social relations both within marriage and family, and what is more, leads to the plague of divorces and stabilizing of a mentality in opposition to the conception of new life.

These issues are also addressed by the reviewed monograph (*Beziehung leben zwischen Ideal und Wirklichkeit*), fruit of another German-speaking country pastoral scholarly conference (Österreichische Pastoraltagung), which under the same title, took place in the formation house of St. Virgil in Salzburg, from 7th to 9th January 2010. Apart from many famous pastors, teachers and psychologists from Austria and Germany, the conference gathered many participants from other European countries (e.g. Belgium and Poland), who from different viewpoints dealt with the organizer-proposed issues. According to a great many of speakers, the significance of the Church's pastoral service to marriage and family, should nowadays result not only from the subject matter connected reasons, but also from many existential circumstances, carrying threats to rightly shaping of matrimonial and family relations. These threats lie in a specific shape of culture and in this way created tradition cutting family life off its proper spiritual and moral sources. Nowadays, we witness some ongoing, increasingly popular discussions surrounding these matters. All over Europe, especially Western Europe, constantly developing civilization-shaping processes, acting in the direction of reducing love and spiritual life of a family to the level of hedonistic utilitarianism, are observed. The brightest manifestation of this trend are attempts at granting the same rights to cohabitation or homosexual relationships as to marriage and family. All of this leads to putting marital love in danger and, as a consequence, a breakup of marriage bonds, which results in divorces.

In the analysed publication, the development of the mentioned phenomenon in contemporary Austria, is a subject of close study and scrutiny. The issue is taken into consideration mainly from the viewpoint of pastoral-theological contemplation, both in practical and theoretical terms.

Current circumstances for family life in Austria are presented in the first group of articles. Their authors show that in a consumption-oriented societies, among which Austria can be counted, the value of unbreakable marriage is nowadays, more and more, ignored (Johannes Ulz: "Kirchliche Vorstellungen von Ehe und Familie"). Legal acknowledgment of new "relationships forms" and shared life, which *in fact* have nothing in common with a traditional family image, is being demanded with growing peskiness. Efforts are also being made in order to legalize homosexual

relationships. According to some speakers, decisive role in such transformations has, first and foremost, the liberal politics of the Austrian government and increasing privatization of life, which destroys the real marriage-family bond (cf. Martina Beham-Rabaner: "Paar- und Familienbeziehungen heute: Balanceakt zwischen Anforderungen und Überforderungen"; Johannes Ulz: "Kirchliche Vorstellungen…").

Analyses of this situation, presented in the second part of the publication, are equally interesting. The authors of these articles point out, among others, that transformations, taking place in the Austrian society on the level of marriage and family, are very troubling, since they not only, in a different manner, strike the truth about dignity of the human being, but also distort the very idea of a family as a place of common life and intimate relations between a man and a wife (cf. Alfons Vansteenwegen: "Liebe, ein Tätigkeitswort…"). We should also look into some authors' contemplations, who turn our attention not only to many increasing dangers for the marital-family life, but also focus on how to help the sacramental relationships which have to resist destructive influence, devastating the traditional model of marriage and promoting promiscuity in intimate marital relations (cf. Alfons Vansteenwegen: "Liebe, ein Tätigkeitswort…"; Franz Harant: "Leitlinien zum Umgang mit Menschen in Beziehungen «außer der Norm»").

Finally, beside the analysis of the current Austrian family situation and contemplation of the actions supporting them in view of psychoanalysis and theology (cf. Erich Lehner: "Beziehungen gestalten und vertiefen. Perspektiven aus der Geschlechtforschung. Psychoanalise und Theologie"), the reviewed publication devotes, in its third part, more attention to issues which focus on elaborating practical solutions that aim at supporting Austrian married couples in building their authentic matrimonial and family community, based on the unbreakable sacrament (cf. Susanne Savel-Damm: "Wenn Beziehungsideale und Lebenswirklichkeit in Konflikt geraten… Erfahrungen aus der Ehe- und Familienberatung"; Thomas Knieps, Port Le Roi: "Beziehung und Spiritualität in Ehe und Familie") serving each marriage and family with specialist guidance. Married couples, which are under a threat of breakup of their mutual bonds and these which want to change or correct something in their lives, are also taken into consideration (cf. Susanne Heine: "Brüche — Scheitern — Neuanfang. Biblische Inspirationen"). Authors also point out that the communities and ecclesiastical organizations that exist in every Austrian diocese are today an important preventive support for families, as well as, divorced people or rejoined relationships (Walter Schmolly: "Beziehungs-Pastoral: Prioritäten und aktuelle Herausforderungen"; Klaus Küng: "Beziehung leben zwischen Ideal und Wirklichkeit: Wir sind auf dem Weg").

It is worth pointing out that the reviewed publication can have crucial significance for deepening the pastoral-theological contemplation on very important subject matter, connected with the family ministry. Moreover, language clarity and communicativeness of the book are also praiseworthy.

Ireneusz Celary

Ecumeny and Law, vol. 2 (2014)
pp. 321—326

Tadeusz Dzidek: *Funkcje sztuki w teologii* (The Functions of Art in Theology). Wydawnictwo WAM Kraków 2013, 170 pp.

What is the place of art in the life of the Church and at the same time in theology? This is a *par excellence* interdisciplinary and — to a large extent — ecumenical question.

How deep does the connection between reason and beauty penetrate into theology, theological epistemology, or into the Christian way of thinking and cognition? And how does it correlate with the Christian *kerygma*? Are the reason and beauty, in fact, dependent on each other, or can they function independently and without any harm to their own and theology's identity? To put it in different words: Are the unbeautiful reasonableness and unreasonable beauty possible in theology and neutral (at least) for the effects of the discipline's cognition. The following is a radical depiction of this matter by Joseph Ratzinger: "A theologian who does not love art, poetry, music and nature can be dangerous. Blindness and deafness toward the beautiful are not incidental: they necessarily are reflected in his theology" (Joseph Cardinal Ratzinger with Vittorio Messori: *The Ratzinger Report. An Exclusive Interview on the State of the Church*. Trans. S. Attanasio, G. Harrison. San Francisco 1985, p. 130).

Theology, which is created with such a stigma (of blindness and deafness to beauty), is — as it follows from the then Cardinal's speech — "barbarian" (ibid.) (in the ancient meaning of this term).

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Fundamental theology — in many different interdisciplinary configurations — has been for many years the main scientific research line of

Tadeusz Dzidek. It is a leading line of his investigations, readings, lectures and publications. This interdisciplinarity bore fruit in a number of articles, all of which have one aim: to think over and present the Christian doctrine in such a way so as to allow it to bring results in dialogue and evangelization of recipient's present-day reality. Since what is the most interesting thing for the careful reader of Dzidek's publications, for the listener of his symposium speeches, receiver of all kinds of didactic or pastoral activities, is the scientific passion, sensible enthusiasm, curiosity and research bravery which constantly tells him to enter new cognitional areas, especially those where theology and modern times meet, on the verge of which there is the fundamental theology-art relation.

Small in size, this 170-page monograph entitled *Funkcje sztuki w teologii* (The Functions of Art in Theology), published in 2013 in Cracow by WAM, is an example of an exceptional work amongst the Polish contemporary theology achievements. The book consists of 14 chapters and also, valuable in this kind of publications, supplements (bibliography, index of names) and is the 77th number in the "Myśl teologiczna" (Theological Thought) publishing series, which has been published for 20 years now becoming one of the most worthwhile theological serial publications in Poland.

Dzidek, as we find out at the beginning of the book, knows fact-collecting and erudite matters, which are the subject of the work — he discusses them in detail and depth. He writes, tone may say, calmly about matters which are the hottest, ambiguous; his writing is thoroughly dialogical, in the best possible meaning of this word: not avoiding judgment, touching upon difficult subjects, he, however, does not take a stand, nor does he manipulate theology, nor avoid its important, though, arguable matters. He provides the reader with very modern narration by writing in a multifaceted manner, presenting the problem from different perspectives.

We surely need this kind of observation and analysis of theology's struggle with the world and also with art. There is a place for understanding and erudite theology, the one gentle in its deepest trend, supporting the non-theological and artistic search for the Mystery, but also a one perspicacious in the face of all the aberrations of the present world (in the John's meaning of the word). We need theology and art that would know the limits and measures, which are — after all — Truth and Love.

The book, though, is not without flaws. One of them is a kind of uncontrolled randomness and disproportionateness in discussing selected views, presenting books or reviewing authors. For example René Girard's views take approximately 30 pages. Dzidek also devotes excessive attention to Miguel de Unamuno's works. Both works and matters brought up

by the author are unarguably important to the expositions discussed in the book, but Dzidek's report extensiveness in this case shatters the order of his analyses.

My reservations about the crux of the Dzidek's work are awaken by the recognisable, in some places of the dissertation, author's irenic attitude towards the a(nti)theistic and iconoclastic trends in modern art. These are not significant threads of the work, but they influence the theological tone of the book. We are in the year 2013 and — in my opinion — a rough, distinctly put standpoint of orthodox theology, its clearly declared identity in conversation with art, against all appearances, seems dialogically more effective. What are the limits of theological hospitality for art (cf. pp. 52—53)? This is the question that Dzidek bravely brings into the very heart of his contemplation. The obvious answer is love. But love that does not cross the borders protecting it against cheap sentimentalism and approval of second person's sin; love, in its essence, should serve the truth which aims at brotherly wellbeing, not at obtaining the illusion of piece of mind, and does not reach a partial compromise for anyone (at first my neighbour, then me, because our world is common) to be imprisoned by the very thing that destroys.

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Therefore, these are the sensitive points: what is common and what is distinct. They all lead to absolutely the most sensitive point: Jesus Christ. For Christianity sees duality in the essence of all religions, philosophies, outlooks, being and lifestyles; harm through the sin, lack of (Christ finally), but also many positives, first and foremost, longing not always consciously for the Christ and some foreknowledge of His mystery and the Event.

Christian way of living in the whole process and in some particular acts of dialogue is, on the one hand, an approval (of truth and good), and on the other, a rebellion and rejection (of idols — their different, sometimes sophisticated forms: protecting oneself from the real God, cultivating harms or devotion to sin). Criticism from the Christian perspective is then an inherent part of honest and deep dialogue, because — as (on 19 April 1999) Cardinal Ratzinger explained to Jarosław Gowin in Cracow (!) — "the dialogue is not a simple acceptance of something different, as it is, but a common intellectual process" (*Dialog jest koniecznością. Kardynał Joseph Ratzinger odpowiada na pytania „Znaku"* [conversations by E. Adamiak, T. Węcławski, K. Tarnowski, G. Chrzanowski, J. Gowin, J. Poniewierski], trans. D. Zańko, „Znak" 51 (1999), nr 11 (534), p. 10); as well as a spiritual one. And very important, from one perspective, neces-

sary in the process of every dialogue, the most important: the unerasable Christo-centrism of Christian position is in no case a contempt for different positions and views. It is, though, a discord for the resignation of looking (common) for truth, an objection to remaining (comfortable?) in "that which has been so far" (J. Ratzinger: *W drodze do Jezusa Chrystusa*. Trans. J. Merecki Kraków 2004, p. 81). It is an appeal to longing for that which is (the) bigger(st), for common truth, for the very God, for this and for that longing inscribed in hearts of all human beings. The beginning of Christianity was no different: from the longing of those Israelites who were not satisfied with tradition as such, but they were looking constantly, looking for something (the) bigger(st) (ibid.).

That is why the dialogue, and the good that comes from it, cannot be replaced or mistaken with the ideology of dialogue. Dialogue is a way of discovering truth, it is the love for your neighbour and the truth: help to your neighbour in uncovering hidden depth of what he/she feels and what he realized in his/her own religious experience, and what things in the meeting with Jesus Christ (that is the definite and full Revelation of God) are subject to be purified, complemented or fulfilled. On the other hand, ideology of dialogue is an understanding and practicing of dialogue in the meaning and shape of being "correct," the left-liberalism one, drastically different from the one (for example) accepted by the Second Vatican Council. The dialogue is here leveled with relativistic thinking, being subordinate to the ideological principles of the post-Enlightenment egalitarianism, thinking, which puts faith on one and the same level with the conviction of others and consists in exchange of relative, equal ideas and standpoints. The aim here is not the common looking for truth, but only the integration of standpoints and co-operation. The "dialogue" initiated in this manner would be able to replace "mission" and Enlightenment ideology of equality would be able to take the place of reformation: an effort to turn your and your neighbour's heart to the Truth.

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I believe that this kind of apposition to Dzidek's otherwise excellent book, is necessary. Not to suggest that the author or his work accept the relativistic thinking, but because of the fact that I discuss his work in *Ecumeny and Law* and ecumenical dialogue issues (that include, in my opinion, the shape of science and art's interdisciplinary dialogue) are fundamental here and it is worth talking about them, also in the context of this good book.

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Dzidek's professorial courage calls for admiration: the issue of "function of art in theology" is not obvious at all, for the traditional way of thinking in theology. Conversely, it is innovative in many aspects, among others, in the formal aspect. It is spiritually deep literature. Dzidek writes, for example, about the necessity of crisis on the way of developing faith: "Sometimes it emerges when on our horizon appears someone who becomes more important to us than God" (p. 123). These are theological benefits from reading Unamuno, even though, if the essence of Abrahamic struggle with God is not called here Isaac, but Concha… This kind of remarks and points compels admiration, and there are quite a lot of them. From them I derived the joy of reading.

Dzidek's book is a pioneering one, which is not restricted to Polish-speaking culture. The basic thesis of the dissertation, namely: "Art is an ally of conceptual theology" (p. 156) seems to have been accustomed to theology since the turn of 20th and 21st century. It is obvious that the fault for such a late conceptualization thereof is on the not infrequent "precariousness" of theology, which sometimes mistakes conservatism with humility towards Tradition, but also not without a major fault on contemporary art's side, for which infantile fascination with so-called straightening out tends to be more important than mature service to truth.

The author sees the problems, asks questions, and tries in every case to look into the matter patiently and — as much as it is possible — comprehensively and critically. He presents them, which is characteristic, very succinctly. This is the synthesis, simultaneously hermeneutic, biblical (less) and theological-fundamental (more), allowing for the pastoral point, making the biggest value of the book and proving the correctness of scientific work, which brought Dzidek to writing *Funkcje sztuki w teologii* (The Functions of Art in Theology).

The content of 14 chapters is, as follows: the first chapter is a contemplation on the nature of theology, examined from the perspective of its relations with art, the second one is about the nature of art. In the third one, the author analyses the rules for interpretation of art, in the fourth he discusses the epistemology and symbolical character of art. The chapters are devoted to different forms of art (picture, literature, movie and theatre) and their complex functions cooperating with theology — from taking the reader in the direction of Mystery, to "paradigm crumbling" (*a rebours* theology). The conclusion is pertinent, however — in my opinion — too concise. I would expect here a longer periphrasis or synopsis of theological role of art, in a form of about a ten-page-long article, recapitulating the entirety of exposition.

The book is well edited, editorially clear, friendly, to put it this way, in lecture use. A genuine, friendly and penetrating dialogue with contemporaneity suggested by Dzidek, is a great necessity of the Polish and European theology, not only the fundamental one, and the dissertation should be recognized as a major achievement in this field — big words that in this case I do not hesitate to use.

Jerzy Szymik

Ecumeny and Law, vol. 2 (2014)
pp. 327—334

Leonardo Paris: *Sulla libertà*
Prospettive di teologia trinitaria tra neuroscienze e filosofia
Città Nuova. Roma, 401 pp.

The contemporary cultural context of discussing human freedom is both broad and intricate. There are many methodological ways of researching this phenomenon, starting from anthropological studies, through analysis of the social sciences, ending with, sometimes awkward, political presentations concerning freedom or the lack thereof. That is because freedom is one the greatest gifts of God to human being. Without it we cannot speak either of a real and full human development, or a personal dignity, valid sacramental marriage, social development, or true human excellence and improvement of society, etc.

The author of the discussed extensive monograph which has won numerous academic and media prizes — Leonardo Paris, begins his analyses with the definition of human freedom and the idea of what "it ought to be" according to the theological anthropology (namely the trynitarian one). Much attention is being paid to the meaning of "the Other" in human life. The Other is, in the first place, God himself — God of the Revelation. Then, there is "the other," meaning every person "created in the image and likeness of God." This thought, as the author himself explains, is "confronted with a reflection of neurological sciences, especially of C.M. Edelman and A. Lurija and the message of freedom by H. Jonas and L. Pareyson" (pp. 16—17). But all this can be done in the perspective of the anthropological assumptions elaborated primarily by Hans Urs von Balthasar and E. Jungel (p. 1).

Analysing the content of *Sulla libertà…*, we can see that the author understands human freedom as one of the greatest gifts of God. It is something inherent to the human dignity and, even though the author

does not state it explicitly, throughout his entire work he remains faithful to the personalism's assumptions in speaking of the mindfulness and human freedom. For this purpose he needs the aforementioned trinitarian perspective that is theological at the same time. It is in this perspective in which he assesses very different "proposals" from the point of view of philosophical ethics and even some achievements in medicine, particularly neurology.

The expected research

In the Introduction, the author speaks quite extensively of freedom in a monistically neurological understanding of the idea ("Confronto at Le neuroscienze"). While describing a materialistic understanding of reality in the 19th century, also according to the Soviet propaganda, he shows reductionist treatment of human life (p. 17). The second part is entitled "Philosophical Mediation" (pp. 18ff.). The author sketches in it most of all the input of two philosophers to understanding of responsibility for life, namely H. Jonas and his lecture on "the philosophy of naturalised freedom" (p. 18). In this philosophical part the author broadens the horizon of thinking by the proposals of reflection on "philosophical perspective on human and Divine freedom" as understood by L. Pareyson. He needs all of this to introduce us to, as he says, "*taxis* of goodness," toward which human freedom directs us.

Thoughts of Eberhard Jungel are presented by the author to explain the perspective of "freedom in the theological sense." In this part of the lecture, the author brings us closer to excellent reflections of Balthasar (pp. 21ff.). The author deplores the fact that a significant part of the secularised philosophy does not reach the theological anthropology. "Naturalization of human freedom" is one of the worst effects of the civilisation of death. However "freedom is to be found where there are various possibilities of human actions, in which an individual may fulfill his/her vocation as an individual and when the criterion of freedom is not limited only to individual human resolutions" (p. 25). It is also about a phenomenon manifesting itself in the fact that nowadays a man is "epistemologically confused" so deeply that it distorts his own understanding of identity. And if it so, it deeply affects understanding of not only one's own humanity, but also of family and marriage. This is for the philosophy of law of a fundamental importance.

"The map of the neurological world"

The above is the title of the first chapter of the reviewed monograph. Actually, it is a map of what the author describes as *neuroscienze*. His starting point is a short presentation of "questions concerning consciousness" as understood by S. Benzoni, S. Coppola and classical lecture by H. Garnier (pp. 29ff.). The author presents views of biologists and neurologists in an interesting way stating that we live in the times of bioprophets. In the first part the author confronts us with the fact that today "talking about freedom is both easy and difficult" (pp. 30ff.). This refers to the *Tractatus* by Wittgenstein, according to whom "what can be said at all can be said clearly, and what we cannot talk about we must pass over in silence." He follows, however, the reasoning of Chalmens, who distinguishes between "problems that are easy and hard to clarify" (p. 31). With this in view, he develops a theme according to which "especially today, we are asked to resolve issues of not only perception of reality, but an attempt to its final resolution" (pp. 31ff.).

While sketching "the neurological map" of perceiving reality the author assumes that a human brain has been tested to the satisfaction. A person needs it to discover his/her own awareness. In a long analysis he dwells upon the issues of functioning of the human brain. However, he concludes after Baars that "awareness of human identity, although dependent on the brain, however, transgresses the understanding of humanity as the whole" (p. 33).

The author presents in the first chapter "phenomenic awareness" (F) and "awareness of access" (A) to reality. The both types of awareness may co-form "co-awareness" with other people. For the author it is the "phenomenological awareness" that is important. It is widely presented by neurological sciences. "In our experience, writes the author, we perceive colours, sounds, sensations, feelings and emotions, we are experiencing fatigue and boredom. All this can be scientifically and neurologically explained. These are the mechanisms involved in origination of our problems ('easy problem'). We know how our eyes, optic nerves and various cerebral fields work allowing us to see properly. The same applies to sounds, smells, experiencing pain, temperature, etc. We know how endocrines work, and based on the analysis of brain, we are able to talk broadly about transfer of humour, feeling hunger, sexual excitement, etc. All of this, however, in spite of being dependent on good functioning of human brain, opens us, as J.R. Searle claims, to a true 'mystery of humanity'" (pp. 34—35). In this way the neurological map takes us into the world of deeper anthropological needs.

In the third part of "the neurological map," Paris, the author of the reviewed monograph, presents us with "three issue orders" (pp. 44ff.). The first order is a criticism of reductionist neurological approaches of a materialistic kind. This is a fierce criticism of narrowing neurology to extremely "physical" approaches. Using the example of pain, the author claims that a person cannot be reduced solely to the sphere of a physical world. He believes, analysing "human nature" (cf. Grassi and A. Aguti — *Neuroscienze e filozofia a confronto*), that a person cannot be perceived in a monistic, or even dual, way. A man should be perceived holistically. The statement is very close to what H. Jonas says in his *Organismo e liberta. Verso una biologia filosofica* (p. 45). Therefore, the author concludes that the situation today is so that to a large extent in mass culture the dominant approaches are of a monistic and materialistic kind. Following "liberal naturalism," an individual claims that the said approaches are sufficient for a human. However, a person — from the ontological point of view — is a mystery. What is more, one needs the Revelation, because he/she is not able to explain what the one's identity, vocation, or the ultimate goal of life are.

In the introductory chapter the author presents what he describes as "the archipelago of neurological problems" (pp. 49ff.). He claims that everything evolves around several variations of human consciousness, starting with the "awareness of banalities," "awareness of recollecting the past," to "sufficient knowledge of reasons of facts" (pp. 49ff.). All this leads the author to the conclusion that a person goes beyond crude determinism of neurological conditions (pp. 52ff.). He or she is a free person.

Around the "Artificial Intelligence"

It is not without a cultural significance that we are surrounded by "cyberspace." The world of Artificial Intelligence (AI) becomes in a sense, as the author puts it, a part of a human nature (pp. 56ff.). Some 50 years ago one was happy to own a calculator. Today, the cyberspace to a large extent decides upon human cognitive abilities and — more often than not — restricting human freedom. Artificial Intelligence is the domain of knowledge comprising "fuzzy logic," "speed of neural calculation," "neural networks," "artificial life" and robotics. Artificial Intelligence is also a section of computer science dealing with intelligence, that is creation of models of intelligent behaviour and computer programs simulating the said behaviour. It can also be defined as a section of computer

science dealing with solving problems that are not effectively presentable in a form of algorhithms. The term itself was invented by John MacCarthy. Artificial Intelligence has two basic meanings. First, it is a hypothetical intelligence implemented in engineering (not natural) process. In the second sense, it is a name of a technology and domain of scientific research on the border of neurology, psychology, and lately cognitivism as well as systematics understood philosophically. The main task of Artificial Intelligence in the second sense is to construct machines and computer programs that are able to execute certain functions of mind and human senses that do not follow simple numeric orders. It is primarily visible in the speed of games. All of this is of fundamental importance not only for personal culture of a man today, for his morality, but also for family life. One can say that today human lives in a double reality: the actual and the virtual one

To complete our critical analysis it would be sensible to remind that the forerunner of virtual reality is Myron Krueger, American scientist and artist, the author of works related to creation of artistic installations initiated at the University of Wisconsin-Madison. His research and installations, implemented in real spaces, paved the way for studies in virtual reality (VR). The creator of the concept is Jaron Lanier, a futurist and a computer scientist who has been working at Columbia University in New York for several years. Computer technologies are applied to create three-dimensional effects, interactive images (world), in which objects seem to be spatially present. This world may be re-created in such a true-to-life manner by computer hardware and software that it will seem real. All this, as Leonardo Paris claims, contributes to the fact that "things that are actual mix with illusionary ones" (p. 57). The digital world includes not only the Net. At first, it expanded to mobile phone space, and then to environment of the so-called smartphones and tablets. Communication, which takes place in this ever growing digital space, went far beyond the three-part "broadcaster — message — receiver" pattern. Now, in the Internet age — each receiver may become a broadcaster. Thanks to the Internet one or many participants of the communication act can communicate with a large group of the Net users. In the case of religious and family communication, two additional levels are taken into account: horizontal, which is interpersonal one, and vertical, which is Divine-human one.

Let us be remembered that the term "communication" is derived from Latin *communio*. As a verb, it means 'to strengthen, to enhance, to reinforce', and as a noun, it means 'a community, unity, connectivity'. The adjective *communis* means 'common, universal, public', and thus *communico*: 'to make something common, to share in something, to co-operate' (especially in this last sense it is present and used by the Church Fathers)

and *communicatio* together with *communitas*, which is a 'mutual exchange of something, including conversation, community', 'communing', as well as participation in the life of the Church.

Leonardo Paris concludes the urgent need to draw attention to "rationality of actions." He believes that in mass culture what dominates is *psicologia del senso comune* (PSC), according to which "the whole human reality is centred around what is unconscious and conscious momentarily." It looks as if there is no longer good and evil, truth and falsehood, freedom and captivity (pp. 59ff.). This comment, however, is not developed further by Leonardo Paris, which is a pity.

The body and emotions

The first philosophical-neurological chapter is concluded by Leonardo Paris by presentation of an issue of "the body and emotions." He believes that today's science, dominated by a naturalistic approach (i.e. materialistic *neurosienze*) seems to reduce all human experience, not only emotions, to bodily functions. Speaking of interrelations between awareness, freedom and cerebral operations, Paris maintains that brain, as biological and organic *datum* is necessary for earthly life. "The brain is always something that is fundamental to the functioning of corporeality, it is *nucleum* of corporeality, but it does not determine fully a personal identity" (p. 61).

It is unfortunate that in this chapter the author does not develop the thread according to which a brain is something more than merely a habitat of emotions. It has to be said critically that in today's culture, instead of speaking of awareness and freedom also in the ethical dimension, most psychologists reduce human behaviour to functioning of emotions. Emotions are to express the whole humanity of a given person.

It is true that emotions are important in human life, but the reality of a person is much richer. This fact is shown by Leonardo Paris in the subsequent chapters of his monograph. In the second chapter he presents "freedom in the biological perspective of G.M. Edelman" (pp. 62—110). What is more, in the third chapter he shows "freedom as biological-social datum as perceived by A. Lureja and L.S. Vygotski" (pp. 111—146). It is good that the fourth chapter presents "a critical philosophy of naturalistic freedom." The latter is shown by H. Jonas (pp. 147—189). Consequences of this reasoning lead Leonardo Paris to "a philosophical confrontation between human freedom and the freedom of God as

understood by L. Pareyson" (pp. 190—293). The conclusion drawn from the entire reasoning is clear, namely: Human freedom can be discovered only in truth about the entire humanity. Human choices between good and evil are ultimately justified in eschatology. Assuming responsibility for the gift of freedom has its consequences of not only earthly, but eternal character.

To sum up, one has to say that the monograph by Leonardo Paris is an example of searching for answers to questions concerning human identity. Undoubtedly it is exactly human who is most interested in understanding oneself. Sole existence or a valid, but extremely isolated, neurological explanations seem insufficient. He or she demands explanation of his existence. He or she is looking for the reason and his/her identity: who or what am I? Looking for one's identity is most of all trying to understand oneself in relation to someone else. As if in search of oneself a man is of course trying to understand oneself on the basis of oneself: the famous Cartesian *cogito* is neither improper nor rude. We do have a certain autonomy in which every man, either believer or non-believer, is fully entitled to understand himself. However, one may ask whether search for identity on the basis of oneself jeopardises awareness of distinctness and therefore exposes to danger of tautology. *Et ego feci memetipsum* (Ez 29: 3). Narcissus tried to capture himself, but got lost in his own reflection. To understand each other and find our identity, we need some *vis-à-vis*, some sort of a distance.

Today, a man often looks for this distinctness in the other, in "the sacrament of a brother." This is fully justified. Another man is not the mean, but the goal (Kant), and his otherness, as Levinas says, summons our identity. And here we are, as it were, obliged to ask a question, whether this otherness does not sometimes prove to be short-lived. Whether in the long term, it does not wear off, whether it is not too similar to me (since the other is also my neighbour), so the danger is, that once again I am confronted with my own reflection. And this is the problem that is not tackled by Leonardo Paris in his monograph.

It is good that Leonardo Paris, in his award-winning book that has been praised by academic and media circles for two years, in the last theological chapter develops a theme according to which a man has always tried to understand himself not only in relation to cosmos, but even stronger in his relation to God. "Man is but a reed, the most feeble thing in nature, but he is a thinking reed" says Pascal rightly. God revealed himself not only as the idea (Descartes), but also as someone friendly to man. The issue of God is not foreign to our search for identity. Even if this refer-

ence can be a challenge (a contemporary man is horrified by the fact that he might be annihilated by some sort of a transcendence!). However, the issue deserves our attention. To find his true and deepest identity, to find out, who he is, to "prove himself," a man is not satisfied with discovering his greatness in what in him/her goes beyond an animal, a reed or a stone. In man there is an initial search for oneself, which is made in relation to gods. In Christian categories, these are not merely "cerebral operations," but also *itinerarium ad Deum*. Briefly put, a man should look for the proof of himself in God. One is wanted and accepted by God.

Michał Drożdż

Ecumeny and Law, vol. 2 (2014)
pp. 335—339

Constans et perpetua voluntas
Pocta Petrovi Blahovi k 75. narodeninám
Eds. Peter Mach, Matej Pekarik and Vojtech Vladár. Trnavská univerzita v Trnave, Právnická fakulta. Trnava 2014, 763 pp.

The collection is dedicated to Professor Peter Blaho, a distinguished Slovak scholar of Roman law, on the occasion of his 75th birthday. As stated by editors, the collection is meant as a tribute to "the one of the most significant representatives of Slovak and European legal science, brilliant teacher and precious human being in every sense" (p. XVIII). The publication consists of a considerable number of 53 articles by the professor's colleagues and friends, which manifest his wide-ranging contacts. Among the contributors are not only the authors from Slovakia and the Czech Republic, but also from Hungary, Poland, Austria and Germany; the articles are written in Czech, Slovak, German, Polish and Italian. Considering the fact that Professor Blaho is mainly an expert in the field of Roman law, it is not surprising that the majority of articles is devoted to certain problems of this legal area and this period of legal history. However, some authors, because of the wide range of Roman-law culture, go beyond the above-mentioned thematic line. That is also the reason of finding points of contact between the branches of theory of law, positive civil law, Church law, not forgetting general legal history. Immediate impulses for this thematic overlap is, for example to certain Czech contributors, the fact of new Czech Code of Civil Law coming into effect on 1 January 2014.

Readers interested in the topic of Church law may found a lot of valuable material. Since the students of canon law usually deal with the sources of Church law itself, it is revealing for them to meet also the Ceasar's Church legislation from the times when the Christianity was

authorized and later official religion. The Byzantine "symphony" of relationships between the state and the Church is well illustrated in the article by Pal Sáry (representing the Miskolci Egyetem, Állam- és jogtudományi kar) about the changes of the prison system in the Christian Roman Empire ("Die Änderungen des Gefängniswesens im christlichen römischen Reich"). For example, according to the Novels of Justinian, the cloisters became the jails for deposed bishops, clerics devoted to the gambling or false testifying at the courts, deaconesses living as concubines, illegally divorced persons, adulterous women and persons selling real properties to heretics (pp. 528—529). The same topic is undertaken by Róbert Brtko (Univerzita Komenského v Bratislave, Právnická fakulta) in the paper "*Catholics lex* and the decrees of emperors concerning the Church matters." This article pays attention, among others, to the very early enactment by the Emperor Constantine who in 318 AD introduced particular type of process, so-called *episcopalis audientia*, by which he granted the Christians the alternative not to turn on the civil court with certain causes, but to the Church forum, thus the bishop applied the "Christian" law, *lex Christiana* (pp. 41—42). Constantine also granted to bishops the right to *manumissio*, the manumitting of slaves: "The will to manumit the slave had to be stated before the Christian community in the temple and to be accepted by the Church authority that *ad probationem* made the written document about it" (pp. 42—43).

Ignác Antonín Hrdina (Univerzita Karlova v Praze, Katolická teologická fakulta) paid attention to the reception of Roman law in Canon law in the article entitled "Ecclesia vivit lege Romana." The author introduces in the very beginning of the paper an inspiring comparison: "Theologians are used to say nowadays, and the participants of the Second Vatican Council did the same, that the Christian Church is the younger sister of Jewish synagogue in the area of religion. It may be said by analogy that canon law in the area of law is the younger brother of Roman law" (p. 223). The Roman-law heritage proves itself in the canon-law concept of Church matrimony whose foundation, literally the root — *radix* — is the consent of parties, *consensus matrimonialis* (p. 224). The summary of canon enactments on the ordaining of clerics is called "law of ordination" until nowadays, having its origin in the old-Roman law anyway: "The same way Church ranks its holders by the rite of ordination, deacons, as well as priests or bishops, to particular state — *ordo* (*diaconorum*, *presbyterorum*, *episcoporum*), namely by the rite that by its name already (*ordinatio*) refers to the categorization of distinguished states of Roman society — for example the state of senators (*ordo senatorius*), state of cavalry (*ordo equester*), etc." (pp. 224—225). Other Church life and institutions maintain the terminology of the old-Roman times, "[…] for exam-

ple the papal curia copies truly enough the organization of emperor's hall; similarly — naturally as smaller units — the bishop's curias. The names of Church administrative districts are taken over from the Roman state administration (province, diocese) too, even in different meaning, etc. — the samples would not have any rhyme or reason" (p. 225). In the context of canon process law the author reminds then the insufficient interdisciplinary connection by the words of the leader of legal-historical science, a Prague professor Tureček that were written in 1935: "Due to the Church activities the miracle happened, the reception of Roman law, dead for a long time. The acceptance of the Roman-canon process in various territories was not a miracle at all, because canon law was and still is appreciated, vivid legal system. The reception of dead Roman law was a miracle […] and the Church was the most scientific, most vital, strongest and most effective. As damage to the science may be classified, the Romanists often forget about this fact with admirable respect to the Roman culture" (p. 225). The desire for a modern codification of Canon law was aroused during the 19th century also in the Catholic Church, the will to create the modern Code of Canon Law, namely under the influence of inspiration of experiences of the Roman Empire and the reception of old-Roman law by the Church in the times of Middle Ages: "The codification of canon law, required then badly anyhow, did not happen during the 19th century, however the bishops invited to the First Vatican Council were calling out and requiring that the Canon law should be revised and better arranged according to the model of all modern states, as Gregory IX imitated Justinian" (p. 230). The medieval reception had also — from the contemporary point of view — its negative sides that were depicted in the article by Veronika Kalyniv (Trnavská univerzita v Trnave, Právnická fakulta), entitled "Death sentence in medieval inquisition trial." The death sentence for "counterfeiting" of faith in the form of heresy was justifiable also for the most important medieval theologian of Western Christianity, St. Thomas Aquinas: "The crimes of high treason and counterfeiting of money was punished by death for a long time according to secular law, which afforded him the main argument for requiring the same punishment for heretics" (p. 274). Among others, the authoress presents the common formula to hand the condemned heretic over into the hands of secular power to execute them: "We are releasing you off our court, relinquishing you to secular power. However, we are asking the secular court to lighten your sentence to be avoided bloodshed and danger of death" (p. 275). An opposite process, that is weakening of Church's influence in the modern state, was described in the article "Secular state and religious freedom in sociology and legal theory" by Michaela Moravčíková (Trnavská univerzita v Trnave, Právnická fakulta). The authoress points out the contempo-

rary paradox that the French law of separation of 1905 establishing the regime of so-called lay state finds its justification in Catholic believers, although being directed against their church originally: "If the Catholics had been declining the acceptance of the law of separation for ages, nowadays it is the Catholic hierarchy, who is against any revision of this law. […] In the present the Protestants came with an idea of its revision, trying to achieve the financing of sacral places by state" (p. 443).

Stanislav Přibyl (Jihočeská univerzita v Českých Budějovicích, Teologická fakulta) points out in the article "Personal status of clerics: matrimony, monkhood or celibacy?" the legislation of Augustus that pressured citizens of the Roman Empire to enter into marriage and give life to children (p. 499). Its indirect consequence was the slowing down of continuous process that resulted in the requirement of abstinence for clerics. The monk discipline was relevant also for the Cyrillo-Methodian mission, which is the main theme of Vojtech Vladár (Trnavská univerzita v Trnavě, Právnická fakulta) in the article "Church law in Great Moravia." High cultural profile of the activities of Constantine and Methodius is apparent for example in the extraordinary translations of both apostles: "Especially the translation of sacral books is qualified by researchers as the best philological work of the 9th century that overcame also the chronologically older translation of Wulfila" (p. 625). Constantine and Methodius did not bring the Byzantine liturgy along, as it is frequently claimed: "However, in Great Moravia the Eastern liturgy of St. John Chrysostom was officiated, but Roman-Oriental liturgy of St. Peter that was created in the first half of the 9th century and represents the Greek translation of Roman mass of the Pope Gregory I the Great (Gregorius Magnus, 590—604) with certain Byzantine elements" (p. 626). Efforts of both apostles in the area of liturgy had its remarkable outcomes in the broader historical perspective: "Timelessness of the work of Constantine and Methodius can be seen especially in the fact that the Second Vatican Council […], following the example of Constantine, officially authorized the using of national languages in the liturgy on the 4 December 1963. Their contribution reminds also the apostolic letter *Egregiae virtutis*, by which they were proclaimed by the Pope John Paul II in 1980 […] the co-patrons of Europe" (p. 650).

The collection is supplemented with valuable register of sources created by Peter Mach, with prevailing domination of the compilations of Justinian's codification, which were the object of Peter Blaho's translations into Slovak language. His Prague colleague, professor Hrdina, translator of the documents of the Council of Trent (1545—1563), highly appreciates especially these activities: "I am confident it will be appreciated by scientific lawyers' community and especially our younger colleagues at the

departments of legal history and elsewhere that represent, despite of not very favourable conditions, living hope of legal-historical science. Especially Professor Blaho is one of the most appreciated persons that have merit in guarantying this hope the real basis; the honest thanks for this activities go to him" (p. 232).

Stanislav Přibyl

Notes on Contributors

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of Marriage in a New Law of the Latin Church and the Law of the Eastern Catholic Churches. For many years he worked in the field of pastoral practice. From 1999 to 2009 he had been working as a judicial vicar for Bishop Mons. Milan Chautur, CSsR Košice Eparchial Bishop. Temporarily served as a judicial vicar of the Archbishop of Presov Mons. John Babjak, SJ. In his teaching and research activities he is dealing with the Law of the Eastern Catholic Churches, the Roman Law, confessional law and issues of Catholic ecumenism.

Pavol Dancák, Professor, PhD, was born on 4 May 1965 in Bardejov (Slovakia). He graduated from the study of theology at the Cyril and Methodius Roman Catholic Theological Faculty in Bratislava in 1988 and in the same year he received the priest's ordination. He worked as a parish priest and in 1996 he was appointed as a censor in beatification of Bishop Paul Peter Gojdič, and later also in the process of beatification of Bishop ThDr. Vasil Hopko. In 1995 he began to study philosophy at the Philosophical Faculty of Papal Theological Academy in Cracow. In 2001, under supervision of Professor dr hab. Karol Tarnowski, he defended postgraduate degree based on a dissertation *The Issue of Education in Teaching of John Paul II*. On 27 April 2005, he habilitated in the history of philosophy with a book *Historical and philosophical reflections of paideia in works of Karol Wojtyla*, at the Faculty of Arts, University of Prešov in Prešov and on 29 January 2011 he was appointed a History of Philosophy Professor. On 1 August 2002 he was employed as vice-dean for Development and External Relations Greek Catholic Theological Faculty of University of Prešov in Prešov, and currently he is the head of Department of Philosophy and Religion. He is a member of the Scientific Council of GTF UP in Prešov and the Scientific Council of the University of Health and Social Work St. Elizabeth in Bratislava.

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Computer-generated forms
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Proofreader
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ISSN 2353-4877
(print edition)
ISSN 2391-4327
(digital edition)

Published by
Wydawnictwo Uniwersytetu Śląskiego
ul. Bankowa 12B, 40-007 Katowice
www.wydawnictwo.us.edu.pl
e-mail: wydawus@us.edu.pl

First impression. No. of copies: 100 + 50. Printed sheets: 22.0
Publishing sheets: 26.0. Offset paper, III grade, 90g
Price 34 zł (+VAT)

Printing and binding: „TOTEM.COM.PL Sp. z o.o." Sp.K.
ul. Jacewska 89, 88-100 Inowrocław