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

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

The issue of finding ways to recapture the lost unity, otherwise than, for example, by unionism, can mainly be found in the teaching of the Church of the second half of the previous century. Also, one is able to trace an obvious development. Some principles in *Mystici corporis*¹ encyclical by Pope Pius XII state that delusion and schism, although formally existing, do not disturb completely belonging to the Church of Christ entered into by baptism. Therefore, we cannot perceive non-Catholic Christian as the unbaptized. They bear not only his name on their forehead forever, but also his indelible image on the soul, because of baptism. On the basis of baptism, not united Christians are therefore subjects and members of the church. These separated brothers are part of mystical body of Christ, “an unconscious desire and wish,”² growing desire for unity, which can be seen in separated brothers, is the piece of work of Holy Spirit³ according to the same encyclical.

¹ See *Acta Apostolicae Sedes* 1943.

² *Ibidem*, p. 243.

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

The Second Vatican Council began a new season in the life of the Catholic Church. In a special way it suggested a relationship to those Christian denominations which are not in full communion with the Church. Ecumenical principles are posted mainly in the decrees of *Orientalium Ecclesiarum Eastern Catholic Churches*, also in *Unitatis Redintegratio*, about ecumenism. The Doctrinal Constitution on Church *Lumen Gentium* (further: LG), but also other documents of this council, as for example declaration of the Second Vatican Council *Dignitas Humanae* on religious freedom, are permeated by the ecumenical spirit. A special chapter of the ecumenical movement in the middle of the Catholic Church are ecumenical activities of the last popes, especially activities of John Paul II, whose pontificate is marked by generous and unceasing desire for ecumenism among all Christians, or even in a broad sense including the entire humanity. Well known are his numerous speeches and ecumenical meetings. In a special way, he addressed the idea of unity with the Eastern Orthodox Church. His encyclicals are full of ecumenical spirit and some of them are devoted to the problem of ecumenism directly. These encyclicals are *Slavorum Apostolori* of 2 June 1985 and *Ut unum sint* of 25 May 1995. He concentrates on this issue in many apostolic letters and speeches. There are innumerable statements by dicasteries of the Apostolic See, especially of Eastern congregation, which are devoted to ecumenical movement. The milestone of all these activities was the edition of both codes: *Code of Canon Law* from 1983, *Code of Canons of Eastern Churches* from 1990⁴ and also *Directory for Implementation of the Principle and Norms about Ecumenism* of the Pontifical Council for Promoting Christian Unity from 25 March 1993.

Documents of the Second Vatican Council on ecumenism

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

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

⁴ Codex Iuris Canonici (CIC), Codex Canonum Ecclesiarum Orientalium (CCEO).

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

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

2. Decree about the Eastern Catholic Churches

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

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

⁵ See J. DUDA: *In the service of God's Kingdom*. Serafín 1997, pp. 180—181.

⁶ See *Documents of the Second Vatican Council II*. Trans. Stanislav POLČIN. Rome 1970. Decree about the Eastern Catholic Churches.

⁷ See *ibidem*.

rights and the same obligations, also as to message of the Gospel around the whole world (cf. Mk 16:15) administered by the Roman Pope.”⁸ Document about Eastern Catholic Churches not only declares this coequality between all the local Churches, but also orders: “to make arrangements everywhere for the protection and development of all the local churches [...],⁹ so Church takes these communities under its special protection. The council considers heritage of Eastern Christians as a heritage of the whole Church of Christ and also declares that “Eastern and Western churches have the right and obligation to behave according to their own provisions recommended by the venerable antiquity and more suited to the nature of their followers and apparently provides a good of souls more effectively.”¹⁰ These words give legal guarantee to these thoughts: “Let all Eastern Christians know and believe, that they can and also must keep their lawful liturgical rites and their way of life and that they should not bring the changes, only in case if it is necessary because of their organic evolution.”¹¹

Special chapter which exposes the office of Eastern patriarchs gives respect to these words. The legal status of this establishment is analysed by Code of Canons of Eastern Churches from 1990. This institution has always enjoyed big respect and authority in the East. A special chapter about office of patriarch should give a special respect to the previous words, or even to the entire decree. This office is a separate legal guarantee that not only declares their ideas into real form, but in the person of patriarch’s special legal protection. Most meetings between various ceremonies are during the celebration of sacraments. Therefore, this document pays special attention to this issue. It clearly accepts the sacramental discipline of Eastern churches; it especially pays attention to the sacrament of confirmation, which can be also celebrated by priests, according to Eastern tradition. It specifically notes, “that every priest of Eastern rite can give this sacrament together with baptism, or without, to all believers from every kind of rite, also the Latin rite.”¹² It is sure that it is the same by contraries and it is also sure that they should keep prescriptions of particular law. The decree also sets out the role of the Eastern Catholic churches to “help create the unity for everyone, but especially the Eastern Christian.”¹³ This applies to helping the unity with Eastern non-Catholic churches. This task is given by the following communities

⁸ Ibidem.

⁹ Ibidem.

¹⁰ Ibidem.

¹¹ Ibidem.

¹² Ibidem.

¹³ Ibidem.

logically, because liturgical identity and often common tradition is the best vision of constructive dialogue. It is, therefore, necessary to know source principles, which have to be kept and are stated by this decree: This decree alleviates old rules about taking separated Christians to community with Catholic Church: “[...] it should not be asked for more than is required by simple confession of Catholic faith.”¹⁴ The same rule speaks about priests, who come to unity with Catholic Church: “[...] they can do the function, which is connected with their sanctification according to a rule, which sets the competent ecclesiastical authority.”¹⁵

This decree solves the participation in holy matters in absolutely new way. The emphasis is again put on the need for salvation and the good of souls:

May be granted to Eastern Christians, who are without fault (*bona fide*) separated from the Catholic Church, the sacrament of Penance, Holy Communion and last rites, if they really want to and are properly prepared. Also Catholics may even ask these sacraments from non-Catholic priests, in case if they kept valid sacraments in their Churches, any time the need or mutual benefit advise in that way and approach to the Catholic priest is physically or morally impossible.¹⁶

These who are without fault are kind of condition for us, which makes problem in our circumstances, because the current Orthodox Christians in Eastern Slovakia are almost all original Greek Catholics and left communion of Catholic Church in previous years. However, it seems that this rule can be applied to them, because of next generation, which is out of this communion without its own fault. We should think about this milder practice, which is built on: 1) the validity of the sacraments, 2) thinking about sincerity (*bona fides*), 3) the need for salvation, 4) the absence of their own priest, 5) eliminate danger, which should be avoided and apparent agreement with heresies.¹⁷ Also, based on the same principles, are legitimate reasons for accepting the complicity of Catholics and Eastern separated brothers on sacred actions, things and places. It is about so-called *communicatio in sacris extrasacramentalis*. The council allows this more conservative practice, but yet it must be observed, which should be respected.¹⁸

¹⁴ Ibidem.

¹⁵ Ibidem.

¹⁶ Ibidem.

¹⁷ Ibidem.

¹⁸ Ibidem, fn. 34.

3. The Code of Canons of the Eastern Churches and Ecumenism

Ecumenical principles put forward by the Second Vatican Council Decree about Eastern Catholic Churches found their own legal anchoring in CCEO. Ecumenical character is actually an essential feature of both codes: CIC 1983 and CCEO. But CCEO because of its formal structure¹⁹ emphasizes its eastern orientation. Even at the ceremonial start of work on the Eastern Church Code 18.3.1974, Pope Paul VI indicated in which direction should Codification Commission move: “[...] canon law of the Eastern Catholic Churches should be in line with the intentions of the fathers of the Second Vatican Council as well as by purely Eastern tradition. [...] The pope in this speech emphasized the care for the salvation of souls as highest goal and extremely redemptive impetus to the restoration of Christian life, which Second Vatican Council wished and promoted. He ordered the Code to meet the requirements of today’s life and real conditions of time and places, which are always changing so fast, and to keep the connection with tradition and fully adapted to the special role that touches believers of Eastern Churches, also supports the unity of Eastern Christians according to a principles of decree of ecumenism.”²⁰

The current law so absolutely left its own asperity, which was detrimental to any kind of contact between Catholic and Orthodox Church, because it considered schismatic on account of the split. It also touched the relations between Orthodox and Greek Catholics, because Catholic Church of Eastern rite as a legal part of Catholic Church was governed by the same law. Code of Canons of the Eastern Churches significantly addresses the members of the Eastern Catholic Churches with a challenge to care in a special way and to promote the unification of all the Eastern Churches, so ecumenical activity towards the Orthodox Church is the responsibility of our church and community. This support should be practiced through prayer and exemplary life at first, trueness of Church to old Church religious traditions of the Eastern Churches, a better knowledge of each other, cooperation and brotherly care about material and spiritual matters.²¹ At the same time, however, code points to “maintain face”

¹⁹ CCEO uses for division titles, heads, articles and canons, which is typical for the collection of canons in the East.

²⁰ See *Kodeks kanoniv schidnich cerkov, latinsko-ukrainske vidannja*. Rome 1993, p. 28 (author’s translation).

²¹ CCEO, can. 903: *Ad Ecclesias orientales catholicas speciale pertinet munus unitatem inter omnes Ecclesias orientales fovendi precibus imprimis, vitae exemplo, religiosa*

during this open and ambitious dialogue and to protect from danger of lie, irenicism, indifferentism and exaggerated zeal.²² Ecumenism therefore does not mean abandoning the principles of Catholicism and membership in Catholic Church. It does not try to indicate that these things do not matter. To avoid these risks, it is necessary to keep the rules, which are set out by CCEO in the next canons:

Heralds of God's word, the person in charge of the media, also all of us who work as teachers or directors of Catholic schools and separate higher institutes should take care to explain the real content of teaching and preaching the Catholic Church and other religious communities of Christian ecumenism.²³

CCEO separately asks principals of Catholic schools, hospitals and other institutions to "take care of other Christians, which visit or live there, to get spiritual help from their own ministers and to receive the sacraments."²⁴ In connection with common participation in the holy stuff, Catholics should keep the forms, which are prescribed by law. It also wishes to "do every activity where they can collaborate with other Christians together, not separately. Namely: Works of charity and social justice, the defense of the dignity of the human person and his/her fundamental rights, peace ambition, national day of remembrance and saints-day."²⁵ Although it may seem that the Code of Canons of the Eastern Churches mentions the objective issue very generally, it is really important to say that the details of these principles contained in the code are analysed by the Directory for practicing norms of ecumenism from 1993, about

erga antiquas traditiones Ecclesiarum orientalium fidelitate, mutua et meliore cognitione, collaboratione ac fraterna rerum antimorumque aestimatione.

²² CCEO, can. 905: *In opere oecumenico persolvendo praesertim aperto ac fidenti dialogo et inceptis cum altis christianis communibus servanda est debita prudentia evitatis periculis falsi irenismi, indifferentismi necnon zeli immoderati.*

²³ CCEO, can. 906: *Quo clarius innotescat christefidelibus, quid reapse doceatur et tradatur ab Ecclesia catholica et ab aliis Ecclesiis vel Communitatibus ecclesialibus, diligenter operam dent praesertim praedicatores verbi Dei, ii, qui instrumenta communicationis socialis moderantur, atque omnes, qui vires impendunt sive ut magistri sive ut moderatores in scholis catholicis, praesertim autem in institutis studiorum supertorum.*

²⁴ CCEO, can. 907: *Curent moderatores scholarum, nosocomiorum ceterorumque similium institutorum catholicorum, ut alii christiani ea frequentantes vel ibi degentes a propriis ministris adiumentum spirituale consequi et sacramenta suscipere possint.*

²⁵ CCEO, can. 908: *Optandum est, ut christefideles catholici servatis normis de communicatione in sacris quodvis negotium, in quo cum aliis christianis cooperari possunt, non seorsum, sed coniunctim pesolvant, cuiusmodi sunt opera caritatis ac socialis iustitiae, defenso dignitatis personae humanae eiusque iurium fundamentalium, promotio pacis, dies commemorationis pro patria, festa nationalita.*

which we are going to discuss in the following pages. It is important to realize that these norms create a spirit moving the ecumenism, determining the size of its freedom, but also setting boarders. Code of Canons of the Eastern Churches²⁶ gives the basic rule in canon 670, which sets conditions for Catholic believers to be part of divine service of non-Catholic Christians. The only designated condition is to respect the grade of unity with the Catholic Church. On the basis of the same canon it is possible to provide non-Catholic Christians with buildings, churches or cemeteries where they could decently perform divine services, but only with agreement of eparchial bishop.²⁷ Even this rule is quite general — it clearly means that relatively to a grade of unity, Orthodox Churches are the closest ones to the Catholic Church. Canon 671²⁸ clearly says that the sacraments are valid for Catholics committed to a Catholic priest. However, if the need arises or it is encouraged by real spiritual use and the danger of mistake is eliminated at the same time, it is allowed to take sacrament of Penance, Eucharist and the last Sacrament for those Catholic believers, who cannot take it from a Catholic priest because of physical or moral problems. But it is necessary for these sacraments to be valid in accordance with mentioned priests.

2. Legalizing Greek Catholics and Orthodox Mixed Marriages in the Historical Process

It was necessary to mention this historical process, because in fact it influenced the conclusion of mixed marriages between Orthodox and Greek Catholics. We have no information how it was in the early years of the Greek Catholic Church. However, we can predict that mixed marriages between Greek Catholics and Orthodox on the territory of Eastern Slovakia were just very few, because of union or Greek Catholic Church was generally accepted. Even in the new situation, after the Eastern Christians joined, we can predict that during the conclusion of marriages *ritus sacer* was still necessary, that is a special church ceremony. This custom was introduced by Ceasar Leo VI (d. 912). The same Ceasar entrusted

²⁶ Henceforth CCEO.

²⁷ CCEO, can. 670 § 2: *Si christianis acatholicis desunt loca, in quibus cultum divinum digne celebrent, Episcopus eparchialis usum aedificii catholici vel coemeterii vel ecclesiae concedere potest ad normam iuris particularis propriae Ecclesiae sui iuris.*

²⁸ CCEO, can. 671 § 1: *Ministri catholici sacramenta licite solis christefidelibus catholicis ministrant, qui pariter eadem a solis ministris catholicis licite suscipiunt.*

to the Church the right and responsibility for the legal status of marriage.²⁹ The period after 1646, when there was the conclusion of Union, transpired after the Council of Trent, which introduced the duty of using legitimate forms, but the obligation of special church ceremony was not part of it.³⁰ As a result of it, also receiving the assessments was different in the various of Eastern Catholic churches. In Eastern Slovakia, we can predict that after Zamość Province Council of the Union in 1720, there was adopted the obligation of keeping assessments of Trent Council. We can also predict that at that time were considered as valid also that marriages of Greek Catholics, which were legalised by an Orthodox priest.

In 1917 there was edited the Code of Canon Law for Latin Church. Even though its first canon contains a clause which is valid just for Latin Church, *lacuna iuris* was because of its own right the reason that Greek Catholic Church in Slovakia was widely used. From this perspective, it started to find valid only this type of mixed marriage between Orthodox and Greek Catholic side which were legalised by a competent priest of Catholic Church under dispensation of competent local hierarchy. Mixed marriage between Orthodox and Greek Catholics was in this case at the same level as mixed marriage between Catholic and Protestant. Marriage of Catholics with the Orthodox side which was legalized by an Orthodox priest, was considered as not valid, because there was not any lawful Catholic canonical form. Complex matrimonial law for the Eastern Catholic Church was promulgated in 1949 in the *motu proprio* of Pope Pius XII. *Crebrae allatae sunt*. In significant ways, this *motu proprium* was based on the provision of the Pio-Benedictine Code of 1917. Special provisions, which were valid for Eastern Catholic Churches were reflected mainly in the form legalizing marriage. Even though this canonical collection contained complex matrimonial law of the Eastern Catholic Churches, the Greek Catholic Church in Slovakia failed to bring it to life, because of 1950 when the absolute liquidation of the Greek Catholic Church started.

The situation of Greek Catholics after liquidation of their Church was more than absurd. They became at one time administratively Orthodox because of decision of Communist authorities, without their own volition and without their own opinion. In this same absurd situation it became possible for them to legalize marriages. We have to emphasise that for Greek Catholics the awareness of their own catholicity was very strong. The “old bearded men,” presented to them as their bishops, were for most Greek Catholics something quite alien and unacceptable. They

²⁹ S. HRACUNIAK: *Prawosławne pojmowanie małżeństwa*. Białystok 1994, p. 62.

³⁰ COUNCIL OF TRENT: Decree *Tametsi* (11.11.1563), ses. XXIV, n. 1. In: U. NOWICKA: “Kanoniczna forma zawarcia małżeństwa.” W: *Prawo kanoniczne*. Warszawa 2009, p. 248.

did not have their own priests, because they were either in prison or in exile behind the Czech border, or converted to Orthodoxy, but they also were not their priests. At that time the Roman Catholic Church was closest to them. The situation became more absurd, when Bishop of Košice Joseph Čársky, under the pressure from the Communist regime gave rules to his priest, which meant that during legalizing marriages of Greek Catholics they have to use those church regulations that affected the mixed marriages between Catholics and Orthodox.³¹ It should be add that these positions from the state side or from side of the Roman Catholic Church were not accepted by Greek Catholics. Most of them entered into marriages secretly, by Roman Catholic priests, who did not respect these illegal practices, or later by Greek Catholic priests, who returned from exile and were working in blue-collar civil jobs performing sacraments secretly for Greek Catholics at their own risk. Finally, many Catholics lived only in civil marriages and sacramental marriages entered into after 1968, when the Greek Catholic Church was restored again. The same difficult situation existed for the Greek Catholic believers who stayed in their churches and they left Orthodox priests to perform sacraments. They were mostly believers in the villages who had no choice but to stay in their parish churches. If they legalized marriages with the Roman Catholic, they had to legalize their marriages in Roman Catholic churches according to Catholic procedure, because of the law. Marriage in their churches, which were occupied by Orthodox Church were not valid.

The situation changed a bit after restoring the Greek Catholic Church. Believers had the opportunity to define their canonical situation. Some Greek Catholics who had been living 18 years into the Orthodox Church accepted this situation and stayed Orthodox. Many others had been getting sacraments from Orthodox Church during the liquidation of the Greek Catholic Church, but after restoring did not want to come back. The hierarchy of the Greek Catholic Church in Slovakia did not apply any canonical sanctions to believers who stayed Orthodox. But their marriages with Catholics had to be legalised according to a dispensation for mixed marriages.

³¹ Verbatim quote: “I note Clergy that after 28 April 1950 all former Catholics should be considered Orthodox, because they are considered such by the state government. As a result, they are applied in proportion to the Roman Catholics laws (regulations) applicable on the ratio between the different faiths. Many clerics failed to comply with these rules, which were of great inconvenience. I recall spiritual, in that its action was aware of it.” F. VNUK: *Tempered bonds*. Matica of Slovakia 2001, p. 179.

5. Mixed Marriage of Catholic and Orthodox Side Today

Today we use the provisions of the Code of Canons of the Eastern Churches and the ecumenical regulations of directory during the celebration of mixed marriages. The Code of Canon Law of the Latin Church from 1983 solves the issue of mixed marriage between Roman Catholic and Orthodox side in a similar way. Ecumenical directory emphasizes special competent authorities of every bishop or regional episcopal conferences in the pastoral and canonical issues in connection with the celebration of sacramental marriage. It deals with specific problems, which concern the mixed marriages.³² According to these rules, we of course celebrate marriages, which are legalized between Greek Catholic and Orthodox followers in the territory of Greek Catholic Church in Slovakia.

5.1. The Conditions Required by Law upon Legalising Mixed Marriages

Mixed marriage is defined by canon 813 of the Code of Canons of Eastern Churches and code 1124 of Canon Law of Latin Church from 1983. These are general provisions which define marriage as a bond that bring together baptized people, woman and man, one of them is a part of Catholic Church and another one is baptized and belongs to another ecclesial community, not being the Catholic Church. This category also includes marriages which are entered into by and between Greek Catholics and the Orthodox Church members. Basic provision says that this kind of marriage is prohibited without previous agreement of the competent ecclesiastical authority who can be for example competent eparchial bishop. They must have some sides for legalising marriage in the Catholic Church that has the agreement of a local hierarchy, which means eparchial bishop or protosyncel or some of another syncels.³³ To obtain this agreement some other conditions must be met:

- The Catholic side has to provide a declaration that it is willing to remove the danger of apostasy from the faith.
- Do everything for children, to their baptism and bringing up in the Catholic Church.

³² Cf. the Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, Trnava 1974, p. 104.

³³ *Protosyncel* or *syncel* in the Eastern Catholic Churches is general vicar and vicar in accordance with the law of the Latin Church.

- Non-Catholic side has to be acquainted with the promise of Catholic side.

For us, this procedure is called the signing of guarantee, which is sometimes considered as written guarantee of non-Catholic side, which will not hinder the Catholic baptism and education of children. This guarantee would not take the form of promise.³⁴ This promise would not apply to verbal forms. The whole issue is to be decided by discussion on premarital meetings and present the result in written form to the local hierarchy. It is his job to consider the whole case. For him a clear signal is also a pronounced rejection of non-Catholic side.³⁵ If this mixed marriage is legalized and the Catholic side does not fulfill its promise, and despite all ambitions, children are not baptized and educated in Catholic Church, a Catholic parents are liable to canon law. However, they have to transfer their children to the Catholic faith.³⁶ The role of this commitment is to create a Christian atmosphere in the family, and also refer to other members of the family for specific values of the Catholic faith.³⁷

5.2. The Form of Entering into Marriage between Catholic and Orthodox Side

For sake of completeness we have to mention more of other regulations, which affect the form of entering into mixed marriages between Catholic and Orthodox side. Regarding the form of entering into marriage, the canon 781 § 2 from the Code of Canons of the Eastern Churches clearly requires legalize marriage in Catholic Church, including sacramental,³⁸ hierarchy, local priest or priests authorized by them as well

³⁴ Cf. CCEO, can. 814; CIC 1983, can. 1125.

³⁵ Cf. The Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 108.

³⁶ Cf. The Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 109.

³⁷ Ibidem.

³⁸ Cf. CCEO, can. 781: *Si quando Ecclesia iudicare debet de validitate matrimonii acatholicorum baptizatorum:*

1° *quod attinet ad ius, quo partes tempore celebrationis matrimonii tenebantur, servetur can. 780, § 2;*

2° *quod attinet ad formam celebrationis matrimonii, Ecclesia agnoscit quamlibet formam iure praescriptam vel admissam, cui partes tempore celebrationis matrimonii subiectae erant, dummodo consensus expressus sit forma publica et, si una saltem pars est christifidelis alicuius Ecclesiae orientalis acatholicae, matrimonium ritu sacro celebratum sit.*

as two witnesses for the side that belongs to some non-Catholic Eastern Church and the side that belongs to Greek Catholic Church. Sacramental means that there have to be a priest who will accept the matrimonial agreement and bless the marriage.³⁹ Catholic form of legalizing marriage have to be between Catholic and Orthodox side during the celebration of marriage, because of validity. So if a Catholic enters into a marriage legalized by a Protestant priest without dispensation from the Catholic form, this kind of marriage is null and void.

Another case is when a Catholic Christian enters into marriage legalised by a Protestant priest according to forms of the Orthodox Church. In this case there must be dispensation from the form, which is given by Apostolic See. The marriage between Greek Catholic and Orthodox side is valid when there is a dispensation from the form and legalised by Orthodox priest. In the case that marriage is entered into without this dispensation, the marriage is valid but illegal.⁴⁰ This ecumenical prescription affects only marriages which are enclosed between Catholics and followers of Orthodox Church.

Exemption from the forms of entering into marriage is therefore reserved by law only for Apostolic See, or, in the patriarchal churches, for the patriarch, who can give exemption only for very serious reasons.⁴¹ Catholic law also prohibits double religious ceremony, or the way in which marriage agreement says or restores first by Greek Catholic official, and then by Orthodox official or also in a different order. It is also forbidden to act this religious ceremony in such a way that is performed by a Catholic priest and Orthodox priest in the same time.⁴² But Orthodox Christian, according to the same law, can be a witness during entering into marriage in accordance with the rules of Catholic Church and the Catholic may be a witness to the marriage, which administers the Orthodox Church.⁴³ The question is, if Catholic priest or deacon, who is invited to the celebration of the sacrament of marriage, can perform some liturgical function. This situation is solved by the Directory, which is used for performing the principles and norms about ecumenism since 1993. From these forms it is clear, that if there is a dispensation from the form⁴⁴ dur-

³⁹ Cf. CCEO, can. 828 § 1: *Ea tantum matrimonia valida sunt, quae celebrantur ritu sacro coram Hierarcha loci vel parocho loci vel sacerdote, cui ab alterutro collata est facultas matrimonium benedicendi, et duobus saltem testibus secundum tamen praescripta canonum, qui sequuntur, et salvis exceptionibus, de quibus in cann. 832 et 834, § 2.*

⁴⁰ Cf. Paragraph 8.1.4 of this work.

⁴¹ Cf. CCEO, can. 835.

⁴² Cf. can. 839, also the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 112.

⁴³ Cf. as above, p. 98.

⁴⁴ Cf. CCEO, can. 835 as above, p. 111.

ing the celebration of mixed marriage, which is celebrated by Orthodox priest, the Catholic priest or deacon can be involved in the liturgy of marriage⁴⁵ and can also say the prayers and added prayers, read the Holy Scripture, say a short homily and bless the couple.⁴⁶ In a similar way also an Orthodox priest may be involved in the celebration of marriage sacrament, which is celebrated by Catholic priest.⁴⁷

For the sake of completeness it has to be said that mixed marriages between baptized Greek Catholics and baptized Orthodox Christians, which were legalised by an Orthodox priest and therefore were legalized without observing the prescribed canonical forms are valid pursuant to the decree of the Congregation for Eastern Churches *Orientalium Ecclesiarum* from 21 November 1964 and from 22 February 1967 for the faithful of the Latin Church *Crescens matrimoniorum*. However, the sacramental ceremony has to be a required way of marriage to its validity.⁴⁸ But other rules of Canon Law remain in force and they should be maintained, which means that permission is necessary to maintain a canonical form under the rules of canon law.⁴⁹ It is necessary to point out the difference between Code of Canon Law from 1983 and Code of Canons of the Eastern Churches. According to the Code of Canon Law of the Latin Church from 1983, canon 1127 § 2 the local Ordinary can give dispensation from preserving of canonical form in certain limited circumstances, but in accordance with the Code of Canons of the Eastern Churches this dispensation may be granted by Apostolic See or by patriarch for patriarchal church, but only for very serious reasons.⁵⁰ Ceremony for receiving sacramental marriage is the one which is performed in accordance with

⁴⁵ Cf. the Directory for the implementation of the principles of ecumenism, the Pontifical Council for the unity of Christians, published in SSV in Trnava, year 1974, p. 98.

⁴⁶ Cf. as above, p. 112.

⁴⁷ Ibidem.

⁴⁸ Cf. CCEO, can. 781: *2° quod attinet ad formam celebrationis matrimonii, Ecclesia agnoscit quamlibet formam iure praescriptam vel admissam, cui partes tempore celebrationis matrimonii subiectae erant, dummodo consensus expressus sit forma publica et, si una saltem pars est christifidelis alicuius Ecclesiae orientalis acatholicae, matrimonium ritu sacro celebratum sit.*

⁴⁹ Cf. CCEO, can. 834, and *Orientalium Ecclesiarum*. Stanislav Polčín: *Documents of Second Vatican Council*. Rome 1972, p. 21.

⁵⁰ Cf. CIC, can. 1127 § 2: *Si graves difficultates formae canonicae servandae obstant, Ordinario loci partis catholicae ius est ab eadem in singulis casibus dispensandi, consulto tamen Ordinario loci in quo matrimonium celebratur, et salva ad validitatem aliqua publica forma celebrationis; Episcoporum conferentiae est normas statuere, quibus praedicta dispensatio concordati ratione concedatur; CCEO, can. 835: *Dispensatio a forma celebrationis matrimonii iure praescripta reservatur Sedi Apostolicae vel Patriarchae, qui eam ne concedat nisi gravissima de causa.**

valid provisions of the liturgical books and valid customs.⁵¹ Adjudicating sides of Catholic and non-Catholic marriages are governed by the principles set out in canon 780 and canon 781 of the Code of Canons of the Eastern Churches. For marriage between Greek Catholic and Orthodox side there is a principle, which means that this marriage is governed not only by divine law, but also by canon law.⁵² This means that marriage of Catholic side is bounded by the Code of Canons of the Eastern Churches. But the law also accepts the competence of Orthodox canon law in the case when a marriage is blessed by Orthodox priest.⁵³

5.3. The Sacrament of Marriage between Couple of Orthodox Denomination Celebrated by Catholic Priest

Code law also allows granting the sacrament of marriage to two Orthodox Christians in Catholic Church, but only if this power is wielded by local hierarch to minister and only in case when engaged couple cannot contact the minister of their church without serious damage. They have to ask for this service voluntarily, without any barrier between couple, which would have defended to enclose this marriage. But Catholic priest who gives the sacrament to this kind of marriage has to notify the competent authority of the non-Catholic church before he blesses the marriage.⁵⁴

⁵¹ Cf. CCEO, can. 836: *Extra casum necessitatis in matrimonii celebratione servantur praescripta librorum liturgicorum et legitimae consuetudines.*

⁵² Cf. CCEO can. 780 § 1: *Matrimonium catholicorum, etsi una tantum pars est catholica, regitur iure non solum divino, sed etiam canonico salva competentia auctoritatis civilis circa effectus mere civiles matrimonii.* § 2. *Matrimonium inter partem catholicam et partem baptizatam acatholicam salvo iure divino regitur etiam:*

1° *iure proprio Ecclesiae vel Communitatis ecclesialis, ad quam pars acatholica pertinet, si haec Communitas ius matrimoniale proprium habet;*

2° *iure, quo pars acatholica tenetur, si Communitas ecclesialis, ad quam pertinet, iure matrimoniali proprio caret.*

⁵³ Cf. CCEO, can. 780.

⁵⁴ Cf. CCEO can. 833 § 1: *Hierarcha loci cuilibet sacerdoti catholico facultatem conferre potest matrimonium christifidelium alicuius Ecclesiae orientalis acatholicae, qui sacerdotem propriae Ecclesiae sine gravi incommodo adire non possunt, benedicendi, si sua sponte id petunt et dummodo nihil valida vel licitae celebrationi matrimonii obstat.* § 2. *Sacerdos catholicus, si fieri potest, antequam matrimonium benedicit, auctoritatem competentem illorum christifidelium de hac re certiore faciat.*

6. The Orthodox Church and Ecumenism

Ecumenism is in a legal sense a bilateral act. On the one hand, there are principles which are determined by law of Catholic Church, now clearly defined and anticipating some reaction or response from the Orthodox Church. The announcement by the Orthodox Church in Slovakia, which was published as Canon Law of the Orthodox Church, shows very serious document for our ecumenical relations in Slovakia in this zone.⁵⁵ The importance of this publication stems from the fact that this canon law is relatively new, published at the end of 1997. The original work was published in Greek in 1991, and in 1993 this work was approved by the Sacred Synod of the Greek Orthodox Church. It is rather a comment on the rules of Orthodox law and the practical behaviour of the Orthodox Christian. It seems that this law was promulgated also by Orthodox Church of Slovakia and the Czech Lands. I emphasize these facts, therefore, so it is clear that it can be officially considered a theological — legal opinions of the Orthodox Church in Slovakia.

A characteristic feature of this canonical works is, that the theme of ecumenism which we are interested in does not occur in the canon law of the Orthodox Church. The only chapter in this book that deals with relations with other churches and religions is the chapter entitled as “Relations of Church⁵⁶ and its members to the other religions and members of the other faith.”⁵⁷ The author of this publication divides these relations into the two categories: the first group consists of those who are not Christians, but belong to other non-Christian religions or to no religion at all (atheists). The second group are Christians who under these rules deviate from the Orthodox faith.⁵⁸

We are interested in what Orthodox canon law thinks about relation to non-Orthodox Christians, or even to us Catholics. Based on these rules, the Orthodox Christian cannot have any relationship with members of other faith if it stems from indifference to truth and its purpose is to gain “personal benefit.” Communication with members of other faith is permitted if it is based on true love and its goal is to help members of other faith. If this relationship comes from true Christian love and is inspired by it, the relationship is not only allowed, but also necessary.⁵⁹

⁵⁵ P.I. BOUMIS: *Canonic law of Orthodox Church*. Prešov 1997, p. 240.

⁵⁶ Understood as Orthodox.

⁵⁷ Ibidem, p. 210.

⁵⁸ Ibidem, p. 211

⁵⁹ Ibidem.

In the next section, we differentiate relations between Orthodox people and members of other faith into:

- a. Relationships during divine service.
 - b. Relationships outside the divine service.
- Ad. a. Any communication or relationship with heretics (and by law of Orthodox Church also with Catholics) is forbidden during the divine service. In the next part, “Canon Law of Orthodox Church” precises this prohibition: Common prayer and participation in sacraments are forbidden, sacraments of members of other faith (also Catholics) are not valid, member of other faith who is cleric cannot baptise the Orthodox follower and also non-Orthodox follower cannot be a godfather of Orthodox follower, and Orthodox believer cannot be godfather to member of other faith. Mutual participation in the liturgy and communion are forbidden. According to the Canon Law of the Orthodox Church the priesthood of members of other faith (also Catholics) is not valid and it does not have any spiritual power. Orthodox cannot be ordained by member of other faith or reversely. As to the marriage, in the economy of salvation it is legally celebrated by Orthodox cleric. It is not possible for members of other faith (also Catholics) to be witness on Orthodox or mixed marriages ceremonies.⁶⁰
- Ad. b. According to the Canon Law of the Orthodox Church, temples of members of other faith cannot be used for celebrating of divine service, only in special cases, but for members of other faith it is allowed to celebrate divine services in Orthodox temples in times of war. Participation of theologians in a conference is allowed for members of other faith, but it does not means that there can be some concessions in question of the rules of faith. It is also allowed to write form of communication with heretics in form of circular letters, but it is not allowed to exchange celebrating letters.⁶¹

Canon Law of the Orthodox Church specifies how the communication with members of other faith should look like: Relations to Orthodox members of other faith are first of all determined by their attitude to Orthodox teaching and the Church. It means that at the beginning, real heretics have to be determined by competent ecclesiastical authorities, because it is not possible to leave every Christian decides and characterize another Christian or heretic (rule 13 of the First and Second Council). Rule 6 of Second General Council says: “The heretics are considered those who are fired

⁶⁰ Ibidem, pp. 212—213.

⁶¹ Ibidem, p. 214.

and excommunicated from the Church.” These words are in need of further clarification, because no one knows whether this view applies to Catholics or not. Bull of Excommunication in 1054 were taken away by Pope Paul VI and Patriarch Athenagoras. The Canon Law of the Orthodox Church sheds some light because of the following fragment: “The above words apply also to the schismatic, but much milder.”⁶² It is possible that it concerns also Catholics. It is sure that these rules should be formulated clearly also for the specific situation of the Orthodox Church in Slovakia, according to the above rule.

6.1. Mixed Marriages between Orthodox and Catholics in Assessment of the Canon Law of the Orthodox Churches

It is interesting to point out the relationship of the current Canon Law of the Orthodox Church to marriage entered into by Orthodox and Catholics. Within Orthodox Church a mixed marriage, that is a marriage between Orthodox and non-Orthodox side, has its own regulations.

We can mention a basic principle from a publication the Canon Law of the Orthodox Church, which says that marriage between Orthodox and heretics (understood as Catholics) is prohibited, but especially rule 72 of Fifth and Sixth General Council defines:

It is not decent to be an Orthodox man married to heretical woman, and also Orthodox woman to be married to heretical man. If it will be seen, made by anyone, it will not be considered as fixed and it is necessary to sever this unlawful cohabitation. (Compare also rule 21 (29) of the Cartagena Council and rules 10 and 31 of Loadicea Council).

Nowadays the Church [understood as Orthodox — the author’s note] in economy accepts marriages with heterodox people (mixed marriages) on condition that children will be baptized in the Orthodox faith.⁶³

From the mentioned factors it can be concluded that the Slovakian Orthodox Church in its current phase of development is still remote from ecumenical understanding, in the sense understood by the Catholic Church. Legal documents of the ecumenical character similar to the Cath-

⁶² Ibidem, p. 214.

⁶³ P. I. BOUMIS: *Canonic law of Orthodox Church*. Prešov 1997, p. 119.

olic ones do not exist. We can only hope that the ecumenical dialogue between churches will yield positive results in this respect.

Conclusions

Marriage is one of those interpersonal relations that belong to the most sensitive and intimate parts of human life. This study is an attempt to analyse the ecumenical openness of the Catholic Church towards the Orthodox Church, with an emphasis being put on situation between Greek Catholics and the Slovak Orthodox Church followers in Slovakia in this sensitive and deeply human area. In present times of globalization and large migrations of population associated with the opening of the borders, we cannot ignore the fact that mixed marriages are also entered into, including marriages between Greek Catholics and Orthodox. Catholic Church created the ecumenical coexistence for these marriages, as a part of its legal system after Second Vatican Council. Therefore, there was given an extraordinary authority to ecumenical marriage. This situation also applies to the territory of the present-day Slovakia, where Greek Catholic and Orthodox Church live in peace. Basic ecumenical principle says that chances of cooperation are given according to a grade of common faith. This implies a serious fact that the Orthodox and the Catholic Church are the closest in this case. Identical ritual facet and shared history of the Orthodox and Greek Catholics in Slovakia speak volumes about about this potential ecumenical responsiveness toward marriage. Today, the ecumenical dialogue is not developing. This stems mainly from the fact that the Orthodox Churches and also Slovakian Orthodox Church are unfriendly to ecumenism. They see it as a betrayal of the faith proclaimed by ancestors. It relates also to marriages which are entered into between Orthodox and Greek Catholics. This situation triggers a new need for spiritual ecumenism, or prayer in this intention. Convergence of Catholics and Orthodox is a process which has its end in the final unification. It will help every facet of life, also the ecumenical marriages which are entered into by Orthodox and Catholics.

FRANTIŠEK ČITBAJ

Sytuacja kanonicznych małżeństw mieszanych katolików i prawosławnych w Słowacji w kontekście historycznym i współczesnym

Streszczenie

Niniejszy artykuł analizuje zagadnienie małżeństw mieszanych katolików i prawosławnych na Słowacji. Jednocześnie ukazane w nim zostały kanoniczny rozwój wspomnianych małżeństw w historycznym kontekście różnych okresów i najnowszej historii, przy uwzględnieniu współczesnego kanonicznego sposobu rozwiązywania problemu małżeństw mieszanych pomiędzy katolikami i wyznawcami prawosławia. W tym kontekście na uwagę zasługuje fakt, że Kościół katolicki wobec ekumenizmu i małżeństwa ekumenicznego, które jest zawierane pomiędzy katolikami i prawosławnymi, stworzył pewien system kanoniczny. Jest on prawnie wiążący, a jednocześnie w swej istocie otwarty. Kościół prawosławny na Słowacji nie wypracował dotychczas takiego spójnego systemu odnośnie do małżeństw mieszanych pomiędzy katolikami a prawosławnymi. Stanowisko Cerkwi Prawosławnej na Słowacji jest w tym względzie bardzo rygorystyczne, a prawosławne prawo kanoniczne zabrania zawierania takich małżeństw. Surowość prawa łagodzą zasady oikonomii, jednak zależne są one od indywidualnych czynników duszpasterskich.

Słowa kluczowe: ekumenizm, Katolickie kościoły wschodnie, małżeństwo

FRANTIŠEK ČITBAJ

La situation des mariages canoniques mixtes des catholiques et des orthodoxes en Slovaquie dans le contexte historique et moderne

Résumé

L'étude présente soumet à l'analyse la question des mariages mixtes des catholiques et des orthodoxes en Slovaquie. Elle démontre également le développement canonique des mariages mentionnés dans le contexte historique des époques différentes, ainsi que le temps moderne, en prenant en considération la méthode canonique de résoudre les problèmes des mariages mixtes entre les catholiques et les orthodoxes. Dans ce contexte il faut noter que l'Église catholique a créé un certain système canonique envers l'oecuménisme et le mariage oecuménique, contracté entre les catholiques et les orthodoxes. Il est en vigueur et en même temps il est particulièrement ouvert. L'Église orthodoxe en Slovaquie n'a pas encore élaboré un système cohérent en ce qui concerne des mariages mixtes entre les catholiques et les orthodoxes. L'opinion de l'Église orthodoxe en Slovaquie est très rigoureuse sur ce point, le droit canonique interdit de contracter ces mariages. La sévérité du droit est adoucie par les principes d'oikonomie, mais ils dépendent des décisions individuelles des prêtres.

Mots-clés: oecuménisme, Églises Orthodoxes et Catholiques, mariage

FRANTIŠEK ČITBAJ

La situazione dei matrimoni canonici misti tra cattolici e ortodossi in Slovacchia nel contesto storico e contemporaneo

Sommario

Il presente lavoro analizza la problematica del matrimonio misto tra i cattolici e gli ortodossi in Slovacchia. Nel contempo presenta il loro sviluppo canonico nel contesto storico di diverse epoche come pure nella storia recente, considerando anche il metodo canonico per risolvere i problemi dei matrimoni misti tra i cattolici e gli ortodossi. In tal contesto merita di essere ricordato che la Chiesa cattolica ha creato un certo sistema canonico quanto all'ecumenismo e al matrimonio ecumenico contratto tra i cattolici e gli ortodossi, il quale è legalmente vincolante ma anche, nella sua essenza, particolarmente aperto. La Chiesa ortodossa in Slovacchia non ha ancora sviluppato un simile sistema coerente per i matrimoni misti cattolico-ortodossi. La posizione della Chiesa ortodossa in Slovacchia è molto rigorosa a questo riguardo e il diritto canonico ortodosso non consente di contrarre tali matrimoni. La severità della legge viene moderata dai principi dell'oikonomia, che dipendono però dai fattori pastorali individuali.

Parole chiave: ecumenismo, Chiese cattoliche orientali, matrimonio