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"Stwierdzenie stanu wolnego
wiernych prawosławnych na forum
kościół", Urszula Nowicka,
Warszawa 2012 : [recenzja]

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Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach
dozwolonego użytku.

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 judicial 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-judicial 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 premarital 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.

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