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An Infant in "Codex Iuris Canonici"

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Introduction

“According to the God’s will, a marriage is the basis for a broader family community, since the purpose of the institution of marriage itself and marital love is to procreate and educate infants, in which its culmination shall be found.”¹ These words of the *Familiaris consortio* apostolic exhortation of John Paul II indicate distinctly that conception and education of infants is — except for the spousal interest — the immediate purpose of the marriage. The exclusive and inseparable relationship of a man and a woman is likewise specified in the highest ecclesiastical legislation in can. 1055 § 1 of CIC). While the spousal interest (*bonum coniugum*) is more individual and personal purpose, conception and education of infants (*bonum prolis*) is more of social character; however, both purposes of the marriage, which are not subject to any hierarchization, are complementary to each other: they are unity in multiplicity.²

Dedicating the marriage, inherently, to procreate and educate infants, which is the essence of this relationship, causes that the fruit of the mari-

¹ JAN PAWEŁ II: *Adhortacja apostolska „Familiaris consortio” do biskupów, kapłanów i wiernych całego Kościoła katolickiego o zadaniach rodziny chrześcijańskiej w świecie współczesnym*. Częstochowa 1982, p. 25, no. 14.

² Cf. *Konstytucja duszpasterska „Gaudium et spes” Soboru Watykańskiego II*, no. 48; A. KOWALIK: *Direito canônico familiar*. Santa Maria 2003, pp. 102—104.

tal love is an infant. One can say that focusing the marriage on procreation materializes in the marriage, in building space appropriate to pass on and educate human life.³ “The real respect to marital love and the full sense of family life is claimed in provided in *Gaudium et spes* Pastoral Constitution of the Second Vatican Council, aiming that the spouses would manfully cooperate, without knowing of the other purposes of marriage, with love of the Creator and Savior, who has continually enlarged and enhanced its family.”⁴ Thus, infants are the most valuable gift of the marriage and bring the most good.”⁵

In order to talk about the infant (*infans*) in CIC, canons in which this word appears (11 times),⁶ as well as canons in which equivalent words: *filius* (30 times)⁷ and *proles* (9 times)⁸ — depending on context — appear. At the same time, provision of can. 97 § 2 of CIC shall be taken into consideration, according to which a minor (*persona minor*)⁹ before reaching 7 years of age is called an infant (this legislator’s distinction between *minor* and *minor ante plenum septennium* results in consequences regarding the subject’s capability). However, one should not forget that according to can. 99 of CIC whoever habitually lacks the use of reason is considered not responsible for oneself and is equated with infants.

It shall be mentioned that as far as minors, including infants, are concerned, there is no organic legislation in binding CIC, as it is for other categories of persons, such as pastors or members of consecrated life institutions and apostolic life associations. Should the canonic doctrine deal with minors, including infants, to a little extent, and even lesser right to life, it shall be attributed to the fact, that there has always been quite limited and completely non-organic regulation. Reasons of such a state of affairs lie in mutually connected phenomena both of structural and historical as well as cultural character.

As far as the first phenomenon is concerned, it shall be considered that the Church, in spite of being legally perfect community, creates a positive imperfect or incomplete legal order; it is structurally supplemented by the natural and positive law of God. However, the positive canonic

³ A. SARMIENTO: *Małżeństwo chrześcijańskie. Podręcznik teologii małżeństwa i rodziny*. Kraków 2002, 3. 46.

⁴ *Konstytucja duszpasterska „Gaudium et spes” Soboru Watykańskiego II*, no. 50.

⁵ *Ibidem*.

⁶ *Infans, antis*. In: *Index verborum ac locutionum Codicis Iuris Canonici*, paravit ac digessit X. Ochoa, Roma 1983, p. 206.

⁷ *Filius, ii*. In: *Index verborum...*, pp. 179—180.

⁸ *Proles, is*. In: *Index verborum...*, p. 352.

⁹ “Osobą małoletnią (*persona minor*) jest ten, kto nie ukończył osiemnastego roku życia; osobą pełnoletnią (*persona maior*) jest ten, kto ukończył osiemnasty rok życia.” Can. 97 § 1 KPK.

law, which has been formed by adopting the natural law, does not need to take a position — in second place — towards facts and situations, which have already been the subject taken into consideration in this natural order. As far as historical and cultural reasons are concerned, narrowing down the focus of canon law on the issue of life and minority, one shall take into consideration the influence of many-ages-old ecclesiology focused on institutional aspect and hierarchy on canon law, understood as legal provisions and education. This ecclesiology has shaped the positive law in Church, provided for, among others, towards own status and distinguishing believers, and clergymen and monks in particular, in regard to which legal positions the status of minors was treated narrowly, not drifting away too much from the status of believers.¹⁰

According to G. Dalla Torre, a traditional, ruling for centuries, model regarding legal position of minors, as dominated in legal experience of the Church, has been amended by the Second Vatican Council, however, it should be added that the ecclesiological renewal influenced slowly and gradually the canon law legislation and the doctrine, and this process has not been finished yet, and a new, post-council codification has overcome the former situation only partially. However, the focus of the doctrine on the central position of human person in the canon law has progressively become even more visible.¹¹

The legal status of the infant — both baptized and unbaptized — can be defined more precisely in CIC on the basis of canons including the already mentioned words (*infans, proles, filius*).

Among numerous provisions of CIC regarding the minor, including the infant, the categories of rights connected with natural personality of the infant and rights connected with their legal personality in the Church can be distinguished.

1. Infant's rights connected with their natural personality

Even though CIC defines the infant as a minor before they reach 7 years of age, it has acknowledged their rights since the conception. Regardless of the fact that *nasciturus*, which is a human being since they were

¹⁰ Cf. G. DALLA TORRE: "Diritto alla vita e diritti dei minori nell'ordinamento Canonico." In: *Tutela della famiglia e diritto dei minori nel Codice di Diritto Canonico*. Città del Vaticano 2000, pp. 63—64; R. CASTILLO LARA: "La condizione e lo stato giuridico del minore nell'ordinamento della Chiesa." *Salesianum*, 1990, vol. 52, p. 257.

¹¹ G. DALLA TORRE: "Diritto alla vita...", p. 64.

conceived until they are born, has no legal entity, which they may achieve in the future, the legislation has granted them many rights, protecting them as the legal interest requiring special protection. Firstly, the Church has protected their fundamental right to life since their conception, and has penalized severely the violation of this right (can. 1098 of CIC).

In CIC the rights of *nasciturusa* have been emphasized by the already mentioned legislator's statement of focusing the marriage on the spousal interest as well as conception and education of infants. Thus, should the contractor exclude any significant element of the marriage, regarding, among others, *bonum prolis*, by a positive act of will, they conclude an invalid marriage (can. 1101 § 2). Consequently, rights of the infant (unborn or born) from which serious parental obligations follow, in fact do exist.¹² Primarily, they shall take care for an unborn infant to develop properly; they shall not take any decisions influencing negatively the infant's development (e.g. poisoning the infant with alcohol), as well as take care of their safe birth.¹³

A special meaning is given to the provision of can. 871 of CIC, according to which stillborn fetus shall be baptized, if possible.

Recognizing the infant as a natural person — as the principle taken over from the Roman law,¹⁴ introduced for the first time to the canon law in *Decretals* of Gregory IX,¹⁵ confirmed in can. 97 of CIC, means that they are the subject of rights, thus, it shall possess legal capacity (legal personality in other words), but only natural one.

Pursuant to can. 97 § 2 of CIC the infant shall be considered as lacking the use of reason; it shall not be legal assumption, but legal provision, which entails the lack of the infant's ability to any legal actions in the Church, and, thus, actions producing legal effects.¹⁶

As a person being below 7 years of age, the infant is not subject to church law, even if in a particular case they had *de facto* sufficient use of their reason, which follows from can. 11 of CIC. It shall be confirmed by can. 852 § 1 of CIC, according to which the prescripts of the canons on adult baptism are to be applied to all those who, no longer infants, have attained the use of reason and, thus — according to can. 862 § 2 of CIC

¹² A. CORTÉS: "Infante." In: *Diccionario General de Derecho Canónico*. Vol. 4. Eds. J. OTADUY, A. VIANA, J. SEDANO, Pamplona 2012, p. 566.

¹³ H. STAWNIAK: "Udział małżonków-rodziców w kościelnej posłudze uświęcania." *Studia Warmińskie*, 1994, vol. 31, p. 138.

¹⁴ *Digesta* 37, 3.

¹⁵ 4, X, IV, 2.

¹⁶ J. KRUKOWSKI: "Osoby fizyczne i prawne." In: *Komentarz do Kodeksu Prawa Kanonicznego*, t. 1: *Księga I. Normy ogólne*. Eds. J. KRUKOWSKI, R. SOBAŃSKI. Pallotinum 2003, p. 167; G. DALLA TORRE: "Diritto alla vita..." pp. 68—69.

— a person who is not responsible for oneself is also regarded as an infant with respect to baptism.

Therefore, the infant shall be free of any obligations, however, some authors admit exceptions here of obligations provided for in canons: 989 (confession at least once a year after having reached the age of discretion), 914 (communion after having reached the age of discretion and after having made sacramental confession) and 920 §§ 1—2 (communion during the Easter time, after the First Communion time). This opinion, however, does not seem correct, because it is in conflict with provision of can. 97 § 2 of CIC (the infant is considered a person lacking the use of reason).

According to can. 1323 nn. 1 and 6 of CIC, it shall be presumed that the infant is not capable of committing a crime. They have no right to stand trial as well — unless they are represented by their parents, guardians or curators — even in spiritual cases or connected with spiritual ones (can. 1478 §§ 1 and 3 of CIC)¹⁷; they shall also not be allowed to give testimony as a witness (can. 1550 § 1 of CIC).

Having no capacity to perform acts in law, in order to exercise their rights, a minor, thus, the infant as well, shall be subject to — according to can. 98 § 2 of CIC — parental or guardian's authority. As far as appointing guardians and their powers are concerned, according to the above canon provisions of civil law shall apply, unless the canon law provides otherwise or a diocese bishop reasonably admits in some cases, that it shall be remedied by appointing another guardian. This provision shall prevent from a situation in which the same person would have two different guardians (in canonical and national forum). The justifiable reason of appointing another by the bishop can be an eventual discrepancy between a given national law and God's law.¹⁸

Canon 1136 of CIC, which imposes a serious obligation (*officium gravissimum*) of education of infants — physical, social, and cultural, as well as moral and religious — results in the right of the infant to be educated.¹⁹ “Right-obligation of parents to education [infants — W.G.], has been stated in *Familiaris consortio* apostolic exhortation of John Paul II,

¹⁷ Cf. R. COPPOLA: “La tutela dei minori nel diritto canonico processuale e penale.” In: *Tutela della famiglia nel Codice di Diritto Canonico*. Città del Vaticano 2000, p. 80.

¹⁸ J. KRUKOWSKI: “Osoby fizyczne i prawne...,” p. 168.

¹⁹ Cf. A. DZIĘGA: “Funkcja wychowawcza rodziny w prawie kanonicznym.” In: *Współdziałanie Kościoła i państwa na rzecz małżeństwa i rodziny*. Eds. J. KRUKOWSKI, T. ŚLIWOWSKI. Łomża 2005, pp. 127—129; J. KRAJCZYŃSKI: *Wychowanie dzieci i młodzieży w świetle posoborowych dokumentów Stolicy Apostolskiej i Konferencji Episkopatu Polski*. Płock 2002, pp. 70—73; see J. HERVADA: “Obligaciones esenciales del matrimonio.” *Ius Canonicum*, 1991, vol. 31, pp. 79—80; R. SZTYCHMILER: *Istotne obowiązki małżeńskie*. Warszawa 1997, pp. 261—262; Cf. C. BURKE: “The Essentials Obligations of Matrimony.” *Studia Canonica*, 1992, vol. 26, pp. 379—399.

and shall be considered crucial and as such connected with giving human life; it is *natural and prior* to educational tasks of other persons, due to its uniqueness and love connecting parents and infants [emphasis in the text — W.G.].”²⁰

Taking into consideration the obligation of spouses to take appropriate actions and attitudes by educating infants/children, to spheres of education shall be presumed provided for in the above canon: purely human (universal), in other words physical (natural), defined as *bonum physicum prolis* and moral and religious, defined as *bonum spirituale prolis*.²¹

In the spheres in which purely human education materializes, the infant shall primarily have right to be provided by their parents with everything necessary for their life and development.²² After an infant is born, their parents shall keep them alive (shall not abandon them, deprive of their lives, injure), take care of their physical and mental condition as well as of everything necessary to their proper development.²³ As far as social education is concerned, it shall include care for the infant to be open to social problems and shaping their traits necessary for a child in order to actively participate in social life. Then, parents’ obligation of cultural education shall be fulfilled mainly by providing infants with proper education which could lead them to right intellectual development.²⁴ Canon 795 of CIC emphasizes the need to take into consideration within the educational process a complete formation of the human person and harmonious development of infant’s physical, moral, and intellectual talents. Among the means to foster education, can. 796 §1 of CIC mentions schools are the principal assistance to parents in fulfilling the function of education; it also advises close collaboration of parents and teachers in schoolsthat infants attend (can. 796 § 2 of CIC).

The infant’s interest, including the aspect of their education, shall be protected in difficult family situations, when one of the spouses causes grave mental or physical danger to the other spouse or to the infant or otherwise renders common life too difficult; then the spouses may separate (can. 1153 § 1 of CIC). As soon as the separation has been decided

²⁰ JAN PAWEŁ II: *Adhortacja apostolska „Familiaris consortio”...*, p. 68 , no. 36.

²¹ Cf. P. PICOZZA: “L’esclusione dell’obbligo dell’educazione della prole.” In: *Prole e matrimonio canonico*. Città del Vaticano 2003, p. 279; W. GÓRALSKI: “Wykluczenie prawa-obowiązku wychowania potomstwa a ważność małżeństwa kanonicznego.” In: *Ochrona funkcji wychowawczej rodziny*. Eds. J. KRUKOWSKI, A. MAĆKOWSKI. Szczecin 2007, pp. 221—242.

²² L. ŚWITO: „*Exclusio boni polis*” jako tytuł nieważności małżeństwa. Olsztyn 2003, p. 43.

²³ W. GÓRALSKI: “Wykluczenie prawa-obowiązku wychowania potomstwa...,” pp. 225—226.

²⁴ Ibidem, p. 226.

(either by decree of the local ordinary, judgment of the ecclesiastical court or local ordinary's own authority) proper maintenance and education of infants shall be provided (can. 1153 § 1 and 1154 of CIC). This issue shall be decided under the local ordinary's decree or ecclesiastical court's order. As a rule the infant (infants) of separated spouses shall be educated by the innocent spouse. It shall be the innocent spouse, who takes care of the infant's interest of the separated spouses. However, the infant's interest may require another decision, for instance ordering relatives or education establishment to take care of the infant. Should the separation of spouses be decided by a civil court, a decision regarding care for the infant is decided as well.²⁵

The sphere of moral and religious education to the larger extent pertains to the infant's rights connected with their legal personality, which is provided in can. 217 of CIC proclaiming the rights of baptized to Christian education, through which they shall be instructed properly to strive for the maturity of the human person and at the same time to know and live the mystery of Salvation. This right shall apply to all Christians, regardless of their age, thus, also to infants.²⁶

The unbaptized infant shall have the right, but only relative, to the ecclesiastical funeral, however, this shall apply to the infant whom the parents intended to baptize but who died before baptism (can. 1183 § 2 of CIC).

As far as the origin of the infant is concerned, the basic principle is provided in can. 1137 of CIC, according to which legitimate infants shall be the infants conceived or born of a valid or putative marriage. This principle is supplemented by the following two legal assumptions. The first is provided for in can. 1138 § 1 of CIC, according to which the father is he whom a lawful marriage indicates unless clear evidence proves to the contrary. According to the second one, legitimate infants are presumed infants born at least 180 days after the day when the marriage was celebrated or within 300 days from the day of the dissolution of conjugal life (can. 1138 § 2 of CIC).

The next principle is provided in can. 1139, which states that illegitimate infants are legitimated by the subsequent valid or putative marriage of their parents or by a rescript of the Holy See (can. 1139 of CIC). According to can. 1140, legitimated infants are equal — as regards canonical effects — in all things to legitimate ones unless the law has expressly provided otherwise.²⁷

²⁵ P. KASPRZYK: *Separacja prawna małżonków*. Lublin 3003, pp. 72—73.

²⁶ Cf G. DALLA TORRE: "Diritto alla vita..." p. 72.

²⁷ Cf M. Al. ŻUROWSKI: *Kanoniczne prawo małżeńskie Kościoła katolickiego*. Katowice 1987, pp. 384—387.

The place of origin (*locus originis*) of an infant is that in which the parents had a domicile or, lacking that, a quasi-domicile when the infant was born or, if the parents did not have the same domicile or quasi-domicile, that of the mother (can. 101 § 1 of CIC). In case the infant is illegitimate or posthumous, their place of origin shall be also permanent or temporary domicile of the mother; in case of any discrepancies as for domicile of the genetic and natural mother, the domicile of the infant shall be the domicile of the latter.²⁸ In the case of the infant of transients, the place of origin is the actual place of birth; in the case of the abandoned infant, it is the place where the infant was found (can. 101§ 2 of CIC). As regards the place of residence of the infant, according to can. 105 § 1 of CIC, a minor necessarily retains the domicile and quasi-domicile of the one to whose power the minor is subject. Whoever for some other reason than minority (thus, either due to the fact that they are not infants any more) has been placed legitimately under the guardianship or care of another has the domicile and quasi-domicile of the guardian or curator (can. 105 § 2 of CIC).

According to can. 106 of CIC it shall be presumed that the infant loses their domicile and quasi-domicile together with the loss of domicile or quasi-domicile by the one under whose guardianship they remain.²⁹

When determining the status of adopted infants, the legislator provides that infants who have been adopted according to the norm of civil law are considered the infants of the person or persons who have adopted them (can. 110 of CIC).

Just by the very fact that the infant is born, they “acquire” consanguinity with particular persons — both through lines and degrees, as well as the affinity (when the relative of the infant concluded a valid marriage), pursuant to can. 108 and 109 of CIC.

2. Infant’s rights connected with their legal personality in the Church

The infant shall have right to be baptized since they are born, and this sacrament — according to can. 96 of CIC — incorporates a human person into the Church of Christ who is now constituted as a person in it

²⁸ J. KRUKOWSKI: “Osoby fizyczne i prawne...,” pp. 170—171.

²⁹ “Stałe lub tymczasowe miejsce zamieszkania traci się przez odejście z tego miejsca połączone z zamiarem niepowracania tam” (can. 106 KPK).

with the duties and rights which are proper to Christians in keeping with their condition insofar as they are in ecclesiastical communion. Thus, the baptism makes that the baptized, without losing their natural personality, acquire legal personality in the Church, and therefore, legal capacity. Execution of rights by the baptized, however, shall be conditioned by numerous factors contributing to their legal position.³⁰

Through the reception of baptism, the infant of parents who belong to the Latin Church is enrolled in it, or, if one or the other does not belong to it, both parents have chosen by mutual agreement to have the infant baptized in the Roman Catholic Church; if there is no mutual agreement, however, the infant is enrolled in the ritual Church to which the father belongs (can. 111 § 1 of CIC).

After the reception of baptism, the infants of spouses who have obtained permission from the Apostolic See, the infants of a spouse who, at the time of or during marriage, has declared that he or she is transferring to the ritual Church *sui iuris* of the other spouse, as well as — in a mixed marriage — the infants of the Catholic party who has legitimately transferred to another ritual Church, shall be enrolled in another ritual Church *sui iuris* (can. 112).³¹

The legislator obliges parents to make sure that infants are baptized within the first few weeks following their birth; as soon as possible after the birth, or even before it; they are to go to the pastor to request the sacrament for their infant and to be prepared properly for it (can. 867 § 1 of CIC). The infant in danger of death shall be baptized without delay (can. 867 § 2 of CIC). The abandoned infant or a foundling shall be baptized unless after diligent investigation the baptism of the infant is established (can. 870 of CIC).

For the infant to be baptized licitly, the legislator requires that the parents or at least one of them or the person who legitimately takes their place must consent and there must be a founded hope that the infant will be educated in the Catholic religion (can. 868 § 1 of CIC). The infant of Catholic parents or even of non-Catholic parents shall be baptized licitly in danger of death even against the will of the parents (can. 868 § 2 of CIC). If the conferral or validity of the baptism remains doubtful, the reasons of the doubtful validity of the baptism shall be explained to parents before the baptism is conferred (can. 869 § 3 of CIC). The pastor shall instruct parents and sponsors on the meaning of this sacrament and the obligations attached to it, as well as to prepare parents properly to the baptism of the infant (can. 851, n. 2 of CIC).

³⁰ J. KRUKOWSKI: "Osoby fizyczne i prawne...", pp. 164—166.

³¹ Ibidem, pp. 181—186.

As far as mixed marriages are concerned, both *sensu stricto* (can. 1124 of CIC), and *sensu lato* (can. 1086 § 1 of CIC) it shall be mentioned that before granting permission by the local ordinary or dispensation, the Catholic party shall declare that he or she shall do all in his or her power so that all infants are baptized and educated in the Catholic Church.

As far as possible, a person to be baptized shall be given a sponsor who — together with the parents — presents the infant for baptism and helps the baptized person to lead a Christian life in keeping with baptism and to fulfill faithfully the obligations inherent in it (can. 872 of CIC). Can. 877 §§ 2—3 specifies, whose name shall be inscribed into the book of baptized if it concerns an infant born to an unmarried mother or an adopted infant.

It shall also be mentioned that the exhaustive position of the Church regarding the baptism of infants has been presented in *Pastoralis action* Instruction of Congregation for the Doctrine of Faith of October 20, 1980.³²

A person who has not received baptism cannot be admitted validly to the other sacraments and it shall be the condition required by can. 842 § 1 of CIC for their validity.

As far as the sacrament of confirmation is concerned, it follows from can. 891 of CIC that the infant could be conferred this sacrament in danger of death and when — for a serious reason — the minister suggests so.³³

Taking into consideration can. 920 and 989 of CIC, it shall be presumed that the infant is not obliged to confess.

As regards the Most Holy Eucharist, it follows indirectly from can. 913 § 1 and 914 of CIC, that, generally, the infant cannot be admitted to the Holy Communion. However, according to can. 913 § 2 of CIC the holy communion can be administered to infants in danger of death if they can distinguish the body of Christ from ordinary food and receive communion reverently.

According to can. 1004 of CIC it shall be presumed that the Anointing of the Sick can be administered to the infant (in danger of death) who has reached the use of reason.³⁴

³² CONGREGATIO PRO DOCTRINA FIDEI: *Instructio de baptismo parvulorum*. Civitas Vaticana 1980.

³³ Cf. P. HEMPEREK: "Sakrament bierzmowania." In: *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r.*, t. 3: *Nauczycielskie zadanie Kościoła. Uświęcające zadanie Kościoła*. Eds. P. HEMPEREK, W. GÓRALSKI, F. PRZYTUŁA, J. BAKALARZ. Lublin 1986, p. 109.

³⁴ In accordance with *Ordo unctionis infirmorum* (Polish edition: *Sakramenty chorych. Obrzędy i duszpasterstwo*. Katowice 1978, no. 12) anointing of the sick may also be provided to children dangerously sick, if they reach an appropriate mental level for the sacrament to bring them solace.

The baptized infant, shall have, then, right to moral and religious education (except for earlier mentioned purely human education), which arises in parental obligation. One can say that education in the mentioned spheres shall be considered as parental care for Christian formation of their infants. “Through the grace of the sacrament of marriage, according to the *Lumen gentium* dogmatic Constitution of the Second Vatican Council, parents have obtained a task and privilege to evangelize their infants. They shall introduce their infants to the secrets of faith, of which they are their first trailers, as soon as possible.”³⁵

A domain connected with moral and religious education of the offspring has been reflected in can. 226 § 2 of CIC, in which the legislator states that Christian parents shall particularly take care of the Christian education of their infants according to the doctrine handed on by the Church. In turn, can. 774 § 2 of CIC imposes on parents (and those who replace them) and sponsors obligation to form their infants — by word and example — in faith and in the practice of Christian life. On the other hand, in can. 835 § 4 of CIC the legislator provides that parents of the Christian faithful also have their own part in the function of sanctifying by leading a conjugal life in a Christian spirit and by seeing to the Christian education of their infants.

In can. 793 § 1 of CIC the legislator provides that parents have the duty and right of choosing those means and institutions through which they can provide more suitably for the Catholic education of their infants according to local circumstances. On the other hand, can. 798 of CIC makes the final end of human person as the point of reference for religious education, and can. 798 of CIC obliges parents to entrust their infants to those schools which provide a Catholic education. In this context, it is not difficult to understand the provision of can. 1366 of CIC, according to which parents or those who take the place of parents who hand their children to be baptized or educated in a non-Catholic religion are to be punished with a censure or other just penalty. This type of penalty shall be treated as evident violation of obligation of Christian education of infants.³⁶

Finally, it shall be mentioned that local ordinaries and other pastors of souls are to take care that the Catholic spouse and the children born of a mixed marriage, both *sensu stricto* and *sensu lato* — do not lack the spiritual help to fulfill their obligations and are to help spouses foster the unity of conjugal and family life (can. 1128 of CIC).

³⁵ *Konstytucja dogmatyczna „Lumen gentium” Soboru Watykańskiego II*, no. 11.

³⁶ Cf. J. SYRYJCZYK: *Kanoniczne prawo karne: część szczególna*. Warszawa 2003, pp. 43—47.

It shall not be added that the subject of moral and religious education is all that is necessary to introduce the infant to divine life, starting from the baptism. "Thus, it is about the parental care for growth of faith in their infant, their participation in the sacramental life, practicing prayers, participation in liturgy, study the word of God, among others through religious education, shaping the right conscience, proper sexual education, following the principles of faith."³⁷ Obviously, each of these forms of education shall be adjusted to and applied with regard to the age of the infant.

It also have to be mentioned that the baptized infant shall have right to be given ecclesiastical funerals (comp. can. 1183 § 2 of CIC).

3. Final remarks

The interest of offspring (their conception and education), as one of the purposes of the marriage, requires taking special care of infants, that is, the minors in the Church who are below 7 years of age. The expression of this care can be, among others, ecclesiastical legislation, in the area of which, despite organic family law, the legal status of the infant has been stipulated distinctly.

Codex Iuris Canonici (CIC), based in its fundamentals on the natural law, expresses the ecclesiastical legislator's deep concern for respecting human life from its conception to natural death.³⁸ Thus, it protects its non-transferable right to life and birth of the *nasciturus*.

As far as the liveborn infant is concerned, rights following from their individual natural personality, among others, right to life, parental care, human education, or receiving baptism have been stipulated.

As regards the baptized infant, who becomes *persona in Ecclesia* by reception of their first sacrament (can. 96 of CIC), provisions of the code sanction their numerous fundamental rights, among others, right to moral and religious education, to grow up in faith or right to other sacraments.

Rights of the *nasciturus*, born and baptized infant generally correspond to certain obligations of their parents (or legal guardians). It is easy

³⁷ W. GÓRALSKI: "Wykluczenie prawa-obowiązku wychowania potomstwa...", p. 228; A. STANKIEWICZ: "L'esclusione della procreazione ed educazione della prole." In: *La simulazione del consenso matrimoniale canonico*. Città del Vaticano, p. 320; H. STAWNIAK: "Udział małżonków-rodziców...", p. 145.

³⁸ Cf. *Katechizm Kościoła Katolickiego*. Pallotinum 1994, p. 515, no. 2270; JAN PAWEŁ II: *Adhortacja apostołska „Familiaris consortio”...*, pp. 48 f., 26.

to notice a parallel here, for example in the domain emphasized by CIC in particular, which is education (in its all aspects). When for example the legislator provides in can. 793 of CIC: “Parents and those who take their place are bound by the obligation and possess the right of educating their offspring,” it means that infants have right to be educated by their parents (and those who take their place).

As G. Dalla Torre has pointed out, the autonomy of the minor, including the infant, appears, as a matter of fact, in the canon law as greater than the one which national legal regulations provide. It probably follows from the fact that — unlike in the latter — canon law, nevertheless, pays more attention to the human person and is less conditioned by patterns of legal subjectivism. On the contrary, *ius canonicum*, unlike most of these legal orders does not depend on the anthropological paradigm, unlike the individualism. The anthropology of the canonic order considers a human person in its integrity, in their natural truth, which has been disclosed precisely by the Revelation and accepted on the supernatural plane, since “Christ reveals the human person in full to the human person themselves. There is a deep community between the natural legal order and ecclesiastic legal order in the way that the primacy of a human person in the natural law is approved and emphasized in the law of the Church. This is so, despite that focus on the human person in the canonic law in new codification has not fully overcome former antinomy between a human person and institution, freedom and power, what is private and public in the Church.”³⁹

Finally, it is important to note that in comparison to CIC of 1917 the current legislation has relocated significantly obligations connected with rights of minors, including infants, from pastors (parsons in particular) to parents. The ecclesiastical responsibility of parents for keeping their children alive and educating them is emphasized in particular, which has occurred due to the doctrine of the Second Vatican Council as regards the common priesthood of the faithful.

³⁹ G. DALLA TORRE: “Diritto alla vita”..., p. 74.

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WOJCIECH GÓRALSKI

An Infant in *Codex Iuris Canonici*

Summary

The interest of the offspring (their conception and education), as one of the purposes of the marriage, requires taking special care of infants, thus, minors in the Church, who are below 7 years of age. The expression of this care can be, among others, ecclesiastical legislation, in the area of which, despite organic family law, the legal status of the infant has been stipulated distinctly.

As far as the live-born infant is concerned, rights following from their individual natural personality, among others, right to life, parental care, human education or reception of baptism have been stipulated. As regards the baptized infant, who becomes *persona in Ecclesia* by reception of their first sacrament (can. 96 of CIC), provisions of the code sanction their numerous fundamental rights, among others, right to moral and religious education, to grow up in faith or right to other sacraments.

The traditional, ruling for centuries, model regarding legal position of minors, which dominated in legal experience of the Church, has been amended by the Second Vatican Council, the post-council codification of the canonic law has overcome former situation only partially. However, it shall be added, that the ecclesiological renewal influenced slowly and gradually the canonic legislation and the doctrine, and this process has not been finished yet, and a new, post-council codification has overcome the former situation only partially. However, the focus of the doctrine on the central position of human person in the canonic law has progressively become even more visible.

WOJCIECH GÓRALSKI

L'enfant dans *Codex Iuris Canonici*

Résumé

Le bien des enfants (leur naissance et éducation), comme un des buts du mariage, veut que l'on prenne un soin particulier des enfants, donc d'un groupe de mineurs à l'Église, qui n'ont pas encore atteint l'âge de sept ans. C'est entre autres la législation ecclésiastique qui est l'expression de ce soin. Bien que le droit familial organique y fasse défaut, c'est bel et bien le statut juridique de l'enfant qui y a été clairement défini.

Pour ce qui est des enfants déjà nés, on a défini les droits résultant de leur condition naturelle, par exemple : droit à la vie, au soin parental, à l'éducation humaine ou

droit d'être baptisé. Par contre, pour ce qui est d'un enfant baptisé — qui, ayant reçu le premier sacrement, devient *persona in Ecclesia* (can. 96 CIC) — un grand nombre de ses droits sont sanctionnés par les normes inscrites dans le code de droit canonique, par exemple : droit à l'éducation morale et religieuse, droit d'être élevé dans une ambiance de foi et droit à d'autres sacrements.

Le modèle traditionnel concernant la position juridique des mineurs, qui régnait depuis des centaines d'années et qui dominait dans l'expérience juridique de l'Église, a été modifié par le Concile Vatican II. La codification du droit canonique de l'après-Concile a triomphé la situation précédente seulement d'une façon partielle. En revanche, l'attention de la doctrine à l'égard de la position centrale de la personne humaine dans le droit canonique devient de plus en plus visible.

Mots clés : enfant, droits de l'enfant, statut juridique, parents, devoirs, baptême, éducation

WOJCIECH GÓRALSKI

Il bambino nel *Codex Iuris Canonici*

Sommario

Il bene della prole (la sua procreazione ed educazione) come uno dei fini del matrimonio, impone di avere una cura particolare per i bambini e quindi per la categoria di persone minorenni nella Chiesa che non hanno compiuto il settimo anno di età. Una manifestazione di tale cura è tra l'altro la legislazione ecclesiastica nell'area della quale, malgrado manchi un diritto organico della famiglia, lo status giuridico del bambino è stato comunque definito univocamente.

Rispetto al bambino nato sono stati definiti i diritti risultanti dalla personalità naturale che gli è propria, tra l'altro il diritto alla vita, alla cura dei genitori, all'educazione umana o il diritto a ricevere il battesimo. A sua volta, in riferimento al bambino battezzato che ricevendo il primo sacramento diventa *persona in Ecclesia* (can. 96 CIC), le norme del codice sanzionano una serie di suoi diritti fondamentali, tra l'altro il diritto all'educazione morale e religiosa, a crescere nella fede o il diritto agli altri sacramenti.

Il modello tradizionale che regna da secoli, riguardante la posizione giuridica dei minorenni, che dominava nell'esperienza giuridica della Chiesa, fu modificato dal Concilio Vaticano II. La codificazione post-conciliare del diritto canonico ha vinto tuttavia la vecchia situazione solo in parte. Invece l'attenzione della dottrina rispetto al luogo centrale della persona umana nel diritto canonico sta divenendo progressivamente sempre più visibile.

Parole chiave: bambino, diritti del bambino, status giuridico, genitori, doveri, battesimo, educazione