

Stanislav Přibyl

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Stanislav Příbyl

University in České Budějovice, Czech Republic

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Abstract: The value changes in the Western world since the 1960s have been markedly strong as regards the youth towards marriage. This situation was reacted to already in the 1983 Code of Canon Law promulgated by Pope John Paul II. Canon law can thus more effectively become a relevant tool in the pastoral care for the betrothed and married spouses in the Catholic Church. However, the basis for such pastoral ministry is a thorough preparation of couples for marriage and their permanent spiritual accompaniment. Legal tools referred to in the present paper can contribute to solving unusual or difficult situations of the spouses and enabling them access to sacramental life.

Keywords: matrimony, spouses, canon law, pastoral care, Catholic Church

Canon law defines the space in which the catechesis on matrimony, preparation of the betrothed for their marriage and its liturgical celebration take place; finally, it also contributes to solving difficult conditions the married couple can come across. The law of the Catholic Church is typical for determining the basic requirements both for the validity (*ad validitatem*) and permissibility (*ad liceitatem*) of legal acts. The new 1983 Code of Canon Law (CIC/1983), influenced by the wide pastoral considerations of Vatican II, however, uses other categories, for example spiritual utility (*spiritualis utilitas*) or “fruitful,” that is, effective liturgical worship (*fructuosa liturgica celebratio*).

Social Changes and Changes in the Church

The 1917 Code of Canon Law (CIC/1917) was promulgated in a period, in which the Church's doctrine about the goals and the essence of marriage in the then concept was generally known, at least among the Catholics. The Code hierarchized the ends or goals of marriage into primary and secondary ones:¹ "The primary end of marriage is procreation and education of children (*procreatio atque educatio prolis*); the secondary [end] is mutual support and remedy of concupiscence (*mutuum adiutorium et remedium concupiscentiae*). The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain special firmness by reason of the sacrament."²

However, the apostolic exhortation of Pope John Paul II on the role of the Christian family (1981) confirms that the Church's concept of marriage can be ignored and is no longer taken to be a matter of course: "In some countries it is still the families themselves that, according to ancient customs, ensure the passing on to young people of the values concerning marriage and family life, and they do this through a gradual process of education or initiation. However, the changes that have taken place within almost all modern societies demand that not only the family but also society and the Church should be involved in the effort of adequate preparation of young people for their future responsibilities."³ The transformation of values, which struck the Western world especially in the 1960s, has been particularly significant in relation to the way young people understand marriage.⁴

Nevertheless, the legislator of the old Code, whose normativity was compiled in the beginning of the 20th century, demanded that concrete and immediate preparation of the nupturients should be entrusted fully in the pastoral care of

¹ "The first author that seems to have distinguished the ends of marriage into the primary and secondary ones was the Dominican Domingo de Soto (1494–1560) and the first official document of the Church talking about the primary and secondary ends of marriage was the 1917 Code of Canon Law." Ján Duda, *Katolícke manželské právo* (Spišská Kapitula—Spišské Podhradie: Kňazský seminár J. Vojtaššáka, 1996), 23.

² CIC/1917, can. 1013, § 1–§ 2.

³ Apostolic Exhortation *Familiaris Consortio* of John Paul II on the Role of the Family in the Modern World (November 22, 1981), art. 66. Hereafter as FC.

⁴ "A lot of young people have lost all illusions about a normal family and experiment with forms of cohabitation totally unknown to their parents [...]. Marriage, for generations the most desired goal of the youth, is now becoming undesirable. We feel the rebellion of the youth against absolute obligations for the whole life. Marriage is less and less safe. People who entered marriage see how after a certain period of time the presumed happiness and fulfilment they were seeking is slowly vanishing and ask the question whether they do not just cling to a mere peel of the original dream."—Larry a Nordis Christenson, *Křesťanští manželé* (Praha: Evangelické nakladatelství, 1991), 10.

the parish priest, who “shall not omit, according to the varying conditions of the persons, to instruct the spouses on the sanctity of marriage and on the mutual obligations of spouses and of parents.”⁵ Here the pastoral goal clearly overlaps with strict legal obligation imposed on the concrete ministers of the Church.⁶ The 1983 Code, however, understands the preparation of nupturients much more broadly, that is, in the entire ecclesial dimension: “Pastors of souls are obliged to take care that their ecclesiastical community offers the Christian faithful the assistance by which the matrimonial state is preserved in a Christian spirit and advances in perfection.”⁷

The Degrees of Preparation for Marriage

Naturally, as far as the education on marriage and parenthood are concerned, it is desirable to take place in primary families, however, on the condition that they themselves live in the Christian spirit.⁸ John Paul II characterizes the effect of primary families as remote preparation: “Remote preparation begins in early childhood, in that wise family training which leads children to discover themselves as being endowed with a rich and complex psychology and with a particular personality, with its own strengths and weaknesses.”⁹ The Code of Canon Law does not explicitly mention this aspect in the provision about the preparation for marriage, nevertheless, the article on Catholic education contains a programmatic formulation about the priority given to the parental education of children: “Parents and those who take their place are bound by the obligation and possess the right of educating their offspring. Catholic parents also have the duty and right of choosing those means and institutions through which they can provide more suitably for the Catholic education of their children, according to

⁵ CIC/1917, can. 1033.

⁶ “CIC/1917 talked about personal preparation for marriage in a very fragmentary manner: Canon 1018 and 1033 see it as the mission of the parish priests (explicitly only to them—sic!) and Canon 1021 § 2 requires receiving the sacrament of confirmation prior to the wedding.” Damián Němec, *Manželské právo katolické církve s ohledem na platné české právo* (Praha—Kostelní Vydří: Krystal, Karmelitánské nakladatelství, 2006), 35.

⁷ CIC/1983, can. 1063.

⁸ “It matters gravely in Christian education that parents be people of sincere, obedient faith who can provide a clear testimony of their faith.” In order to instruct their children, they must, therefore, be sufficiently instructed themselves.” Štěpán Šoltész, *Kristus a rodina* (Praha: Kalich, 1970), 181.

⁹ FC, n. 66, p. 70, see n. 3.

local circumstances.”¹⁰ The Magisterium insisted on this right of parents already prior to Vatican II; we can see that in the reference to the Code of Canon Law¹¹ made by Pope Pius XI in his encyclical *Divini illius magistri* promulgated in 1929, that is, in the period in which the etatism of Mussolini’s “total state” (*stato totale*) intended to take control of the education of children:

The wisdom of the Church in this matter is expressed with precision and clearness in the Codex of Canon Law, can. 1113: “Parents are under a grave obligation to see to the religious and moral education of their children, as well as to their physical and civic training, as far as they can, and, moreover, to provide for their temporal well-being.” On this point the common sense of mankind is in such complete accord that they would be in open contradiction with it who dared maintain that the children belong to the State before they belong to the family, and that the State has an absolute right over their education.¹²

By remote preparation Pope John Paul II means not only education in the actual family, but also a wider ecclesial formation: “Also necessary, especially for Christians, is solid spiritual and catechetical formation that will show that marriage is a true vocation and mission, without excluding the possibility of the total gift of self to God in the vocation to the priestly or religious life.”¹³ The Code of Canon Law transforms this aspect of proclaiming the doctrine into an appeal to offer pastoral assistance to marriage with “preaching, catechesis adapted to minors, youth, and adults, and even the use of instruments of social communication, by which the Christian faithful are instructed about the meaning of Christian marriage and about the function of Christian spouses and parents.”¹⁴ According to the classification found in the exhortation of John Paul II, the means mentioned in this norm of the Code also introduce the *proximate preparation* which “from the suitable age and with adequate catechesis, as in a catechumenal process, involves a more specific preparation for the sacraments, as it were, a rediscovery of them.”¹⁵ An aspect of preparation for marriage is also integrated in the following quotation:

This preparation will present marriage as an interpersonal relationship of a man and a woman that has to be continually developed, and it will encour-

¹⁰ CIC/1983, can. 793.

¹¹ CIC/1917, can. 1113.

¹² *Divini illius magistri*, Encyclical of Pope Pius XI on Christian Education, accessed (July 15, 2015), http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_31121929_divini-illius-magistri.html.

¹³ FC, art. 66.

¹⁴ CIC/1983, can. 1063 1°.

¹⁵ FC, art. 66.

age those concerned to study the nature of conjugal sexuality and responsible parenthood, with the essential medical and biological knowledge connected with it. It will also acquaint those concerned with correct methods for the education of children, and will assist them in gaining the basic requisites for well-ordered family life, such as stable work, sufficient financial resources, sensible administration, notions of housekeeping.¹⁶

For the following degree of the preparation, the Code uses the term “personal” (*preparatio personalis*). It talks about assistance to concrete nupturients by the means of “personal preparation to enter marriage, which disposes the spouses to the holiness and duties of their new state.”¹⁷ The papal exhortation calls this preparation “immediate”; it refers to an “exam” (*examen*) of the spouses required by the Code: “The immediate preparation for the celebration of the sacrament of Matrimony should take place in the months and weeks immediately preceding the wedding, so as to give a new meaning, content, and form to the so-called premarital enquiry required by Canon Law. This preparation is not only necessary in every case, but is also more urgently needed for engaged couples that still manifest shortcomings or difficulties in Christian doctrine and practice.”¹⁸ The view of the immediate preparation sketched by the pope thus presupposes mingling of legal and pastoral elements.¹⁹ As regards legal rulemaking, a detailed legal framework is decentralized by an authorizing provision: “The conference of bishops is to establish norms about the examination of spouses and about the marriage bans or other opportune means to accomplish the investigations necessary before marriage. After these norms have been diligently observed, the pastor can proceed to assist at the marriage.”²⁰ If the betrothed wish to have someone else than the parish priest to assist at their wedding ceremony, this person becomes responsible for keeping the legal framework of contracting their marriage: “The person assisting at marriage acts illicitly unless this person has made certain of the free status of the contracting parties according to the norm

¹⁶ FC, art. 66.

¹⁷ CIC/1983, can. 1063 2°.

¹⁸ FC, art. 66, p. 71.

¹⁹ “The goal of the legal preparation is the assurance of validity and permissibility of marriage via the so-called fore-wedding proceedings. One of its objectives is *cooperation of the nupturients with the parish priest in the administrative field* which should help create moral certainty that no impediments hinder the celebration of the marriage, that is, reaching certainty about the unmarried status of the nupturients and excluding marriage impediments and bans. This is done by completing a spousal protocol, presenting relevant documents, cooperating on possible requesting of necessary dispensations and permits (legal preparation), but especially by open personal contact making it possible to reach a moral certainty about an appropriate understanding of marriage and due intention to enter the matrimonial state (this is particularly the contents of the immediate personal preparation).” Damián Němec, *Manželské právo*, 35.

²⁰ CIC/1983, can. 1067.

of law, and, if possible, of the permission of the pastor whenever the person assists in virtue of general delegation.”²¹

Preventing Defects of Matrimonial Consent

Difficulties with understanding marriage for the nuptrients may reach such a form which the Canon Law presents as a defect of matrimonial consent: “If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly.”²² That which renders marriage invalid entails the so-called total simulation of the marital contract, while partial simulation violates particularly the “goods” of marriage, as defined by St. Augustine: “This is the goodness [*bonum*] of marriage, from which it takes its glory: offspring, chaste fidelity, unbreakable bond. Let these nuptial goods be the objects of our love: offspring (*prolis*), fidelity (*bonum fidei*), the unbreakable bond (*sacramenti*).”²³ The new Code literally takes over the provision of the 1917 Code about two essential properties of marriage which are content-wise related to the Augustinian “goods”: “The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament.”²⁴ Unity as an essential property relates to the cohabitation of one man and one woman, and excludes polygamy, polyandry, and the cohabitation of same-sex couples.²⁵ Unity clearly presupposes mutual fidelity of the spouses. The Code thus defines matrimonial covenant as a bond “by which a man and a woman establish between themselves a partnership of the whole of life (*consortium totius vitae*).”²⁶ The second property of marriage is indissolubility, which has by now become an exceptionally demanding lifelong challenge for the couple, although in traditional societies it was understood more as an institutional matter of course.²⁷

²¹ CIC/1983, can. 1114.

²² CIC/1983, can. 1101 § 2.

²³ *De bono coniugali* 24, in *Patrologia latina* 40: 394.

²⁴ CIC/1983, can. 1056.

²⁵ “The word ‘unity,’ used here, does not refer to a ‘successful marriage’ in which wife and husband understand each other or are one. It expresses exclusivity, i.e. that the union of one man and one woman is an essential property of marriage.” Jiří Kašný, *Manželství v západní tradici. Soubor kanonických studií* (České Budějovice: Jihočeská univerzita, 2006), 37.

²⁶ Cf. CIC/1983, can. 1055 § 1.

²⁷ “The fact that marriage in the past could last for the whole life was partially due to an external support and external limitations which helped marriage unions to stay together. That

These elements and “goods” need to be distinguished from the good of the concrete spouses, which is—in compliance with the concept of Vatican II—²⁸an equally essential property of marriage together with procreating and educating children: “For the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone.”²⁹ The new Code then transforms this concept into a programmatic legal norm, in which the matrimonial covenant (*matrimoniale foedus*) “is ordered by its nature to the good of the spouses (*bonum coniugum*) and the procreation and education of offspring (*prolis generationem et educationem*).”³⁰ The equal status of the “good of the spouses” with the traditional “procreation and education of offspring” was in fact enforced thanks to the work on the new Code.³¹

The concept of the good of the spouses was characterized in John Paul II’s Letter to Families, issued on the occasion of the Year of the Family (declared by the same pope in 1994):

The words of consent define the common good of the *couple and of the family*. First, the common good of the spouses: love, fidelity, honor, and permanence of their union until death—“all the days of my life.” The good of both, which is at the same time the good of each, must then become the good of the

does not mean that the love between the two partners was not profound. If there was such a love, the marriage had an internal permanence of a different kind than in many other marriages held together chiefly by external factors. Moreover, the permanence or indissolubility of marriage was not understood as something which would result from the nature of the partners’ mutual love. Thus, their love was not understood as essentially important for their marriage and its indissolubility.” Kevin T. Kelly, *Rozvod a druhý sňatek. Tváří v tvář výzvě* (Brno: Centrum pro studium demokracie a kultury, 2012), 36.

²⁸ “The constitution *Gaudium et spes* of Vatican II made a bold attempt to evaluate marriage in the contemporary world from the theological perspective [...]. Marriage is thus understood as an intimate community of love, as a Christian mission, sacramental bond, covenant, and mutual gift of two persons. It is remarkable that traditional formulation describing marriage as a contract is missing. The major theological issue was reassessing the question whether procreation is the primary natural purpose and end of marriage.” Francis Schüssler Fiorenza, “Manželství,” in *Systematická teologie III — římskokatolická perspektiva*, ed. Francis S. Fiorenza, John P. Galvin (Brno—Praha: CDK, Vyšehrad), 119–161, 135.

²⁹ *Gaudium et spes*, 48.

³⁰ Cf. CIC/1983, can. 1055 § 1.

³¹ “The term the ‘good of the spouses’ entered general consciousness when it was used by Dominicus M. Prümmer in his manual of moral theology. In fact, in his concept this ‘good’ was the most important end of marriage [...]. As we can see, the canonists enforced the ‘good of the spouses’ among the ends of marriage. On the other hand, in theological literature on marriage this term often does not even appear. Even the *Catechism of the Catholic Church* does not explain the doctrine in more detail. Instead, it simply quotes the appropriate Canon (art. 1601, cf. art. 2363).” Dominik Opatrný, *Dobro manželů v kontextu biblické etiky*, *Revue církevního práva* 57–1 (2014): 49–63, 50, 52.

children. The common good, by its very nature, both unites individual persons and ensures the true good of each.³²

Here the pope proceeds from the wording of the matrimonial consent and comes to the traditional “good of the offspring.” For comparison, we may quote the concept of marriage embedded in today’s Czech civil law: “Marriage is a permanent community of man and woman founded in the way stipulated by law. The main purpose of marriage is foundation of family and proper upbringing of children.”³³ Contrary to the practice of the Church, the role of the state is not to search whether nupturients intend to contract a marriage as it is legally defined.³⁴

However, neither of the nupturients wishing to contract a marriage in a canonical form can exclude the sum of elements and goals of marriage stipulated by the Canon Law, both in totality or individually. If a minister preparing them for marriage finds out that one or both of these elements are rejected, he will not proceed to administering the wedding. Such nupturients wish to contract a covenant whose content is at odds with the matrimonial covenant, as it is understood by the Church. No Catholic minister is licensed to celebrate such a wedding: “However, if the betrothed openly and explicitly disagree with the meaning the Church puts forward in relation to marriage between the baptized, the pastor must not perform the wedding; he is obliged—even unwillingly—to take into account the given situation and inform the couple concerned that under such circumstances it is not the Church, but they themselves who impede the ceremony they want.”³⁵ Pastorally speaking, it is a particularly sensitive matter: “Those who demand sacramental marriage usually come late, oftentimes under the pressure of immature motivations. They frequently find themselves in a situation, in which they are not ready to hear ordinary ecclesiastical language. In terms of the life of faith, and the future life in marriage, the betrothed asking for a church marriage in most cases live diametrically different personal stories. Similarly, their expectations regarding marriage and marriage preparation are divergent as well. One must, therefore, distinguish a pre-evangelization and

³² John Paul II, Letter to Families *Gratissimam Sane* from Pope John Paul II, http://w2.vatican.va/content/john-paul-ii/en/letters/1994/documents/hf_jp-ii_let_02021994_families.pdf, art. 10. Hereafter as GS.

³³ Zákon č. 89/2012 Sb., občanský zákoník, § 655.

³⁴ “The main end of marriage is defined as starting a family and proper education of children. Such is the situation. Nevertheless, it is unquestionable that there are marriages whose end is something totally different. The end of marriage can be creating a firm basis for bearing children, but there may be psychological and health reasons, the purpose may be a mutual social support or fulfilling some economic interests.” Karel Eliáš et al., *Nový občanský zákoník s aktualizovanou důvodovou zprávou a rejstříkem* (Ostrava: Sagit, 2012), 287.

³⁵ *Svatební obřady. Druhé vydání* (Praha: Česká biskupská konference, 2007), *Úvod II — Příprava na manželství*, art. 21, s. 11–12.

pastoral situations and choose the manner of preparation accordingly. The evangelization moment, that is, helping people discover or deepen their lives in the light of the Gospel, should never be absent in the preparations.”³⁶

Life of faith brings the betrothed closer to the Church’s understanding of marriage in a completely natural way; although—given the contemporary situation—they tend to live in an environment alienated from the Church.³⁷ However, those individuals whose life is lived away from Christian principles often tend to adopt majoritarian patterns of behavior in the society abandoning traditional moral attitudes,³⁸ for example, they test the issue of matrimonial fidelity as one of the “goods” of marriage in a way that cannot bring them closer to a full understanding and experiencing of what real fidelity means.³⁹

When contemporary social and economic parameters lead couples to postpone marriage, contrariwise, in traditional societies, it was deemed responsible to slow down a too early contraction of marriage.⁴⁰ In this context, the legislator of the 1917 Code assigned a duty to the parish priest to consult the local Ordinary if he was to assist at a wedding of nupturients who were too young: “The pastor shall gravely exhort children yet in families not to enter into wedding if the partners are unaware of it or [if they] are reasonably opposed to it; but if they are going to marry, he should not assist without first consulting the local Ordinary.”⁴¹ According to the new Code, a license is needed to marry “a minor

³⁶ *Směrnice ČBK pro přípravu na svátost manželství v ČR*. Document of Czech Bishop conference (Praha: Česká biskupská konference, 2010), art. 2.3, p. 3.

³⁷ “Therefore the issue of faith is not a marginal, but a central one. Nowadays, when young people live in a community outside the Church more than in the Church, such considerations become important. Young people should remember these things and their friends and parents should remind them of it with particular urgency. They should talk about it and pray for unity in faith.” Josef Smolík, *Pastýřská péče* (Praha: Kalich, 1991), 153.

³⁸ “Triple fear—to be infected, to conceive, and to be discovered—which some people felt earlier and which forced them to ‘Christian’ behaviour (monopoly of marriage) has vanished thanks to medicine and the lifestyle of urban inhabitants.” Joseph Fletcher, *Situační etika* (Praha: Kalich, 2009), 104.

³⁹ “From this perspective we should now consider the frequently asked question of marriage on test or with the so-called no-licence marriage. In the end, it is always a link given to observation, an essential element—unconditional fidelity—is not there. Apart from that, firm mutual fidelity cannot be tested [...]. A truly human dimension can only be reached—and be trained in it—only at the definitive decision.” Franz Furger, *Etika seberealizace, osobních vztahů a politiky* (Praha: Academia, 2003), 69.

⁴⁰ “Given the gravity of sacred mystery of marriage and in regards to the fact the most Christian marriages suffer from formality, it is necessary to think about the possibility to postpone the contraction of the marriage until the bridegroom and the bride understand the genuine and real meaning of the sacred mystery of marriage to realize that the sacred mystery of marriage is eternal unity formed on the unity of Christ and His Church.” Imrich Belejkanič, *Pravoslávne dogmatické bohoslovie II* (Prešov: Pravoslávna bohoslovecká fakulta, 1996), 146–47.

⁴¹ CIC/1917, can. 1034.

child when the parents are unaware or reasonably opposed.”⁴² Moreover, the Code provides a pastorally oriented appeal: “Pastors of souls are to take care to dissuade youth from the celebration of marriage before the age at which a person usually enters marriage according to the accepted practices of the region.”⁴³

However, the influence of parents or pastors can work in the opposite direction, because it is possible (even unintentionally) to be compelled into marriage: “A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it.”⁴⁴ The defect of the matrimonial consent formulated in this way can often manifest itself as *timor (metus) reverentialis*, that is, the fear of a disfavor from a person, whom the nupturient gravely respects.⁴⁵ We should add that—contrary to Luther’s concept—the Catholic Church has never officially taught that the will of the parents is decisive for contracting a marriage: “The consent of the parties, legitimately manifested between persons qualified by law, makes marriage; no human power is able to supply this consent.”⁴⁶

The Paradoxes of the Legal Regulation

Although it is evident that marriages of too young people are not desirable⁴⁷—as well as those of too advanced an age⁴⁸—the formulation of the matrimonial

⁴² CIC/1983, can. 1071 6°.

⁴³ CIC/1983, can. 1072.

⁴⁴ CIC/1983, can. 1103.

⁴⁵ “In practice, fear arising from the respect (*metus reverentialis*) does not need to be a big issue. However, it becomes a grave problem, e.g., the natural worry stemming from the fear of disobedience to your parents, the fear that certain behaviour can inflict pain on your parents, etc.” Ján Duda, *Katolícke manželské právo*, 126.

⁴⁶ CIC/1983, can. 1057 § 1.

⁴⁷ “Generally, one may say that the Church is not rejoicing over marriages of minors because there is a real supposition that this important step in life has been realized in a state of psychic immaturity. Such cases require more attention; therefore, the Church also investigates the causes of such nupturients.” Duda, *Katolícke manželské právo*, 72.

⁴⁸ “However, for starting a family, the right time of life is irreversible. Especially postponing the birth until relatively high age of the woman (which is, by the way, taken to be something modern and simply a matter of course) poses a number of dangers and unnaturalness. In this sensitive and most human of all questions we find extremes (too young or too advanced age of the parents) generally unacceptable, because they necessarily deform parenthood and further course of life for those who are born out of such unions (not to mention the health risks.)” Senta Radvanová and Michaela Zuklínová, *Kurs občanského práva. Inštitúty rodinného práva* (Praha: C. H. Beck, 1999), 5.

impediment of age (*impedimentum aetatis*) reveals that given the diversity of cultures, the Church counts with very young couples: “A man before he has completed his sixteenth year of age and a woman before she has completed her fourteenth year of age cannot enter into a valid marriage.”⁴⁹ Nevertheless, the legislator in the authorizing regulation makes it possible for adapting the age to the civil law of individual concrete states: “The conference of bishops is free to establish a higher age for the licit celebration of marriage.”⁵⁰ Following the trend of enculturation, the legislator for the whole Church takes into account the liturgical customs of the regions, ethnic groups, and nations. This is manifested in the possibilities of adapting the liturgical form: “The conference of bishops can produce its own rite of marriage, to be reviewed by the Holy See, in keeping with the usages of places and people which are adapted to the Christian spirit; nevertheless, the law remains in effect that the person who assists at the marriage is present, asks for the manifestation of consent of the contracting parties, and receives it.”⁵¹ Nowhere else can we find a regulation about liturgical ceremonies and celebrating the sacraments which would provide such free hand to particular law.

The fact that such a grave decision for the whole life can be given to fourteen or sixteen-year-old people contrasts dramatically with the age limitations of other, similarly obligatory, definitive decisions: solemn vows can be taken only at the age of 21,⁵² priestly ordination at 25.⁵³ Moreover, the Code dedicates only a single canon related to the preparation for marriage,⁵⁴ while for the preparation to a definitive decision for consecrated life has 12 canons,⁵⁵ and for the ordination we find as many as 32 canons.⁵⁶

It is chiefly the primary families who are to act as educational environments for contracting future marriages. However, even those often fail in its role.⁵⁷ Even the desirable impact of the entire Christian community as an environment of inspiration and support is not as direct, as for example a priestly seminary,

⁴⁹ CIC/1983, can. 1083 § 1.

⁵⁰ CIC/1983, can. 1083 § 2.

⁵¹ CIC/1983, can. 1120.

⁵² CIC/1983, can. 658 1°.

⁵³ CIC/1983, can. 1031.

⁵⁴ CIC/1983, can. 1063.

⁵⁵ CIC/1983, can. 641–53.

⁵⁶ CIC/1983, can. 232–64.

⁵⁷ “The fundamental and decisive environment, in which one forms the idea of the value and properties of marriage, is the family, where the person is raised [...]. He or she may experience a faithful and indissoluble love of parents as married spouses, he/she may feel to be always welcome, or may have an experience with something completely different, including things totally at odds with that.” Michael Slavík, *Manželství—od snů k realitě. Teologicko-právní analýza některých přístupů k uzavírání manželství* (Praha: Pastorační středisko při Arcibiskupství pražském, 1988), 54.

defined by John Paul II in his post-synodal Apostolic Exhortation on the Formation of Priests in the Circumstances of the Present Day in the following words: “The seminary is, therefore, an educational ecclesial community, indeed a particular educating community. And it is the specific goal which determines its physiognomy: the vocational accompanying of future priests, and therefore discernment of a vocation; the help to respond to it and the preparation to receive the sacrament of orders with its own graces and responsibilities [...]. Inasmuch as it is an educating community, the seminary and its entire life—in all its different expressions—is committed to formation, the human, spiritual, intellectual, and pastoral formation of future priests.”⁵⁸

The 1917 Code did not contain any canon about a complex preparation for contracting a marriage, while some regulations about educating candidates for priesthood in seminaries paid attention even to some details: “The seminary officials should insist upon the rules of genuine Christian politeness and excite the students to imitation by their example. They should also exhort them to observe the rules of hygiene, be cleanly in dress and appearance, and practice courtesy joined with modesty and gravity.”⁵⁹ However, the Church is—in the words of the current Code—obliged to accompany the spouses on the journey of their lives. Pastors of souls are thus obliged to make sure the Christian community provides “help offered to those who are married, so that faithfully preserving and protecting the conjugal covenant, they daily come to lead holier and fuller lives in their family.”⁶⁰

The Need for a Full Sacramental Life

For Catholic spouses, the sacramental life has immense significance. Sacraments should also introduce the nupturients into the sacramentality of marriage: “Catholics who have not yet received the sacrament of confirmation are to receive it before they are admitted to marriage if it can be done without grave inconvenience. To receive the sacrament of marriage fruitfully, spouses are urged especially to approach the sacraments of penance and of the Most Holy Eucharist.”⁶¹ In this context, we should also recall the doctrine of Vatican II about the proper link between celebrating the sacraments with the faith of

⁵⁸ *Pastores dabo vobis*. Post-Synodal Apostolic Exhortation of John Paul II about the Formation of Priests in the Circumstances of Today, art. 61.

⁵⁹ CIC/1917, can. 1369 § 2.

⁶⁰ CIC/1983, can. 1063 4°.

⁶¹ CIC/1983, can. 1065, § 1–§ 2.

those who confer them and those who accept them: “They not only presuppose faith, but by words and objects they also nourish, strengthen, and express it; that is why they are called ‘sacraments of faith.’ They do indeed impart grace, but, in addition, the very act of celebrating them most effectively disposes the faithful to receive this grace in a fruitful manner, to worship God duly, and to practice charity.”⁶²

However, nowadays the problem are marriages of Catholics, who were baptised after birth, but do not practice their faith any longer, do not live by it, nor do they participate on the sacramental life of the Church.⁶³ Nevertheless, even these Christians have the right—and strictly speaking also a duty—to contract their marriage canonically: “Even if only one party is Catholic, the marriage of Catholics is governed not only by divine law but also by canon law, without prejudice to the competence of civil authority concerning the merely civil effects of the same marriage.”⁶⁴ If one of the parties is not Catholic—as the quoted regulation also presupposes—the danger of deflecting from the faith is even higher. Such marriages, contracted after having been granted the dispensation *disparitatis cultus*⁶⁵ are not sacramental; they are only canonical, that is, fulfilling the requirements of the Canon Law. (They can become sacramental, if the non-baptized party is later baptized.) Potential compromises of the contrahents are accommodated for example by the regulation about the place of the nuptials, whereby “a marriage between a Catholic party and a non-baptized party can be celebrated in a church or in another suitable place.”⁶⁶ The esthetic aspect and impressive festivity of wedding rites in the Church lead to their extraordinary popularity also in an environment alienated from the faith.⁶⁷ It is clear that un-

⁶² *Sacrosanctum concilium*, 59.

⁶³ “A typical problem today is marriage of Christians, i.e. those who are baptised, but have no faith. This is particularly true of *baptised Catholics*. Can a baptised Catholic who has lost his/her faith contract a valid marriage? In other words, does the sacramentality of marriage depend solely on the baptism of contrahents or a faith *in actu* is needed? In order not to exclude the issues related to these questions, it is necessary to mention (not to make this question unsolvable) that the fact of the absence of faith brings along a plethora of meanings, including various subjective and psychological situations whereby every one could lead to different reactions to the given problem.” Mario F. Pompedda, “Mancanza di fede e consenso matrimoniale,” in *Studi di diritto matrimoniale canonico* (Milano: Giuffrè, 1993), 398–448, 403.

⁶⁴ CIC/1983, can. 1059.

⁶⁵ Cf. CIC/1983, can. 1086.

⁶⁶ CIC/1983, can. 1118.

⁶⁷ “Although divorce and second or third marriage is nothing exceptional in our society, wedding is still considered a unique event (this concrete couple gets really married only once), therefore the cultural pressure on experiencing the uniqueness of the moment is quite strong. This is documented in the willingness to pay the expenses of the whole celebration and in the choice of the environment—not only a church, but also castles and chateaux or a special place in the countryside are on demand. Apart from that, a lot of people in the process of getting married—who are not really acquainted with the Christianity—are convinced that to make

der these circumstances the preparation of the betrothed couple and the actual celebration of the wedding can present a certain pastoral opportunity, however, in a rather limited way.

The cases where the nupturients are seeking closer attitude to the faith present a different category. For example, preparation for the sacrament of confirmation can be partially thematically mingled with marriage preparation: “Proximate preparation can be suitably carried out within the framework of a thorough preparation for the sacrament of confirmation of those who were baptized as infants. For young people, who are first in touch with the Church via free-time or similar activities, such preparation can be a pre-catechumenal journey, or a journey to a ‘catechumenate of the baptised’ for those who were baptized, but had not been ‘formed in the Christian faith.’⁶⁸ One of the goals of the preparation for confirmation is discerning the vocation to marriage or to priestly or consecrated life: “The preparation for confirmation is a relatively good opportunity to help an adolescent to progress from childlike faith to the faith of an adult. It is also important for him/her to encounter topics, e.g. choosing the state of life or finding one’s own place and mission in the Church.”⁶⁹

For those in civil marriage who got divorced and remarried, and subsequently convert to the Catholic faith, the Church applies annulment of their marriage in favor of their faith, namely, the so-called *privilegium paulinum*, inspired by Paul’s extract from the First epistle to the Corinthians (1 Cor 7:12–16). These are very often people getting ready for baptism in the catechumenate; however, their divorced status protects them from receiving baptism in the catechumenal process with all the consequences for their sacramental life.⁷⁰ The Church considers

the wedding meaningful, the circumstances of contracting it should be somehow exclusive. Weddings taking place in municipal councils or town halls are considered so formal (“just official”) that most people find it redundant. Therefore, it sometimes happens that a church wedding is required even from a couple where neither is baptised.” Aleš Opatrný, “Mohou být setkání s účastníky pohřbů, svateb a půlnočních mší evangelizační neb pastorační šanci?” in *Pronikavá změna pastorace, nebo sebezáchovný provoz? Být církví misionářským způsobem*, Zdeněk Demel and Karl Schlemmer (České Budějovice: Teologická fakulta Jihočeské univerzity, 2005), 105–14.

⁶⁸ ČBKs měrnice ČBK pro přípravu na svátost manželství, č. 4.3, p. 8.

⁶⁹ *Směrnice pro udělení svátosti v Arcidiecézi pražské*, in *Sbírka právních norem Arcidiecéze pražské z let 1945–2009*, ed. Marie Kolářová (Praha: Arcibiskupství pražské, 2009), 87–106, 94–95.

⁷⁰ “The problem is not a single man/woman or someone married in their first or functional marriage that is getting ready for receiving the initial sacrament of baptismal rebirth in the catechumenate. However, there are different cases: a divorced candidate, i.e. someone who is bound by his/her previous marriage bond. It is necessary to proceed with caution and responsibly find out about his/her legal status, so that the existence of the first marriage would not cause a difficult and painful situation after baptism whose core is the inability to receive sacraments for the lasting bond of marriage.” Jiří Svoboda, *Aplikace privilegia sv. Pavla podle kán. 1143–1147 CIC a kán. 854–856 CCEO*, *Revue církevního práva* 24–1 (2003): 16.

their marriage as indissoluble, since the Gospel maxim: “Therefore what God has joined together, let no one separate” is valid for them as well (Mt 19:6b). Such marriage is called “natural,”⁷¹ the old Code uses the term “legitimate”: “Marriage between the non-baptised validly celebrated is called *legitimate*.”⁷² In the 1983 Code, the initial state, on the basis of which the privilege can be granted, is defined in the following words: “A marriage entered into by two non-baptized persons is dissolved by means of the Pauline privilege in favor of the faith of the party who has received baptism by the very fact that a new marriage is contracted by the same party, provided that the non-baptized party departs.”⁷³ In a situation, when the non-baptised spouses who celebrated civil marriage after divorce, one cannot re-establish their cohabitation without offending the Creator (*sine contumelia Creatoris*), as it is expressed in a traditional canonistic formula.⁷⁴ Settling the Pauline privilege thus becomes easier, moreover, it takes place on the diocesan level and the competent authority is the local Ordinary.⁷⁵

Other complicated and pastorally difficult problems are solved on the level of the entire Church, using the rescript of the Congregation for the Doctrine of the Faith. This is the so-called *privilegium petrinum*, whose designation is analogical to the Pauline privilege.⁷⁶ The recent legal regulation can be found in the document “Norms on the Preparation of the Process for the Dissolution of the Marriage Bond in Favor of the Faith” from 2001.⁷⁷ These norms define the initial

⁷¹ “The Church has always accepted marriages of the non-baptized as an institution of natural order, i.e. the ability of these spouses to live in a faithful and in indissoluble marriage in accordance with the natural law. The Church respects such marriages as naturally valid.” Marie Kolářová, “Konvertita žijící v neplatném manželství,” in *Revue církevního práva* 56–3 (2013): 7.

⁷² CIC/1917, can. 1015 § 3.

⁷³ CIC/1983, can. 1143 § 1.

⁷⁴ Cf. CIC/1983, can. 1144 2°.

⁷⁵ “The requirement for the validity of the new marriage is interpellating the non-baptized party, whether this party is willing to accept baptism or live with the baptized party ‘without offending the Creator.’ If the answer is negative to this official interpellation, the baptized party is granted the right to contract a new marriage, but principally with a Catholic. For a new marriage, an authorization is required from the ordinary (the common expression is: permission for application of the Pauline privilege). Nevertheless, the original (natural) marriage is not ended as a consequence of this permission (which is basically a certificate), but in the act of contracting a new marriage, i.e. *ipso facto*.” Ignác Antonín Hrdina, “Manželství v současném českém i kanonickém právu,” *Revue církevního práva* 16–2 (2000): 91–104.

⁷⁶ “Situations to which the studied norms remind us of the annihilation of marriage *in favorem fidei* using the Pauline privilege. The norms have this goal—*in favorem fidei*—in their own title. The annihilation of marriage in favor of the faith with the decision of the pope began to be unofficially, but fittingly be called *privilegium petrinum*.” Jiří Kašný, “Zrušení manželství in favorem fidei,” *Revue církevního práva* 25–2 (2003): 83–94.

⁷⁷ “Normae de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei,” in *Revue církevního práva* 25–2 (2003): 107–115.

configuration: “A marriage entered into by parties, of whom at least one is not baptized, can be dissolved in favor of the faith by the Roman Pontiff, provided that it has not been consummated after both parties have received baptism.”⁷⁸ The condition fixed here is based on the fact that baptism of two baptized are absolutely indissoluble. The character of the privilege is also mirrored in investigating whether the guilt of the petitioner “the petitioner was not exclusively or predominantly the culpable cause of the breakdown of the conjugal life, and that the party with whom the new marriage is to be contracted or convalidated was not at fault in provoking the separation of the spouses.”⁷⁹ While *privilegium paulinum* helps solve the situation especially for the catechumens, *privilegium petrinum* is conceded in favor of the marriage, which the applicant wants to contract with a third person, baptized in the Catholic Church and wishing to live in a canonical marriage, including full participation on the sacramental life of the Church.

Other aids for the realization of sacramental life are convalidations or sanations of marriages. The prerequisite of these legal means is lasting desire to live together: “Even if a marriage was entered into invalidly by reason of an impediment or a defect of form, the consent given is presumed to persist until its revocation is established.”⁸⁰ The baptized husband living in marriage celebrated not in the canonical form wants to be admitted to the sacraments, nevertheless, he finds out that he was not wedded *coram Deo*. Two possibilities are open. If the second party is willing to “celebrate the marriage in the church” again, he or she proceeds to convalidation, that is, to a simple validation of the marriage (*convalidatio simplex*).⁸¹ If the second party is not ready, or one can reasonably suppose it will not be willing, the Catholic party can petition for a validation in the fundament, sanation.⁸² “The radical sanation of an invalid marriage is its convalidation without the renewal of consent, which is granted by competent authority and entails the dispensation from an impediment, if there is one, and from canonical form, if it was not observed, and the retroactivity of canonical effects. Convalidation occurs at the moment of the granting of the favor. Retroactivity, however, is understood to extend to the moment of the celebration of the marriage unless other provision is expressly made.”⁸³ Here also one needs to presuppose that the spouses will persevere in

⁷⁸ “Normae,” art. 1.

⁷⁹ “Normae,” art. 4,2.

⁸⁰ CIC/1983, can. 1107.

⁸¹ Cf. CIC/1983, can. 1156–160.

⁸² “Situations in which a renewal of consent using the canonical form is necessary, but one of the partners rejects it or it is not suitable to request it or to announce the invalidity of marriage (especially if everything religious or ecclesiastical is rejected) is frequent.” Damián Němec, “Manželské právo,” 163.

⁸³ CIC/1983, can. 1161, § 1–§ 2.

mutual consent, which is the “root” of their marriage, that is why it is known as “radical” (*in radice*).⁸⁴

Mixed Marriages

For contracting a marriage between a Catholic and non-Catholic party, the 1917 Code required a dispensation from the impediment known as *mixta religio* (mixed religion), without which such marriage would be invalid. It also vigorously warned Catholics from contracting such marriages: “Most severely does the Church prohibit everywhere that marriage be entered into by two baptized persons one of whom is Catholic and the other belonging to a heretical or schismatical sect; indeed, if there is a danger of perversion to the Catholic spouse and children, that marriage is strictly forbidden also by the divine law.”⁸⁵ According to the new Code, for contracting mixed marriage (*matrimonium mixtum*) one only needs a licence of the local Ordinary, whose absence would cause a mere impermissibility, but not invalidity of such a marriage: “Without express permission of the competent authority, a marriage is prohibited between two baptized persons of whom one is baptized in the Catholic Church or received into it after baptism and has not defected from it by a formal act and the other of whom is enrolled in a Church or ecclesial community not in full communion with the Catholic Church.”⁸⁶

Laxing the discipline in contrast to the earlier regulation in the Canon Law is the fruit of implementing ecumenical efforts formulated by the declaration of the decree on ecumenism of Vatican II *Unitatis redintegratio*,⁸⁷ into the normativity of the Canon Law. However, even the new regulation cannot eliminate some fundamental differences in the understanding of the marriage as such: this is different in non-Catholic churches themselves, but also in relation to the concept found in the Catholic Church.⁸⁸ Negative evaluation of mixed marriages can

⁸⁴ Cf. CIC/1983, can. 1161, § 3.

⁸⁵ CIC/1917, can. 1060.

⁸⁶ CIC/1983, can. 1124.

⁸⁷ *Dokumenty II. vatikánského koncilu* (Kostelní Vydří: Karmelitánské nakladatelství, 2002), 433–57.

⁸⁸ “Is it right on our side to presuppose that the marriages are sacramental, although a common faith of a given community denies that marriage is a sacrament? Should we still presuppose an implicit intention to contract an indissoluble marriage, even though the tradition of a religious community considers marriage to be dissoluble?” Ladislav Örsy, “Ecumenism and Marriage,” in *The New Code of Canon Law. Proceedings of the 5th International Congress of Canon Law, organized by Saint Paul University and held at the University of Ottawa, August 19–25, 1982*

still be found,⁸⁹ while some expectations are—contrariwise—too optimistic.⁹⁰ The decisive significance has the position found in the exhortation *Familiaris Consortio* of John Paul II: “Marriages between Catholics and other baptized persons have their own particular nature, but they contain numerous elements that could well be made good use of and developed, both for their intrinsic value and for the contribution that they can make to the ecumenical movement. This is particularly true when both parties are faithful to their religious duties. Their common Baptism and the dynamism of grace provide the spouses in these marriages with the basis and motivation for expressing their unity in the sphere of moral and spiritual values. For this purpose, and also in order to highlight the ecumenical importance of mixed marriages which are fully lived in the faith of the two Christian spouses, an effort should be made to establish cordial cooperation between the Catholic and the non-Catholic ministers from the time that preparations begin for the marriage and the wedding ceremony, even though this does not always prove easy.”⁹¹

Legal regulation of the old Code made it difficult to contract a mixed marriage through the requirement imposed on the non-Catholic party to “give precaution to remove the danger of perversion from the Catholic spouse, and from both spouses [there is a promise] that all children will be baptised only Catholic and so educated.”⁹² It is clear that between the betrothed couple of two different Christian denominations there is a certain “strategic agreement.”⁹³ The meaning of the warranties given by the Catholic party cannot be a categori-

(vol. II), ed. Michel Thériault and Jean Thorn (Ottawa: Faculty of Canon Law, University of Saint Paul, 1986), 1043.

⁸⁹ “We should openly admit that the Church is not blessed by such marriages because the drama of division amongst Christians is thus brought directly into the marriage and the family formed by this marriage. The practice clearly shows that these families experience frequent rows over religion and faith. As a consequence, it is manifested with lack of affection or downright religious indifference.” Duda, *Katolicke manželské právo*, 228.

⁹⁰ “Saint Paul wrote the following words about a marriage between a believer and an unbeliever: ‘For the unbelieving husband has been sanctified through his wife, and the unbelieving wife has been sanctified through her believing husband. Otherwise your children would be unclean, but as it is, they are holy.’ If God’s gifts can be abundant in the case of marriages with impediments known today as *disparitatis cultus*, the more abundant can they be in the case of two believers belonging to two different Christian communities, however, joined together through sacrament.” Ladislav Örsy, *Ecumenism and Marriage*, 1045.

⁹¹ FC, art. 78.

⁹² CIC/1983, can. 1125 1°.

⁹³ “This situation brings some Christians into impossible situations, for example, if the non-Catholic partner insists beforehand that children will be brought up on the basis of a non-Catholic doctrine. We need to base this on the fundamentals of the sacrament of baptism obliging both partners to educate their children in Christ’s spirit, even if they encounter a number of difficulties in the education. Anyway, the discussion on the topic of baptism and educating children prior to contracting a marriage is very desirable and inspiring for both sides.” Josef

cally adamant decision to enforce the Catholic education of the children, which could result in a breakdown of the marriage. This is reflected in the adjusted text of the oath: “I hereby declare that in the intended marriage I will keep and develop my faith and live in accordance with it. I will sincerely try—as my faith requires—baptizing and bringing up all our offspring in the Catholic Church. I will respect the religious freedom and the freedom of conscience of my partner and will take care of the unity and stability of the marriage and of keeping the family community.”⁹⁴ Moreover, the ecumenical directory refers to the fact that the non-Catholic party can feel the responsibility in the other direction: “At the same time, it should be recognized that the non-Catholic partner may feel a likely obligation because of his/her own Christian commitment.”⁹⁵

The Catechism of the Catholic Church reflects the pastoral situation in the countries where mixed marriages are contracted: “Through ecumenical dialogue Christian communities in many regions have been able to put into effect a *common pastoral practice for mixed marriages*. Its task is to help such couples live out their particular situation in the light of faith, overcome the tensions between the couple’s obligations to each other and towards their ecclesial communities, and encourage the flowering of what is common to them in faith and respect for what separates them.”⁹⁶ However, it is clear that churches where the ecumenical dialogue is not reflected in the pastoral consequences do not participate on such common pastoral activity anyway.⁹⁷

The new Code also confirmed the possibility of further easement in relation to contracting a marriage: “If grave difficulties hinder the observance of canonical form, the local ordinary of the Catholic party has the right of dispensing from the form in individual cases, after having consulted the ordinary of the place in which the marriage is celebrated and with some public form of celebration for validity. It is for the conference of bishops to establish norms by which the aforementioned dispensation is to be granted in a uniform manner.”⁹⁸ The appropriate “norms for granting the dispensation in a uniform manner” formulate the cases of the “grave difficulties” allowing for a dispensation: “(1) if the non-

Dolista, *Naděje vložena do manželství (Teologicko-pastorální studie)* (Olomouc: Matice cyrilometodějská, 1994), 172.

⁹⁴ “Text příslibu dle kánonu 1125 CIC (Rozhodnutí ČBK dle kánonu 1126 CIC),” in Marie Kolářová, ed., *Sbírka právních norem*, 178.

⁹⁵ *Directory for the Application of Principle and Norms on Ecumenism*, art. 150.

⁹⁶ CCC, art. 1636.

⁹⁷ “Although under certain circumstances the Church is directly forced to tolerate such marriages, under no circumstances can she abandon Gospel criteria of Christian life. In every individual case it has hope that in the end, the non-Orthodox party will accept Orthodoxy to realize the fullness of faith and thus also the mystery of marriage.” Peter Kormaník, *Základné sväté tajiny pravoslávnej cirkvi (Teologicko-praktický výklad)* (Prešov: Pravoslávna bohoslovecská fakulta, 1996), 165.

⁹⁸ CIC/1983, can. 1127 § 2.

Catholic party fundamentally rejects to contract a marriage using the canonical form and the Catholic party is firmly determined; (2) if the canonical form is refused by the non-Catholic party who lives considerably better than the Catholic party; (3) if keeping the canonical form causes a grave rift in the family of one of the betrothed; (4) if the non-Catholic party has a special position in his/her own church or religious community (a pastor, a commission member, a senior etc.).⁹⁹ If the canonical form is kept, the question is raised about the possible participation of the non-Catholic party on receiving the Eucharist: “Because of problems concerning Eucharistic sharing which may arise from the presence of non-Catholic witnesses and guests, a mixed marriage celebrated according to the Catholic form ordinarily takes place outside the Eucharistic liturgy. For a just cause, however, the diocesan bishop may permit the celebration of the Eucharist. In the latter case, the decision as to whether the non-Catholic party of the marriage may be admitted to Eucharistic communion is to be made in keeping with the general norms existing in the matter both for Eastern Christians and for other Christians, taking into account the particular situation of the reception of the sacrament of Christian marriage by two baptized Christians.”¹⁰⁰ Particular law presupposes that such a community in sacraments (*communicatio in sacris*) can be granted with the permission of the ordinary in case of grave spiritual need at the celebration of a mixed marriage.¹⁰¹ In the case of a “seriously grave need,” the non-Catholic party may be allowed to receive sacraments in the Catholic Church for “strengthening the life of grace and faith in confessionally mixed families.”¹⁰² Such sacramental help, however, should be accompanied with pastoral care and the interest of individual church communities in the married couple who themselves experience the reality of the divided Christendom.¹⁰³

⁹⁹ “Normy pro jednotné udělování dispenze od kanonické formy (Rozhodnutí ČBK dle kánonu 1127 § 2 CIC),” in Marie Kolářová, ed., *Sbírka právních norem*, 176–77.

¹⁰⁰ *Directory for the Application of Principle and Norms on Ecumenism*, art. 159.

¹⁰¹ “Společenství ve svátostech s křesťany jiných církví — B. Směrnice stanovené Českou biskupskou konferencí, 2a,” in *Sbírka právních norem*, ed. Marie Kolářová, 110.

¹⁰² *Směrnice stanovené Českou biskupskou konferencí, 2c*, in *Text příslibu dle kánonu 1125 CIC, Sbírka právních norem*, 178.

¹⁰³ “Anyway, it is clear that mixed families carry the burden of the separation which they themselves did not cause; they became a sort of an outpost, an avant-garde in the effort for unity and a laboratory of the struggle for a common faith. Therefore, one may not be reconciled with an opinion that it is something desperate or impermissible. On the contrary, it is to be welcome that marriage is entered by two Christians, however different their denominations. For sure, they are going to be faced with special difficulties which do not have those who contracted a marriage with a partner of the same Church. The burden of the struggle will also be carried by the community accompanying their marriage. If they are given no effective support in the struggle for individual faith and for the faith of their children, such a family may end up with no relationship to either of the churches; regrettably, there are numerous examples.” Pavel Filipi, *Po ekumenickém chodníku. Příručka ke vztahům a možnostem spolupráce mezi církvemi* (Praha: Kalich, 2008), 36.

Conclusion

At the first sight, it may seem that canon law in relation to matrimony creates an almost oversophisticated system whose opacity hinders effective pastoral application. Nevertheless, it is clear that every one of these legal institutions and procedures can help both the betrothed and the married couple if it is applied suitably and at the right time. This is clear already in the “technical” process in delineating the canonical parameters of the contracted marriage: “What is legally required for a valid and permissible contraction of marriage, can also serve to support a living faith and fruitful love among the betrothed and to form a Christian family.”¹⁰⁴ The same thing is the case of solving difficult situations which the married couple may come across. Precisely in these cases canon law can prove to be a flexible tool of pastoring marriages and families.

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¹⁰⁴ *Svatební obřady. Druhé vydání. Úvod II—Příprava na manželství*, art. 20, p. 11.

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Stanislav Příbyl

Aspects pastoraux de l'activité du droit canonique matrimonial

Résumé

Les systèmes de valeurs qui ont eu lieu dans le monde occidental, surtout ceux des années soixante du XX^e siècle, se sont manifestés particulièrement fortement dans les relations des jeunes gens envers le mariage. À cette situation a réagi le droit canonique dans le Code de droit canonique promulgué par le pape Jean-Paul II. Le droit canonique peut être un outil efficace et important pour la prêtrise des fiancés et des époux à l'Église catholique. Cependant, une préparation soignée des couples à la vie conjugale et une surveillance spirituelle continue sont la base d'une telle prêtrise. Les voies de droit dont on parle dans le présent texte peuvent aider à résoudre une situation exceptionnelle et difficile, ainsi que faciliter l'accès à la vie sacramentaire.

Mots clés: mariage, époux, droit canonique, prêtrise, Église catholique

Stanislav Příbyl

Aspetti pastorali di diritto canonico nei confronti dell'istituzione matrimoniale

Sommario

I sistemi di valori che hanno avuto luogo nel mondo occidentale, soprattutto dagli anni '60 del XX secolo, in particolare si rilevano fortemente nei rapporti dei giovani in relazione al matrimonio. In risposta a questa situazione si è mosso il diritto canonico nel Codice di Diritto Canonico annunciato da Papa Giovanni Paolo II. Il diritto canonico può essere uno strumento efficace e importante per la tutela pastorale dei fidanzati e degli sposi nella Chiesa cattolica. La base di tale tutela pastorale è, tuttavia, un'attenta preparazione delle coppie al matrimonio e la loro costante guida spirituale. Le misure giuridiche, di cui si tratta nel presente testo, possono aiutare a risolvere difficili e insolite situazioni dei coniugi e consentire loro l'accesso alla vita sacramentale.

Parole chiave: matrimonio, diritto canonico, pastorale matrimoniale, Chiesa cattolica