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The Right to Freedom of Spouse Choice and Religious Upbringing of Children : CRF, Articles 2 and 7

Ecumeny and Law 2, 193-203

2014

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

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The Right to Freedom of Spouse Choice and Religious Upbringing of Children (CRF, Articles 2 and 7)

Keywords: religious freedom, marriage, conjugal consent, education of offspring

Despite the fact that from the announcement of the Charter of the Rights of the Family over 30 years have past, the meaning of its contents and the timelessness of its subject matter remain momentous and it can be safely claimed that this document will never lose its value, precisely because it refers to family which has been named “the engine of world and history” by Pope Francis. We can claim that the document in question is not a lecture of dogmatic or moral theology about marriage and family, but it shows the main ecclesiastical opinion towards its contents. Neither is it a code of behaviour which is written for particular people or institutions nor the declaration of simple theoretical rules relating to the family. The purpose of the Charter is to show all modern Christians and non-Christians, all — orderly gathered — elementary rights of this natural and universal society called family.¹ Among the catalogue of those elementary rights, we can also find the right to freedom to spouse choice and religious upbringing of children, which is written down in the articles no. 2 and no. 7 of the Charter.

¹ SANTA SEDE: Carta dei diritti della famiglia (24.11.1983). *Enchiridion Vaticanum* 9, p. 538.

1. The foundations of religious freedom

Speaking about the first fundamental rule of religious freedom, it should be noted that freedom is not only a value for the human being, but it is also one of the most significant elements of his/her concept and nature — as Pope John Paul II said in the proclamation delivered during the International Day of Peace in 1981 — This is the hallmark of human being saved in his inside.² This is the source of Man, ontologically free in the deepest meaning, who has the associated possibility of the implementation and the use of the freedom during his/her entire daily life.³ This freedom encompasses also the marriage and family both of which have their rights such as the right to the religious freedom, which includes the freedom of professed religion, and the personal choice of each family cannot be discriminated or privileged on that field. The essence and the meaning of this law was perfectly described by John Paul II, in the speech for the International Day of Peace which took place on the 1 January 1988 or the ones addressed to the diplomatic corps on the 9 January 1989 or many numerous occasions: “The right to the religious freedom is so strictly connected with the other rights that it can be legitimate to claim that respect for the religious freedom is the test of the respect for the other elementary rights [...]. If the country respects the right to the religious freedom, this can be a sign that it will respect other elementary rights as it is the implicit recognition of the kind of legal order which transcends the political dimension of our existence.”⁴

² GIOVANNI PAOLO II: *Per servire la pace, rispetta la libertà*. Messaggio per la celebrazione della XIV Giornata Mondiale della Pace (1.1.1981), n. 5, http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jpii_mes_19801208_xiv-world-day-for-peace_it.html (accessed 2.4.2013).

³ Cf. H. SKOROWSKI: “Chrześcijańskie rozumienie wolności.” Referat wygłoszony podczas III Zjazdu TNFS w Kutnie (12.6.2010), <http://www.tnfs.pl/aktual/Skorowski-2010.pdf>, p. 1 (accessed 2.4.2013).

⁴ GIOVANNI PAOLO II: *La libertà religiosa, condizione per la pacifica convivenza*. Messaggio per la celebrazione della XXI Giornata Mondiale della Pace (1.1.1988), AAS 80 (1988), pp. 278—286; GIOVANNI PAOLO II: *Discorso ai Membri del Corpo Diplomatico accreditato presso la Santa Sede* (9.1.1989), n. 6, http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19871208_xxi-world-day-for-peace_it.html (accessed 2.1.2013).

2. The freedom of spouse choice

2.1. The freedom from coercion in choosing a spouse

It is claimed in Art. 2 that the marriage must be contracted by mutual consent which is expressed in an appropriate form. This is neither the new rule nor the new authorization given or established in the Charter of the Rights of the Family. The essence of this rule had been underlined in the Conciliar Constitution *Gaudium et spes* no. 48, which next has become an elementary foundation of the whole marriage law system contained in CIC 1983, which can. 1057 § 1 reads: “the consent of the parties legitimately manifested between persons qualified by law makes marriage; no human power is able to supply this consent.” The marital consent as a cause of marriage is a basic element of its existence, and no human authorities can replace this element in any way.⁵ The fact that this is the act of will creates a necessity for this act to be performed freely and consciously, in other words, without any coercion.⁶ The concretization of this assumption is the freedom from any form of the coercion in the choice of the person for the future spouse, underlined in the Charter of the Rights of the Family. This freedom must be respected despite the fact of the existence of many differences between the cultural circles in the managing of children’s decisions. There is a need to take a look into the marriage in the Indian culture where marriages are traditionally arranged in almost all types of communities living in India. Nowadays, except for the middle high class living in the cities, arranged marriages are still widely practiced. Marriages entered into out of love are seen as insane acts of passion. Parents control not only their adult children, but also the whole society structure and the caste system by the institution of the arranged marriage. The Charter of the Rights of the Family underlines the freedom from any form of the coercion in choosing the person for the future spouse. It is worth pointing that the essence of freedom is often understood from the negative side, as the freedom from any coercion and compulsion, but from the side of Catholic social teaching this dimension is not the only one. In the Catechism of the Catholic Church it can be read: “Freedom is the power, rooted in reason and will to act or not, to do this or that, and so to perform deliberate actions on one’s own responsibility. By free will one shapes one’s own life. Human freedom is a force for

⁵ W. GÓRALSKI: *Kanoniczna zgoda małżeńska*. Gdańsk 1991, p. 18.

⁶ Cf. J.F. CASTAÑO: *Sacramento del matrimonio*. Roma 1990, pp. 118—119.

growth and maturity in truth and goodness; It attains its perfection when directed towards God our beatitude” (no. 1731). Thus, the issue of freedom in spouse choice has a need to point not only to the freedom from coercion, but also to the possibility in choice and decision-making, as well as the particular action and the decision about a human being. This freedom “to” — the freedom in the positive aspect — the spouse choice must also be seen in the aspect of the religious freedom.

2.2. The spouse freedom to the range of the religious profession

The religious freedom should first and foremost express the freedom to the spouse choice no matter what religion they profess. Without any doubt, current in this aspect are imminent dangers and difficulties which can be the consequence of religiously or professionally mixed marriages. The most significant and important in marriage and family is unity, because it is the basic element of peace and full communion, and the problems may appear because of the differences in profession or religion, most of all, in the religious upbringing of children.⁷ Secondly, marriage needs to be a communion of life and love. The differences in aspects of professed religions are not conducive to building of this communion in the most significant cases, which can bring misunderstandings, especially after the period of first spurts of love when the newly-weds meet the reality of marriage and family life.⁸ Finally, the Catholic spouse will be living with the awareness of fulfilling his/her obligations arising from his faith because they have their source in the Divine Law.⁹ From the legal side, they have been regulated by the establishment of the orders for such a marriage, specifically by the introduction of a dispensation or the permission of the local Ordinary and deposit the guarantee.¹⁰ On the one hand, they express the Church’s concern and its precarious attitude towards mixed

⁷ KONFERENCJA EPISKOPATU POLSKI: *Instrukcja w sprawie duszpasterstwa małżeństw o różnej przynależności kościelnej* (11.3.1987), n. IV, 3. In: *Dokumenty duszpastersko-liturgiczne Episkopatu Polski (1966—1998)*. Eds. Cz. KRAKOWIAK, L. ADAMOWICZ. Lublin 1999, pp. 251—252.

⁸ Cf. P.M. GAJDA: *Prawo małżeńskie Kościoła katolickiego*. Tarnów 2000, pp. 207—208.

⁹ Cf. *Ibidem*, p. 208.

¹⁰ These include a declaration of the Catholic party that he or she is prepared to remove dangers of defecting from the faith and a sincere promise to do all in his or her power so that all offspring are baptized and brought up in the Catholic Church — Code of Canon Law, can. 1125, n. 1.

marriages, but on the other, the respect and the appreciation of the rule of freedom in spouse choice, which had been acknowledged before, no matter which religion, if any, they profess. Secondly, as it is underlined in the Charter of the Rights of the Family: “Therefore, to impose as a priori condition for marriage a denial of faith or a profession of faith which is contrary to conscience, constitutes a violation of this right. This is one of the most important facts. In the conciliar declaration on religious freedom no. 10, it can be read that: that Man’s response to God in faith must be free [...]. The act of faith is of its very nature a free act.” This is the first reason why the religious systems that agree on the marriage with followers of the other religions only after the condition of faith change, are not acceptable. The second reason is that it is not acceptable for the one spouse to make such a condition towards the other. It constitutes the violation of religious freedom, because its subject is the sphere of personal religious beliefs according to the requirements of personal conscience.

Pope John Paul II in his Message for the XXXII International Day of Peace in 1999 said that “the religious freedom is the heart of Human Rights” and that “this right is inviolable to the extent that it calls for the recognition of free human being decision of changing religion if his/her personal conscience says so.”¹¹ But only in that case. Once again there is a need to underline the aspect which has been show in the Charter of the Rights of the Family, that is not: “to impose as a priori condition for marriage a denial of faith or a profession of faith which is contrary to conscience.” Each human being is obliged to follow the voice of his/her conscience and cannot be forced to act against it. And this is why — continues the pope — no one can be forced to accept a specific religion, regardless of the circumstances and motivations.” Certainly, the above is not a case of legitimate marriage. If someone abandoned one’s faith or embraced the spouse’s faith due to marriage, but against their conscience or subject to coercion, it first of all means that his/her freedom was limited, and secondly, it undermines the value of such a fate. The acceptance of the other spouse’s faith without the inner conviction, under a threat of the marriage being impossible, would not be valid.

So neither wife nor husband have the right to force the other party to change their religion or profession or to embrace or dismiss a religion or a profession. Despite the superiority of the husband’s rights in some cultures, there is a need to underline and recall that both spouses have the same dignity and rights within the marriage. The woman is equal to

¹¹ GIOVANNI PAOLO II: *Nel rispetto dei diritti umani il segreto della pace vera*. Messaggio per la celebrazione della XXXII Giornata Mondiale della Pace (1.1.1999), n. 5, http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_14121998_xxxii-world-day-for-peace_it.html (accessed 4.4.2013).

the man in terms of personal dignity,¹² because she was created by God and has the same nature as the man.¹³ It can be inferred from the description of the act of creation: God, during the creation of the human being as a man and a woman has given them the gender differences which complement each other. In the other words, the man and the woman have a different structure of the body and the mind but complement and strongly need each other, as they are irreplaceable in their roles.¹⁴ It grants us with confidence to talk about their equal dignity and rights. A spouse is not entitled to do any more than the other one in the marriage. It means that both of them are obliged to the same. The faithfulness is also mutual, which concerns any other right or obligation. This is a result of the unity created by them and the human being dignity itself, regardless of their origins, financial status, race, nationality or the profession and religion. Pope John XXIII wrote in the encyclical *Pacem in terris* that the human being, even if he/she makes mistakes, always retains the inherent dignity and is unable to dispose of it.¹⁵ Therefore, there is a need to talk about spouses equality also in terms of their religious freedom.

3. The freedom of religious practice and the religious upbringing of children

There is one more aspect connected to the religious freedom of spouses and family founded by them. It needs to be stressed that the issue of religious freedom concerns not only the inner, but also the outer sphere of life. This is because of the fact that religion involves not only inner acts

¹² SACROSANCTUM CONCILIUM OECUMENICUM VATICANUM II: *Constitutio pastoralis "Gaudium et spes" de Ecclesia in mundo huius temporis* (7.12.1965), n. 49, AAS 58 (1966), pp. 1069—1070; IOANNUS PAULUS II: *Adhortatio Apostolica de familiae christianae muneribus in mundo huius temporis "Familiaris consortio"* (22.11.1981), n. 22, AAS 74 (1982), p. 107; IOANNUS PAULUS II: *Epistula Apostolica "Mulieris dignitatem" de dignitate ac vocatione mulieris* (15.8.1988), n. 6, AAS 80 (1988), p. 1662; Catechismus Catholicae Ecclesiae, n. 2334.

¹³ Cf. S. PASZKOWSKI: *Rodzina bogatą wspólnotą życia i miłości. Zarys teologii małżeństwa i rodziny*. Wrocław 2000, p. 23.

¹⁴ KONFERENCJA EPISKOPATU POLSKI: *List na XXVII niedzielę zwykłą zapowiadający obchody XII Dnia Papieskiego, 14.10.2012 r.* (accessed 23.6.2012), http://episkopat.pl/dokumenty/listy_pasterskie/4581.0,Jan_Pawel_II_Papiez_Rodziny.prn (accessed 4.4.2013).

¹⁵ IOANNUS XXIII: *Litterae Encyclicae "Pacem in terris" de pace omnium gentium in veritate, iustitia, caritate, libertate constituenda* (11.4.1963), AAS 55 (1963), p. 259.

directed to the God, but also the material, visible ones being the profession of the faith.¹⁶ The subject of religious freedom is therefore the public practice of worship, as well as the daily testimony based on the relevant principles of the faith. Thus, in the Art. 7 of the Charter of the Rights of the Family it is claimed that “every family has the right to live freely its own domestic religious life under the guidance of the parents, as well as the right to profess publicly and to propagate the faith, to take part in public worship and in freely chosen programmes of religious instruction, without suffering discrimination.”¹⁷ The Man as a social being has the right to the public profession of his/her faith, and particularly to building temples and being materially concerned about their decor and furnishing. A follower also has a right to organize processions and other religious celebrations, wearing religious symbols in public, and also to religious education and upbringing of children without suffering any discrimination because of that.

Unfortunately, these basic rights and freedoms are infringed in many places all over the world. The report published in 2012 *The International Religious Freedom* describes the frightening data concerning very frequent violations of those rights. It has turned out that Christians are the most persecuted religious group in the world. There are the “blasphemy laws” in Pakistan and Iran, under which insulting Muhammad is punished by the death penalty. More and more often the mass media bring the shocking information on this topic. In 2011 the widely known case concerned a man who was punished by the Islamic fundamentalists, even though the court found the accusations against him ungrounded. The man was hiding but the Muslims kidnapped his son and his daughter-in-law, who were forced to recite Muslim prayers. The information was announced from the mosque loudspeakers that they have renounced Christ. Eventually, this time the tragedy was managed to be avoided, but many other cases did not have a happy ending. John Paul II underlined that “even in cases where the State grants a special juridical position to a particular religion, there is a duty to ensure that the right to freedom of conscience is legally recognized and effectively respected for all citizens, and also for foreigners living in the country even temporarily for reasons of employment and the like.” That is why the spouses have inalienable right to profess their religion according to their conscience, and as parents they have rights to organize the religious life of their children in their own way. In this regard, the parental responsibility comes from the natural law and

¹⁶ Cf. H. SKOROWSKI: *Chrześcijańskie rozumienie wolności...*, p. 8.

¹⁷ Cf. SACROSANCTUM CONCILIUM OECUMENICUM VATICANUM II: *Declaratio de libertate religiosa “Dignitatis humanae”* (7.7.1965), n. 5, AAS 58 (1966), p. 933.

it cannot be limited by school or other institutions, unless the parents brought up their children in the spirit that is contrary to the fundamental principles of ethics and morality. Parental rights are so basic and inalienable that only in cases of violation of natural law or morality the authorities have the right to interfere with them by restricting or suspending them in any way.¹⁸ Catholics are obliged by the canon law to the Catholic upbringing of children who, in turn, exercise their rights under the parental authority. There is a need to remember that the Charter of the Rights of the Family is addressed to everyone — either Christians or non-Christians, that is why upon discussing this law there is an additional need to keep in mind the freedom of human being in general to the religious formation of their family and children due to their own conscience. Organizing the religious family life must include the parental freedom to choose the education programme for their children, so that is why the situation in which anyone imposes the certain system of education, incompatible with parental conscience, is inadmissible. Therefore, the obligation to respect the family rights concerns everyone, be it an individual person or a civil authority

Conclusion

The principles contained in the Charter of the Rights of the Family, are covered by other documents that have been issued by both Church and secular authorities (states and international organizations). The above also applies to issues enlarged upon in the present article: the freedom of spouse choice and religious upbringing of children.¹⁹ It stems from the fact that those rights are inalienable, granted to humans on the basis of their natural dignity. Compliance with them is necessary, and the wide range of duties of the Church and the State towards human being surely encompasses it.

¹⁸ H. MISZTAŁ: “Gwarancje prawa międzynarodowego i polskiego w zakresie uprawnień rodziców do religijnego wychowania dzieci.” In: *Studia z prawa wyznaniowego*. Eds. A. MEZGLEWSKI, W. JANIGA. Lublin 2000, pp. 10—11.

¹⁹ Just as examples are the Universal Declaration of Human Rights of 10.12.1948, the International Covenant on Civil and Political Rights of 16.12.1966, the International Covenant on Economic, Social and Cultural Rights of 16.12.1966, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 25 November 1981, the Convention on the Rights of the Child of 20 November 1989, the Constitution of the Republic of Poland of 1997.

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The Right to Freedom of Spouse Choice and Religious Upbringing of Children (CRF, Articles 2 and 7)

Summary

Among the catalogue of elementary rights contained in the Charter of the Rights of the Family, we can find the right to freedom of spouse choice and religious upbringing of children. These are neither new rights nor new freedoms given or established in the Charter, but an ecclesiastical opinion towards their contents that expresses the natural rights of an individual. The freedom from coercion in choosing the spouse expresses the foundation assertion of the entire marriage law system that the marriage must be contracted by mutual consent. And closely related to it is the freedom to practice one's own religion and the religious upbringing of children. The above rights and freedoms are the subject of analysis in this study.

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Droit à la liberté de choisir son conjoint et d'élever religieusement ses enfants (Charte des droits de la famille, Articles 2 et 7)

Résumé

Le catalogue des droits de la famille inclus dans la Charte des droits de la famille englobe le droit à la liberté de choisir son conjoint et d'élever religieusement ses enfants. Ce ne sont ni des droits nouveaux ni de nouveaux pouvoirs donnés ou institués dans la

Charte, mais la pensée de l'Église dans ce domaine exprimant les droits naturels de l'être humain. La liberté de choisir son conjoint est exprimée par l'idée fondamentale de tout le système du droit conjugal confirmant que le mariage peut être contracté uniquement par consentement mutuel. Cependant, la liberté de pratiquer sa propre religion et d'élever religieusement ses enfants y est strictement liée. Dans le présent article, ces droits constituent l'objet de notre analyse.

Mots clés: liberté de religion, mariage, consentement conjugal, éducation des enfants

URSZULA NOWICKA

Il diritto alla libertà di scelta del coniuge e all'educazione religiosa dei figli (CDR, Artt. 2 e 7)

Sommario

Il catalogo dei diritti della famiglia, incluso nella Carta dei Diritti della Famiglia, comprende il diritto alla libertà di scelta del coniuge e all'educazione religiosa dei figli. Non sono diritti nuovi, né nuove facoltà date o stabilite nella Carta, ma il pensiero della Chiesa in tal campo, che esprime i diritti naturali della persona umana. La libertà dalla costrizione della scelta del coniuge esprime la premessa fondamentale di tutto il sistema del diritto matrimoniale, secondo la quale il matrimonio può essere contratto solamente con il consenso reciproco. Rimangono invece strettamente legate ad esso la libertà di praticare la propria religione e dell'educazione religiosa dei figli. Tali diritti sono oggetto di analisi nel presente articolo.

Parole chiave: libertà religiosa, matrimonio, consenso matrimoniale, educazione dei figli