

Leszek Adamowicz

Free State Declaration of Non-Catholic Persons before Celebrating of Canonical Marriage

Ecumeny and Law 1, 173-195

2013

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

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

LESZEK ADAMOWICZ

The John Paul II Catholic University of Lublin, Poland

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Keywords: marriage, free status, natural law, divorce

One of the results of a valid marriage contraction is the existence of a mutual bond, which in its nature is perpetual and exclusive, while in a Christian marriage the spouses are supported by sacramental grace and somehow consecrated to perform their duties and the state.² A study of the free state of a person is related not only to the circumstances connected with a marriage contraction, but also with e.g. an adult's permission for baptism ("having a marital past") or to enter into a community with the Catholic Church.

¹ In this work non-Catholic persons imply those who are not baptised as well as those baptised outside the Catholic Church who have never been officially accepted. Apart from the following study there are also schismatics and apostates to consider.

² CIC, can. 1134: "From a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive. Moreover, a special sacrament strengthens and, as it were, consecrates the spouses in a Christian marriage for the duties and dignity of their state." CCEO, can. 776 § 2: "From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an undetectable union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace."

1. Free State as a Prerequisite for Contracting a Marriage out of the Divine Law

One of the basic activities of a legal-pastoral feature, to which a priest is obliged to, is a preparation of the contracting parties to a canonical marriage and the examination of their free state. The role of the priest as a servant to a marriage reality, which came into being out of the God's will, demands a diligent analysis of the circumstances and has a significant role to form a marriage alliance. "God himself is the author of marriage" (CCE, n. 1603 and GS 48). "The vocation to marriage is written in the very nature of man and woman as they came from the hand of the Creator" (CCE 1603). The Church implements the unity and indissolubility of marriage, that is, "a partnership of the whole of life" (CIC, can. 1055 § 1,³ CCEO, can. 776 § 1⁴), that is, its crucial attributes of divine law, stating that "unity, indissolubility, and openness to fertility are essential to marriage. Polygamy is incompatible with the unity of marriage; divorce separates what God has joined together" (CCE, n. 1664, CIC, can. 1056,⁵ CCEO, can. 776 § 3⁶).

If "all persons who are not prohibited by law can contract marriage" (CIC, can. 1058, CCEO, can. 778), there is a need to declare standards limiting this permission and find them within the divine norms, in its natural and positive dimension, but also in the law established by human authority including the one established within the religious community and a secular authority.

Those kind of standards are linked with the free state confirmation of a person, with a possibility to contract a marriage with him/her.

Therefore, the subject of the pre-marriage canonical investigation is to determine the free state of both contracting parties (among others), that is, a statement that is at odds with reality, which according to the law,

³ CIC, can. 1055 § 1: "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized."

⁴ CCEO, can. 776 § 1: "The matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of the offspring."

⁵ CIC, can. 1056: "The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament."

⁶ CCEO, can. 776 § 3: "The essential properties of marriage are unity and indissolubility, which in a marriage between baptized persons obtain a special firmness in virtue of the sacrament."

hinders a possibility to contract a marriage because of the existence of marital bonds.

On the other hand, the marriage knot is likely to come into being not only in case of a marriage contraction (as the canonical form by the baptized persons), but also when it was contracted as “a valid, objective marriage also contracted by those unbaptized.”⁷

The aim of the priest or other person responsible for the analysis of a marital case is to determine the truth about the free state of a candidate before a marriage contraction takes place. The words of John Paul II, uttered in the context of the court service, are pertinent to the analysis of the person’s status “the criterion that inspires the deontology of the judge is his love for the truth. First and foremost, therefore, he must be convinced that the truth exists. The truth must therefore be sought with a genuine desire to know it, despite all the inconveniences that may derive from such knowledge. It is necessary to resist the fear of the truth that can, at times, stem from the dread of annoying people. The truth, which is Christ himself (cf. Jn 8:32, 36), sets us free from every form of compromise with interested falsehoods.”⁸

The papal statement emphasises beyond doubt that there is, in fact, a duty to investigate the truth carefully, sometimes diligently. The superficial treatment of the case, having pseudo-pastoral motive, is according to John Paul II unjust: “[...] the judge who truly acts as a judge, in other words, with justice, neither lets himself be conditioned by feelings of false compassion for people, nor by false models of thought, however widespread these may be in his milieu. He knows that unjust sentences are never a true pastoral solution, and that God’s judgement of his own actions is what counts for eternity.”⁹

The duty of the Church is to affirm the marriage as a permanence (among others), despite the individual, social and territorial circumstances connected with the contraction, with respect to the rule that a marriage is respected by the law. That is why the analyses of the free state of the contracting parties are supposed to dismiss a legal presumption pertaining to the marriage validity (CIC, can. 1060, CCEO, no. 779¹⁰).

⁷ F. BĄCZKOWICZ: *Prawo kanoniczne. Podręcznik dla duchowieństwa*. T. 2. Opole 1958, p. 222.

⁸ JOHN PAUL II: *Address of Pope John Paul II to Members of the Tribunal of the Roman Rota — 29.01.2005*, no. 5. Available online: http://www.vatican.va/holy_father/john_paul_ii/speeches/2005/january/documents/hf_jp-ii_spe_20050129_roman-rot_en.html. Accessed 4.2.2013.

⁹ Ibidem.

¹⁰ CIC, can. 1060: “Marriage possesses the favour of law; therefore, in a case of doubt, the validity of a marriage must be upheld until the contrary is proven.” Similarly CCEO in can. 779.

This legal-pastoral activity demands the knowledge of the whole marital law system.

2. Marital Law System

The Marital law system of the Catholic Church embraces three groups of regulations: the regulations being the declaration of the divine law (natural and positive), the rules of religious community as well as the rights of the civil law.

A normative question should be asked about the free state of the contracting parties. According to the contemporary legal state of the Catholic Church, it stems from the regulations included in the Code of Canon Law from 1983, but also in the Code of Canons of the Eastern Churches from 1990, together with its authentic reading and the instruction *Dignitas connubii*.¹¹

The essential rule pertaining to this matter was promulgated in can. 780 and 781 CCEO, which merely correspond to can. 1059 CIC from 1983.

This canon says:

Can. 780. § 1. Even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the competence of civil authority concerning the merely civil effects of such a marriage. (= can. 1059 CIC)

§ 2. In addition to divine law, marriage between a Catholic and a baptized non-Catholic is also regulated by:

1° the law proper to the Church or ecclesiastical community to which the non-Catholic belongs, if that community has its own matrimonial law;

2° the law that binds the non-Catholic, if it is an ecclesiastical community, if proper matrimonial law is lacking.

Can. 781. If the Church must judge the validity of a marriage between baptized non-Catholics:

1° there is to be concern for the law by which the parties were bound at the time of the celebration of marriage in the light of can. 780, 2;

¹¹ PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS: „*Dignitas connubii*”. *Instructio servanda a Tribunalibus Dioecesanis et Interdioecesanis in pertractandis causis nullitatis matrimonii*, 25.1.2005, *Civitas Vaticana* 2005 abbreviation DC). There is a debate pertaining to the topic of „*Dignitas connubii*”, whether it is an instruction or it contains statutory elements.

2° with regard to the form of the celebration, the Church recognizes any form prescribed or admitted by the law to which the parties were subject at the time of the celebration of the marriage, provided that the consent be expressed in a public form and, when at least one of the parties is a baptized member of an Eastern non-Catholic church, the marriage be celebrated with a sacred rite.

Latin Code of canon law skips in its regulations the necessity to refer to an own right of non-Catholic religious communities. It points out and determines the dependency between the canon law of the Catholic Church and the divine role together with the civil law. Since the promulgation of the Code of Canons of Eastern Churches, in accordance with the Code rules in law reading, it was stated that due to a loophole in Latin Church, can. 780 and 781 of Eastern Code are also applied to Latin Church¹² (see the juxtaposition of codes in Table 1) As a formal confirmation of this interpretation, which can be read literally and without any references, the inscription of the aforementioned eastern canons to the Instruction of the Papal Council of legal text matters *Dignitas Connubii* from 25 of January 2005, is addressed to Latin Church tribunals (DC, art. 2 § 2 and art. 4 § 1) and applies those decisions to the non-baptised marriages (DC, art. 4 § 2).

When analysing the footnotes, there is a reason to state that the system of the Catholic law orders, when necessary, to investigate the validity of a marriage knot contracted outside the Catholic Church in the light of the regulations embedded in tree-element law, always embracing the divine law. Furthermore, the system covers the marital law and the civil law of its members in reference to those who identify themselves with a religious community — unless the contracting parties are non-religious or when a particular communion “canonizes” civil regulations about marriage. In other cases, the civil law has a significance for the civil consequences of the marriage, not the validity of the knot. In case when the two norms of the three systems collide with each other, the divine law has the priority over the law of civil, religious community.

The same principle also applies to the interpretation of divorce practices in non-Catholic religious communities and civil society. Catholic interpretation of divine law does not allow for dissolution of marriage, the environment, beyond the well-defined reasons (marriage unconsummated, *privilegium Paulinum*, *privilegium fidei*). It is not possible to consider it as an invalid or terminated marriage because of the conclusion that the actions and solutions (declaration of invalidity) took place outside the Catholic Church.

¹² See L. ADAMOWICZ: *Lex — natura — Ecclesia. Międzyreligijne, międzywyznaniowe i międzyobrzędkowe normy prawa kodeksowego Kościoła katolickiego*. Lublin 2004, p. 184.

TABLE 1. Church regulations applicable in case of a marriage between a Catholic and a non-Catholic

CIC/83	CCEO	DC
1	2	3
<p>Can. 105 9. — 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.</p>	<p>Can. 780. § 1. Even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the competence of civil authority concerning the merely civil effects of such a marriage.</p>	<p>Art. 2. § 1. A marriage between Catholics, even if only one party is a Catholic, is governed not only by divine law but also by canon law, without prejudice to art. 3, § 3. Art. 3. § 3. Causes concerning the merely civil effects of marriage belong to the civil magistrate [...].</p>
	<p>§ 2. In addition to divine law, marriage between a Catholic and a baptized non-Catholic is also regulated by: 1° the law proper to the Church or ecclesial community to which the non-Catholic belongs, if that community has its own matrimonial law; 2° the law that binds the non-Catholic, if it is an ecclesial community, if proper matrimonial law is lacking.</p>	<p>Art. 2. § 2. A marriage between a Catholic party and a baptized non-Catholic party is also governed: 1° by the proper law of the church or ecclesial community to which the non-Catholic party belongs, if that community has its own marriage law; 2° by the law used by the ecclesial community to which the non-Catholic party belongs, if that community lacks its own marriage law.</p>
	<p>Can. 781. If the Church must judge the validity of a marriage between baptized non-Catholics: 1° there is to be concern for the law by which the parties were bound at the time of the celebration of marriage in the light of can. 780, 2; 2° with regard to the form of the celebration, the Church recognizes any form prescribed or admitted by the law to which the parties were subject at the time of the celebration of the marriage, provided that the consent be expressed in a public form and, when at least one of the parties is a baptized member of an Eastern non-Catholic Church, the marriage be celebrated with a sacred rite.</p>	<p>Art. 4. § 1. § 1. Whenever an ecclesiastical judge must decide about the nullity of a marriage of baptized non-Catholics: 1° in regard to the law by which the parties were bound at the time of the celebration of the marriage, art. 2, § 2 is to be observed; 2° in regard to the form of celebration of marriage, the Church recognizes any form prescribed or accepted in the Church or ecclesial community to which the parties belonged at the time of the marriage, provided that, if at least one party is a member of a non-Catholic Eastern Church, the marriage was celebrated with a sacred rite.</p>

Table 1 continued

1	2	3
		§ 2. Whenever an ecclesiastical judge must decide about the nullity of a marriage contracted by two unbaptized persons: 1° the cause of nullity is heard according to canonical procedural law; 2° however, the question of the nullity of the marriage is decided, without prejudice to divine law, according to the law by which the parties were bound at the time of the marriage.

In the light of the above-mentioned canonical regulations, it should be recalled that there is the presumption of validity of the marriage, and therefore also contracted by non-Catholics as part of their religious community, or in the case of undeclared religious attitudes as civil liability.¹³ After the implementation of the regulations contained in the *motu proprio Omnium in mentem*,¹⁴ it does not apply to married people who in any way depart from the Catholic Church.

The valid marriage bond has the value of permanence, but not everyone has the sacramental dignity which is an important prerequisite for the absolute indissolubility.

A multitude of possible situations raises the problem of the determination of free non-Catholics who have married outside the Catholic Church, and, after obtaining a divorce or other analogous authorization, apply for the right to marry a Catholic.

When analysing systems of some non-Catholic marriage law of religious communities, we can find a convergent or similar laws to those of the Catholic Church or the regulations contradicting them.

Similar rules are embedded in “Pragmatics Uniforms” of Lutheran Church in Poland. § 109 provides that: “Evangelical marriage, even if only one side was of this creed, is subject to the law of God and the law of the Evangelical Church of the Augsburg Confession, maintaining competence of the Civil Law.” However, § 137 provides that: “a member of another Church who wants to get married in the Church, the Evangelical-Augs-

¹³ CIC, can. 1060 and CCEO, can. 779, quoted above.

¹⁴ BENEDICTUS XVI: *Litterae apostolicae motu proprio datae “Omnium in mentem” quaedam in Codice Iuris Canonici immutantur*, 26.10.2009, AAS 102 (2010), pp. 8–10. The regulations were first applied on 8.4.2010.

burg, an Evangelical clergyman is obliged to inform about the principle and the possibility of obtaining a dispensation of his Church.”

The same document requires the presence of the ordained clergyman of that Church (§ 122, 134—137). The position of the Evangelical Church of the Augsburg Confession in Poland, expressed in § 145 “Pragmatics,” confirms “the biblical position of the indissolubility of marriage. However, when a marriage breaks and divorce is obtained from the court, it takes note of the status quo as a result of human sin and hard-heartedness,” and thus allows for a new marriage, provided that “the divorced person wishing to join the new marriage, is required to obtain a dispensation from the Bishop of the Evangelical Church of the Augsburg Confession, who takes the position after obtaining an opinion of the proposal by the proper pastor” (§ 147).

However, the doctrine of the Evangelical Reformed Church states that the marriage is regarded only in a civil form; “marriage belongs to the order established by God. [...] Reformed Church does not see the nature of the sacrament in it, but surrounds it with great seriousness and respect. Because it is not the matter of sacrament, every form of a public relationship is valid and gives it an inseparable character. Therefore, the marriage legalised by a registrar is considered as rightful and inseparable. The total and irrevocable way out of the family home, joining the spouse and the creation of the one, is an act of obedience to the universal divine law, whether one considers the legislator that does not approve him. However, great importance is attached to the act of the Church, which is to make the deposit liabilities and the mutual promises in the name of God and in the presence of the congregation. Marriage is inseparable from the judgment of God — what God has joined together, let not man put asunder. It is worth to remember that this is the rule, not the rule of law, and that it concerns the unity of husband and wife, not a contract between them. If for some reason the unity of marriage breaks up, upholding the contract may be a pure fiction, sometimes very harmful, because it is not a relevant factor for marriage. The Church does not approve of relationship breakdown, but in some cases allows for termination of the contract as a legal form, or divorce, if the overriding principle of love requires it. However, it is always unique and similar to the disaster.¹⁵

In the doctrine of the Orthodox Church, we find an affirmation of belonging to the natural order of marriage and its subordination to the divine law. The valid marriage can be contracted only in the presence of

¹⁵ EVANGELICAL-REFORMED CONFESSION: *Sacrament*. Available online: http://reocities.com/Athens/parthenon/4032/dok_sakrament.html. Accessed 4.2.2013.

a priest (“sacred rite”). Even if the party is Catholic, the Catholic dispensation from canonical form is only required *ad liceitatem*. Orthodox theology emphasizes the indissolubility of marriage, though, because of the “human weakness,” it allows the “blessing of the wedding photo,” and authorization of a new marriage, which, however, is not entered in connection with the Eucharist, but as a penitential ceremony. The Orthodox Church has never allowed the fourth marriage.¹⁶

Anglican Churches, in turn, recognize marriage as a union permanent and lifelong. Generally their law do not require *ad validitatem* religious celebration, considering the form of civil marriage sufficient. The problem of divorce, which became the cause of the schism of Henry VIII, is currently evolving towards complete liberalization of divorce and entry into new marriages of divorced persons.¹⁷

In monotheistic communities of non-Christian religions, the natural origin of the institution of marriage and its permanence are emphasized.

In Islam, there are two problems — the practice of polygamy and divorce. Legal standard for the number of wives appears in the Holy Book. Islamic reformers of the modern era particularly refer to the passage of the Quran speaking about the number of wives. Sura says about it in 4, 3: “get married, therefore, with women who are good to you — with two, three, or four.”¹⁸ In their view, it is a limitation of polygamy. With a restriction that a normal person cannot be equally fair in their feelings towards four wives. Quran in this Sura goes on to state: “But if you fear that you will not be fair, then only marry one...”¹⁹ If there will be a brave person, the Quran leaves the matter to his conscience.²⁰

When it comes to marriage life, Sura 58, 3—4 speaks of punishment for divorce, namely, those divorced must free a slave while the person who does not have such possibility should fast for two months. Sura 2 says about the divorce law, 227—228 — saying that the men should take their wives back and be reconciled to them.²¹ In verses 236 and 237 of Surah 2 it is said that men do not commit sin when giving the women a divorce, if they are not touched and have no obligations towards them.²² Quran condemns and prohibits divorce, thereby protecting family life and prevents

¹⁶ S. HRYCUNIAK: *Prawosławne pojmowanie małżeństwa*. Białystok 1994. See also the monograph of U. NOWICKA: *Stwierdzenie stanu wolnego wiernych prawosławnych na forum Kościoła katolickiego*. Warszawa 2012.

¹⁷ J. PRADER: *La legislazione matrimoniale latina e orientale. Problemi interecclesiali, interconfessionali e interreligiosi*. Rome 1993, pp. 86—87.

¹⁸ Quran 4, 3.

¹⁹ Quran 4, 3.

²⁰ Cf. W. PAŁUBICKI: *Małżeństwo i rodzina w religiach świata*. Gdańsk 1995, p. 82.

²¹ Quran 2, 229.

²² Cf. Quran 2, pp. 236—237.

its disintegration, however, it provides for the institution of separation, which may result in actual dispersing of a married couple.²³

In Judaism, marriage is a private consent between a man and a woman, and therefore the presence of a rabbi or other clergy is not necessary, although it is accepted that a rabbi participates in the ceremony, including for this reason that the civil law of many countries requires the presence of a priest for the recognition of the effects of marriage.²⁴ Religious law also prohibits polygamy, but it was never widespread. The State of Israel, although it prohibits it, allows men to have several wives, but without the right to marry another. Judaic law also allows divorce, even in the case of marriage with a person who is not a Jew. Therefore, to enter into another marriage, the divorce is not necessary.²⁵

Finally, when it comes to people who do not declare their affiliation to any religion, they are subject to divine law and the provisions contained in this system. That is why the civil law is subject to consistency with the divine law. For example, in the Polish legal system we find reasons (positive and negative, that is, excluding the circumstances), that do not conflict with divine law, with the exception of bigamy,²⁶ which is understood only in the context of the civil marriage bond.

From the above, necessarily brief presentation, a variety of rules on marriage indissolubility is seen as well as various regulations of the existing forms of marriage and polygamy. Examination of the free state of the contracting parties may therefore be very difficult in a typical, pastoral situation.

The similar situation is in civil law where the legal capacity to marry a foreigner is tested according to the laws of the country of origin and the country's legal marriage.

In ecumenical and interreligious dialogue the reciprocity is expected in the recognition of the principles based on which unmarried persons are religiously mixed. The Catholic Church must examine the status of a free-state person in the light of the law and in the context of the divine law while non-Catholic community should allow its followers to marry those Catholics who have a canonical permission.²⁷

²³ Cf. W. PAŁUBICKI: *Małżeństwo i rodzina w religiach świata...*, p. 83.

²⁴ See *Małżeństwo*. Available online: <http://www.jewish.org.pl/index.php/pl/bwi-kalendarz-i-cykl-iycia-mainmenu-68/140-masieo.html>. Accessed 4.2.2013.

²⁵ See *Małżeństwo mieszane*. Available online: <http://www.the614hcs.com/40.461.0.0.1.0.phtml>. Accessed 4.2.2013.

²⁶ Art. 13 the law from 25 of February 1964 — *Kodeks rodzinny i opiekuńczy*, OJL. 1964 no. 9, item 59 with further modifications.

²⁷ See E. ZICCARDI: *Il matrimonio nelle confessioni religiose. Il matrimonio di culto cattolico, acattolico, islamico e il giudizio di nullità del matrimonio*. Experta Edizioni 2006.

3. Free State Investigation

Free state investigation of the contracting parties is one of the fundamental obligations stemming from can. 1085²⁸ and from can. 1066²⁹ CIC. It can be done at various levels of the Church, from the pastoral care of the parish, the diocesan administration and the judiciary to the Holy See.

3.1. The Competence of the Local Ordinary and the Parish Priest

According to can. 1115³⁰ and 1070³¹ CIC, the priest to examine the legal capacity to marry is the pastor of the parish in which “at least one of the contracting parties has a domicile or quasi-domicile or monthly stays, and when it comes to the migrant, in the parish, where he is currently staying,” or other but “with the permission of their Ordinary or their pastor.” However, “if the premarital exam has not been conducted by the pastor, who should assist at the marriage, but otherwise, he has a duty to inform the right pastor about the result of an authentic document.”

In each of these cases, the criterion of contracting parties to the Church *sui iuris* should be also taken into account, as pastor-territorial competence has an impact only in case when at least one of the contracting parties belongs to his Church *sui iuris*.³²

²⁸ CIC, can. 1085: “§ 1. A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage. § 2. Even if the prior marriage is invalid or dissolved for any reason, it is not on that account permitted to contract another before the nullity or dissolution of the prior marriage is established legitimately and certainly.”

²⁹ CIC, can. 1066: “Before a marriage is celebrated, it must be evident that nothing stands in the way of its valid and licit celebration.”

³⁰ CIC, can. 1115: “Marriages are to be celebrated in a parish where either of the contracting parties has a domicile, quasi-domicile, or month long residence or, if it concerns transients, in the parish where they actually reside. With the permission of the proper ordinary or proper pastor, marriages can be celebrated elsewhere.”

³¹ CIC, can. 1070: “If someone other than the pastor who is to assist at marriage has conducted the investigations, the person is to notify the pastor about the results as soon as possible through an authentic document.”

³² CIC, can. 1109, CCEO, can. 829. Another issue is the competence of the Ordinary and parish personnel.

The competence and duties of the pastor in this area should be further specified by the Conference of Bishops or the appropriate authority in the Eastern Catholic Churches.³³

Conference of the Polish Episcopate in the Instructions for the preparation of marriage in the Catholic Church of 1986³⁴ orders to carefully investigate the issue³⁵ and to find obstacles in the context of discussing the marriage bond, that is “to draw attention that the divine law has a special significance. Pastors are particularly responsible for ensuring that the faithful, being in good or bad faith, do not engage in a new relationship if they are bound by a prior marriage bond of ecclesiastical or natural law. This applies even when there is doubt as to the validity of previously contracted marriage (can. 1060).

If the priest has a reasonable doubt about the unmarried, he should stick to preaching the announcement at the previous place of residence, and question witnesses. Only in the absence of other evidence, a supplementary oath of the parties can be used.”³⁶ The command includes both pastoral operations for the contracting parties, who are Catholic, as well as for non-Catholics.

In the case of unmarried Catholic’s confirmation, baptism certificate determines recent status (which is issued not earlier than six months prior to delivery of documents³⁷), unless it contains an entry for the canonical

³³ CIC, can. 1067: “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.” CCEO, can. 784: “In the particular law of each church *sui iuris*, after consultation with the eparchial bishops of other Churches *sui iuris* exercising power in the same territory, norms are to be issued concerning the examination of the parties and other means for inquiries which are to be carried out before the marriage, especially those which concern baptism and the freedom to marry, which are to be diligently observed so that the celebration of the marriage can proceed.”

³⁴ Polish Bishops’ Conference: *Instrukcja Episkopatu Polski o przygotowaniu do zawarcia małżeństwa w Kościele katolickim*. In: *Dokumenty duszpastersko-liturgiczne Episkopatu Polski 1966—1993*. Red. C. KRAKOWIAK, L. ADAMOWICZ. Lublin 1994, pp. 151—227. (hereafter referred to as *Instrukcja*)

³⁵ *Instrukcja*, no. 42: “The discernment is to determine: [...] 2. free status of those who intend to get married, [...] 5. if there is no breaking of any obstacles that would prevent the conclusion of an important relationship” and in no. 46: “Deciding on unmarried homeless have to be carefully followed, or people who do not have either a permanent or temporary residence and migrants who move from place of birth after reaching the age of maturity (12-, 14-years old) in a remote site and after a short stay in the new location with a desire to marry.”

³⁶ *Instrukcja*, no. 52.

³⁷ *Instrukcja*, no. 44: “Metric for the full discharge is not only the evidence of baptism, but if it is recent, i.e. issued not earlier than six months ago, it is the statement of the unmarried.”

marriage,³⁸ ecclesiastical or civil or death certificate of a spouse, diocesan decree concerning the alleged death of the spouse,³⁹ the judgment annulling the invalidity of the marriage,⁴⁰ the papal rescript of dispensation *super matrimonio rato sed non-consummato* or the dissolution of marriage on the basis of the privilege of the faith, or rescript to use St. Paul's privilege by the local Ordinary.⁴¹ Definitely, the opinion that all the above procedures can be used also for non-Catholics and non-baptized should be supported.

If a Catholic in his earlier relationship lived only the civil marriage, the pastor recognizes his free state in the canonical and pastoral conversations, without the need for trial. Concerns in this area, resulting on the ground of can. CIC 1686,⁴² dispelled the answer of the Pontifical Council

³⁸ *Instrukcja*, no. 98: "Imprint of baptism is also one of the evidence-free state. Therefore, baptism certificate has to be recent and must include all the annotations that should be made in the book of baptisms. [...] In addition, in the book of the baptized the dissolution of an unfulfilled marriage should be noted or declaration of nullity of marriage on the basis of the final judgment of the church of the court of first resort, a ban on joining a new marriage in the case of physical disability or mental disability. If baptism book did not have any notes, this should be noted in the document of baptism."

³⁹ *Instrukcja*, no. 55: "As a proof of death, the spouse should be required to present an authentic document of the Church or the secular power of the document confirming the death of that person. It is not enough to present the civil document of the alleged death but it is required, in accordance with can. 1707, a trial on the alleged death of a spouse. This difference in treatment of documents stems from the fact that the Church bases its process on different criteria. In all cases, the ecclesiastical court decree widowhood should be given, especially when the death of a spouse cannot be proved by official church or laity documents. There is a need to collect all possible documents as well as a form should be considered, containing 11 questions to witnesses on finding the missing deceased and present it to the decision of the diocesan curia."

⁴⁰ *Instrukcja*, no. 53: "If one of the parties had a church wedding, a new marriage may proceed only after the submission of a final judgment and a genuine ecclesiastical court, stating the invalidity of first marriage (can. 1684). This is also where it becomes a final judgment adjudicating the invalidity of a marriage based on the shortened process, which is based on documents (can. 1686—1688)."

⁴¹ *Instrukcja*, no. 54: "If the parties have obtained a dispensation from the Pope of not consummated marriage, to enter into a new relationship, notice of the authentic papal rescript are required to provide (can. 1706). The same official statement is required in cases where the previous marriage was dissolved on the basis of the so-called St. Paul's privilege. Then the decree of the local Ordinary is required, which states that there are conditions to take advantage of this privilege." It would be interesting if the unbaptized, who left the baptized, after some time, would ask to be baptized or as an unbaptized person would like to conclude a marriage with another person belonging to the Catholic Church. In my opinion, the single status is indisputable, but a moral and pastoral aspect should be questioned.

⁴² CIC, can. 1686: "After receiving a petition proposed according to the norm of can. 1677, the judicial vicar or a judge designated by him can declare the nullity of

for Legislative Texts of 11 July 1984, stating that if a person required to maintain the canonical form of marriage had only a civil union or tried to contract it with a non-Catholic minister, declaration of invalidity is not required, even through the documentary trial, but it is enough to examine the case in the ordinary course of the investigation.⁴³ Polish Bishops' Conference has decided that, in this situation, local ordinary should be contacted in order to receive the appropriate authorization.⁴⁴

The question is whether an analogous procedure should be applied by a non-Catholic priest. An affirmative answer can only refer to the eastern non-Catholics who are committed to marriage *coram ministra sacro*. However, both in this case as in every other, when the marriage party is non-Catholic (baptized or unbaptized, and apostate), the pastor should refer the matter to the local ordinary, who is competent to grant dispensation from the impediment of the religious difference,⁴⁵ of permission to

a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except for the citation of the parties and the intervention of the defender of the bond.”

⁴³ Pontificia Commissio Codici Iuris Canonici Authentice Interpretando: *Responsa ad proposita dubia* (can. 1686 CIC), 26.06.1984. AAS 76 (1984), pp. 746—747. In CCEO, this interpretation is to be found in the text of can. 1372 § 2: “However if it is the case of one who would have been obliged to observe the prescribed form for the celebration of marriage required by law, but who attempted marriage before a civil official or a non-Catholic minister, the prenuptial investigation mentioned in can. 784 suffices to prove his or her free status.” So is also *Instruction “Dignitas connubii”* in art. 5 § 3: “However, in order to establish the free state of those who, while bound to observe the canonical form of marriage according to can. 1117, attempted marriage before a civil official or non-Catholic minister, it is sufficient to use the premarital investigation in accordance with can. 1066—1071.”

⁴⁴ *Instrukcja*, no 52: “Pastors should also be aware that the bond obstacle does not arise if the Catholics — required to maintain the legal status of marriage — tied together only by a civil contract to the civil registrar. However, pastor preparing for religious marriage of Catholics who have previously entered into a civil union with another person than the one person you wants to enter marriage in the Church is obliged to request the authorization of the local Ordinary. It is necessary to determine whether the previous relationship does not have any obligation to the other party or to the children (can. 1071 § 1, n. 3), and therefore that a civil union, which has broken-up, or even been solved by civil act of divorce could become an important validation of a marriage performed by ordinary power. The validation of this fact will cause obstacles to the marriage bond and is sometimes observed only in the acts of the curia.”

⁴⁵ CIC, can. 1086 § 1: “A marriage between two persons, one of whom has been baptized in the Catholic Church or received into it and the other of whom is not baptized, is invalid” and can. 1078 § 1: “The local ordinary can dispense his own subjects residing anywhere and all actually present in his own territory from all impediments of ecclesiastical law except those whose dispensation is reserved to the Apostolic See.”

be cross-married⁴⁶ or of an apostate, what should consider the free state declaration of the parties. If a person submits a document, used by the Orthodox, to the new marriage, it is considered to be insufficient to determine the status of a free and refer the case to the court of the Church.⁴⁷

It is implied by the *Instruction* 88: “[...] when dealing with the usual formalities before the wedding, the pastor completing the protocol of personal discernment brides, pays attention to the fact of baptism of the non-Catholic party as well as his/her free state. When the free state of the non-Catholic is doubtful, all records of the case should be sent to the diocesan curia, as a need for further clarification and to make a decision. Accidents of this type may occur in the non-Catholic divorced or further comprising re-marriage, and with foreigners. In this case, after consultation with the diocesan curia, the pastor directs the case to court of the Church, which must be considered individually.” The certificate of being unmarried should be also delivered by non-Catholic party (when possible), even if it is free to ask for the entrance into the full communion with the Catholic Church,⁴⁸ but in this case the standard to apply to the local Ordinary is relevant.

A situation, in which one of the contracting parties is in danger of death, is an exception. In such a situation, according to can. 1068 CIC (can. 785 § 2 CCEO), “in danger of death and if other proofs cannot be obtained, the affirmation of the contracting parties, even sworn if the case warrants it, that they are baptized and are prevented by no impediment is sufficient unless there are indications to the contrary.”⁴⁹

⁴⁶ CIC, can. 1124: “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 the other of whom is enrolled in a Church or ecclesial community not in full communion with the Catholic Church.”

⁴⁷ See *Supremum Signaturae Apostolicae Tribunal: Quaesitum. Responsio in re particulari de investigatione praevia ad matrimonium celebrandum*, 3.1.2007, Prot. N. 38964/06 VT, *Periodica* 97 (2008), fasc. 1, pp. 45—46; *Supremum Signaturae Apostolicae Tribunal: “Declaratio” sull’ammissione dei fedeli della Chiesa ortodossa romana alla celebrazione di un nuovo matrimonio nella Chiesa cattolica*, 20.10.2006, Prot. N. 37577/05 VAR, *Communicationes* 39 (2007), n. 1, pp. 66—67.

⁴⁸ Polish Bishops’ Conference: *Instrukcja Episkopatu Polski w sprawie duszpasterstwa małżeństw o różnej przynależności kościelnej*. In: *Dokumenty duszpastersko-liturgiczne Episkopatu Polski 1966—1993*. Red. C. KRAKOWIAK, L. ADAMOWICZ. Lublin 1994, pp. 247—262, no. 5: “If marriage coincides with the adoption of the full unity of the Church, there is a need to: a) instruct the non-Catholic party to ask the pastor for the necessary documents (baptismal certificate and a free-state certificate), in the case of inability to obtain these documents, sworn testimony of witnesses must be drawn.”

⁴⁹ CIC, can. 1068: “In danger of death and if other proofs cannot be obtained, the affirmation of the contracting parties, even sworn if the case warrants it, that they are baptized and are prevented by no impediment is sufficient unless there are indications to the contrary.” Similarly CCEO, can. 786 § 2.

It follows that while the pastor is the first chronologically, the official representative of the Church, he is responsible for reviewing the status of free contracting parties, practically, except for two contracting parties. The Catholics who have never in any form concluded a marriage and, if widowed, never ultimately decide on the establishment of the free contracting parties but should always refer to the Ordinary of the place and to proceed in accordance with his decision or according to the judgement of the tribunal of the Church. Understanding of the legal position of the contracting, non-Catholic parties requires from the parish priest at least to perceive the problem as to the status of free non-Catholic. This problem can be resolved, however, at least on the diocesan level and not only according to the legal standards of the Catholic Church, but also on the basis of non-Catholic communion standard.

3.2. Church Tribunal Competence

Ecclesiastical jurisdiction to examine the free contracting parties who do not belong to the Catholic Church was most clearly expressed in the Instruction *Dignitas connubii*. This manual, by repeating the standard written in can. CIC 1671 (the can. CCEO 1357), first states that “marriage cases of the baptized belong to the ecclesiastical judge by proper right,”⁵⁰ allows the ecclesiastical judge to “hear only those causes of the nullity of marriage of non-Catholics, whether baptized or unbaptized, in which it is necessary to establish the free state of at least one party before the Catholic Church, without prejudice to art. 114,”⁵¹ that is, after the submission of the plaintiff’s complaint.

In the case of consummated marriage between two baptized, there is the only way to recognize those unmarried persons, as “the sacramental bond of marriage for a consummated marriage cannot be dissolved by any human power nor by any cause other than death.”⁵²

⁵⁰ DC, art. 3 § 1.

⁵¹ DC, art. 3 § 2.

⁵² CCEO, can. 853. Editors of this canon are more precise in the eastern Code than in Latin can. 1141, which reads: “A marriage that is *ratum et consummatum* can be dissolved by no human power and by no cause, except death.” It is not specified whether that is a sacramental knot (between two baptized persons), making this canon imprecise. Compare CIC, can. 1055: “§ 1. The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of

Catholic tribunal should act in this case according to its own procedural rules (or CCEC CIC), both in terms of identifying the properties, as well as the entire procedure. This is due to the written instruction *Dignitas connubii*: “Whenever an ecclesiastical judge must decide about the nullity of a marriage contracted by two unbaptized persons: 1° the cause of nullity is heard according to canonical procedural law.”⁵³ However, the substantive law should apply the law of their own religious community to which non-Catholic party belonged (baptized or unbaptized) at the time of the prosecuted marriage. The Instruction is clear that “whenever an ecclesiastical judge must decide about the nullity of a marriage of baptized non-Catholics,”⁵⁴ the invalidity of the marriage is governed by and subject to the law of God, on the basis of the law that is subject to both parties during the marriage, in particular “in regard to the form of celebration of marriage, the Church recognizes any form prescribed or accepted in the Church or ecclesial community to which the parties belonged at the time of the marriage, provided that, if at least one party is a member of a non-Catholic Eastern Church, the marriage was celebrated with a sacred rite.”⁵⁵

This requires the expertise of a judge of the Church in the field of jurisprudence and statements of the tribunals⁵⁶ and other dicasteries of the Holy See⁵⁷ as well as non-Catholic marriage law of religious communities. The judge in this case must be particularly sensitive to the precise application of the rules of substantive law, not to be tempted to treat marriages “in a Catholic way” by non-Catholics. Certainly, the determination of formula will be fruitful (*concordantio dubii*) with the causes of nullity, which unquestionably derived from the divine law.

In the catalogue of creating marital obstacles, two examples may be found in the natural law: kinship in a straight line and in the second stage the sideline (can. 1091 CIC and 808 CCEO),⁵⁸ physical inability (can.

offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized. §2. For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament.”

⁵³ DC, art. 4 § 2 no. 1.

⁵⁴ DC, art. 4 § 1 no. 1.

⁵⁵ DC, art. 4 § 1 no. 2.

⁵⁶ A series of decisions are given by e.g. J. PRADER: *La legislazione matrimoniale latina e orientale. Problemi interecclesiali, interconfessionali e interreligiosi*. Rome 1993.

⁵⁷ For instance Papal Commission of the reading of the validity of matters embedded in the Legal Canonical Code, an answer to can. 1103 CIC, 23.4.1987, AAS 79 (1987), p. 1132, on the coercion as a marriage fault.

⁵⁸ CIC, can. 1091 § 4: “A marriage is never permitted if doubt exists whether the partners are related by consanguinity in any degree of the direct line or in the second degree of the collateral line.” Similarly CCEO, can. 808 § 3.

1084 CIC and 801 CCEO)⁵⁹ and one of the divine positive law: obstruction of the marital bond (can. 1085 CIC and 802 CCEO).⁶⁰

In addition, the legislature, discussing the marriage consensus, posted some rules rooted by jurisprudence and canon lawyers in the natural law. These canons: 1095 CIC (818 CCEO), especially no. 3 — inability to fulfill the essential obligations of marriage for psychological reasons, 1098 CIC (821 CCEO) — deceitful misrepresentation, 1103 CIC (825 CCEO) — coercion.

Can. 1095 CIC (818 CCEO) states: “the following are incapable of contracting marriage: 1. those who lack the sufficient use of reason; 2. those who suffer from a grave defect of discretion of judgement concerning the essential matrimonial rights and duties mutually to be handed over and accepted; 3. those who are not able to assume the essential obligations of marriage for causes of a psychic nature.” Paździor justifies: “[...] at the basis of the contemporary regulations there is a rule that says that no one can commit to thing he cannot fulfill. The principle was expressed by Romans in words *ad impossibile nemo tenetur*. Decree-makers of rules made a rule: *Nemo potest ad impossibile obligari*. [...] The aforementioned quote stems from the natural law.”⁶¹

The interpretation of the can. 1098 CICI⁶² and can. 821 CCEC⁶³ raises more problems. When asked if *deceptio dolosa* will make a nullity title that derives from the natural law, the court replied in the affirmative jurisprudence of the Roman Rota. In the judgment of C. Burke of 25 October 1990, Ponens highlights such standards or natural origin.⁶⁴

⁵⁹ CIC, can. 1084 § 1: “Antecedent and perpetual impotence to have intercourse, whether on the part of the man or the woman, whether absolute or relative, nullifies marriage by its very nature.” Similarly CCEO, can. 801.

⁶⁰ CIC, can. 1085 § 1: “A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage.” CCEO, can. 802 does not include the final clause *quamquam non consummati*.

⁶¹ S. PAŹDZIÓR: *Przyczyny psychiczne niezdolności osoby do zawarcia małżeństwa w świetle can. 1095*. Lublin 1999, p. 25; M. FĄKA: “Niezdolność do przyjęcia istotnych obowiązków małżeńskich jako tytuł nieważności małżeństwa.” *Prawo Kanoniczne* 25 (1982) nos. 1—2, p. 246.

⁶² CIC, can. 1098: “A person contracts invalidly who enters into a marriage deceived by malice, perpetrated to obtain consent, concerning some quality of the other partner which by its very nature can gravely disturb the partnership of conjugal life.”

⁶³ CCEO, can. 821: “A person contracts invalidly who enters marriage deceived by fraud, perpetrated to obtain consent, concerning some quality of the other party which of its very nature can seriously disturb the partnership of conjugal life.”

⁶⁴ “Dec. c. Burke 25.10.1990 about Madraspolitan and Mediapolitan. About the validity of a marriage.” *Ephemerides Iuris Canonici* 49 (1993) nos. 1—3, pp. 256—260. See W. GÓRALSKI: “Podstępne wprowadzenie w błąd (can. 1098 CIC) (na podstawie

However, as regards can. 1103 CIC⁶⁵ and can. 825 CCEO⁶⁶ addressing the issue of coercion and fear in the context of nullity of marriage, doubts were resolved by the response of the Pontifical Council for the Interpretation of Legislative Texts on November 25, 1986.⁶⁷ According to its response, the invalidity of the marriage because of coercion is rooted in the natural law norms.⁶⁸

In the era of facilitated communication and frequent contacts between people of different cultures and faiths, the jurisdiction in such cases will certainly be more frequent in the Polish church tribunals and the more recent it is, as already quoted, the Pope's statement that it is a matter of belief that truth exists and it is possible to discover it in the canon law.⁶⁹

3.3. The Issues within the Competence of the Holy See

Apart from the possibility of an appeal and asking the Holy See for clarification or resolution of specific concerns regarding the free state of the contracting parties,⁷⁰ a number of issues regarding the marital bond are within the exclusive competence of the Holy See. They are only listed as they indirectly relate to the subject.

Only the Bishop of Rome may grant dispensation from the marriage not consummated (even non-Catholics and non-baptized)⁷¹ and terminate

wyroku Roty Rzymskiej c. Burke z 15 X 1990 r.)” *Prawo Kanoniczne* 38 (1995) nos. 1—2, pp. 3—11.

⁶⁵ CIC, can. 1103: “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.”

⁶⁶ CCEO, can. 825: “A marriage is invalid if it is entered into due to force or grave fear inflicted from outside the person, even when inflicted unintentionally, which is of such a type that the person is compelled to choose matrimony in order to be freed from it.”

⁶⁷ AAS 79 (1987), p. 1132.

⁶⁸ L. ADAMOWICZ: *Lex — natura — Ecclesia...*, pp. 84—88.

⁶⁹ JOHN PAUL II: *Address of Pope John Paul II to Members of the Tribunal of the Roman Rota — 29.01.2005*, no. 5.

⁷⁰ CIC, can. 1707 § 3 pertaining to the alleged death: “The bishop is to consult the Apostolic See in uncertain and complicated cases.”

⁷¹ CIC, can. 1142 (CCEO, can. 862): “For a just cause, the Roman Pontiff can dissolve a non-consummated marriage between baptized persons or between a baptized party and a non-baptized party at the request of both parties or of one of them, even if the other party is unwilling.” And CIC, can. 1698: “§ 1. Only the Apostolic See adjudicates the fact of the non-consummation of a marriage and the existence of a just cause to grant a dispensation. § 2. Only the Roman Pontiff, however, grants the dispensation.”

a marriage on the basis of privilege of non-sacramental faith.⁷² It is worth remembering that only the Magisterium of the Church is to interpret the natural, divine and the positive law.⁷³ The Supreme Court of the Apostolic Signature, in addition to resolving issues of jurisdiction, has the power of “deciding by decree cases of the nullity of marriage in which the nullity appears evident”⁷⁴ and to dispense from procedural laws.⁷⁵

Conclusions

The legislature in the can. 776 § 1 of the Code of Canons of the Eastern Church pointed out that “the matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of the offspring.” Every person has the right to marry. However, with the right to marry there is a common obligation of every human person accepting the natural order that has been entered in the nature of the person and the marriage. One of the elements of the natural order is a free-state requirement of the contract-

S. CONGREGATIO PRO SACRAMENTIS: *Litterae circulares „De processu super matrimonio rato et non consummato”*, 20.12.1986, *Monitor Ecclesiasticus* 112 (1987), pp. 423—429; BENEDICTUS XVI: *Litterae Apostolicae motu proprio datae “Quaerit semper” quibus Constitutio apostolica “Pastor bonus” immutatur atque quaedam competentiae a Congregatione de Cultu Divino et Disciplina Sacramentorum ad novum Officium de processibus dispensationis super matrimonio rato et non consummato ac causis nullitatis sacrae Ordinationis, apud Tribunal Rotae Romanae constitutum, transferuntur*, 30.8.2011, *AAS* 103 (2011), pp. 569—571.

⁷² CIC, can. 1149 (CCEO, can. 860): “A non-baptized person who, after having received baptism in the Catholic Church, cannot restore cohabitation with a non-baptized spouse by reason of captivity or persecution can contract another marriage even if the other party has received baptism in the meantime, without prejudice to the prescript of can. 1141.” CONGREGATIO PRO DOCTRINA FIDEI: *Normae de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei*. Civitate Vaticana 2001; IOANNES PAULUS II: *Constitutio apostolica „Pastor bonus”*, art. 53.

⁷³ CIC, can. 747.

⁷⁴ DC, art. 5 § 2: “However, the Apostolic Signatura enjoys the faculty of deciding by decree cases of the nullity of marriage in which the nullity appears evident; but if they require a more detailed study or investigation the Signatura is to remit them to a competent tribunal or another tribunal, if need be, which is to handle the cause according to the ordinary procedure of the law.”

⁷⁵ DC, art 1 § 3: “Dispensation from procedural laws is reserved to the Apostolic See (cf. can. 87; Pastor bonus, art. 124, no. 2).”

ing parties. Among the multitude of modern concepts, the only acceptable, from the point of view of the doctrine of the Catholic Church's, is the affirmation of the absolute indissolubility of consummated marriage between two baptized persons. The Church, as guardian of marriage and safeguard of the human rights, perceives and recognizes the dignity of marriage contracted by any person with respect for the natural order, regardless of time, place and circumstances of its conclusion. Sacramental grace, which is a gift of God to the baptized spouses, strengthens and consecrates the call to ensure that the union of a man and a woman become *Totius vitae consortium*, fruitful mutual love and fertility.

Recognizing the validity of marriages outside the Catholic Church and being faithful to Christ's teaching on marriage, the Church cannot agree to the resolution against the divine law, whether in the civil law, or on the basis of positive law in religious communities.

In his last speech to the Roman Rota Court staff John Paul II exhorted: "In the name of what they claim to be pastoral requirements, some voices have been raised proposing to declare marriages that have totally failed null and void. [...] The objective juridical and moral gravity of such conduct, which in no way constitutes a pastoral valid solution to the problems posed by matrimonial crises, is obvious. Thanks to God, there is no lack of faithful people who refuse to let their consciences be deceived. Moreover, many of them, despite being personally involved in a conjugal crisis, are not prepared to solve it except by keeping to the path of truth."⁷⁶

It seems that the careful examination is always on the path of truth. It is hard to see why it is only now that the careful examination enters the path of truth.

⁷⁶ JOHN PAUL II: *Address of Pope John Paul II to Members of the Tribunal of the Roman Rota — 29.01.2005*, no. 3.

LESZEK ADAMOWICZ

Stwierdzenie stanu wolnego niekatolików przed zawarciem małżeństwa kanonicznego

Streszczenie

Tematem analiz jest problem stwierdzenia stanu wolnego osób nie będących katolikami, którzy deklarują wolę zawarcia małżeństwa kanonicznego z osobą należącą do Kościoła katolickiego. Każdy człowiek ma prawo do zawarcia małżeństwa. Z prawem do

zawarcia małżeństwa związany jest obowiązek wspólny dla każdej osoby ludzkiej akceptacji porządku naturalnego, który został wpisany w naturę osoby oraz w małżeństwo. Jednym z elementów porządku naturalnego jest wymóg stanu wolnego stawiany nupturientom. Wśród wielości współczesnych koncepcji jedyną do zaakceptowania, z punktu widzenia doktryny Kościoła katolickiego, jest afirmacja nierozzerwalności absolutnej dopełnionego małżeństwa dwojga ochrzczonych. Kościół, stojąc na straży małżeństwa oraz na straży praw osoby ludzkiej dostrzega i uznaje godność małżeństwa zawieranego przez każdego człowieka z poszanowaniem porządku naturalnego, niezależnie od miejsca, czasu i okoliczności jego zawarcia. Uznając ważność małżeństw zawieranych poza Kościołem katolickim, jednocześnie Kościół nie może, będąc wiernym nauce Chrystusa o małżeństwie, godzić się na jego rozwiązywanie wbrew prawu Bożemu czy to w prawie cywilnym, czy to w prawie stanowionym w niektórych wspólnotach religijnych.

Autor analizuje stan wolny jako jeden z warunków do zawarcia małżeństwa wynikający z prawa Bożego, umiejscawiając to prawo na szczycie systemu prawa małżeńskiego, a następnie omawia zasady badania stanu wolnego, a w szczególności kompetencje duszpasterza (proboszcza) i ordynariusza miejsca, kompetencje sądu kościelnego oraz kwestie będące w wyłącznej kompetencji Stolicy Apostolskiej.

Słowa kluczowe: małżeństwo, stan wolny, prawo naturalne, rozwód

LESZEK ADAMOWICZ

La constatation du statut de célibataire des non-catholiques avant de contracter le mariage canonique

Résumé

L'objectif des analyses est la constatation du statut de célibataire des non-catholiques, qui déclarent la volonté de contracter le mariage canonique avec une personne appartenant à l'Église catholique. Chaque homme a le droit de contracter le mariage. Avec le droit à contracter le mariage est lié le devoir commun pour chaque être humain d'accepter l'ordre naturel, qui est inscrit dans la nature humaine et dans le mariage. Un des éléments de l'ordre naturel est l'exigence du statut de célibataire, posée aux nupturients. Parmi la multitude des conceptions modernes, la seule acceptable selon la doctrine de l'Église catholique est l'affirmation de l'indissolubilité absolue du mariage accompli de deux personnes baptisées. L'Église, tout en gardant le mariage et les droits de la personne, aperçoit et reconnaît la dignité du mariage, contracté par chaque homme avec le respect de l'ordre naturel, indépendamment du lieu, temps et circonstances du contrat. En reconnaissant la validité des mariages contractés hors de l'Église catholique, l'Église ne peut pas, tout en restant fidèle aux instructions de Christ concernant le mariage, accepter sa dissolution ni au niveau de la loi civile, ni au niveau de la loi canonique de certaines communautés religieuses.

L'auteur analyse de statut de célibataire comme une des conditions de contracter le mariage, qui résulte de la loi divine, en la plaçant à la tête du système de la loi conjugale, et ensuite il présente les principes d'étudier l'état célibataire ; en particulier les compétences du prêtre (curé), l'ordinaire local, du tribunal ecclésiastique et des questions restant sous la responsabilité exclusive du Saint-Siège.

Mots-clés: mariage, état de célibataire, loi naturelle, divorce

LESZEK ADAMOWICZ

L'appurazione dello stato libero dei non cattolici prima della contrazione del matrimonio canonico

Sommario

L'oggetto della presente analisi è il problema dell'appurazione dello stato libero delle persone non cattoliche che dichiarano la volontà di contrarre il matrimonio canonico con una persona appartenente alla Chiesa cattolica. Ognuno ha il diritto di contrarre il matrimonio. A tale diritto è legato l'obbligo comune ad ogni persona di accettare l'ordine naturale proprio della natura umana e del matrimonio. Uno degli elementi dell'ordine naturale è il requisito dello stato libero, che deve essere assolto dai nubendi. L'unica interpretazione accettabile dal punto di vista della dottrina della Chiesa cattolica, vista la moltitudine delle idee contemporanee, è l'affermazione dell'assoluta indissolubilità del matrimonio tra due persone battezzate. La Chiesa, in quanto custode del matrimonio e dei diritti umani, vede e riconosce la dignità del matrimonio contratto da ogni persona con il rispetto per l'ordine naturale, a prescindere dal tempo, dal luogo e dalle circostanze in cui esso è stato contratto. La Chiesa, riconoscendo la validità dei matrimoni contratti al di fuori della Chiesa cattolica stessa, non può tuttavia, data la fedeltà all'insegnamento di Cristo sul matrimonio, accettare la sua dissoluzione contro la legge di Dio, sia in base al diritto civile, sia in base al diritto di alcune comunità religiose.

L'autore analizza lo stato libero come una delle condizioni per contrarre il matrimonio derivante dalla legge di Dio, ponendo la stessa legge in cima al sistema del diritto matrimoniale, e quindi discute i principi di valutazione dello stato libero, in particolare la competenza del ministro (parroco), dell'ordinario locale, del tribunale ecclesiastico, nonché le questioni di esclusiva competenza della Santa Sede.

Parole chiave: matrimonio, stato libero, diritto naturale, divorzio