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## Civil Effects of Entering Into Canonical Marriage according to Laws of the Slovak Republic

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Ecumeny and Law 2, 269-286

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2014

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**Keywords:** cooperation, Church and state, democratic society, marriage, canon law, law 36/2005 Z.z.

### Introduction

From the times of Constantine the Great the phenomena of Christ's Church and state authority exist side by side. Both institutions, the religious and earthly one, take care of human good. State emphasizes the temporal wellbeing, while Church the eternal one. To the category of wellbeing belongs organized marriage, so it is not strange that both the Church and the State establish institutions that support marriages. Over the centuries the marriage has been developing in our continent, the phenomenon that is typical for Europe and its culture. Today, we are able to properly define European marriage phenomenon and also specify its defining characteristics and differences from other types of marriage.

Considering the practical aspects of the state's and the Church's involvement in the European type of marriage, we deal with a number of different situations. Over the centuries there have been seasons in solemnization of marriage where the secular element dominated, and seasons where religious element dominated. Today's situation in European countries is favourable for the Church and the state cooperating not only in the field of solemnization of marriages, but also during the actual married life. The presented article focuses on Slovakia in discussing various marital

circumstances. The territory of the nowadays Slovak Republic was a part of different historical states. First, it was a part of Great Moravia, later for almost one thousand years Austria-Hungary, and finally Slovakia became a part of the Czechoslovak Republic, to eventually become a part of the independent Slovak Republic. All these eras had a great impact on the lives of and also on development of marriage institution. In this day and age, in a new-born Slovak democracy even the Church has a new position, also toward institution of marriage. We will discuss these circumstances both historically and from a present point of view.

## Marriage as a phenomenon of the Church and a temporal discipline

The Catholic Church treats marriage in two ways: either religiously or judicially. In the former case marriage is a part of God's plan, so we can see it as a natural part of human being. Thanks to it, humans, basically out of their own naturalness, seek their own anti-poles, and founds marriage and family. To this category belongs the other side of marriage concerning a legal contract between two baptized and *ipso facto*, is a sacrament, which means that it is in special God's attention and source of spiritual gifts for a married couple. It is also shown in can. 1055 §1 CIC 1983 and can. 776 §1 CCEO.<sup>1</sup> The second side is a juridical one, which says that only those Catholic marriages are valid, and also in the case when only one of partners is Catholic, and when couples were married in the Catholic Church in valid legislation. So when Catholic is married only in civil form, marriage is invalid. It is necessary to say that today the Catholic Church, in spite of that fact does not look on civil marriage in negative way or disapprovingly. Pope John Paul II in his great exhortation *Familiaris consortio* writes that Catholics which from whatever reasons accepts only civil marriage cannot be compared to those couples who are living together without alliance.<sup>2</sup>

<sup>1</sup> CIC 1983: 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. 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 indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace.

<sup>2</sup> JÁN PAVOL II: *Familiaris consortio*, n. 82. There are increasing cases of Catholics who for ideological or practical reasons, prefer to contract a merely civil marriage, and

Today's Catholic legislation looks approvingly at cooperation of political community, that is the state, during contracting and the marriage of Catholics. It is explained in can. 1059 CIC and can. 780 § 1 CCEO, where it is literally said that marriage of Catholics, even if only one of the partners is Catholic, is a subject of not only God's, but also canonical law, in uninterrupted powers of civil authority, related to civil effects of marriage. It results from the fact that even political community has natural interest in developing married life and family.<sup>3</sup> For those Catholics who contract marriage in the Church the acknowledgement of its validity in terms of valid civil system of laws has a huge meaning. It is related to methods of marital community property and their relationship to give birth to children, which provides civil law.

Current system of laws of the Slovak Republic in its present code on family considers valid a marriage that: was contracted in agreement with current form described in the law 36/2005 Z.z. in *est de jure*, that with civil laws are accepted for valid only marriages entered into according to both civil and canonical form. Those forms are used by registered churches and religious communities in the territory of the Slovak Republic.

## Why to contract marriage in the Church?

It is a legitimate question that has a logical substantiation. If the Church, in accordance with the words of the Pope John Paul II improves her attitude towards marriages contracted only in the civil way, why then the Church insists on the necessity of Catholics' marriages to be officiated in the Church? The answer is simple. As an external and internal sign of God's presence, the Church has a mission to help people with achieving their temporal goals and the eternal end. In view of classical canonistics, this eternal end is *salus animarum*, "the salvation of souls." Marriage as a basis of family, so the most natural environment in which man lives,

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who reject or at least defer religious marriage. Their situation cannot of course be likened to that of people simply living together without any bond at all, because in the present case there is at least a certain commitment to a properly-defined and probably stable state of life, even though the possibility of a future divorce is often present in the minds of those entering a civil marriage.

<sup>3</sup> CIC 1983 can. 1059, CCEO can. 780: 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.

plays an important role in human life and also among the methods of salvation. The participation of spiritual means mediated by the Church is necessary from the beginning of its creation.

Enlarging on it, we can focus on the first sight of marriage creation, than we will tell why the religious rite is important. The Pope gives many reasons to explain it. He demonstrates that the preparation to contracting the marriage contains pre-marital disquisition about single life of engaged couples and their free will to enter into the marriage and barriers to marriage as well. Failing to meet those conditions can badly disturb future life of married couples. The preparation to marriage contains strict advices concerning the life of a married couples, its advantages and disadvantages. Future husband and wife are at least theoretically prepared to situations which await them in marriage. It turns over attention to important religious and sacramental facets of marriage contracted under the authority of Church rites. As a sacramental act, the rite of contracting marriage is contained in the liturgy, which grows into the source of the saint power of future husband and wife. The sacramental rite is therefore not only blessing for newly-married couple, but also passing graces, from the source which is the creator of marriages himself. No less important is the social meaning of the Catholic rite of marriage. Not only saint servant and witnesses are attending the rite, but also parents, siblings, friends and other church-goers, which pray for newly-married couples, too. That is how the new marriage is created on the secret of the Christ and the Church.<sup>4</sup>

## Forms of historical progress of contracting marriage

The form of contracting marriage undergoes its evolution in the Christian Europe. This evolution was followed by different law systems which the land of current Slovakia has been conformed to. In the end of the first millennium, Slovakia was a part of the Great Moravia, and for the most of the next millennium, it was a part of the Kingdom of Hungary. What cannot go unnoticed is that in the first centuries of its existence the Church accepted a valid civil form of contracting marriage, in terms of Roman Empire's system of laws. The Church during that time "canonised" the civil form of contracting marriage, and so the marriage entered into within

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<sup>4</sup> Cf. JOHN PAUL II: *Familiaris consortio*, n. 67: Christian marriage normally requires a liturgical celebration expressing in social and community form the essentially ecclesial and sacramental nature of the conjugal covenant between baptized persons.

the scope of Roman law was accepted as valid in terms of canon law as well. In the early times of Christianity, there appeared a phenomenon that Christians contracted their marriages only in terms of Roman laws. We can meet that phenomenon at time of persecution but also long after the Church gained its freedom. On the other hand, it does not mean that the Church, in the field of marriage, is not interested in those who became Christians as a result of their baptism. The Church more and more often applied evangelical teaching to the life of Christian married couples and the Christian family. That is why the Church never considered the marriage as a private matter of those Christians who were entering into it. Even in the first centuries, priests and thinkers were developing catechism on marriage on the basis of evangelical doctrine and guidance of St. Paul. Participation of the Church in the future life of the married couples was progressively being expressed by engaged couples asking for the tentative permission of the bishop.<sup>5</sup>

Later, the Church began to partake in the process of officiating the marriage. In that time common opinion was expectation of Christ's second arrival, which was obvious during the time of persecution, when establishment of virginity and sexual abstinence were stressed and strongly preferred. On the other hand, the fight against the heathendom forced Christians to differ in their lifestyles and the way they married. The evolution of marriage led to the celebration thereof during the Holy Eucharist. In the beginnings of the organised Church, the seven sacraments were turned into two major ones: the baptism and the Eucharist. The baptism was connected to the confirmation and the Eucharist to the reconciliation, marriage and holy orders. After the future husband and wife fulfilled all the requirements specified by civil law, during the Eucharistic liturgy they received the blessing from their bishop and Eucharist. With those acts the marriage became a sacrament and gained its meaning for the eternity. This tradition continues in the Latin Church, where the marriage is usually celebrated during the liturgy. Nevertheless, the Church respected civil marriage for long years. The command that every marriage needs to be celebrated with a special religious ceremony came from the emperor Leo VI († 912). The same emperor entrusted the Church with law and responsibility for legal status of marriage. From that time on, the marriage in Eastern Churches was officiated only with a church form. The Church gradually emancipated itself from the heathen meaning of marriage and adjusted it to the image of Christ, and so it remains to the present day. We meet different meanings of some aspects of marriage in the teaching of the Church and in the teaching of liberalized world. The Catholic mar-

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<sup>5</sup> S. HRACUNIAK: *Prawosławne pojmowanie małżeństwa*. Białystok 1994, pp. 37—50.

riage is in confrontation with its civil form. The blessed Pope John Paul II claims that the Church, follower of Christ, is not always accorded to the view of the majority.

## Desacralisation of marriage by the state executive

Until the 16th century, so until the Reformation, Church had been the only one who remained empowered to officiate the marriage in Slovakia. But under the pressure of Reformation, marriage was not considered sacral and also in the Kingdom of Hungary, where Slovakia belonged, it was under the pressure of humanism and it started to be more of a social affair and also the state started to play its role in institution of marriage. Under the influence of these trends, there were brought new elements into marriage, which were contrary to traditional church teachings. The institution of divorce affected them very deeply and was sharply untolerated in our country for a few centuries. The answer of the Church to desacralisation of marriage by Lutherans was the Council of Trent in 1563 which established that only those marriages are valid which are concluded before a priest and two witnesses in compliance with the standards and form established by the Church. But, it did not ceased to be only legal form of cohabitation between man and woman in the end of this evolution. However, the political community offered its own alternatives to marriage, which relate to jurisprudence of the so-called civil marriage.

The civil marriage represents a liberalized form of canonical marriage. At first, it is about weakening the unity and indissolubility of marriage, which are the most important characteristics according to Catholic doctrine. Particular forms of civil marriage differ in various countries, and this “civil union” adapts to liberal, social and political needs and requirements of a given country. On the other hand, many elements of civil marriage keep the character of the canonical marriage. For example monogamy, equality of spouses, free choice of engaged couple to contract marriage, the presence of two witnesses, permanent nature of marriage.<sup>6</sup> The latest trends in civil legislations of many countries, however, go to extremes. They concern the promotion of gay and lesbian relationships on the same level as marriage, which were legalized in many countries of Europe and America.

When we consider the further development of marriage celebration in Slovakia, we can see that we are trying to copy the all-European trend.

<sup>6</sup> Cf. J.R. TRETERA: *Církevní právo*. JK 1993, p. 171.



Former Austria-Hungary, that included Slovakia, was one of the Catholic countries of Europe. In spite of arrival of the Reformation, the Catholic Church in Austro-Hungary maintained the important impact.

After the the Austria-Hungarian compromise of 1867, the Catholic Church in our country lost a huge part of the social authority. Based on the laws issued in 1868, many religious schools were nationalized, a large part of the competence of ecclesiastical courts was eliminated, and they were only given the powers in matters of Catholic marriages. On the 1 October 1894, civil marriages and state registries were established in the territory of Austro-Hungary. The Kingdom of Hungary started to accept only these marriages that were contracted by the civil authority and only official notes which were from civil state registers.<sup>7</sup> Religious marriages and registers started to be important only in the religious aspect.

The situation started to be more serious after the collapse of the Austro-Hungarian Empire. The request for separation of the Church from the state was offered in the years 1918—1920 during the National Assembly of the Czechoslovak Republic. The request was not accepted because of the lawgivers from Slovakia. However, facultative civil marriage was established. It was a similar to the one which is currently in force in Slovakia. The state recognized as valid also religious and civil marriage. It is interesting that the religious and civil marriage was in fact considered to be inseparable. Facultative civil marriage meant kind of amendment for Slovakia, which was in accordance with the laws of the Kingdom of Hungary, where civil marriage was rated, but in the countries of Czech Republic, this civil marriage invalidated the religious marriage. Acceptance of the priest was not recognized as a barrier to marriage.<sup>8</sup>

## Legislative practise in the communist Czechoslovakia and in the present-day Slovak Republic

In the February 1948, in the reborn Czechoslovak Republic, as in other countries of the Soviet sphere of influence after the Second World War, the communist totalitarian regime was established. The result of it was a totally different social climate, created on the basis of the ideology of Marx and Lenin, which did not envisage a place for religion or the Church. The whole system of laws was subordinated to the communist

<sup>7</sup> Cf. J. KRAJČÍ: *Historické reflexie konfesijných vzťahov*. Banská Bystrica 2006, p. 128.

<sup>8</sup> Cf. J. ŠPIRKO: *Cirkevné dejiny IV*. Faximilné vydanie, pp. 468—469.



ideology. A significant number of laws was gradually accepted that either restricted or totally denied any manifestations of religiousness.

One of the most hurtful points of the totalitarian law was § 178 of the Criminal Code about so-called obstruction of the control over the churches and religious communities. According to this law, churches were entirely under the control of state authorities. Two years in prison threatened everyone who, in the understanding of this law, counteracted or interfered with the duty of the state controller over the churches and religious communities. Theoretically, it was a violation against the law of economic security of the churches and the religious communities number 218/1949 Zb., but in praxis this assessment was applied to innumerable spheres of church-goers' lives who, on the basis of this law, were persecuted and imprisoned. The real aim of this law was not the economic security of churches and religious communities, but the communist authorities' control over their activities. Based on the principle inscribed in the Art. 7 no. 1 of this law, the duty of religious activities was restricted by the "state agreement." So, basically, it was the permission of communist state clerk given to a specific parish that was a basis of performing spiritual activities. The priests who were active without the state agreement were punished in terms of the valid law.

When it comes to contracting marriage, communist legislative treated the religious form of officiating marriage as nonexistent. Entering into marriage in the churches and the religious communities was tolerated in secret, but according to the § 137 of the Criminal Code and after absolving the civil form of contracting marriage. Religious marriage did not have any effect on the civil legislation and was only tolerated by the state administration. Logically, after the restoration of democracy in 1989, the communist system of laws had to be amended and adjusted to value standards of democratic state. Between the first legislative changes of the restored democratic state we may count an amendment of totalitarian justice system, but particularly the changes in the field of a conscience and a religious belief. Legislation change in the form of contracting marriage happened in the time of the Czechoslovak federation with law number 234/1992 Zb. that changed the law on family number 94/1963 Zb., which resulted in religious marriages being legitimized according to the civil code. The legality of marriages based on canon law was later introduced into the Civil Code of the Slovak Republic. Then, the necessity to contract marriage in front of a register office clerk was obviated and a possibility to choose religious form of entering into marriage was provided, of course all within the law.

## Basic law agreements between civil and canon law

1. Nowadays in the Slovak Republic we may consider marriage as legislatively mixed (and based mostly on law 36/2005 Z.z. on family, and also, in terms of canon marriage law, on both codes of John Paul II). The state not only limits its authority to recording and registering of the contracted marriages, but also meets the requirements of civil-law way of the officiating valid marriages in terms of the civil law. It relates to those marriages that are contracted in the church. Because the marriage is a mixed matter, the church in matters of marriage does not only accept its competences, but also, in our circumstances, where the contracting of marriage has also a civil-law consequences, respects in its legislation upon officiating marriage also the civil-law decree and follows administrative requirements of the state.<sup>9</sup>
2. Next canonical axiom says that the Church accepts competence of civil law to the point where this law is not in conflict with the natural God's law and canonical one. For example, the Church will never accept civil legislation that allows abortion, even if this option is a part of the civil legislation of the Slovak Republic. If we discuss marriage, due to the mentioned axiom, the Church accepts consequences of the civil law concerning the civil consequences of the marriage,<sup>10</sup> so to the rights and duties of the married couple, with connection to the upbringing of offspring and the status of the parents or to its relationship to the common acquisition of the possession. On the other hand, the Church does not accept institution of the divorce, which originates in the civil law, as well as cannot accept homosexual relationships as marriages. All these laws, even though they are a part of a legislation in many countries stand in sharp contrast to the teaching and against moral and juridical axioms of the Church.

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<sup>9</sup> Fundamental agreement between the Slovak Republic and the Holy See: Čl. 1: Slovenská republika uznáva právo Katolíckej cirkvi v Slovenskej republike (ďalej len "Katolícka cirkev") a jej členov na slobodné a nezávislé pôsobenie, ktoré zahŕňa najmä verejné vyznávanie, hlásanie a uskutočňovanie katolíckej viery, slobodu pri plnení poslania Katolíckej cirkvi, vykonávanie jej kompetencií ustanovených kanonickým právom, vykonávanie vlastníckeho práva k jej finančným a materiálnym prostriedkom a spravovanie jej vnútorných vecí. Čl. 2: Svätá stolica garantuje, že Katolícka cirkev využije všetky vhodné prostriedky na mravné formovanie obyvateľov Slovenskej republiky v prospech spoločného dobra podľa princípov katolíckej náuky v súlade s právnym poriadkom Slovenskej republiky.

<sup>10</sup> Cf. D. SALACHAS: *Il sacramento del matrimonio nel Nuovo Diritto Canonico delle Chiese orientali*. Bologna 2003, p. 54.

## The basic values applying to contracting civil marriage in the Slovak Republic and canon law

As a civil legislation in the law about a family number 36/2005 and as both of the codes of the John Paul II in their introductions define legitimate institution of marriage, in which they indicate its fundamental characteristics: Marriage as a covenant between a man and a woman created to give birth to children and provide their upbringing. In the civil legislation there is a visible elementary advancement, because previous totalitarian family law, provided by the law number 265/1949 Sb. and 94/1963 Zb., did not define the concept of marriage. From the introduced religious and civil legislation stems that marriage is only a covenant between a man and a woman, so there cannot be a valid marriage between two persons of the same sex. Moreover, not every cohabitation of a man and a woman can be considered a marriage. Because there is another assessment which says that the marriage has to be contracted in a way foreseen by law. From thus contracted marriage result legal consequences for married couples and their offspring relating to personal and proprietary relationships.<sup>11</sup> In the civil law on a family number 36/2005 Z.z. we deal with a concept of family. It is defined as a community of parents and children. Those are personal values and so it comes as no surprise that also in this point both civil and religious legislation meet. John Paul II in his apostolic exhortation literally mentions the family as one of the most valuable treasures of the mankind.<sup>12</sup> The Catholic and the civil legislation meet in another part as well. It is part relating to the coequality of a man and a woman, husband and wife in marriage. The theological interpretation takes into accounts the natural differences between a man and a woman. The equality of husband and wife is limited by these natural differences. The equality of husband and wife in the religious and civil legislation results from the Christian origins of our culture and the God's appearance. The Catholic marriage creates a coequal communities between husbands and wives while respecting different natural features of a man and a woman who, being mutually complementary, realizes the ideal of full service. The axioms of this kind see marriage as an equal community of a man and a woman, and we can find them in the teaching of St. Paul the Apostle, who in his Epistle to the Ephesians says: "Submit to one another out of reverence for Christ. Wives, submit to your husbands as to the Lord. [...] Husbands,

<sup>11</sup> Cf. B. PAVELKOVÁ, G. KUBÍČKOVÁ, V. ČEČOTOVÁ: *Zákon o rodine, komentár s judikatúrou*. Šamorín 2005, p. 13.

<sup>12</sup> JOHN PAUL II: *Familiaris consortio*, no. 1.

love your wives, just as Christ loved the Church and gave himself up for her [...].”<sup>13</sup> In order to emphasise this aspect of canonical and civil marriage, it is good to remind that members of our cultures come into contact with culture of Islam, in which woman is totally subordinated to the man and his will. On the other hand, equality of a man and a woman in the marriage also means the ban to any domestic physical or mental violence, which the spouses may inflict on each other. Marriage is in both the legislations (civil and canonical) also the foundation of the family, that is the community life of parents and children.

### Legal form of contracting marriage: obligatory civil marriage

According to Slovak law and canon law, valid marriage can only occur between a man and a woman and it is virtually the only form of cohabitation of a man and a woman which is regulated by law. According to the Slovak legal system, marriage may be contracted in two ways. It can be officiated in front of a state authority, particularly a mayor or a member of local council. Such a marriage has only the civil effect. It may also be contracted in front of the member of the Church or religious community in terms of its own canonical law. Then, it has not only civil, but also canonical effect. Thanks to the agreement between the government of the Slovak Republic and the Holy See the sacred marriage can be contracted which is valid even according to civil legislation.

However, there still remains a question if there could be a marriage officiated only in a sacred form without acknowledgement from a register office. It is interesting that neither canon nor civil-legal literature in Slovakia discuss this issue. The lawmaker only claims that marriage is valid according to civil law of the Slovak Republic and “contracted with agreeing declaration of the engaged couple” according to sacred dictation, or according to valid civil legislation. This issue is not discussed further. Therefore, the situation remains unclear. Even the opinions of the civil-law attorneys are sometimes divergent. There are opinions that it is possible, according to valid legislation, to contract a sacral marriage without its registration in the register office. Others point at the statutory text of family law number 36/2005 Z.z. that does not mention different option than a civil registration of a marriage. Fortunately, the law number 154/1994 Z.z. on register offices explains in its § 27 that a member of the

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<sup>13</sup> Full text: Eph 5, 22—33.

Church contracting a marriage is obliged to provide a register office with a memorandum of marriage not later than three days after the marriage was contracted.

Due to the legislation currently in force and the lack of other legal amendments of civil law in this field, we may say that theoretically it is possible to contract sacral marriages without their registration in the register offices. However, such marriages have no civil-legal effect. It is for example connected to property rights relations, or relations towards alternative heirs, as well as those between parents and children. This implies that such a religious marriage would be against civil rights in case of cohabitation, therefore a non-binding co-existence of a man and a woman. Additionally, such procedures appear as signs of speculation, which would put the Church in a bad light. Based on the civil legislation, the Church ensures the holdback principle of civil and glorious contracting of marriage. The publicity of contracting marriage is ensured by the presence of two witnesses who have to assist in the ceremony of marriage.<sup>14</sup>

The priest who conducts the rite of marriage is entrusted with a great responsibility consisting in the fact that during the ceremony not only the canonical, but also civil-law requirements have to be met. His duty is to prepare documents and charts which are needed during the marriage ceremony. If the bride and groom are not baptized in the parish where the marriage has to be contracted, they have to provide the priest with their certificates of birth that were issued not earlier than six months before the priest has to check the comments section of the said certificates. The entering into marriage is added to those comments, or his consecration, if he was consecrated, as a deacon or presbyter, and a monastery profession etc. On the basis of the certificates of birth and in cooperation with the bride and groom they will prepare a marriage memorandum. If a widow or a widower is willing to enter into marriage a certificate of death of a wife or a husband has to be provided. If the death of the spouse cannot be proven by the said document, a process concerning the dead spouse has to be officiated according to can. 1383 CCEO, so can. 1707 of the CIC 1983.

The marriage memorandum has to be prepared and edited according to the preliminary version thereof. None of the columns of memorandum can be erased or simplified. The press for effectuation of civil memorandum are mostly taken from the register of the place, where marriage is to be contracted. The priest in the field of civil-law system has to adopt and

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<sup>14</sup> Cf. B. PAVELKOVÁ, G. KUBÍČKOVÁ, V. ČEČOTOVÁ: *Zákon o rodině, komentár s judikaturou*. Heureka 2005, p. 16.

work system of the register office employees. It is worth to notice that the Church, according to canons 1117 CIC and 834 § 1 CCEO, demands that the juridical form of contracting marriage remains each time, if at least one of the spouses going to enter into marriage is baptized in or accepted to the Catholic Church.

Besides, it is a necessary and serious duty of the person going to get married that he or she performs every action required, for a marriage to be valid. In cooperation with register office he or she has to prepare a memorandum that register office asks for, fill them in and, after contracting of the marriage and signing by nupturients and witnesses, deliver them during three subsequent days to the register office. It has to be remembered that according to civil law, marriage has to be contracted in the register office of the spouses' abode. During the ceremony, because of its civil effects, the engaged couple is required to present these documents in the church: certificates of birth, ID cards, certificates of death of the widow's or widower's dead spouse. In case of divorced persons, the documents of divorce must be presented. Because marriage is going to be officiated according to religious laws too, civil divorce documents must also be shown, including the judgement of the ecclesiastical court of the second instance declaring the previous marriage as null and void. If it is marriage dissolved by secular authority and previously legalized by it, they need to enter into the new marriage in front of the Church license of the local ordinary or the local hierarch.<sup>15</sup>

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<sup>15</sup> CCEO: can. 984 § 1. Besides the Roman Pontiff, a hierarch is understood to mean, first of all, a patriarch, a major archbishop, a metropolitan who presides over a Church *sui iuris*, and an eparchial bishop, as well as one who for a time succeed these in governance in accordance with the law. § 2. Besides the Roman Pontiff, local hierarchs are the eparchial bishop, the exarch, the apostolic administrator, as well as those who for a time legitimately succeed them in governance in their absence, also the protosyncellus and the syncellus; however, the patriarch, the major archbishop, the metropolitan who is head of a Church *sui iuris*, as well as those who for a time succeed them in governance in accordance with the law, are local hierarchs only with regard to the eparchy which they govern, with due regard for can. 101. § 3. Major superiors in institutes of consecrated life, who have ordinary power of governance, are also hierarchs, but they are not local hierarchs. CIC 1983: can. 134 § 1. In addition to the Roman Pontiff, by the title of ordinary are understood in the law diocesan bishops and others who, even if only temporarily, are placed offer some particular church or a community equivalent to it according to the norm of can. 368 as well as those who possess general ordinary executive power in them, namely, vicars general and episcopal vicars; likewise, for their own members, major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right who at least possess ordinary executive power. § 2. By the title of local ordinary are understood all those mentioned in §1 except the superiors of religious institutes and of societies of apostolic life.

According to civil law, the engaged couple in front of ecclesiastical servant have to make a mutual statement that they know each other's health and there are not circumstances which should prevent contracting the marriage between them. At the same time they have to agree on their common surname. Surnames they can choose from are the other spouse's one, or they can retain their own surnames. At the same time they should declare which surname their children will have.

In order for the marriage to be valid in terms of civil law, it has to be legalised in the church or in a religious community registered in the Ministry of Culture of the Slovak Republic. Marriage contracted in an unregistered church or religious community is not valid according to the civil law. For sake of completeness we would like to introduce the list of all the registered churches and religious communities in the Slovak Republic (in alphabetical order): Apostolic Church, Bahá'í Community in Slovak Republic, Baptists, Seventh-day Adventist Church, Church of Brothers, Czechoslovak Hussite Church, Church of Jesus Christ of Latter-day Saints, Evangelical Methodist Church, Evangelical Church of the Augsburg Confession, Greek Catholic Church, Christian Communities, Jehovah's Witnesses, New Apostolic Church, Eastern Orthodox Church, Reformed Church, Roman Catholic Church, Old Catholic Church, Central Union of Jewish Religious Communities in the Slovak Republic.<sup>16</sup> There is no possibility of contracting marriage in other, unregistered churches and religious communities in the Slovak Republic.

### Canonical consequences stemming from the termination of cohabitation between spouses previously married in the church and later civilly divorced

Not only religious, but also civil legal system supports permanence of the marriage institution. However, while the Catholic Church speaks of genuine indissolubility of marriage, civil legal system recognizes and uses the institution of divorce, which in fact means the termination of marriage. The increasing number of divorces and entering into new cohabitation by the believers, and also contracting only a civil marriage is contrary to confession of the baptized believers, who should "marry into Christ." According to statistics, nowadays more than 40% of marriages in Slo-

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<sup>16</sup> See: <http://www.culture.gov.sk/posobnost-ministerstva/cirkvi-a-nabozenske-spolocnosti-registrovane-cirkvi-a-nabozenske-spolocnosti-f9.html>.



vakia ends up in divorce. Additionally, the number of divorces has been increasing over the recent years. Many divorces take place between Catholic previously legalizing their marriages in the Church. This is why the both types of marriage — religious and civil one become a dilemma of conscience amongst the divorced believers. Despite the fact that the society considers their marriage to be dissolved, from the point of view of canon law it remains valid. Canonical consequence is the loss of ability to receive the sacraments, especially the Eucharist. Their situation is considered as a severe infringement of the indissolubility of marriage, and if they live in the new relationship legalized as a civil marriage, this position is considered as *advowtry*.

But the Church considers divorced Catholics as its members and is willing and trying to help them. The Church allows “the innocent side” to receive the sacrament, but only if there is no sexual relationship. In practice in Slovakia, the innocent side requests the permission to accept sacraments referring to his or her own parish priest, or other priest who knows their situation well. This permission is usually granted without any problems. But it cannot be obtained in the internal forum in this situation of the Church.

The second way is resolving their case by the ecclesiastical court. In practise, it means that the injured party can ask the Catholic court for a declaration of invalidity of marriage. Nowadays, this way solution is relatively widespread. Each diocese of the Latin and the Greek Catholic eparchy has set up its own tribunals and helps believers to deal with matrimonial cases.

## Conclusions

Although the present-day liberal communities try to introduce new untypical forms of marriage, such as the “marriage” of homosexual couples, it remains certain that classical European marriage between a man and a woman is only natural way of cohabitation that enables the human being to realize his or her humanity fully. According to the new trends, the Catholic Church and Slovak society have to fight, too. The fact that the current legal system recognizes the Catholic Church marriages as valid, is not only because of the change of communist totalitarian laws, but it also influences very positively the lives of normal people. This is supported by the fact that civil legislation in the law 36/2005 Z.z. on family echoes the rules of canon law and also supports the positive trends in community of

Slovakia. It does not change the fact that civil legal system enables divorce of married couples. However, there exists a positive trend indicating the cooperation between the Church and the state in order to achieve the common goal also in other social and political institutions in Slovakia.

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FRANTIŠEK ČITBAJ

### Civil Effects of Contracting Canonical Marriage according to the Laws of the Slovak Republic

#### Summary

The beginning of democracy after 1989, and consequently the beginning of independent Slovak Republic brought new atmosphere into the life of the entire society. It was reflected in the relationship between Church and the state. While communistic regime during four decades fought against all religions, new democratic society is looking for new ways of cooperation between the Church and the state. It reflected in many

areas. The first concrete result of this cooperation is recognition of those marriages that were entered into in Church and also according to system of law in Slovak Republic. This legislation is in law 36/2005 Z.z. It is the result of mutual negotiations between the Government of the Slovak Republic and the Holy See and its result is interstate agreement on development of cooperation between state and the Catholic Church in the Slovak Republic. It was accepted on 24 November 2000. This agreement in that time included valid legislation, under which, the civil legislation recognized as valid those marriages that were contracted according to canon law. It began new circumstances and legal structures that are theme of this paper.

FRANTIŠEK ČITBAJ

### Effets civils de la conclusion du mariage canonique selon le droit de la République slovaque

#### Résumé

En 1989, toute la société slovaque a subi d'énormes changements qui ont influencé les relations entre l'État et l'Église, ou encore les conclusions des mariages. Après 1948, quand les communistes se sont emparés du pouvoir en Tchécoslovaquie, l'État communiste a établi un système où seulement les mariages civils étaient considérés comme légitimes. Cependant, les mariages religieux étaient acceptés à contrecœur. Les gens qui travaillaient dans la gestion budgétaire ou dans l'enseignement ne pouvaient pas conclure de mariages religieux sous la menace d'un licenciement. C'est juste après 1989 que la situation a changé. En 2001, on a conclu un accord international entre le gouvernement de la République slovaque et le Saint-Siège qui, encore que ne soit pas un concordat, réglementait les questions fondamentales dans les relations État-Église. Sur sa base, la conclusion du mariage selon le droit canonique a les effets civils inclus dans la législation de la République slovaque, dans la loi sur la Famille no 36/2005 Z.z.

**Mots clés:** coopération, Église et État, société démocratique, mariage, droit canonique, loi sur la Famille no 36/2005 Z.z.

FRANTIŠEK ČITBAJ

### Effetti civili della contrazione del matrimonio canonico nell'ordine giuridico della Repubblica Slovacca

#### Sommario

Il 1989 diede inizio in tutta la società slovacca ad enormi trasformazioni che si ripercossero anche sui rapporti tra lo stato e la Chiesa, come pure sull'istituzione della contrazione dei matrimoni. Dopo il 1948 lo stato comunista, in cui i comunisti in Cecoslovacchia presero potere, instaurò un sistema in cui erano considerati legali soltanto i matrimoni contratti secondo il diritto civile. Si guardava con avversione invece alla contrazione dei matrimoni ecclesiastici. Le persone che lavoravano nel cosiddetto settore

pubblico o nel sistema scolastico non potevano contrarre matrimoni ecclesiastici perché rischiavano di perdere il lavoro. Dopo il 1989 la situazione cambiò. Nel 2001 è stato stipulato tra il governo della Repubblica Slovacca e la Sede Apostolica un accordo internazionale che, anche se non era un concordato, regolava le problematiche fondamentali ed i problemi nei rapporti stato-Chiesa. In base allo stesso la contrazione del matrimonio secondo il diritto ecclesiastico ha effetti civili previsti nella legislazione della Repubblica Slovacca, nella legge sulla Famiglia n. 36/2005 Z.z.

**Parole chiave:** collaborazione, Chiesa e stato, società democratica, matrimonio, diritto canonico, legge sulla Famiglia n. 36/2005 Z.z.