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## **WORKS OF THE POLISH EPISCOPAL CONFERENCE ON A NEW REGULATION ON PREPARATION FOR CANONICAL MARRIAGE (PART II)**

### **1. Defects of matrimonial consent**

The Polish Episcopal Conference (“PEC”) addresses matrimonial consent in Part VI of the Decree<sup>1</sup> (no. 61-69). They correspond to no. 65-70 of the previous Instruction.<sup>2</sup> The purpose of the new regulations, and hence “an important task of the pastor of souls is to verify the authenticity of matrimonial consent to be given by the parties when entering marriage.” The new provisions essentially avoid justification through reference to the experience of ecclesiastical tribunals, as is the case in the currently existing regulations (no. 66-67).

This positive intention to marry is also expressed in the pastor’s commitment to make sure that the parties wish to conclude a real marriage “in line with God’s plan, and therefore they want to commit themselves by irrevocable matrimonial consent to live a life in inseparable love and unconditional fidelity and readiness to procreate and raise children” (no. 61), and only then the pastor is supposed to verify that “it will not be prevented by mental incapability, error, deceit, simulation, force or making the marriage dependent on any condition” (ibid.).

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<sup>1</sup> On 17 March 2017, the Polish Episcopal Conference adopted a new General Decree on Conducting Canonical and Pastoral Dialogue with the Betrothed Prior to Concluding Canonical Marriage [henceforth cited as: Decree].

<sup>2</sup> Polish Episcopal Conference, *Instrukcja o przygotowaniu do zawarcia małżeństwa w Kościele katolickim* (5.09.1986), “Akta Konferencji Episkopatu Polski” 1 (1998), no. 1, p. 85-137 [henceforth cited as: Instruction].

This indication of the priorities of pastoral dialogue helps avoid the impression that the drawing up of a pre-marital report is a means to collect evidence to be used prospectively by an ecclesiastical tribunal in the event of challenging the validity of the marriage. According to no. 62 of the Decree, only “solid grounds” entitle the pastor to apply more detailed and specialised procedures.

In the case of “justified and serious” doubts as to the mental capability of either party due to mental illness, immaturity, addictions or other serious personality disorders, the pastor is, first of all, required to hold a “conversation with the two parties together and separately while highlighting the perceived threat,” in which he can explain the threat.

The legislator also indicates three possible situations: the parties abandon the idea of contracting marriage, which puts an end to the procedure; in a dialogue with the pastor, the parties have managed to remove any previous doubts, and the pastor can continue preparation for marriage; the parties uphold their intention to marry despite the fact that serious doubts remain as to the psychological capability of one of or both parties [Dzierżon 2002; Paździor 2009]. In the latter case, the provisions of the Decree oblige the pastor to report the matter to the local bishop ordinary, so that he may decide whether to permit pastor’s assistance at the conclusion of the marriage or forbid it temporarily (can. 1077 § 1).<sup>3</sup> The decision of the local ordinary should be based on a careful description of the matter and any accompanying circumstances provided by the pastor, any medical documentation available and an expert opinion based on the principles of Christian anthropology, which is mandatory in such a case. However, the natural right to marry remains the overarching principle (can. 1058) [Góralski 2015, 23-38].

For the first time, the provisions of the PEC (no. 63) raise the issue of the current disturbance of party’s or parties’ consciousness to the extent that prevents them from accountable action when they are supposed to give their matrimonial consent. This may include cases of being under the influence of alcohol or other intoxicants. Should this be the case, the pastor or deacon should withhold any assistance.

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<sup>3</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [henceforth cited as: CIC/83].

The following sections of the Decree contain provisions regarding the content of matrimonial consent and its unconstrained expression.

The legislator begins this section of the Decree with contracting marriage inveigled by deceit (can. 1098) [Majer 1998, 115-47]. Of key importance in this respect is for the pastor to hold a dialogue with the parties separately. The Decree also lists typical circumstances in which deceit may be used which, by its very nature, can seriously disrupt the partnership of conjugal life. The legislator mentions, for example, concealment of infertility or other serious diseases, especially infectious and hereditary ones, mental illnesses, addictions, misrepresentation as to the paternity of a conceived child, concealment of extramarital offspring, concealment of perpetrating a serious offence or other serious moral or financial burdens (no. 64).<sup>4</sup> This list is not closed.

In the event of disclosure and recording of such circumstances, the pastor should postpone further marriage preparation procedure while offering the parties some time (at least a few days) “to clarify the matter to each other” and possibly resume the preparation if the parties wish to continue with the conclusion of marriage. Such circumstances may also be disclosed during marriage banns.

Admittedly, the legislator does not say so, yet it seems obvious and necessary for the pastor after detecting deceit to confront the parties with each other and decide to continue or postpone further preparation.

Further three sections of the Decree are devoted to acceptance of vital goals and attributes of marriage (no. 65-67).

However, the priest should bear in mind that only the explicit disagreement with one of the essential elements of matrimony planned by the parties has a bearing on its validity. Mere expression of general judgements, e.g. regarding admissibility of divorce in general or non-acceptance of the Catholic principles of sexual ethics, is not yet an impediment to entering a canonical marriage [Góralski 1998, 89-114]. Only a clear reference of such views to the parties’ own marriage and explicit

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<sup>4</sup> Cf. Franciscus PP., Litterae apostolicae motu proprio datae *Mitis Iudex Dominus Iesus* quibus canones Codicis Iuris Canonici de causis ad matrimonii nullitatem declarandam reformantur (15.08.2015), AAS 107 (2015), p. 958-70, Ratio procedendi in causis ad matrimonii nullitatem declarandam, Art. 14.

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rejection of inseparability (but not through separation, see no. 66), faithfulness, procreation [Świto 2003] or the sacramental nature of marriage [Leszczyński 2017, 123-36] can be of importance for its validity.

If during the pastoral dialogue the parties make statements questioning their intentions, the pastor should, in addition to the questions provided for in the report, also ask supplementary questions while carefully record the parties' responses and explain that "these elements are indispensable for contracting marriage validly and their exclusion would mean its invalidity" (no. 65). Also, in the case of non-Catholics (baptised and non-baptised), their intentions concerning some essential elements of marriage should be tested as resulting from natural or positive law of God, which they cannot exclude either (no. 67-77).<sup>5</sup>

If one of the essential elements of marriage is explicitly excluded, the pastor should make the parties aware that "in this state of affairs, it is not the Church but they themselves create an impediment to complete the rite that they ask for (see John Paul II, Apostolic Exhortation *Familiaris Consortio*, no. 68)," and, therefore, no such marriage can be contracted in the Roman Catholic Church.

no. 68 of the Decree is devoted to marriage contracted subject to a condition. After discussing the option of attaching a condition in accordance with can. 1102 § 2 CIC/83, the legislator reminds of the total prohibition of attaching conditions by Eastern Catholics (can. 837 CCEO) [Gołębiowska 2012, 56-87].

The last section of this part of the Decree concerns the voluntary nature of contracting marriage (can. 1103)<sup>6</sup> while drawing attention to the possibility of "restriction of freedom" in certain situations, "for example, due to unfair parental influences or pressure of the environment" (no. 69).

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<sup>5</sup> Cf. *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), p. 1045-363 [henceforth cited as: CCEO], can. 780; Pontificium Consilium de Legum Textibus, *Instructio servanda a tribunalibus dioecesanis et interdioecesanis in pertractandis causis nullitatis matrimonii Dignitas connubii* (25.01.2005), "Communicaciones" 37 (2005), p. 11-92 [henceforth cited as: DC], Art. 4 § 1.

<sup>6</sup> Absence of force as a prerequisite for consent of natural origin also applies to non-Catholics, as in: Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *Responsiones ad proposita dubia* (25.11.1986), AAS 79 (1987), p. 1132, no. I.

## 2. Mixed and similar marriages<sup>7</sup>

Part seven of the Decree containing 25 sections discusses mixed and similar marriages (no. 70-94) [Nowicka 2014; Salij 2016, 107-18]. In the previous 1986 Instruction, the corresponding section included 23 sections (no. 71-93). The Decree does not repeal the Instruction of the Polish Episcopal Conference on the Pastoral Care of Marriages of Various Church Affiliation of 14 March 1987.<sup>8</sup>

The first three sections of the Decree (no. 70-72) refer to mixed marriages in the strict sense, i.e. marriages between a person of the Roman Catholic persuasion and a baptised person who has never belonged to the Roman Catholic Church. To begin with, the legislator recalls the arguments for prohibiting such marriages without the permission of the local bishop ordinary, “The Church grants permission for such marriages if there is a just and reasonable cause and the real danger of losing the Roman Catholic faith by the Catholic spouse is excluded, and his or her rights to practise their faith and raise children is guaranteed” (no. 70) [Adamowicz 2014, 65-80].

Next, the Decree encourages pastors “to put emphasis on the positive aspects of what is shared by Christian married couples, that is, the life of grace, faith, hope and love, as well as other internal gifts of the Holy Spirit. While faithfully continuing their Christian engagement and putting it into practice, each of the spouses should strive for what can lead to their unity and harmony without bridging the actual differences and avoiding the attitude of religious indifference” (no. 71, 75-77). Also, the encouragement for the Roman Catholic pastor “to establish, as far as possible, contact with a minister from another Church or Ecclesial Community even if it may be challenging” is a novelty (ibid.). A similar stimulus is provided to the parties (no. 80). This is relevant for ecumenical reasons but also important

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<sup>7</sup> The doctrinal basis for this part of the Decree: Pontifical Council for Christian Unity, *Directory on the implementation of principles and norms regarding ecumenism* of 25 March 1993, Art. 143-60.

<sup>8</sup> Polish Episcopal Conference, *Instrukcja w sprawie duszpasterstwa małżeństw o różnej przynależności kościelnej* (14.03.1987), in: *Dokumenty duszpastersko-liturgiczne Konferencji Episkopatu Polski 1966-1998*, ed. L. Adamowicz, Cz. Krakowiak, Polihymnia, Lublin 1999, p. 195-207.

because the requirements for the validity of marriage imposed on one of the parties by a non-Catholic denomination should be verified by an authorised and knowledgeable person (minister) (CCEO, can. 780; DC, Art. 4 § 1).

On the other hand, the parties are encouraged to “try to learn more about the religious beliefs of the other person and the teachings and religious practices of their Church or Ecclesial Community” (no. 72).

In the two sections that follows, the legislator recommends the application of “corresponding principles [...] to marriages concluded by Catholics with non-baptised persons (can. 1086 § 2),” while making a reservation that “differences, and therefore also possible threats, between the spouses who are not united by faith in Christ, are much graver than in a Christian marriage,” “therefore, in the case of marriage with a non-Christian, there is a diriment impediment of disparity of cult, and such a marriage would be invalid without dispensation of the local bishop ordinary” (no. 73). This section also refers to the relevant forms (12a and 4).

As a category of marriages similar to the mixed ones, the legislator, referring to can. 1071 § 2 CIC/83, discusses conjugal partnerships established by “Catholics who defected from the Church, baptised Catholics declaring themselves non-believers, and those Catholics who notoriously reject the Catholic faith” (no. 74 and 103), also referring to the relevant forms (12b and 5).

The legislator warns against refusal to “admit before another party that for both of them the contracted marriage entails the same requirements as to indissolubility and fidelity, regardless of the outlook of the non-Catholic or non-believer, and therefore it will be one and indissoluble for both even if the non-Catholic or non-believer had a different opinion,” and “if both parties are baptised, their marriage will also be a sacrament,” regardless of the doctrine of the non-Catholic denomination (no. 77).

Another two sections of the Decree are devoted to the confirmation of baptism (no. 78) and unmarried status of the non-Catholic party (no. 79) [Adamowicz 2008, 39-62; Jakubiak 2013, 25-72]. The legislator recommends that all doubts be removed as to valid baptism by imposing the obligation to obtain *ad cautelam* dispensation from the impediment of disparity of cult if doubts still remain and the non-Catholic party does not

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express the will to enter into full communion with the Roman Catholic Church, which, in accordance with can. 869 § 2 CIC/83, would require conditional baptism.

An extremely important matter, referred to in no. 79, is a thorough investigation of the non-Catholic party's unmarried status. The legislator reminds that a non-Catholic's single status cannot be recognised on the basis of a final divorce decree or a decision of the authority of the Church or non-Catholic Ecclesial Community or on the basis of a baptism certificate issued outside the Roman Catholic Church (more on this matter also in no. 21, 22 and 42 of the Decree) and states that "in such cases, the unmarried status of the party of a mixed marriage must be established by applying the regulations of canon law."<sup>9</sup>

A particularly sensitive issue, also of an ecumenical nature, arises when, while preparing for marriage, a baptised person other than Roman Catholic, expresses a desire to enter into full communion with the Roman Catholic Church.<sup>10</sup> In such a case, the pastor should pay attention to the fact whether this decision is actually free (especially not forced by the pastor himself) and mature (no. 81).

On the other hand, if an unbaptised person asked for baptism, the pastor should take care of their proper preparation in the catechumenate, hence it will not always be possible for such a person to be baptised before entering marriage. In such a situation, a dispensation is required from the impediment of disparity of cult; in the relevant request for dispensation, it should be noted that the unbaptised person is a catechumen. Interestingly, the liturgical book provides for the rite of marriage with a catechumen,<sup>11</sup>

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<sup>9</sup> See Supremo Tribunale della Segnatura Apostolica, *«Declaratio» sull'ammissione dei fedeli della Chiesa ortodossa romana alla celebrazione di un nuovo matrimonio nella Chiesa cattolica* (20.10.2006), "Communications" 39 (2007), p. 66-67.

<sup>10</sup> See Pontificium Consilium ad Unitatem Christianorum Fovendam, *Directorium oecumenicum noviter compositum* (25.03.1993), AAS 85 (1993), p. 1039-119, Art. 23.

<sup>11</sup> *Obrzędy sakramentu małżeństwa*, Księgarnia św. Jacka, Katowice 1996, "Wprowadzenie teologiczne i pastoralne," no. 36; Chapter III: "Obrzęd zawarcia małżeństwa między osobą należącą do Kościoła katolickiego i niechrześcijaninem lub katechumenem," p. 54-64.

and the marriage itself is valid as a sacrament with subsequent baptism and does not require any legal or liturgical supplementation.<sup>12</sup>

The conditions for granting permission to contract a mixed marriage and marriage with a person who has defected from the Catholic faith and for dispensation from the impediment of disparity of cult remain unchanged compared with the previous regulations (no. 82). According to can. 1125, 1071 § 2 and 1086 § 2 CIC/83, the Catholic party should always declare in writing that “he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all in his or her power in order that all the children be baptised and brought up in the Catholic Church” (no. 82 a) [Nitkiewicz 2007, 67-76; Adamowicz 2014, 65-80]. Waiver of the requirement to make a promise regarding the upbringing of children is only justified by the age of the fiancée or fiancé. The legislator perceives these obligations as instruments “which the legal order gives to pastors, so that potential threats underlying the prohibition of marriages of different cult may be excluded or at least reduced” (no. 83).

Next, the legislator provides the content of the promise that is required of a person who has formally or actually defected from the Catholic faith. Such a person “should make a promise in writing in the presence of witnesses that he or she will not prevent the Catholic party from keeping up and practising faith and from having their children baptised and brought up in the Roman Catholic Church” (no. 82 b).

On the other hand, as for persons who have never been Catholic, they should be notified “in due time of the promises made by the Catholic party, so that he or she is aware of the content of the promise and the obligation assumed by the Catholic party” (ibid.). Finally, both parties “should be instructed on the purposes and essential attributes of marriage that none of the parties may exclude” (no. 82 c). What is meant here is the requirements stemming from natural law and God’s positive law.

Only after meeting the above conditions and after acknowledging a just and reasonable cause (no. 82), such as “serious intention to marry, which includes, among other things, the spiritual good of the parties and their

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<sup>12</sup> Franciscus PP., *Adhortatio apostolica post-synodalis Amoris laetitia de Amore in Familia* (19.03.2016), AAS 108 (2016), p. 311-446, no. 75.



offspring,” the competent local bishop ordinary will grant dispensation or permission.

Since the written form of declarations is generally required, it was decided that, as before, “both the Catholic and non-Catholic party sign statements and promises (Form 4 or 5) in triplicate. The pastor attaches one copy of each of these declarations to the pre-marital report; the other is sent to the diocesan curia together with a request for permission or dispensation; the third copy is delivered to the Catholic party” (no. 87).

In specific cases, however, there may be difficulties, both from the Catholic and non-Catholic side.

In the event that the Catholic side refuses to make the required declaration, the legislator requires the pastor “to state firmly that this is an order of faith arising from God’s law” (can. 209 § 1 and 226 § 2 CIC/83) and “explain the meaning of the content of the declaration: it means that, with the help of God’s grace, the Catholic party will fulfil the obligations arising from baptism while avoiding anything that could threaten the Catholic faith, while, as regards baptism and the Catholic upbringing of children, he or she should do everything which is within their real possibilities and in conscience while respecting the religious freedom and conscience of the other parent, preserving the unity and durability of the marriage, and maintaining the family communion” (no. 83). In the case of a firm refusal to make the said declaration, “the pastor will refrain from applying for permission,” because “in such a case, the marriage cannot be concluded” (ibid.).

As regards the non-Catholic party, there may be three basic attitudes. The first and most desirable is to confirm with their own signature that they have received information about the declaration made by the Catholic party. Second, the party may refuse their signature having received the relevant information. If so happens, the pastor should certify the fact of informing the non-Catholic party and should mention that fact in a request for dispensation or permission (no. 84).

The most challenging situation arises “when the non-Catholic party, having learned about the declarations of the Catholic party, clearly declares that he or she will do everything to prevent them from being implemented” (no. 85). In such a situation, after adequate instruction, “the pastor tries to

investigate thoroughly the reasons for such a stance of the non-Catholic party and presents the case to the local bishop ordinary” (ibid.).

The same course of action is necessary “when a Catholic, who has formally or practically defected from their faith, refuses to sign their declaration” (ibid.).

In each of these cases, the matter should be referred to the local bishop ordinary for determination, and “exceptional cases [...] may be referred to the Congregation for Divine Worship and the Discipline of the Sacraments” (ibid.).

After interviewing the parties and collecting the appropriate obligations and declarations, the pastor, on behalf of the future spouses, submits a request for dispensation or permission to the local bishop ordinary. Such a request should “contain accurate personal data of the parties, a valid reason for the dispensation, the name of the religious community of the non-Catholic, if he or she belongs to any, and a short report on the completed pastoral dialogue. The pastor should also indicate any difficulties, if they arise, concerning baptism, unmarried status or promises and declarations made by the parties. A copy of the declarations made by the Catholic party should be attached together with the other party’s signature confirming their acceptance or declarations when it comes to persons who have defected from the Catholic Church” (no. 86). To complete this formality, Forms 4, 5, 12a, 12b can be used attached to the Decree.

A novelty in the Decree is the pastor’s obligation to deliver to the curia the entire written report of canonical and pastoral dialogues along with all attachments (including the “certificate” from the Registry Office). After verification of the documents, the curia should send the report back to the parish together with the granted permission or dispensation or a justification of their refusal (no. 87). It should also be noted that the decision of the local bishop ordinary may be subject to recourse in accordance with the provisions of ecclesiastical administrative law.

### 3. Contracting a mixed marriage and marriage with a non-baptised person

Further sections of the Decree (no. 88-94) concern the liturgical form of contracting marriage and possible dispensation from the canonical form.

As regards the liturgical form, the legislator confirms the obligation to use up-to-date liturgical books and the proper rite. Celebrating mixed marriages and marriages with a non-baptised person outside Mass is a rule. The local bishop ordinary is authorised to permit a marriage during Mass only if it is contracted by a baptised person, and if he or she belongs to an Eastern non-Catholic church, such permission is granted by virtue of law and allows for the option of the Eastern non-Catholic to receive holy communion during the celebration (no. 88). As regards holy communion in other cases, the legislator refers to can. 844 (*communicatio in sacris*). When contracting marriage with a non-baptised person, “the marriage celebration cannot take place during Mass, and the local bishop ordinary is not authorized to license it” (*ibid.*).

In a Catholic celebration, at the parties’ request, the bishop ordinary may allow the participation of “a minister from the Church or Ecclesial Community of the non-Catholic party [...]” that is, “to to the reading at Mass, to say a few words of advice and encouragement (but not a homily) and a prayer of blessing” (no. 89).<sup>13</sup> However, the only official witness is a duly empowered Catholic priest or deacon.<sup>14</sup>

Because “it is forbidden to have another religious celebration of the same marriage (can. 1127 § 3)” (no. 93), and in some cases and for vital reasons (among them: preserving family harmony, obtaining parental consent to marry, recognition of a special religious commitment of the non-Catholic party or their family relationship with the minister of another Church or Ecclesial Community) marriage with a non-Catholic cannot be

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<sup>13</sup> See *Directorium oecumenicum*, Art. 158.

<sup>14</sup> For more on the subject, see *Directorium oecumenicum*, Art. 127: “A Catholic minister may be present and take part in the marriage ceremony concluded by virtue of the rules by Eastern Christians or by two persons, one of whom is a Catholic and the other an Eastern Christian in an Eastern temple if he has been invited by the competent authority of the Eastern Church and provided that he complies with the following standards governing mixed marriages, where they apply.”

concluded in the Catholic form, “the local bishop ordinary of the Catholic party may, having consulted the ordinary of the place where the marriage will be contracted, dispense the Catholic party from maintaining the canonical form of marriage” (no. 90).<sup>15</sup>

It should be noted that *de facto* dispensation from the canonical form only “replaces” the celebration as such, while the pastor is obliged to conduct the canonical and pastoral dialogue and secure all the necessary dispensations or permissions (no. 91).

Having received the dispensation, the parties should conclude the marriage “by observing, in order to contract validly, some public form of celebration,” especially the religious form of the denomination of the non-Catholic party or a civil form (no. 92), and then the Catholic spouse should also attend to having the marriage certificate prepared and recorded in the relevant Catholic parish register. The legislator does not specify whether that parish should be the one in which the marriage was actually contracted or the one in which the canonical and pastoral dialogue was held before. It seems that the latter solution is more practical. In this case, the marriage certificate is drawn up “based on an appropriate document confirming the marriage. The marriage certificate is signed at least by the Catholic spouse and the parish priest” (no. 94).

#### **4. Effects of marriage in civil law**

Section eighth of the Decree concerns the effects of marriage in civil law (no. 95-102). The Decree refers to the instruction of the PEC regarding the so-called concordat marriage and updates some of its provisions, however, without repealing any (no. 98-99, 102).<sup>16</sup>

The Decree contains a declaration that the Church recognizes “the state’s competence over marriage in what concerns its effects in civil law (can. 1059), and, assuming that the state should provide assistance, guarantee and protection to the marriage and the family as the foundation

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<sup>15</sup> See, for example, Dzierżon 2006, 91-101.

<sup>16</sup> Polish Episcopal Conference, *Instrukcja dla duszpasterzy dotycząca małżeństwa konkordatowego* (22.10.1998), “Biuletyn Katolickiej Agencji Prasowej” of 13 November 1998, no. 46, p. 15-17.

of society, ensures that every canonical marriage is recognised in the state legal order, and that the spouses can exercise their full rights” (no. 95).

As a rule, the PEC recognises that “the faithful of the Roman Catholic Church in Poland entering a canonical marriage are obliged to secure its civil effects” (no. 95),<sup>17</sup> and “without the consent of the local bishop ordinary, it is forbidden to assist at a marriage of parties who do not want their marriage to have civil effects. The same applies to marriages which, for some reason, cannot be recognised by the state (can. 1071 § 1, 2°).” Hence, “the ordinary way of ensuring that a canonical marriage produces effects under civil law is to contract a religious marriage with civil effects (the so-called concordat marriage),” thus meeting the requirements of Art. 10 of the Concordat<sup>18</sup> (ibid.). Justifying this choice, the PEC finds that “contracting marriage by a single act, that is, during a church ceremony with civil effects, supports the concept of marriage as a single relationship established before the Church and recognised in the state legal order. Otherwise, the division of marriages into «civil» and «church» is entrenched, which is not conducive to the institution of marriage” (no. 97).

The consequence of the above rule is recognising as exceptional a situation in which “the civil and canonical marriages are contracted separately,” which can occur “only in cases where the parties have been bound under civil law for a long time and want to stabilise their matrimonial situation in the Church” (ibid.). This is actually the case of *convalidatio simplex* of a marriage contracted invalidly due to the lack of canonical form. Given that, the parties should submit an official copy of the marriage certificate (no. 98).

The PEC also considers it exceptional to enter marriage without civil effects, even when the parties promise that “they will ensure the civil effects of their canonical marriage only after contracting marriage in the Church” (no. 100).

The pastor of souls should become acquainted with the parties’ arguments and forward their request to the local bishop ordinary, who “may

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<sup>17</sup> Ibid., Art. 5. For more on the subject, see Majer 2000, 169-92.

<sup>18</sup> Concordat between the Holy See and the Republic of Poland done at Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, item 318.

permit marriage without civil effects only in exceptional cases and for important pastoral reasons,” and should attach the parties’ written declaration “that they do not want their marriage to produce civil effects; that they are aware of all the inconvenience that this may entail; and that they will complete all official formalities as soon as the reasons, which prevent it at the moment, cease to exist” (ibid.); such a declaration may be submitted using Form 16a. The declaration also protects the pastor against allegations that he did not provide information in this regard or did not send the relevant notification to the Registry Office in due time.

The decision of the local bishop ordinary should be based on the assessment of whether “the parties’ arguments are important enough to outweigh the negative conditions related to the lack of civil effects of marriage,” and also “whether, in that particular case, the application for permission to marry without civil effects does not result from short-sightedness as the effects of such a conjugal relationship might be harmful to both spouses and their offspring in the long run” (no. 101).

## **5. Celebration of marriage**

Section nine of the Decree contains comments on the celebration of marriage (no. 103-111). The legislator obliges pastors of souls to prepare the marriage rite carefully stating that “introduction into the marriage rites should be one of the topics of the pre-marital instruction and dialogue with the parties, so that they can understand the meaning of liturgical texts and gestures and can take an active and worthy part in the celebration,” in particular, “can have a good and fruitful confession and receive holy communion” (no. 103).

Later in the Decree, the PEC clarifies some issues related to the rights of official witnesses, in particular to the delegation by a parish priest to offer assistance (no. 104), to cases of contracting marriage in a non-parish church or chapel (no. 105-106), when the personal parish priest provides assistance (no. 107) and to contracting marriages by Christians of Eastern Catholic and non-Catholic Churches (no. 108-109). In the latter case, the PEC takes into account the provisions of CIC/83 added in 2016 (can. 1108

§ 3) limiting deacon's rights.<sup>19</sup> Other provisions relate to some technicalities, the content of the delegation and the method of preparation and submission of documents (also no. 111, forbidding the signature of documents on the altar and during liturgical celebrations).

Finally, the Decree addresses marriage witnesses saying that, "as a rule, marriage witnesses should be Catholics," who should be "encouraged to obtain confession and receive holy communion." At the same time, the Decree reminds that the presence of witnesses is not "only a condition for the validity of canonical marriage, but they are also representatives of the community of the faithful which, through their intermediation, participates in the sacramental act affecting that community" (no. 110).<sup>20</sup>

The PEC also allows that "at the contracting of a mixed marriage, one of the witnesses may be a baptised non-Catholic,"<sup>21</sup> and if the marriage is to produce civil effects, the witnesses must be of the age of majority" (ibid.).<sup>22</sup>

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<sup>19</sup> Franciscus PP., Litterae apostolicae motu proprio datae *De concordia inter Codices quibus nonnullae normae Codicis Iuris Canonici immutantur* (31.05.2016), AAS 108 (2016), p. 602-606, Art. 6, can. 1108 § 3.

<sup>20</sup> Pontificio Consiglio per la Famiglia, *Preparazione al sacramento del matrimonio* (13.05.1996), Città del Vaticano 1996, no. 55: "Si invitino coloro che prenderanno parte attiva alla azione liturgica a disporsi opportunamente anche al sacramento della Riconciliazione e dell'Eucaristia. Ai testimoni si spieghi che essi sono non solo garanti di un atto giuridico, ma anche rappresentanti della comunità cristiana, che partecipa per loro mezzo ad un atto sacramentale che la riguarda, poiché una nuova famiglia è una cellula della Chiesa. Per il suo essenziale carattere sociale il matrimonio richiede una partecipazione della società e questa viene espressa dalla presenza dei testimoni."

<sup>21</sup> See *Directorium oecumenicum*, Art. 128: "A person who belongs to an Eastern church may be a witness to a marriage in the Roman Catholic Church. Also, a person who belongs to the Roman Catholic can witness a marriage contracted according to the rules of an Eastern church. In all these cases, their conduct should be governed by the general discipline of the two Churches concerned regarding the rules of participation in such marriages;" Art. 136: "Members of other Churches or Ecclesial Communities may be witnesses to the celebration of marriage in the Roman Catholic Church; while Catholics can witness marriages in other Churches and Ecclesial Communities."

<sup>22</sup> See Act of 25 February 1964, the Family and Guardianship Code, Journal of Laws of 2017, item 682 as amended, Art. 8 § 2.

## 6. Recording concluded marriage

Chapter ten of the Decree addresses the recording of a contracted marriage and other matters related to its documentation (no. 112-116).

The legislator recalls the relevant provisions of the Code of Canon Law regarding the drawing up of a marriage certificate (no. 112), notification of the Registry Office about a marriage with civil effects, making appropriate entries in the spouses' baptism certificates and, possibly, in the parish that issued the permission (no. 113).

A novelty is reference to the provisions of CIC/83 and the CCEO regarding the options of unification by the spouses of their affiliation with the Church *sui iuris* due to marriage. The legislator reminds that the right to change affiliation is always vested with the woman while only a man belonging to the Latin Church can transfer to an Eastern church of his wife. A man who belongs to an Eastern Catholic church does not enjoy this right<sup>23</sup> (no. 114). Admittedly, the PEC orders that the diocesan curia be notified about the change of affiliation *sui iuris* "that will ensure that adequate entry be made in the baptism certificate," but this provisions seems impractical since such information may be attached to a standard marriage notification sent to the parish priest of the place of baptism under can. 1122 CIC/83.

Another novelty in the Decree is a new "period of validity" of the pre-marital report, after which the canonical inquiry must be repeated (no. 115).

The last provision in this part concerns the obligation to store marriage records with due case and, in particular, to ensure that they are not disclosed to unauthorised persons.<sup>24</sup>

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<sup>23</sup> On the form of the declaration, see *De concordia inter Codices*, Art. 2, can. 112 § 3 and Art. 3, can. 535 § 2. See also Skonieczny 2017, 278-82.

<sup>24</sup> Polish Episcopal Conference, *Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim* (13.03.2018), <https://episkopat.pl/wp-content/uploads/2018/06/DekretOgolnyKEPWSprawieOchronyOsobFizycznychWZwiazkuZPrzetwarzaniemDanychOsobowychWKoscieleKatolickim.pdf> [accessed: 13.08.2018]. Decree issued by the Polish Episcopal Conference on 13 March 2018 during the 378th Plenary Meeting in Warsaw, based on can. 455 CIC/83, in conjunction with Art. 18 of



By invoking pastoral secret,<sup>25</sup> the PEC also introduced a limitation on the disclosure of these documents to secular bodies and institutions; they made this option subject to the consent of the local bishop ordinary (no. 116), which appears to be a major support for parish priests in view of the expectations and demands of the family departments of common courts.

### **7. Marriage contracted by a Catholic before an Eastern Catholic priest without dispensation from the canonical form**

The closing article of the Decree introduces a new canon-law solution to the problem of “validation” of a marriage concluded by a Catholic before a priest from an Eastern non-Catholic church without dispensation from the canonical form, which, in this case, is not required for validity but only *ad liceitatem matrimonii* (no. 117).

Therefore, the provisions of CIC/83 on *sanationis in radice* do not apply because there is a presumption of validity of marriage, at least as far as the form of contracting is concerned. However, bearing in mind the criteria of determination of unmarried status or validity of baptism existing in the non-Catholic setting, i.e. in non-Catholic Churches and Ecclesial Communities, as well as a serious violation of canon marriage law, the PEC established a way of “verifying whether the principles of God’s law have been violated and whether the Catholic party meets all the conditions for contracting validly.” Therefore, “before he or she is admitted to the Eucharistic Communion, they should submit to the parish priest of the Catholic parish of their residence the certificate of marriage contracted in the Eastern Church and the baptism certificate” and “make the relevant promise and declaration in accordance with the provisions on entering mixed marriages.” The pastor is obliged<sup>26</sup> to draw up a report on the

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the Statutes of the PEC, having obtained a special permission from the Holy See dated 3 June 2017.

<sup>25</sup> Pastoral secrecy lacks legal definition. The term appears in Art. 9, item 2, point 4 of the General Decree on the Protection of Individuals with regard to the Processing of Personal Data in the Roman Catholic Church.

<sup>26</sup> For example, verification of unmarried status in order to prevent bigamy and, in particular, attempts to “circumvent” of canon law by a divorced person by entering marriage in an ecclesiastical community allowing remarriage while the former spouse is still alive.

canonical and pastoral dialogue held with the spouses and then forward the documentation “to the diocesan curia in order to obtain validation of the marriage in the Roman Catholic Church from the local bishop ordinary.” After receiving the required declaration, “the parish priest of the parish of spouses’ residence prepares a marriage certificate in the parish register and notifies the parish priest of the place of the Catholic party’s baptism of his or her marriage in an Eastern Church.”

The adopted solution will help put in order the canonical status of a Catholic and may also protect against serious violations of God’s law.

## **8. Forms<sup>27</sup>**

The last part, or rather an annex to the Decree, is a collection of forms that can facilitate the preparation of marriage documentation. The collection contains 35 forms. The basic one is a new report on a canonical and pastoral dialogue with the parties prior to contracting marriage. It is intended for couples who are both Catholic and have never entered any marriage either in religious or civil form (Form 1). Therefore, there are two options of completing the report by attaching attachments: when the parties have married other persons in any form (Form 1a) or when one of the parties is not a Catholic or is a Catholic who has defected or is non-practising (Form 1b). The requirement to attach these forms is indicated within the basic report. It is similar in other places of the report, i.e. by indicating other forms designed for various pastoral and legal situations.

The report has seven parts. Part one is the parties’ prayer and oath; part two contains the parties’ personal data, including information on their current religious formation and the course of their pre-marital relationship.

Part three contains questions aimed to verify the potential existence of canonical diriment impediments; part four addresses defects of the act of will to contract marriage. It is worth noting that the questions about marriage indissolubility are more detailed, and a section on admissibility of separation was added. In the event of a marriage between two Catholics belonging to different Churches *sui iuris*, the last questions was added

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<sup>27</sup> Collections of forms were attached to the previous Instruction and were published by many authors, e.g. Adamowicz 2001; Wenz 2008.

about potential unification of this affiliation; there is also extra space for comments and observations. Parties' signatures are appended under this part.

Part five of the report is intended for listing documents that should be collected; part six for listing documents confirming the concluded marriage, and part seven for listing issued notifications of concluded marriage and received confirmations of any external annotations made.

Forms 2 and 3 are used to confirm parties' unmarried status and, alternatively, baptism based on declarations and testimonies.

Forms 4 and 5 contain model declarations and promises made when entering mixed and similar marriages while model requests to the curia for dispensation or permission are contained in Forms 12a, 12b, 12c and 12d. The last form is used for the process of validation of marriages concluded in the Orthodox Church without dispensation from the canonical form.

The other forms concern marriage banns (no. 6 and 6a), transfer of competence between parishes (no. 7\_lat, 7\_pl, 8 and 9), confirmation of contracted marriage (no. 10, 11 and 22), requests for dispensation from a diriment impediment or for permission (no. 13-19), delegation to assist (no. 20a, 20b and 20c) and the healing of marriage in union (no. 21a and 21b).

Each form has some space for entering required data and justifications in the event of dispensation and permission requests. References to specific forms are included in the content of the Decree, in the report on canonical dialogues; additional explanation is also provided in form footers.

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## Works of the Polish Episcopal Conference on a New Regulation on Preparation for Canonical Marriage (Part II)

### Summary

The article contains an analysis of the second part of the general decree of Polish Bishop's Conference, accepted on March 17, 2017, *on the subject of premarital, pastoral and canonical preparation with the engaged couple prior to the celebration of the canonical sacramental marriage*. The article discusses regulations pertaining to the matrimonial consent, mixed marriages and other marriages similar to them, civil effects of marriage as well as the celebration and registration of such marriages. What is more, the author presents the original and new legislation of the Polish Bishop's Conference in the forum of the Catholic Church's marriage contracted by a Catholic before an Easter rite priest without a proper dispensation from the canonical form of marriage. The last part contains an analysis of the forms to be used in the procedure above.

**Key words:** marriage preparation, Polish Bishop's Conference, particular law, general decree

### Prace Konferencji Episkopatu Polski nad nową regulacją przygotowania do zawarcia małżeństwa kanonicznego (cz. II)

#### Streszczenie

Artykuł zawiera omówienie drugiej części dekretu ogólnego Konferencji Episkopatu Polski uchwalonego dnia 17 marca 2017 r. *o przeprowadzaniu rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego*. Autor analizuje regulacje dotyczące wad konsensu małżeńskiego, małżeństw mieszanych i podobnych do mieszanych, cywilnych skutków małżeństwa oraz celebracji i zapisania małżeństwa. Ponadto autor przedstawia nowatorską legislację KEP dotyczącą legalizacji na forum Kościoła katolickiego małżeństwa zawartego przez katolika wobec wschodniego kapłana akatolickiego bez dyspensy od formy kanonicznej. Ostatnia część zawiera omówienie formularzy wykorzystywanych w analizowanej procedurze.

**Słowa kluczowe:** przygotowanie do małżeństwa, Konferencja Episkopatu Polski, prawo partykularne, dekret ogólny

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