

MIXED CATHOLIC-ORTHODOX MARRIAGE ACCORDING TO CANON LAW IN POLAND

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Abstract

The sacrament of marriage between a Catholic and an Orthodox member of the faithful is treated in canon law as a mixed marriage. However, owing to the doctrinal affinity between the two Churches, marriage is also treated differently than other possible mixed marriages. This, however, does not eliminate the need for compliance with the legal regulations when obtaining the required permission and possibly a dispensation from canonical form. The article focuses on the reasons and possible canonical and pastoral issues that may pose problems in such marriages. Therefore, with the concept of mixed marriage and legal requirements presented, the dangers related to mixed marriage are also indicated – all kinds of spiritual threats to the Catholic party that may be experienced in such a marriage. The potential difficulties include divergent notions of marriage, excessive attachment to one's own Church, and the danger of religious indifferentism, impediments to worship, difficulties in the religious education of children.

The permission of the local ordinary, as prescribed by law, should meet conditions that will help the competent authority to decide a specific case. The article also lists the most common situations that priests may encounter in the case of Catholic-Orthodox marriages, for example: difficulty ascertaining that a person is baptised or single, aversion to the institution of promises on the Catholic or non-Catholic side, expression of the desire to join the Church of the other party.

Keywords: mixed marriage, canonical form, validity of the sacrament, Orthodox person, permission, dispensation

Introduction

The new pastoral challenges faced by the Church in Poland, which prompted the Polish Bishops' Conference to issue the *General Decree on the Conduct of Canonical and Pastoral Interviews with Engaged Couples*

Due to Celebrate Canonical Marriage,¹ include phenomena such as a considerable increase in the number of mixed marriages celebrated by Catholics with the faithful of other denominations and religions, as well as with persons who do not identify with any religious community. In light of the current provisions of canon law in Poland, it will be instructive to look at the special issue of marriage concluded between a Catholic and a person of the Orthodox confession, taking into account the special case where marriage is not celebrated before a Catholic priest – where the canonical form is not observed – but in another form permitted by canon law.

1. Mixed marriages in canon law

The 1983 Code of Canon Law for the Latin Church² defined mixed marriage as one “between two baptised persons, one of whom was baptised into the Catholic Church or received into it after baptism, and the other a member of a Church or ecclesial community not in full communion with the Catholic Church” (Canon 1124), such marriages are forbidden, which is to say they cannot be celebrated without the express permission of the competent ecclesiastical authority (*ibid.*). This ban is motivated by a supposition that a mixed marriage is “highly likely” to run into difficulties on important issues caused by differences of religion (*Decree*, no. 70). This position of the Church originates in its centuries-long experience.³ The potential problems include different notions of marriage, threats to one’s religious affiliation, and the danger of religious indifferentism, impeding practice of faith, and difficulties in the religious upbringing of children (*Decree*, no. 70) – which is why the Church is averse to mixed marriages, and as a consequence, even the Conference’s 1989 *Instruction on Preparation for Marriage in the Catholic Church* strongly recommended that young people be dissuaded from such marriages (*Instruction on Preparation*, no. 73). However,

¹ Polish Bishops’ Conference, *Dekret ogólny o przeprowadzaniu rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego* (08.10.2019), “Akta Konferencji Episkopatu Polski” 31 (2019), p. 28-49 [henceforth: *Decree*].

² *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text available at: https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html [henceforth: CIC/83]; legal state as of 18 May 2022.

³ Polish Bishops’ Conference, *Instrukcja Episkopatu Polski o przygotowaniu do zawarcia małżeństwa w Kościele Katolickim* (13.12.1989), Wydawnictwo św. Stanisława B.M. Archidiecezji Krakowskiej, Kraków 1990 [henceforth: *Instruction on Preparation*], no. 74.

giving consideration to natural law, which concerns not only the possibility of celebrating marriage, but also the free choice of a spouse, the Catholic Church grants such a marriage, but subject to some conditions.⁴

It is highly recommended that preparation for a mixed marriage place special emphasis on the positive aspects of what Christians spouses share in the life of grace, faith, hope and love, and other inner gifts of the Holy Spirit (*Decree*, no. 71). As regards mixed marriage (which is of special interest to us) – a Catholic marrying an Orthodox believer – it is worth noting that some of these concerns and difficulties are far less pronounced, since “these Churches, although separated from us, possess true sacraments, above all by apostolic succession, the priesthood and the Eucharist, whereby they are linked with us in closest intimacy”;⁵ The 1993 *Directory on Ecumenism* calls these relations “close communion that exists between the Catholic Church and the Eastern Orthodox Churches”.⁶ For this reason, special provisions have been introduced for mixed marriages celebrated by a Catholic with an Orthodox person, pursuant to which the observance of the canonical form is required only for liceity (legitimacy), whereas for validity a sacred minister must be present (Canons 1127 and 1108 CIC/83) [Nowicka 2007, 193-94].⁷ However, all of these arguments make it necessary to carefully examine the legal and, consequently, pastoral aspects of such mixed marriages.

⁴ Polish Bishops’ Conference, *Dyrektorium duszpasterstwa rodzin*, Rada Episkopatu Polski do spraw Rodziny, Warszawa 2003, no. 36.

⁵ Vatican II, Decretum de oecumenismo *Unitatis redintegratio* (21.11.1964), AAS 57 (1965), p. 90-112, no. 15; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19641121_unitatis-redintegratio_en.html.

⁶ Pontifical Council for Promoting Christian Unity, *Directorium oecumenicum noviter compositum* (25.03.1993), AAS 85 (1993), p. 1039-119; my translation based on the Polish version: *Ut unum. Dokumenty Kościoła katolickiego na temat ekumenizmu 1982-1998*, edited by S.C. Napiórkowski, K. Leśniewski, J. Leśniewska, Towarzystwo Naukowe KUL, Lublin 2000, p. 30-101, no. 98b.

⁷ The priest’s crucial role in the celebration of marriage in the Eastern Churches is also recognized by an amendment to the 1983 Code of Canon Law with respect to the canonical form of marriage to a member of the Eastern Catholic or non-Catholic Churches (see § 3 of Canon 1108 CIC/83), added in 2016 by Pope Francis; *Litterae apostolicae motu proprio datae De concordia inter Codices quibus nonnullae Codicis Iuris Canonici immutantur* (31.05.2016), AAS 108 (2016), p. 602-606.

2. Legal requirements binding prospective spouses

As the universal legislator stipulates, the local ordinary will grant permission for a mixed marriage in the presence of a just and reasonable cause and if the following conditions are met: 1) the Catholic party declares that they are ready to remove from themselves the danger of “defecting from the faith”, and pledges sincerely to do all in their power to ensure that “all offspring are baptised and brought up in the Catholic Church”; 2) the other party is informed of the Catholic party’s pledges; 3) both parties are instructed about the ends and essential properties of marriage, which neither party may exclude (Canon 1125 CIC/83). The cause, just and reasonable, can be a serious intention to marry, which accommodates such aspects as the spiritual well-being of the parties and their children (*Decree*, no. 82); or it can be a small number of Catholics in a particular region inhabited by the contractants, the need to normalise their relationship and thus quit living in cohabitation, a reasonable hope that the non-Catholic party may be inclined to convert to the Catholic faith, inspired by the example of the spouse’s Catholic life [Chiappetta 2012, 400].

Of special note is the above-mentioned statement made by the Catholic party, which is to be acknowledged by the non-Catholic party, too (Canon 1125). This institution, called ‘promises’, has for years functioned bilaterally: both the Catholic and the non-Catholic party were obliged to make pledges to cater for the spiritual good of the Catholic party [Góralski 2006, 220]. As from the *motu proprio Matrimonia mixta*,⁸ a promise is no longer required of the non-Catholic party. In this way the provision that no one should be forced to act against one’s conscience,⁹ contained in Vatican II’s Declaration on Religious Freedom *Dignitatis humanae*, was implemented with respect to mixed marriage. However, the non-Catholic party is to be informed “in due time” of the Catholic party’s obligations,

⁸ Paul VI, Litterae apostolicae motu proprio datae. Normae de matrimoniis mixtis statuuntur *Matrimonia mixta* (31.03.1970), AAS 62 (1970), p. 257-63, nos. 5226-269; English text available at: https://www.vatican.va/content/paul-vi/en/motu_proprio/documents/hf_p-vi_motu-proprio_19700331_matrimonia-mixta.html.

⁹ Vatican II, Declaratio de libertate religiosa *Dignitatis humanae* (7.12.1965), AAS 58 (1966), p. 926-46, no. 3 [henceforth: *DH*]; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

so that the former is aware not only of the very fact, but also of the content of the pledge and the resultant obligation (Canon 1125, 2°).

The Catholic party's obligation and declaration as well as informing the other party of these should be regarded as tools that pastors are given to possibly exclude or at least minimise the potential dangers covered by the ban on marriages where the parties' denominations are different (*Decree*, no. 83). The local ordinary, on the other hand, should focus on the Catholic party's promise and, on that basis, judge whether the marriage poses a threat to his or her faith [Hendriks 2001, 267]. Regarding offspring, it should be made clear that both parties may declare their willingness to do their utmost to have their children baptised and educated in their parents' religion. The inability to carry out the obligation to baptise a child or, for example, to bring up children in two traditions, should not be considered as a canonical offence (Canon 1367) [Mosconi 2022, 1120].

3. Necessity to obtain permission and dispensation from canonical form

Canon law, both the universal laws contained in the 1983 Code of Canon Law and the regulations of particular Churches in Poland, emphasize that the celebration of mixed marriage requires the permission of the competent authority. Without express permission, such a marriage is prohibited (Canon 1124). The universal legislation provides that the competent authority in this case is the local ordinary (Canon 1125). However, exceptional cases – that is, such that do not meet the conditions stipulated in the canons on mixed marriages or ones that cause the local ordinary to have doubts as the faith of the Catholic party may be at risk – can be referred to the Dicastery for Divine Worship and the Discipline of the Sacraments (*Decree*, no. 85), which is the Curia institution competent in this matter,¹⁰ although in very complicated cases the competence of the Dicastery for the Doctrine of the Faith cannot be ignored with complete certainty [Chiappetta 2012, 399], which is not mentioned in the *Decree* of the Polish

¹⁰ Francis, *Costituzione apostolica sulla Curia Romana e il suo servizio alla Chiesa nel mondo Praedicate Evangelium* (19.03.2022), "L'osservatore Romano" (31.03.2022), Article 90 § 2; English text available at: https://www.vatican.va/content/francesco/en/apost_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html#Dicastery_for_Divine_Worship_and_the_Discipline_of_the_Sacraments.

Bishops' Conference. It must be stated, nonetheless, that by virtue of Article 90 § of the apostolic constitution *Praedicate evangelium* competence can be determined in this manner. Authors stress that it is not possible to obtain permission to marry when there is a serious threat to the faith of the Catholic party [Majer and Adamowicz 2021, 192-93].

Although Canon 1125 speaks of permission for such a marriage, the requirement that the cause be just and reasonable, nevertheless, refers to the concept of dispensation, since these are the classic properties essential for dispensation [Dzierżon 2020, 133-39]. In fact, the term 'dispensation' was not replaced by 'permission' until the last phase of drafting the CIC/83 and replaced by 'permission' (Lat. *licentia*) [Peters 2005, 1005]. The change seems significant because the prohibition contained in Canon 1124 appears not to be equally applicable for all mixed marriages. Although in every case the consent of the local ordinary is required for a marriage to a non-Catholic, the legislator introduces an exception that in marriages with an Orthodox person, the canonical form is necessary only for liceity, and the presence of a sacred minister is required for validity (Canon 1127). It seems that in this case, then, the lack of consent to a mixed marriage by the ordinary of the Catholic party, and thus celebrating the sacrament of matrimony before a sacred minister of an Eastern Church that is not in communion with the Catholic Church, will not invalidate the marriage, since the requirement for its validity has been met. However, such a course of action is not in keeping with the provisions of canon law, and as a result, it must be concluded that the above legal hypothesis is certainly does not consistent with the intent of the legislator.

4. The moral obligation to request permission and dispensation from canonical form

4.1. Licit celebration of the sacrament as a condition for its fruitfulness

Although the legislator recognises that a sacrament celebrated without canonical form but in the presence of a sacred minister is valid (Canons 1127 CIC/83 and 834 § 2 CCEO¹¹), it should be remembered, however, that

¹¹ *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), p. 1045-363; English text available at: https://www.intratext.com/IXT/ENG1199/_INDEX.HTM [henceforth: CCEO].

the universal legislator, notably, emphasized the necessity of observing canonical form. The idea that the sacrament of marriage between a Catholic and a member of the Orthodox Church should conform to canonical form not for validity, but only for liceity (legitimacy), follows chiefly from consideration given to spiritual closeness mentioned in ecclesiastical documents. What matters is the almost the same sacramental doctrine, hence recognition of the validity of all the sacraments administered in a specific Church, subject to conditions imposed by the Catholic Church for their celebration. The absence of a sacred minister of the Orthodox Church, who should be a priest capable of performing the rite of blessing the spouses, will render the marriage so celebrated null and void. Therefore, it can be concluded that the legislator, in the case under consideration, permits “two alternative canonical forms” in which to celebrate marriage. One is specified in Canon 1108 CIC/83, whereby the sacrament is valid through the presence of an authorized priest (no deacon may assist) (§ 3) and two witnesses. The other form is mentioned by Canon 1127 CIC/83¹² – for validity, a sacred minister must be present. This formula raises several doubts. First of all, a sacred minister is mentioned (Lat. *sacerdos*), so it is not made clear whether the person should be a Catholic or a non-Catholic minister. Another doubt is that his active part in the ceremony is not specified, only his participation is required, which can also be understood as merely presence – this is because the Latin term *interventus* means ‘arrival, appearance’ [Plezia 1998, 236]; there is also no mention of two witnesses, and although in some commentaries all these requirements are considered valid as concluded in the canon – “and the other requirements of law are to be observed” (Canon 1127) [Navarro-Valls 2004, 1512] – this cannot be accepted. In the first place, because the structure of this canon would not be logical, since the general principle is laid out in the first sentence that speaks of the necessity of the canonical form (reference to Canon 1108), and only then is an exception mentioned, which is the validity of the sacrament celebrated, even if not canonical in form. Therefore, it should be

¹² This norm originates in: Vatican II, Decretum de Ecclesiis Orientalibus Catholicis *Orientalium Ecclesiarum* (21.11.1964), AAS 57 (1965), p. 76-89, no. 18; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19641121_orientalium-ecclesiarum_en.html [henceforth: *OE*]; Sacred Congregation for the Oriental Church, Decretum de matrimonii mixtis inter catholicos et orientales baptizatos acatholicos *Crescens matrimonium* (22.02.1967), AAS 59 (1967), p. 165-66.

assumed that for the legislator ‘sacred minister’ means a non-Catholic rather than a Catholic minister, without excluding the latter;¹³ also, it should be concluded that since the presence of witnesses is not expressly required, no such requirement should be made when interpreting this norm. One admissible interpretation could indicate the participation of a Catholic minister at such a mixed marriage, without witnesses taking part, because then, indeed, the canonical form is not observed. Thus, it is obvious that introducing an exception to the canonical form, but without prejudice to relevant provisions of Canon 1108, would not make sense. This is confirmed by a provision in the CCEO that makes the validity of a marriage conditional on being blessed by a non-Catholic priest, despite failing to observe the Catholic canonical form, which in the case of a Catholic-Orthodox marriage contracted even illegally in an Orthodox church is required only for liceity (Canon 834 § 2 CCEO). Similarly, with marriages performed in extraordinary form (including between two Eastern Catholics) and under special circumstances (Canon 832 § 2 CCEO), a non-Catholic priest may be engaged.

These latter forms of mixed marriage can have two aspects: only validity, when the sacrament is celebrated without the permission of the local ordinary of the Catholic party, or both validity and liceity, when a marriage is celebrated with the consent of the competent authority and with a dispensation from the canonical form. Although a marriage concluded without the lawful canonical form is usually associated with the absence of a canonical examination of the prospective spouses, when concluded before a priest, it enjoys a presumption of validity (Canon 1060 CIC/83) [Kędracka 2020, 161]. It should be emphasized that receiving the sacraments illicitly weighs on the conscience of those receiving them and thus limits the operation of grace and thus the possibility of enjoying the fruits of the sacraments received. Therefore, there surely exists a moral obligation to ask for permission and a dispensation from the canonical form in order to receive the sacrament of marriage licitly.

4.2. The offence of receiving a sacrament in a different denomination

Disrespect for the precepts of canon law – that is, receiving the sacrament of marriage in violation of the provisions of the universal legislator,

¹³ Canon 844 CIC/83 uses the explicit term ‘non-Catholic minister’.

even if the latter acknowledges its validity but defines it as illicit, should be considered not only in the moral order, which concerns the conscience, but also in the legal order. Although these issues in canon law are intertwined, because from the beginning of the Church, sin has been treated as an inseparable component of the offence [Burchard 2014, 44]. According to the idea that “an offence is always a sin, but not every sin constitutes an offence” [Myrcha 1986, 46], we might want to ask whether by reason of a sacrament being illicit, the elements of an offence under canon law are also observed. Since the legislator reasoned that a mixed marriage “cannot be celebrated without the express permission of the competent authority” (Canon 1124 CIC/83). And in Book VI, in the title “Offences against the Sacraments”, Canon 1381 provides as follows: “One who is guilty of prohibited participation in religious rites is to be punished with a just penalty” (Canon 1381). In light of these provisions, it should be noted that the situation under consideration may satisfy the elements of this crime if all of them are present (Canon 1321 § 2). Therefore, the lack of respect for the provisions of canon law cannot be explained by the new spirit of ecumenism [Chiappetta 2012, 700], since it is evident from many places in 1983 Code of Canon Law that the ecclesiastical legislator takes account of the provisions of the Second Vatican Council, also with respect to ecumenism (Canon 844), but the sacrament of marriage is not subject to the regulations of *communicatio in sacris* [Jakubiak 2013, 130-31]. Therefore, the conduct in question could be considered a canonical offence not as administration of the sacraments to persons forbidden from receiving them (Canon 1379 § 4),¹⁴ but as initiatives going beyond the *communicatio in sacris* mentioned in Canon 844 not only with respect to the sacraments mentioned therein, especially if this conduct presupposes religious indifference contrary to divine law.¹⁵

¹⁴ Some authors refer to the impossibility of treating this issue as a delict pursuant to Canon 1379 § 4 [Pighin 2021, 383].

¹⁵ However, a study prepared by the Dicastery for Legislative Texts offers an explanation concerning the penal law on the prohibited *communicatio in sacris*, which does not rule out the possibility that a Catholic prospective spouse’s act may constitute an offence – all acts that contravene the provisions of Canon 844. In consequence, this also applies to other sacraments in addition to those listed in that canon. Dicastery for Legal Texts, *Le sanzioni penali nella Chiesa. Sussidio applicativo del Libro VI del Codice di Diritto Canonico*, https://www.delegumtextibus.va/content/dam/testilegislativi/TESTI_NORMATIVI/Testi_Norm_CIC/Libro_VI/LibroVISussidio/Sanzioni_penali_Sussidio.pdf [accessed: 13.11.2023], p. 141-42.

The 1987 *Instruction on the Pastoral Care of Marriages of Different Ecclesiastical Affiliation* did not see this sort of conduct as an offence, but rather as a sin, or more precisely “guilt against one’s own Church,” since it allows – as far as marriage between a Catholic and an Orthodox person is concerned – this matter to be resolved by the Catholic party internally during the sacrament of penance and reconciliation. Before that, however, it is required that *post factum* promises be made, necessary for issuing a permission for a mixed marriage.¹⁶ As regards canonical interviews, the *Decree* offers more precision, stating that this marriage is contracted validly, but illicitly – in other words, illegally (*Decree*, no. 117). Therefore, there is a “need to verify that the principles of divine law have not been infringed and that the Catholic party has met all the conditions for a valid celebration of marriage before being admitted to Eucharistic Communion” (*ibid.*). For this reason, the *Decree* contains a procedure intended to verify the circumstances of marriage conclusion (*ibid.*). Although the *Decree* does not mention the possibility of committing an offence either, it provides a better support for such a perspective, speaking of a violation of divine or ecclesiastical law.

These requirements show that this is not an issue that concerns the internal forum only, so it cannot be ruled out that the local ordinary can make a decision in case of a violation of the law that is external and gravely imputable (Canon 1321 § 2) to impose a just penalty, such as some canonical penance, since entering into the sacrament of marriage without permission was a public form, so the penance could have a public character (Canon 1340 § 2). This could have happened if the Catholic party had acted in this way clearly disregarding the rules of canon law, rather than being ignorant or desiring to avoid conflicts with the non-Catholic side early on in their life path together.

5. Necessary steps before issuing a permission for a mixed marriage

Before the local ordinary gives permission for a mixed marriage and possibly grants a dispensation from the canonical form, he is to verify

¹⁶ Polish Bishops’ Conference, *Instrukcja w sprawie duszpasterstwa małżeństw o różnej przynależności kościelnej* (14.03.1987), in: *Codex Iuris Canonici. Kodeks Prawa Kanonicznego. Komentarz. Powszechnie i partykularne ustawodawstwo Kościoła katolickiego. Podstawowe akty polskiego prawa wyznaniowego*, p. 1356-362 [henceforth: *Instruction on Pastoral Care*], IV, no. 8.

if the following have been removed or minimised: the potential danger posed by the error of religious indifferentism, threat to the faithfulness to one's own Church or, finally, the absence of discrepancies in the understanding of the sacrament of marriage (ibid., no. 70), which also concerns disciplinary issues that are different in the Catholic Church and the Orthodox Church. The local ordinary, to be able to properly evaluate the specific case elucidated by the pastor at the request of the engaged couple, should analyse all these circumstances. Therefore, canon law offers specific tools for their verification to enable the local ordinary to make the proper decision.

5.1. The need for canonical-pastoral interviews

When a departure from the canonical form in the case of a marriage between a Catholic and an Orthodox person is allowed for, a stipulation in the final clause is emphasised, too: “and the other requirements of law are to be observed” (Canon 1127). As mentioned earlier, some canonists, however, see in this clause a reference to the provisions on witnesses or the active participation of the sacred minister, but this opinion should be seen in a broader perspective. The “other requirements of the law” mentioned here underscore the fact that only a marriage that meets all validity conditions under canon law will be validly contracted, since this law affords protection to the Catholic doctrine of the sacrament of marriage and even the law binding on the Orthodox party (*Decree*, nos. 71, 80).¹⁷ It becomes necessary, then, to have canonical-pastoral interviews with the prospective spouses before celebrating canonical marriage to make certain that all other conditions for the validity of the sacrament of marriage are satisfied. The conduct of such interviews is explicitly required by the Polish Bishops' Conference's *Decree*. It says that a record of canonical-pastoral interviews, with all attachments (paying special attention to the promises given by both parties), is to be sent to the curia (no. 83) – a procedure aimed at enabling a verification of all the legal requirements: the lack of diriment impediments, the validation of a just and reasonable cause for a mixed marriage,

¹⁷ Pontifical Council for Legislative Texts, Instruction to be observed by diocesan and interdiocesan tribunals in handling causes of the nullity of marriage *Dignitas connubi*, https://www.vatican.va/roman_curia/pontifical_councils/intrptxt/documents/rc_pc_intrptxt_doc_20050125_dignitas-connubii_en.html [henceforth: *DC*], Articles 2-3.

and so on. The obligation to hold the interviews in the case of a mixed marriage that is to take place with a dispensation from the canonical form is explicitly mentioned in another article of the *Decree*: “before granting a dispensation from the canonical form, the pastor of the Catholic party is to run a complete canonical examination of the engaged couple in the usual form, and thus make a record of canonical-pastoral interviews, ascertain the single status of the parties and the integrity of the consensus, and obtain the necessary permissions and dispensations, including permission for a mixed marriage” (no. 91). The *Decree* explicitly mentions a situation where a mixed marriage between a Catholic and an Orthodox person would be concluded without permission and without a dispensation from the canonical form – although validly concluded, it is illicit (illegal) nonetheless. Such a situation is described in the *Instruction on Pastoral Care*. It says that *post factum* the declarations and pledges of the parties should be completed at the parish office, but nothing is mentioned about the record (IV, no. 8) that would help determine whether this marriage is indeed celebrated validly – as required by law. We read in the *Decree* that it is necessary to analyse the observance of not only divine law but also precepts required for the validity of a mixed marriage. Therefore, the *Decree* requires that a number of actions be carried out after the celebration but before the Catholic party is admitted to Eucharistic Communion (*Decree*, no. 117).

5.2. Potential difficulties in fact-finding during canonical interviews

While having canonical-pastoral interviews, the pastor of the Catholic party may face some problems in establishing the facts concerning the engaged couple’s capacity for canonical marriage and their intentions. Therefore, it would be instructive now to examine at least issues considered the most common and thus discussed by authors addressing mixed marriage.

5.2.1. The Catholic party’s refusal to sign the promises

It may happen that during a canonical-pastoral interview the Catholic party refuses to make a written statement that they are willing to remove the danger of straying from their faith and pledge to do their utmost to have all the children of the marriage baptised and raised in the Catholic Church. Should this happen, the pastor is obliged to make it unequivocal

that this is an imperative of faith arising from divine law; he is also to clarify the meaning of the pledge (*ibid.*, no. 83). Notably, this is underscored in the teaching of Vatican II when it speaks of participation in liturgical acts (*communicatio in sacris*) – such participation “harms the unity of the Church or involves formal acceptance of error or the danger of aberration in the faith, of scandal and indifferentism, is forbidden by divine law” (*OE* 26). The pastor is to emphasise the Catholic party’s obligation to act in accordance with their conscience – properly formed and obedient to divine law – with respect to the baptism and Catholic education of children, but in adherence to the religious freedom and conscience of the other parent, out of concern for the unity and permanence of marriage and peace in the family. “The Catholic party should be made aware that physical or moral incapacity for obligations does not entail moral responsibility (sin) and penal-canonical liability. In contrast, conscious resignation or actual non-performance, given the possibility of carrying out obligations, gives rise to moral or even criminal liability” [Majer and Adamowicz 2021, 189]. To the above-mentioned acts that may bear the hallmarks of an offence one should add the handing over of children to be baptised or bringing them up in a non-Catholic religion (Canon 1367). Should the Catholic party, regardless of such an explication, not agree to give the required promises, efforts to obtain permission from the local ordinary for a mixed marriage should be abandoned, since such obligations demanded by the Church of the Catholic party are a sacred requirement of the faith. If this requirement is not met, permission cannot be granted, and the marriage cannot be celebrated (*Decree*, no. 83). Even if it were concluded outside the Catholic Church, it would certainly be illegitimate in the absence of grounds for nullity.

5.2.2. The non-Catholic party’s refusal to participate in the interviews

The *Decree* of the Polish Bishops’ Conference does not specify the course of action when the non-Catholic party categorically refuses to take part in canonical-pastoral interviews with the pastor of the Catholic party. Therefore, provisions of the *Instruction on Pastoral Care* should be utilised again; the document says that “the pastor is to conduct activities related to recording canonical-pastoral interviews before the marriage is concluded at least with the Catholic party (if the non-Catholic party has not shown willingness to come) [...]” (IV, no. 7, c). Nevertheless, we should underscore

that the unwillingness to come is a major issue when the risks that a mixed marriage faces are assessed. In the application directed to the local ordinary, the pastor should cite the explanation of the Catholic part as to why the other party did not wish to take part in a canonical interview. Most certainly, the local ordinary – when issuing a permission for such a marriage – should take account of the non-Catholic party’s stance and exercise particular caution and prudence out of concern for the spiritual welfare of the Catholic party.

However, in the case where the non-Catholic party attends premarital canonical interviews, but having been informed in a timely manner of the Catholic party’s obligations, it refuses to confirm such a fact with a signature, it becomes necessary for the pastor to clarify the meaning of the declaration made – that is, if he or she is acting in good faith, the Church does not require them to make a commitment that is at odds with their conscience, but only to acknowledge what obligations the Catholic party has. If the non-Catholic party still refuses to sign the declaration, the pastor can do so if he has moral certainty that the non-Catholic is aware of what the Catholic party is pledging. However, in the request for permission, the non-Catholic should describe this fact (*Decree*, no. 84), as this is highly relevant to the decision of the ordinary in terms of assessing the risks to such a marriage and to the faith of the Catholic party. Such difficulties, emerging at the beginning of the life journey together, should be discussed by both parties, because this can seriously jeopardise the unity of marriage and family and the Christian upbringing of children [ibid., 191].

5.2.3. Confirming the conferral of baptism

The Conference’s *Decree* obliges the non-Catholic party to present a certificate of baptism. However, a practical problem may emerge here, as the non-Catholic party may have difficulty furnishing a certificate of baptism for a number of reasons, for example, not being able to go to the place of baptism, the perishing of baptismal records in war, the Orthodox parish refusing to issue such a certificate, etc. [Adamowicz 2014, 70]. In a case like this, the rules for confirming baptism should be applied; first and foremost, “the declaration of one witness beyond all exception is sufficient or the oath of the one baptized if the person received baptism as an adult” (Canon 876 CIC/93). Also, the condition included in this canon can be considered: “if prejudicial to no one.” With respect to marriage, however, certainty that

baptism was indeed conferred is desirable not only for the party in question, but the other party too, as well as the public good owing to the social character of this sacrament [Blanco 2004, 484] (Canon 1430).¹⁸ It must be assumed that it is necessary to prove the conferral of baptism by a document stating this fact. This interpretation also seems to be supported by the *Decree*; although the ordinary procedure is allowed for both Catholic parties by Canon 876, consultation with the diocesan curia is necessary to determine the further course of action, and thus the assessment is left to the competent ecclesiastical authority (*Decree*, no. 22). The case is somewhat different with a mixed marriage, as we read in the *Decree*: “in case of doubt as to whether the fact of baptism is sufficiently certain, or if there is doubt as to its validity, the local ordinary is to be consulted. If doubts cannot be cleared up, it is advisable that – additionally to permission for a mixed marriage – a dispensation from the difference of religion impediment be granted *ad cautelam*” (ibid., no. 78). Therefore, if a baptism certificate was not issued, a conditional dispensation is to be granted for the difference in religion. The lack of such dispensation – if the person was not baptised or if the baptism was found invalid – would also render the marriage invalid, too. This shows that also the Catholic party, and it cannot be ruled out that this fact might bring confusion to the community of believers.

5.2.4. Confirming the unmarried status

If a baptismal certificate is not presented, there is also the problem of confirming the unmarried status. It should be emphasised, however, that the confirmation of the unmarried status by clerics of other denominations, including the Eastern Orthodox Churches, does not always

¹⁸ “For the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone. For, God Himself is the author of matrimony, endowed as it is with various benefits and purposes. All of these have a very decisive bearing on the continuation of the human race, on the personal development and eternal destiny of the individual members of a family, and on the dignity, stability, peace and prosperity of the family itself and of human society as a whole.” Vatican II, *Constitutio pastoralis de Ecclesia in mundo huius temporis Gaudium et spes* (07.12.1965), AAS 58 (1966), p. 1025-115; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html [henceforth: GS], no. 48.

indicate the unmarried status with complete certainty under the canon law of the Catholic Church. “Documents issued by non-Catholic church authorities confirming the prospective spouse’s unmarried status (e.g., a decision to recognize a civil divorce or annulment of marriage, or a decision of an Orthodox hierarch to allow a second or third marriage) are not acceptable” (ibid., no. 79). Also, a baptismal certificate issued by the Orthodox Church (even recently) does not confirm the unmarried status. Therefore, in every case, a sworn testimony of at least two credible witnesses who have known the non-Catholic party well since at least the age of majority is to be used (ibid., no. 22). If the Orthodox party celebrated a prior marriage in an Orthodox church or one subject to canonical form, a declaration of nullity of that marriage under the canon law of the Catholic Church issued as a decision by an ecclesiastical court must be presented (DC 3).

5.2.5. Conversion of the spouse to the Catholic Church

The Conference’s *Decree* also envisages the possibility that a non-Catholic party may declare readiness to enter into full communion with the Catholic Church. Such a state of affairs would eliminate the impediment of difference of religion, as it would remove the dangers associated with unions of this kind – where, nevertheless, differences emerge in the marital community of all life on account of religion. Although such a situation would help avoid many inconveniences and would simplify the preparation of marriage documents, such a condition cannot be set for a non-Catholic party during canonical-pastoral interviews. This is a practical application of the principle of religious freedom emphasized by the conciliar fathers (DH 2). However, if such an intention were declared by the non-Catholic party, then it should be verified carefully by: “examining the reasons for and degree of maturity of such a decision” (*Decree*, no. 81).

If a conversion to the Catholic Church occurs, the non-Catholic party’s ecclesiastical affiliation with a given Church *sui iuris* is determined on the grounds of its affinity with the tradition of the Eastern Church whence the party has converted (cf. Canon 35 CCEO). Therefore, notably, there is no difference of religion in such a marriage, but there may occur a difference of rite.¹⁹ However, the universal legislator allows married

¹⁹ “[...] a person who is baptized outside the Catholic Church, regardless of who has accepted the Catholic profession of faith from them, the person retains the corresponding

couples to practice a single ritual tradition for the duration of their marriage. However, it should be remembered that the 1983 Code allows both male and female spouses to convert to another Church *sui iuris* (Canon 112 § 1, 2° CIC/83), while the CCEO allows a woman to convert to the Church *sui iuris* of her husband (Canon 33 CCEO). This distinction is intended to protect the smaller churches *sui iuris*. Both Codes allow a person to return to their earlier Church *sui iuris* after the marriage ceases.

5.2.6. Obligation to record and report a marriage

In the case of a mixed marriage, there is also an obligation to make a marriage certificate in the marriage register. The universal legislator does not make a distinction in this regard between single-faith and mixed marriages. Admittedly, such a distinction could be introduced by the conference of bishops or the diocesan bishop, since they are authorised by the universal legislator to determine the manner in which to make such an entry in the register (see Canon 1121 § 1 CIC/83). What is more, there is an obligation to inform the parish of the baptism about the marriage contracted. Even if the Orthodox party does not supply a baptismal certificate, information about the changed canonical status of the Orthodox person must be sent (cf. Canon 1122 CIC/83).

The case is similar when the marriage was performed with a dispensation from canonical form, which is to say that it took place in an Orthodox church or other convenient place, and the pastor who made a record of the canonical-pastoral interview was unable to verify whether the marriage had actually been celebrated. Therefore, the Catholic party is under the obligation to inform the pastor and the ordinary of the marriage, also about the place where it happened and the public form observed (Canon 1121 § 3 CIC/83). The Conference's *Decree* further specifies this provision, stating that the Catholic party is obliged to notify the pastor, and that he is to follow the procedures prescribed by law: to make a note in the marriage register and make sure that a note of the marriage is made in the baptismal

Eastern rite (if the person was an Eastern non-Catholic) or the Latin rite (if the person was previously a Protestant, Anglican, Polish Catholic, etc.)” Legal Council of the Polish Bishops’ Conference, *Pro memoria dotyczące relacji duszpasterskich Kościoła łacińskiego z katolikami Kościołów wschodnich*, (4.10.2018), “Wrocławskie Wiadomości Kościelne” 71/2 (2018), p. 59-68.

register of the Catholic party. To draw a marriage certificate, the presence of only the Catholic party is sufficient, but it is even better if both parties are present. If this is the case, both parties should sign the marriage certificate inscribed in the book and the signature of the pastor who made the record is to be affixed. In the absence of the non-Catholic party, only the Catholic party and the pastor put their signatures. The marriage certificate should be made on the basis of an appropriate document confirming the marriage (e.g., a marriage certificate from an Orthodox church or a document issued by a civil registry office, etc.).

5.2.7. The Catholic party attempting to convert to the Eastern Orthodox Church

The *Decree* issued by the Polish Bishops' Conference does not offer the pastor any guidance if the Catholic party – either when reporting the fact of marrying a Christian who is not in communion with the Catholic Church or at any other time – has communicated their decision to convert from the Catholic Church to another denomination. However, the *Instruction on Pastoral Care* is still relevant helping pastoral workers to take the proper course of action. The pastor is under a “strict duty of conscience to make every necessary effort (instruction, request, admonition)” so that the Catholic party will desist from doing so” (IV, no. 9). By realising this intention, the person would be led to schism through “refusal of submission to the Supreme Pontiff or of communion with the members of the Church subject to him” (Canon 751 CIC/83). Such conduct, in turn, is not only a sin, but also an offence under canon law under the pain of excommunication *latae sententiae* (Canon 1364 § 1 CIC/83).

Conclusion

In the circumstances of today, mixed marriages are becoming more common, as people have greater freedom of movement and professional requirements, or other circumstances force them to move elsewhere (owing to war or labour migration); in consequence, mixed marriages have the opportunity to exist in a different culture with, among other things, a different religion or denomination.

In the case of a mixed marriage between a Catholic and an Orthodox person, despite small differences of doctrine, there are considerable

differences in discipline and worship practices. When preparing for the sacrament of marriage, the parties should fulfil all the obligations imposed by the universal legislator or by competent legislators in particular churches.

The pastor himself is required to help the parties prepare well for the sacrament of marriage, make sure the prospective spouses' have an adequate knowledge of the Catholic doctrine of marriage, and verify possible risks involved in such a mixed marriage, so as to be able to lay out the matter to the local ordinary so that the required permission can be issued. Thus, the pastor is the one intended to help prospective spouses overcome both legal and pastoral obstacles that were noted at the preparatory stage. Also, it belongs to him to present the case of a mixed marriage to the local ordinary, who assesses whether it is possible to issue the legally required permission for such a union.

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