

SUMMARY

The grounds for declaring the invalidity of marriage in the theological and legal sense of Russian Orthodox Church

In the Code of Catholic Eastern Churches, and in particular in the law relating to the sacrament of Marriage, there is a provision that the marriage between a Catholic and a non-Catholic person is governed also by the law of the Church to which the non-Catholic belongs.

The main purpose of the dissertation was to show the grounds for the invalidity of marriage resulting from the understanding of marriage, its purposes and sense, by the Orthodox Church itself.

In the first two chapters, entitled "The Essential Goals of Christian Marriage" and "The Essence of Marriage" accordingly, positive conditions of marriage validity and the so called elements without which marriage in the understanding of the Orthodox Church cannot be valid have been discussed.

Difficulties arising when defining the essence of marriage (goals and essential elements) were related to the occurrence of different and even contradictory views of various authors of the canonical and theological thought of the Orthodox Church. In Orthodoxy there are two theories of marriage, one is called idealistic theory and the other is naturalist theory. Ideological theory addresses the reality of marriage into ideal categories, emphasizing the theological or even eschatological vision in which marriage is judged in relation to the divine plan embodied in his ascension in paradise. Naturalistic theory as the starting point in the understanding of marriage takes a human nature. Comparing these two theories, we could see that the earthly life of a human, who, in the situation of weakness after original sin, cannot live the ideal reality of marriage even though he is constantly called to and invited.

Taking into account these two theories and comparing them with each other, it was possible to determine what important goals are in marriage in the Orthodox view. It turned out that in addition to the main purpose which is a marital love, there are other important goals from which the importance of marriage depends on, namely the purpose of procreation and the goal of preventing dissipation.

The second important moment in defining important goals, and especially the designation of the main one, was the designation of essential elements and qualities that characterise the nature of marriage. The difficulty in this regard was the inclusion in the legal area of the concept of conjugal love as the main purpose of marriage. In legal terms, it comes down to the notion of a conjugal community, widely understood. This gave us the opportunity to identify the essential elements that stem mainly from the notion of conjugal love as the main purpose of marriage.

These essential elements of marriage are above all the unity and indissolubility of marriage, resulting from the conception of marriage as a community, on the one hand founded by God himself, making them "one body" and on the other hand, relating to the reality of the whole life of the spouses in a temporal dimension and lasting throughout life

and in eternity, as well as in the qualitative dimension, that is the total mutual giving of each other in all spheres of their life.

Such understanding of the community which is fundamented by God as a spiritual reality gives us the opportunity to say about the sacramental character of marriage. This marriage reality transforms earth reality of the baptised, who can accept God's blessing into the reality of the Home Church taking as an example Christ and Church. On the other hand only the community between one man and one woman can be called marriage. The Council in Crete in 2016 called sex difference the positive condition for marriage validity.

The next question was a canonical form of sacrament marriage. Necessary elements of marriage validity are marital consent and Priest's blessing. Orthodox Church recognizing the legitimacy of civil marriage doesn't recognize its validity as a sacrament. Also the marriage concluded by the Orthodox person in another Christian Church is supposed to be invalid for that person. In that case Orthodox Church demands to conclude a marriage also in Orthodox Church and to get a blessing of Orthodox priest in order to valid this marriage.

Unlike positive conditions Orthodox Church presents also negative conditions of marriage validity and calls them marriage obstacles. The third chapter of dissertation called " Law grounds for marriage invalidity" was dedicated to marriage obstacles.

It should be noted that in Orthodox Church not every canonical obstacle is a ground for marriage invalidity. For example, impotence which was detected before the marriage is absolute obstacle for marriage validity, but detected after the marriage (pre-existing and lasting) is only the reason for marriage divorce but only after three years. Such reality is connected with divorce practice in Orthodox Church. Also, while discussing certain obstacles it turned out that not all authors of Orthodox view have the same view on the obstacles. Such differences in views were noted in relation to obstacle of canonical age or while determining people to whom the obstacle of spiritual relation refers to and also relatively the obstacle of parental disagreement.

Except canonical obstacles for marriage validity in Orthodox Canonistic exist also court or synodic prohibitions that are connected with given divorces. The above mentioned prohibitions cause marriage invalidity, which was concluded against to those prohibitions. Such prohibitions indicate marriage incapability of people to whom such prohibitions refer. It appears from the above mentioned that the reasons for divorce can be reasons for marriage invalidity indicating the incapability of people to the marriage.

The extraction and identification of reasons of marriage invalidity, that come from Orthodox Church teaching are the ease for the Catholic judge in conducting a marriage process and gives the opportunity to relate to the law of Orthodox Church in that process (as such position doesn't contradict to the law of Catholic Church).