

DR. NAGY LÁSZLÓ

LAWS TO BE OBSERVED FOR THE VALIDITY OF MARRIAGE RELATING TO BAPTIZED NON-CATHOLICS

A nem katolikus keresztényekre vonatkozó törvények betartása a házasság érvényességéhez. Egy összehasonlító tanulmány keretében megkíséreljük bemutatni a két jogrend – (CIC 1983 és a CCEO) – jogszabályainak szükséges betartását a megkeresztelt nem „katolikusok” házasságának érvényességéhez.

A keresztség által leszünk a különböző házasságjogi normáknak. Ez határozza meg a személy hovatartozását a sajátjogú egyházak jogrendszerén belül. Mivel a sajátjogú egyházbeli tagság a személy cselekvőképességét meghatározó tényező, s mint olyan kihathat az általa végzett jogcselekmények érvényességére, pontos ismerete alapvető egyházi érdek. Ez a tény meghatározza, hogy melyik házasságjogi normatíva vonatkozik az illető megkeresztelt személy esetére. Számottevő jogi lehetőségek megkülönböztetésével és sokkal bonyolultabb diskusszióval állunk szembe, ha az egyik fél nem katolikus, hanem a más sajátjogú egyház tagja, valamelyik keresztény felekezetek tagja vagy meg nem keresztelt.

Manapság növekszik azok száma, akik szabadon együtt élnek vagy csak polgári házasságot kötöttek. Azok a katolikus felek, akik csak polgári hatóság előtt nyilvánították ki házassági beleegyezésüket, könnyen elnyerhetik az új házasságkötéshez szükséges engedélyt. Katolikusok házasságát, akkor is, ha csupán az egyik fél katolikus, az isteni jogon kívül a kánonjog is szabályozza, sőt a házasság merőben polgári hatásait illetően a polgári hatóság is (1059. k.).

A sajátjogú egyházak joghatósági hatalmának elismerése hosszú jogtörténelmi fejlődés eredménye. A 2. vatikáni zsinat hatására érezhető változás vette kezdetét a különböző egyházak önkormányzati hatalmának elismerésével, beleértve a házasságjogi kérdéseket is. Ugyanis az 1917-es CIC minden megkeresztelt személyt kötelezett. Viszont az 1983-as CIC kihangsúlyozza, hogy kánonjai csak a latin egyházra vonatkoznak. De a vegyesházasságok esetében a nem katolikus fél továbbra is a kánonjog alanya. Mivel az új egyházjog alapelve az, hogy a tisztán egyházi törvények csak a katolikusokat kötelezik (11. k.), ezzel összhangban rendezte a törvényhozó a házasságra vonatkozó egyházi jogszabályok hatályossági körét is. A CCEO megengedi a nem katolikusoknak, hogy kövessék a saját jogrendszerüket, kivéve a vegyes házasságok kánoni forma esetében. Tehát a vegyesházasságokra vonatkozó, korábban meglehetősen szigorú megkötéseket tartalmazó katolikus normatíva igen jelentősen enyhült, de még mindig arasznyira elmarad a Keleti Katolikus Egyházak házasságjogi doktrínájától. A Zsinat az ortodox féllel kötendő házasságok törvényes formája vonatkozásában is jelentős változást helyezett kilátásba, azaz, hogy véget vessen az érvénytelen keleti vegyes házasságok sokasodásának, a kánoni forma kötelezettségét csak a megengedettséghez szükséges feltételnek nyilvánította. Az érvényességhez elegendő egy szent szohgálattevő jelenléte, ha egyébként mindenben a jog szerint jártak el.

A keleti féllel kötött vegyesházasságok stabilitását jelentősen érinti, hogy a katolikus kánonjog mennyire nyitott a vonatkozó akatolikus fegyelmi rend figyelembevételére. E szempontból a latin és a keleti katolikus normatíva között jelenleg nem elhanyagolható különbségek vannak. Ilyen például a CIC 1095. kánonja, amely minden olyan házasságot a katolikus egyházjog kizárólagos hatáskörébe utal, melyben katolikus fél is részes. Ezen értelmzés helytállósága esetén a vegyes

házasságokról szóló CIC 1127. kánonnál is irreleváns, hogy az akatolikus fél saját, valódinak elismert, azaz szent hatalomra támaszkodó egyházjoga az adott kérdésben hogyan is rendelkezik. Tehát a latin kánonjog nincs tekintettel a keleti hagyomány ide vonatkozó világos kikötésére, remélhetőleg ebben a kérdéskörben további jogfejlődés várható.

A nem katolikus keresztények házasságát ugyan a hatályos egyházjog nem kívánja szabályozni, de ezzel még semmi esetre sem szándékszik tagadni az egyház illetékes-ségét a nem katolikus keresztények házassága ügyében. Azzal, hogy a mai katolikus egyházjog a nem katolikus keresztények házasságát nem szabályozta, de a nyugati nem katolikus egyházi közösségek vonatkozásában nem ismerte el kifejezetten azt a jogot sem, hogy ezek saját fegyelmük szerint szabályozzák tagjaik házasságát, jog-hézagra adott okot.

A nem keresztények közötti házasság alá van vetve a világi törvényeknek a „természetjog” szabta keretek között. Tehát a nem keresztények közötti polgári házasság is felbonthatatlan, ha érvényesen kötötték.

Introduction

This paper is an exegetical study of cc. 780 and 781 of *Codex Canonum Ecclesiarum Orientalium (CCEO)* in comparison with c. 1059 of *Codex Iuris Canonici (CIC)* evaluating the change of attitude of the Catholic Church and its law makers concerning the validity of the marriages of baptized non-Catholics. This study also identifies, for the purpose of suggesting some solutions, some of the confusion and problems created by the different Codes and by different laws within one and the same Code concerning the validity of the marriages of non-Catholics.

Baptism makes a person subject to differing systems of marriage law, according to the legal norms established by the Catholic Church and contained in either of the Codes of canon law. Thus, to adjudicate marriage nullity cases, it must be established whether a person is baptized or not, and if baptized, into which ecclesial group. It must further be established whether the person professes membership in the Catholic Church, or more precisely, in which autonomous Church of the Catholic Communion. These facts determine which system of marriage law must be followed.

Questions may arise regarding which legislation is to be followed when judging the nullity of the marriages of persons, at least one of whom was not a catholic, especially if the parties belong to different ecclesial communities. Many possible juridical situations can be distinguished. For instance, marriage could have been celebrated between a Catholic and an Oriental non-Catholic, between a Catholic and a Western non-Catholic, between an Oriental non-Catholic and Western non-Catholic, between baptized person and a non-baptized

person, among the Orthodox themselves, among Western non-Catholics themselves, and when at least one party has left the Catholic Church.

The power of jurisdiction of non-Catholic Churches not in full communion with the Catholic Church has been a disputed question in the history of the Church. From Vatican II on, there has been a change of perception regarding the power of each Church to govern itself, especially in regard to marriage. While the 1917 Code was binding on all the baptized, the 1983 Code was limited to Latin Catholics. In spite of this, in mixed marriages between Catholics and non-Catholics, non-Catholics are still considered subject to canon law. The 1990 Code for the Orientals allowed non-Catholics to follow their own law; however, this is not fully true in the case of mixed marriages, especially with regard to canonical form.

1. COMPARISON OF CANON 780 OF CCEO WITH CANON 1059 OF CIC

It is very important to note the nuances between c. 1059 of *CIC* and cc. 780–781 of *CCEO*, especially when adjudicating marriage nullity cases. To this purpose, we now make a comparative study of these canons.

The Eastern Code was directly and greatly influenced by the Latin Code. In part, such large-scale derivation or dependence may be explained by the influence, for better or worse, of Latin Church legislation and Church order upon the Eastern Catholic Churches in recent centuries. In part, it also reflects what was thought, rightly or wrongly, to be necessary or useful Church law derived from the Latin Church's experience.¹

In spite of c. 11, the Latin Code in c. 1059 shows that the Church continues to hold that the Latin canon law is the only law to be applied to non-Catholic Christians who enter into a marriage relationship with a Latin faithful in the mixed marriage. In this case, c. 1059 excludes the jurisdiction of non-Catholics in the case of a mixed marriage. Regarding the application of c. 11 to c. 1059, the majority of canonists hold that it is an exception to the stipulation of c. 11.² In any case, the exemption has created a good deal of dispute among canonists.

¹ F. R. MCMANUS, *Marriage in the Canons of the Eastern Catholic Churches*, in: *The Jurist*, 54 (1994) p. 59.

² J. T. KANIAMPARAMBIL, *Competence of the Catholic Church in Mixed Marriages: The New Vision of the Oriental Code*, (Doctoral Thesis), Rome, Pontificium Athenaeum Sanctae Crucis, 1997, (ms), p. 11.

Canon 780 §2 of *CCEO* did justice to the stipulations of its own c. 1490³ (the corresponding canon to *CIC* c. 11⁴), which also excluded non-Catholics from the merely ecclesiastical laws of the Catholic Church. The legislator did not show any hesitation in implementing the teachings of Vatican II about the laws governing marriage and the competence of non-Catholic Orientals in legislating for marriage, a matter which was addressed in an incomplete manner by the Latin Code. The Oriental Code accomplished its work of filling the *lacuna* by adding a second paragraph to c. 780 and by introducing the new canon 781. The introduction of these two canons is a significant contribution of the Oriental Code. It should also be noted that for ecclesiastical communities of Protestants who do not have a proper marriage law, the canon law “canonizes” the civil norm to which c. 780 §2, 2° refers.⁵

However, since there is no parallel in *CIC* for c. 781 of *CCEO*, to resolve the *lacuna*, the Apostolic Signatura made a declaration on this matter on 28 May, 1993. It states that in order to judge the nullity or validity of the marriage contracted between non-Catholics, the judicial process would be implemented according to the norms of cc. 1671–1691.⁶ This declaration says nothing about the substantive laws that should be applied in the judgement of the validity or nullity of the marriage contracted between non-Catholics. Since *CIC* and the Apostolic Signatura did not say anything about this matter, there is no way of knowing about the laws that should be applied in this case.⁷

Along with others, U. Navarrete has argued for such an authoritative intervention that would extend these provisions of the Oriental Code to the Latin Church. He has stated: “to fill the gap that exists in the Latin Code concerning this subject matter, it would

³ „Legibus mere ecclesiasticis tenentur baptizati in ecclesia catholica vel in eandem recepti, quique sufficientem usum rationis habent et, nisi aliter iure expresse cavetur, septimum aetatis annum expleverunt.”

⁴ „Legibus mere ecclesiasticis tenentur baptizati in ecclesia catholica vel in eandem recepti, quique sufficienti rationis usu gaudent et, nisi aliud iure expresse caveatur, septimum aetatis annum expleverunt.”

⁵ For more detail see J. ABBASS, *Marriage in the Codes of Canon Law*, in *Apollinaris*, 68 (1995), pp. 534-538.

⁶ SUPREMO TRIBUNALE DELLA SEGNETURA APOSOLICA, *Dichiarazione sulla giurisdizione della Chiesa riguardo al matrimonio celebrato tra due acattolici*, in: *Ius Ecclesiae*, 6 (1994), p. 366.

⁷ M. A. ORTIZ, *Note circa la giurisdizione della Chiesa sul matrimonio degli acattolici*, in: *Ius Ecclesiae*, 6 (1994), pp. 374-375.

suffice if only these canons (i.e., of *CCEO*) were also extended authoritatively to the Latin Church. In that way, unity would also be gained in a matter of great importance and the greatest complexity".⁸ M. Ortiz is of the opinion that the prescription of the Vatican II, Decree on Ecumenism, *Unitatis redintegratio* no. 16 could be used in this case.⁹ However, the proposed instruction of the Interdicasterial Commission for Matrimonial Process, suggested on 22 February, 1999 to follow the canons 780–781 of *CCEO*.¹⁰

2. APPLICATION OF CANONS REGARDING THE VALIDITY OF MARRIAGE RELATING TO NON-CATHOLICS

Having studied in detail c. 1059 of *CIC* and cc. 780–781 of *CCEO*, we now apply them in actual situations of inter-Church marriages. We shall thus examine various scenarios to see various types of mixed marriages. Further, provisions regarding the canonical form of marriage in mixed marriage are also studied.

2. 1. General Norms

Both Codes expressly state in their first canon that they legislate only for members of their respective Catholic Churches.¹¹ Other Christian communities or Churches are left outside the orbit of merely ecclesiastical laws. However, the Catholic Church asserts its exclusive authority to define the contents of divine law, natural and positive, which obliges all human beings. In this way, catholic marriage law applies even to non-Catholics with respect to impediments which are assumed to be derived from divine law. The law is applied when the validity of the marriage of a non-Catholic is challenged in the ecclesiastical tribunals.

The Church also claims jurisdiction over all marriages when at least one of the parties is Catholic. Hence, a non-Catholic Christian who desires to marry a Catholic is brought into the orbit of canonical

⁸ U. NAVARRETE, *Ius matrimoniale latinum et orientale, Collatio Codecem latinum inter aroantium*, in: *Periodica*, 80 (1991), p. 618.

⁹ ORTIZ, p. 376.

¹⁰ See COMMISSIO INTERDICASTERIALIS «PER IL PRIMO PROGETTO DI UNA ISTRUZIONE SUI PROCESSI MATRIMONIALIS», *Primum Schema, a Commissione Approbatum, (Reservatum)*, 1999, vii, p. 83.

¹¹ For a more detailed discussion of this point, see J. FARIS, *Inter-ritual Matters in the Revised Code of Canon Law*, in: *Studia Canonica*, 15 (1983), pp. 239–259, especially footnote 1; see also D. SALACHAS, *Problematiche interrituali nei due Codici orientale e latino*, in: *Apollinaris*, 67 (1994), pp. 635–690.

legislation.¹² When a Catholic wishes to enter marriage with a non-Catholic who was married previously and whose spouse is still alive, a Catholic marriage can be permitted only after judging that the earlier marriage was invalid.¹³ It is to be noted that most non-Catholic Churches do not have a procedure of adjudicating marriage nullity cases, and that for them the civil procedure of divorce is accepted as sufficient for remarriage among non-Catholics.

When the ecclesiastical judge is to assess the validity of the prior union of a partner to a new marriage with a catholic, he will proceed in reverse order with the three elements for the valid marriage: consent, absence of impediments and marriage form. If he finds that the prescribed obligatory marriage form had not been observed, which is easily ascertained, the marriage was obviously invalid, and there is no need to investigate the absence or presence of impediments, or whether the consent was a valid one. If the form was found to have been valid, the question of impediments is studied. If, finally, the first marriage of such a prospective partner was valid on account of the form and the absence of impediments, there could be processed thoroughly by the competent ecclesiastical tribunal.

2. 2. WHEN AN EASTERN NON-CATHOLIC IS INVOLVED

First, we shall examine different scenarios of inter-Church marriages where an Eastern non-Catholic is involved.

2. 2. 1. *Marriage of Eastern Non-Catholic among Themselves*

The principle stipulated by c. 780 §2, 1° applies to all the Oriental non-Catholic Churches, which Vatican II recognized as possessing their own proper marriage law to be observed by their own members. In fact, these Churches have a rich common patrimony founded in the ancient canons of the Councils. In addition, the patrimony of these Churches was enriched with appropriate renewal and changes over the centuries. The Catholic Church, while recognizing that these Churches possess valid sacraments, especially the priesthood and the apostolic succession of the episcopacy, as well as ecclesiastical jurisdiction, acknowledges their right to govern themselves with proper discipline.

¹² Cf. L. ÖRSY, *Marriage in Canon Law: Text and Comments, Reflections and Questions*, Wilmington, Glazier, 1986, p. 65; see J. M. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, Quincy, IL, Quincy University, 1995, p. 189; see also L. BWAMBALE, *The „Bonum Coniugum” and „Bonum Prolis” in Mixed Marriages: With a Special Reference to the Diocese of Kasese*, Romae, Pontificia Universita Urbaniana, 1994, p. 101.

¹³ Cf. CCEO c. 781.

Consequently, the Catholic Church attributes legal force to their marriage law unless there is a violation of divine law.

Commenting on c. 781, J. Prader states that if the motive of nullity arises from a defect of consent based on the natural law or arises from an impediment based on divine or natural law, the norms of the canon law should be applied. But if the nullity of marriage is due to a defect of consent founded on merely ecclesiastical law or because of a diriment impediment of human law, or because of defect of form, the judges should take into account the respective Orthodox disciplines.¹⁴ Canon 781, 1° addresses juridical capacity, matrimonial impediments and defects of consent arising from human law. The same principle is applied to marriage between a Catholic and a baptized non-Catholic.¹⁵

2. 2. 2. *Marriage of eastern non-catholics with protestants*

Most Orthodox Churches grant permission for a marriage of an Orthodox with a Protestant, provided that the Protestant guarantees the Orthodox baptism and the rearing of their children in the Orthodox faith.¹⁶ The Catholic Church recognizes the obligation of Eastern non-Catholics to observe their own marriage form, namely, the priestly blessing, and declares null and void those marriages entered without observing that form, i.e., marriage before a civil magistrate or a Protestant minister who is not a priest, or before a non-Christian priest. If such form were missing, this enables the Eastern Orthodox party to remarry in the Catholic Church. This policy was confirmed by many decisions of the Rota¹⁷ and the Apostolic Signatura.¹⁸ *CCEO* c. 781, 2° confirms this law.

¹⁴ J. PRADER, *Il matrimonio in Oriente e Occidente*, Kanonica 1, Roma, Pontificium Institutum Orientalium Studiorum, 1992, p. 40.

¹⁵ Cf. D. SALACHAS, *The Ecumenical Significance of the New Code*, in: J. CHIRAMEL and K. BHARANKULANGARA, (eds.), *The Code of Canons of the Eastern Churches: A Study and Interpretation*, Alwaye (India), STAR Publication, 1992, p. 273.

¹⁶ V. J. POSPISHIL, *Eastern Catholic Marriage Law According to the Code of Canons of the Eastern Churches*, Brooklyn, NY, Saint Maron Publications, 1991, p. 232.

¹⁷ There have been several Rotal sentences on this issue, in: *Sacrae Romanae Rotae Decisiones seu Sententiae* (=SRR Dec), *coram* CANALS, vol. 63 (1980), pp. 366–371; *coram* MERCIÉCA, vol. 63 (1980), pp. 382–386; *coram* FERRARO, vol. 63 (1980), pp. 817–824; *coram* AGUSTONI, vol. 63 (1980), pp. 739–749; *coram* CANALS, vol. 66 (1983), pp. 416–418; see also A. MENDONÇA, *Rotal Anthology: An Annotated Index of Rotal Decisions from 1971 to 1998*, Washington, DC, Canon Law Society of America, 1992, pp. 380, 385.

¹⁸ SIGNATURA APOSTOLICA, November 28, 1970; *Periodica de re morali et canonica*, 60 (1971), pp. 306–308; see also G. LOBO, *The New Marriage Law*, Bombay, St. Paul Publications, 1989, p. 96.

2. 2. 3. *Marriage of Eastern Non-Catholic Converted from Protestantism*

When a Protestant is received into a non-Catholic Oriental community, he/she becomes, in canon law, an Oriental non-Catholic. Therefore, the validity of a marriage into which he may afterwards enter must be examined according to Oriental canon law. The former Protestant will no longer be exempt from the diriment impediment of disparity of worship. Specifically, by conversion, a Protestant enters the legal sphere of the Eastern non-Catholic Church and becomes bound to the obligation of the marriage from and the impediments of that Eastern Church. The laws of the Orthodox Church should be observed when adjudicating a marriage nullity case.

2. 2. 4. *Marriage of Eastern Non-Catholic with Catholics*

Mixed religion, which was a prohibitive impediment in *Crebrae Allatae*,¹⁹ is no longer an impediment in the new Code. There exists only a simple prohibition with regard to this in the canon on mixed marriage (*CCEO* c. 813). Such a marriage needs permission from the local ordinary. But, even without the permission or in contravention of refusal to grant permission, the marriage would still be valid as long as both parties are baptized.²⁰

According to *CIC* c. 1059 and *CCEO* c. 780 §1, even if only one party is Catholic, the marriage is regulated by canon law. Thus, if a Catholic marries an Eastern non-Catholic or a Protestant or even a non-baptized person, canon law must be observed because in any of these cases, at least one party (the Catholic) is baptized. Hence, the Catholic marriage form provided in *CIC* c. 1108 §1 or *CCEO* c. 828 §1, as the case may be, must be observed. However, c. 1127 §1 of *CIC* and c. 834 of *CCEO* allow a concession to Oriental non-Catholics. These canons state that if the Catholic party contracts marriage with a non-Catholic party of Oriental rite, the canonical form of celebration is to be observed for lawfulness only. For validity, however, the intervention of a sacred minister is required, while observing other requirements of the law. This is because of the fuller ecclesial reality

¹⁹ PIUS XII, MP *Crebrae Allatae Sunt*, February 22, 1949, in: *Acta Apostolicae Sedis* (=AAS), 41 (1949), pp. 89–119.

²⁰ Cf. I. GRAMUNT, J. HERVADA, and L. A. WAUCK, *Canons and Commentaries on Marriage*, Collegeville, MN, The Liturgical Press, 1987, p. 72; see also J. CORIDEN, T. GREEN, and D. HEINSTSCHTEL, eds., *The Code of Canon Law: A Text and Commentary*, New York, Paulist Press, 1985, xxvi, p. 802.

and the validity of the Orders in the Orthodox Churches which are recognized by the Catholic Church.²¹

Oriental theology teaches that it is the priest who celebrates the sacrament of marriage. Sacramental grace comes to the couple through the blessing of the priest, who according to Orthodox theology, is the minister of the sacrament of matrimony. The mutual matrimonial consent of the couple is regarded as the indispensable precondition for receiving the sacrament.²² In the celebration of the marriage there is a proper sacramental epiclesis which can be performed only by the priest. This is the reason behind the insistence of the Oriental Code on the sacred rite of marriage; i. e., the blessing and assisting of a priest.²³

Is a marriage between a Latin Catholic and an Oriental Christian, Catholic or non-Catholic, valid if officiated at by a deacon; i. e., without priestly blessing? There are differing opinions. To some, like D. Salachas, such a marriage would be invalid due to the absence of sacred rite, and on the argument that the Latin Code also admits Oriental theology regarding sacred rite in its canon is in the sense of *CCEO* c. 828 §2 (with sacred rite accomplished by the priest assisting and blessing).²⁴ None of the Oriental Churches, Catholic or Orthodox, have in their liturgical tradition a deacon or a lay person as the minister of marriage, even in extraordinary circumstances by way of delegation.

However, according to J. Prader, V.J. Pospishil and J.D. Faris, there is no doubt that a Latin deacon, delegated by the norm of *CIC* c. 1111 §1, can validly bless such a marriage in his Church, even if in the Oriental Churches, on the other hand, deacons are not delegated to bless marriages.²⁵ It would seem that the legal axiom sanctioned by the approval of centuries, *locus regit actum* – i.e., the legal formalities of a juridical act follow local requirements – is the principle to be

²¹ LOBO, p. 106.

²² P. EVDOKIMOV, *The Sacrament of Love: The Nuptial Mystery in the Light of the Orthodox Tradition*, trans. by A. P. GYTHIEL and V. STEADMAN, New York, St. Vladimir's Seminary Press, 1985, p. 146.

²³ D. SALACAS, *Il sacramento del matrimonio nel nuovo Diritto canonico delle Chiese Orientali*, Roma, Dehoniane, 1994, pp. 32–33.

²⁴ *Ibid.*, p. 223

²⁵ Cf. PRADER, p. 38; see J. D. FARIS and V. J. POSPISHIL, *The New Latin Code of Canon Law and Eastern Catholics*, Brooklyn, Diocese of Saint Maron, 1984, pp. 32–33; see POSPISHIL, p. 372; see also *LG* no. 29.

followed.²⁶ The new Ecumenical Directory of 1993 referring to both Latin and Oriental Catholics in no. 153 speaks only of marriage being “celebrated [...] by an ordained minister”; it does not specify “priest”. The discussion still continues as to whether the Latin deacon is a valid minister in such cases or not.

3. WHEN A WESTERN NON-CATHOLIC IS INVOLVED

Western non-Catholic ecclesial bodies are also placed beyond the scope of the marriage law of the Catholic Church. These Churches and communities historically trace their origin to the Latin Church of Rome, and are usually identified by the term “Protestants”. Some of them have preserved some of the sacraments in accordance with the teaching of the Catholic Church and of the Eastern non-Catholic Churches. However, they consider marriage to be a secular affair, and not a sacrament, even though they are zealous in involving God’s blessing upon the married couple and their families.²⁷ Consequently, they assign to the state the ordering of marriage in law. They are thus Churches or ecclesial communities for which the state is the source of marriage law. For this reason, they are not considered by canon law to be in the same juridical situation as Oriental non-Catholics. The civil law in force at the time of the celebration of the marriage should be applied in determining the validity of the marriage. The same principle is valid in the case of the marriage between baptized non-Catholics and non-baptized persons.²⁸

3. 1. Marriage of Protestants among Themselves

The Church prohibits, in principle, civil marriage for all baptized persons, but since non-Catholic Christians are not subject to Catholic marriage law, and specifically not to the obligatory ecclesiastical marriage form (*CCEO* c. 781, 2^o), the Church recognizes for such Christians the civil marriage as valid in canon law provided that the consent was valid and that there was no impediment of secular law present.²⁹

CCEO c. 781 shows a dramatic advance in acknowledging the freedom of non-Catholics to be governed by their own proper laws.³⁰ Note that since the 1917 Code (c. 1070, §1) all Western non-

²⁶ Cf. HUELS, p. 254.

²⁷ *Ibid.*, pp. 227–228.

²⁸ KANIAMPARAMBIL, p. 187.

²⁹ *Nuntia*, 5 (1977), pp. 54–59.

³⁰ J. D. FARIS, *The Codification and Revision of Eastern Canon Law*, in: *Studia Canonica*, 17 (1983), p. 477.

Catholics, baptized or not, are exempt from the diriment impediment of disparity of worship when they marry among themselves (see also *CIC* c. 1086, §1). Hence, the absence or presence of baptism is of no legal importance. The same can be said with respect to the marriage form (*CCEO* c. 781).

3. 2. Marriage of Protestants Converted from Orthodox Churches

Those Eastern non-Catholic who joined a Protestant or any other religious denomination remain still under the obligatory marriage form, i.e., the blessing of the marriage by a priest. Consequently, a marriage entered by a former Eastern Orthodox before a civil magistrate or a minister of religion who is not a priest, will be judged invalid by a Catholic tribunal.³¹ An Eastern non-Catholic remains bound to the obligation of the form and the impediments of his/her Church even when he/she has publicly "converted" to a Protestant denomination. Such an Eastern non-Catholic cannot leave his/her Church formally, in the same way an Eastern Catholic cannot leave his/her Church.³² So, when a marriage nullity case of such an Eastern non-Catholic who joined a Protestant Church is to be adjudicated, the Eastern non-Catholic law is to be observed.

3. 3 Marriage of Protestants with Catholics

Canon 780 §2, 2° of *CCEO* deals with the ecclesial community to which the non-Catholic party belongs, and which does not have a proper matrimonial juridical system. In this case, the canon says the marriage is to be regulated not only by divine law, but also by the *law "quo pars acatholica tenetur"*.³³ The incidental clause "*quo pars acatholica tenetur*", applies only to those laws that formally, in one way or another, derive from the authority of the Church. The competence of the ecclesiastical authority as regards the marriages of the baptized is exclusive.³⁴ In the case of an ecclesial community without marriage law, the Catholic Church recognizes civil law as valid for those faithful.³⁵ It may seem that c. 780 §2 excludes also the law on observing the form. However, *CCEO* c. 834 repeats after *CIC* c. 1127 that the marriage form prescribed by canon law is to be observed.

³¹ *Ibid.*, pp. 391–392.

³² *Ibid.*, p. 232.

³³ KANIAMPARAMBIL, p. 60.

³⁴ *Nuntia*, 28 (1989), p. 105.

³⁵ J. MIÑANBRES, *La remisión de la ley canónica al derecho civil*, Roma, 1992, pp. 17–23, 192.

In any case, if the non-Catholic is a non-baptized person, the marriage with a Catholic would be invalid on the ground of disparity of cult, unless a dispensation was granted. Baptism in all mainline Protestant Churches must be considered valid when it is conferred by immersion or pouring of water accompanied by the Trinitarian formula.³⁶ In some Protestant communities, baptism is not conferred until an adult age. Thus, a person may have been raised to adhere to some Christian beliefs and practices without having been baptized as a child.³⁷

4. WHEN ONE WHO LEFT THE CHURCH IS INVOLVED

The policy on leaving the Church is different in the Latin and Oriental Codes. This can cause confusion when a person who has left the Church is subsequently involved in a mixed marriage. Hence, we must consider this matter.

4. 1. Leaving the Church

The Latin Code acknowledges the possibility of a Latin Catholic withdrawing partially from the sphere of his/her marriage law by leaving the Church in a formal manner, as is mentioned in connection with the impediment of disparity of worship (c. 1086 §1), with respect to the obligatory marriage form (c. 1117) and mixed marriage (c. 1124). The corresponding canons of the Eastern Code have no such provision. Eastern Catholics can never become disconnected from the application of Catholic marriage law, irrespective of whether they have rejected membership in the Catholic Church or not. According to *CCEO* c. 834 §1, all those baptized in the Catholic Church are bound by the canonical form laid down by the Code if they wish their marriage to be valid in the eyes of the Church, whether or not they have been brought up as Catholics, and whether or not they have formally defected from the Catholic Church.³⁸

When a Latin Catholic withdraws by a formal act of his own, or of his parents in case of children, he/she is no longer by the impediment of disparity of worship or obliged to observe the marriage form. This exception does not extend to the other impediments, to wish they remain subject. However, this exemption of Latin Catholics who have

³⁶ Cf. LOBO, p. 48, see also CORIDEN, p. 768.

³⁷ *Ibid.*, p. 768.

³⁸ J. VADAKUMCHERRY, *Marriage Laws in the Eastern and Latin Codes*, in: J. CHIRAMEL, and K. BHARANIKULANGARA, (eds.), *The Code of Canons of the Eastern Churches: A Study and Interpretation*, Alwaye, St Thomas Academy for Research Publications, 1992, p. 184.

left the Church has legal force only since November 27, 1983. The validity of marriages entered before that date is to be judged according to the preceding law of 1917 Code, which followed the axiom “once a Catholic, always a Catholic”; i.e., someone who was baptized in the Catholic Church or, if baptized outside the Catholic Church, had joined the Catholic Church.³⁹ Rotal decisions have clarified this.⁴⁰ Nevertheless, note that until January 1, 1949, those who were baptized in the Catholic Church but never educated in it, were not bound by the canonical form if they were born to non-Catholic parents.⁴¹

4. 2. Marriages between Those who left the Church and Non-Catholics

The question of whether a Latin Catholic has actually left the Catholic Church, in the precise meaning of the law, will come up when the validity of his/her former marriage is to be judged at the time this person or his/her former spouse wishes to enter a new marriage with a Catholic.⁴² If the withdrawal from the Catholic Church was effective in the meaning of the law, such a person will not be bound by the form of marriage and impediment of disparity of cult, and the former marriage, entered outside the Catholic Church, will be valid on those grounds, thus preventing him/her from a new marriage in the Catholic Church unless other grounds exist.⁴³

4. 3. Marriages between Those who have left the Church and Catholics

Formal defection leads to a situation of mixed marriage. The Pontifical Commission for the authentic interpretation of the Code had declared previously that, as regards marriage, those enrolled in atheistic sects are also equated with those who belong to non-Catholic sects.⁴⁴ When a “former” Latin Catholic wishes to marry a Catholic, permission is to be sought from the local ordinary on the same conditions which apply to a marriage with a non-Catholic.⁴⁵ An

³⁹ POSPISHIL, *Eastern Catholic Marriage Law*, p. 223.

⁴⁰ See SRR Dec. coram EWERS, vol. 63 (1980), pp. 42–46; coram LEFEBVRE, vol. 63 (1980), pp. 967–972; see also MENDONÇA, pp. 376–377.

⁴¹ CIC/1917, c. 1099 §2; PIUS xii, MP *Abrogatur Alterum*, August 1, 1948, in: *AAS* 40 (1948), p. 305; *Canon Law Digest (=CLD)* T. BOUSCAREN (ed.), MILWAUKEE, BRUCE PUBLISHING Co., 1935–1969, vol. 3, pp. 463–464; see also MENDONÇA, p. 376.

⁴² Cf. VADAKUMCHERRY, p. 20; HUELS, p. 223; see also CORIDEN, p. 797.

⁴³ Cf. POSPISHIL, pp. 219–223; VADAKUMCHERRY, p. 20; HUELS, p. 223; CORIDEN, p. 797.

⁴⁴ PONTIFICIA COMMISSION AD CODICIS CANONES AUTHENTICE INTERPRETANDOS, *Responsa ad Proposita dubia, An ad normam Codicis*, July 30, 1934, in: *AAS*, 26 (1934), p. 494.

⁴⁵ Cf. CIC c. 1071, 4°; CCEO c. 789, 6°; see also ÖRSY, p. 83; CORIDEN, pp. 754–755; VADAKUMCHERRY, pp. 32, 74–75.

official reply of the Commission for the Interpretation of the Decrees of Vatican II, February 11, 1972, clarified that a bishop could also dispense from the canonical form when a Catholic marries a lapsed Catholic who has joined another Church.⁴⁶ A further reply of April 9, 1979, implied that bishops in granting dispensation could add certain clauses for the validity of the dispensation which, if not observed, would cause the nullity of the marriage.⁴⁷ The canon on mixed marriage is not applicable when both parties have notoriously abandoned the Catholic faith. In that case, the couple should not marry as Catholics.⁴⁸

The Eastern Catholic pastor would have to take cognizance of this provision only when such a person who had left the Latin Church wishes to have the previous marriage declared null in order to marry an Eastern Catholic. The question of the validity of the previous marriage would normally have to be resolved by a Latin marriage tribunal.⁴⁹

4. 4. Marriages of Oriental Catholics who have left the Church

As we have seen, Eastern Catholics who have left the Catholic Church remain obliged to the Catholic marriage form. The clause "*neque actu formali ab ea defecerit*" found in *CIC* c. 1117 is absent in the corresponding canon of *CCEO* (c. 834). Hence, if such a person's first marriage was entered before a non-Catholic minister who was not a priest, or before a civil magistrate, this first marriage would be invalid. Consequently, a new marriage can be permitted to the Oriental Catholic.⁵⁰

Oriental Catholics who are the offspring of non-Catholics, but baptized in childhood in an Oriental Catholic Church, and then reared outside the Catholic Church, are bound to the obligatory marriage form. Eastern Catholics who as adults ceased to present themselves publicly left the Catholic Church, and perhaps even formally joined some other denomination, remain subject to the marriage form: "once a Catholic, always a Catholic"⁵¹; and "once an Oriental, always an Oriental".

5. DISPENSATION FROM THE CANONICAL FORM OF MARRIAGE

A major difference between Western and Eastern legislations is that the local ordinary in the Western Church can dispense from the

⁴⁶ *AAS*, 64 (1972), p. 397.

⁴⁷ *AAS*, 71 (1979), p. 632; see also LOBO, p. 107.

⁴⁸ ÖRSY, p. 83.

⁴⁹ POSPISHIL, p. 391.

⁵⁰ See *CCEO* cc. 828, 832, 834.

⁵¹ POSPISHIL, p. 390.

form of the celebration of marriage in the case of a mixed marriage, if there are serious difficulties (*CIC* c. 1127 §2). It is reserved, according to new Eastern legislation, to the Apostolic See or the Patriarch,⁵² and granted only for a most grave reason.

Canon 832 of *CCEO*, following *CIC* c. 1116, clearly recognizes the possibility of sacramental marriage without the priestly blessing in extreme and exceptional circumstances. The inclusion of §3, without a full parallel in the Latin Code, is only an effort to respect Eastern tradition of priestly blessing. It states that the spouses shall not neglect to receive this blessing as soon as possible. However, this canon prompts a question of validity: if the couple married in such circumstances neglected the priestly blessing later when it was possible, can this mixed marriage be adjudicated invalid? Note that validity accompanies the celebration of the marriage and not later when fulfilling a condition.

Conclusion

We have made, in this work, an exegetical study of the Latin and the Oriental Codes regarding canons relating to the validity of marriages of non-Catholics. Progress, as measured by the change of attitude of the Catholic Church towards the marriages of non-Catholics, is evident. In the old Codes, the Catholic Church insisted on its jurisdiction over the marriages of all the baptized. Imbued with the spirit of the Second Vatican Council, the Church now makes an attempt to allow non-Catholics to rule themselves. Both new Codes clearly state that the canons affect only their respective Catholic Churches. The Oriental Code goes further declaring that non-Catholic are to follow their own laws with regards to marriage and, if they do not have laws of their own Church, then the laws they come under, allowing even civil law for this purpose.

Nevertheless, this attempt of the Catholic Church is not yet complete. It does not have the full confidence to leave non-Catholics to their own rules when Catholics are involved in mixed marriages. The Catholic Church still wants some say over mixed marriages or the marriages of non-Catholic, claiming that only the Catholic Church has the authority to define and to stipulate divine laws. The Oriental Code, although it is more progressive than the Latin Code concerning jurisdiction over non-Catholics, is also conservative by stressing the importance of priestly blessing in marriage and reserving the faculty to dispense from the marriage form to the Apostolic See and the Patriarch. The different views of several canon lawyers indicate the

⁵² Cf. *CCEO* c. 835. Nuncios also can grant this dispensation by their faculties.

current level of confusion in adjudicating marriage nullity cases
of non-Catholics.