

CIVIL MARRIAGE VERSUS RELIGIOUS MARRIAGE- 120 YEARS OF COHABITATION

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Abstract: This paper deals with a thematic retrospective, when 20 years are celebrated from release of the first Code of Canons of Eastern Churches, CODEX CANONUM ECCLESiarUM ORIENTALIUM¹, by its reception and applicability. Similarly, in 2014, 120 years are celebrated from promulgation of obligatory civil marriage, as solitary action of the State. On this line, the paper refers strictly to sacrament of marriage, by a parallel between vision of the Church and that of Hungarian State as for consequences of this decision throughout time. Subject of civil marriage is approached also from the perspective of Romanian element, the issue becoming delicate, given the fact that a civil marriage involved also introduction of Registers of births, deaths and marriages that obviously followed to be completed in Hungarian, with translation of Romanian names into Hungarian names, practically assisting to a process of Magyarization under the guise of Hungarian liberalism. If reaction of the Hungarian Catholic Church was justified by the ground of Christian teachings, reaction of Romanians was extended by the harm caused to Romanian spirit itself, the issue transforming from one religious into one national, all Romanians being affected, irrespective of their religion.

Keywords: codex, marriage, sacrament, vision, Register of births, deaths and marriages, Romanian spirit.

On 20 year celebration from the appearance of the first canon law of eastern churches, CODEX CANONUM ECCLESiarUM ORIENTALIUM² is necessary a thematic retrospective, through its reception and applicability. I will only refer to sacrament of marriage, considering

¹ Codex canonum Ecclesiarum orientarium, translation by Iulia Vasile Muntean, Editura Presa Universitară Clujeană, Cluj-Napoca, 2001.

² Codex canonum Ecclesiarum orientarium, translation by Iulia Vasile Muntean, Editura Presa Universitară Clujeană, Cluj-Napoca, 2001

celebration in 1994, of 100 years from promulgation of obligatory civil marriage, as solitary action undertaken by the State.

“Unirea” newspaper from Blaj offers us, starting with the 6th issue of 1893, a range of articles on intention of the Hungarian liberal government, to introduce civil marriage and Registers of births, deaths and marriages as component of civil law, exonerating the Catholic Church of its right to officiate the wedding ceremonies on its own behalf, in compliance with religious law.

1. The stance of the Catholic Church concerning the civil marriage

Obviously that such an action of the Hungarian government triggered some reactions, the first institution that took official stand contrary to this approach being the Catholic Church from Hungary, by the body of Catholic Episcopacy, invoking in his favour Christian teaching and exclusivity of professing it amongst believers.

Interesting to mention here, the stance of newspaper “Gazeta Transilvaniei” issue 13 from 1893³, that suspects Vatican of influencing the position of Hungarian Catholic Episcopacy, „teaching [...] means of traffic”⁴, to detriment of civil marriage, although arguments invoked by the Church were strictly theological, dogmatic and moral.

“Against this tendency of the state is the teaching of the church, which was set forth also by ecumenical councils, according to which marriage is sacramental, and consequently as the state cannot impose conditions referring to the true receiving of the sacrament of baptism and unction, the same way cannot impose either the conditions of true validation of the sacrament of marriage, and this even more that the sacrament of marriage is the physical act itself of marriage. Thus, there cannot exist amongst Christians marriage without sacramental feature, because if there is no sacrament there won’t be any marriage. Similarly, it was proclaimed in ecumenical Synods, that the right of establishing diriment impediments for marriage exclusively comes to

³ *Unirea*, issue 6, 11.02.1893, p.1

⁴ *Gazeta Transilvaniei*, issue 13, 1893

attribution of the church, which is the only one entitled to judge whether a marriage is valid or not.”⁵

Thus, the Church assuming decisional singularity as regards matrimonial law was not and is not a privilege, but it rests upon the sacrality of the action, meaning the sacrament of marriage itself.

If, things were and are still clear as for the right of the Church to decide unilaterally in the matter of ecclesiastic issues, as concerns the right of the State to interfere with Church, things became substantially dangerous, they could affect the mission itself of the Church. Suspicion thrown on liberal Hungarian government, as for its intention of controlling also activity of the Church was justified by the more and more frequent actions, taken against it: the law of limiting, until dismissal, of confessional education in favour of state education, the law of kindergartens withdrawn from support of the Church, and taken under patronage of the state, etc. Practically, we notice intention of the state of exerting control over all domains of activity, with the goal of centralizing them into sole decisional will, that of the state.

Considering the modern times, wish of State decisional centralization remained constant, irrespectively of the type of political regime, either dictatorial or democratic, attention being always directed towards the Church, with the purpose of diminishing its power and unofficial using some of its prerogatives.

Coming back to civil marriage, it is necessary approaching the subject also by the Romanian element, the problem becoming delicate, due to the fact that a civil marriage also involved introduction of Registers of births, deaths and marriages, that obviously followed to be filled in Hungarian, with translation of Romanian names into Hungarian names, practically assisting to a process of Magyarisation under the guise of Hungarian liberalism. If reaction of the Hungarian Catholic Church was justified by the ground of Christian teachings, reaction of Romanians was extended by the harm caused to Romanian spirit itself, the issue transforming from one religious into one national, all Romanians being affected, irrespectively of their religion. On this line, we find out from “Tribuna”⁶ newspaper that Romanian National Party started to

⁵ *Unirea* issue 6, 11.02.1893, p.1.

⁶ *Tribuna* issue 18, 5.02.1893

seek undertakings to protest against civil marriage and introduction of Registers of births, deaths and marriages, the adopted stance being “in full harmony with our ecclesiastic and national interests”.⁷

Even “Gazeta Transilvaniei”, a periodical with frequent anti Greek-Catholic attitude, by voice of editor Iosifu Romanu, fierce critic of “Unirea”, is on the same part of the barricade in the matter of preserving the identity of Romanian element, interchanging expressions such as [...] monstrous and degenerate principles [...]” with “[...] we agree with the declaration made by “Unirea” [...] and [...] it gives peace that independence of our metropolitan province will be always defended from foreign schemes, subordination”⁸.

Ten months were necessary so that the intention of the government to materialize in a draft bill on “regulating matrimonial law” that followed to be presented to the Parliament, the Crown barely accepting, yet without this definitely engaging on the side of supporters of civil marriage. Worth remembering is the attitude showed by the Crown which, although accepts presentation of the draft bill in the Parliament, does not openly assert the arguments in favour or against, being satisfied with adopting a reserved attitude, with the evident wish of maintaining a balance of the state of affair, without straining relations with the Church of Rome.

Another hypothesis, relatively plausible if we consider its source, “Vaterland” newspaper from Vienna, from November 8, 1893⁹, indicates the long period of expectation of the assent given by the Crown, as a possible overthrow of Wekerle – Tisza government, with the implicit effect of renouncing to the respective draft bill. Should this change had been successful the Crown would have had a more than honourable position in relation with Rome, but also Hungarian parliament. Unfortunately, the government withstood pressure and having internal support, succeeded introducing this into Parliament, following presentation of the draft budget. It is a strategic manoeuvre of the government to overshadow any law in relation with budget law, exactly to minimalise importance of the other draft bills, with the intention that these to be passed without a thorough analysis.

⁷ idem

⁸ *Unirea* issue 6, 1893, *La cestiunea autonomiei catolice (On the issue of Catholic autonomy)*, p. 43

⁹ *Unirea* issue 46, 1893, *Din istoria proiectului de lege despre căsătoria civilă (History of the draft bill on the civil marriage)*, p.370

For Romanians, this was also a period of expectation, yet of different nature, a time for preparation and call for preservation of national identity, even subordinated to the Crown. Significant is also the slogan by which Romanians profess loyalty towards the Crown, “God, Country and Throne”¹⁰, hoping to place the Crown on the side of opponents of civil marriage.

2. Civil marriage between Christian and civic consciousness

Once forwarded for debate before the Parliament, the draft offered whole text of the future matrimonial law, opening for the Church and Catholic believers new expressions of opinion, especially on freedom of conscience. Conscience of Catholic Christian, for whom ecclesiastic law was fundamental, was now severely affected by introduction of the new law that removed marriage from the domain of the sacred and transformed it into civil contractual obligation. Furthermore, Catholic Christian was faced with an unusual option: if one accepted civil marriage at the expense of religious marriage, was liable to the punishment of the Church, and if this accepted religious marriage at the expense of the civil one, was punishable by the State. Which one to choose civil duty or Christian duty? This was the question that the conscience of the Catholic Christian had to answer. Why do we specify “Catholic Christian”? Because this problem was essential only for the Catholic Church, marriage being acknowledged as sacrament, while for the other confessions was not, or like in the case of the Orthodox Church where, although it was acknowledged as sacrament, it was not kept as such. Also, here must be mentioned the fact that in Romania, where the Orthodox Church was predominant, civil marriage was already applied, its introduction not being opposed anymore by any Church.

Interesting is the fact that in the Empire still wasn't raised the issue of coexistence of the two forms of marriage; the new law did not prohibit religious marriage, as neither the ecclesiastic laws could forbid civil laws.

Analysing the text of the new civil matrimonial code, one can notice ushering in some ecclesiastic phrases, as the following: banns, dispensations, engagement, terms used only within the Church. Such enunciations in civil matrimonial law had the role of influencing the conscience of the citizen to ecclesiastically agree on civil marriage. Although Church made

¹⁰ op.cit., p.370.

efforts to withdraw this legislative initiative, the idea of civil marriage had already found supporters even amongst some Catholic priests¹¹ who did not find the new civil law as being an impediment, but as central administrative measure which followed to organise and systematize the civil institution of marriage.

From the intention of bringing into use civil marriage and until its promulgation, almost two years have passed, “Unirea”¹² newspaper recording this event in the issue 53 from 15 December 1894. From the article entitled “Sanționarea” (Sanctioning), we also find about the new attitude of citizens but also of the Church as regards civil marriage and Registers of Births, Deaths and Marriages, a resigned attitude: “Nowadays civil marriage is a mandatory law together with divorce. And law is law. And we will obey the law.”¹³ Article comprises, referring to the negative effects of bringing in civil marriage in relation with Christian conscience, also a gloomy forecast regarding the future of the institution of family, underlining:

“- [...] unjust and unfair, injurious, revolts our Christian conscience, Romanian and patriotic, demoralising, ruiner of family life and ignorer of social and state order.

- [...] civil matrimony and divorce destroy our religious conscience, because by marriage we understand not only a bilateral and civil contract, but rather and important and sublime act of religion, a sacrament of the new law.

- [...] only in heavenly blessing do we find a guarantee for peaceful and happy cohabitation of spouses.

- [...] the only base of Romanian families is in the marriage before priests...

- [...]because we consider that the sole and true guarantee for prosperity and material and spiritual well-being was in the morality and integrity of families, as foundation above which rises the social entity of the state.”¹⁴

Other negative effects we encounter amongst the lines of the same article:

¹¹ op.cit., p. 407.

¹² Unirea issue 53, 1894, p. 405

¹³ idem

¹⁴ Ibidem

“- [...] loose morals demoralise, as the base of morality is family life. In addition, family life gets its morality from the sacred feature of marriage. Yet, civil marriage affects the saint character of religious marriage and casts out God from the family. Moreover, without God there is no morality.

- [...] ruins family life, as deprives religious marriage of its sacramental feature and turns it into a simple contract concluded for a determined period of time, likely that the other side to renounce at any time. On the other hand, by divorce marriage is deprived by its indissoluble character and transforms it into concubinage, and the wife, the partner that promised to be true in good times and in bad, is denigrated to the state of a prostitute, only good at satisfying the beastly desires of man.”¹⁵

Therefore, it seemed to be opened an authentic Pandora’s box following the civil marriage. Throughout time, we have the possibility of analysing these predictions made more than 100 years ago, accepting fulfilment of some and unsoundness of others.

3. Matrimonial civil code and Code of Canons of the Eastern Churches - intertwinements

Analysing the text of the law on matrimonial civil law proposed by the Hungarian government and text of the chapter referring to marriage from the Code of Canons of Eastern Churches, we cannot help noticing major similarities between different articles, some even identical, small differences being of content and not format. An external factor of the problem itself is development of Romanian language, as means of expressing and synthesising, which allowed concentration of the text in the actual code¹⁶.

Noticing the structure of the matrimonial civil code, we record division of the text of the law into 10 chapters:

- Chap. I. Engagement - comprises articles 1-7, published in Unirea, issue 49 from 8.12.1983

¹⁵ Ibidem

¹⁶ The 7 law articles from Civil marriage code, on engagement, are gathered in Code of Canons of the Eastern Churches in Can. 782 that encompasses only two articles.

- Chap. II. Impediments to marriage - comprises articles 8-31, published in Unirea, issue 49 from 8.12.1893

- Chap. III. Entering into marriage - comprises articles 32-60, published in Unirea, issue 50 from 16.12.1893 and Unirea issue 51 from 23.12.1893

- Chap. IV. Invalidity of marriage - comprises articles 61–93, published in Unirea, issue 51 from 23.12.1893 and Unirea issue 52 from 30.12.1893

- Chap. V. Termination of marriage – comprises articles 94- 126, published in Unirea, issue 52 from 30.12.1893 and Unirea issue 2 from 13.01.1894

- Chap. VI. Separation from bed and board – comprises articles 127- 130, published in Unirea, issue 3 from 20.01.1894

- Chap. VII. Marriages contracted abroad and the foreign married – published in Unirea, issues 131- 143, published in Unirea, issue 3 from 20.01.1894 and Unirea, issue 4 from 27.01.1894

- Chap. VIII. Penal provisions – comprises articles 145-148, published in Unirea, issue 4 from 27.01.1894

- Chap. IX. Different provisions – comprises articles 149-155, published in Unirea, issue 4 from 27.01.1894

- Chap. X. Final provisions – comprises articles 156-167, published in Unirea, issue 5 from 3.02.1894.

Comparing these data with the structure of CCEO¹⁷ which debates marriage in chapter 14¹⁸, is supported the previous assertion on similarities of format between texts, even if the term chapter used by the law is replaced with article in Code of Canons of Eastern Churches, and the term article is replaced with canons.

¹⁷ CCEO – Latin name of Code of Canons of the Eastern Churches

¹⁸ op.cit., p.411

A first observation refers to number of canons reserved for marriage, 80¹⁹ in the case of Code of Canons of Eastern Churches, as opposed to 167 in the Matrimonial civil code.

On enumerating titles of articles from Code of Canons of Eastern Churches, numerically,

- On marriage, can. 776-can. 783
- On pastoral care and those things that must precede celebration of marriage, can.783-can. 789
- On diriment impediments in general, can.790 – can.799
- On impediments specifically, can. 800-can. 812
- On mixed marriages, can. 813-can. 816
- On matrimonial consent, can. 817-can. 827
- On the form for celebration of marriage, can.828-can.842
- On convalidation of marriage, can. 843-can. 852
- On dissolution of the bond, can. 853-can. 866

we notice a different approach of the same theme, yet focusing on the issue of marriage in ecclesiastical context. Researching article by article the text of each code, we incline to believe that the intention of the Hungarian government was not declared against the Catholic Church, as an insult or subversion of its power, but rather to develop a public service, similar to that actual of civil status, keeping own accurate evidence, in full compliance with ecclesiastic registers of births, deaths and marriages. Indubitably, state has left its mark over family as base institution within society, offering it at the same time also possibility of transforming it into an infamous institution, as in the case of divorce. Otherwise, the result of this comparison sumps up in the two aspects contrary to the Church and its teaching, divorce and sentence, with the most negative effects over the members of the society.

¹⁹ Chapter IX, Despre căsătorie (On marriage), can.776 – can. 866

4. Conclusions

Nowadays, when civil marriage is constituent part of union of man with woman under civil rapport, a dominant rapport as opposed to the religious one, when issues were moved from the field of marriage to concubinage, we incline to agree with our forerunners, as for negative effects of bringing in civil marriage. Meanwhile, matrimonial civil code, that included also divorce, offered the young a new alternative, that of concubinage or marriage of probation, from here being just a step to marriage between identical sexes.

If more than 100 years ago, the Catholic Church fervently militated against this law, nowadays it is obliged to fight against the effects of the law, with its derivates. Common sense and fear of God succeeded for a while to compensate for drawbacks of civil marriage, rarely the Christians invoking separation by divorce. And still, with the passage of time to modern period, statistics, not only those of state, civil, but also the ecclesiastical ones, record increase of the number of divorces, of the abandoned children resulted following it, the problem becoming one really serious, developing in a primary theme in re-catechization of fathers, but also the young who wished to start a Christian family.

Publication in 1983 of Code of canon Law, established for the Roman-Catholic Church and subsequently, in 1991 of the new Code of Canons of the Eastern Churches, established for eastern Catholic Churches, is an appeal inviting all Christians to re-evaluate this sublime sacrament, that of marriage, under the sign of authentic love and mutual respect, having as base authentic faith. To praise and worship God, the Catholic Church keeps intact the character of passing down teaching unchanged, neither this new Code of Canons accepting the compromise, be it conjectural, even if from the point of view of canonical matrimonial law is established by **Canon 780** – §1., Marriage of Catholics, even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regard for the *competence of civil authority concerning the merely civil effects of such a marriage.*

Prayer within the religious ceremony of Greek-Catholic denomination presents to the newlyweds the base principle of Christian family “What therefore God has joined together let not

man separate”²⁰. This quote is not only a simple fragment of text from The Scripture, but represents the essence of Christian moral, having as central point family, a Christian family whose example to be followed we find in the Holy Family.

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