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Legal Regulation of Care for Mixed Marriages in Selected Central European Countries Comparison and Proposals

Abstract: This article presents the modalities of legal regulation regarding mixed marriages in the Catholic Church in selected countries of Central Europe: Poland, the Czech Republic, the Slovak Republic, Germany, and Austria. In the comparative part, it presents a comparison of the solutions in the following areas: announcement before marriage, declaration before requesting permission for a mixed marriage, mandate for permission for marriage, dispensation from the canonical form and possibilities of access to the sacrament of the Eucharist in mixed marriages. In the synthesizing part, it presents not only an evaluation of the solutions described and suggestions for their improvement, but also the way in which the relevant regulations and forms are issued and published from the point of view of pastoral care and the openness of the Church. In the appendix, it discusses the legal solution to similar situations (marriage of a Catholic party with an unbaptized person and with a Catholic party distant from Christian faith and practice) and presents in a framework the draft directive of the Bishops' Conference for mixed and similar marriages in the Czech Republic.

Keywords: Catholic Church, canon law, mixed marriages, preparation for marriage, conference of bishops

Introduction

Mixed marriages are a common reality and therefore a pastoral challenge. Pastoral care and its goal, the salvation of souls, is also to be served by legal regulation insofar as it benefits pastoral care.

The author of this article lives in the Czech Republic, so he has chosen for comparison the neighbouring countries of his homeland: Poland, Slovakia, Austria, and Germany. In this way, quite a lot of documents, which are sometimes very difficult to access, have had to be collected and compared.

The study uses the method of analysis, comparison, and then synthesis, which leads to concrete proposals, especially for the Czech Republic, where a new regulation of the Bishops' Conference is now being prepared.

In the first section it is necessary to mention the development of the understanding of the concept of mixed marriages after the Second Vatican Council and its impact in the current Church-wide legislation of the Catholic Church.

The next two sections deal with the conclusion of mixed marriages: the second section is devoted to the specific emphases of preparation for mixed marriages, and the third one to the special topic of dispensation from the canonical form of their conclusion.

The fourth section focuses on the care of persons living in mixed marriages, specifically on the legally addressed question of the access of the non-Catholic spouse to the sacrament of the Eucharist.

The fifth section contains not only a summary of the findings, but also a reminder of situations similar to mixed marriages, namely, the diversity of religions as well as permission for manifestly unbelieving Catholics, and makes suggestions *de lege ferenda*, thus also acting as a conclusion to the article.*

1. Terminological clarification and its impact in legal texts of the Church after Vatican II

Although Vatican II is often presented as a new beginning or even a turning point, that is, in a perspective of discontinuity, it is precisely in

* The article describes the legal situation at the end of 2022.

the question of mixed marriages that continuity is strongly manifested. The Council itself does not explicitly address mixed marriages in any of its documents, thus leaving in force the existing discipline established by the 1917 Code of Canon Law (hereinafter: CIC/1917).¹

The terminology of the CIC/1917 is not entirely uniform, but it is consistent. In several canons, it distinguishes between the diversity of religions (*disparitas cultus*), which is described as an impediment that causes both the invalidity and the illicitness of the marriage, and being mixed within the same religion — Christianity (*mixta religio* or *mixtae nuptiae*) — which is described as an impediment that causes “only” the illicitness of the marriage, however, it is expressed in canon 1060 in these words: the Church most strictly forbids (*severissime Ecclesia prohibet*).

On the other hand, in several respects, administratively, it treats the two impediments in the same or similar manner: both impediments are of a higher degree (*maioris gradus*), announcements are forbidden for both (can. 1026), the Holy See usually grants a dispensation for both (can. 1040), specifically by the Congregation of the Holy Office (can. 247 § 3), but except for the danger of death and the disclosure of an impediment just before the wedding (can. 1043 to 1045), the requirements (especially the promises) laid down in canons 1061 to 1064 for mixed marriages are also applied by the power of canon 1071 in the case of a disparity of cult; the marriage is to be without sacred rite, unless authorized by the Ordinary, but always without Mass (can. 1102 § 2).

This consistent terminology of the CIC/1917 is also taken up by the instruction of the Sacred Congregation for the Doctrine of the Faith, *De matrimoniis mixtis*, of 18 March 1966, which already slightly modified *ad experiendum* the previous discipline: a marriage may take place with a sacred rite with the permission of the Ordinary (no. IV), while local Ordinaries may, for serious reasons, ask the Holy See for a dispensation from the form (no. III); promises (declarations) may exceptionally, with the permission of the local Ordinary, be realized in a form other than writing (no. I, para. 4).²

However, what differed from this consistent distinction was the common practice of calling both mixed marriages (in German still distinguished by the terms *Konfessionsverschiedenheit* and *Religionsverschiedenheit*), which found its official expression in the *motu proprio* of Paul VI's

¹ *Codex iuris canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus praefatione Emmi Petri card. Gasparri et indice analytico-alphabetico auctus* (27.05.1917). Roma 1956.

² SACRA CONGREGATIO PRO DOCTRINA FIDEI: “Instructio de matrimoniis mixtis (18.03.1966).” *Acta Apostolicae Sedis* [hereinafter: AAS] 58 (1966), pp. 235—239.

Matrimonia mixta of 31 March 1970,³ where both situations are referred to as *matrimonium mixtum*. This *motu proprio* has largely relaxed the previous legal requirements: the dispensation from the impediment of denominational difference can be dispensed by the Ordinary (No. 3), both parties must be instructed in the Catholic understanding of marriage, the promise is now required only from the Catholic party, the other party is to be informed of it, with the details to be determined by the Bishops' Conference, the marriage is to take place in a canonical form in a sacred ceremony according to the recently published wedding rites, that is, as a rule without Mass (unless the Ordinary grants permission for Mass), whereas this form of celebration is required only for permissibility in the case of marriage to a non-Catholic Eastern Christian (nos. 4 to 8 and 11); in the event of difficulties in maintaining the canonical form of marriage, the Ordinary has the right to dispense with it according to the rules laid down by the Bishops' Conference (no. 9), marriages are to be duly registered in the registers, even in the case of a dispensation from the canonical form (no. 13), and Catholic clergy are to take care of mixed marriages (no. 14).

These modifications were subsequently transposed into the 1983 Code of Canon Law (hereafter: CIC/1983), especially in canons 1124 to 1129, entitled *De matrimoniis mixtis*, where mixed marriages are unambiguously defined in canon 1124 as marriages between two baptized persons, only one of whom is *de iure* Catholic.⁴

2. Legal elements in preparation for mixed marriages

In contrast to CIC/1917, mixed marriages are subject to the normal rules regarding the determination of the unmarried status of the spouses according to the regulations of the Bishops' Conference, as required by canons 1066 and 1067 of CIC/1983.⁵

³ PAULUS VI: "Litterae apostolicae motu proprio datae *Matrimonia mixta* quibus normae de matrimoniis mixtis statuuntur." AAS 62 (1970), pp. 257—263.

⁴ "Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus (25.01.1983)." AAS 75, Pars II (1983), pp. 1—320; corrections: *Appendix* from 22 September 1983, pp. 321—324.

⁵ In the following sections we will refer to CIC/1983 alone, therefore only the canon numbers will be given.

2.1 Pre-marriage announcements

The traditional part of the ascertainment of the unmarried state of the betrothed are the announcements; more detailed regulations for them according to canon 1067 are determined by the Bishops' Conference.

In Poland, announcements are to be made primarily by being posted in writing for at least eight days, including two Sundays or one Sunday and one ordered feast day. An exception may be granted by the local Ordinary.⁶ In Slovakia, in towns over 10,000 inhabitants, announcements are to be made on the parish notice board and on the parish website three weeks prior to the wedding, while in smaller towns and villages three Sundays before the wedding in the parish announcements, with no announcements if the couple has lived together for more than five years.⁷ In the Czech Republic, the resolution of the Czech Bishops' Conference of 1993 applies generally to announcements, whereby a dispensation from them may be granted quite broadly by the pastor conducting the pre-marriage proceedings.⁸ Only the Diocese of Brno issued in 2012 a clarifying particular law containing the exact wording of the announcements.⁹

In Austria, this is dealt with by a decree of the Bishops' Conference of 1984 which does not provide for any exceptions for mixed marriages; announcements are not made in the case of marriages with only ecclesiastical validity, marriages secretly celebrated, marriages of Catholics who have left the Church and in the case of simple convalidation.¹⁰

In Germany, this is newly addressed by the norms of the Bishops' Conference in force since 1 January 2005, which prescribe either an oral announcement or being posted in writing, in both cases for one Sunday liturgical celebration, with the proviso that the dispensation from announcements may be made by a person having general authority to

⁶ KONFERENCJA EPISKOPATU POLSKI: "Dekret ogólny o przeprowadzaniu rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego (18.11.2019)," n. 14—15. *Akta Konferencji Episkopatu Polski* 31 (2020), p. 31.

⁷ DIECÉZA BANSKÁ BYSTRICA: *Sviatosť manželstva, pastoračné inštrukcie*, <https://bbdieceza.sk/dokumenty/instrukcie-k-vysluhovaniu-sviatosti-sviatost-birmovania/> [accessed 24.08.2022], there is the norm of bishops' conference mentioned on p. 3.

⁸ ČESKÁ BISKUPSKÁ KONFERENCE: "Ohlášky před sňatkem (27.01.1993)." *Acta Curiae Olomucensis* 04 (1993), Prot. n. 1227-3/1993.

⁹ DIECÉZE BRNĚNSKÁ: "PZ 4.3 O ohláškách manželství." *Acta curiae episcopalis Brunensis* 9 (2012), Appendix 1, available also at <https://www.biskupstvi.cz/partikularni-zakon> [accessed 24.08.2022].

¹⁰ ÖSTERREICHISCHEN BISCHOFSKONFERENZ: "Dekret über Bekanntmachung der Trauung (can. 1067)." *Amtsblatt der Österreichischen Bischofskonferenz, Nr. 1 vom 25. Jänner 1984*, Document no. 3, p. 2.

assist in the celebration of a marriage, for instance, also by a deacon generally commissioned by his pastor; there are no exceptions for mixed marriages.¹¹

2.2 Declaration prior to the application for a mixed marriage, authorization of permission to marry

According to canon 1125, the condition for requesting permission for a mixed marriage is the declaration of the Catholic party and the notification to the other party (and instruction on the purpose and essential properties of the marriage); the modalities are to be determined by the Bishops' Conference according to canon 1126.

In Poland, this declaration and notification is made in three written copies: one remains with the Catholic party, one is attached to the marriage protocol and one to the application to the local Ordinary for permission for a mixed marriage; the refusal of this declaration by the Catholic party leads to the non-realization of the Catholic wedding, and the refusal of the notification by the non-Catholic party is to lead to an attempt to reach a joint decision of the spouses, according to the result of which the wedding is to be either abandoned or the Ordinary is to be asked for permission.¹² The text of the Catholic Party's promise reads: "I solemnly declare that I am prepared to push away the danger of losing my faith, to fulfil my religious duties and I sincerely promise to do everything in my power to ensure that all our offspring are baptised and brought up in the Catholic Church." The text of the other party's notification reads: "I acknowledge that I have been informed of the declaration and promise of my Catholic fiancé's (fiancée's) faith. I am indeed aware of the content of the promise and the conscientious duties of my fiancé (fiancée)."

In Slovakia, there is no uniform formula issued at the level of the Bishops' Conference, the forms are determined by the individual (arch)dioceses, and there is very poor access to the texts. The application form for dispensation or permission to marry of the Archdiocese of Košice contains

¹¹ DEUTSCHE BISCHOFSKONFERENZ: Ehe — 4.2.8 — 2, Partikularnorm zu c. 1067 CIC, https://recht.drs.de/fileadmin/user_files/117/Dokumente/Rechtsdokumentation/4/2/8/09_01_03a.pdf [accessed 25.08.2022].

¹² KONFERENCJA EPISKOPATU POLSKI: *Dekret ogólny o przeprowadzaniu rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego* (18.11.2019), n. 82—87.

this text of the promise of the Catholic party: “I declare that I believe in Jesus Christ and that, with God’s help, I want to continue to live according to the Catholic faith. I am ready to remove all dangers of my apostasy from the Catholic faith. At the same time, I will strive to respect the religious liberty and conscience of my fiancé/fiancée. I sincerely promise to do everything in my power to see that all children born of our marriage are baptized and raised in the Catholic Church. I will strive for the unity and permanence of marriage and for the preservation of the family community.” A declaration to this effect is also required from the other party: “By my signature I certify that I am aware of the above promise and of my partner’s obligations arising from his/her conscience.”¹³ The Formulary of the Diocese of Banská Bystrica contains the following texts: “I, the undersigned, born on [date of birth], of the religion of Roman Catholic, do declare that in my intended marriage I will endeavour to preserve and develop my Catholic faith and to live according to it. I sincerely promise to do all in my power to see that all my children are baptized and brought up in the Catholic Church.”; and “I, the undersigned, born on [date of birth], of the religion of [name of religion], by my signature, certify that I am acquainted with the commitment of my fiancé/fiancée, which arises from his/her conscience.”

In the Czech Republic, the details were prescribed by the Bishops’ Conference in 1999, permission is always given by the Ordinary, and the declaration and record of the notification are attached to the marriage protocol and are not sent to the Ordinary; if the non-Catholic party refuses to sign the notification, two witnesses, which may be the person leading the preparation for the marriage and the Catholic party, sign it as a substitute.¹⁴ The text of the Catholic Party’s promise reads: “I declare that in my intended marriage I will keep and develop my faith and live it. I will sincerely endeavour, as my faith requires of me, to have our children baptized and brought up in the Catholic Church. I will respect the religious liberty and conscience of my spouse and will be concerned about the unity and permanence of the marriage and the maintenance of the family community.” The text of the other party’s acknowledgement reads, “I am aware of the above written declaration of my Catholic spouse.”

¹³ KOŠICKÁ ARCIDIIECÉZA: Žiadosť o dišpenz / povolenie k sobášuv, <https://www.ke-arcidieceza.sk/sk/formulare> [accessed 25.08.2022].

¹⁴ ČESKÁ BISKUPSKÁ KONFERENCE: “Směrnice o smíšených manželstvích.” *Acta Curiae Archiepiscopalis Pragensis* 5 (1999), Annex no. 3, B.II. This directive has been published for internal use only in the Acts of the Curia of each (arch)diocese.

In Austria, two directives from 1984 apply: one generally for mixed marriages¹⁵ and the other specifically for marriages to Eastern Christians.¹⁶ In both documents there is a very broad authorization in chapter 1: permission for a mixed marriage can be granted by any person having a general authorization to assist in the celebration of marriage, for example, even a deacon generally authorized by his pastor, provided, however, that the couple who are engaged to be married have never been married ecclesiastically or civilly before. The text of the promise of the Catholic party reads¹⁷: “I wish to adhere to the Catholic faith in my marriage. I acknowledge that my faith requires me to commit myself to the baptism and education of our children in the Catholic Church. I will endeavour to comply with this with due regard for the conscience of my partner.” The text of the announcement to the other party is not prescribed; the announcement is confirmed in the wedding protocol.

In the case of Germany, this is dealt with in the norms of the Bishops’ Conference in force since 1 January 2005, with minor changes, mainly concerning the affiliation to the Church *sui iuris*, effective from 1 June 2022.¹⁸ Here, a general faculty is given to permit mixed marriages to all persons having a general authority to solemnize marriages, with an exhaustive list of situations in which it is necessary to apply to the Ordinary (note 23 to the marriage protocol). The text of the Catholic Party’s promise reads: “a) Do you want to live as a Catholic Christian in your marriage and bear witness to the faith? b) As a Catholic Christian you have the duty to have your children baptised in the Catholic Church and to bring them up in the Catholic faith. Do you promise to make every effort to fulfil this moral imperative as far as is possible in your marriage?” The text of the notification to the other party is not prescribed;

¹⁵ ÖSTERREICHISCHE BISCHOFSKONFERENZ: “Ausführungsbestimmungen der österreichischen Bischofskonferenz für konfessionsverschiedene Eheschließungen nach dem neuen kirchlichen Gesetzbuch (Can. 1124-1128).” *Amtsblatt der Österreichischen Bischofskonferenz*, Nr. 1 vom 25. Jänner 1984, Document no. 4, p. 2.

¹⁶ ÖSTERREICHISCHE BISCHOFSKONFERENZ: “Dekret über die rechtliche Ordnung konfessionsverschiedener Eheschließungen zwischen Katholiken und orientalischen Nichtkatholiken nach dem neuen kirchlichen Gesetzbuch (can. 1124—1128).” *Amtsblatt der Österreichischen Bischofskonferenz*, Nr. 2 vom 1. Juni 1984, Document no. 25, p. 13.

¹⁷ ÖSTERREICHISCHE BISCHOFSKONFERENZ: “Dekret über die Weise der Versprechen bei Mischehen, can. 1126.” *Amtsblatt der Österreichischen Bischofskonferenz*, Nr. 12 vom 3. August 1994, II. Gesetze und Verordnungen, Document no. 3, p. 3.

¹⁸ DEUTSCHE BISCHOFSKONFERENZ: Ehe — 4.2.8 — 2, Partikularnorm zu c. 1126 CIC: Erklärung und Versprechen bei konfessionsverschiedenen Ehen, https://recht.drs.de/fileadmin/user_files/117/Dokumente/Rechtsdokumentation/4/2/8/09_01_03a.pdf; BISTUM LIMBURG: “Änderungen im Ehevorbereitungsprotokoll.” *Amtsblatt des Bistums Limburg* 1 (14.01.2022), no. 357, p. 490.

the notification is confirmed by his/her signature at the end of the wedding protocol.

3. Dispensations from the canonical form

In this section, we deal with the dispensation from the canonical form in the situation of the marriage of a Catholic party and a baptized party belonging to the tradition of the Western Reformation, as specified in canon 1127 § 2. We do not, therefore, deal with the situation of the marriage of a Catholic party with a member of an Eastern Church not in the union with the Catholic Church, which is referred to in canon 1127 § 1, because there the canonical form is prescribed only for permissibility.

The Instruction of the Polish Bishops' Conference requires that the request for a dispensation from the canonical form be made by the Catholic party's own pastor, even if he differs from the pastor in charge of marriage preparation, and makes no exception to the requirement that the dispensation be granted by the Ordinary. It lists the following as the main reasons for the dispensation: the preservation of family harmony, obtaining parental consent to the marriage, or the recognition of a particular religious commitment of the non-Catholic party or his/her kinship bond with a minister of another Church or Ecclesial Community.¹⁹

In Slovakia, the Bishops' Conference does not cede this authority to persons other than ordinaries and in the norm on the granting of dispensations from the canonical form of 2009 is stated the following reasons in a demonstrative list: preservation of family harmony, obtaining parental consent to the celebration of marriage, recognition of the special family relationship of the non-Catholic party with a cleric of that party, greater involvement of the non-Catholic party in the life of the non-Catholic Church or religious society, and the possibility of the Catholic minister's participation in such a celebration of marriage with a dispensation from the canonical form, when he may take the opportunity to explain to those present such a celebration as a sacramental marriage with its objectives and essential properties (unity and indissolubility).²⁰

¹⁹ KONFERENCJA EPISKOPATU POLSKI: "Dekret ogólny o przeprowadzaniu rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego (18.11.2019)," n. 90.

²⁰ KONFERENCIA BISKUPOV SLOVENSKA: "Normy Konferencie biskupov Slovenska, podľa ktorých sa má na Slovensku udeľovať dišpenz od kánonickej formy jednotným

In the Czech Republic, the power to grant dispensations is also reserved to ordinaries, and a directive of the Bishops' Conference of 1999 also gives the following reasons in a demonstrative list: (a) if the non-Catholic party fundamentally refuses to marry in the canonical form and the Catholic party is firmly determined to marry, (b) if the canonical form is refused by the non-Catholic party who lives a significantly better Christian life than the Catholic party, c) if the observance of the canonical form could cause a very serious split in the family of one of the betrothed, d) if the non-Catholic party has a special position in his/her Church or religious community (clergy, member of the council, elders, etc.).²¹

In Austria, the competence to grant a dispensation from the canonical form according to the 1994 decree is also reserved to ordinaries and the following reasons are given demonstratively: family or friendly relations with the Catholic minister, resistance to the Catholic marriage on the part of the Catholic partner or his/her family members, the fact that the marriage is taking place in a non-Catholic environment, the danger that the partners will otherwise live together in an ecclesiastically invalid marriage.²²

In Germany, this dispensation is also reserved for ordinaries. The reasons are given demonstratively in the wedding protocol: serious conflict of conscience of the partners which cannot be resolved in any other way, insurmountable resistance of the non-Catholic partner to a canonical marriage, rejection of canonical marriage on the part of the relatives of one partner, or the danger that the partners will live together in an ecclesiastically invalid marriage.

4. Possibilities of access to the Sacrament of the Eucharist in mixed marriages

It is seldom that the regulations of the Bishops' Conferences of the countries under study regulate the modalities of access to the reception

spôsobom," no. 2.1.1-2.1.5, <https://www.kbs.sk/obsah/sekcia/h/dokumenty-a-vyhlasenia/p/dokumenty-kbs/c/dispENZ-od-kanonickej-formy-slavenia-manzelstva-50> [accessed 25.08.2022].

²¹ ČESKÁ BISKUPSKÁ KONFERENCE: "Směrnice o smíšených manželstvích," B.I.1. Moreover, it is expressly provided in B.I.7 that the Ordinary of the Catholic Party is authorized to grant a dispensation for any other grave reason.

²² ÖSTERREICHISCHE BISCHOFSKONFERENZ: *Dekret über die Dispens von der kan. Eheschließungsform, can. 1127 § 2, Amtsblatt der Österreichischen Bischofskonferenz, Nr. 11 vom 28. April 1994, I. Gesetze und Verordnungen, Document no. 3, p. 4.*

of the Eucharist by a partner belonging to ecclesial societies that emerged from the Western Reformation, as envisaged by canon 844. The Czech Bishops' Conference in its 2002 directive in Part B²³ give instructions with a dual mode of delegation. The minister of the sacrament himself is permitted to confer the Eucharist, among others, when there is danger of the death of the recipient, in impossibility caused by persecution, imprisonment, service in the army, stay in hospitals and social institutions, if a conferrer from his own Church is not reachable, and situations in the diaspora when a non-Catholic Christian feels a real need for sacramental assistance and cannot achieve it because a conferrer from his own Church is unavailable or only with great difficulty. With the permission of the local Ordinary, it is possible to confer the sacraments in these cases of serious spiritual need: the celebration of a mixed marriage, an extraordinary event in a marriage such as the baptism of children, the first Holy Communion of children, a significant wedding anniversary, a funeral Mass for a deceased family member, the strengthening of the life of grace and faith in confessionally mixed families (exceptionally, in cases of truly grave need), and if the petitioner is Catholic by faith and orientation but serious circumstances prevent him or her from making a formal conversion to the Catholic Church. In all cases, the applicant for the conferral of the sacrament must simultaneously meet the following four conditions: a) he cannot obtain this sacrament from the conferrer of his own church or ecclesial society, b) he himself requests it, c) he expresses his Catholic faith regarding the sacrament he desires to receive, d) he is duly prepared. It is clear, therefore, that the situation of mixed marriages is strongly reflected in these regulations.

There is also an emphasis on sharing the sacraments across denominations in Germany, where mixed marriages make up almost half of all marriages in the Catholic Church. Based on the work of the expert ecumenical commission Jäger-Stählin-Kreis, a comprehensive document *Gemeinsam am Tisch des Herrn* was produced in 2019 on the possibilities of sharing the sacrament of the Eucharist between Catholics and Protestants.²⁴ At the Spring 2020 meeting of the Bishops' Conference, the text was favourably discussed and sent to the Congregation for Bishops for recognition. On 20 May 2020, the latter forwarded it to the Congregation for the Doctrine of the Faith with a request for a statement, which

²³ ČESKÁ BISKUPSKÁ KONFERENCE: *Společenství ve svátostech s křesťany jiných církví*. Praha 2002, n. pag.

²⁴ Documents on this issue are published on the website of the DEUTSCHE BISCHOFSKONFERENZ: "Ökumene: Wichtige Dokumente, Auswahl ökumenischer Schriften von EKD und Deutscher Bischofskonferenz," <https://www.dbk.de/themen/oekumene/wichtige-dokumente> [accessed 26.08.2022].

sent its critical evaluation of the document to the president of German Bishops' Conference on 18 September 2020. The document does not deal with some fundamental topics of Catholic doctrine on the Church, the Eucharist and the priesthood with sufficient clarity and does not take due account of aspects related to the Eastern Churches' view of these issues; it can therefore serve as a starting point for further elaboration, but it cannot be a guide for individual decisions of conscience, for its application would lead to a deepening of the rift with the Eastern Churches. The letter is accompanied by a four-page appendix explaining the reasons leading the Congregation to this conclusion. It finds fault in the deficiencies in the biblical justification, the lack of consideration of the patristic tradition, the insufficient consideration of the role of the Church in the transmission of Christ's Eucharist, the minimized consideration of the Eucharistic ecclesiology of the Second Vatican Council, the lack of consideration of the Eucharistic ecclesiology of the Second Vatican Council, and the emphasis on the universal priesthood of the faithful as opposed to the ministerial priesthood, while accepting not the episcopal but the presbyterial succession characteristic of the theology of the evangelical churches, and disregard of the suggestions made by Pope Francis in his letter *Brief an das pilgernde Volk Gottes in Deutschland* of 29 June 2019. The next meeting of the Bishops' Conference at the end of September 2020 therefore did not vote on the document, but subsequently on 6 October 2020 a largely positive appreciation of the document was published by a working commission composed of representatives of the German Bishops' Conference and the Council of Evangelical Churches in Germany as a significant advance in mutual dialogue, while at the same time this appreciation does not obscure the differences of opinion between the Catholic and Evangelical traditions.²⁵ The question of the access of evangelical Christians to the Catholic Eucharist remains a burning issue in Germany, where in many cases there is a lack of agreement with the statement of the Congregation for the Doctrine of the Faith,²⁶ which has an impact

²⁵ DEUTSCHE BISCHOFKONFERENZ: *Pressemeldung Nr. 160 (06.10.2020)*, „Gemeinsam am Tisch des Herrn“ — Ein Votum des Ökumenischen Arbeitskreises evangelischer und katholischer Theologen, *Würdigung des Kontaktgesprächskreises*, <https://www.dbk.de/presse/aktuelles/meldung/gemeinsam-am-tisch-des-herrn-ein-votum-des-oekumenischen-arbeitskreises-evangelischer-und-katholi> [accessed 26.08.2022].

²⁶ In this context, it is significant that the WIR SIND KIRCHE IN DEUTSCHLAND movement also includes on its website, in the context of the document *Gemeinsam am Tisch des Herrn*, a strongly critical statement on the response of the Congregation for the Doctrine of the Faith from the President of the German Bishops' Conference, the Bishop of Limburg Georg Bätzing: “Bätzing: Nicht glücklich über Vatikan-Stellungnahme (16.03.2021),” https://www.wir-sind-kirche.de/?id=129&cid_entry=8669 [accessed 26.08.2022].

on the practice in individual parishes or dioceses, and decision making according to individuals' consciences takes place.²⁷

5. Evaluation and suggestions

5.1 Method of issuing and publishing regulations and forms

The regulations for mixed marriages are issued in significantly different ways in the countries studied.

In the case of Poland (2019) and Germany (2002), it is a generally binding decree (*decretum generale*) of the Bishops' Conference, to which the Congregation for Bishops has given its *recognitio*. In the case of Germany, they are published on the website of the Bishops' Conference (the Conference does not publish its acts), while in the case of Poland it is in the acts of the Bishops' Conference available on their website.

The Austrian Bishops' Conference has issued more regulations: in 1984 decrees for announcements before marriage, for mixed marriages with Eastern Christians and for mixed marriages with other Christians, and in 1994 another decree with the text of the promise of the Catholic party and the announcement to the other party. All of these decrees were published in the Acts of the Bishops' Conference, which are available on the web. Only the 1994 decree has the *recognitio* of the Apostolic See.

The Czech Bishops' Conference issued its norm for mixed marriages as a directive, not as a decree, and therefore without the *recognitio* of the Apostolic See. This directive has not been published on the website of the Bishops' Conference, but in the acts of the individual (arch)dioceses, so it remains more of an internal document. In contrast, the 2002 directive on *communicatio in sacramentis* and the 2017 directive on marriage preparation are both available on the Conference website. The latter directive, however, does not contain detailed guidelines for announcements before marriage; here the norm of the Bishops' Conference of 1993, published only in the Acts of the Curia of each (arch)diocese, must be applied.

The situation is even more difficult in Slovakia. On the website of the Bishops' Conference, only the norm on the granting of dispensations

²⁷ Cf., for example, the booklet for mixed marriages of the diocese of Münster: BISCHÖFLICHES GENERALVIKARIAT MÜNSTER: *Mit Christus gehen. Konfessionsverbindende Ehepaare und ihre gemeinsame Teilnahme an der Eucharistie*. Münster 2021, pp. 19–23.

from the canonical form of 2009 is published, without mentioning the date of its approval by the Bishops' Conference and without mentioning the *recognitio* of the Apostolic See; no other norms are traceable there. In the pastoral directives of the diocese of Banská Bystrica, the norm of the Bishops' Conference regarding the announcement of marriage is mentioned and its merits are given, and it is necessary to refer to the forms of the individual (arch)dioceses: rather rarely are the forms available on the web, in two dioceses they are in the internal part of the website, in the others they are completely absent from the website.

Personally, I believe that in such a serious matter, it should be a *decretum generale* of the Bishops' Conference, which has received the *recognitio* of the Apostolic See (now the Dicastery for Bishops). This is what follows from the diction of canon 455, since in cases of ascertaining the unmarried state of the betrothed (can. 1067), the manner of declarations and promises (can. 1126), and dispensations from the canonical form (can. 1127), the Bishops' Conference is expressly empowered to issue the norm in question. It may, of course, be argued *a contrario* that in the cases cited the "norm of the Bishops' Conference" is explicitly referred to without specifying its juridical nature, but the gravity of the matter, in my opinion, requires the form of a *decretum generale*.

And since this is a fact of general interest — marriage — where various forms of misinformation are easily spread out of ignorance, I consider it absolutely necessary to publish these regulations and forms online.²⁸

5.2 Announcements before marriage

The norms for announcements before marriage are usually set either in a separate norm (Austria, Czech Republic, and probably Slovakia as well) or in the regulations on preparation for marriage.

Depending on the extent of the possibility of dispensation, these norms are detailed: more detailed in the case of Slovakia, where dispensation from announcements is not foreseen, then Poland, where dispensation is granted on a case-by-case basis by the Ordinary, and Austria, where situations exempting from the obligation to announce are generally provided for.

²⁸ From the point of view of computerization of the administrative agenda, in my opinion, uniform forms published (among others) on the website of the Bishops' Conference should be established in individual countries, which is undoubtedly implemented in the case of Germany and Poland.

In the Czech Republic, the regulations are relatively precise and the right to dispense from announcements rests with the priest in charge of the pre-marriage proceedings. In Germany, there are framework norms, with the right to dispense being given to all persons with general authority to assist in a marriage, including, for example, parochial vicars and permanent deacons with general delegation.

Also, in this area there is a mandate for the Bishops' Conferences to determine whether or not to hold announcements and their modalities (can. 1067), so here too it should be a *decretum generale*, published on the website of the Bishops' Conference after receiving the *recognitio* of the Apostolic See.

5.3 Declaration prior to the application for a mixed marriage, authorization to permit the marriage

The declarations of the Catholic party required for the permission of a mixed marriage are very similar in substance to the provisions of canon 1125 CIC/1983. There is a great difference in the manner of notification of these declarations to the other party: from the signature in the context of the conclusion of the marriage protocol (Germany) to the separate written confirmation of the notification (Austria, Poland, Slovakia) to the separate signature of the other party, replaceable by the signature of the Catholic party and the person in charge of the pre-marriage preparation in case of refusal of the signature by the other party (Czech Republic).

Significant differences exist in the area of permission for mixed marriages: while in the Slavic countries (Poland, Slovakia, Czech Republic) permission is reserved for the Ordinary, in Austria and Germany, apparently because of a large number of mixed marriages, all those who are generally authorized to assist in the marriage are entitled to permit a mixed marriage.

This marked difference has its justification in the religious situation of the countries concerned.

5.4 Dispensation from the canonical form

The regulations for dispensation from the canonical form are quite similar in all the countries surveyed: in accordance with the provisions of canon 1127, they leave this competence only to the Ordinary, with the reasons for granting dispensation being formulated as a demonstrative list of facts when it is necessary or preferable to depart from the requirement of the Catholic canonical form. These reasons are very similar and are always aimed at ensuring common life in a proper marriage even at the cost of great concessions on the Catholic side.

It does not seem necessary to introduce any modifications in this area.

5.5 Access to the Eucharist in mixed marriages

The solutions regarding the possibilities of access to the sacraments, especially the Sacrament of the Eucharist, given by Catholic ministers in the case of the other party of a mixed marriage vary greatly.

While the available norms of the Bishops' Conferences of Poland, Slovakia, and Austria do not specifically address this, the norm of the Czech Bishops' Conference seeks a differentiated approach: it is always about individual persons, not general permission, and a distinction is made between the competence of the ministers of the sacraments themselves and that of the ordinaries.

The German approach clearly tends towards a very open access of evangelical Christians to the sacrament of the Eucharist administered in the Catholic Church, even to the extent that there is clear dissent from the statements of the Apostolic See.

In this context, I find the position of the Czech Bishops' Conference to be doctrinally and pastorally balanced and commendable.

5.6 Appendix

Legal solutions to similar situations

A factually analogous situation to a mixed marriage is a marriage between a Catholic party and an unbaptized party, which according to canon 1086 is an impediment to marriage. For such marriages, there are multiple references in the Code to mixed marriages: according to canon 1086, the dispensation is granted upon fulfilment of the requirements specified in canons 1125 and 1126 for mixed marriages: just and reasonable cause, a declaration by the Catholic party, and notification to the other party of the Catholic party's promises. In addition, canon 1129 provides that the provisions of canons 1127 and 1128 are to be applied to marriages with an unbaptized person: the canonical form of marriage, from which the local Ordinary of the Catholic Party may dispense, is to be observed, and the spouses are to be given the necessary pastoral care.

Other similar situations of prohibitions of marriage are specified in canon 1071, especially those Catholics who have publicly demonstrated their rejection of the Catholic faith, or even Catholics under canonical penalties (excommunication, interdict, suspension). Although these persons are *de iure canonico* still Catholics, in fact their life situation represents a burden on married life and a threat to the faith of the other party. This is also why canon 1071 § 2 requires that for a marriage with a Catholic who has publicly demonstrated their rejection of the Catholic faith, the declaration and notification prescribed in canon 1125 for mixed marriages with the necessary modifications (*congrua congruis referendo*) must be made.

These similarities find their application in different ways in the particular regulations. The 2019 regulation of the Polish Bishops' Conference for the preparation for marriage explicitly requires the application of the principles for mixed marriages in no. 73 for marriages with unbaptized persons and in no. 74 for marriages of Catholics who have formally separated from communion with the Catholic Church, baptized Catholics who have declared themselves unbelievers, Catholics in ecclesiastical censure, and those Catholics who persistently do not practise the faith. For the granting of a dispensation or permission, the appropriate forms are established as set forth in the appendix to this norm.

The German Bishops' Conference in its 2002 regulation also addresses diversity of religion and the marriage protocol clearly states that the

text of the Catholic party's declaration for mixed marriages is also binding in the case of diversity of religion or demonstrable rejection of the faith.

The Austrian Bishops' Conference has gone the route of more regulations. In addition to the two aforementioned regulations for mixed marriages of 1984 (for marriages with Eastern Christians and with other Christians), it issued in the same year a norm for marriages with an unbaptized person²⁹ and to deal with prohibitions on marriage.³⁰ In the case of a difference of religion, a dispensation from this marital impediment and possibly also from the canonical form of marriage is reserved to the local Ordinary according to the canonical residence of the baptized party. Similarly to mixed marriages, the prohibitions on marriage can be lifted by any person having general authority to assist in the celebration of marriage, for instance, even a deacon generally authorized by his pastor, provided, however, that the parties who are engaged to be married have never previously been married ecclesiastically or civilly.

In the Czech Republic and the Slovak Republic, no special norm has been issued for the marriage of a Catholic party to an unbaptized person, even in cases of the above-mentioned prohibitions, while the same declarations and notifications as for mixed marriages are already required by the Code of Canon Law, and the individual dioceses take this into account in their forms with regard to both the marriage protocol and requests for dispensation from obstruction or for permission to marry.

In the Czech Republic, therefore, a new regulation of the Bishops' Conference is currently being drafted to regulate, for practical reasons, not only the situation of mixed marriages ("inter-confessional marriages"), but the diversity of cult ("inter-religious marriages") and the marriage of Catholics of the Latin Church *sui iuris* with Catholics of other Churches *sui iuris* ("inter-ritual marriages"). Because of practical reasons, it is also to include rules for marriages between two Eastern Christians (usually Orthodox) before a Catholic minister, as is mentioned in the recently added § 3 of canon 1116, but not for marriages with Catholics who have formally separated from communion with the Catholic Church, baptized Catholics who have declared themselves unbelievers, Catholics in ecclesi-

²⁹ ÖSTERREICHISCHE BISCHOFSKONFERENZ: "Dekret über die rechtliche Ordnung religionsverschiedener Eheschließungen nach dem neuen kirchlichen Gesetzbuch (can. 1086 und can. 1129)." *Amtsblatt der Österreichischen Bischofskonferenz*, Nr. 2 vom 1. Juni 1984, Document no. 26, pp. 16—18.

³⁰ ÖSTERREICHISCHE BISCHOFSKONFERENZ: "Dekret zu den Trauungsverboten (can. 1071)." *Amtsblatt der Österreichischen Bischofskonferenz*, Nr. 2 vom 1. Juni 1984, Document no. 27, pp. 18—19.

astical penal servitude and those Catholics who persistently do not practise the faith.³¹ Since this is a text primarily intended for priests and other pastoral workers, it has been prepared as a clear, structured guide for practical use, with explanatory and source texts (excerpts from the translation of the two current codes and from the Ecumenical Directory), as well as the agreed nationwide forms — unfortunately this has been only one so far, being the text of the declaration of the Catholic party and the notification to the other party in appendices.

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³¹ The decision on this matter was made at the meeting of the Commission for economy and legal issues of the Czech Bishops’ Conference on 15 September 2022.

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DAMIÁN NĚMEC

Régulations légales concernant les mariages mixtes dans l’Église catholique dans certains pays d’Europe centrale Comparaison et propositions

Résumé

Cet article présente les régulations légales concernant les mariages mixtes dans l’Église catholique dans certains pays d’Europe centrale : République tchèque, Pologne, Slovaquie, Allemagne et Autriche. Dans la partie comparative, il examine les différences dans les domaines suivants : publication des bans avant le mariage, déclaration avant la demande de permission pour un mariage mixte, autorisation pour contracter le mariage, dispenses de la forme canonique et possibilités d’accès à l’Eucharistie dans les mariages mixtes. La partie synthétique propose non seulement une évaluation des solutions décrites et des suggestions d’amélioration, mais aussi une réflexion sur la manière de promulguer et de publier les règles et formulaires pertinents du point de vue du ministère pastoral et de l’ouverture de l’Église. En annexe, l’auteur discute des solutions juridiques pour des situations similaires (mariage avec une personne non baptisée ou avec une personne catholique éloignée de la foi chrétienne) et présente de manière succincte

un projet de directive de la Conférence épiscopale concernant les mariages mixtes et similaires en République tchèque.

Mots-clés: Église catholique, droit canonique, mariages mixtes, préparation au mariage, conférence épiscopale

DAMIÁN NĚMEC

Regolamentazioni legali riguardanti i matrimoni misti nella Chiesa cattolica in alcuni paesi dell'Europa centrale Confronto e proposte

Sommario

L'articolo presenta le modalità di regolamentazione legale riguardanti i matrimoni misti nella Chiesa cattolica in alcuni paesi dell'Europa centrale: Repubblica Ceca, Polonia, Repubblica Slovacca, Germania e Austria. Nella parte comparativa viene effettuato un confronto delle soluzioni riguardanti: le pubblicazioni prima del matrimonio, le dichiarazioni prima della richiesta di permesso per il matrimonio misto, l'autorizzazione a concedere il permesso per il matrimonio, la dispensa dalla forma canonica e la possibilità di accesso al sacramento dell'Eucaristia nei matrimoni misti. Nella parte sintetica vengono presentate non solo le valutazioni delle soluzioni descritte e le proposte per il loro miglioramento, ma anche il modo di emettere e pubblicare le normative e i moduli appropriati dal punto di vista della pastorale e dell'apertura della Chiesa.

Nell'appendice, l'Autore discute la soluzione legale di situazioni simili (matrimonio di una parte cattolica con una persona non battezzata e con una parte cattolica lontana dalla fede e dalla pratica cristiana) e presenta un progetto quadro di direttiva della Conferenza Episcopale riguardante i matrimoni misti e simili nella Repubblica Ceca.

Parole chiave: Chiesa cattolica, diritto canonico, matrimoni misti, preparazione al matrimonio, conferenza episcopale