

APPROACH OF THE MODERN STATE AND THE CHURCH TO THE INSTITUTION OF MARRIAGE

Dalia Perkumienė

Kaunas Kolegija/University of Applied Science

Anotation. The matrimonial rights and duties in the religious view are binding not only in the external sphere of public life but in the internal sphere of one's conscience. Democratic systems of modern civilization recognize the right of their religious citizens to worship and respect their obligations to the confessional law. However, these systems differ in the aspect of respect vis-à-vis the individuals' religious feelings regarding religious marriage. Confessional marriages are recognized by civil law in some countries¹: in others² – the church marriage is not recognized as it has no legal power. The modern Church is clearly in favour of marriage and family. Marriage and family are no obsolete models of pre-modern times, nor are they solutions to embarrassing situations, nor can they be swept away as a failed development that has to be overcome.

Key words: modern state, church, marriage, matrimonial rights and duties, religious.

1 As it was pointed in the introduction in seventeen EU countries church marriage is recognized by State: in Lithuania, in Latvia, in Estonia, in Spain, in Italy, in Cyprus, in Greece, in Denmark, in Sweden, in Poland, in the United Kingdom, in Ireland, in Portugal, in Malta, in Finland, in Slovakia, in the Czech Republic.

2 For example, in Belgium, in France, in Germany, in the Netherlands, Hungary, Bulgaria.

Introduction

The relevance of the paper

The State considers marriage a contractual relationship between two parties that vests these parties with a new legal status³. Unlike other contracts, however, the new status, created by the marriage contract, cannot be terminated at will by the parties, but only as provided by the law of the state, thereby making the State a “third party” to any marriage.

In the modern world, the marriage has an increasingly complicated meaning. Definition of family may include transgender parents and bisexuals married to members of the opposite sex or living with same-sex partners. In some states same-sex couples possess or pursue the right to be married. Certainly, a legal recognition of such marriage does not create or eliminate the agreements that people make between themselves, nevertheless these couples ask for legal recognition (Cahill S.; Tobias, S. 2007).

Besides, high divorce rates mean that many children are not raised in a traditional family unit (Cotton 1997). Here again, the fact that the parents are not married does not mean that they are not a family, but it changes the way that families are arranged (Stets 1991).

While text writers and decisions of courts often define marriage as a civil contract, generally indicating that it must be founded upon the agreement of the parties and does not require any religious ceremony for its solemnization, it is, nevertheless,

3 The modern law of marriage is based on the premise that men and women are independent individuals.

something more than a mere contract. Of course, the consent of the parties is essential to existence of marriage, but when the contract to marry is executed, the parties cannot change the relation created between them. Other contracts can be modified, restricted, enlarged, or entirely terminated by the same consent of the parties. This is not the case with marriage. The relation once formed the law steps in and holds the parties to various obligations and liabilities (Funaro 1991).

Most modern countries and their legal systems are secular⁴ i.e. do not confess any religion but their citizens have the right to confess faiths, to be guided by them and to belong to religious communities (Madeley, J.; Zsolt, E. 2003). All faiths acknowledge marriage to be a religious matter, a subject of subordination to their spiritual law.

The aim of the paper – to disclose an approach of the modern state and the church to the institution of marriage.

Object of the work – the modern state and the church to the institution of marriage.

Materials and methods of the work – in this paper there were used analysis of scientific literature, analysis of legislation, specifying and summarizing and logical abstraction methods. There also were

4 A secular state is a concept of secularism, whereby a state or country purports to be officially neutral in matters of religion, supporting neither religion nor irreligion. A secular state also claims to treat all its citizens equally regardless of religion, and claims to avoid preferential treatment for a citizen from a particular religion/nonreligion over other religions/nonreligion. However, not all legally secular states are completely secular in practice.

analysed scientific and practical material of national and foreign authors (Cahill, Tobias, Glenn, Kramer, Meilius, Sagatys, Örsy et al).

Approach of the modern church to the institution of marriage

Today the Church denies both the social dimension of marriage and its character as a contract; but it does insist that the heart of marriage lies in its being an inter-personal sexual relationship of life-giving love, and one, which is therefore permanent and exclusive. It is this relationship, which is given the legal status of a contract and institutionalized in various other ways; but it is neither the contractual character nor the institutional factors, which tell us about the reality of marriage (Kelly 1997).

The modern Church provides amendments to Canon law⁵, which attempt to look globally at marriage and to cover various personal and social aspects. The Church understands that action of legal regulations should contribute to fostering of such conditions, under which serious attention is always focused on human values of marriage.

General opinion, existing in the jurisprudence of the modern State, states that in its own sphere the State is the supreme body establishing the inter-communication of its citizens. The Church deals with spiritual matters – human relations to God. From the point of view of the law, marriage is a contract, whereas from the point of view of the Catholic Church – it is both a contract and a sacrament⁶.

“Marriage” is an objective institution and as an individualized reality it is a dynamic process, which develops and changes, and can go through periods of growth or deterioration (Hill 1993).

Legislation of the modern State has made attempts to negate Canon marriages and to recognize civil marriages only (Meilius 2010).

A comparison of the ancient State and the modern State approach to the marriage institu-

tion distinguishes the following peculiarities:

1. The modern State has separated itself from the Church, and marriage is considered a civil matter only;

2. The modern State has legitimized divorce;

3. The approach of the modern State to marriage institution has been modernized: social activities (policy) the State takes more functions that previously were peculiar to family. Thus, in the State’s opinion the significance of the marriage institution decreases.

Consideration of the requests of the 2nd Vatican Council and the new marriage celebration rites brings the expectation of new liturgical and juridical norms for the nations that have recently accepted Evangelic. These preparations, made under the guidance of the Catholic Church superiors, are an attempt to combine the reality of the Christian marriage and the authentic traditional values of these nations (Örsy 1986).

In contemporary Western Europe two different approaches to the agreement of marriage prevail: some countries, such as Belgium, France, Germany, the Netherlands and Switzerland, consider the civil marriage ceremony compulsory, and it is the one to cause legal consequences. These countries have completely separated the role of the Church and the State in the conclusion of marriage.

In other European countries, such as Denmark, the United Kingdom, Ireland, Greece, Italy, Spain, Portugal, Sweden, Poland and Lithuania, the individuals entering into marriage have the right and are free to choose a civil or church ceremony, both of these secure the legal consequences of marriage.

Although the Church does not recognize civil marriage, it shows increasing tolerance to the civil marriage of Catholics, understands and sees into the problems the spouses face if they marry through the church only. The State approach to the marriage institution is also undergoing rapid changes: greater regard to the needs and requests of engaged couples results in restructuration of marriage institution. The State recognizes church marriages, refuses some of the requirements for the conclusion of valid marriage and allows homosexual marriages. However, such radical steps of the State, as legitimization of homosexual marriage, provoke negative reaction from some citizens and the Church.

Therefore the modern Church is clearly in favour of marriage and family. Marriage and family are no obsolete models of pre-modern times, nor are

5 Under 1983 Canon code understanding of marriage appears in a broad religious context through the doctrine of the covenant, the highly juridical language of the contract.

6 Marriage has not always been listed among the sacraments of the Catholic Church. The early Scholastics defined sacrament as both a sign and a cause of grace and, since they looked upon marriage as a sign but not a cause of grace, they did not list it among the sacraments. Marriage could not be a cause of grace, run their argument, because it involved sexual intercourse which Augustine had taught was always sinful, even between a husband and wife, except in the case when it was for the procreation of a child.

they solutions to embarrassing situations, nor can they be swept away as a failed development that has to be overcome. In marriage, the ‘yes’ two people say to each other becomes the principle based on partnership, trust and openness on which they live for God. This being so, marriage is the place where people can develop themselves as persons within a relationship. Furthermore it is the place where new life does not only emerge from but where it can also develop itself in a shelter of security. This is why marriage and family correspond to each other.

The attitude of the Catholic Church towards the institution of marriage

Marriage is one of the oldest social institutions, existing in one form or other in all cultures. As a human institution, it has existed in several forms; polygamist (including polygamy and polyandry), as well as the more common monogamist model. It has undergone significant changes throughout the centuries (Hill 1993).

Under the Christian teaching marriage is a place where the two sexes accept each other as differently gendered and learn and grow through it. Marriage is a lifelong, monogamous relationship between a man and a woman (Keller 2011).

Marriage and family are not only a laic institution, but also a religious-moral institution, (the divine arrangement, the sacred sacrament, the vocation of life). As far as history dates back, the State and Church have always been inseparable concepts both in the philosophical, legal and practical sense. Of course, such an important institution as marriage and family had to have religious features and have been controlled by the Church (Blankenhorn 2007). Family is the fortress of religion and morality, therefore the Church is related to the family institution with the deepest historic and cultural traditions, and this relationship lifts it up to the highest rank of sacraments. It is reflected in canon law. Without going deeper into the religious aspects, it can be stated that the modern Catholic canon law acknowledges the competency of the civil government in the consequences of civil marriage. The Church acknowledges the following features of marriage: unity, indissoluble union, monogamy, i.e. the marriage of a man and a woman; heterosexuality, i.e. the spouses must be of different sexes. The aims of marriage according to canon law (Mckenna 2000) are mutual life, the goodness of spouses, the bearing of chil-

dren and their education. These are obligatory conditions, therefore if one of them is missing or if one of the spouses consciously does not acknowledge one of the main features of marriage, the Church does not acknowledge the marital agreement and considers the marriage invalid.

Marriage is regarded as a twofold action: firstly as a wedding connection and secondly as an action of making a family between a man and a woman. These two concepts have different words in different languages. These concepts are different: the wedding is considered an action starting the embryo of the family (*Trauung, Eheschliessung, бракосочетание, la célébration du mariage*). The consequence of this action, or the wedding in a broader sense, is called marriage (*брак, брачный союз, matrimonium, le mariage*). Marriage is the agreement between a man and a woman for the constant alliance of their life and rights (Kavolis 1930).

According to the Church marriage is called a covenant, because, like all other types of covenant, marriage is an agreement between two parties that contained stipulations and sanctions. A marriage covenant, like any other covenant, includes details of payment, the agreement to stipulations by two parties, a set of penalties for the party who did not keep these stipulations, and a legally binding witnessed ceremony or document that recorded all matters (Instone-Brewer 2001).

The attitude of the Church towards marriage is twofold: realistic and idealistic. Following the realistic view, marriage is considered the issue of this world and according to the idealistic one, marriage is regarded as a supernatural phenomenon belonging not only to spouses themselves, but is also an issue of the State and Church (Kavolis 1930). Marriage, as taught by the Church, is the issue of the human heart and feelings.

Marriage is considered by the Church as a supernatural phenomenon. The laws of the Church indicate “marriages of the baptized are a sacrament”, which brings supernatural value for the marriage. The sacrament “happens” when a couple proclaims their will to marry (Tihameris 1994).

What a theology of Christian marriage most needs is an account which sets forth the kind of human intentions, actions, and affections, sometimes thought to be reserved for God alone, can be directed toward one’s marital partner (Thomas 1983).

“Christian marriage is a prism through which God’s love shines into many areas of human life.

Through the love of wife and husband, woman and man, through the loving words pronounced in public in formal ceremony..." (Thomas 1983).

Canon law defines marriage in the same way: "the marital agreement by which a man and a woman make their mutual union for the rest of their lives that is in its nature meant for the goodness of the spouses and the bearing and education of children" (Coriden 1986). The marriage *in fieri* is clearly distinguished, i.e. the union and marriage *in facto*, i.e. the constant way of life. Marriage is clearly defined as an agreement of the wedded (Meilius 2010). In general, the Church is stricter than the State, indicating and requiring the married couple to clearly realize the marital agreement and the fullness of its content, i.e. defines the object of marriage for the spouses. If the spouses do not form a union for the rest of their lives or refuse to bear children or do not acknowledge the marital fidelity, their marital agreement is regarded as not sufficient, i.e. they agreed upon something not considered as marriage by the canon law.

According to the Catholic Church, the marital community is based on the relationship of spouses as well as the mutual agreement. Marriage and family are meant for the well-being of spouses, the bearing of children and their education (Meilius 2010).

As mentioned before the internal and essential ground for marriage is a strong union of a man and a woman based on love (Wojtyła 1994). Canon law (1983) defines marriage as a union uniting a man and a woman with special bonds for the rest of their life, is meant for the goodness of the spouses and to raise and educate children. The aim of this unity is to retain the goodness of the spouses, not to violate the individual autonomy and dignity, respect the subjectivity of one's own and one's partner (Plužekas 1996).

Following Canon law, the marriage is not only a natural agreement of the wedded, but it also has the sign of sanctity: it is a sacrament: "among the baptized there is no valid marital agreement which is not a sacrament at the same time" (Coriden 1986). Canon law specialist Malakauskas states the marriage of Christians *in fieri* is an agreement and also a sacrament (Malakauskis 1932).

Codex Juris Canonici does not have a precisely determined definition of marriage. The definition of marriage of the Roman law is regarded as valid by the Church: I. 1. D. 23,2: "*coniunctio maris et femi-*

nae, consortium omnis vitae, divini et humani iuris communicato" and I I I,9: "*nuptiae sive matromonium est viri et mulieris (legitima) coniunctio, individuum vitae consuetudinem continens*". The Catholic Church made the following conclusions out of this definition: marriage is monogamist, inseparable, and, if established between Christians, is sacramental.

According to the concept of a marriage based on the decisions of the Second Vatican Council, the main features of marriage are considered its unity and indissolubility⁷. These attitudes are transferred into and consolidated in the Canon law Code (Can. 1056⁸). Unity is the union of a man and a woman. It not only rejects the possibility of a polygamic union, but also requires the marital fidelity. Dissolubility follows from means the marital bond lasting for the rest of their life and after the death of one of them. At the same time the goodness of the offspring and the spouses is implicated as well as the declaration of the agreement for marriage as an act by which a motivated decision is made determining the future. The future has a special meaning here as it embodies the object of the marital agreement (Malakauskis 1932).

The Catholic Church strongly declares a valid marriage is indissoluble and cannot be cancelled in the eyes of God and society (Coriden 1986). Therefore the Church prohibits the divorce of the spouses.

However, history shows, the primary attitude of the Church towards Christian divorce and second marriage has not been uniform. The famous Fathers of Church Basil and Cyril allow the second marriage for the goodness of souls if there is a proportional reason. The early community of Christians did not encourage divorce or second marriage by any means. Regarding divorce as a tragedy, the Church still was not ready to forgive its member for a tattered marriage, if he repents for his sin. A Christian entering into his/her second marriage was not considered to be condemned by or excommunicated from the Church.

7 The indissolubility of marriage is revealed in the Pauline privilege (Privilegium Paulinum). In Paul's epistle it states: "To the married I give charge, not I but the Lord, that the wife should not separate from her husband ... and that the husband should not divorce his wife. To the rest I say, not the Lord, ... But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace." (1 Corinthians 7:10-15 RSV).

8 The essential properties of marriage are unity and indissolubility; in christian marriage they acquire a distinctive firmness by reason of the sacrament.

At all times the Church has declared the indissolubility of marriage as a direct demand of God and the obvious principle of natural law (Twomey 1982). Until the 12th century the Church had viewed the indissolubility of marriage as the moral requirement entangling it with disciplinary laws. Later canonists and theologians started treating the indissolubility of marriage as impossibility rather than a ban: Christian marriage cannot be dissolved. A matrimonial bond appearing in the valid sacramental marriage was started to be considered as an anthropological reality rather than as a moral obligation of Christians. At approximately 1200 A.D, the indissolubility of marriage was no longer a Christian ideal to be strived for by spouses in western society: it became “the law”, binding all Catholics. In 1917, Canon law Code (can. 2356) declared excommunication and personal interdiction to anybody attempting a second marriage, despite a Bishop’s warning, and who remains in “impermissible union”.

In accordance with church statistics of two decades ago, 80.46 percent of the Lithuanian population confesses to the Catholic religion (Evangelicals - 9.54 percent, Orthodoxies - 2.54 percent) (Vaitiekaitis 1992). More than 2/3 of marriages are consecrated by the Church, and therefore the role of the Church in this process is very important. It is worth noticing in Catholic Lithuania the number of recorded divorces is significantly higher than in countries where the Catholic tradition has not been interrupted. For example, the number of divorces per one hundred marriages is 19 in Poland, 13 in Italy, 16 in Spain and unfortunately, 55 in Lithuania (Moterys ir Vyrai Lietuvoje 1999).

While the Church continues to recognize the indissolubility of marriage, spouses find it too difficult to live together for different reasons. In such cases, the Church allows the spouses to be separated physically and not to live together. It states that the spouses remain as husband and wife before God; they cannot enter into a new marriage. In such complicated situations, reconciliation, if possible, would be the best solution. The Christian community is encouraged to help such people to live a Christian life in their situation and to remain faithful to their irrevocable matrimonial bond (John Paul II 1994).

In summary, the essence of Christian marriage consists of:

- Monogamy, i.e. marriage between one man

to one woman;

- Heterosexuality: it consists of a man and a woman;
- Public recognition, the separation from parents is made public and announced to the community;
- Embodiment of sexual union: “one body”;
- Non-recognition by the church of marriage that is attempted to be concluded by a sexually impotent individual or when sexual life is rejected;
- A church marriage lasts for life.

For the validity of canon marriage, the consent of spouses has to be stated in an established legal form and between legally capable persons. Validity of the matrimonial consent is understood not only as an outcome of a spouse’s natural capability (such as sufficient power of reasoning) but also their legal capability. This means, individuals entering into marriage have to be sufficiently mature mentally and there should be no obstacles disrupting the marriage. Matrimonial consent has to be expressed with free will, without fraud, violence, reservations or fear (Vaičekonis 2003).

The priest participating in the ceremony of marriage, on behalf of the Church, accepts the consent of individuals entering into marriage and bestows the consecration of the Church on the marrying couple. Therefore, the Church usually requests its members to marry in the church. Several reasons can serve as an explanation for the marriage procedure:

- Sacramental marriage is a liturgical act, and therefore it is to be performed during a public church liturgy;
- Marriage introduces into the church estate, creates rights and obligations in relation to spouses and their children in the church;
- Publicity of agreement protects the concluded marriage (Coriden 1986).

The non-observance of all these regulations prescribed for the conclusion of lawful marriage however does not interfere with the conclusion of valid marriage. In addition, the Church establishes the so-called disrupting obstacles, serving as causes for invalidity of marriage. Canon law is favourable to marriage, and therefore before obstacles are proven in court, marriage is deemed valid. In the Church, matrimonial obstacles are firstly related to the very act of the wedding conclusion, i.e. the act of matrimonial consent. It cannot be given by ju-

veniles and those who are incapable of full self-determination at the time of the marriage agreement.

The civil law approach to the marriage institution

At present in Lithuania the juridical, material, psychological and social aspects of family are to a greater extent influenced by the State legislation, Constitution, Civil Code and relevant international treaties. As a small part of the State and the nation the family fosters such moral values as a sense of responsibility, understanding and forgiveness to each other. Social life cannot even be imagined without these family functions. Family is the foundation of society and the State. The State protects and takes care of families.

As already was mentioned in the previous chapter Lithuanian Civil Code (Article 3.7) defines the concept of marriage as an institution where legal family relations are in force: "Marriage is a voluntary agreement between a man and a woman to create legal family relations executed in the procedure provided for by law. A man and a woman, who have registered their marriage in the procedure provided for in law, shall be deemed to be spouses".

However, these relations, consisting of mutual rights and duties, are neither named nor founded, i.e. the conditions that determine these rights and duties are not defined. The Civil Code focuses on the validity of the marriage agreement, its recognition, matrimonial property and the rights and duties of spouses and their children in case of divorce or any restrictions of marriage.

If Canon law considers marriage as a personal and moral matter, inevitably the State has to pay more attention to the social aspects of this institution. The State⁹ does not have any official religion or morality, and, therefore, it must adjust and ensure the rights and interests of citizens of the most diverse religious and moral systems.

An expert in the Canon law, Dr. P. Vaičekonis (Vaičekonis, 1994) provides an interpretation of civil marriage as a matrimonial contract, signed by an official of civil power, in compliance with state legislation. It can be analyzed in two ways: as a momentary act, i.e. as a wedding (*matrimonium in fieri*), and as a regular life style, as an estate (*matrimonium in facto*).

⁹ Absolute majority of states of the European culture, including Lithuania.

The Lithuanian Republic law takes a slightly different approach to the marriage and family institution compared with that of the Church. The State does not recognize the indissolubility of marriage and undeniable preservation of the same qualities of marriage; it does not require spouses to keep to the engagements with the same strictness as the Church implies (Sagatys 2010).

The State and the Church have common interests in the marriage agreement and family: they aim at strengthening family relations, put effort into making families harmonious and stable, solve arising problems and provide various types of support. However, the family interests of these two institutions are slightly different. The Church is more concerned about the spiritual life of families; it encourages families to lead a moral life, to follow the commandments of God, and strengthens faith. The State looks at the family as a foundation of society and the State.

At present the State has a significantly higher power over the family institution compared to that of the Church. The State regulates family relations through civil law. The spiritual and moral education of families is left to the Church¹⁰.

The procedure of conclusion and registration of marriage as well as all other marriage and family relations in the Lithuanian Republic are regulated by Civil Code; previously these matters were regulated by the outdated Marriage and Family code (MFC) and temporary regulations of the civil status acts registration. At present in Lithuania civil marriages are completely regulated by the state law that defines the rights and duties of both parties, declares when marriages are invalid and analyzes other aspects.

Conclusions

1. Both religious communities and State have strong interests in regulating marriage that arise from the fundamental institutional, practical and conceptual identities and needs of the State, as well as of the Church.
2. Conflicts between the Church and the State over the marriage regulation, between religious community autonomy and individual religious liber-

¹⁰ Although the State has a greater power in the conclusion of marriage, pursuant to the Supreme Court consultation of 2004, matters pertaining to the Church marriage are left to be settled by the Church itself.

ty, on the one hand, and civil marriage regulation and protection of public interests, on the other, significantly threaten both those institutions.

3. The law takes a slightly different approach to the marriage and family institution compared with that of the Church. The State does not recognize the indissolubility of marriage and undeniable preservation of the same qualities of marriage; it does not require spouses to keep to the engagements with the same strictness as the Church implies.
4. The State and religion in a liberal State acknowledge each other's sovereignty in their field, and they co-operate. The problem emerges due to the fields in which the institutions realize their sovereignty. Both institutions care for the welfare of people.
5. The State cares only in a secular field, which embodies the welfare of individuals by creating opportunities for people to satisfy their interests. The care of individual interests does not violate the welfare and rights of others. So, the State provides guarantees and limits the rights of its citizens.
6. The Church's position is that it considers marriage as a sacrament and pushes its legal contents into the second place. This attitude is reasonable in the view of separation of powers between the State and the Church: the consequences of the sacramental marriage are to be legitimised by the State regulations; it is only the State that determines legally binding rights and obligations.

References

1. CAHILL, S. and TOBIAS, S., *Family Policy: Issues Affecting Gay, Lesbian, Bisexual and Transgender Families*, Michigan: the University of Michigan Press, 2007, p. 6.
2. CATTON, W., "Family Divorce Heritage and Its Intergenerational Transmission: Toward a System Level Perspective", *Sociological Perspectives*, 1988 (31), 398-419; EVANS, J., "Effects of Parental Divorce among College Undergraduates", *Journal of Divorce and Remarriage*, 1997 (26), 69-88; GLENN, N. and KRAMER, K., "The Marriages and Divorces", *Journal of Marriage and the Family*, 1987 (49), 811-825.
3. STETS, J., "Cohabiting and Marital Aggression: The Role of Social Isolation", *Journal of Marriage and the Family*, 1991 (53), 669-680.
4. FUNARO, J., *Legislative Guide to Marriage Law*, Iowa: Iowa University Press, 1991, p. 3.
5. MADELEY, J. and ZSOLT, E., *Church and State in Contemporary Europe: the Chimera of Neutrality*, Cambridge: Cambridge University Press, 2003, p. 15.
6. KELLY, K., *Divorce and Second Marriage– Facing the Challenge*, London: Sheed & Ward 1997, p. 12.
7. HILL, N., *Christian Marriage and Family*, Collegeville: The Liturgical Press, 1993, p. 5.
8. MEILIUS, K., "Šeimos Privatizavimas – Pavojus Jos Stabilumui", *SOTER*, 2003 (38), 21-22. [MEILIUS, K., "Family Privatisation is a Danger for Stability of a Family", *SOTER*, 2003 (38)].
9. ÖRSY, M., *Marriage in Canon Law*, Delaware: Michael Glazier, 1986, p. 47.
10. KELLER, T., *The Meaning of Marriage: Facing the Complexities of Commitment with the Wisdom of God*, London: Penguin Books, 2011, p. 16.
11. BLANKENHORN, D., *The Future of Marriage*, New York: Encounter books, 2007, pp. 14-16.
12. MCKENNA, K., *Concise Guide to Canon Law: A Practical Handbook for Pastoral Ministers*, Notre Dame: Ave Maria Press, 2000, p. 65.
13. KAVOLIS, M., *Bažnytinės Tikybiniai Mišriosios ir Civilinės Moterystės Juridinė Padėtis Lietuvoje*, Kaunas: Vytis, 1930. [KAVOLIS, M., *Legal Position of Mixed Matrimony in Lithuania*, Kaunas: Vytis, 1930, p. 24.
14. INSTONE-BREWER, D., *Divorce and Remarriage in the Bible: The Social and Literary Context*, Cambridge: William B. Eerdmans Publishing Company, 2002, p. 4.
15. TIHAMERIS, T., *Katalikų Santuoka ir Šeima*, Alytus: Alka, 1994, p. 14-15. [TIHAMERIS, T., *The Marriage of Catholics*, Alytus: Alka, 1994].
16. THOMAS, D., *Christian Marriage: A Journey Together*, Minnesota: The Liturgical Press, 1983, p. 87.
17. CORIDEN, J., *Code of Canon Law: A Text and Commentary*, New York: Paulist Press, 1986, p. 95.
18. WOJTYLA, K., *Meilė ir Atsakomybė*, Vilnius: Aidai, 1994, pp. 5-8. [WOJTYLA, K., *Love and Responsibility*, Vilnius: Aidai, 1994].
19. PLUŽEKAS, Z., *Pastoracijos Psichologija*, Vilnius: Amžius, 1996, p. 320. [PLUZEK, Z., *Psychology of Pastoration*, Vilnius: Amžius, 1996.
20. ŽIŪKAS, V., *Lithuanian family*, Vilnius: Institute of Philosophy and Sociology, 1994, pp. 16-17.
21. MALAKAUSKIS, P., *Moterystės Teisės*, Kaunas: Vytauto Didžiojo Universitetas, 1932, p. 5. [MALAKAUSKIS, P., *Rights of Matrimony*, Kaunas: Vytautas Magnus University, 1932].

22. VAIČEKONIS, P., *Santuokinė Teisė*, Kaunas: Vytauto Didžiojo Universitetas, 1994, pp. 36-38. [VAIČEKONIS, P., *Marriage Law*, Kaunas: Vytautas Magnus University, 1994].
23. SAGATYS, G., "The Concept of Family in Lithuanian Law", *Jurisprudencija*, 2010 (119), 182-183.
24. JOHN PAUL II, *Apostolic Adoration*, Lumen: Liturgical Press, 1994, p. 83.
25. VAIČEKONIS, P., "Marriage Consent under to the Canon Law", *Soter*, 2003 (38), 28-31.
26. TWOMEY, G., *When Catholics Marry Again*, Minneapolis: Private Publishing House, 1982, p. 36.
27. VAITIEKAITIS, A., *Bažnyčios Praeitis*, Kaunas: Šviesa, 1992, p. 173. [VAITIEKAITIS, A., *The Past of the Church*, Kaunas, Šviesa, 1992].
28. *Moterys ir Vyrai Lietuvoje*, Vilnius: Statistikos Departamentas, 1999, p. 117. [Women and Men in Lithuania, Vilnius: Department of Statistics, 1999].
29. CORIDEN, J., *Code of Canon Law: A Text and Commentary*, New York: Paulist Press, 1986, p. 95.
30. ŽIŪKAS, V., *Lithuanian family*, Vilnius: Institute of Philosophy and Sociology, 1994, pp. 16-17.

ŠIUOLAIKINĖS VALSTYBĖS IR BAŽNYČIOS POŽIŪRIS Į SANTUOKĄ

Santrauka

Santuokinės teisės ir pareigos religijos požiūriu yra privalomos ne tik viešojo gyvenimo santykiuose, bet ir sąžinės požiūriu. Šiuolaikinės civilizacijos demokratinės visuomenės pripažįsta savo piliečių teisę gerbti savo įsipareigojimus tiek pagal valstybinę, tiek konfesinę teisę. Tačiau šios abi sistemos yra labai skirtingos. Kai kurios šalys pripažįsta bažnytinę santuoką, kitose teisinės pasekmės sukelia tik santuokos sudarytos pagal valstybės keliamus reikalavimus.

Moderni bažnyčia aiškiai pasisako už santuoką ir šeimą, tačiau nepripažįsta civilinės santuokos. Moderni valstybė pripažįsta civilinės santuokos registraciją, tačiau valstybė pripažįsta tik tas santuokas, kurios yra sudarytos pagal civilinės teisės keliamus reikalavimus.

Tiek religinės bendruomenės, tiek ir valstybė turi stiprius interesus reglamentuojant santuokas. Šie interesai kyla iš esminių institucinių bei praktinių ir koncepcinių bažnyčios ir valstybės reikmių.

Konfliktai tarp valstybės bažnyčios, reguliuojant santuokos instituciją iš vienos pusės kyla santuokos sudarymo ir pripažinimo klausimais, konfliktus iš kitos pusės sukelia ir santuokos anuliavimo, nutraukimo klausimai.

Valstybės požiūriu santuoka yra sutartis, bažnyčios- sutartis ir sakramentas.

Valstybė ir bažnyčia liberalioje valstybėje pripažįsta viena kitos suverenitetą savo srityje ir abi bendradarbiauja. Problemos iškyla kada šios abi institucijos siekia realizuoti savo suverenitetą. Abi institucijos rūpinasi žmonių gerove. Valstybė santuoktiniais rūpinasi tik pasaulietinėje srityje, kuri detalai reglamentuoja asmenų gerovę, sukuriant žmonėms galimybes patenkinti savo interesus. Valstybė savo piliečiams suteikia garantijas. Bažnyčios pozicija yra ta, kad, jos nuomone, santuoka yra sakramentas ir savo teisinius santuokos sudarymo padarinius nustumia į antrąją vietą. Šis požiūris yra pagrįstas atsižvelgiant į valdžių padalijimo tarp valstybės ir bažnyčios. Valstybė nustato tik teisiškai privalomas santuoktinių teises ir pareigas.

Raktiniai žodžiai: moderni valstybė, bažnyčia, santuoka, santuoktinių teises ir pareigos.