

**University “Ovidius” of Constanța**

**Faculty of Orthodox Theology**

**Doctoral School of Theology**

# **DOCTORAL THESIS**

## **SUMMARY**

**Mixed marriages.**

**Orthodox and Roman-Catholic ordinances and canonical  
regulations**

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**Constanța**

**2013**

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Keywords:

Canonical legislation, canonical doctrine, mixed marriage, difference of religion

This work, *Mixed marriages. Orthodox and Roman-Catholic ordinances and canonical regulations*, is presented as a project of my doctoral thesis in Theology, in Canon Law, within the Faculty of Orthodox Theology of “Ovidius” University in Constanța, having Fr. PhD Prof. Nicolae V. Dură as scientific supervisor. Without claiming to be an exhaustive coverage of the matrimonial canon law, which is very vast, the work is focused in a theoretic and applicative manner, in accordance with the proposed thematic, on the juridical and canonical conditions of the administering of mixed marriages, through oikonomia, on the legislative collisions concerning these conditions and impediments (e.g. the difference of faith), by reference to the coexistence of civil marriage as compulsory along with the religious matrimony, outside the pluralist system, on the historical and canonical evolution of mixed marriages in Orthodoxy and in the Roman Catholicism and on the development of the coverage of the canonical legislation and its interpretation on the ground of the canonical principles of interpretation, unanimously accepted, and of the most important current sources of the canonical doctrine and jurisprudence of the Orthodox and Roman-Catholic Churches.

The present paper is structured on six chapters, with the respective subchapters. The six chapters are preceded by the list of abbreviations of reviews and dictionaries, but also by an introduction in which are emphasized the general framework of the administration of mixed marriages, the argumentation for the choice of the topic, its importance and actuality, the terminological clarifications, the structure of the work, the purpose and objectives of the current scientific research, the sources and secondary (auxiliary) bibliography and the research methodology. After the development of the topic, throughout the six vast chapters, the work also includes conclusions and perspectives, the general bibliography and the annexes.

In the current multicultural societies, which include communities of different faiths, the presence of mixed marriages cannot be avoided, nor ignored, as they represent a true means of religious encounter and also a possibility of reciprocal knowledge and respect for these communities and for the different faiths of the spouses. Although the reactions of canonists and of the theologians were different, as the Church treated those according to the local pastoral needs of the respective periods, within the limits of the canonical acrimia and of the application of ecclesiastical oikonomia as a dispense, the legal, valid union of the spouses, in mixed marriages, also contributed to the strengthening and stability of the mixed religious communities, although there were committed some abuses of exploiting the marriage<sup>1</sup> only to ensure the religious unity within a certain multicultural community. Thus, we should note that always the socio-political framework, as well as the objective material conditions in which the Church conducted its activity had a major contribution to the development of the problematic of mixed marriages. Unfortunately, the matrimony, which is the sacrament of love<sup>2</sup> *par excellence* and an image of the Kingdom of God, raises numerous problems, even conflicts<sup>3</sup>, in our very secularized society, determining us to manifest a special attention, to carry on a profound research, with responsibility, in order to find the most appropriate juridical, canonical and pastoral solutions, within the limits of the canonical dispositions and of the canonical tradition in general, on the grounds of the doctrine jurisprudence.

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<sup>1</sup> Grigorios D. PAPATHOMAS, *Un comunitarism eclezial deschis: Căsătorii cu disparitate de cult-mixte și convertirile adulților*, trad. from French by Iulian Mihai L. Constantinescu, after art. *Un communautarisme ecclésial ouvert : Mariages dispar-mixtes et conversions d'adultes.*, in *Le Feu sur la Terre*, Mélanges offerts au Père Boris Bobrinskoy pour son 80<sup>e</sup> anniversaire, Paris, éd. des Presses Saint-Serge de l'Institut de Théologie Orthodoxe Saint-Serge (coll. *Analecta Sergiana*, n° 3), 2005, p. 183-191, in *Mitropolia Olteniei*, LXI (2009), no. 5-8, p. 206.

<sup>2</sup> See H. CAZELLES, *Mariage: dans le Nouveau Testament*, in DBS, (1957), no. 5, p. 926-935; J. BONSIRVEN, *Théologie du Nouveau Testament*, Paris, 1951, p. 143-144; E. LOEWESTAM, *Le mariage dans le Nouveau Testament*, Lund, 1950 (in Swedish, with an abstract in English), p. 296-297; Paul EVDOKIMOV, *Sacrement de l'amour. Le mystère conjugal à la lumière de la tradition orthodoxe*, Paris, 1980, p. 9.

<sup>3</sup> For details, see Richard Joseph RYAN, *The Canonical Status of marriages attempted before civil authorities*, The Catholic University of America, Washington, 1989, p. 10

The institution of marriage was inevitably influenced, throughout the centuries, by the Christian values as well as by the cultural and socio-political particularities and by the mentality of the society in certain periods, those also being a true material source of the matrimonial canon law. This can be also seen from the fact that “after the development of Christianity and the apparition of the Christian states, it is noted a progress to fusion between the constitutive civil act of marriage and the sacramental act of forming a Christian family. In the periods of society cooling towards the Christian values, a distancing between marriage and the Sacrament of Matrimony is produced, even a dilution of the notion of family and, in the end, of the familial values, in general”<sup>4</sup>. In the current context, when we witness a decrease of the canonical discipline, we cannot talk anymore of canonical rigorousness and “even from within the Church there are raising voices, which relativize the role of canonical tradition, reducing it to a simple system of regulations, which are dispensable, for each case in part, and so the Church gets to live in an era in which the things that were supposed to be exceptions, became rules and the rule, although proclaimed, is applied only as an exception”<sup>5</sup>. Consequently, the Orthodox Church manifested throughout the centuries respect for its own canonical legislation, for the rigorousness of the canonical acribia, in the same time, having its own mission and purpose, manifested prudence, applying the principle of churchly oikonomia<sup>6</sup>. In different stages, according to the settings, of the local pastoral needs, for supporting its mission, the Church applied either the canonical acribia, or the dispense concerning mixed marriages.

The coverage of the mixed marriages, according to the oikonomia, without an abuse of the text of the canonical dispositions which mark the maximal limit of the canonical acribia, became a necessary practice, which has to be kept within certain canonical limits. Thus, the application of the canonical principle, with a dogmatic and juridical ground, of the ecclesiastical oikonomia in the field of mixed marriages has “the role of correcting in some situations the rigor of law, without being able to assert that the pastoral attitude of the Church is synonymous to the unlimited indulgency, avoiding the abuse of the competent authority concerning the grant of dispensation”<sup>7</sup>. A cause of the pastoral attitude of the Church towards the union of man and woman in mixed marriages is also the context of secularization of the institution of matrimony and of the society, in general<sup>8</sup>. In such a society, where there are numerous religious communities, with different faith, along with the unjustified compulsoriness of the civil marriage for the religious matrimony in some countries, the marriage is the one that marks the place of meeting of its members, on the ground of several juridical and canonical conditions. This causes that the problem of mixed marriages to determine a concrete current imperative answer, as we witness, unfortunately, how it does not receive the deserved attention. The difficulty of this problem is in the way that we take position towards it: either we limit it to a problem that only concerns the appurtenance to a religious community, or there is a risk to fall in the trap of exclusivism<sup>9</sup>, because such a problem inevitably involves the human freedom, which led in numerous cases to double religious appurtenances, with negative implications over the ecclesial body. Consequently, nowadays, the existence of mixed marriages must avoid the forces

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<sup>4</sup> Patriciu VLAICU, *Biserica Ortodoxă în fața problematicei căsătoriilor mixte*, în *Studii Teologice*, VIII (2012), nr. 1, p. 180.

<sup>5</sup> *Ibidem*.

<sup>6</sup> Also see Pierre L'HUILLIER, *L'espace du principe d'« économie » dans le domaine matrimoniale*, in RDC, t. XXVIII (1978), nr. 1, p. 44; Damaskinos PAPANDREOU, *Saint et Grand Concile de l'Église Orthodoxe*, in *Contacts*, sem. IV (1972), no. 80, p. 10; K. DUCHATELEZ, *Pour une valorisation de l'économie ecclésiale au Grand Concile orthodoxe*, in NRT (2002), no. 124, p. 565 sq.

<sup>7</sup> Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii. De la acrivia canonică la iconomia bisericească*, Editura Universitaria, Craiova, 2010, p. 110.

<sup>8</sup> Gerhard ROBBERS, *Etat et Eglises dans l'Union Européenne*, Nomos Verlagsgesellschaft, Baden-Baden, 1997, p. 76; A. ESMEIN, *Le mariage en droit canonique*, vol. I, Paris, 1891, p. 38.

<sup>9</sup> See Bruno GIANESIN, *Matrimoni misti*, Bologna, Edizioni Dehoniane, 1991, p. 48-49.

conversions, that is the lack of free and voluntary integration into a religious community and, implicitly, the doubled religious appurtenance<sup>10</sup>.

But, in the context of the current world, when there is an intense human mobility, this problem of mixed marriages tends to become acute, especially in the communities in the Diaspora. In the mainly Catholic and Protestant West, the Orthodox inevitably enter social relations with those belonging to other confessions, frequently being formed families based on mixed marriages, that is those marriages between people of different faiths, who freely adhered to communities of different faith, values, traditions and mentalities. We must note the fact that, within these communities, there are different jurisdictions of various local Orthodox Churches and the Romanian clergy must respect the discipline of our Church, ensuring “a pastoral activity in accordance to the decisions of the hierarchical Romanian Orthodox courts, but in the same time they cannot losing sight of the attitude of our brothers, or else the rigor might be perceived by those shepherded as a lack of zeal and lack of availability and the dispense might be considered as disorder”<sup>11</sup>.

Always in mind with these circumstances, it is important to be aware of the importance of transposing in the practical life of the Church the teaching of faith, the canonical regulations and the principles of organization and functioning, in order to prevent the wrongful understanding of the application of churchly oikonomia, which seems inevitable in the context of administering mixed marriages.

Our savior Jesus Christ urges us to manifest understanding towards those who manifest a will to approach the Church of Christ, because “whoever comes to Me, I will never drive away” (Jn. 6:37), in the same time having to know what are the limits of this availability. That is why the tolerance of the Church towards those who are not its members, but are validly baptized through oikonomia, must not be understood as a sign of weakness or overlooking of its own mission, but as a means of manifesting of oikonomia<sup>12</sup>, in the correct sense of the notion, of good administration of all the means of salvation made available to the Church by Christ the Savior for the salvation of the faithful. Despite this, the Church understood, throughout the centuries, the complexity of the phenomenon of mixed marriages, mainly in the context in which “the differences in mentality and values are not taken into serious, these are able to provoke imbalances that put the family life in great difficulty and can even lead to putting in danger the perfecting of the spouses and of the children”<sup>13</sup>.

The Holy Fathers of the Church took a position concerning the marriages between persons of different faiths, proving to be rather intransigent, that tolerant. But this should be correctly interpreted by also looking to the historical context and to that of the practical ecclesial life<sup>14</sup>. Saint Ignatius of Antioch condemned the marriages between Christians and non-Christians, showing that the union of Christians in marriage must be according to God, but not according to the passions<sup>15</sup>. Emphasizing the unity of faith of the spouses, Saint John Chrysostom developed the importance of conserving the Christian faith, the unity of faith of the spouses leading to the accomplishment of the great mystery that is the Christian matrimony<sup>16</sup>. Consequently, the Church maintained in its canonical legislation, starting with the 4<sup>th</sup> century, the impossibility of perfecting marriages between persons of different faiths, forbidding them

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<sup>10</sup> Patriciu VLAICU, *Biserica Ortodoxă în fața problematicei căsătoriilor mixte*, p. 205.

<sup>11</sup> *Ibidem*, p. 167.

<sup>12</sup> \*\*\**Iconomia în Biserica Ortodoxă (Referat al Comisiei interortodoxe pregătitoare a Sfântului și Marelui Sinod, întrunită la Chambésy între 16 și 28 iulie 1971)*, in O, XXIV (1972), no. 2, p. 285; also see A. de HALLEUX, *L'économie dans le premier canon de Basile*, în ETL (1986), nr. 62, p. 381-392.

<sup>13</sup> Patriciu VLAICU, *Biserica Ortodoxă în fața problematicei căsătoriilor mixte*, p. 167.

<sup>14</sup> See details in Ioan COZMA, *Căsătoriile mixte în teoria și practica Bisericii Ortodoxe*, in *Altarul Reîntregirii*, nr. 2/2010, p. 147.

<sup>15</sup> Sanctii Ignatii, *Epistola ad Policarpum*, V, Quid conjuges, caelibes, sponsos, moneat episcopus, in PG 5, col. 723: „ut nuptiae secundum Dominum sint, non secundum cupiditatem”.

<sup>16</sup> S. Joannis Chrysostomi, *In epistula I ad Cor.*, hom. 19, in PG 61, col. 155.

according to the acribia, but also letting some possibilities of dispensation, with a strict observance of the canonical conditions (can. 14 IV ec.). Following the teaching of Saint Apostle Paul, who forbade the union with the unfaithful (cf. can. 72 Trulan), the Orthodox Church considered that the mixed unions in marriage, because of the faith of the spouses, are relative and prohibitive impediments, condemning without any reserve any union with the heretics or with the schismatics (can. 45, 66 apost.; 32, 33, 34, 37-39 Laodicea), even in prayer<sup>17</sup>.

From the canonical legislation we can observe that the Church tolerated the marriage between an Orthodox and a heterodox, the condition imposed by the canonical rule being the conversion to Christianity. Therefore, the heterodox is explicitly asked to engage on the path of the true faith. Thus, “the canonical texts took a position against the mixed marriages simply perfected, without a pastoral discernment (can. 10 Laodicea) by the assumption by the Church of a family consisting in a convert and a heterodox (can. 72 Trulan), showing that the rejection of mixed marriages does not have a doctrinaire character, but a pastoral-disciplinary one”<sup>18</sup>. The consequence of this fact was that, according to their own local pastoral needs, the local autocephalous Church made decisions either according to the canonical acribia, or by applying the dispense.

The canonical position of the Church was that a marriage perfected between a faithful and a non-faithful cannot be called marriage. In this sense, the Byzantine canonist Theodoros Balsamon, in the 12<sup>th</sup> century, according to can. 72 Trulan, showed that if the spouse of other faith does not want to follow the faithful spouse and wish to separate, then the marriage must be undone. Therefore, can. 72 Trulan, being relevant and classic for the ecclesiastical practice in the field of mixed marriages, explicitly introduces in the canonical legislation the relative impediment of mixed marriages, in its two understandings: 1. a faithful of the Church, as a full member through valid Baptism, with a heretic and 2. faithful with non-baptized or heretic. In consequence, in the churchly practice, those who perfected marriages with persons of other faiths were subject to the punishment of excommunication, their union in marriage being declared null. The theological reasoning for the ban applied on the marriages between faithful of the Church and those of other faiths was argued with the incompatibility between a member of the Church through Baptism and a heretic or a heathen, assimilated, in the text of can. 72 Trulan, to that between a sheep and a wolf or as the one between those who belong to Christ and the sinners<sup>19</sup>.

Consequently, by carefully analyzing the text of the canons<sup>20</sup> concerning the problematic of mixed unions in marriage we can observe an evolution, according to the historical context<sup>21</sup>, to the existing practices in a certain place or time or to the civil legislation, that inevitably influenced the legislative function of the Church. Therefore, “observing the thematic of the canons, including the problem of mixed marriages, we understand the type of situations that the Church confronted with in different historical periods. The explicit ban on a certain thing or on a certain practice also shows the existence of a concrete pastoral reality, in front of which the Church adopts an attitude”<sup>22</sup>.

But without relating to the text of the canons, which represent an important formal source of the canon law in the field of mixed marriages or to the entire content of the canonical Tradition of the Church, we must note that after the era of the ecumenical councils, the power of

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<sup>17</sup> N. V. DURĂ, *Mărturii ale Tradiției ortodoxe, biblice și patristice despre rugăciune*, in MMS, LX (1984), nr. 1-3, p. 95.

<sup>18</sup> Patriciu VLAICU, *Biserica Ortodoxă în fața problematicei căsătoriilor mixte*, p. 180.

<sup>19</sup> Dimitrios SALACHAS, *Il Diritto canonico delle Chiese orientali nel primo millennio*, Roma-Bologna, Edizioni Dehoniane, 1997, p. 269.

<sup>20</sup> The Holy Canons from the fundamental collection of canons of the Orthodox Church, which regulate the celebration of mixed marriages are the following: can. 10 Laodicea (343), can. 31 Laodicea (343), can. 21 Carthage (419), can. 14 IV ec. (451), can. 72 Trulan (691-692), but also can. 23 of Saint John the Faster (619); see also Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe. Note și comentarii*, București, 1992.

<sup>21</sup> Jean GAUDEMET, *Le mariage en Occident. Les mœurs et le droit*, Cerf, Paris, 1987, p. 70-155.

<sup>22</sup> Patriciu VLAICU, *Biserica Ortodoxă în fața problematicei căsătoriilor mixte*, p. 170.



the Church in regulating the sacramental field of mixed marriages did not diminish<sup>23</sup>, as the Church was still able to regulate through its collegial or individual organisms, according to its own necessities, according to the pastoral needs from a certain period, in order to always give a current answer to the problems raised in the life of the Church.

Therefore, the work is the product of my own research, during a number of years, in the field of canon law, of my documentation and scientific research concerning the legislative juridical and canonical evolution and the pastoral and canonical practice of mixed marriages in the East and the West, as well as the study of the current stage of administering the mixed marriages, but also of the research of the topic at the academic level.

The actuality and the importance of the theme for the current canonical research is given by the fact that in the Orthodox Church, in the past decades, especially after the start of the Pan-Orthodox Conferences in Rhodes (1961, 1963, 1964), but mainly after the 2<sup>nd</sup> Pre-synodal Pan-Orthodox Conference in Chambèsy/Genève (The Center of the Ecumenical Patriarchate), the problem of administering mixed marriages was officially taken into debate at the inter-Orthodox level in order to reach an agreement through fundamental decisions concerning the limits of churchly oikonomia in the local ecclesiastical practice, by taking into the account the local pastoral particularities and necessities. The importance of mixed marriages, of their academic research, can be easily observed from the coverage of this topic at a pan-Orthodox level and from its placement on the agenda of the preparing inter-Orthodox Conferences and Commissions, in order to be taken decisions with general and mandatory character and for their confirmation by the Holy and Great Synod of the Orthodox Church.

Therefore, the awareness of the importance of the thematic of mixed marriages, of its unitary coverage at the pan-Orthodox level and, therefore, their scientific research was made in Orthodoxy starting with the second half of the 20<sup>th</sup> century, precisely because at the beginning of the 20<sup>th</sup> century, the mixed marriages were celebrated “as of right”, with the idea of applying the churchly oikonomia being strengthened<sup>24</sup>. There was not a unitary practice in Orthodoxy, as in general the practice of the Ecumenical Patriarchate influenced the jurisprudence of the local Churches. The ignorance of the limits of ecclesiastical oikonomia made that this problem of mixed marriages to become a complex one. In the aforementioned period, mixed marriages were even “institutionalized”, by their acceptance by the Ecumenical Patriarchate and by other autocephalous Orthodox Churches. In order for this practice of celebrating mixed marriages to be grounded, no appeal was made anymore to the churchly oikonomia, but to the finding of a canonical basis to justify it. This lead to the development of canon law studies, although they are still very few compared to their amplitude in the Roman-Catholic Church after Vatican II.

The problems of mixed marriages became acute in rapport to the official dialogue with the Roman-Catholic Church, as the opinions of canonists and of the local Orthodox Churches were different. The coverage of the thematic at the inter-Orthodox level, with an emphasis on the decisions made at Chambesy, in 1982, which are debatable, from the perspective of the limits of churchly oikonomia, developed in parallel to the Orthodox-Catholic dialog. After the official beginning of the dialogue with the Roman-Catholic Church, the recognition of mixed marriages between an Orthodox and a Catholic, celebrated only in front of the Catholic priest, was taken into account<sup>25</sup>. But we observe that this problem divided the Orthodox canonists, as some of them firmly rejected, according to the canonical acribia, the validity of the marriages celebrated

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<sup>23</sup> Ioan N. FLOCA, *Drept canonic ortodox. Legislație și administrație bisericească*, vol. II, EIBMBOR, București, 1990, p. 209.

<sup>24</sup> N. PANTAZOPOULOS, *Κεπήνιον. Συμβολή ἔρευναν του θερμού τοῦ ἐπὶ Τουρκοκρατίας*, în *Mélanges Alexandre Litziropoulos*, Atena, 1985, p. 205-235.

<sup>25</sup> See Liviu STAN, *Căsătoriile mixte și ultimele măsuri luate de Vatican în privința lor*, p. 487-494; Iulian Mihai L. CONSTANTINESCU, „*Mixta religio*” după dreptul canonic matrimonial al Bisericii Romano-Catolice, în *Altarul Reîntregirii*, no. 2 (2009), p.133-164; Maximilian PAL, *Căsătoriile mixte în legislația Bisericii Catolice: aspecte istorico-juridice*, în *Studia Theologica*, IV, no. 4 (2006), p. 479.

only by Catholic priests, while others recognize them on the basis of the apostolic succession of the Roman-Catholic Church and, consequently, their character of sacrament of the Matrimony, but by *oikonomia* as a dispense, because the canonical principle states that all the sacraments administered outside the Orthodox Church can only be recognized through *oikonomia*. The Orthodox Churches in Russia, Poland, Serbia, Czech Republic and Slovakia, much more open to the application of the churchly *oikonomia*, recognize the mixed marriage between an Orthodox faithful and a Catholic, celebrated in front of the Catholic priest, but only under the condition that all the resulting children will be baptized and educated in the Orthodox faith<sup>26</sup>. But the Orthodox Church of Greece and the Orthodox Church of Cyprus, following the canonical acribia, conditioned the validity of this marriage, between an Orthodox and a Catholic, by the previous existence of an approval by the competent bishop and by its celebration only in the Orthodox rite and by an Orthodox priest<sup>27</sup>. The Romanian Orthodox Church remained attached to the Orthodox canonical legislation and tradition, which received a full expression in its own particular legislation, namely the "Procedural regulation of the disciplinary and judgment courts of the Romanian Orthodox Church" (art. 70)<sup>28</sup>. Through this regulation it was allowed, in principle, to celebrate marriages only between Orthodox persons, while those belonging to other cults are forced to convert to the Orthodox faith (can. 14 IV ec.; 72 Trulan). Only as an exception, the unions in mixed marriages can be administered, but only with dispense from the competent Orthodox bishop and with the solemn promise of the heterodox part that will not oppose to the baptism and education of the children in the Orthodox faith.

The evolution of the canonical practice, as well as the distinctions found in the canonical doctrine, make this theme of maximum actuality. Its importance determined me to personally cover it at a scientific level, by evaluating the canonical legislation and the opinions of classical and current canonists on mixed marriages. Along the existing changes in the Orthodox Church, according to the place and time, the practice varying permanently from the limits of the canonical acribia to the limits of churchly *oikonomia*, according to the local pastoral needs, to all these we add the canonical novelties appeared in the Roman-Catholic Church and in the official dialogue with this Church, after Vatican II (1962-1965).

In the Roman-Catholic Church, the administration of mixed marriages became an important subject, beginning with the second half of the 20<sup>th</sup> century, being in the centre of numerous acts delivered by the papacy, both before and after Vatican II. Before this, under the authority of the dispositions of the Canon Code of 1917, a reticence was manifested towards mixed marriages, these being viewed as prohibitive impediments and can be administered, but following the canonical form. What radically changed the position of the Roman-Catholic Church towards mixed marriages, after Vatican II, even before adopting the new Code (1983), is *Motu Proprio Matrimonia mixta* (March 31, 1970)<sup>29</sup>, of real importance and representing the basis for current regulations<sup>30</sup>.

In the papal and council documents is mentioned the existence of three types of mixed marriages, namely the marriage of Catholics with non-Catholic Oriental Christians, the marriage of Catholics with non-Catholics outside the Oriental rite and the marriage of Catholics with the non-baptized, these being names with cult disparity and claiming a special treatment, that of dispensation, according to a different procedure. In the present work, given the importance of *Matrimonia mixta*, we covered the canonical doctrine concerning this fundamental law and the dispositions that followed on the local level, also taking into the account that the law operated in

<sup>26</sup> Joseph PRADER, *La legislazione matrimoniale latina e orientale. Problemi interecclesiali interconfessionali e interreligiosi*, Roma, Edizioni Dehoniane, 1993, p. 66.

<sup>27</sup> Cf. Dimitrios SALACHAS, *Mariage civil et mariage religieux en Grece*, in *Apollinaris*, no. 58 (1985), p. 701-704.

<sup>28</sup> See \*\*\**Legiurile Bisericii Ortodoxe Române*, EIMBOR, București, 1953.

<sup>29</sup> PAULUS VI, *Litterae apostolicae motu proprio datae Matrimonia mixta*, quibus Normae de matrimoniis mixtis statuuntur, 31 martii 1970, in *AAS*, LXII (1970), p. 257.

<sup>30</sup> Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii...*, p. 215.

the rigid framework hostile to the mixed marriages, of the Code from 1917. Nevertheless, it managed to simplify the regime of mixed marriages, the Episcopal Conferences being competent to establish the general rules of the frame law.

In the general context created by the new liberal law, the Conferences may tighten the legal regulations. A margin of interpretation exists, between the letter of the law and the application of the rules for the local Ordinary, who grants dispenses<sup>31</sup> or for the ecclesiastical courts competent in judging causes of nullity. The Motu Proprio of 1970 served to a new codification in the time of John Paul II (1983)<sup>32</sup>, its dispositions being a special chapter in the new code (chapter VI, can. 1124-1129), concerning mixed marriages.

On the basis of the Orthodox and Roman-Catholic canonical legislation, of its evolution and changes, without the devaluation of the canonical legislation, various scholarly works developed in the canonical doctrine, concerning the mixed marriages, from a systematic and historical-canonical perspective, both in Orthodoxy and in the Roman-Catholic Church. We cannot find, though, in the Orthodox bibliography, current reference works, those existing begin far too few and treating this problem with a theological-dogmatic emphasis, and less with a juridical and canonical one. Unlike in Orthodoxy, in the Roman-Catholic Church the scientific research developed and we can find a vast bibliography in the matrimonial field<sup>33</sup> and numerous canonical perspectives proposed by the current Roman-Catholic canonists. It is certain that the canon law scientific papers, with an actual juridical-canonical view of the conditions and relative impediments concerning the administering of mixed marriages between acribia and oikonomia did not make their way in the scientific research in the Romanian Orthodox Church. There are only a few works and articles of renowned canonists, as it might be seen in the used sources.

This lack in the scientific research I tried to cover through the present work in the field of the canonical matrimonial law concerning the mixed marriages in Orthodoxy and in Roman Catholicism, in relation to the juridical dimension of the civil marriage<sup>34</sup>, but also to the perspectives of the mixed marriages between Orthodox and Latin Catholics. In this context, I aimed to elaborate a doctoral thesis that, through my personal endeavor, will be able to contribute to the development of the canonical doctrine in the Romanian Orthodox Church, to be a step forward, on the basis of a thorough study of the current stage of research, being a systematic and critical-comparative presentation of the juridical-canonical dimension of the administering of mixed marriages, but also an ecclesiological-canonical approach to this complex theme, in a rigid juridical framework. During my scientific research, under the guidance of the erudite canonist, Fr. PhD Prof. Nicolae V. Dură, I tried to thoroughly study the juridical and canonical aspects of the use of the sanctifying power in the canonical administration of the Holy Sacrament of Matrimony for persons of different faiths. Thus, I noticed the multitude of problems that have to be treated, developed and carefully researched, with seriousness and responsibility towards the theology of our Orthodox Law, being aware that the theologians and canonists of the Romanian Orthodox Church can have an essential contribution to the strengthening of the canonical discipline of mixed marriages, making responsible the competent

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<sup>31</sup> See Louis DE NAUROIS, *Les mariages mixtes. Esquisse de sociologie et de droit religieux comparé*, în RDC, t. XX (1970), no. 3, p. 218-219 (note 20).

<sup>32</sup> Pier V. AIMONE, *Le droit des sacrements*, Fribourg, 2002, p. 17.

<sup>33</sup> Some important works in Roman Catholicism: Jacques VERNAY, *L'Eglise Catholique casse-t-elle le mariage?*, Ed. Fleurus/Tardy, Lyon, 1990; Jacques VERNAY, *Les dissolutions du lien matrimonial en droit canonique*, în AC, t. XXXII, 1989; Jacques VERNAY, *Le mariage civil en droit canonique*, in *Mariage civil et mariage canonique*, Téqui, Paris, 1985; Michel LEGRAIN, *Les divorcés remariés*, Centurion, Paris, 1987; Armand LE BOURGEOIS, *Chrétiens divorcés remariés*, Desclée de Brouwer, Paris, 1990; Patrick VALDRINI, Jean-Paul DURAND, Olivier ECHAPPE, Jacques VERNAY, *Droit canonique*, éd. IIe, Dalloz, Paris, 1999; Gaston CANDELIER, *Le droit de l'Eglise au service des époux*, Cerf, Paris, 1999; Roger PARALIEU, *Guide pratique du Code de droit canonique*, Ed. Tardy, 1985; Alain SERIAUX, *Droit canonique*, PUF, Paris, 1996; *Dictionnaire de théologie catholique*, „Mariage”, t. IX, p. IIème, Paris, 1927.

<sup>34</sup> See Patriciu VLAICU, *Biserica Ortodoxă în fața problematicei căsătoriilor mixte*, p. 170.

ecclesiastical factors over the importance of the theme and over the fact that the application of the churchly oikonomia cannot be equal to the ignorance of the canonical dispositions in the field.

Therefore, the actuality and importance of the theme are undeniable. They determined me to approach the scientific research of the field of matrimonial Canon Law concerning the administration of mixed marriages. The importance of the theme is also proven by the current problems emerged in the secularized society in our country, concerning the marriages between persons of different faiths, cultures and mentalities, the existence of mixed marriages asking for actual answers from the part of the theologians and canonists. It is a duty of the canonists of our Church to strongly affirm the Orthodox canonical discipline, promoting the canonical tradition of the Church on mixed marriages and to establish the limits of the churchly oikonomia, in order to avoid the abuse of the canonical dispositions, through a lack of correct interpretation and understanding of the corpus of canonical legislation.

CHAPTER I: *The union of faith of man and woman in marriage – Sacrament of the Church and socio-juridical institution.* In this introductory chapter, I emphasized the character of sacrament of the matrimony in the Orthodox Church, with effects on the Orthodox position concerning the administration of mixed marriages. After underlying some aspects over marriage and mixed matrimonial unions in the era of the Old Testament, I showed the evolution in sense of the union between man and woman in the New Testament. The matrimony finds its true sense in the New Testament, where the union between man and woman in marriage is raised in the order of grace, receiving the character of sacrament, by fulfilling the conditions that the Church of Christ responsibly imposed. Thus, the marriage receives a new signification<sup>35</sup>, being a sacrament of Christ and in His Church, and “the Matrimony is the sacrament that objectively inserts the union of the two spouses in the tight and existential relation between the Church and Christ”<sup>36</sup>. The union of the two spouses in marriage, man and woman, is a great sacrament, a “sacrament of the Love of God”<sup>37</sup>, aiming to bring human to perfection, in the communion full of faith and love of Christian family. Saint Apostle Paul<sup>38</sup> calls the matrimony “mystery”, emphasizing that in “marriage, the human has the possibility or realize an important part of the purpose that he was created for, namely to enter the Kingdom of eternal life, through the Resurrection of Christ”<sup>39</sup>, the matrimony being unique in the Kingdom of God, “a true matrimony can only be unique, not by virtue of an abstract law or moral principle, but because it is a *sacrament of the Kingdom of God*, introducing man in the eternal joy and in the eternal love”<sup>40</sup>.

But matrimony is not only a mystery, but also a socio-juridical contractual institution. In the Orthodox Church, marriage is a Holy Sacrament, while in the Roman-Catholic Church, “the matrimonial alliance” is both sacrament and contract (can. 1055), even getting to identify “the matrimony-sacrament” with “the matrimony-contract”<sup>41</sup>, therefore to the recognition of mixed marriages.

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<sup>35</sup> Jean MEYENDORFF, *Le mariage...*, p. 12; Nicolae CHIFĂR, *Taina Nunții după învățătura Sfinților Părinți*, în *Teologie și Viață*, IV (1994), no. 5-7, p. 97-110; Gheorghe POPA, *Familia creștină: o perspectivă teologică și spirituală*, în *Teologie și Viață*, IV (1994), no. 5-7, p. 143-154; Mihai VIZITIU, *Familia în învățătura Mântuitorului și a Sfinților Apostoli*, în *Teologie și Viață*, IV (1994), no. 5-7, p. 25-39.

<sup>36</sup> Dumitru RADU, *Caracterul eclesiologic al Sfintelor Taine și Problema intercomuniunii*, în *Ortodoxia*, XXX (1978), no. 1-2, p. 308.

<sup>37</sup> Vasile GAVRILĂ, *Cununia...*, p. 44.

<sup>38</sup> See details in Ph. – H. MENOUD, *Mariage et célibat selon saint Paul*, în *Revue de Théologie et de Philosophie*, serie 3e, I (1951), p. 21-34; F. PRAT, *La théologie de saint Paul*, ed. 38e, vol. I, Paris, 1949, p. 124-135; X. LÉON-DUFOUR, *Mariage et continence selon saint Paul*, în *A la rencontre de Dieu. Mémorial Albert Gelin*, Lyon-Paris, 1961, pp. 319-329.

<sup>39</sup> Iulian Mihai L. CONSTANTINESCU, *Biserica și instituția căsătoriei...*, p. 32.

<sup>40</sup> Jean MEYENDORFF, *Le mariage...*, p. 23.

<sup>41</sup> See Henry LEENHARDT, *Le mariage...*, p. 38-39.

From the canonical legislation of the Canon Code in 1917 to the current Canon Code in 1983 we can note an evolution, in the sense that the definition of matrimony changed from the emphasis of its contractual character (can. 1012 §1) to the “sacrament”, being a “communion for the entire life”, for the purpose of fulfilling the good of the spouses and the birth and education of children (can. 1055 §1)<sup>42</sup>. This alliance between baptized spouses was raised by Lord Christ to the rank of sacrament (can. 1055), mentioning that “between the baptized cannot be any valid matrimonial contract that is not, through this very means, a sacrament”<sup>43</sup>. We can see here how the two different realities are identified. There is no separation between the matrimony-sacrament and the matrimony-contract. This fact can be explained by the increase of civil marriages and by the diminishing importance of the matrimony celebrated in the Roman-Catholic Church.

Therefore, nowadays, if we study the firm position of the Roman-Catholic Church in matrimonial matters, we observe that it maintains its “proper and exclusive” competence in the field, though it recognizes the State some aspects of competence in the area. But we should note that this proper and exclusive competence of the Roman-Catholic Church is only for those who are baptized Catholics, not for the non-Catholics. To support this thesis “the Church of the West invokes the sacramentality of marriage, this being a strong argument against the pretention of State to regulate this field, that the Church wished to reserve for itself”<sup>44</sup>.

Also in this chapter we discussed about the matrimonial competence claimed by the State and the intensification of celebrating mixed marriages. We can note a civil-ecclesiastical evolution of the legislation on the institution of marriage. Although the Sacrament of Holy Matrimony is celebrated since the very first centuries within the Holy Liturgy, like all the other Holy Sacraments of the Church, existing a relation Sacrament-Liturgy, only in the 9<sup>th</sup> century we can assert that the Church had its own rite for the marriage, formed from the liturgical ordinance of the Holy Liturgy. This fact determined some canonists to affirm that the celebration of Matrimony outside the Liturgy was made precisely for giving the possibility of celebrating mixed marriages with those of other faiths, an existing practice in the Church, which could not be doubted, who could not participate to the Liturgy of the faithful and could not receive Communion from the Holy Chalice of full communion, out of the lack of intercommunion.

In the matrimonial field, as far as the evolution of the relation between State and Church is concerned, we could say that until the 9<sup>th</sup> century, the Roman and Byzantine law granted the Church a greater control over marriage, but was not proclaimed the compulsoriness, from a juridical perspective, of the marriage in the Church. During Justinian’s reign (527-565), for a marriage to be valid from juridical perspective, the consent and the celebration of the wedding were requested. For a short period of time, emperor Justinian, through an ordinance<sup>45</sup>, obliged the citizens, except for the pagans and soldiers, to register their marriages in front of a *defensor ecclesiae*. Thus, the juridical thesis according to which a marriage is formed through a determined juridical act was established. This period of emperor Justinian was very favorable for the Church, as far as the matrimonial law is concerned, as he managed to harmonize the State legislation concerning the marriage with the canonical dispositions of the Councils, general and obligatory, giving the canons the same constitutional authority as the civil laws<sup>46</sup>. Therefore, an effort was made to realize proximity between the civil legislation and the ecclesiastical jurisdiction in the matrimonial field<sup>47</sup>.

<sup>42</sup> \*\*\**Codex Iuris Canonici*, Auctoritate Ioannis Pauli PP. II, promulgatus, Libreria Editrice Vaticana, 1983, p. 186; A se vedea și J. VERNAY, *Le droit canonique du mariage*, în VALDRINI, Patrick, DURAND, Jean-Paul, ECHAPPE, Olivier, VERNAY, Jacques, *Droit canonique*, Ed. IIe, Dalloz, Paris, 1999, p. 312.

<sup>43</sup> \*\*\**Codex Iuris Canonici*..., p. 186.

<sup>44</sup> *Ibidem*, p. 37-38.

<sup>45</sup> Novela 74 was revoked by Novela 117.

<sup>46</sup> Iulian Mihai L. CONSTANTINESCU, *Biserica și instituția căsătoriei*..., p. 39.

<sup>47</sup> Traian COSTEA, *Căsătoria din punct de vedere istoric, dogmatic și canonic*, Institutul de Arte Grafice „Speranța”, București, 1935, p. 18.

The compulsoriness of celebrating the marriage in the Church determined, as some theologians and canonists assert, the separation of the Holy Sacrament of Communion from the Holy Sacrament of Matrimony<sup>48</sup>, because the Church was forced to marry even those who were less worthy of marriage, determining the promotion of a liturgical ordinance of matrimony, separated from the Holy Liturgy. This practice, imposed in the churchly life for the following centuries, encouraged the celebration of mixed marriages, as the non-baptized part does not have the obligation of taking the Communion, as it was made within the Holy Liturgy, when the two validly baptized spouses received the Communion, and was conditioned no more by the lack of participation within the Liturgy of the faithful.

Therefore, after the period of Constantine, the civil legislator strictly forbade the mixed marriages, sanctioning them with absolute nullity. Thus, as we have seen, in the year 388, emperor Valentinian II (375-392) strengthened the previous legislation from the time of Constantine the Great (306-337), forbidding marriages between Christians and Jews, declaring them as null and punishing them with the capital punishment; this new juridical norm was taken over by emperor Theodosius I (379-395) in his own Code of laws (*Cod Theod., De Judeis*, XVI, 8). In the 6<sup>th</sup> century, emperor Justinian I (527-565) explicitly forbade mixed marriages between Christians and Jews (*Codex Iust.* 1.9.6)<sup>49</sup>, a norm that can also be found in the *Nomocanon in 14 Titles*, from 883 (XII, 2; XII, 13), the fundamental collection of canons of the Orthodox Church, where the mixed marriages are categorically forbidden<sup>50</sup>.

The first ecclesiastical disposition concerning mixed marriages can be considered that of the canon 16 from Elvira (305/306?), where this kind of unions are forbidden, under the sanction of excommunication. As for the marriages already concluded, the synod opted for their non-dissolution<sup>51</sup>. In the category of the canons that ban the mixed marriages can also be found canon 31 of Laodicea, confirmed by canon 10 of the same synod, canon 12 from Hippo, canon 14 of the 4<sup>th</sup> Ecumenical Council, as well as canon 72 from the 6<sup>th</sup> Ecumenical Council (691-692). Although the opposition to such “unlawful union” is noticeable, in some circumstances mixed marriages are allowed, under the condition that the heterodox part promises the conversion to Orthodoxy. Therefore, this part will become, by receiving the Holy Sacrament of Baptism, a subject of law, with rights and duties, within the Orthodox community<sup>52</sup>, as will be shown in detail hereunder.

As far as the reclamation of the matrimonial competence by European states and the strengthening of the institution of civil marriage, we emphasized that the secularization of marriage reached its climax following the French Revolution in 1789, although a vast movement of secularization had already started (14<sup>th</sup> century) and imposed itself more and more in Europe<sup>53</sup>. The revolutionary ideas of the 18<sup>th</sup> century decisively influenced all the institutions, including the marriage, which had asserted in time as a traditional institution of the Church<sup>54</sup>. This laicization and weakening of the conscience of the faithful of the Church to receive, within the Church, the blessing of their matrimonial union, with the fulfillment of all the canonical conditions, progressively lead to the encouragement of mixed marriages between persons of different faiths. Those who conclude civil marriages this way, in front of the State authorities, without finding any obstacle or hindrance, sometimes manifested their wish to receive the matrimony in the Church. This is where, in fact, the legislative collisions appear, but also the

<sup>48</sup> Karl RITZER, *Le Mariage...*, p. 163-191.

<sup>49</sup> Bruno GIANESIN, *Matrimoni misti*, Bologna, Edizioni Dehoniane, 1991, p. 48-49.

<sup>50</sup> See J. B. PITRA ed., *Juris ecclesiastici Graecorum. Historia et monumenta*, vol. II, Romae, 1864-1868, p. 608-612.

<sup>51</sup> Philip SCHARF, *History of the Christian church ...*, p. 332.

<sup>52</sup> Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii. De la acrivia canonică la iconomia bisericească*, Editura Universitaria, Craiova, 2010, p. 189.

<sup>53</sup> Jean GAUDEMET, *Le mariage en Occident. Les mœurs et le droit*, Cerf, Paris, 1987, p. 375.

<sup>54</sup> Traian COSTEA, *Căsătorie...*, p. 28.

compulsion on the Church to abuse the application of ecclesiastical oikonomia, in order to avoid the encouragement of concubinage.

In France, a country whose legislation influenced many European countries, numerous tensions existed in the relation between State and Church, concerning the reclamation of matrimonial law. From the 16<sup>th</sup> century, the State regulated the matrimonial matters, violating the traditional law of the Church, its competences being progressively reduced, while the civil courts involved in matrimonial causes from the 14<sup>th</sup> century<sup>55</sup>. The evolution of the institution of marriage in France and the reduction of the ecclesiastical competence lead to an influence on the legislation of civil marriage in other European countries, too, such as Switzerland, Spain, Belgium, Holland, England, Austria etc.

We can assert that nowadays, in Europe, there is a number of systems of regulation in the matrimonial field, with direct effects on the mixed marriages, some of them influencing in a greater degree their celebration. The compulsoriness of the civil marriage for the religious matrimony is to be found in countries such as Belgium, Holland and France – here, the priest is even criminally charged if breaks the legal prescriptions. In other countries, such as Austria, Germany of Romania, without allowing the administering of the religious matrimony before the civil marriage, there is no criminal incrimination and religious matrimonies may be conducted, but, of course, without any civil effect<sup>56</sup>. But numerous other countries, such as Greece, Italy, England, Ireland, Finland, Denmark or Spain recognize the civil effects of the religious matrimonies, the civil marriage not being compulsory for the religious matrimony. The introduction of the religious matrimony with civil effects recognized by the State, although would increase the responsibility of the competent religious authorities in ascertaining the conditions and potential impediments, would consolidate the canonical position of the Church in the matrimonial field, making it able to truly impose its will as far as the mixed marriages are concerned, too. It would be a justified forsaking of the secularized practices of the 18<sup>th</sup> century that remained, unfortunately, until today<sup>57</sup>.

The institution of civil marriage, which had consequences over the application according to the acribia of the canonical dispositions of the Church, was the effect of secularization, because the modern states “are proclaimed alien of the supernatural order and cannot recognize the notion of sacrament”<sup>58</sup>. Consequently, the states enforced the civil marriage to their citizens, without distinction of religion. The members of the Church may celebrate the religious matrimony, according to their own will, but this is only facultative. Mandatory is to be celebrated after the civil marriage<sup>59</sup>.

CHAPTER II: *The canonical condition for the administration of mixed marriages, according to the Orthodox and Roman-Catholic legislation and canonical doctrine.* In the second chapter we treated about both the fundamental and formal conditions of the administration of a mixed marriage, through oikonomia, following these conditions from the perspective of similarities and distinctions between the two legislations, civil and ecclesiastical. In their positive form, *the fundamental conditions* for perfecting a marriage are imperative<sup>60</sup>, precisely in order to avoid the appearance of some factual or juridical circumstances called hindrances to marriage or impediments. The lack of these fundamental conditions, as well as the trespassing of the legal dispositions concerning the relation of kinship or the divorce, inevitably

<sup>55</sup> A. ESMEIN, *Le mariage en droit canonique*, vol. I, Paris, 1891, p. 38.

<sup>56</sup> Gerhard ROBBERS, *Etat et Eglises dans l'Union Europeenne*, Nomos Verlagsgesellschaft, Baden-Baden, 1997, p. 76.

<sup>57</sup> Ionuț-Gabriel CORDUNEANU, *Biserica și Statul...*, p. 181.

<sup>58</sup> R. NAZ, *Dictionnaire de droit canonique*, vol. VI, Paris, 1957, p. 731.

<sup>59</sup> Marcel Ioan RUSU, *Procedura divorțului în dreptul românesc*, Ed. Rosetti, București, 2003, p. 6.

<sup>60</sup> Ion P. FILIPESCU, Andrei I. FILIPESCU, *Tratat de dreptul familiei*, p. 16; A se vedea și T. BODOAȘCĂ, *Aspecte critice sau controversate din legislația și doctrina română cu privire la condițiile încheierii căsătoriei*, în *Dreptul*, XV (2004), no. 6, p. 67.

lead to the damage of the union of the future spouses in marriage, that is of the valid marriage, because of the presence of absolute or relative impediments. The precise specification of the fundamental conditions of a valid marriage, as well as of the possible impediments, that is in a negative manner, because of the lack of one of the conditions, has a real practical importance, “because the future spouses must prove the existence of the fundamental conditions and observe the formal conditions, as the impediments can be invoked by third parties who oppose the marriage for a reason or can be mentioned by the civil status officer in an ascertaining minute”<sup>61</sup>.

The fundamental conditions mentioned in all the scholarly work are also accepted by the Orthodox and Roman-Catholic legislation, respectively through the Canon Code of 1983, but with several differences concerning the administration of marriage. In the same time, it should be noted that in Romania, according to the current national Constitution (2003), the civil marriage is mandatory before the administration of matrimony, while this one is only facultative. Consequently, in Romania, both the old Family Code and the New Civil Code, which includes the prescriptions of the Family Code, with some modifications, present four fundamental conditions for the civil marriage, which are constitutional and legal for the administration of the Holy Sacrament of Matrimony in the Church. These are: the sexual differentiation, the legal age for marriage, the presence of consent and the reciprocal communication of the health status, in order for any potential physical or psychical condition to be known before the marriage.

Besides the fundamental conditions for marriage imposed by the civil legislation, but also by the canonical legislation for the administration of the Holy Sacrament of Matrimony, there are some formal conditions or preliminary acts for perfecting the civil marriage and the mixed marriages.

The imposition of the formal conditions for the conclusion of a marriage by the Romanian legislator shows the importance of the family for the society as the establishment of the formal conditions through the solemnity of the act overpasses the personal interest of the spouses. To ensure the fundamental conditions, it is required to observe the formal conditions for the conclusion of a marriage, which is a juridical, bilateral and solemn act, in order to avoid the impediments and to ensure the means of proof, according to the civil legislation<sup>62</sup>, as the act of publicity guarantees the fulfillment of the fundamental conditions for the conclusion of marriage. Thus, the marriages that correspond to the exigencies of the law are valid, having juridical effects.

These legal formal conditions are classified into two categories, according to the moment they come into force: 1. Preceding or antecedent formalities; 2. Formalities concerning the very procedure of completing the juridical act of marriage.

The formal conditions and the preceding acts of administering the Holy Sacrament of Matrimony are necessary. Once the civil marriage, mandatory in the Constitution (art. 48) for the legal and constitutional receiving of the Holy Sacrament of Matrimony<sup>63</sup> (without affecting the validity), is perfected, the two spouses, which can be of different faiths (one part Orthodox and the other heterodox with valid Baptism, recognized by *oikonomia*), can manifest their consent for the reception of the Holy Sacrament of Matrimony in the Church. But for the administration of the Holy Sacrament of Matrimony, those civil married must observe the exigencies of the conditions of ecclesiastical law, to avoid the impediments to matrimony, some of them being also found among the impediments to civil marriage. One of them is the very impediment of the difference of faith, of religion or the mixed marriages. Thus, the fulfillment of canonical conditions, which are specifically ecclesiastic, that is religious, moral, physical and social, must be ascertained by the officiating priest through preceding or antecedent acts (confession and publicity or announcements), before the engagement, respecting the formal specific conditions of

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<sup>61</sup> Iulian Mihai L. CONSTANTINESCU, *Biserica și instituția căsătoriei...*, p. 80.

<sup>62</sup> Ion P. FILIPESCU, Andrei I. FILIPESCU, *Tratat de dreptul familiei*, p. 29; Also see art. 18 of the old family Code, included in the New Civil Code.

<sup>63</sup> Art. 48, alin. 2, RC.



the administering of Matrimony. Always when we treat about a Holy Sacrament of the Church, from the perspective of the Canon Law, we target the aspects concerning the officiants, the receivers, the manner of administration and the juridical effects of the sacrament, these being also formal conditions for the matrimony, in relation to the formal conditions for the conclusion of the civil marriage. We will refer here to the preceding acts to the administration of the Holy Sacrament of Matrimony in the Orthodox Church, important as means of ascertaining the canonical impediments, among them being also the problem of mixed marriages, that is of spouses of different faiths.

In the Roman-Catholic Church, the union in marriage of the spouses is a human reality raised to the dignity of sacrament<sup>64</sup>, on the basis of love and of the free consent. But the matrimonial love<sup>65</sup>, as a factor of cohesion that maintains the link or the matrimonial alliance in an indissoluble state, has as its effect the mutual consent of the spouses, a mutual consent expressed in legal forms<sup>66</sup>. In consequence, the two future spouses must be psychically capable of expressing their free and conscientious consent, without any vice.

The future spouses have the canonical obligation to observe all the legal conditions for the celebration of marriage in order to avoid the impediments, or else the marriage can be declared null<sup>67</sup>. There is here a differentiation depending on “ratum et consummatum” Thus “the marriage between two baptized, validly concluded, therefore through the valid manifestation of the consent and consumed through the physical union between the spouses, cannot be ever loosen or canceled, while the sacramental matrimony, based on the mutual consent of the spouses, but not consumed through their physical union, can be the object of its loosening by the Church<sup>68</sup>”. But according to the Roman-Catholic doctrine, a marriage perfected between two non-baptized persons, or between a baptized person and a non-baptized person, is a non-sacramental marriage, being only based on consent, without the affectation of the attributes of marriage, namely unity and indissolubility.

CHAPTER III: *The mixed marriages according to the legislation and canonical doctrine of the Orthodox Church. The canonical tradition and the evolutions of jurisprudence in the praxis of the Church.* In this chapter we developed the Orthodox canonical legislation, but also the canonical doctrine concerning the administration of mixed marriages. The notion of mixed marriage (γάμος μικτός) designates the conjugal link between two persons who are part of different Christian confessions. To designate a marriage of an Orthodox Christian with a person with whom he is not in Eucharistic communion or with someone who is not baptized in the Christian faith, are used some other notions too, along with the one of mixed marriage, such as: intra-Christian, intra-Church, inter-Church relation, ecumenical marriage, inter-confessional or inter-religious relation or marriage with cult disparity. In the ecumenical dialogue it is more often used the notion of inter-religious marriage, the term “mixed” being intentionally avoided, as it appears to be too offensive. The notion of “mixed marriage” is not to be found in the text of the canons, but appears as a new product of the theory of Canon Law. In the Collection of canons of the Orthodox Church, there are some canons that mention this type of marriage. We used in the present work the notion of “mixed marriage” as a generic term to designate all the categories of unions in marriage of persons of different faiths.

In Orthodoxy, the ambivalent character of this is emphasized. Namely, the marriage is seen both as a divine institution (Gen. 1:2; 2:23-24) and in the same time as a bilateral juridical

<sup>64</sup> Jean BERNHARD, *Le mariage sacrement au concile de Trente*, în RDC, 42/2, 1992, p. 15; Gérard MATHON, *Le mariage des chrétiens*, vol. II: Du concile de Trente à nos jours, Desclée, Paris, 1995, p. 229.

<sup>65</sup> R. LLANO, *A relevância jurídica do amor conjugal*, in IC, 30/1990, p. 243-286.

<sup>66</sup> José M. MILLAS, *Il Sacramento del Matrimonio. Elementi fondamentali*, în *Matrimonio e Sacramento* (Studi Giuridici LXV), Vatican, 2004, pp. 9-17.

<sup>67</sup> See R. L. JURKE, *Grave difetto di discrezione di giudizio. Fonte di nullità del consenso matrimoniale*, in IC, 31/1991, p. 139-154.

<sup>68</sup> Iulian Mihai L. CONSTANTINESCU, *Biserica și instituția căsătoriei...*, p. 173.

act<sup>69</sup>. The two dimensions of the marriage, divine and human, are important for the conclusion of the mixed marriages. Even since the apostolic age, the Church was confronted with the problem of mixed marriages (μικτοί γάμοι), when the Christians concluded illegal marriages with non-Christians, according to the Roman law. The Church took a position in this sense, in order to “be known what it happens with the conjugal relation of two non-Christians, of which one converted to Christianity”<sup>70</sup>.

Always when we research into a problem of Canon Law, we must do a systematic, critic and comparative analysis of the text of the canons included in the fundamental Collection of canons, in order to follow an interpretation that will correspond to the principles of interpretation unanimously accepted in doctrine, without ignoring all the elements of the canonical Tradition.

Starting with the Pauline privilege, the mixed marriages were tolerated in the life of the Church only under the condition of the conversion of one of the spouses to Christianity. The other, non-Christian spouse agreed to the marriage and did not hinder the converted to Christianity in its manifestation or exteriorization of religiosity through cultic acts, by participating to the cult of the Church. If this kind of marriages were tolerated, the marriages of Christians with those of other faiths, with heretics or schismatics were forbidden by the text of the canons. Those who became members of the Church through baptism and trespassed the canonical prescriptions were even excommunicated from the religious communities<sup>71</sup>.

In the Orient, the text of canon 31 of the local council in Laodicea (380), which retook the disposition of the canon 10 of the same council, as well as the canon 14 of the 4<sup>th</sup> Ecumenical Synod in Chalcedon, forbade the marriages between Orthodox and heterodox, these being allowed only with the strict condition that the heterodox part to promise that will pass to Orthodoxy through the Holy Sacrament of Baptism. Thus, the text of the two aforementioned canons is eloquent for the discussed problematic, as the canon 10 specifies: “It is not allowed that those who belong to the Church to unite without care their sons with the heretics, by the link of matrimony”<sup>72</sup>, while the canon 31 of Laodicea says: “With no heretic it is allowed to conclude marriage or to give sons or daughters to the heretics, but especially to take them, if they promise they will become Christians”<sup>73</sup>, forbidding this kind of marriages<sup>74</sup>. There are, though, allowed under the condition of conversion to the Christian faith. The disposition of canon 10 of Laodicea was interpreted by some canonists<sup>75</sup> as referring only to the marriages of the Orthodox with those anathematized by the Church, because of their fall in heresies already anathematized by the Church (can. 1 II ec.; 1 Basil the Great; 45 Apostolic)<sup>76</sup>.

As we have seen, for the Orthodox Church canon 72 Trulan is normative as far as the mixed marriages are concerned, regulating in a negative manner this problematic, of great actuality nowadays. Thus, through the text of this canon, 72 Trulan, classic in the problem of mixed marriages, the interdiction already existent since the 4<sup>th</sup> century in the life of the Church, since the local council in Laodicea, is generalized. Now, at the Trulan Synod (692), the existent restriction was nuanced, strengthened and generalized through the canonical work of this synod being realized, for the first time, a codification of the canons and a confirmation of them as general and mandatory in the practical life of the Church (can. 2 Trulan)<sup>77</sup>.

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<sup>69</sup> Also see *La IIe Conférence Panorthodoxe Préconciliaire (Chambésy, 3-12 sept. 1982)* in Syn, VIII/1994, p. 124-144.

<sup>70</sup> L. STAN, *Căsătoriile mixte și ultimele măsuri luate de Vatican în privința lor*, in ST, year XX (1968), no. 7-8, p. 488.

<sup>71</sup> Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii. De la acrivia canonică la iconomia bisericească*, Editura Universitaria, Craiova, 2010, p. 189.

<sup>72</sup> Ioan N. FLOCA, *Canoanele Bisericii Ortodoxe. Note și comentarii*, București, 1992, p. 205.

<sup>73</sup> *Ibidem*, p. 210.

<sup>74</sup> George P. SAMUREANU, *Despre căsătoriile mixte*, in BOR, XIII (1890), p. 488.

<sup>75</sup> N. MILAȘ, *Canoanele...*, vol. I, partea a II-a, p. 88-89.

<sup>76</sup> Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii...*, p. 190.

<sup>77</sup> P. L'HUILLIER, *Dreptul...*, p. 9.

By virtue of the Pauline privilege (1 Cor. 7:12-16), the Orthodox Church always considered that a potential fall from faith of one of the spouses and his conversion from Christianity to paganism or to another religion or heresy, represents a canonical reason for divorce, if the Orthodox part invokes the defense of its own faith<sup>78</sup>. This fall from faith of one of the spouses can affect, with negative consequences, the unity of faith and feelings<sup>79</sup>. In the same time, the marriage can be also loosened by the one fallen from faith, if he does not want any more to live in marriage with the Orthodox part, as Saint Apostle Paul shows (1 Cor. 7:12-16). In case of the union of the two in marriage, after the fall from faith of one of the spouses, “the Church recognizes that the conjugal life is empty of sacramental substance and it is no more than a perpetual profanation, going event to the loss of soul”<sup>80</sup>. That is why the Holy Fathers of our Church considered more right to loosen the marriage, as the salvation is for those who want it, by personal and not forced participation<sup>81</sup>.

The fall from faith is a canonical reason of divorce, canonically based, of divine right, this being the specification of the text of canon 72 Trulan: “Let no Orthodox man be allowed to contract a marriage with a heretical woman, nor moreover let any Orthodox woman be married to a heretical man. But if it should be discovered that any such thing is done by any one of the Christians, no matter who, let the marriage be deemed void, and let the lawless marriage tie be dissolved. For it is not right to mix things immiscible, nor to let a wolf get tangled up with a sheep, and the lot of sinners get tangled up with the portion of Christ. If, therefore, anyone violates the rules we have made let him be excommunicated...”<sup>82</sup>, being possible the potential dissolution of such a marriage, under the circumstances when it is considered that the Christian faith of the spouse and the future education and grow of the children are affected<sup>83</sup>. It must not exclude the possibility of conviviality in these cases – the marriage being previously legally concluded – when the spouses agree to live together within a mixed marriage (can. 14 Chalcedon)<sup>84</sup>.

CHAPTER IV: *The mixed marriages and with cult disparity in the current matrimonial Canon Law of the Roman-Catholic Church*. The valid celebration of the marriage, according to the Canon Law of the Roman-Catholic Church implies the observation of the canonical conditions of administration: a. the prescribed canonical form; b. the absence of matrimonial impediments<sup>85</sup> and c. the existence of valid consent<sup>86</sup>. The lack of fulfillment by the contracting parts of the canonical conditions leads to the invalidation of the marriage. A marriage concluded validly and that is licit must not be hindered by various circumstances, this being regulated by both Canon Codes of the Roman-Catholic Church, namely that of 1917 (can. 1035) and the current Code of Canon Law (can. 1058), showing explicitly that “may conclude the marriage all those who are not banned by the law”<sup>87</sup>. In the category of diriment impediments we also find the marriages with cult disparity, the only ones kept in the category of impediments to marriage,

<sup>78</sup> Paul EVDOKIMOV, *Sacrement...*, p. 263.

<sup>79</sup> Traian COSTEA, *Căsătorie...*, p. 177.

<sup>80</sup> Paul EVDOKIMOV, *Sacrement...*, p. 263.

<sup>81</sup> *Ibidem*.

<sup>82</sup> NEOFIT, Patriarh al Constantinopolului, *Pidalion. Cărma Bisericii Ortodoxe*, Ed. Pelerinul, Iași, 2004, p. 296.

<sup>83</sup> Also see Ioan N. FLOCA, *Canoanele...*, p. 138-139.

<sup>84</sup> But evaluating the canonical legislation of the Orthodox Church (can. 72 Trulan; 31 Laodicea; 9 Carthage) it is forbidden, under the risk of ecclesiastical punishments, the marriage of Christians with pagans, Jews, heretic and schismatics, the latter having to firstly convert to the Christian faith, in order to be able to unite in marriage with Christians

<sup>85</sup> The new Code of Canon Law of 1983 excluded those impediments called prohibitive from the old Canon Code of 1917, keep though the diriment impediments, which cause the invalidity of marriage; among them are also the marriages with cult disparity, this way being encouraged the importance of valid Baptism for matrimony (can. 1073).

<sup>86</sup> Pier V. AIMONE, *Le droit des sacrements*, p. 27.

<sup>87</sup> Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii...*, p. 133.

because the mixed marriages were excluded from among the impediments, as the dispense can be canonically obtained from the competent authority, respectively from the Ordinary of the place. The diriment impediments present in the current Canon Law Code of the Roman-Catholic Church could be defined as “a law of divine, natural or revealed law, or of human, ecclesiastical or civil law, which establish that a certain person, due to an objective circumstance, is not capable of validly concluding a marriage”<sup>88</sup>.

Therefore, the conclusion of the marriage is only allowed in the conditions of the Canon Law or if no law declares them incapable for the marriage, as the very term of “impedimentum” (hindrance, obstacle) explicitly targets the legal interdictions, under the punishment of nullity.

Even before the current canonical legislation, issued on the grounds of Council Vatican II, the Roman-Catholic Canon Law understood by mixed marriages those marriages of Catholics with Christians belonging to the various heretic or schismatic sects<sup>89</sup>. Until the Code of 1983, these unions of Catholics with persons of other faiths, even Christian, were forbidden, because they endangered the faith of the Catholic part, but also the religious education of the children born in such mixed marriages. The pastoral-canonical consequence of this fact was their banishment, without the possibility of granting dispense, the mixed marriages being passed into the category of prohibitive impediments<sup>90</sup>. Thus, it was still possible to obtain the dispense, but only exceptionally, on the basis of a just and serious reason (can. 1061 §1, nr. 1), but also of the determined guarantees (can. 1061 §1, nr. 2) and of the obligation assumed by the Catholic part, who had the duty to directly contribute to the adherence of the non-Catholic part to the faith of the Roman-Catholic Church (can. 1062). Moreover, in the case of the dispense, the canonical form of the celebration had to be observed and “the non-Catholic part had to refrain from blocking the religious practice of the Catholic part, while the children had to be baptized and educated in the Roman-Catholic Church”<sup>91</sup>.

The Roman-Catholic Church considered the mixed marriages as prohibitive impediments until Council Vatican II and therefore forbade them, this being the conclusion that could be derived from “the prescriptions established for their celebration, based on the request of the free manifestation of consent, as in the case of the other marriages, while all the liturgical ceremonies were forbidden”<sup>92</sup>. One of the usual ceremonies could, though, be permitted (can. 1102 §1 and 2), by the Ordinary of the place, but only when there was no possibility to avoid the serious, negative consequences. Under these conditions, it was forbidden that the project of the marriage to be published and that the matrimony to be celebrated in the Church. This explicit interdiction could be suspended only in the areas where the other Christian confessions were predominant, to avoid the celebration of the matrimony in front of a minister of other confession. The system of mixed marriages and the regime of the dispenses granted by the competent ecclesiastical authority, in precise circumstances, made from this a system characterized as rigid and not only because of the mandatory canonical form, but also because the exclusion of any other form of celebration, “being asked that the non-Catholic part will explicitly promise not only that will respect the religious practice of the Catholic spouse, but also that will baptize and educate all the children in the Catholic faith, under the punishment of the refuse of granting the dispense”<sup>93</sup>.

Therefore, the system of mixed marriages imposed by the regulations of the Canon Law Code in 1917 is characterized by the limitation of religious freedom for the mixed marriages but

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<sup>88</sup> G. GHIRLANDA, *Il diritto nella Chiesa mistero di comunione*, Ed. Paoline, Roma 1990, p. 343.

<sup>89</sup> Chanoine O. SCHOELLIG, *Les Sacrements*, p. 340. Chanoine Schoellig asserts that most of the divorce trials were between spouses of different faiths, as the Catholic spouse always had the possibility of divorce for serious difficulties.

<sup>90</sup> In exceptional cases the dispense could be obtained, precisely in order to avoid a greater evil, after it was previously tried the conversion of the non-Catholic part to the faith of the Roman-Catholic Church.

<sup>91</sup> Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii...*, p. 213. Also see M. MATHIEU, *Les canonistes, le mariage et les jeunes*, in RDC, t. XXXVI (1986), no. 2-4, p. 154-166.

<sup>92</sup> *Ibidem*.

<sup>93</sup> *Ibidem*, p. 214.

also by the constraint of the spouses to baptize, educate and grow all their children in the Roman-Catholic faith. Moreover, the Catholic spouse had the duty to insist for the conversion of the non-Catholic spouse to the Catholic faith, while the latter had to not hinder the Catholic spouse in living the Catholic faith and in participating to the holy services (can. 1060-1065)<sup>94</sup>. The commitments of the spouses were very important and encouraged in the practice of the Church and, in consequence, the Congregation of the Holy Office imposed, in 1932, that the commitment of the spouses to be authenticated by the State. Only a few years later, in 1944, decided that the assumption and strengthening of the commitments should be made by oath<sup>95</sup>.

CHAPTER V: *The reception of the canonical legislation concerning the mixed marriages in the practice of the Orthodox Church. The inter-Orthodox and Orthodox-Catholic dialogue concerning the celebration of marriages between Orthodox and Catholics.* The Great Schism in 1054 did not introduce an immediate, institutional separation between the two Churches in the West and in the East. The succession of the future events institutionalized, in fact, the great fracture and the differentiations emerged in time. Among these events we can count the Crusades, through the conquest of Constantinople in 1204, which determined in a great measure the deepening of the gap between the two Churches, the installation of the Latin episcopate or the failure of the councils in Lyon or Ferrara-Florence, but also the fall of Constantinople under the Turks and the new historical context of Orthodoxy in the Ottoman Empire. All these events that followed the schism decisively influenced the position towards the marriages with cult disparity or towards de mixed marriages between Catholics and Orthodox. The differentiations deepened in time, existing different jurisdictions, with different law and ritual<sup>96</sup>.

The practice of the Ecumenical Patriarchate in the matter of mixed marriages also influenced the other Orthodox Churches, given the honorific position of the Constantinople Seat in Orthodoxy. After the schism in 1054<sup>97</sup>, the position of the Ecumenical Patriarchate was according to the canonical acribia, the disposition of canon 72 Trulan becoming a general discipline.

The 4<sup>th</sup> Crusade (1204) changed the position of the Orthodox Church in relation to the Western Roman-Catholic world, an event following which the seat of the Ecumenical Patriarchate was moved to Nicaea (1208-1261). This period had negative effects on the relations with the Western Church, because the crusaders imposed in Constantinople a Latin patriarch, this being the climax that fully consecrated the act of rupture from 1054.

After the beginning of the inter-Orthodox dialogue, at the start of the 20<sup>th</sup> century, but also through the opening of the inter-Christian dialogue, the discussion on the problem of mixed marriages was emphasized and were made proposals in principle, assumed by the local autocephalous Orthodox Churches, according to the local pastoral needs. This decisions in principles have to be confirmed as general and mandatory within the ecumenical Orthodoxy by the work of the Holy and Great Synod of the Orthodox Church, a synod with the character of an ecumenical synod.

Even since the pan-Orthodox reunion in Vatopedi (1930), the idea that the Orthodox Church has to manifest an unitary position in the matter of mixed marriages was strengthen, becoming necessary an analysis of the stage of the problematic in that time, respectively of the attitude of the local Churches towards mixed marriages, depending on the local pastoral realities.

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<sup>94</sup> M. SWEETING, *Les Eglises et les mariages mixtes*, p. 34-36.

<sup>95</sup> Liviu STAN, *Căsătoriiile mixte și ultimele măsuri luate de Vatican în privința lor*, p. 491.

<sup>96</sup> Constantinos G. PITSAKIS, *Les mariages mixtes dans la tradition juridique de l'Église grecque : de l'intransigeance canonique aux pratiques modernes*, in *Études balkaniques* [online], 10 | 2003, <http://etudesbalkaniques.revues.org/index341.html>

<sup>97</sup> The new ecclesiastical context created after the schism of 1054 determined interminable discussions of the Orthodox canonists and theologians concerning the status of the faithful of the Western Church, these being considered from now on as schismatic. Thus, according to the text of the canons, the schismatic had a special position within the Church. But is remarkable that the Orthodox Church did not embrace an exclusivist position in the first two centuries from the schism, as far as the Roman-Catholic Church is concerned.

The pan-Orthodox conferences that started in Rhodes in 1961 (Rhodes 1963, 1964), followed by those in Chambesy (The Orthodox Center of the Ecumenical Patriarchate), in 1968 (the 4<sup>th</sup> pan-Orthodox Conference) took into discussion the problem of mixed marriages. Before the beginning of the pre-synodal pan-Orthodox Conferences in Chambesy, in 1976, in 1971 at the preparatory inter-Orthodox Commission, the Russian Church and the Church of Greece were responsible with the preparation of some papers on this topic, being ascertained the diversity of opinions over the mixed marriages. The two local Church found themselves on different, even opposing positions, treating the issue from the different perspectives of the application of the principle of churchly oikonomia. While the Moscow Patriarchate promoted the recognition through dispense by the bishop of the place of mixed marriages, including those marriages administered within the Roman-Catholic Church, the Church of Greece expressed its opposition towards mixed marriages, on the grounds of the canonical acribia, proposing, though, that each local Church will decide the manner of applying the oikonomia<sup>98</sup>.

But the most important pre-synodal pan-Orthodox Conference that approached the theme of mixed marriages and that issued decisions in principle was the 2<sup>nd</sup> Conference of Chambesy (1982). According to the decisions made in 1982, the mixed marriages with those of other faiths are forbidden, according to the canonical acribia present in the text of the Holy Canons, but a dispense can be granted in the conditions imposed by the text of the canons, that is only when the children resulted from these marriages are baptized and raised in the right Orthodox faith. In the same decisions we can find the specification that the local Churches may apply the churchly oikonomia according to the pastoral needs. As far as the marriages between Christians and non-believers are concerned, it is shown that the canonical acribia bans the celebration of mixed marriages, but in this case, too, the local Churches may decide to apply the oikonomia, by taking into account the pastoral needs<sup>99</sup>.

Therefore, although from the point of view of the limit of canonical acribia present in the text of the canons these marriages are forbidden, by applying the canonical principle of churchly oikonomia by each local Orthodox Church, according to the local pastoral needs and by specifying the limits of applying the oikonomia, the Orthodox faithful could conclude blessed matrimones within Orthodoxy with Christians of other confessions, but validly baptized, on the ground of philanthropy, but also of the pastoral assistance that the Orthodox priests are in debt to ensure to mixed families<sup>100</sup>.

CHAPTER VI: *The quality of full member of the Church through valid Baptism. The mixed marriages between conversion to Orthodoxy, according to the acribia, and the recognition of the heterodox baptism, through oikonomia.*

The application of the churchly oikonomia, through the dispensation of mixed marriages, continued into the Constantinople Church, with important influences in the other Eastern Churches, especially as in this period of the 19<sup>th</sup> century a lot of local Churches were still under the jurisdiction of the Ecumenical Patriarchate in Constantinople. The local bishop frequently addressed the Ecumenical Patriarch, in order to receive answer in the particular cases of mixed marriages, the historic-political context being important in determining the official position, through the firm pronouncement of the synod<sup>101</sup>. It was also taken into account the pastoral aspect of the mixed marriages, to avoid the bad consequences of their categorical banishment.

<sup>98</sup> Liviu STAN, *Iconomie și intercomuniune*, in *Ortodoxia*, XXII (1970), no. 1, p. 5-19; Dumitru STĂNILOAE, *Iconomia Dumnezeuiască, temei al iconomiei bisericești*, in *Ortodoxia*, XXI (1969), no. 1, p. 3-24; Isidor TODORAN, *Principiile iconomiei din punct de vedere dogmatic*, in *Studii Teologice*, VII (1955), no. 3-4, p. 140-149.

<sup>99</sup> See Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii...*, p. 205-208.

<sup>100</sup> Pierre L'HUILLIER, *L'Economie...*, p. 19-38; Elie MELIA, *Le lien matrimonial...*, p. 180-197; Iulian Mihai L. CONSTANTINESCU, *De impedimentis matrimonii...*, p. 237.

<sup>101</sup> *Ibidem*, p. 130-135.

In the legislations of the local autocephalous Churches, following the Orthodox canonical legislation and its interpretation in doctrine, it was observed the disposition of canon 72 Trulan. But this canon cannot be applied but in the case of “heretics” and non-Christians, as they are considered, defined and officially condemned by the Church<sup>102</sup>. We specify here that the Roman-Catholics are considered in the canonical doctrine as schismatics, although this term is no more in use today. They cannot be considered heretics and even if they were considered heretics no council condemned their heresy. Therefore, the disposition of the quinisext canon cannot be applied to Roman-Catholics. As far as the Protestants are concerned, although they were accused of “heresy” numerous times, in the classic sense of the term, from an Orthodox perspective they were not condemned by any council of the Church and there is a possibility not to apply the disposition of canon 72 Trulan in their case, when they are baptized in the name of the Holy Trinity, with a valid Baptism, and they accept the Nicaeo-constantinopolitan faith. Truly, a problem in this matter is that concerning the non-Chalcedonians. They were explicitly condemned for heresy by the synods of the Church. But although they were condemned, the celebration of mixed marriages with them was allowed, through churchly *oikonomia*, an analogy with the Catholic and Protestants being always made, especially as the non-Chalcedonians are more close to the Orthodox, being Oriental Christians with common tradition, culture, liturgy and history<sup>103</sup>.

Because of the aggressive proselytism from the part of Christian confessions, the Orthodox Church was forced, in a period (17-18<sup>th</sup> centuries), in order to defend the just faith, to not recognize the sacraments officiated outside the Orthodox Church, by the priests of the respective confessions. As far as the Catholic baptism is concerned, the Orthodox Church always had in mind the official position of the Roman-Catholic Church concerning the relation between grace and jurisdiction, as well as the jurisdictional nature of the ecclesiastical power<sup>104</sup>. This way it can be explained that the Synods in Moscow (1620) and Constantinople (1756) did not recognize the validity of the Catholic baptism, given the intensification of proselytism in Eastern Europe, on the jurisdictional territory of some Orthodox Churches. In this strict context, having to well interpret, from a pastoral perspective also, the Orthodox Church, resorting to the principle of ecclesiastical *oikonomia*, applied it according to the canonical acribia (in the strict sense)<sup>105</sup>. This ignorance was not constant on the long run, but only for periods and not as an official position of the Orthodox Church. Therefore, two synods gathered in Moscow (1667, 1721) took position, concerning mixed marriages, by recognizing the validity of the Baptism of Christians who belong to other confessions, also making the necessary distinctions between heretics and schismatics<sup>106</sup>. The mixed marriages with persons of different faiths, but with valid baptism, were tolerated through *oikonomia*, the condition being the protection of the Orthodox part from the potential proselytism of the one of other faith, as well as the baptism of the children in the Orthodox faith<sup>107</sup>.

The work ends with CONCLUSIONS AND PERSPECTIVES, followed by a bibliography and annexes. In the present project of the doctoral thesis in the field of the matrimonial canon law of mixed marriages, which cannot claim to be an exhaustive approach of

<sup>102</sup> H. OHME, *Das Concilium Quinisextum und seine Bischofstiste. Studien zum Konstantinopler Konzil von 692* [Arbeiten zur Kirchengeschichte, 56], Berlin-New York, 1990, p. 34-35; P. MÉNÉVISSOGLU, *Ιστορική εισαγωγή εις τούς κανόνες της Ὁρθοδόξου Ἐκκλησίας*, Stockholm 1990, p. 276-296; S. TROIANOS, *Ἡ Πενθέκτη Οἰκουμενική Σύνοδος καὶ τὸ νομοθετικὸ της ἔργο*, Athens, 1992, p. 98.

<sup>103</sup> Constantinos G. PITSAKIS, *Les mariages mixtes dans la tradition juridique de l'Église grecque: de l'intransigeance canonique aux pratiques modernes*, p. 107-145.

<sup>104</sup> See on this matter L. STAN, *Har și jurisdicție*, in ST, no. 1-2/1970, p. 5.

<sup>105</sup> Nicolae DURĂ, *Căsătoriiile mixte...*, p. 102.

<sup>106</sup> For a canonical approach concerning the sacraments of the heretics and schismatics, see Ioan N. FLOCA, *Drept canonic ortodox...*, vol. II, p. 111-121.

<sup>107</sup> Radko POPTODOROV, *Intermarriages...*, p. 110.

the entire complex problematic of the administration of mixed marriages according to the two canonical legislations and doctrines, Orthodox and Roman-Catholic, I aimed to realize a critic and comparative evaluation of the matrimonial canon law of the two Church and to bring into light the canonical practice concerning the administration of the mixed marriages between the canonical acribia and the limits of the churchly oikonomia as a dispense.

Through our research, we wish to advance in the field of the research concerning the administration of mixed unions in marriage, bringing an actual contribution to the development of the efforts of the canonists to underline the importance of the knowledge and observation of the canonical rules, but also their application in the current objective conditions, according to the oikonomia. But the observation of the canonical dispositions and their application to the practical life of the Church cannot be realized but through an objective and pertinent interpretation of the canonical legislation and through the rigorous evaluation of the canonical doctrine, starting from the Byzantine canonists of the Church from the 12<sup>th</sup> century, to the modern canonists of the Orthodox and Roman-Catholic Churches.

In the period of documentation and scientific research of the ensemble of canonical legislation, on the basis of the scholarly sources, I could observe an immense gap in the scholarly literature concerning the matrimonial canon law in the Romanian Orthodoxy, even in Orthodoxy in general, compared to the Roman-Catholic Church. This fact lead to an important effort of the research, but also to the strengthening of the idea that such a work was necessary in the field, especially given the actuality of the theme. That is why a special emphasis was put on the actual evaluation of the formal sources of the canon law in the two Church, starting from the collections and official canon codes to the study of the opinions expressed by the canonists and the customary practices of the local Orthodox Churches, but also of the Roman-Catholic Churches, at the local level of competence of regulation of the Episcopal Conferences. By the thoroughgoing study of the sources and scholarly work we could note the necessity of approaching this theme nowadays, in the current context, when the Orthodox Churches manifest a constant interest concerning the keeping of the canonical discipline of administering the matrimony to persons of different faiths.

Thus, in the context of the current pluralist society, under cultural and religious aspects, the problem of mixed marriages is necessary to be treated carefully and in detail, given its increased importance in a secularized world, where the Church fights to keep its own canonical tradition, without neglecting the presence of the civil marriage, which is even mandatory for the administration of religious matrimony. In fact, the Church found itself in front of the marriage as a civil institution of the State even since the formation of the first Christian communities, managing, in time, through the consolidation of its own legislation, but also through the support offered by the Roman-Byzantine state authorities, to integrate into the Church the civil act of marriage, through a sacramental union. This was not kept during the time and nowadays we witness the presence of the civil marriage, of the civil conditions and impediments for marriage, different from those of the canonical legislation for the administration of matrimony. This has effects on the legislative collisions, respectively on the marriages between persons with different faiths, cultures, mentalities and traditions, not recognized as relative impediment by the civil legislations of the states.



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