
Mixed Marriages in the Canonical Legislation: a Brief Survey

MAXIMILIAN PAL, OFM.CONV.
*Theological Franciscan Institute of Roman
(Romania)*

Summary:

§1. Introduction. §2. Terminology. §3. Canon Law until the two Codes in 1983 and 1990 were promulgated. §4. Attenuations. §5. Forbidding the celebration. §5.1. Reasons for forbidding the celebration. §5.2. The nature of the forbidding. §6. Giving permission. §7. Canonical form. §8. Celebrating mixed marriages between Catholics and Protestants. §9. Mixed marriage in the Eastern non-Catholic Churches. §10. The liturgical celebration of a mixed marriage. §11. Registering mixed marriages. §12. Conclusion.

§1. Introduction

At first sight, this article may seem of very little interest, even to those to whom it is addressed; but in reality, every day experience shows that the opened borders after the 1990's and the migration phenomenon to and from Europe and the United States of America, as well as the presence of significant numbers of believers of different religions in this country, has led to many mixed marriages during the last decade of the last century and during the first years of this millenium.

The importance of this topic is therefore obvious, if we consider the social-political situation, beyond the ecumenical movement: no society can be seen as an ideal. In fact, each society is pluralistic from an ethnic point of view as well as from a religious one.

Therefore, marriage as a juridical institution, established by law as well as by the Church is at the centre of the attention of researchers from different fields, starting with the social and ending with the judicial, encompassing all social and human structures.

Also, we have today radical challenging and free interpretation of marriage, which deny its natural basis, suggesting totally different models to those given by Christian Churches. That is why the Church continues to have a maternal and special concern for christian marriage and gives special pastoral assistance to mixed marriages¹.

¹ «The Church, in virtue of its mandate, has taken special concern in mixed marriages, that is marriages contracted between a catholic party and a non-catholic party, either christened or not. This concern becomes even greater because of the special conditions in which christians now live. Whilst in the past, catholics lived separated from members of other religions, Christian or not, nowadays this separation has not only been attenuated, but relations between people from different regions and different religions have evolved, and mixed marriages have increased. Industrial development and the progress of culture,

The introduction to the Apostolic Letter given as a *motu proprio*, «*Matrimonia Mixta*», which I have given in note, shows the reason the Catholic Church wanted to regulate a phenomenon that had exceeded the expectations of the Church during the time of PAUL VI.

Cardinal ERDŐ, the Primate of Hungary, believed that the regulations regarding mixed marriages prior to the Canon Law of 1917 had a prohibitory character, naming impediments to mixed marriages, and therefore Catholics, in order to celebrate a mixed marriage, had to obtain permission to marry from the competent authorities. These impediments were preceded by the impediment of cult disparity, a prohibitive law in the Church, whose origin goes back to the first Christian ages, and to which they referred for resolving those marriages in which only one of the parties was Catholic².

The Canon Law Code in 1917 included mixed marriages among the prohibitory elements, whilst the present legislation of the Church, i.e. the *Codex Iuris Canonici* for the Latin Church (= *CIC*), promulgated in 1983; the *Codex Canonum Ecclesiarum Orientalium* for the Catholic Oriental Churches (= *CCEO*), promulgated in 1990; both the codes, contain canons concerning mixed marriages as follows: *CIC* cann. 1125-1125; *CCEO* cann. 813-814.

Therefore, as we can see, the rules of the church regarding mixed marriages have changed according to the socio-cultural and historical context of the Church³, but after the debates during the Second Vatican Council, the canonical legislation underwent great changes, mostly during the 1960's and 70's⁴. These changes are already known by many theologians and canon lawyers⁵, but the most important thing in the study we are to approach is the fact that agreements among Christian Churches in recent years have speeded up the closeness and mutual knowledge process in this field. As far as mixed marriages are concerned, we still find unsolved problems that canonical thinking has brought to light⁶. Amongst the

urbanization and the diminishing of rural life, mass migrations and the increased number of refugees have also contributed to this phenomenon». Cfr. PAULUS VI, *Litteræ Apostolicæ motu proprio datæ* «*Matrimonia mixta*», *quibus Normæ de matrimoniis mixtis statuuntur*, 31 martii 1970, in *AAS* LXII (1970), 257.

² ERDŐ P., *Matrimoni misti e la loro evoluzione storica*, in AA. VV. *I matrimoni misti* «Studi Giuridici» 47, Città del Vaticano 1998, 11

³ KONNIK A., *Canonical Doctrine Concerning Mixed Marriage – Before Trent and During the Seventeenth and Early Eighteenth Centuries*, in *The Jurist* 20 (1960), 295-326; 398-418; ERDŐ P., *Matrimoni misti*, cit., 12.

⁴ Regarding the legislative reforms that took place during this period, cfr. GROCHOLEWSKI Z., *Matrimoni misti*, in *Matrimonio canonico fra tradizione e rinnovamento* (Il Codice del Concilio Vaticano II 7), Bologna 1985, 237-256; PIVONKA L., *Ecumenical or Mixed Marriage in the New Code of Canon Law*, in *The Jurist* 43 (1983), 103-124.

⁵ *Motu Proprio «Crebæ Allatæ»*, cann. 50, 51-52, 54 and 85 correspond to cann. 813, 814, 816 and 834 from *CCEO*. See, synthesis of recently changed legislation, by ABBAS J., *I matrimoni misti*, in AA.VV., *Il matrimonio nel Codice dei Canonici delle Chiese Orientali*, «Studi Giuridici» 32, Città del Vaticano 1994, 187-205.

⁶ See the study realised by SZABÓ P., *Matrimoni misti ed ecumenismo. Prospettive del riconoscimento ortodosso dei matrimoni misti con speciale riguardo al caso della celebrazione cattolica*, in CONGREGAZIONE PER LE CHIESE ORIENTALI (ed.), AGRESTINI S.-CECCARELLI MOROLLI D. (curantibus), *Ius ecclesiarum vehiculum caritatis, Atti del Simposio Internazionale per il decennale dell'entrata in vigore del Codex Canonum Ecclesiarum Orientalium* (Città del Vaticano, 19-23 Novembre 2001), Città

problems dealt with by such literature we will point out only a few points as follows:

(a) the technical-juridical value of the law, which stipulates the limitation of mixed marriages (*CCEO*, can. 813; *CIC*, can. 1124)⁷;

(b) the issue of the juridical relevance of canons 780 and 781 from the *CCEO* to the latin juridical prescriptions⁸;

(c) adjusting ‘personal statutes’, still in force in the Eastern Catholic Churches, to the after council juridical prescriptions⁹;

(d) the authorization of the ‘faculty’ given by the Hierarchy of the latin area to a deacon to assist a marriage even when one of the husbands to be was Orthodox;

(e) the intervention of the priest in celebrating the marriage, prescribed in canon 834 §2 in *CCEO*, called in the Oriental Canon Law Code, the *priest’s blessing*, which is required by the law in force;

(f) recognition of mixed marriages by the Orthodox Church (in theory and in practice).

Therefore, to have a general idea (*Weltanschauung*) on this juridical institution, we will try to compare the former and the present legislation of the Catholic Church, according to the historical context. Some prescriptions were given in order to establish the conditions for mixed marriages, the form and essential features required by law to celebrate them. Referring to this, there are two studies made by Romanian canon observers, called: *Mixed marriages*, published in the magazine *Feast of the Annunciation*, in 1968, and the other one, in Italian, by Rev Iuliu Vasile MUNTEAN, *La celebrazione del matrimonio misto tra greco-cattolici e ortodossi in Romania- Problemi pratici*, published in the magazine *Folia canonica*¹⁰.

del Vaticano 2004, 235-259, especially pages 245-250 where the author gives the position of the Orthodox Church regarding mixed marriages.

⁷ Cfr. SCHULZ W., *Questioni ecumeniche nel nuovo Codice di diritto canonico*, in *Vitam impendere vero*, (coordinators) SCHULZ W.-FELICIANI G., *Studi in onore di Pio Ciprotti*, «Utrumque Ius» 14, Roma 1986, 183-184; DE PAOLIS V., S.V. *Matrimoni misti*, in *Nuovo dizionario di diritto canonico*, (coordinators) CORAL SALVATOR C.-DE PAOLIS V.-GHIRLANDA G., Milano 1993, 669-670; GROCHOLEWSKI Z. *Matrimoni misti*, cit., 245; *Nuntia*, 10 (1980), 13, 47-48; *Nuntia* 15 (1982), 73-74; CECCARELLI MOROLLI D., *Il Codex Canonum Ecclesiarum Orientalium e l’Ecumenismo. Aspetti ecumenici della legislazione canonica orientale*, «Quaderni di Oriente Cristiano – Studi» 9, Palermo 1998, 113-130.

⁸ See observations made by NAVARETTE U. in the review of *Il matrimonio in Oriente e Occidente* by JOSEPH PRADER, in *Orientalia Christiana Periodica* 58 (1992), 66-569. Regarding the historical evolution of the codification of these canons cfr. FÜRST C.G., *Zur Entstehungsgeschichte der c. 780 & 2 und 781 CCEO im interkonfessionellen und interreligiösen Kontext*, in *Kanon 15: Kirchenrecht und Ökumene. Festgabe für die Mitropoliten von Tyroloi und Serention Panteleimon Rodopoulos*, Eichenau 1999, 82-97.

⁹ Cfr. GEFAELL P., *La educación religiosa de los hijos en los matrimonios mixtos: normativa canónica en Italia e Líbano*, in *Matrimonio. El matrimonio canónico y su expresión canónica ante el III milenio*. (X Congreso Internacional de Derecho Canonico), (coordinators) VILADRIKH P.J.-ESCRIVA-IVARS-BAÑARES J.-MIRAS J., Pamplona 2001, 185-192.

¹⁰ *Folia Canonica*, 4 (2001), [Institute of Canon Law “ad instar facultatis” of the Pázmány Péter Catholic University (Budapest) & St. Athanasius Greek-Catholic Theological Institute (Nyiregyháza)].

§2. Terminology

Marriages contracted between Catholics and non-Catholics, but non-baptized persons, are called mixed marriages. Marriages contracted between Catholics and non-Christians (Muslims, Jews, Buddhists, Hindus) are also called mixed marriages, but in this case, according to the law of the Latin and the Eastern Churches the Catholic contracting the marriage has to ask for a dispensation from the impediment of *disparity of religion*. With the introduction of the 1983 Canon Law Code the term of *disparity of religion* disappeared from the canon dictionary, leaving in force the impediment I was talking about earlier¹¹.

Following the doctrine of the Second Vatican Council, the Bishops' Synod in 1967 reexamined the entire issue regarding mixed marriages, refusing to replace the term *mixed marriages* with *interreligious marriages*. The Synod discussions led to Pope PAUL VI issuing an Apostolic Letter given as a *motu proprio* «*Matrimonia Mixta*» in 1970¹². Since then, marriages concluded between any Catholic and non-Catholic, baptized or not, are called *mixed marriages* and not of *mixed religions*, or of *religion disparity*, as it used to be called.

Defining the terminology, the juridical problem of mixed marriages was clarified: if a marriage is celebrated between a Catholic and a baptized non-Catholic, then for it to be kept within the law, the permission of the Hierarchy of the place is required (*CIC*, can. 1125; *CCEO*, can. 813); but if the marriage is contracted between a Catholic and a non-baptized person, then the Catholic has to ask for a dispensation from the impediment of disparity of religion. This applies whether the non-baptized person has given his commitment to an unchristian religion (Buddhism, Hebrew, Islamism, Hindu, etc.), or whether the person is an atheist, meaning he has not given a commitment to any religion, having no faith.

§3. Canon Law until the two Codes in 1983 and 1990 were promulgated

The essential conviction which has not been changed by the present legislation in the two Codes, clearly shows that the Church takes care of the faith of the Catholic spouse and the bringing up of the children. Keeping the faith along with the religious education of any children from the marriage is an obligation deriving from the divine right, as we will see in the next pages. That is why the present legislation has the following provision:

CIC, can. 1124: «Without express permission of the competent authority, a marriage is prohibited between two baptized persons of whom one is baptized in the Catholic Church or received into it after baptism and has not defected from it by a formal act and the other of whom is enrolled in a Church or ecclesial community not in full communion with the Catholic Church».

¹¹ Cfr. TOCĂNEL P., *Căsătoriile mixte*, in the *Feast of the Annunciation*, VIIth year, n. 1-2 (1968), 18-28; PRADER J., *Il matrimonio in Oriente e Occidente*, «*Kanonika*» 1, Roma 1992, 131.

¹² Cfr. PAULUS VI, *Litt. Ap.* «*Matrimonia Mixta*», 31 martii 1970, in *AAS*, LXII (1970), cit., 257.

CCEO, can. 813: «Marriage between two baptized persons, of which one is Catholic and the other is not, without permission of competent authorities is strictly forbidden»¹³.

These two Canons are the fruit of theologico-canonical reflections going through the entire history of the Catholic Church. Therefore, since ancient times, mixed marriages have been the subject of Church Legislation. Starting with the fourth century, the Church has taken continuous charge of mixed marriages, promulgating adequate norms in order to ensure the faith of the ones united in marriage, whether with pagans, or with persons from various Christian communities which have wandered away from the doctrine of the Apostles and of the Church¹⁴. Regarding these, there are canons 10 and 31 from the Council of Laodicea¹⁵ (year 343), canon 21 from the Council of Carthage¹⁶ (year 419), canon 14 from the Council of Chalcedon (year 451) and canon 72 of the Council of Constantinople in Trullo¹⁷ (year

¹³ See juridical studies of authors that have studied this problem before the promulgation of the two Canon Law Codes in 1983 and 1990: TOCANEL P., *Căsătoriile mixte*, quotation from note 10; BERSINI F., *I matrimoni misti con i fratelli cattolici orientali*, in *Perfice munus* (1968), 284-291; MARCHESELLI G., *I matrimoni misti in Italia*, Brescia 1969; NAVARETTE U., *Commentarium canonicum ad M. P. "Matrimonia mixta"*, in *Periodica* 59 (1970), 423-469; DE NAUROIS L., *Les mariages mixtes*, in *Revue de Droit Canonique* 20 (1970), 193-219; FUNK J., *Anotaciones by M. P. "Matrimonia mixta"*, in *Revista española de Derecho Canónico* 27 (1971), 368-396; TOMKO G., *Matrimoni misti*, Roma 1971; FLADER J., *Los matrimonios mixtos ante reforma del Código de Derecho Canónico*, Pamplona 1971; GARCIA BARBERENA T., *Los matrimonios mixtos en perspectiva ecuménica*, in AA.VV., *Lex Ecclesiae*, Salamanca 1972, 273-289; PETRITAKIS J., *Le droit matrimonial dans l'Eglise Orthodoxe greque. Les mariges mixtes*, in *L'Année Canonique* 20 (1976), 67-86; ANNE L., *Consideration sur le rapport final: Théologie du mariage et le problème de mariages mixtes*, in *La Documentation Catholique* 125 (1978), 172-176; CANTIN L.V., *La forma canónica de los matrimonios mixtos. Comentario a la repuesta de 9 de abril de 1979 de la Comisión Pontificia de Intérpretes*, in *Revista Española de Derecho Canónico* 36 (1980), 117-145. There are not many juridico-canonical studies regarding mixed marriages after the two Canon Law Codes were promulgated. Remaining significant are the works written by: SANTOS J.L., *Derecho matrimonial: VIII. Los matrimonios mixtos*, in AA.VV. *Nuevo Derecho Canónico. Manual universitario*, Madrid 1983, 313-322; AZNAR GIL F.R., *El nuevo derecho matrimonial canonico*, Salamanca 1985, 345-356; ABATE A.M., *Il matrimonio nella nuova legislazione canonica*, Roma-Brescia 1985, 179-204; SEBOTT H.-MARUCCI C., *Il nuovo diritto matrimoniale della Chiesa*, Napoli 1985, 197-214; CHIAPPETTA L., *Il matrimonio della nuova legislazione canonica e concordataria. Manuale giuridico-pastorale*, Roma 1990, 319-336; GIANESIN B., *Matrimoni misti*, Ed. Dehoniane, Bologna 1991; PRADER J., *Il matrimonio in Oriente e Occidente: op. cit., praesertim 131-143; IDEM., La legislazione matrimoniale latina e orientale. Problemi interecclesiali interconfessionali e interreligiosi: Parte II: Problemi interconfessionali e interreligiosi*, Roma 1993, 51-93; SZABÓ P., *Matrimoni misti ed ecumenismo. Prospettive del riconoscimento ortodosso dei matrimoni misti con speciale riguardo al caso della celebrazione cattolica*, in CONGREGAZIONE PER LE CHIESE ORIENTALI (ed.), AGRESTINI S.-CECCARELLI MOROLLI D. (curantibus), *Ius ecclesiarum vehiculum caritatis, Atti del Simposio Internazionale per il decennale dell'entrata in vigore del Codex Canonum Ecclesiarum Orientalium* (Città del Vaticano, 19-23 Novembre 2001), Città del Vaticano 2004, 235-259; ERDŐ P., *Matrimoni misti e la loro evoluzione storica*, in AA. VV. *I matrimoni misti*, «Studi giuridici» 47, Città del Vaticano 1998.

¹⁴ Regarding this matter, we have a significant study, that of BUCCI O., *Per la storia del matrimonio cristiano fra eredità giuridica orientale e tradizione romanistica*, in AA. VV., *Il matrimonio nel Codice dei canoni delle Chiese Orientali*, «Studi Giuridici» 32, Città del Vaticano 1994, 7-92.

¹⁵ Cfr. HEFELE C.J., *Histoire des conciles*, t. I, Paris 1907, 989-1028.

¹⁶ MANSI, *Sacrorum conciliorum collectio*, t. III, coll. 915-935; HEFELE C.J., *Histoire des conciles*, t. II, Paris 1908, 198-201 and the next.; DUCHESNE, *Origines du cult chretien*, third edition, Paris 1902, 363-376. Also, see the word *Cartagina* in *Enclopedia Italiana*, vol. IX, 210-220; *Dictionnaire de Theologie Catholique*, vol. II, 2, 1806-1810; *Dictionnaire d'Histoire et de geographie ecclesiastique*, t. XI, Paris 1949, 1149-1233, and the relevant bibliography.

¹⁷ This Council was held in Constantinople, inside the emperor's palace, giving the name of Trullan Council, or in Trullan, meaning "dome". On this Council see, NEDUNGATT G.-FEATHERSTONE M. (eds.),

691-692), annulling marriages because they increased the cases of perverted Christian faith, therefore of the children resulting from these marriages.

After the debates in the provincial and ecumenical synods, the civil legislator brought some changes of major importance for those times: mixed marriages were annulled, effectively forbidding them. So, in 388, an imperial law declared it to be adultery, therefore annulling marriages between Christians and Jews¹⁸, and the Code of JUSTINIAN (534) strengthened this prescription¹⁹, later being adopted by the *Nomocanon* of XIV titles²⁰.

After that, there are many pontifical documents, since the 16th century until the present time, in which the Holy See has tried to rectify this juridical institution from all points of view. Some of these documents are regarding the Eastern Catholic Churches and even the Greek-Catholic Church in Romania²¹. Particular synods did nothing but apply the apostolic instructions²².

By these instructions, the Holy See tried to prevent celebrating mixed marriages and to make it harder to obtain the marriage licence, ensuring that the Catholic party kept the faith.

The previous *Codex Iuris Canonici* of 1917 (for Latin Church), gives the past legislation only in a few canons (1060-1064)²³, bringing some innovation, with the purpose of eliminating the danger of perversion of the

The Council in Trullo revisited, «Kanonika» 6, Roma 1995; other significant studies: SALACHAS D., *La normativa del Concilio Trullano commentata dai canonisti bizantini del XII secolo Zonaras, Balsamone, Aristenos*, in *Oriente Cristiano* 2/3 (1991), monographical number (Palermo 1991); CECCARELLI MOROLLI D., *I canoni del Concilio Quinisesto o Trullano ed il Codex Canonum Ecclesiarum Orientalium*, in *Oriente Cristiano* 36/4 (1996), 29-39.

¹⁸ «*Impp. Valentinianus, Theodosius et Arcadius AAA. Cynegio P. P. – Ne quis christianam in matrimonium iudeus accipiat, neque iudeae christianus sortiatur coniugium. Ne si quis aliquid huiusmodi admiserit, adulterii vicem commissi huiusmodi crimen obtinebit, libertate in accusandum publicis quoque vocibus relaxata. Dat. prid. Id. Mart. Thessalonicae, Theodosio A. II. Et Cynegio Cons.*». This prescription will be taken and introduced to the Code of Emperor Theodosius the Great (3.7.2; 9.7.5).

¹⁹ *Codex*, 1.9.6. In 339, Emperor Constantine the Great and then emperor Valentinian, in 388 introduced death penalties for Christians marrying Jews. Cf. C.Th. 6, *De Judeis*, XIV, 8; *Decretum Gratiani*, II, causa 28, q. 1, c. 15. About mixed marriages in agreement of the canons of the 1st millennium with special reference to the Oriental Churches see: CECCARELLI MOROLLI D., *I matrimoni misti alla luce dei Sacri Canones del primo millennio*, in *Nicolaus* 12/2 (1995), 137-143.

²⁰ XII, 13 and XII, 2 in PITRA I.B., *Iuris ecclesiastici Græcorum historia et monumenta*, II, Romæ 1864, 608-612.

²¹ *Collectanea S. CONGREGATIONIS DE PROPAGANDA FIDE*, 2 voll., Romæ 1907, nn. 451, 562, 579, 779, 811, 920, 1009, 1154 (answers from the Congregation to the problems suggested by Greek-Catholic hierarchs regarding mixed marriages), 1169, 1232, 1236, 1247, 1324, 1362, 1379, 1412, 1478, 1521, 1638, 1696 (Instructions from the Holy Office on December 22nd 1888 to all Eastern bishops), 1783, 2155. A fundamental work which mentions the origins of canons is that of TER HAAR F., *De matrimoniis mixtis eorumque remediis*, Taurini 1931, where we can find pontifical documents until Pius XI, bishops' letters, statistics and other documents regarding mixed marriages.

²² *The first Provincial Council* of the Province of the Greek-Catholic Church in Alba-Iulia and Făgăraș, held in 1872, Blaj 1882, tit. V, chapter. IX, 99-100; *Provincial Council* (II), held in Blaj in 1885, tit. IV, sect. I, chapter. III, & 31.

²³ CIC 1917: can. 1060: «*Severissime Ecclesie ubique ne matrimonium ineatur inter duas personas baptizatas, quarum altera sit catholica, altera verosectae hereticae seu schismaticae adscripta: quod si adsit perversionis periculum coniugis catholici et prolis, coniugium ipsa etiam lege divina vetatur*». The source of this canon is relevant. See typical edition of the pio-benedictin Code, published in 1974, note 4, 353-354.

faith of the catholic party and to ensure that the parents give a religious education to the children born from these marriages; in this case, if the required guarantees do not exist, the marriage itself is stopped by Divine Law²⁴.

Until the enforcement of the *motu proprio* «*Crebæ Allatæ*» (May 2, 1949), marriage between the Catholic party of latin origins and a non-Catholic of Greek origins could be celebrated by any priest, Catholic or Orthodox, except by the ones from areas where Eastern Catholics had to submit to the canon form prescribed by Decrees: «*Tametsi*»²⁵ (February 11, 1563) or «*Non temere*» (August 2, 1907). Once the *motu proprio* «*Crebæ Allatæ*» was promulgated, a new law was created for Eastern Catholics who were not obliged to submit to the latin canons in celebrating the marriage²⁶. Such marriages celebrated by an Orthodox priest were invalid and the Catholic party was excluded from the sacraments²⁷.

Experience has proven that the prescriptions of the two Codes, the pio-benedictin and the «*Crebæ Allatæ*», were too rigid, mostly regarding the guarantees that the Catholic husband had to give, as well as following the canons, required by law, to validate the mixed marriage. That was why the need of a change in the Catholic Church's legislation was felt, which led Pope PAUL VI to give bishops the authority to give dispensations from the impediment of *disparity of religion*.

§4. *Attenuations*

The Second Vatican Council (1963-1965), at the insistence of the Eastern members of the Council, has modified the *form* of the celebration of mixed marriages, and the Congregation for the Doctrine of the Faith has attenuated the rigour of some canons, stating that the observance of the canonical form in a mixed marriage between an Eastern Catholic party and an Eastern non-Catholic one is prescribed only for its legality in the celebration; in return, it needs a sacred minister to validate it²⁸.

This situation was presented once by the Latin and Eastern Bishops. It came back to discussion during the preparations for the Second Vatican Council, during the display of the Council's works.

²⁴ CIC 1917, can. 1060.

²⁵ The *Tametsi* Decree was preceded by four other schemes given by BENDER L., *Forma iuridica celebrationis matrimonii. Commentarius in canones 1094-1099*, Roma-Parigi-New-York-Tournai 1960, 14-20.

²⁶ Cfr. MP. «*Crebæ Allatæ*», in *AAS*, XLI (1949), 89-119.

²⁷ Cfr. PRADER J, *Il matrimonio in Oriente e Occidente*, op. cit., 135.

²⁸ The Decree regarding Eastern Catholic Churches, no. 8: «In order to avoid invalid marriages, when Eastern Catholics marry baptized Eastern non-Catholics and in order to ensure the solidity and the holiness of the marriage, as well as the peace of the home, the Holy Council prescribes the canon form of its celebration only for its legality; for it to be valid, the presence of a minister is enough, the other prescriptions of the law remaining in force». This decree came into force on January 1st 1965 for the Melchites, December 9th 1965 for the Ukrainians, for all other Eastern Christians on January 22nd 1965. Cfr. Council Vatican II, the Decree regarding Eastern Churches «*Orientalium Ecclesiarum*», in *AAS* LVII (1965), promulgated on November 21st 1964, 82.

In 1966, the Congregation for the Doctrine of the Faith (the *Sant'Uffizio*), by the instruction of «*Matrimonium sacramentum*», imposed only on the Catholic party the carrying out of the guarantees, whilst from the non-Catholic party a declaration, in which they specified knowing the duties of the Catholic party, was enough. But, as many Latin Catholics married baptized Eastern non-Catholics, Latin Bishops required for the prescriptions of the Vatican Council, regarding the form of mixed marriages between Eastern Catholics and baptized Eastern non-Catholics, an extension of the law to their territories too; leading to the issue of the decree *Crescens matrimoniorum*²⁹ in 1967, by the Congregation for Eastern Churches.

In 1970, Pope PAUL VI, with the *motu proprio* «*Matrimonia Mixta*», established that the non-Catholic party (even if baptized) should only be informed of the guarantees given by the Catholic party; and regarding the canonical form, claimed for the validity, if serious difficulties come up, the Bishop may give permission, making it possible for a marriage to be celebrated in a public form. We should remember that this *motu proprio* does not refer to mixed marriages between Eastern Catholics and Protestants or unbaptized, as we shall see.

§5. Forbidding the celebration

Despite the danger of perversion, Saint PAUL does not forbid the Catholic party from contracting a marriage with a non-baptized person, when the latter is willing to peacefully coexist with the Christian one, meaning not to endanger the faith of the Catholic party, nor the religious education of the children.

Experience has shown that there are many cases where the Catholic party loses faith, or the children were baptized and educated outside the Catholic Church, which is why, in time, the Church's discipline regarding mixed marriages has become more rigid. For the first time, the Council of Laodicea, forbade parents from negligently uniting their sons in holy matrimony, with unbaptized persons, without checking if the nonchristian was willing to receive baptism³⁰. The Councils of Chalcedon and Trullan did not speak of guarantees, but the punishment for a Catholic that married a non-Catholic was ex-communication³¹.

In the course of time, documents of the Holy See have forbidden, condemned, and rejected mixed marriages, minutely presenting with real facts the inconveniences of such unions and recommending that priests do everything possible to prevent such marriages, or at least to avert the danger of perversion of the Catholic party and of the children. The Latin Law Code in 1917 and the Eastern one before the one promulgated in 1990 expressed in hard words the same prohibition, saying: «*The church prevents, universally*

²⁹ Cfr. THE HOLY CONGREGATION FOR THE EASTERN CHURCHES, Decree «*Crescens Matrimoniorum*» in *AAS* LIX (1967), 165. This decree was enforced the day it was promulgated, March 25th 1967.

³⁰ The Synod of Laodicea, can. 10 and 31. Therefore, mixed marriages were permitted only when the non-Catholic party, at the request of the Catholic party or that of its parents', promised to turn to Christianity. Cfr. MILAŞ N., *Canons of the Orthodox Church*, vol. II, 1, Arad 1934, 88-89; 105-106.

³¹ Cfr. MILAŞ N., *Canons of the Orthodox Church*, vol. I, 2, op. cit., 226-228.

and in the most strict way, the marriage between two Christians, one of which is Catholic and the other is part of a heretic or a schismatic sect; if there is danger of desertion for the Catholic party or for the children, then it is forbidden by Divine Law».

§5.1. Reasons for forbidding the celebration

There are four reasons for which mixed marriages are considered “*severissime prohibentur*”, according to the Latin Canon Law Code in 1917, though this form of interdiction is no longer used in the last *motu proprio* «*Matrimonia Mixta*».

«With responsibility, the Church is opposed to mixed marriages, wishing for Catholic Christians to be able to achieve, in their married life, a perfect spiritual unity and a total life communion. But, taking into consideration that getting married and having children is man’s natural right, the Church, by its laws that clearly prove its pastoral concern, is trying to provide regulations, so that, on the one hand the absolute respect for God’s commands should be guaranteed, and on the other hand man’s right to get married should be protected»³².

(a) *The danger of faith perversion for the Catholic party*, that is the danger of losing the Catholic faith. If the husband is non-Catholic, because he may have greater authority over his wife, and he may be more intelligent, he may easier prevent her from practicing her faith or feed her with serious doubt regarding the Catholic religion. But, also the wife may represent a real danger to the perversion of her Catholic husband, as proven by experience and by Saint BELLARMINUS: «*ea est natura feminarum, ut multo facilius sit ut ipsae viros pertrahant ad errorem, quam viri eas perducant ad veritatem*»³³.

(b) Mixed marriages expose the children to the danger of being baptized and educated in another religion. Indeed, if the husband is non-Catholic, he may easier claim that the children should be baptized into his religion, referring to the civil laws in force, or even to the stipulation of the Second Vatican Council, that is «*parentibus competit ius ad determinandam rationem institutionis religiosae suis liberis tradendae iuxta suam propriam religiosam persuasionem*» (*Dignitatis Humanae* 3).

If the mother is non-Catholic, she may easily educate the children in her religion or give them no religious education at all, so as not to contradict her husband. Frequently the relatives of the non-Catholic party and then the

³² Cfr. «*Matrimonia Mixta*», quoted above. «In mixed marriages, religion is no longer considered to be the strongest connection, the happiness of supreme harmony and the most profound joy, but it becomes an element of dissonance and confusion, and it is more and more placed in the last place (...). When the Church gives permission, it does not mean that it approves of mixed marriages; it is merely showing a gesture of tolerance in order to avoid a greater evil (...) A true Catholic young man will not easily initiate a mixed relationship» (The Letter of the Bishop of Germany from the 22nd of January 1958, in *Herderkorespondenz*, 13 (1958), 203-204, apud TAMAȘ I., *Drept matrimonial canonic*, Ed. Presa Bună, Iași 1994, 130.

³³ BELLARMIN, *Epistula inter familiares* 35; BRÎNZEU N., *The Sheppard and the Flock*, in *Hodogetica*, Lugoj 1930, 449.

non-Catholic priests during their visits, will try to baptize them and transmit to them their religious beliefs.

(c) The difficulty of spiritual unity and of the love between the spouses, appears when the non-Catholic party is not baptized or belongs to a Community that does not have the Sacrament of Priesthood and is opposed to the Catholic religion. Arguments of a religious character prevent the unity of the souls, disturbing the peace of the family and making it harder for children to be educated by the Catholic Church. If the diversity of rituals prevents the unity of the family, leading the wife to adopt the husband's religion, the diversity of faith makes the spiritual unity and the love that should unite the members of the family impossible, or at least harder to accomplish.

(d) Mixed marriages may expose the Catholic party to *irreparable spiritual and lasting dangers*. The non-Catholic party may find a reason to separate or even claim for divorce, according to the common law, and thereby to contract another marriage. In return, if the Catholic party cannot obtain the annulment of the marriage from the Court of the Church, he or she is condemned to celibacy, which may not suit them, and there is the danger of illegitimately living with another person³⁴.

Some say, unjustly, that we should give the Catholic party the possibility of contracting another marriage, as the non-Catholic can do, finding a happier solution. But neither the Catholic nor the non-Catholic party may contract another valid marriage because of the matrimonial unity with the Catholic party, and the unity with another person is considered concubinage. If the Catholic party contracts a civil marriage with another person, the Catholic cannot receive the Sacraments.

§5.2. The nature of the forbidding

Before the Trullan Council, mixed marriages were simply forbidden and declared illicit and sinful, but valid. But canon 72 of the Trullan Synod declared mixed marriages to be invalid, imposing the split of the parties.

The juridical value of this canon has been largely discussed. But it is certain that in the Eastern Church, before and after the split, as well as in Eastern Churches after the split, mixed marriages were forbidden, but after celebrating them, they were recognized as valid; having therefore priority of ancient discipline. We should remember that in the Orthodox Churches, the Catholic or the Protestant party had to go to the Orthodox religion, or even be baptized once again; whereas nowadays only the baptism and the education of the children are required by the Orthodox Church.

In the West, mixed marriages were always considered valid, even without the dispensation for mixed marriage, being considered as an *impediment* that *prevents*, but not as an interdiction. This doctrine is

³⁴ Cfr. MILAŞ N., op. cit., vol. I, 2, 447-450; COUSSA A., *Animadversiones in can. LXXII Trulanae Synodi in Apollinaris*, 32 (1959) 170-181, concludes that trulan canon n. 72 was no longer valid for Byzantine Catholic Churches; on the contrary, for Byzantine non-Catholic Churches, the canon was in force until 1949, when the motu proprio «*Crebrae Allatae*» was promulgated.

confirmed by the pio-benedictin Code of 1917, with canon 1060, and by the former legislation of Eastern Churches. The suggestion of some theologians and canonists, as well as that of the Bishops Synod, to abolish this impediment, on pretext of limiting the freedom of the Catholic party to marry whoever it may choose, and that it would be against the ecumenical spirit, was not met, as it would have prevented action by the priest and the bishop trying to avoid the dangers that a mixed marriage can bring.

In return, mixed marriages between a baptized party and a non-baptized one, in the former Eastern and Western discipline, as well as in particular Catholic Churches and split ones, have been declared invalid without a dispensation from the impediment of religious disparity. That is what the pio-benedictin code establishes in canon 1070, «*Crebae Allatae*» in canon 60 and the motu proprio «*Matrimonia Mixta*», in no. 2.

§6. Giving permission

The mixed marriage between a Catholic and a baptized non-Catholic, celebrated without express permission of the local Ordinary, is valid, but illegal, as it does not respect the laws of the Church. If the non-Catholic party is not baptized, a marriage contracted without permission to marry is not valid, and the Catholic party is punishable with all penance established for those living in concubinage.

The dispensation from this impediment used to be given by the Congregation *De Propaganda Fide*, but among the five faculties given to the Nuncios and to the Bishops was that of giving dispensations for mixed marriages³⁵. In cases of emergency and in danger of death, the Bishop, the vicar, the substitute of a prelate or the confessor, could give the dispensation, but with some restrictions. In the Eastern Catholic Churches, the Patriarchs, and in some rituals, the Bishops gave dispensations for all marriage impediments.

In 1963, Pope PAUL VI, gave all Bishops the power to give dispensations for impediments of mixed religion, which they can delegate only to the auxiliary bishop, the general substitute and the bishops' substitutes, but for the dispensation to be valid, three conditions from Canon Law must be taken into consideration. The same power was later given by motu proprio *Matrimonia mixta*, nos 1-3, with the condition of celebrating it for a right cause, *dummodo iusta causa habeatur*. The dispensation can never be given if there is an immediate danger of perversion of the Catholic party and of the children, because it is forbidden by Divine Law. In order to remove these dangers, and for the dispensation to be given, three things are necessary:

(a) *A right reason for celebrating the mixed marriage from the Catholic party.* The just reason may be public or private, for instance: if the parties do not wish to give up on marriage and they are willing to go on with it even without the dispensation; if by celebrating the marriage they stop

³⁵ CIC 1917, can. 247§3: Congregatio Consistorialis, Index facultatum Nuntiis ... tributarum, Formula II, no. 32; Index Facultatum quinquennialium, Formula IV, n. 2.

living in concubinage; if the Catholic party cannot find in the same area a Catholic party of the same social and intellectual state; if the non-Catholic party promises to follow the Catholic Church and receive baptism; if once marriage is celebrated, illegitimate children will be educated in the Catholic Church, and so on. Because it is more serious to forbid a marriage with a non-baptized, the reason for getting the dispensation must be more serious.

(b) Catechising. The Bishop or the Vicar must catechize the parties regarding the nature, the purposes and the essential properties of marriage. The instruction may be made together, that is with both parties, or separately. If the parties, especially the non-Catholic one, do not accept the Catholic doctrine regarding the nature, the purposes and the essential properties of marriage, then the dispensation will not be given. But if they accept the Catholic view of these three points, they may go on to the third act.

(c) Guarantees. The guarantees represent a true promise, therefore admitting the duty to eliminate the danger of perversion of the Catholic party, to baptize and educate all children in the Catholic Church. The suggestion of some people to replace “the Catholic Church or religion” by “Christian religion”, in order to admit the right of the non-Catholic party to educate the children «*iuxta suam propriam religiosam persuasionem*», cannot be admitted, because the right of the Catholic party being the greater, the Catholic Church being the only true Church established by Christ³⁶.

Until 1966, the guarantees had to be given by both parties, that is, the Catholic party had to promise to maintain faith, to baptize children and educate them in the Catholic religion; the non-Catholic party had to promise not to do anything to make the Catholic party give up on its faith, and not to prevent it from baptizing and educating the children in the Catholic religion.

This attitude of the pio-benedictin Code, canon 1061, and of the Eastern Code regarding marriages, «*Crebrae Allatae*», canon 51, was considered to be too hard for the non-Catholic party and contrary to the spirit of the Second Vatican Council and that of ecumenism. That is why, in 1966, the Congregation for the Doctrine of the Faith ordered that only the Catholic party should specifically express guarantees for fulfilling these duties; the non-Catholic party was asked only to admit the duties of the Catholic party; if the latter declared that he did not admit the duties, the case had to be presented to the Holy See. By *motu proprio* «*Matrimonia Mixta*» in 1970, the rule is even more gentle, meaning the non-Catholic party only had to be informed of the duties of the Catholic party and the promises it made, without asking for recognition; if it did not protest, “*consentire videtur*”; if it had any reaction, the case had to be presented to the Holy See, as it is the sole giver of the dispensation. This follows from the *motu proprio* «*De Episcoporum muneribus*», no. 16 and «*Episcopalis Potestas*», no. 11 for Eastern Churches.

³⁶ CIC 1917, can. 1061§1, n. 2; «*Crebrae Allatae*», can. 51§1, n. 2. Also see TER HAAR, op. cit., 54-59; ÖRSY L., *Documenta selecta de educatione religiosa proles ex matrimonio mixto natae*, in *Periodica* 53 (1964), 267-284

But if the non-Catholic party declared that it was willing to admit and respect the promises and duties of the Catholic party concerning the education of children in the Catholic religion, and civil law – mostly in countries where the Orthodox Church is considered national and dominant – claiming that children from mixed marriages should be baptized and educated in the Orthodox Church, then the Bishop may give the dispensation if the Catholic party promises to do its best in educating the children in the Catholic religion, and the non-Catholic party shows willingness not to interfere.

Anyway, in order to obtain the moral certainty referring to the sincerity and the good will of the Catholic and the non-Catholic parties, the Bishop or the Vicar must take into consideration the education they have received in their families and the way they behaved during catechization. *Motu proprio «Matrimonia Mixta»* no. 7, adds the fact that the Bishops' Conference has to establish the way that the Catholic party must make the promises – verbal, written or in front of two witnesses; and the non-Catholic party must be informed about the promises and the duties of the Catholic party.

The changes brought by the two Canon Law Codes, promulgated after the Second Vatican Council regarding this problem, abrogate the impediment of mixed religion, and a mixed marriage may be celebrated without permission of the competent authorities, as we have seen above, when we talked about the legislation. In giving this permission, the local Ordinary must only verify if there is a right and rational cause³⁷.

Canon Law prescribes that this dispensation should not be given unless all conditions in the Code are met. These conditions or promises must be written by the forms established by Private Law: for the Latin Catholic Church, these norms are given by the Bishops' Conference, in Eastern Catholic Churches, by the Patriarch or the Major Archbishop with the Bishops' Synod or the Metropolitan together with the Council of Hierarchs³⁸.

§7. Canonical form

(a) The intervention of the Church concerning marriage, in Christian East, as well as in European West is not singular: the Holy Fathers will give their own opinions, the Synods and the Local and General Councils and through them, the Sovereign Pontiff who will give a religious patrimony of juridical rules valid in the East as well as in the West pointing out the difference of ritual and that of constitutionality. *The Statutes of the Ancient Church*³⁹, the norms issued by the Councils⁴⁰, the Holy Fathers and the Greek⁴¹, the Syrian⁴² and the Latin⁴³ Churches, the Documents of the Roman

³⁷ CIC 1983, cann. 1124-1125; CCEO, cann. 813-814.

³⁸ CCEO, cann. 82, § 1 and 152; 159, n. 2.

³⁹ Cfr. RITZER K., *Formen, Riten und religiöses Brauchtum der Eheschliessung in der Christliche Kirchen der erste Jahrtausend*, Münster 1962, which contains all the previous bibliography.

⁴⁰ Cfr. HUARD J., *La liturgie nuptiale dans l'Eglise romaine. Les grandes étapes de sa formation*, in *Questions liturgique et paroissiales* 38 (1957), 196-205.

⁴¹ Cfr. RAES A., *De liturgia matrimoniali in ecclesiis orientalibus*, Romae 1947.

Pontiffs⁴⁴, certify the blessing of the priest after the spouses have given their right hand, showing that the Church is starting to build new canons regarding marriage. Using the crown when celebrating a marriage, had and still has a significant, singular symbolism. But, including marriages celebrated by the civil form, that is the written form of the marital contract signed by three witnesses- or without being written, but in the presence of friends- were considered valid by the Church Forum⁴⁵. Anyway, the blessing of the priest, the document, the presence of friends, more than a valid form of celebrating a marriage, were the proof that the marriage was celebrated with the assent of both parties.

The Byzantine Emperors, LEON the Philosopher and ALEXIUS, have declared invalid those marriages celebrated without the blessing of a priest⁴⁶. The Novelette of emperor LEON has strengthened the Christians' belief in the necessity of the priest's blessing of a marriage. This is not about the canonical form, but about the blessing that the priest gives when celebrating the marriage. This novelette was placed among the canons by the Eastern Church before it split. Rightfully, Byzantine Churches, whether Catholic or not, have considered the blessing of the sacred minister as an essential element for a valid celebration of the marriage, specifying that the passive presence of the priest gives it no sacramental value⁴⁷.

I said that Catholic Eastern Churches did not have a uniform discipline in this matter until 1949. Some of them adopted the Latin discipline, that is the decree issued by the Tridentine Council, adjusted by Pope PIUS X, as it is in the present Code: in order for mixed marriages to be valid, they must be celebrated according to the canonical form, but without the priest's blessing, the *in sacris*⁴⁸ communication being forbidden. Other Churches followed the "Eastern" form, established by the private councils or by the practices observed in the Church: in order for mixed marriages to be valid, they had to be celebrated in front of a priest, usually a Catholic one.

To put an end to the doubt concerning the validity or the invalidity of the mixed marriage, because there was not a clear idea in all rituals on the nature and the necessity of the canonical form, the Eastern Code in 1949 has established a general rule for all Eastern Catholic Churches, adopting the canonical form given by the Latin Code for validating mixed marriages; the sacred ritual or the priest's blessing are part of the canonical form.

(b) This state of things was largely exposed by the Eastern Fathers during the activities of the Second Vatican Council. In the period of preparing for the Council, they presented the fact that by prescribing the

⁴² Cfr. VAN DE PAVERD F., *Forme celebrative del matrimonio nelle Chiese orientali*, in AA. VV., *La celebrazione del matrimonio cristiano*, (Atti della V settimana dei professori italiani di Liturgia), Bologna 1977, 11-116.

⁴³ Cfr. JUNGSMANN J.A., *Die Stellung Christi in liturgischen Gebet*, München 1925.

⁴⁴ A rich collection of sources can be found in BELLINI A.L., *Il valore giuridico della celebrazione nuziale cristiana dal I secolo all'età giustiniana*, Milano 1939.

⁴⁵ Cfr. GAUDEMET J., *Droit romain*, cit., 179, note 4.

⁴⁶ Cfr. ZEPOS I., *Ius Græco-Romanum*, vol. I, Athenis 1931, 156, 311.

⁴⁷ Cfr. ŞAGUNA A., *Compendium of canon law*, Sibiu 1913, 66.

⁴⁸ Cfr. COUSSA A., *De matrimonio*, op. cit., 175-187.

canonical form also for mixed marriages, many marriages became invalid, as the non-Catholic party did not accept celebrating the marriage in this way and, on the other hand, the spouses to be did not want to give up on the marriage, which led to a civil marriage, or to the presentation in front of the non-Catholic sacred minister. Even when the non-Catholic party accepted the celebration of the marriage by the prescribed canonical form, during the marriage it had various occasions to disturb the peace of the family or even to ask for a divorce, in order to marry another person. That is why the Council established that the canonical form is required only for them to be legal, the presence of a sacred minister being enough for it to be valid, noticing the other prescriptions of the law. The purpose of this request is to diminish the number of invalid marriages, to contribute to the stability and the holiness of marriage, to insure the peace of the families and to feed more love to the relations between Catholics and non-Catholics.

Encouraged by this prescription of the Council, in force only for mixed marriages between *Eastern Catholics*, the Latin Bishops required that this prescription should be extended to the marriages of Latin and Orthodox people. The request was accepted and decreed by the Congregation for Eastern Churches with the document *Crescens matrimoniorum* in 1967.

Therefore, at present, to validate mixed marriages between Catholics of any ritual and baptized Eastern non-Catholics, the canonical form is sufficient, consisting, as I mentioned above, of being in the presence of the sacred minister, generally a Catholic or an Orthodox priest or a bishop- but not the substitute of a priest. The pontifical Commission for interpreting the Council's decrees has specified that the passive presence of the sacred minister is not enough; the blessing, meaning the sacred ritual, is required⁴⁹.

The norms from the «*Orientalium Ecclesiarum*» and «*Crescens Matrimonium*» have then been introduced to the Latin and Eastern Code, slightly modified. The meaning is preserved. Canon 1127 §1 from the *CIC* 1983 establishes that for the validity of the canonical form “the intervention of the sacred minister is required”, in order to show that the simple presence is not sufficient. In canon 834 §2 from the *CCEO*, it is mentioned that for the validity of the canonical form, the “priesthood blessing” is required, in order to show that the sacred ritual is necessary, meaning the blessing of the priest. The deacon, by Eastern Law does not have the power to bless marriages in Catholic Eastern Churches. To these two rules established by present law, is

⁴⁹ Beside the bibliography given at notes 4 and 6 of the present study, cfr.: ABATE A.M., *Il matrimonio nella nuova legislazione canonica*, Ed. Paidea, [Pontificia Universitas Urbaniana, «Subsidia Urbaniana» 1, Roma 1985; BERSINI F., *Il nuovo diritto canonico matrimoniale*, Torino 1985; CHIAPPETTA L., *Il matrimonio nella nuova legislazione canonica e concordataria*, Roma 1990; AA.VV. *Il matrimonio canonico fra tradizione e rinnovamento*, Bologna, 1991²; MONETA P., *Il matrimonio nel nuovo diritto canonico*, Genova 1993; (cfr. The shortened edition published in AA.VV., *Il diritto nel mistero della Chiesa*, vol. III, [Pontificia Università Lateranense], Roma 1992, 165-302); PRADER J., *La legislazione matrimoniale latina e orientale. Problemi interecclesiali, interconfessionali, interreligiosi*, Roma 1993; VITALI E.-BERLINGÒ S., *Il matrimonio canonico*, Milano 1994. For the specialty juridic-canonice treaties regarding the marriage sacrament, see: AA.VV., *La nuova legislazione matrimoniale canonica. Il consenso: elementi essenziali, difetti, vizi* in «Studi giuridici» 10, Città del Vaticano 1986; AA. VV., *Gli impedimenti al matrimonio canonico*, in «Studi Giuridici» 19, Città del Vaticano 1989.

added the stipulation: “*servatis aliis de iure servandis*”. This stipulation means that:

(a) the Catholic party should not contract a mixed marriage without enough reasons;

(b) the Bishop and mostly the local Catholic vicar has to make sure of the freedom of the non-Catholic party; he has to make the announcements prescribed by law; to see if the reasons given by the Catholic party are right or not; to properly instruct the spouses to be, specifying the nature of marriage, their rights and the duties they have.

(c) that they are released from all impediments, otherwise the marriage can be declared annulled or invalid. To legally celebrate the marriage, the Catholic party must make the declarations and promises prescribed by canons 1125 CIC and 814 CCEO.

§8. Celebrating mixed marriages between Catholics and Protestants

The prescriptions of the Council regarding the form of celebrating mixed marriages do not apply for celebrating marriages between Catholics of any ritual and Protestants; in order to validate these marriages, the canonical form is prescribed in the Code, at canon 1099, § 1, 2, from the legislation and canon 90, § 1, 2 from the «*Crebrae allatae*».

Latin Bishops have presented to the Holy See the difficulties that the Latin Catholic party had in convincing the Protestant party they wanted to marry respecting the canonical form and for which only the Roman Pontif could give a dispensation: *De Episcoporum muneribus*, no. 17; *Episcopalis potestatis*, no. 12.

Pope PAUL VI, in motu proprio «*Matrimonia mixta*», emphasizes the duty to respect the canonical form (no. 8); but if in order for it to be considered valid, there were no serious impediments in following the canonical form, then the Bishop may renounce the canon form, “*salva tamen aliqua publica forma celebrationis*” (the marriage still being celebrated in public), which can have a civil form, if the Bishops’ Conference has not decided otherwise, as the Italian Bishops’ Conference did, saying that they may renounce the canonical form, providing the duty to celebrate the mixed marriage in a public form remains, and in front of a legitimate religious minister, which may even be the Protestant pastor.

As «*Matrimonia Mixta*» says that this prescription is not valid for mixed marriages between Eastern Catholics and Protestants, in these cases there are serious difficulties in respecting the canonical form. Many Latin as well as Eastern Bishops who are on patriarchal territories, have requested the Holy See to give them the power to dispense from using the canonical form, respecting another public form. For this purpose, the Holy See has asked the opinion of the Eastern Patriarchs, who have insisted in respecting the canonical form on their territories where the Apostolic See had the freedom to give or to refuse the dispensation. The result is that the Holy See gives the dispensation *in singulis casibus* (for each case) with the necessary precautions.

§9. Mixed marriage in the Eastern non-Catholic Churches

In Orthodox Churches, after the Schism in 1054, there was no legislation to forbid marriages between Catholic and Orthodox people, or between Orthodox and Protestant ones. As I mentioned above, canon 72 in the Trullan Synod, which forbade, under penalty of annulment of the mixed marriage between Christians and Heretics, has no juridical relevance regarding mixed marriages between Orthodox and Catholic persons, as there is a general opinion according to which Catholics are not considered Heretics⁵⁰. Largely, the Orthodox Church says that mixed marriages between Orthodox and Catholic or Protestant persons can take place if two conditions are met:

(a) the mixed marriage is celebrated by an Orthodox priest, with the approval of the Bishop;

(b) both spouses promise to baptize and educate the children in the Orthodox Church.

In Greece, where until 1982, the compulsory religious matrimonial system was in force, marriages contracted between Orthodox and non-Orthodox Christians were considered valid according to art. 1367 in the Civil Code, with the condition that it should be celebrated by an Orthodox priest. By the new art 1367, modified by law no. 1250/82, on June 16th 1982, mixed marriages are recognized as valid with civil effects, if celebrated by the ritual or in the religion of one of the parties. Still, the Greek Orthodox Church recognizes the validity of a mixed marriage only if it was celebrated by the Byzantine Orthodox ritual⁵¹.

In the Orthodox Church in Cyprus, the marriage between an Orthodox Christian and a non-Orthodox one is recognized as valid if it is blessed by an Orthodox priest with the approval of the Bishop. The spouses must declare in writing that they will baptize and educate their children in the Orthodox Church(art. 320, no. 2b from the Constitutional Chart of the Church of Cyprus, 1980).

In the Russian Orthodox Church, the Patriarchal Synod decided in 1967, to recognize the validity of the marriage between Russian Orthodox Christians and Roman Catholics, even if this mixed marriage has been celebrated in the presence of a Roman Catholic priest⁵².

The Commission preparing the pan-Orthodox Council, after studying the matrimonial impediments, and taking into account the customs existing in the local Orthodox Churches regarding mixed marriages, reached the following conclusions: the Russian Churches accept mixed marriages blessed by incorporation in the church, though the non-Orthodox party does not recognize the significance of this ritual. As the Catholic Church has decided to recognize the validity of mixed marriages between Roman

⁵⁰ Cfr. TRAIANOS S., *Die Mischehen in den heiligen Kanones*, in *Kanon-Jahrbuch der Gesellschaft für das Recht der Ostkirchen* VI, Wien 1983, 82-101.

⁵¹ Cfr. PRADER J., *Il matrimonio in Oriente e Occidente*, op. cit., 141; IDEM, *La legislazione latina e orientale*, op. cit., 51 ff.

⁵² *Journal du Patriarcat de Moscou* 5 (1967).

Catholics and Orthodox, the Russian Church also recognizes the validity of mixed marriages, celebrated in special conditions, in the presence of a Catholic priest, with the condition that the Bishop allows the celebration. The Orthodox Church in Poland says that it recognizes mixed marriages between baptized persons, in the spirit of ecumenism and on the basis of the local interconfessional relations⁵³.

The Copt Orthodox Church does not accept mixed marriages. Art. 24 from the Personal Statute in 1938, still in force, says that the spouses must belong to the Copt Church. According to present practices, marriage between a Copt Orthodox party and a Catholic one may be celebrated with the condition that Catholic party should become Orthodox. In this case, the Catholic party must be baptized again⁵⁴.

The Orthodox Church of Ethiopia does not accept mixed marriages between Orthodox and Catholic persons, nor between Orthodox and Protestant ones. The obstacle is given by the prescriptions of Fetha Nagast (chapter XXIV, section 5)⁵⁵ which considers Eucharistia of the spouses an essential element in the marriage ritual, meaning an essential element in celebrating marriage as a sacrament. A non-Orthodox Christian, being unable to receive the Holy Eucharist, the marriage cannot be celebrated in the Ethiopian Orthodox Church. Also, this Church does not recognize the marriage between one of its Christians with a Catholic party in front of a Catholic priest.

§10. The liturgical celebration of a mixed marriage

The *Matrimonia mixta* decree does not mention the liturgical form of celebrating mixed marriages. Abrogated Latin Canon Law was strict; marriage had to be celebrated in the vestry at most; the priest was not allowed to wear sacred robes, to preach on this occasion, to bless the rings or to celebrate the Liturgy during which he gave the solemn blessing⁵⁶.

Some Private Eastern Catholic Councils specifically forbade the crowning and the blessing of mixed marriages.

The prescriptions of the Latin Canon Code have been abrogated by the Congregation for the Doctrine of the Faith through the Instruction *Matrimonium sacramentum* in 1966, meaning that from then on mixed marriages could also be celebrated in the Church 'intra Missam' with discourses *for this purpose* and the usual blessings. If this celebration was assisted by the minister of the non-Catholic party, he could not celebrate the

⁵³ *Revue Orthodoxe Contacts*, supplement to n. 80 (1972), 49-50.

⁵⁴ Cfr. Bishop ANBA GREGORIUS, *The Recognition of the sacraments of other Churches by Coptic Orthodox Church*, in *VIIth International Congress of the Society of the Eastern Church*, Thessaloniki, 22nd-27th of September 1981, 7.

⁵⁵ Cfr. TZADUA P., *The Fetha Nagast*, Addis Ababa 1968, 142.

⁵⁶ Cfr. CIC 1917, can. 1102§2, and 1109§3. The canons have no innovation, as it repeats *ad litteram* the prescriptions of the quoted sources. See: BRIDE A., *Mariage mixte avec Messe*, in *L'Ami du Clergé* 84 (1963), 291-294.

marriage together with the Catholic minister; only after the blessing of the Catholic minister could he hold a speech and say some prayers⁵⁷.

The new *Ordo* for celebrating mixed marriages has two rituals: marriage with an unbaptized person must be celebrated *extra Missam* and by the prescribed ritual; marriage with a baptized non-Catholic must be celebrated *extra Missam* and the consent of the Bishop of the diocese is necessary for it to be celebrated during the Liturgy⁵⁸.

If a mixed marriage is celebrated in the Protestant church, the Catholic minister may assist it. The Catholic minister- after the celebration held by the Protestant pastor- may hold a congratulation speech and say some prayers with the Catholics.

The Eastern Catholic Code and Ritual does not speak of the form of the Liturgy, as for Easterners, the blessing of the priest is necessary, which may be given *intra* or *extra Missam* (during the Liturgy or not).

§11. Registering mixed marriages

The Latin code, canons 1121- 1122 and the Eastern one, canon 841, oblige the Catholic party to record mixed marriages in the marriage register and make the special notes in the baptism register.

This is very simple when he or one of his substitutes is celebrating the marriage. If the marriage is celebrated only with two witnesses, the Catholic party must give the vicar all necessary information for the records; if a Catholic priest happens to be present, then he must give information to the vicar, too.

When the marriage is celebrated in the presence of a non-Catholic priest, then the Catholic vicar must ask him to send the information necessary for entering it in the marriage register and for the necessary notes that need to be made in the baptism register; moreover, the Bishops' Conference must decide the way that the information may be obtained from the non-Catholic minister. Anyway, the Catholic party must think of a way to inform its own vicar about the celebration of the marriage.

If then, the marriage is celebrated in a public form, the Italian Conference of the Bishops requires that the Catholic party should give a record of the marriage that was celebrated to the vicar, which he must note in the registers required by Canon Law.

⁵⁷ Cfr. *Instructio de matrimoniis mixtis*, V; *Directorium...*, op. cit., nn. 40-43, 49 which establishes the general principles by the hierarchy that must apply them in private cases.

⁵⁸ In case the marriage is celebrated during the Liturgy, in order for the non-Catholic party to receive the Holy Sacrament, must respect canons 844 from the CIC 1983 and 671 from CCEO. Eastern non-Catholics who are baptized may receive the eucharist from a Catholic minister, as non-Catholic Eastern Churches have priesthood and eucharist by apostolic succession. Non-Catholic Christians which are not Eastern and which do not have the Sacrament of the Priesthood, cannot receive the Holy Sacrament, unless in danger of death or judged by the Bishop, when there is a special case, with the condition that he must show Catholic faith regarding the Holy sacrament and be willing to receive it. Cfr. PADER J., *Il matrimonio in Oriente e Occidente*, cit, 140.

§12. Conclusion

The fruitful and active collaboration between the Eastern and Western Catholic Churches, has partially led, after long meditations, to clearing up some problems regarding mixed marriages. The Second Vatican Council, by the Decree *Orientalium Ecclesiarum*, says that: «*all these juridical prescriptions are established for the present conditions, until the Eastern Church and the split Western Churches will reach full communion, having contributed and at the same time having determined the sister Churches in the Christian West to review their attitude towards this juridical institution*».

I may say in conclusion that, even today in the age of globalisation, these unions are not under the most favourable auspices, and I consider indicative and mostly guiding what JOHN PAUL II said in His Apostolic Exhortation «*Familiaris Consortio*»⁵⁹:

«The growing number of mixed marriages between Catholics and other baptized persons also calls for special pastoral attention in the light of the directives and norms contained in the most recent documents of the Holy See and in those drawn up by the Episcopal Conferences, in order to permit their practical application to the various situations.

Couples living in a mixed marriage have special needs, which can be put under three main headings:

- In the first place, attention must be paid to the obligations that faith imposes on the Catholic party with regard to the free exercise of the faith and the consequent obligation to ensure, as far as is possible, the baptism and upbringing of the children in the Catholic faith.

- There must be borne in mind the particular difficulties inherent in the relationships between husband and wife with regard to respect for religious freedom: this freedom could be violated either by undue pressure to make the partner change his or her beliefs, or by placing obstacles in the way of the free manifestation of these beliefs by religious practice.

- With regard to the liturgical and canonical form of marriage, Ordinaries can make wide use of their faculties to meet various necessities. In dealing with these special needs, the following points should be kept in mind:

In the appropriate preparation for this type of marriage, every reasonable effort must be made to ensure a proper understanding of Catholic teaching on the qualities and obligations of marriage, and also to ensure that the pressures and obstacles mentioned above will not occur.

It is of the greatest importance that, through the support of the community, the Catholic party should be strengthened in faith and positively helped to mature in understanding and practicing that faith, so as to become a credible witness within the family through his or her own life and through the quality of love shown to the other spouse and the children.

Marriages between Catholics and other baptized persons have their own particular nature, but they contain numerous elements that could well be made good use of and developed, both for their intrinsic value and for the contribution that they can make to the ecumenical movement. This is

⁵⁹ JOHN PAUL II, The Apostolic Exhortation «*Familiaris Consortio*», n. 78, on the 22nd of November 1981, in *AAS* LXXIV (1982), 178-179.

particularly true when both parties are faithful to their religious duties. Their common baptism and the dynamism of grace provide the spouses in these marriages with the basis and motivation for expressing their unity in the sphere of moral and spiritual values. For this purpose, and also in order to highlight the ecumenical importance of mixed marriages which are fully lived in the faith of the two Christian spouses, an effort should be made to establish cordial cooperation between the Catholic and the non-Catholic ministers from the time that preparations begin for the marriage and the wedding ceremony, even though this does not always prove easy.

With regard to the sharing of the non-Catholic party in Eucharistic Communion, the norms issued by the Secretariat for Promoting Christian Unity should be followed.

Today in many parts of the world marriages between Catholics and non-baptized persons are growing in numbers. In many such marriages the non-baptized partner professes another religion, and his beliefs are to be treated with respect, in accordance with the principles set out in the Second Vatican Council's Declaration *Nostra Aetate* on relations with non-Christian religions. But in many other such marriages, particularly in secularized societies, the non-baptized person professes no religion at all. In these marriages there is a need for Episcopal Conferences and for individual Bishops to ensure that there are proper pastoral safeguards for the faith of the Catholic partner and for the free exercise of his faith, above all in regard to his duty to do all in his power to ensure the Catholic baptism and education of the children of the marriage.

Likewise the Catholic must be assisted in every possible way to offer within his family a genuine witness to the Catholic faith and to Catholic life».