

Introduction

Inspired by the Pastoral Constitution *Gaudium et spes* (n. 48) of Vatican Council II, can. 1055 §§ 1-2 (CCEO can. 776 §§ 1-2) reads: «The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament. Consequently, a valid marriage contract cannot exist between baptised persons without its being by that very fact a sacrament».

The canon makes a distinction between marriage in general and marriage between the baptised. All marriages, among the baptised and among the non-baptised, once validly contracted, are partnerships for the rest of their lives. The canon 1055, being the introductory one on marriage also intends to communicate that the canons of the *Code of Canon Law*, regarding marriage, do not have only the catholic faithful in mind. This however, is not in contradiction with the can. 1 (CCEO can. 1), which states: «The canons of this code concern only the Latin Church». Can. 1055 § 1, must be read in the light of can. 11 (CCEO can. 1490), which reads: «Merely ecclesiastical laws bind those who were baptised in the catholic Church or received into it [...]». Can. 1055 § 1, is not merely an ecclesiastical law; for marriage «is an institution confirmed by the divine law» (GS 48) and belongs to the realm of natural law; the Church, in as much as “custodian” of natural laws, has the duty to safeguard its *sanctity* and explain its meaning, when needed. In this regard declares Pope Paul VI: «It is in fact indisputable, as Our Predecessors have many times declared, that Jesus Christ, when he communicated his divine power to Peter and the other apostles and sent them to teach all nations his commandments, constituted them as the authentic guardians and interpreters of the whole moral law, not only, that is of the law of the gospel but also of the natural law, the reason being that the natural law declares the will of God, and its faithful observance is necessary for man’s eternal salvation»¹.

¹ PAUL VI, Encyclical letter *Humanae vitae* (25 July 1968), n. 4, in A. FLANNERY (ed.), *Vatican Council II. More Post Conciliar Documents*, vol. II, St. Paul Publications, Bombay 1988, pp. 398-399.

Thus, every marriage, whether contracted between the baptised, mixed or the non-baptised, enjoys stability and it cannot be broken either by the spouses themselves, on their own or by any other authority. However, in some cases the Church can intervene keeping in mind the eternal salvation of persons. The two ways in which the Church intervenes are: the declaration of nullity and the dissolution of marriage bond. The declaration of nullity is done by either an ecclesiastical tribunal or a diocesan bishop, according to the Apostolic letter m.p. *Mitis Iudex Dominus Iesus* (can. 1683) – eparchial bishop, in the case of Oriental Churches, according to *Mitis et Misericors Iesus* (can. 1369) – in the case of an impediment, defect of consent or defect of form. The dissolution of marriage bond, on the other hand, while in the cases of non-consummated marriage and *in favorem fidei* are reserved to the Roman Pontiff, pauline privilege, polygamy/polyandry and captivity/persecution are left to the intervention of the local Ordinary by the universal law (cann. 1143-1149; CCEO cann. 854-860).

At this point we need to know the difference between the dissolution of a marriage and the declaration of nullity. In the case of dissolution, the marriage bond is either valid or at least presumed to be so. It is even possible that the marriage to be dissolved is probably null, however, because a marriage once contracted, with a valid external form, enjoys the favour of law (can. 1060), it can still be dissolved. Dissolution means separation of the spouses, that is, freeing them of mutual obligations and rights that pertained to their partnership of conjugal life (can. 1135; CCEO can. 777), without questioning its validity. The marriage bond ceases either at the time the Roman Pontiff grants the grace of dissolution or at the time the new marriage is contracted; this depends on whether a case is reserved to the Roman Pontiff or not. The declaration of nullity, on the other hand, deals with an invalid marriage; it is invalid from the time it was contracted, that is to say, although marriage existed in fact, it did not exist in law. Therefore, the declaration of the tribunal does not annul marriage, nor does it dissolve the bond, rather it only declares that the said marriage was non-existent in law since the time it was contracted.

This book deals with all types of marriage dissolution cases, i.e., (a) non-consummated cases between the baptised or when a party is not baptised; the privilege of the faith cases: (b) pauline privilege, (c) polygamy/polyandry, (d) captivity/persecution and (e) *in favorem fidei*. While the first four cases are dealt with in the code, the last one has its own specific norms. The study includes both commentary of the norms and procedure to be followed in specific cases.