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CURRENT SOCIAL ISSUES AND STATUS OF A PERSON IN CANON LAW

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RESUMÉ: ***Les questions sociales actuelles et la position de la personne en droit canonique.*** En droit canonique, la définition d'une «personne» est principalement utilisée comme un attribut de l'individu, un sujet de droits et d'obligations et un point de référence dans des situations juridiques ayant la capacité d'accomplir des actes constitutifs dans le domaine juridique. Dans notre article, nous représentons la place d'une personne physique dans le droit canonique et également les conditions avec lesquelles une personne physique peut obtenir la capacité juridique dans le système canonique. Respectivement, quelles conditions une personne doit-elle remplir pour devenir un sujet de relations juridiques et, par conséquent, posséder ses droits et obligations dans tout le spectre mentionné du droit canonique.

Mots clés: droit canonique, droit civil, personnes physiques, adulte, mineur, voyageur, domicile, quasi-domicile.

REZUMAT: ***Chestiunile sociale actuale și poziția persoanei în dreptul canonic.*** În dreptul canonic, definiția de „persoană" este în principal utilizată ca un atribut al individului, subiect al unor drepturi și obligații și un punct de referință în

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situațiile juridice, având capacitarea de a îndeplini acte constitutive în domeniul juridic. În articolul de față, prezentăm poziția unei persoane fizice în dreptul canonic și totodată modalitățile prin care o persoană fizică poate obține capacitate juridică în sistemul canonic, respectiv care sunt condițiile pe care trebuie să le întrunească o persoană pentru a deveni subiectul unor relații juridice și, în consecință, să aibă drepturi și obligații în întregul spectru menționat al dreptului canonic.

Cuvinte-cheie: drept canonic, drept civil, persoană fizică, adult, minor, nomazi, domiciliu, cvasi-domiciliu.

Introduction

Nowadays, we encounter the issue of personal identity of man as a result of concept and theories of postmodern anthropology, secular humanism and rationalism. Secular humanism glorifies man's will and his or her qualities. Postmodern philosophers reject and underestimate unified and global sense of man's life embedded in his or her relationship with God. When defining human person and his dignity, Plato says that moral obligation is characterized searching for something that belongs to man from other person because of its value. This value distinguished man from animals in a sense that man can govern himself or herself and make laws[2]. Rationalism proclaims that progress may be achieved by applying rationalising programmes applied within reformation focused on man, and its aim is to make an impression that transferred faith and wisdom are less valuable and reliable.

However, adequate characteristics of man's personal identity can be found in work *Osoba a czyn* (Person and Act) by Karol Wojtyla, in which he introduces authentic freedom of man who is the author his or her acts. His concept of *man* describes human *person,* realised through his or her acts inspired by goodness and awareness of moral obligation. He helps himself with the definition by Boethius who defined *person* as *rationalis naturae individual subtantia*. There, man is perceived as a substantial being that is rational in its nature, and in this definition,

[2] I. A. Bláha, *Ethika jaka véda,* [*Ethics as a science*] Praha 1991, 11-12.

Wojtyla sees "metaphysical ground" as it were, "dimension of being, where personal subjectivity of man is realised"[3]. Self-realisation is possible through conscience that enables *man* to learn objective truth about goodness and he or she freely decides for acting good. This decision-making is the only basis for a human person to realize its autonomy and heteronomy, to exercise *Law* that is *embedded* in man's heart[4], and that is recognised as dignity of human person[5]. Despite all kinds of negative realities that influence man, such as transformation and related human anonymity, power of moeny and constant questioning of values[6].

As a result of this, man often wants to live at the expense of others, without any commitments or obligations. Decline in Christian values and secularisation contribute to destabilisation of a person. As a result, man tends to be egoistic, even when he or she should be an adult as he or she has fulfilled conditions, he or she has obtained an ID or passport where there is declared his or her majority and his or her full responsibility for their acts and decisions[7].

Person

In Canon law, the term „person" is used to refer to man as a subject of rights and obligations as well as it serves for orientation in legal matters and also in relation to the capability of substantial acts in the legal sphere. The Greek term πρόσωπον (pròsopon) is translated to Latina as *persona* and it was originally used to refer to actor's mask in the ancient times. Later, it was adopted by philosophy to refer to a human being[8].

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[3] P. Dancák, *Personalistický rozmer vo filozofii 20. storočia,* [*Personalistic Dimension in Philosophy of the 20th century]* Prešov 2011, 89.

[4] R. Nemec, Niekoľko pohľadov na problematiku „homo interior" vo vybraných textoch Augustína z Hippa, [Some Views on Issue of „Homo Interior" in Selected Texts of Augustine of Hippo] in: *Filozofia. Vol. 72, Issue 3,* Bratislava 2017, 186–187.

[5] K. Wojtyla, *Osoba i czyn, [Person and Act]* Kraków 1985, 187.

[6] Cf. Š. Jusko, Otázka hodnôt u Heideggera a Nietzscheho [Issue of Values According to Heidegger and Nietzsche] in: *Filozofia. Vol. 72, issue 5*, Bratislava 2017, 375–376.

[7] Cf. G. Gilson, *Diecézny kňaz v pastoračnej službe,* [*A Diocese Priest in Pastoral office*] Spišské Podhradie 2001, 55–56.

[8] A. Anzerbacher, *Úvod do filozofie,* [*Introduction to Philosophy*] Praha 1991, 188–189.

Although „personality", state of being of a person can be understood as a formal attribute, granted by law, legal concept of physical persons, it is necessary related to ontological concept, that is to human certainty. It naturally follows that person in law is *man* preferentially. Though, in medieval legal system, an idea was realized that personal features may be assigned to another legal organism and that it is possible to legally form an "artificial" person next to a natural person as it were[9]. It seems that a person, with regard to his or her dignity, has all the rights granted by the law, as it is stated in the pastoral constitution of the Second Vatican Council *Gauduim et spes*: "Man's social nature makes it evident that the progress of the human person and the advance of society itself hinge on one another. For the beginning, the subject and the goal of all social institutions is and must be the human person which for its part and by its very nature stands completely in need of social life"[10]. Hence, man as a person is *prius* before the law[11].

Two other concepts are closely related to a legal understanding of a person: legal capacity that is a set of ownership or existence as unifying and independent in actual legal situations and capability to act, an attribute belonging to a person determining effectiveness if their own acts. According to the mentioned criterion, legal persons are divided into physical and juridical persons. In the past, the terms natural person *persona naturalis* and moral person *persona moralis* were used in Canon law[12].

Physical person

Code of Canons of the Eastern Churches does not define physical person like the previous legislation which defined it as a set of individual subjects and who are then defined as physical persons, but in can. 7 CCEO it is presumed

[9] J. R. Tretera, *Konfesní právo a církevní právo,* [*Confessional and Canon Law*] Praha 1997, 125.

[10] Cf. Pastoral Constitution on the Church in the Modern World, Second Vatican Council, Vatican II, (22.1.2020) *https://www.kbs.sk/obsah/sekcia/h/dokumenty-a-vyhlasenia/p/druhy-vatikansky-koncil/c/gaudium-et-sp*es.

[11] G. Nedungatt, *Путівник по Східному Кодексу: Коментар до Кодексу Канонів Східних Церков,* Львів 2008, 507.

[12] Tretera, *Konfesní právo* 125.

they are already in this state[13]. The Eastern Code does not contain a claim that man becomes *a person in Christ's Church* through the baptism. According to Joaquin Llobell, defining of *a person* is a very important terminological issue, as the Eastern Canon as well as Latin Canon may mislead us. Especially, when they are compared with classical terminology in the so called *general section on human rights*[14]. Code of canons of the Catholic Church, in can. 96 preserves, according to some authors, an unfortunate definition, that man becomes a member of the Christ's Church through baptism and there he is constituted a person with obligations and rights[15].

Within canonical discipline of Church alone, the unbaptised are granted ability to marry, to be a part of trial, it also presumes a special status of the catechumen, the people who have not been baptised yet. It can be observed that they are persons within Canon law whether they are baptised or not, though they have various legal standing. It is parallel to Civil law, to legal standing of citizens and foreigners[16]. In the Code of Canons of the Eastern Churches, this prescription of can. 96 CIC 1983 is modified in can. 675 CCEO[17], it is stated that in the areas of rights every human being has "*legal capacity*," that is he or she has their legal ownership (right to life) and that he or she is able to bear

[13] Code of Canons of the Eastern Churches, Washington, D.C. 1992, Can. 7 CCEO – § 1. The Christian faithful are those who, incorporated in Christ through baptism, have been constituted as the people of God; for this reason, since they have become sharers in Christ's priestly, prophetic and royal function in their own manner; they are called, in accordance with the condition proper to each, to exercise the mission which God has entrusted to the Church to fulfill in the world.

[14] J. Llobell, Stránky, procesná spôsobilosť a patróni v kánonickom poriadku [Aspects, processing capability and Patron Saints in Canon Law] in: *Ius et Iustitia Acta IX. Sympozii iuris canonici anni 1999 III,* Spišské Podhradie 1999, 104.

[15] Kódex Kánonického Pravá, Bratislava 1996, Can. 96 CIC 1983 – By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition, insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way.

[16] Nedungatt, *Путівник по Східному Кодексу* 510.

[17] Can. 675 CCEO – § 1. In baptism a person through washing with natural water with the invocation of the name of God the Father, Son and Holy Spirit, is freed from sin, reborn to new life, puts on Christ and is incorporated in the Church which is His Body.§2. Only by the actual reception of baptism is a person made capable for the other sacraments.

various rights and obligations. On the other hand, everybody does not have "*capability to act*", that is, everybody cannot dispose of their legal ownership themselves. It depends on certain conditions stipulated by the law. The first is age, then the use of reason, residence, consanguinity and canonical status.

Age

In order to establish criteria that define person as mature, that is important for identifying acts and which are important in the law, according to Nedungate, the code has chosen age to be the main element, ignoring traditional elements, such as sexual maturity[18]. The term „*infantes*" refers to those who did not reach the age of seven and those who „*usu rationis carent*", and even though they have legal capacity, they do not have the capacity to act and are considered to be „*non sui compostes"* that is „incompetent"[19] as given by Roman law. Though a child has reached for using reason, he or she cannot freely dispose of his or her legal ownership[20]. Only after reaching full and general capability to act, the condition of majority is fulfilled, that is reached at the age of eighteen, or emancipated minor[21].

In Canon law, majority is not defined autonomously and rules and regulations of civil law are applied. But strictly Church law obliges those who were baptised in the Catholic church or were accepted to the Catholic church, and who use their reason enough, and if law does not stipulate otherwise, they reached the age of seven[22]. He or she who has reached the age of eighteen is considered an adult, has reached legal majority, may use his or her rights *praesumptio iuris* without any impediments, it is presumed that he or she is able

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[18] Nedungatt, *Путівник по Східному Кодексу* 510.

[19] Cf. Can 97 CIC 1983 – § 2, 852 CIC 1983 – § 2 a can. 681 CCEO – § 3, 909 CCEO – § 2 a 3.

[20] F. Čitbaj, *Základné inštitúcie Rímskeho práva* [Principal Institutions of Roman Law], Prešov 2009, 41.

[21] Llobell, *Stránky, procesná spôsobilosť* 104. Cf. Čitbaj, *Základné inštitúcie* 48.

[22] Cf. V. Vladár, Odpadnutie od spoločenstva s Katolíckou cirkvou formálnym úkonom, [Leaving Community of the Catholic Church through Formal Act] in: *Studia Theologica.* Vol. 19, issue 2, Olomouc 2017, 127.

to understand and detect the will in a way that allows him or her to act effectively and responsibly in legal matters, with regard for can. 901 § 1 CCEO[23].

Emancipation is not defined autonomously in Canon law and this institute is taken from Civil law, under which the given person comes, with regard to can.105 § 1 CIC 1983 and can. 915 § 1 CCEO[24]. But if we follow diction of Canon law, minors who celebrated the sacrament of matrimony, independently of their civil status, shall be considered emancipated by civil law[25]. As far as prescriptions of can. 1674, § 1 CIC 1983 and can. 1360, § 1 CCEO are concerned, they define that marriage may be challenged: § 1 by the spouses. This gives an impression of their majority that means they are exempt from their parents' power and that they can use other rights, not applied distinctively, that belong to majors with regard to can. 98 § 2 CIC 1983 and can. 910 § 2 CCEO[26]. This status, required by a general prescription, according to which disabling laws should be interpreted strictly as stated in can. 1500 CCEO[27] and it seems to be in concordance with *mens ligislatoris* (can. 1499 CCEO[28]), with regard to which a married minor person is made capable of exercising his or her rights only in a marital area, as marriage is considered to be the reason for „*spiritualis sen cum spiritualibus conexa*"[29].

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[23] Can. 910 CCEO – § 1. An adult person enjoys the full use of his or her rights.

[24] Can. 915 CCEO – § 1. A minor necessarily keeps the domicile or quasi-domicile of the one to whose power he or she is subject. After passing beyond infancy one can also acquire a quasi-domicile of one's own; and one who has been legally emancipated according to the norm of civil law can also acquire a proper domicile.

[25] Llobell, *Stránky, procesná spôsobilosť* 104.

[26] Can. 910 CCEO – § 2. In the exercise of his or her rights, a minor person is under the authority of parents or guardians, with the exception of those areas in which minors by divine or canon law are exempt from their power; with reference to the designation of guardians, the prescriptions of the civil law are to be followed, unless the common law or the particular law of the Church *sui iuris* determines otherwise, with due regard for the right of the eparchial bishop, to designate guardians himself if it is necessary.

[27] Can. 1500 CCEO – Laws which establish a penalty or restrict the free exercise of rights or which contain an exception to the law are subject to a strict interpretation. .

[28] Can. 1499 CCEO – Laws are to be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse is to be taken to parallel passages, if such exist, to the purpose and the circumstances of the law, and to the mind of the legislator.

[29] Llobell, *Stránky, procesná spôsobilosť* 105.

A minor is a subject to parents' authority, or with regard to can. 1486 § 3 CIC 1983 and can. 1136 § 3 CCEO[30], a guardian may be designated. Designation of a guardian is specified in Civil law instead of Canon law, even though general law and particular law of *sui iuris* presuppose something else. Despite of this, with due regard to can. 910 § 2, an ancient right is preserved that the eparchial bishop designates a guardian if needed. Regarding the prescription about the minors, they are based on two elements: the first – incompetence, the second – the will to protect them, though they can act for themselves with due regard for the prescription of can. 1413 CCEO[31]. This prescription stipulates that minors who have not reached the age of fourteen cannot be punished, as well as the minors between 14-18, as a rule, shall not be punished by being deprived of their good.

And hence, the minors who have reached ability to use their reason, called „*pubers*" at the age of 14-18, and „*impubers*" at the age of 7-14, use restricted and differentiated, but still important capability to act legally. It is because in a specific religious area of Canon law, the so called minors have considerable authority when exercising rights and obligations. This position is stronger, and even comparable to the position of the majors after reaching the age of fourteen[32]. Hence, after reaching this age, they are granted legal status and Canon law recognizes intensifying of free exercise of right, and they can act independently of their parents and guardians in specific areas of Canon law, and according to Nedungate, some are rooted in the Divine law and some in natural law[33]. There are:

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[30] Can. 1136 CCEO – § 3. But in spiritual cases and in cases connected with spiritual matters, if minors have attained the use of reason, they can act and respond without the consent of parents or guardian; if they have completed their fourteenth year of age, they can do so on their own; if a not, through a curator appointed by the judge. §4. Those deprived of the administration of their goods and those who are of diminished mental capacity.

[31] Nedungatt, *Путівник по Східному Кодексу* 511. Cf. Can. 1413 CCEO – § 1. One who has not completed the fourteenth year of age is not subject to any penalty. § 2. Those, however, who have committed an offense between their fourteenth and eighteenth year of age can be punished only with penalties which do not include the loss of some good, unless the eparchial bishop or the judge decides in special cases that their reformation can be better provided for otherwise.

[32] Llobell, *Stránky, procesná spôsobilosť* 105.

[33] Nedungatt, *Путівник по Східному Кодексу* 511. Cf. Llobell, *Stránky, procesná spôsobilosť* 107–108.

1. Spiritual life: to choose a church *sui iuris* where one wants to be baptised and registered and other sacraments, as sacrament of penance, anointing of the sick and Eucharist (can. 30 a 682 CCEO that is can. 111 § 1 MT DCIC).

2. Return to one's own Church *sui iuris* of original membership (can. 34 CCEO that is can. 112 § 1 MT DCIC)[34].

3. Agreement to the full association with the Catholic Church (can. 900 § 1).

4. Observance of fasting discipline of the Church (can. 882 CCEO that is can. 1252 CIC 1983).

5. The choice of own life status, marital status (can. 800, 789 § 4 CCEO that is can. 1083 §1 CIC, can. 1071 §1 CIC 1983) or consecrated life (can. 450 § 4 517 §1 and 586 § 1 that is can. 643 § 1 b § 1, 597 §1 643 §1,2, 644 CIC 1983, can. 748 § 2).

6. Capability to stand trial in spiritual cases and cases connected with spiritual matters (can. 1136 § 3 CCEO that is can. 1476 CIC 1983) and give testimony (can. 1231 § 1 CCEO that is can. 1550 § 1 CIC 1983).

Despite the above mentioned, there are other requirements as to the performing of one's office, for instance, male sex for ordination or certain required education, so the requirement of majority is not satisfactory for one to act legally and thus to exercise all the rights within the Church. For instance, the prescribed age for the diaconate is completion of *twenty-one* years and for the presbyterate the completion of *twenty-four* years (can. 759 § 1 that is can. 1031 § 1 CIC 1983). We also find age restriction of the age of *thirty* years regarding syncelli, protosyncellus and judicial vicar (can. 247 § 2, 1086 § 4 that is can. 478 § 1, 1420 § 4 CIC 1983), the age of *thirty-five* years is prescribed for the episcopate (can. 180 § 4 CCEO that is can. 378 § 1, § 3 CIC 1983) and also, there is the prescribed age of *thirty-five* years for the election and appointment if the administrator of an eparchy (can. 227 § 2 CCEO that is can. 425 § 1 CIC 1983)[35].

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[34] Cf. M. K. Adam, Získanie príslušnosti k cirkvi *sui iuris* podľa platného zákonodarstva Katolíckej cirkvi, in: *Studia Theologica*. Vol. 18, issue 1, Olomouc 2016, 75–76.

[35] Llobell, *Stránky, procesná spôsobilosť* 105–106.

Mental State

Can. 909 CCEO – § 3[36] of the Canon code of Eastern Churches defines a person who is not capable to act freely and to use one's rights. In Canon law, the status of these persons is compared to „*infantes*" as a result of the fact that they suffer an illness that constantly disables them of using the staus, hence they are „*non sui compos*" even though they have rights and obligations from the legal stance *stricto sensu,* they cannot dispose of nor can they fulfil them[37]. It is the result of them being compared to „*infantes*" and hence the ecclesiastical laws are not binding for them with regard to can. 1490 CCEO[38] that is can. 11 CIC 1983[39]. Such a presumption of incapability to act legally uses the principle of *iuris et de iure*, and from this reason they cannot use their rights, even though they have the so called lucid moment[40]. This principle is introduced clearly in prescription of can. 762 § 1 bod. 1 and can. 763 art. 3 CCEO[41] regarding receiving and exercising sacred orders[42]. This is also present in the fifth chapter – Matrimonial Consent and it errors in prescription of

[36] Can. 909 CCEO – § 3. Whoever habitually lacks the use of reason is held to be incompetent (non sui compos) and is equated with infants.

[37] Cf. Llobell, *Stránky, procesná spôsobilosť* 106.

[38] Can. 1490 CCEO – Merely ecclesiastical laws bind those baptized in the Catholic Church or received into it, who have sufficient use of reason and, unless the law itself expressly provides otherwise, who have completed their seventh year of age. Cf. Nedungatt, *Путівник по Східному Кодексу* 664.

[39] Cf. V. Vladár, Odpadnutie od spoločenstva s Katolíckou cirkvou formálnym úkonom, [Leaving Community of the Catholic Church through Formal Act] in: *Studia Theologica.* Vol. 19, issue 2, Olomouc 2017, 132.

[40] Čitbaj, *Základné inštitúcie Rímskeho práva* 50.

[41] Can. 762 CCEO – § 1. The following are impeded from receiving sacred orders: 1° a person who labors under some form of insanity or other psychic defect due to which, after consultation with experts, he is judged incapable of rightly carrying out the ministry; Can.763 CCEO The following are impeded from exercising sacred orders: 3° a person who is afflicted with insanity or with another psychological illness which is mentioned incan. 762, §1, n. 1, until the hierarch, after consultation with an expert, permits the exercise of that sacred order.

[42] Cf. Nedungatt, *Путівник по Східному Кодексу* 443.

can. 817 § 1, 2[43] that is can. 1057 § 1, 2 which defines matrimonial consent[44]. Also, the pastoral constitution of the Second Vatican Council *Gaudium et spes* defines matrimonial consent as a human act whereby spouses mutually bestow and accept each other[45]. Therefore, the matrimonial consent is an act of the will expressed publicly by which a man and woman, through an irrevocable covenant, mutually give and accept each other in order to establish marriage. A valid matrimonial consent requires the persons, a man and woman[46] that want to celebrate to be capable for legal acts, hence for performing such a specific act as celebrating of marriage is[47]. In its essence, the matrimonial consent represents natural ability of man to live in matrimony in his or her most personal dimensions. It expresses the ability of man to accept, in relation to matrimony, appropriate, free and premediated decisions. In case a particular person lacks any of these abilities, we speak of a error concerning marital consent and this is to be found in prescription of can. 818 art. 1 CCEO that is can. 1095 art. 1 CIC[48].

The first case as presupposed in can. 818, art. 1 introduces incapability of celebrating matrimony by those who lack sufficient use of reason. It follows that capability to celebrate marriage requires those who celebrate marriage

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[43] Can. 817 CCEO – § 1. Matrimonial consent is an act of the will by which a man and woman, through an irrevocable covenant, mutually give and accept each other in order to establish marriage. § 2. No human power can replace this matrimonial consent.

[44] Cf. A. Pastwa, "Common Good of Marriage and the Family." Canonical Reflections, in: *Philosophy and Canon Law. Vol. 1 The Family Institution: Identity, Sovereignty, Social Dimension. Philosophy and Canon Law Vol. 1 The Family Institution: Identity, Sovereignty, Social Dimension,* Katowice 2015, 135–137.

[45] Cf. Pastoral Constitution on the Church in the Modern World, Second Vatican Council, Vatican II, (22.1.2020) *https://www.kbs.sk/obsah/sekcia/h/dokumenty-a-vyhlasenia/p/druhy-vatikansky-koncil/c/gaudium-et-spes.*

[46] Cf. P. Kroczek, Church Teaching on Marriage and Family as an Instruction for the State Legislator in the Context of Poland, in*: Philosophy and Canon Law Vol. 1 The Family Institution: Identity, Sovereignty, Social Dimension. Philosophy and Canon Law Vol. 1 The Family Institution: Identity, Sovereignty, Social Dimension,* Katowice 2015, 206 –207.

[47] F. Čitbaj, *Manželstvo v katolíckom kánonickom práve a právnom poriadku Slovenskej republiky,* Prešove 2013, 222. Cf. A. Pastwa, *Common Good of Marriage and the Family* 133.

[48] F. Čitbaj, *Manželstvo v katolíckom kánonickom práve* 224.

to have an opportunity to use their own mental abilities in the first place[49]. Canon law stipulates that a seven-year old child is capable of using its reason with regard to prescription of can. 909 § 2. The use of one's reason is the power of human soul that has a decisive role. For the one consent of the engaged is the source and cause of marriage, it is the consent that as an act of the will presumes rational knowledge of the subject which they are aiming at, and this can happen only when it is realized through a specific human act[50].

Therefore, for the consent to be valid, it is not sufficient to simply use one's reason but such extent of understanding and will is required that is appropriate for importance of legal act of marital covenant, that is the legal act that enacts marriage[51]. The essential cause that produces this state may be mental deficiency of man but also various illnesses[52] and mental disorders[53]. However, classification of mental illnesses is sometimes complex and very difficult. In jurisprudence, and sometimes more significantly in psychiatry, the definition or at least unequivocal understanding on "mental illness" is lacking.

In psychiatry, there are visibly growing difficulties with acceptable definition of deviations of human behaviour that would be possible to define as mental illness[54]. The whole problem lies in using specific terms for what is to be understood as mental health. On the other hand, it would not be sufficient to

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[49] M. F. Pompeda, Chápanie kánona 1095 kódexu vo svetle právnej náuky a jurisprudencie, [Understanding of Can. 1095 within Legal Teachings and Jurisprudence] in: *Ius et Iustitia Acta IV. Sympozii iuris canonici anni 1994,* Spišské Podhradie 1995, 100.

[50] Cf. L. Botek, Psychické příčiny jako důvod neplatnosti manželství u církevního soudu v Olomouci v letech 1983-2013, in: *Studia Theologica.* Vol. 18, issue 1, Olomouc 2016, 136-137. Cf. M. F. Pompeda, *Chápanie kánona 1095 kódexu* 100.

[51] M. F. Pompeda, *Chápanie kánona 1095 kódexu* 101. Cf. F. Čitbaj, *Manželstvo v katolíckom kánonickom práve* 228.

[52] Cf. J. M. Kašparů, Psychiatrická diagnóza a kánon 1095 CIC, [Psychiatric Diagnosis and Can. 1095 CIC], in: *Ius et Iustia Acta IV. Sympozii iuris canonici anni 2002.* Spišské Podhradie 2004, 136–151.

[53] F. Čitbaj, *Manželstvo v katolíckom kánonickom práve* 224. Cf. Nedungatt, *Путівник по Східному Кодексу* 462.

[54] Cf. M. F. Pompeda, *Chápanie kánona 1095 kódexu* 101. Cf. Botek, *Psychické příčiny jako důvod* 136–137.

claim that disease lies in the processing disorder, or disorder of will: this term is actually still not defined[55].

In human reality, intelligence as well as will represent the whole scale of expressions and nothing that in capabilities and scope of abstraction depends on individual subjective conditions of each individual can be qualified. It follows that it is not possible to tell at which stage a disorder or deviation represents onset of a mental illness. Hence, the very same disorder can be present in relation with the subject towards which we are heading, such as celebrating of marriage[56].

Residence

Personal life and acts take place in time as well as in particular space, not only in civil society, but also in Church. The connection of a physical person and residence is in Canon law used to define domicile[57]. On the basis of this, we differentiate persons who have domicile or quasi-domicile. Canon law defines exactly when a person acquires domicile[58] and when quasi-domicile[59], but it also defines a person that possesses neither of these domiciles, called a traveller[60]. This technical terminology, that helps define relationship of the Christian faithful to a territory or residence, originates in Roman law[61] and gradually, it has become an inextricable part of the Canon tradition.

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[55] M. F. Pompeda, *Chápanie kánona 1095 kódexu* 102. Cf. F. Čitbaj, *Manželstvo v katolíckom kánonickom práve a právnom poriadku Slovenskej republiky,* Prešove 2013, 228–229.

[56] Cf. F. Čitbaj, *Manželstvo v katolíckom kánonickom práve* 228–229. Cf. M. F. Pompeda, *Chápanie kánona 1095 kódexu* 102

[57] Cf. Nedungatt, *Путівник по Східному Кодексу* 511.

[58] Can. 912 CCEO – § 1 Domicile is acquired by residence within the territory of a certain parish or at least of a eparchy, which either is joined with the intention of remaining there permanently unless called away, or has been protracted for five complete years.

[59] Can. 912 CCEO – § 2 Quasi-domicile is acquired by residence within the territory of a certain parish or at least of a eparchy which either is joined with the intention of remaining there at least three months, unless called away, or has in fact been protracted for three months.

[60] Can. 911 CCEO – A person is called a traveller (peregrinus) when he is in a different eparchy from the one where he has a domicile or quasi-domicile and a transient (vagus) if one has neither domicile or a quasi-domicile anywhere.

[61] Čitbaj, *Základné inštitúcie Rímskeho práva* 29–31.

We come across the terms such as *peregrines,* that is a foreigner, who in the time given founds himself outside the borders of his or her domicile or quasi-domicile, and *vagus*, that is a roamer, a homeless, who does not have any domicile or quasi-domicile. This definition is applied in the matters of bindingness with the prescription of can. 1491 §§ 3 – 4[62]. As far as the acquirement, loss of domicile or quasi-domicile is concerned, it is up to a person, excluding the following:

1. With regard to. 915 CCEO, children and minors are under the authority of parents, or guardians, curator. In this case, a minor has his or her domicile or quasi-domicile in the residence of parents, or guardians, curators. However, in case that minor is seven years old, he or she may have his or her own quasi-domicile, and when he or she becomes a major, in accordance with civil law, he or she acquires domicile[63].

2. With regard to the prescriptions of can. 914 CCEO[64], spouses shall have a common domicile. But because of some just causes, they may be separated legitimately, for instance, because of work, care of an ill parent and other reasons. In these cases they may have a different residence[65].

3. Members of religious institutes and societies of common life in the manner of religious acquire a domicile in the place of the house to which they are attached[66].

A domicile or a quasi-domicile is lost when the place is left without intention of returning, and while not breaching prescription of can. 913 and 915. From the list regarding domicile or quasi-domicile it is evident that Christian faithful may have several domiciles or quasi-domiciles at the same time.

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[62] *Nuntia* 28 (1989) 125.

[63] Tretera, *Konfesní právo a církevní právo* 127.

[64] Can. 914 CCEO – Spouses may have a common domicile or quasi-domicile; either can have a proper domicile or quasi-domicile by reason of some just cause.

[65] Cf. Nedungatt, *Путівник по Східному Кодексу* 512.

[66] Can. 913 CCEO – Members of religious institutes and societies of common life in the manner of religious acquire a domicile in the place of the house to which they are attached; they acquire a quasi-domicile in the house where they are living for at least three months.

The most serious juridical consequence of domicile and quasi-domicile is the appointment of juridical or proper hierarch (*hierarcha proprius*). Certainly, in order to preserve affiliation *sui iuris*, each Christian faithful should have a hierarch or a pastor who provides for their spiritual matters. As their jurisdiction is restricted by the territory, the system of designating hierarch or pastor is based on their relationship with the territory. But certainly, there are criteria, such as another Church *sui iuris*, language, nationality for designating proper hierarch or pastor. A typical example represents personal parishes with regard to can. 193 and 280[67] CCEO and ordinariates for Christian faithful of Eastern Churches *sui iuris*[68].

General principle is that proper or juridical hierarch of Christian faithful is a local hierarch and pastor that belong to Church *sui iuris*. It means that Christian faithful are in the territory where they were enrolled in their own Church *sui iuris*. But if it is not so and they found themselves in the territory without eparchy or exarchy[69], or their own hierarch of the same Church *sui iuris,* or their own pastor of the same church, then care of their souls is committed to a hierarch or a priest of another Church *sui iuris*. Still, there is no transfer in affiliation to the original Church *sui iuris* with regard to prescription of can.38 CCEO[70]. With regard to can. 916 CCEO, the Code presents criteria for the appointment of proper hierarch and proper pastor in three different situations:

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[67] Can. 193 CCEO – § 3. Eparchial bishops, who appoint such presbyters, pastors or syncelli for the care of Christian faithful of patriarchal Churches, are to formulate plans of action with the patriarchs who are concerned in the matter and, if they are in agreement, act by their own authority and notify the Apostolic See as soon as possible; if the patriarchs, for any reason whatever, disagree, the matter is to be referred to the Apostolic See.

Can. 280 CCEO – § 1. Generally, a parish is to be territorial, that is, it embraces all the Christian faithful of a certain territory; if however, in the judgment of the eparchial bishop, having consulted the presbyteral council, it is expedient, personal parishes are to be erected based on nationality, language, enrollment of the Christian faithful in another Church *sui iuris* or even upon some other definite determining factor. § 2. It is the competency of the eparchial bishop to erect, modify and suppress parishes after consulting the presbyteral council. § 3. A lawfully established parish is a juridic person by the law itself.

[68] Cf. Nedungatt, *Путівник по Східному Кодексу* 513.

[69] Can. 311 CCEO – § 1. An exarchy is a portion of the people God which, because of special circumstances, is not erected as an eparchy, and which is established within territorial or other kinds of limits and is committed to an exarch.

[70] Can. 38 CCEO – Christian faithful of Eastern Churches even if committed to the care of a hierarch or pastor of another Church *sui iuris*, nevertheless remain enrolled in their own Church.

1. Through both domicile and quasi-domicile each person acquires his or her local hierarch and pastor of the Church *sui iuris* in which he or she is enrolled. The proper pastor of one who has neither an eparchial domicile or quasi-domicile is the pastor of the place where that person is actually staying. The proper local hierarch and pastor of a transient is the pastor of his church and the hierarch of the place where the transient is actually staying[71].

2. If there is no pastor for the Christian faithful of a certain Church *sui iuris*, the eparchial bishop of these people can appoint the pastor of another Church *sui iuris* to look after them as their proper pastor, but with the consent of the eparchial bishop of the pastor who is to be appointed[72]. In some individual cases when this appointment did not take place, the Apostolic See decided, when previous prescriptions were still valid that the local Latin pastor shall be the pastor for those believers[73].

3. In places where no exarchy has been constituted for the Christian faithful of a certain Church sui iuris, the hierarch of another Church sui iuris, even the Latin Church, of the place is to be considered the proper hierarch of these faithful, with due regard for the prescription of can. 101; if, however, there are several hierarchs, that one is to be considered their proper hierarch who has been appointed as such by the Apostolic See if it is a question of Christian faithful who belong to a patriarchal Church, by the patriarch with the assent of the Apostolic See. In such cases, the hierarch often entrusts them to the pastor of their proper Church *sui iuris* or he appoints him as their proper pastor with regard to prescription of can. 193 § 2, 3 CCEO[74].

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[71] Can. 916 CCEO – § 1. Through both domicile and quasi-domicile each person acquires his or her local hierarch and pastor of the Church *sui iuris* in which he or she is enrolled, unless other provision is made by common law. § 2. The proper pastor of one who has neither an eparchial domicile or quasi-domicile is the pastor of the place where that person is actually staying. § 3. The proper local hierarch and pastor of a transient is the pastor of his church and the hierarch of the place where the transient is actually staying.

[72] Can. 916 CCEO – § 4. If there is no pastor for the Christian faithful of a certain Church *sui iuris*, the eparchial bishop of these people can appoint the pastor of another Church *sui iuris* to look after them as their proper pastor, but with the consent of the eparchial bishop of the pastor who is to be appointed.

[73] Nedungatt, *Путівник по Східному Кодексу* 514. Cf. Tretera, *Konfesní právo a církevní právo* 128.

[74] D. Salachas, *Il sacramento del matrimonio nel Nuovo Diritto Canonico delle Chiese orientali*, Roma 1994, 196. Cf. Nedungatt, *Путівник по Східному Кодексу* 514.

In case the proper hierarch has been appointed, Christian faithful remain without proper pastor. As far as general law does not presume that their pastor is a local pastor (in a domicile, a quasi-domicile or where he is currently staying) of the Church *sui iuris* of these Christian faithful. These local pastors cannot legally consecrate marriages of these Christian faithful without rightful delegation which they must obtain from their hierarch of these Christian faithful[75].

Except the above mentioned canonical consequences, a domicile or a quasi-domicile of any Christian faithful is of great importance in case of effectiveness of issued laws, with due regard for the prescription (can. 1491 CCEO), celebration of marriage (can. 831 CCEO). A domicile also influences elections to the presbyteral council (can. 267 CCEO), with certain dispensations (can. 759 § 2 a 767 § 2 CCEO), and remitting of certain penalties (can. 1423 § 1 CCEO)[76].

Consanguinity

Giving birth to children and family affinities, that connect one relative with another have social importance as well as they have juridical status. There are two basic types of consanguinity: calculated through direct line and collateral line, that has arose when celebrating marriage with due regard for the prescription of can. 917 and 918 CCEO[77].

Impediment of blood consanguinity arises among those who have mutual blood. He or she may be in direct or indirect line. Blood consanguinity arises among direct ancestors; that is between a father and daughter, a mother and son, a grandfather and granddaughter, between grandmother and grandson etc. In indirect line, consanguinity arises between a brother and sister, a male and female cousin, between uncle and niece, an aunt and nephew, etc. Blood

[75] Cf. Salachas, *Il sacramento del matrimonio* 195–198.

[76] Cf. Nedungatt, *Путівник по Східному Кодексу* 514–515.

[77] Can. 918 CCEO – Consanguinity is calculated through line and degrees: 1° in the direct line, there are as many degrees as there are persons, not counting the common ancestor; 2° in the collateral line, there are as many degrees as there are persons in both lines together, not counting the common ancestor. Can. 919 CCEO – § 1. Affinity arises from a valid marriage and exists between one spouse and the blood relatives of the other. § 2. A blood relative of either one of the spouses is related by affinity to the other spouse by the same line and in the same degree.

consanguinity in direct line makes marriage invalid in all degrees with regard to both canons, in indirect line to the fourth degree. It is considered to be the impediment of divine law[78].

Conclusion

At present, we meet discussed issue of a person and following human rights too often. What are man's rights and what are not his or her rights. Fundamental human rights arise from the essential value of every single human being from human dignity. This value belongs to everybody – not only to one who realizes it, who can freely use it, but also to one who wins it. However, it happens that fundamental human rights are broken within society. Due to its own mistake, the society wants to forbid the use of these rights. If anybody is forced to fight for his or her rights, then it is a sign that something is wrong and the society is not healthy: hence it means that prescription of Canon law regarding rights of physical persons mentioned above in this contribution have their clear role. This role means that Church itself shall not break the rights of physical persons which are guaranteed to each Christian faithful of the Church.

[78] Cf. D. Salachas, *Il sacramento del matrimonio* 126–128.