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Legal Aspects of the Right to a Catholic Marriage During Armed Conflict

During peacetime, the faithful of the Catholic Church—both clergy and laity—are so accustomed to the liturgical form of marriage that they often assume only those unions are valid, provided at least one of the spouses is Catholic, which are concluded before a Catholic cleric authorized by law or delegation to receive consent, and in the presence of two witnesses [4, can. 1108; 3, can. 828]. However, the legislator provides for several exceptions to this general rule.

In regions where priests and deacons are unavailable, the law of the Roman Catholic Church allows for properly trained laypersons to be delegated to assist at marriages. For a diocesan bishop to make such a delegation, prior authorization from the Apostolic See is required, following a positive recommendation by the Episcopal Conference [4, can. 1112]. In the 1983 Code of Canon Law, John Paul II noted that the prescribed canonical form is not required when a Catholic marries a non-Catholic of an Eastern rite. In such cases, the presence of a sacred minister alone suffices for validity. Furthermore, the Pope, as legislator, allowed for the possibility of dispensing from the canonical form when serious difficulties prevent its observance. In these instances, some other public form of marriage is required for validity [4, can. 1127; 3, can. 834]. All the above-mentioned legal provisions—except for the norm concerning marriages between Catholics and Eastern non-Catholics—envision the involvement of a Catholic Church representative either in the preparation for marriage or in the celebration itself.

In addition to the aforementioned exceptions, the legislator has also recognized the validity and liceity of marriages contracted solely in the presence of two witnesses, in cases where the person legally authorized to assist is either unavailable or cannot be approached without serious inconvenience. This applies in situations of danger of death, or even outside such danger, provided it is reasonably foreseen that these circumstances will persist for a month [4, can. 1116; 3, can. 832].

The cited provision in canon 832 of the Code of Canons of the Eastern Churches (CCEO) states:

§1. If one cannot have present or have access to a priest who is competent according to the norm of law without grave inconvenience, those intending to

celebrate a true marriage can validly and licitly celebrate it before witnesses alone:

1° in danger of death;

2° outside the danger of death, as long as it is prudently foreseen that such circumstances will continue for a month.

§2. In either case, if another priest, even a non-Catholic one, is able to be present, inasmuch as it is possible he is to be called so that he can bless the marriage, without prejudice for the validity of a marriage in the presence only of the witnesses.

§3. If a marriage was celebrated in the presence only of witnesses, the spouses shall not neglect to receive the blessing of the marriage from a priest as soon as possible.

As the reading of the above-mentioned provision indicates, the norms it contains may be applicable during wartime. Let us therefore undertake a brief analysis.

The danger of death (*periculum mortis*) refers to a state in which there exists a reasonable likelihood that death will occur in the near future, although it is not an absolute certainty. It must be distinguished from agony (*artculus mortis*), in which death is nearly certain. Prior to 1983, the causes that were considered to constitute such a danger included, among others: illness, car accidents, major technical failures during air or sea travel, floods, earthquakes, bombings, engagement in frontline combat, and death sentences [8, p. 353].

The absence of a priest may be either physical (factual/real) or so-called moral. According to Navarro-Valls, the impossibility of reaching an qualified witness must be both objective and individual. It is considered objective when the qualified witness is unattainable due to real and verifiable circumstances, rather than false or subjective estimations, as otherwise the marriage cannot be considered valid. The condition is regarded as individual when it specifically affects the couple in question, regardless of circumstances affecting other people or the general situation in a given location [6, pp. 1471–1472]. Beal refers to this 'individual' impossibility as 'relative impossibility', offering as an example the case where a journey of twenty-five miles may pose only a minor inconvenience for someone with access to good roads and a car, but a major hardship for those who must travel on foot [1, p. 1334].

When contracting marriage according to the extraordinary form, the parties must intend to enter into a true, monogamous, and indissoluble marriage—namely, the kind of union typically contracted within the Church. Their consent must be free from defects. The spouses must also be free from any canonical impediments [7, p. 237]. A person contracting marriage under exceptional circumstances, in the absence of a qualified witness, should be mindful that the Rite of Marriage in extraordinary form is not a mere natural contract. If validly celebrated between baptized Christians—even without the presence of a priest—it is always a sacrament [5, pp. 230–232].

Codified legislation does not prescribe specific requirements for the two ordinary witnesses. Canon lawyers infer their qualifications from the analysis of canonical provisions regarding witnesses in the ordinary form of marriage. According to the canonical tradition, natural attributes are sufficient for the validity of their role. As noted by Stefan Biskupski, these include consciousness at the time consent is exchanged, and the ability to understand the nature of what is taking place. Biskupski also lists categories of individuals who may not act as witnesses:

persons with mental illness, children under the age of seven, individuals who are completely intoxicated, sleeping, or deaf-mute. The witnesses' state of life, baptismal status, or the fact of excommunication is irrelevant. At the time of the marriage celebration, witnesses are required to be present both formally and materially [2, p. 355].

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Значення практики ЄСПЛ для формування поняття та правового статусу осіб, які шукають притулку через зміну клімату та екологічні катастрофи

У сучасних умовах глобального потепління, екологічних та кліматичних змін питання правового статусу осіб, змушених залишити свої домівки з екологічних причин, набуває дедалі більшої актуальності. Екологічні мігранти або кліматичні біженці часто опиняються поза межами класичного правового регулювання у сфері міжнародного захисту, зокрема Конвенції ООН про статус