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On the "Concordat Marriage" and its Legal Regime. Considerations and Assessments

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Abstract
Throughout the pages of this research, which has a pronounced interdisciplinary content (judicial, canonical, theological and historical), the reader will be able to see that, in the Romanian specialized literature it is for the first time when such a subject is tackled not only on the basis of the Lateran Concordat text, from the year 1929, and the modern legislation (Agreements between the "Holy See/Sancta Sede" and some States, Constitutions, Civil Codes, etc.), but also on the basis of some firsthand documentary testimonies, provided by jus romanum antiquum, about "matrimonium" (marriage) and its forms/types (civil and religious).
The reader will also find that both the judicial and canonical norms and the jurisprudential doctrine of the old Roman law, regarding the institution of marriage, have been examined and assessed also from the point of view of the basic principles of "jus naturale", identified by some of today's jurists with the "natural moral law", the sources of which are stated in "jus divinum". We find the principles of this right stated not only in the text of the Codes of Canon Law and of the Concordats concluded by the Vatican with various states of the world, such as the Concordat concluded between the Vatican State (the Holy See) and the Italian State, but also in the text of certain Constitutions and Civil Codes, from our days, which have been the subject of our scientific research in other specialized papers.

Keywords
Marriage, Lateran Concordat, the Vatican State, Civil Codes, Codes of Canon Law

Preliminaries

Until the Lateran Concordat of 1929, there were only two types of marriage in both Eastern Europe – where Christian Orthodox faith predominated – and in the Western Europe – where the Christian Catholic faith prevailed – namely religious and civil marriage, as stipulated in the state legislation of this European geographical area of the 19th century[1]. Along with the Lateran "Concordat" of 1929, the "concordat" marriage also appeared.

What is a "Concordat"? The Latin word "concordatio / onis" tells us that it is the result of an "agreement" or of a bilateral "agreement". In the case of the Lateran Concordat of 1929, we are dealing with an agreement between the Italian State and the Vatican State, which put an end to a six – decade crisis in the relations between the State and the Church in Seneca's homeland. As the author of the famous treaty "Ars vivendi" (The Art of Living) said, if the word given by the signatory parties on the occasion of such an Agreement is not "cum vita" (Seneca), i.e., it is not given in order to be respected throughout their lives, it risks losing its legal force, as was the case, in fact, with many of the Concordats concluded between the Catholic Church and some States of the world.

The Code of Canon Law of the "Latin Church" (according to can. 1), in force, expressly states that through its "canons" it does "not repeal the conventions concluded by the Apostolic See with states or other political societies, nor does it alter any of their contents" (can. 3)[2].

In their comments on this canon, the Catholic jurists stipulated that the Catholic Church "... does not intend to repeal or modify the conventions (Concordats) stipulated between the Apostolic See and other States or other political societies"[3], having an international character, such as the "UN", "FAO", "UNESCO", "OAU" etc., and that "the Church observes the principles of concordat law"[4], because "it has confidence in the Pacts concluded between two autonomous societies"[5].

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[1] See, for example, *Constituţia României din 1866* (Art. 22), http://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=37755, accessed on 18.01. 2022 and *The Spanish Civil Code of 1889* (Art. 42) https://www.boe.es/buscar/doc.php?id=BOE-A-1889-4763, accessed on 10.01. 2022.

[2] *Codul de drept canonic. Text oficial şi traducere în limba română*, trans. I. Tamaş, Sapientia, Iaşi, 2004, p. 43.

[3] P. Vito Pinto, *Commento al codice di diritto canonico*, Urbaniana University Press, Rome, 1985, p. 2.

[4] P. Vito Pinto, *Commento al codice ...,* p. 2.

[5] P. Vito Pinto, *Commento al codice ...,* p. 2.

The same Catholic jurists stated that, in the text of these Pacts – whose principles are stated in concordat law – "it is not a question of privileges granted to the Apostolic See (Sede Apostolica), but of rules which, by mutual commitment, regulate the manner of organizing and operating certain mixed institutions, in which without a common law there would be sources of permanent conflict"[6].

Marriage is also such an institution, with a mixed character, given that, indeed, it has both a civil and a religious character, as evidenced by the texts of bilateral Agreements or Pacts which "... continue to be in force and do not in any way oppose the provisions contrary to this Code" (can. 3), i.e., to the Canonical Code of the Roman Catholic Church. In the present case, "we are dealing with an implementation of the legal principle Pacte sunt servanda / Agreements must be kept, since Concordat agreements are treaties of external public law"[7].

The history of concordats – between the Papal See and some States in the "pars Occidentis" (Western part) of Europe – begins in the eleventh century, with those "*Concordata nationis Germanicae*"[8], i.e., between the Papal See and some kings of the "Holy Roman Empire of the German Nation", which had been generated by the disputes over the investiture of Catholic prelates and by the demand of German emperors to elect the popes. The first of these Concordats – retained in the medieval history – was the Concordat concluded at Worms in the year 1122.

Also, in Western Europe – where the "*Sede Romana*" (Roman See) of the "bishop of the Church of Rome" (can. 331 of the Code of Canon Law) is located, and which, for the Roman Catholic Church, is "the head of the College of Bishops (Collegii Episcoporum est caput), ..., and the Shepherd of the whole Church on this earth (universae Ecclesiae his in terris Pastor)" (can. 331)[9] – the first Concordat on Concordat marriage also appeared in 1929, in which, under the impact of the actions undertaken by the Movement of "militant secularism" for the removal of the sacred from

[6] P. Vito Pinto, *Commento al codice ...,* p. 2.

[7] P. Lombardia, "Commentary on Canon 3 of the Latin Canonical Code", in: E. Caparros et al. (eds.), *Code de droit canonique. Édition bilingue* et *annotée*, Montreal, 1990, p. 41.

[8] G. Renard, "Concordats", in: A. Vacant (ed.), *Dictionnaire de Theologie Catholique: contenant l'exposé des doctrines de la théologie catholique, leurs preuves et leur histoire*, tom. III, Paris, 1908, p. 729.

[9] *Codul de drept canonic ...,* pp. 222-223.

the citadel, especially expressed in the twentieth century, the policy of "secularization/laicization of marriage"[10] was undertaken. In some Western European states, such as France, the Netherlands, Belgium, Spain etc., this policy of laicization[11], including marriage – "pursued diplomatic paths that led to a laicization by cohabitation" or to "laicization by secularization"[12].

Since this "laicization" by "cohabitation"[13] also manifested in Vatican's relations with some Western states, the Papal See[14] had to take into account not only their political orientation and their laws, but also the canonical-judicial regime of the institution of marriage established by the canonical legislation of the Roman Catholic Church[15], as well as the Vatican Concordats with the respective States.

An edifying example in this regard is, of course, Italy, where there are "three types of marriages that can be officiated", namely: a) "Civil marriage" (*il matrimonio civili*), i.e., the marriage officiated by the Registrar, and which bears only "the effects provided by law"[16] ; b) "Religious marriage" (*il matrimonio religiosa*), "officiated in the Church according to canon law"[17], and which produces the effects stipulated in the

[10] E. Agostini, "État laïque et mariage chrétien en droit comparé", in: R. M. Tchidimbo (ed.), *Mariage civil et mariage canonique: actes du V^e Colloque national des juristes catholiques*, Téqui, Paris, 1985, p. 152.

[11] N. V. Dură, "About the Freedom of Religion and the Laicity. Some Considerations on the Juridical and Philosophical Doctrine", in: *Bulletin of the Georgian National Academy of Sciences*, 13 (2019) 4, pp. 156-164.

[12] E. Agostini, "État laïque et mariage ...", p. 151.

[13] N. V. Dură, "About the «Religious» Politics of Some Member States of the European Union", in: *Dionysiana*, III (2009) 1, pp. 463-489; N. V. Dură, "The Relationships between the State and the Church and their Legal Regime. Rules of International and National Law", in: *Bulletin of the Georgian National Academy of Sciences*, 12 (2018) 4, pp. 192-201.

[14] N. V. Dură, "The «Petrine primacy»: the role of the Bishop of Rome according to the canonical legislation of the ecumenical councils of the first millennium, an ecclesiological-canonical evaluation", in: W. Kasper (ed.), *The Petrine ministry: Catholics and Orthodox in dialogue: academic symposium held at the Pontifical Council for Promoting Christian Unity*, New York, Newman Press, 2006, pp. 164-184.

[15] N. V. Dură, "Colecţii canonice, apusene, din primul mileniu", in: *Analele Universităţii Ovidius. Seria: Drept şi Ştiinţe Administrative*, 1 (2003), pp. 19-33.

[16] *Annullamento matrimonio 2021: civile, religioso, tempi*, https://www.soldioggi.it/annullamento-matrimonio-14910.html, accessed on 12.02. 2022.

[17] *Annullamento matrimonio 2021...*

Code of Canon Law of the Latin (Roman Catholic) Church; c) "Concordat marriage" (*il matrimonio concordatario*), "celebrated in the Church, but which also has civil effects"[18]. This type of marriage, i.e., "concordatario" (concordatar), was created on the basis of the Lateran Concordat of 1929, whose text would become a source and documentary reference also for other agreements signed by the "Holy See" with various States of the world.

I. On the Concordat between the "Holy See and the Romanian State" from 1927

We would like to point out that the Concordat concluded in Rome between the "Holy See and the Romanian State" on April 27, 1927 – signed on May 10, 1927 by Vasile Goldiş[19], the head of the Romanian delegation, and His Eminence Cardinal Gaspari, representative of His Holiness Pope Pius XI, – no reference is made to the institution of marriage, although the Romanian constitutional text of 1866 stipulated that "the acts of the civil State are the responsibility of the civil authority. The drafting of these acts will always have to proceed with the religious blessing which will be mandatory for marriages, except for the cases that will be stipulated in a certain law" (Art. 22)[20]. The same thing was provided by the Romanian Constitution of 1923 in the text of Article 23[21].

As for the Concordat of 1927, between the Holy See and the Romanian State, some Orthodox historians and theologians in our country stated that through it the papacy undertook its proselytizing actions to catholicize interwar Romania[22], while others consoled us with the fact that "the Austrian

[18] *Annullamento matrimonio 2021...*

[19] Vasile Goldiş, Orthodox Christian, deacon in the diocese of Arad. About his activity see N.V. Dură, "Andrei Şaguna († 1873) şi Alexei Mateevici († 1917), precursori ai «Marii Uniri» de la 1918", in: C. Ioja et al. (eds.), *Biserica Ortodoxă Română şi Marea Unire de la 1918. Contribuţia Teologiei arădene*, Editura Universităţii „Aurel Vlaicu", Arad, 2019, pp. 172-179.

[20] I. Muraru, G. Iancu, *Constituţiile Române. Texte. Note. Prezentare comparativă*, Actami, Bucureşti, 2000, p. 35.

[21] I. Muraru, G. Iancu, *Constituţiile Române ...,* p. 68.

[22] See V. Anania, *Pro memoria. Acţiunea catolicismului în România interbelică*, Editura Institutului Biblic şi de Misiune al Bisericii Ortodoxe Române, Bucureşti, 1992.

government, in 1855, concluded a Concordat in extremely humiliating terms, which will not be met except in the one concluded by Romania in 1927"[23].

Hence, therefore, the requirement of some Orthodox clergymen and politicians, of that time, that the Concordat be "annulled", because it would have included "essential deviations from our (author's note: Orthodox) point of view, and on the other hand we are not being offered the guarantees that, in the interest of the State, we absolutely need"[24].

It was also mentioned that the "responsibility" for "concluding the negotiations on the Concordat, in extremely humiliating and damaging conditions for the prestige and interests of the Romanian State"[25] belonged to the "liberal government of I. I. C. Brătianu"[26]. But what did the representative of the Romanian state, who signed the Concordat of 1927 on its behalf, confess to us?! According to Minister Vasile Goldiş, through this Concordat the "Latin Church" of the Old Kingdom passed "from the jurisdiction of the *Congregatio De Propaganda Fide*/ Congregation for Propagation of the Faith to that of common law, which is a great advantage for the state"[27].

Pursuant to the provisions of Article IX of this Concordat, the Romanian State recognized "the legal personality of the Catholic Church, represented by its legitimate hierarchical authorities, in accordance with the common law of the country"[28], and at the same time recognized the right of the Catholic Church "... to create and maintain, at its own expense, primary and secular schools, which will be under the supervision of the respective hierarchs and under the supervision and control of the Ministry of Public Instruction" (Art. XIX § 1)[29].

Regarding the "school regime", for the Roman Catholic Church were created "... even more privileged situations ..., a situation of state within the state, which undermined the sovereignty of our State and put the Orthodox

[23] S. Tomescu, *Concordatul României cu Vaticanul. Câteva aspecte ale relaţiilor României cu Vaticanul şi situaţia Bisericii în perioada 1918-1928*, p. 100, https://www.revistateologica.ro/wp-content/uploads/2018/02/vatican.pdf, accessed on 19.02. 2022.

[24] O. Ghibu, *Nulitatea Concordatului dintre România şi Sf. Scaun*, Arte Grafice "Ardealul", Cluj, 1935, p. 11.

[25] S. Tomescu, *Concordatul României* ..., p. 102.

[26] S. Tomescu, *Concordatul României* ..., p. 102.

[27] V. Goldiş, *Concordatul,* Tipografia Diecezane, Arad, 1927, p. 30.

[28] V. Goldiş, *Concordatul ...,* p. 38.

[29] V. Goldiş, *Concordatul ...,* p. 40.

Church in a state of inferiority, which violated the freedom and equality of the cults, which were stipulated in the country's Constitution of 1923"[30].

Did these realities constitute the "great gain" of the Romanian State following the conclusion of the Concordat of 1927?! In the condemnation of this Concordat by the Romanian state, on July 17, 1948, it was stated that "this measure was dictated by the principle of equality and freedom of all the cults enshrined in the Constitution of the Romanian People's Republic"[31], which, indeed, was not even stated in the text of the Concordat of 1927 concluded between the "Holy See" and the Romanian State.

We have also to underlined the fact that, in the text of the Concordat of 1927, no mention was made to the institution of marriage, whether civil or religious, while in the Lateran Concordat of February 11, 1929, concluded between the Italian State and the Catholic Church, would also introduce the "concordat marriage, which was subject to all the conditions stipulated in the Canon law…"[32], i.e., the norms of the Latin Canonical Code of 1917.

However, this marriage was based not only on the norms of the Canon law of the Roman Catholic Church, but also on those of Italian national law – in force at the time – so that in the European legal landscape a third type of marriage emerged, in addition to the existing ones, namely the civil and the religious marriage, i.e., the concordat marriage. Therefore, through this Concordat, Italy also recognized a third type of marriage, i.e., the "concordat marriage", as a legal institution of the State.

II. The Lateran Concordat from 1929 and the Concordat Marriage

Through the Lateran Concordat of 1929, not only a "*conciliazione tra Stato e Chiesa*" (conciliation between the State and the Church) was reached in Italy[33], and, implicitly, a normalization of the relations between Italy and the Vatican after decades of crisis, but also the admission of a "plurality"[34] of the

[30] M. Păcurariu, *Istoria Bisericii Ortodoxe Române,* V[th] edition, Sophia, Bucureşti, 2000, pp. 432-433.

[31] *MAE/Ministry of Foreign Affairs Archive*, Vatican Fund. Issue 71 / 1947-1948, vol. 4, apud A. Ignat, "Concordatul cu Vaticanul (1927)", in: *Romanian Journal of Axiological Studies*, no. 1, 1(2020), p. 78.

[32] E. Agostini, "État laïque et mariage ...", p. 152.

[33] L. Mangoni, "I Patti lateranensi e la cultura cattolica", in: *Studi Storici*, 43 (2002) 1, p. 155.

[34] N. Marchei, "Matrimoni «religiosi» ed effetti civili", in: *Stato, Chiese e pluralismo*

forms of marriage, which was primarily beneficial to the Roman Catholic Church, especially in terms of the institutionalization of the "concordat marriage" and its legal effects, via laws with constitutional value, hence the remark of some Italian jurists that the Lateran "Pacts" or "Concordats" also have a "constitutional relevance (*rilevanza costituzionale*)"[35].

In the text of the Agreement between the Holy See and the Italian Republic of February 18, 1984, ratified by Law no. 121 of March 25, 1985,

> "The Italian Republic recognized the value of religious culture, and given that the principles of Catholicism are a part of the historical heritage of the Italian people, it will continue to ensure, within school curricula, the teaching of the Catholic religion in public schools ..." (Art. 9, para. 2)[36].

In 1984, the Italian state recognized not only the "value of religious culture" but also the fact that the principles of the doctrine of the Catholic Church are a constituent part of the historical heritage of the Italian people, hence the assurance given to the Italian nation that the Christian Catholic religion will be taught in public schools.

Unfortunately, these provisions – stated in the Agreement between the Holy See and the Italian State, of February 18, 1984, which are still in force today – did not have any impact on Romanian legislation, because both in the text of the Romanian Constitution of 1965, republished in 1986 (in the Official Gazette of the Socialist Republic of Romania, Part I, no. 64 of October 27, 1986), as well as in those of 1991 and 2003, we do not find such provisions on the value and importance of the religious culture of the Orthodox Church, considered by the national poet M. Eminescu the "Mother of the Romanian People".

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confessionale, 2010, https://www.statoechiese.it/images/uploads/articoli_pdf/marchei_matrimoni.pdf?pdf=matrimoni-religiosi-ed-effetti-civili, accessed on 14.01. 2022.

[35] F. Broglio, *La rilevanza costituzionale dei Patti Lateranensi tra ordinamento fascista e Carta repubblicana*, https://www.treccani.it/enciclopedia/la-rilevanza-costituzionale-dei-patti-lateranensi-tra-ordinamento-fascista-e-carta-repubblicana_%28Cristiani-d%27Italia%29/, accessed on 1.02. 2022.

[36] *Legge 25 marzo 1985, no. 121*, https://www.lezionidireligione.it/joomla3/images/02.Normativa/1.Documenti/03.Legge25marzo1985n121.pdf, accessed on 28.02. 2022.

We note that, based on Law no. 121 of 1985, from the text of the Lateran Concordat of 1929, revised in 1984[37], the clause "establishing that the Catholic religion is a state religion in Italy"[38] was removed, a reality which allowed, in 2021, the Italian Prime Minister Mario Draghi to declare before the Senate that Italy is "a secular state, not a confessional state", and that "secularism does not mean the indifference of the state towards the religious phenomenon, secularism means protecting pluralism and cultural diversity"[39].

According to statement of the Italian jurists, the statement made by the Mario Draghi is contradicted even by the reality, since Italy is indeed

> "a predominantly Catholic country, though it is difficult to estimate the number of Italians practicing Catholicism because the national census does not include questions on religious affiliation. These questions are considered incompatible with the secular character of the State which follows a traditional liberal and individualistic approach with respect to religious orientation inquiries"[40].

In fact, "given the Italian historical and social context, some authors think that an «Italia laica» is simply impossible. Consequently, the Italian laicità is a limited one or, as some have said, a «baptised laicità»"[41].

Under the impact of secularism propaganda, religion or religious beliefs are perceived and defined by some rulers of today's Italy only as a simple "religious phenomenon", and the state has a duty to "protect" "pluralism"

[37] *The Agreement between the Holy See and the Italian Republic of 18 February 1984*, amending the Lateran Concordat, was ratified by Law no. 121, of March 25, 1985, renewed on January 14, 2017, https://www.lezionidireligione.it/joomla3/images/02.Normativa/1.Documenti/03.Legge25marzo1985n121.pdf, accessed on 2.02. 2022.

[38] E. Dumea, *Biserica şi Statul în Europa. Perspective istorice şi creştine*, Iaşi, 2011, p. 48, apud https://emildumea.files.wordpress.com/2011/12/emil-dumea-biserica-si-statul-in-europa-perspective-istorice-si-crestine-2011.pdf, accessed on 6.01. 2022.

[39] R. Arbore, "Premierul Italiei, replica la criticile Vaticanului pe tema legii anti-homofobie: «Italia este un stat laic»", in: *Ziare.com*, 23 June 2021, https://ziare.com/international/stiri-internationale/mario-draghi-raspuns-pentru-vatican-1686579, accessed on 2.03. 2022.

[40] A. Ferrari, S. Ferrari, *Religion and the Secular State: The Italian Case*, https://classic.iclrs.org/content/blurb/files/Italy.pdf, accessed on 4. 03. 2022.

[41] A. Ferrari, S. Ferrari, *Religion and the Secular State ...*

and "cultural diversity", but not the spiritual or religious diversity, which is the constitutive element of "culture", in the sphere of which its two components enter, namely the material culture and the spiritual culture[42].

According to the provisions of the Law no. 222 of 20 May 1985, that gave effect to the provisions on the agreement reached between Holy See and Italian State regarding entities and property, it has been established "two systems of financing have been established: they apply both to the Catholic Church and to the other denominations which have signed an agreement, benefit"[43].

In the Agreement of Villa Madama of 1984 – signed by Holy See and Italian State – stipulated that "the State bears the total financial burden of Catholic religious education"[44].

Moreover, by the fact "the teachers of Catholic religious education are chosen by the diocesan bishop from a list of people who have been trained in theology and Church disciplines ...", proves that "the recognition by the Church authority takes the form of a written confirmation (nihil obstat) which certifies that they are suitable to teach religious education"[45].

The same Italian jurists state that

> "the Italian Catholic tradition and the Italian interpretation of the principle of laicità facilitate wearing religious symbols in public places, included schools, hospitals and public offices, allowing a relevant degree of freedom to public servants also"[46].

On September 9, 2020, the Senate of the Italian Republic ratified "the exchange of letters which took place between the Italian Republic and the Holy See on February 13, 2018 on the spiritual assistance within the (Italian) armed forces"[47], which also included some "amendments to the

[42] See G. Kvesitadze, N. V. Dură, *The Roots of the Georgian and Romanian Science and Culture,* Editura Academiei Oamenilor de Ştiinţă din România, Bucureşti, 2017, pp. 124-138.

[43] A. Ferrari, S. Ferrari, *Religion and the Secular State ...*

[44] A. Ferrari, S. Ferrari, *Religion and the Secular State ...*

[45] A. Ferrari, S. Ferrari, *Religion and the Secular State ...*

[46] A. Ferrari, S. Ferrari, *Religion and the Secular State ...*

[47] *LEGGE 22 aprile 2021, n. 70, Ratifica ed esecuzione dello Scambio di Lettere tra la Repubblica italiana e la Santa Sede sull'assistenza spirituale alle Forze armate, fatta a Roma e nella citta' del Vaticano il 13 febbraio 2018, e norme di adeguamento*

Lateran Concordat of February 11, 1929", ratified by "Law of March 25, 1985, no. 121"[48]. Following these changes, "the spiritual assistance for the Catholic military ... is provided by military chaplains, appointed by the Minister of Defence"[49] (Art. 3).

In the same time, in the Code of Military Order, revised and amended as a result of this "exchange of letters", it is mentioned that the Holy See exercises its "ecclesiastical jurisdiction" over the Catholic military through "military chaplains"[50] (Art. 3 (1533, para. 4)), whose superiors, such as the "the Military Vicar General, are appointed by the Holy See and the Army Leadership"[51] (Art. 3 (1534)). However, these articles of the Military Code attest to the fact that the text of the 1929 Concordat – concluded between the Holy See and the Italian Republic – is still in force, even though it has undergone some modifications and completions, largely required by the realities of our time.

Regarding the "*Concordato fra la Santa Sede e l'Italia*"[52] (Concordat between the Holy See and Italy) – signed by the two parties on February 11, 1929, and published in "Acta Apostolicae Sedis" no. 6 of June 7, 1929 – we are also mentioning that it was drawn up and published in the name of the "Holy Trinity", as the Byzantine emperors once did with their legislation (for example, Emperor Justinian with his legislative work Code, Digest, Institutions and Novels). Through this nomination and express invocation of the Holy Trinity, the institution of concordat marriage was placed under its protection, hence the emphasis on its divine-sacramental character.

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dell'ordinamento interno ad obbligazioni internazionali contratte con la Santa Sede, https://www.federalismi.it/ApplOpenFilePDF.cfm?artid=45434&dpath=document&dfile=25052021093026.pdf&content=L%2E%2Bn%2E%2B70%2F2021%2CRatifica%2Bed%2Besecuzione%2Bdello%2BScambio%2Bdi%2BLettere%2Btra%2Bla%2BRepubblica%2Bitaliana%2Be%2Bla%2BSanta%2BSede%2Bsull%27assistenza%2Bspirituale%2Balle%2BForze%2Barmate%2C%2Bfatta%2Ba%2BRoma%2Be%2Bnella%2Bcitt%C3%A0%2Bdel%2BVaticano%2Bil%2B13%2Bfebbraio%2B2018%2B%2D%2Bstato%2B%2D%2Bdocumentazione%2B%2D%2B, accessed on 19.01. 2022.

[48] *LEGGE 22 aprile 2021, n. 70 ...*

[49] *LEGGE 22 aprile 2021, n. 70 ...*

[50] *LEGGE 22 aprile 2021, n. 70 ...*

[51] *LEGGE 22 aprile 2021, n. 70 ...*

[52] *Concordato fra la Santa Sede e l'Italia*, http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19290211_patti-lateranensi_it.html#CONCORDATO_FRA_LA_SANTA_SEDE_E_LITALIA, accessed on 4.01. 2022.

Among other things, regarding marriage, the Concordat between the Holy See and Italy stipulated that "The Italian state wishes to restore to the institution of marriage, which is the basis of the family, its dignity in accordance with the Catholic traditions of its people; it recognizes the civil effects of the sacrament of marriage regulated by canon law" (Art. 34)[53].

Therefore, the Italian state recognized not only the legal value of the canon law of the Roman Catholic Church, but also the civil effects of the religious marriage officiated by its hierarchs and priests, so that in terms of this "Concordat", a "concordat marriage" – concluded according to the norms of the canonical Roman Catholic legislation – also produces "civil effects", hence the obligation of the parish priest to explain to the spouses "immediately after the officiation" the "civil effects of marriage, by reading the articles of the civil code on the rights and duties of the spouses", and to draw up the "certificate of marriage, and within five days he will send a full copy to the municipality, so that it can be transcribed in the civil status registry" (Art. 34).

Regarding Article 34 of the Lateran Concordat (1929), some Italian jurists pointed out that this article conferred on religious marriage "civil effects (with the transcription in the Civil Status Registries)"[54], and, implicitly, by this act the Italian State "expressly recognized the sacramental nature" of the marriage governed by "canon law"[55].

According to other Italian jurists, "the Lateran Pact of 1929 reintroduced ..., an ecclesiastical component in matrimonial matters, with the provision of the concordat marriage"[56], and "such a form of marriage has the specific function of not forcing Catholics to celebrate two distinct rites, a religious one and one of civil relevance"[57], while, at the same time, thanks to the Concordat, this "marriage is governed by canon law"[58].

With regard to the civil divorce cases, the Concordat stipulated that the Holy See should allow them "to be judged by the civil judicial authority"

[53] *Concordato fra la Santa Sede ...*

[54] N. Marchei, "Matrimoni «religiosi» ed effetti civili"

[55] N. Marchei, "Matrimoni «religiosi» ed effetti civili"

[56] F. Lombardi*, Matrimonio civile, religioso o concordatario? Se scegli ti sposo!,* https://www.corsopraticodidiritto.it/l/matrimonio-civile-religioso-concordatario/, accessed on 24.01. 2022.

[57] F. Lombardi*, Matrimonio civile ...*

[58] F. Lombardi*, Matrimonio civile ...*

(Art. 34)[59], which was also stipulated in the Matrimonial Law of May 27, 1929, according to which in Italy a civil marriage "may be officiated in a secular form by the registrar" and "in its religious form, for the non-Catholics, by a representative of the cult they prefer"[60].

Pursuant to Article 8, paragraph 2 of the Agreement between the "*Santa Sede*" (Holy See) and the Italian Republic of February 18, 1984 and the Additional Protocol, ratified by Law no. 121/1985,

> "decisions on the annulment of a marriage issued by ecclesiastical courts, together with the enforcement decree issued by the superior ecclesiastical control body, ..., are declared effective at the request of the parties or one of the parties in the Italian Republic by decision of the competent court of appeal"[61].

Both parties, i.e., the "Holy See" and the Italian State, have decided that if a marriage is annulled from a civil point of view, in order for its incapacity to also be recognized at the religious level, it must be contacted "the Holy Wheel (Sacre Rota – the body which decides whether or not to annul a marriage from a religious point of view)"[62].

Following a decision by Pope Francis in 2015, the "nullity of a religious marriage" can also be declared by "undergoing a short trial" or a "divorzio breve" (short divorce), which, from the three-year period of research provided by the law of December 1, 1970, no. 898, with subsequent amendments, reached only "twelve months"[63], however, in this case, the decision no longer belongs to the "Sacra Rota", but to the "diocesan (or eparchial) bishop"[64].

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[59] *Concordato fra la Santa Sede ...*

[60] E. Agostini, "État laïque et mariage chrétien ...", p. 153.

[61] *Agreement between the Italian Republic and the Holy See*, http://home.lu.lv/~rbalodis/Baznicu%20tiesibas/Akti/Arvalstis_ligumi/Italijas&Sv.Kresla_konkordats.pdf, accessed on 24.02. 2022.

[62] *Annullamento matrimonio 2021 ...*

[63] E. Falletti, *Tribunale religioso e divorzio: riconoscibilità della pronuncia in Italia,* https://www.altalex.com/documents/news/2019/06/10/tribunale-religioso-divorzio, accessed on 22.02. 2022.

[64] I. Policarpio, *Annullamento matrimonio religioso Sacra Rota: quando è possibile, costi, tempi e procedura*, https://www.money.it/annullamento-matrimonio-religioso-cause-costi-tempi-Sacra-Rota, accessed on 2.03. 2022.

Regarding the annulment of a religious marriage, it should also be noted that this

> "... differs in some respects from divorce. By annulment, religious marriages are as if they had never been officiated, while by divorce, marriages remain as officiated, and only the effects of the marriage are annulled. Consequently, with the annulment of the marriage, we return to the status of «celibi/ nubili» (celibate), whereas, through divorce, they do not return to the previous situation, but they are divorced"[65].

In accordance with the provisions of Article 28 of Law no. 218/1995, "a marriage held outside of Italy is valid in its form"[66] even if it is performed by "*un ministro di un culto religioso*" (a representative of a religious cult). The only condition provided by law is that the respective marriage concluded "by the Italian citizen" complies with the "conditions" stipulated by the "rules of the Italian Civil Code" and, in this case, it "does not require publication (of the marriage certificate), unless required by foreign law"[67], i.e., in the State in which it was concluded.

Such a marriage, namely a "religious marriage" concluded by an Italian citizen outside the borders of his/her country, is "valid and effective in Italy only if it produces civil effects (effetti civili) in the foreign State, i.e., in the state in which it has been concluded, and will have to be transcribed in the Italian civil registries, having a declarative and not a constitutive value (because transcription is not necessary, as it is considered valid)"[68].

The same Italian civilists add that the judges of the Italian Court of Cassation stated that all these religious marriages

> "concluded abroad, according to the canonical-concordat rite, are valid, as this kind of marriages, which have a sacramental character, have an extraterritorial value and can be performed in

[65] *Annullamento matrimonio 2021...*

[66] Francesca e Giuseppe Morgante, *Il Matrimonio all'estero: regole, leggi, documenti, obblighi e modalità*, https://www.insiemeonline.it/i-consigli-degli-esperti/diritto-di-famiglia-e-documenti/item/482-matrimonio-all-estero.html, accessed on 12.01. 2022.

[67] Francesca e Giuseppe Morgante, *Il Matrimonio all'estero ...*

[68] Francesca e Giuseppe Morgante, *Il Matrimonio all'estero ...*

any part of the world where the representatives (ministers) of the Catholic cult are located"[69].

Therefore, a religious marriage concluded outside the borders of the Italian State, according to the canonical-concordat rite and in accordance with the provisions of the "canonical norm"[70], is also valid from the point of view of civil law, since the Italian State is recognized as having jurisdiction in matrimonial matters, and, consequently, such a sacramental type of marriage, "... must be considered valid from a civil point of view, and must be transcribed (in the civil status registries)"[71].

On December 20, 2017, the Court of Justice of the European Union ruled in the Case C-372/16: "Soha Sahyouni v Raja Mamisch" (of Syrian and German nationality) concerning the unilateral divorce declaration made before a religious court of a third State and its recognition in German law[72]. However, as stated by some civilists in the EU States, the decisions made in another state regarding divorce do not imply the recognition "ex sesse" of "a decision issued by a religious court"[73].

The Law no. 165 of April 14, 1982 stipulated that in Italy "a religiously officiated marriage" is devoid of "civil effects"[74] if one of the spouses requests a change of sex during the marriage. However, according to the provisions of some Decisions of the Court of Cassation from 2019, the divorce pronounced outside the borders of the country – between an Italian citizen and a foreigner – is recognized. In fact, the Court "reiterated (the fact) that, as regards the recognition of a foreign divorce judgment, ..., it does not constitute an obstacle to the recognition of the foreign judgment in Italy"[75].

In their comments, however, some Italian civilists stated that, with regard to the annulment of a marriage and divorce or the conclusion of a new marriage abroad, "there are cases in which a divorce has been pronounced, and although it produces effects in the state where the foreign spouse is a citizen, however, it cannot be recognized in Italy"[76].

[69] Francesca e Giuseppe Morgante, *Il Matrimonio all'estero ...*
[70] Francesca e Giuseppe Morgante, *Il Matrimonio all'estero ...*
[71] Francesca e Giuseppe Morgante, *Il Matrimonio all'estero ...*
[72] E. Falletti, *Tribunale religioso e divorzio ...*
[73] E. Falletti, *Tribunale religioso e divorzio ...*
[74] E. Falletti, *Tribunale religioso e divorzio ...*
[75] E. Falletti, *Tribunale religioso e divorzio ...*
[76] E. Falletti, *Tribunale religioso e divorzio ...*

The Italian Civil Code of June 8, 1865, recognized only civil marriage. However, according to the revised Civil Code, of March 16, 1942[77], and, for the last time in 2021[78], a "marriage concluded in the presence of a representative of the Catholic cult (a un ministro del culto cattolico) is regulated in accordance with the provisions of the Concordat with the Holy See and the special laws on the subject matter" (Art. 82 of *Italian Civil Code*)[79].

As regards "the marriage performed by representatives of the Cults admitted by the state (dei culti ammesi nello Stato)", it must comply with the rules laid down "in the special laws (nella legge speciale) on marriages" (Art. 83 of the *Italian Civil Code*)[80]. Therefore, in Italy only the marriages concluded by the "representatives of the Catholic Cult" are covered by the Civil Code, whereas the other marriages concluded by the representatives of the admitted Cults, including the Orthodox one, must comply with the provisions stipulated in a "special law" on marriage.

Finally, in accordance with the provisions of the revised Italian Civil Code, "no one may claim the status of spouse and the effects of marriage unless he/she presents the act of its conclusion extracted from the Civil Status Registries" (Art. 130)[81]. In other words, the status of spouse and the legal effects of marriage can only be demonstrated by this Extract from the Civil Status Registries.

III. The provisions of the Constitution of the Italian Republic (January 1948) on Marriage

On December 22, 1947, the Constituent Assembly of Italy promulgated the Constitution of the Italian People's Republic, in force since January 1, 1948[82], in which – among others – in Title II – entitled "Ethical and social rights and duties" – it was expressly stipulated that "the Republic

[77] Published in an extraordinary edition of the Official Gazette [*Gazetta Ufficiale*], no. 79 of April 4, 1942.

[78] *Codice Civile 2022*, https://www.altalex.com/documents/codici-altalex/2015/01/02/codice-civile, accessed on 26.01. 2022.

[79] *Codice Civile 2022 ...*

[80] *Codice Civile 2022 ...*

[81] *Codice Civile 2022 ...*

[82] Published in Official Gazette no. 298 of December 27, 1947.

recognizes the rights of the family as a natural society based on the institution of marriage" (Art. 29, para. 1)[83]. By stating that family is a "natural society", the Italian constitutional text acknowledged, in fact, that it was precisely from this "Jus naturale" (natural law)[84] that "the union of man and woman (maris atque feminae coniugatio) arises from" (*Justiniani Institutiones*, lb. I, II)[85], i.e., marriage[86], on which family is based[87].

Another old judicial principle enunciated by the "jus romanum antiqum" was invoked in the text of the fundamental law of Italy, namely the principle of the indissolubility of a marriage between a man and a woman, to which the famous Roman jurisconsult Modestin (3rd century) had also referred, according to which the family is a "community of life" (vitae continens), which results from the "union of a man and a woman" (viri et mulieris coniunctio)[88], i.e., from a marriage.

The same Roman jurisconsult asserted that the "rights" (iura) of marriage are based on "jus naturale" (natural law), i.e., "the right which natural reason has given among all men"[89], hence the fact that the "iura matrimonii" (marriage rights) could not be annulled, disregarded or

[83] *Constituţia Republicii Italia*, https://constitutii.files.wordpress.com/2013/01/italia.pdf, accessed on 23.02. 2022.

[84] See N. V. Dură, "The Right and its Nature in the Perception of the Roman Jurisprudence and of the Great Religions of the Antiquity", in: A. Sandu et al. (eds.), *Rethinking Social Action. Core Values*, Medimond, Bologna, 2015, pp. 517-524; N. V. Dură, "«Jus» (Law) and «Justitia» (Justice) in the Roman legal experts' perception. Reflections and evaluations", in: *Logos Universality Mentality Education Novelty: Law*, 7 (2019) 2, pp. 45-56; N. V. Dură, "About «Justitia» (Righteousness) and «Aequitas» (Equity). The contribution of Lactantius († 325) in the specifying of the content of the two constituent elements of the «Jus»", in: *Annales canonici*, 15, (2019) 2, pp. 9-38.

[85] *Justiniani Institutiones (Justinian's institutions*), translated into Romanian and published by V. Hanga, Lumina Lex, Bucureşti, 2002, p. 12.

[86] N. V. Dură, P. Kroczek, C. Mititelu, *Marriage from the Roman Catholic and Orthodox points of view,* Scriptum, Krakow, 2017, pp. 117-135; N. V. Dură, "Decisions of the «Holy and Great Council», Held in Crete (Greece, June 16-26, 2016), on Marriage", in: *Teologia*, 80 (2019) 3, pp. 39-55; C. Mititelu, "Emperor Justinian's Novel 74 and its Importance for European Marriage Law", in: *Teologia*, 81 (2019) 4, pp. 26-37.

[87] N. V. Dură, "Căsătoriile mixte în lumina învăţăturii şi a practicii canonice ortodoxe", in: *Ortodoxia*, XL (1988) 1, pp. 92-113; C. Mititelu, "Emperor Justinian's «Constitutions» on the Legal Protection of the Mother and Children", in: *Bulletin of the Georgian National Academy of Sciences*, 13 (2019) 4, pp. 165-175.

[88] *Justiniani Institutiones (Justinian's institutions*), lb. I, IX, 1, …, p. 26.

[89] *Justiniani Institutiones (Justinian's institutions)*, lb. I, II, 1, …, p. 12.

abolished by the "Jus civilis" (Civil Law), which – according to the juristconsult Gaius (second century) – is "a common right of all people" (Gaius, *Institutiones*, lb. I, 1)[90].

According to Roman jurisconsults of the second and third centuries AD, such as Pomponius, the provisions of natural law (juris naturale)[91] are "based on morality, not on law" (Justiniani *Digesta*, lb. XXIII, 2, 8)[92]. In their turn, the jurists of Emperor Justinian (527-565) (Tribonian, Theophilus, Dorotheus etc.) also pointed out that "… *civilis ratio civilia quidem iura corrumpere potest, naturalia vero non utique*"[93] (civil law may abolish civil rights, but not those of natural law), hence the obligation for "the manner of acquiring property" to also follow the procedure established by "*jure naturali*" (natural law) given that "nothing better corresponds to natural equity (natural aequitati)"[94].

Therefore, any law and any legislator must seek first and foremost the attainment of the fairness provided by "jus naturale" (natural law), and then that of "jure civile", because without that "aequitas"[95] (fairness), i.e., 'fair judgment' or 'natural equity', there is no "implementation of the rule of law in particular in favour of the accused"[96], which also takes into account "circumstances unforeseen even by law"[97], and also the accomplishment of the act of justice, i.e., of "justice"[98] (justice/ae).

According to the principle provision stated in the Italian Constitution, "marriage" must be "based on moral and legal equality between the spouses within the limits provided by law, in order to guarantee the unity of the family" (Art. 29, para. 2). It is both a "moral equality" – which is

[90] Gaius, *Institutiones (Roman private law institutions),* translated by A. Popescu, Editura Academiei, Bucureşti, 1982, p. 64.

[91] N. V. Dură, "«Persoana» umană, şi libertăţile ei fundamentale, în percepţia gândirii filosofice şi juridice europene", in: *Studii juridice universitare*, VI (2013) 3-4, pp. 106-121.

[92] The text from the book of jurisconsult Sabinus, lb. V, was reproduced by the jurists of emperor Justinian in the work *Digesta*, published in 533 AD.

[93] *Justiniani Institutiones (Justinian's institutions*), lb. I, XV, 3 …, p. 43.

[94] *Justiniani Institutiones (Justinian's institutions*), lb. II, 40, …, p. 76.

[95] N. V. Dură, "«Justitia» and «Aequitas» in the perception of the Greek philosophers and of the Roman jurists", in: *Teologia Młodych*, 4 (2015), pp. 4-9.

[96] I. Tamaş, "Mic dicţionar juridico – canonic", in: *Codul de drept canonic ...,* p. 1150.

[97] I. Tamaş, "Mic dicţionar ...", p. 1150.

[98] N. V. Dură, "Ideea de Drept. «Dreptul», «Dreptatea» şi «Morala»", in: *Analele Universităţii Ovidius. Seria: Drept şi Ştiinţe Administrative*, I (2004), pp. 15-46.

stated by the "natural moral law", as an expression of "jus naturale", – and a "legal equality", as provided by "jus civilus romanum".

Some of the principles and norms of Roman law regarding both the institution of the Engagement (Sponsalia)[99], and the institution of Marriage, are found not only in the Civil Codes, but also in the Fundamental Laws of some States, such as Italy, France, Romania etc.

In their comments, some civilists of today have stated that the "equality of spouses", which is both "moral" and "legal", is one of the principles on which marriage is based, and that, "based on this, the husband or wife takes on the same rights and duties ... "[100]. However, as is well known, not all the constitutional texts in Europe stipulate the obligation of a marriage between a man and a woman to be based on the "moral equality" of the spouses, which is in fact the basis and a "sine qua non" condition for their "legal equality".

Among these Constitutions, which lack this phrase, "moral and legal equality of spouses", we are mentioning both the Romanian Constitution and the Constitution of the Republic of Moldova. For example, the Romanian Constitution speaks only about the "equality between the spouses" (Art. 48, para. 1), and in the Constitution of the Republic of Moldova only about "their equality in rights" (Art. 48, para. 2). The adjective "moral" is therefore missing, so it is only a question of an "equality" exclusively of a legal nature, i.e., "in rights"[101] between the spouses, and not of a "moral" nature, about which express reference is made not only in the "Moral natural law"[102], which is the "source of natural law"[103] (Juris naturale), but also "*Juris praecepta*" (Rules of Law), i.e., of Roman Law, formulated

[99] C. Mititelu, "About Engagement («Sponsalia»). From «Jus Romanum» to «Jus Civile» of Romania", in: *Technium Social Sciences Journal*, 29 (2022), p. 672-682.

[100] Francesca e Giuseppe Morgante*, Diritti e Doveri nel Matrimonio* (1 parte) *apud https://www.insiemeonline.it/i-consigli-degli-esperti/diritto-di-famiglia-e-documenti/item/320-diritti-e-doveri-nel-matrimonio-1-parte.html,* accessed on 28.01. 2022.

[101] See N. V. Dură, "«De jura personarum». Consideraţii şi evaluări ale unor texte juridice şi filosofice", in: *Revista de Teologie Sfântul Apostol Andrei*, XVII (2013) 1, pp. 28-47.

[102] See N. V. Dură, "Law and Morals. Prolegomena (I)", in: *Acta Universitatis Danubius. Juridica*, 2 (2011), pp. 158-173; N. V. Dură, "Law and Morals. Prolegomena (II)", in: *Acta Universitatis Danubius. Juridica*, 3 (2011), pp. 72-84.

[103] N. V. Dură, "Loi morale, naturelle, source du Droit naturel et de la Morale chrétienne", in: M. Th. Urvoy (ed.), *La morale au crible des religions*, Éditions de Paris, Paris, 2013, pp. 213-233.

by famous Roman jurisconsults through their "decisions (sententiae) and opinions (opiniones)"[104].

Among other things, the same Constitution of the Italian Republic, promulgated on December 27, 1947, stipulated that "the State and the Catholic Church are independent and sovereign in their sphere of activity" and "the relations between them are governed by the Lateran Pacts, …" (Art. 7)[105], namely, "*Trattato fra la Santa Sede e l'Italia*" (Treaty between the Holy See and Italy), "*Concordato fra la Santa Sede e l'Italia*" (Concordat between the Holy See and Italy) and "*Processo Verbale dello scambio delle ratifiche* (Minutes of the Exchange of Ratifications, June 7, 1929)"[106], known as the "Lateran Pacts" and "*Convenzione Finanziaria* (Financial Agreement)"[107].

As mentioned above, later on, some of the provisions of the Constitution of the Italian Republic of 1947 would be repealed or simply removed from the legislative text under the impact of the desecration and secularization of Italian society. However, not with regard to the institution of the concordat marriage, which – due to Vatican diplomacy and the skill of its jurists (civilist and canonical ones) – was also mentioned in subsequent legislative texts that are still in force.

IV. Agreement between the Italian Republic and the Holy See of February 18, 1984

On February 18, 1984 the "Italian Republic" and the "Holy See" signed an "Agreement"[108] ratified by the Italian Parliament on March 25, 1985, in which the two parties called for the provisions of the 1929 Lateran Pact to be applied in a concrete and effective manner and to "avoid any difficulty

[104] *Justiniani Institutiones (Justinian's institutions*), lb. I, II, 8 …, p. 15.

[105] *Constituţia Republicii Italia ...*

[106] *Inter Sanctam Sedem et Italiae Regnum Conventiones,* http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19290211_patti-lateranensi_it.html, accessed on 2.02. 2022.

[107] *Convenzione Finanziaria*, http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19290211_patti-lateranensi_it.html#CONVENZIONE_FINANZIARIA, accessed on 2.03. 2022.

[108] The text of this Agreement has been translated into English also by "The American Society of International Law".

in interpreting their text"[109] (according to Art. 14), including in the case of concordat marriage. Furthermore, in the text of this "*Agreement between the Italian Republic and the Holy See*" it was noted that both sides "took into account the process of political and social transformation in Italy in recent decades and the evolution of the Church after the Second Vatican Council"[110].

At the same time, the signatory parties stated that, in accordance with "Article 7 of the Constitution of the Italian Republic, the relations between the State and the Catholic Church are governed by the Lateran Pacts, which can, nevertheless, be amended by mutual agreement of the two parties, without imposing constitutional review procedures" (Preamble)[111].

By this Agreement (February 18, 1984) – which was ratified by Law no. 121 of March 25, 1985 – the civil effects of "canonical marriage" (matrimonio canonico) were also recognized, i.e., contracted according to the norms of canon law, provided that the respective act is transcribed in the civil status registries. For example, Article 8, para. 1 of this Agreement between the Holy See and the Italian State also stipulated the possibility of registering a "canonical marriage", i.e., concluded in accordance with the rules of canon law and "subsequently, at the request of the two contracting-parties, or only one of them, but with the agreement of the other"[112].

The late registration of the marriage is the act of the "spouses" and it cannot be presented at the Civil Registry Office by the priest, as stipulated by the Concordat. Hence the conclusion that, in the absence of the will expressed by the spouses, it is not possible to proceed with the "late registration of the concordat marriage"[113].

The text of the same 1984 Agreement stipulated the obligation of the priest who officiated the religious marriage service – after the administration of the Sacrament of Marriage – to "explain to the parties the civil effects of marriage under the Articles of the Civil Code on the Rights and Duties of the Married", and, to draw up "original duplicates of the marriage certificate, in which the declarations of the spouses provided

[109] *Agreement Between the Italian Republic and the Holy See ...*
[110] *Agreement Between the Italian Republic and the Holy See ...*
[111] *Agreement Between the Italian Republic and the Holy See ...*
[112] S. Arena, *Quesitario Massimario di stato civile*, Vth edition, SEPEL, Bologna, 2009, p. 828.
[113] S. Arena, *Quesitario Massimario ...,* p. 103.

by the civil law are inserted"[114] (Art. 8 para. 1). And also "the priest of the local parish, where the marriage was officiated", had to "register the marriage in writing, within five days from its officiation …" (Art. 8 B).

According to the provisions of this Agreement, a religious marriage has "civil effects from the moment of its administration …" (Art. 8, 1 B). Therefore, the "Holy See" wanted to make it clear that "marriage registration", "... must not take place" if the following conditions are not met: a) "If the spouses do not meet the age requirements provided by Civil law"; b) "If there is an impediment between the spouses in the case of which, according to civil law, no derogation is allowed" (Art. 8, 1)[115].

Some italian jurists also have remarked that, "by Article 8 of the 1984 Agreement, which replaced Article 34 of the Concordat, the rules underlying the old legal rule have undergone a significant readjustment to the new conditions (of the society)"[116]. Indeed, this Agreement stipulated, among others, that "the decisions of nullity of a marriage, pronounced by ecclesiastical courts, together with the enforcement decree given by the superior authority, of ecclesiastical control, at the request of the parties or one of the parties, shall produce effects in the area of the Italian Republic following a judgment of a competent Court of Appeal, …" (Art. 8, 1 B para. 2), which must rule a "judgment recognizing the canonical judgment, …" (Art. 8, 2 C)[117].

With these provisions of Article 8 of the Agreement signed in 1984, the Italian State regained its "sovereignty areas"[118], which, on the basis of the 1929 Concordat, would have been under the jurisdiction of the Holy See. What is certain is that, as regards "concordat marriage", this Agreement also mentions that, "as a result of the entry into force of this regulation on matrimonial matters, the Holy See has sought to reaffirm the unwavering validity of the Catholic teaching on marriage, and, at the same time, the Church's concern for the dignity and values of the family, the foundation of society" (Art. 8, 3)[119], which did not prejudice at all the sovereignty of the Italian State.

[114] *Agreement Between the Italian Republic and the Holy See ...*
[115] *Agreement Between the Italian Republic and the Holy See ...*
[116] N. Marchei, "Matrimoni «religiosi» ed effetti civili"
[117] *Agreement Between the Italian Republic and the Holy See ...*
[118] O. Fumagalli Carulli, "Giurisdizione ecclesiastica e Corte Costituzionale", in: R. Botta (ed.), *Diritto ecclesiastico e Corte Costituzionale*, Esi, Napoli, 2006, p. 181.
[119] *Agreement Between the Italian Republic and the Holy See ...*

Regarding the impediments to marriage[120] – stipulated in Article 8 paragraph (1) (B) -, the text of the Agreement also states that "… no derogation from the civil law is permitted" with respect to the following realities: (a) entering a marriage with "parties" suffering from a "mental infirmity"; b) the existence of a previous marriage between the spouses, which is valid from a civil point of view, but which constitutes an impediment to the conclusion of another marriage; c) the impediments resulting from a bloodline in a direct line offense" (no. 4, regarding Article 8: 1, 2, 3)[121].

It was also stipulated that, in terms of the nullity of marriage, i.e., the provisions of Articles 796 and 797 of the Italian Code of Civil Procedure, "the specificity of the system of canon law, which governs the marriage bond, and whose origins lie in it, must also be taken into account" (no. 4, regarding Article 8, 3 b)[122]. Indeed, we need to know, recognize, and respect "… what belongs to the divine law (divini iuris)"[123] and, implicitly, to "Canon law" (jus canonicum)[124], which – since the 4th-5th centuries – has taken over in the text of its legislation, of Christian origin, not only a part of the terminology and thinking of Roman law, but also its procedural system, as attested by the canonical legislation of the Eastern[125] and Western Church[126] from the first millennium, as well as the Roman Catholic one elaborated from the time of Gratianus[127] (sec. XII) up to this day.

[120] Both the Lateran Pact and the 1984 Agreement provided for the impediments stipulated in the Code of the Catholic Church, which, in many respects, are different from those provided by the canonical legislation of the first millennium Ecumenical Orthodox Church (See C. Mititelu, "Rudenia în «Pravila cea Mare» (Târgovişte, 1652). Studiu juridico-canonic", in: *Studii juridice universitare*, VI (2013) 3-4, pp. 122-140).

[121] *Agreement Between the Italian Republic and the Holy See* ...

[122] *Agreement Between the Italian Republic and the Holy See* ...

[123] *Justiniani Institutiones (Justinian's institutions*), lb. II, I, 7…, p. 63.

[124] In the West, the father of this canon law is the proto-Romanian Dionysius Exiguus († 545) (See N. V. Dură, "Un daco-roman, Dionisie Exiguul, părintele dreptului bisericesc apusean", in: *Studii Teologice*, XLIII (1991) 5-6, pp. 84-90).

[125] N. V. Dură, *Le Régime de la synodalité selon la législation canonique, conciliaire, oecuménique, du I^er millénaire*, Ametist 92, Bucureşti, 1999, pp. 287-382.

[126] N. V. Dură, "Denis Exiguus (Le Petit) (465-545). Précisions et correctifs concernant sa vie et son oeuvre", in: *Española de Derecho Canonico Magazine*, L (1993), pp. 279-290; N. V. Dură, "Dionisie Exiguul şi Papii Romei", in: *Biserica Ortodoxă Română*, CXXI (2003) 7-12, pp. 459-468.

[127] C. Mititelu, "Reglementări ale dreptului roman, privind instituţia căsătoriei, exprimate şi comentate în "Decretum Gratiani"", in: *Jurnalul juridic naţional: teorie*

The new canonical code of the Roman Catholic Church[128] in force since 1983 (according to can. 1055-1165)[129], remains an obvious testimony in this regard, and also Law 489/2006[130], i.e., the Romanian Law of Cults, in which the representatives of the Roman Catholic Church, – who also proved to be good connoisseurs of civil and canon law – during the sessions for drafting this law managed to insert in its text the phrase according to which Religious Cults are organized and operate in accordance with the "Canonical Codes". Indeed, Law 489/2006 stipulates that, in Romania, Religious Cults "are organized and are functioning also on the basis of the constitutional provisions of this law, autonomously, according to their own statutes or canonical codes" (Art. 8, para. 1), and "they operate in compliance with the legal provisions and in accordance with their own statutes or canonical codes" (Art. 8, para. 3)[131].

By inserting the phrase "canonical codes" in the text of the Law of Cults (no. 489/2006, republished), the Roman Catholic and Greek Catholic Churches – the only ones which have canonical codes – have managed to give their canonical codes an authority with legal value in the Romanian area as well, which the jurists of these Churches knew how to use in the courts as well. It is unfortunate that, in the text of this Law of Cults (489/2006, republished) in Romania, no mention was made of the two thousand years old canonical legislation of the Orthodox Church[132]. This suggests that the Romanian Orthodox Church is organized and operates only in accordance with the provisions of its own "Statute" (Art. 8, para. 1 and 3), i.e., similarly to the Protestant and neo-Protestant Cults, which do not have a canonical legislation – hence the phrase "statutory organization and functioning" which we find repeated in their theology and ecclesiology

şi practică, 36 (2019) 2, pp. 32-35.

[128] N. V. Dură, "Noul Cod canonic al Bisericii Catolice. Reflecţii ale canoniştilor şi ecleziologilor catolici", in: *Ortodoxia*, XXXV (1983) 4, pp. 621-625.

[129] *Codul de drept canonic ...,* pp. 635-687.

[130] See N. V. Dură, "The Law no. 489/2006 on Religious Freedom and General Regime of Religious Cults in Romania", in: *Dionysiana*, II (2008) 1, pp. 37-54; N. V. Dură, "Legea nr. 489/2006 privind libertatea religioasă şi regimul general al Cultelor religioase din România", in: N.R. Stan (ed.), *Biserica Ortodoxă şi Drepturile omului: Paradigme, fundamente, implicaţii*, Universul Juridic, Bucureşti, 2010, pp. 290-311.

[131] *Law no. 489 of December 28, 2006 (republished),* published in the Official Gazette no. 201 of March 21, 2014, https://legislatie.just.ro/Public/DetaliiDocument/78355, accessed on 18.02. 2022.

[132] See N. V. Dură, *Le Régime de la synodalité ...*, pp. 287-382.

– and not that of "canonical organization and functioning", which is typical of three religious cults, namely Orthodox, Catholic and Greek Catholic.

Instead of Conclusions

The provisions of the Concordat between the Holy See and the Italian State, signed in Rome in 1929, are still in force, as evidenced by the fact that, in terms of marriages, even "the Courts of Appeal (of Italy) applied and continue to apply the concordat rules, and not those stipulated in the Code of Civil Procedure"[133].

In the Italian specialized literature it was mentioned that the Lateran Concordat recognized "... a plurality of forms of officiation of a marriage"[134], and, more precisely, a form of civil marriage, religious marriage and concordat marriage, which, according to some Italian jurists, have been placed under "the protection of the religious freedom of faithful citizens, which is much broader and more effective than the one guaranteeing civil marriage ..."[135].

However, this "guardianship" of religious freedom must be enjoyed not only by the believers of the Catholic faith, but also by the believers of other religious cults "recognized" by the Italian state, including those concluded by the "representatives of admitted cults", which, through the "concordat marriage", are already favoured by Italian law. Of course, if this reality were to be taken into account, we could really be talking about respecting the right of every human being to religious freedom[136],

[133] P. Consorti, "La nuova disciplina del matrimonio degli stranieri alla luce del pacchetto sicurezza. I suoi riflessi sul matrimonio concordatario", in: *Stato, Chiese e pluralismo confessionale*, 2011, https://www.statoechiese.it/images/uploads/articoli_pdf/consorti_la_nuova.pdf?pdf=la-nuova-disciplina-del-matrimonio-degli-stranieri-alla-luce-del-pacchetto-, accessed on 25.02. 2022.

[134] N. Marchei, "Matrimoni «religiosi» ed effetti civili"

[135] N. Marchei, "Matrimoni «religiosi» ed effetti civili"

[136] N. V. Dură, "The Right to the Guarantee and Ensurance of Religious Freedom from «The Statute for Religious Freedom» of 1786 to the «Declarations» Issued during the UN Session of 2019", in: *Bulletin of the Georgian National Academy of Sciences*, 15 (2021) 1, pp. 117-127; N. V. Dură, "Proselytism and the Right to Change Religion: The Romanian Debate", in: S. Ferrari, R. Cristofori (eds.), *Law and Religion in the 21st Century. Relations between States and Religious Communities*, Ashgate Publishing Limited, England, 2010, pp. 279-290.

regardless of his/her religion or religious cult, and implicitly about the assertion of "the principle of equality as the supreme principle in the constitutional norm"[137].

From the examination of the texts of the Italian Civil Code, which entered into force in 1865, with its subsequent amendments, of the Concordat between the "Italian State" and the "Holy See", – concluded in 1929 and updated in 1984 – and of the Constitution of the Italian Republic (in force since January 1, 1948), it was also noted that both the Italian State and the Roman Catholic Church provided the institution of marriage with not only a legal and canonical basis, but also a moral one, which springs from the Natural Moral Law, an ontological component of "Jus naturale", whose norms cannot be eliminated or annulled by those stipulated by "Jus civilis", i.e., by Civil Law.

That is why we consider that the informed research and an adequate familiarization, both with the text of the Civil Code and that of the Constitution of the Italian Republic, as well as with the text of the respective Concordat and of the Canonical Code of the Catholic Church, constitute a "sine-qua-non" obligation not only for the Italian jurists, but also for any jurist (Christian or non-Christian), because the institution of "concordat marriage" can only be fully perceived and expressed in terms of both branches of the law, namely "jus civile" and "jus canonicum".

By examining and evaluating the respective texts and in the light of the legislation and doctrine of the Roman law on the legal regime of the three types of marriages, and relating them to both "jus naturale" and "jus canonicum", we can contribute to a better understanding of the legal regime of marriage in the country in which "jus matrimonium" (marriage law) originates, i.e., Italy with its "Old" citadel, Rome (according to can. 3 Sin. II ec., 28 Sin. IV ec.), which was once "caput mundi" (head of the World).

The reference "ad fontes", i.e., to the main documentary sources, namely those offered by the Roman law (jus romanum), both the "Old" (antiquum) and the "New" (novum), and through examining and evaluating their text in the light of the doctrine of Roman law and Canon law, we were able to also present the legal regime of the institution of marriage, without

[137] F. Modugno, "Il principio di uguaglianza come principio «supremo» dell'ordinamento costituzionale", in: A. Celotto (a cura di), *Il lodo Alfano. Prerogativa o privilegio*?, Neldiritto Editore, Molfetta – Roma, 2009, p. 67.

which we cannot perceive, define and assess the legal regime of concordat marriage.

The hermeneutic analysis was added to this approach – even though a brief one – of some legal texts (Constitutions, Civil Codes and Concordats), which allowed us to draw up a pioneering work in the Romanian specialized (legal and canonical) literature, through which the reader of these pages will actually get acquainted with the legal regime of the three types of marriages, namely civil, religious and "concordat". And, as could be noticed, the concordat marriage has been the product of a common law, of the state and of the church, i.e., the Lateran Pact of 1929, hence its mixed character.