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GRANTING PERMISSION AND DISPENSATION TO CONCLUDE MARRIAGE TO PERSONS AFFECTED BY IMPEDIMENT OF AGE IN POLISH LAW AND CANON LAW

Introduction

The impediment of age is among those obstacles to contract marriage that are extensively regulated both in Polish law¹ and in canon law of the Roman Catholic Church.² Still, it should be emphasised that the two legal orders differ in terms of regulation of the ground for the impediment of age and of the procedure of granting permission to marry despite the aforesaid obstacle existing between the contracting parties. However, despite the divergence, the approach to the impediment of age in Polish law and in the ecclesiastical legislation aims at the same goal, that is, to make the contracting parties aware that the occurrence of the obstacle may have an adverse effect on the legal dimension of their conjugal relationship. Therefore, it seems justified to believe that the regulation of the problem of age impediment in the two legal systems confirms the establishment of a conventional age of transition to maturity of the contracting parties, both physical and mental.

Impediments to marriage do not comprise a general norm in these legal systems but merely an exception to the general rule according to which every person has the right to enter marriage and procreate.

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¹ Act of 25 February 1964, the Family and Guardianship Code, Journal of Laws of 2017, item 682 as amended [henceforth cited as: FGC].

² *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [henceforth cited as: CIC/83].

1. Impediment of age in the Polish and canon law legislation

Age impediment is ranked, both by the Polish and ecclesiastical legislator, among the obstacles to contract marriage. The two legal systems, however, set a different age limit for the contracting parties to enter valid marriage. It is important to note that both the provisions of Polish law and of the law of the Roman Catholic Church provide for institutions enabling marriage by people of a lower age, however, such a possibility depends on the fulfilment of additional requirements. At the outset, age impediment needs to be defined in order to go on to discuss the procedure of matrimonial consent by persons affected by that impediment.

1.1. Impediment of age in Polish law

Under the amendment to the Act of 25 February 1964, the Family and Guardianship Code,³ the age limit of a man and a woman willing to enter marriage was made even because the previous standards regulating this matter had been found contrary to the constitutional principle of gender equality [Andrzejewski 2014, 47; Czajkowska-Matosiuk 2009, 25] and with Art. 16 of the Universal Declaration of Human Rights and the content of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, done at New York on 10 December 1962.⁴ Currently, in accordance with Art. 10 § 1 FGC, no one under the age of 18 can enter marriage. The legislator, however, provided for an exception to this age limit and reserved that the court may allow a woman of 16 years of age to marry but only for compelling reasons and if the present circumstances of the case indicate that her marriage would benefit the interest of the newly-formed family [Sokołowski 2013, 65]. According to the doctrine, compelling reasons include, for example, pregnancy, or the probability of impending death of one or both contracting parties [Andrzejewski 2014, 47; Bieliński and Pannert 2011, 25; Czajkowska-Matosiuk 2009, 25-26].

³ Act of 24 July 1998 amending the acts – Family and Guardianship Code, Code of Civil Procedure, Law on Civil Status, Act on the Relationship of the State to the Roman Catholic Church in the Republic of Poland and some other acts, Journal of Laws No. 117, item 757.

⁴ Journal of Laws of 1965, No. 9, item 53.

The Polish legislator does not provide for the upper age limit to enter marriage. Thus, the contracting parties are free to choose at what stage of life they wish to contract marriage [Gromek 2016, 55].

It should also be emphasised that for a woman of 16 years of age to marry also leads to some additional consequences under civil law. According to Art. 10 of the Civil Code,⁵ a woman becomes adult on marriage. Thus, pursuant to Art. 11 CC, she acquires full capacity for acts in law. The age of a contracting party should be calculated based on the guidelines contained in Art. 112 CC [ibid., 56; Sugier 1999, 32].

1.2. Impediment of age in canon law

Impediments to marriage play a central role in the matrimonial law of the Roman Catholic Church. The first list of such impediments was drawn up at the Synod of Rome in 721 [Zubert 1970, 71-126] and was later refined in papal decretals [Gajda 2013, 83]. The issue of obstacles to marry was also included in the 1917 Code of Canon Law.⁶

In CIC/83, the ecclesiastical legislator does not define a marriage impediment but only states that it renders a person incapable of validly contracting marriage, thus indicating the effect of its occurrence (can. 1073) [Biskupski 1956, 103; Gręźlikowski 2002, 108]. The establishment of marriage impediments, as a law rendering spouses unable to marry, aims to protect their common good and their future conjugal covenant and family. In CIC/83, the legislator lists impediments to marriage as follows: age, impotence, prior bond, disparity of cult, sacred orders, public perpetual vow of chastity, abduction, crime, consanguinity, affinity, public propriety, and adoption (legal relation) (can. 1083-1094) [Gręźlikowski 2002, 110].

As evidenced in the list above, the impediment of age is among obstacles to marriage. It was regulated in can. 1083 which says that a man cannot validly enter marriage before the completion of his sixteenth year of age, nor a woman before the completion of her fourteenth year [Pawluk 2016, 132; Suchocki 1997, 51; Gręźlikowski 2002, 111; Sugier 1999, 87].

⁵ Act of 23 April 1964, the Civil Code, Journal of Laws of 2019, item 1145 as amended [henceforth cited as: CC].

⁶ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 1-593.

It should be noted that the impediment of age is a public impediment (can. 1074)⁷ originating in ecclesiastical law: it is absolute, temporal, prior, and one that can be dispensed.

To verify if there an obstacle occurs in a specific case, it is necessary to determine the man and woman's age. It is done based on their vital records and other public documents, as well as parents' testimony and parish registers. Also, an ID card, passport or other document containing the contracting parties' personal data can be relied on [Pawluk 2016, 137; Sugier 1999, 87]. As follows, the parish priest preparing a prenuptial report has a number of means at his disposal enabling him to exclude this impediment [Żurowski 1987, 84]. To determine the age of the contracting parties correctly, it is necessary to make calculations in accordance with the guidelines contained in can. 203 [Pawluk 2016, 136; Góralski 2016, 77].

The ecclesiastical legislator, attentive to the interest of newly-formed families, provide for dispensation from the discussed impediment, on the one hand, and, on the other, pursuant to can. 1083 § 2, it empowers the local episcopal conference to raise the age limit to marry to make the soon-to-be married couple aware of how important marriage and family are. Still, as follows from the aforesaid canon, the episcopal conference may raise the age limit but only to an age enabling "the lawful celebration of marriage," which means that their decision does not affect the validity of concluded marriage [Pawluk 2016, 136; Gręzlikowski 2002, 111; Sugier 1999, 86].

By using their authority, the Polish Episcopal Conference, in their Instruction on Preparation for Marriage in the Roman Catholic Church of 5 September 1986,⁸ determined that for a lawful marriage in the Republic of Poland, it is necessary to achieve the age limit set out in the applicable state legislation (no. 50). The aforesaid document was amended by the Polish

⁷ When analysing the cited list of impediments to marriage, it should be highlighted that in order to qualify a specific circumstance as impediment, it is necessary to study its nature. However, there may be a situation (*causa*) when a specific *de iure* impediment to marriage should be classified as public, as it can be proved in an external forum; however, in this particular case, it will be justified to consider it occult.

⁸ Polish Episcopal Conference, *Instrukcja o przygotowaniu do zawarcia małżeństwa w Kościele katolickim* (5.09.1986), "Akta Konferencji Episkopatu Polski" 1 (1998), no. 1, p. 85-137

Episcopal Conference through the 1998 Instruction on Concordat Marriage.⁹ The above amendment was forced by the revised FGC, including its modified provisions on the impediment of age. In accordance with the Instruction on Concordat Marriage, in order for contracting parties to receive the sacrament of marriage in the Roman Catholic Church in the Republic of Poland in a lawful manner, it is necessary for the two to reach the age of 18 (no. 8). Yet, the woman at age of 16 may, for important reasons, apply for a dispensation from the local bishop ordinary (no. 10). Due to the fact that the age impediment is ranked as a temporal obstacle, it ceases upon the contracting parties' coming of age required by the ecclesiastical legislator [Szatafrowski 1985, 64; Góralski 2016, 81].

2. Possibility of contracting marriage by persons affected by the impediment of age

Both the Polish legislation and canon law provide for a procedure of permitting marriage to persons affected by the impediment of age. In accordance with Polish law, the permission can be granted by a competent court pursuant to the FGC and the Code of Civil Procedure.¹⁰ However, in accordance with canon law, in order for the contracting parties affected by age impediment to enter marriage validly, they are obliged to seek dispensation in accordance with the provisions of CIC/83.

2.1. Licence to marry granted to persons affected by the impediment of age

Marriage can be entered into by a woman who is at least 16 years old but only if she obtains a relevant licence. Such a licence is granted by a guardianship court for important reasons and taking into account the interest of the whole, newly established family, their mutual relations, and durability. The above conditions must be met all together for the licence to be granted. Having received the application for granting a licence pursuant

⁹ *Idem*, *Instrukcja dla duszpasterzy dotycząca małżeństwa konkordatowego* (22.10.1998), "Biuletyn Katolickiej Agencji Prasowej" of 13 November 1998, no. 46, p. 15-17

¹⁰ Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2018, item 1360 as amended [henceforth cited as: CCP].

to Art. 10 § 1 FGC, the guardianship court first examines whether the applicant is at least 16 years old. If this condition has been met, the application is further processed. Otherwise, the court is released from the obligation to examine the two other conditions [Domański 2013, 152].

Subsequently, the court takes action to determine whether in the given case there are compelling reasons justifying the granting of the licence pursuant to Art. 10 § 1 FGC. If no such reasons are identified, the court dismisses the application and does not proceed to determine the existence of the third condition (interest of the family) [ibid.].

It should be emphasised that the guardianship court is not obliged to grant the said licence, so it may but does not have to be issued (Art. 10 § 1) [Andrzejewski 2014, 47]. Nevertheless, the issuing of a decision permitting marriage to a woman who is 16 years old is not a supplementary one, nor does it replace the declaration of will by the contracting parties to conclude marriage [Zieliński 1975, 158; Sher 1966, 48]. It is worth noting that dismissal by the guardianship court of the application for permission to marry is of a dilatory nature, which means that it only leads to temporary postponement of the man and woman's establishment of family [Domański 2013, 121; Sugier 1999, 50].

In there are several impediments to marriage existing between the couple cumulatively, the guardianship court is obliged to issue one licence which will take into account the overall situation of future spouses [Zieliński 1975, 162-63]. The Polish legal system does not allow for the guardianship court to recognise the application only in part, i.e. to issue a licence to lift only one obstacle to marriage and dismiss the remainder of the application [Madej 1978, 79].

When issuing its licence, and thus deciding whether to permit marriage, the court does not only examine the conditions for granting the licence, as sought by the applicant, but also explores the possibility of occurrence of other circumstances excluding marriage. This court's action is aimed to eliminate situations in which a licence would be issued, e.g. to a minor woman intending to marry a bigamist or a totally incapacitated person [ibid., 77; Haak 1999, 112]. Examination of these circumstances by the guardianship court is ensured by the provisions contained in Art. 561 § 3

CCP: during the proceedings, it is required to indicate the personal data of the person whom the applicant intends to marry [Domański 2013, 122].

In accordance with Art. 561 § 1 CCP, the application for granting the said licence may be submitted only by a female minor or by her statutory representative on her behalf. However, this right cannot be exercised by her minor partner. It has been accepted in the doctrine that the applicant minor does not need to be 16 at the time of submitting the application if she reaches that age at the time of court's decision. In such a case, the guardianship court should not dismiss the application on grounds of the minor's actual age and should continue the proceedings. However, it is a challenge to set a fixed time limit for submitting such an application before the date of turning 16. It seems reasonable that the application should be submitted no earlier than 3-4 weeks before that date. Otherwise, if the application is submitted earlier, the guardianship court would be compelled to prolong the proceedings and delay the issuing of the decision while awaiting the minor to reach the prescribed age [ibid., 152-53].

As follows from Art. 10 FGC and Art. 561 CCP, the licence in question is issued by a guardianship or family court (Art. 568 CCP). It is the guardianship court, designated in accordance with Art. 569 § 1 CCP, that has territorial jurisdiction. The view prevailing in the doctrine is that the Polish legal system does not envisage circumstances allowing the effective granting of the discussed licence by a court having no such jurisdiction [Madej 1978, 80].

When submitting the application, a female minor also gains the capacity to act in proceedings (Art. 573 § 1 CCP) [Domański 2013, 175] and is also entitled to appoint a statutory representative. She is the most important figure in the proceedings for issuing the licence pursuant to Art. 10 FGC and Art. 561 CCP. Also, her partner is a party to the proceedings. His hearing by the court is a mandatory stage of the proceedings, as provided in Art. 561 § 3 CCP. Moreover, if the court deems it necessary, the spouses' relatives may be questioned.

The relatives are persons closely related to the applicant as well as her future spouse who are aware of their financial, family, and personal situation [Haak 1999, 342]. Most often, legal guardians, siblings, and grandparents are considered close relatives, yet the group is not legally

limited and, thus, is not based solely on legal ties. Not every person close to the applicant and her future spouse who is heard by the guardianship court as a witness is eligible to apply for the status of participant in the proceedings. According to the provision of Art. 510 § 1 CCP, only the person whose rights will be affected by the result of the proceedings may be allowed as participant.¹¹ Thus, such a person must demonstrate their legal interest as a party to the proceedings. The guardianship court investigates objectively whether there are any premises in the given circumstances to allow a relative to enter the proceedings [Rowiński 1971, 141].

In the course of proceedings for the issuing of the licence in question, the guardianship court is obliged to conduct evidence-taking aimed at examining whether there are grounds to grant the licence to marry, referred to in Art. 10 FGC. The court investigates the existence of the ground related to the minor reaching the age of 16 by reviewing her birth certificate, which, according to the provision of Art. 4 of the Law on Civil Status,¹² is the exclusive evidence of the facts contained therein as a vital record. Pursuant to the said provision, the licence may be issued only if there are important reasons, i.e. facts which, in the public view, can be regarded as justifying the licensing of marriage by a woman who is 16 but has not reached the age of 18 [Domański 2013, 154]. Such important reasons include the minor's pregnancy, long-term relationship of the couple, birth of a child, danger of death of one of the persons [ibid., 155; Gromek 2016, 56; Ruszewski 2011, 22; Strzebińczyk 2016, 92; Suchocki 1997, 120; Sugier 1999, 50; Stojanowska 2012, 100]. The doctrine underlines that a need to work on a farm, in a family business or minor's desire to leave the family home or the applicant's coming of age cannot be considered important reasons [Safjan 2007, 174; Sugier 1999, 51].

¹¹ There is also another view in the doctrine which says that according to Art. 561 CCP is a *lex specialis* from Art. 510 CCP, so each close relative to the future spouses should be granted the status of participant in the proceedings for issuing a marriage licence. However, this would lead to a significant broadening of the group of individuals entitled to appeal against the decision of the court of first instance, which would lead to the challenging of the legitimate court's decision because of family disputes or personal animosities, thus disrupting the course of proceedings [Wangerek, Policzkiwicz, and Siedlecki 1973, 144; Piasecki 2011, 84].

¹² Act of 28 November 2014, the Law on Civil Status, Journal of Laws of 2018, item 2224 as amended.

It is worth noting that it is necessary to prove the existence of the above circumstances by submitting a valid medical certificate confirming pregnancy, or possibly the child's birth certificate. On the other hand, a long-term relationship of the couple can be proved based on testimonies of any interested persons or close relatives.

It is also necessary for the sake of the proceedings to prove the existence of the third condition, namely the interest of the family to be formed through marriage of the proceedings participants. The Supreme Court stressed that the mere existence of important reasons does not constitute grounds for the guardianship court to recognise that the third condition has been fulfilled automatically.¹³

Evidence that will allow the guardianship court to investigate the existence of the third condition may be the result of a community interview by a probation officer, as provided in Art. 561 § 1 CCP. The court may take advantage of this evidence but is not obliged to do so. If the future spouses live separately, it seems reasonable to conduct two separate community interviews in order to collect all the necessary facts.

Before issuing the final decision, the guardianship court is obliged to hear future spouses, as provided in Art. 561 § 3 CCP. The court issues a decision pursuant to Art. 561 § 1 and 3 CCP. In its decision, the court provides not only the personal data of the applicant but also of the person with whom she intends to contract marriage [Ignatowicz and Nazar 2016, 211; Sugier 1999, 52]. The decision to issue a licence to marry becomes effective upon becoming final and non-reversible [Gromek 2016, 55; Sugier 1999, 51].

2.2. Dispensation under ecclesiastical law

The ecclesiastical legislator in can. 85 CIC/83 points that dispensation should be understood as the relaxation of a merely ecclesiastical law in a particular case [Gręźlikowski 2002, 109]. On the other hand, a more elaborate definition of matrimonial dispensation has been developed in the doctrine which says that dispensation is a legal act issued by the executive

¹³ Decision of the Supreme Court of 6 October 1958, III CO 19/58, OSNC 1 (1960), item 21 [Szer 1966, 34].

power of the Roman Catholic Church, based on which contracting parties affected by an impediment to marriage can validly and lawfully receive the sacrament of marriage in the forum of the Church. However, dispensation is granted only in a particular case and if it is just and reasonable [Pawluk 2016, 121]. A dispensation given in doubt as to the sufficiency of its reason must be considered valid and lawful (can. 90 § 2). A model list of reasons that may offer grounds for dispensation was prepared by the Congregation for the Propagation of the Faith in its Instruction of 9 May 1877 [ibid., 122]. As follows from can. 90, and as confirmed in the doctrine, a dispensation given without a just and reasonable cause is invalid. Where a dispensation was granted without any reason and by an authority other than the Holy See, it should be regarded as invalid [ibid.].

In accordance with canon law, a dispensation may be given only from impediments to marriage of ecclesiastical origin, i.e. such that have been established by the ecclesiastical legislator [Pawluk 2016, 34]. In addition, it can be granted both internally and externally [ibid., 121]. Dispensation granted externally, unlike the one given internally, produces effects not only in the contracting parties' conscience but also in the community. It should also be emphasised that the external dispensation may be granted only from impediments of public nature, including from the impediment of age.

In accordance with the provisions of can. 87, the diocesan bishop can offer dispensation from universal laws and particular laws made by the supreme ecclesiastical authority, except for cases of dispensation from procedural laws or penal laws which are reserved to the Apostolic See [Góralski 2006, 84].

A dispensation is given upon a written request of the contracting parties submitted to a competent parish priest and containing the parties' full names, age, denomination, place of residence, the existing impediment to marriage as well as describing other circumstances that give a better picture of the actual state of affairs, plus the reasons justifying the dispensation. Where the impediment is classified as occult, the application for dispensation should contain fictitious names of the applicants and no residence address, provided that it is considered just and beneficial for the future spouses [Pawluk 2016, 123]. When it comes to the dispensation from

obstacles to marriage, three types of situations should be distinguished which entail different procedures: ordinary case, urgent case, and danger of death [Góralski 2006, 85].

2.2.1. Ordinary case

An ordinary case is a situation that is not marked by any extraordinary circumstance which would justify the launch of the procedure intended for urgent cases or danger of death. According to can. 1078 § 1, the local ordinary can dispense his own subjects wherever they are residing, and all who are actually present in his territory. The bishop having authority over some location may dispense from all impediments under ecclesiastical law, except for those reserved to the Holy See [Pawluk 2016, 125]. Local ordinaries are all individuals listed in can. 134 § 2 CIC/83 [Gręźlikowski 2002, 110]. It should be noted at this point that no dispensation can be given from the impediment of consanguinity in the direct line or in the second degree of the collateral line (can. 1078 § 3) [Góralski 2006, 85; Gręźlikowski 2002, 110].

When analysing the question of dispensation from the impediment of age, assuming that it concerns ordinary cases, the dispensation may be given by the ordinary to all persons who request it and are his subject, or, possibly, other persons who are currently present in his territory.

2.2.2. Urgent case

According to can. 1080 § 1, an urgent case is when an impediment is discovered after everything has already been prepared for a wedding and the marriage cannot be postponed without probable danger of grave harm to the contracting parties [Góralski 2006, 87]. Should this be the case, the power of dispensation is held, with the exclusion of the impediment of sacred orders and public perpetual vow of chastity made at a religious institute governed by papal law, by the ordinary of the territory, parish priest, priest or deacon properly appointed to bless marriage, priest or deacon assisting in the conclusion of marriage in the extraordinary form (can. 1080 § 1) [Pawluk 2016, 121].

The confessor also has this authority, but only internally, regardless of whether he gives dispensation during or outside confession (can. 1079 § 3)

[Pawluk 2016, 123]. It should be stressed that all the listed entities, except the bishop ordinary, have the authority to dispense only if it is impossible to refer to the ordinary and assuming that the case is occult, i.e. the impediment is known to a very narrow group of people [Góralski 2006, 87; Pawluk 2016, 122].

In accordance with can. 87 § 2, in an urgent case, if recourse to the Holy See is difficult, and at the same time there is danger of grave harm in delay, any ordinary can dispense from these laws, even if the dispensation is reserved to the Holy See, provided the dispensation is one which the Holy See customarily grants in the same circumstances, except for the dispensation from celibacy [Góralski 2006, 88].

To sum up, in the event of the impediment of age in an urgent case, the local ordinary bishop would be authorised to dispense. Furthermore, if the case is occult and it is not possible to contact the ordinary, the entities referred to in can. 1079 § 2 and 3 CIC/83 are authorised to dispense from the aforesaid obstacle to marry.

2.2.3. Danger of death

Dispensation from restrictions on marriage in the event of danger of death was regulated by the ecclesiastical legislator in can. 1079 CIC/83. In the event of danger of death of one or two contracting parties, the ordinary is authorised to dispense both from impediments to marriage and the form to be observed in the celebration of marriage. In such a situation, the local ordinary may dispense from impediments under ecclesiastical law, both public or occult, excluding the impediment related to sacred orders, which is reserved to the Holy See.

According to can. 1079 § 2, when the local ordinary cannot be approached, the same authority of dispensation is possessed by the parish priest, by a properly delegated sacred minister, and by the priest or deacon who assists at the marriage in accordance with can. 1116 § 2 [Pawluk 2016, 124]. The inability to approach the local ordinary should be understood as a situation when such contact can only be established via telephone or telegram [Góralski 2006, 87; Pawluk 2016, 121]. In addition, in the event of danger of death, the confessor has the power to dispense from occult impediments for the internal forum, whether within the act of sacramental

confession or outside (can. 1079 § 3) [Pawluk 2016, 123]. Individuals referred to in can. 1079 are additionally obliged to follow the provisions of can. 1081 and 1082 [Góralski 2006, 88-89], as in urgent cases [Pawluk 2016, 128; Góralski 2006, 88-89].

In the event of danger of death of one or two contracting parties, the ordinary may dispense from the impediment of age. If it is not possible to approach him, the dispensation may be given by entities referred to in can. 1079 § 2 as well as by the confessor for the internal forum, provided that the age impediment in that specific state of affairs can be considered occult [Pawluk 2016, 122].

Conclusion

In conclusion, the impediment of age is a circumstance that renders a person incapable to marry, both in the light of canon law and the Polish legislation. Regulations on age impediment to marriage are included in the Family and Guardianship Code. In the Roman Catholic Church, the same impediment is addressed mainly in the CIC/83 and in the Instruction on Preparation for Marriage in the Roman Catholic Church of 5 September 1986. The age-related restriction on marriage is approached differently in the two legal systems. The legislators foresee different age limits as well as a different procedure for granting consent to persons who are not eligible to marry on young age basis. In accordance with Polish law, no one under the age of 18 can enter marriage. In contrast, the ecclesiastical legislator requires the contracting parties to be at least 16 (male) and 14 (female). In the territory of the Republic of Poland, the Polish Episcopal Conference provided that for marriage to be lawful the contracting parties must reach the age required by Polish law, i.e. 18. The legal systems referred to above allow certain exceptions that enable persons who have not attained the legally required age to marry effectively and validly. Strictly speaking, according to Polish law, a woman who is at least 16 years old can obtain a licence to marry after fulfilling certain conditions specified in the law. Similarly, in the system of canon law, the ecclesiastical legislator offers dispensation to persons affected by the impediment of age. It should be emphasised, however, that dispensation sought by a woman who is at least 16 years old is only necessary for a lawful marriage in the territory of the

Republic of Poland because, according to canon law, she can validly marry at the age of 14.

Both the granting of the licence to marry and dispensation involve, in a sense, the interference of a third and authorised party in the conclusion of marriage by the contracting parties. Such entities are empowered to make free decision on the matter. Refusal to issue dispensation entails far-reaching consequences for the couple as they cannot marry until they reach the legal age provided for by Polish law or, alternatively, in the ecclesiastical legislation.

Admittedly, the impediment of age keeps evolving in both Polish and canon law. Therefore, that the minimum age required to conclude marriage may be lowered or increased in the future must not be ruled out, especially given the deferred process of mental development of contemporary society and cultural and political changes.

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Granting Permission and Dispensation to Conclude Marriage to Persons Affected by Impediment of Age in Polish Law and Canon Law

Summary

The impediment of age, both in Polish legislation and in canon law, is a circumstance that renders a person unqualified to contract marriage. The author examined the premises for the existence of the abovementioned impediment in the Polish and canonical legal orders. The procedure of granting a permit and a dispensation from an impediment of age also has been analyzed. An obtaining a permit in the Polish legal order, as well as dispensations in canon law, allows those affected by the impediment to enter into a marriage. Analyzing the issue of granting dispensation in ecclesiastical legislation, the author considered this procedure both in the ordinary case as well as whenever an impediment is discovered after everything has already been prepared for the wedding and in the case of danger of death.

Key words: impediment of age, marriage impediments, dispensation, marriage license

Udzielenie zezwolenia oraz dyspensy do zawarcia małżeństwa osobom dotkniętym przeszkodą wieku w prawie polskim i w prawie kanonicznym

Streszczenie

Przeszkoda wieku, zarówno w ustawodawstwie polskim, jak również w prawie kanonicznym, stanowi okoliczność, uniemożliwiającą nupturientom zawarcie związku małżeńskiego. W treści niniejszego artykułu autorka zbadała przesłanki zaistnienia przeszkody w polskim i kanonicznym porządku prawnym. Przeanalizowana została procedura udzielenia zezwolenia oraz dyspensy od przeszkody wieku. Uzyskanie zezwolenia w polskim porządku prawnym, jak i dyspensy w prawie kanonicznym, pozwala osobom, dotkniętym przedmiotową przeszkodą na zawarcie związku małżeńskiego. Analizując problematykę udzielenia dyspensy w prawodawstwie kościelnym, autorka rozważyła odpowiednią procedurę zarówno w przypadku zwyczajnym, jak również w tzw. przypadku nagłym i w niebezpieczeństwie śmierci

Słowa kluczowe: przeszkoda wieku, przeszkody małżeńskie, dyspensa

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