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Ius Matrimoniale Concordatarium

A comparative approach

Abstract. The comparative examination of the matrimonial parts of the treaties bond between the Holy See and the states (concordatarian law) shows that during the 20th century, the Catholic Church has contracted in this matter such a way that it was able to conclude stronger treaties with the local secular sovereigns. The *actuality* of the examination of the Catholic Church's international treaties becomes obvious during the examination only. In the treaties of the last decade, a significant change can be followed in the Parties' legal relationships, which is an important step in the course of the gradual formation from the first half of the 20th century. As a result of the *examination of the legal structure of treaties* of these ten years, the tendencies of the former decades can better be understood as well. *Recently* such a treaty-material is available for us, on which it is possible and *worth* carrying out an examination.

This essay contains the detailed examination of all matrimonial parts of the Catholic Church's international treaties with a consideration of all legally relevant bearings to be found in them.[1] In the Appendix, one can find the whole text to examine in English.[2] This essay, as it issues from its genre, is to be read with the Appendix together.

Keywords: concordatarian intention, treating force, canonical legal order, local secular legal order, canonical bond of matriomony, legal link, secular legal effects

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[1] It means only such parts of treaties are left out which are not effective to the legal main figures and as exceptions are not significant either.

[2] *Usage of the Appendix:*

1. Numbering of chapters in the Appendix (after a "A") follows that in the main text.

2. a) The original text of the treaty can be found in the Appendix if one of its original languages is English. In this case the texts stays without quotation marks.

b) If neither of the treaty's original language is English, and most of them are such, the Appendix shows the possibly literally translated text, containing all legally accurate and relevant terms (instead of a translation of literature). The translation uses the legally relevant terms of the same English equivalent to have the most reliable text as a basis of the examination. In this case the texts is put in quotation marks.

3. The sign of source, the translation of which can be read next to it, stays in the first place on the left side, the rest of them lists the legally equivalent norms.

4. The structure of signing the sources: *Country year/article* E.g.: Italy 29/34 = the 34th article of the agreement of Italy of 1929.

1. Introduction

1.1. Preliminary theoretical and methodological remarks

It is ascertainable about the legal nature of the material to be examined (Catholic Church's international treaties) that they are *sources of law of international law*. We have to set out from this by elaborating the methodology of examination. On the one hand, the consensus of the international practice and literature of international law claims that the agreements are part of the sources of law and even the formal consideration is the reason for it. On the other hand, most of the treaties *declare* themselves *as law* meaning the Parties consider them as law. Further on, from the point of view of the content *they establish rights and duties* between the Parties. The Catholic Church contracts exclusively legally good considerable agreements with nations and political communities.[3]

As for these treaties, they contain material of law to be examined by a methodology of law. *A comparative methodology* with a positivistic attitude is used here starting strictly out of the text of treaties. This still will not lead to an exaggerated cardboard and poor result, because the text of treaties are amazingly rich in phenomena, from which connections and tendencies can be disclosed.

Catholic church's legal order[4] (the canon law) is current around the world[5] while secular sovereigns' law is local. The collisional law relating to a certain part of the Catholic Church, which coincides with a certain secular sovereign's territory is the concordatarian law, which is obviously local country by country as well. However, it is possible to make a comparison among concordatarian legal regimes, and this comparative examination has an international public nature as well. The scope of the present essay is restricted to the matrimonial law parts of concordats exclusively.

[3] The term is taken over from the 3. canon of the Codex Iuris Canonici (abbr.: CIC 3.)

[4] Basic sources (fons cognoscendi): 1. current from 1983: *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus. Fontium, annotatione et indice analitico-alphabetico auctus*, Citta del Vaticano 1989. (abbr.: CIC), 2. it was current from 1917 to 1983: *Codex iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, fontium, annotatione et indice analitico-alphabetico ab E.mo Petro Card. Gasparri auctus,* Typ. Pol. Vat 1974. (abbr.: CIC'17).

[5] Canon law jurists call it as universal law as well. This universality is discernible from the context of the 3. canon of the current Codex too, which is dealing with international treaties: "Codicis canones initas ab Apostolica Sede *cum nationibus aliisque societatibus politicis* conventiones non abrogant neque iis derogant; eadem idrico perinde ac in praesens vigere pergent, contrariis huius Codicis praescriptis minime obstantibus." (CIC 3.)

It is worth going over the legal examination and explaining the agreements in their broader context. The results of comparative law examination can call the attention to the different ways of approach in different countries.[6] Besides the juridical methodology, the methods of social history and of diplomacy should be used. The premise of this stage is that the *text* put down in treaties is the projection of the actual certain age and moment, *from which as an indicator,* the intentions and their backgrounds can be deduced brought into existence by the treaty (the principle of the contextuality of the comparative law).[7] Putting findings together in a broader view, it will outline the Catholic Church's concordatarian politics in the field of the matrimonial law.

1.2. Competence of legal orders and their collision

If a matrimonial bond comes into being between two parties, its different legal effects (sacred and profane) are set up *in different fields of the human life*. The single legal orders are ruling that field of human life, which is in their competence by own right. The Church reserves exclusive jurisdiction in the field of sacred entities, and the secular state (on a basis of its own principles) does not lay claim to it. One can see that *the two legal orders* (both on a basis of their own principles), *independently of one another and all by oneselves,* subsist and succeed. A connection between them is just a possibility and the expressed intentions of the Parties bring it into being.

In the matrimonial law however there is a *collision*, but *just concerning the fact of matrimony*. In regard to the matrimony of the Catholics, who are obliged to the canonical form, the canon law is competent.[8] Since the establishment of secular matrimonial laws at the end of the 19th century, the secular legal orders declared themselves competent in it as well. The canon law however does not deal with its consequences[9] regarding to property, inheritance, (in case of family taxation) taxation,[10] etc., but the secular legal orders distinguish them.

[6] Wienczyslaw, W. J.: Comparative law: its methodology and development in the United States. *Comparative Law Review* (1991), 2, 7.

[7] Konijnenbelt, W.: *Discours de la methode en droit public comparé.* In: *Comparability and Evaluation in Honour of D. Kokkini-Iatridou,* Dordrecht, 1994. 125–126.

[8] Leo XIII., Litt. Enc. *Arcanum,* 1880. II. 10, in: *Acta Sanctae Sedis* 12 (1879–1880), 393 contains that the church in matrimonial cases has juridical power of its own right, and not as a result of the local state's concession.

[9] "Item non ipsa ignorat neque diffitetur sacramentum matrimonii, cum ad conservationem quoque et incrementum societatis humanae dirigatur, cognationem et necessitudinem habere cum rebus ipsis humanis, quae matrimonium quidem consequuntur, sed in genere

This has multilayer consequences:

1. Since the secular legal orders are changing in that direction, that the same legal effects are attached to the mere cohabitation to the matrimony, Christians are less and less interested in the celebration of matrimony according to the secular law. Therefore, in countries where the secular legal order does not oblige the secular celebration before the ecclesiastical one, the Christians less and less get married by secular celebration. As a consequence they can not expect without concordatartian law to be regarded by the secular forum as living in matrimony.[11]

2. Other secular legal orders oblige the parties to declare their matrimonial consensus in face of the secular registrar before the ecclesiastical matrimony. As several secular laws at the end of 19th century went in this direction, a theoretical problem arose in the canon law. The canon law thinks from a point of view of the natural law and according to the natural law the first declaration of matrimonial consensus is valid. This was the cause that led to the formation of the canonical principle according to which the secular celebration on ecclesiastical forum is not an invalid legal act but a *non-existing* legal act.[12] This was necessary for re-establishing the normal (initial) position (the two legal orders succeed independently and parallelly with each other) after duplicating the matrimonial legal regime from the secular Party's part.

The canonical legal order (like secular ones) defines its competence on a basis of the legal status of legal subjects (persons). Those persons' cases (of matrimony bond in canonical form), belong to the canonical matrimonial law's competence, where at least one of the parties is catholic. However, the concordatarian law never thinks on a basis of the persons' legal status, but always on the basis of the form of of a bond coming into existence (we should speak about the canonical status of the bond). A collision law starting out of the persons' legal status would be impracticably complicated.

The concordatarian matrimonial law (after the positive law came into being by concluding the agreement) deals with the *fact of the matrimony* and with taking on the obligation of the secular Party, it attributes legal effects into its own legal order. On the other hand the concordatarian law does not deal with

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civili versantur, de quibus rebus iure decernunt et cognoscunt qui rei publicae praesunt." Leo XIII., Litt. Enc. *Arcanum*, 1880. II. 10. in: *Acta Sanctae Sedis,* (1879–1880), 399.

[10] If, for instance, an intervening decision in an ecclesiastical suit is needed regarding such a matter, the ecclesiastical court will adopt (receptio iuris) the local secular law, current in its territory of competence (cf. CIC 22., 110., etc.).

[11] Perhaps it can prohibit a married woman using the name of the husband in personal papers.

[12] This means that its nonentity does not need verification.

the established legal effects in the canonical and secular legal orders, because after their rise they independently succeed in the single legal orders and do not have any interference. Therefore connection just comes into existence between two legal orders where the concordatarian law positively makes it.

Summing it up:

1. The *concordatarian intention* is directed towards the partial or the whole withdrawal of the pressure of the double contract from the part of the secular Party, thus the Christians do not have to declare their matrimonial consensus twice in favour of legal effects in the secular legal order as well.

2. Therefore, the concordatarian law always concentrates on one thing: to bring into existence the *legal link between*

a) – the canonically formed contraction (declaration of matrimonial consensus) or
   – the canonical bond (vinculum matrimoniale)[13]
b) *and* its secular consequences (secular legal effects).

1.3. Essential similarity of fundamental rules

The canonical main figure has shaped up from the verbal contract inherited from the Roman law since the Constantinian age.[14] There is a regulation in the authentic collection called *Liber Extra* (promulgated in 1234.) of Gregory the IX.,[15] but the definitive ruling has been accomplished only by the famous decree called *Tametsi* of the General Council of Trident in the 16th century.[16] Thereto, the concordatarian law is possible, because the main figure of contraction a matrimony (the celebration) in secular legal orders did not diverged from that of the main figure of the canon law during the evolution of the single national matrimonial laws. Without this, it would surely be impossible or at least rather difficult for the Parties to condescend.

During the examination, the ecclesiastical Party is unchanging. It is worth summarizing the basic principles of this. There are two fundamental concepts:

[13] The concept of the *matrimonial bond* (vinculum matrimoniale) has an important role in the canonical legal figure of the marriage. This promotes that the valid marriage would be considered in the legal practice as an objective legal fact, which is the consequence of the valid contraction.

[14] Gaudemet, J.: *Droit romain et principes canoniques en matière de mariage an Bas-Empire*, in *Studi Albertario II.*, Milano, 1950, 173–196.

[15] X. 4. 2.

[16] Concilium Eocumenicum Tridentinum, Canones super reformatione circa matrimonium, *Tametsi,* Sessio XXIV, Caput I, 1563. XI. 11, in: Alberigo, G.–Jouannau, P.–Leonardi, C.–Prodi, P.: *Conciliorum Oecumenicorum Decreta,* Freiburg, 1962, 731.

the *form of contracting matrimony* (forma celebrationis martrimonii) and the *matrimonial consent* (consensus matrimonialis).

1. a) The *canonical form* consists of three elements:
   – two parties
   – to declare his/her matrimonial consensus in the presence of the church's authorised representative,
   – two witnesses.[17]
   b) Here should stay the Hungarian Family Law[18] as an example which rules the formal properties of binding as:
   – *parties to be married* are jointly present,
   – *the registrar,* to declare personally that they intermarry with each other,
   – in the presence of *two witnesses*,
   + the registrar publicly registers it.[19]
2. The *matrimonial consent* (inherited from the Roman law) is considered by the canon law and secular legal orders as well as a verbal contraction, which is its establishing cause.
   a) Its *canonical definition* consist of three elements:
   – *legally able parties*,
   – *legally declared*,
   – conscious act.[20]
   b) In the Hungarian Family Law the definition of matrimonial consent does not exist.

1.4. Structure of matrimonial parts of the agreements

All matrimonial chapters consist of two main parts:

1. They *attribute* legal effects to the fact of the declaration of matrimonial consensus or to the canonical bond.[21] With this, the *connection* comes into existence *between the two legal orders* according to the concordatarian intention.
2. Further norms are ruling the
   a) conditions (if the secular law considers the elements of the fundamental rules otherwise as the canon law),
   b) circumstances,
   c) cessation of the legal effects.

[17] CIC 1108.

[18] 1952. year IV. law 2 §.

[19] The canon law doesn't rank the registration in the register of births among the formal properties but it is regulated separately (CIC 1121. 1. §, 3. §, 1122. 1. §, 1123.).

[20] CIC 1057.

[21] See the explanation in the Examination.

2. Examination

2.1. Attribution of the legal effect

2.1.1. The establishing norm of the legal effect

There are 17 agreements all dealing with matrimonial law, as well as protocols, which are independent, or the appendixes of the mentioned agreements. All agreements start with a norm *to establish the legal effects*.

TEXT ANALYSIS

1. The *attributive* verb:

a) Since the Italian Concordat from 1929 which was the first one dealing with the matter of marriage up to that bond with Malta in 1993, the verb *"recognises"* (riconosce) was used by turns. This idiom suggests as if the canonical and the national legal order were not of equal rank, and the secular Party would "grant" the validity to the canonical matrimonial bond. This passage is a typical one, where the legal principle of states formed during the wave of separation, and the claim of the state legal order to exclusiveness can be well manifested. From the state Parties thinking in this manner, the ecclesiastical Party could receive the civil effects of the bond as a concession.

b) The *"brings about", "produces", "will have", "has the same force",* terms legally mean the same. The bond established in the canonical legal order by a valid contraction, in the same time, produces the equivalent legal effects in the secular legal order as well.

The concept of the *matrimonial bond*[22] (vinculum matrimoniale) has an important role in the canonical legal figure of the marriage. This promotes that the valid marriage would be considered in the legal practice *as an objective legal fact*, which is the consequence of the valid contraction.

2. The consideration of the *canonical marriage*:

a) To this concept, there are six different idioms in the agreements. The idiom *"sacrament of marriage"* to be found in the Italian agreement of 1929 could seem of a bit of pietism in an international agreement, but looking at the even more frequently appearing theological matters, it is aftermath less surprising. The Austrian agreement of 1933 presses legal approach by the idiom *"contracted marriage"*, and it can also be found later in the Italian agreement of 1984.

[22] CIC 1134.

b) The idiom *"marriages celebrated in accordance with the norms of canon law"*[23] was used in the Spanish-Portugal cultural circle and in the southern European Malta's agreement as well. The secular Party's affection for the rite as an attitude of codification is possible, but I consider the cause of this formula is the cultural circle's social-psychological character and legal approach in which the person to person linkages are very important (in contrast with the Nordic institutionalism).

c) Legally, the *"catholic marriage"* and the *"canonical marriage"* forms are the most correct ones used by the Polish agreement of 1993, while in the same time the not really pleasant idiom of 'contract' is avoided in this topic.

CONCLUSIONS

ad 1. Looking at the dates, it is clear that the idiom "recognises" has been changed to "produces" after 1993. By this, the first definitive norm is transformed in its mechanism: *the legal effect in the secular legal order automatically establishes because of the concordatarian law itself*, although the further norms take ad validitatem conditions as well. By this, the canonical legal order in this respect is tacitly present as an equal legal order. This is part of that process, in which after the weakness of the concordatarian law at the turn of the century the negotiative force of the ecclesiastical Party is increasingly growing, and as it seems, it is able to assert its claims permanently. Shortly, it concludes an agreement only with a Party, which is ready to accept this mechanism.

ad 2. The change of the *consideration of the canonical marriage* is related to the preceeding tendency:

The idiom *"celebration"* expresses the event, (declaration of the matrimonial consensus), while all the other idioms enumerated in paragraphs a) and c) are expressing the matrimonial bond as a legal fact set up in the canonical legal order which was established as a consequence of that event. From the point of view of the legal practice, as a first approach, it seems to be the same that *a fact happened* in the order of the reality or *a fact of canon law* which has been established as a consequence of the previous, can be taken as a nearer cause producing the secular effect, since the canon law ensures the unequivocal correspondence between the declaration of the consensus and the bond. Further on, we can see that this is not such a simple thing.

The explanation based exclusively on the text:

It seems that the establishing from the event leads to ambiguity. This allows, that the declaration of the matrimonial consensus interprets the secular law on a basis of its matrimonial law, and it judges it valid or invalid. Moreover it also

[23] Matrimoni celebrati in conformita con le leggi canoniche.

means that only so much had been realized from the concordatarian intention that there are no two declarations of consensus, but only one, however the legal orders are interpreting that one according to its rules. Now, this does not mean that canonical bond becomes more effective in the secular sphere, but it merely indicates the elimination of the state celebration.

The intention of avoiding this ambiguity could lead to the later practice. These later agreements, using the automatically established form, are always establishing the secular effects from the canonical bond (except the Estonian agreement of 1998 only) while earlier, in those agreements where the "recognises" formula was used this had happened assortedly either from the event or from the canonical legal fact.

The change of the establishing norm resulting in 1993 means the better prevailing of the ecclesiastical Party's concordatarian intention, even though that the automatic establishing is coming from the matrimonial bond (vinculum matrimoniale). Such a way the canonical conditions of establishing the bond (vinculum) are automatically prevailing in the secular legal order as well. Hence, the agreement means, in the same time the whole canonical legal figure's prevailing in the secular legal order.

2.1.2. Conditions of the secular legal effects (conditions ad validitatem)

2.1.2.1. Reasons of the conditions

In my view, not the appearing of conditions is unusual, but the lack of them in the first two agreements (Italy 1929, Austria 1933). It is obvious, that the ecclesiastical and the secular legislators have other points in definition of conditions of validity of marriage (impedimentum). It would be difficult to examine it in details, since all national law thinks about it differently to some extent, according to their cultural particularity, to the momentary general agreement as well as the state of legal development in that country. The canon law however, being a sacral law, takes theologically determined points as well into consideration beyond the natural law, in other words the revealed law. The certain secular legal orders cannot construe these latter ones, and the natural law can differently be approached (e.g. in its theory of law it can be disputed that there are such norms, etc.), first of all on a basis of the social agreement taking shape on this.

It is logical in any case that the differences among the legal orders are appearing in the concordatarian law as a collision law. It would also be logical as well that this concordatarian law was taking shape along the differences of the matrimonial impediments used by legal orders. However, this did not happen in this way.

2.1.2.2. Transcription[24] and answering the secular law

SECTIONING

Ad validitatem conditions started with the Portuguese agreement of 1940. As regards to the transcription and the correspondence of the secular law, the turn of the 70's and 80's was a mile stone. Before this, the transcription was the ad validitatem condition, after this the conditions defined in the secular law will be mentioned. The Croatian agreement of 1996 brings again something new; it leaves out completely the transcription as an ad validitatem condition. These two points are dividing the changes in time of the codification's tendency *into three sections*. In the 80's and the first half of 90's, both conditions were used.

From this main tendency, the Estonian agreement of 1998 is an exception, in which the transcription appears again instead of the impediments according to the secular law. As it seems, in this agreement the Spanish-Portuguese model returns.

TEXT ANALYSIS

1. No conditions:

In the first two agreements, which include matrimonial law as well (Italian agreement of 1929 and the Austrian one of 1933), *there are not* any ad validitatem conditions. The Italian concordat-revision already includes certain conditions, so this seems now to be the strongest agreement from the ecclesiastical Party's point of view (beyond the agreements after 1993, which are on a basis of automatic mechanism).

2. The only condition is the transcription:

In the Portuguese agreement of 1940, the criterion is the transcription into the civil register *in a proper sense*; namely an administrative work. Taking literally the text this means that *only the canonical impediments are regulating the secular validity of canonical marriages, the secular laws do not effect it.* This is in all similar facts regarding to all agreements where only the transcription is the condition. As it will be clear, this is only formal.

3. The transcription *and* the secular laws:

The Italian agreement of 1984 is first mentioning the secular laws besides the transcription, as an ad validitatem condition, so the canonical marriages bond from this time have civil validity under a dual regime. In this agreement,

[24] This usage of the word is there in the agreement of Malta (1993. Art. 2.). One of the languages of this agreement is English and in the Appendix it can be checked (under A.2.3.3. deferred transcription).

only the transcription is the *formal* condition, but the correspondence of the secular laws is the condition of this.

In the Maltese agreement, the "handing over" (transmission) of the act is the condition, which will (obviously) be examined by the secular registry office on the basis of the secular laws. In the Polish agreement of 1993, the secular impediments are in the first place, by themselves, as a part of the collision law, and not in such a way that the secular registry officer was to apply at the transcription (albeit, the secular officer is clearly applying in practice). From the point of view of the codification technique this is *clearer than* the Maltese agreement.

4. Only the secular laws:

Here the transcription became superfluous, as an ad validitatem condition, and it will be sufficient to mention it among the further rules of the procedure. The Polish agreement of 1993, however still include it, and only from the Croatian one of 1996 onwards has been left out, as we can see it in the Latvian, Lithuanian and Slovakian agreements of 2000 as well.

CONCLUSIONS

ad 2. When the transcription is the only condition, it is not clear, whether the civil register's officer was allowed to ponder the transcription on its merits. A debate arose about it if the state officer is obliged to ponder it, since he/she is allowed to register what answers the conditions defined in the secular law. However it is also possible to argue in that case, that if the possibility of pondering in merits is not in the concordatarian law, he/she is not allowed to do it (stricte interpretatio), since this would restrict the legal claim for the civil effects of those who are living in a canonical bond which came into existence by the concordatarian law. And a right to be restricted is only possible in an explicit way. Such legal disputes are probably resolved by the common interpretation clause which is used in the final provisions, or, tacitly, in the practice.

ad 3. The matrimonial impediment by the secular law and the transcription, *as a dually applicated condition,* is the strongest legal construction from the secular Party's point of view. This practically resolves the dilemma and declares that the sate register's officer *must* ponder in its merit. Therefore, not all canonical bonds obtain a transcription. The contributor who makes the examination of the engages before the contraction, whether he knows that the future bond will not gain the secular recognition on the basis of the secular impediments, he cannot refuse the contribution at the contraction, because the parties have a canonical legal claim of taking the sacrament, which is just rejectable referring to a legal canonical impediment.[25] As it follows from the different

[25] CIC 1058.

matrimonial impediments of the two legal orders (and moreover this difference is varies always from country to country), there is a disparity between the bondable judged or valid bonds from the part of the two legal orders. Hence, if the civil register's officer decides upon the transcription of the bond according to impediments of the secular law, thus *this is a job made as one by the authorities*.

In the Italy 84/8[26] the civil register's officer examines literally the possibility of transcription; according to the Malta 93/1 and the Poland 93/10, it is already seen that the national law recognises or do not the canonical bond. This is an important change from a formal (codificational) point of view but regarding that the transcription is an ad validitatem condition in all these agreements as; the civil register's officer always decides as an authority.

ad 4. The Croatia 96/16 (the Latvia 2000/8, the Lithuania 2000/13 and the Slovakia 2000/10) do not show formal development, so up to the Maltese and the Polish agreement, the *legal figure of the concordatarian law* was done. The transcription became weightless among the further rules, it is a mere administration, and is not the decision of the authorities. In this way, the canonical matrimonial bond is not on the basis of the discretional right of the civil register's officer, but it is *qualified as an objective legal basis*.

To sum it up, it is apparent in the concordatarian law of a decade, how the collision law between the two legal orders concerning the ad validitatem matrimonial conditions shaped up from the practical approach to the clearer, legally more correct codification, in other words *to the collisionary correspondence between the two legal orders*.

2.1.3. Joint examination of the establishing norm of the legal effect and the ad validitatem conditions

TEXT ANALYSIS

1. First type:

a) The so called "*recognising"* agreements (all the agreements of the Spanish-Portuguese cultural circle, the Italian agreement of 1984 and the Maltese one of 1993) all give a *discretional* (of the authorities) right to the civil register's officer, *and* the secular legal effects are originating from the event (from the declaration of matrimonial consensus).

b) There is an exception: the system of agreements concluded with Colombia (Colombia 42/note, Colombia 73/3). The expressions in these agreements tightly interpreting the text, do not fit in the category of conditions ad validitatem, but in further rules of transcription (conditio ad liceitatem). These *oblige* the state

[26] The structure of this shorter way of signing is: *Country Year/Article.*

official to transcript the bond *on the basis of the act* that had been sent over in the required form, which means that, his/her discretional right has been limited to the rules of the form of sending over, so he/she does not have any discretional right in merit.

2. Transitional type:

The Polish agreement of 1993 which is the first of those stating the *automatically originating* civil effects, establishes the civil effects from the canonical bond, *while* it applies the transcription between the conditions ad validitatem as well. With this duality, this is a transitional, and not a clear structure.

3. Second type:

The agreements mentioning only the secular matrimonial impediments are all composed with an automatic originating rule and they originate from the canonical vinculum.

It is already clear that in the Polish agreement (and the Estonian one which is hanging out in a chronological sense as well), which has a mixed construction, the originating automatism and the clearly objective legal conditions *are going together*.

CONCLUSIONS

As it has been ascertained in both topics, the latter concordatarian legal figures, in both cases, were stronger for the ecclesiastical Party than the earlier ones. This joint statement is even more obvious. Thus, it is a mistake to see it as just a mere extensive growing of the negotiating strength of the ecclesiastical Party. Here, the change of the concordatarian system should be caught in act as well.

ad 1. First type: the mechanism using only the secular legal order:

The earlier 1) bending down verb "*recognition*", 2) that the civil effect does not originate from the canonical legal fact but directly from the fact of the order of the reality, 3) this legal effect is attributed and granted by a sate official, so all these are manifestations of that approach, that here the state legal order is contracting an agreement with a system not qualified as a true, real legal order. As it can be seen, in this concordatarian construction, we can reach from the fact of the reality to the civil effects exclusively through a mechanism originated from the secular legal order, that is to say, we do not need the mechanism of the canon law. Therefore, *here the canon law does not work as a legal order, it does not play any role*, the secular law is doing everything.

ad 2. Transitional type:

The transitional character of the Polish agreement of 1993 is apparent from more facts. As we can see, the Italian agreement and the Maltese one are not conspicuous in the Polish agreement, that the state officer decides on the

possibility of the transcription. However, from the whole phrase, it is evident that the canonical bond becomes effective in the secular legal order by the transcription. The composition already points towards the following section, while the mechanism of the whole norm works as it was in the earlier one.

The Estonian agreement of 1998 according to its time, brings the automatic legal effect, but to this, it makes the transcription as a condition, while the secular norms is not even mentioned. Besides this, it returns to the origin of secular effects from the fact of the celebration (declaration). The whole figure, *as it regards its mechanism,* is obviously a construction before the Italian agreement of 1984. Here the automatic origination of the civil effects is just a question of composition, as "it is automatic if the state official decides so". In this case, it is clear now, that the secular Party did not allow the Croatian-Latvian model.

The Estonian example shows, that the composition of the ad validitatem conditions gives the working mechanism of the legal construction, while the norm of the composition of the attribution is just a question of legal-diplomatic nature. It is not accidental, that the ecclesiastical Party firstly managed to bring the automatism into the agreement, and only afterwards could adjust the composition of the ad validitatem conditions, so that the automatism would really work as well as the Polish agreement shows.

ad 3. Second type: the mechanism using both legal orders:

Whereas, the construction of the Croatian, the Litvanian, the Slovakian and the Latvian agreements is 1) a canonical legal fact comes into being from a fact in the order of the reality *through the mechanism of the canon law*, 2) *which* (the canonical legal fact) *has itself* legal effects on a basis of criteria of the "input (the canonical) legal order".

2.2. Further rules concerning the form of the contraction (conditions ad liceitatem)

Until now the examination of the norms focused on the ad validitatem conditions of the secular legal effects, and now the *ad liceitatem conditions* are examined. These must be observed during the contraction, however if they are not, thereby the secular legal effects come into existence.

2.2.1. Proclamation of banns

The aim of the proclamation of banns is to bring the intention of parties to the community's knowledge, so that who knows a matrimonial impediment, could make it known. In the canon law, the Codex of 1983 does not give any order

on a universal level, but it entrusts it to the local bishop's conferences to make local norms, considering the circumstances.[27]

TEXT ANALYSIS

1. A rule of proclamation is only in the agreements of the first type, and it is not even there in all cases. The last norm of publication is in the Portuguese agreement of 1940, as an ad liceitatem condition. Later, it was left out or defined as an ad validitatem rule (see above Italy 85/4, Malta 93/1).

CONCLUSIONS

ad 1. Ad liceitatem conditions in the cases of the two legal figures:

a) In the case of *the second type,* the first, definitive part of the concordatarian legal construction (meaning the attributive norm and the conditions ad validitatem) the established construction has such a structure, by which *the mechanism "before" the canonical bond* (canonical legal fact) belongs exclusively to the sphere of the authority of the canon law. This means, it is not logical to introduce ad liceitatem elements by the concordat in the mechanism "before" the canonical bond, since it might worsen the possibility of interpretation. Obviously, both Parties can allow to insert, by international agreement, "foreign" elements in that mechanism which is fitted in the authority of its own legal order by the main figure, if this does not hurt the principals of its legal order. This would be a real compromise. As it seems, in the cases of the second type agreements the secular Party did not demand it.

b) It is easy to understand that this condition occurs in case of the *first type*. In this case, however there is not a real compromise, because the state makes the norm of publication obligatory just in its own jurisdiction; the ecclesiastical Party allows only that the state could comment an ad liceitatem condition on an act in face of the ecclesiastical authority.

2.2.2. Instruction of engaged couple

The future spouses must take part in instruction of engaged couple during a determined period, with the aim to study and to become aware of the teaching of the church upon the marriage.[28] There is an other institution in the canon law as well, the *examination of engages*, which is done as a main role by the parish priest according to the place of contraction, in which the legal control takes

[27] CIC 1067.
[28] CIC 1063/2.

place according to the canonical impediments and prohibitions.[29] The text of agreements does not determine the exact time of statements of the secular law.

TEXT ANALYSIS

1. There is not any mentioning,
2. the collaborator reads from the secular code of law after the contraction,
3. during the instruction of engaged couple, the one who conducts the instruction makes it known.

CONCLUSION

ad 1. and 2. First type agreements:

As it seems clearly from the distribution, in the first type of agreements either there is no reference to the information of secular legal effects, or the collaborator explains them after the contraction. It is evident, that it is the secular Party's interest to be arranged this matter well in the legal construction. In the Austrian Agreement of 1933, there is no reference to this, which means the state Party applies that principal of law that the ignorance of law does not release anybody from its authority. The other one is a resolution of compromise. On the one hand the secular norms are made known by the contributor, by a person who is a holy service keeper (and not a state official), on the other hand he merely has to read the secular code of law, in such a way he does not do anything by his own conscious act. By this kind of resolution, the principle remains intact, according to which in case of the secular effect originated from the event the whole legal mechanism is unfolding in the secular legal order.

ad 3. Second type agreements:

a) In case of the agreements fitting in the second type, the situation is different. Firstly, the information takes place before the contract, secondly the person does the instruction of engaged couple who makes known the related secular legal norms as well (and is not simply reading the code of law), i.e. he is carrying out a secular function.

b) One could raise the question, why the secular norm should made known before the contract in the second type agreements. One could argue namely, that from the declaration of consensus, the marriage to the canonical bond is exclusively the canon law active (as it was seen by the publication, in the second type agreements case) and the secular law takes the realised canonical bond as a basis. Just in this case, the information about the secular norms should not be placed before the contraction, since those are not at all effective to this section.

[29] CIC 1067, 1071.

The norm of the instruction of engaged couple in a tight sense allows two mechanisms: 1) two different effects of the sole declaration of matrimonial consensus are originating one at a time in the two legal orders, 2) the originating canonical bond has secular legal effects at the same time as well. In any of these two cases, the parties to be intermarried have to be aware of the secular effects of their legal act. From which of these two is the one (to say the Parties which choose of these) is clear from the composition's form of the concordatarian main figure. It is discernible that *the Estonian agreement has choosen the 1., the other three have choosen the 2*. And as we see in fact, in the Estonian agreement, there isn't any norm of the engaged couple (whereas, all the agreements are less detailed), only in the case of the other three ones.

Relating to the tactics of the Parties, we can point out that the ecclesiastical Party has chosen what we called at the publication's paragraph as a tactics of compromise. The former three agreements have permitted namely to fit in secular legal elements which sphere makes part unambiguously of the canonical legal order. In return for this a valuable gesture has been received: a holy service keeper person is doing a secular function. This is not a problem for the secular Party, because that person is a citizen of it.

2.2.3. Invitation of an official of the state

TEXT ANALYSIS

1. The Colombia 42/6 shows the whole form, which is explainable on its own. To explain the Spain 53 Add. Prot. 23 No. 1. we need the main rule in the former agreement of 1941, which still has the authority and the interpretation of which is this.

CONCLUSIONS

ad 1.

a) As a requirement, the presence of a state official at the contract is attached to the first type structure. This enforces the statement that these agreements are really originating the secular legal effects to the event. It is obvious, that in case of the other main figure this would not have any reason, because if the concordatarian figure attaches the legal effect to the canonical bond, the ensuring of the event belongs exclusively to the authority of the canon law.

b) The aim from the part of the secular Party could be to ensure and control the existence of the declaration of the consensus. The interest of the ecclesiastical Party is to weaken this element, which presses the omission of the consideration of the canonical legal order. Some danger also existed that those, who were present at the contract and obviously did not understand the

sovereignty (independence) of legal orders, could feel, that the state official being present at the contract had some role during the establishing of the canonical bond. The ecclesiastical Party had to avoid all sorts of misinterpretations, this has a question of principle, and therefore we do not find such a role in any of other agreements. This role in this agreement is showing the secular Party's force.

2.3. Rules of administration

2.3.1. Rules ad liceitatem of transcription

TEXT ANALYSIS

The certain agreements attribute different importance to transcription as it follows:

1. it is included in the ad validitatem rules: (see there)
   a) and *includes* rules that do not touch upon validity as well
   b) there is no further regulation (Polish 1993)
2. the agreement does not rule it:
   – entrusts it to the secular law (Croatian 1996/13 No 2, Slovakia 2000/10 No 1, Latvian 2000/8 No 2)
   – appoints a further agreement (Lithuania 2000).

CONCLUSIONS

ad 1. First type agreements:

a) Most of the first type agreements besides the ad validitatem rules of transcription include ad liceitatem rules as well. These norms are to be explained as they regard the working mechanism of the legal figure like that of proclamation, in the first type of agreements.

By the first type agreements the secular effects were originating by the transcription, i.e. it was an interest of the ecclesiastical Party to regulate the transcription. The correct ruling of the transcription in the agreement could ensure that the contracts would gain their secular effects. It is obvious, the interest of the ecclesiastical Party was that the transcription would not be an ad validitatem condition (as it was previously seen), however *ad liceitatem should be regulated in such a detailed manner as it was possible*.

b) The Polish agreement of 1993 does not include such a norm. Therefore it may be concluded that it was present in the secular law or it was regulated after contracting the agreement. Hereby this agreement is a transitional one between the two types.

ad 2. Second type agreements:

In this type, the transcription is regulated out of the agreement, or in the secular law, or they promise a future non-international agreement. The importance of the question is not so grave for neither Parties to put into the agreement. In this type, if a canonical bond does not have the secular registering, it is only a registration problem, to be corrected easily afterwards. But if the registration is missing in the earlier type, it means that the state has not recognised the bond.

2.3.2. Coming into force of the secular legal effects

CONCLUSIONS

ad 1. "from the date of its celebration":

During the period of the first type agreements, the evolution of the norm is showing that the negotiating power of the ecclesiastical Part is slightly gaining strength. The early norms relating the pure rules (which is in the Columbia's agreement of 1973 Prot. fin. 4.) are slightly restricting; in the end of the period the Italian agreement of 1984 shows extension.

The structure of the first type agreement shows that if the agreement does not say it explicitly that the secular effects are valid from the date of the bond, then it can be interpreted that it is valid from the date of the transcription, because (in this model) the secular legal effect comes into being by the transcription itself, i.e. the appearance of this phrase in the agreement means the retroactive extension of the secular legal effect by the period before the transcription (to say from the bond). It is palpable from the wording of the notes of Columbia agreement of 1942 that it consciously emphasizes the retroactive extension of the transcription.

ad 2. "from the moment of its celebration":

a) About the end of the period of the first type structure, in the agreements of Italy, Malta and Poland not the date but the moment of the bond is fixed in the text as a beginning of the terminus. This change of wording has not got any legal consequences because whole days are counted in all legal orders. This is rather only a wording difference, which just turns the wording style in that direction that it more emphasizes the bond itself. Therefore, it is preparing the way to that structure, in which the secular legal effect comes from the bond itself. It is obious, that this modification has taken place by the proposal of the ecclesiastical Party.

b) In the case of the second type structure (Croatia 96/13, Lithuania 2000/13, Latvia 2000/8) the explanation is not easy, because the canonical bond itself is empowered by the secular legal effects, which means that the origination of the secular legal effects is also bound to the existence of the canonical bond, so the

time of secular legal effects automatically derives from this. Thus, it is just tautology, in this case the term could be simply omittable. Thus the Slovakian agreement of 2000 does not contain it any more.

2.3.3. Deferred transcription

The legal reason of presenting the possibility of the deferred transcription in agreements is that the concluded canonical marriage, by all means, obtain its secular legal effects, i. e. the concordatarian intention would not fail by an administrational error.

CONCLUSIONS

ad 1. The deferred transcription occurs in the case of the *first type* agreements (except the Polish agreement of 1993). This is reasonable because in the second type legal figure it does not have any grave reason. Seeing that the concordatarian law binds the secular legal effects to the existence of the canonical bond, so whenever its administration can happen it has not got an effect on the force of secular legal effects.

It is clear that it was the ecclesiastical Parties' interest to present this rule in the agreement and in the first type structure (in the weaker for the ecclesiastical Part) it indicates its relative force.

ad 2. In the first agreement among the *second type* agreements (Poland 93/10) it is still there, but the criteria are already relatively lax, so the deferred transcription is possible practically unlimitedly. Afterwords there is no ruling on this. In the case of the marriages bound under the regime of these agreements the interest of the matrimonial parties is that the transcription has been done, because this is how one can refer to it in the presence of the secular legal forum (albeit the secular legal effects are existing).

It is worth noticing from a diplomatic point of view that the complex entireties of the rules connected to the transcription in the Italian agreement of 1984 are the strongest. The fact is surprising because this agreement has been bound firstly with Italy, secondly with a Christian democrat government.

2.3.4. The effect of death to the transcription

This point can be strange at first sight, since all matrimonial bonds come to an end in all legal orders if one of the matrimonial parties dies. So in this case the matter in issue is the deferred recognition of a matrimonial bond existed only in the canonical legal order. It is true, and it can be explained since there is a

legal interest of the living party to the past existence of the past marriage, and there is also the right of children (e.g. their legality, right of inheritance, etc). Furthermore, in the last case it needs the possibility to make the marriage valid in the case of death of any of the parties.

An other reason, not so much practical rather peculiar to the treating force of the representatives of legal orders is, that by including the possibility of the subsequent convalidation the ecclesiastical Party takes an other step towards making the *bond* accepted (more precisely in that time the declaration of matrimonial consensus) as a more objective entity and making the way of understanding weaker as a "pure ceremony" (which is conspicuously inaccurate).

2.4. Suit law

The church's legal claim for judgement in matrimonial cases has been canonised firstly on the Council of Trident.[30] The legal claim refers here not only to the sacramental aspect of the matrimony but generally, as a whole.[31] We could expect that in the time when the single secular states have created their own matrimonial law, those have been competing with the ecclesiastical jurisdiction. But the church did not consider it in this way. It did not hurt the church's legal claim because 1) the marriage bond on the base of the secular state's law is a non subsisting legal act from the church's viewpoint, and obviously it does not violate the church's legal claim if the state judges upon a legal act constructed by itself, 2) when earlier the ecclesiastical court judged on the non-sacramental consequences of the bond (inheritance, children's legality, etc.) it came about because the profane legal order did not cover the whole issue of human's life, so the church did not find the withdrawal from this area injurious.

It is a general principle and is held by all legal orders that a legal fact is judged on the base of the law of that legal order and is judged that a legal forum has to come into existence. Interstate agreements take this as an axiom and if they depart from it they must be regulated explicitly. The church's above-mentioned behaviour shows that the church considers the ecclesiastical and secular matrimonial laws living side by side on a base of 1) the legal orders independency and 2) the principle that the canonical and the secular legal orders' relationship is ruled by international public law. This behaviour made it possible that after the wave

[30] Concilium Eocumenicum Tridentinum, Canones de sacramento matrimonii, Sessio XXIV, canon XII, 1563. XI. 11, in: Alberigo–Jouannau–Leonardi–Prodi: *op. cit.* 731.

[31] Repeats the legal claim: Leo XIII., Litt. Enc. *Arcanum*, 1880. II. 10. in: *Acta Sanctae Sedis,* (1879–1880), 392.

of separation, the question could be easily managed on the base of international law.

As we have seen there are two ways to establishing the secular legal effects. The *first type agreements* are recognising the ecclesiastical declaration of matrimonial consensus by a legal act in the secular legal order. Therefore, this legal act is in the secular legal order and will be judged in that way. In the *second type agreements* the situation is twofold: the canonically formed declaration of matrimonial consensus (ecclesiastical celebration) causes the canonical matrimonial bond and *this causes* the secular legal effects as well. So it is clear, that the matrimonial *bond exists in the canonical legal order* hence it is to be judged in that way, while its secular legal effects are in the secular legal order, and the secular forum is to judge upon them. This principle just succeeds in such a clear way in the case of the Polish agreement.

2.4.1. Theological elements

In certain agreements some elements of the church's teaching upon the marriage appear. In the earlier agreements this has taken place according to a formula, and the single agreements hardly differ from each other in the formulation of this term. The first phrase of this formula is a self-evident statement, because if the parties are contracting the marriage on the base of the canon law, it is morally evident that they consider these rules obligatory on settling its further legal effects before the secular forum as well. The presentation of the theological principles in agreements is in the order of the ecclesiastical Party to make this evidence more obvious. It is clear that this is related to the order of matrimonial suits, so it is worth dealing with it in the part of the suit law.

CONCLUSIONS

ad 1. First type agreements:

a) In this case the situation is complex because of the mechanism. Here the secular effect comes into force by the decision of the registrar, so the only declaration of the matrimonial consensus causes the canonical bond and its analogue appears also in the secular legal order. The secular court has obviously an exclusive jurisdiction upon this, while upon the canonical bond the ecclesiastical court has the exclusive jurisdiction. This is the reason why the ecclesiastical Party has inserted into the agreement a part which reminds the parties to be married of their canonical duty. Such a way, it makes a legal effect to the canonical norm, which is sensible for the state as well, while this effect does not have any enforceability of the secular legal order itself. So this norm is rather only a commission without a sanction but the willingness of the

ecclesiastical Party is perceptible that upon the marriages bound according to the canon law the ecclesiastical forum could judge in an effective way.

b) From the Spanish agreement on it is not said that the parties to be married renounce the right for divorce but with the mentioning of the church's teaching in the agreement, the secular Party knows about it. Anyway, it is not explicit, and from the Spanish agreement on it is important for the secular Party. In this time such a definition appears on the main figure of suit law, which does not preclude the possibility of the jurisdiction of the of secular forum upon bound marriages according to the canonical form (cf. chapter of Delimitation of the jurisdictional competences).

The above mentioned ambition of the ecclesiastical Party is failed, and it does not succeed either afterwards, which shows the secular Party's force in these agreements.

ad 2. Second type agreements:

The form of the Polish agreement is substantially deferring from the earlier ones, because the rule in these is not related to the parties to be married, but the contracting Parties incure an obligation which means here the commitment of the Polish State. This norm does not strictly create law, it is just a declaration of an intention. Nota bene it is a declaration of intention related to a concrete ecclesiastical teaching, which is imaginable only in the post-modern time; national liberalism in the 19th century would not have had it. Phrases like this are even more frequent in the recent agreements.

2.4.2. Provision of legal force for the adjudication of the ecclesiastical forum

There are two possibilities for this: the delimitation of the jurisdictional competences *or* the provision of secular legal force for the decisions of the ecclesiastical forum.

2.4.2.1. By delimitation of the jurisdictional competences

This main figure of the suit law, in chapter 2.4.2.1.1. will demonstrate the transfer of the legal effect of the judgement of the ecclesiastical court in the secular legal order.

TEXT ANALYSIS

1. It compels the contracting Parties:

a) The most evident way of this approach is, that the Parties declare in the agreement: the ecclesiastical court has the jurisdiction to judge upon the fact of a canonical marriage, the state by the same time takes on that its court declares itself not competent if somebody enters an action by this legal title.

b) he above mentioned principle (legal facts are judged in that legal order in which they have come into existence) can be found in the clearest form in the Polish agreement of 1993.

2) It compels the matrimonial parties:

The other way of approach in codification is when not the contracting Parties but the matrimonial parties are obliged by the norm. Such shaped norms (Spanish 79/6, Malta 93/4 No. 2, Dominica 54/25 No. 2) are all including theological elements as well, as it was seen earlier.

CONCLUSIONS

ad 1. The "recognise" phrase in the Austrian agreement of 1933 just means that the ecclesiastical court is competent, but does not preclude that of the secular court. However, the intention of the contracting Parties that the legal orders should be clearly distinguished is evident from other parts of the agreement, so it is just a lack of precision in wording.[32] Agreements after the Austrian treaty have already eliminated this possibility of misinterpretation. The "exclusive competence" and the "are reserved" phrases are equivalent (only the ecclesiastical court is competent to judge upon it), so they are not variations.

The Maltese agreement of 1993 mentiones the competence of the ecclesiastical forum only, and leaves out the exclusivity, and as it will further be evident, the Parties do not interpret it exclusively as well. This formula is similar to the Austrian one of 1933, but the context interprets it right in the opposite direction.

ad 2. The conception of structuring the norm which *obliges the matrimonial parties* reinforces and extends the obligations in the canon law such a way that these would not be infringable using the other way of thinking of the secular law. This confirmation is obtained by mentioning the theological teaching about the sacrament of marriage, which makes the base of the canonical matrimonial law in the agreement. One can see that the Spanish agreement of 1979 and the Dominican one of 1954 which contain the renunciation and the theological teaching together are drafting loosely here, and the Maltese agreement of 1993 makes the parties to be married renounced here, namely written. Now here is the reason of legal relevance of mentioning the theological terms.

The *mechanism* here is theoretically double: 1) the parties to be married by the celebration itself (ipso facto) or separately, in a written form renounce the right to ask the divorce from the secular court, 2) the state Party is not allowed to receive a legal action which is conflicting with the agreement signed by

[32] "Ecclesiastical and secular courts ought to provide for each other legal aid *all on its own jurisdiction's field."* Austria 1933/7. 5. §.

itself. In wide sense, this way of approach obligates the secular court as well to reject the legal action.

The situation is not so clear if we have a closer look at it. Among these three agreements only the Spanish one of 1979 does not contain either in the theological part, nor here that the parties take on by the celebration itself they will not ask the divorce. The Italian agreement of 1984 belongs to this category as well. It does not contain any explicit phrases about the delimitation of competences. Both agreements are restricting themselves and refer to the catholic teaching, which is laying emphasis on maintaining the jurisdiction upon spiritual goods to the ecclesiastical forum. This is, as I see, too lax a role to obligate effectively the state Party to reject the legal actions. It seems too lax especially looking at the Maltese agreement of 1993. This contains a reference to the renunciation of parties in one place, and in an other place, however, it refers to an earlier sentence of the secular court based on a caput nullitatis (grounds of nullity), which is not opposite to the caput nullitatis of the sentence of the ecclesiastical court. Thus such things, in fact, can be found despite of the explicit mentioning of the renunciation. Therefore, it does not necessarily follow mean that the secular Party would take on the reject of legal action if the agreement contains the parties obligating renunciation.

2.4.2.1.1. Attribution of the secular legal effects

TEXT ANALYSIS

1. In the procedure of the first group, the sentence will only be communicated and the secular court declares the secular legal effects. This is the same way as it was in the case of the automatic method of legal effects (second type).

2. In the other group, the secular court has a real sphere of authority of examination, in merits. This is parallel to the recognisional way of transfer of the matrimony. In the Spanish agreement of 1979, the aspects of the examination are undefined in detail, in the Italian one of 1984 and in the Maltese one of 1993, they are all enumerated in a taxative way.

CONCLUSIONS

ad 1. The Spanish agreement of 1953 is using a special way of procedure: to reach the secular legal effects in the future this role makes it obligatory, that during the ecclesiastical suit procedures one of the parties asks the secular court to regulate the future secular effects of the ecclesiastical sentence. It is disquieting whether the two procedures authority personals mutual influence could be eliminated.

ad 2. The Spanish agreement of 1979 is the strongest one from the state Party's viewpoint. The guidelines are undetermined and it allows the secular court to examine the case in a wider scale, since it is possible to rehear the case in its merits as well, or, at least, the criticism of the sentence.

The Italian agreement of 1984 and the Maltese one of 1993 enumerates all the competences of the secular court; it cannot examine either less or more. Both agreements make sure the right of defence of the parties and the examination of the competence of the ecclesiastical court. It is evident, that the secular court claims the right of the examination of defence, but the examination of the competence of the court could be rather strange. It means namely that the secular court demands an account of the application of a canonical norm. This can be an interesting precedent under the aspect that the secular forum can adopt canonical norms (as it is a practice that the ecclesiastical forum adopts the norms of the local secular laws).

It is furthermore appearing from the detailed enumerations that both the Italian agreement of 1984 and the Maltese one of 1993 were discussed for a long time and they are results of a compromise. E.g. the Italian agreement deals with the decision made by the ecclesiastical court *as a foreign sentence*, which shows the ecclesiastical Party's force. This is albeit a theoretical question, because it does not generally cause the secular legal effects of ecclesiastical courts with other decisions brought in other cases, it only relates to matrimonial sentences. However, it is sure, this term was not used in other agreements before, and this is the first appearance of this way of thinking. The Maltese agreement contains a phrase, that the secular court cannot examine the sentence in merits, which means a relative force in this agreement-group. Re-examination of the merits is possible on a basis of the Italian and the Spanish agreements, which show the secular Party's force in these agreements.

The fact that the Maltese agreement is a solution of compromise is apparent also from the phenomenon that the validation of the secular effects of resolutions of dispensation (i.e. a decision made by a dicasterium of the Holy See, so this is not a local ecclesiastical court's sentence) is reduced to formal, so the importance of the diplomatic hierarchy is high in this case.[33] In this agreement, there is a pair of rules, which is unknown in others. This pair of rules says that on the one hand a secular court is not allowed to receive a legal action under such a legal title on which ecclesiastical court has already brought definitive sentence, on the other hand a secular court of appeal is not allowed to declare

[33] "The *Highest Court* orders the *recognition* of the decree if it is about a matrimony bond *according* to the Catholic Church's *canonical norms*." Malta, 1993/7.

secular legal effects for such a definitive sentence of an ecclesiastical court whose legal title was already used by a sentence of a secular court. This pair of rules is apparently asymmetrical, since the secular court is not allowed to deal with it at all, but the ecclesiastical one can, but it will not have any secular legal effect. This sort of solutions shows the ecclesiastical Party's force.

It is worth mentioning with regard to the Maltese agreement, that its figure (structure) uses too much instruments, so it is too complex and rather difficult to interpret. This is not conductive to the legal security. In shaping up the figure there is a phrase delimitating jurisdictions (obligates the contracting Parties), the another one which obligates matrimonial parties, and although both (separately as well) are to be interpreted that the secular court does not have any jurisdiction, however it takes it into consideration elsewhere. This agreement does not seem to be the most excellent one from this point of view, but there are shortly drafted, axiomatically formulated phrases, which can help the interpretation of other agreements.

2.4.2.2. Providing secular legal force for the adjudication

The *main figure* of the suit law in this group is *implicit*. There is not any formula of recognition, only "the sentences and the decisions are communicated".

TEXT ANALYSIS

1. The Maltese agreement of 1993 is a transitional form: beyond the delimitation of jurisdiction, there is a new element, the recognition of the sentences and of the decisions of dispensation.

2. In the Croatian, Slovakian and Lithuanian agreements there are not any delimitations of jurisdiction, so the question is ruled only by the transcription of decisions.

COCLUSIONS

ad 1. It would be the ecclesiastical Party's aim to make this rule present, and it might want to shift it towards a new structure of agreement. This is supported by the tendency that the agreements following it use only the recognition of the decisions.

ad 2. The new formula is the clearest in the Croatian agreement of 1996. The decisions are communicated to the secular Party and are validated by its court. There might be some difficulties in the interpretation of their wording. The term "put into effect, adempimento" on the one hand stresses that the secular court does not have any right of examination, on the other hand the "according to the legal norms of the Republic of Croatia" term could mean that it has a right of examination, whether the sentence is according to the practice

of the secular administration of justice. As I see it is not the point in this case, but it has to be interpreted together with the 9§ of the Maltese agreement of 1993, which contains a more unambiguous rule: on its merits, the secular court cannot intervene in the ecclesiastical sentence, but its further secular effects (which can be rather complicated) has to shape up according to the law of the Republic of Croatia.[34]

The formula in the Lithuanian agreement of 2000 is not so clear, because instead of the "put into effect" there is the more active "regulates", however this activity is to be restricted, according to the above-mentioned things, to the further effects of the ecclesiastical sentence.

The mechanism of the Slovakian agreement of 2000 at the first look seems to be the same as that of the Lithuanian one. It can cause some difficulties that cannot be found in any of the earlier formulas before the administrational rules of transfer by which the Parties attached secular legal force to the ecclesiastical sentences and decisions by the agreement. But these phrases, without a main figure, can have a totally different meaning. In this form, they mean that the sentences are communicated to the Slovakian state and it decides about the taking over as it likes. In fact, if an ultrapositivist Slovakian judge looks at this text, he/she might easily say this. But why this matter is there in the agreement since the Slovakian state, after a legal supervision, can take over whatever decisions are made in a foreign legal order without any international agreement. As I see, the *mere mentioning* of the administrational rules of transfer in the text means that *the concordatarian intention of the Parties* was to agree upon the transfer of the ecclesiastical sentences. Consequently, *there is* the earlier main figure (implicitly) and in such a way, the whole regulation works in fact as it can be seen in the case of the Lithuanian agreement of 2000: the secular judge cannot interfere, on its merit, in the decision of the ecclesiastical court, and his/her activity is limited to the attachment of secular legal effects to the sentence.

To sum it up, the following can be ascertained:

1. the recognition of the decisions of the ecclesiastical forum is clear from the concordatarian intention,
2. this recognition is full-scale, namely it does not only extend over the sentences of nullity, but over the peculiar decisions of ecclesiastical suit law (like privilegium paulinum, dispensatio super ratum, etc.). This shows the treating force of the ecclesiastical Party.

[34] "… the secular legal effects are *regulated by secular laws*." Malta, 1993/9.

3. The secular forum must take over these decisions without a right of pondering, on its merit, and it must formulate the legal consequences according to its own legal order. This shows the treating force of the ecclesiastical Party.

4. The lack of the delimitation of jurisdictions, the secular forum (in its own order) can divorce married couples (which does not have any interference with the ecclesiastical legal order). This shows the treating force of the secular Party.

2.4.3. Tendencies in the suit law

Summing up it can be ascertained, that the unequivocal direction cannot unambiguously experienced in the suit law which could be seen in the case of the secular legal effects validation of the ecclesiastical marriage, namely in the rising of the ecclesiastical Party's treating force.

1. The competence of the secular forum:

a) Until the Columbian agreement of 1973 the norm shaping up the main figure was built on the delimitation of jurisdictions. In that time, all agreements were precluding the jurisdiction of the secular forum, which shows the ecclesiastical Party's force.

b) From the middle of the 1970s, the secular Party insists on the right of judgement upon such a matrimonial bonds. Hence, after the Spanish agreement of 1979 only the Polish one of 1993 contains exclusive ecclesiastical jurisdiction, in the rest of the agreements the secular courts have jurisdiction as well, which signs the secular Party's force.

2. Concerning the coming into existence of the secular legal effects of the sentences of the ecclesiastical court the tendency is complex:

a) Until the Columbian agreement of 1973, it is practically an administrational procedure after a canonical supervision, which takes place before the publication of decisions.

b) In the middle of the '70s there was a change in this respect as well: the secular court received the examinational right. This is the case in the Spanish agreement of 1979 (here the secular court can intervene in its merits as well), in the Italian one of 1984 and in the Maltese one of 1993 (formal examination on the base of canonical and secular law).

c) In the newest Croatian, Latvian, Slovakian and Lithuanian agreements this question is not ruled, because the main figure of suit law is defined such a way that the sentence of the ecclesiastical court on base of the agreement itself (ipso iure) has secular legal effects, the task of the secular court is only to endow it with content (property rights, etc.) according to the secular law.

It can be seen, that the change of the mechanism occured in the suit law approximately at the same time, after the beginning of the '90s, when it was

in the matter of the contraction as well. The takeover of the decisions of the ecclesiastical forum became automatic too, but the ecclesiastical Party renounced the exclusivity of the jurisdiction.

3. Summary

In this essay I have set the aim to examine the matrimonial parts in the Holy See's international agreements, and to show characteristics and tendencies in them. I have chosen from the agreements the parts with the same functions and I have compared their legal structure, their legal terms, and their technique of codification. The legal analysis can and should be examined in the context of history, concerning cultural circles, history of politics, etc. This makes on one hand the examining system more compound, on the other hand it helps to find the legal characteristics from outside of law.

Norms concerning matrimonial law can be found on the one hand only in a smaller part of agreements, on the other hand the relating chapters are generally not too long. This provides the possibility for a detailed text analysis, in which I practically presented the whole relevant legal material, and *I examined it entirely and in detail*.

CONCLUSIONS

1. During the examination I came to the conclusion, that in the early and late agreements two different main figures (models) were used. In the case of the first model, the Parties agreed, that the secular law would attribute to the fact of the ecclesiastical matrimonial contraction (celebration) the legal effect of the secular matrimony. In the second model, the concordatarian law itself attributes secular legal effects to the canonical bond (vinculum matrimoniale) which has come into existence in the celebration (declaration of the matrimonial consensus). In the first case besides the mechanism of the canon law the secular law was working as well (both in their own legal order), in the second case *the mechanism of the secular law has been built upon the result of the canon law's mechanism*. By this, not only the canonical contraction is recognised by the agreement, but the canonical matrimonial law as well.

2. This change (after the beginning of 1990s) of the main figure in the suit law can be observed as well. The takeover of the decisions in the ecclesiastical forum became here automatic as well, and from the sentences of nullity it extended to the declarations of dispensatio as well.

* * *

As it is discernible from the examination, the newer type of the concordatarian treaties, containing matrimonial law, was *stipulated by turns with the countries of Eastern-Central-Europe*. The reason for that is that these countries considered to re-establish their relations, interrupted after the World War II., with the Catholic Church as an important part of their social transition. It is characteristic that *the matrimonial sections constitute more and more a constant part* of the treaties stipulated with the Holy See of these transitional countries. A few years ago a possible stipulation of a treaty containing such a part regarding Hungary came up as well.

4. Appendix

Numbering of chapters in the Appendix (after a "A") follows *that in the main text*.

A.2.1. The attribution of the legal effect

A.2.1.1. The legal effect's establishing norm

FIRST TYPE agreements:

Italy 1929/34	"The Italian State *recognises* the secular legal effects of the sacrament of marriage provided by the canon law"

Austria 1933/7, Italy 1984/8	"The Republic of Austria *recognises* the secular legal effects of marriages contracted in accordance with the canon law."
Portugal 1940/22, Spain 1953/23, Colombia 1942/4, Dominica 1954/15, Spain I. 1979/6, Malta 1993/1	"The Portuguese State *recognises* the secular legal effects of marriages celebrated in accordance with the norms of canon law."

SECOND TYPE agreements:

Poland 1993/10	"... the catholic marriage *brings about* the effects of the marriage bond provided by the Polish law."
Croatia 1996/13, Latvia 2000/8	"The canonical marriage … *produces* the legal effects by the law of the Republic of Croatia."
Estonia 1998/8	"Marriages celebrated in the Catholic Church, […] *have* civil effect."
Lithuania 2000/13	"A canonical marriage *will have* civil effects pursuant to the legal acts of the Republic of Lithuania"

Slovakia 2000/10	"The marriage contracted in accordance with the Canon Law … *has* on the territory of the Republic of Slovakia the *same force and the same lega*l *consequences* as it has the marriage contracted in accordance with civil form."

A.2.1.2. Conditions of the secular legal effects (conditions ad validitatem)

2. just the TRANSCRIPTION:

Portugal 1940/22	"provided that *the act of the marriage* is carried over the competent authority of the secular state"
Colombia 1942 notes	"… the *registration* of the competent civil registry office will be a necessary condition that the catholic marriage reach civil legal effects"
Spain 1953 Additional Protocol 23.	[to recognise the civil legal effects] "... will be sufficient that the contraction of the marriage would *be written into* the competent civil registry"
Colombia 1973/7	"To the validity of this recognition the competent ecclesiastical authority hands the copy of the act over to the competent functionary of the State who *has to send a note* to the civil registry."
Spain I. 1979/6	"To the complete recognition (of marriage) the *registration* into the civil Registry is necessary …"
Estonia 1998/8	"[have civil effect] upon *registration* and for which a certificate of marriage has been issued by the civil registry office […]"

3. transcription AND to meet civil legal requirements as well:

Italy 1984/8	[are recognised] *with condition of*: 1. *is transcripted,* 2. previous *publishing the banns* at the local authority, *the transcription is not possible if*: 1. lack of age according to civil laws, 2. no remedy impediment according to civil laws,
Malta 1993/1	1. " […] are recognised …] provided that: a) it clearly appears from a certificate issued by the Marriage Registrar that the banns required by civil law have been published, or that a dispensation from the same has been granted; such certificate shall constitute definitive and conclusive proof of the regularity of the banns or of the dispensation therefrom; b) the Parish Priest of the place where the marriage was celebrated transmits an original of the act of marriage to the Public Registry compiled in the form established by common accord between the Parties, and signed by the local Ordinary or the Parish Priest or their Delegate, who has officiated at the celebration of the marriage. 2. The Holy See takes note that the Republic of Malta recognises

	the civil effects of canonical marriages where no spouses and *impediment* exist which can cause the nullity of the marriage and that the stated civil law considers it as mandatory or not dispensable."
Poland 1993/10	[brings about the effects] *if*: 1. no *impediments* between the parties according to the *Polish law*, 2. "they unanimously *manifest* their *intention* willing to trigger such effects, 3. it *is transcripted*"

4. just to meet CIVIL LEGAL REQUIREMENTS:

Croatia 1996/13 Latvia 2000/8	[produces the legal effects] *if*: "there are no civil impediments between parties to the contract and they meet the requirements stated by the laws of the Croatian Republic."
Lithuania 2000/13 Slovakia 2000/10	" [will have civil effects …] *provided* there are no impediments to the requirements of the laws of the Republic of Lithuania."

A.2.1.3. The joint examination of the establishing norm of the legal effects and the conditions ad validitatem

Colombia 1942 notes	"...the State has to write into the civil register that canonical marriages, whose act was handed over in the adequate form by the competent ecclesiastical authority."
Colombia 1973/7	"...the competent ecclesiastical authority hands over the authentic copy of the Act to the competent official of the State who has to transcript it into the civil register."

A.2.2. Further rules concerning the form of the contraction (conditions ad liceitatem)

A.2.2.1. Publishing of banns

Italy 1929/34, Portugal 1940/22	"The *publishing* of banns […] has to take place beyond the parish *at the local authority*."
Portugal 1940/22	"It is allowed to contract the marriage *without the previous publication of banns* in danger of death, in case of imminent birth and the explicit authorisation of the ordinary because of grave moral motive."

Austria 1933/7	"These marriages (banns) are to be pubished according to the canon law. The Republic of Austria reserves the right to order the secular publication as well."
Colombia 1942/4	"The publication of a catholic marriage (banns) will be in the form prescribed by the canon law; but the State can order the

	secular publication as well and, to the same aim, the parties to contract are obligated to inform the competent official about their intention to contract a catholic marriage."

A.2.2.2. The instruction of the engaged couple

Italy 1929/4, Colombia 1942/8, Italy 1984/8	"The parish priest immediately *after* the celebration explanes to spouses the secular legal effects, reading the adequate articles to the parties treating the rights and obligations of spouses of the secular code of law."

Croatia 1996/13, Poland 1993/10 No. 2., Lithuania 2000/13	"The preparation of a canonical marriage *includes* the explanation of the future spouses the teaching of the church about the dignity, the unity and the undissolubility of the sacrament of the marriage as well as the civil legal effects of the bond of marriage according the laws of the Republic of Croatia."

A.2.2.3. Invitation of an official of the state

Colombia 1942/6	"For the effects in the Civil Register the State can order, that *one of its officials* would present at the religious celebration, however in no case the presence of the said official is necessary that the marriage produces legal effects."
1942/7	"Before the celebration the priest who will assist *requires* authentic copy of parties that certifies that the Civil Regiter's authorized *official is invited* to day, hour and place to the ceremony. *Forbear from requiring inviation of* the official is possible in case of marriage in articulo mortis, on missionary territory if the place of celebration is farther than 20 km from the residence of the official."
Spain 1953 Add. Prot. 23. No. 1.	"In no case the *presence of state official* to the celebration of canonical marriage will be considered as a necessary condition to the recognition of civil effects."

A.2.3. Rules of administration

A.2.3.1 Rules ad liceitatem of transcription

Italy 1929/34	"[The parish priest after the celebration …] issues the marital act whose entire copy in 5 days should be handed over the local authority to be transcripted into the civil states's register."
Colombia 1942/8	"Aftermath the parish priest or his delegate, the parties, the witnesses and the state official subscribe the act in 2 copies. One of them the parish priest hands over to the authorised state official of the Civil Registrar in 6 days after the contraction."

Portugal 1940/22, Italy 1984/8, Malta 1993/2,	"The parish priest in 3 days hands an entire copy of the act of marriage over to the competent office of civil registrar for transcription; the transcription has to be carried out in 2 days and and the competent official on the following day of the transcription declares it to the parish priest indicating the date of transcription."
Spain I. 1979/6	"[the recognition of secular effects] ... which is realised by the *simple presentation* of the ecclesiastical certificate of the existence of the marriage."

Croatia 1996/13 No. 2., Slovakia 2000/10, Latvia 2000/8	"The *way* and the until time to be registered in the civil register a canonical marriage is prescribed by the adequate *law of the Republic of Croatia*."
Lithuania 2000/13 No. 2.	"The time and manner of recording a canonical marriage in the civil register shall be established by the competent authority of the Republic of Lithuania, in co-ordination with the Conference of Lithuanian Bishops."

A.2.3.2. Coming into force of the secular legal effects

Portugal 1940/23, Spain 1953 Add. Prot. 23. No. 4.	"The marriage produces all its civil legal effects *from the date of its celebration* if the transcription takes place within 7 days. If does not, it produces effects to a third person only from the date of its transcription."
Colombia 1942 Notes	"the catholic marriage does not produce civil legal effects *from the date of its celebration* unless through the writing into the competent civil register."
Colombia 1973 Add. Prot. 7.	"The civil effects of the properly transcripted catholic marriage come into force *from the date of the celebration* of the declared marriage."

Spain I. 1979/6	"The civil effects of the canonical marriage come into existence *from the moment of the celebration*."
Italy 1984/8	"The marriage has civil effects *from the moment of the celebration*, even if the state official because of whatever cause has been late with the implementation of the transcription."
Mata 1993/1, Poland 1993/10	"[The civil effects are recognised …] *from the moment of the celebration* [...]"

Croatia 1996/13, Lithuania 2000/13, Latvia 2000/8	"[The catholic marriage …] *from the moment of its celebration* [produces the civil effects …]"

A.2.3.3. Defered transcription

Spain 1953 Add. Prot. 23. No. 2.,	"The transcription of a catholic marriage which has not been recorded into civil registers immediately after the celebration,

Colombia 1973 Add. Prot. 7. No. 1.	is possible to be implemented at any time and at the request of anybody of parts or who has a legitimate interest." "To do this the presentation of an authentic copy of the ecclesiastical act will be sufficient."
Italy 1984/8	*The deferred transcription is possible if:* – at the request of both parties or of one of them with the other's knowledge and without his/her opposition, – both remain uninterruptedly in independent status since the marriage, – third party's legally obtained interests are not damaged.
Malta 1993/2	"Should the transmission of the act of marriage not be effected within the established time limit, it shall be the duty of the Parish Priest to effect the same as soon as possible. The spouses, or either of them, always retain the right to demand such transmission. *Late transmission* shall not be an obstacle to transcription."

Poland 1993/10	"[in 5 days …] this *deadline becomes extended* if has not been observed because of a vis maior until its end."

A.2.3.4. Death's effect to the transcription

Portugal 1940/23, Spain 1953 Add. Prot. 23. No. 3., Colombia 1973 Add. Prot. 7. No. 1.	"Death of one or both of the parties *does not hinder* the transcription."

A.2.4. Suitlaw

A.2.4.1. Theological elements

Portugal 1975 Add. Prot. I., Portugal 1940/24, Dominica 1954/15 No. 2.,	"The spouses with the celebration itself of a catholic marriage *assume responsibility* in face of the Church *for adher to* the regulating canonical norms, particulary to the essential attributes. The Holy See reinforces the teaching of the Catholic Church about the indissolubility of the bond of the marriage, remind the spouses who have contracted a catholic marriage of the heavy duty concerning them, not to use their civil faculty of the request of the divorce."
Spain I. 1979/6 No. 3., Poland 1993/11	The same without the last clause.
Italy 1984/8	"[…] the Holy See considers it necessary to *reinforce* the unaltered worth of the catholic teaching about the marriage and the encouragement of the Church for the dignity and the worth of the family, the basis of the society."

Malta 1993/4 No. 2.	"The Church shall enlighten prospective spouses about the specific *nature* of canonical marriage and, […]"

Poland 1993/11, Slovakia 2000/11	"The Contracting Parties manifest they will *cooperate* for defence and to respect the institution of the marriage and the family, basis of the society."

A.2.4.2. The provision of legal force for the decisions of the ecclesiastical forum

A.2.4.2.1. By delimitation of the jurisdictional competences

1. Compels the contracting Parties:

Colombia 1942/9, Colombia 1973 Add. Prot. 8.	The cases of nullity, of dispensation from marriages rato et non consummato, of the procedure of privilegium paulinum are in the *exclusive competence* of the ecclesiastical courts and congregations."
Spain 1953/24	The same and the cases of separation as well.
Italy 1929/34, Portugal 1940/25, Dominica 1954/16 No. 1., Colombia 1973/8	"As it concerns the cases of the nullity of the marriages and the dispensation from marriages rato et non consummato are *reserved* for ecclesiastical courts and congregations."
Austria 1933/7 § 3., Austria 1933 Add. Prot. 7. No. 1.	"The Republic of Austria *recognises the competence* of ecclesiastical courts and congregations in case of the nullity of the marriages and the dispensation from marriages rato et non consummato." "The Republic of Austria *recognises the competence* of the ecclesiastical Authorities in case of the procedure of privilegium paulinum as well."
Malta 1993/4 No. 2.	"[… specific nature of canonical marriage] and, consequently, about *ecclesiastical jurisdiction* concerning the marriage bond."

Poland 1993/10 No. 3., No. 4.	"It is in the *exclusive competence* of the ecclesiastical authority to judge upon the validity of canonical marriage, and upon the other matrimonial cases issued in canon law." "To judge upon matrimonial cases concerning the legal effects provided in the polish laws is in the *exclusive competence* of the statal coursts."

2. Compels the parties:

Spain I. 1979/6 No. 2.	"Concordant with the provisions of the canon law the *parties can appeal* to ecclesiastical courts for the declaration of the nullity or ask for the pontifical dispensation from marriages ratum et non consummatum."
Malta 1993/4 No. 2.	"[… the ecclesiastical jurisdiction concerning the bond of marriage.] The prospective spouses shall, by way of acceptance, formally *take note of this in writing*."

Dominica 1954/15 No. 2.	"[…] by the mere fact of celebrating a canonical marriage the spouses *renounce* the secular faculty of asking for divorce, which therefore will not be applicable for canonical marriage by civil courts."

A.2.4.2.2. Providing secular legal force for the decisions

Malta 1993/3	"The Republic of Malta *recognizes* for all civil effects, in terms of this Agreement, the judgements of nullity and the decrees of ratification of nullity of marriage given by the ecclesiastical tribunals and which have become executive."
Malta 1993/7	"The decrees of the Roman Pontiff super matrimonium ratum et non consummatum *are recognized*, as regards civil effects by the Republic of Malta, upon request, accompanied by the authentic copy of the pontifical decree, presented to the Court of Appeal by the parties or by either of them."

Croatia 1996/13	"The decisions of ecclesiastical Courts upon nullity of marriage and those of the Supreme Authority of the Church upon dispense from matrimonial bond are *communicated to* the competent civil Court *to put into effect the civil consequences* of the measurement, according to the legal norms of the Republic of Croatia."

Slovakia 2000/10 No. 2.	"The decisions of the Catholic Church upon nullity of marriage and upon dispense from matrimonial bond are *communicated to* the request of one of the interested parties to the Republic of Slovakia. The Republic of Slovakia will proceed according to its juridical order."

Lithuania 2000/13 No. 4.	"Decisions of ecclesiastical tribunals on the nullity of marriage and decrees of the Supreme Authority of the Church on the dissolution of the marriage bond are to be *reported to* the competent authorities of the Republic of Lithuania with the aim of *regulating* legal consequences of such decisions in accordance with the legal acts of the Republic of Lithuania."

A.2.4.3. Attribution of the secular legal effects

Austria 1933/7. § 4., Italy 1929/34, Colombia 1942/9, Spain 1953/24 No. 4.	"The provisions and the judgements when they are definitive are *brought to* the Supreme Court of the Secretariat which controls if the rules of the canon law were observed relating to the judge's competence and the summoning and of the representation or keeping away of the parties. The declared provisions and definitive judgements with the relative decisions of the Supreme Court of the Apostolic Secretariat are handed over to the Supreme Court of Austria. The civil effects come into force by decision of the execution made in secret meeting of the Supreme Court of Austria."

Portugal 1940/25, Dominica 1954/16 No. 2.	The same but the handing over is through a diplomatic way.
Spain 1953/24 No. 3., Colombia 1973/8.	The same, but leaving out the Secretariat, the ecclesiastical court *communicates* the judgement to the secular court.

Spain 1953/24 No. 2.	"[...] is the civil Court's task is to *decide* at the interested person's request about the norms and the precautionary measures regulating the civil effects of the case under way."

Spain I. 1979/6 No. 2.	"At request of anybody of the parties the said ecclesiastical provisions will have effects in the civil legal order *if* they are *declared conform* with the State law by a resolution issued by the competent civil court."
Italy 1984/8 No. 2.	The same bat the court of appeal *decides in judgement with conditions*: "– whether the judge were competent in the case, if the celebration took place on the basis of the Agreement, – whether in proceedings of the ecclesiastical court the right to act and to defend were provided in a way not different from the basic principles of the Italian legal order, – whether they correspond to the other *conditions* prescribed in the Italian law *for the proclamation* of effects *of foreign judgements*. The court of appeal can make interim economical measurements, in the judgement with which it implements the canonical judgement, to the advantage of one of the parties whom marriage has been declare null, sending them to the competent judge to decide in the matter."
Malta 1993/5	"[The judgements … are recognized …] *provided that*: a) a request is presented, by the parties or either of them, to the Court of Appeal together with an authentic copy of the judgement or decree, as well as a declaration of its execution according to canon law issued by the tribunal that has given the executive decision; b) the Court of Appeal ascertains that: I. the ecclesiastical tribunal was competent to judge the case of nullity of the marriage insofar as the marriage was celebrated according to the canonical form of the Catholic Church or with a dispensation from it; II. during the canonical juridical proceedings the right of action and defence was assured to the parties, in a manner substantially not dissimilar to the principles of the Constitution of Malta; III. in the case of a marriage celebrated in Malta after the 11 August 1975 the act of marriage laid down by the civil law has been delivered or transmitted to the Public Registry; IV. no contrary judgement pronounced by the civil tribunals and which has become res judicata, based on the same grounds of nullity."

Malta 1993/8.	"In the exercise of its specific functions as regards to the recognition of the decrees mentioned in article 7, as well as of the judgements of nullity or of the decrees of ratification of nullity of marriage mentioned in Article 3, the Court of Appeal *does not re-examine* the merits of the case."