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Nierozerwalność małżeństwa w rozumieniu Cerkwi prawosławnej

Indissolubility of marriage according to the Orthodox Church

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Introduction

Marriage, understood as a legally sanctioned union between a man and a woman, is the basic unit of social and religious life. In the Christian tradition, marriage has taken on particular significance by raising the dignity of the sacrament through Jesus Christ, which is why marriage is a matter of interest and concern for the Catholic Church and the Orthodox Church. The break-up of Christianity, which ultimately took place with the East–West Schism in 1054, has also left its mark on this sacramental relationship. In their teaching, Catholics and Orthodox refer to the Holy Scripture and Tradition, but their teaching on marriage is not identical. In the Gospel according to Saint Matthew, Jesus says: „Haven’t you read”, he replied, „that at the beginning the Creator „made them male and female”, and said, „For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh”? So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate” (Matt 19:4b-6). The above text clearly emphasises the indissolubility of marriage, but we are also aware that there are many circulating opinions about „church divorces” or about the praise of the Orthodox Church allowing divorce and new relationships. This „divorce” has inspired the author to look at the attribute of indissolubility of marriage from the perspective of the Orthodox Church. The above subject also seems to be topical in the context of a lively discussion within the Catholic Church about the Catholic doctrine of indissolubility of marriage.

1. Orthodox understanding of marriage

The Orthodox Church devotes much space to marriage in its teaching. In its doctrine, it refers to the Roman definition of marriage, which is understood as „the union of a man and a woman and the union [community] for life, the community of divine and human law”¹. This understanding of marriage has become a permanent feature of the Orthodox Church's collection of laws. They are referred to in: *Номоканон в 14 титулах* (6th century, second edition from 9th century)², *Алфавитная Синтагма* Матфея Властаря and other collections of law that enjoy „The orthodox authority”³. This definition is also referred to by the Holy Council of the Russian Orthodox Church (2000), which states that „early Christian fathers and teachers of the Orthodox Church were also based on the Roman understanding of marriage”⁴. The Orthodox Church, drawing on the Roman heritage, gave the definition of marriage the Christian meaning, referring to the Holy Scripture and the Orthodox Church tradition⁵, while departing from the Roman principle of dissolution of marriage by mutual consent of the parties⁶.

The doctrine of the Orthodox Church on marriage refers primarily to the Book of Genesis, in which she sees a description of the first marriage: „The Lord God said, „It is not good for the man to be alone. I will make a helper suitable for him” (Gen 2:18)⁷, as well as: „Be fruitful and increase in number; fill the earth and subdue it” (Gen 1:28a)”⁸. According to the Orthodox Church, the first marriage was established and blessed by God Himself. He indicated the purpose for which it had been established: for husband and wife to be mutual

¹ „Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio” („The union of man and woman and the union [community] for life, the community of divine and human law” – (author’s transl.), Modestinus (D. 23, 2, 1). Quot. from: T. PAWLUK, *Prawo kanoniczne według Kodeksu Jana Pawła II, Prawo małżeńskie*, t. 3, Olsztyn 1984, p.16; Cf. S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, Białystok 1994, p. 15 (S. Hrycuniak has translated the definition to: „Marriage is the union of a man and a woman, a common destiny for life, a divine and human truth association”); Cf. В. ЦЫПИН, *Каноническое право*, Москва 2009, p. 656.

² The Byzantine collection of church regulations and imperial resolutions that referred to the church - written in the 6th century and later edited in the 9th century. Cf. *Номоканон*, <https://ru.wikipedia.org/wiki/Номоканон> [access: 24.04.2017].

³ Cf. АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции Русской Православной Церкви*, Москва, 13 – 16 августа 2000 г., <http://www.patriarchia.ru/db/text/141422.html> [access: 24.07.2017], X1; В. ЦЫПИН, *Каноническое право*, op. cit., p. 656.

⁴ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции ...*, op. cit., X2.

⁵ Cf. В. ЦЫПИН, *Каноническое право*, op. cit., p. 656; J. MEYENDORFF, *Małżeństwo w prawosławiu liturgia, teologia, życie*, Lublin 1995, p. 21-26.

⁶ PHOTIUS CONSTANTINOPOLITANUS, *Notocanon*, Tit. XIII, cap. 4, PG 104, p. 1190 – 1194, quot. from: U. NOWICKA, *Stwierdzenie stanu wolnego wiernych prawosławnych na forum Kościoła katolickiego*, Warszawa 2012, p. 137.

⁷ Cf. П. ЕВДОКИМОВ, *Таинство любви*, Москва 2011, p. 212-214.

⁸ Cf. П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 212-214.

helpers and for people to breed on earth through marriage⁹. Some Orthodox theologians emphasise that it is only in the second chapter of Genesis that we are dealing with the proper establishment of marriage, where „one flesh” is mentioned, without any mention of procreation, which cannot be seen as the purpose of marriage¹⁰. The Holy Council of the Russian Orthodox Church does not reject such a goal, but even values it, stating that it does: „by implementing God's original will for creation, the marriage community sanctified by Him is a means of extending and multiplying the human race”¹¹. Orthodox doctrine on marriage refers to the presence of Jesus at the wedding in Cana of Galilee. In this event he sees the sanctioning and sanctification of marriage¹².

Orthodox theologians strongly emphasise the heavenly nature of marriage and its permanence even after death. The divine origin of marriage has a lasting moral basis and indicates the eternal positive attitude of the Creator towards it and coordinates His attitude to the purpose and the marking of man¹³. Orthodox theologians base the concept of eternal marriage on the teaching of Saint John Chrysostom, who stated that, in marriage, a man and a woman are not two, but one being¹⁴. The above teaching contrasts very strongly with that of the Catholic Church. Orthodox theologians citing, among others, the dialogue between Christ and Sadducees: „When the dead rise, they will neither marry nor be given in marriage; they will be like the angels in heaven” (Mark 12:25), suggest that the Western Church sees marriage only as an earthly institution, role of which ends with death. They argue that there has never been any opposition in the Western Church to widowed re-marriages, nor has the number of re-marriages after the death of a spouse been reduced. Orthodox theologians point out that this practice is contrary to the teaching of Saint Paul and the canonical practice of the Orthodox Church¹⁵. According to the Church, marriage has a mark of permanence and fidelity. It is an inseparable link between two unique and eternally existing personalities. It cannot be dissolved because of the offspring (justification of cohabitation) or family solidarity (basis of „levirate”)¹⁶.

⁹ M. JAKIMIUK, H. GABRIEL, J. MISIEJUK (ed.), *Katechizm Cerkwi Prawosławnej*, Hajnówka 2001, p. 57; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 212 – 214.

¹⁰ Cf. П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 200 – 201; *Katechizm Cerkwi Prawosławnej*, op. cit., p. 57.

¹¹ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit., XI: „Воплощая изначальную волю Господа о творении, благословенный Им супружеский союз становится средством продолжения и умножения человеческого рода” (the author’s translation in the text).

¹² Cf. IBID.; S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 10.

¹³ S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 18.

¹⁴ *Patrologie cursus completus. Seria Latina*, 1 – 222, ed. J.P. Migne, Paris 1878 – 1890, LXI, p. 289

¹⁵ Cf. J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 17 – 18; S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 32.

¹⁶ J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 19.

1.1. The sacrament of love

The innermost feature of the essence of marriage, which is the very essence of a close union, is love, which is expressed in the following words: „[...] a man will leave his father and mother and be united to his wife, and the two will become one flesh”¹⁷ (Matt 19:5; cf. Eph 5:31-3). Love - in Orthodox theology - is the sacrament of marriage¹⁸. The Holy Council also stresses: „For Christians, marriage is not only a legal contract, a means of extending the family and satisfying temporary natural needs, but, according to the words of Saint John Chrysostom, the „sacrament of love”, the eternal union of spouses with each other in Christ”¹⁹. Through marriage, people unite so closely together that they sanctify each other. Their relationship is seen not only as something external, but as the internal union from which their mutual love stems²⁰. Orthodox doctrine, citing the words of Saint Paul, who compares marriage to a relationship that exists between Jesus and the Church²¹, states that the very concept of marriage according to the teachings of the New Testament is so high that it cannot be equated with anything on earth; the only comparison can be found at divine level. In this context, marriage is seen as the complete union of two personalities according to body and spirit - a union based on true, personal and mutual love²².

2. Eternity of marriage

The doctrine of the Orthodox Church on marriage indicates its origin in paradise and its establishment by God. This justifies the fact that marriage is inseparable. This is confirmed by numerous passages from The Holy Scripture: „a man leaves his father and mother and is united to his wife, and they become one flesh” (Gen 2:24) and „So they are no longer two, but one flesh. Therefore what God has joined together, let no one separate” (Matt 19:6). This scriptural justification is common to both the Orthodox Church and the Catholic Church. The concept of

¹⁷ See П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 175-185.

¹⁸ Cf. H. PĄPROCKI, *Sakrament małżeństwa w Kościele prawosławnym*, in: M. PACIUSZKIEWICZ (ed.), *Słabość i moc. O ludziach żyjących w związkach niesakramentalnych*, Ząbki 1996, p. 128, 131

¹⁹ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit., X2: „Для христиан брак стал не просто юридическим договором, средством продолжения рода и удовлетворения временных природных потребностей, но, по слову святителя Иоанна Златоуста, «таинством любви», вечным единением супругов друг с другом во Христе”.

²⁰ Cf. S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 26.

²¹ Cf. Ef 5:31-32; J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 24-27; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 212.

²² S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 33; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 175-185.

indissolubility of marriage is firmly rooted in the faith and tradition of the Churches of East and West, but their understanding is already one of the differences in the conjugal doctrine of both Churches²³.

The Catholic Church emphasised in its legislation that: „Marriage concluded and completed cannot be dissolved by any human power and for any reason other than death” (can. 1141 of the Code of Canon Law; cf. can. 853 of the Code of Canons of the Eastern Churches). The Orthodox Church does not accept this position, and in its teaching it emphasises that marriage is eternal²⁴. Referring to the words of Saint Paul from the Letter to the Ephesians, in which the marriage is compared to a „great mystery” (Eph 5:32)²⁵, Orthodox theologians see it as a reconstruction of the great mystery of Christ's spousal love for the Church. Through the sacrament of marriage, human love ceases to be merely human - it becomes an expression and sign of the love of Christ himself for his Bride - the Church²⁶. Just as Christ loves the Church, so a husband loves his wife. Marriage can only be one for life, because it is something unique. It brings man into eternal joy and love and is the mystery of the Kingdom of God²⁷. J. Meyendorff emphasised that: „The Orthodox Church *implicite* connects marriage to the eternal Mystery, where there are no boundaries between heaven and earth, where human decision and action also reach an eternal dimension”²⁸. Through priestly blessing, people are closely united in a married couple so that they become one body. This understanding of marriage derives from Scripture and from the teachings of John Chrysostom, who taught that in marriage „a man and a woman are not two, but one being”²⁹. The doctrine of the Church emphasises: „Marriage is a „great mystery” (holy sacrament), which partners receive in the Church through the blessing and prayer of the priest. And like any other sacrament, it is also about eternal life in God's Kingdom. The sacrament does not stop working after the death of one of the spouses, but creates „as it has been given to them” (Matt 19:11) – eternal union”³⁰. Orthodox theologians stress that nowhere in the New Testament is there any direct prospect of re-marriage after divorce. They

²³ Cf. T. KAŁUŻNY, *Nierozzerwalność małżeństwa w Kościele Prawosławnym*, Sympozjum 1(19) 2010, p. 41; S. HRYCUNIAK, *Rozwód w pojmowaniu prawosławnym*, Rocznik Teologiczny XIX (1977), no. 2, p. 103-122.

²⁴ Cf. АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit., XI; S. HRYCUNIAK, *Prawosławne...*, op. cit., p. 18; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 175 – 240.

²⁵ Cf. J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 24 – 26.

²⁶ Cf. IBID.; T. KAŁUŻNY, *Nierozzerwalność małżeństwa...*, op. cit., p. 42.

²⁷ U. NOWICKA, *Stwierdzenie stanu wolnego...*, op. cit., p. 63-64; cf. H. PAPROCKI, *Sakrament małżeństwa w Kościele prawosławnym*, op. cit., p. 122 -125.

²⁸ J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 29 -30; cf. K. GRYZ, *Antropologia przebóstwienia. Obraz człowieka w teologii prawosławnej*, Kraków 2009, p. 203-204.

²⁹ P.G., LXI, p. 289; cf. АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit., XI; S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 46-47.

³⁰ S. HRYCUNIAK, *Rozwód w pojmowaniu prawosławnym*, op. cit., p. 104; cf. J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 64.

refer to the words of Saint Paul: „To the married I give this command (not I, but the Lord): A wife must not separate from her husband! But if she does, she must remain unmarried or else be reconciled to her husband. And a husband must not divorce his wife” (1 Cor 7:10-11)³¹. Some Fathers of the Church also confirm the eternity of the holy knot. Orthodox theologians recall in this context the words of Athenagoras, who described the remarried divorcee as a *harlot*, and also stated: „He who gets rid of his first wife, despite her death, is an adulterer, even though he does so in a disguised way”³². Orthodox canonists and theologians strongly emphasise that the Church radically excludes simultaneous polygamy and advocates a single, inextricable marriage as an ideal³³. This teaching about marriage is confirmed by the official position of the Holy Council in its resolution of 7 (20) April 1918: „The marriage of a man and a woman, consecrated and adorned in the sacrament of marriage with the power of grace, should be indestructible for all Orthodox Christian marriages: all of them, accepting with humility God's will as to the fate of their lives, should carry together the joys and burdens of marriage to the end of their days, striving to carry out the words of the Saviour and the Lord: „What God has joined together, let man not divide”³⁴. In a similar vein, in 2000, the Holy Council also stated that: „The church demands that the faithfulness of the spouses and the indissolubility of an Orthodox marriage should be preserved until death”³⁵.

3. Eternity of marriage and the possibility of remarriage

The indissolubility of an Orthodox marriage is eternal and is a certain ideal that spouses should strive for. However, in its doctrine, the Orthodox Church allows divorce and remarriage, and this practice should be regarded as very widespread. In the literature on the subject one can find, among other things, such a justification for the practice of repeated marriages: „Marriage

³¹ Cf. J. MEYENDORFF, *Malżeństwo w prawosławiu...*, op. cit., p. 65-66.

³² P.G. VI, 968; cf. J. MEYENDORFF, *Malżeństwo w prawosławiu...*, op. cit., p. 65-66.

³³ Cf. P. L'HUILLIER, *Le divorce selon la theologie et le droit canonique de l'Eglise orthodoxe*, „*Messenger de l'Exarchat du Patriarchat russe en Europe occidentale*” 65 (1969), p. 25; U. NOWICKA, *Stwierdzenie stanu wolnego...*, op. cit., p. 64.

³⁴ СВЯЩЕННЫЙ СОБОР ПРАВОСЛАВНОЙ РОССИЙСКОЙ ЦЕРКВИ, *Определение О поводах к расторжению брачного союза, освященного Церковью*, Москва 07 (20) April 1918 roku, <http://www.zaweru.ru/pravila/3990%20поводах%20к%20расторжению%20брачного%20союза,%20освященного%20Церковью.html> [access: 20. 07. 2017 г.]: „Супружеский союз мужа и жены, освященный и украшенный в Таинстве брака благодатною силою, должен быть у всех православных христиан-супругов нерушимым: все они, приемля с покорностью воле Божией свой жребий жизни, должны до конца дней совместно нести и радости, и тяготы супружества, стремясь осуществить слова Спасителя и Господа: „еже Бог сонета, человек да не разлучает (Матф. 19, 6)”.

³⁵ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit. X3: „Церковь настаивает на пожизненной верности супругов и нерасторжимости православного брака”; cf. J. MEYENDORFF, *Malżeństwo w prawosławiu...*, op. cit., p. 52.

as a sacrament is not a magical act, but a gift of grace. Spouses, having a flawed nature, may make a mistake; they may ask for God's grace in the sacrament of marriage or they may prove incapable of developing this grace in their lives together. If they prove to be so, the Church has the right to recognise that God's grace has not been „accepted”, and therefore she can tolerate „separation” and allow a new marriage”³⁶. An Orthodox theologian and canonist, Pierre L'Hullier, defending the practice of dissolution of marriages and reunion, says that if Jesus teaches that a marriage should not be dissolved, he does not say at the same time that it cannot be dissolved. Treating Jesus' words as a true commandment, he observes that the phrase „let not separate” implies that exceeding God's will by man is impossible to eliminate³⁷. S. Hrycuniak also states that an ideal, spiritual marriage was and could only be in paradise. Through sin it was lost, and therefore a formal divorce is also allowed³⁸.

The Orthodox science on the indissolubility of marriage refers to the well-known, also in Catholic science, Matthew clauses, on which the Church bases its divorce practice. In the Orthodox Church, the clauses are taken literally, in a literal, exceptive manner, as real exceptions to the principle of indissolubility³⁹. It is emphasised that adultery annihilates a marriage that has been concluded⁴⁰. This attitude is fundamentally different from that of Catholic science in interpreting and trying to read the above passages in the spirit of recent historical and exegetical research⁴¹. In the East, the search for Biblicists is of no importance⁴². For the Orthodox Church, the words: „except for harlotry” (Matt 5:32; cf. Matt 19:9)⁴³ are the foundation on which to base their position on divorce. Orthodox canonists refer to the Fathers of the Church, who allowed repeated marriages. It should be noted that not everyone shared this view. Strong opponents of this practice were, for example, Athenagoras, Theophilus, Clement of Alexandria⁴⁴. One of the authorities in favour of allowing divorce practice is Origen.

³⁶ S. HRYCUNIAK, *Rozwód...*, op. cit., p. 104; cf. J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 52. 65.

³⁷ Cf. P. L'HULLIER, *Le divorce...*, op. cit., p. 28; T. KAŁUŻNY, *Nierozerwalność małżeństwa...*, op. cit., p. 43.

³⁸ Cf. S. HRYCUNIAK, *Rozwód...*, op. cit., p. 111-112; В. ЦЫПИН, *Каноническое право*, op. cit., p. 699-708.

³⁹ S. JANKOWSKI, „*Co Bóg złączył...*” *geneza i znaczenie klauzul Mateuszowych Studium egzegetyczno-historyczne*, Warszawa 2015, p. 72.

⁴⁰ Cf. *IBID.*, p. 73; J. H. ERICKSON, *Orthodox Perspectives on Divorce and Remarriage*, in: *The Challenge of Our Past: Studies in Orthodox Canon Law and History Church*, Crestwood, 1991, p. 43: „For the East generally, the Matthean exceptive phrase is understood not as a derogation from the prohibition to divorce but as a logical and necessary corollary. Adultery is the antithesis of marriage as it was established „from the beginning” the perpetual union in love of one man and one woman”

⁴¹ See *Biblia Jerozolimska*, Poznań 2006, komentarz do Mt 19, 9, p. 1386; R. BROWN (ed.), *Katolicki Komentarz Biblijny*, Warszawa 2001, p. 931; W. GÓRALSKI, *Komentarz do kan. 1056*, in: J. KRUKOWSKI (ed.), *Komentarz do Kodeksu Prawa Kanonicznego*, t. III/2, Poznań 2011, p. 253

⁴² U. NOWICKA, *Stwierdzenie stanu wolnego...*, op. cit., p. 71.

⁴³ See П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 310.

⁴⁴ Cf. U. NOWICKA, *Nierozerwalność czy rozerwalność małżeństw prawosławnych? Refleksje na kanwie praktyki rozwodów i powtórnych małżeństw w akatolickich Kościołach wschodnich*, in: W. IRKA (ed.), *Vir Ecclesiae*

His teaching lies at the heart of the whole theology of marriage in the Orthodox Church⁴⁵. Origen, in his Commentary on the Gospel of Saint Matthew, noted that some church leaders allow distant women to marry again during their spouse's lifetime⁴⁶. He stresses that such a practice is contrary to the law and the precepts of Scripture, but adds: „they probably did not act unjustifiably and not without cause, because it seems that by allowing such a relationship, they tolerated human weakness in order to prevent greater evil”⁴⁷. Origen did not refer to the Saint Matthew's clauses when speaking of allowing divorce⁴⁸. In the teaching of Saint Basil the Great, opinions on the admissibility of divorce for adultery can also be noted⁴⁹, and in the writings of Saint Epiphanius, even remarriage on other grounds is permitted⁵⁰.

In the context of discussions on the correct reading of the Saint Matthew's clause, it seems that the historical background in which the Orthodox Church introduced divorce law will be not without significance. In short, this context and his opinion was presented by Cardinal Charles Journet during the Second Vatican Council: „It is true that some Eastern Churches [non-Catholic - author's note] have accepted divorces in cases of adultery and allow innocent spouses to enter into repeated unions. This fact is explained by the relationship that existed between the state and the Church in the past. Under the influence of civil law, which allowed divorce and a new marriage in such cases, the Code of the Eastern Church, called *Nomokanonem, Novellae Justiniani* were included enumerating multiple legal grounds for divorce. Later, in order to justify the practice, the Churches began to invoke Saint Matthew's divorce clause for adultery”⁵¹. This position is also confirmed by Mr Meyendorff: „After Leo VI, the Church could determine the legal status of all marriages, even those that were contrary to Christian norms [...]. In practice, not only was he obliged to bless marriages that he did not

deditus. Księga dla uczczenia Księdza Profesora Edwarda Góreckiego, p. 191; S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 37-50.

⁴⁵ Cf. T. ROGALEWSKI, *Nauka Jezusa o nierozzerwalności małżeństwa w Ewangelii św. Mateusza*, in: J. ŁACH (ed.), *Z problematyki etosu biblijnego, Studia z biblistyki*, t. II, Warszawa 1980, p. 187.

⁴⁶ Cf. ORIGENES, *Commentarius in Evangelium secundum Matthaëum*, t. 14, PG XIII, p. 1246; U. NOWICKA, *Stwierdzenie stanu wolnego...*, op. cit., p. 132-134.

⁴⁷ ORIGENES, *Commentarius in Evangelium...*, op. cit., p. 1246: „Non omnino tamen sine ratione, hec enim contra legem initio latam et scriptam, ad vitanda pejore, alieno arbitrio morem gerentes eos permississe verisimile est”.

⁴⁸ Cf. S. JANKOWSKI, „*Co Bóg złączył...*”, op. cit., p. 72.

⁴⁹ Cf. U. NOWICKA, *Stwierdzenie stanu wolnego...*, op. cit., p. 133-134; S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 37-50.

⁵⁰ Cf. U. NOWICKA, *Stwierdzenie stanu wolnego...*, op. cit., p.134-135; S. HRYCUNIAK, *Prawosławne pojmowanie małżeństwa*, op. cit., p. 37-50.

⁵¹ Text of the speech in: ACTA SYNODALIA SACROSANCTI CONCILII OECUMENICI VATICANI II, Vol. IV: *Periodus Quarta*, Pars III: *Congregationines generales*, Typis Polyglottis Vaticanis 1977, p. 45-4. Translation from: T. SIKORSKI, *Interwencja melchickiego biskupa Eliasza Zagħby na Soborze Watykańskim II w sprawie powtórnych małżeństw chrześcijan rozwiedzionych*, *Studia Theologica Varsaviensia* 21 (1983) no. 2, p. 85-91; cf. U. NOWICKA, *Nierozzerwalność czy rozzerwalność małżeństw...*, op. cit., p. 192.

approve, but even to „dissolve them” [i.e. „to give divorces”]”⁵². It is also stated that: „The Church neither „recognised” nor „given” a divorce. Divorce was considered a mortal sin [...]. It was not until the 10th century, when the Church received from the Emperor the legal monopoly of registering and approving all marriages, that it was obliged to „give divorce”⁵³. The above text indicates that divorce is a „civil” institution which the church has accepted as its own. The Eastern Church Fathers, who in their teaching were sympathetic to the practice of divorce in the Church, very rarely cited the Saint Matthew's clause as a source or justification for their position⁵⁴.

Contemporary Orthodox theologians refer to the New Testament texts on the indissolubility of marriage: „The possibility of a divorce on the grounds of harlotry and even the much more general acceptance by Saint Paul that a wife can separate from her husband make it clear that the New Testament does not present the indissolubility of marriage as the total suppression of human freedom. And freedom presupposes the possibility of sin as well as its consequences, which can ultimately lead to the breakdown of a marriage”⁵⁵. The Orthodox Church, justifying the right to dissolve marriages, states that Jesus himself pointed to adultery as the cause of divorce, because it is precisely this adultery that desecrates the sacred relationship⁵⁶. Orthodox theologians are severely criticised by the Catholic teaching on the indissolubility of marriage and the Church's failure to divorce: „The Catholic law, contrary to the Saviour's clause on the indissolubility of marriage, does not allow divorce at all, except in cases of adultery, although in the practice of the Catholic Church much more often than in our country, it cancels the actually existing marriages as invalid”⁵⁷. In their publications, the authors do not explain the Catholic position on the nullity of marriage by suggesting that an important marriage that exists is being dissolved.

⁵² Cf. J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 33.

⁵³ *IBID.*, p. 68-69.

⁵⁴ Cf. U. NOWICKA, *Nierozzerwalność czy rozerwalność małżeństw...*, op. cit., p. 192.

⁵⁵ J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 65.

⁵⁶ В. ЦЫПИН, *Каноническое право*, op. cit., p. 701; see АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit., X3: „Единственным допустимым основанием развода Господь назвал прелюбодеяние, которое оскверняет святость брака и разрушает связь супружеской верности”.

⁵⁷ *IBID.*

4. 1. „Death” of love

The theology of the Church in its doctrine of marriage strongly emphasizes that the matter of the sacrament is the mutual love of spouses⁵⁸. It is not uncommon, however, as Orthodox canonists note, that the reality of a fallen man does not allow the ideal to be fully achieved. Sin annihilates the grace of the sacrament, the consequence of which is the death of a marriage⁵⁹. The term „death” not only means biological but also moral and religious death⁶⁰. Paul Evdokimov, an Orthodox theologian, classifies the types of death of a marriage by distinguishing:

1. the death of love as a matter of sacrament caused by adultery;
2. religious death as a result of deviation from faith;
3. civil-law (social) death by virtue of the sentence of death;
4. death through a long-lasting absence⁶¹.

This is the vein of the claim that the Church does not dissolve marriage, because it has been dissolved by a human sin⁶². The act of divorce only formally establishes the dissolution of the marriage. It recognises the spiritual death of a married couple, and certifies the state of affairs caused by a human sin⁶³. Divorce is a declaration of the destruction of love and a recognition of the non-existence of marriage⁶⁴. Paul Evdokimov adds: „The Church therefore recognises that there are cases where married life, devoid of its sacramental substance, becomes only an extended profanation leading to the loss of the soul. The indissolubility of the bond threatens to force people to lie; the personal good is massacred by protecting the good of all. (...) An insoluble bond is not an argument for love. The issue becomes urgent when there is nothing to save and the bond originally established as inseparable is already dissolved and the law has nothing to replace grace, it can neither heal nor resurrect, nor say: „Stand up and go”⁶⁵. According to this approach, the Orthodox Church, as canonists and Orthodox theologians claim,

⁵⁸ Cf. H. RAPROCKI, *Sakrament małżeństwa...*, op. cit., p. 128. 131; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 175-185.

⁵⁹ Cf. U. NOWICKA, *Nierozerwalność czy rozerwalność małżeństw...*, op. cit., p. 194-196; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 314-327.

⁶⁰ Cf. KAŁUŻNY T., *Nierozerwalność małżeństwa...*, op. cit., p. 48.

⁶¹ *IBID.*; cf. ЕВДОКИМОВ П., *Таинство любви...*, op. cit., p. 308-327.

⁶² Cf. U. NOWICKA, *Nierozerwalność czy rozerwalność małżeństw...*, op. cit., p. 194-196; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 314-327.

⁶³ U. NOWICKA, *Nierozerwalność czy rozerwalność małżeństw...*, op. cit., p. 195; J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 64-69.

⁶⁴ U. NOWICKA, *Nierozerwalność czy rozerwalność małżeństw...*, op. cit., p. 195; cf. S. HRYCUNIAK, *Rozwód...*, op. cit., p. 111-112.

⁶⁵ П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 314-327; cf. T. KAŁUŻNY, *Nierozerwalność małżeństwa...*, op. cit., p. 44.

does not grant a divorce in the strict sense of the word, but states the facts by its ruling⁶⁶. J. Meyendorff calls for this: „Practically in full compliance with Scripture and Church Tradition, I would suggest that our church authorities stop „divorcing”. (as they are given by civil courts anyway) and rather on the basis of the recognition of a civil divorce that the marriage does not actually exist, they issued „remarriage permits”⁶⁷.

5. Orthodox church divorce

The Orthodox Church, in its teaching, strongly emphasises the indissolubility of marriage and at the same time, although it does not approve of this choice, it allows divorce and remarriage. The justification for this is as follows: „Since the marriage of Christians is a sacrament and an image of the bond between Christ and the Church, there can only be one true marriage, just as Christ has only one Bride - the Orthodox Church, and the Orthodox Church has only one Spouse in Christ [...] Hence the wisdom of the Orthodox Church is that it regards one marriage as true for all Christians. A second marriage allows for the sake of forbearance towards human weakness, and a third one allows reluctantly, with repentance, as not free from sin, preventing this ideal solution to a greater evil - adultery (coexistence outside marriage)”⁶⁸. Paul Evdokimov claims that, by accepting divorce, the Orthodox Church bears witness to infinite respect for the human person and the sacrament of charismatic love⁶⁹. It points to internal freedom and personal responsibility before God. The Holy Council highlights that: „Unfortunately, sometimes, because of a sinful imperfection, spouses may prove to be incapable of preserving the gift of God's grace, accepted by them in the Sacrament of Marriage, and maintaining the unity of the family. Desiring the salvation of sinners, the Church gives them the opportunity to improve and, after penance, is ready to admit them back to the Sacraments”⁷⁰. In spite of allowing divorce on the grounds of human weakness, it is always the

⁶⁶ Cf. S. HRYCUNIAK, *Rozwód...*, op. cit., p. 104; T. KALUŻNY, *Nierozzerwalność małżeństwa...*, op. cit., p. 42.

⁶⁷ J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 69.

⁶⁸ ФИЛАРЕТ, *Собрание мнений и отзывов Филарета, митрополита Московского*, quot. from: Ю. МАКСИМОВ, *Учение Христова о нерасторжимости брака «кроме вины прелюбодеяния» (Мф. 5, 32) и современная практика «церковных» разводов. Богословский аспект.*, published 14. 11. 2008r., <http://www.pravoslavie.ru/jurnal/28265.htm> [access: 20.07.2017]: «Поскольку брачный союз христианский есть таинство и образ союза Христа с Церковью, то совершенный брачный союз может быть только один, так как Христос имеет единую только невесту – Церковь, и Церковь – только единого жениха, Христа... Отсюда мудрость Православной Церкви заключается в том, что она для всех христиан совершенным признает один брак. Второй брак допускает она по снисхождению к немощи человеческой, а третий допускает неохотно, с епитимией, как не свободный от греха, отвращая сим несовершенным делом большее зло – любодеяние вне брака»

⁶⁹ П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 212.

⁷⁰ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit. X3.

norm for the Orthodox Church that marriage is inseparable⁷¹. The teaching even points out that a second marriage was never considered „full” by the Church. This is evidenced by the fact that a different rite of the sacrament is provided for second and third marriages. While for the first marriage the liturgy is dominated by a solemn, joyful character, for the subsequent couples the liturgy has a penitential character⁷². The law of the Church, by permitting a second and a third marriage, sets certain conditions for the parties: „The church does not encourage a second marriage. Nevertheless, after the Orthodox Church's final divorce, under canon law, an innocent party is allowed to remarry. Persons whose first marriage had broken up and had been dissolved with a ruling on their guilt are only allowed to enter into a second marriage on the condition of repentance and execution of a penance imposed according to canonical rules. In those exceptional cases where a third marriage is allowed, the period of penance, according to Saint Basil the Great, is increasing”⁷³. The Orthodox Church allows three marriages to be concluded, the fourth one is categorically forbidden⁷⁴.

In her teaching on marriage, the Orthodox Church often refers to the concept of „ecclesiastical economy”, understood as a temporary and ad hoc departure from the strict application of regulations for pastoral reasons⁷⁵. It allows a sacramental union to be dissolved and a new one to be entered into even if this is contrary to the general teaching of marriage. Divorce is treated as an exceptional but necessary concession, dictated by the Church's forbearance and concern for the spiritual good of man⁷⁶. According to this principle, new marriages are allowed for both parties⁷⁷.

⁷¹ Cf. IBID.; T. KAŁUŻNY, *Nierozzerwalność małżeństwa...*, op. cit., p. 46; J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 65.

⁷² Cf. Ю. МАКСИМОВ, *Учение Христово о нерасторжимости брака...*, op. cit.; J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 52-56: „The rite of „remarriage” is so strikingly different and penitential that, in some cases, when the second marriage is indeed a happy event, it is difficult to justify its use and give an acceptable explanation to the young couple and the whole congregation. The Orthodox sections recommend that it should only be used in those cases where both newlyweds are remarried. This reservation is difficult to explain theologically because, as we have seen above, in the biblical and canonical tradition of the Church it would be difficult to accept a fully „normal” marriage, one of the parties to which was already married”.

⁷³ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit., X3: „Церковь отнюдь не поощряет второбрачия. Тем не менее после законного церковного развода, согласно каноническому праву, второй брак разрешается невиновному супругу. Лицам, первый брак которых распался и был расторгнут по их вине, вступление во второй брак допускается лишь при условии покаяния и выполнения епитимии, наложенной в соответствии с каноническими правилами. В тех исключительных случаях, когда допускается третий брак, срок епитимии, согласно правилам святого Василия Великого, увеличивается”.

⁷⁴ Cf. S. HRYCUNIAK, *Rozwód...*, op. cit., p. 122; П. ЕВДОКИМОВ, *Таинство любви*, op. cit., p. 313

⁷⁵ Cf. W. HRYNIEWICZ, *Zasada «ekonomii eklezjalnej» w życiu i teologii prawosławia*, *Roczniki Teologiczno-Kanoniczne*, 28 (1981) no. 6, p. 137-152.

⁷⁶ Cf. АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit. X3; T. KAŁUŻNY, *Nierozzerwalność małżeństwa...*, op. cit., p. 46; J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 44-47.

⁷⁷ Cf. АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit. X3; J. MEYENDORFF, *Małżeństwo w prawosławiu...*, op. cit., p. 68.

5.1. Reasons for divorce

When discussing the detailed provisions on divorce in the Orthodox Church, it should be noted that the Orthodox Church, although it undoubtedly represents one religion, is nevertheless institutionally and hierarchically divided. In view of the size of the above study, only the provisions in force in the Russian Orthodox Church, also known as the Moscow Patriarchate, will be cited in this study.

The current science on divorce in the Russian Orthodox Church is set out in the following documents:

1. Resolution on the issuance of decrees on divorce and civil marriage ⁷⁸,
2. Resolution on the reasons for divorce of married couples blessed by the Church ⁷⁹,
3. Resolution, supplement to the Council's resolution on the reasons for divorces of married couples blessed by the Church ⁸⁰,
4. Foundations of the social concept of the Russian Orthodox Church ⁸¹.

The above documents emphasise the Church's consistent tradition of teaching about the indissolubility of marriage. However, there are certain situations where, due to human weakness, it is possible to dissolve a marriage⁸². It is pointed out that only ecclesiastical authority has power over the union of the Blessed in the Church; no secular authority can dissolve such unions ⁸³. A civil divorce without the dissolution of the marriage in the church is not enough for a new marriage.⁸⁴

The Council documents state that: „The Holy Church allows for the dissolution of a marriage, bowing only to human weakness, caring for the salvation of people - preventing the inevitable violation of the law and relieving the severe sufferings - on condition that the

⁷⁸ СВЯЩЕННЫЙ СОБОР ПРАВОСЛАВНОЙ РОССИЙСКОЙ ЦЕРКВИ, *Определение по поводу декретов о расторжении брака и о гражданском браке*, 19.02.(04.03)1918г., http://krotov.info/acts/20/1917_19/19180304.html [access: 20.03.2017]

⁷⁹ СВЯЩЕННЫЙ СОБОР ПРАВОСЛАВНОЙ РОССИЙСКОЙ ЦЕРКВИ, *Определение о поводах к расторжению брачного союза, освященного Церковью*, 07.04. (20.04) 1918г., <http://www.zaweru.ru/pravila/399-O%20поводах%20к%20расторжению%20брачного%20союза,%20освященного%20Церковью.html> [access: 20.03.2017].

⁸⁰ СВЯЩЕННЫЙ СОБОР ПРАВОСЛАВНОЙ РОССИЙСКОЙ ЦЕРКВИ, *Определение о дополнении соборного определения о поводах к расторжению брачного союза, освященного Церковью*, 20.08 (02.09) 1918, <http://www.bogoslov.ru/data/100/413/1234/Dejanija00.pdf> [access: 20.03.2017].

⁸¹ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции*, op. cit.

⁸² Cf. СВЯЩЕННЫЙ СОБОР ПРАВОСЛАВНОЙ РОССИЙСКОЙ ЦЕРКВИ, *Определение о поводах к расторжению...*, op. cit., pt 1-2

⁸³ Cf. СВЯЩЕННЫЙ СОБОР ПРАВОСЛАВНОЙ РОССИЙСКОЙ ЦЕРКВИ, *Определение по поводу декретов*, op. cit., pt 1.3.

⁸⁴ Cf. *IBID.*, pt 2.

marriage has actually broken down beforehand and cannot be carried out”⁸⁵. The Russian Orthodox Church gives the following reasons for divorce:

1. Apostasy from the Orthodox faith,
2. Adultery and acts contrary to nature (a petition for divorce may be filed up to three years after obtaining information about the spouse's adultery, but no later than ten years from the act itself; the sin of adultery may not be caused by a desire to „deceive” an Orthodox divorce),
3. prior impotence (impotence becomes the cause of divorce only two years after marriage; the exception is when impotence is undisputed, also due to the absence or defect of organs. The Orthodox legislator also considers impotence resulting from self-mutilation after marriage to be an obstacle),
4. diseases: leprosy and syphilis,
5. missing of one of the spouses - absence of more than three years; this period may be reduced to two years in certain cases,
6. sentencing to a penalty involving the loss of civil rights; the obstacle ceases when the marriage continues after serving the sentence,
7. threat to the life of the spouse or their offspring,
8. cohabitation with family members, pimping and profiting from the spouse's disorder,
9. entering into a second marriage⁸⁶,
10. an incurable mental disorder that prevents the continuation of married life,
11. abandonment by the spouse, which prevents the continuation of the marriage⁸⁷.

The above regulations were passed at the Local Council of the Russian Orthodox Church in 1918. The first nine were approved by a resolution of 07/04 (20/04) 1918, and then, a few weeks later, on 20/08 (02/09) 1918, this list was supplemented by two more reasons for divorce.

In 2000, the Russian Orthodox Church supplemented the divorce causes in a document issued at the time entitled *The Basics of Social Doctrine of the Russian Orthodox Church*. This act provides that, in addition to the above mentioned reasons, divorce may also be caused by the fact that the Russian Orthodox Church is not a divorce:

1. AIDS,
2. alcoholism,

⁸⁵ IBID.

⁸⁶ Cf. IBID., pt 3.

⁸⁷ СВЯЩЕННЫЙ СОБОР ПРАВОСЛАВНОЙ РОССИЙСКОЙ ЦЕРКВИ, *Определение о дополнении соборного определения...*, op. cit., pt 1.

3. drug dependence,
4. abortion carried out by the wife without the consent of her husband⁸⁸.

This is the current legal status, and it cannot be ruled out that this inventory will be modified. This assumption seems to be confirmed by the document of the Holy Council, which has already been cited: „however, if the break-up of a marriage is a fact that has taken place - especially when the spouses live separately - and it is impossible to rebuild the family, then for pastoral reasons, an Orthodox divorce is also permitted”⁸⁹.

The Orthodox Church continues to teach about the indissolubility of marriage, emphasising its eternal character, but at the same time, in its legal provisions, it formulates further reasons for dissolving a marriage. The practice of the Orthodox Church's judiciary is also shaped in this spirit, as confirmed by the Orthodox canonist ЦЫПИН by stating that: „Nowadays, divorce cases are, as you know, dealt with in state judicial bodies. The church authority, in such a case, does not conduct complex court proceedings similar to those organised in synodal times in the Consistori or Synod, without having sufficient capacity to do so, and may base its decision on a request for the dissolution of the marriage only on the testimony of the spouses themselves, a testimony of the clergyman, and also on a judgment of a state court concerning the marriage in question, if it is already”⁹⁰.

Conclusion

In conclusion, it should be stated that the Orthodox tradition, like the Catholic tradition, advocates the indissolubility of marriage. Both Churches draw on Scripture and Tradition, but they understand the term in a different way. The Catholic Church upholds the indissolubility of sacramental and completed marriage, and the Church provides numerous possibilities for divorce. The Orthodox Church's position on the possibility of three marriages may prove to be quite complicated for a man brought up in the Catholic spirit. On the one hand, the church teaches about the eternal character of marriage, on the other hand, it speaks openly about the possibility of divorce. The most important documents of the Russian Orthodox Church also underline this dualism: „In order to educate brides and grooms spiritually and to strengthen marital ties, priests are called upon to explain in detail to the bride and groom the idea of the church's indissolubility of marriage, stressing that divorce in the last resort can only take place

⁸⁸ ІВІД.

⁸⁹ АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции*, op. cit. X 3

⁹⁰ Cf. В. ЦЫПИН, *Каноническое право*, op. cit., p. 692.

if the spouses commit acts which are described by the Church as grounds for divorce”⁹¹. When analysing the applicable norms concerning the invalidity of marriage and divorce law of the Russian Orthodox Church, it should be noted that in the Orthodox Church, the pastoral economy is above the law, which, because of human weakness, makes further concessions, showing mercy to its believers. The analysis presented in the above study shows that there has been a break in the Orthodox Church between theology and the Orthodox Church's practice of divorce, which is attempted to justify by human weakness and showing mercy. Such actions do not lead to the strengthening of the institution of marriage but, on the contrary, to its weakening and increasing the number of divorces.

⁹¹ Cf. АРХИЕРЕЙСКИЙ СОБОР, *Основы социальной концепции...*, op. cit. X3.