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PEOPLE OF THE BOOK: FUNDAMENTAL ISSUES OF THE REGULATION OF CHRISTIAN, JEWISH AND MUSLIM MARRIAGE RIGHTS**

ABSTRACT: The relationship between the system of civil matrimonial law and denominational and religious rights in the European context is quite clear to any lawyer because civil matrimonial law evolved from canon law, particularly Catholic canon law. The system of canon law influenced and shaped the thinking of legal scholars who formed civil matrimonial law, and this is also true of Protestant marriage. Jewish and Islamic marriage law, however, differs significantly from the Christian conception and is definitely contractual in nature. This study aims to compare the marriage law rules of Christianity, Judaism, and Islam using the method of comparative law, but it also compares them with the Hungarian matrimonial law system. The study analyzes the pre-marriage procedure and the process of entering into marriage, and it compares the rules for divorce with regard to these three religions. The study is a shorter explanation of one of the important topics of the author's doctoral research since the main topic of the research is facultative civil marriage, i.e. the possibility of recognizing church marriage in civil law in Hungary. The author aims to get a more complete picture of the

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legal concepts of the three great world religions and the relation of Hungarian marriage law to these religious legal systems.

Keywords: religious marriage, civil marriage, Jewish law, Sharia, Orthodox law, Lutheran law, Calvinist law, Catholic law, legal comparison, comparative law

INTRODUCTION

When examining the functioning of marriage, a more thorough analysis of denominational canon law is also essential, since the system of regulating marriage law finds its foundations in the legal order of almost every state, in denominational/religious marriage laws. For the comparative analysis of denominational church law, the author uses the methods of legal comparison, especially the tool of functional legal comparison.

“We should not look at a foreign legal system with the eyes and doctrinal framework of our own legal system, but try to transcend it, by using external ‘neutral’ elements for comparing legal systems”,

says Mark Van Hoecke, a Dutch comparatist,¹ and the author fully agrees with this statement, as it is precisely with regard to denominational canon law that it is necessary to disregard already known legal disciplines and to take into account the transcendent elements of religious rights. Of course, this should be done only to the extent necessary for comparison, since it is not possible to compare the legal institutions of ecclesiastical and confessional legal systems with those of civil law in such a way as to discover complete harmony of law between them.

The main direction of the study is primarily the legal provisions of the Roman, Greek Catholic, Lutheran, Reformed, and Orthodox denominations, as well as Judaism and Islam related to marriage, and the author tries to take theological teaching into account only to the extent that it is indispensable for legal assessment. The theological teaching and legal provisions of the churches cannot be completely separated because the legal provisions within the denominations and churches are always theological, but in order to interpret them within the rules of civil law, it is necessary to analyze only legal decision-making and regulatory systems and to evaluate theological involvement as moral and emotional motivation.

¹ Van Hoecke, M. (2015). Methodology of Comparative Legal Research. *Law and Method*, 27. (Accessed on February 5, 2024) <https://www.lawandmethod.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001.pdf>

The question may also arise: to what extent and in what manner do the laws of the state and the law of churches coexist? Canon law, superior to the Church's own members, is equivalent or inferior to the laws of the State. It is safe to say that the legal regulation of churches, no matter how elaborate, cannot exceed state regulation because the state gives a common right to all its citizens, while the church regulates the material realization of the transcendent. The author considers it more viable if state and church law are equivalent for citizens of denominations since the direction of legal regulation is the same in both cases: the restriction of human life to the normal course, the suppression of fluctuations, the satisfactory settlement of disputes, and the application of a kind of moral code. Within this framework, it is acceptable for a citizen belonging to a denomination not to exercise one of the rights granted by the state, but not to fail to fulfill one of his obligations, so this situation can also be regarded as a special relationship,² if the party belonging to the denomination cannot exercise the right that benefits him or her due to the regulation of the Church.³ If the laws of church and state operate in parallel, but without affecting each other, as is currently the case in Hungary, which is also guaranteed by the Fundamental Law, based on the principle of religious freedom, cooperation between denominations and the state based on agreement is conceivable, as can be found in the laws of several states belonging to the European Union.

Another question is whether state and church legislation can be made equivalent or possibly "compulsory" in the life of a state or not. In the work published in 1994 by Balázs Schanda and Péter Erdő, the relationship between church and state can be examined from three legal perspectives: Firstly, the state can create its own laws that regulate its relations with churches; secondly, it can adopt ecclesiastical legislation as its own⁴; and thirdly, it can enter into contracts with the churches.⁵ In the following, the author would like to take into account the aspects related to the fundamental stages of the Hungarian marriage system and examine how the canon law of the aforementioned Christian denominations and Judaism and Islam relate to each other and possibly to civil law rules.

² The norms that characterize it allow deviations from the prescribed conduct in favour of one of the parties.

³ For example, the issue of abortion, which is basically provided by the state but belongs to the same denomination (mainly Christians, but also people of other religions), cannot use the possibility of abortion (in principle) because it is forbidden for them by beliefs and church rules.

⁴ There have been countless examples of this in the past, suffice it to consider only Joseph II's Matrimonial Patent, which is the adoption of Catholic marriage law in its entirety and its transformation into state law.

⁵ Cf. Schanda, B., Erdő, P. (1994). *Egyház és vallás a mai magyar jogban* [Church and religion in today's Hungarian law]. Budapest: Szent István Társulat, 15–16.

POSSIBILITY OF GROUPING MARRIAGES ACCORDING TO MORAL AND LEGAL GROUNDS

There are two important aspects to consider when examining denominational or religious canon law: on the one hand, what legal classification is given to marriage in relation to that denomination or religion; and, on the other hand, whether that denomination or religion considers marriage to be a civil or religious act or both.

With regard to the Catholic, Greek Catholic, and Orthodox denominations, the legal assessment of marriage is that it is a sacrament, and accordingly, church marriage establishes a new legal relationship between the spouses, independent of the conjugal relationship established by civil marriage. This is precisely why these three denominations regard civil marriage as *matrimonium non existens* and accept only ecclesiastical marriage as a valid and existing marriage.⁶ Protestant churches primarily consider marriage a civil act, in which the marriage bond is not established by the ecclesiastical ceremony but by the civil act, and the task of the denominations is only to bless this already established union.

With regard to the Jewish and Muslim religions, marriage has almost no religious or civil matrimonial connection but is seen as a contract, so it is rather an act within the framework of contract law. Judaism attaches certain religious requirements to marriage, but its essence is the signing of a *ketubah*, i.e., the conclusion of a contract between a man and a woman. In the case of Muslim marriage, even this small religious aspect is not mandatory. It is completely sufficient to sign and hand over the marriage certificate, so the marriage is considered a purely civil act.

PRE-MARRIAGE PROCEDURE

In Section 4:7 of the Book of Family Law, the Civil Code regulates the process which must precede all marriages contracted in Hungary.⁷ The Civil Code merely summarizes the essential rules, since the procedure is regulated

⁶ Cf. Erdő, P. (1991). *Egyházjog* [Law of the Church]. Budapest: Szent István Társulat, 398.

⁷ Cf. Vékás, L., Gárdos, P.(2020). *Nagykommentár a polgári törvénykönyvhöz* [Great Commentary to the Hungarian Civil Code]. Budapest: Wolters Kluwer Hungary, 710; Heger, Cs., Katonáné Pehr, E. (2021). *Magyar családi jog* [Hungarian Family Law]. Budapest: Novissima, 38–39; Barzó, T. (2017). *A magyar család jogi rendje* [The legal order of the Hungarian family]. Budapest: Patrocinium, 67–69; Hegedűs, A. (2022). *Polgári jog. Családjog* [Civil Law. Family Law]. Budapest: R.I.M.Á.K. 53–54.

in detail by Act I of 2010 on Civil Registration Procedure.⁸ The first step of marriage is the same in Christian denominational canon law and civil law: the intention to marry must be announced in advance in each case. From the point of view of Jewish law, it is also necessary to report the intention and date of marriage to the rabbi, since he examines marriage impediments within a narrow scope. Islamic marriage is purely contractual, and it is not associated with religious or legal ceremonies, so it does not need to be announced. In Catholic and Greek Catholic canon law, following the announcement of marriage, the minister also checks whether there is a marriage impediment between the parties, and whether there is a ban due to *mixta religio*⁹ or a *disparitas cultus*¹⁰ impediment that can be removed.¹¹ In addition, it is essential to ascertain that the parties do not have a valid marriage with anyone else, not even a civil marriage, since in some cases this may also constitute an impediment to marriage.¹²

As far as the Reformed and Lutheran denominations are concerned, there is no such examination, since the two denominations essentially acknowledge the authority of civil marriage¹³ and do not impose any special conditions in this regard. At the same time, the Second Helvetic Confession also regulates the rules of marriage,¹⁴ and Martin Luther likewise makes provisions on the issue of marriage.¹⁵

⁸ Section 17 of Act I of 2010 on Civil Registration Procedure, Magyar Közlöny, 2010/1. (2010. január 8).

⁹ A marriage impediment that prohibited marriage between Catholics and baptized persons belonging to a „heretical or schismatic sect” in canon law. With the new code of laws of 1983, the issue of mixed marriages was reorganized, and now some conditions must be met, including: the elimination of the dangers associated with abandonment of the faith, the promise of baptism of offspring and their Catholic ecclesiastical education.

¹⁰ Under this impediment, a marriage between two persons is invalid one of whom has been baptized or admitted to the Catholic Church and has not left it by formal act, and the other who has not been baptized or has been baptized invalidly.

¹¹ The prohibition of *mixta religio* (mixed religion) exists between Catholic and non-Catholic Christians and can be removed under the authority of a minister, while the impediment of *disparitas cultus* (difference of religion) exists between a Catholic and an unbaptized person, which can be removed with the permission of the bishop.

¹² Cf. Kuminetz, G. (2002). *Katolikus házasságjog* [Catholic Marriage Law]. Budapest: Szent István Társulat, 102–103; Erdő, P. (1991). *Egyházjog* [Law of the Church]. Budapest: Szent István Társulat, 411–412.

¹³ According to the rules of their founders.

¹⁴ Bullinger, H. (2010). *Második Helvét Hitvallás* [Second Helvet Confession]. Cluj–Napoca, 65–66.

¹⁵ Cf. Reuss, A. „...őszintén és teljes hűséggel szeretik egymást” *A házaseletről Luther írásaiban* [„...they love each other sincerely and faithfully.” About married life in Luther’s writings] *Lelkipásztor-Evangélikus teológiai folyóirat*, 2022/3, 88–96.

With regard to the Orthodox Churches, there is also a marriage registration procedure that determines whether the basic conditions for entering into marriage are met. However, since the Orthodox denomination allows divorce, it must specifically examine how many times divorce has occurred, as it is not permissible to divorce and remarry more than three times. Free will is an essential condition for entering into an Orthodox marriage, and a person belonging to an Orthodox denomination cannot marry someone who is not Orthodox—that is, a Christian of another denomination or a follower of a different religion.

As for Judaism and Islam, no specific procedure exists for separately examining marriage impediments, although there are situations in both traditions where a marriage cannot validly be concluded.¹⁶ In the author's opinion, the role of morality is most prominent in these cases, since, for example, the examination of marriage impediments is not institutionalized. Thus, in order not to create an impediment to marriage, families in particular need to pay close attention. This is first and foremost a moral, not a legal issue.

CIRCUMSTANCES RENDERING A MARRIAGE INVALID

The Civil Code defines the grounds for the invalidity¹⁷ of a marriage.¹⁸ Catholic matrimonial law, on the other hand, regulates marriage impediments, and it is an ecclesiastical law that renders a person incapable or declaring a person unable to marry based on a characteristic or circumstance.¹⁹ A person is incapable if they are unfit for marriage based on some personal characteristic, and a person is unable if they are unfit based on some circumstance. E.g. impotence is a personal quality, and not reaching the minimum age for marriage is a circumstance, all of which are barriers to marriage. This is an essential

¹⁶ Cf. Donin, H. H. (1998). *Zsidónak lenni* [To be Jewish]. Budapest: Göncöl Kiadó, 261–262.

¹⁷ For a marriage to be valid or void, it must necessarily exist. Absolute and relative grounds of invalidity were determined during the codification of the Civil Code. Absolute impediments constitute an impediment to everyone, while relative impediments constitute an impediment to marriage only within a certain circle of persons.

¹⁸ Cf. Hegedűs, A. (2022). *Polgári jog-Családjog* [Civil Law. Family Law]. Budapest: R.I.M.Á.K., 7; Barzó, T. (2017). *A magyar család jogi rendje* [The legal order of the Hungarian family]. Budapest: Patrocinium, 69–71; Herger, Cs., Katonáné Pehr E. (2021). *Magyar családi jog* [Hungarian Family Law]. Budapest: Novissima, 48–52.

¹⁹ Erdő, P. (1991). *Egyházjog* [Law of the Church]. Budapest: Szent István Társulat, 415.

similarity between the two legal systems²⁰ because in Catholic marriage law, impediments²¹ either preemptively annul a marriage, prevent its conclusion, or serve as grounds for annulment when discovered later.²² Canon law also distinguishes between oath-based and marriage-based prohibitions, which are similar to the system of absolute and relative marriage impediments in civil law.²³ Oath-based prohibitions apply to the minister officiating a marriage, while marriage prohibitions apply to the parties themselves.²⁴ Greek Catholic canon law regulates marriage impediments similarly to Roman Catholic Church law.²⁵

With regard to Protestant denominations, again, there can be no generally defined marriage impediments or grounds for annulment. The canon law of the Lutheran and Reformed Church accepts the grounds of invalidity set out in the Civil Code, and if such grounds exist, the spouses are not granted the Church's blessing. The only difference pertains to the marriage of a pastor²⁶ from the perspective of the Reformed or Lutheran²⁷ denomination.

The marriage law of the Orthodox Churches is governed by Roman and Greek Catholic regulations, with only a few minor differences.²⁸ While it is

²⁰ The thinking of the Civil Code starts from the fact that marriage is fundamentally valid, and compared to this, there may be circumstances that, if proven, could render the marriage invalid.

²¹ Cf. Kuminetz, G. (2002). *Katolikus házasságjog* [Catholic Marriage Law]. Budapest: Szent István Társulat, 261.

²² Cf. Erdő, P. (1991). *Egyházjog* [Law of the Church]. Budapest: Szent István Társulat, 404–405.

²³ The difference is that while absolute marriage impediments prohibit and annul marriage beforehand, relative marriage impediments do not, although marriage is not allowed under such impediments.

²⁴ Cf. Kuminetz, G. (2002). *Op. cit.*, 106–107.

²⁵ Cf. Pallath, P. (2021). *Code of Eastern Canon Law English traslation of the four apostolic letters Issued Motu proprio by Pope Pius XII*. Kerala: Oriental Istitute of Religious Studies India, Oirsi Publications, 113–159.

²⁶ The Reformed denomination regulates that a pastor may only marry a person belonging to a Lutheran or Reformed denomination, and the bishop must have prior permission for this to be valid. In the absence of these conditions, marriage will not be permitted under the laws of the Reformed Church, and violation of these rules may result in loss of office for the pastor.

²⁷ Lutheran canon law is more permissive, this rule is no longer prescribed. but marriage is also subject to the permission of the bishop, and avoiding it may also result in loss of office.

²⁸ Cf. Păcurariu, M. (1994). *Orthodox of Istoria Bisericii Române*. Bucharest: Editura Institutului Biblic și de Misiune al Bisericii Române; Movila, P. (1975). *Orthodox Confession of Faith*. Studies in Sacred Theology, n. 259; *Official Documents of the Great Holy Council of the Orthodox Church – The Sacrament of Marriage and its Impediments*, Chapter II, Points 3–4. Accessed on: January 18, 2024, <https://www.holycouncil.org/marriage>;

irrelevant to Catholic, Greek Catholic, or Protestant ecclesiastical law whether civil marriage precedes or follows the ecclesiastical one, the canon law of Orthodox Churches requires that ecclesiastical marriages must be preceded by civil ones.²⁹

If a marriage is not conducted in accordance with canonical forms, even if it is valid under civil law, it is not recognized as valid by the Orthodox Churches.³⁰ The rules of the Orthodox Church do not prohibit *mixta religio* nor do they treat *disparitas cultus* as an impediment, since a member of the Orthodox denomination can only marry an Orthodox person, unlike in the Catholic denomination. The Orthodox Church also sets an upper age limit for marriage, which does not appear in any of the other denominations or churches examined.³¹

In the author's opinion, this upper age limit was introduced with regard to the threefold benefit of marriage. At such an age, the possibility of having a child still theoretically exists, but it would occur only in extremely rare cases. It may also be noteworthy that Orthodoxy is the only denomination to prohibit the marriage of individuals who have undergone gender reassignment surgery or have changed their gender according to Orthodox law. Such a rule does not appear in the regulations of any other denomination or religion.

With regard to marriage impediments and grounds for invalidity, Judaism and Islam have several interesting characteristics. In Judaism, the Torah provides the foundational rules, which have been further interpreted by legal scholars. However, Jewish law does not apply separate absolute and relative grounds of annulment specifically to the priestly order; impediments apply equally to everyone.³² It is essential that no exemptions from impediments can be granted, and marriages with such impediments remain invalid even if they are performed in accordance with standard Jewish marriage rites.³³ Simi-

Official Documents of the Great Holy Council of the Orthodox Church – The Sacrament of Marriage and its Impediments, Chapter II, Points 5. Accessed on: January 18, 2024, <https://www.holycouncil.org/marriage>

²⁹ Cf. О канонических аспектах церковного брака. In: Архиерейский Собор 2017 г., accessed on: January 12, 2024, <http://www.patriarchia.ru/db/text/5075384.html>

³⁰ Among the prohibitions, marriage is prohibited for collateral descendants up to the 7th degree of descent, while the Catholic and Greek Catholic Churches prohibit marriage only up to the 4th degree of descent.

³¹ According to Orthodox denominations, a woman cannot marry if she is over 60 years of age and a man is over 70.

³² These include: age, impediments arising from blood ties, and existing marriage.

³³ C. Heka, L. (1998). *A zsidó jog alapjai* [The basics of the Jewish legal system]. Szeged: Polay Elemér Alapítvány, 183; Donin, H. H. (1998). *Zsidónak lenni* [To be Jewish]. Budapest: Göncöl Kiadó, 261–263.

lar to the Orthodox position that an Orthodox person cannot marry someone of another denomination, Judaism does not allow marriage between a Jew and a Gentile. Such a marriage is always invalid. A kohen³⁴ may not marry a divorced person, a proselyte, someone involved in a questionable relationship or concubinage³⁵ (here the moral and ethical element appears again), or someone who is descended from a forbidden marriage of a kohen.

Muslim marriage law also includes prohibitions whose existence prevents or annuls marriage.³⁶ Muslim law primarily imposes prohibitions on the basis of blood relations: consanguinity (e.g. kinship between siblings) and marriage with a brother-in-law (with the husband's or wife's brother) constitute impediments. It also establishes religious rules based on the Holy Quran, distinguishing between the rights of men and women. A man may marry a Muslim or a non-Muslim woman, but a woman may only marry a Muslim man. If the man has not reached puberty, he remains under his father's authority, and the decision to marry is made by his father or paternal grandfather. The situation is similar for a woman until she reaches puberty, which is considered the minimum age for marriage (around 12 years old). The rules set out above also make marriage invalid and there is no possibility of exemption from them, so they should be considered absolute impediments.

THE QUESTION OF ENGAGEMENT

Hungarian family law does not currently regulate engagement, so it exists only as an ecclesiastical institution. In both Roman Catholic and Protestant canon law, betrothal, an outdated legal institution, is not regulated, although its practice is not prohibited by the Church. Catholic marriage law does not use the term “betrothed” but rather refers to it as a “marriage promise”. This indicates a qualitative difference: while betrothal still carried legal effects and was considered a legal institution under the 1918 *Codex Iuris*

³⁴ A member of the priestly family of the Tribe of Levi, descended from Aaron, who has certain ritual privileges in the synagogue service

³⁵ A person who converts to Judaism from another denomination or religion as an adult.

³⁶ Cf. Rizvi, S. M. (2001). *Marriage and Morals in Islam*. Toronto: Islamic Education & Information Centre; Picchi, M. (2020). *Muslim Marriage and Contemporary Challenges*. Lukens-Bull, R., Woodward, M. (eds.) *Handbook of Contemporary Islam and Muslim Lives*. Springer, Cham.

Canonici,³⁷ it is no longer regulated under the 1986 *Codex Iuris Canonici*.³⁸ The earlier Code stipulated that no action could be taken to enforce a marriage based on a marriage promise, but that pecuniary damages³⁹ could be sought in the event of a failed marriage promise.

The promise to marry is therefore not legally binding, and if such a promise is made between the parties, it can still be dissolved. Protestant canon law, based on current legal developments, does not provide for betrothal. Of course, there is nothing to prevent those intending to marry from “getting engaged”, but this carries no legal significance. However, from the perspective of Greek Catholic, Orthodox, Jewish, and partly Muslim canon law, the period of engagement is legally significant. The first part of the Greek Catholic and Orthodox marriage ceremony is the engagement itself. For communities belonging to Eastern Catholic denominations, the engagement period usually lasts from one to six months.⁴⁰

The marriage law of the Eastern Churches distinguishes between two main aspects of marriage: first, the engagement, and second, the “crowning” (the formal wedding rite). In the legal order of the Eastern Churches and their denominations, engagement has the same effect as marriage, i.e., from the moment of engagement the parties may exercise marital rights and obligations, including sexual relations. Both the Greek Catholic and Orthodox Churches unite these two steps into a single event, so the engagement and crowning take place at the same time, rendering the engagement symbolic.⁴¹ In Jewish law, engagement, known as *Kiddushin*, is also of great importance.⁴² Similarly to Orthodox practice, engagement in Jewish marriage law creates effects similar to those of marriage. Two important elements are placing the ring on the woman’s finger and the accompanying words, which record the

³⁷ Cf. De Gasperri, P., Serédi, J. (1923). *Codex Iuris Canonici Fontes*. Roma: Typis Polyglottis Vaticanis,

³⁸ Cf. Erdő, P. (2015). *Egyházi Törvénykönyv* [Ecclesiastical Code] Budapest: Szent István Society, Canons 1083–1094.

³⁹ Cf. Erdő, P. (1991). *Egyházjog* [Law of the Church]. Budapest: Szent István Társulat, 408–409; Kuminetz, G. (2002). *Katolikus házasságjog* [Catholic Marriage Law]. Budapest: Szent István Társulat, 95–96.

⁴⁰ Cf. *The particular law of the ukrainian greek catholic church*. Promulgated by the Major Archbishop Sviatoslav Shevchuk April 7, 2015. (Accessed on February 8, 2024) https://www.archeparchy.ca/wcm-docs/docs/Particular_Law_Canons.pdf

⁴¹ Papp, M. (2022) „*Megkoronáztat*” *A házasságkötés misztériuma*. [„You crowned it” The mystery of marriage]. Szeged: Lazi Publishing House, 105–109.

⁴² It means sanctification or holiness. Meaning: „Buying” is done by the bridegroom putting a ring on the bride’s finger in front of the witnesses, before the groom says that he sanctifies his wife by this ring.

fact of the engagement.⁴³ Marital effects can also occur if the man gives a wedding gift other than the ring.⁴⁴ This means that you signal your intention either with an engagement ring or with another gift. These two acts have the same legal relevance. The presence of two witnesses is required for the validity of the engagement, and their names must be indicated in the marriage contract. After the engagement, the man can take the bride to his home and consummate the marriage.

Muslim law does not have the betrothal ceremony already described in Christianity and Judaism, but Sharia provides for engagement as an agreement between the two parties that can be revoked.⁴⁵ In the author's opinion, in both Muslim and Jewish law, engagement serves as a guarantee of the marriage contract, ensuring that a woman does not enter into a marriage contract with another person during the engagement's duration.⁴⁶

THE PROCESS OF MARRIAGE

In the civil marriage system, the formal conditions of marriage are regulated by the Civil Code, while the administrative rules are governed by the Act on Civil Registry Procedure.⁴⁷ These steps are particularly important because Protestant denominations accept civil marriage as valid, and so the elements of Protestant marriage are essentially the same as those of civil marriage.

The form of marriage may differ according to various canon laws. It is first necessary to distinguish between those forms of canon law that regard marriage as a sacrament and those that consider it a contract or a purely civil act. Protestant denominations view marriage primarily as a civil act, and they merely provide a subsequent blessing within their own rites. The Catholic, Greek Catholic, Orthodox, as well as Jewish religious traditions, view

⁴³ Cf. Donin, H. H. (1998). *Zsidónak lenni* [To be Jewish]. Budapest: Göncöl Kiadó, 261. „Háré át m'kudeset li b'tábáát zo k'dát Mose u'Jiszráél”.

⁴⁴ Cf. Heka L. (1998). *A zsidó jog alapjai* [The basics of the Jewish legal system]. Szeged: Polay Elemér Alapítvány 186.

⁴⁵ Cf. Rizvi, S. M. (2001). *Marriage and Morals in Islam*. Toronto: Islamic Education & Information Centre, 51.

⁴⁶ Unlike Jewish and Orthodox law, however, in Muslim law, engagement is not the same as marriage, the parties cannot yet exercise the rights and obligations of the spouses, and even spouses cannot meet each other unsupervised or go anywhere together.

⁴⁷ Cf. Hegedűs, A. (2022). *Polgári jog-Családjog* [Civil Law-Family Law]. Budapest: R.I.M.Á.K, 59; Herger, Cs., Katonáné Pehr E. (2021). *Magyar családi jog* [Hungarian Family Law]. Budapest: Novissima, 41–43; Barzó, T. (2017). *A magyar család jogi rendje* [The legal order of the Hungarian family]. Budapest: Patrocinium, 66–67.

marriage as a sacrament to some extent. At the same time, a more contract-like character is dominant in Jewish and Muslim religious traditions. In Catholic canon law, marriage is not only a ceremony but also a legal act.

In the context of Catholic rites, a new legal relationship is established between the parties intending to marry, regardless of whether they have already concluded a civil marriage.⁴⁸ From a legal perspective, the Greek Catholic, Orthodox, and Jewish denominations hold the same position.⁴⁹

Catholic matrimonial law also prescribes certain cumulative conditions for marriage. Marriage is understood as a lifelong union between a man and a woman. Both parties must be present simultaneously at the conclusion of the marriage, either in person or through a representative. They must verbally express their consent to marry. Two witnesses must be present, and the marriage must be concluded before the minister with jurisdiction over the parish church where the ceremony takes place.⁵⁰ Although placing rings on the fingers is a significant element of the ceremony, failure to do so does not affect the marriage's validity.⁵¹ Since marriage is a sacrament in the Catholic denomination, it is legally established not by the pastor's presence, but by the unanimous expression of the will of both parties.⁵²

In the Greek Catholic denomination, the conditions are the same as in the Roman Catholic Church, with one key difference: the presence and blessing of the priest are integral to the marriage's legal validity. Without meeting this requirement, the marriage is not valid. The oath ceremony in the Greek Catholic tradition has two main parts: the engagement and the crowning. During the crowning, an actual crown is placed on the heads of the man and the woman.⁵³ This practice is also found in the Orthodox tradition. Members of the Greek Catholic denomination can only validly marry before a Greek Catholic pastor

⁴⁸ From the point of view of the State, a marriage of a Catholic denomination is a non-existent marriage, in the same way, according to the position of the Catholic denomination, a civil marriage between two persons belonging to a Catholic denomination is also a non-existent marriage.

⁴⁹ Thus, these denominations do not accept purely civil marriage as a valid marriage, and members of their denominations are also obliged to marry according to the law of their own denomination.

⁵⁰ These are the decrees of the Council of Trent to ensure publicity. Territorially, the bride's parish priest is always competent to be present at the marriage.

⁵¹ Veress, A. (2006). *A házasságkötés szertartásának rendje* [The Order of the Rite of Marriage]. Budapest: Szent István Társulat, 13–15.

⁵² The pastor participates in the conduct of the ceremony as an official witness and his role is declaratory, his task is to establish validity and register births, just as the registrar participates in civil marriages.

⁵³ Cf. Papp, M. (2022). „Megkoronáztad” A házasságkötés misztériuma. [„You crowned it” The mystery of marriage]. Szeged: Lazi Publishing House, 105–109.

and inside a temple.⁵⁴ Another significant difference is that the Greek Catholic denomination does not allow marriage by representation.

The essential elements of the Orthodox marriage ceremony are the same as in the Greek Catholic denomination. An important distinction is that Orthodox marriage law does not permit concluding an ecclesiastical marriage before a civil one, meaning civil marriage has primacy. As with the Catholic denomination, interreligious marriages are not permitted in the Orthodox Churches, so a member of the Orthodox faith may only marry another Orthodox Christian. Both parties must be physically present at the marriage ceremony and express their free will to marry. The presence of at least two witnesses is also required, and the marriage must be officiated by the competent local pastor.

For members of the Jewish faith, marriages are valid only if they are performed in accordance with the rules of the Jewish religion; therefore, purely civil marriages are not considered valid. Engagement is an essential element of Jewish marriage, as previously explained. The marriage itself takes place in a synagogue and involves the groom, the scribe trained to write the marriage contract, the bride, and the rabbi. The elements of the ceremony are cumulative in nature, meaning they cannot be altered or omitted without causing the marriage to be invalid.

During the ceremony, a marriage contract called a *ketubah*⁵⁵ is prepared, setting out the rights of the woman. Handing the *ketubah* to the woman legally establishes the marriage. After the blessings and drinking of wine, the groom places a gold ring on the bride's finger. The couple then withdraws to a separate room, symbolically left alone. Legally, this signifies the consummation of the marriage, which is necessary for validity since, similar to Catholic canon law, procreation and the act that enables it are considered indispensable conditions of marriage.⁵⁶ Both parties must be present in person, and two witnesses must also be present. Before the ceremony begins, a *minyán*,⁵⁷ (a prayer community of ten men), must be formed to ensure the marriage's public nature.

Muslim matrimonial law is fundamentally contract-based. While it does set certain rules, mainly to prevent matrimonial anomalies, it does not

⁵⁴ Cf. Erdő, P. (1991). *Egyházjog* [Law of the Church]. Budapest: Szent István Társulat, 452.

⁵⁵ In fact, a *ketubah* is written at the time of engagement, which is the task of the rabbi or the editor officially commissioned by the rabbi, since it is written in Hebrew. Nowadays, pre-written and/or pre-printed documents are used, in which only the names of the parties are entered.

⁵⁶ Cf. Margalit, Y. (2019). *The Jewish Family: Between Family Law and Contract Law*. Cambridge: Cambridge University Press, 51.

⁵⁷ The presence of at least 10 adult males is required to perform official ceremonies, this is the *minyán*.

prescribe a strict ceremony, leaving the details to the parties and their families.⁵⁸ There are three main aspects to concluding the marriage: the man's proposal to the woman (usually considered and decided upon by both families), the acceptance of the proposal by the woman and her family,⁵⁹ and the drafting of the marriage contract in Arabic, without which the agreement is not valid.⁶⁰ Finally, it must be determined whether any impediment exists that would render the marriage invalid. For this, two witnesses must be present at the drafting of the contract, and their names must be recorded.⁶¹ It is not essential for the woman to be personally present, as her representative may appear on her behalf. Usually, the ceremony is made solemn by reading aloud from the Qur'an, and an Imam or another respected authority figure offers a prayer. In many Muslim-majority countries, marriage registration is now required.⁶²

CONCLUSION

In religious legal systems, the concepts of law and morality are closely intertwined. According to R. Posner, morality is a set of duties toward others⁶³ that prohibits unethical behavior.⁶⁴ Law, on the other hand, is a general rule of conduct established or recognized by the State, whose enforcement is ensured by the State. G. Jellinek summarizes these two disciplines succinctly: law is the minimum of morality.⁶⁵

Religions fundamentally define human life from an ethical-moral perspective, and the laws they create serve to reinforce this moral dimension. Religious legal systems exemplify that law and morality cannot easily be

⁵⁸ Maududi, A. (2007). *Islám életmód* [The Islamic way of life]. Budapest: Church of Muslims in Hungary, 45.

⁵⁹ Overall, see: Picchi, M. (2020). Muslim Marriage and Contemporary Challenges. Lukens-Bull, R., Woodward, M. (eds.) *Handbook of Contemporary Islam and Muslim Lives*. Springer, Cham.

⁶⁰ Concept of Marriage under Islam. <https://old.amu.ac.in/emp/studym/99995934.pdf>

⁶¹ The marriage does not require the participation of an official either from the state or from the Muslim Church.

⁶² Cf. Picchi, M. (2020). *Op. cit.*, 14.

⁶³ Cf. Posner, R. A. (1998). *The Problematics of Moral and Legal Theory*. Harvard Law Review, Vol. 111, No. 7, 1637–1717. (Accessed on February 10, 2024) https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2828&context=journal_articles

⁶⁴ Miskolczi Bodnár P. (2015). *Az erkölcs és a jog szoros kapcsolata* [A close relationship between morality and law] *Polgári Szemle*, December 2015 – Volume 11, Issue 4–6.

⁶⁵ Cf. Jellinek, G. (1914). *Allgemeine Staatslehre*. Berlin: Verlag von O. Häring, 218–219.

separated, nor is there always a need to separate them. Jellinek also states that all social institutions are inherently closely linked to religion, and it is only through the modernization of law that efforts have been made to separate them.⁶⁶ Over time, this separation has succeeded for certain religions and denominations, but not for others.

In states where Christianity is the principal religion, a complete or partial separation of law and morality may be considered successful. However, in states where Judaism or Islam predominates, separating law from morality or religion is not possible. The task of canon law is to regulate those matters of the Church, an entity integrated into society, that cannot be managed by theology alone. In other words, it addresses the Church's organization, the establishment and maintenance of the necessary framework for its functioning, the provision of various services, and administration. These are areas that do not belong to the Church's transcendent existence but rather to its operational and structural framework.

The author largely agrees with this definition, acknowledging that canon law indeed governs those external affairs of churches that cannot be resolved through theological means alone. However, it must also be noted that one cannot analyze the legal systems of churches without taking their theological specificities into account, as these features significantly shape both their identity and their legal rules. This is especially true for religions where membership does not require a formal act⁶⁷ but is inherently linked to religious, national, and legal identity, as in Judaism and Islam. A person born Jewish is automatically considered Jewish, and a person born Muslim is automatically considered Muslim, without any need for a formal initiation or reaching a certain age of adulthood.⁶⁸

For the author's doctoral research, these realities are essential. Understanding the rules and expectations of religious and denominational law in marriage is necessary if the system of optional civil marriage is to be adapted into the legal frameworks of states governed by these traditions. Another condition for successful adaptation is not only familiarity with the religious and denominational canon law systems and their operation but also consideration of how these systems intersect with Hungarian civil law. This is particularly important regarding Christian denominations, where these specific legal systems and the rules of Hungarian matrimonial law interconnect.

⁶⁶ Cf. Jellinek, G. (1914). *Allgemeine Staatslehre*. Berlin: Verlag von O. Häring, 112.

⁶⁷ In the case of Christianity, participation in baptism makes a child or adult a member of the Church, so it is also a formal legal act, not just a theological act.

⁶⁸ In the case of both denominations, circumcision is the ceremonial at birth and the ability to read sacred scriptures is the act of attaining adulthood.

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