PECULIARITIES OF THE LEGALITY OF MARRIAGE IN WESTERN EUROPE IN THE MIDDLE AGES

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This article examines the peculiarities of the development of the concept of legality of marriage in Western Europe in the Middle Ages. It is found that medieval church family and marriage law in Western Europe went through a long period of development, was collected, revised and systematized in the work "Harmony of Divergent Canons" by the Bolognese master Gracian and treatises of his successors, the «decretists», university professors of the new legal discipline - canon law, papal decretals on the issues of determining the legality of certain provisions of the church doctrine of law (including marriage law) and law enforcement, resolutions of general church, provincial and local councils and synods, decisions of church judges and tribunals. It is noted that 1) Gratian developed the concept of spousal consent to marriage; 2) the concept of the legality of marriage based on the consent of the spouses was fully supported by theologians (Peter of Lombardy), since only the consent of the couple turned marriage into a sacrament; 3) the institution of marriage consent received an official rank in the «Decretals» of Pope Gregory IX. The author analyzes the essence and reasons for, on the one hand, the prohibition and, on the other hand, the recognition of secret marriages as valid. It is concluded that, firstly, the concept of the legality of marriage in Western Europe in the Middle Ages, based on the Holy Scriptures, went through a difficult period of development; secondly, the concept of marital consent developed by Gratian was given an official rank in canon law; thirdly, the procedural conditions for the conclusion of a legal marriage were reduced to the fact that the marriage had to be concluded in public in the presence of parents, oaths had to be taken to a priest and a dowry had to be given; it was the oath that was necessary for the recognition of marriage as a legitimate legal fact; fourthly, during the Middle Ages, ordinary church jurisdiction had exclusive competence to determine the legality and invalidation of valid marriages.

Key words: canon law, secular law, marriage and family law, legality, marriage, church doctrine, family values, historical and legal basis, institution of marriage, the Middle Ages.

Statement of the problem

Family and marriage relations not only cover the sphere of personal life of a person, but are also closely related to the formation of the legal culture of society at different stages of human development. The medieval church marriage and family law in Western Europe went through a long period of development [1, p. 5-9; 2, p. 29-31; 3], was collected, revised and systematized in the work «Harmony of Divergent Canons» by the Bolognese Master Gracian [4, p. 8-10; 5, p. 133-137] and treatises of his successors, «decretists», university teachers of a new legal discipline – canon law [6, pp. 21-31; 4, p. 11], papal decretals on the issues of determining the legality of certain provisions of the church doctrine of law (including marriage law) and law enforcement [7, pp. 421-423; 4, pp. 9, 11; 2, p. 31], resolutions of general church, provincial and local councils and synods [8, p. 50-54; 9, p. 48-50; 10, p. 42-46], decisions of church judges and tribunals [11, p. 49-52; 12, p. 9-20; 13]. A comprehensive and in-depth study of the processes of formation and

development of the main institutions of Western European marriage and family law is intended to prevent certain deformations of the marriage institution (such as neglect of legal consolidation of marital relations) in a modern democratic society and to promote the restoration of traditional family values.

State of research of the problem

Of interest for our research were the works of domestic scholars which address general theoretical issues on the history of marriage and family relations, which contain a historical and legal analysis of the evolution of the concepts of «family» and «marriage» in the system of European and Ukrainian political and legal thought, the formation and development of the main institutions of Ukrainian marriage and family law from the Middle Ages to the present, and which cover certain issues of marriage law, namely: N. V. Anishchuk, V. K. Antoshkina, I. I. Boyko, O. O. Balko, V. A. Vatras, R. M. Dostdar, M. V. Mendzhul, V. I. Ozel, D. I. Sydorenko, T. Y. Tarasevych, E. O. Kharytonova, A. E. Shevchenko, D. A. Shevchenko, etc. [14, pp. 105-112; 15; 16, pp. 17-26; 17, pp. 41-47]. Also noteworthy are the works of domestic researchers of medieval canon law O. M. Voloshchenko [18, pp. 52-56], O. M. Loschykhin [2, pp. 28-36], M. A. Matselik [11, pp. 49-52; 12, pp. 9-20; p. 13, pp. 51-55], S. V. Misevych, B. R. Savenko, V. A. Sanzharov [1; 4; 5; 9; 10], A. E. Shevchenko [15] and others. However, it should be noted that the systematic study of the issues of medieval Western European church marriage and family law and law enforcement in the national historical and legal science is just beginning.

Purpose and objectives of the study

The purpose of the study is to investigate the peculiarities of the legality of marriage in Western Europe in the Middle Ages. In accordance with the aim, the following tasks of the article can be defined:

1. To determine the essence and main components of the church doctrine of marriage and family relations in the Middle Ages.
2. To analyze the peculiarities of the legality of marriage in Western Europe in the Middle Ages.

Scientific novelty of the study

The appeal to the historical and legal heritage of church law and medieval law in general is valuable given the development of modern family law. A comprehensive study of the sources and characteristics of church and secular law will help to identify the interconnection of the evolution of the spiritual, ethical and legal aspects of marriage and family relations, to revive and consolidate in the minds of Ukrainians the historical and legal basis of the institution of marriage, and to increase the effectiveness of legal regulation in this area.

Summary of the main material

Medieval theologians and canonists were interested in formulating a concept aimed at preserving marriage and honoring family values [1; 2, p. 30]. In this regard, the Roman Catholic Church has developed an official position that the only legal way to realize personal relationships can only take place in marriage [3; 4]. The doctrine of medieval canon law builds a hierarchy within the marriage relationship, giving priority to the inner desire of two people for mutual communication. Reflecting on the nature of marriage, Gracian pointed out that the «motivating cause for marriage» is the will, not the conjunction (C.27.q.2.c.6) [19], an inner desire based on the natural need for love and respect.

Graecian made a distinction between parental consent and spousal consent in matters of marriage. Gratian emphasized the consent of the spouses, which was later supported by the Church, and stated: «Marriage is the union of a man and a woman, supported by an inseparable way of life. In other words, the union took place between those who led an inseparable lifestyle». In the Decree, Graecian stated: «No woman should be united to anyone except in accordance with her free will» (C.31.q.2) [19]. Graecian expanded on Ivo of Chartres' concept that no woman should be forced into an unwanted marriage, even by her own parents, despite the importance of parental desire.

The rules for expressing consent to marriage formulated by Graecian in Western canon law later developed into a whole body of contract law, according to which: first, consent had to be given of good will; second, a mistake about the identity and qualities of the partner did not allow consent

and made the marriage invalid; and finally, third, the marriage was considered invalid in case of coercion, as it violated the voluntariness of consent [4, p. 10; 5, c. 133-137]. The concept of the legitimacy of marriage based on the consent of the spouses, not their parents, was fully supported in 1150 by the theologian Peter of Lombardy, since only the consent of the couple turned marriage into a sacrament.

Based on the principles laid down by Graecian, Pope Alexander III (1159-1181) formulated the rule in his decree Cum Locum: «if a person was in fear at the time of marriage and could not resist the force used against him, then such a marriage was recognized as invalid». The «Decretals» of Gregory IX in 1234 elevated Graecian's position on the institution of marriage consent to an official rank [7, p. 421-423].

In modern legal terminology, Graecian understood marriage as a complex legal fact, which includes as a primary element the initiation by verbal consent («matrimonium initiatum») and the subsequent consummation (coitus), which makes the marriage complete («matrimonium perfectum»). A marriage that was initiated but not consummated by consummation did not legally have the force of a consummated marriage and had different legal consequences from a consummated marriage. A consummated marriage, unlike an initiated marriage, could not be dissolved in order to adopt a monastic lifestyle (C.27.q.3) [19]. The parents of an engaged girl could not legally give her to another man, but the law did not prohibit her from choosing a monastery. Only in a completed marriage did the so-called «conjugal duty» arise [2, p. 32-33]. If one of the partners was incapable of sexual activity and could not «consummate the marriage», then at the request of one of the parties, such a marriage was annulled, and each party was entitled to enter into a new marriage (C.27.q.2.pp.30-32) [19]. However, if there was at least one sexual intercourse between the partners after the engagement, such a marriage was considered completed and could not be dissolved, even if one of the partners became impotent later.

Given that marriage was impossible without «conjugal duty», marriage was strictly prohibited for all those in the sub-diaconate and above. The ban also applied to monks and nuns who had taken vows of chastity. As early as the fifth century, decisions of regional synods and papal messages to individual bishops (the so-called «decretals») were issued that obliged them to observe celibacy. Even a priest's conversations with women whose customs were questionable were punishable by excommunication. Graecian substantiated the idea of celibacy and emphasized the mandatory personal punishment for clergy guilty of sexual offenses (C.27.q.1.c.11) [19]. Graecian pointed out that this rule applied to monks and nuns who married each other or someone from the laity. Such illegal unions were called «illicita ac sacrilege» and those who entered into such a union, breaking their vow of celibacy, had to mourn their sin until death.

Despite the idea of free consent, Graecian identified a number of restrictions when choosing a marriage partner [2, p. 32]. Firstly, the age criterion: to get married, one must reach the appropriate age. Graecian considered the issue of age in the context of the institution of consent (C.30.q.2) [19] and referred to the authority of Pope Nicholas, who determined that «marriage cannot be concluded before the age of betrothal» (C.30.q.2.c.1) [19]. Second, the religious criterion: Christians could not marry nonbelievers or Jews. For canonists and lawyers in Western Europe, the clause «monotheism of the spouses» was traditionally considered a necessary condition for a Christian marriage (C.28.q.1.p.15) [19]. Thirdly, the absence of kinship between the spouses: no one could marry a person to whom he/she was related by seven degrees of consanguinity (p.35) [19]. In the post-Graecian era, the recognition of marriages as invalid due to consanguinity became so frequent that the Lateran Council of 1215 lowered the criterion of consanguinity to the fourth generation, while retaining in its resolution («constitution») the prohibition on marriage in the presence of spiritual degrees of kinship [4, p. 12-13; 10, p. 42-46].

Marriage was subject to the obligatory observance of symbolic rites and the fulfillment of procedural requirements (C.30.q.5-11) [19]. First, the girl had to be «the ideal of innocence» (C.30.q.5.c.4) [19]. In the context of the concept of monasticism at the time, the requirement of virginity was theoretically equally applicable to both men and women. Secondly, according to Graecian's Decretum, the bride must be given a dowry («dotata legitime»), which was agreed

upon in advance by the families of the bride and groom (C.30.q.5.c.4) [19]. The dowry had to correspond to the family's financial capabilities. It was not the value of the dowry that was important for the marriage procedure, but its presence as a sign of a legal marriage. Dowry was a symbolic act that proved the fact of marriage. Thirdly, an important procedural element of the wedding was the blessing of the priest and the presentation of gifts; at the time of marriage (i.e. at the time of the wedding), the bride and groom come to the church with offerings that they must give to God through the hands of the priest (C.30.q.5.c.3) [19]. A church wedding should be held in the presence of relatives. After receiving the blessing of the priest, the bride and groom are entitled to the first wedding night, while maintaining the chastity of their marriage (C.30.q.5.c.5) [19]. The veil and ring are important elements of marriage (C.30.q.6-8) [19]. The bride and groom must be tied with a red and white headband. The combination of colors is intended to symbolize both the purity of the union and the future offspring. Another element, the ring, which is usually given to the bride, becomes a symbol of mutual love («mutuae dilectionis») (C.30.q.5.c.7) [19]. The veil demonstrates a woman's submission to her husband. Fourth, the most important procedural component of the marriage union is the oath (C.30.q.5.c.9) [19]. It is the oath («tactis scripturis juraverit mulieri») that is necessary for the recognition of marriage as a legitimate legal fact.

Graecian describes in great detail all the necessary procedural elements of a legal marriage and against the secret form of marriage (C.30.q.5.c.1-5) [19]. However, Graecian then turns to the etymology of the term «marriage» and ultimately concludes that secret marriage is a form of marriage prohibited by the law of the Church (C.30.q.5.c.6) [19], but that its validity and indissolubility cannot be denied. Graecian believes that the reason why such a marriage should be recognized as valid is the consent of the spouses as the main constitutional element of marriage. Finally, Graecian confirms his position by indicating that it is the oath taken by the spouses («tactis scripturis juraverit mulieri») that is necessary for entering into a legal marriage (C.30.q.5.c.9) [19] and that neither dowry nor a written contract is the basis of marriage. However, if one of the parties in court refuses to recognize the marriage, the judge will not be able to trust the testimony of only one party in the dispute. Consequently, the judge will not be able to make a positive decision on the validity of the marriage based on the testimony of one of the parties alone. it is for this reason that Graecian spoke of the need for a public marriage procedure. Compliance with the ceremonial requirements during the marriage automatically removed many issues related to the invalidity of the marriage. Thus, in the case of a secret marriage, in the event of a dispute, it was possible to prove its legality only through the recognition of this marriage by each of the bride and groom in court (C.30.q.5. p.10-11) [19].

Thus, in the Decree of Graecian, secret marriage is for the first time granted legitimacy, as it is «the lawful consent of the spouses» and, therefore, such a marriage is essentially valid and cannot be dissolved. At the same time, Graecian explicitly links the formal ban on secret marriages to the difficulty of providing evidence in the event of a court dispute, since «when one party denies conjugal affection for the other, it cannot be refuted» (C.30.q.5.c.11) [19]. This was the key reason for the Church's condemnation of such a union and its recognition as an illegal, though permissible, form of marriage.

Conclusions

Thus, based on the above, the following conclusions can be drawn:

1. Church medieval family and marriage law in Western Europe went through a long period of development, which resulted in a clear procedure for the legality of marriage.

2. Graecian developed the concept of spouses' consent to marriage. The legitimacy of marriage was based on the consent of the spouses and was fully supported by theologians (Peter of Lombardy), since only the consent of the couple turned marriage into a sacrament. The institution of marriage consent received an official rank in the «Decretals» of Pope Gregory IX.

3. The procedural conditions for a legal marriage were limited to its public conclusion in the presence of parents, as well as an oath to a priest and the delivery of a dowry. It was the oath that recognized the marriage as a legal fact.

4. During the Middle Ages, ordinary church jurisdiction had the authority to determine the legality and invalidate valid marriages. In addition,

it was more significant and attractive in matters of marriage and family law compared to secular jurisdiction.

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