

Cancellation of Marriages.

Not acknowledged lawful and valid are:

- 1) marital unions contracted by violence or in madness of one or both partners¹;
- 2) marital unions of persons, consisting in close, that is, in the degrees forbidden by church canons, either by blood or spiritual relationship or property;
- 3) marital unions of persons, who are already obligated by other lawful matrimonial unions which are not stopped and are not lawfully broken off by the spiritual heads of their religion;
- 4) marital unions of persons, who after divorce are prohibited to enter a new marriage;
- 5) marital unions of persons, who have not reached the age defined by the Church for entry into marriage or being more than eighteen years old or have entered the fourth marriage;
- 6) marital unions embracing monasticism, but equally are also already devoted to the priestly or diaconal dignity, as long as they remain in this dignity;
- 7) marital unions of Orthodox persons with non-Christians (Svod Zakonov [Code of Laws], vol. X, part 1, article 37; Ust. Dukh. Kons. [Ustav of the Spiritual Consistory], 205).

Matters of the recognition of the legality or illegality of marriages are subject to an examination of the diocesan authorities² (and thus by that diocese where they are done:

- 1) by the reports of subordinates to the diocesan authority of the places and officials;
- 2) by the relations of criminal courts, if done on matters in this there is doubt in the legality of the marriage;
- 3) by complaints and reports of private persons, if their rights are broken by that illegal marriage or when such marriage belongs to some of the crimes punished as criminal (Ust. Dukh. Kons. [Ustav of the Spiritual Consistory], 206, 207).

The power of decisions about the prescription does not extend to those obviously entered into illegal marriage (Ulozhenie o nakazaniakh [Criminal Code of Laws], 162 items). Persons, whose marriages are nullified illegal by the appropriate spiritual court and, immediately, on the intercourse of the diocesan with the local civil authorities, are separated from any further cohabitation. For this, those recognized guilty of entry into illegal marriage by the court, obviously, are exposed to church repentance, but some are the designated cases certainly punished by law (Ust. Dukh. Kons. [Ustav of the Spiritual Consistory], article 212).

Under the right in force, the self-willed divorce without court, under one mutual agreement of spouses, in any case is not allowed and is forbidden by clergy in fear of the court for deprivation of their rank, to write that there would or not be any view and that somebody would or not be, with divorce papers³ (Svod Zakonov [Code of Laws], vol. X, part 1, article 46). The sufficient causes of divorce, except the natural way of termination of the marital union by death of one or both spouses, are admitted by the Russian church and civil law:

1) the adultery of one of spouses⁴ (Ibid., article 45 of the Ustav Dukhovnikh Konsistorii [Ustav of the Spiritual Consistory], article 238).

2) Inability for marriage co-habitation⁵; (ibid.): the claim for divorce for this reason can be begun not earlier than within three years after entry into marriage⁶ (Ust. Dukh. Kons. [Ustav of the Spiritual Consistory], article 242; refer to page 1086 above).

3) Unknown absence of one of the spouses; the request for divorce occasionally is for the unknown absence of one of the spouses, with the application for the metrical extract about marriage, is granted by the Spiritual Consistory in the residence of the applicant⁷; a year after being published in the "Tserkovniia Vedomosti [Church News]" by the established forms of the announcements about the presented claim, the Consistory, by the petition of the applicant, begins an examination of the circumstances of the matter, and, if it would not prove in this indication or data, making doubt in the unknown absence of the spouse, makes the decision on divorce and the permission for the applicant to enter a new matrimony. Matters of divorce because of the unknown absence of the person belonging to the petty-bourgeois or country estate, the diocesan heads definitively decide (Svod Zakonov [Code of Laws], vol. X, part 1, articles 45; Visochaishii povelenie [Imperial Orders], 14 January 1895 about the new rules about divorce, brought because of the uncertainty of the absence; see these rules in the Tserkovniia Vedomosti [Church News], 1895, 7; refer to p. 1109).

4) The award of one of the spouses for punishment connected to the deprivation of all rights of status⁸ (see pp. 1109-1110); if the condemned returns from exile due to the revision of his matter in court or under the mercy manifesto, but the innocent spouse meanwhile, although did not follow the condemned to the place of exile, did not address a petition to the spiritual authority for divorce up to this time, the former marriage remains in force (Svod Zakonov [Code of Laws], vol. X, part 1, article 53; Ust. Dukh. Kons. [Ustav of the Spiritual Consistory], article 228); if both spouses are deprived the rights of status, their marriage must also remain in force (K. P. Pobedonostsev, "Lectures on the rights of the citizen", p. 95).

In case of the entry of both spouses, by their mutual agreement, into monasticism, the existing marriage ends, of course, not that the former spouses enter into a new marriage, but for both committing to their vow of chastity. But the termination of marital union for the indicated purpose is allowed only when if: a) interested persons by mutual agreement are tonsured that

have no juvenile children demanding parental oversight and if both spouses have reached the age specified for this purpose Submitted to the Consistory (see p. 1110 above) the petition should have two paid 80 kopeck stamps, and his certified copy should be enclosed from the criminal court about the exile of the guilty spouse together with the inquiry on the performance of this sentence and the metrical entry about marriage (Tserkovnyi Viestnik [Church Messenger] 1895, 21; Tserkovniia Vedomosti [Church News] 1898, 6). Submitted to the Consistory (see p. 1110 above) the petition should have two paid 80 kopeck stamps, and one's certified copy should be enclosed from the criminal court about the exile of the guilty spouse together with the inquiry on the performance of this sentence and the metrical entry about marriage (Tserkovnyi Viestnik [Church Messenger] 1895, 21; Tserkovniia Vedomosti [Church News] 1898, 6)⁹. (Svod Zakonov [Code of Laws], vol. IX, publ. 1876, article 347, note 1).

Matters of divorce are generally subject to the department of the spiritual courts and begin not differently than by those spouses who offered demanded requests for this divorce¹⁰ (Svod Zakonov [Code of Laws], vol. XVI, part 2, Zak. Sud. Grazhd. [Law of Civil Courts], publ. 1892, articles 440, 448).

¹ Madness, which occurred after marriage, cannot form the basis of divorce (see Svod Zakonov [Code of Laws], vol. X, part 1, article 37, item 1).

² In relation to the recognition of the validity or invalidity of marriage "corporal copulation" of spouses has no value for "marriage not is made by that action, which is a man sleeps with his wife, but because of their meeting in marriage" (Rudder, Zak. grazhd. [Civil Law], group 4, chapter 17). According to this, the marriage crowned in the church, is equally indissoluble even before and after, "carnal copulation" of spouses and, on the contrary, is equally subject to dismissal in both cases, if whatever obstacles are found against its continuation (A. Pavlov, "Rudder" chapter 50, pp. 79-80).

³ Spouses are obligated to live together (Svod Zakonov [Code of Laws], vol. X, part 1, item 103). But there can be cases, when it is presented completely impossible for the wife to execute the requirement of the law for joint residence with the husband, for example, when the husband himself has no definitive residence, or cannot give a place for the wife and so forth. And in such cases the impossibility for the wife to live together with the husband should be precisely established in the judgment (resolution of the Grazhdanskaia Kassatsiia Deputatsiia [Civil Court Depositions], 1892, № 111).

Only forbidding the self-willed separated spouses, the law does not demand that spouses continually and inseparably live in one apartment, for frequently their separate residence is caused by such circumstances, which have nothing in common with separating them, and concerning these circumstances special acts can be concluded between the husband and the wife. The meaning of separate residence of spouses and idea of the act in this composed occasion depends on the court, supervising the matter being solved. Grazhdanskaia Kassatsiia Deputatsiia [Civil Court Depositions], 1879, № 309).

⁴ The claim petition, which is brought into court for processing the matter by the court under the form, should be in writing and made by the points under the general form (Svod Zakonov [Code of Laws], vol. XVI, part 2, publ. 1892, Zak. Sud. Grazhd. [Law of Civil Courts], article 79). After acceptance of the application in their examination, the diocesan authority recommends entrusted ecclesiastics to make an exhortation to spouses so that they stop their disagreement by Christian reconciliation and remain in the marriage union (Ust. Dukh. Kons. [Ustav of the Theological Consistory], article 240). The exhortation for the suitor is offered to spouses through local parish priests in their residence in the case of the special request of spouses through their confessors or other priests under their indication, the results of an exhortation should inform the Consistories with the presentation of written responses of spouses (S. Grigorovsky, "Sbornik tser. i grazhd. zak. o brake i razvode [Collection of Church and Civil Laws concerning Marriage and divorce]", p. 148). When exhortations do not achieve their aim, then the diocesan authority starts the formal examination of the matter (Ust. Dukh. Kons. [Ustav of the Theological Consistory], article 240). The main evidence of a crime should be recognized by: a) indications of two or three obvious witnesses and b) the bearing of children out of lawful wedlock, proved by metrical certificates and arguments about illegal ties with a stranger. Then other proofs, somehow: letters, the uncovering of criminal ties of the

respondent; indications of the witnesses who were not eyewitnesses to the crime, but knowing about that by authentic witnesses or by hearings; indications of ordinary people about the dissolute life of the respondent, and others, only then they can have the power, when they are connected to one of the main proofs or on their own find out the crime (ibid., article 249). The respondent's own recognition of the infringement of the holiness of marriage by adultery is not accepted in respect, if this does not agreed with the circumstances of the matter and is not accompanied by proofs, is doubtless its confirmation (Svod Zakonov [Code of Laws], vol. X, part 1, article 47; Ustav Dukhovnikh Konsistorii [Ustav of the Theological Consistory], article 250).

According to item 1, article 45, part 1, vol. X of the Svod Zakonov [Code of Laws], in the case of demonstrated marital fidelity infringements by both spouses, their marriage, as both are guilty of adultery, is not subject to divorce, but in this case both spouses can for their mutual infringement of the holiness of marriage imposed a seven-year church penance (S. Grigorovsky, "Sbornik tser. i grazhd. zak. o brake i razvode [Collection of Church and Civil Laws concerning Marriage and Divorce]", p. 169).

If, after divorce because of adultery of one of spouses, it has appeared that the guilty has been slandered and consequently the other party would wish to live again with the one; then that similar marriage can be restored merely by the Holy Synod, to which the former spouses should also apply for this; to the same restoration of marriage their co-habitation should be recognized as illegal (Tserkovnyi Viestnik [Church Messenger] 1897, 38).

According to canon 8 of the Council of Neocaesarea, if the wife of a cleric "falls into adultery" then he "cannot do the services entrusted to him", and "should divorce her"; after divorce he remains a cleric, his wife, as convicted in the sin of adultery, is forbidden entry into a second marriage (Tserkovnyi Viestnik [Church Messenger] 1897, 14); thus it is necessary to have in view that the canon speaks about the obvious accusation of the wife of the cleric, and only in that case demands divorce when she is legally convicted and proved of adultery (Archim. John, "Kur. Tser. Zakonov [Course in Church Laws], vol. 1, p. 366).

⁵ Heavy illness (paralysis and so forth) of the wife cannot serve as the basis for divorce even in that case when both the husband and the sick wife wish this (Tserkovniia Vedomosti [Church News] 1896, 29).

⁶ After the lapse of the same interval, he has the right to ask for divorce on the specified (i. e. attained) inability of his husband and wife of the priest. Similar sorts of matters usually begin with the given petition in the Consistory or addressed to the Bishop (Tserkovnyi Viestnik [Church Messenger] 1892, 1).

The spouse, guilty of the infringement of marital fidelity by adultery, does not lose the right to divorce on the inability of the other spouse to marriage co-habitation, but the diocesan authority should on this point in question, in each separate case, ask direction of the Holy Synod in as much as direct legislation concerning the given subject in the current legislation is not available (for more details see S. Grigorovsky, "Sbornik tser. i grazhd. zak. o brake i razvode [Collection of Church and Civil Laws concerning Marriage and Divorce]", p. 176).

Wives of those who willingly castrated themselves are permitted to abandon a marriage for the other, if they wish and ask about it. (See the Polnoie Sobranie Zakonov [Full Collection of Laws], 8 January 1824, № 29,722; refer to p. 1116 above), and in this case is not properly a divorce, but is merely the simple permission for one of the spouses, for the castration of the other (imposed by the court, according to article 201 of the Ulozhenie o nakazaniiakh [Criminal Code of Laws], the link with the deprivation of all rights of status), to enter a new marriage, as the permission will be given directly by the diocesan authorities (Separ. opr. Sv. Syn. [Separate decision of the Holy Synod], 31 Jan. - 25 Feb. 1868, № 249; S. Grigorovsky, "Sbornik tser. i grazhd. zak. o brake i razvode [Collection of Church and Civil Laws concerning Marriage and Divorce]", pp. 175 - 176).

⁷ In the request, submitted to the theological authorities about divorce, wives of the lowest ranks present certificates of the city or district police administrations management of those places, whence their husbands approached for service, about the time when they have made the getaway, went into the war without a message or were taken prisoner by the enemy, but also these persons remain undiscovered. (Svod Zakonov [Code of Laws], vol. X, part 1, p. 56; Note. for article 5 of the Visochaishee povelenie [Imperial Orders], 14 January 1895 about the new rules about divorce because of the uncertainty of the absence).

⁸ Submitted to the Consistory (see p. 1110 above) the petition should have two paid 80 kopeck stamps, and his certified copy should be enclosed from the criminal court about the exile of the guilty spouse together with the inquiry on the performance of this sentence and the metrical entry about marriage (Tserkovnyi Viestnik [Church Messenger] 1895, 21; Tserkovniia Vedomosti [Church News] 1898, 6).

⁹ Relative to the age, the Spiritual Regulations (see "About monks", note 5) say that if "the husband and wife mutually agree to attain monastic rank, one needs to look at the age of the woman, whether she is passed 50 or 60 years old". By the general canon,

interested persons are tonsured in monasticism should be: the man 30 years old and the woman 40 years old (Svod Zakonov [Code of Laws], vol. IX, publ. 1876, article 344).

Both spouses, voluntarily having agreed to accept monasticism, each one arrives whenever possible separately at the monasteries (Tserkovnyi Viestnik [Church Messenger] and should be tonsured on the same day (Separate Ukase (Decree) of the Holy Synod, 28 Jul. 1839, № 10463; see O. Grigorovsky, "Sbornik tser. i grazhd. zak. o brake i razvode [Collection of Church and Civil Laws concerning Marriage and divorce], p. 138).

¹⁰ If, after the decision of the spiritual courts about the divorce, the divorced spouses will wish to restore again the former marriage, then this their marriage, "in view of their sincere repentance and reconciliation", will be restored, usually, in this case without the fulfilment of whatever religious ceremonies, although the case when marriage confirmation was done "according to the church ceremonial" (see about this ceremonial above on p. 1151), however, is known for the restoration of a broken marriage (Tserkovnyi Viestnik [Church Messenger] 1895, 40). The restoration of dissolved marriage of persons and the method of this restoration is by the authority of the Holy Synod. Precisely as well the question on the restoration of such marriage when one of the divorced spouses or both of them, having entered another marriage (of course having permission for it), after the death of his other spouse, wishes to continue his cancelled marriage (but equally also the question on whether it is necessary to crown them, and as they recognize the second or third marriage), can be resolved only by the Holy Synod. Thus this should mean that the restoration of a broken marriage even in the event after divorce that either did not marry again, has been allowed only by the practice of the Holy Synod. There is not met any basis in the church statutes for the decision of similar questions (Tserkovnyi Viestnik [Church Messenger] 1895, 40).

*S. V. Bulgakov, "Handbook for Church Servers", 2nd ed., 1274 pp. (Kharkov, 1900) pp. 1169-1171.
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