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### **THE AGE OF CONSENT AND THE REDUCTION OF THE AGE OF CONSENT IN CHURCH AND CIVIL MARRIAGES AND THEIR INTERACTION**

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### **ABSTRACT**

In order for marriage to be valid, material conditions for marriage should be fulfilled. The form of marriage and material conditions for marriage have changed over the ages. Today marriage can be formed both by a civil and church order. The recognition of church marriage also differs from state to state. Some countries have chosen not to recognise church marriage and some countries have chosen to recognise church marriage. Church marriage is recognised by the state of Lithuania. However, only church marriages which correspond to requirements of material marriage conditions can be included in the public register. Marital age both in church and civil marriage is the same - 18 years. Under special circumstances the age of consent can be reduced. There exist different conditions for the reduction of marital age in church and civil marriage procedure. In church marriage, the bishop must give permission to reduce marital age, and in civil marriage only the court can reduce marital age. The authors of the article recommend obtaining court permission to reduce marital age even though performing the church marriage, because, otherwise, the church marriage will not be included into the public register by the state. As marital age and reduction of marital age differ from country to country, the authors also analyse when marriages concluded abroad shall be recognized if they do not satisfy the requirement of age.

### **KEYWORDS**

Church marriage, civil marriage, recognition of church marriage, age of consent, marriage conditions

## INTRODUCTION

The meaning of marriage and marriage conditions differs from one country to another and from one time to another. "In ancient times, for example, a marriage meant a condition in which a woman was given to a man almost as property, and often as part of a political, social, or business arrangement of some sort."<sup>1</sup> "The marriage today is more of a union of equals, rather than the subjugation of one person to the other. On the down side, marriage often becomes much more temporary than it has been in years past."<sup>2</sup>

During the ages the form of marriage also has changed. A family can be formed even without marriage by cohabitation. In all Catholic countries the Catholic Church considers marriage a Matrimonial Sacrament. In Western countries the Council of Trent<sup>3</sup> formed and enforced the so-called Canon marriage, i.e. a couple had to visit a priest of the congregation in order to receive matrimonial consent.<sup>4</sup>

Conditions necessary for registering a marriage or validating a marriage are considered as the requirements for contracting a marriage. The purpose of such requirements is to prevent any adverse outcomes related to the violation of these conditions. Usually, the conditions for marriage include the free will of a man and a woman, different sex, a special age of consent, the prohibition to violate the principle of monogamy and the principle of close blood relationship, etc. One of the conditions of marriage is the age of consent. The age of consent depends on social, mental and physical maturity of a person. "A juvenile's physical and psychological maturity puts an end to the parents' rights over the juvenile, and this juvenile can live the life of a legally able person."<sup>5</sup> All countries require a minimum age to marry. However, the age of consent has risen and fallen throughout history, with fluctuations from 12 to 21 years of age. Today, in all European countries, the age of consent is 18 years. The age of consent for marriage can be reduced for serious reasons. Valid marriage requirements for the conclusion of church and civil marriage are different, too, as well as the requirement for the age of consent and requirements for juveniles' marriages and the reduction of the age of consent.

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<sup>1</sup> Randall Collins and Scott L. Coltrane, *Sociology of Marriage and Family: Sex, Love and Property* (Chicago: Nelson-Hall, 1991), 68.

<sup>2</sup> Janice E. Stockard, *Marriage in Culture: Practice and Meaning across Diverse Societies* (Orlando: Harcourt College Publishers, 2002), 8-10.

<sup>3</sup> The decisions of Council of Trent were obligatory only for Catholics in places where the decisions were announced.

<sup>4</sup> Philippe Beguerie and Claude Ducheseau, *Kaip suprasti santuokinius sakramentus* (How to Understand the Sacraments) (Kaunas: Lietuvos katechetikos centras, 1998), 28.

<sup>5</sup> Inga Kudinavičiūtė-Michailovienė, "Santuokinis Amžius – Santuokos Sudarymo Sąlyga" (The Age of Consent – the Request of Valid Conjugality), *Jurisprudencija* 55 (47) (2004): 84.

Around the world today there is a wide variety of approaches to balancing the claims of and conflicts between the Church and the State concerning the regulation of marriage, from purely secular (prohibiting religious celebration or any civil recognition of religious regulation), to primarily religious (giving full civil law effect only to marriages that have been celebrated according to religious regulations).<sup>6</sup>

Lithuania has chosen to recognize church marriages. This article analyses the requirement for the age and its reduction for church and civil marriage. This article also answers whether church marriage can be recognized if the requirement for the age of consent according to the civil law is not satisfied and the civil rules of concluding marriage between juveniles are not met.

The authors comparatively analyse under what conditions marriages concluded abroad must be recognised if they do not correspond to material conditions and requirements for age.

This topic has not been analysed by scholars in Lithuania yet. Lithuanian scholars have analysed the conditions of marriage, and the age of consent; additionally, Lithuanian authors have analysed which age of consent would be suitable for marriage, to what extent the age of consent could be reduced, and what the general procedure for the recognition of church marriage is;<sup>7</sup> however, the recognition of church marriage in relationship to different material conditions of marriage has not been analysed in Lithuanian jurisprudence to date. So the article aims to fill the gap of solving practical problems of the recognition of church marriage.

## **1. MATERIAL CONDITIONS FOR CHATOLIC CHURCH AND CIVIL MARRIAGE**

Conditions necessary for registering a marriage or validating a marriage are considered requirements for contracting a marriage. The purpose of such requirements is to prevent any adverse outcomes related to the violation of these conditions. According to the Church concept:

Marriage is a covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing

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<sup>6</sup> Lynn D. Wardle, "Marriage and Religious Liberty: Comparative Law Problems and Conflict of Laws Solutions," *Journal of Law and Family Studies* 12 (2) (2010): 317.

<sup>7</sup> Valentinas Mikelėnas, Inga Kudinavičiūtė-Michailovienė, Gediminas Sagatys, Kazys Meilius, Vytautas Brilius, Rusnė Juozapaitienė.

of children following the religious aspects of being baptized and raised by Christ the Lord to the dignity of a sacrament.<sup>8</sup>

The Canon law marriage requirements for a valid marriage conclusion or, in other words, impediments for marriage are considered obstructive impediments (*impedimenta dirimentia*) in the Canon Code 1983<sup>9</sup>. These impediments are classified into two groups:

- 1) divine impediments or impediments of natural law (positive impediments); and
- 2) impediments of church law.<sup>10</sup>

The first group of impediments includes the following: absolute sexual impotency; marriage between persons related by blood in the direct line. The second group of impediments includes the following: differences of religion, consecrations, a public eternal vow of celibacy made in a monastery, an abduction of a woman with intention of marriage, a murder of a spouse with intention to make a new marriage, blood relation in the collateral line, affinity relations, and a public vow and blood relations according to the law.

Requirements of the State for concluding a valid marriage are described in Articles 3.12-3.17 of the LR CC. There are six requirements for contracting a valid marriage in the CC of the Lithuanian Republic, which provide the following: 1) marriage is prohibited between people of the same sex; 2) the voluntary nature of marriage; 3) the age of consent; 4) active capacity; 5) violation of the monogamy principle and 6) the prohibition to contract marriage between close relatives. In addition to these direct requirements there are several conditions,<sup>11</sup> stated in the Article 3.21 and Article 3.39 – 3.40 that make marriage invalid. One of the conditions mentioned is that the future spouse, if suffering from a venereal disease or HIV, must inform the other spouse about this disease.<sup>12</sup>

Some of the valid marriage requirements are common both in civil and church marriage (a free will of a man and a woman, different sex of spouses, legal capacity of persons, a prohibition to violate the principle of monogamy). Church marriage has some special requirements such as: marriage is not possible in the case of a woman abducted for marriage, murder of a spouse with an intention to contract a

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<sup>8</sup> *Code of Canon Law*, Canon Law Society of America (1999), c. 1055.

<sup>9</sup> Each Canon in the *1983 Code of Canon Law* (commonly called the "New Code") is a law of Pope John Paul II. The *1983 Code of Canon Law* reflects the mind of Vatican II in that the essentials and substance of the faith have been retained, while the way in which they are explained, communicated, and experienced have been adapted to modern times.

<sup>10</sup> *Code of Canon Law*, *supra* note 8.

<sup>11</sup> They can be called by the term used by the CIC, i.e. 'marriage impediments'.

<sup>12</sup> Under the Article 3.21, part 3: "Failure of one of the parties to an intended marriage to inform the other party that he or she is suffering from a venereal disease or HIV shall provide a cause for rendering the marriage null and void".

new marriage, a public eternal vow of celibacy made in a monastery, and absolute sexual impotency.

### 1.1. THE AGE OF CONSENT IN CHURCH MARRIAGE

The Church position on the age of consent is expressed in the first paragraph of 1083 Canon of CIC 1983. Under this canon, "a man before he has completed his sixteenth year of age, and likewise a woman before she has completed her fourteenth years of age, cannot enter a valid marriage."<sup>13</sup>

So the church determines a rather low marital age requirement, which is criticized by some scholars allowing females to marry who have reached only 14 years of age. But the church response is that 14 years is the universal minimum age requirement, which is increased by local bishops and adapted to local culture.

According to the second paragraph of the same Canon, "a conference of bishops has the right to increase the age of consent"<sup>14</sup>. The Lithuanian conference of bishops decided to accept the age of consent, as indicated in the Lithuanian Republic Civil Code and international laws. Thus, only adult people (who are at least 18 years old) can conclude a valid marriage before the Catholic Church in Lithuania.<sup>15</sup>

Juveniles wishing to complete their valid marriage must get the bishop's permit for their marriage. The priest, registering and documenting the marriage, provides the bishop with the juvenile's marriage application. Not being of age is only the temporal barrier, according to Canon law.

The requirement of age to conclude a valid marriage is stipulated in the first paragraph of the Canon 1071: "no one is to assist without the permission of the local Ordinary at a marriage of a minor whose parents are either unaware of it or are reasonably opposed to it"<sup>16</sup>. Modern Canon law defines the marriage of juveniles according to the pastoral Constitution of the second Vatican assembly "*Gaudium et spes*" n. 52, 1: "The duty of the spouses' parents or guardians is to help them create a successful family, but the parents or guardians cannot use constraint to force the spouses"<sup>17</sup>. Arguments against marriage from the parents or guardians of the spouses are evaluated by the priest. The priest can seek advice from the local Ordinary, but, if the local Ordinary makes a decision, the priest must

<sup>13</sup> *Code of Canon Law*, *supra* note 8, c. 1083, 1 §.

<sup>14</sup> *Code of Canon Law*, *supra* note 8, c. 1083, 2 §.

<sup>15</sup> *Lietuvos Vyskupų Konferencijos nutarimas dėl pasirengimo santuokos sakramentui programos* (Decision of Lithuanian Bishop Conference regarding program for preparation for matrimonial sacrament), *Bažnyčios žinios* (1996, no. 22).

<sup>16</sup> *Code of Canon Law*, *supra* note 8, c. 1071, 1 §.

<sup>17</sup> *Gaudium et spes*, Pastoral Constitution//Resolutions of the 2nd Vatican Council. Promulgated by His Holiness, Pope Paul VI on December 7 (Vatican: The Conciliar And Post Conciliar Documents by Costello, 1965).

follow it. The Church's view of juvenile marriage is described in Canon No. 1072; the priests must try and persuade the spouses not to marry when they are too young. Parents or guardians with an opposing opinion of a juvenile's marriage hold legal power in church marriage. However, according to Civil law, the consent of parents or guardians is not necessary for a juvenile to marry legitimately. According to Article 3.14 of the LR CC, parents and guardians can announce their opinion of the marriage to the court.<sup>18</sup>

In sum, the Church is known to have a very hard stance on the marriage of juveniles and, according to Canon law, in Lithuania people can marry from 18 years old, the age can be reduced with the permission of a bishop.

## 1.2. THE AGE OF CONSENT IN CIVIL MARRIAGE IN LITHUANIA

Under the Lithuanian Republic civil law, people who are older than 18 years of age have the right to conclude their valid marriage.<sup>19</sup> However, people younger than 18 years old wanting to marry legitimately must get a permit from the court<sup>20</sup> to reduce marital age.

Pursuant to Art 3.14 p. 2, marital age can be reduced by two years.<sup>21</sup> When a girl is pregnant, the court can issue a permit to conclude a valid marriage to a person younger than 16 years, i.e. reduce marital age by more than 2 years. In the present regulation of Civil Code the lowest age limit is not determined. In the opinion of I. Kudinavičiūtė-Michailovienė, in the absence of a minimum threshold when it is possible to enter into marriage, it can happen that marriage can be concluded by children.<sup>22</sup> But in the opinion of V. Mikelėnas, permission to conclude marriage for younger than 14-year person could not be acceptable.<sup>23</sup>

### 1.2.1. THE GENESIS OF THE AGE OF CONSENT IN LITHUANIAN CIVIL LAW

According to the initial regulation Art. 3.14 part 2 of the Lithuanian Civil Code, the court had the right to reduce marital age by 3 years. The present regulation of reduction of marital age was accepted in 2010 and indicated that marital age can be reduced by two years. So the law increased the lowest permissible age by

<sup>18</sup> *Civil Code of the Republic of Lithuania*, Official Gazette (2000, no. 74-2262), art. 3.14.

<sup>19</sup> *Ibid.*

<sup>20</sup> Until accepting the Civil Code of the Republic of Lithuania a competent authority to reduce marital age was an administrative body, but not the court.

<sup>21</sup> *Civil Code of the Republic of Lithuania*, *supra* note 18, part 2.

<sup>22</sup> Inga Kudinavičiūtė – Michailovienė, *supra* note 5: 80.

<sup>23</sup> Valentinas Mikelėnas, *Šeimos teisė* (Family Law) (Vilnius: Justicia, 2009), 155.

indicating that the court can reduce the marital age not by three years (to 15) but by two years only (to 16).

The reason to increase the lowest permissible marital age was related to protecting the interests of minors and to "create preconditions for effectively ensure the child's balanced development and protect against the negative consequences of early sexual intercourse"<sup>24</sup>. "The project of law was harmonized to the proposed Criminal Code of the Republic of Lithuania Amending Article 153 and Article 151<sup>2</sup> of the Code Supplement Bill, which sought to establish that criminal liability for non-violent sexual intercourse with a person who has not reached the age of 16, and molestation of people under 16 years."<sup>25</sup> Member of parliament Rimantas Remeika already in 2004 started an initiative to increase the lowest permissible age from 15 to 16. In an explanatory letter he stated that:

The admissibility of reducing marital age below 16 years of age limit is incompatible with the emancipation, which provides that the court considering that there are sufficient grounds to allow the minor to independently enforce all civil rights or discharge its responsibilities, can recognize a person fully capable only when he/she is 16 years of age. It should be noted that criminal laws fully mature, aware of his actions and essence of managing them and, on the basis of who can answer for any criminal offense recognized by persons aged 16.<sup>26</sup>

However, the Law department in Parliament in its conclusion presented an opposite opinion, stating that:

The minimum marital age in the concept of civil law cannot be confused with the age of sexual consent in criminal law (when a person has sexual intercourse with a person that has not reached the age shall be liable for child molestation), because it is a different legal category, detecting targets are also different.<sup>27</sup>

In 2010 the Lithuanian Parliament accepted changes in Lithuanian Civil Code Art. 3.14 p.2 and stated that marital age can be reduced by the court by two but not three years.<sup>28</sup> Even though there were attempts to eliminate the possibility to reduce marital age by more than two years in any circumstance, the Parliament left

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<sup>24</sup> *Lietuvos Respublikos Civilinio Kodekso 3.14 Straipsnio Pakeitimo, Įstatymo Projekto, Aiškinamasis Raštas* (Explanatory note of the amendment of the Civil Code of the Republic of Lithuania), 2009-07-23, no. XIP-944.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Lietuvos Respublikos Civilinio Kodekso 3.14 Straipsnio Pakeitimo, Įstatymo Projekto, Aiškinamasis Raštas* (Explanatory note of the amendment of the Civil Code of the Republic of Lithuania), 2005-02-08, no. XP-246.

<sup>27</sup> *Lietuvos Respublikos Seimo Kanceliarijos Teisės Departamento Išvada Dėl Lietuvos Respublikos Civilinio Kodekso 3.14 Straipsnio Pakeitimo Įstatymo Projekto* (Conclusion of the Lithuanian Seimas Law Department on the amendment Project Law of the Civil Code of the Republic of Lithuania, art. 3.14), 2005-02-10, no. XP – 246.

<sup>28</sup> *Lietuvos Respublikos Civilinio Kodekso, 3.14 Straipsnio Pakeitimo Įstatymas* (Amendment Law of the Civil Code of the Republic of Lithuania, art. 3.14), Official gazette (2010-06-22, no. XI-937).



possibility for the court to reduce by more than two years, i.e. for a person lower than 16 years in the case of pregnancy.

### 1.2.2. THE PROCEDURE OF THE REDUCTION OF MARITAL AGE

When the court reduces the permissible age, parents or guardians of the juvenile must express their opinion on marriage. But the consent of parents and guardians is not mandatory. The court must check the mental condition of the juvenile, his/her financial condition and other reasons, which can influence the reduction of the age of consent. The court's decision on the reduction of the age of consent must take into account the views expressed by the State Service for Protection of Children's Rights.

There is no maximum age of consent for marriage and the difference in age between spouses is not relevant to conclude a valid marriage. The main discussion among scholars in Lithuania is to what age marital age can be reduced, because the Civil Code does not define the lowest line to what age the court can reduce marital age if a person is pregnant. The commentators of the Civil Code stated that marital age can be reduced not only when a person is pregnant but when a juvenile has already given birth to a child.<sup>29</sup>

### 1.2.3. THE REDUCTION OF AGE FOR COHABITANTS

Lithuanian Law clearly defines marriage, conditions for marriage, marital age and the reduction of marital age. However, the Constitutional Court of Lithuania defined that family can be formed not by any marital bond only. The Constitutional Court stated that:

In the context of the constitutional justice case at issue it needs to be noted that the constitutional concept of family may not be derived solely from the institute of marriage <...>. However, this does not mean that, under the Constitution, inter alia the provisions of Paragraph 1 of Article 38 thereof, the Constitution does not protect and defend families other than those founded on the basis of marriage, inter alia the relationship of a man and a woman living together without concluding a marriage, which is based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, shared upbringing of the children and similar ones, as well as on the voluntary

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<sup>29</sup> Valentinas Mikėlėnas, Šarūnas Keserauskas, and Zita Smirnovienė, *LR Civilinio kodekso komentaras. Trečioji knyga. Šeimos teisė* (Commentary on the Civil Code of the Republic of Lithuania. Third book. Family law) (Vilnius: Justitia, 2002).

determination to take on certain rights and responsibilities, which form a basis for the constitutional institutes of motherhood, fatherhood and childhood.<sup>30</sup>

According to the ruling of the Constitutional Court, the family is treated as persons living together without marriage as partners or cohabitants. The question which is not solved by the Lithuanian legislation is from what age persons can be treated as family members living in cohabitation.

This question appeared before the Supreme Administrative Court of Lithuania, where the applicant R.Ž. applied to Pravieniškės 1st prison administration with a request to give him a long-term date with his girlfriend E. P. The administration rejected the applicant's request.

Kaunas Regional Administrative Court granted the applicant's appeal. The court stated that the convict's right to meet with relatives and other persons is regulated by Ministry of Penal Code Article 94. Paragraph 3 stipulates that the convict has the right for long term dates with a spouse or a cohabitant. As the convict and the girlfriend satisfied the status of cohabitants, the permission for long term dates was issued. After that, the appeal was presented to the Supreme Administrative Court which finally stated that the girlfriend only reached adulthood when the applicant was imprisoned. The applicant and the girlfriend could not become cohabitants because the girlfriend was minor before the seize of the applicant and, after the seize, the applicant was isolated so they could not form a cohabitation<sup>31</sup>.

According to Lithuanian legislation the marital age can be reduced only to people who intend to marry, but for cohabitation relations the age cannot be reduced. Only a person who has reached adulthood can live in cohabitation even though the cohabitation is recognized as a legal relation.

#### **1.2.4. MARITAL CAPACITY, EMANCIPATION AND A RELATIONSHIP WITH FULL CAPACITY OF PERSON**

A marriage permit issued by the Court to a person under the age of 18 years, according to Article 2.5 of the Lithuanian Republic Civil Code<sup>32</sup>, grants full juridical capacity upon the registration of marriage. If the marriage is annulled, a juvenile does not lose his/her full legal capacity. So if a person has marital capacity he has full legal capacity, too.

<sup>30</sup> *The ruling of the Constitutional Court of the Republic of Lithuania of 28 September 2011 On The Compliance Of The Provisions Of The State Family Policy Concept As Approved By Resolution Of The Seimas Of The Republic Of Lithuania No. X-1569 "On The Approval Of The State Family Policy Concept" Of 3 June 2008 With The Constitution Of The Republic Of Lithuania*, Official Gazette (2011, no. 118-5564).

<sup>31</sup> *R.Ž. v Pravieniškių 1-mieji pataisos namai*, Supreme Administrative Court of Lithuania (2008, no. A-525-219-08).

<sup>32</sup> *Civil Code of the Republic of Lithuania*, *supra* note 18, art. 2.5.

A person who has reached 16 years of age can be emancipated if there are sufficient grounds to believe that s/he may exercise all civil rights and discharge his obligations alone according to Art. 2.9 of the Lithuanian Civil Code.

An emancipated person who wishes to marry must obtain the court's permission to reduce marital age even though he is emancipated.

Civil capacity and marital capacity do not coincide, but if a person obtains the court's permission and marries, s/he shall be treated as having full civil capacity.

So the person who has not reached adulthood but is duly married cannot be treated as a minor. In general, crimes against children are treated as higher crimes. But what about crimes against persons who have not reached adulthood and are duly married? In the criminal case of human trafficking the offence was committed against a woman M.B. who was under 18 but already duly married. The prosecutor believed that the convicts should be convicted for the trafficking of a child since the offense was committed against M.B. who had not reached the age of 18 years. But the court stated that:

The authorization to marry a minor person should assess whether a minor is mature enough to be able to participate independently in legal relations. While the M.B. the offended was 17 years old, but she already had entered into marriage, had children, i.e. was sufficiently mature and was given permission to marry before reaching the age of 18 <...>. So under these circumstances, the M.B. does not constitute a child in criminal law sense.<sup>33</sup>

So the main rule of the age of consent for civil marriage is 18 years. This age can be reduced by the court by two years. If a woman is pregnant or has children, the age of consent can be reduced even further. Parents or guardians and the State Service for Protection of Children Rights must express their opinion but their consent is not mandatory. The minimum marital age is not determined but the permit to conclude marriage to a younger than 14 years old persons could not be acceptable. Even though Lithuania recognised cohabitation, the age for cohabitation cannot be reduced and is 18 years of age. The reduction of marital age and the conclusion of marriage grants full judicial capacity to a person. But an emancipated person does not get marital capacity and must get the court's permit for the conclusion of marriage. The reduction of marital age has influence on the criminal law field. A crime toward a minor who is duly married cannot be treated as a crime against a child.

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<sup>33</sup> *Valstybė v J. L., I. K. and P. B.*, Court of Appeal of Lithuania (2015, no. 1A-127-518).

## 2. THE AGE OF CONSENT IN FOREIGN COUNTRIES

The Age of Consent in the majority of the European Union countries is 18. Some countries have marital age of 16, such as Malta, Luxembourg, and Monaco. Each country determines different rules about how the marital age could be reduced. The situation of marital age is quite different in other countries of the world, where child marriages are performed. In some countries marital age is extremely low and could be even 8 or 10 years. The UN criticizes child marriages and puts strong effort into restricting them; but the numbers of child marriages in the world remains enormous. "Between 2011 and 2020, more than 140 million girls will become child brides, according to United Nations Population Fund (UNFPA). Furthermore, of the 140 million girls who will marry before they are 18, 50 million will be under the age of 15."<sup>34</sup>

Recently, Spain had the lowest permissible marital age in Europe, which was 14 years.<sup>35</sup> But in 2015 legislation in Spain was changed and "under the new legislation, 14- and 15-year-olds will no longer be able to marry, while 16-year-olds will now require permission from a judge or parental consent to marry"<sup>36</sup>. Today Estonia has the lowest marital age in Europe, which is 15 years. "A person who is at least 15 years old is obliged to submit a court order on the broadening of their legal capacity to enable the performance of the operations needed for the contraction of marriage and the exercising of the rights and the performance of the obligations connected to marriage."<sup>37</sup> The rest of the European Union countries allow the reduction of the marital age to 16 years, but there is a different authority authorized to reduce marital age.

In the majority of the European Union countries it is the court that has competence to reduce marital age but in some countries it could be other administrative bodies. In Denmark the consent of the local municipality and parents must be obtained in order to marry before 18 years old.<sup>38</sup> In France the local prosecutor may grant permission to reduce marital age.<sup>39</sup> In Luxembourg the Grand Duke may reduce the minimum age for marriage. In Finland a person who is under 18 years of age can marry with a special permission given by the Ministry of Justice.<sup>40</sup> Pursuant to 1929 Finish Marriage Act "the Ministry of Justice may,

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<sup>34</sup> No author named, "Child marriage: 39 000 every day" (November 2015) // [http://www.who.int/mediacentre/news/releases/2013/child\\_marriage\\_20130307/en/](http://www.who.int/mediacentre/news/releases/2013/child_marriage_20130307/en/).

<sup>35</sup> *Spanish Civil Code* (approved 24-07-1889, last amended by Law No. 20/2011 of 21-07-2007), art. 48, sec. 2.

<sup>36</sup> No author named, "Spain moves to raise minimum marriage age to 16" (November 2015) // <http://www.theguardian.com/world/2015/apr/28/spain-marriage-age-16-legislation-senate>.

<sup>37</sup> No author named, "At what age is it possible to get married?" (January 2016) // <http://www.tallinn.ee/eng/Contraction-of-marriage#age>.

<sup>38</sup> *Danish Marriage Act* (1969, no. 256).

<sup>39</sup> *French Civil Code* (2006, no. 2006-399), art.145.

<sup>40</sup> No author named, "Marriage" (January 2016) //

however, for special reasons grant a person under 18 years of age a dispensation to marry. Before the matter is decided, the custodian of the applicant shall be reserved an opportunity to be heard if his or her whereabouts can be determined with reasonable measures.”<sup>41</sup> Typically the reasons are religious or pregnancy. Under the Belgian Civil Code, special dispensation to marry below these ages can be given by the juvenile court due to the pregnancy or other reasons (Art. 145 of the Belgian Civil Code)<sup>42</sup>.

In Italy a tutor is assigned for juveniles wishing to marry. The Civil Code of Italy states that “if there are crucial reasons for a marriage, the court must explore the physical and mental maturity of the juvenile, hear the parents’ opinion about the marriage and only after hearing this evidence can the court grant a marriage permit to a person older than 16 years of age.”<sup>43</sup>

Some countries require the mandatory consent of persons with parental responsibility in order to reduce the marital age of a juvenile. In the United Kingdom the parties must be over the age of 16. A person aged 16 to 18 can only marry with the consent of a parent or other persons with parental responsibility, but where consent is not forthcoming, the court can authorise the marriage to take place.<sup>44</sup>

In some countries it is allowed to marry for a juvenile only when the other spouse has full capacity, so marriage between two juveniles is not allowed. In Austria the marital age may be reduced only if the marriage is performed with an adult person having full capacity.<sup>45</sup> In Germany, too, it is allowed to reduce the marital age if the marriage is concluded with a person having full capacity.<sup>46</sup> Also in Latvia it is allowed to marry under 18 years if one spouse has already reached adulthood.<sup>47</sup>

It can be concluded that the age of consent for spouses in the Lithuanian Republic is similar to that of the EU member countries: in Lithuania the age of consent for spouses is 18 years of age. But the reduction of marital age differs from country to country. In some countries the consent of juveniles’ parents or guardians for marriage of juveniles is mandatory, in other countries not. In some countries it is the court that can reduce marital age and in other countries other administrative bodies (e.g. Ministry of Justice in Finland or Local Municipality in Denmark) can do this. Each country sets a different minimal age requirement about

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<http://www.infopankki.fi/en/living-in-finland/family/marriage>.

<sup>41</sup> *Finish Marriage Act* (234/1929; amendments up to 1226/2001 included), sec. 4, para. 2.

<sup>42</sup> *Belgian Civil Code* (L 19-01-1990, Art. 8, 03-21-1804), art. 145.

<sup>43</sup> *Italian Civil Code* (03-16-1942, no. 262), art. 84, para. 1.

<sup>44</sup> Carolyn Hamilton and Alison Perry, *Family Law in Europe* (London: Butterworths, 1995), 4.

<sup>45</sup> *Austrian Marriage Act* (1938, BGBl. I No. 15/2013), art. 1 para. 2.

<sup>46</sup> *German Civil Code* (last amended by Article 4 para. 5 of the Act of 10-01-2013 (Federal Law Gazette I page 3719)), art. 1303, para. 2.

<sup>47</sup> *Latvian Civil Code*, Ziņotājs (1993, no. 22), Valdības Vēstnesis (1937, no. 41), art. 32.

the extent to which the age can be reduced (15 years in Estonia and 16 years in other European Union countries).

### 3. INTERNATIONAL MARRIAGES AND THE AGE OF CONSENT

The migration of people is increasing and persons can conclude international marriages. Marital conditions and the requirement for marital age differ from one country to another—it is not unified. An international marriage joins two people from different countries and cultural backgrounds.<sup>48</sup>

#### 3.1. LAW APPLICABLE TO THE AGE OF CONSENT FOR INTERNATIONAL MARRIAGES

The international marriage category comprises those marriages that take place in the country where at least one of the spouses has a foreign domicile.<sup>49</sup> When marriage has an international element, an additional question arises regarding which country's law marital capacity and marital age should be determined, and additionally whether a marriage concluded abroad which does not satisfy local requirements for the essential marriage conditions, including marital age, could be recognized.

Most countries distinguish between marriage formalities and marriage essentials.<sup>50</sup> The rules of private international law determine what law shall be applied to the conclusion of marriage and when marriages concluded abroad can be recognized. The predominant rule regarding marriage formalities if it was concluded abroad is to simply apply the law of the place where the marriage was celebrated.<sup>51</sup> "There is no rule more firmly established in private international law than that which applies the maxim *locus regit actum* to the formalities of marriage."<sup>52</sup> Exceptions to this *lex loci celebrationis* rule regarding marriage formalities include consular marriages and marriages by members of the military serving abroad under particular circumstances.

With regard to marriage essentials there are two dominant choice-of-law systems widely used for determining law for international marriages. One is the rule

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<sup>48</sup> Sarah Rogers, "What is International Marriage?" (April 2013) // [http://www.ehow.com/facts\\_6722709\\_international-marriage\\_.html#ixzz1JgeOnd6p](http://www.ehow.com/facts_6722709_international-marriage_.html#ixzz1JgeOnd6p).

<sup>49</sup> See, e.g., *Simonin v. Mallac*, 1860, 2 Sw & Tr 67 (marriage in England between a French man and French woman); *Ogden v. Ogden*, 1908, P 46 (marriage in England between a French man and an English woman).

<sup>50</sup> Often called capacity in choice in law literature.

<sup>51</sup> Under art. 3 of 1978 Hague Convention on Celebration and Recognition of the Validity of Marriage: *The formal requirements for marriages shall be governed by the law of the State of celebration.*

<sup>52</sup> Peter North and James Fawcett, *Private International Law* (London: Butterworths, 1987), 558.

checking the compatibility of marriage essentials with the *personal law*<sup>53</sup>. The other applies the rule of *lex loci celebrationis*.<sup>54</sup>

The *personal law* system includes two different rules for determining personal law: *lex patriae*<sup>55</sup> and *lex domicilii*<sup>56</sup>: *lex patriae* applies the law of the nationality of each individual in the couple; the other personal law regime looks at the law of the domicile of spouses (*lex domicilii*).

*Favor validitatis*<sup>57</sup> may also influence the choice of law when the parties are from different jurisdictions.<sup>58</sup> Thus, when other factors are balanced, the benefit of the doubt usually falls to upholding the validity of marriage. Even when other factors are not in equipoise, courts<sup>59</sup> tend to start with the presumption that marriage should be upheld as valid unless the law or public policy compels the invalidation of marriage.<sup>60</sup>

The other major system for deciding the validity of marriage with reference to essentials is the *lex loci celebrationis* rule. States that follow this regime apply the law of the place of celebration to essentials as well as to formalities in determining validity of marriage.

Marital age for international marriages could be determined according to *lex loci celebrationis*, *lex patriae* or *lex domicilii* rule.

### 3.2. LAW APPLICABLE TO MARITAL AGE FOR INTERNATIONAL MARRIAGES IN LITHUANIA

Each country has different requirements for the determination of law for international marriages. In Lithuania the general rule is stipulated in Art. 1.25, Part 1 of the Lithuanian Civil Code: "Matrimonial capacity and other conditions to contract marriage shall be governed by the law of the Republic of Lithuania".<sup>61</sup>

So, if a marriage is concluded in Lithuania, the condition to contract marriage shall be governed by the laws of Lithuania. The principle of *lex loci celebrationis* is applied to the validity of marriage. But the third part of the Art. 1.25 indicates a special rule for the conclusion of marriage: "Matrimonial capacity and other

<sup>53</sup> The law that defines the personal status of the parties.

<sup>54</sup> The law of the place of celebration.

<sup>55</sup> The law of one's nationality.

<sup>56</sup> The law of one's domicile.

<sup>57</sup> An underlying policy value that can be seen in many marriage recognition cases is the premise or presumption *favor validitatis* that is the law favors marriage validity.

<sup>58</sup> Lynn D. Wardle, *International Marriage Recognition: A World Dilemma*, in *Families across Frontiers* (The Hague: Martinus Nijhoff publishers, 1996), 77-85.

<sup>59</sup> USA case: *Reid v Reid* (1911, no. 72 Misc. 214, 129 N.Y.); English case: *Wolfenden v. Wolfenden* (1946, P 61); German case: *Savenis v Savenis* (1950, no. SASR 309); German case: *Kuklycz v. Kuklycz* (1972, no. VR 50).

<sup>60</sup> Lynn D. Wardle and Laurence C. Nolan, *Fundamental Principles of Family Law* (Praeger: David Orgon Coolidge Eds., 2002), 213.

<sup>61</sup> *Civil Code of the Republic of Lithuania*, *supra* note 18, art. 1.25 (1).

conditions to contract marriage in respect of foreign citizens and stateless persons without Lithuanian domicile may be determined by the law of the state of domicile of both persons intending to marry if such marriage is recognized in the state of domicile of either of them.”<sup>62</sup>

So, if future spouses residing in China whose age is 19 wish to marry in Lithuania because one of the spouses is a Lithuanian citizen, then their marital capacity must be determined not according to Lithuanian law but according to law of future spouses’ domicile, i.e. China. Marital age in China is 20 years for a woman and 22 years for a man, “which is the highest in the world today due to Chinese population control policy that aims to limit the number of children a couple will have”<sup>63</sup>. But marital age in Lithuania is 18 years. So, in order for the marriage to be valid in China, the future spouses must correspond not to Lithuanian but Chinese requirements for marital age. And the marriage cannot be registered in Lithuania even though it does not infringe on the age requirements applied in Lithuania but it does not meet marital age requirements of spouses’ domicile.

It can be the opposite situation, when, according to Lithuanian law, marriage cannot be registered because it would not be valid in Lithuania, but it would be valid and recognized in at least one of the countries where one spouse is domiciled.<sup>64</sup> For example, Azerbaijan’s Civil Code currently allows girls to wed at age 17.<sup>65</sup> So if both future spouses are domiciled in Azerbaijan and are 17 years old, Lithuanian authority must register the marriage even though they do not correspond to Lithuanian requirements. This is only a theoretical approach; there have been no practical cases when Civil Metrickation registered marriage for 17 years foreign domiciled person without Lithuanian court permit to reduce the age. There is only one exception when foreign law could not be applied for the material condition for marriage, i.e. when it infringes on the public policy of Lithuania. This situation could be when the law of domicile allows polygamous marriages and this is against the public policy of Lithuanian, so foreign law allowing polygamous marriages could not be applied.

As to the conclusion of marriage with a foreign element inside Lithuania: the Registration Bureaus of the Republic of Lithuania shall have jurisdiction to perform the registration of marriage if either of the persons intending to marry is domiciled

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<sup>62</sup> *Ibid.*

<sup>63</sup> No author named, “World minimum marriage age chart” (January 2016) // <http://www.independent.co.uk/news/world/the-lowest-age-you-can-legally-get-married-around-the-world-10415517.html>.

<sup>64</sup> Valentinas Mikelėnas, Šarūnas Keserauskas, and Zita Smirnovienė, *supra* note 29.

<sup>65</sup> UNICEF, “Child marriage” (January 2016) // [http://www.unicef.org/azerbaijan/protection\\_10022.html](http://www.unicef.org/azerbaijan/protection_10022.html).



in the Republic of Lithuania or is a Lithuanian citizen at the time of the solemnization of marriage.<sup>66</sup>

Individuals wishing to get married in Lithuania need to fill out the required forms and submit them along with their passport, birth certificate, and required documents<sup>67</sup> to the Civil Registry office.

If a foreign citizen has never been married, proving that he or she is “free to marry”, originating certificate from his or her last state of residence. This is a proof of celibacy. This document must have an apostille attached to it.

So Lithuania has chosen *lex loci celebrationis* as the main principle, which means that for marriages performed in Lithuania matrimonial capacity and other conditions to contract marriage shall be governed by the law of the Republic of Lithuania. But the law determines an additional special principal when marriages are registered in Lithuania, one of the spouses is a Lithuanian citizen and both of the spouses are domiciled in a foreign country. In such a case, conditions to contract marriage and marital age can be determined according to the law of the state of the domicile (*lex domicilii*) of both persons intending to marry if such marriage is recognized in the state of the domicile of either of them.

### 3.3. REQUIREMENTS FOR MARITAL AGE FOR MARRIAGES CONCLUDED ABROAD

Marriages concluded in one country must be recognized in other countries to have full effect. Each country can select different principles (*lex loci celebrionis*, *lex domicilii*, *lex patriae*) in order to recognize marriages concluded abroad, especially when they contradict essential conditions of marriages in that country.

When deciding whether a foreign marriage should be recognized as valid according to the rules of private international law of a country, the courts must consider a range of legal, cultural, moral, religious and social values that are held in high esteem both by the country in which recognition is sought and the country in which the marriage was celebrated.<sup>68</sup>

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<sup>66</sup> *Civil Code of the Republic of Lithuania*, *supra* note 18, art. 1.25, 2 §.

<sup>67</sup> In Order to get the marriage certificate in Lithuania, the following documents must be submitted: passports or identity cards, birth certificates, former partner's death certificate or certificates proving or annulling/terminating, a marriage/civil partnership (if previously married). If any of the partners is alien, documents to be submitted are as follows: passport or identity cards (translated into the Lithuanian language), birth certificates (legalized according to the established procedures and translated into Lithuanian language), document proving person's right to get married, issued by the competent institution of the country of origin (legalized according to the established procedure and translated into the Lithuanian language).

<sup>68</sup> John Murphy, *International Dimensions in Family Law* (Manchester: Manchester University Press, 2005), 33.

Some countries apply the principle of *lex loci celebrionis* in order to evaluate whether a marriage concluded abroad is valid. In the case *in Re May's estate*<sup>69</sup> a New York court recognized a marriage concluded in Rhode Island between an uncle and a niece of Jewish faith, who were validly married by a rabbi even though this marriage could be treated as incestuous and void in New York. The court applied the principle that marriage validity shall be determined according to the place where marriage is concluded (*lex loci celebrionis*).

In the English case *Brook v Brook* it was stated that:

While forms of entering into the contract of marriage are to be regulated by the *lex loci contractus*, the law of the country in which it is celebrated, the essentials of the marriage depend on the *lex domicilii*, the law of the country in which the parties are domiciled at the time of the marriage and in which the matrimonial residence is contemplated.<sup>70</sup>

So a marriage between spouses domiciled in England and lawfully concluded in Denmark will be not recognized in England on the grounds of affinity because the man married his deceased wife's sister.

In Lithuania, pursuant to Art. 1.25 part 4 of the Civil Code, "a marriage validly performed abroad shall be recognized in the Republic of Lithuania, except in cases when both spouses domiciled in the Republic of Lithuania performed the marriage abroad with the purpose of evading grounds for nullity of their marriage under Lithuanian law". If a marriage is validly contracted abroad of 17-year-old spouses pursuant to the requirement for marital age it must be recognized in Lithuania (*lex loci celebrionis*), even though the age for marriage is 18 in Lithuania. But the exception is applied if both spouses being 17 years are domiciled in Lithuania and conclude marriage abroad in order to avoid mandatory marital age in Lithuania which is 18 years. In such a case, the *lex domicilii* shall be applied.

There is no general requirement to register a marriage entered into abroad. However, to keep his/her civil status up to date, a person can register his/her marriage in Lithuania: marriages of nationals of the Republic of Lithuania registered by institutions of a foreign state are entered into the records of the Civil Registry office of their place of residence in the Republic of Lithuania. Thus a marriage record entry is made and a marriage certificate is subsequently issued. Marriages of nationals without a permanent residence in the Republic of Lithuania are entered by the Civil Registry Office of the City of Vilnius.

When dealing with issues on the recognition of foreign marriage, Lithuanian case law is not numerous and available information is far from complete.

<sup>69</sup> *In Re May's estate*, Court of Appeals of New York (1953, no.305 N.Y. 486, 114 N.E.2d 4).

<sup>70</sup> *Brook v Brook* (1861, no. 9 HLC 193).

Such a problem related to the recognition of marriages concluded abroad and to writing the names of the spouses, was raised in the Civil Case No. 3K-7-20/2006 of the Lithuanian Supreme Court.

The claimant M. C. in that particular case requested that the Civil Registry Office at the Law Department of the Vilnius City Municipality would enter into records the marriage concluded in the Carson City, the State of Nevada in the United States on October 6, 2003, between M. C. and G. P., by enrolling the name of the claimant (the name of the spouse with the masculine ending of the name). The claimant stated that the Civil Registry Office refused to enter into records the marriage between her and the person G. P. concerned, concluded in the State of Nevada, the USA, on the grounds that the applicant's choice of the spouse's name form does not meet the rules of the state Lithuanian language. As it was not established, that M. C. and G. P. concluded the marriage in the United States with the aim of avoiding marriage annulment (marriage of nullity not identified as referred to in Article 3:37 of the Civil Code), the jury of the Civil Division at Vilnius District Court justly imposed upon the Civil Registry Office at the Law Department of the Vilnius City Municipality the obligation to enter the marriage between M. C. and G. P., concluded in Carson City, the State of Nevada in the United States on October 6, 2003, into its records, but unjustly ordered the recording of civil status' records and erroneously issued a marriage certificate where the name of the claimant was not M.C. but M. (paragraph 57 of the Civil Registry rules).<sup>71</sup>

In the field of family law with cross-border implications, the legal regulation of private international law is often clearly interrelated with the approaches adopted at the level of the substantive law.<sup>72</sup>

So there are different principles to recognise marriages concluded abroad such as *lex domicilii* or *lex loci celebrionis*. Lithuania has chosen to apply the principle *lex loci celebrionis* and to recognize marriages concluded abroad even though they do not correspond to material conditions of Lithuanian law. But the law also stipulates one exception—when a Lithuanian domiciliary concludes marriage abroad, the validity of marriage must be determined according to Lithuanian law *lex domicilii*.

<sup>71</sup> M. Č. v G. P, Supreme Court of Lithuania (2006, no. 3K-7-20/2006).

<sup>72</sup> Vytautas Nekrošius, *Europos Sąjungos Civilinio Proceso Teisė* (European Union Civil Procedure Law) (Vilnius: Justitia, 2009), 80.

#### 4. THE RELATIONSHIP BETWEEN CHURCH AND STATE MARRIAGE IN THE EUROPEAN UNION

The relationship between religion and the State is defined following the system of the modern State and has developed throughout the relationship of the State and Christianity; thereby through the evolution of their relations.<sup>73</sup>

According to the intensity of the co-operation of the State and religious organizations, all states can be divided into a few categories: States hosting a partial separation between the State and the Church (Spain); states in which the State and the Church are completely separated (France); and, States having a national Church (Denmark).<sup>74</sup>

##### 4.1. RELATIONSHIP BETWEEN CHURCH AND STATE IN LITHUANIA

Article 43 of the Constitution of the Republic of Lithuania declares that there is no state religion in Lithuania. The State and religion is separated in Lithuania. But there are some spheres in which religious communities can co-operate with the State. For example, religious organizations can obtain financial support from the State.<sup>75</sup> In the first part of the same Article of the Constitution of the Republic of Lithuania the provision "the State acknowledges churches and religious organizations traditional in Lithuania" is proclaimed.

In a liberal State, both the State and religion<sup>76</sup> acknowledge each other's sovereignty in its sphere, they co-operate and do not decide what the truth is but regulate it, taking into account the things that are universally acknowledged as true and good. The State can easily change its "moral positions", as it does not have and cannot have such a moral position and the truths followed by the Church – received from the Lord – are eternal and unchanging.<sup>77</sup>

The relationship between the State and the Church is consolidated in Article 14 of the Lithuanian Republic Religious Community and Society Law<sup>78</sup>. Article 14 declares:

Religious communities, societies and centres are entitled to establish and have schools for general education and other teaching, educational and cultural institutions, development institutions for the training of clergymen, also to

<sup>73</sup> Vytautas Brilius, "Sakramentinės Santuokos Pripažinimo Problemos Lietuvos Respublikos Civilinėje Teisėje" (The Recognition Problems of Sacramental Marriage in Civil Law of Lithuanian Republic), *Soter* 38 (2003): 48-49.

<sup>74</sup> No author named, *International Conference on State and Religious Communities Relationships: State and Religious Communities Relationships in Austria* (Vilnius: Lithuanian Ministry of Justice, 2000), 47-49.

<sup>75</sup> Vytautas Brilius, *supra* note 73: 50.

<sup>76</sup> In the case when religion displays itself through social structure able to have and having its law.

<sup>77</sup> Vytautas Brilius, *supra* note 73: 50.

<sup>78</sup> *Lietuvos Respublikos Religinių Bendruomenių ir Bendrijų Įstatymas* (Law on Religious Communities of the Republic of Lithuania), Official Gazette (1995, no. 89 – 1985).

engage in charity, participate in charitable activity, and to establish medical and charity institutions and organizations.<sup>79</sup>

According to the agreement between the Lithuanian Republic and the Holy See<sup>80</sup> concerning juridical aspects of the relations between the Catholic Church and the State, Article 1 states: "The Lithuanian Republic and the Holy See agree that both the Catholic Church and the State are independent and autonomous, each in its own sphere and following this principle closely co-operate aiming at the spiritual and material wellbeing of every person in society"<sup>81</sup>. According to the Government and the Holy See's agreement on relations between the Catholic Church and the State legal aspects of Article 13, "the time and manner in which the canonical marriage must be registered in the public register of marriages established by the competent authorities of the Republic of Lithuania State, in agreement with the Lithuanian Bishops' Conference".

#### 4.2. CHURCH MARRIAGES IN EUROPE

Some European Union countries recognise Church marriages. Some countries recognise Church marriages from the moment they are celebrated (Poland), but some countries recognize church marriages from the moment they are registered in a civil register (Italy).

In some states it is a criminal offence for a minister of religion to solemnize a church marriage prior the civil marriage.<sup>82</sup>

Countries which recognise Church marriages are regulated by the agreement (concordat) between the Holy See and each country. The basis for church marriages is Concordats with Vatican regarding *On the recognition of civil effects to canonical marriages and to the decisions of the ecclesiastical authorities and tribunals about the same marriages*:

The Concordat gave rise to a "hybrid": church weddings celebrated by a catholic priest were privileged in that one they were entered in civil records they produced civil legal consequences.<sup>83</sup>

For example, pursuant to Art. 8 of Concordat agreement between Italy and the Holy See, it is agreed that

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<sup>79</sup> *Ibid.*

<sup>80</sup> *Lietuvos Respublikos ir Šventojo Sosto Sutartis "Dėl Santykių tarp Katalikų Bažnyčios ir Valstybės Teisinių Aspektų"* (Agreement between the Holy See and the Republic of Lithuania concerning juridical aspects of the relations between the Catholic Church and the State), Official Gazette (2000, no. 67 – 2022).

<sup>81</sup> *Ibid.*

<sup>82</sup> Norman Doe, *Law and Religion in Europe A comparative introduction* (New York: Oxford University Press, 2011), 220.

<sup>83</sup> Guido Alpa and Vincenzo Zeno-Zencovich, *Italian Private Law* (Abingdon: Routledge-Cavendish, 2007), 56.

Civil effects are recognised of marriage contracts made according to Canon Law, provided that a marriage has been registered in state registers and notification has been previously published in the local registry office <...>. The Holy See notes that marriage registration shall not have taken place when: the spouses do not fulfil the age requirements of the civil law for the celebration of marriage.<sup>84</sup>

For example, Art. 10, Part 1 of the Agreement between the Holy See and Poland states that "the conclusion of the marriage by canon law will have civil effect, if there are no obstacles between spouses according to Polish law [and] <...> the marriage was entered by Office for the Registry <...>"<sup>85</sup>

Some European countries recognise Church marriages from the moment of celebration and others from the moment they are included in Civil Register. Some European Countries do not recognise Church marriages and wedding at church is treated as a criminal offence.

#### 4.3. RECOGNITION OF CHURCH MARRIAGE IN LITHUANIA

The State acknowledges the registration of church<sup>86</sup> marriages. Article 38 of the Constitution of the Republic of Lithuania declares: "The State registers marriage, birth and death. The State acknowledges the registration of church marriage as well"<sup>87</sup>.

For most Lithuanian believers, the issue of entering into marriage and its legal registration is relevant, so the State, in respect of the will of the citizens, acknowledges the Canon marriages. For Christians and especially Catholics, a marriage is primarily a sacral and moral event, and the juridical act comes later. So in Article 13 of the *Agreement Regarding the juridical aspects of the relations between the Catholic Church and the State*, signed on May 5<sup>th</sup>, 2000, the following is established: "Entering into Canon marriage creates civil consequences according to the acts of the Lithuanian Republic"<sup>88</sup>.

The legal aspect of marriage is either ecclesiastical or civil, depending on the place of marriage – Church or Civil Registry institution, where the ceremony takes

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<sup>84</sup> *Agreement between the Holy See and the Italian Republic. Modifications to the Lateran Concordat*. February 18, 1984.

<sup>85</sup> *Ollempnis Conventio Inter Apostolicam Sedem Et Poloniae Rem Publicam* (Concordat between the Holy See and the Republic of Poland) (July 28, 1993).

<sup>86</sup> Only the traditional religious communities (including Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Russian Orthodox, Old Believers, Judaist, Sunni Muslim and Karaite) (*Law on Religious Associations and Communities*, *supra* note 78, art. 5).

<sup>87</sup> *Lietuvos Respublikos Konstitucija* (Constitution of the Republic of Lithuania), Official Gazette (1992, no. 33-1014), art. 38.

<sup>88</sup> *Lietuvos Respublikos ir Šventojo Sosto Sutartis "Dėl Santykių tarp Katalikų Bažnyčios ir Valstybės Teisinių Aspektų"* (Agreement between the Holy See and the Republic of Lithuania concerning juridical aspects of the relations between the Catholic Church and the State), *supra* note 80, art. 13.

place and the registration is done and by which authority the marriage certificate is issued.<sup>89</sup>

There are different regulations about how the State recognizes church marriages. In some countries the State does not check whether the marriage corresponds to the requirements of a civil marriage. But Article 3.24 of Lithuanian Civil Code determines:

The formation of a marriage in accordance with the procedures established by the Church (confessions) shall entail the same legal consequences as those entailed by the formation of a marriage in the Register Office provided that the conditions laid down in Articles 3.12 to 3.17 hereof have been satisfied.<sup>90</sup>

There is a court practice in Lithuania in which the church marriage which does not correspond to requirements of civil law marriage shall not be included into the civil register. If this marriage is included, it could be the basis to cancel the record. As it was stated in the decision of Lithuanian Supreme Court in 2006, the defendant V. B. married the plaintiff's father V.Z. at Vilnius Orthodox Holy Virgin Mary, a Sign from Heaven Parish Church. But already in 2005 the civil procedure of acknowledging plaintiff's father V.Z. as incapable was started. In 2006 the plaintiff's father was diagnosed with a chronic progressive mental disorder because of which he cannot understand the meaning of his actions and control them. Article 3.24 of the CC determines the set of conditions, each of which must be fulfilled so that marriage registered in churches (denominations) will be recognized by the State and would have the same legal effect as marriage in a civil registry office (CC 3.7, paragraph 2, Article 3.24 2, 3.26, paragraph 1). The application to court was based on the fact that the requirements of Article 3.15, i.e. the principle of voluntary marriage, was breached because the plaintiff's father did not understand the essence of his actions.

The Supreme Court stated that the defendant presenting information to the civil registration office and not informing them about the plaintiff's father as incapable infringed on the regulation set in CC 3.24 and, therefore, it is the basis to remove the record of church marriage from the civil register.<sup>91</sup>

Lithuanian Supreme Court Civil Division of expanded panel of judges on the 07-02-2007 in civil case stated that the State records the legal fact of marriage conclusion in order to ensure both public and private interests, the constitutional provision that the State recognizes church registration cannot be regarded as absolute and does not require any additional implementing procedures. The State

<sup>89</sup> Kazys Meilius and Gediminas Sagatys, "Bažnyčios (Konfesijų) Nustatyta Tvarka Sudarytų Santuokų Kelias į Pripažinimą" (Way of Marriages to Acknowledgement Formed in Church (Confessions) Established Manner), *Jurisprudencija* 28 (2002).

<sup>90</sup> *Civil Code of the Republic of Lithuania*, *supra* note 18, art. 3.24.

<sup>91</sup> *A.Z. v V.B.*, Supreme Court of Lithuania (2008, no. 3K-3-148/2008).

can only recognize what is known, so that for the Church's (confessions') procedure established by the marriage to be recognized, it is necessary to comply with Article 3.24 of the CC set out in paragraph 2. The recognition of that fact means the State's commitment to regulate the social relations. Lithuanian Supreme Court Civil Division of the expanded panel of judges noted that courts of general competence may be competent to solve the questions of civil legal consequences due to the Church (confessions) marriage and eliminate the marriage entry accounting an act from the civil registry office.<sup>92</sup>

The Lithuanian Supreme Court noted that the recognition of church marriage is not absolute. The Civil Code of the Republic of Lithuania sets forth that only these church marriages which correspond to requirements of the Civil Code material marriage conditions can be recognized as valid marriages.

So even though Lithuania has chosen to recognise church marriages, the recognition is not absolute.

#### **4.4. RECOGNITION OF CHURCH MARRIAGE WHEN THE SPOUSE'S AGE IS UNDER 18 YEARS**

The age of consent as an impediment for contracting marriage goes current in all countries. The age of consent may be defined as the minimum age provided by the law at which a person can contract a marriage<sup>93</sup>. The minimum age limit is applicable on the grounds of physical and psychical maturity, required for contracting marriage.

People of at least 18 years old can marry legitimately according to canon or civil law and, if permitted, can marry under the age of 18 years. However, according to church law, people under the age of 18, engaging in marriage, may encounter problems, because, in order to marry in church, the permission from a bishop but not the permission from the court is necessary.

According to the second part of Article 3.24 of the LR CC, validating a marriage through the Church generates similar consequences as a marriage concluded in the Civil Registry offices. This is only if the marriage reservations of Articles 3.12 – 3.17 are not infringed upon. However, if an infringement of Article 3.14 occurs, the age of consent can only be adjudicated by a court of law.

The above mentioned article sets out different conditions about how marital age can be reduced.

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<sup>92</sup> *G.K. v G.S.*, Supreme Court of Lithuania (2007, no. 3K-7-6/2007).

<sup>93</sup> Age is an additional aspect of the consent to marry. All states prescribe the age which must be reached by both parties to the marriage for the couple to be able to legally agree to become a husband and a wife without a parental permission and a court's decision.



Here is an example of the problems related to the age of consent to conclude a valid marriage in the Lithuanian Republic: A couple, M.K. and A.S., married legitimately through their church parish, according to church law. However, upon registering their marriage at the Civil Registry office,<sup>94</sup> the officer saw the bride was a juvenile. With respect to this, the officer informed the couple to apply to the local court for a permit to register their marriage. The court rejected their application for marriage on the ground that the couple had already married, and a new permit for marriage could not be given.<sup>95</sup>

According to the opinion of I. Kudinavičiūtė-Michailovienė, the Civil Code of Lithuania does not regulate what the consequences of church marriage which does not correspond to material conditions of civil marriage are.<sup>96</sup> K. Meilius stated that the miscommunication of the two legal systems is revealed by life cases when a juvenile's pregnancy accelerates marriage and civil legislation office in the church does not recognize the marriage.<sup>97</sup>

So in order to avoid situations that marriage is not included into the civil register when marriage is formed by juveniles in church, it is recommended to obtain the court's permission to reduce marital age even though this is not mandatory as stated by the law.

## CONCLUSIONS

Conditions necessary for registering a marriage or validating a marriage are considered to be requirements for contracting a marriage. If a couple marries only in church, the requirements of Canon Law are applied. According to Canon Law, people who are at least 18 years old can conclude a valid marriage before the Catholic Church in Lithuania. Juveniles wishing to conclude their valid marriage must get the bishop's permit for their reduction of marital age.

Under the Lithuanian Republic civil law, people who are younger than 18 years of age have the right to conclude their valid marriage. However, people younger than 18 years old wanting to marry legitimately must apply to the Lithuanian Republic Court. The age can be reduced by two years and in the case of pregnancy even by more than three years. The lowest age is not determined. The consent of parents is not mandatory.

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<sup>94</sup> According to the Civil Code of the Republic of Lithuania, the Church conjugality must be registered in the same towns where the conjugality was made, in The Civil Registry office within 10 days.

<sup>95</sup> *M. K. and A. S. v Civil Registry*, Court of Appeal of Lithuania (2002, no. 2A-1608).

<sup>96</sup> Inga Kudinavičiūtė-Michailovienė, *Santuokos sąlygos ir jų vykdymas* (Conditions of marriage and their implementation) (Vilnius: Justitia, 2006), 35-45.

<sup>97</sup> Kazys Meilius, "Bažnytinė santuoka civilinių ir bažnytinių teismų praktikoje" (The marriage contracted in the Church, Civil law and the practice of courts), *Soter* 11 (39) (2003): 50.

A marriage permit issued by the Court to a person under the age of 18, according to Article 2.5 of the Lithuanian Republic CC, grants full juridical capacity upon registration of marriage. Civil capacity and marital capacity do not coincide because an emancipated person who wishes to marry must obtain court permission to reduce marital age even though he is emancipated. The reduction of marital age has influence in the criminal law field. A crime against minor who is duly married cannot be treated as a crime against a child.

According to Lithuanian legislation, marital age can be reduced only to people who intend to marry, but for cohabitation relations the age of consent cannot be reduced. Only a person who has reached adulthood can live in cohabitation even though cohabitation is recognized as a legal relation.

It can be concluded that the age of consent for spouses in the Lithuanian Republic—the age of consent for spouses is 18 years—is similar to how it is in EU member countries. But the reduction of marital age differs from country to country. In some countries the consent of juveniles' parents or guardians for marriage of juveniles is mandatory, in some country not. In some countries it is the court that can reduce marital age and in some countries other administrative bodies (The Ministry of Justice in Finland or the Local Municipality in Denmark). Also, each country sets different minimum age requirement about the extent to which the age can be reduced (15 years in Estonia and 16 years in other countries of the European Union).

For international marriages Lithuania has chosen the main principle of *lex loci celebrationis*, which means that for marriages performed in Lithuania matrimonial capacity and other conditions to contract marriage shall be governed by the law of the Republic of Lithuania. But the law determines additional special principals when marriages are registered in Lithuania, and one of the spouses is a Lithuanian citizen and both of the spouses are domiciled in a foreign country. In such a case, conditions to contract marriage and marital age can be determined according to the law of the state of domicile (*lex domicilii*) of both persons intending to marry if such marriage is recognized in the state of domicile of either of them.

There are different principles to recognise marriages concluded abroad, such as *lex domicilii* or *lex loci celebrionis*. Lithuania has chosen to apply the principle *lex loci celebrionis* and to recognize marriages concluded abroad even though they do not correspond to material conditions of Lithuanian law. But the law also stipulates one exception when a Lithuanian domiciliary concludes marriage abroad, so the validity of marriage must be determined according to Lithuanian law *lex domicilii*.

There are different options in the world defining relations between the State and the Church and between state and church marriages. Lithuania has chosen to acknowledge the registration of church marriages.

There are different regulations about how the State recognizes church marriages. In some countries, the State does not check whether marriage corresponds to requirements of civil marriage. But the Lithuanian Supreme Court noted that the recognition of church marriage is not absolute. The Civil Code of the Republic of Lithuania sets that church marriage can be registered if it meets material conditions for marriage. There is a court practice in Lithuania that church marriage which does not correspond to requirements of civil law marriage shall not be included into the civil register.

People at least 18 years old can marry legitimately according to canon or civil law and, if permitted, can marry under the age of 18 years. However, according to church law, people under the age of 18 engaging in marriage may encounter problems, because, in order to marry in church, the permission from the bishop but not the permission from the court is necessary.

Thus it would be recommended to obtain the court's permission to decrease the marital age before the church marriage solemnization even though it is not necessary to get the court's permission for church marriage.

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