

F. State and Public Law for Marriage

The number of conditions for the legality of the marriage, flowing from laws of society, also concerns the state and public law for marriage.

Under the operating decisions, persons of the Orthodox confession all without distinction of status may marry between themselves (Svod Zakonov [Code of Laws], vol. X, part 1, article 1). Only those condemned under adjudication in a criminal offence together with the restriction or deprivation of all rights of status are exposed to restriction of the right to marry¹.

Prisoners, single or widowed, confined in prisoner companies, are not allowed to marry during any time of their confinement in these companies² (ibid., article 19; vol. XIV, publ. 1890, Ust. [Typ.] for those confined under guard, article 297).

Exiles are forbidden to marry between themselves before their assignment to the city of Tyumen, but they can marry on the way to an inaccessible place. In Tyumen and generally in Siberia, after the actual assignment, those exiled of both sexes may, with the consent of local authorities, also marry between themselves with the observance of the special canons established for these marriages (Svod Zakonov [Code of Laws], vol. XIV, Ust. [Typ.] about Exiles, publ. 1890, articles 86-87, 409). So, women, exiled to Siberia in a settlement with deprivation of the rights of estate, can marry only those similarly exiled (ibid., article 413). After the transfer, under certain terms, in the estate of peasants, they can enter marriages in general for persons of this estate right, but so that marrying with them they have been obligated by subscriptions not to take them out and not to move from Siberia and that by these marriages the mentioned women were not informed of the rights and advantages of the husband, belonging to the supreme status, and did not return those rights and advantages of which they have been deprived by the court (ibid. article 414).

Exiled men are permitted marriages both with banished criminals and with free status women (ibid. article 415). Tramps exiled to Siberia are forbidden to marry before the expiration of 5 years from the date of their arrival there (ibid. article 511).

Women exiled to Siberia as installed workers, are allowed, with observance of conditions, designated in article 414, to marry people of free vocations³, if there was no crime or offence attracting the deprivation of all rights of position committed by them since their arrival at the destination to ask permission for marriage (ibid., article 512).

Those women, exiled to Siberia for being accessories to the **Skoptsy heresy**, who, after sentencing, join the Orthodox Church, are permitted to marry persons of free status, even though these women also have still not been listed in the estate of peasants. The action is expanded to such marriages, specified in article 414 of the Ustav (Typikon) concerning the exiled, restrictive conditions⁴ (ibid., note for article 413).

Marriage is forbidden to **political exiles**, who do not have the permission for this from the chiefs of the provinces (Reference to the General Irkutsk Province Practice for the Irkutsk Spiritual Consistory, July 18, 1870, № 2411; see *Prakticheskoe Rukovodstvo dlia Sviashchenno Sluzhitelei* [Practical Manual for Church Servers], p. 228).

Convicts can marry with the permission of the authority - 1st category within 3 years, 2nd within two years, and the 3rd within one year; after reception into the correctional group, both between themselves and with those exiled deprived of all rights of status⁵ (*Svod Zakonov* [Code of Laws], vol. XIV, Ust. [Typ.] about Exiles, publ. 1890, article 412).

It is forbidden to marry those standing in active compulsory service to **those in the lower ranks**. It is likewise forbidden to marry those on leave, even though for a long time, to the lower ranks, or dismissed for illness for a certain term, with the obligation in this and the other case to be on service for a known time⁶ (in as much as the lower ranks, being found on leave or being dismissed for illness for a certain term do not cease to stand in active service).

The exception of this common rule is allowed only for the lower ranks serving in remote districts defined by the laws of the Empire⁷, but also generally for all the widows of the lower ranks (Irrespective of the place of their service), having children from previous marriages, remaining without any oversight. But the lower ranks, standing in reserve armies and discharged into retirement, may marry⁸ (*Collection of Military Regulations*, book VII, publ. 1892, article 947; *Svod Zakonov* [Code of Laws], vol. IV, Ust. [Typ.] Concerning Military Obligations, publ. 1897, article 28). **Corporals**, continuing in active service after the fulfillment of target dates of obligatory service, are permitted to marry and have families (*Collection of Military Regulations*, book VII, publ. 1892, article 948). Refer above to pp. 1079, 1084 and 1107.

The Tomsk diocesan authority has ordered the clergy of churches of the diocese not to crown **recruits** after their reception into active service, as weddings of those persons 2, article 150 of the project, belong to the order of the military department - 1881 for № 63, are strictly forbidden⁹.

The Samara Spiritual Consistory announced for the knowledge of the clergy of the diocese that young men, drafted for compulsory military service departure, but has not been shown why or whether they are suitable for departure for compulsory military service and received the **annual deferment** from the Provincial or District Offices (with the obligation after this, i. e. within a year, to appear for a re-examination), it is possible to crown equally with the others, with the observance of the general premarriage precautions.

The Poltava diocesan authority offered to the clergy of the diocese that they, on the basis of article 28 of the Ust. [Typ.] for compulsory military service, do not do marriages only for the

lower ranks who are in active service even though such also were released in the house on **temporary leave**, for health rehabilitation. In this last case, i. e. if the given person is returned from military service for disability on temporary leave, for rehabilitation, it is absolutely impossible to crown, or in an extreme measure it is impossible without the permission of military authorities. But if the given person on disability is completely released **from military service**, then he is married with the observance of only one of the general premarriage precautions (Samarskiia Eparkhial'nyiia Vedomosti [Samara Diocesan News] 1890, 23; see also Tserkovnyi Viestnik [Church Messenger] 1888, 29; 1890, 22).

There are still obstacles to marriage, arising from special temporary positions of persons. So, for example it is forbidden to marry **pupils** before their release from the jurisdiction of the Educational House, excepting only rural teachers whom, on reaching majority age, are permitted to marry with the permission of their authority¹⁰ (Svod Zakonov [Code of Laws], vol. IX, Law for professions, publ. 1876, applying to note 1 of article 522, 6 items; refer to note 1 on p. 1104).

In view of this, that pupils "with family duties absolutely cannot devote themselves to studies", in 1821 the Holy Synod prescribed, that the diocesan authorities strictly confirm to the clergy about not marrying state **pupils** of secular educational institutions until the fulfillment of their studies and the rule has also been extended to pupils of schools of the spiritual department (Uk. Sv. Syn. [Decrees of the Holy Synod] on May 19, 1821. In 1885 it was unconditionally forbidden to marry students during a course of study in the theological academies¹¹ (Opredelenie sviatago Synoda [Decisions of the Holy Synod], June 12 - July 15, 1885, № 1148). By the confirmed rules for students of universities of May 16, 1885, it is also forbidden to marry these students during their stay in the university¹² (§ 17; see Pravitel'stvennii Viestnik [Governmental Messenger], 1885, № 117).

¹ According to the opinion of one, persons **standing under criminal investigation** and judgment are not forbidden to marry legally (see Prakticheskoe Rukovodstvo dlia Sviashchenno Sluzhitelei [Practical Manual for Church Servers], p. 228). Precisely as well the Orenburg Spiritual Consistory explained to the clergy of the diocese that the finding under the investigation of the charge of some kind of crime does not deprive that person of the right to marry (Orenburgskii Eparkhial'niia Vedomosti [Orenburg Diocesan News] 1891, 17).

But, under the indication of others, it does not follow to crown those accused of murder up to the decision of the court in the matter (see Tserkovniia Vedomosti [Church News] 1897, 36).

In the operating laws, there is no prohibition to crown the specified persons though, it is necessary to note, there is also no permission for such marriages.

If taking into consideration the possibility for those standing under the criminal investigation of such punishment by the court, which can serve as a cause of divorce, and even in other cases directly after the court sentence becomes valid (see pp. 1109-1110), then it would not follow to crown the marriage of persons under criminal investigation. Taking into consideration the possibility of the trial of the specified persons by the court, but also together with the absence of the prohibition of their marriage in the law, there is no basis to consider such marriage unlawful.

In view of this, in dioceses where there are no corresponding orders of the local diocesan authorities about the marriage of the specified persons, priests are also turned to the latter for the resolution of the doubts concerning the marriage standing under criminal investigation for such crimes; those guilty may be subject to punishment that will give an occasion for divorce. If the crimes consisting

of a criminal investigation does not by itself attract the above-stated punishments, then the priests may crown such persons without troubling his diocesan authority with a petition for the allowance of the marriage of these persons.

² **Married prisoners** are forbidden to live together with their wives (Svod Zakonov [Code of Laws], vol. XIV, publ. 1890, Ust. [Typ.] for Soldiers under Guard. p. 297).

³ All conditions necessary for the legality of all marriages in general should necessarily be observed at the wedding **of the exiled**. Legal obstacles to the marriage of the exiled are usually noted in their "article records". If these records do not appear with the necessary information, then the priest may be satisfied in this case with the conscience test of the exiled (Uk. Sv. Syn. [Decrees of the Holy Synod] on July 13, 1864, № 3180).

⁴ **Molokans** are allowed to follow Orthodox spouses moved to the far reaches of Russia, at their will, in places assigned for the settlement of these Molokans. Marriages of the Orthodox with those moved to the faraway places with the Molokans may be terminated by the request of the first, who may be authorized to enter new marriages by the canons established on this subject (Uk. Sv. Syn. [Decrees of the Holy Synod] 28 Feb. 1858, № 154; refer to Sobranie Mnenie (Collection of Opinions and Excerpts), vol. IV, pp. 66-69, supplementary vol., pp. 602-605).

⁵ Those men **exiled to hard labor**, who married are obliged, in the case of the termination of one of them of their term of labor before the other are to live with the wife or the husband until the termination of (her, his) term of labor, during which they should remain as spouses. Similarly, those women exiled to hard labor, who married men exiled to hard labor, are not excluded from those in hard labor and do not leave from labor before the expiration of the lawful term. This rule should be declared before the marriage to those entering marriage with a certificate. (Svod Zakonov [Code of Laws], vol. XIV, Ust. [Typ.] about Exiles, publ. 1890, article 412, items 2).

⁶ The lower ranks **of the Cossack** armies standing in active obligatory service are also forbidden to marry (Svod Zakonov [Code of Laws], vol. IV, Ust. [Typ.] about Military Service, publ. 1897, article 411).

⁷ It is authorized **to marry the lower ranks** who are serving the following districts:

- a) In the Turkistan military district,
- b) In the Yakut local command,
- c) In the wall strengthening areas of the Omsk military districts and in parts of the armies located in and beyond the Irtysh part of the Semipalatinsk oblast and in the Katok-Karagajskom post,
- d) In the areas that are beyond the Caspian, Karssky and Batumi Seas and also at points of the coast of the Black Sea,
- e) In the Caucasus, in the Dagestan Oblast and in the mountainous strip of the Tersky Oblast (Sv. voien. post. [Codex of Military Regulations], book VII, publ. 1892, article 947).

All the lower ranks of the Torneosk Commandant Administration are authorized to remain on extra urgent service with the right to marry and have families for themselves (ibid., note for article 948).

With Imperial approval dated October 16, 1891, the standing Military Council decided to cancel the allowed 2, item 150, part II, book I, Sv. voien. post. [Codex of Military Regulations] publ. 1859 (in the amended editions of the orders in the Military News 1881, № 63 and 1882, № 88) the right to marry for the lower ranks of parts of the armies located in the Amur and seaside areas and on Sakhalin Island, during their active duty status.

⁸ In **wartime**, during the movement of armies, it is forbidden for wives, generally families of the lower military ranks, to follow them (Svod Zakonov [Code of Laws], vol. IV, Ustav zemskaja povinnosti [Ustav for territorial obligations], article 259, note 5).

⁹ According to the opinion of "Tserkovnyi Viestnik [Church Messenger]", persons do not concern these persons, **enlisted by lot** into military service, but yet acceptance on this is not definitive, and the wedding of such persons can be done (Tserkovnyi Viestnik [Church Messenger] 1897, 38).

¹⁰ At the marriage of **pupils of Educational Houses**, located in villages and approved by behavior district supervisors, receive a dowry of 20 rubles from Empress Maria, but the condition in service in the Educational House or other institutions of the department approved by their authority in behavior, of 30 rubles. Except for this, all pupils entering marriage in as much as by this they leave the department of the Educational House, receive an initial amount of 30 rubles (Svod Zakonov [Code of Laws], vol. IX, Law for Professions, encl. for note 1 of article 522, item 3). If the discharged pupils from the department of the Educational House, on reaching majority age, will marry during first year after the date of discharge and will present approbative certificates for good conduct and behavior or from those persons with whom they lived after dismissal or from the parish priest, then they will receive a

dowry of 30 rubles (ibid. item 4). Entering into marriage for the former pupils of the house, placed above the pupils a dowry of money by him, is still given the 30 rubles. (ibid. item 5).

¹¹ This prohibition to marry **students of theological academies** has resulted in cancellation of permission given in 1879 (see Uk. Sv. Syn. [Decrees of the Holy Synod] 26 Oct. 1879, № 3768, addressed to Metropolitan of Moscow Macarius), in extreme unusual cases and for especially good reasons for students of theological academies standing on their own maintenance.

The decision of the Holy Synod, from 10 December - 10 January 1875-1876, for № 1834, entrusted the Hierarchs to prescribe to the dioceses that pupils of theological seminaries who completed course at the expense of the crown were not allowed marriages before September 1 of that year, in which the release of those pupils from the academy has followed, and presented to the Councils of the academies to announce to those pupils of the academies remaining until the time without assignment and sent to the diocese of the place of their origins, that they should fully obey the subsequent order of the spiritual authorities about them, despite the circumstances, in which other of them may marry.

¹² There is nothing to say about the merits of the case for the marrying of seminarians, grammar-school boys, grammar-school girls and so forth during all the period of their training (see Tserkovnyi Viestnik [Church Messenger] 1897, 13). Generally marriage is considered forbidden to all **pupils** of all middle and higher educational institutions (see J. S. Berdnikov, Course on Church Rights, p. 98). But in as much as this sort of obstacle to marriage in it has an unconditionally prohibitive character, then in the relation to pupils in secular higher educational institutions their authority in certain cases allowed exceptions, permitting them entry into marriage, as this, for example sometimes have happened in relation to pupils at universities. Obviously, that for the fulfillment of marriage of such persons by them the appropriate formal permission should be presented by the authority. Without such permissions the clergy should refer the marriage of the specified persons as forbidden.

*S. V. Bulgakov, "Handbook for Church Servers", 2nd ed., 1274 pp. (Kharkov, 1900) pp. 1115-1118.
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