

**CHURCH MARRIAGE AND CIVIL MARRIAGE COMPATIBILITY
AND RECOGNITION PROBLEMS IN THE LAW
OF THE LITHUANIAN REPUBLIC**

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Resumen

El matrimonio en la República de Lituania es un acontecimiento fundamentalmente social que ha sufrido un importante cambio actualmente debido a las nuevas condiciones de vida y las nuevas necesidades de los individuos. La Iglesia, sin embargo, mantiene su tradicional punto de vista de la institución matrimonial, basada en una concepción filosófica y teológica, lo que supone una potencial fuente de conflictos entre ambas concepciones.

Abstract

The Republic of Lithuania approach to the marriage institution is mainly social and has currently undergone significant change in the light of changed social and modern circumstances (living conditions, individual needs and abilities). The Church, however, maintains its traditional view of the marriage institution, based on philosophical and theological generalizations. This poses a potential conflict between these differing conceptions.

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I. INTRODUCTION

In the relationships of society, family plays a very important role. It is a primary cell of society and carries out fundamental functions of people's family continuation, education of the young generation and also provides material and moral mutual support functions. Family is the permanent union of a common life between a man and a woman. The formation of this union is called an act of marriage. Marriage is an agreement between a man and a woman, which is announced in a defined external form and is recognized by public institutions. It is a social phenomenon of society, which hosts an array of requirements. Marriage is not only a spouses' affair, but a matter of society, state, nation and Church¹. People are bound by the laws of the State and Church. As the state and religious confessions assign power to themselves for regulating marriage affairs, they also recognize each others sovereignty. This leads to the important questions of what are the main differences between the institutions' legal laws and their compatibility, and also their different facets of marriage, for example; personal positions, interests, rights and duties of engaged couple.

This article explores the marriage laws of the Lithuanian Republic and the Catholic Church with special attention given to engaged people (fiancés) and lawyers. In European Christian cultures, marriage stability and legality follows Church and State regulations. The Lithuanian Republic has its own laws: Constitution, Civil Code, and international agreements. The Church has its own law to register marriages, recognized by the State, legislative rules with defined obstacles, marriage suspension orders, and the right to investigate marriage cases and etc. Through its public character, a marriage always was and still is the factor regulating society's life standards. In Lithuania the Church and the State recognize each others' sovereignty and has an agreement to act freely in their own fields. The Lithuanian Republic recognizes Church marriage and *vice versa*. The recognition conditions and order is the research object of this project. Such research corresponds to the harmonization of two different legal systems and reveals possible problems. One of the aims of this dissertation is to define how State and Catholic law corresponds to the hopes and interests of spouses' and their families' and how the interaction of two legal systems serves people.

¹ In this article problems of Christian religion marriage contracting are analysed, as this religion predominates in the researching state.

II. RESULTS

Every State regulates the marriage procedure and its arrangement by using their laws and by enforcing the marriage arrangement procedure. The State arranges marriage by itself or gives this right to the Church. The expression «gives this right» is chosen due to the fact that there is such accord in State's jurisprudence that in all respects the State is the highest authority within the confines of its own. The highest authority determines laws for its citizens' relationship².

Currently, the State also controls individuals' rights concerned with marriage, recognizing the registry of marriage through the church. This recognition validated on 25 th of October 1992, enacted by Lithuanian Republic in Part 4 of the 38 th. article, where intended that «The State registers marriage, birth and death». The State also recognizes the registration of marriage through the church³. The Constitutional Court of Lithuanian Republic gave a partial answer to what is covered under this standard. With the resolution, made on the 21st of April 1994, the Court recognized, that the provision of the 6th article of Marriage and Family Code, «marriage is recognized only when arranged by Public Bodies of the Civil Registry» and the provision of the 12th article «marital rights and duties are established only by marriage, arranged in Public Bodies of the Civil Registry» contradicts the 4th part of the 38th article of Constitution of Lithuanian Republic⁴. The Constitutional Court recognized that the registration of marriage by certificate and marriage through the church, which were arranged after the establishment of Constitution, are the independent juridical facts that can cause analogical legal consequences.

Civil Law recognizes only the State's requirements⁵ fulfilling confessional marriage, in other words, everything recognized and required by Civil Law. The State would not recognize confessional marriage which does not match the requirements of Civil Law. At present the legislation of Lithuanian Republic recognizes registered marriages of nine traditional religions: Latin Ceremonial Catholic, Greek Ceremonial Catholic, Evangelical Lutheran, Evangelical Reformer, Orthodox, Old – Time religion, Jew, Muslim Sunni and Karaites⁶.

² Legal position of mixed matrimony of Church and civil matrimony in Lithuania, supra note 83, at p. 5.

³ The Constitution of LR. (1992), supra note 3, at Article 38.

⁴ *Lietuvos Respublikos Konstitucinio Teismo 1994 m. balandžio 12 d. nutarimas, «Dėl Lietuvos Respublikos santuokos ir šeimos kodekso 6 straipsnio antrosios dalies, 11 straipsnio ir 12 straipsnio antrosios dalies atitikimo Lietuvos Respublikos Konstitucijai»// Valstybės žinios. 1994. Nr. 31 – 562.* [The decision of Constitutional Court of Lithuanian Republic, made on 12th April, 1994 'Due to marriage and family code of Lithuanian Republic, article 6th second part's, article 11 and 12 second part's congruence to Constitution of Lithuanian Republic'. Valstybės žinios (State's News), No. 31-562, (1994)].

⁵ *LR Teisingumo ministro Įsakymas, «Dėl pranešimo apie Bažnyčios (konfesiją) nustatyta tvarka įregistruotą santuoką formos ir pranešimo tvarkos patvirtinimą».* Vilnius. 2002 06 27. Nr. 124 Str. 4. [Order of Minister of Justice 'Due to notification about marriage, registered according to Church's (confession) determined order and confirmation of form and notification order'. Vilnius. No. 124 Article 4. (27 06 2002)].

⁶ Order of Minister of Justice 'Due to notification about marriage, registered according to Church's (confession) determined order and confirmation of form and notification order, supra note 290.

The Lithuanian Republic considers the special role the Catholic Church plays in developing Lithuanian nation's moral values, its historical and present contribution to the social, cultural and educational areas. Following the provisions of the Lithuanian Republic Constitution and recognizing that the majority of citizens of Lithuania profess Catholic religion with the Holy See, which followed by documents of II Vatican Convocation, has agreed that canonical marriage, from the moment of its religious agreement, will cause civil consequences, according to the legal acts of the Lithuanian Republic, if the foreseen legislation requirements of Lithuanian Republic will be kept⁷. Both Civil and Church laws recognize that marriage is arranged by the marriage agreement, made by both spouses of the marriage, and agree, that it can only be registered and «authorized» by legal rules. However, the Lithuanian Catholic Church and other confessions are not ready to conduct the registering of marriage in the required high standard. The Lithuanian Bishop Conference presented a document to the Government explaining that they are not ready to perform marriage registration. Therefore the Church only blesses the marriage, and leaves the registration to be completed by the registry offices. This provision was specified by the Bishop Conference, held on the 12th November 1996 by confirming the program of the Preparation for Marriage Sacrament, which commenced on the 31st March 1997. According to this program, the Roman Catholic Church only blesses the marriage while it's issued certificate has to be registered in registry office by one of the spouses.

According to the temporary registration rules of the Civil Condition Acts, issued by State on the 1st April 1999 «when it is requested by spouses, marriages arranged by religious licence after the 2nd November 1992, are recorded in the civil registry office by writing a marriage record, issuing a marriage certificate and by noting in the spouses' passports»⁸. Registry offices recorded only marriages arranged under church order following the requisition of the Lithuanian Republic Marriage and Family Code.

According to the currently valid order, marriage arranged by religious licence does not create consequences in civil law, which means there are neither duties nor rights. The State would recognize marriage by religious licence registration but the Church does not keep such records as required⁹. This position of the Church can be based on the theory that the Church concentrates on marriage as a sacrament, thus placing the law in second place. Both the Church and the

⁷ Agreement between the Republic of Lithuania and the Holy See concerning the juridical aspects of the relations between the Catholic Church and the State, *supra* note 140, at 13th article.

⁸ 1999 03 26 Lietuvos Respublikos teisingumo ministro įsakymas Nr. 65 Civilinės būklės aktų registravimo laikinosios taisyklės// Valstybės žinios. 1999. Nr. 2. [1999 03 26 order N. 65 of Lithuanian Republic Minister of Justice Temporary rules of registration by civil statusdeeds// 1999 April 1 d].

⁹ In the Countries where civil law recognizes a marriage through the church (i.e. Italy) the marriage through the church must be registered in civil institution even though it gains the consequences in law from the moment of its arrangement.

State recognize that spouses' agreement it is sufficient for a marriage arrangement and validity, but for marriage validity in a public area it is necessary that the marital agreement would be registered in public institutions. Marriage arranged by religious licence, obtains civil consequences only after its registration in the civil institution, also it is recognized that marriage was valid from the moment it was arranged, legitimating children and recognizing other consequences in law that appeared through the marriage arrangement.

The registration of marriage by religious licence in the civil code is ordered by article 3.24, which determines the conditions for the recognition of such marriages. Basically all marriages by religious licence can be recognized under these conditions. The juridical conflict is created by the public record order of marriage by religious licence, which according to article 3.312 of the Civil Code appoints a 10 day period for registering the marriage and receiving recognition of the arrangement moment. If the marriage is not registered during the given period, the arrangement moment is considered as the day when it was registered in the civil institution. If the religious marriage documents are delivered to the Civil Registry Office after 11 or 20 days, the spouses should not encounter any problems, but what would be the circumstances if the documents were delivered after 10 or more years? During a 10 year period many juridical facts can and will occur: acquisition, administration and loss of assets, birth of children, spouse death and etc. Certainly, it is easy to find a guilty person responsible for the failure to deliver the marriage registration documents but, basically it is impossible to recover the recognition for civil consequences of marriages back dated. The spouses who with good will consider themselves as a family with all rights, but did not deliver the religious marriage documents during the 10 day period, fixed by article 3.312 of the C.C., can not have the same guaranties as for a common-law couple provided by the C.C.¹⁰, because they did not register their marriage by article 3.229 of the Lithuanian Republic C.C. Due to the non-existence of marriage the paternity of the children could not be recognized. The paternity would have to be proven (levied) in the proper order¹¹.

In different countries¹² where the forms of civil marriage and marriage by religious licence arrangement are acceptable, the period and order of marriage registration varies. For example in the Latvian Republic, the 58th article of civil law¹³ determines that the representatives of the church has to deliver the necessary documents about every arranged marriage to the civil state act registration department, in which territory the marriage was arranged. The church representative can be prosecuted for the failure to carry out the obligation. Unfortunately,

¹⁰ C.C. of L.R. 3.230-3.235 articles.

¹¹ C.C., *supra* note 45, at 3.140 article, part 4.

¹² Sweden, Denmark, Great Britain, Portugal, Italy, Spain, Latvia, etc. are referable to such states.

¹³ Civil code of Latvian Republic//Family law, *supra* note 159, at 58.

our civil code does not cover any sanctions for the failure to report marriages to the registry office by church representatives.

According to the current effective order, the Lithuanian Republic does not recognize marriage by religious licence from the date of its agreement until the registration, but once registered a confessional marriage is recognized and does not require a new civil procedure. The recognition denial of religious licence marriage does not allow civil consequences to be effectively back dated, also restricts the rights of individuals, and many various juridical problems and inconveniences can arise. For example, if individuals marry only in the church and do not register their marriage to the registry office in time, for example, for the negligence of the church representative or for the instantaneous death of a spouse, according to the civil law, the widow or widower has no rights to the descent or other rights (surname, widow pension, etc.) coherent with the dead spouse, because the State does not recognize such marriages. To prove the topicality of this problem we will present an example from the Lithuanian courts. In civil case No. 2A-481-02/2004 the Juridical Board of the Civil Case Division of Panevėžys County Court in appellant written order has judged the separate complaint from the representative lawyer of the declarants Genovaitė Voverienė and Kęstutis Rakauskas. The complaint was against the judgement of Utena Regional Court on the 1st of October 2004, in which the court refused to accept a petition to cancel the finding of the fact with juridical meaning¹⁴. The declarant Genovaitė Voverienė presented the petition to the Utena Regional Court, asking to establish the fact with juridical meaning, that the legal marriage between Genovaitė Voverienė and Kazys Vytautas Murauskas was registered at Leliūnai Church in the Utena Region, on the 23rd of August 1996. The lawyer of Genovaitė Voverienė and Kęstutis Rakauskas also noted that due to the juridical ignorance the marriage was not registered in the Utena Registry Office. After the arrangement of marriage the complainant and K. V. Murauskas lived together and managed the marital property. K. V. Murauskas died on 18th July, 2004. Since K. V. Murauskas is dead, the Utena Region Registry Office has refused to register the marriage. With a separate complaint the complainant's lawyer K. Rakauskas asked the Utena Region District Court to cancel the judgement made on the 1st of October 2004, and to retrial the case.

According to the Lithuanian Republic Attorney General's injunction No. 129, legislated on the 29th of June 2001 and approved by the 55th p. of the Registry Rules, a marriage contracted after the 2nd of November 1992 by religious licence is allowed to be registered, but only if both spouses are alive. As one of the spouses K. V. Murauskas is deceased, the Registry Office of the Utena region refused to register the marriage by religious licence. In other ways it is impossible to obtain

¹⁴ *Panevėžio apygardos teismo Civilinių bylų kolegijos nutartis. Civilinė byla Nr. 2 A- 481- 02/2004. 2004.* [The Decision of the Board of Civil Cases of Panevėžys County Court. Civil case No. 2 A-481-02/2004. (2004)].

document confirming this fact. Therefore the separate complaint was ignored leaving the judgement from the First Instance Court's decision effective.

This problem also was raised by a specialist of church and civil law, Professor K. Meilius¹⁵. According to Professor K. Meilius, there can be difficulties in determining the agreement moment of religious licence marriages. For example, if one of the spouses dies during the 10 day period after religious licence marriage and before the marriage is registered in Registry Office. In such cases, the marriage mentioned previously, should cause consequences in law from the day it was arranged in church. Religious licence marriage is effective or not effective from the moment of its creation and it can not be created in *sub conditione de futuro* (can. 1102)¹⁶. Moreover, according to article 3.28 of the C.C., spouses create family relations as the basis to mutual life, spouse equality, suability and capability, obligations to each other, childcare and etc. Marriages arranged under the Catholic Church be *bonum coniugum*, *bonum prolis*, *bonum fidei* would not be valid (C.I.C. '83, can. 1055; 1101). Therefore in every case of litigation, if the marriage was arranged without violation of canon law, the Spiritual Courts will consider it valid and leave it registered.

The documentation of marriages by religious licence also raises juridical conflicts. After failing to register a church marriage to the civil registry office within the 10 day period, the date written in the marriage certificates is the date when spouses applied for the registration of marriage. Under those circumstances, religious licence marriage considered as valid loses its validity. In this case the Code of Civil Law contradicts the recognition of religious licence marriage guaranteed by the Constitution and this is considered as the contravention of the law and a legislative gap. Question: what marriages are registered by the Registry Office? The ten day period, during which the marriage by religious licence has to be registered, is criticized as there is no possibility foreseen to prolong this period, due to consequences uncontrollable by the parties' will (diseases and other reasons which court would consider important).

There are some uncertainties in the time of the ten day period, during which the marriage by religious licence has to be registered. The ten day period determined by law is not clearly motivated; the aim of this provision is not clear; therefore leading to the question of: why is it needed? According to V. Brilius, a law specialist of religious licence marriages, it is just a disciplinary punishment, in order to keep marriage registration operative and exact. In violation of this provision, the denial of recognizing the marriage from the date of its agreement until its recognition serves as a penalty, but such actions are deemed unreasonable and non legitimate. The notification about marriage by religious licence has

¹⁵ Church marriage in the practice of civil and church courts, *supra* note 192, at p. 46, (2003).

¹⁶ These canon law's comments are followed in all cases: *Pinto P. V. Commento al Codice di Diritto Canonico. Citta del Vaticano. (2001)*; *Chiappetta L. II Codice di Diritto Canonico. Commento giuridico -pastorale. Vol. I-III. Rome. (1999)*, 2 nd edition.

to be presented to the Registry Office by a church representative, who could be punished for the failure to perform such duties. But in this case, the spouses' marriage is not recognized, despite that the spouses are not guilty for failing to present their marriage documents in time and do not know about such responsibilities. Additionally, such a penalty would be irrational and disproportioned. The law also fails to mention this penalty; therefore, if the 10 day period is exceeded the negation period of the marriage, from its beginning until the registration in Registry Office is not considered as a disciplinary punishment¹⁷.

Recognition problems appear in marriage by religious licence when an annulment is required. The Church recognizes marriage as non destructive and does not release spouse from valid marriage, except in very rare «*ratum non consumatum*» and «*privilegium Paulinum*» cases. However, due to strict Church requirements for valid marriage, the Spiritual Court sometimes recognizes the marriage as invalid. The effective legislation in the Lithuanian Republic does not foresee such cases. A marriage deemed invalid by church law is not deemed invalid by civil law. The theoretical question is: on what account does the state recognizes such a marriage, if it was not made in civil order, while registered marriage by religious licence is not valid? The state can annul a religious licence marriage. However the Church still views the marriage as valid. After the State's annulment of the marriage by religious licence, the State no longer recognizes it. This is considered as a direct violation of Constitutional guaranties to the recognition of marriage by religious licence, which is completely valid in the effective legislation, creating contradictions between the Constitution and the Civil Code. According to the provision of article 3.24 of the C.C., church marriages host the same consequences as civil law marriages, but the law provisions regulating the termination of marriage do not distinguish the differences between civil and religious licence marriage. When a marriage is arranged in the church and registered into the marriage records, the spouses qualify for individual moral rights, interests and duties foreseen in Civil Code.

The second section provisions of article 3.49 of the C.C. about the treatment of marriage termination recorded in the Registry Office and the consequences of marriage terminations are invoked. However the court can not apply the provisions of the C.C. to a marriage by religious licence, as marriage termination handled by the appropriate Church institutions (Constitution article 43, part 4). Therefore the circumstances of the marriage arrangement shall be indicated in the application concerning marriage termination, while the requisition for the court shall be stated as controversial.

Courts are misleading by misapprehensions and gaps, which appear in the legislation. For example, according to the decision of civil case No. 2A-152-02/2004

¹⁷ The recognition problems of sacramental marriage in Civil law of Lithuanian Republic, supra note 132, at pp. 53-54, (2003).

given on the 20th of April 2004, The Juridical Board of the Civil Case Division of Panevėžys County Court in a written process order has adjudicated a separate complaint from Aurelija Juškevičienė in regards to the judgement of the Utena Region County Court made on the 18th of February 2004, in this civil case in consonance with the petition of Aurelija Juškevičienė and Romas Juškevičius due to marriage termination by mutual agreement and verification of treaty due to marriage termination sequence¹⁸.

The declarants Aurelija Juškevičienė and Romas Juškevičius had applied to the Utena Region County Court, asking to declare their marriage invalid by both spouses' agreement. The marriage was arranged in the Zarasai region Registry Office on the 22nd of August 2000. However, the Utena Region County Court cancelled the case, since the marriage of the declarants was made at the Antalieptė church on the 15th of June 2000. This marriage was registered according to the current legislation in the Zarasai region registry office; the marriage certificate was also issued. The court decided, religious licence marriage agreements (confessions) registered in the registry office according to the existing procedure, can not be cancelled by the court, because the termination of marriage is regulated by the rules and rights of church law. The declarant A. Juškevičienė gave a separate complaint asking to cancel the decision of the Utena Region County Court made on the 18th of February 2004. The declarant asked to consider the case cancellation as illegal and perverse, and also asked for a retrial with the same magistrate. The first Court hearing applied the rules of material law improperly. Therefore it cancelled the case perversely for breaking the law process, determining the jurisdiction question of the marriage termination and its consequences. The judgement was cancelled and the motion of declarant was successful, being granted a retrial with the same magistrate.

The Constitutional rights guaranteed to the church were violated, by claiming the marriage was arranged by religious licence, but State denies this by its judgement. It is not foreseen in the present legislation that the Church has a right to sue out the marriage termination in the Spiritual Courts. Presently, marriages by religious licence and civil marriages are terminated by civil courts.

In order to underline and consider the relevance of marriage by religious licence and civil marriage compatibility and recognition problems in the civil law of the L.R. in all aspects, the question «are you satisfied with the realization of the 38th article of the L.R. Constitution «The state recognizes the registration of marriage by religious licence» in the Civil Code of Lithuanian Republic?» was given to the engaged persons and lawyers. According to Figure 9, less than a half (41 percent) of the engaged persons and 57 percent of lawyers are satisfied with the present situation. The opinion of the engaged persons is more relevant in

¹⁸ *Panevėžio apygardos teismo civilinių bylų skyriaus teisėjų kolegijos nutartis 2004 04 20, civilinė byla Nr. 2 A – 152 –02/2004, 2004.* [The decision of the Board of Civil Cases of Panevėžys County Court. Civil case No. 2 A-152-02/2004. (2004)].

this case, but the provisions of the lawyers (as professionals) are none the less important in searching for alternate ways to solve this problem.

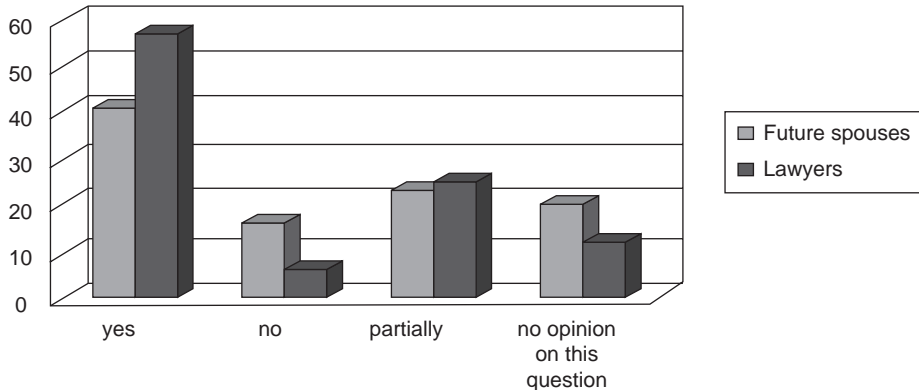


Figure 1. The answers of the engaged persons and lawyers to the question «are you satisfied with the realization of 38th article of Lithuanian Republic Constitution “The State recognizes the registration of marriage by religious licence” in C.C. of Lithuanian Republic?» (as a % of respondents).

To discover the reasoning behind the answers of the respondents, the engaged persons and lawyers who were not content or partially content with civil law recognition of religious licence marriage were asked to specify their reasons why. As it is obvious from table 9, 18 percent of engaged persons and almost 10 percent of lawyers suppose, that other legislation roughly transgress the Constitution of Lithuanian Republic; 7,6 percent of engaged persons are confident the state does not recognize marriage by religious licence and 74,35 percent of engaged persons and 90,32 percent of lawyers maintain, that the state only partly recognizes marriage by religious licence.

Table 1. Reasons why respondents are not satisfied with constitutionally guaranteed church marriage recognition		
Reasons	The answers of the respondents (%)	
	Engaged persons N=39	Lawyers N=31
Due to other legislation roughly transgress of the Constitution	17.9	9.67
Due to absolute renouncement of marriage by religious licence	7.6	–
Due to the state's partly recognition of marriage by religious licence	74.35	90.32

Engaged persons and lawyers were also asked if the current legislation should be amended, seeking major changes to the recognition of marriages contracted by the church. The derived results indicate 31 percent of engaged persons and 53 percent of lawyers suppose there is no necessity to amend the current legislation. However, 35 percent of engaged persons and 25 percent of lawyers agree the legislation should be amended and 34 percent of engaged persons and 22 percent of lawyers do not have opinion.

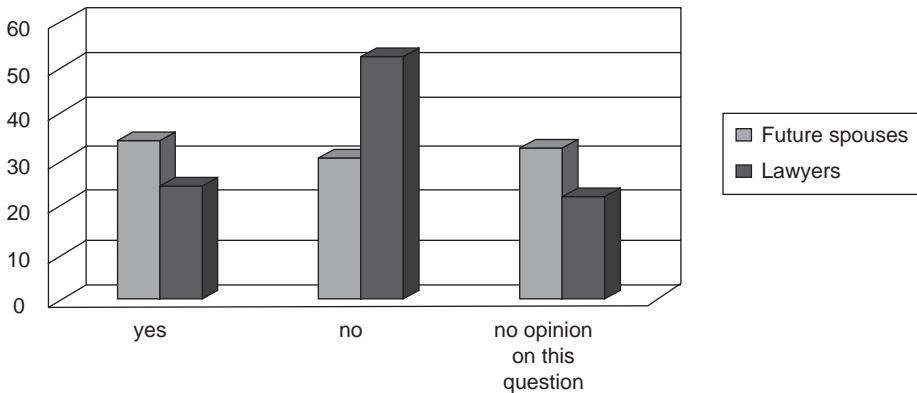


Figure 2. The opinion of respondents: is it necessary to amend the current legislation, in order to achieve better recognition of church marriage (as a % of respondents).

According to the 4th section of article 38 of the Lithuanian Republic Constitution, the state recognizes church marriage. The content of this constitutional provision concludes; after a church marriage is registered the rights and obligations of spouses' also appear. Church marriage or civil marriage registration – is the beginning of marriage civil relations relative to the rights and duties. The same conclusion is registered in the provision of the, Lithuanian Republic Constitutional Court legislation (21st April 1994). But the results only confirm the legislation gaps and problems of church marriage and civil marriage compatibility and recognition. Therefore this problem should be solved at a legitimate level, by changing the marriage procedure of church marriage registration, because the current provisions of the Lithuanian Republic contradict the 4th part of article 38 of the L.R. Constitution, as the State recognizes marriages, registered only by its own institutions.

The other problem is that Lithuanian Republic Civil Code does not anticipate clear documentation of civil and religious licence marriages; therefore the establishment of a marriage register is necessary. Also the Civil Code does not define the legal consequences, if a church marriage was made in disagreement to the requirements of state marriage. Marriages made by the church should not be terminated in civil courts; since the State recognizes marriages made by the church, it should also recognize the law of the Church. According to the

current order, the State recognizes marriages contracted by the church, but only if it is made under civil law.

III. CONCLUSIONS AND PROPOSALS

1. The marriage and family concepts of the Church and state are similar. The Civil marriage concept concentrates more on the realisation of conjugality, while the concept of marriage by the church concentrate on its essence and generalized aims. The major and essential difference is the marriage breakdown. In this case the State's and Church's positions are completely opposite.

2. According to the current order, marriage arranged only by the church does not cause lawful consent (i.e. duties or rights). The State would recognize church marriage, but the church does not register or count their marriages. The reason for the church's position is that the Church considers marriage as sacrament and pushes its lawful consents into second place.

3. According to the current order, the Lithuanian Republic does not recognize church marriage from the time of its agreement until registration. The registration of confessional marriage into the civil registry does not require a new civil procedure. Such negation of church marriage does not allow valid legal consequences of marriage back dating, restricts spouses of church marriage and can cause other possible juridical problems and disadvantages.

4. Juridical conflicts rise through the marriage documentation system of the Church. Conflicts arise by missing the 10 day marriage registration period during which a church marriage must be registered in registry office, the date written in the marriage certificates is coincident with the date when spouses apply for the registration of marriage. Church marriages not registered within 10 days are considered invalid by Civil law. In this case the C.C. contradicts the recognition of church marriage guaranteed by the Constitution and this is considered as a violation of law and a legislation gap.

5. Problems also appear on the annulment of a church marriage. The Church recognizes marriage as ever lasting and rarely discharge valid marriage, except in very extraordinary «*ratum non consumatum*» and «*privilegium Paulinum*» cases. However, due to strict Church requirements for valid marriage the spiritual court sometimes recognizes a marriage as invalid. The current legislation of the Lithuanian Republic does not foresee such cases. A marriage viewed by the Church as invalid is not considered as invalid by civil law.

6. Jurisdiction issues of church marriage termination and recognition should be broader than civil marriage according to the perspective of the democratic law concept. This is not considered as discrimination of human rights on the account of religious dependence, but is considered as a respect for concerted and impartially expressed personal will. Spouses who have chosen church marriage accordingly choose the marriage termination outlines and procedures which are recognized by Church law. On the other hand, it is difficult to prove

how competent the civil and spiritual courts are, because there are no clear and authentic juridical aspect interpretations of an international agreement due to the relation between Catholic Church and Lithuanian Republic. With formation of the new C.C. and international agreement, involving a bilateral committee of representatives from the Lithuanian Republic and the Diocesans' Conference of Lithuania, hopefully many of the occurring problems will be solved.

7. The Church's and State's provisions agree marriages must be registered properly and marriage registration causes lawful consent. Presently, the Church in Lithuania is not able and does not keep marriage registration records. The state accepts church marriage and registers the marriage by civil order.

8. The civil registration of church marriages means that State recognizes church marriage.

9. According to the current legislation when the Church invalidates a civil registered church marriage there is no lawful consent. This means that the current Lithuanian legislation ensures the recognition of church marriages; however this constitutional guarantee is only in applied in some cases. Church marriage could be recognized as an autonomous institution, with the confession's agreement to raise claims not only to its arrangement but also to its dissolution and avoidance. The State should register only church marriages recognized by confessions.

10. The registration of Civil or religious marriage is the beginning of a marital juridical relationship with rights and duties. It is also noted in the provision of the Constitutional Court of the Lithuanian Republic dated on the 21st of April 1994. The received results only confirm the legislation gaps, compatibility and the recognition problems between civil and church marriage. Therefore these problems should be solved legally, by changing the registration order of church marriage. Presently the valid provisions of the Lithuanian Republic C.C. are inconsistent with section 4 article 38 of the Lithuanian Republic Constitution, as the state only recognizes marriages registered in its own institutions. Another problem is the Lithuanian Republic Civil Code does not predict clear registration records of civil and church marriages; therefore the marriage register is necessary. Moreover, there is no definition of what are the lawful consequences for church marriage if a marriage was arranged by obeying conditions of civil law. It could be possible to separate marriage from spiritual jurisdiction, so couples are not with held by the Church authority. In such cases the believer should be able to receive a marriage certificate from the church authority, notifying the removal of his marriage from the spiritual jurisdiction and at the same time he will gain access to the civil jurisdiction, for its future management according to the State's legislation.

11. Marriages arranged by the church should not be discharged in civil courts. If a church marriage is recognized by the state then the Church's marital legal rules must also be recognized. However, under the current order, the state recognizes church marriage registration, but only if the marriage has been arranged following civil legislation.