

## THE WORK OF THE PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS: TO HARMONIZE SOME PROVISIONS OF THE *CIC* AND THE *CCEO*

**Francesco Cardinal Coccopalmerio\***

The author indirectly shows, in this article, how the Pontifical Council for Legislative Texts serve the Latin as well as Oriental Churches. As part of its efforts to serve the Church it tries to bring harmony among the various Churches by making all the efforts to bring about possible unity also in the laws of the Church. As such the author discloses some of the reforms the council has suggested for creating a harmony in the *CIC* and *CCEO* - issues regarding the sacraments of baptism and marriage, the passage to another Church *sui iuris*, the relevance of can. 1 *CCEO* for the Latin Church and the designation of parish priests for Eastern Catholics in the United States of America.

### **Introduction**

The immigration of many Eastern Christians to the countries of Latin tradition in recent years has brought with it some pastoral problems that required the adoption of a consistent discipline in various pastoral activities that take place in the life of the Church.

In 2007, Pope Benedict XVI instructed the Pontifical Council for Legislative Texts to study a possible harmonization of the *CIC* and *CCEO*'s disciplines in order to offer - as already mentioned - a consistent pastoral practice. In 2016, the m.p. *De Concordia inter Codices* was published which made some changes to the *CIC* to harmonize it with the *CCEO*.

---

\*Francesco Cardinal Coccopalmerio was born at San Giuliano Milanese, Italy in 1938. He was ordained priest in 1962 by the archbishop of Milan, Giovanni Montini, later Pope Paul VI. After having done a licentiate in theology (1963) he obtained doctorate in Canon Law from the Pontifical Gregorian University, Rome in 1968 and in law from the *Universtia Cattolica* of the Sacred Heart, Milan in 1976. Pope Benedict XVI appointed him president of the Pontifical Council for Legislative Texts in 2007 and is still serving the universal Church in this capacity.

The Study Commission, constituted by our Dicastery, identified 13 issues that required a normative adjustment to correspond to pastoral practice. These questions concern the sacraments of baptism and marriage, the passage to another Church *sui iuris*, the relevance of CCEO c. 1 for the Latin Church, and the designation of Eastern Catholic parish priests in the United States of America. However, as it shall be seen, the aforementioned *motu proprio* does not adopt all of these adjustments.

### 1) Explanatory Note to Canon 1 CCEO

The pastoral care of many Eastern Catholic immigrants to Western countries has pushed the Latin Church and other Eastern Catholic Churches toward closer collaboration. In the pastoral and canonical fields, this involves the question of whether the CCEO norms on inter-ecclesial relations also concern the Latin Church.

To answer this question, an “Explanatory Note” on CCEO canon 1 was prepared and published in *Communicationes*.<sup>1</sup>

At its conclusion, the text reads:

... seems to be reasonably confirmed by the normative provisions of the CCEO that, in addition to the canons in which the Latin Church is “explicitly” mentioned, there are also other canons of the same Code in which it is included “implicitly”, if the text and the context of the norm are taken into account, as in canon 1499 CCEO ... Consequently, it must be held that the Latin Church is implicitly included by analogy whenever the CCEO expressly uses the term “Church *sui iuris*” in the context of inter-ecclesial relations. The use of the term “by analogy” means that while the characteristics of the Latin Church do not coincide totally with those of the Church *sui iuris* outlined in canons 27 and 28 §1 of the CCEO, they are, however, substantially similar in this respect.

### 2) Baptism and Ascription to the Catholic Church

Concerning the baptism of children of non-Catholic parents, the two Codes adopted different norms. According to the old *CIC* canon 868 §1, a Latin parish priest could not licitly baptize the child of Orthodox parents because the child would not be educated in the Catholic faith. However, according to CCEO canon 681 §5, an Eastern parish priest

---

<sup>1</sup>*Communicationes* XLIII (2011) 315.

may licitly baptize such a child. To facilitate the pastoral action of Latin parish priests, it was decided to introduce into the aforementioned Latin canon a new paragraph 3 that incorporated the provision of *CCEO* canon 681 §5.

According to *CCEO* canon 29 §1, a child born of a mixed marriage who is baptized in the Orthodox Church is to be ascribed to the Church *sui iuris* of the Catholic parent. The corresponding *CIC* canon 111 contained no such provision. Thus, it was decided to introduce in the Latin canon a new paragraph 2 in which the ascription of this baptized person is established in the Church of the Catholic parent.

When a child of two Eastern Catholics is baptized in the Latin Church, *CCEO* requires the child's ascription to a Church *sui iuris* to be recorded in the parish's baptismal register (see can. 37). The *CIC*, however, prescribed such an annotation only for a change of rite (see can. 535 §2). In order to harmonize the discipline of the two Codes, it was decided to introduce, in paragraph 2 of *CIC* canon 535, the obligation to note also the ascription. Consequently, Latin parish priests must now note the ascription to the Church *sui iuris* in the aforementioned register.

Canons 36 and 37 of the *CCEO* established a procedure to be observed in the case of transferring to another Church *sui iuris* or returning to the Church of origin. *CIC* canon 112, which established the discipline on the validity of the passage to another ritual Church *sui iuris*, did not establish how the passage or return had to be made. Therefore, it was decided to introduce in *CIC* can. 112 a paragraph 3 which incorporated the provisions of *CCEO* cann. 36 and 37.

*CCEO* canon 32 has a provision regarding the valid passage of a Catholic faithful to another Church *sui iuris*, which occurs with the consent of the Apostolic See or with its presumed consent when two eparchial Bishops with overlapping jurisdiction consent in writing. While *CIC* canon 112 § 1, 1° provided that the Latin faithful could pass to another ritual Church *sui iuris* with permission of the Apostolic See, it did not refer to any presumed permission when the two Bishops concerned express their agreement in writing. This lacuna was filled by the *Rescriptum ex audientia* of November 26, 1992.<sup>2</sup> The rescript presumes the Apostolic See's permission in the case where a parish of

---

<sup>2</sup>Cf. Secretariat of State, *Rescriptum ex audientia* 26 November 1992, AAS 85 (1993) 81.

the Eastern Church exists in the territory to which the Latin faithful wants to register, provided the two Bishops consent in writing.

This Rescript immediately raised the question whether the passage of a faithful Eastern to the Latin Church was included in the provision of canon *CCEO* c. 32 on the presumed consent. It was decided not to make any changes to *CCEO* canon 32, because according to the aforementioned Explanatory Note on *CCEO* canon 1, consent is also presumed when an Eastern faithful wishes to pass to the Latin Church and the two Bishops (Latin and Eastern) with overlapping territorial jurisdiction consent in writing.

Canon 35 *CCEO* establishes a norm for the passage of a non-Catholic faithful into the Catholic Church; however, canonists disagree about whether the norm is for validity or liceity. It has been proposed to introduce in can. 35 the words *ipso iure* before the word *ascribantur* and to change the word *ascribantur* with the word *ascribuntur* to establish clearly that the faithful who passes to the Catholic Church will be automatically ascribed to the Church *sui iuris* closest to his or her Church of origin. The study of this canon is still ongoing.

### 3) Assistance to Marriage

In *CCEO* canon 833, it is expected that the local Hierarchy can confer the faculty to any Catholic priest to bless the marriage of two Orthodox persons. There is no such provision in *CIC*. Hence, to have a single discipline on the subject, there has been introduced in *CIC* canon 1116 a paragraph 3. Inspired by *CCEO* canon 833, this paragraph provides the priest with the faculty to bless the marriage of two Orthodox persons.

The text of canon 1109 *CIC* was not very clear on the competence of the Latin parish priest to attend the marriage of two Eastern Catholics, even if they were his subjects, because none of them belongs to the Latin Church. On the other hand, the text of *CCEO* canon 829 §1 is very clear about the priest's competence. Consequently, to clarify the provision of *CIC* canon 1109 about the priest's competence in the aforementioned case, it was decided to reformulate more clearly the text of the same canon.

After *CCEO* came into force, doubt arose over the validity of the marriage between a Latin spouse and an Eastern spouse celebrated with the assistance of a Latin deacon who possessed the delegation mentioned in *CIC* canon 1108.

In *CIC*, priests, deacons, and even lay persons with proper delegation can assist at the wedding. Instead, according to *CCEO*, only a priest with the proper faculty can assist and bless. Since Eastern tradition, theology and discipline require the assistance and blessing of the priest for the validity of marriages - assistance and blessings by deacons or lay persons would be inconceivable - it was decided to implement the following measures: to introduce a paragraph 3 in canon 1108 *CIC* on the validity of the assistance of the single priest; to introduce in paragraph 1 of canon 1112 *CIC* the clause "*firma § 3 can. 1108*" to recall the new indication; to modify in paragraph 1 of canon 1127 *CIC* the expression "*ministri sacri*" with "*sacerdoti*"; and, finally, to introduce at the end of paragraph 1 of canon 1111 *CIC* the clause "*firma tamen § 3 can. 1108*".

#### **4) The Celebration of Marriage under Condition**

The possibility of harmonizing the discrepant discipline of the two Codes regarding marriage under condition (see canons *CIC* 1102 and *CCEO* 826) was studied, particularly concerning marriages celebrated between a Latin and another Eastern partner. However, given the different traditions, the complexity of the issue and the different opinions of the authors in the subject, it was considered appropriate not to modify the aforementioned discipline.

#### **5) Dispensation from Canonical Form**

*CCEO* Canon 835 reserves the dispensation from canonical form of marriage to the Apostolic See or to the patriarch, but *CIC* canon 1127 §2 establishes that, if grave difficulties hinder the observance of canonical form, the local ordinary of the Catholic party can dispense from it in individual cases. Since it is difficult for many Eastern faithful who live outside the territory of their own patriarchal Church to petition the Apostolic See or their patriarch for this dispensation, a modification was considered that would have introduced into the Eastern canon the faculty of the nuncio or the local hierarch/ordinary to grant such a dispensation. In the end, bearing in mind the sensibility of the Easterners towards their own tradition on the form of the celebration of marriage, it was decided not to modify the canon in question.

## 6) The Designation of a Parish Priest for Eastern Catholic Faithful in the USA

In 1955, the Congregation for the Eastern Churches introduced the practice in the United States of America of automatically entrusting Eastern faithful without their own parish priest to the local Latin parish priest.<sup>3</sup> When *CCEO* came into force, this practice was directly contradicted by *CCEO* canon 916 §4. Some canonists have pointed out to us that this practice is still in force in some places.

In 2012 the Pontifical Council for Legislative Texts, after an adequate study, sent to the United States Conference of Catholic Bishops a letter<sup>4</sup>, prepared together with the Congregation for the Eastern Churches, in which it was announced that the practice is contrary to the norm in force. Consequently, the letter affirmed that the provision of *CCEO* canon 916 §4 must be observed for the appointment of parish priests for the Eastern Catholic faithful.

---

<sup>3</sup>Cf. Congregation for Eastern Churches, Prot. N. 803/48 of 30 May 1955.

<sup>4</sup>Cf. PCTL, Prot. N. 13533/2012 of 23 February 2012, *Communicationes* XLIV (2012) 36-37.