

MAJOR CONTRIBUTIONS OF CCEO DURING THE PAST 20 YEARS

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This year we celebrate the 20th anniversary of the promulgation of the CCEO. In this article I try to explain the path followed by Eastern canonical science throughout these years. In order to make the explanation more pleasant I would like to talk about personal experience, but without any interest of self-satisfaction. I will try to be as clear and thorough as I can, bearing in mind that I have the unmerited fortune to belong to a generation that has received its formation directly from the lips of the protagonists of the new Eastern codification.

1. The Interest of the Study of Eastern Law

As I was finishing my doctorate in Latin Canon Law, back in the year 1990, and beginning my educational experience, the much awaited *Codex Canonum Ecclesiarum Orientalium*¹ was passed. On October 25th of that same year, the Servant of God Pope John Paul II presented it to the Assembly of the Synod of Bishops that was taking place in Vatican. Presenting the Code that regulates the common ecclesiastical discipline of all the Eastern Catholic Churches to the

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¹Promulgated on 18th October 1990 with the apostolic constitution *Sacri Canones*, in AAS 82 (1990), pp. 1033-1044. It came into vigour from the 1st October 1991.

Assembly, the great Polish Pontiff told: "I consider it an integral part of the unique *Corpus Iuris Canonici*"² which is constituted by the CIC, the *Pastor Bonus* and the CCEO. John Paul II also recommended that "in all the Schools of Canon Law a suitable comparative study of both Codes be promoted, although these, according to their statutes, have as their main object the study of the one or the other."³ The Pope repeated several times this desire. To the congress celebrated on occasion of the tenth anniversary of the Latin Code, for example, he said: "the knowledge of this whole *Corpus* (...) must opportunely be promoted in the sacerdotal formation and, first of all, in all the Schools of Canon Law. Indeed, such knowledge will be able to enrich the students and cause that canonical science, practiced in the Athenaeums, to be '*plene respondens titulis studiorum, quos hae Facultates conferunt.*'"⁴

Before such insistence, it was logical to see the response with a renewed investigating and formative effort that, little by little, the different Faculties of Canon Law have put in practice. To tell the truth, sometimes, in Latin atmosphere the Eastern Law has been regarded as "exotic" or of lesser importance, and one of the secondary subjects in the curriculum. Today, unexpectedly it has become relevant and of crucial importance due to the sweeping migratory flow from the East. As for me, I have been convinced from the very beginning, that the unicity of the legal ordering of the Church demands constructing and teaching a unitary Canon Law, that considers the two disciplines, Eastern and Latin, because the reconstruction of the common canonical institutes has to be done harmonizing the originating data set, indications and consequences of the whole normative order.⁵

²JOHN PAUL II, *Presentation of CCEO to the Synod of Bishops*. Latin version in «Insegnamenti di Giovanni Paolo II», XIII, 2, pp. 936-937, n. 8. English translation is mine.

³*Ibid.*

⁴JOHN PAUL II, "Allocutio Summi Pontificis ad eos qui conventui internationali iuris canonici interfuerunt," in *Communicationes* 25 (1993), p. 13. See also the Apostolic Letter *Oriente Lumen*, in *AAS* 87 (1995), pp. 745-774, n. 24. The need of giving a formation on the diverse rites was already indicated in the Second Vatican Council: «All clerics and those aspiring to sacred Orders should be instructed in the rites and especially in the practical norms that must be applied in interritual questions. The laity, too, should be taught as part of its catechetical education about rites and their rules» (OE n. 4).

⁵ Cfr. P. GEFAELL, "La presentazione del Codice orientale," in *Ius Ecclesiae* 3 (1991), p. 355.

In addition to this, it is a legal requirement by the same CCEO that when the Latin faithful have frequent relations with those of the Eastern Churches because of their office, ministry or order, they must acquire a formation adapted to the rite of those Eastern faithful and learn to love it and to venerate it (cfr. CCEO can. 41). For that reason, it is logical that the Eastern Law be comprised among the obligatory matters of the curriculum of the Faculties of Latin Canon Law.

Obviously, it should not be necessary to talk about all these reasons in the case of the academic institutions that by constitution are dedicated to train Eastern canon lawyers. Nevertheless, also these should bear in mind what our Holy Father said regarding the necessary knowledge of the whole *Corpus Iuris Canonici* and not to neglect the compared study of the Latin discipline. As it is widely known, at present, there are only two institutions dedicated solely to the Eastern Canon Law: the much loved and meritorious Faculty of Eastern Canon Law of the Pontifical Oriental Institute (Rome, Italy) and its aggregate, the Institute of Oriental Canon Law at the Pontifical Atheneum *Dharmaram Vidya Kshetram* in Bangalore (India), that has promoted this periodical and whose tenth anniversary we are also celebrating today.

2. Recent Oriental Canonists

As an answer to the call of the Pope, the “Santa Croce” Pontifical University where I work, initially invited Rev. Prof. Marco Brogi, O.F.M., the then undersecretary of the Congregation for the Eastern Churches, to give an optional course in our Faculty. Brogi has written fundamental papers on the Eastern Law⁶ until his appointment as Nuncio in Sudan and his consequent episcopal

⁶ His full bibliography (till that date) can be found in *Liber triennalis annis 1972-1996*, 8 vols., Pont. Aten. Antonianum, Romae 1973-1997; cfr. also *Revista Española de Derecho Canónico* 54 (1997), pp. 931-932. See, for example, M. BROGI, “La Congregazione per le Chiese orientali”, in AA.VV., *La Curia romana nella cost. ap. 'Pastor Bonus'*, Libreria Editrice Vaticana, Città del Vaticano 1990, pp. 239-267; IDEM, “Il nuovo codice orientale e la Chiesa latina,” in *Antonianum* 66 (1991) pp. 35-61; IDEM, “Le Chiese sui iuris nel Codex Canonum Ecclesiarum Orientalium,” in *Revista Española de Derecho Canónico* 48 (1991), pp. 517-544; IDEM, “Aperture ecumeniche del Codex Canonum Ecclesiarum Orientalium,” in *Antonianum* 66 (1992) pp. 455-468; IDEM, “Elezioni dei Vescovi Orientali Cattolici”, in D. ANDRÉS GUTIÉRREZ (ed.), *Il processo di designazione dei Vescovi. Storia, legislazione, prassi. Atti del X Symposium canonistico-romanistico 24-28 aprile 1995*, («Utrumque Ius» 27), Roma 1996, pp. 597-613.

consecration in 1998. Soon after this, we invited our dearest Prof. Dr. Carl Gerold Fürst, professor at the University of Friburg, who, thanks to his generous dedication to the works of the PCCICOR, had merited a special gratefulness from the Holy Father during His presentation of the CCEO to the Assembly of the Synod of Bishops.⁷ Besides his innumerable articles, his book on the Synopsis of the canons of the CIC and the CCEO has been an essential base for the comparative studies of both Codes.⁸ His complete bibliography can be found in the *Festschrift* published on the occasion of his 70th birthday: The heavy volume is a proof of the affectionate esteem his great amount of friends, colleagues and disciples have for him!⁹ Recently, the Pontifical Oriental Institute (P.I.O.) has honoured him with the *Doctoratum honoris causa*.

Anyway, seeing that in my Faculty (as in the other Latin Schools) they lacked stable professors specialized in that field, I decided to dedicate myself to the Eastern Canon Law and thus I initiated my studies in the Pontifical Oriental Institute [PIO], whose Faculty of Eastern Canon Law, was back then unique in the world.

In the PIO, I had the opportunity to meet great masters of the Eastern Canon Law who had taken part in the formulation of the Eastern Code. Some have already given their souls to God. I cannot forget dear Rev. Prof. Ivan Žužek, S.J., Secretary of the Pontifical Commission for the redaction of the Code of Oriental Canon Law (PCCICOR) from its very beginning, and soul of the codification work, deceased in 2004. His best known canonical works are the brilliant "Index Analyticus CCEO"¹⁰ and the book "Understanding the Eastern Code,"¹¹ a compilation of several of his articles.

I was also taught by Mons. Joseph Prader, of the diocese of Bolzano-Brixen, who was the relator for the codification of the canons on marriage and who - besides his book "Marriage in the world," a

⁷ JOHN PAUL II, *Presentation of CCEO*, n. 7.

⁸ C.G. FÜRST, *Canones Synopse zum Codex Iuris Canonici und Codex Canonum Ecclesiarum Orientalium*, Herder, Freiburg-Basel-Wien 1992.

⁹ H. ZAPP - A. WEISS - ST. KORTA (eds.) "*Ius canonicum in oriente et occidente*". *Festschrift fuer Carl Gerold Fürst zum 70. Geburtstag*, («Adnotationes in Ius Canonicum» 25), Peter Lang, Frankfurt/M. 2003, pp. 493-508. The bibliography of prof. Fürst can be found also in: <http://www.theol.uni-freiburg.de/institute/ipt/kr/fuerst/>

¹⁰ I. ŽUŽEK, *Index Analiticus CCEO*, (*Kanonika* 2), PIO, Roma 1992.

¹¹ I. ŽUŽEK, *Understanding the Eastern Code*, (*Kanonika* 8), PIO, Roma 1997.

compilation of state legislation on marriage¹² – wrote in 1991 the splendid work “Marriage in the East and the West” of which he managed to make a second edition, reviewed and updated in 2003,¹³ before leaving us in 2006 at the age of 90. He also received the *Doctoratum honoris causa* from the PIO.

Another illustrious professor, already emeritus, is Rev. Prof. George Nedungatt, S.J., Editor of the collection “Kanonika” for long years, which reunites monographic books on Eastern Canon Law, published by the Pontifical Oriental Institute. The same author has to his credit significant books like “The Spirit of the Eastern Code,”¹⁴ “Laity and Church Temporalities,”¹⁵ the commentary to the CCEO, “A Guide to the Eastern Code,”¹⁶ and other collective works edited by him¹⁷ and innumerable number of scholarly articles. It is good to remember, here, the book published in honor of his 70th birthday that gave occasion to many authors, mainly of the Syro-Malabar Church,¹⁸ to show their esteem for him.

I also remember with special gratitude and love Rev. Prof. Clarence Gallagher, S.J., who was the Rector of the Pontifical Oriental Institute during my studies and who welcomed me with his habitual benevolence and good humour. His publications are mainly of historical character.¹⁹

¹² J. PRADER, *Il matrimonio nel mondo: celebrazione, nullità e scioglimento del vincolo*, CEDAM, Padova 1986.

¹³ J. PRADER, *Il matrimonio in Oriente e in Occidente*, (Kanonika 1), PIO, 1st ed., Roma 1991; 2nd revisited and updated edition, Rome 2003. He also wrote a brief but interesting book: J. PRADER, *La legislazione matrimoniale latina e orientale. Problemi interecclesiali, interconfessionali e interreligiosi*, Ed. Dehoniane, Rome 1993.

¹⁴ G. NEDUNGATT, *The Spirit of the Eastern Code*, Dharmaram Publications, Bangalore 1993.

¹⁵ G. NEDUNGATT, *Laity and Church Temporalities. Appraisal of a Tradition*, Dharmaram Publications, Bangalore 2000.

¹⁶ G. NEDUNGATT (ed.), *A Guide to the Eastern Code. A Commentary of the Code of Canons of the Eastern Churches*, (Kanonika 10), PIO, Rome 2002.

¹⁷ G. NEDUNGATT (ed.), *The Council of Diamper Revisited*, (Kanonika 9), PIO, Rome 2001; G. NEDUNGATT – M. FEATHERSTONE (eds.), *The Council in Trullo Revisited* (Kanonika 6), PIO, Rome 1995.

¹⁸ F. ELUVATHINGAL (ed.), *Syro-Malabar Church since the Eastern Code: an evaluation and future prospects, particular laws, statutes, decrees, bibliography*, Mar Thoma Yogam, Rome 2002.

¹⁹ CL. GALLAGHER, *Church Law and Church Order in Rome and Byzantium; A Comparative Study*, (Birmingham Byzantine and Ottoman Monographs), Ashgate

The Rev. Prof. Dimitrios Salachas, current Apostolic Exarch of the Byzantine Rite Catholics in Greece, has also been one of the protagonists of the teaching of Eastern Law in the past years. Up to now, he has been the most prolific writers of the modern Eastern Canon lawyers. Among his books, I would like to point out his treaties on Sacraments,²⁰ Marriage,²¹ Institutions of the Eastern Law,²² The Historical Sources of Eastern Law,²³ Teaching and Evangelisation,²⁴ Codification and Preliminary Canons of the CCEO,²⁵ Clerics,²⁶ Consecrated Life,²⁷ and, recently, a concise but useful book on the Latin and Eastern Relations.²⁸ Besides these, he also has written books on Ecumenism and innumerable scientific, research articles.

2002; IDEM, "Sacri Canones nel Decretum di Graziano", in PCTLI (ed.), «*Ius in vita et missione Ecclesiae*»: *Acta Symposii internationalis Iuris Canonici occurrente X anniversario promulgationis Codicis Iuris Canonici, diebus 19-24 aprilis 1993 in civitate vaticana celebrati*, Lib. Ed. Vaticana, Città del Vaticano 1994, pp. 763-771.

²⁰ D. SALACHAS, *I sacramenti dell'iniziazione cristiana in Oriente e Occidente*, EDB, Bologna 1991; IDEM, *Teologia e disciplina dei sacramenti nei Codici latino e orientale. Studio teologico-giuridico comparativo*, EDB, Bologna 1999.

²¹ D. SALACHAS, *Il sacramento del matrimonio nel nuovo diritto canonico delle Chiese orientali*, ED-EDB, Roma-Bologna 1994.

²² D. SALACHAS, *Istituzioni di diritto canonico delle Chiese cattoliche orientali*, ED-EDB, Roma-Bologna, 1993.

²³ D. SALACHAS, *La normativa del Concilio Trullano: commentata dai canonisti bizantini del XII secolo*, Zonaras, Balsamone, Aristenos, Palermo 1991; IDEM, *Il Diritto Canonico delle Chiese orientali nel primo millennio. Confronti con il diritto canonico delle Chiese orientali cattoliche*, ED-EDB, Roma-Bologna 1997.

²⁴ D. SALACHAS, *Il magistero e l'evangelizzazione dei popoli nei Codici latino e orientale - Studio teologico-giuridico comparativo*, EDB, Bologna 2001.

²⁵ D. SALACHAS - L. SABBARESE, *Codificazione latina e orientale e canoni preliminari*, (Studia Canonica 48), Urbaniana University Press, Città del Vaticano 2003.

²⁶ D. SALACHAS - L. SABBARESE, *Chierici e ministero sacro nel Codice latino e orientale - prospettive interecclesiali*, (Studia Canonica 50), Urbaniana University Press, Città del Vaticano 2004.

²⁷ D. SALACHAS, *La vita consacrata nel Codice dei Canonici delle Chiese Orientali (CCEO)*, Edizioni Dehoniane, Bologna 2006.

²⁸ In collaboration with Mons. Krzysztof Nitkiewicz (then undersecretary of the Congregation for the oriental Churches): D. SALACHAS - K. NITKIEWICZ, *Rapporti interecclesiali tra cattolici orientali e latini, sussidio canonico-pastorale*, PIO, Roma 2007. There is also an English edition: D. SALACHAS - K. NITKIEWICZ, *Inter-ecclesial Relations between Eastern and Latin Catholics: a Canonical-Pastoral Handbook*, English edition by George Dmitry GALLARO, CLSA, Washington 2009.

At some conferences, I had the opportunity to meet Prof. Dr. René Metz, of the University of Strasbourg-II, who was one of the consultants of the Codification, and author of a brief manual on Eastern Law in French language,²⁹ and also co-editor of the French version of the CCEO,³⁰ apart from his other publications on the subject. And on a trip to the United States I was able to meet Rev. Prof. Victor J. Pospishil, who has published, among other works, a manual on Eastern Law on Marriage³¹ and another one on the whole of Eastern Law, which is, now, on its second reviewed edition.³² S.E.R. Mons Sophron Mudry, O.S.B.M., was also Professor at the PIO, and today he is emeritus archbishop of Ivano-Frankivsk of the Ukrainians.³³ We cannot also forget S.E.R. Mar Andrew Thazhath, expert in canonical procedural Law,³⁴ who was President of the Oriental Canon Law Society of India and President of the Syro-Malabar Major Archiepiscopal Ordinary Tribunal; he was also chief editor of "Eastern Legal Thought," an annual publication of that same Tribunal, until his appointment as Archbishop of Trichur.

Obviously, there is today a new generation of teachers of Eastern Canon Law who are trying to profit by the inheritance received from our teachers. In the first place the Canadian Maronite Rev. Prof. Jobe Abbass, O.F.M., former teacher at the PIO, and currently working as a teacher at the Saint Paul University of Ottawa. His scientific production is remarkable concerning the comparison and interrelation between Latin and Eastern Codes, and in procedural and Religious Law as well.³⁵

²⁹ R. METZ, *Le nouveau Droit des Églises orientales catholiques*, Ed. Cerf, Paris 1997.

³⁰ See below.

³¹ V.J. POSPISHIL, *Eastern Catholic Marriage Law – According to the Code of Canons of the Eastern Churches*, Saint Maron Publications, Brooklyn (NY) 1991.

³² V.J. POSPISHIL, *Eastern Catholic Church Law*, Second Revised and Augmented Edition, Saint Maron Publications, Staten Island (NY) 1996.

³³ Cfr. S. MUDRY – D. CECCARELLI MOROLLI, *Introduzione allo studio storico-giuridico delle fonti del diritto canonico orientale*, Pontificio Collegio Ucraino di San Giosafat, Roma 1994; S. S. MUDRY, *Lineamenti di storia della Chiesa in Ucraina*, Misioner, L'viv 2008.

³⁴ Cfr. A. THAZHATH, "Administration of Justice in the Patriarchal Churches", in CONGREGAZIONE PER LE CHIESE ORIENTALI (ed.), *«Ius ecclesiarum vehiculum caritatis»*, Atti del simposio internazionale per il decennale dell'entrata in vigore del Codex Canonum Ecclesiarum Orientalium, Città del Vaticano, 19-23 novembre 2001, Libreria editrice vaticana, Città del Vaticano 2004, pp. 465-513.

³⁵ Besides his many other articles, cfr. J. ABBASS, *Two Codes in Comparison*, (Kanonica 7), PIO, Rome 1997.

Worthy pupil of Prof. Žužek, S.E.R. Mons Cyril Vasil', S.J., present Secretary of the Congregation for the Eastern Churches, has been Dean of the Faculty of Canon Law as well as Rector of the Pontifical Oriental Institute, besides being a consultant to several Congregations of the Roman Curia.³⁶

Prof. Dr. Peter Szabó,³⁷ is the Chairman of the Review "Folia Canonica" published by the Institute of Canon Law, at the Catholic University Peter Pázmány of Budapest and also by the Greek-Catholic Theological Institute St. Athanasius of Nyíregyháza, affiliated to the P.I.O., that publishes many works on Eastern Law and a very useful "Eastern Canon Law Bibliography." The Pontifical Council for Legal Texts counts him among its consultants.

Naturally, I cannot forget the Rev. Prof. Varghese Koluthara, C.M.I.,³⁸ who was the first Director of the Institute of Oriental Canon Law at *Dharmaram Vidya Kshetram*, his successor Rev. Cherian Thunduparampil, C.M.I.,³⁹ editor of the *Dharmaram Canon Law Journal*, its present Director Rev. James Mathew Pampara, C.M.I.,⁴⁰ and the rest of the educational body of that young Institute, which, thanks to its dynamic character, has gained a place in the present Eastern Canon Law milieu. Other illustrious members of the Syro-Malabar Church are the great expert in its history, Rev. Prof. Jacob

³⁶ Among his publications, cfr. for example, C. VASIL', S.J., *Fonti canoniche della Chiesa cattolica bizantino-slava nelle eparchie di Mukacevo e Presov a confronto con il Codex Canonum Ecclesiarum Orientalium (CCEO)*, PIO, Roma 1996; IDEM, "Valutazione delle fonti tra autenticità e organica progressio, con speciale riguardo alle Chiese originate dall'eparchia di Mukačevo", in Š. MARINČÁK (ed.), *Diritto particolare nel Sistema del CCEO. Aspetti teoretici e produzione normativa delle Chiese orientali cattoliche*, («Orientalia et Occidentalia» vol. 2), Centrum sprituality Východ - Západ Michala Lacka, Košice 2007, pp. 127-143.

³⁷ Cfr. p. es., P. SZABÓ, "Opinioni sulla natura delle Chiese «sui iuris» nella canonistica odierna," in *Folia Theologica* 7 (1996), pp. 239-251; IDEM, "Ancora sulla sfera dell'autonomia disciplinare dell'Ecclesia sui iuris," in *Folia Canonica* 6 (2003), pp. 157-213.

³⁸ L. NELI - V. KOLUTHARA - G. THANCHAN, *Catholic Marriage Nullity Process : The Introduction of the Case a Study of Latin and Oriental Codes with Reference to Rotal Jurisprudence*, Institute of Oriental Canon Law, Dharmaram Vidya Kshetram, Bangalore 2007.

³⁹ C. THUNDUPARAMPIL, *The Role of Miracle in the Process of Canonization*, *Dharmaram Canonical Studies* 2), Dharmaram Publications, Bangalore 2003.

⁴⁰ J. PAMPARA, *The Specific Characteristics of the Penal Law and the Penal Procedure in the Code of Canons of the Eastern Churches*, Thesis ad Doctoratum, PIO, Rome 2009.

Kollaparambil,⁴¹ teacher at the Faculty of Canon Law of the PIO, and Rev. Prof. Sunny Kokkaravalayil S.J.,⁴² who till this very year was interim Rector of the Pontifical Oriental Institute in Rome.

As I am aware that I cannot make myself too long by naming everybody, other worthy professors of mention are: Rev. Prof. Michael Kuchera, S.J.,⁴³ present Dean of the Faculty of Canon Law at the PIO, Prof. Dr. Danilo Ceccarelli-Morolli,⁴⁴ at the PIO, and editor of the electronic Review «Iura Orientalia»,⁴⁵ Rev. Prof. Georges Gallaro,⁴⁶ at the Byzantine Catholic Seminary of SS. Cyril and Methodius of Pittsburgh, Rev. Prof. Lorenzo Lorusso, O.P.,⁴⁷ new President of the Institute of Greek-Byzantine Ecumenical-Patristic Theology “Saint Nicholas” of Bari, and also teacher at the PIO, Rev. Prof. Luis Okulik⁴⁸ who was Vice Dean at the Institute San Pio X of Venice, Prof. Dr. Astrid Kaptijn,⁴⁹ who was Vice Dean of the

⁴¹ J. KOLLAPARAMBIL, *The Knanaya Community in Kerala History* [in Malayalam], Jyothi Book House, Kottayam 2003; IDEM, *The Babylonian Origin of the Southists among the St. Thomas Christians*, PIO, Roma 1992; IDEM, *The St. Thomas Christians' Revolution in 1653*, The Catholic Bishop's House, Kottayam 1981; IDEM, *The Archdeacon of All-India*, The Catholic Bishop's House, Kottayam 1972.

⁴² S. KOKKARAVAYIL, *The Guidelines for the Revision of the Eastern Code: their impact on CCEO, Kanonika 15*, PIO, Roma 2009.

⁴³ Cfr. M. KUCHERA, *A Balance between Concession and Discipline “Cum data fuerit”, article XII and “Codex Canonum Ecclesiarum Orientalium”, canon 758, § 3 in the Metropolia “sui iuris” of Pittsburgh [USA]: A Question of Celibacy or Jurisdiction*, Dissertatio ad Doctoratum in PIO, Rome 2005; IDEM, *Particular Law of the Ruthenians Today. A Church Divided or United?*, in MARINČÁK, pp. 213-236.

⁴⁴ Cfr. D. CECCARELLI MOROLLI, *Le tematiche ecumeniche nel «Codex Canonum Ecclesiarum Orientalium»*, Roma 1996, and his many invoices in the collective work E. FARRUGIA (ed.), *Dizionario enciclopedico dell'Oriente cristiano*, Roma 2000.

⁴⁵ Cfr. *Iura Orientalia*, rassegna on-line di diritti orientali antichi e moderni: www.iuraorientalia.net. Here he publish also many of his articles.

⁴⁶ Cfr. G. GALLARO, *Melkiti ed Ortodossi d'America: sfide ed aperture*, in *Studi sull'Oriente cristiano* 3 (1999/1), pp. 135-153; IDEM, *Rome's Liturgical Instruction for the Eastern Catholic Churches*, in «Logos» 43-45 (2002-2004), pp. 149-179.

⁴⁷ Cfr. L. LORUSSO, *Gli orientali cattolici e i pastori latini: problematiche e norme canoniche*, (Kanonika 11), PIO, Roma 2003; IDEM, “Estensione della potestà patriarcale e sinodale in diaspora. Designazione dei Vescovi, erezione di circoscrizioni ecclesias-tiche, clero uxorato,” in *Angelicum* 83 (2006), pp. 845-870.

⁴⁸ Cfr. L. OKULIK, *Tutela giuridica dell'identità ecclesiale dei fedeli orientali in situazione di diaspora*, in IDEM (ed.), *Nuove terre e nuove Chiese – Le comunità di fedeli orientali in diaspora*, Marcianum Press, Venezia 2008, pp. 219-241.

⁴⁹ Cfr. A. KAPTIJN, “Divorce et remariage dans l'Église orthodoxe,” in *Folia Canonica* 2 (1999), pp. 105-128 ; IDEM, “Droit particulier et production normative des

“Institute Catholique” of Paris and now is a professor at the University of Friburg, in Switzerland, Rev. Prof. Natale Loda⁵⁰ at the Lateran University, Rev. Prof. Leszek Adamowicz⁵¹ at the University of Lublin, Rev. Francis Marini⁵² and Rev. Archim. John D. Faris,⁵³ of the Maronite eparchy of Brooklyn (NY), S.E.R. Mons. Antonios Aziz Mina,⁵⁴ who worked at the Congregation for the Oriental Churches and was visiting teacher at the PIO during his stay in Rome and now is Bishop of the Coptic eparchy of Guizeh in Egypt, etc.

There are many professors of various Schools of Theology that deserve to be mentioned here as some of their works are about canonical matters, but I think that it would be too complicated and confusing to include all of them. Let us mention at least two among them, that is, Rev. Mons Paul Pallath,⁵⁵ teacher at the Faculty of Eastern Ecclesiastical Sciences at the PIO and official of the Congregation for the Divine Cult and Sacraments and the recently deceased dear Mons. Eleuterio Fortino,⁵⁶ from the Italo-albanese

Églises Particulières des Orientaux Catholiques en France. Un rapport,” in *Iura Orientalia* 3 (2007), pp. 73-82.

⁵⁰ Cfr. N. LODA, *Sul concetto di nomina ed elezione dei Vescovi nel Codex Iuris Canonici e nel Codex Canonum Ecclesiarum Orientalium*, in D. ANDRÉS GUTTIÉREZ (ed.), *Il processo di designazione dei Vescovi. Storia, legislazione, prassi*, (Utrumque Ius 27), Roma 1996, pp. 445-471; IDEM, “Il canone 1401 CCEO quale ‘ianua’ dell’ordinamento penale canonico ed il superamento del modello retribuzionistico. Semantica e valutazione delle fonti,” in *Apollinaris* 80 (2007/1-2), pp. 241-331.

⁵¹ Cfr. L. ADAMOWICZ, *Profilo giuridico della Chiesa greco-cattolica ucraina in Polonia*, in MARINČÁK, pp. 399-412.

⁵² Cfr. F. MARINI (ed.), *Comparative sacramental discipline in the CCEO and CIC. A Handbook for the Pastoral Care of the Members of the Other Catholic Churches ‘sui iuris’*, Washington, D.C. 2003; IDEM, *The Catholic View of Patriarchal Jurisdiction and its Relation to Future Church Unity*, Eastern Christian Publications, Fairfax (Va.) 2003.

⁵³ Cfr. FARIS, J., *The Eastern Catholic Churches: Constitution and Governance. According to the ‘Code of Canons of the Eastern Churches’*, Saint Maron Publications, New York (NY) 1992; IDEM, “The Synod of Bishops and Council of Hierarchs in the Code of Canons of the Eastern Churches,” in *Studies in Church Law* 2 (2006), pp. 125-146.

⁵⁴ Cfr. A. MINA, “Sviluppo del diritto particolare nelle Chiese *sui iuris*”, in CONGREGAZIONE PER LE CHIESE ORIENTALI (ed.), *Ius Ecclesiarum vehiculum caritatis*, pp. 535-553.

⁵⁵ Cfr., ex. gr., his books: P. PALLATH, *The Synod of Bishops of Catholic Oriental Churches*, Mar Thoma Yogam, Rome 1994; IDEM, *The Catholic Church in India*, Mar Thoma Yogam, Rome 2005; IDEM, *Matrimonio tra cristiani indiani: il rito nella Chiesa siro-malabarese*, Urbaniana University Press, Città del Vaticano 2009.

⁵⁶ Cfr. for example, E. FORTINO, “Droit canonique et dialogue oecumenique en Europe”, in AA.VV., *Multiconfessional Europe II – Priesthood in East and West*, (Kanon XIII), Eichenau 1996, pp. 1-18.

Eparchy of Calabria and undersecretary of the Pontifical Council for Promoting Cristian Unity.

3. Journey Along the Main Eastern Events of These Past Years

In the years just before the promulgation of the CCEO a renewed interest in the Law of the Eastern Churches had already started. At official level, in 1987 the Congregation for the Catholic Education made a call in order to promote the studies on the Eastern Churches,⁵⁷ and in 1988 the President of the PCCICOR announced the then imminent appearance of the CCEO.⁵⁸ Now I will only quickly go through the published official documents of the Church that talk about Eastern Law in one way or another during these last twenty years.

First of all, it is known that, after the promulgation of the CCEO, the then so-called Pontifical Council for the Interpretation of Legal Texts (PCITL) received in 1991 the competence for the interpretation of this new legal body.⁵⁹

In 1992 the Secretary of State issued for the Latin discipline an analogous norm to the CCEO can. 32 § 2, until then non-existent in the CIC, on the presumption of the consent of the Apostolic See for the transit of faithful from the Latin Church to an Eastern Church, if the respective Bishops allow this in writing (and if they exert jurisdiction in the same territory).⁶⁰

In order to protect the Eastern patrimony, in 1996 the Congregation for the Oriental Churches published an Instruction on the liturgical prescriptions of the CCEO,⁶¹ where concrete indications regarding

⁵⁷ SACRED CONGREGATION FOR CATHOLIC EDUCATION, "Lettera Circolare riguardante gli studi sulle Chiese Orientali," in *Seminarium* 27 (1987) pp. 175-186.

⁵⁸ E. EID, "Presto il nuovo codice di diritto canonico orientale," in *Nuntia* 27 (1988), pp. 93-94; M. BROGI, "Codificazione del diritto comune delle chiese orientali cattoliche," in *Revista española de Derecho Canónico* 45 (1988) pp. 7-29.

⁵⁹ SECRETARY OF STATE/PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF ORIENTAL CANON LAW, "Epistula Praesidi Pontificii Consilii de Legum Textibus Interpretandis circa competentiam eiusdem Consilii quoad interpretationem authenticam Codicis Canonum Ecclesiarum Orientalium legumque communium omnibus Ecclesiis Orientalibus Catholicis (27-II-1991)," in *Communicationes* 23 (1991), pp. 15-16.

⁶⁰ SECRETARY OF STATE, *Rescriptum ex Audientia Ss.mi*, 26 de noviembre de 1992, in *AAS* 85 (1993), p. 81.

⁶¹ CONGREGATION FOR THE ORIENTAL CHURCHES, *Istruzione per l'applicazione delle prescrizioni liturgiche del Codice dei Canonici delle Chiese Orientali*, Libreria Editrice Vaticana, Città del Vaticano 1996.

the divine cult and the sacraments take form. I have to confess that some of its affirmations seem problematic to me, like, for example, the one that makes reference to the minister of the sacrament of marriage. We will talk about this further on.

In 2003 the Spanish Episcopal Conference published some "Directives" on the pastoral care of the Eastern Catholics.⁶² And in 2006 the same Episcopal Conference wrote a document on the pastoral services offered to the Orthodox faithful.⁶³ I have published a commentary to both documents highlighting the most interesting things and problematic questions.⁶⁴

In 2004 the Instruction *Erga migrantes*, n. 55, affirmed that the CCEO can. 193 § 3 had to be applied to the Latin Church by analogy,⁶⁵ that is, although CIC can. 383 does not foresee this, the Latin diocesan bishop must obtain the consent of the interested Patriarch if he wants to appoint a priest to take care of the faithful of that Eastern Church present in his diocese.

In 2005 the Instruction *Dignitas Connubii* explicitly included in the Latin discipline some articles that are parallel to the norms of the CCEO: Art. 2 § 2 is parallel to CCEO can. 780 § 2, and Art. 4 § 1 corresponds to CCEO can. 781. In fact, up to that moment, the Latin discipline had foreseen in its can. 1059 that marriages between a Catholic and a baptized non-Catholic would be regulated (only) by (Catholic) Canon Law and, in addition, there was not any written criteria for the Catholic judge when he had to judge the validity of marriages between those non-Catholic Christians. Now, however, also in Latin discipline the criteria already established in those canons of CCEO are to be followed.

⁶² SPANISH EPISCOPAL CONFERENCE, "Orientaciones para la atención pastoral de los católicos orientales, LXXXI Plenary Meeting (17-21 November 2003), in *Boletín Oficial de la Conferencia Episcopal Española*, Year XVII, n° 71 (2003), pp. 56-63.

⁶³ SPANISH EPISCOPAL CONFERENCE, "Servicios pastorales a orientales no católicos. Orientaciones," LXXXVI Plenary Meeting (27-31 March 2006), in *Boletín Oficial de la Conferencia Episcopal Española*, Year XX, n° 76 (30 June 2006), pp. 51-55.

⁶⁴ P. GEFAELL, *Nota a los documentos de la Conferencia Episcopal Española "Orientaciones para la atención pastoral de los católicos orientales en España (17-21 de noviembre de 2003)" y "Servicios pastorales a orientales no católicos. Orientaciones (27-31 de marzo de 2006)," in *Ius Ecclesiae* 18 (2006), pp. 861-876.*

⁶⁵ PONTIFICAL COUNCIL FOR THE PASTORAL CARE OF MIGRANTS AND ITINERANT PEOPLES, Instruction *Erga migrantes caritas Christi*, 3rd May 2004, in AAS 96 (2004), pp. 762-822.

On October 20th 2006, the Apostolic Signature declared that the sentences of “marriage annulment” dictated by the Rumanian Orthodox Church could not be accepted by the Catholic Church.⁶⁶

On January 3rd 2007, the same Signature decreed that in order to accept the “free status to marry” of an orthodox person who previously was civilly married to someone, without the appropriate priestly blessing, and now wants to duly marry another catholic person, it is not necessary a formal judicial trial declaring the nullity of the first marriage, but it suffices the normal pre-marriage investigation done by the Catholic Ordinary or the parish priest. In this decree, the Signature applies the CCEO can. 781 and art. 4 § 1 n. 2 of the *Dignitas Connubii*, considering, by analogy, the authentic interpretation of June 26th 1984 on CIC can. 1686 (= CCEO can. 1372 § 2) referring to those Catholics married without canonical form.⁶⁷

Although they are not documents directly dealing with Eastern Canon Law, it is also significant that, during his papacy, John Paul II wanted to often address the Eastern Churches.⁶⁸

⁶⁶ Cfr. APOSTOLIC SIGNATURE, “Declaration of 20th October 2006,” P.N. 37577/05 VAR, in *Communicationes* 39 (2007), pp. 66-67. See my commentary in: P. GEFAELL, “La giurisdizione delle Chiese ortodosse per giudicare sulla validità del matrimonio dei loro fedeli”, in *Ius Ecclesiae* 19 (2007), pp. 773-791.

⁶⁷ APOSTOLIC SIGNATURE, *Decree of 3rd January 2007*, P.N. 38964/06 VT, published with a commentary of G.P. MONTINI, “La procedura di investigazione prematrimoniale è idonea alla comprovazione dello stato libero di fedeli ortodossi che hanno tentato il matrimonio civile,” in *Periodica* 97 (2008), pp. 47-98.

⁶⁸ Besides those quoted in the main text, John Paul II wrote in 1985 the Letter *Slavorum apostoli*, celebrating the evangelizing work of Saints Cyril and Methodius: JOHN PAUL II, Encyclical Letter *Slavorum apostoli*, 2 June 1985, in AAS 77 (1985), 796. On 25 January 1988 the Pope published the letter *Euntes in mundum* on the occasion of the millenary of the baptism of Rus of Kiev, in AAS 80 (1988), pp. 935-956. On 12 November 1995 he wrote another apostolic letter for the 4th centenary of the union of Brest, that was the origin of the Ukrainian Greek-catholic Church, in AAS 88 (1996) pp. 129-140 (it is written in Ukrainian language; translations can be found in www.vatican.va). On 18 April 1996 he wrote one more letter, now for the 350^o anniversary of the union of Uzhorod, which is the origin of many oriental Catholic Churches of Byzantine-Slavic rite: in AAS 89 (1997), pp. 163-166 only a pontifical allocution for the occasion can be found, but the apostolic letter is in www.vatican.va. On 7 May 2000 John Paul II wrote another apostolic letter, this time on occasion of the union of the Rumanian Greek-catholic Church with the Church of Rome, which, besides other topics, dealt with themes as crucial as the ecumenical relations with the Romanian orthodox Church and the return to the original ecclesiastical traditions: I was not able to find it in AAS, but it can be consulted also in www.vatican.va. And on 25 July 2001 John Paul II wrote his last letter on oriental

Among these pontifical documents the Apostolic Letter *Orientalis Lumen*,⁶⁹ published on May 2nd 1995 on the occasion of the centenary of the Apostolic Letter of Leo XIII *Orientalis Dignitas*,⁷⁰ stands out in first place. In this letter, the Pope exhorts once more Western Catholics to become acquainted with Eastern Christianity. Specially, he asserted: "A special thought goes to the lands of the diaspora where many faithful of the Eastern Churches who have left their countries of origin are living in a mainly Latin environment. These places, where peaceful contact is easier within a pluralist society, could be an ideal environment for improving and intensifying cooperation between the Churches in training future priests and in pastoral and charitable projects, also for the benefit of the Orientals' countries of origin. I particularly urge the Latin Ordinaries in these countries to study attentively, grasp thoroughly and apply faithfully the principles issued by this Holy See concerning ecumenical cooperation and the pastoral care of the faithful of the Eastern Catholic Churches, especially when they lack their own hierarchy" (n. 26).

In that same year, the Pontiff published the important Encyclical Letter *Ut Unum Sint*, on the ecumenical endeavour.⁷¹

In order to finish this section, it is necessary to indicate that, besides the official Latin version, and its edition with sources,⁷² the Eastern Code has already been published in many languages: Spanish,⁷³ Italian,⁷⁴ French,⁷⁵ English,⁷⁶ German,⁷⁷ Arab,⁷⁸ Croatian,⁷⁹ Pole,⁸⁰ and

matters, this time in occasion of the 17th centenary of the baptism of the Armenian People (cfr. www.vatican.va).

⁶⁹ JOHN PAUL II, Ap. Lett. *Orientalis Lumen*, 2 May 1995, in AAS 87 (1995), pp. 745-774.

⁷⁰ LEO XIII, Ap. Lett. *Orientalium dignitas*, 30 November 1894, in *CIC Fontes*, vol. III, 455.

⁷¹ JOHN PAUL II, Enc. Lett. *Ut unum sint*, 25 May 1995, in AAS 87 (1995), pp. 981.

⁷² PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, *Codex Canonum Ecclesiarum Orientalium, auctoritate Ioannis Pauli II promulgatus, Fontium annotatione auctus*, Libreria editrice Vaticana 1995.

⁷³ *Código de Cánones de las Iglesias orientales: Edición bilingüe comentada por los profesores de la Facultad de Derecho Canónico de la Pontificia Universidad de Salamanca*, BAC, Madrid 1994.

⁷⁴ *Codice dei Canonici delle Chiese Orientali*, versione italiana di Bruno Testacci, in *Enchiridion Vaticanum*, vol. 12, EDB, Bologna 1992.

⁷⁵ *Code des Canons des Églises Orientales*, Texte officiel et traduction française par Émile Eid et René Metz, Libreria Editrice Vaticana, Città del Vaticano 1997.

⁷⁶ *Code of Canons of the Eastern Churches: a new English translation prepared under the auspices of the Canon Law Society of America*, CLSA, Washington D.C. 2001.

Romanian.⁸¹ Finally I cannot forget to mention that, as far as I know, there are only two publications of the Eastern code with commentaries: one has been carried out by the professors of the university of Salamanca⁸² and the other one by those of the Urbaniana.⁸³

4. Some of the Main Issues Dealt with throughout These Years

a) Presentations of Eastern Codification - Works and Conferences

In the first years of the CCEO many of the publications and conferences dwelt in a general presentation of the new Code. At the beginning, some articles⁸⁴ and a small leaflet edited by P. Clarence Gallagher, S.J.,⁸⁵ presented the new Eastern Code in a general way. Also, in those years, there were works that introduced the diverse parts of the Eastern Code⁸⁶ and the history of the Eastern codification.⁸⁷

⁷⁷ *Codex Canonum Ecclesiarum Orientalium - Gesetzbuch der Katholischen Ostkirchen*, S. Demel, L. Gerosa, P. Krämer L. Müller (eds.), traducción de Gerd Ludwig y Joachim Budin, Bonifacius Verlag, Paderborn 2000.

⁷⁸ There are two translations to Arabic: one is Libanese (*Codex canonum Ecclesiarum orientalium. Texto Latino with Arabic translation*, translation of Yúhanna Mansúr, K. Salím Bustrus and Hanna al-Fákhúri, Beirut 1993), and the other Egyptian (*Codex canonum Ecclesiarum orientalium. Translated into Arabic from the original text in Latin by the Egyptian commission instituted by His Beatitude Stephanos II Ghattas, Patriarch of the Catholic Coptic Church of Alessandria, Egypt*, Franciscan Center of Oriental Christian Studies, Egypt 1995).

⁷⁹ *Codex canonum Ecclesiarum orientalium: Croatian*, translator Stanislav Kos (et al.), editor Matija Berljak (et al.), Glas Koncila, Zagreb 1996.

⁸⁰ *Codex canonum Ecclesiarum orientalium - Kodeks Kanonów Kościołów Wschodnich*, Wydawnictwo Archidiecezji Lubelskiej "Gaudium," Lublin 2002.

⁸¹ *Codex canonum Ecclesiarum orientalium - Codul canoanelor Bisericii orientale*, translator and editor Iuliu Vasile Muntean, Presa Universitară Clujeană, Cluj-Napoca 2001.

⁸² See above, for the Spanish translation of the CCEO.

⁸³ P.V. PINTO (ed.), *Commento al Codice dei Canoni delle Chiese Orientali*, LEV, Città del Vaticano 2001.

⁸⁴ I., ŽUŽEK, "Presentazione del Codex Canonum Ecclesiarum Orientalium," in *Monitor Ecclesiasticus* (1990) pp. 591-612; O. BUCCI "Il Codice dei canoni delle chiese orientali (28-X-1990) (adnotaciones)," in *Apollinaris* 63 (1990) pp. 443-490.

⁸⁵ CL. GALLAGHER (ed.), *The Code of Canons of the Oriental Churches. An introduction*, Mar Thoma Yogam, Rome 1991.

⁸⁶ For example, K. BHARANIKULANGARA, - J. CHIRAMEL (eds.), *The Code of Canons of the Eastern Churches. A Study and Interpretation, (Essays in honour of Joseph*

As we know, parallel to the “*Consociatio Internationalis Studio Iuris Canonici Promovendo*”, the “Society for the Law of the Eastern Churches” dates back to the 70s with headquarters in Vienna, in which catholic (Eastern and Latin), orthodox and protestant experts in Canon Law and Civil Ecclesiastical Law take part. From then on, the Eastern Society has promoted conferences every two years (ex. gr., in Santiago, Bari, Vienna, Boston, Athens, Würzburg, Beirut, Tsaghkadzor, Rome, Budapest, Urbino, Cluj, Venice, etc.) on different issues of special relevance to the reciprocal acquaintance of the different Churches (i.e.: the concept of “Protos”; the Oikonomy; Priestly Ordination; the Ascription to the Church; Law and Ecumene; the Caucasian Churches; the Constitution of the Church and its ecclesiastical basis; the Church in Rumania; Types of autonomy in the Eastern Churches). The Acts of these conferences have been gathered in the collection “*Kanon*”.⁸⁸

The Conference of Bari in 1991 reunited, for the first time, the two Societies (the Latin *Consociatio* and the *Oriental Society*) and was very important in order to stimulate Latin and Oriental canonists to study together the canonical discipline.⁸⁹

Also, many conferences on “Latin” Law included Eastern issues. For example in 1993, on the occasion of the conference held in Rome in order to celebrate the tenth anniversary of the Latin Code, P. Ivan Žužek delivered an interesting speech on the incidence of the CCEO in the modern history of the Church.⁹⁰

Besides the conferences on Eastern Law organized by the “Society for the Law of the Eastern Churches,” other institutions have also organized them. For example:

Card. Parecattil, Star Publications, Alwaye (India) 1992; K. BHARANIKULANGARA (ed.), *Il Diritto Canonico Orientale nell'ordinamento ecclesiale*, Città del Vaticano 1995.

⁸⁷ J. D. FARIS, “The Codification and Revision of Eastern Law,” in *Studia Canonica* 17 (1983) pp. 449-486; E. EID., “la révision du code de droit canonique oriental: histoire et principes, in *L'Année canonique* 33 (1990) pp. 11-27.

⁸⁸ «*Kanon*», Yearbook of the Society for the Law of the Eastern Churches.

⁸⁹ Cfr. R. COPPOLA (ed.), *Incontro fra canonici d'oriente e occidente: Atti del congresso internazionale*, Bari 23-29 Settembre 1991, 3 vols., Bari 1994.

⁹⁰ I. ŽUŽEK, *Incidenza del «Codex Canonum Ecclesiarum Orientalium» nella Storia moderna della Chiesa Universale*, in PCITL, *Ius in vita et in missione Ecclesiae: Acta Symposii internationalis Iuris Canonici occurrente X anniversario promulgationis Codicis Iuris Canonici, diebus 19-24 aprilis 1993 in Civitate Vaticana celebrati*, Città del Vaticano 1994, pp. 675-738.

In 1995 the conference held in Kaslik (Lebanon)⁹¹ served to stimulate knowledge of the new codification and to give new forces to the Lebanese nation hurt at the time by their recent civil war.

Summoned by the Congregation for the Eastern Churches, in 1997 the bishops of the Eastern Rite of Europe met in Nyíregyháza (Hungary) to study the problems of their Churches.⁹²

The *Société de Droit Canonique et de Législations Religieuses Compares* (related to the *Institut Catholique* of Paris) organised a conference on important matters of the CCEO in 1998.⁹³

In 2000, The Ateneo Pontificio *Dharmaram Vidya Kshetram* of Bangalore (India) held a conference to celebrate the 10th anniversary of the promulgation of the CCEO.⁹⁴

In 2001, the tenth anniversary of the coming in effect of the CCEO was celebrated in the Vatican. Almost all cultors in Eastern Law, as well as those interested in it, gathered there.⁹⁵

In that same year, the *Consociatio* and the international Society for Eastern Law gathered again at a conference held in Budapest on the highly topical issue of "Territoriality and Personality."⁹⁶

⁹¹ A. AL-AHMAR - A. KALIFÉ - D. LE TOURNEAU (eds), *Acta Symposii Internationalis circa Codicem canonum Ecclesiarum Orientalium, Usek 24-29 aprilis 1995*, Ed. USEK, Kaslik (Liban), 1996.

⁹² CONGREGATION FOR THE ORIENTAL CHURCHES (ed.), *L'identità delle chiese orientali cattoliche: Atti dell'incontro di studio dei vescovi e dei superiori maggiori delle chiese orientali cattoliche d'Europa, Nyíregyháza (Ungheria) 30 June - 6 July 1997*, Libreria Editrice Vaticana, Città del Vaticano 1999

⁹³ Congress of the SOCIÉTÉ DE DROIT CANONIQUE ET DE LÉGISLATIONS RELIGIEUSES COMPARES, *Le Code des Canons des Églises Orientales. Questions importantes*, Paris 30 de marzo - 2 abril de 1998.

⁹⁴ *National Seminar celebrating the 10th anniversary of the promulgation of the CCEO*, Dharmaram Vidya Kshetram Pontifical Athaeneum, Istitute of Oriental Canon Law, Bangalore (India), 16-18 agosto 2000.

⁹⁵ CONGREGATION FOR THE ORIENTAL CHURCHES (ed.), «*Ius ecclesiarum vehiculum caritatis*»: Atti del simposio internazionale per il decennale dell'entrata in vigore del Codex Canonum Ecclesiarum Orientalium, Città del Vaticano, 19-23 novembre 2001, Libreria editrice vaticana, Città del Vaticano 2004.

⁹⁶ CONSOCIATIO INTERNATIONALIS STUDIO IURIS CANONICI PROMOVENDO - SOCIETY FOR THE LAW OF THE ORIENTAL CHURCHES, «*Territorialità e personalità nel diritto canonico e ecclesiastico*»: *Il diritto canonico di fronte al terzo millennio: Atti dell'XI Congresso internazionale di Diritto canonico e del XV Congresso internazionale*

In 2006 the University of Catania organized a brief colloquy on Eastern Law.⁹⁷ In that same year, the Theological School of the University of Trnava held at Košice (Slovakia) an Eastern Canon Colloquy on Particular Law.⁹⁸ This conference followed a preceding conference which had been held in Rome that same year at the P.I.O. (about its initiatives we will talk about in the following paragraph); that is why their acts have been published together.⁹⁹

Coherent with its specific purpose, the Pontifical Oriental Institute organizes a study day on topics of Eastern Canon Law every year.¹⁰⁰

This year 2010, I have had the opportunity to organize the annual conference of the Faculty of Canon Law of "Santa Croce" Pontifical University, centered on the subject "Eastern Christians and Latin Pastors" (Rome, 15th -16th April 2010).

From the 8th to the 9th of October 2010, the Pontifical Council for Legislative Texts, in association with the Congregation for Oriental Churches and the PIO, organized a Meeting, discussing the theme, "The Code of the Eastern Churches - History, Particular Legislations, Ecumenical Perspectives," to celebrate the twentieth anniversary of the promulgation of the CCEO.

I cannot finish this section without mentioning the initiative born in 1999 from a small group of Eastern canon lawyers (in those years we regarded ourselves as "young Eastern canon lawyers") with the purpose of periodically studying some subject of common interest in a friendly context. Up to now, we have met in: Budapest,¹⁰¹ Košice,¹⁰²

della Società per il Diritto delle Chiese orientali (Budapest, 2-7 September 2001), Szent István Társulat, Budapest 2002.

⁹⁷ *La scienza del diritto canonico orientale: stato attuale e prospettive di ricerca*, Universidad de Catania (Italia), 10 November 2006.

⁹⁸ *Oriental Canonistic Colloquy*, Center of Spirituality Orient-Occident of the Theological School of Trnava University, Košice (Slovak Republic), 29th November - 3th December 2006.

⁹⁹ S. MARINČÁK (ed.), *Diritto particolare nel Sistema del CCEO*, o.c.

¹⁰⁰ The last one was: «*Il Codex Canonum Ecclesiarum Orientalium e la Sede Apostolica. Riflessioni e approfondimenti*», Pontifical Oriental Institute, Rome 10th December 2009.

¹⁰¹ 1st Colloquy of Teachers of Oriental Canon Law, *Metodologia della Docenza del Diritto Canonico Orientale*, Università Péter Pázmány, Budapest 11-13 de noviembre de 1999. Many of its papers were published in *Folia Canonica* 4 (2001).

¹⁰² 2nd Colloquy of Teachers of Oriental Canon Law, *Criteri per l'identificazione del fenomeno della "Ecclesia sui iuris"*, Košice (Slovacchia) 5-7 March

Venice,¹⁰³ Rome,¹⁰⁴ Nyíregyháza-Uzgorod,¹⁰⁵ Ragusa,¹⁰⁶ Bratislava¹⁰⁷ and Rome.¹⁰⁸

Now, let's have a quick look at some of the topics of debate in the doctrine throughout these last twenty years.

b) Interrelation between Codes

The criteria of interrelation between the CIC and the CCEO have been studied by many authors.¹⁰⁹ I will set out the main items briefly.

2004. Its proceedings have been published in L. OKULIK (ed.), *Le Chiese 'sui iuris': Criteri di individuazione e delimitazione*, Atti del Convegno di Studio svolto a Košice (Slovacchia), 6-7.03.2004, Marcianum Press, Venezia 2005.

¹⁰³ Congress, «Nuove terre e nuove Chiese». *Le comunità di fedeli orientali in Diaspora*, Istituto di Diritto Canonico San Pio X, Venezia 23-25 aprile 2005. Its proceedings have been published in L. OKULIK (ed.), *Nuove terre e nuove Chiese – Le comunità di fedeli orientali in diaspora*, Marcianum Press, Venezia 2008.

¹⁰⁴ Symposium, *Diritto particolare nel sistema del CCEO. Aspetti teorici e produzione normativa delle Chiese orientali cattoliche*, Pontificio Istituto Oriental, Roma 28-30 April 2006. Its proceedings have been published in S. MARINČÁK (ed.), *Diritto particolare nel Sistema del CCEO*, o.c.

¹⁰⁵ Congress, *Scienza canonistica orientale – personaggi e dottrine*, Institute St. Athanasius, Nyíregyháza (Hungary) – Greek-Catholic Academy of Uzgorod, Uzgorod (Ukraina), 20-22 April 2007.

¹⁰⁶ Congress, *L'iniziazione cristiana nel CCEO*, Istituto Teologico Ibleo, Ragusa 24-27 June 2008.

¹⁰⁷ Symposium, *La divina Eucaristia nel Diritto canonico orientale*, Bratislava 14-17 April 2009.

¹⁰⁸ Congress, *Strutture sovra episcopali nelle Chiese orientali: Riflessione teoretica e prassi, bilancio dell'epoca del CCEO*, Pontificia Universidad Urbaniana, Roma 17-18 April 2010.

¹⁰⁹ Cfr. M. BROGI, "Il Nuovo Codice orientale e la Chiesa latina," in *Antonianum* 66 (1991), p. 591-612; F.J. URRUTIA, *Canones preliminares Codicis (CIC). Comparatio cum canonibus praeliminaribus Codicis Canonum Ecclesiarum Orientalium (CC)*, in *Periodica* 81 (1992), p. 158; D. GARCÍA-HERVÁS, *La significación para la Iglesia del nuevo Código Oriental*, in *Atti del Congresso internazionale «Incontro fra canonici d'oriente e d'occidente»*, vol. 2, a cura di R. Coppola, Bari 1994, pp. 41-47; C.G. FÜRST, "Interdipendenza del Diritto Canonico Latino ed Orientale", in AA.VV., *Il Diritto Canonico Orientale nell'ordinamento ecclesiale*, a cura di K. Bharanikulangara, Città del Vaticano 1995, p. 13-33; J. OTADUY, "Comentario al c. 1", in A. MARZOA - J. MIRAS - R. RODRÍGUEZ-OCAÑA (eds.), *Comentario exegético al código de Derecho Canónico*, vol. 1, Eunsa, Pamplona 1996, p. 258; P. GEFAELL, "Relaciones entre los dos códigos del único "Corpus iuris canonici", in *Ius Canonicum* 39 (1999), pp. 605-626 ; J. ABBASS, "CCEO and CIC in Comparison," in G. NEDUNGATT (ed.), *A Guide to the Eastern Code*, pp. 882-888; D. SALACHAS, "Canoni preliminari", in P.V. PINTO (ed.), *Commento al Codice dei Canonici delle Chiese Orientali*, LEV, Città del Vaticano 2001, p. 4; L. LORUSSO,

b-1 Direct Indication, *ex natura rei* Application, and Indirect Entailment¹¹⁰

The canons of the CCEO apply to the Latins only if expressly established so.¹¹¹ But there are many other canons of the CCEO in which it would be logical to implicate also the Latin Church but which do not mention it explicitly (ex. gr. CCEO can. 32 § 2; can. 916 § 4). Nevertheless, most authors claim that an indication can be made expressly but implicitly, as to the “expressed” way, only the “tacit” way is opposed and, therefore, an indication made expressly could as much be explicit as implicit.¹¹² We should establish strictly in what occasions the expressed-implicit indication occurs, because the Commission for the revision of the Eastern code wished that the cases of express indication were absolutely *taxative*.¹¹³ In this sense, it is reasonable that each norm that expressly talks about the “Churches *sui iuris*” in a context of inter-ritual relations, also includes implicitly the Latin Church. Another possibility would be to cancel the word “*expresse*” of can. 1 of the CCEO.

The Latin code applies explicitly to the Eastern in many of its canons.¹¹⁴ But CIC can. 1 – parallel to the CCEO can. 1 – does not have any clause that limits the application of the Code to the cases of an expressly made indication and, for that reason, it would seem to give more freedom in establishing when a Latin canon is tacitly applicable to the Eastern faithful, nevertheless, it would be logical that the limits of application of the CIC were similar to those of the CCEO.

“L’ambito d’applicazione del Codice dei Canoni delle Chiese Orientali. Commento sistematico al can. 1 del CCEO,” in *Angelicum* 82, 2 (2005) pp. 451-478; etc.

¹¹⁰ Cfr. M. BROGI, “Il Nuovo Codice orientale e la Chiesa latina,” in *Antonianum* 66 (1991), p. 591-612; J. PRADER, *La legislazione matrimoniale latina e orientale*, ED, Roma 1993, p. 22-26;

¹¹¹ Canons in which CCEO indicate expressly the Latin Church: CCEO cc. 37, 41, 207, 322, 432, 696, 830, 916 §5, 1465.

¹¹² Cfr. R. METZ, “Preliminary Canons (cc. 1-6),” in G. NEDUNGATT (ed.), *A Guide to the Eastern Code*, pp. 67-80 [here, p. 72]; J. ABBASS, *CCEO and CIC in Comparison*, p. 882; G. NEDUNGATT, *The Spirit of the Eastern Code*, Rome - Bangalore 1993, 102; L. LORUSSO, *L’ambito d’applicazione del Codice dei Canoni delle Chiese Orientali. Commento sistematico al can. 1 del CCEO*, in «*Angelicum*» 82, 2 (2005) 451-478 [here, p. 451].

¹¹³ *Nuntia* 22 (1986), p. 22, cfr. also *ibid.* p. 13.

¹¹⁴ Cfr. CIC cc. 111, 112, 214, 372 §2, 383 §2, 450 §1, 476, 479 §2, 518, 535 §2, 846 §2, 923, 991, 1015 §2, 1021, 1109, 1127 §1, 1248.

According to can. 1 of the CIC 1917¹¹⁵ a Latin canon could be applied to the Eastern faithful “by the nature of the thing” (*ex natura rei*), but this clause was eliminated from the CIC 1983 and from the CCEO,¹¹⁶ nevertheless there are still those who keep on appealing to it,¹¹⁷ although many of the examples mentioned by those authors are rather cases of implicit indication, indirect entailment or resource to the analogy in cases of legal omission.

The indirect relation between both codes may happen in inter-ritual businesses (ex. gr. marriages and other sacraments)¹¹⁸ in which, on the one hand, each part regulates according to its own norm (matrimonial impediments, etc.) but, on the other, the unitary external acts must be carried out in such a way as to be recognized by both disciplines (ex. gr. the blessing of the *priest* in the canonical form of marriage).

b.2. Interpretation of a dark Norm (CIC can. 17 - CCEO can. 1499)

In order to interpret a norm which is not very clear, it is possible to resort to the “parallel passages,” in which the mind of the legislator is perhaps more evident. Most authors accept the resource to the other code as a parallel passage. For example, the final clause of CIC can. 1109 can be well made clear with the Latin text of the CCEO can. 829, as we will see.

Nevertheless, it is necessary to bear in mind that we cannot give an extensive interpretation of the penal laws or of those that limit the free exercise of rights or are an exception (CIC can. 18 - CCEO can. 1500). In addition to this, the intercodicial interpretation is not possible if it is clear that in a given norm the *mens legislatoris* has wanted to make it different for the Eastern (due to its being a peculiarity of the Eastern tradition).

¹¹⁵ CIC 1917, can. 1: «Licet in Codice iuris canonici Ecclesiae quoque Orientalis disciplina saepe referatur, ipse tamen unam respicit Latinam Ecclesiam, neque Orientalem obligat, nisi de iis agatur, quae ex ipsa rei natura etiam Orientalem afficiunt».

¹¹⁶ PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS REDIGENDO, *Revisione dei canoni delle singole sezioni - Canones praeliminares*, Nuntia 22 (1986), pp. 12-14.

¹¹⁷ Cfr. D. SALACHAS, “Problematiche interrituali nei due codici orientale e latino,” in *Apollinaris* 75 (1994), pp. 635-690 [here, p. 655].

¹¹⁸ P. ej. P. ERDÖ, “Questioni interrituali (interecclesiali) del diritto dei sacramenti (battesimo e cresima),” in *Periodica* 84 (1995), p. 317-319.

b.3. Possibility of there Being an Auxiliary Source by Legal Analogy (CIC can. 19)

In case of legal gap, CIC can. 19 points out the suppletive sources of Law, among which we find the resource to the laws given on similar cases. Although some authors have affirmed that the legal analogy cannot be used between both codes, since they belong to two different legal systems, I think, however, that we can resort to them, because those legal systems are not sovereign and are within the unique primary legal system of the Church.

Although the CCEO can. 1051 does not make any reference to "*leges latae in similibus*," I think that we can apply the legal analogy to overcome an omission in the CCEO, as it is an essential legal technique and it was already mentioned in the third principle, n. 3, of the Guidelines for the Revision of the Oriental Canon Law.¹¹⁹

Obviously, legal analogy in case of penal, invalidating or disqualifying laws cannot occur. Moreover, we must verify that it is a true legal vacuum and not of a case of different legislation.

An example (already surpassed after Instr. *Dignitas Connubii* Art. 4) could be found in the CCEO can. 781 which offered the ecclesiastical judge a nonexistent criterion in the CIC to judge the marriages of the non-Catholics.

b.4. Abrogation Appealing to a Better Expression of the Divine Law?

It is not appropriate that a private person should change the scope of a codified norm by appealing to an apparently better deepening into the Divine Law in the other Code. Indeed, when there is a norm given by the Supreme Legislator, the private interpreter cannot declare himself in authority to consider the norm of a Code to be of Divine Law and thus to change by his own initiative the parallel norm of the other. For example: unlike CIC can. 1102, the CCEO can. 826 establishes the invalidity of a marriage celebrated under any type of condition, something that would seem more coherent with the unconditional nature of the self-donation in marriage, but this personal opinion does not allow us to change the norm of the CIC.

¹¹⁹ Cfr. PCCICOR, "Guidelines for the Revision of Oriental Canon Law, 3rd principle, n. 3," in *Nuntia* 3 (1976), p. 19.

Anyway, it is clear that one Code can offer ideas on *iure condendo* to the other discipline sphere, since it has already happened, for example, with the CCEO can. 32 § 2 that brought about the decree of the Secretary of State of 1992,¹²⁰ or the CCEO can. 780 § 2 that improves CIC can. 1059 and has impelled the norm of Instr. *Dignitas Connubii* Art. 2 § 2 (that, anyway, was already part of the rotal jurisprudence).

Let us now have a brief look at a few comparisons between both disciplines.

c) Some Comparisons between Eastern and Latin Disciplines:

c.1. On Canonical Norms:

The CIC talks about “universal” laws when it is actually referring only to the Latin Church (cfr. CIC cc. 8, 12, 13). The CCEO speaks, instead, of laws “given by the Supreme authority” (CCEO cc. 1491) or of laws “produced by the Apostolic See” (CCEO can. 1489), and it uses the expression “common Law” referring to all the laws and customs of the universal Church and the laws common to all the Eastern Churches (CCEO can. 1493 § 1). I think this could help to improve the perspective. The interesting CCEO can. 1492 establishes the criteria to know when the laws of the Supreme Legislator apply to the Eastern faithful.

In the CCEO, we cannot find generic canons on general decrees nor on instructions, but there are canons that speak of specific cases of general decrees and instructions. So, in my opinion, it will be necessary to apply by analogy the criteria established by the Latin Code on these issues (CIC cc. 29-34).

It is interesting to verify that in Particular Law as long as the Superior Law is not contradicted, the *sui iuris* Oriental Churches do not have restrictive limits to their legislative capacity¹²¹: at least Patriarchal and Major archiepiscopal Churches undoubtedly enjoy that general legislative capacity, and I think also Metropolitan *sui*

¹²⁰ SECRETARY OF STATE, *Rescriptum ex audientia Sanctissimi*, 26th November 1992, in AAS 85 (1993), p. 81.

¹²¹ Cfr. SZABÓ, P., *Autonomia disciplinare come carattere del fenomeno dell' Ecclesia sui iuris: ambito e funzioni*, in L. OKULIK (ed.), *Le Chiese sui iuris. Criteri di individuazione e delimitazione*, pp. 67-96; P. SZABÓ, “Ancora sulla sfera dell'autonomia disciplinare dell'Ecclesia sui iuris,” in *Folia Canonica* 6 (2003), pp. 157-213.

iuris Churches, but not the other minor Churches *sui iuris*¹²². Today many catholic Oriental Churches have begun to promulgate their own new Particular Laws, but there is still a lot to do.¹²³ It is to praise the good work done especially by the Syro-Malabar Church in this regard.

c.2. On Private Juridical Persons:

Unlike CIC can. 116, in the CCEO private juridical persons do not exist, and this raises problems when vindicating the rights of private associations, that do really exist (cfr. CCEO can. 573) but cannot have juridical personality. So, I think that in this case we should apply by analogy CIC can. 310 (subjects without personality), nonexistent in the CCEO. In Eastern Law, the goods pertaining to all juridical persons are always "ecclesiastical goods" (CCEO can. 1009 § 2).

c.3. On Ascription to a Church *sui iuris* and Change from One to Another

The Latin parish priest is expressly bound by the norm of the CCEO cc. 37 and 687, and therefore, he must indicate in the book of baptisms to which Church the newly baptized belongs. It seems to me that this is not known by many Latin parish priests, and this ignorance might be a source of several problems.

The afore-mentioned Rescripto *ex audientia Sanctissimi* of 26 November 1992 establishes for Latin discipline the criterion of CCEO can. 32 § 2 (presumed consent of the Apostolic See), allowing a faithful to change from the Latin Church to an Eastern Church, but not the opposite.¹²⁴ Even so, there are some¹²⁵ who affirm that this is possible including "expressly but implicitly" the Latin Church in the

¹²² Cfr. P. GEFAELL, "La capacità legislativa delle Chiese orientali ed il CCEO", in PONTIFICAL COUNCIL FOR THE LEGISLATIVE TEXTS, *Il Codice delle Chiese Orientali - la storia, le legislazioni particolari, le prospettive ecumeniche*, (under publication).

¹²³ S. MARINČAK (ed.), *Diritto particolare nel Sistema del CCEO*, o.c.. Also the afore mentioned recent Congress (8-9 November 2010), organized by the PCTL for celebrating the 20th anniversary of CCEO, dedicated a full session to analyze and stimulate the legislative activity of the Oriental Churches.

¹²⁴ Cfr. M. BROGI, "Licenza presunta della Santa Sede per il cambiamento di Chiesa "sui iuris", in *Revista Española de Derecho Canónico*, 50 (1993), p. 667.

¹²⁵ A. KAPTIJN, "L'iscription à l'Eglise de droit proper," in *L'Année Canonique* 40 (1998), pp. 49-70, p. 62 ; L. LORUSSO, *Gli orientali cattolici e i pastori latini - Problematiche e norme canoniche*, (Kanonika 11), PIO, Roma 2003, p. 73.

CCEO can. 32 § 2. Anyway, since now, the praxis of the Eastern Congregation does not allow an Eastern to change to the Latin Church with this method.¹²⁶

c.4. On Marriage Law ¹²⁷

Many authors¹²⁸ have written on the minister of the sacrament of marriage, so I will not dwell much in this. It is enough to point out that in 1996 the instruction of the Congregation for the Eastern Churches on liturgy – when speaking of the role of the priest who blesses a marriage – affirmed that “to bless means to act as true minister of the sacrament, by virtue of his priestly sanctifying power.”¹²⁹ but we must bear in mind that that document had been written before the definitive and official version of the Catechism of the Catholic Church (1997), that in its n. 1623 corrected the first vernacular version of 1992 cancelling all reference to the priest as minister of the sacrament of marriage.¹³⁰

¹²⁶Cfr. D. SALACHAS & K. NITKIEWICZ, *Rapporti interecclesiali tra cattolici orientali e latini: Sussidio canonico-pastorale*, PIO, Roma 2007, p. 138.

¹²⁷ On matrimony see, for example, U. NAVARRETE, “Ius matrimoniale latinum et orientale. Collatio codicem latinum inter et orientalem,” in *Periodica* 80 (1991) pp. 609-639; AA.VV., *Il matrimonio nel Codice dei Canonici delle Chiese Orientali*, (Studi giuridici 32), Libreria editrice vaticana, Città del Vaticano 1994; etc.

¹²⁸ T. RINCÓN-PÉREZ, “Los ministros del sacramento del matrimonio según la edición típica latina del Catecismo de la Iglesia Católica”, in P.J. VILADRICH, J. ESCRIVÁ -IVARS, J.I. BAÑARES & J. MIRAS (eds.), *Matrimonio. EL matrimonio y su expresión canonica ante el III milenio*, Eunsa, Pamplona 2000, pp. 185-192; U. NAVARRETE, “De Ministro sacramenti matrimonii in Ecclesia latina et in Ecclesiis orientalibus,” in *Periodica* 84 (1995) pp. 714-733; G. NEDUNGATT, “Minister of the sacrament of marriage in the Eastern and the West, in *Periodica* 90 (2001) pp. 305-388; J. PRADER, *Il matrimonio in oriente e occidente*, (Kanonika 1), 2nd ed., Roma 2003, pp. 21-22.

¹²⁹ CONGREGAZIONE PER LE CHIESE ORIENTALI, *Istruzione per l'applicazione delle prescrizioni liturgiche del Codice dei Canonici delle Chiese Orientali*, Libreria Editrice Vaticana, Città del Vaticano 1996, n. 82.

¹³⁰ *Catechism of the Catholic Church, 1st English version*, n. 1623: «In the Latin Church, it is ordinarily understood that the spouses, as ministers of Christ's grace, mutually confer upon each other the sacrament of Matrimony by expressing their consent before the Church. In the Eastern liturgies the minister of this sacrament (which is called “Crowning”) is the priest or bishop who, after receiving the mutual consent of the spouses, successively crowns the bridegroom and the bride as a sign of the marriage covenant». Nevertheless, in the Latin official version of 1997, this text was changed for the following: «n. 1623. Secundum traditionem latinam, sponsi, tamquam ministri gratiae Christi, sibi mutuo Matrimonii conferunt sacramentum,

In the CCEO there are impediments which do not exist in the CIC (abduction of the man, spiritual relationship, affinity in 2nd collateral degree). As we have already said, such impediments cannot be applied by analogy in the Latin discipline.

We have already referred to the marriage based on a condition, that, in CCEO can. 826, is always null and void, although the condition be verified. On this there is enough literature.¹³¹

In order to assist the marriage of two Eastern persons who do not have their own hierarchy in their place of residence, the Spanish Episcopal Conference has given a directive which shows the difficulty of interpretation of CIC can. 1109. Indeed, the aforementioned document "Directives for the pastoral attention of the Eastern Catholics," of 21st November 2003, in its n. 29, affirms that "in order to attend and to bless the canonical marriage of two Eastern Catholics, the Ordinary of the place and the Latin parish priest are, in themselves, incompetent, even when the contracting parties are subjects of them,"¹³² but the Latin text of the CCEO can. 829 makes clear that the Ordinary and the parish priest are incompetent only for those who are not their subjects.¹³³

It is well known the dispute on the validity or not of the assistance of the Latin deacon at those marriages in which there is at least one Eastern party. Although the Latin deacon can bless marriages (LG n. 29; CIC can. 1108), I am of the opinion that such assistance would have to be null and void, simply because it does not fulfill the legal requirement of the blessing "of the priest" foreseen by CCEO can. 828. Nevertheless, those marriages celebrated up to now have to be considered as valid because in doubt of Law, merely ecclesiastical law does not oblige (CIC can. 14 - CCEO can. 1496).

suum consensum coram Ecclesia significantes. In traditionibus Ecclesiarum Orientalium, sacerdotes – Episcopi vel presbyteri – testes sunt consensus mutuo ab sponsis praestiti (cf. CCEO, can. 817), sed etiam eorum benedictio ad validitatem sacramenti est necessaria (cf CCEO, can. 828)».

¹³¹ Cfr., for example, J. PRADER, *Il consenso matrimoniale condizionato*, in AA.VV., *Il matrimonio nel Codex Canonum Ecclesiarum Orientalium*, Città del Vaticano 1994; P. GEFAELL, *Il matrimonio condizionato durante la codificazione piobenedettina, fonte del c. 826 CCEO*, in «*Ius Ecclesiae*», 7 (1995) pp. 581-625.

¹³² «Para asistir y bendecir el matrimonio canónico de dos católicos orientales, el Ordinario del lugar y el párroco latinos son, de suyo, incompetentes, aunque los contrayentes sean súbditos» SPANISH EPISCOPAL CONFERENCE, *Orientaciones para la atención pastoral de los católicos orientales*, pp. 56-63.

¹³³ Cfr. P. GEFAELL, *Nota ai documenti della Conferenza Episcopale Spagnola Orientaciones*, pp. 868-870.

Contrary to what happened till now in the CIC, in the CCEO those who have formally left the Catholic Church are not exempt of the impediment of disparity of cult (CCEO can 803 § 1, different from CIC can 1086 § 1), nor of canonical form (CCEO can. 834 § 1, different from CIC can. 1117), nor of the prohibition of mixed marriage (CCEO can. 813 – CIC can. 1124).¹³⁴ Nevertheless, Benedict the XVIth with his motu proprio *Omnium in mentem* of 26th October 2009¹³⁵ has cancelled from the corresponding Latin canons, the clause that exempted those who have left the Catholic Church with a formal act and, therefore, has caused these Latin canons to be exactly equal to the parallels of the CCEO.

c. 5. In Penal Law ¹³⁶

As it is known, in the CCEO there are not *latae sententiae* penalties but reserved sins (CCEO cc. 727-729). This Eastern discipline, among other things, has the advantage that, when *in urgentioribus* the priest gives the absolution, the penitent does not have to return to the confessor, because in many cases it is difficult that priest and penitent should ever meet again.

Also, it is known that in the CCEO there is not a parallel canon to CIC can. 1399. In this way the principle of legality is better respected. In order to solve unexpected and exceptional cases, the CCEO can. 1406 § 2 reminds us that the admonition with a penalty threat is equivalent to a penal precept, that legitimates the punishment if broken.

¹³⁴ Cfr., J. PRADER, *Il matrimonio in Oriente e Occidente*, Roma 2003, pp. 116, 244-245 and 247. In Latin environment, before appearing the motu proprio, Aymans was already in favour of the non exemption: W. AYMANS, "El problema de las cláusulas de defección en el derecho matrimonial canónico. Informe a favor de la supresión de las causas de exención debidas a un actus formalis defectionis ab Ecclesia catholica (cc. 1086 § 1, 1117 y 1124 CIC)," in *Revista Española de Teología* 62 (2002), pp. 169-184.

¹³⁵ BENEDICT XVI, m.p. *Omnium in mentem*, 26.X.2009, in AAS 102 (2010), pp. 8-10.

¹³⁶ Cfr. G. DI MATTIA, "La normativa di diritto penale nel «Codex iuris canonici» e nel «Codex canonum ecclesiarum orientalium»", in BAHARANIKULANGARA, K. (ed.), *Il Diritto Canonico Orientale nell'ordinamento ecclesiale*, Libreria Editrice Vaticana, Città del Vaticano 1995, pp. 191-210; A. D'AURIA, "L'imputabilità nel diritto penale. Un'analisi comparata tra il CIC e il CCEO," in *Apollinaris* 75 (2002), pp. 93-157; C. G. FÜRST, "Diritto penale e carità," in CONGREGAZIONE PER LE CHIESE ORIENTALI (ed.), *Ius Ecclesiarum vehiculum caritatis*, pp. 515-534; P. V. AIMONE, "Un tentativo di confronto: le norme penali nel CIC e nel CCEO", in CONGREGATION FOR THE ORIENTAL CHURCHES (ed.), *Ius Ecclesiarum vehiculum caritatis*, pp. 623-641.

c.6. In Procedural Law

It is interesting to verify the possibilities of the collaboration between the Latin Church and the Eastern Churches in the ecclesiastical courts. For example, according to the CCEO can. 1102 § 1 judges of another rite can be admitted in a tribunal. In addition to this, according to the CCEO can. 1071 and CIC can. 1418, the court can request the collaboration of a tribunal of another rite for the instruction of the case. It is known that a bishop cannot directly entrust his cases to a court of another Church *sui iuris*, but he could request from the Apostolic Signature the prorogation of the competence of that tribunal, as it frequently happens. In addition to this, the bishop could appoint delegated judges who already belong to the tribunal of another rite, but these would judge in behalf of the delegating bishop, not of their own bishop.¹³⁷

In the CCEO, the norms on the competence of the Ordinary Tribunal of the Patriarchal Church have raised doubts about the competence of the Roman Rota for the cases initiated within the territory of a Patriarchal Church. The question is object of debate¹³⁸ and, although

¹³⁷ Cfr. P. GEFAELL, "Tribunali delle Chiese sui iuris non patriarcali," in CONGREGATION FOR THE ORIENTAL CHURCHES (ed.), *Ius Ecclesiarum vehiculum caritatis*, pp. 555-572.

¹³⁸ Cfr. Z. GROCHOLEWSKI, "I tribunali", in AA.VV., *La Curia Romana nella Cost. Apostolica Pastor Bonus*, Città del Vaticano 1990, 416-417; I. ŽUŽEK, "The Patriarchal Structure: According to the Oriental Code", in C. GALLAGHER (ed.), *The Code of Canons of the Oriental Churches. An Introduction*, Roma 1991, p. 48; J. LLOBELL, "Sul diritto di appello presso la Rota Romana," in *Ius Ecclesiae* 5 (1993) 607-609; IDEM, "Perfettibilità e sicurezza della norma canonica. Cenni sul valore normativo della giurisprudenza della Rota Romana nelle cause matrimoniali", in PCITL, "*Ius in vita et in missione Ecclesiae.*" *Acta Symposii Internationalis Iuris Canonici*, Città del Vaticano 1994, pp. 1231-1258; A. THAZATH, "The Superior and Ordinary Tribunals of a 'sui iuris' Eastern Catholic Church," in *Studia Canonica* 29 (1995) pp. 357-396; J. LLOBELL, "Le norme della Rota Romana in rapporto alla vigente legislazione canonica: la matrimonializzazione del processo. La tutela dell'ecosistema processuale; il principio di legalità nell'esercizio della potestà legislativa", in AA.VV. *Le «Normae» del tribunale della Rota Romana*, Città del Vaticano 1997, p. 68; R. FUNGHINI, "La competenza della Rota Romana", in AA.VV., *Le 'Normae' del Tribunale della Rota Romana*, Roma 1997, pp. 163-164; M. MADDAPALLIKUNNEL, *The Tribunals of a Major Archiepiscopal Church. (A Study about the composition and competence of Major Archiepiscopal Tribunals according to CCEO with particular reference to the Statutes of these Tribunals of the Syro-Malabar Church)*, Thesis ad Doctoratum in P.U.S.C., Roma 1997 (pro manuscripto), pp. 130-151 [specially, pp. 140-146]; C. G. FÜRST, "Lex prior derogat posteriori? Die Ap. Konst. 'Pastor Bonus', die Römische Rota als konkurrierendes Gericht II. Instanz bzw. als III. (und ggf. weitere) Instanz zu Gerichten einer Orientalischen Kirche eigenen Rechts und der CCEO", in *Winfried*

in my opinion the CCEO can. 1063 is clear on Rota's incompetence, nevertheless I think that – whatever the solution may be – it is necessary to protect the right of appeal of the Eastern faithful and also to guard the unity of the jurisprudence as a suppletive source of Law.¹³⁹

d) The Hierarchical Organization of Oriental Churches

The promulgation of the Code of Canons of the Oriental Churches has represented a great promotion of the Eastern ecclesiastical organization. Thanks to this, many of the Eastern Churches have been raised to a higher rank, for example: Syro-Malabar, Rumanian and Syro-Malankara Churches have become Major Archiepiscopal Churches; Slovak Church became a Metropolitan Church *sui iuris*, and even Macedonian Church gained the *sui iuris* status.

During these years, we have tried to deepen in the concept and the criteria of identification of the Churches *sui iuris*.¹⁴⁰ The close relationship between this sort of ecclesiastical structure and a certain people (CCEO can. 28) raises, among many others, the question of to what extent these are structures for the complementary pastoral care of the faithful or for common and ordinary pastoral.

Another field of study is the juxtaposition of the hierarchical structures in the same territory. The conference of Budapest 2001 dealt with this especially.¹⁴¹ The necessity of pastoral coordination in a territory explains the figure of the Assembly of Hierarchs of diverse Churches *sui iuris* as foreseen in CCEO can. 322: nevertheless this kind of Assembly does not exist in places where, perhaps, it would be advisable.¹⁴²

Schultz in memoriam. Schriften aus Kanonistik und Staatskirchenrecht, Sonderdruck 1999, pp. 269-283; J. ABBASS, "The Roman Rota and Appeals from Tribunals of the Eastern Patriarcal Churches," in *Periodica* 89 (2000) pp. 439-490; J. LLOBELL, "Title XXV: Contentious Trials in the Codex Canonum Ecclesiarum Orientalium (Title 25, Canons 1185-1356)", in G. NEGUNGATT (ed.), *A Guide to the Eastern Code*, pp. 766-767; J. LLOBELL, "La competenza della Rota Romana nelle cause delle Chiese cattoliche orientali," in *Quaderni dello Studio Rotale*, 18 (2008), pp. 15-57.

¹³⁹ It is well known that CCEO can. 1501 uses the words "ecclesiastical jurisprudence", instead of "the jurisprudence of the Roman Curia" as in CIC can. 19.

¹⁴⁰ L. OKULIK (ed.), *Le Chiese 'sui iuris': Criteri di individuazione e delimitazione*, Atti del Convegno di Studio svolto a Košice (Slovacchia), 6-7.03.2004, Marcianum Press, Venezia 2005.

¹⁴¹ CONSOCIATIO INTERNATIONALIS STUDIO IURIS CANONICI PROMOENDO – SOCIETY FOR THE LAW OF THE ORIENTAL CHURCHES, «Territorialità e personalità nel diritto canonico e ecclesiastico», o.c.

¹⁴² P. SZABÓ, "Convento dei Gerarchi 'plurium Ecclesiarum sui iuris' (CCEO can. 322). Figura canonica dello 'ius commune' e la sua adattabilità alla situazione dell'Europa Centro-orientale", in H. ZAPP – A. WEISS – S. KORTA (eds.), *Ius canonicum in Oriente et in Occidente*, pp. 587-612.

The controversy on the territorial limitation of the power of Patriarchs (CCEO can. 78 § 2) is well-known.¹⁴³ Up to now, the Apostolic See has considered it advisable to maintain that limit.¹⁴⁴

In the CCEO, the figure of the personal prelatures does not expressly exist, but I think that it is perfectly possible to identify them with personal exarchates (CCEO can. 311).¹⁴⁵

We could also speak of the interesting Eastern method for the election of bishops within the Patriarchal Church (CCEO cc. 110 § 3, 181-189 and 947-957), but I do not want to extend myself on this too much.¹⁴⁶

e) Pastoral Care of Eastern Faithfuls Outside the Territory of Their Church *sui iuris* (what some call the “diáspora”)¹⁴⁷

This deals mainly with the pastoral attention given to the Eastern by the Latin Church.

In this sense, it is good to know that §§ 4 and 5 of the CCEO can. 916, which do not exist in the CIC, establish the criteria to designate the proper parish priest and the Hierarch (Ordinary) for the Eastern faithfuls in those places where they do not have a Hierarch nor a parish priest of their own rite. If that place is within the territory of

¹⁴³ C. VASIL', "Modificazioni nell'estensione della potestà dei Patriarchi: identificazione dei limiti della loro competenza amministrativa secondo il CCEO," in *Folia Canonica* 5 (2002), pp. 293-304.

¹⁴⁴ Cfr. A. card. SODANO, "Discorso ai partecipanti al Simposio," in CONGREGATION FOR THE ORIENTAL CHURCHES (ed.), *Ius Ecclesiarum vehiculum caritatis*, pp. 587-591.

¹⁴⁵ Cfr. P. GEFAELL, "Enti e Circostrizioni meta-rituali nell'organizzazione ecclesiastica", in H. ZAPP - A. WEISS - ST. KORTA (eds.), *Ius canonicum in oriente et occidente*, pp. 493-508.

¹⁴⁶ Cfr. D. ANDRÉS GUTTIÉREZ (ed.), *Il processo di designazione dei Vescovi. Storia, legislazione, prassi*. Atti del X Symposium canonistico-romanistico 24-28 aprile 1995 («Utrumque Ius» 27), Roma 1996.

¹⁴⁷ Cfr. Cl. PUJOL, "Conditio fidelis orientalis ritus extra suum territorium," in *Periodica* 73 (1984), pp. 489-504; J. FARIS, *Pastoral Care of Migrants and the Code of Canons of the Eastern Churches*, in *Proceedings of the CLSA 2001*, pp. 85-99; L. OKULIK, *Aspetti giuridici della cura pastorale dei fedeli di rito orientale nelle diocesi latine. (Spunti a partire dall'esortazione ap. Pastores gregis)*, in A. CATTANEO, *L'esercizio dell'autorità nella Chiesa. Riflessioni a partire dall'esortazione apostolica «Pastores gregis»*: Atti del Convegno di Studio svolto a Venezia, 12. V. 2004, Venezia 2005, pp. 149-159; L. LORUSSO, *Gli orientali cattolici e i pastori latini: problematiche e norme canoniche*, (*Kanonika* 11), Roma 2003; A. VIANA, "Estructuras personales y colegiales de obierno. Con referencia especial al problema de la movilidad humana y de la diáspora de los católicos orientales," in *Folia canonica* 7 (2004) pp. 7-48. Moreover, see the papers of the Congress «Cristianos orientales y pastores latinos» Santa Croce Pontifical University, Rome 14-15 April 2010 (under publication).

an eparchy or exarchy of their own Church *sui iuris*, then, they will be subjects of that Hierarchy and not of the Latin Ordinary of that territory (CCEO can. 916 § 1). In this case, if they do not have their own parish priest, the Eastern bishop will have to appoint a parish priest of another Church *sui iuris*, with the consent of the bishop of that parish priest (CCEO can. 916 § 4). But, what would happen if the Eastern and the Latin bishops do not reach an agreement? In my opinion the direct person in charge of those faithful will be the Eastern bishop himself. From 1982, in U.S.A. there was a special law enjoining that in those places without their own Eastern parish priest, the Latin parish priest was automatically in charge of those faithful. From my point of view, that norm would have to be considered abrogated by the CIC and the CCEO, because they rearrange the matter *ex integro* (CIC can. 6 § 1, 4^o - CCEO can. 6, 1^o), but there are some authors who affirm that this law is still in force.¹⁴⁸

If a territory does not belong to any circumscription of the Church *sui iuris* of the interested faithful, the Hierarchy of those faithful will be the one of another Church *sui iuris* present in the place, also the Latin Church (CCEO can. 916 § 5). In this paragraph the Hierarchy is mentioned, but not so the parish priest, thus the Latin parish priest is not the parish priest of the Eastern faithful residing in his parish, unless he receives a delegation or specific mandate from his Ordinary.

Following the directives of OE n. 1, CCEO can. 39 reminds us that we must guard and promote the rites of the Eastern Churches. This duty is especially important in those territories where the Easterners do not have their own Hierarchy. Indeed, these Eastern faithful continue being Eastern in spite of being entrusted to the pastoral care of a Latin Ordinary (cfr. CCEO can. 38); and all the faithful must know their own rite and are held to observe it everywhere (cfr. CCEO can. 40 § 3): This is especially relevant for clerics and members of institutes of consecrated life (CCEO can. 40 § 2).

For that reason, diocesan bishops have the serious obligation to provide for the preservation of their subjects' own rite even if they belong to another Church *sui iuris*, and must favour the relations of those faithful with the superior authority of their own Church (CCEO can. 193 § 1 - CIC can. 383 §§ 1-2). In order to achieve this, for example, both codes foresee to appoint priests or parish priests of the

¹⁴⁸ Cfr. F. MARINI, "Determination of Pastors for Eastern Catholics in the United States", in *CLSA Advisory opinions 1994-2000*, Washington D.C. 2002, pp. 549-551.

same rite or even an Episcopal Vicar (CIC can. 383 § 2 = CCEO can. 193 § 2). The CCEO can. 193 adds a § 3, nonexistent in CIC can. 383, demanding that for such appointments the bishop should obtain the consent of the Patriarch of those faithful: but as this is not mentioned in the Latin canon and, on the other hand, the Eastern canon does not name the Latin Church expressly, some consider that they are not obliged to obtain the consent of the Patriarch. As we have already said, the instruction *Erga migrantes*, n. 55 requests that in these cases the norm of the CCEO can. 193 § 3 should be applied by analogy to the Latin Church.

Another delicate matter is the celibacy of Eastern priests in the West. I do not want to enter this discussion. Suffices it to say that there has been, and there still is, great controversy.¹⁴⁹

d) Canon Law in the Relationship with the Orthodox

To conclude, I will just indicate the points that make reference to the relationship with the Orthodox Churches

The massive emigration of these last years has set new challenges for the pastoral care of the orthodox faithful in the West on the part of the Catholic Church. The Spanish Episcopal Conference has published an interesting document on the matter.¹⁵⁰

The CCEO can. 780 § 2 and 781 and of articles 2 and 4 of the *Dignitas Connubii*, approach the problem as to what extent the Catholic Church recognizes the jurisdiction of the orthodox bishops.¹⁵¹ From my point of view, a consequence of this recognition is the already mentioned decree of the Apostolic Signature of 3rd January 2007.¹⁵²

In close relation with what has been said in the previous paragraph, the declaration of the Apostolic Signature of 20th October 2006,¹⁵³ according to which the orthodox sentences of “annulment” of the marriage are not approved (as in fact they are of divorce), raises the

¹⁴⁹ Cfr. P. GEFAELL, *Clerical Celibacy*, in «Folia canonica» 4 (2001) 75-91; G. NEDUNGATT, “Celibate and Married Clergy in CCEO Canon 373,” in *Studia Canonica* 36 (1/2002), pp. 129-167; G. NEDUNGATT, “USA Forbidden Territory for Married Eastern Catholic Priests,” in *The Jurist* 63 (2003), pp. 139-170.

¹⁵⁰ SPANISH EPISCOPAL CONFERENCE, *Servicios pastorales a orientales no católicos. Orientaciones* (27-31 March 2006), o.c.

¹⁵¹ Cfr. P. GEFAELL, *Basi ecclesiologiche della giurisdizione delle Chiese ortodosse sui matrimoni misti*, in J. CARRERAS (ed.), *La giurisdizione della Chiesa sul matrimonio e sulla famiglia*, Roma 1998, pp. 127-148.

¹⁵² See above.

¹⁵³ See above.

question whether other orthodox sentences could not be recognized if they were not opposite to the Divine Law.¹⁵⁴

The possibility that the marriage of two orthodox faithful could be blessed by a catholic priest (CCEO can. 833) and, vice versa, that the marriage of two catholics celebrated with extraordinary form could be blessed by an orthodox priest (CCEO can. 832 § 2), encourages us to deepen in the meaning of that blessing. I personally think, such blessing does not mean that the priest “celebrates” that marriage, because he is not competent for the canonical form (neither the catholic priest for the marriage of orthodox faithful, nor the orthodox priest for the marriage of catholic faithful). It is just an annexed blessing to a marriage already celebrated with extraordinary form. Yet, this may not be fully understood by the Eastern people, as from the Eastern point of view that blessing is an essential part of marriage celebration.

Another interesting point is the possibility that a child of orthodox parents may be baptized by a catholic priest and that thus baptized it should be assigned to the orthodox Church (CCEO can. 681 § 5). On the contrary, in CIC can. 868 § 1, the minister of the baptism, in order to baptize lawfully, must have founded hope that the child to be christened will be educated in the catholic religion, and there are not any foreseen exception to this.

In a private answer in 2002, the Congregation for the Eastern Churches indicated that the orthodox minor of 14 years who is adopted by Latin parents becomes a catholic and Latin automatically.¹⁵⁵ I am not convinced by the reason given by the Congregation (because it makes reference to CCEO can. 29 but this canon deals with those not already baptized), nevertheless, we must have it in account as it is the praxis of the Roman Curia.¹⁵⁶

There is another praxis of the Eastern Congregation that raises questions: the one that considers that a child born to a mixed marriage is catholic even if it is baptized in the Church of the orthodox parent. I personally think that this is based on a less accurate interpretation of CCEO can. 29 § 1 that does not consider

¹⁵⁴ P. GEFAELL, “La giurisdizione delle Chiese ortodosse per giudicare sulla validità del matrimonio dei loro fedeli,” in *Ius Ecclesiae* 19 (2007), pp. 773-791.

¹⁵⁵ CONGREGATION FOR THE ORIENTAL CHURCHES, *Ukrainian Orthodox Infant Ascribed to Rite of Adoptive Parents*, in PEDONE, S. - DONLON, J. (eds.), *Roman Replies and CLSA Advisory Opinions* (2003), Washington D.C. D.C. 2003, 23-24.

¹⁵⁶ Cfr. P. GEFAELL, *L'ammissione alla piena comunione di quanti provengono da altre confessioni*, in AA.VV. *Iniziazione cristiana: profili generali* («Quaderni della Mendola» 16), Glossa, Milano 2008, pp. 155-172.

the change of context brought about by the CCEO can. 814 (corresponding to CIC can. 1125).¹⁵⁷

The CCEO can. 35 has provoked many discussions on the catholic Church *sui iuris* to which those who come to full communion with the catholic Church are ascribed. As it does not have an invalidity clause, many consider that this canon only affects the liceity of the assignment. Others¹⁵⁸ claim that, as it is a “legal fact” and not a “legal act,” this assignment is automatic to the Catholic Church *sui iuris* parallel to the one of provenance, and the allegiance to another one would be null and void (as long as it is not resorted to the Apostolic See). In my opinion, even if the second point of view protects more the Oriental Churches, the strict text of the law indicates that it should affect only the liceity.¹⁵⁹ At any rate, the competent legislator could provide otherwise in the future.

I could continue setting out interesting points arisen in these years about Eastern Law, but I think I would rather not make myself too long. The offered bibliographical references in this text can be useful to deepen in the exciting world of the discipline of the catholic Eastern Churches and their interrelation with the Latin Law.

¹⁵⁷ Cfr. SALACHAS, D., *Lo status giuridico del figlio minorenne nei matrimoni misti tra cattolici ed ortodossi. Un problema ecclesiologico, giuridico ed ecumenico*, in H. ZAPP - A. WEISS - S. KORTA (eds.), *Ius canonicum in Oriente et in Occidente*, pp. 743-758; ALHLERS, R., *Rituszugehörigkeit und Rituswechsel nach CIC und CCEO*, in *ibid.* pp. 423-432; KAPTIJN, A., “Le statut juridique des enfants mineurs nés des mariages mixtes catholiques-orthodoxes,” in *L’année canonique* 46 (2004), pp. 259-268; P. GEFAELL, “Matrimonio misto ed ascrizione ecclesiastica dei propri figli: una questione riaperta? Riflessioni su alcune considerazioni recenti,” in *Folia Canonica* 12 (2009), pp. 153-166.

¹⁵⁸ J. FARIS, *A Canonical Examination of the Acquisition, Consequences and Loss of Membership in a Church - A Catholic Perspective*, in «Folia Canonica» 4 (2001), pp. 135-153:148; V.J. POSPISHIL, *Eastern Catholic Church Law*, Second Revised and Augmented Edition, Saint Maron Publications, Staten Island (New York) 1996, p. 125; MARINI, ‘*Ipso iure*’ Adscription to a Catholic Church ‘*sui iuris*’ of Baptized Converts, in S. PEDONE & J. DONLON (eds.), *Roman Replies and CLSA Advisory Opinions* (2003), Washington D.C. 2003, pp. 114-116 [here, p. 115].

¹⁵⁹ Cfr. P. GEFAELL, *L’ammissione alla piena comunione*, o.c.