

## ORDINARIATES FOR THE EASTERN CATHOLIC FAITHFUL LACKING THEIR OWN HIERARCHY

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### Introduction

As part of our colloquium on “Eastern Christians and Latin Pastors” it would be unthinkable not to address the question of Ordinariates for the Eastern Catholic faithful. The historical accounts in the *Annuario Pontificio* teach us that Ordinariates are geographically-based structures set up for Eastern Catholic communities who do not have their own hierarchy in a given territory. They are led by a prelate who bears the title of “Ordinary,” named by the Holy See, who exercises jurisdiction over Eastern Catholics who do not have their own Bishop.

As far as the current Ordinariates are concerned, it must be noted that, in the majority of cases, the Eastern faithful are entrusted to an Ordinary belonging to a different Church *sui iuris* than that of the faithful in question. In general, these Ordinaries will come from the Latin rite<sup>1</sup>. This account shall therefore only cover this type of Ordinary, even though others do exist.

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<sup>1</sup> In its 2010 edition, the *Annuario Pontificio* gives two exceptions: the Ordinariate for Armenian Catholics in Eastern Europe, that exists since 1991, whose

In order to explore the issues involved, this essay will first briefly discuss the Ordinariates that have been in place for several decades before locating the origins of these institutions and situating them within the context of the law in place at the time they were constituted. Following this, we will study the historical factors leading to their establishment, their legal configuration before closing with an evaluation of these structures and a canonical-theological perspective of their role.

### 1. Status Questionis

Ordinariates for the Eastern faithful exist in many countries, in both Europe and Latin America. In chronological order, following the rubric on Ordinariates in the *Annuario Pontificio*, the first Ordinary was named in Romania in 1930. This Ordinary was appointed for Catholics of the Armenian rite residing in the country and jurisdiction over this flock was entrusted to an Ordinary chosen by the Holy See and directly accountable to the same. His title was “Apostolic Administrator for the Armenians” and his see was established in the town of Gherla<sup>2</sup>. Today, this office is held by the Archbishop of Alba Julia, a Latin bishop from the Roman church. At the time the term “Ordinary” was not used and this continues to be the case to the present day.

A second Ordinariate dates from 1945 and concerns the Ruthenian faithful in Austria. The Archbishop of Vienna was named apostolic delegate for the Ruthenian faithful by decree of the Congregation for the Oriental Churches, which was signed by Cardinal Tisserant. In 1956, the same Archbishop received ordinary jurisdiction over the faithful of the Byzantine rite in Austria. This appeared to form an extension of the jurisdiction of the Archbishop of Vienna over all the faithful of rites descended from the Byzantine tradition.

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see is in Yerevan, is governed by an Ordinary belonging to the Armenian Catholic Church and the Ordinariate for Armenian rite Catholics residing in Greece, which does not have an Ordinary at the moment, was entrusted to the Ordinary ruling the above Ordinariate, who governs it as Apostolic Administrator. It is unknown whether the Ordinary belonged to the Armenian rite when the Ordinariate was created in December 1925 or whether he belonged to another Church. The decree for the constitution of the Ordinariate was not published in either the *Acta Apostolicae Sedis* or in the *Leges Ecclesiae de X: Ochoa*.

<sup>2</sup> Cf. AAS 22 (1930) pp. 381-386. This apostolic constitution of Pope Pius XI, dated 5th June, 1930, aimed to create a new diocese and a new hierarchical order for dioceses of the Latin and Greco-Romanian rites in Romania.

In November 1951, an Ordinary for the Eastern faithful lacking an Ordinary of their own rite was constituted in Brazil after the decision taken by Pius XII in an audience of 26<sup>th</sup> October of the same year. In his role of Ordinary, the Archbishop of Rio de Janeiro holds exclusive power of the Eastern faithful of his Ordinariate residing on the national territory<sup>3</sup>. This was the first case of a multi-ritual Ordinariate, with Eastern Catholics of different rites coming under the jurisdiction of a single Ordinary. This situation began to change in 1962 with the creation of an exarchate for the Ukrainian faithful<sup>4</sup>. In 1971, this exarchate became an eparchy at the same time as two other eparchies were created, one for the Maronites and the other for the Melkite Greeks. All of these eparchies are suffragan to the Latin Episcopal sees<sup>5</sup>.

The Ordinariate in France dates from July 1954 and was created for the faithful of the Eastern rite residing in France. The Archbishop of Paris exercises his jurisdiction cumulatively with that of the local Ordinaries<sup>6</sup>. In France, exarchates were also created in 1960 for Ukrainians and Armenians. The two exarchates were responsible "*ad instar*" (in a similar fashion to suffragan dioceses) to the metropolitan see of Paris<sup>7</sup>. In 1986, the exarchate for the Armenians was elevated to the dignity of an eparchy<sup>8</sup>.

The year 1959 saw the creation of an Ordinariate in Argentina for the faithful of the Eastern rite with the exclusive power of jurisdiction

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<sup>3</sup> S. Congregation for the Oriental Church, decree "Ordinariatus in Brasilia constituitur pro fidelibus rituum orientalium," 14th November 1951, AAS 44, (1952) pp. 382-383.

<sup>4</sup> John XXIII, Apostolic Constitution «Qui divino consilio», 30th of May 1962, AAS 55 (1963) pp. 218-220.

<sup>5</sup> These constitutions were decided upon by Pope Paul VI and date from the same day, 29th November, 1971. The relevant texts can be found respectively in CA «Eius Vicarius» on the Ukrainian faithful, AAS 64 (1971) pp. 411-412; CA «Quod providenter» on the Maronites, *Id.*, pp. 408-409; et CA «Haec Romana et Apostolica Sedes», *Id.*, pp. 409-410.

<sup>6</sup> S. Congregation for the Oriental Church, Decree «Ordinariatus pro omnibus christifidelibus ritus orientalis in Gallia degentibus instituitur,» 27th of July 1954, AAS 47 (1955) pp. 612-613.

<sup>7</sup> John XXIII, CA «Exarchatus pro Ucrainis in Gallia,» 22th of July 1960, AAS 53 (1961) pp. 341-342 et CA «Exarchatus pro Armenis in Gallia,» of the same date, AAS 53 (1961) pp. 343-344.

<sup>8</sup> John-Paul II, CA «In Petro Apostolorum Principe,» 30th June 1986, AAS 78 (1986) p. 1211.

given to the Archbishop of Buenos Aires<sup>9</sup>. Once again, it was the Ukrainians who would benefit first from a change in status as an exarchate was created for them in 1968 and was to become an eparchy ten years later<sup>10</sup>. Other exarchates and eparchies were created between 1981 and 2002 for Armenians, Maronites and Melkite-Greeks<sup>11</sup>.

According to the *Annuario Pontificio*, an Ordinariate for the faithful of the Greek-catholic and Armenian rites was created in Poland in 1981. Ten years later, the jurisdiction of the Ordinary was extended to all the Eastern faithful who did not have an Ordinary of their own rite. The Archbishop of Warsaw assumed the functions of Ordinary<sup>12</sup>.

## 2. Origins and Evolution of the Institution

According to the *Annuario Pontificio*, Ordinariates originate with the apostolic letter "Officium supremi Apostolatus" of 15<sup>th</sup> July, 1912<sup>13</sup>, however, there would seem to have been a marked evolution in the institution since that time. When the aforementioned apostolic letter, whose aim was to structure spiritual aid for Ruthenians in Canada, is examined, it becomes clear that this role was entrusted to a bishop of the Ruthenian "rite," who would exercise full, personal jurisdiction over all the Ruthenian faithful in Canada, in direct dependence to the

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<sup>9</sup> S.Congregation for the Oriental Church, decree «Ordinariatus pro fidelibus ritus orientalis in Argentina erigitur,» 19<sup>th</sup> of February 1959, AAS 54 (1962) pp. 49-50.

<sup>10</sup> Paul VI, CA «Ucrainorum fidelium», 9<sup>th</sup> of February 1968 , AAS 60 (1968) pp. 547-549; Paul VI, created it as the eparchy of Santa Maria del Patrocinio, suffragan to the see of Buenos Aires by the CA «Cum, praeterito exeunte saeculo,» 24<sup>th</sup> of April 1978, AAS 70 (1978) pp. 385-386.

<sup>11</sup> Jean-Paul II, CA «Armeniorum fidelium,» 3<sup>rd</sup> of July 1981, AAS 74 (1982) pp. 5-6; this exarchate included the Armenian faithful residing in Latin America and Mexico. For those residing in Argentina, the eparchy of St. Narek was created in Buenos Aires in February 1989 by Pope John-Paul II. This eparchy was directly submitted to the Holy See. To the best of our knowledge, this document was not published. The eparchy of St. Charbel for the Maronites in Buenos Aires, which answers to the see of Buenos Aires, was created on 5<sup>th</sup> October, 1990. Once again, we have not discovered the supporting document. This is also the case for the apostolic exarchate for the Melkite-Greeks residing in Argentina, which was created on 21<sup>st</sup> March 2002.

<sup>12</sup> Unfortunately, we do not have any information on this Ordinariate as the texts on its constitution were not published.

<sup>13</sup> *Annuario Pontificio*, 2010, p. 1823 («Note storiche»).

apostolic delegate<sup>14</sup>. The word “personal,” which qualifies this jurisdiction, must be understood as giving jurisdiction over the persons mentioned, that is, the Ruthenian faithful. This was therefore a jurisdiction that was principally delineated by personal criteria even though there was a named territory, in this case, Canada.

The document also fixed the ordinary residence of the bishop but there was no question of creating an ecclesiastical organizational structure, either as an Ordinariate or an eparchy,<sup>15</sup> neither was any canonical status conferred on the Ruthenian community as such. The bishop had no eparchial see and was thus simply a titular bishop<sup>16</sup>. He did not receive any office but instead exercised delegated

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<sup>14</sup> Apostolic Letter «Officium supremi Apostolatus» 15th of July 1912, signed by the Secretary of State, AAS, 4 (1912) pp. 555-556. See also Pont. Commission for the Pastoral Care of Migrations and Tourism, *Chiesa e mobilità umana. Documenti della Santa Sede dal 1883 al 1983*, a cura di G. Tassello e L. Favero, Roma, Centro Studi Emigrazione, 1985, pp. 86-87.

<sup>15</sup> *Ibid.*

<sup>16</sup> Some years prior, a Ruthenian bishop was established in the United States. The apostolic letter “*Ea semper*” established the Ruthenian “rite” in the United States with the nomination of a Bishop who was directly submitted to the Holy See and under the supervision of the apostolic delegate in Washington but without any ordinary jurisdiction. He was obliged to request jurisdiction by delegation from the Ordinaries presiding over the places where the Ruthenian faithful resided. His task (“*officium*”) covered the supervision over the integrity of the “rite,” the confection of holy oils for Ruthenians, the dedication of churches for the faithful, the celebration of the sacrament of confirmation, the ordination of clerics according to the Ruthenian rite providing that they held dimissorial letters from the local Ordinaries and the cessation of the usage of pontificalia in Ruthenian churches. Cf. *Chiesa e mobilità umana, op.cit.* pp. 59-61. This bishop therefore only acted by delegated jurisdiction in specific domains, which mostly concerned the sacraments. This figure reminds us of what we would be called a “*Weihbischof*” in German – a titular bishop who is mostly charged with the administration of sacraments – or even an auxiliary bishop. For, although he could carry out visits in Ruthenian missions, this could only take place when endowed with the necessary faculties by local Ordinaries and with their prior written permission. Following such visits, the Ruthenian bishop was required to present his visit report to the local Ordinary who decided on the best course of action. The only autonomy enjoyed by this bishop seemed to concern the presentation of a report on the personal, moral and material state of the Ruthenian, which he was required to submit every three years to the apostolic delegate who transmitted it to the Congregation for the Propagation of the Faith. It is probably because of this configuration that this apostolic letter is not considered as symbolising the founding of modern Ordinariates. As is said by F. Marti in his recently published work *I Rutheni negli Stati Uniti. Santa Sede e mobilità umana tra ottocento e novecento*, Milano, Giuffrè, 2009, pp. 309-353, it is more of an episcopal vicar with the dignity of a bishop.

authority. The term “Ordinary” was not used and instead reference was made to a bishop of the Ruthenian rite.

The apostolic letter of Pius X was relatively cursory and apparently it was felt necessary to add additional specifications, a task which was fulfilled by the decree of the Eastern Section of the Congregation for the Propagation of the Faith in 1913<sup>17</sup>. The bishop of the Ruthenian “rite” was named for the region of Canada. He was directly submitted to the Holy See and was allowed to exercise ordinary, full and personal jurisdiction over the faithful of the Ruthenian “rite” residing in this region. He was given the right to reign and govern his flock by laws and statutes inasmuch as these were not contrary to common law. He was charged with the complete conservation of doctrine and morals as well as of the rite and discipline of the Eastern Church. He was charged with visiting the Ruthenian missions at least once every five years and with the submission of a report on the state of missions of the Ruthenian “rite” every five years to the Congregation for the Propagation of the Faith . He was also required to visit *ad limina* once every ten years, in accordance with the custom of the bishops in the region of Canada.

We may conclude from this decree that the Ruthenian bishop occupies an office, as he has ordinary jurisdiction, whose personal character comes from the fact that it may only be exercised over the Ruthenian faithful. With this office, the function of Ordinary acquired a measure of stability and canonical visibility and this office will continue to exist, even when its bearer leaves. There is no mention here of the constitution of an eparchy but the bishop has a people (“*grex*”) that he governs. To the present day, the entirety of the Ruthenian faithful and their missions fall under the exclusive jurisdiction of the Ruthenian bishop. His jurisdiction is full since, while legislative power is mentioned, it must be concluded that he also holds executive power, which is necessary to govern his flock. Similar remarks could be made regarding judicial power<sup>18</sup>. He is

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<sup>17</sup> S.Congregation for the Propagation of the Faith, Eastern Rite section, decree «*Fidelibus ruthenis*» quo statuuntur mutuae relationes disciplinares inter Episcopos Latinos Canadenses et Episcopum ruthenum illius regionis, nec non inter Clerum et fideles utriusque ritus, 18th of August 1913, in *AAS* 5 (1913) pp.393-399. See also *Chiesa et mobilità umana, op. cit.* pp. 90-97.

<sup>18</sup> Cf. G.HOLKENBRINK, *Die rechtlichen Strukturen für eine Migrantenpastoral. Eine rechtshistorische und rechtssystematische Untersuchung,*

more or less equivalent to the resident Bishops due to the obligation to present a report every five years and to perform the visit *ad limina*. However, he is not part of an ecclesiastical province as he is directly submitted to the Holy See. His relationship with the Latin Ordinaries is one of an equal<sup>19</sup>. In this decree, the term “Ordinary” arose for the first time to designate the Ruthenian bishop<sup>20</sup>. This term does not correspond to the Eastern vocabulary where the term “Hierarch” is preferred<sup>21</sup>.

Following this, provisions for the Eastern faithful in the United States were made according to this model<sup>22</sup>. The fact that this is not, however, a model which is currently used and applied more generally is demonstrated by the provisions for the Greek Ruthenians in South America, who remain under the jurisdiction of local Latin bishops<sup>23</sup>.

In 1924, the Holy See apparently employed the term “Ordinariate” in relation to the United States in the documents creating two Ordinariates for Greek Ruthenians, thus revising a decree of 1914<sup>24</sup>.

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Päpstlicher Rat der Seelsorge für die Migranten und Menschen unterwegs, Vatikan 1995, p. 126.

<sup>19</sup> As an example, the Ruthenian bishop may give jurisdiction to a Latin priest to take care of the Ruthenian faithful in a place where there is no priest of their “rite,” after having made contact with the Ordinary of this priest and *vice versa*, the Latin Ordinary may do the same thing as regards Ruthenian priests. See the decree «Fidelibus ruthenis», *op.cit.*, art. 22 and 23. Similarly, the Congregation exhorts the Latin priests in Canada to make priests available to the Ruthenian bishop for a time, should he request them. See *Ibid.*, art. 20.

<sup>20</sup> Voir *Ibid.*, art. 19.

<sup>21</sup> Cf. MP «Postquam Apostolici Litteris,» c. 306. This canon also defines how we must understand the term “prelate,” a term subsequently removed from canon law.

<sup>22</sup> See S.Congregation for the Propagation of the Faith, Eastern Rite section, decree «Cum Episcopo Graeco-Rutheno», de spirituali administratione Ecclesiae Graeco-Ruthenae in Foederatis Civitatibus Americae Septentrionalis, 17th of August 1914, AAS 6 (1914) pp. 458-463. See also *Chiesa e mobilità umana, op. cit.* pp. 111-117. The Ruthenian bishop in the United States, who primarily held the power of order has now received an office with real jurisdiction.

<sup>23</sup> S.Congregation for the Propagation of the Faith, Eastern Rite section, decree «Cum sat numerosiores» de spirituali adsistentia fidelium graeco-rutheni ritus in regionibus America Meridionalis immigrantium», 27th of March 1916, in AAS 8 (1916) pp. 105-107. See also *Chiesa e mobilità umana, op.cit.* pp. 132-135.

<sup>24</sup> The document of 1914 was given by the S.Congregation for the Propagation of the Faith, Eastern Rite section, in the decree «Cum Episcopo Graeco-

This is the first mention of an ecclesiastical see, rather than a titular bishop who took over the spiritual administration of a given group of the faithful. Perhaps we might conclude from this that the community of faithful had gone through a period of numerical growth and that this had conferred on them the benefit of full canonical status with its resulting stability.

A new stage in the development of this concept was reached after the Second World War, from the point when the Holy See created a new order with new sees in order to better provide for the needs of the Eastern faithful. More than at any previous time, from this point forward, we begin to see Ordinariates entrusted to a bishop of another rite or from another church *sui iuris*, in this case, the Latin church. This implies the introduction of a new legal figure, not simply because the Ordinary was and is a Latin bishop, contrary to the provisions in force until that point in the US and Canada, but also because this Ordinary had a multi-ritual Ordinariate under his care.

Meanwhile, the Holy See began to use another term for the ecclesiastical sees in North America whose faithful came under the jurisdiction of a bishop of the same rite. In 1948, the apostolic constitution of Pius XII divided the Greek Ruthenian Ordinariate in Canada into three ecclesiastical sees and used the term “exarchate” as an equivalent to the term Ordinariate<sup>25</sup>. The *Motu proprio* « Cleri Sanctitati », promulgated in 1957, contains specific standards for exarchs and exarchates but these were known by Pius XII at a much earlier date given that the *Schema* of the *Codex Iuris Canonici Orientalis* was printed in its entirety from 1945. The Pope probably used this vocabulary in accordance with the canons he was to promulgate later. This apostolic constitution should be seen as a transitional document as, later on, the Holy See was to abandon the term “Ordinariate” in favour of only using the word “exarchate,”

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Rutheno », de spirituali administratione Ecclesiae Graeco-Ruthenae in Foederatis Civitatibus Americae Septentrionalis, 17th of August 1914, AAS 6 (1914) pp. 458-463. There is nothing that can be said with certainty about the document of 8<sup>th</sup> May, 1924 as it was not published. However, the Congregation gave evidence of its existence in its decree “Cum data fuerit” of 1<sup>st</sup> March, 1929, with the mention of the creation of two Ordinariates in 1924. See also F.Marti, *op.cit.*, pp. 365-537.

<sup>25</sup> Pope Pius XII, CA « Omnium cuiusvis rites christifidelium » 3<sup>rd</sup> of March 1948, in AAS 40 (1948) pp. 287-290. See also *Chiesa e mobilità umana, op.cit.*, pp. 293-296. However, the title only uses the term “exarchate”.

which was reserved for this type of see, even though the exarchs over these sees are still designated as “Ordinaries,” a continuation of the Latin terminology<sup>26</sup>.

From that point, the term “Ordinariate” would seem to have been reserved for ecclesiastical sees whose leader is of the Latin “rite” but who cares for Eastern faithful of many different rites. This can be verified in the creation of Ordinariates in the 1950s such as the one in Brazil in 1951, the one in France in 1954 and the Ordinariate created in Argentina in 1959, as shown above. According to Herman, these show evidence of a new category of sees and a new form of government in the creation of a single Ordinariate for Eastern Catholics of any rite, distinct from other sees in that they are not primarily territorially bounded but instead are limited to named people groups<sup>27</sup>.

### 3. The Canon Law in Force

The introduction of this new legal leadership position may be surprising if we realise that the *Motu proprio* “*Crebrae Allatae*”, promulgated in 1949, contains a norm designating the local Hierarch as the proper Hierarch for the Eastern faithful living outside the territory of their own “rite” who do not have a Hierarch of their “rite”<sup>28</sup>. A similar norm is also found in the *Motu proprio* «*Cleri Sanctitati*», promulgated in 1957<sup>29</sup>. In most cases, this implies that the Hierarch responsible for the Eastern faithful would be a Latin bishop, closely corresponding to the solutions that were in place in

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<sup>26</sup> See Pope Pius XII, CA «*De Ruthenorum*» 19th of March 1951 creating a new exarchate in Canada, in AAS 43 (1951) pp. 544-547. See also *Chiesa e mobilità umana, op. cit.*, pp. 307-310.

<sup>27</sup> AE.HERMAN, «*Adnotationes*,» *op. cit.*, p. 29.

<sup>28</sup> CA, c. 86, §3, 3°: «*Extra territorium proprii ritus, deficiente huius ritus Hierarcha, habendus est tamquam proprius, Hierarcha loci. Quodsi plures sint, ille habendus est tamquam proprius, quem designaverint Sedes Apostolica vel, obtento eiusdem consensu, Patriarcha, si iure particulari cura fidelium sui ritus extra patriarchatus commorantium ei commissa est.* »

<sup>29</sup> CS, c. 22, §3: «*Extra territorium proprii ritus, deficiente huius ritus Hierarcha, habendus est tamquam proprius, Hierarcha loci. Quodsi plures sint, ille habendus est tamquam proprius, quem designaverit Sedes Apostolica, firma praescripto can. 260, §1, n. 2, d.* » Canon 260 covers the precise cases where the specific law decided that the Patriarch may designate a Hierarch for the faithful of his rite who reside outside the Patriarchate, if the charge over these same faithful is entrusted by the specific law to the Patriarch and if he had acquired the consent of the Apostolic See.

the Church for centuries. The 1215 council of Lateran IV envisaged a situation where people speaking different languages and having different rites and morals could find themselves in the same town or diocese. It ordered the bishops of these towns or dioceses to name suitable priests who could celebrate the divine offices and the sacraments for the faithful in accordance with the differences between these rites and languages<sup>30</sup>. Following that, there is also a similar norm found in the apostolic letter of Leon XIII "Orientalium Dignitas" dating from 1894. The Pope here took the line that the Eastern faithful who reside outside the territory of their Patriarch should be submitted to the administration of the Latin clergy<sup>31</sup>.

While the Eastern law in force did not mention Ordinariates or the role of the Ordinary, the second Vatican council did mention the role of the Ordinary in its decree *Christus Dominus* 23.3: « ... where there are faithful of a different rite, the diocesan bishop should provide for their spiritual needs either through priests or parishes of that rite or through an episcopal vicar endowed with the necessary faculties. Wherever it is fitting, the last named should also have episcopal rank. *Otherwise the Ordinary himself may perform the office of an Ordinary of different rites.* »<sup>32</sup>

In this text, different solutions are proposed to the diocesan bishop, at both the local community level, covering the nomination of priests

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<sup>30</sup> IVth Lateran Council, const. 9: « Quoniam in plerisque partibus intra eandem civitatem atque dioecesim permixti sunt populi diversarum linguarum, habentes sub una fide varios ritus et mores, districte praecipimus ut pontifices huiusmodi civitatum sive dioecesum, provideant viros idoneos, qui secundum diversitates rituum et linguarum divina officia illis celebrent et ecclesiastica sacramenta ministrent, instruendo eos verbo pariter et exemplo. Prohibemus autem omnino, ne una eademque civitas sive dioecesis diversos pontifices habeat, tanquam unum corpus diversa capita, quasi monstrum; sed si propter praedictas causa urgens necessitas postulaverit, pontifex loci catholicum praesulem, nationibus illis conformem, provida deliberatione constituat sibi vicarium in praedictis, qui ei per omnia sit obediens et subiectus (...). » Cited from *Les Conciles Œcuméniques*, t. 2: *Les décrets, De Nicée à Latran V*, sous la direction de G. Alberigo, Paris, Cerf, 1994, p. 513 (p. 512 for the original Latin text).

<sup>31</sup> Pope Leo XIII. Apostolic Letter "Orientalium dignitas," n° IX: « Quicumque orientalis, extra patriarchale territorium commorans, sub administratione sit cleri Latini, ritui tamen suo permanebit adscriptus; ita ut, nihil diuturnitate aliave causa nulla suffragante, recadat in ditione Patriarchae simul ac in ejus territorium revenerit. » in *Codicis Iuris Canonici Fontes*, cura Emi. Petri Card. Gasparri editi, vol.III, Typis Polyglottis Vaticanis, 1933, p. 457.

<sup>32</sup> Italics are ours.

or parish priests and at the diocesan level, covering the nomination of an Episcopal vicar. Lastly, the diocesan bishop himself could assume the role of Ordinary. While priests and curates had to be of the same rite, in principle, the Episcopal vicar and the Ordinary would have faithful of different rites under their charge. Reading this passage, there is the impression that these solutions are linked to the numerical status of the faithful in Eastern communities. This seems even more likely for the last solution given – which we have not mentioned since it is outside the scope of our current interest – which is to establish a proper hierarchy for the different rites, if for certain reasons, these prescriptions are not applicable in the judgment of the Apostolic See. The council seems to suggest therefore that the earlier solutions must first be tried. The creation of a proper hierarchy is presented as the final solution if none of the other proposals can be carried out.

Returning to the role of the Ordinary, while the council did mention Ordinaries of different rites, it is not clear that the council fathers were thinking of the existing Ordinaries when writing this canon. Rather, they were thinking of the diocesan bishop who would personally assume the pastoral charge of the faithful of different rites, without having been named by the Holy See for this task. The term “Ordinary” was therefore used here in the normal sense, in accordance with the Latin canon law in place. By domicile, each member of the faithful would have their own Ordinary (CIC/17, c.94), the diocesan (residential) bishop and vicar general are then named among the Ordinaries (CIC/17, c.198, §1).

In the same vein, the passage of CD 23 is behind the creation of canon 383, §2 of the Code of 1983, which states that the diocesan bishop has to provide for their spiritual needs either through priests or parishes of the same rite or through an episcopal vicar, if he has faithful of a different rite in his diocese. The institution of the Ordinariate was not introduced in the Code of 1983. Here once again, the term “Ordinary” retains the same meaning as it did in the Code of 1917.

Even the Code of Canons of the Eastern Churches (CCEO) did not bring about the institution of the Ordinariate. Apart from the fact that this word is really an example of Latin terminology, the solution suggested by the CCEO for the pastoral charge of the faithful who live outside the territory of their churches is simply to order that “in

places where not even an exarchy has been erected for the Christian faithful of a certain Church *sui iuris*, the local hierarch of another Church *sui iuris*, even the Latin Church, is to be considered as the proper hierarch of these faithful." (c.916, §5).

It is therefore not surprising that the absence of the institution of the Ordinariate from earlier canon law and from the law currently in force has led some canonists to qualify it as an institution *praeter ius*<sup>33</sup>. Furthermore, it could also be added that the Ordinariate is not only an institution *praeter ius*, but that it departs from the canon law in force at different periods, which prescribed that each Hierarch or Ordinary should assume the pastoral care for the faithful of churches *sui iuris* residing in his territory. Similarly, it should also be noted that there is no general or basic text for the Ordinariates. Neither is there a "model" text, along the lines of the Apostolic Constitution "Spirituali militum curae" of 1983 for example on pastoral assistance in the armed forces. The Ordinariate is an institution which was built on a case-by-case basis in accordance with specific historical factors. To illustrate this, let us briefly trace the origins of two Ordinariates, created in Austria and France respectively<sup>34</sup>.

#### 4. Specific Historical Factors

In Austria, from the time of the attribution of the province of Galicia to the Empire, in 1772, the Ruthenians found themselves within Austrian territory. In 1784, the parish of St. Barbara was established by imperial decree. Emperor Joseph II decided that it should be the parish for the Greek Catholics with a parish priest and a parish vicar who was required to know Ruthenian and Polish given the number of faithful from Galicia. The government of Lower Austria was required to pay the salary of these ministers from the finances of a state foundation<sup>35</sup>. The creation of the parish was therefore a purely state-driven act<sup>36</sup>. The intervention of the Emperor was not limited to the foundation of this parish : a few months later, the government of

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<sup>33</sup> M. BROGI, «Cura pastorale di fedeli di altra Chiesa «sui iuris» », in *REDC*, p. 130.

<sup>34</sup> This choice is justified by the fact that we have little information on other Ordinariates.

<sup>35</sup> Niederösterreichischen Religionsfonds.

<sup>36</sup> Cf. W.PLÖCHL, *St:Barbara zu Wien. Die Geschichte der griechisch-katholischen Kirche und Zentralpfarre St.Barbara*, Bd.I, coll. Kirche und Recht, 13, Wien, Herder Verlag, 1975, pp. 52-53.

Lower Austria informed the Archiepiscopal consistory that the Emperor had authorised the unified Greek Church to continue to use St. Barbara, with the designation of two specific priests as parish priest and parish vicar. The Archbishop was then informed of this fact<sup>37</sup>.

The characteristics of this imperial foundation, which was set up without the input of the competent ecclesiastical authorities, including the Holy See, explains why the jurisdiction of the parish priest posed a number of problems. For instance, the competent authority with jurisdiction over his investiture was not defined. The vicar general, who, in practice, presided over the consistory, issued a decree which noted of the establishment of the parish and called, for this reason, for the parish priest to exercise his care over souls, administer the sacraments and assume, as required, all his other pastoral obligations. The decree did not endeavour to discover whether the Archbishop of Vienna was the competent authority for the installation of the parish priest. The Archbishop was not the competent authority since he had not received jurisdiction over Eastern Catholics by delegation from the Pope<sup>38</sup>. From then on, parish priests nominations were always made by the Emperor: a governmental decree presented the priest to the Archbishop who esteemed himself competent to delegate jurisdiction and proceed with the installation. According to Plöchl, the Archbishop therefore became the organism for executing state administrative deeds<sup>39</sup>. In November 1818, the consistory asked the imperial chancellery

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<sup>37</sup> ID., pp. 65-66. The author explains the role and composition of the consistory on pp. 69-70: an ecclesiastical and civil college at the same time, composed of clerics and laypeople designated by the bishop, that functioned as an intermediary between the Church and the State « Es war damals, kurz gesagt, eine kirchliche Amtsstelle, die gleichzeitig in den Behördenapparat des Staates eingegliedert war. Es war ein Kollegium, bestehend aus den Konsistorialräten, teils geistlichen Standes, teils Laien. Die Mitglieder geistlichen Standes wurden vorzüglich dem Domkapitel entnommen. Die Bestellung erfolgte durch den Bischof, doch gab es staatliche Vorschriften, die sich auf die Auswahl der Personen und teilweise auch auf die Zuständigkeit bezogen. Die Diözese hatte mit den staatlichen Stellen über das Konsistorium zu verkehren, genauso wie die Regierungsstellen in der Regel sich nur an das Konsistorium und nicht an den Bischof wandten. (...) dass er (der Erzbischof, Kardinal Magazzi, AK) nur in ganz wichtigen Angelegenheiten sich un mittelbar an den Kaiser wenden konnte. Ansonsten musste auch er über das Konsistorium mit der Regierung verkehren.”

<sup>38</sup> ID., pp. 70-72.

<sup>39</sup> ID., pp. 82-84.

whether the metropolitan of Lviv held jurisdiction over the parish of St. Barbara. The chancellery pronounced in favour of such a jurisdiction “by convenience”. The consistory then requested that the priests for the parish of St. Barbara receive jurisdiction from the Metropolitan of Lviv but be submitted to the Archbishop of Vienna for matters concerning discipline and moral behaviour throughout their stay in the archdiocese<sup>40</sup>.

The question of Episcopal jurisdiction was not definitively settled until 1820. A decree from the imperial chancellery recognised the Episcopal jurisdiction of the Greek-Catholic Metropolitan in Lviv. He was given the authority to present candidates, from among which the Emperor then named the parish priest and/or the parish vicar. The Archbishop of Lviv was designated as the authority giving jurisdiction to the parish priest and installed him in his office, with the authority of the Archbishop of Vienna seen as subsidiary. The state authorities affirmed that the parish of St. Barbara was not part of any diocese but leaned towards Lviv<sup>41</sup>. This situation was to last almost one hundred years.

After the First World War, the situation did not change immediately. The parish priest, doubting his rights because of the border changes, which led to Lviv becoming part of Poland, sent a request, via the intermediary of the Archbishop of Lviv, to the Congregation for the Oriental Church for clarification of his jurisdiction. The Congregation did not intervene until 1935. A decree from the Congregation for the Oriental Church in December of that year reflected the decision of Pope Pius XI to remove the parish of St. Barbara from the jurisdiction of the Archbishop of Lviv of the Ruthenians and instead place it under the authority (*ditio*) of the Archbishop of Vienna. For specific historic reasons, the Archbishop of Vienna governed it as a special delegate of the Holy See<sup>42</sup>. The Archbishop of Lviv retained the right to present three candidates for the office of parish priest but it was the Archbishop of Vienna who proceeded with the nomination. The parish priest had parish jurisdiction over all the faithful of the Byzantine rite residing within

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<sup>40</sup> ID., pp. 117-118.

<sup>41</sup> ID., pp. 121-125.

<sup>42</sup> These historical reasons are related to a seminary created in the same place before the creation of the parish. This seminary formed Latin and Ruthenian candidates for the priesthood.

the limits of the Austrian republic<sup>43</sup>. It should be noted that the Archbishop of Vienna exercised delegated power. The Congregation for the Oriental Church tried meanwhile to safeguard some power for the Archbishop of Lviv. The jurisdiction of the parish priest was also better defined: it was seen as personal, as it covered the faithful of the Byzantine rite but, from this point, it covered all Austrian territory.

A decree of the Congregation for the Oriental Church, dating from October 1945, mentioned the fact that the Apostolic Visitor to the Ukrainians in Germany, in post since 1941, had experienced difficulty, due to the war, in reaching those residing in what, at that time, was a province of Germany, previously Austrian territory. For this reason, the Archbishop of Vienna received all rights relating to the Ukrainian clergy and faithful, the same rights as he could exercise over the Latin faithful in his own diocese<sup>44</sup>. The Archbishop of Vienna would then have a quasi-episcopal jurisdiction over the Ukrainians, even though this was still delegated power. The Archbishop of Lviv thereby lost his right to present candidates for the office of parish priest. It is also important to note that the decree mentioned Ukrainians, with the term Ruthenian falling out of use<sup>45</sup>.

By a decree of the same Congregation in June 1956, the Ordinary "pro tempore" of the Archdiocese of Vienna gained ordinary and exclusive jurisdiction over the faithful of the Byzantine rite in Austria. The faithful of other rites, on the other hand, remained under the jurisdiction of their own Ordinaries<sup>46</sup>. The Ordinary no longer acted as a delegate of the Holy See but now gained ordinary power, becoming thus an office bearer in his own

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<sup>43</sup> ID., pp. 129-134. However, we find it hard to share Plöchl's conclusion that the parish therefore became a pontifical parish and remains such to this day. The decree was published in the *Wiener Diözesanblatt*, nr. 3/4, 28th of April 1936. We are grateful to the diocesan archivist of Vienna, Dr. Johann Weissensteiner, for having sent us the texts of the decrees mentioned here. They can also be found in C.G.FÜRST, «Die Bedeutung des Codex Canonum Ecclesiarum Orientalium für die ostkirchliche Diaspora,» *ÖAKR* 42, 1993,3/4, pp. 368-370.

<sup>44</sup> W.PLÖCHL, *op. cit.*, pp. 134-136. see also C.G.FÜRST, *op.cit.*, p. 369.

<sup>45</sup>This is also true for the document found in the archives of the Archdiocese of Vienna. The version published in the article by Fürst, on the other hand, mentions Ruthenians. For the change of terms, see F.MARTÍ, *op.cit.*, pp. 47-48, note 95.

<sup>46</sup> W.PLÖCHL, *op. cit.*, pp. 136-137. The decree was published in *Wiener Diözesanblatt*, nr. 120, 1st of August 1956. See also C.G. FÜRST, *op. cit.*, p. 369.

right<sup>47</sup>. At the same time, his jurisdiction excluded that of other priests as he could exercise this jurisdiction over the entire territory of Austria even in the dioceses belonging to his colleagues, provided that he only exercised it over Byzantine rite Catholics. This brief historical sketch gives a good illustration of how important historical circumstances were in the creation of an Ordinariate in Austria.

In France, the situation was quite different. From 1922, there was a Diocesan Administration for Foreigners within the Archdiocese of Paris, under the authority of an auxiliary bishop. This administration looked after foreigners, including Catholics of Eastern rites. In 1954, the Episcopal Commission for Foreigners drafted a report on the state of Eastern Catholics in France and the opportunity to create a “coordinating element” between them<sup>48</sup>. Two sets of considerations were noted in favour of the creation of such a structure: on the one hand, these related to the character of Eastern communities, on the other, there were more general concerns.

Under the first heading, the Commission discussed the problem surrounding the diversity of certain Eastern clergy in terms of their nationality and their spread throughout France. Problems concerning the management of temporal possessions were also taken into account in this regard.

There were five general concerns. Firstly, the apostolate for Latin rite immigrants, following the Constitution “*Exsul Familia*,” was placed under the control of a “National Director for Works for Immigration,” who was named by the Consistorial Congregation, this Director also was the person with whom the French authorities had a special relationship. The report therefore noted the risk of neglecting immigrants of Eastern rites in this process. Secondly, there was a need for a central administration to watch over the spiritual needs of the faithful of Eastern rites where there were no missions or parishes. Thirdly, this would allow a central authority to

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<sup>47</sup> This is why we do not agree with Plöchl, who, speaking of the 1956 decree, calls the Archbishop of Vienna the “special delegate” of the Holy See. Cf : ID., *op. cit.*, p. 137.

<sup>48</sup> Historical Archives of the Archdiocese of Paris (Archives historiques de l’archidiocèse de Paris : AHAP), Carton 9KII, Episcopal commission for Foreigners, «Rapport sur la situation des Orientaux en France et l’opportunité de la création d’un élément coordonnateur entre eux,» 1954, p. 29. Id. Archives Ordinariate, OR-2-01-02.

promote and develop the Catholic Action, which was rare in Eastern communities. Fourthly, such an authority could also defend the dignity of Eastern rites and their equality as regards Latin rites. Lastly, the subject of relationships with other Christians was raised where coordinating efforts over the entire country would be beneficial<sup>49</sup>.

These considerations were not only pastoral, underlining the need for greater cohesion in each Eastern community and between different dispersed communities in France, but they were also concerned with links with the state, underlining the usefulness of having a single high-level spokesman. Such a spokesman would be able to represent Eastern communities to the civil authorities.

The Archbishop of Paris had already erected eight Eastern parishes in the diocese of Paris in 1953, after having received the necessary indult from the Congregation for the Oriental Church<sup>50</sup>.

In July 1954, an Ordinariate for the faithful of all Eastern rites residing in France was created. The introduction of this decree mentions the large number of Eastern faithful who were living in France with the intention of remaining there and that each Ordinary should take charge of the spiritual care<sup>51</sup>. To bring about a more united administration, it seemed useful to create an Ordinariate governed by its own Ordinary with faculties established by law. The Archbishop of Paris was given this charge with the right to name one or more vicars general. This Ordinary would hold jurisdiction over the Eastern faithful cumulatively with the local Ordinaries, who in turn could only act within their own rights under the Archbishop and were required to give account to the Ordinary for the Eastern faithful for every important decision they made regarding these faithful. The Ordinary for the Eastern faithful would take great care, after having heard from the local Ordinaries, to create parishes and

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<sup>49</sup> *Ibid.*, pp. 21-23.

<sup>50</sup> The communities concerned were Armenians, Chaldeans, Melkite-Greeks, Maronites, Romanians, Russians, Syrians and Ukrainians. An apostolic indult was required by c. 216, §4 of the CIC/17.

<sup>51</sup> According to the 1954 census, there were, at the time, 50,000 Eastern Catholics in France. The largest of these communities were those formed by the Armenians and Ukrainians with 16,200 and 28,000 faithful respectively. The number of the faithful in other communities was between 49 (in the Belarusian community) and 778 (in the Maronite community). Cf. J.PÉLISSIER, «Les 50.000 Orientaux de France ont leur évêque à Paris,» *La Dépêche du Maine*, Le Mans, 17 janvier 1960.

build churches, to gather and train young people in seminaries, to conserve the purity of authentic rites and disciplines, to appoint priests for the faithful, promote all ecclesiastical, social and scholarly works and to undertake anything he felt helpful. Where a parish for the Eastern faithful did not exist, the local Latin rite parish priest could provide for the spiritual need of the faithful, equipped with the right to do so by the Ordinary for the Eastern rite or by his local Ordinary. Every five years, the Ordinary for the Eastern Rite was required to send a report on the state of the Ordinariate to the Congregation for the Oriental Church<sup>52</sup>.

It should be noted that, in France, the idea of united church government played a major part not only for ecclesiastical reasons but also so that it would be easier to have a single representative to the civil authorities. At the same time, the local Ordinaries were never disinterested in the Eastern faithful, which explains the decisions to give the Ordinary jurisdiction that was cumulative with that of the local Ordinaries.

The historical factors that determined the configuration of different Ordinariates also demonstrate how difficult it would be to write a general text on the issue. The situations in different countries simply vary too widely.

## 5. The Legal Configuration of These Ordinariates

At this point, we wish to take note of certain legal elements that allow us to examine the commonalities and differences between Ordinariates.

Let us begin with the nature of the charge, whether it was an office (*officium*) or a simple charge (*munus*). Several reasons led us to believe that the answer is the former. The first of these is the qualification of the power of the Ordinary. We have already seen that the Archbishop of Vienna received ordinary jurisdiction over the faithful of the Byzantine rite in 1956. The power of Ordinary was

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<sup>52</sup> S. Congregation for the Oriental Church, decree «Ordinariatus pro omnibus christifidelibus ritus orientalis in Gallia de gentibus instituitur,» 27th of July 1954, signed by Cardinal E.Tisserant, prefect of the Congregation for the Oriental Church and by A. Coussa, secretary of said Congregation, in *AAS* 47 (1955) pp. 612-613; french translation in *DC* 51, 1954, col. 1175-1177, *id.*, in *La Semaine Religieuse de Paris* du 4 septembre 1954, pp. 807-808. See also *L'année canonique* III, 1954-1955, p. 344.

linked to an office<sup>53</sup>. It is true that the decree for the creation of the Ordinariate in France mentions that this would be governed by the Ordinary with the faculties established by law and thus without the mediation of an office. However, and here we come to the second reason, the fact is that this charge was seen as stable. The Holy See always named another Ordinary as soon as the person previously in the post was no longer there. This leads us to consider whether the role of Ordinary was directly linked to that of Archbishop or whether they were distinct offices. Fürst feels that the formulation of the decree tends towards them forming a single, personal office, since the text mentions “the Ordinary *pro tempore* of the archdiocese of Vienna” as the receiver of ordinary and exclusive jurisdiction over the faithful of the Byzantine rite. This Ordinary could be the diocesan administrator, for example. However, he notes that this cannot be the case as Cardinal Gröer, when he succeeded Cardinal König, was named Ordinary of the faithful of the Byzantine rite separately from his nomination as Archbishop of Vienna. The decree of the Congregation for the Oriental Churches also states, “as everyone knows, the charge (*munus*) of Ordinary for the faithful of the Byzantine rite residing in Austria is connected to the office (*officium*) of Archbishop of Vienna.”<sup>54</sup>. It might be possible, nevertheless, to say that in case the two were really linked, a single nomination to the Archiepiscopal see would suffice. However, this was never practised. For every Ordinariate entrusted to a Latin (Arch)bishop, the nomination to the Archiepiscopal see was always followed, some months later, by the nomination as Ordinary to the Eastern Catholics. For these reasons, our view is that the two were distinct offices.

The Ordinaries for Eastern Catholics exercise their power over the entire national territory. This allows them to interfere in the diocesan territory of their colleagues in matters concerning the Eastern Catholics under their charge. It is therefore interesting to note that the questions around the divisions of powers were not resolved in the same way in each area. In some countries, such as Austria, Brazil and Argentina, the Ordinary for Eastern Catholics exercises exclusive

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<sup>53</sup> This explains our disagreement with Plöchl in note 44.

<sup>54</sup> S.Congregation for the Oriental Churches, decree of 21 February, 1987: «Ut omnes norunt, officio Archiepiscopo Vindobonensis connectitur munus Ordinarii pro fidelibus ritus Byzantini in Austria commorantibus,» cited by C.G. FÜRST, *op. cit.*, p. 370.

power. While in France, the Ordinary exercises his power cumulatively with that of local Ordinaries. This latter arrangement could easily lead to a conflict of powers if the competence of either party is not well defined. The decree creating the Ordinariate in France mentions that local Ordinaries may only act in their own power secondarily (“*secundario*”) to that of the Ordinary for Eastern Catholics. This might lead us to believe that the last one enjoys a higher priority, with local Ordinaries intervening afterwards. However, the text also gives authority to local Ordinaries to make important decisions, which seems somewhat ambiguous.

Apparently, the lack of clarity did cause problems since, in 1986, the Congregation for the Oriental Churches published an “Interpretative Declaration”<sup>55</sup>. It brought greater precision to the matter of cumulative jurisdiction between the Ordinary for the Eastern faithful and local Ordinaries. It states that “the Ordinary for the Eastern faithful may not take any measures without having obtained the prior agreement of the Ordinaries in the locations affected. This agreement is required *ad validitatem*.” It further explains “under the above terms” the matters under the jurisdiction of the Ordinary for the Eastern faithful. These include, amongst others, “the authorisation of the creation of new communities attached to Eastern churches, after receiving consent from the superior authority for the ritual churches affected; the recognition, after consent from this same authority, of groups and associations of Latin faithful who wish to live according to the traditions of one of the Eastern churches, to celebrate its liturgy and live out its spirituality; to build churches or places of worship or, as required, to adapt the same for the Eastern faithful; to create Eastern parishes and to name their parish priests as well as the priests charged with ministry to the faithful or communities attached to an Eastern church, after consultation or the proposal of the superior authority of this church; to approve “*ad normam iuris*” the statutes of monasteries and institutes of consecrated life and all other associations or groups attached to an Eastern church.”

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<sup>55</sup> Congregation for the Oriental Churches, « Déclaration interprétative du décret du 27 juillet 1954, » in *AAS* 78 (1986) pp. 784-786 (in french); see also *DC* no 1925, 1986, pp. 876-877.

It should first be noted that the Declaration no longer qualified the jurisdiction of the local Ordinaries as "*secundario*" but as "subsidiary," while the Ordinary for the Eastern faithful is qualified as "principal." This qualification underlines the accessory nature of the jurisdiction of the local Ordinaries and emphasises that it supports something important. We do not believe that this should be read as qualifying this jurisdiction as less important than that of the Ordinary for Eastern faithful, as the decree of 1954 might suggest, but instead it underlines the complementary character of its support. The ambiguity we saw in the 1954 decree concerning the local Ordinaries who had to act secondarily to the Ordinary for the Eastern faithful but who retained the possibility to take important decisions, was now gone.

The subsidiary nature of this jurisdiction does not mean that the Ordinary for the Eastern faithful could act unilaterally. Decisions of great importance, which might affect the configuration of the diocese and the government of the diocesan Bishop, came within the competence of the Ordinary for Eastern Catholics but with the rejoinder that he required the prior agreement of the local Ordinary, without which the decision would be invalid.

This marks the first time that an official text from the Holy See on Ordinariates for Eastern Catholics makes a comparison with the double jurisdiction exercised by the Vicar to the Armed Forces and the local Ordinaries. However, this comparison is not valid in every aspect. It is certainly for this reason that the Declaration states: "following the example (*"à l'instar"*) of the jurisdiction exercised by the Vicar to the Armed Forces" as, in the latter structure, a member of the faithful may choose freely to go to the Vicar of the Armed forces or to the local Ordinary of his domicile. The two jurisdictions therefore existed on the same hierarchical level, which is not the case for Eastern faithful in France.

How can we explain the cumulative nature of the jurisdiction over Eastern Catholics in France? There is no explicit explanation given anywhere but there may be a clue found in the decree that set up the Ordinariate. The text notes that each of the local Ordinaries cared for the spiritual needs of the Eastern Catholics with much zeal. The fact that the local Ordinaries were interested in the Eastern Catholics living in their dioceses should probably be linked with the religious protectorate that France has exercised for some time over the Eastern Church Catholics in the Middle East and the Ottoman Empire. In the

past, this role was a decisive factor in the forging of contacts between the Eastern faithful and France and is important still today for both ecclesiastical and political links.

Another characteristic of these Ordinariates is the fact that Eastern Catholics have the right to surround themselves with helpers for their task. Most of the time, this part is played by vicars general. In Argentina, on the other hand, this role was taken up by an auxiliary bishop or delegates or secretaries for specific rites. The vicar general could either be a member of one of the Eastern churches *sui iuris* or a priest of the Latin Church. The first case is much easier when there are only a few different Eastern communities. In Austria, for example, the vicar general is Ukrainian. In France, where there are faithful from at least a dozen of Eastern churches *sui iuris*, the vicar general belongs to the Latin church.

Further study might reveal greater detail on the internal organisation of Ordinariates, their finances, the legal status of their priests or even on collaboration mechanisms<sup>56</sup>. We might fruitfully ask whether Ordinariates for Eastern Catholics are a proper structure existing independently and in parallel with other dioceses or whether they are more or less integrated into the diocese of the Archbishop/Ordinary and other dioceses.

## 6. Canonical and Theological Evaluation

We have seen that, in principal, every local bishop, Latin or otherwise, who has Eastern faithful in the territory of his diocese is competent for their pastoral care, despite the difference in rite. However, the Holy See found it necessary to create the institution of the Ordinate, which was hitherto unknown in universal law. This suggests that this institution must present some advantages. It is therefore useful to perform a brief canonical and theological evaluation of the concept of Ordinariates. Social and practical considerations shall also be taken into account.

However, before doing so, it is useful to define the principles and goals that all of these provisions, of whatever form, must protect and serve. Above all else, these principles are related to the conservation and observance of precisely those rites that form the specificity of

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<sup>56</sup> We have begun such work as regards France in our thesis entitled «Les statuts canoniques et les régimes civils des communautés orientales catholiques en France (1821-2000)». The thesis has been submitted jointly to examiners from the Institut Catholique de Paris and the Université Paris Sud. Publication is in preparation.

these Catholics in relation to their Catholic brethren. They are to foster the knowledge and appreciation of their own rite and are bound to observe it everywhere unless an exception is provided by the law. (CCEO,c.40, §3). This obligation includes the right to worship God according to the prescriptions of their own Church *sui iuris* (CCEO, c.17). In addition, these rights and responsibilities create an obligation for bishops: Eastern Catholics from outside of the home country of the bishop not only have the right to receive adequate pastoral assistance but also to receive this assistance in accordance with their own rite. This obligation is all the more pressing given that “the rites of the Eastern Churches, as patrimony of the whole Church of Christ in which shines forth the tradition coming down from the Apostles through the Fathers, and which, in its variety, affirms the divine unity of the Catholic faith, are to be observed and promoted conscientiously”. (cf. CCEO, c.39). This explains why all Catholics in general and pastors in particular, are required to promote and protect the rites of Eastern Catholic Churches. The grounds for this given in canon 39 of CCEO are not only historical, given the link established between Eastern rite and the apostolic tradition transmitted by the Fathers of the Church but they are also dogmatic and ecclesiological in that Eastern catholic churches, through their different rites, live out the unity of the catholic faith which comes from God and expresses itself in its variety of concrete forms<sup>57</sup>. These twin concerns, unity and diversity, require protection and promotion as they form the foundation of the catholicity of the Church. In other words, without the variety of Eastern rites, the (catholic) Church would not be the Church (of Christ).

Outwith the considerations concerning specific rites, it is also possible to integrate the aims of the pastoral care for migrants, as mentioned, for example, in the instruction «*Erga migrantes caritas Christi*»<sup>58</sup>. The instruction states that the pastoral worker among immigrants, on one hand, has to safeguard the migrant’s ethnic, cultural, linguistic and ritual identity and on the other hand, should guide thee to an authentic integration, avoiding a cultural ghetto and

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<sup>57</sup> Cf. CCEO, c. 28, §1: «A rite is a liturgical, theological, spiritual and disciplinary heritage, differentiated by the culture and the circumstances of the history of peoples, which is expressed by each Church *sui iuris* in its own manner of living the faith.»

<sup>58</sup> Pontifical Council for the Pastoral Care of Migrants and Itinerant People, Instruction «The Love of Christ towards Migrants», 3<sup>rd</sup> of May 2004, in *People on the Move*, 36, August 2004, pp. 105-172.

at the same time opposing the pure and simple assimilation of migrants into the local culture<sup>59</sup>. Applied to the Eastern Churches, this shows that there is a real concern, not only for the conservation and observation of the rights of these believers and their ecclesial identity but also for their integration into the life of the local church.

It is now apt to try to evaluate the different solutions and institutions created in light of these principles and aims. Social and practical considerations, although not the most important aspects of the issue, will lead to canonical and theological perspectives.

The Ordinary of the Ordinariate is in general the Archbishop of the national capital. This is certainly linked to the fact that immigrants tend to settle in large cities, like the capital. It can also be suggested that the fact that the Ordinary is often the Archbishop of the see of the capital city gives a sense of prestige to the Ordinariate and thus also the Eastern faithful.

The Ordinary brings together two offices: he is the occupant of the Archiepiscopal see and receives the office of Ordinary to the Eastern faithful. Bringing these two offices together also implies that the Ordinary is not able to personally look after all the affairs involved in the Ordinariate. Normally, a vicar general is enlisted for this task. The role of the Vicar General offers the advantage of the ability to solely or at least primarily dedicate oneself to the faithful of the Eastern churches, allowing the vicar general to specialise. He often has an excellent level of specialist knowledge and his position facilitates relationships with the authorities of the Eastern Catholic churches. This could also lead to the rites and ecclesial identity of the Eastern Catholics being better protected.

This leads naturally to the other factor underlined by the Holy See, the unity of government. It was mentioned in several decrees and seems to have motivated the creation of Ordinariates, contrary to universal law. This centralisation, if it can be called that, was explicitly wished by the French Bishops. It was justified by underlining its civil advantages: allowing a single spokesman to create links with the public authorities.

However, unity of government might also lead to a lack of integration into the local church. The Ordinariate exists alongside the diocese over which the Ordinary has pastoral charge at the same

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<sup>59</sup> Ibid., n. 78.

time. Due to the doubling of structures and services, the Ordinariate may become an organism that has absolutely no link with local diocesan institutions. It has its own vicar general with his secretariat and services, its own priests, parishes, places of worship, liturgies, liturgical calendar, movements and associations. In short, it might not necessarily have any link with local diocesan life. In addition, there is the question of which diocese it might relate to since the Ordinariate covers the entire national territory and therefore all dioceses are in principal affected. If the Ordinary has exclusive jurisdiction over the Eastern Catholics of the country, he might be considered as a far-off figure who is only involved in everyday life on rare occasions. This could lead to a Christian life which is concentrated on the parish or local mission and may be centred on their own Church *sui iuris* to the detriment of a *sensus ecclesiae universae*. On the other hand, if the Ordinary for Eastern Catholics exercises a jurisdiction which is cumulative with that of local Ordinaries, this will not necessarily lead to greater integration of Eastern Catholics in diocesan church life. The combination of jurisdictions may actually lead to a situation where each ecclesiastical authority, despite provisions and normative texts, might feel relieved of his responsibilities thinking that his colleague is looking after the situation. In this way, local communities could live their lives relatively independently without having any real relationships either with the Ordinary for Eastern Catholics or with the local Ordinary and the diocesan institutions and services. The faithful, for their part, could go to whichever Ordinary they feel will be most favourable to their requests.

Nevertheless, a local Church that is truly a catholic Church would be able to bring together and harmonise in the same area, the diversity of its inhabitants who have not chosen to live together but who together constitute the Church-communion in the image of the communion of the One and Triune God<sup>60</sup>.

How can we translate this into canonical structures and institutions? Here it will simply not do to identify one or other of the solutions proposed as right or ideal. In our opinion, both situations existing to this day present specific advantages and disadvantages. What is far more important is to make sure that each institution and ecclesiastical authority asks itself how to make things better. They

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<sup>60</sup> Cf. Instr. Erga..., n. 89.

might reflect, for instance, on how to arrive at a situation where rites are conserved and observed but without preventing a greater level of integration into the life of the local church. To this end, they might aim for a greater presence and participation of Eastern Catholics in the different diocesan councils (diocesan synod, presbyteral council, pastoral council, finance council) or also at the level of a vicariate forane. Greater collaboration between Eastern parishes and missions on the one side and Latin ones on the other might also promote this integration.

Where Ordinariates do not exist, a service to the Conference of Bishops might help local Ordinaries and their aids by providing information on these churches and their faithful including their theology, liturgy, spirituality and canon law. This service might also make it easier to establish contacts with the different Churches *sui iuris* in the home country. The Conference of Bishops could also designate one of its members as the main spokesman to ecclesiastical authorities such as the Holy See and to civil authorities.

In short, it is possible to adopt some adaptations to the current configurations to improve the protection of the principles and aims identified without completely redesigning the solutions adopted to the present day.