

THE POSSIBLE APPLICATION OF *DIGNITAS CONNUBII* BY THE TRIBUNALS OF THE ORIENTAL CATHOLIC CHURCHES

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The author deals with two main points: 1. General Notions of *Dignitas Connubii* exposing the genesis, purpose, juridical status and binding force of the instruction DC; 2. Secondly the applicability of DC to the tribunals of the Oriental Catholic Churches is pointed out highlighting its significance for the tribunals of the Oriental Catholic Churches and its similarity with the procedural norms of CCEO. While bringing to light points of mutual complementarities and divergences in DC and CCEO the author also reflects over the possibility of an instruction in the manner of DC for the Oriental Churches.

Introduction

Dignitas Connubii (=DC), an instruction issued by the Pontifical Council for Legislative Texts on 25-01-2005, is already established as a *vademecum* widely used by diocesan and inter-diocesan tribunals around the world in handling marriage nullity cases. Soon after its publication DC prompted much canonical commentary and reflections in reference to its content, nature, normative value, binding force, innovations brought about in the field of marriage nullity

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processes, etc.¹ Authors on canon law have widely discussed various issues in relation to the drafting process and the nature and legal

¹Soon after the promulgation of *Dignitas Connubii* many books and articles were published over this new document. To name some of those studies: P. A. Bonnet and C. Gullo (ed.), *Giudizio di nullità matrimoniale dopo l'istruzione Dignitas Connubii*, Vol. I - *I Principi*, Città del Vaticano, Libreria Editrice Vaticana, 2007; P. A. Bonnet and C. Gullo (ed.), *Giudizio di nullità matrimoniale dopo l'istruzione Dignitas Connubii*, Vol. 2 - *La parte statica del processo*, Città del Vaticano, Libreria Editrice Vaticana, 2007; P. A. Bonnet e C. Carlo (ed.), *Giudizio di nullità matrimoniale dopo l'istruzione Dignitas Connubii*, Vol. 3 - *La parte dinamica del processo*, Città del Vaticano, Libreria Editrice Vaticana, 2007; H. Franceschi, J. Llobell and M. A. Ortiz (ed.), *La nullità del matrimonio: temi processuali e sostantivi in occasione della Dignitas Connubii, il corso di aggiornamento per operatori del diritto presso i tribunali ecclesiastici*, Rome, Università della Santa Croce, 2005; P. M. Dugan and L. Navarro (ed.), *Studies on the Instruction Dignitas Connubii: Proceedings of the Study Day*, Montréal, Wilson & Lafleur, 2006; M. Canonico, *Note di commento all'istruzione Dignitas Connubii sul processo matrimoniale canonico*, Torino, G. Giappichelli Editore, 2008; K. Lüdicke and R. Jenkins, *Dignitas Connubii: Norms and Commentary*, Alexandria, CLSA, 2006; A. Mendonça, "What is New? A Brief Analysis of Selected Themes Found in *Dignitas Connubii*," *Studies in Church Law* 2 (2006) 173-273; F. Daneels, "A General Introduction to the Instruction *Dignitas Connubii*," *Forum* 17 (2007) 361-384; F. G. Morrissey, "The Possible application of *Dignitas Connubii* to Formal Marriage Nullity Trials in the Eastern Churches," *Eastern Legal Thought* 5 (2006) 44-87; G. Read, "*Dignitas Connubii*: Instructions to be Observed by Diocesan and Inter-diocesan Tribunals in Handling Cases of Nullity of Marriage: An Introductory Comment (Document n. V)," *CLSGBIN*, n. 132 (June 2005); L. Robitaille, "Through the Lens of DC: The Judges' Active Role in Marriage Nullity Cases," *Studia Canonica* 40 (2006) 137-182; L. G. Wrenn, "A New Procedural Law for Marriage Cases," *The Jurist* 6 (2002) 195-210; J. I. Arrieta (ed.), *L'istruzione Dignitas Connubii nella dinamica delle cause matrimoniali*, Venice, Marcianum Press, 2006; J. Kowal, "L'istruzione *Dignitas Connubii* e la competenza della Chiesa circa il matrimonio dei battezzati," *Periodica* 94 (2005) 477-507; G. P. Montini, "L'istruzione *Dignitas Connubii* sui processi di nullità matrimoniale: una introduzione," *QDE* 18 (2005) 342-363; G. P. Montini, "L'istruzione *Dignitas Connubii* nella gerarchia delle fonti," *Periodica* 94 (2005) 417-476; P. Bianchi, "Una prima presentazione della istruzione della santa sede *Dignitas Connubii*," in *Tribunale Ecclesiastico Regionale Lombardo, Relazione 2004*, Milan, 2005, 8-38; C. Gullo and A. Gullo (ed.), *Prassi processuale nelle cause canoniche di nullità del matrimonio, terza edizione aggiornata con l'instr. "Dignitas Connubii" del 25 gennaio 2005*, Città del Vaticano, Libreria Editrice Vaticana, 2009. P. Hallein, *Le défenseur du lien dans les causes de nullité de mariage: étude synoptique entre le code et l'istruzione "Dignitas Connubii," fondée sur les travaux des commissions préparatoires de*

status of DC. This instruction attracted the attention of the canonists not only because it presented the procedural norms of the Code of Canon Law in a systematic way, but also it has incorporated the post-code developments in the Catholic matrimonial procedural law.

However, an important aspect of *Dignitas Connubii* was not attended to any of these discussions, namely, the fact that this instruction is limited only to the tribunals of the Latin Church and the tribunals of the Oriental Catholic Churches are explicitly excluded from its application. The first article of this instruction says: "This Instruction concerns only the tribunals of the Latin Church."² When the canonical authors praise the usefulness and merits of *Dignitas Connubii* in the functioning of ecclesiastical tribunals, they do not seem to have considered the exclusion of its application to the tribunals of the Oriental Catholic Churches as an issue worth discussing. But in the point of view of tribunal personnel of the Oriental Catholic Churches, the lack of such a useful weapon, leave them handicapped in the ministry of justice in the Church. Therefore, I would like to point out certain merits of *Dignitas Connubii* in the application of marriage procedural law, and its possible application in the tribunals of the Oriental Catholic Churches.

1. General Notions of DC

In 1936, about nineteen years after the promulgation of the Pio-Benedictine Code of 1917, the Holy See published the Instruction, *Provida mater* with the declared intention "of providing for the same cause to be instructed and decided more quickly and more securely."³ This instruction was in force until 25-01-1983 when the new Code of Canon Law was promulgated. The new Latin Code, like its predecessor, expected the general norms governing contentious trial to be used for the marriage nullity process, despite the fact that the marriage process possessed unique characteristics that did not always

l'instruction, Roma, Editrice Pontificia Università Gregoriana, 2009; J. Otaduy, "El principio de jerarquía, normativa y la instrucción *Dignitas Connubii*," *Ius Canonicum* 46 (2006) 59-97.

²DC, art. 1 §1: "*Haec Instructio tantummodo tribunalia Ecclesiae Latinae respicit* (see, CIC c. 1)."

³See, Sacra Congregatio pro Sacramentis, "*Provida Mater*," AAS 28 (1936) 313-361.

fit smoothly with the ordinary contentious trial.⁴ Pontifical Council for Legislative Texts (=PCLT) has made it clear in the introduction to the DC:

The new Code followed the same method as the Code of 1917, in regard to the matrimonial process for the declaration of nullity. In the special part *De processibus matrimonialibus*, it gathers together in one chapter the particular norms proper to this process (cc. 1671-1691/CIC), while the prescriptions which govern the entire process are found in the general part *De iudicibus in genere* (cc. 1400-1500/CIC) and *De iudicio contentioso* (cc. 1501- 1655/CIC), with the result that the procedural path which the judges and ministers of the tribunal are bound to follow in causes for the declaration of the nullity of marriage is not found in one and the same continuous tract.⁵

A systematic and continuous presentation of all the relevant norms governing the marriage nullity process was missing in both codes. As a result, applying the norms of the Code in handling marriage cases became a tedious work for judges and other tribunal officials around the world. In order to apply the matrimonial procedural law correctly and properly, the tribunal personnel must have the necessary expertise to bring together the canons specifically concerned with the matrimonial nullity process that are found scattered throughout Book VII of CIC.⁶ The Code of Canons of the Oriental Churches, promulgated in 1990, also followed the same pattern of CIC in presenting matrimonial procedural law. Thus this difficulty - the lack of a unified presentation of procedural law applicable to marriage nullity cases - arises in reference to both CIC and CCEO. Thus, there arose a desire in the canonical world for a systematically arranged procedural text to guide the administration of marriage nullity processes. The Apostolic See received persistent requests to provide such a new document.⁷ "After the Code was promulgated in 1983, there appeared a pressing need to prepare an instruction which, following the footsteps of *Provida mater* would be helpful to judges and other ministers of

⁴K. Lüdicke and R. Jenkins, *Dignitas Connubii: Norms and Commentary*, viii-ix.

⁵PCLT, *DC*, Introduction, 13.

⁶R. J. Kaslyn, "The Role of History and Context in the Church Law," 6.

⁷K. Lüdicke and R. Jenkins, *Dignitas Connubii: Norms and Commentary*, ix.

tribunals in properly understanding and applying the renewed matrimonial law.”⁸

The preparatory work of this Instruction started in 1996 by the decision of Pope John Paul II to constitute an interdicasterial commission, and their work was concluded in January 2005 with the publication of DC.

1.1. Genesis of the Instruction DC

Different dicasteries of the Roman Curia worked jointly nine years to shape this Instruction. The dicasteries that were involved in the formation of this instruction were the Pontifical Council for Legislative texts, the Congregation for the Doctrine of the Faith, the Congregation for the Divine Worship and the Discipline of Sacraments, the Supreme Tribunal of the Apostolic Signatura, and the Apostolic Tribunal of the Roman Rota.⁹ However, the Signatura had a prominent role in this codification process.

Pope John Paul II, in his allocution to the Roman Rota on 22-01-1996, pointed out certain principles regarding the marriage nullity process that are to be elaborated and translated into clear juridical practices.¹⁰ He indicated that these principles call for corrective measures by the legislator or for specific norms for the application of the Code, as occurred in the past in reference to the *Provida mater*.¹¹ A letter was issued soon after this allocution, on 24-02-1996 by G. B. Re, Substitute for the General Affairs of the Secretariat of State, addressing the Prefect of the Apostolic Signatura, the Dean of the Roman Rota, and the President of PCLT stating that the Holy Father John Paul II had considered very opportune, “for the purpose of safeguarding better the indissolubility of marriage,” that under the auspices of the Apostolic Signatura, an instruction on matrimonial procedure was to

⁸DC, Introduction, 13.

⁹DC, Introduction, 15; M. Canonico, *Note di commento all'istruzione Dignitas Connubii sul processo matrimoniale canonico*, 8; J. Herranz, “Natura e finalità dell'istruzione *Dignitas Connubii*,” in J. I. Arrieta (ed.), *L'istruzione Dignitas Connubii nella dinamica delle cause matrimoniali*, Venezia, Marcianum Press, 2006, 13; C. Gullo and A. Gullo, *Prassi processuale nelle cause canoniche di nullità del matrimonio*, 14.

¹⁰John Paul II, *Allocution to the Roman Rota*, 22 January 1996, AAS 88 (1996) 775.

¹¹John Paul II, *Allocution to the Roman Rota*, 22 January 1996, 776.

be drafted by an interdicasterial commission.¹² The Commission was to be composed of six members and each of the above mentioned dicasteries had to propose to the Secretariat of State two representatives each from those dicasteries.¹³ It was obvious that the Holy Father was intending to execute immediately what he had pointed out in his allocution as “corrective measures” and “specific norms.” The same Supreme Pontiff had in another allocution to the Roman Rota on 17-01-1998 declared: “In order to encourage an ever better administration of justice from both the substantive and the procedural standpoint, I have established an interdicasterial commission charged with drafting an instruction on the conduct of trials concerning marriage cases.”¹⁴

Between 20-05-1996 and 22-02-1999 the first commission met forty six times and produced a draft of the procedural law for marriage cases consisting of 308 articles arranged under fifteen titles and printed out in eighty three pages. On 22-02-1999 the Commission presented the *Primum Schema a Commissione approbatum*¹⁵ to the Prefect of the Apostolic Signatura, Cardinal Z. Grocholewski. The schema was then proposed, in agreement with the Cardinal Secretary of State, in a reserved manner to 27 Episcopal Conferences of different continents.

¹²Letter of 24-02-1996 of Msgr. G.B. Re, Substitute for the General Affairs of the Secretariat of State addressed to Card. G. Agustoni, Prefect of the Apostolic Signatura, Prot. n. 388.342 quoted by P. Hallein, *Le Défenseur du lien dans les causes de nullité de mariage*, 83, footnote n. 10; See also: F. Daneels, “A General Introduction to the Instruction *Dignitas Connubii*,” 362.

¹³Signatura proposed Frans Daneels and Charles Scicluna; the Rota proposed Raffaello Funghini and Joseph Huber; and, the PCLT proposed Urbano Navarrete and Velasio de Paolis as members of the commission. President of the Commission was F. Daneels and the Secretary was C.J. Scicluna. F. Daneels, “A General Introduction to the Instruction *Dignitas Connubii*,” 362; P. Hallein, *Le Défenseur du lien dans les causes de nullité de mariage*, 83; L.G. Wrenn, “A New Procedural Law for Marriage Cases?” 198-199.

¹⁴John Paul II, *Allocution to the Roman Rota*, 17 January 1998, AAS 90 (1998) 783-785; see also, F. Daneels, “A General Introduction to the Instruction *Dignitas Connubii*,” 364.

¹⁵Commissione Interdicasteriale “Per il primo progetto di una istruzione sui processi matrimoniali” (1996-2000), *Primum Schema 1999-A Commissione Approbatum (Reservatum)* [=Primum Schema 1999], n. p. 1999.

22 Episcopal Conferences offered, in one way or another, their advice and their observations regarding the document.¹⁶

The Interdicasterial Commission “for the first draft” examined these comments and observations of the Episcopal Conferences in 17 sessions and on 11-08-2000 it could present the *Primum Schema Recognitum* together with the reserved document *Vota et Animadversiones Conferentiarum Episcoporum una cum modorum expansione ex parte Commissionis Interdicasterialis*.¹⁷ At its presentation, this draft consisted of 308 articles arranged in 15 titles.¹⁸

In June 2001 a second commission, that was thought to be that “for the drafting of a definitive set of norms on the processes of marriage nullity,” was formed now with the added intervention of representatives from the Congregation for the Doctrine of the Faith and the Congregation for the Divine Cult and the Discipline of the Sacraments. The new Commission consisted of eleven members.¹⁹ The President of the Commission was M. F. Pompedda and the Secretary was C. J. Scicluna. This Commission met 25 times over the years 2001-2002 and

¹⁶Commissione Interdicasteriale “Per il primo progetto di una istruzione sui processi matrimoniali,” *Verbale delle Riunioni XLVII-LXIII, 19 ottobre - 26 maggio 2000 (sessiones I-XVII pro Recognitione Animadversionum Conferentiarum Episcoporum)* [=Verb. R. 2], n. p. n. d., XLVII Meeting (19 October 1999) 424-425; see also F. Daneels, “A General Introduction to the Instruction *Dignitas Connubii*,” 363.

¹⁷Commissione Interdicasteriale “Per il primo progetto di una istruzione sui processi matrimoniali” (1996-2000), *Vota et Animadversiones Conferentiarum Episcoporum una cum modorum expansione ex parte Commissionis Interdicasterialis* [= *Animadversiones*], Rome, 2000.

¹⁸Commissione Interdicasteriale “Per il primo progetto di una istruzione sui processi matrimoniali” (1996-2000), *Primum Schema “de processu ad nullitatem matrimonii declarandum”- Perspectis Episcoporum Conferentiarum Animadversionibus Recognitum (Reservatum)* [= *Primum Schema Recognitum 2000*], Rome, 2000.

¹⁹The members of this second Commission were: M. F. Pompedda, F. Daneels, and C. J. Scicluna (of the Apostolic Signatura), R. Funghini and A. Stankiewicz (of the Roman Rota), G. Girotti and A. R. McCormack (of the Congregation for the Doctrine of the Faith), P. Pallath and P. Amenta (of the Congregation for the Divine Cult and the Discipline of the Sacraments), E. Davino and M. Marchesi (of the PCLT). See P. Hallein, *Le défenseur du lien dans les causes de nullité de mariage*, 92.

formed a brief *Novissimum Schema*.²⁰ It differed radically from the *Primum Schema*. There were several articles in this schema which were notably different from CIC and of such innovative nature that special pontifical approval would have been required.²¹ It aimed at the preparation of a *motu proprio* such as *Causas Matrimoniales* of Paul VI rather than at an Instruction in the lines of *Provida mater*.²² However, both drafts were not accepted by the Supreme Pontiff to be published as binding norms for ecclesiastical tribunals. Therefore, the Pope entrusted the task to redraft the Instruction to the PCLT on 04-02-2003.²³

The new mission was entrusted to the PCLT and it had to form an interdicasterial Commission and obtain counsel from the Apostolic Tribunals of the Apostolic Signatura and the Roman Rota. This third Commission was composed of nine members and they had sixteen meetings between 18-02-2003 and 18-01-2005.²⁴ As it was clear from the mandate given to the PCLT, its task was to prepare a third draft taking into account the two previous drafts. The official Latin text of the Instruction was approved (*in forma communi*) by Pope John Paul II on 08-11-2004. It was officially published by the PCLT on 25-01-2005 and came into effect from the very date of publication.

1.2. The Purpose of the Instruction DC

²⁰Nuova Commissione Interdicasteriale per la redazione del progetto definitivo di normativa sui processi di nullità del matrimonio, *Novissimum Schema*, n. p., 2002 (Riservatum) [= *Novissimum Schema*]; See, P. Hallein, *Le défenseur du lien dans les causes de nullité de mariage*, 93; F. Daneels, "A General Introduction to the Instruction *Dignitas Connubii*," 363

²¹See *Novissimum Schema* Artt. 3, 8, 9, 18 § 1, 24, 35 § 2, 41, 43 § 2. L.G. Wrenn, "A New Procedural Law for Marriage Cases?" 209. See also A. Mendonça, "What is New?" 173-273.

²²F. Daneels, "A General Introduction to the Instruction *Dignitas Connubii*," 365.

²³See, *The letter of 4 February 2003* of Card. A. Sodano, Secretary of State, addressed to J. Herranz, President of PCLT, Prot. n. 517.238/PCLT.

²⁴J. Herranz, U. Navarrete, T. J. Fucinaro, E. Davino, F. Daneels, C. J. Scicluna, R. Funghini, A. Stankiewicz, and J. Llobell were the members of the third Commission. J. Herranz was the president of the Commission and E. Davino was the one who led the discussions of the Commission. F. Vinaixa and E. Napolitano had served as notaries. See P. Hallein, *Le Défenseur du Lien dans les Causes de Nullité de Mariage*, 96.

The purpose of this Instruction was not to form a new legislative text or to abrogate any laws contained in the CIC but to make the consultation and the application of the law easier for tribunals.²⁵ The Instruction, in general, contains no innovations,²⁶ but gives a good deal of clarification on points apparently not spelled out in the CIC. It brings about two conveniences: first of all, it presents together all the laws regarding the marriage nullity process which are scattered in the Latin Code; secondly it incorporates the new developments which had come about in the canonical field during the period immediately following the promulgation of the CIC, i. e., interpretations of the PCLT, the responses of the Supreme Tribunal of the Apostolic Signatura, the jurisprudence of the Apostolic Tribunal of the Roman Rota, etc.²⁷

The Instruction, according to the Preface of DC, has in the first place the finality of easing the difficulties that the operators of justice face in the administration of justice.²⁸ In the press conference conducted on the occasion of the publication of DC, Cardinal J. Herranz, the then President of the PCLT stated:

The purpose of this Instruction is very simple: to offer the ministers of justice who work in ecclesiastical tribunals a practical document, a sort of *vademecum* that will serve as an easy guide to enable them to handle their work better in canonical processes of matrimonial nullity.²⁹

Pope Benedict XVI has underlined this purpose of DC in his allocution to the Roman Rota on 28 January 2006: "It was intended to set out a

²⁵J. Herranz, "Natura e finalità dell'istruzione *Dignitas Connubii*," 13.

²⁶Already many canonical authors have discussed of the "newness" of DC. However, these innovations, they point out, are evaluated to be founded on the norms of the Code or later doctrinal and jurisprudential development. For example A. Mendonça points out certain innovations in DC. A. Mendonça, "What is New?" 272; M. Canonico, *Note di commento all'istruzione Dignitas Connubii sul processo matrimoniale canonico*, 11-85.

²⁷J. Herranz, "Natura e finalità dell'istruzione *Dignitas Connubii*," 13-14.

²⁸DC, Introduction, 13; F. Daneels, "A General Introduction to the Instruction *Dignitas Connubii*," 366.

²⁹J. Herranz, "A simple Purpose: helping tribunals handle their work better," 347; J. Herranz, "Natura e Finalità dell'Istruzione *Dignitas Connubii*," 13.

sort of *vademecum* which not only contains the respective norms in force on this subject but enriches them with further, relevant measures necessary for their correct application."³⁰

Cardinal J. Herranz added in his press conference, "as usually happens with norms that are less important than laws, this Instruction does not only reiterate the text of the canonical code, but also contains interpretations, explanations of what the laws prescribe and further measures concerning procedures for execution."³¹ DC is intended to fill the gap between the law given in the Code and the practice of ecclesiastical tribunals, and to help the tribunal personnel towards a proper application of procedural law in marriage nullity processes which constitute the bigger part of the activities of ecclesiastical tribunals.³² The Code has provided a few special norms governing the marriage nullity trials (CIC cc. 1671-1709). In addition, CIC c. 1691 stipulates that the general norms on contentious trial are to be used to conduct the marriage nullity process "unless the nature of the case demands otherwise (*nisi rei natura obstet*)." This entails that the judge must be cautious of applying the norms of ordinary contentious trial when particular cases require it. Here DC becomes a real *vademecum*.

...the Instruction assumes the responsibility of harmonizing the general norms of the Code on the contentious trial with the marriage nullity process. In other words, the Instruction relieves the judge of the duty that c. 1691 imposes on him, to determine how the law adapts when particular cases require it. With the advent of the Instruction, the argument becomes difficult to sustain that the general procedural law does not adapt well to marriage nullity cases.³³

DC systematically inserts the norms of the ordinary contentious trial to the norms of the marriage nullity process. It is obvious that this

³⁰Benedict XVI, *Allocution to the Roman Rota*, 28 January 2006, AAS 98 (2006) 135. English translation taken from: http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/january.

³¹J. Herranz, "A simple Purpose," 347; J. Herranz, "Natura e finalità dell'istruzione *Dignitas Connubii*," 13.

³²G.P. Montini, "Una introduzione," 343-344. J. I. Arrieta, "Presentazione," in J. I. Arrieta, *L'Instruzione Dignitas Connubii nella dinamica delle cause matrimoniali*, Venezia, Marcianum Press, 2006, 6.

³³K. Lüdicke and R. Jenkins, *Dignitas Connubii: Norms and Commentary*, ix-x.

Instruction promotes expeditious and secure undertaking of marriage nullity cases which is always demanded by the Roman Pontiffs. Referring to DC, art. 72, Pope Benedict XVI in his allocution to the Roman Rota on 29-01-2010 stated: "The Judge who seeks to be just and wishes to live up to the classic paradigm of *"animate justice"*, has the grave responsibility before God and men of his function, which includes due timeliness in every phase of the process: *"quam primum, salva iustitia* [as soon as possible, while safeguarding justice]."³⁴

1.3. Juridical Status and Binding Force of DC

Though DC is self addressed as an "instruction," many of its features do not correspond to the standards of an instruction specified by common law. It appears that DC does not limit itself to a mere systematic presentation of dispersed canons of the Code regarding Marriage nullity trials, but supplements its provisions and sometimes goes beyond to derogate the prescriptions of common procedural law.³⁵ It seems to have gone beyond the limits of an instruction in supplying norms where there is a *lacuna legis*, in presenting procedural law of the matrimonial cases as well as its substantive laws, and in specifying the norms of the ordinary contentious trial in the context of matrimonial process.³⁶ Among the 308 articles of DC at least 238 contain adaptations of the existing law or, more rightly, explanations of the law. Of course they are intended to give clarity to the *ius vigens*. In order to show the nature of the innovations introduced in DC we point out a few examples.³⁷

The untitled preliminary section contains seven articles, most of which are either new or have been adapted from the present Latin Code,

³⁴Benedict XVI, *Allocution to the Roman Rota*, 29 January 2010, AAS 102 (2010) 111.

³⁵M. Canonico, "L'istruzione *Dignitas Connubii* nel sistema delle fonti," 1528.

³⁶G.P. Montini, "L'istruzione *Dignitas Connubii* nella gerarchia delle fonti," 460.

³⁷For detailed descriptions of innovations in DC see M. Canonico, *Note di commento all'istruzione Dignitas Connubii*, 11-85; A. Mendonça, "What is New?" 173-273; G. P. Montini, "L'istruzione *Dignitas Connubii* sui processi di nullità matrimoniale," 351-356; J. I. Arrieta, *L'istruzione Dignitas Connubii nella dinamica delle cause matrimoniali*, Venezia, Marcianum Press, 2006, 123-162.

from CCEO or from responses of different Roman dicasteries.³⁸ For example, DC, art. 2 §2 is new to the Latin Code; however, it contains the same norm of CCEO c. 780 §2 with little textual variations. Another article that makes an evident innovation is DC, art. 4 which speaks of the procedural and substantive laws on judging the marriages of non-Catholics, both baptized and unbaptized. These two articles (artt. 2 and 4) of DC now seem to have filled the *lacuna legis* in the law of the Latin Church regarding the norm that is to be followed while processing a marriage nullity case involving baptized and unbaptized non-Catholics. It specifies that while judging a marriage nullity case involving non-baptized persons, the ecclesiastical tribunal should follow the canonical procedural law (DC, art. 4 §2, 1^o) and the substantive law, without prejudice to divine law, by which the parties were bound at the time of their marriage (DC, art. 4 §2, 2^o). Likewise, many other articles reflect norms that are apparently new.³⁹

In spite of the innovative contents, DC does not claim any legislative value for itself. It is clearly stated in the "Introduction" to DC: "The procedural laws of the Code of Canon Law for the declaration of the nullity of marriage remain in their full force and reference is always to be made to them in interpreting the Instruction." Hence, the instruction itself excludes its capacity to derogate any provisions of the Code and indicates the Code as the parameter of reference for the correct interpretation of the Instruction.⁴⁰ The nature of the Instruction and its relationship with the Code is clear: the law is contained in the Code while the Instruction serves as a guide for the implementation of that law.⁴¹

It may be concluded that DC is an Instruction with the force of an administrative decree but it does not possess any force of law while at the same time contains elements that seem to go beyond the provisions of CIC. This contradiction may be explained by the argument that the so called innovations of DC are not *praeter legem*,

³⁸A. Mendonça, "What is New?" 180.

³⁹See the commentary on artt. 170 § 1, 235, 258 § 3, 265 § 6, 291 § 2, etc. in K. Lüdicke, and R. Jenkins, *Dignitas Connubii: Norms and Commentary*.

⁴⁰M. Canonico, "L'istruzione *Dignitas Connubii* nel sistema delle fonti," 1531.

⁴¹K. Lüdicke and R. Jenkins, *Dignitas Connubii: Norms and Commentary*, ix.

but *praeter codicem*.⁴² This is because the sources of DC are not limited to CIC,⁴³ but it includes heterogeneous sources such as, the allocutions of the Roman Pontiff to the Roman Rota,⁴⁴ the interpretations provided by the PCLT,⁴⁵ doctrinal developments,⁴⁶ the evolution of jurisprudence, especially that of the Supreme Tribunal of the Apostolic Signatura⁴⁷ and the Tribunal of the Roman Rota,⁴⁸ the Apostolic Constitution *Pastor Bonus*,⁴⁹ CCEO,⁵⁰ developments in the

⁴²E. Baura, "Il valore normativo dell'istruzione *Dignitas Connubii*," 200.

⁴³The articles of DC presuppose the text of the CIC and give explicit reference to the relevant canons. Thus, while a straight reference to a canon means it is simply reproduced unchanged (e. g., DC, art. 137) the use of "cf." referring to a canon or to another formal document, such as *Pastor bonus*, implies that the article is drawn from the canon or the specific document, but the text has been expanded or clarified (e. g., DC, art. 134 § 4). The third type of article, is the one that has no reference (e. g., DC, art. 135 §3). This means that we are dealing with a new article, based either on jurisprudence or on the practice of the Roman Curia. See, F. G. Morrissey, "The Possible Application of *Dignitas Connubii* to formal marriage nullity trials in the Eastern Churches," 48-49; see also G. Read, "An Introductory Comment," 31.

⁴⁴In three occasions DC gives explicit references to the Allocutions of the Roman Pontiff to the Roman Rota: DC, artt. 167 §1, 203 §1 and 218.

⁴⁵In four articles of DC explicit references are given to the authentic interpretations given by the PCLT: DC, artt. 5 §3 (Response, 26-06-1984 in AAS 76 (1984) 747), 13 §5 (Response, 28-02-1986, in AAS 78 (1986) 1323), and 19 §1 (Response, 29-04-1986, in AAS 86 (1986) 1324).

⁴⁶Certain DC articles provide references to the decrees of CDF (DC, art. 19) and the Congregation for the Divine worship and the Discipline of the Sacraments (DC, artt. 153 §2, 154 §1 and 154 §3).

⁴⁷Even if the source of many of the articles could be traced to different documents of the Apostolic Signatura, they are not given in the footnotes. G. P. Montini, "L'istruzione *Dignitas Connubii* nella gerarchia delle fonti," 427-428; F. Daneels, "A General Introduction," 376-377.

⁴⁸DC, art. 19 refers to the Norms of the Tribunal of the Roman Rota, promulgated in 1994. F. Daneels, "A General Introduction," 377.

⁴⁹In many articles of DC direct reference to PB is given in parenthesis besides the references to CIC. For example DC, art. 1 §§2, 3; art. 9 §3, etc.

procedural provisions of the Code brought about by later laws including particular laws issued by the supreme authority such as the *lex propria* of the Roman Rota or that of the Rota of the Apostolic Nunciature in Spain,⁵¹ “former law” of the Instruction *Provida mater* which was subsequently passed to DC,⁵² etc.

Therefore, it is clear that the “law in force” within the canonical order stems from different sources, of which CIC forms only a part (albeit the most important). What DC has done is, in fact, to put together all the existing norms regarding the marriage nullity process in a systematic and handy order. In other words, DC does not merely repeat the text of the canons of the code, but also contains interpretations and clarifications of law basing on authentic interpretations, magisterial teachings, jurisprudence of the apostolic tribunals, etc. and facilitates its implementation. In this background its application to the tribunals of Oriental Catholic Churches becomes an issue worth consideration.

2. Applicability of DC to the Tribunals of the Oriental Catholic Churches

The first paragraph of DC, art. 1 reads: “This Instruction concerns only the tribunals of the Latin Church.” Through this statement, the legislator restricts the scope of the Instruction’s applicability solely to the tribunals of the Latin Church. The adverb “only” (*tantummodo*) is deliberately inserted in this text in order to exclude the tribunals of the Oriental Catholic Churches.⁵³ In fact, one of the topics of discussion at

⁵⁰DC, art. 2 §2 reflects CCEO c. 780 §2; DC, art. 4 §1, 2° reflects CCEO c. 781; and DC, art. 16 reflects CCEO c. 916 §5. See, P. O. Akpoghiran, *Witness Testimony in Marriage Nullity Trials*, 22.

⁵¹J. Llobell, “The Juridical Nature of the Instruction *Dignitas Connubii*,” 7-8.

⁵² “[...] for example, article 122 of *Dignitas connubii* is obviously taken from article 64 of PME, and article 102 of *Dignitas connubii* from article 43, §3 of PME.” J. Llobell, “The Juridical Nature of the Instruction *Dignitas connubii*,” 9.

⁵³The proposed article which came before the Commission for discussion was formulated in an affirmative way: “*Haec Instructio tribunalia Ecclesiae latinae respicit* (cf. can. 1).” It was decided in the Commission that in order to explicitly exclude the Oriental Catholic Churches, it is necessary to coin the article in a more exclusive way and therefore it was decided to add

the first meeting of the Interdicasterial Commission for the preparation of the *Primum Schema* was, if it should be “one Instruction only for the Latin Church or also for the Oriental Churches?”⁵⁴ It was suggested that the Instruction should be intended to provide service to the whole Church. The option was between the possibilities of a) one document with reference to both the Latin and the Oriental legislation, and b) two distinct documents, but parallel.⁵⁵ However, in the second meeting of the Commission it was decided to establish the first article (probably on account of a clarification from higher authority) as, “the Instruction is intended only for the Latin Church.”⁵⁶ Thus, like CIC (c. 1), this Instruction also governs only the tribunals of the Latin Church. In other words, DC, art. 1 §1 implies that other Churches *sui iuris* are not bound by the directives with respect to the procedural law provided by the Instruction.⁵⁷

However, one cannot hastily judge that DC has nothing to do with the Oriental Catholic Churches. DC is an instruction drafted with the intention of fostering correct application of matrimonial procedural law in the Tribunals of the Latin Church. As we have seen before, DC is not merely a document that collects together the marriage nullity procedure law contained in CIC; but, it provides also more extensive norms helpful in marriage nullity procedure on the basis of recent jurisprudence and post-Code canonical developments, which cannot be found in either CIC or CCEO. The procedural law contained in CIC (which is the foundation of DC) does not have much difference from the norms contained in CCEO. Therefore, basically DC has many things in common with the procedural law section of CCEO. Moreover, the Rotal jurisprudence, the authentic interpretations, the dogmatic clarifications and the other post-Code developments in the procedural norms, which have served as sources of DC, are equally relevant to the Oriental Catholic Churches.⁵⁸ In the absence of a docu-

the adverb “*tantummodo*” after the word “*Instructio*.” See, Verb. R. 1, II Meeting (1 October 1996), 4, 6 and *Bozze e Commenti*, 1.

⁵⁴“*Una istruzione per la sola Chiesa latina o anche per le Chiese Orientali?*” Verb. R. 1, I Meeting (28 May 1996), 2.

⁵⁵See, Verb. R. 1, I Meeting (28 May 1996), 4.

⁵⁶Verb. R. 1, II Meeting (1 October 1996), 6.

⁵⁷K. Lüdicke and R. Jenkins, *Dignitas Connubii: Norms and Commentary*, 13; A. Mendonça, “What is New?” 180.

⁵⁸F. G. Morrissey, “The Possible Application of *Dignitas Connubii*,” 49.

ment like DC, ecclesiastical judges could possibly be left ignorant of many developments in the procedural law established by jurisprudence and authentic interpretations. F. G. Morrissey suggests: "although it is addressed to the Latin Church, *Dignitas Connubii* contains many procedural details that could be of assistance to the Eastern Churches..."⁵⁹ Hence, it becomes a pertinent question to ask how DC can be of significance to the tribunals of the Oriental Catholic Churches.

2.1. Significance of DC to the Tribunals of the Oriental Catholic Churches

The primary significance of DC in relation to the tribunals of the Oriental Catholic Churches is that, the motivating principles behind the formation of DC for Latin tribunals are equally relevant to Oriental tribunals. DC was intended to clarify the laws of the Latin Code, to put the scattered canons on marriage nullity process together, and thus to provide a *vademecum* for the diocesan and interdiocesan tribunals. Further concerns of this Instruction were to gather all the procedural norms outside the Latin Code, to facilitate the handling of cases and to ensure the accurate implementation of the trial, to guarantee the conformity of the decisions of local tribunals with the jurisprudence of the Roman Rota and clarifications of the Apostolic Signatura, and finally, checking the abuses in the practice of ecclesiastical tribunals.⁶⁰ A document with these intentions will, obviously, promote a smoother functioning of the Oriental Catholic tribunals, as well. For example, many articles of DC have incorporated the jurisprudence of the Apostolic Signatura, and the tribunals of the Oriental Catholic Churches may not be deprived of their application at least in individual cases.

Another significance of DC may be analogically deduced from DC, art. 1 §2: "All tribunals are regulated by the procedural law of the Code of Canon Law and by this Instruction, without prejudice to the proper laws of the tribunals of the Apostolic See (see, CIC c. 1402; *Pastor bonus*, artt.125 & 130)." Llobell comments that:

[The provision of this article] should not be taken as meaning that the apostolic tribunals are exempt from following *Dignitas*

⁵⁹F. G. Morrissey, "The Possible Application of *Dignitas Connubii*," 44.

⁶⁰G. P. Montini, "Una introduzione," 343-344; G. P. Montini, Dall'istruzione *Provida Mater* all'istruzione *Dignitas Connubii*, 39-40; F. Daneels, "A General Introduction," 367-368.

Connubii: they are required to apply it, just as they are obliged to respect the procedural norms of the Code. These two sets of norms (CIC and *Dignitas Connubii*) would only cease to bind the apostolic tribunals in the case of conflict with the *lex propria* of those tribunals. Subject to these extremely minor exceptions, article 1 §2 of *Dignitas Connubii* reinforces the procedural uniformity of all tribunals whether local or apostolic.⁶¹

Analogically it could be concluded from this explanation that, unless there is a conflict with the *lex propria* of the Oriental tribunals, (i.e. with the procedural norms of CCEO), the provisions of DC may be used by the Oriental tribunals too. The similarities one may find between the procedural norms of CCEO and the Instruction DC, as well the similarities between the CCEO procedural norms and the CIC procedural norms, clarify furthermore this argument.

2.2. Similarity of DC with the Procedural Norms of CCEO

DC has systematically arranged the procedural norms that were scattered over different titles in the Code together with adequate explanations for application in concrete cases. Its intention was, as we have already indicated, to give clarity to the norms of the Latin Code. When DC clarifies the provisions of CIC, it clarifies the norms of CCEO too, because both Codes contain almost identical procedural norms. The marriage nullity procedure pursued by the Oriental Catholic tribunals has substantial similarity with the procedure given in DC. As regards the general structure of the tribunal, the different phases of a trial, etc. both documents do not differ much. Moreover, most of the CIC canons which are given as sources in parenthesis to the articles of DC, have their parallel canons in CCEO. Therefore, the explanations given to the CIC canons in the form of an instruction are equally helpful for the tribunal personnel of the Oriental Catholic Churches.

There are many articles of DC which have corresponding canons in CCEO and the articles that are found to have a resemblance with canons of CCEO do not always need to follow the exact wording of CCEO. Nevertheless, with respect to contents they match each other. It is worthwhile to note certain salient features of this comparison.

2.2.1. Resemblance between Procedural Norms in CCEO and CIC

⁶¹J. Llobell, "The Juridical Nature of the Instruction *Dignitas Connubii*," 9-10.

The similarity between the procedural norms of CCEO and CIC makes DC analogically significant to Oriental Catholic Churches. One of the guidelines for the preparation of the Eastern Code was to provide the same procedural norms for all Catholics.⁶² The ninth directive of “the guidelines for the Revision of the Code of Eastern Canon Law” adopted by the 1974 Plenary Assembly of PCCICOR⁶³ proposed in its n. 2: “It is desired that all Catholics observe the same procedural norms.”⁶⁴ As a result, the majority of the procedural norms in CCEO are identical with those of CIC.⁶⁵ The study group, which dealt with the schema of the procedural law, was very attentive to fulfil this desire of the Commission expressed in this guideline. After the promulgation of the Latin Code in 1983 the study group focused up on making the procedural norms of the Oriental Code conform to the Latin Code.⁶⁶

After the promulgation of the new Code of Canon Law for the Latin Church, this guideline could not have any other meaning for the study group than the maximum possible conformity with the Latin Code in this matter. For a more adequate administration of justice in the Church, the study group has kept only those differences which are required by the hierarchical configuration of the Eastern Churches and by the particular conditions of the East or, at any rate, (those differences) which are opportune for a greater understanding of the Code on the part of the Easterners, and, in some rare instances, for a greater agreement of the canons and terminology.⁶⁷

On the basis of this new understanding, the study group made significant changes to the 1982 schema of the procedural norms. This rework has helped to achieve “maximum possible conformity” with the Latin Code in canons on “trials in general” (CCEO, Title 24; CIC,

⁶²S. Kokkaravalayil, *The Guidelines for the Revision of the Eastern Code: Their Impact on CCEO*, (Kanonika 15), Rome, PIO, 2009, 425.

⁶³J. Abbas, *Two Codes in Comparison*, 210-211.

⁶⁴*Nuntia* 3 (1976) 23.

⁶⁵S. Kokkaravalayil, *The Guidelines for the Revision of the Eastern Code*, 424.

⁶⁶J. Abbas, *Two Codes in Comparison*, 213.

⁶⁷*Nuntia* 17 (1983) 73; English translation is taken from J. Abbas, *Two Codes in Comparison*, 213-214.

Part 1 of Book 7),⁶⁸ on contentious trial (CCEO Title 25; CIC part 2 of Book 7)⁶⁹ and special process (CCEO Title 26; CIC Part 3 of Book 7). As a result, it is not surprising that the promulgated CCEO canons on procedural law are to a great extent similar, if not identical, to their Latin counterparts. However, there are still some CCEO canons which have no CIC equivalents and some CIC canons with no parallel CCEO canons. At the same time, there are other CCEO canons which would differ substantially from their corresponding CIC canons (obviously to keep the Oriental character of the Code). Notwithstanding these differences, in general both Codes follow similar procedural norms.⁷⁰

Moreover, both Codes follow the same format for the procedural norms for handling marriage cases. Both Codes give the general principles applicable to all cases in two titles namely, *De iudicibus in genere* (CCEO cc. 1055-1184; CIC cc. 1400-1500) and *De iudicio contentioso* (CCEO cc. 1185-1356; CIC cc. 1501-1655), and complement them with particular canons to be used in marriage nullity causes (CCEO cc. 1357-1384; CIC cc. 1671-1691). This necessitated the drafting of a single guideline which could put all the relevant marriage procedural laws together. The Latin Church actualized it through DC and the Oriental Catholic Churches still require such a document.

2.2.2. CCEO as One of the Sources of DC

The first Preparatory Commission of DC had a “*strumento di lavoro*” at its disposal with a synoptic text of articles of the *Provida Mater*, the

⁶⁸“With respect to the 126 canons on trials in general in the 1982 Schema, 11 of them were already identical to canons of the 1983 Latin Code. Then, as 7 CIC canons were added to the 1982 Schema, 16 other norms in the Schema which had no CIC equivalents were omitted. Regarding 35 other canons, the study group substituted their formulation with that of their corresponding CIC norms. In 3 of these cases, the substitution amounted to the addition of a series of CIC canons.” J. Abbas, *Two Codes in Comparison*, 214-215.

⁶⁹“With specific regard to the 175 canons on contentious trial in the 1982 Schema, 32 of them were already identical to canons of the 1983 Code. Then, as 7 CIC canons were added to the 1982 Schema, 11 other canons (or paragraphs thereof) were omitted. Regarding 98 other canons (or paragraphs thereof), the study group substituted their formulation with that of their corresponding CIC norms.” J. Abbas, *Two Codes in Comparison*, 253.

⁷⁰For a detailed treatment of the similarities and differences between the procedural norms of CIC and CCEO see J. Abbas, *Two Codes in Comparison*, 209-278.

canons of the CIC 1917, CIC 1983 and CCEO 1990.⁷¹ The reason for including CCEO as one of the instruments to be consulted in drafting DC seems to be that CCEO is more recent in the legislations promulgated by the same Supreme Legislator, and it has definitely modified the procedural law in the light of post-CIC experience. However, in the minutes of the Commissions only rare indications are found where the members of the Commissions have taken into consideration the procedural canons of CCEO.⁷²

In the final text of DC only once is there an explicit reference to the Oriental Code which is found at the end of DC, art. 16 § 1, 1° which speaks of the competence of Latin tribunals to hear marriage cases involving Eastern Catholics where there is no hierarchy of the Eastern Churches or where the care of souls of the Eastern Catholics has been given to the Latin Ordinary either directly by the Apostolic See or at least with its approval (e.g., in Paris). CCEO c. 916 §5 is given as its source; however, the canon is not taken verbally, but with adaptations.

Even if DC does not recognize it explicitly, art. 2 §2 is borrowed from CCEO c. 780 §2 with little textual variations. In fact, the proposed article presented at the Commission for discussion⁷³ and included in the *Primum Schema* of 1999 gave explicit reference to CCEO c. 780 §2 and CCEO c. 781 in parenthesis with DC, art. 3 §2 and §3 respectively.⁷⁴ It is not clear why the later drafts omitted this reference. In fact,

⁷¹Supremum Signaturae Apostolicae Tribunal, *Synopsis legum de processu pro causis nullitatis matrimonii. Instructio "Provida Mater Ecclesia,"* 1936, CIC 1917, CIC 1983, CCEO 1990, *Ad usum Membrorum Commissionis*, n. p. 1996. This was a synopsis of the parallel canons of the above mentioned legislative texts, prepared for the use of the Preparatory Commission which is kept at present in the archives of the Apostolic Signatura.

⁷²See, Verb. R. 1, II Meeting (01-10-1996), 12; Verb. R. 1, V Meeting (03-12-1996), 39-40; Verb. R. 1, VI Meeting (17-12-1996), 45-46.

⁷³See, Verb. R. 1, II Meeting (01-10-1996), 12, 13.

⁷⁴*Primum Schema* art. 3 § 2: *Matrimonium inter partem catholicam et partem baptizatam acatholicam salvo iure divino sed etiam:*

1° *iure proprio Ecclesiae vel Communitatis ecclesialis, ad quam pars acatholica pertinet, si haec Communitas ius matrimoniale proprium habet;*

2° *iure, quo pars acatholica tenetur, si Communitas ecclesialis, ad quam pertinet, iure matrimoniali proprio caret [CCEO c. 780 §2].*

§3 *Si quando Ecclesia iudicare debeat de nullitate matrimonii acatholicorum baptizatorum:*

these articles received much criticism from the Episcopal Conferences telling that it simply took up the norms of CCEO and applied them to the Latin Church.⁷⁵ The Commission has clarified that the norm was included to fill a *lacuna legis*, which all agree exists in Latin legislation, so to have certainty and unity regarding the law applicable in the matrimonial cases of the baptized non-Catholics when presented before Catholic tribunals; moreover, this norm is already established by different documents of the Holy See for the Latin Church.⁷⁶

CCEO cc. 780 §2 and 781 speak of the law that is to be observed when a marriage is being celebrated between a Catholic party and a baptized non-Catholic party. They have no corresponding canon in CIC. However, DC includes this norm as DC, artt. 2 §2 and 4 §1, 2^o.⁷⁷ Notwithstanding the existence of other documents like authentic interpretations or decrees of the Apostolic Signatura⁷⁸ supporting this norm, CCEO is to be considered as its authentic source, since it is a substantive norm⁷⁹ placed in the context of procedural law. The Episcopal Conferences which have made a comment on this article have, in general, appreciated the adoption of the CCEO canon to fill a *lacuna legis* in the Latin legislation.⁸⁰

Another inspiration taken from CCEO is found in the formation of DC, art. 4 §1, 2^o. In *primum schema recognitum* an insertion of “*in*

1^o *quod attinet ad ius, quo partes tempore celebrationis matrimonii tenebantur seruetur* §2;

2^o *quod attinet ad formam celebrationis matrimonii, Ecclesia agnoscit quamlibet formam iure praescriptam vel admissam, cui partes tempore celebrationis matrimonii subiectae erant, dummodo consensus expressus sit forma publica et, si una saltem pars est christifideles alicuius Ecclesiae orientalis acatholicae, matrimonium ritu sacro celebratum sit* [see, CCEO c. 781].

⁷⁵See, Verb. R. 2, XLVIII Meeting (22 October 1999), 433-440.

⁷⁶See, Verb. R. 2, XLVIII Meeting (22-10-1999), 438-439; L Meeting (12-11-1999), 454-456.

⁷⁷The article quoted above as *Primum schema* art. 3 § 2 turned to be art. 2 §2 and *Primum schema* art. 3 §3 become art. 4 §1 in the final text of DC.

⁷⁸See, Apostolic Signatura, “Decree, May 28, 1993,” *Ius Canonicum* 34 (1994) 652.

⁷⁹“The prescript of CCEO c. 780 is found among the introductory canons on marriage. That means that it is a substantive and not a procedural law. Therefore, art. 2 is a substantive norm even if it is placed in the context of procedural law.” A. Mendonça, “What is New?” 188.

⁸⁰*Animadversiones* 30-37; Verb. R. II, I Meeting (21-09-2001), 7-8.

communitate ecclesiali ad quam partes tempore celebrationis matrimonii pertinebant" was introduced as inspired by CCEO c. 871.⁸¹ Likewise, DC, artt. 303 §1, 3° and 304 §1 establish that account is to be taken of the poverty of the parties while determining the court costs. There is no equivalent norm in CIC; however, CCEO ascertains it as a right of the poor to get free legal aid (CCEO c. 1334).

2.2.3. Mutual Complementarities between DC and CCEO

An interesting characteristic of DC is that it has avoided contentious terminologies frequently used in the canons of CIC. Uggè points out certain non-contentious terminologies used in DC in contrast with the contentious terminology of CIC.⁸² P. Hallein indicates that some of those terminologies have a resemblance with CCEO which is less contentious.⁸³ For instance, DC speaks of "parties" instead of "litigants" and "*causa*" instead of "*lis*" used by CIC. For example CIC c. 1577 §1 speaks of "*litigantibus*," while the equivalent DC, art. 207 uses the term "*partibus*" which is more similar to CCEO c. 1258 §1. Likewise, Book VII, Part II, Title I, Chapter I of CIC is entitled "*De libello litis introductorio*," while the equivalent DC title (DC Title V, Chapter I) is "*De libello causae introductorio*."⁸⁴ Likewise, DC avoids other terms like *controversia* and *contentioso* used by CIC.⁸⁵ According to Uggè the changes of terminology are not casual, but intentional. It indicates that the marriage process should not be viewed as opposition between two parties in order to vindicate something, but the intention is to see whether their marriage is valid or not.⁸⁶ This view is acceptable in the marriage nullity process of Oriental tribunals as well.

⁸¹See, Verb. R. 2, L Meeting (12-11-1999), 455.

⁸²B. Uggè, "La terminologia non contenziosa dell'istruzione *Dignitas Connubii*," QDE 18 (2005) 364-375.

⁸³P. Hallein, "Il Difensore del vincolo nella *Dignitas Connubii* e il CCEO," *Iura Orientalia* VII (2011) 42-45 [www.iuraorientalia.net].

⁸⁴For detailed terminological comparison see: B. UGGÉ, "La terminologia non contenziosa dell'istruzione *Dignitas Connubii*," 364-375.

⁸⁵. UGGÉ, "La terminologia non contenziosa dell'istruzione *Dignitas Connubii*," 365-367.

⁸⁶B. Uggè, "La terminologia non contenziosa dell'istruzione *Dignitas Connubii*," 368-371.

The innovative articles of DC (e.g., DC, artt. 102, 291) are to a great extent very useful to Oriental tribunals. It is true that those articles refer to the jurisprudence and other relevant documents of the Holy See. Referring to those clarifications, while treating individual cases, is, indeed, a tiresome work for the tribunals of Oriental Catholic Churches. However, DC has codified it in a most convenient way, and Oriental Catholic tribunal personnel may use it as a reference book. In certain occasions it serves to fix the *lacuna legis*, left by the CCEO. For example, neither of the Codes speaks of the procedural and substantial laws that are to be used while handling marriage nullity cases of the unbaptized in ecclesiastical tribunals. Now DC has filled this *lacuna*. While handling such a case, a judge of an Oriental Catholic tribunal may refer to DC, art. 4 §2, 1°, 2°.

Moreover, there are complementary canons in CCEO which are helpful in resolving the still persisting silence of law in both CIC and DC. For example, DC, art. 109 does not speak of the possibility of recourse to a tribunal of appeal, if an advocate or a procurator is dismissed by the president of the tribunal. *Provida Mater*, art. 51 gives the possibility of recourse to the bishop, while CIC keeps silence over this point. However, CCEO has given provision for appeal in this case in CCEO c. 1145. DC has kept silence over this point of recourse to a bishop or to an appellate tribunal, because the Commission did not want to solve this problem which was not solved by the Code. In that case when such a question arises the only option is to look at the norms of CCEO.⁸⁷

2.3. Points of Divergence between DC and CCEO

As we have already noted, it was a deliberate decision of the draft Commission to determine that the Instruction governs only tribunals of the Latin Church and not those of the Oriental Catholic Churches *sui iuris*. Then, on account of the similarities we have found between the procedural norms of CCEO and the articles of DC, it is quite natural to ask why the articles of DC are not made applicable to the tribunals of Oriental Catholic Churches, too. Obviously, this is due to the substantial difference between the Latin and the Oriental theology and discipline. One of the relaters of the Commission pointed out during the discussions on the first article: “the judicial order of the

⁸⁷P. Hallein, “Il difensore del vincolo nella *Dignitas Connubii* e il CCEO,” 44.

Oriental Churches is different from that of the Latin Church.”⁸⁸ Despite the uniformity in procedural norms achieved by PCCICOR between the Codes, many of the Eastern canons either have no CIC counterpart or are significantly different from the parallel norms of the Latin Code.⁸⁹ Consequently, DC also, in spite of all the conformity, differs from CCEO at least in certain points. Therefore, many articles of the Instruction are not relevant to the Oriental Catholic Churches or cannot be applied without modification.⁹⁰ The discrepancies mainly arise on account of the unique provisions of CCEO cc. 1062-1063 concerning Patriarchal Churches.⁹¹ We may note a few of those diverging elements.

The DC norm on the tribunal of the second instance is not fully consonant with the Oriental canon law. The general norm that the second instance tribunals of the eparchial tribunals are the metropolitan tribunals is common in DC, art. 25 §1 (CIC c. 1438, 1°) and CCEO c. 1064 §1. However, DC, art. 25 §1, 2°, 3°, and 4° are not applicable as such to the Oriental Catholic tribunals.

DC, art. 25 §1, 2°: in cases judged in first instance before the tribunal of the Metropolitan appeal is made to the tribunal which he, with the approval of the Apostolic See, has stably designated (cf. c. 1438, n. 2);

3° if a single tribunal of first instance has been established for several dioceses, in accordance with art. 23, the Conference of Bishops must establish a tribunal of appeal, with the approval of the Apostolic See, unless the dioceses are all suffragans of the same archdiocese (cf. c. 1439, § 1);

4° the Conference of Bishops can, with the approval of the Apostolic See, establish one or more tribunals of second instance even apart from the cases mentioned in n. 3 (cf. c. 1439 § 2).

⁸⁸“L’ordinamento giudiziale delle Chiese Orientali è diverso dalla Chiesa Latina.” Verb. R. III, I Meeting (21 September 2001), Appendix, n. p.

⁸⁹J. Abbas, *Two Codes in Comparison*, 216.

⁹⁰“Pertanto molti articoli dell’istruzione non si possono applicare alle Chiese Orientali senza modifiche.” Verb. R. III, I Meeting (21 September 2001), Appendix, n. p.

⁹¹J. Abbas, *Two Codes in Comparison*, 218.

The functions mentioned in these paragraphs of DC, art. 25 are carried out by patriarchal or major archiepiscopal tribunals in Oriental Catholic Churches (CCEO c. 1063) within their proper territories.⁹²

Another difference regards the tribunal of the third instance. According to DC, art. 27 §2, the Roman Rota is the only tribunal of third and higher instance. CCEO c. 1063 §3 establishes that the ordinary tribunal of the Patriarchal/major archiepiscopal Church is the appellate tribunal in second and further instances for cases already adjudged in lower tribunals within the territory of the Church *sui iuris*.⁹³ This difference was pointed out during the drafting of DC. One member of the second commission for the drafting of DC indicated that, "in fact, the tribunals of the Patriarchs and Major Archbishops are competent to adjudge the marriage cases in all the grades until it becomes definitive."⁹⁴

Another diverging point is found in CCEO c. 1080 which establishes a norm which has no equivalent either in CIC or in DC. This canon states: "If none of the above mentioned titles supports the judge and yet a case is introduced before him, the judge obtains competence if the parties and the authority to whom the tribunal is immediately subject consent." According to J. Abbas this canon has added a title of competence to the otherwise identical canons of the Latin and Eastern Codes concerning the titles of competence.⁹⁵ However, DC did not incorporate this canon from the Oriental Code; thus, the difference endures.

⁹²It is to be noted that, the norms applicable to patriarchal and major archiepiscopal Churches are not as such applicable to Metropolitan and other Churches *sui iuris*. Likewise, the exercise of judicial power of those tribunals is limited to the territory of each patriarchal/major archiepiscopal Church. See J. Abbas, *Two Codes in Comparison*, 218-223.

⁹³G. H. Ruysen, "Problematiche relative alla competenza della rota romana per le cause matrimoniali provenienti dai territori patriarcali o arcivescovili maggiori," *Iura Orientalia* VII (2011) 93-120 [www.iuraorientalia.net]; H. Alwan, "Il tribunale apostolico della rota romana ed il Codex Canonum Ecclesiarum Orientalium," *Iura Orientalia* VI (2010) 12-47 [www.iuraorientalia.net].

⁹⁴"Infatti, i tribunali delle Chiese patriarcali ed arcivescovili maggiori sono competenti a giudicare le cause matrimoniali in tutti gradi fino alla sentenza definitiva." Verb. R. III, I Meeting (21-09-2001), Appendix, n.p.

⁹⁵J. Abbas, *Two Codes in Comparison*, 224-225.

We may note many other Eastern canons with no DC counterparts. For example, CCEO cc. 1330-1333 give norms concerning the opposition of a third party and CIC and DC lack any such norm. Likewise, there are parallel norms of CCEO and DC that differ in some significant respect. For example, regarding the publication of the sentence, CCEO determines that, "The sentence is to be intimated as soon as possible, indicating the time within which an appeal of the sentence can be placed" (CCEO c. 1297). Whereas, parallel DC and CIC norms (DC, art. 257 §2; CIC c. 1614) require that the parties are to be informed of how, to whom, and by what deadline they are to propose the appeal (DC, art. 257 §2). In fact, CCEO has deliberately omitted these details.⁹⁶

It is obvious from the above discussions that in spite of the conformity between the procedural norms in DC and CCEO, there are certain points in which the Oriental procedural law differs significantly and there are at least certain DC norms which cannot be applicable as such to the Oriental Catholic Churches.

2.4. Can DC Be Used by the Tribunals of the Oriental Catholic Churches?

According to CCEO c. 1498 §3 (CIC c. 16 §3), an interpretation in the form of an administrative act in individual cases does not have any force of law and it binds only those persons, and affects only those matters for which it was given. CIC c. 34 recognizes the competence of the dicasteries of the Roman Curia to interpret the law through general executory decrees and instructions. DC is an administrative act by the PCLT, as we have already seen, and, therefore, it only binds those persons and cases to which it is expressly intended. Hence, DC is applied directly and only to the diocesan and interdiocesan tribunals of the Latin Church as stipulated by DC, art. 1 and is not, therefore, applicable to the Oriental Catholic tribunals.

A possible direct application of this Instruction to Oriental Catholic Churches may be found in case of the inter-ecclesial tribunals constituted according to CCEO c. 1068 §1, which provides the possibility of establishing common tribunals for the Latin Church and an Oriental Church. DC can be applied in such tribunals in accordance

⁹⁶For a detailed discussion on this canon and its present formation in CCEO see *Nuntia* 28 (1989) 133.

with their particular law approved by the Apostolic Signatura (*PB*, art. 124, 4^o).⁹⁷

However, on the basis of the already mentioned reasons, DC also has indirect application in the tribunals of the Oriental Catholic Churches. It is precisely because many of the procedural norms of CIC and CCEO are identical and the explanatory norms of the DC are equally helpful to Oriental Catholic tribunals. Therefore, without compromising their own basic identity, Oriental Catholic Churches can make use of the provisions of DC which are not contrary to the provisions of CCEO. In fact, CIC and CCEO together with *Pastor Bonus* constitute one *Corpus Iuris Canonici*. As the primary intention of any instruction is to clarify the content of the law, whenever Oriental Catholic judges are in need of a clarification of any of the procedural norms of CCEO, the clarification given by DC to parallel CIC canons may be referred to. In fact, CCEO c. 1499 provides an alternative of consulting the parallel passages when there is a doubt of law.

DC has included certain norms which were elaborated through the jurisprudence of the Roman Rota and through the responses of the Supreme Tribunal of the Apostolic Signatura. They are in general also applicable to tribunals of the Oriental Catholic Churches, if not specified as applied only to the Latin Church.⁹⁸ Therefore, at least for the time being, until the publication of an equivalent instruction for the Oriental Catholic Churches, many of the provisions of DC could be used by the tribunals of the Oriental Catholic Churches, too.

2.5. An Instruction in the Manner of DC for the Oriental Catholic Churches

The call for an instruction in the manner of DC for the Oriental Catholic Churches springs from the same reasons that led to the

⁹⁷See D. Salachas, *Inter Ecclesial Relations between Eastern and Latin Catholics*, 31; J. Beal, "When East Meets West," 348-349.

⁹⁸"Even though the tribunals of the Eastern Catholic Churches *sui iuris* are not governed by the provisions of the Instruction, they are still obliged to observe elements of doctrine and jurisprudence that are the source of select norms of the Instruction. For instance, provisions of the Instruction based on the jurisprudence of the Roman Rota would not *per se* bind Eastern tribunals to the extent that the jurisprudence of the Roman Rota serves as a model for tribunals of the Catholic Church, including those of the Eastern Catholic Churches *sui iuris* (*PB*. 126)." K. Lüdicke and R. Jenkins, *Dignitas Connubii: Norms and Commentary*, 13-14.

drafting of DC, namely, the demand for a *vademecum* to help the judges and ministers of the tribunals of Oriental Catholic Churches, the necessity to include the doctrinal and jurisprudential developments, filling the *lacunae legis*, etc. After the promulgation of CIC, it “seemed necessary that some time would be allowed to pass before that instruction would be prepared”⁹⁹ and DC was published after twenty years of the publication of CIC. It may be noticed that in the case of CCEO too a necessary time period is now being completed to observe the experience of applying the new matrimonial law provided in the Code. However, any initiative from whichever part to form such a document has not yet been reported.

Hence, certain questions follow naturally: who has the competence to produce such an instruction for the Oriental Catholic Churches? Is it the PCLT? Or, is it the Congregation for the Oriental Churches? Or, can each of the Oriental Churches draft and publish its own instruction equivalent to DC?

In fact, DC was published by the PCLT not out of an ordinary competence of that Council, but according to a special mandate given by the Roman Pontiff. The ordinary power of this Council includes, however, the right to make authoritative interpretations of the Oriental Code as well as other Church legislations. Therefore, if there is a special mandate from the Supreme Pontiff, PCLT can very well publish a similar document for the Oriental Catholic Churches. Regarding certain articles of DC, which have an innovative value and which have not yet been promulgated in a manner to render them applicable to the Oriental Catholic Churches too, require an explicit intervention of the Legislator. For example, as Pinto notes DC, art. 4 §2 helps to fix a *lacuna legis* in CIC and CCEO; however, in case of CCEO an explicit intervention of the Legislator is required.¹⁰⁰ Nevertheless, in particular cases applying the provision of referring to parallel passages (CCEO c. 1499), the judges of the tribunals of the Oriental Catholic Churches may use the provision of DC, art. 4 §2.

⁹⁹DC, Introduction, 13-15.

¹⁰⁰P.V. Pinto, “Gli articoli preliminari,” 23: “... *c'è da osservare che la norma dell' art. 4 § 2 manca del tutto nel CCEO, per cui il giudice ecclesiastico dovrebbe fare ricorso alla forza suppletiva dei cann. 1399 e 1501 del CCEO (cann. 17 e 19 del CIC). Così se con DC è stata colmata una lacuna del CIC, ora è il CCEO ad attendere un intervento esplicito del Legislatore (tramite in Rescriptum ex Audientia SS.mi, o, una pronunzia estensiva del Pontificio Consiglio Interprete).”*

Do the Congregation for the Oriental Churches possess any competence to draft an instruction equivalent to DC? According to PB, art. 58 §1:

The competence of this Congregation extends to all matters which are proper to the Oriental Churches and which are to be referred to the Apostolic See, whether concerning the structure and organization of the Churches, the exercise of teaching, sanctifying and governing, or the status rights, and obligations of persons.

Although, this is not a congregation which normally deals with legislative texts, it has the right, on the basis of art. 58 §1/PB, to take the initiative in forming a *vademecum* for Oriental tribunals in handling marriage nullity cases. Until now, no initiative of that sort is reported from the part of the Congregation for the Oriental Churches.

Can each of the Oriental Catholic Churches make its own instruction, in the manner of DC? Commentators of DC, especially of DC, art. 1, are of the opinion that “other Churches *sui iuris* are entitled to organize their own procedural systems akin to the one promulgated for the Latin Church.”¹⁰¹ In fact, the synod of bishops of the Patriarchal and Major Archiepiscopal Churches have the competence to specify, integrate and promulgate any norm, as much as it is not contrary to common law.¹⁰² Common law provides the patriarch the right to issue decrees which are not laws but which are complementary to laws. CCEO c. 82 §1, 1° establishes that the patriarch can by his own right, within the scope of his competence, issue decrees that urge the application of a law, determine the method by which a law is to be observed, or provide further detailed elaboration of the law.¹⁰³ In virtue of CCEO c. 152 major archbishops also have the same competence. Even if there is a lack of explicit recognition, the competence of the heads of different types of Churches *sui iuris* to issue instructions is obvious analogically from their possession of legislative power (with synod or council of bishops) and executive power. They can issue instructions which are of an executive nature, directed to those authorities or officeholders whose responsibility it is

¹⁰¹A. Mendonça, “What is New?” 180.

¹⁰²Verb. R. 3, I Meeting (21-09-2001), n. p.

¹⁰³See, J. D. Faris, “The Patriarchal Churches,” in G. Nedungatt (ed.), *A Guide to the Eastern Code*, (Kanonika 10), Roma, PIO, 2002, 164.

to ensure the execution of the laws.¹⁰⁴ Therefore, patriarchs, major archbishops and heads of Metropolitan Churches and other Churches *sui iuris* can issue an instruction equivalent to DC for their Churches, observing the norms of law.

Conclusion

Canon law is a still evolving system of rules and regulations. New developments in canon law, especially in marriage law and marriage nullity procedure, are being evolved mainly through developments in jurisprudence of the apostolic tribunals and through different documents issued by various dicasteries of the Holy See. Every development and every new explanation of law is inspired by different needs of the Church, by its interaction with other Churches, ecclesial communities and other religions, and by the changes in the social circumstances of its members. "Law is usually reason's response to life."¹⁰⁵ Therefore law is to be interpreted and developed from its *Sitz im Leben* (see, CCEO c. 1499). DC is appreciated as an attempt from the part of the legislator to read the signs of the time and to put into practice the recent developments in the procedural laws which are relevant both to the Latin and Oriental tribunals.

In the present practical situation of the tribunals of the Oriental Catholic Churches, the application of the norms of DC is done without any hesitation whenever it deemed to be of great use in the administration of justice. We suggest, after considering different characteristics of the oriental law and the nature of DC, that individual Oriental Churches could adopt the instruction *Dignitas Connubii* excluding those elements that are contrary to the oriental law. However, until now no such attempts have been reported. Since at present DC is not directly applicable to the Oriental Catholic tribunals, in case of doubt of law, it can be referred to according to CCEO c. 1499 which provides an alternative of consulting parallel passages in case of doubt of law. However, considering the peculiarities of the Oriental

¹⁰⁴ Patriarchs and major archbishops have relatively more freedom in issuing instructions and decrees compared to the heads of Metropolitan and other Churches *sui iuris*. (See, CCEO cc. 167 §2, 176).

¹⁰⁵ V. De Paolis, "Laws, Customs, Administrative Acts (cc. 1488-1539)," 822.

Churches and consonant with the mind of the legislator, issuing of an instruction equivalent to DC is highly welcomed. In those Oriental Churches where there are systematically constituted tribunals function and qualified canonists engage actively in the administration of justice, this is not a merely recommended thing, but an immediate necessity.