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THE EASTERN CODE TURNS THIRTY: FINDING ITS PLACE IN THE ONE *CORPUS IURIS CANONICI*

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Thirty years after the promulgation of the Eastern Code, canonical experts continue to define the interrelationship of the Eastern Code and the Latin Code together with *Pastor bonus*. Given *CCEO* canon 1 and the Holy See's 2011 Explanatory Note regarding that canon as well as Pope Francis' 2016 *De concordia inter Codices,* this article examines two Eastern norms (cc. 678 §1 and 1102 §1) and their possible application to the Latin Church. The paper then deals with *CCEO* canon 193 §1 and the standard of care it establishes for a bishop entrusted with the care of faithful of another Church *sui iuris*. *De concordia inter Codices* has provided some clarity in the matter. Finally, the article examines the possibility of appeals from patriarchal tribunals to the Roman Rota. At issue is the significance of Eastern canon 1063 §3 in relation to *PB* art. 128, a question which still awaits a definitive response from the Holy See.

Introduction

Thirty years ago, when Pope John Paul II presented the *Codex Canonum Ecclesiarum Orientalium* (*CCEO*) to the universal Church by way of the twenty-eighth General Congregation of the Synod of Bishops, he indicated that the new Eastern Code together with the *Codex Iuris*

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Canonici (*CIC*) and *Pastor Bonus* (*PB*) constituted one body of canon law. His Holiness declared: "In presenting to this Assembly, so representative of the universal Church, the Code which governs the common discipline of all the Eastern Catholic Churches, I regard it as part of one *Corpus Iuris Canonici*, made up of the three above-mentioned documents promulgated over the span of seven years."[1] In promulgating the Eastern Code only a week earlier (October 18, 1990), the pope already set up an interrelationship of the Eastern and Latin Codes in *CCEO* canon 1.[2] It states: "The canons of this Code concern all and only the Eastern Catholic Churches, unless, with regard to relations with the Latin Church, it is expressly (*expresse*) established otherwise."[3]

However, even before exploring the interrelationship of the Codes posed by *CCEO* canon 1 and very soon after the promulgation of the Eastern Code, this writer argued that the parallel passages of the Codes could be used as interpretative tools when the meaning of one or the other of them remained doubtful. Indeed, the Legislator may well have intended this as *CIC* canon 17 no longer restricts recourse for this purpose only to "parallel passages of the code" (see 1917 *CIC* c. 18). A corresponding recourse to the Latin Code is also foreseen in *CCEO* canon 1499 for interpretative ambiguities there. At the same time, by way of *CIC* canon 19, the Legislator may also have allowed for other Eastern canons to fill legislative gaps in the Latin Code promulgated eight years earlier. From the perspective of both recourse to parallel passages and filling legislative gaps, it seemed obvious to this writer to argue for a certain complementarity of the Codes in accord with the canons just mentioned.[4]

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[1] *AAS* 83 (1991) 490. *Note*: Unless otherwise indicated, foreign language translations in this article are the writer's.

[2] For a detailed commentary on *CCEO* c. 1, see Jobe Abbass, "The Eastern Code and Latin Church," in John D. Faris and Jobe Abbass (eds.), *A Practical Commentary to the Code of Canons of the Eastern Churches,* 2 vols. (Montréal: Wilson & Lafleur, 2019) I:1-50.

[3] In this study, English translations for the *CCEO* and *CIC* canons, respectively, are taken from *Code of Canons of the Eastern Churches, Latin-English Edition*, (Washington, D.C.: Canon Law Society of America, 2001) and *Code of Canon Law, Latin-English Edition*, (Washington, D.C.: Canon Law Society of America, 1999).

[4] See, Jobe Abbass, "Canonical Interpretation by Recourse to 'Parallel Passages': A Comparative Study of the Latin and Eastern Codes," *The Jurist* 51 (1991) 293-310.

With specific regard to the interrelationship of the Codes and the interpretation to be given *CCEO* canon 1, several canonists argued over the years that the rule expressed in *CCEO* canon 1 is peremptory and intends to exclude the Latin Church unless explicitly established.[5] There are only nine Eastern canons in which the Latin Church is explicitly named. Other canonists maintained that the interrelationship of the Codes is broader and that the Legislator implicitly established it through the use of the expression "Church *sui iuris*" or even by reason of the nature of the matter (*ex natura rei*).[6] To clarify these issues, the Pontifical Council for Legislative Texts published an official, Explanatory Note on December 8, 2011. After recognizing "that the express (*expresse*) mention of the Latin Church in the (*CCEO*) canons can occur both in an 'explicit' and an 'implicit' way," the Pontifical Council concluded:

> According to this distinction, that appears reasonably confirmed by the normative provisions of CCEO, besides the canons in which the Latin Church is "explicitly" named, there are also other canons of the same code in which it is included "implicitly", if one takes into account the text and context of the norm, as CCEO canon 1499 requires. It is therefore necessary to begin with the expressions contained in the norm to be interpreted and with the context in which it is found to determine if the Latin Church is implicitly included in it or not. This is the case, for example, of the CCEO

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[5] See, M. Brogi, "Licenza presunta della Santa Sede per il cambiamento di Chiesa *sui iuris*," *Revista Española de Derecho Canónico* 50 (1993) 645; Peter Erdö, "Questioni interrituali (interecclesiali) del diritto dei sacramenti (battesimo e cresima)," *Periodica de re canonica* 84 (1996) 317-318; and P. Gefaell, "Impegno della Congregazione per le Chiese orientali a favore delle comunità orientali in diaspora," in Luis Okulik (ed.), *Nuove terre e nuove Chiese: Le comunità di fedeli orientali in diaspora*, (Venice: Marcianum Press, 2008) 137-138.

[6] See, D. Salachas, "Problematiche interrituali nei due codici orientale e latino," *Apollinaris* 75 (1994) 641-648; C.G. Fürst, "Interdipendenza del diritto canonico latino ed orientale," in K. Bharanikulangara (ed.), *Il Diritto Canonico Orientale nell'ordinamento ecclesiale*, (Vatican City: LEV, 1995) 21-24 and 28-30; Jobe Abbass, "The Interrelationship of the Latin and Eastern Codes," *The Jurist* 58 (1998) 12-20; R. Metz, "Preliminary Canons," in G. Nedungatt (ed.), *A Guide to the Eastern Code A Commentary on the Code of Canons of the Eastern Churches*, (Rome, Pontifical Oriental Institute, 2002) 72 and L. Lorusso, "L'ambito d'applicazione del Codice dei Canoni delle Chiese Orientali: Commento sistematico al can. 1 del CCEO," *Angelicum* 82 (2005) 471-472.

> norms that concern juridical relations with the various Churches of the one Catholic Church.
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> Consequently, one must hold that the Latin Church is implicitly included by analogy each time that CCEO explicitly uses the term "Church *sui iuris*" in the context of interecclesial relations. We say "by analogy" keeping in mind that the characteristics of the Latin Church, though not coinciding completely with those of the Church *sui iuris* described in canons 27 and 28 §1 of CCEO, are nevertheless, in this regard, substantially similar.[7]

By this official interpretation, the Explanatory Note allows for a more extensive application of the Eastern Code to the Latin Church at least with regard to those Eastern canons in which the expression "Church *sui iuris*" is employed in the context of interecclesial relations. Indeed, in referring "to the other canons of the same (Eastern) Code in which it (Latin Church) is included implicitly," the Note does not limit them to only those canons that contain the expression "Church *sui iuris*" but could also include those norms that apply to the Latin Church by reason of the nature of the matter (*ex natura rei*) in interecclesial contexts involving various Churches *sui iuris*. However, the Explanatory Note did not open the door to a broader, unchecked application of the Eastern Code to the Latin Church.[8] Following the publication of the Explanatory Note, for example, this writer examined the Eastern Code's use of the expression "Church *sui iuris*" 243 times and found that clearly more than one-half do not intend to regard the Latin Church. In some cases, the Eastern norms are addressed only to the Eastern Churches by definition or context; others refer solely to Eastern liturgical norms or the particular law of each Eastern Church *sui iuris*. In still other cases, the Eastern canons simply cannot apply to the Latin Church since it already has parallel *CIC* norms governing the same matter. Nevertheless, there were found to be many Eastern norms that potentially regard the Latin Church *ex natura rei* in the context of ascription/transfer between Churches, interritual

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[7] *Comm*, 43 (2011) 316.

[8] Cf., however, Giacomo Incitti, "Quale concordanza tra i Codici? Ancora su un progetto di *Lex Ecclesiae Fundamentalis*," in *La costante sollecitudine per la concordanza tra i Codici* (*Quaderni di Ius Missionale*, 13) (Rome: Urbaniana University Press, 2018) 48.

celebration of the sacraments and interecclesial collaboration generally.[9]

In a subsequent and important legislative development regarding the interrelationship of the Eastern and Latin Codes, Pope Francis published (September 15, 2016) his *motu proprio*, *De concordia inter Codices*.[10] In the Preamble to the *motu proprio*, Pope Francis explained that his solicitude for harmonizing the Codes was motivated by two specific reasons: 1) to seek an equilibrium between safeguarding the law proper to the Eastern minority with the canonical tradition of the Latin majority, especially in the West and 2) to better define relations with the faithful of the non-Catholic Churches particularly regarding Catholic ministers' celebration of the sacraments of baptism and marriage for non-Catholic faithful. These pastoral considerations constitute the key and backdrop against which the articles of the *motu proprio* are to be interpreted. Despite the pope's intent to harmonize the Codes, all eleven articles of the *motu proprio* considered, His Holiness essentially set limits on the application of the Eastern Code to the Latin Church in three ways.[11] First, by adding norms to the Latin Code (cc. 112 §3; 868 §3 and 1116 §3) to mirror those already found in the Eastern Code (cc. 36; 681 §5 and 833 §§1-2), Pope Francis implied, in effect, that these Eastern norms could not have been considered, beforehand, to be applicable to the Latin Church. Secondly, by not adding other unique Eastern canons (for example, cc. 588; 701, 899; 1102 §1) to the Latin Code, the Legislator effectively indicated that these Eastern norms, common to all the Eastern Catholic Churches, are still not universal Latin norms. Thirdly, while Pope Francis observed that the Codes often have common or parallel norms, which should have "an appropriate degree of harmony," he nevertheless acknowledged that the Codes have "their own peculiarities which make them mutually independent." Consequently, parallel norms of the Codes (for example, *CCEO* c. 193 §1/*CIC* c. 383 §§1-2; *CCEO* c. 828 §1/*CIC* c. 1108 §1; *CCEO* c. 826/*CIC* c. 1102) that remain mutually

[9] For a detailed analysis, see, Jobe Abbass, *The Eastern Code (Canon 1) and Its Application to the Latin Church*, (Bangalore: Dharmaram Publications, 2014).

[10] For the text of the *motu proprio*, see *AAS* 108 (2016) 602-606 or *Comm,* 48 (2016) 326-330. For an unofficial English translation and a commentary on the *motu proprio*, see, Jobe Abbass, "*De concordia inter Codices*: A Commentary," *Studia canonica* 50 (2016) 323-345.

[11] For a detailed study, see, Jobe Abbass, "Setting Limits on the Application of the Eastern Code to the Latin Church," *Studia canonica* 51 (2017) 25-54.

different in some significant respect result in a certain disharmony between the Codes.[12] Unique differences in *CCEO* norms cannot oblige the Latin Church just as differences found in *CIC* norms cannot bind the Eastern Catholic Churches. Given that the Eastern and Latin Codes are separate and distinct juridical systems, any parallel matter may be regulated in a different manner and the norms of one Code simply cannot be imposed on the other.

Given the interpretative history regarding *CCEO* canon 1 as well as the 2011 Explanatory Note and the 2016 *De concordia inter Codices*, part 1 of this study will examine two Eastern norms and their possible application to the Latin Church. The hope is that the examples given here and elsewhere in the paper will illustrate how difficult it sometimes still is to define and properly situate the relationship the Eastern Code has with the Latin Code and *Pastor bonus*, all three integral parts of the one *Corpus Iuris Canonici* of the Catholic Church. The first Eastern norm, *CCEO* canon 678 §1 concerns baptism administered by a priest of "another Church *sui iuris*." Does that norm mean to include a Latin priest in the context of interecclesial relations? In the second example, *CCEO* canon 1102 §1 allows for hiring tribunal personnel from "another Church *sui iuris*." Does that unique Eastern norm envisage hiring Latin tribunal personnel for Eastern tribunals?

Part 2 of the paper deals with *CCEO* canon 193 §1 and the standard of care it establishes for a bishop entrusted with the care of faithful of another Church *sui iuris*. Much study and debate have been devoted over the years to the relationship between Eastern canon 193 §1 and Latin canon 383 §2. Notwithstanding the duty of care already prescribed by *CIC* canon 383, does the stricter duty of care imposed by the unique *CCEO* canon 193 §1 apply also to Latin bishops since it deals with a fundamental right of the faithful to preserve their proper rite? In June 1999, the Pontifical Council for the Interpretation of Legislative Texts, as it was then known, was asked to consider the relationship between *CCEO* canon 193 §1 and *CIC* canon 383 §2. Without a response to date from the Pontifical Council, part 2 will examine the question and endeavor to flesh out a better definition of the Eastern Code's part in the Church's one body of canon law. On the specific question of a bishop's duty of care for the faithful of another Church *sui iuris* entrusted to his care, the pope's 2016 *motu proprio* may well have helped to clarify the matter.

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[12] For more detail, see, Jobe Abbass, "*De concordia inter Codices:* Towards a Harmonization of the Eastern and Latin Codes," *Iustitia* 8 (2017) 15-48.

Regarding the interrelationship of the Eastern Code and *Pastor bonus* on the Roman curia, there is no doubt that, as a law issued by the supreme authority of the Church, *Pastor bonus* binds the Latin as well as the Eastern Catholic Churches (see *CCEO* c. 1491 §1; *CIC* c. 12 §1). However, soon after the promulgation of *CCEO*, questions arose regarding the extent to which certain articles of *PB* applied to the Eastern Catholic Churches. Even regarding *PB* art. 155, there was some doubt as to whether or not the Pontifical Council for the Interpretation of Legislative Texts would be competent to publish authentic interpretations of the "common law," by which the laws of the Eastern Code are known (see *CCEO* c. 1493 §1), since *PB* art. 155 refers to "universal laws," an expression which generally identifies the norms of the Latin Code.[13] In response to a letter from Archbishop Vicenzo Fagiolo, then President of the Pontifical Council for the Interpretation of Legislative Texts, to the Secretary of State asking for clarification concerning the interpretation of *CCEO* and the laws common to the Eastern Churches, Archbishop Angelo Sodano, then Acting Secretary of State, replied: "The 'mind' of His Holiness regarding the drafting of the aforesaid Apostolic Constitution concerning the Roman Curia was that the competence of the Council for the Interpretation of Legislative Texts extended to the entire Church and was not limited to just the Latin (Church)."[14]

Although this answer clarified that the competence of the Pontifical Council for the Interpretation of Legislative Texts was also meant to extend to the Eastern Churches, it did not establish the extent to which *PB* intended the competence of the other dicasteries of the Roman Curia to extend to the Eastern Churches.[15] Regarding the competence of the Tribunal of the Roman Rota, *PB* art. 58 §2 does expressly establish its proper and exclusive competence in the entire Catholic Church. In turn, *PB* art. 128 establishes the Rota as an appellate tribunal for the Catholic Church in second, third and further instances. However, no exception or qualification is made in terms of the Eastern

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[13] *PB* art. 155 states: "With regard to the universal laws of the Church, the Council is competent to publish authentic interpretations which are confirmed by pontifical authority, after having heard in questions of major importance the views of the dicasteries concerned by the subject matter."

[14] For the complete text of the letter, see: *Comm,* 23 (1991) 14.

[15] For a fuller study regarding the problem of determining the competence of the dicasteries of the Roman Curia in relation to the Eastern Catholic Churches, see: Jobe Abbass, "*Pastor Bonus* and the Eastern Catholic Churches," *Orientalia Christiana Periodica* 60 (1994) 587-610.

patriarchal Churches even though the then proposed Eastern norm (now *CCEO* c. 1063 §3) foresaw that the ordinary tribunal of the patriarchal Church would serve as the appeal tribunal in second and further grades of judgment.[16] In 1995, the question as to the Rota's competence regarding appeals from tribunals of the patriarchal Churches was submitted to the Pontifical Council for the Interpretation of Legislative Texts.[17] Over the years, a majority of canonists have held that the ordinary tribunal of the patriarchal Church is the appeal tribunal in second and further instance, to the exclusion of the Roman Rota. On the other hand, a minority, led by the future dean of the Roman Rota, maintained that, given a lack of exclusionary language in *CCEO* canon 1063 §3 and the competence reserved to the Apostolic See in *CCEO* canon 1062 §1, the Roman Rota has concurrent competence for appeals in the context of the patriarchal Churches. Part 3 of this paper will examine the question regarding Eastern canon 1063 §3 in relation to *PB* art. 128 while we await a definitive response from the Pontifical Council for Legislative Texts.[18] The writer's opinions here, as elsewhere in the paper, do not in any way intend to undermine the power of the Legislator, or those to whom he grants that power, to interpret laws authoritatively or authentically (*CCEO* c. 1498 *§1/CIC* c. 16 §1).

1. The Application of Eastern Norms to the Latin Church (CCEO *c. 1)*

Given the legislative and interpretative history behind *CCEO* canon 1 and guided by the 2011 official, Explanatory Note as well as Pope Francis' 2016 *De concordia inter Codices,* part 1 will illustrate how the Eastern and Latin Codes may well be interrelated by way of our best understanding, to date, of *CCEO* canon 1. In the first example regarding *CCEO* canon 678 §1, we will conclude that the Eastern norm applies in both an active and passive sense to the Latin Church. In the

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[16] Indeed, soon after the promulgation of *Pastor bonus*, Archbishop Zenon Grocholewski, then secretary of the Apostolic Signatura, observed that *PB* did not seem to take into full consideration the legislation of the Eastern Churches. See: Zenon Grocholewski, "I tribunali," in P.-A. Bonnet et al. (eds.), *La Curia Romana nella Cost. Ap. Pastor Bonus*, (Vatican City, 1990) 416-418.

[17] *Comm,* 27 (1995) 31.

[18] Although twenty-five years have passed since this question was posed to the Pontifical Council, this author recalls a 2003 conversation with Father Ivan Žužek in which I lamented the lack of a response. In reply, perhaps predicting from his reading of the writing on the wall, Father Žužek indicated, with a sense of humor, that it was probably for the better because, if the Council did reply, "Siamo fritti!" ("We are fried!").

second case concerning *CCEO* canon 1102 §1, the conclusion regarding the norm's application to the Latin Church is less certain. As we celebrate the thirtieth anniversary of the promulgation of the Eastern Code, the future work of canonists will need to focus on a more precise definition of the interrelationship of the Codes and their just place in the Church's one *Corpus Iuris Canonici.* Needless to say, the help of the Holy See in providing rules or dynamics within which that interrelationship operates will prove indispensable in giving spirit and life to that body.

1.1. Baptism Administered by a Priest of Another Church *Sui Iuris* (*CCEO* c. 678 §1)

Unique to the Eastern Code, *CCEO* canon 678 §1 establishes that, while permission is required to baptize in the territory of another, a pastor cannot deny such permission to a priest of another Church *sui iuris* in which the person to be baptized is to be ascribed. The norm states:

> In the territory of another it is not licit for anyone to administer baptism without the required permission; this permission cannot be denied by a pastor of a different Church *sui iuris* to a priest of the Church *sui iuris* in which the person to be baptized is to be ascribed.

Within the *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo* (*PCCICOR*), the *Coetus de sacramentis* based their first draft of this norm on the initial text that had been proposed in 1958 but was never promulgated.[19] Faced with the problem of territories where no proper pastor exists for the faithful seeking baptism, the study group proposed two norms. Then Chorbishop Moussa Daoud, reporting for the group, stated:

> But there are territories where there is no proper pastor of such a Particular Church. Who then has the right to baptize the persons before them belonging to that Particular Church?
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> In order to foster the rite, two dispositions are foreseen by the new canon:
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> 1) The pastor of the territory, who is of another rite (*diversi ritus*) from that of the person to be baptized, cannot refuse a priest, who would be present and of the same rite of the person being baptized, the permission for him to administer the baptism.

[19] *Nuntia* 4 (1977) 45 (c. 9 §§1-2).

> 2) The local hierarch is urged to designate for the faithful, who do not have a proper pastor in the territory, a priest who is of the same rite as them to administer baptism to their children.
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> But the words "*diversi ritus*" ("of a different rite") caught the attention of the group. Do they also include the Latin rite? The old base-text found it necessary to add "*latini quoque*" ("also Latin") and "*latino non excepto*" ("Latin not excluded"). Our group, imbued with ideas of equality among the rites and wishing to avoid all discrimination, states with a note attached to the text of the new canon 4 that these words include the Latin rite itself, and they dispense us from having to add each time "*latini quoque*" ("also Latin").[20]

Already substantially the same as the promulgated norm, provisional canon 4 §1 stated: "In the territory of another, it is not licit to administer baptism without the required permission; this permission cannot be denied by the pastor of a different rite to a priest who is present and who is of the same rite as the person to be baptized." The norm subsequently became canon 13 §1 of the 1980 *Schema canonum de culto divino et praesertim de sacramentis* (1980 Schema).[21] In the *Praenotanda* to the 1980 Schema, the *Coetus de sacramentis* clearly reiterated: "In can. 13, we substantially retained what was already proposed in 1958, namely, the obligation of pastors of whatever rite, the Latin by no means excluded, not to deny a Catholic priest the faculty of administering baptism to those who are of the same rite..."[22] During the *denua recognitio* of the 1980 Schema, no observations were made to change canon 13 §1.[23] The *Coetus de coordinatione* slightly modified the formulation before it became *SCICO* (*Schema Codicis Iuris Canonici Orientalis)* canon 675 §1, which was identical to the promulgated norm.[24]

The use of the expression "Church *sui iuris*" twice in *CCEO* canon 678 §1 clearly implies the Latin Church. To deal first with the second use of the expression, in relation to the words "priest of the Church *sui iuris* in which the person to be baptized is to be ascribed," it implicitly involves the Latin Church in a passive sense. That is to say, regarding the administration of baptism, an Eastern pastor cannot deny

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[20] *Nuntia* 4 (1977) 21 (c. 4).
[21] *Nuntia* 10 (1980) 20 (c. 13 §1).
[22] *Nuntia* 10 (1980) 5.
[23] *Nuntia* 15 (1982) 15 (c. 13 §1).
[24] *Nuntia* 24-25 (1987) 127 (c. 675 §1).

permission to a priest of another Church *sui iuris*, either Eastern or Latin, to which the person to be baptized is to be ascribed. In the context of interecclesial relations, this interpretation logically follows the indications of the 2011 Explanatory Note, which held that the Latin Church is implicitly included by analogy when the Eastern norm explicitly uses the expression "Church *sui iuris*". Now, given that Latin Catholic parishes are found almost everywhere in the world, the circumstance may be rare that a Latin priest approaches an Eastern Catholic pastor for permission to celebrate the baptism of a person to be ascribed to the Latin Church. Nevertheless, let us take the example of the Latin Catholic husband and wife who work for the American embassy in Asmara, Eritrea and who, like all Catholics there, are entrusted to the care of an Eritrean Catholic pastor. They have invited their cousin, a Latin Catholic priest from Washington, to visit and celebrate the baptism of their first child. Since the child would be ascribed to the Latin Church (see *CIC* c. 111 §1),[25] it seems clear, based on the 2011 Explanatory Note, that the Eastern pastor could not deny this Latin priest the permission to administer his cousin's baptism.

Now, it can also be argued that the first use of the expression "Church *sui iuris*", in the words "pastor of a different Church *sui iuris*", implicitly obliges the Latin Church in an active sense. That is to say, in these cases regarding baptism, Eastern as well as Latin pastors cannot deny permission to a priest of another Church *sui iuris* in which the person to be baptized is to be ascribed. The problem is that *CCEO* canon 678 §1 is a norm unique to the Eastern Code and apparently only addressed to pastors of the different Eastern Catholic Churches *sui iuris*. Because the Eastern and Latin Codes are separate and distinct, the characteristic norms of one Code cannot simply be imposed on the other. Moreover, since the pastorally motivated *motu proprio*, *De concordia inter Codices*, did not add Eastern canon 678 §1, or a similar norm, to the Latin Code, it could be argued that Latin pastors are simply not governed by *CCEO* canon 678 §1. In addition, Pope Francis insisted that, despite the pastoral intent of the *motu proprio* to effect "an appropriate degree of harmony" between the Eastern and Latin Codes, he nevertheless acknowledged that the Codes would still have "their own peculiarities which make them mutually independent."

[25] *CIC* c. 111 §1 begins: "Through the reception of baptism, the child of parents who belong to the Latin Church is enrolled in it...."

Nevertheless, it seems clear from the detailed legislative history concerning Eastern canon 678 §1 that the Eastern draftsmen intended it to oblige Latin as well as Eastern pastors. While the Eastern and Latin Codes are separate and distinct, they are still interrelated (*CCEO* c. 1). The 2011 Explanatory Note allows for the explicit use of the expression "Church *sui iuris*" in interecclesial relations to imply also the Latin Church. Then, even as Pope Francis' *motu proprio*, *De concordia inter Codices*, meant to harmonize the Codes in some areas, that harmonization was limited and certainly did not intend to harmonize the Codes in every respect. Therefore, as this writer has argued in the past,[26] it still seems more reasonable to argue that the first use of the expression "Church *sui iuris*" in Eastern canon 678 §1 also implicitly obliges Latins in an active sense. That is to say, Eastern as well as Latin pastors are not to refuse the permission for administering baptism to a priest of any other Church *sui iuris*, either Eastern or Latin, in which the person to be baptized is to be ascribed. Let us take a practical example. An Eritrean Eastern Catholic couple works for the Eritrean embassy in Washington and is entrusted to the care of a Latin pastor in the capital. They have invited their cousin, an Eritrean priest studying canon law at Catholic University of America, to administer baptism to their first child. Upon the basis of *CCEO* canon 678 §1, when the Eritrean priest asks the Latin pastor for the required permission to baptize the child, the Latin pastor cannot deny him that.

1.2. Tribunal Personnel from Another Church *Sui Iuris* (*CCEO* c. 1102 §1)

An Eastern norm which may not apply to the Latin Church, *CCEO* canon 1102 §1 provides for the recruitment of judges and other personnel of ecclesiastical tribunals from one's own or even another Church *sui iuris*. Unique to the Eastern Code, it provides:

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[26] Jobe Abbass, "The Interrelationship of the Latin and Eastern Codes," *The Jurist* 58 (1998) 15-16; Idem, "CCEO and CIC in Comparison," in George Nedungatt (ed.), *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches,* (Rome: Pontificio Istituto Orientale, 2002), 888; Idem, *The Eastern Code (Canon 1) and Its Application to the Latin Church,* (Bangalore: Dharmaram Publications, 2014) 200-202 and Idem, "The Eastern Code and Latin Church," in John D. Faris and Jobe Abbass (eds.), *A Practical Commentary to the Code of Canons of the Eastern Churches,* 2 vols. (Montréal: Wilson & Lafleur, 2019) I:25-26.

> Judges and other officers of the tribunals may be chosen from any eparchy, religious institute or society of common life in the manner of religious, of one's own or even of another Church *sui iuris*, with the written consent, however, of their own eparchial bishop or major superior.

As the reported proceedings of *PCCICOR* indicate, the *Coetus de processibus* presented the first draft of this norm while revising the former Eastern canon in *Sollicitudinem nostram* (*SN*) canon 71. The proposed formulation stated: "Judges and other ministers of the tribunals can be taken from any eparchy, monastery or institute of the same or a different rite, provided the written consent of proper hierarch is given."[27] That formulation became canon 44 §1 of the *Schema canonum de tutela iurium seu de processibus* (1982 Schema).[28] Thereafter, no observations were reported in *Nuntia* regarding the norm and it only underwent terminological or other minor changes before promulgation.[29]

Regarding the interpretation of *CCEO* canon 1102 §1, the norm is addressed to Eastern Catholic bishops. There is no corresponding *CIC* norm for Latin bishops and they cannot simply adopt it as if it were a canon in the Latin Code. While this Eastern norm therefore does not regard the Latin Church in an active sense, it does involve the Latin Church, in a passive sense, in the context of the recurring theme of interecclesial cooperation that characterizes the Eastern legislation. Thus, for example, an Eastern Catholic bishop can choose judges and other tribunal personnel from any eparchy of his own Church *sui iuris* or even from an eparchy of another Church *sui iuris*. Given the 2011 Explanatory Note, since the implicit meaning of the expression "Church *sui iuris*" can also include the Latin Church, an Eastern bishop could appoint judges and tribunal personnel from an eparchy of his own Church or from an eparchy (diocese) of another Eastern Church or even the Latin Church. The Eastern bishop can also hire his tribunal personnel from among the religious or the members of societies of common life of his own Church or another Eastern Catholic Church *sui iuris*. However, in the case of the Latin Church, the same Eastern bishop can hire religious or members of societies of apostolic life mentioned in *CIC* canon 731 §2, since the latter are to be

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[27] *Nuntia* 5 (1977) 26-27 (c. 40 §1). *SN* c. 71 stated: "Judges and ministers mentioned in can. 38 seqq., can also be taken from persons of another rite."

[28] *Nuntia* 14 (1982) 29 (c. 44 §1).

[29] See, *Nuntia* 21 (1985) 46 (c. 44); *Nuntia* 24-25 (1987) 200 (c. 1117 §1); *Nuntia* 27 (1988) 85 (c. 1117 §1) and *Nuntia* 31 (1990) 38 (c. 1117 §1).

equated with Eastern societies of common life, as defined in *CCEO* canon 554 §1.[30] In whichever case, the Eastern bishop will need the written consent of the relevant eparchial (diocesan) bishop or major superior.

Although this writer still argues for the interpretation of *CCEO* canon 1102 §1 outlined above, the *motu proprio*, *De concordia inter Codices*, has raised a number of issues that question the sureness of that interpretation. While the *motu proprio* added several norms to the Latin Code to mirror those already found in the Eastern Code, it did not add other unique Eastern norms, like *CCEO* canon 1102 §1. Did this mean to imply that Eastern canon 1102 §1 is strictly Eastern and does not apply to the Latin Church either in an active or passive sense? Even though the expression "Church *sui iuris*" appears in the norm, it may be one instance in which the Latin Church is not implied, notwithstanding the 2011 Explanatory Note. Indeed, *CCEO* canon 1102 §1 could intend that Eastern bishops necessarily hire tribunal judges and officers who are experts, not in Latin canon law, but rather in the common law (*CCEO*) and traditions of their own Eastern Catholic Churches. Moreover, the norm speaks of eparchies and institutes of consecrated life characteristic of the same Eastern Churches. If, in the final analysis, *CCEO* canon 1102 §1 only implies hiring tribunal personnel from the same or another of the Eastern Catholic Churches *sui iuris*, then that would arguably diminish the possibilities for interecclesial collaboration contemplated by *CCEO* canon 1. In any event, as canonical knowledge regarding the interrelationship of the two Codes of the Catholic Church continues to grow, more guidelines and rules for interpretation from the Legislator or the Pontifical Council for Legislative Texts will be extremely helpful.

*2. A Bishop's Care for Faithful of Another Church (***CCEO** *c. 193 §1/***CIC** *c. 383 §§1-2)*

Regarding a Latin bishop's duty of care towards Eastern Catholics entrusted to his care and, more specifically, their right to retain, cherish and observe their own rite, much study and debate have been devoted to the relationship between Eastern canon 193 §1 and Latin canon 383 §§1-2. In June 1999, the Pontifical Council for the

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[30] For the comparison between Eastern societies of common life in the manner of religious and (*CCEO* c. 554 §1) and Latin societies of apostolic life, whose members assume the evangelical counsel with some bond (*CIC* c. 731 §2), see, Jobe Abbass, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes* (Ottawa: Saint Paul University, 2008) 419-425.

Interpretation of Legislative Texts, as it was then known, also noted that a question had been submitted for its own study concerning "certain observations regarding the relation between Eastern canon 193 §1 and Latin canon 383 §2."[31]

Where Eastern Catholic faithful are entrusted to the care of a Latin bishop, *CIC* canon 383 §1 states: "In exercising the function of a pastor, a diocesan bishop is to show himself concerned (*sollicitum*) for all the Christian faithful entrusted to his care, of whatever age, condition, or nationality they are, whether living in the territory or staying there temporarily...." Establishing how this solicitude is to be concretely expressed, *CIC* canon 383 §2 states: "If he has faithful of a different rite, he is to provide for their spiritual needs either through priests or parishes of the same rite or through an episcopal vicar." Eastern canons 192 §1 and 193 §2, respectively, establish norms that correspond to §§1 and 2 of Latin canon 383. However, *CCEO* canon 193 §1, which has no Latin counterpart, sets a higher standard of care for Eastern bishops to whom the faithful of another Church *sui iuris*, including the Latin Church, have been entrusted. It states:

> The eparchial bishop to whose care the Christian faithful of another Church *sui iuris* have been committed is bound by the serious obligation of providing everything (*gravi obligatione tenetur omnia providendi*) so that these Christian faithful retain the rite of their respective Church, cherish and observe it as far as possible. He is also to ensure that they foster relations with the superior authority of their Church.

Given that the Legislator promulgated two separate and distinct codes in the Catholic Church, a relationship between them cannot simply be drawn so as to, for example, impose the more serious obligation of Eastern canon 193 §1 also upon Latin bishops, who are already obliged by Latin canon 383 §§1 and 2. It is true that, in the draft version of Eastern canon 193 §1, the qualifying phrase, *etiam Ecclesiae latinae* ("also of the Latin Church"), had immediately followed the canon's opening words *episcopus eparchialis* ("eparchial bishop"), but that phrase was omitted by the Legislator himself during the last changes he made to the draft of the Eastern Code.[32] Consequently, in the years following the promulgation, canonists have maintained that Eastern canon 193 §1 does not oblige Latin bishops and no relationship can be drawn between it and Latin canon 383 §2 so as to add to the Latin

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[31] *Comm*, 31 (1999) 50.

[32] See *Nuntia* 31 (1990) 39 (c. 193 §1).

bishops' obligation already prescribed in the Latin canon with respect to Eastern Catholics entrusted to their care.[33] However, other canonists have argued that, despite the absence of the phrase *etiam Ecclesiae latinae* to qualify *episcopus eparchialis*, the more serious obligation in Eastern canon 193 §1 implicitly applies also to Latin bishops because of the nature of the matter (*ex natura rei*) and/or the very *ratio* that inspired this Eastern norm. They seem to argue that the Legislator may have omitted the phrase "even of the Latin Church" as unnecessary since all bishops, Eastern and Latin, have the serious obligation to provide everything so that the faithful can exercise their fundamental human right to retain and practice their own rite.[34]

This position undoubtedly drew inspiration from a line of argument advanced over the years by Ivan Žužek, the Secretary of *PCCICOR* and the relator of the of the *Coetus de S. Hierarchia* that drafted Eastern canon 193 §1.[35] Ivan Žužek's thought stressing the importance of the

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[33] See: C. G. Fürst, "Zur Interdependenz von lateinischem und orientalischem Kirchenrecht: Einige Anmerkungen zum Kirchenrecht der katholischen Kirche," in *Iuri Canonico Promovendo. Festschrift für Heribert Schmitz zum 65. Geburtstag*, W. Aymans et al., (eds.), (Regensburg: Pustet, 1995) 553; M. Brogi, "Il nuovo codice orientale e la Chiesa latina," *Antonianum,* 66 (1991) 60, note 96; Jobe Abbass, "Le 'ultime modifiche' al Codice di diritto canonico orientale," in K. Bharanikulangara, (ed.), *Il Diritto Canonico Orientale nell'ordinamento ecclesiale*, (Vatican City: Libreria Editrice Vaticana, 1995) 226-230; Idem, "Canonical Dispositions for the Care of Eastern Catholics outside their Territory," *Periodica de re canonica,* 86 (1997) 330-346; Idem, "Latin Bishops' Duty of Care towards Eastern Catholics," *Studia canonica* 35 (2001) 7-32; Idem, *The Eastern Code (Canon 1) and Its Application to the Latin Church*, (Bangalore: Dharmaram Publications, 2014) 28-36; Idem, "Setting Limits on the Application of the Eastern Code to the Latin Church, *Studia Canonica* 51 (2017) 44-47; and Idem, "*De concordia inter Codices*: Towards a Harmonization of the Eastern and Latin Codes," *Iustitia* 8 (2017) 29-34.

[34] See Marco Brogi, "Cura pastorale di fedeli di altra Chiesa *sui iuris*," Revista Española de *Derecho Canónico* 53 (1996) 124; Luis Okulik, "Tutela giuridica dell'identità ecclesiale dei fedeli orientali in situazione di diaspora," in *Nuove terre e nuove Chiese: Le comunità di fedeli orientali in diaspora*, ed. Luis Okulik (Venice: Marcianum Press, 2008) 231-232; and Orazio Condorelli, "Giurisdizione universale delle Chiese *sui iuris*? Tra passato e presente," in *Cristiani orientali e pastori latini*, ed. Pablo Gefaell (Milan: Giuffrè Editore, 2012) 104, note 133.

[35] In the context of an international canon law congress (October 6-11, 1980) concerning the fundamental rights of Christians, Žužek stated: "On one hand, in fact, it is really a question concerning ecumenism but, on the other hand, one denies or questions the right these Churches have to exist, a right,

fundamental human right to preserve one's own rite was even echoed by Pope John Paul II at the time of the Eastern Code's promulgation.[36] When John Paul II subsequently presented the new Eastern Code to the synod of bishops (October 25, 1990), His Holiness insisted that Eastern Catholics entrusted to the care of Latin ordinaries keep their rite and he urged all ordinaries to collaborate in the realization of this end as an essential service to the universal Church.[37]

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however, which has priority among fundamental rights and which, for the individuals who are united to the Catholic Church, implies other essential rights, which point to the most sacred rights of people, for they constitute their most intimate 'me', that is, the right to preserve their own Christian identity in which they have lived and grown up since their tenderest years, beginning with the first prayer learned on their own mothers' laps." See: I. Žužek, "Observations à M. le Prof. Sobanski," in *Les Droits Fondamentaux du Chrétien dans l'Église et dans la Société: Actes du IV Congrès International de Droit Canonique*, E. Corecco et al. (eds.), (Fribourg, Freiburg i. Br. and Milan: Editions Universitaires, Herder and Giuffré, 1981) 742. At a later conference (July, 1989) given to Italian canonists in view of the forthcoming promulgation of the new Eastern code, Žužek stated: "Certainly, just as all persons belong to a specific cultural area, so all baptized, from their family background, even from their mothers' laps, belong to a specific *ritus*, that is, they are formed within the framework of a specific 'patrimonium liturgicum, theologicum, spirituale et disciplinare.' Thus, each *Ecclesia sui iuris* is entirely pregnated by its *ritus*, from its earliest roots to its most modern institutions." See: I. Žužek, "Presentazione del *Codex Canonum Ecclesiarum Orientalium*," *Monitor Ecclesiasticus* 115 (1990) 121.

[36] In the apostolic constitution, *Sacri canones*, by which Pope John Paul II promulgated the Eastern Code, His Holiness stated: "Indeed, this Code protects the very fundamental right of the human person, namely, of professing the faith in whatever their rite, drawn to a great extent from the very womb of the mother, which is the rule of all 'ecumenism'." See: *AAS* 82 (1990) 1035.

[37] His Holiness stated: "But it has always been the pressing desire of the supreme pontiffs that all these faithful, to use the words of Vatican Council II, "keep, follow and as far as possible observe their own rite everywhere in the world" (*OE* 4). The Holy See, especially through the assiduous work of the very deserving Congregation for the Eastern Churches, has done and will do everything possible so that these faithful find everywhere in the world situations that favor and support the desire just expressed, and it is also confident that all Ordinaries, to whose pastoral care they have been entrusted, will share this concern (*sollicitudinem*), aware that, by it, they are rendering an essential service to the universal Church and giving witness of their concern for what is most precious and congenial to man and, that is, to be able to live according to that natural disposition of the heart (*secundum eam cordis*

With the publication of the 2016 *motu proprio*, *De concordia inter Codices*, Pope Francis squarely addresses the question of the relationship between *CCEO* canon 193 §1 and *CIC* canon 383 §§1-2 that had been referred to the Pontifical Council for the Interpretation of Legislative Texts back in 1999. In the Preamble to the *motu proprio*, the pope first explains that, while it is desirable to achieve a certain harmony between the Codes especially for pastoral reasons, they will inevitably have their own peculiarities which make them mutually independent His Holiness states: "On one hand, the Codes have common norms and, on the other hand, their own peculiarities which make them mutually independent. However, it is necessary that, even in these specific norms, there be an appropriate degree of harmony. Indeed, these discrepancies, if and to the extent they are present, have a negative effect on pastoral practice, especially in cases in which relations between subjects belonging respectively to the Latin Church and an Eastern Church are governed." Given this premise, the Legislator proceeds directly to deal with the issue regarding a bishop's duty of care towards faithful of another Church *sui iuris* entrusted to his care. Although the Holy Father does not say it specifically, it could be argued that, to some extent, he answers the study question referred to the Pontifical Council in 1999. Speaking to the standard of care required of bishops in these cases, His Holiness states:

> It needs to be remembered that Eastern faithful are bound to observe their own rite wherever they are and, as a result, the competent ecclesiastical authority is to take care most earnestly that appropriate means are provided (*auctoritatis ecclesiasticae competentis est maximopere curare ut congrua media apparentur*) them to be able to fulfill this obligation (cfr. *CCEO* c. 193 §1; *CIC* c. 383 §§1-2; Postsyn. Ap. Exhort. *Pastores gregis*, 72).[38]

It would appear that, while the Eastern and Latin Codes are interrelated within the one *Corpus Iuris Canonici*, they are separate and distinct parts of it with respect to their parallel norms on a bishop's duty of care in these cases. The Legislator does not state that the more serious obligation established in *CCEO* canon 193 §1 also implicitly applies to Latin bishops entrusted with the care of Eastern faithful. It is true that the pope further clarifies and elaborates upon the

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naturam) in which the Creator has placed him since the maternal womb, and that such action is truly in conformity with what the "salus animarum" requires. See: *AAS* 83 (1991) 491.

[38] *AAS* 108 (2016) 602 or *Comm,* 48 (2016) 326.

"solicitude" (*CIC* c. 383 §1) Latin bishops are to show to Eastern faithful entrusted to their care but he does not state that they are further bound *ex natura rei* by Eastern canon 193 §1 because of the interecclesial nature of the matter or because of an underlying fundamental right of the faithful. Among the articles of the *motu proprio,* addressed to the Latin Church, the Legislator does not qualify *CIC* canon 383 §§1-2 with a cross-reference to *CCEO* canon 193 §1. Nor does he simply add a *CIC* equivalent of the unique *CCEO* canon 193 §1 to the Latin Code, as he does in several articles of the *motu proprio*.[39] Certainly, the Preamble intends to strengthen and characterize more precisely the solicitude Latin bishops are to have for Easterners entrusted to them but it does not impose on Latin bishops the grave obligation of providing everything so that these faithful are able to observe their own rite in all respects. In contrast, regarding the serious duty of care placed on Eastern bishops entrusted with faithful of another Church *sui iuris*, including the Latin Church, the parallel *CCEO* canon 193 §1 clearly establishes that a bishop has the grave obligation of providing everything (*gravi obligatione tenetur omnia providendi*) so that these faithful observe their own rite in all its respects. It is clear that the *motu proprio* does not go this far for Latin bishops in the same circumstances.

From another perspective, it could also be argued that Pope Francis did consider a bishop's duty of care under both *CCEO* canon 193 §1 and *CIC* canon 383 §§1-2 to be the same and tied to a fundamental right of the faithful to cherish and observe their own rite as far as possible. After all, for years, canonists have argued, and it would seem with some success, that the Eastern and Latin Codes are interrelated especially in the area of interecclesial relations. Why should all bishops not be obliged in the same way and to the same degree regarding faithful entrusted to them from another Church *sui iuris*? By the nature of the matter, the stated obligation of a bishop in both Codes is certainly serious. The only difference is that *CCEO* canon 193 §1 requires a bishop to provide everything (*omnia providendi*) so that these faithful observe their own rite. It may just be that the Legislator assessed this obligation as too onerous and, while more precisely defining a bishop's solicitude under *CIC* canon 383 §§1-2, His Holiness came up with a formula which all bishops could follow in this matter. In the Preamble to *De concordia inter Codices*, Pope Francis may well

[39] Parallel to *CCEO* c. 36, *CIC* c. 112 §3 is added (article 2 of *motu proprio*); Equivalent to *CCEO* c. 681 §5, *CIC* c. 868 §3 is added (article 5); Comparable to *CCEO* c. 833 §1, *CIC* c. 1116 §3 was added (article 10).

have intended to soften a bishop's obligation under *CCEO* canon 193 §1 to correspond with a more realizable objective so that faithful of another Church are provided appropriate means (*ut congrua media apparentur*) to retain and cherish their rite wherever they are in the world. At the same time, the "appropriate means" test would strengthen the much less onerous "solicitude" required of Latin bishops by *CIC* canon 383 §1. This may well be the test by which the Legislator intends to measure a bishop's duty of care in these cases and the *motu proprio* is later legislation to both Codes. However, the pope in no way expressly abrogates or derogates from these previous norms nor does he refer to any authentic interpretation or response to the 1999 question posed to the Pontifical Council for the Interpretation of Legislative Texts. Still, given these contrasting arguments and the doubts that remain, it would seem that a definitive answer to the 1999 study question would surely contribute to canonical science and help to clarify further the interrelationship of the Codes as well as their place in the Church's one body of canon law.

*3. The Roman Rota and Appeals from the Patriarchal Churches (***CCEO** ***c. 1063 §3)***

Both before and after the Pontifical Council for the Interpretation of Legislative Texts received the question regarding the Roman Rota's competence to adjudge appeals from tribunals of the patriarchal Churches, many canonists have expressed their views on this issue.[40] Among the majority of writers, there has been the general consensus that *CCEO* c. 1063 §3 intended to make of the ordinary tribunal of the patriarchal Church a kind of Rota and that, within the territory of the patriarchal Church, the ordinary tribunal is to judge cases in second and further instances, to the exclusion of the Roman Rota.[41] This

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[40] In accord with *CCEO* c. 152, what is stated here regarding patriarchal Churches and their tribunals also applies to the major archiepiscopal Churches and their tribunals.

[41] See: Ivan Žužek, "Alcune note circa la struttura delle Chiese orientali," in *Understanding the Eastern Code* [*Understanding*], (Rome: Pontificio Istituto Orientale, 1997) 141; Idem, "Un Codice per una *varietas Ecclesiarum*," in *Understanding*, 252; George Nedungatt, *The Spirit of the Eastern Code,* (Rome/Bangalore: Centre for Indian and Inter-religious Studies/Dharmaram Publications, 1993) 93; Zenon Grocholewski, "I tribunali," in P.-A. Bonnet et al (ed.), *La Curia Romana nella Cost. Ap. Pastor Bonus*, (Vatican City: Libreria Editrice Vaticana, 1990) 416-418; Andrews Thazhath, "The Superior and Ordinary Tribunals of a *sui iuris* Eastern Catholic Church," *Studia canonica* 29 (1995) 381; Victor J. Pospishil, *Eastern Catholic Church Law*, 2nd. ed., rev. and

position also seems to be supported by the legislative history of *CCEO* canon 1063 §3 within *PCCICOR*.[42] However, in the context of the interrelationship of the Eastern Code and *Pastor bonus*, *PB* art. 128 establishes the Rota as an appellate tribunal for the universal Church in second, third and further instances and no exception or qualification is made in terms of the tribunals of the patriarchal Churches.[43] As a result, a minority of canonists have argued that the competence of the Roman Rota is concurrent with that of the ordinary tribunal of the patriarchal Church to deal with cases in second and further instances decided by lower tribunals in the patriarchal territory.[44]

Monsignor Raffaello Funghini, then judge of the Rota and afterwards its dean, was one of the first to take up the minority opinion in a 1997

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augument., (Brooklyn: St. Maron Publications, 1996) 711; M.J. Arrobe Conde, *Diritto Processuale canonico*, (Rome: Ediurcla, 1996) 151; Jobe Abbass, "The Roman Rota and Appeals from Tribunals of the Eastern Patriarchal Churches," *Periodica de re canonica* 89 (2000) 439-490; Carl. G. Fürst, "*Lex prior derogat posteriori?* Die Ap. Konst. *Pastor Bonus*, Die Römische Rota als Konkurrierendes Gericht II. Instanz bzw. als III. (und ggf. weitere) Instanz zu Gerichten einer Orientalischen Kirche eigenen Rechts und der CCEO," in C. Mirabelli et al., (eds.), *Winfried Schulz in Memoriam: Schriften aus Kanonistik und Staatskirchenrecht*, (Frankfurt: Peter Lang, 1999) 269-283. Joaquín Llobell, "La competenza della Rota Romana," *Quaderni dello studio rotale* 18 (2008) 13-57; and Georges Ruyssen, "Problematiche relative alla competenza della Rota Romana per le cause matrimoniali provenienti dai territori patriarcali o arcivescovili maggiori," *Iura orientalia* VII (2011) 93-120.

[42] For a detailed account of the *iter* of *CCEO* c. 1063 §3 within *PCCICOR*, see, Jobe Abbass, "The Roman Rota" (footnote 41), 456-468.

[43] *PB* art. 128 states: "This tribunal (the Roman Rota) adjudicates:1° in second instance, cases that have been decided by ordinary tribunals of the first instance and are being referred to the Holy See by legitimate appeal; 2° in third or further instance, cases already decided by the same Apostolic Tribunal and by any other tribunals, unless they have become a *res iudicata*."

[44] Raffaello Funghini, "La competenza della Rota Romana," in P.-A. Bonnet et al. (ed.), *Le "normae" del Tribunale della Rota Romana,* (Vatican City: Libreria Editrice Vaticana, 1997) 163-164; Joussef I. Sarraf, "I giudizi in generale," in Pio Vito Pinto (ed.), *Commento al Codice dei Canoni delle Chiese Orientali*, (Rome: Libreria Editrice Vaticana, 2001) 886-888; Hanna G. Alwan, "Il tribunale apostolico della Rota Romana ed il *Codex Canonum Ecclesiarum Orientalium*," *Iura orientalia* VI (2010) 12-47; and William L. Daniel, "Trials in General," in John D. Faris and Jobe Abbass (eds.), *A Practical Commentary to the Code of Canons of the Eastern Churches,* 2 vols. (Montréal: Wilson & Lafleur, 2019) II: 2009.

conference.[45] As this writer detailed in another place, Funghini made his case for the Rota's concurrent competence by building on several arguments.[46] He first noted that, according to *PB* art. 58 §2, the Roman Rota still has exclusive competence in relation to the Eastern Catholic Churches.[47] Funghini then recalled that, even as the pope was presenting the new Eastern Code to the synod of bishops, he nevertheless declared that the provisions of *Pastor bonus*, as part of the one body of canon law of the universal Church, were to be added to the official editions of *CIC* and *CCEO*. Given that one body of canon law, the presence *in loco* of a second or third instance tribunal does not deny the right of the faithful to bring their own case to the judgment of the Holy See.[48] Furthermore, Funghini added, *CCEO* canon 1059

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[45] Subsequently, Monsignor Joussef Sarraf, relator of the *Coetus de processibus*, adopted the minority opinion. See: Sarraf, "I guidizi in generale," (footnote 44) 887-888. In his commentary to *CCEO* c. 1063 §3, Msgr. Sarraf states: "In sum, it seems that, when the disposition of this canon is compared with PB art. 58 §2 and art. 126 of the *Normae Romanae Rotae Tribunalis ...* the *cumulative* competence, even if *not prevalent*, of the Roman Rota, by way of appeal, must not be excluded." Note: The reference to art. 126 of the Rotal norms must mean to refer to *PB* art. 126 since the Rotal norms only count 120.

[46] For the full context, see: Jobe Abbass, "The Roman Rota," (footnote 40) 447-449. Cf., however, Alwan, "Il tribunale apostolico," (footnote 44) 38 (footnote 86).

[47] *PB* art. 58 §2 states: "This however does not infringe on the proper and exclusive competence of the Congregations for the Doctrine of the Faith and for the Causes of Saints, of the Apostolic Penitentiary, the Supreme Tribunal of the Apostolic Signatura or the Tribunal of the Roman Rota, as well as of the Congregation for Divine Worship and the Discipline of the Sacraments for what pertains to dispensation from a marriage *ratum et non consummatum*...."

[48] See: Funghini, "La competenza della Rota Romana," (footnote 44) 163. Funghini states: "It is true that the Code for the Eastern Churches was promulgated after Pastor Bonus, but it has not, according to the declared mind of the Legislator, abrogated or derogated *ne jota unum*. Pastor Bonus is considered by the Pope, Supreme Legislator, an integral part of the *Corpus iuris canonici* of the Universal Church, so much so as to have to be published in the official editions of the two Codes, that of the Latin Church and that of the Eastern Church." Then, Funghini indicates that, while *Pastor bonus* regulated the competence of the Roman Rota (*PB* artt. 126-130), *CCEO* does not deal with the tribunals of the Holy See or establish their competence. He states that, within the patriarchal Churches, *CCEO* c. 1063 §3 does provides for a tribunal of third instance *in loco* but he argues: "This does not negate, though, the general principle of *Corpus iuris canonici universalis*, of which the pope spoke, that the presence *in loco* of a second or third instance tribunal

contains the solemn principle regarding the right of the Christian faithful to defer their case at any stage to the Holy See.[49] Funghini concluded:

> It seems to us to be able to conclude that the competence stated in the Code for the Eastern Churches of the Patriarchal Tribunal in the second and further grade of judgment does not exclude the competence of the Rota. We must speak of two tribunals *aeque* competent in both grades.[50]

The minority has also argued that the addition of the clause "without prejudice to the competence of the Apostolic See" in *CCEO* canon 1062 §1 only confirms their opinion that the Roman Rota, as a dicastery of the Holy See, is equally competent. In addition, the minority holds that the Eastern Code, being a later law, has not abrogated or derogated from *PB* art. 128 since the Legislator does not state so expressly. In view of the doubt of law that has arisen, the Roman Rota continues to accept appeals from the ordinary tribunals of the patriarchal Churches.[51]

To summarize the majority position on *CCEO* canon 1063 §3 and, perhaps, respond to the arguments made by the minority, this part will essentially ask and attempt to answer the following three questions: 1) Can the Roman Rota claim competence on the basis of *CCEO* c. 1059? 2) Does *PB* art. 128 apply to the Eastern patriarchal Churches? 3) Has *CCEO* c. 1063 §3 integrally reordered the former law granting the Roman Rota competence in these cases?

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does not deny the right of the faithful to bring their own case to the judgment of the Holy See."

[49] See, Funghini, "La competenza della Rota Romana," (footnote 44) 162. Funghini states: "As is well-known, in the Code for the Eastern Churches no mention is made at all of the Tribunal of the Rota. Mention is made of the *provocatio ad S. Sedem,* but not of appeal to the Rota..."

[50] Funghini, "La competenza della Rota Romana," (footnote 44) 449.

[51] See: Alwan, "Il tribunale apostolico" (footnote 44), 45-46. At the time a Rotal judge, Alwan states: "Presently, all the Eastern Churches continue to send the acts of their legitimately appealed causes to the Tribunal of the Roman Rota. Indeed, this practice has never been interrupted either on the occasion of the promulgation of *CCEO* or, so much the less, on the occasion of the interposition of the *dubbium* with the PCLT (Pontifical Council for Legislative Texts)."

3.1. Can the Roman Rota Claim Competence by Virtue of *CCEO* Canon 1059?

One of the arguments made in support of the competence of the Roman Rota, despite *CCEO* canon 1063 §3, is that *CCEO* canon 1059 establishes a solemn right of the Christian faithful to bring their case at any stage before the Holy See. Since the Roman Rota is a tribunal of the Holy See for all Catholics, the Eastern Catholic faithful should also be able to bring their appeal before the Rota. The problem is that this argument does not make the necessary distinction between recourse (*provocatio*) and appeal or between Holy See and Roman Pontiff. Thus, this question is the easiest of the three to answer.

Practically unchanged from the time it was first drafted by the *Coetus de processibus* in 1975, *CCEO* canon 1059 establishes:

> §1. By reason of the primacy of the Roman Pontiff, any member of the Christian faithful is free to defer his or her case at any stage or grade of the trial to the Roman Pontiff. Being the supreme judge for the entire Catholic world, he renders judicial decisions personally, through the tribunals of the Apostolic See, or through the judges he has delegated.
>
> §2. This recourse (*provocatio*) to the Roman Pontiff, however, does not suspend the exercise of power by a judge who has already begun to adjudicate a case except in the case of an appeal. For this reason, the judge can continue with a trial up to the definitive sentence, unless it is evident that the Roman Pontiff has called the case to himself.

In fact, even as *PCCICOR* debated and approved the guiding principle that would empower tribunals to handle cases in all three instances, a clear distinction was made between drafting a norm for appeals and one for recourse (as in *SN* c. 32), "which represents an exceptional case and does not constitute a real appeal."[52] In its first draft of *CCEO* canon 1059, the *Coetus de processibus* reiterated that this canon does not speak of an appeal, but of a *provocatio*.[53] Nothing can be found in the reported *iter* of *CCEO* canon 1059 to contradict the *Coetus'* affirmation regarding the intent of this Eastern norm.

In its initial formulation of *CCEO* canon 1059, the *Coetus de processibus* also purposely changed "*provocatio ad Apostolicam Sedem*" in *SN* canon

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[52] *Nuntia* 3 (1976) 23.

[53] See: *Nuntia* 5 (1977) 9-10 (c. 5).

32 to "*provocatio ad Romanum Pontificem*."[54] Arguments that have cited *CCEO* canon 1059 to uphold the competence of the Roman Rota, notwithstanding *CCEO* canon 1063 §3, seem to have overlooked this difference.[55] Generally speaking, while "Apostolic See" applies not only to the Roman Pontiff but also to dicasteries and other institutions of the Roman Curia (see *CCEO* c. 48), "Roman Pontiff" obviously intends only the pope, himself. The change from "Apostolic See" to "Roman Pontiff" in *CCEO* c. 1059, in fact, has been seen as a concrete demonstration by *PCCICOR* of its intention to exclude the competence of the Roman Rota to hear appeals from the tribunals of the patriarchal Churches.[56]

It should therefore be clear that a recourse (*provocatio*) made to the Roman Pontiff in accord with *CCEO* canon 1059 must be sent to the pope himself and that the Roman Rota has no competence. It would appear that recourse documentation can be addressed either to "*Beatissimus Pater*", as is the protocol in personal recourses to the Holy Father, or to the Apostolic Signatura in the case of a *provocatio ad Romanum Pontificem*.[57] According to *CCEO* canon 1059, if the Roman Pontiff eventually calls the case to himself, he may render a decision personally or assign the case to a tribunal of the Holy See, including the Roman Rota, or to judges he has delegated.

3.2. Does PB art. 128 Apply to the Eastern Patriarchal Churches?

There is no doubt that, as a law issued by the supreme authority of the Church, *Pastor bonus* binds both the Latin and Eastern Catholic Churches (*CCEO* c. 1491 §1; *CIC* c. 12 §1). Now, *PB* art. 58 §2 expressly

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[54] *Nuntia* 5 (1977) 9 (c. 5).

[55] See also Fürst, "Lex prior derogat posteriori?" (footnote 40), 272-273.

[56] See, Joaquín Llobell, "Le norme della Rota Romana in rapporto alla vigente legislazione canonica: la 'matrimonializzazione' del processo; la tutela dell''ecosistema processuale'; il principio di legalità nell'esercizio della potestà legislativa," in P.-A. Bonnet et al. (ed.), *Le "normae" del Tribunale della Rota Romana*, (Vatican City: Libreria Editrice Vatican, 1997) 68. Llobell states: "A further manifestation of such will (of *PCCICOR* to exclude the competence of the Roman Rota) is that c. 1059 (parallel to *CIC* c. 1417) has substituted the term "*Sedes Apostolica*" (applicable to the Pontiff and the Rota) with the univocal "*Romanus Pontifex*"..."

[57] See: Fürst, "Lex prior derogat posteriori?" (footnote 40), 273, footnote 18. The author writes: "The Apostolic Signatura, as it was confirmed to me from there, has received from the Pope after the promulgation of *CCEO* the special and general authority, also in relation to Easterners, for *advocatio* in the matter of a *provocatio ad Romanum Pontificem*."

establishes the exclusive competence of certain dicasteries, including the Roman Rota, in the entire Catholic Church.[58] Consequently, one could argue that *PB* art. 128, regarding the competence of the Roman Rota on appeals, must also extend to the Eastern patriarchal Churches, despite the provisions of *CCEO* c. 1063 §3.

It is true that *PB* art. 58 §2 attributes exclusive competence to the Roman Rota and that, in turn, *PB* art. 128 establishes the Rota as an appellate tribunal for the Catholic Church in second, third and further instances. No exception or qualification is made in terms of the Eastern patriarchal Churches even though the former Eastern norm (*SN* c. 73 §1) and the proposed draft of *CCEO* canon 1063 §3 already foresaw the possibility of appeals to a tribunal other than the Roman Rota.[59] In at least two studies, then Archbishop Zenon Grocholewski noted this shortcoming of *PB* for not having taken the Eastern legislation fully into account. He effectively implied that, while *PB* art. 128 fully applies in the Latin Church and is adaptable with respect to certain Eastern norms, it is not applicable in the context of *CCEO* cc. 1062-1064. He stated that the juridical competencies of the Apostolic Signatura and the Roman Rota "are indicated in the apostolic constitution *PB* respectively in artt. 122-123 and 128-129, entirely applicable to the Latin Church, and adaptable to cc. 1060 §1-2, 1061 and 1065 of *CCEO* with regard to the Eastern Churches.[60]

Nevertheless, some have argued that, despite *CCEO* canon 1063 §3, *PB* art. 128 grants the Roman Rota competence even in relation to the Eastern patriarchal Churches since *Pastor bonus* is an integral part of the one body of canon law in the universal Church and, as the Holy Father has often recalled, the apostolic constitution must be published

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[58] *PB* art. 58 §2 states: "This however does not infringe on the proper and exclusive competence of the Congregations for the Doctrine of the Faith and for the Causes of Saints, of the Apostolic Pentitentiary, the Supreme Tribunal of the Apostolic Signatura or the Tribunal of the Roman Rota, as well as of the Congregation for Divine Worship and the Discipline of the Sacraments for what pertains to dispensation from a marriage *ratum et non consummatum*...."

[59] *SN* c. 73 stated: "§1. From the tribunal of the patriarch or the archbishop judging in first or second instance, an appeal can be made to the Apostolic See or to other judges appointed by the patriarch or archbishop, with due regard for §2. §2. Whenever the patriarch or archbishop acts as judge for himself, the appeal must be lodged with the Apostolic See."

[60] Zenon Grocholewski, "Il Romano Pontefice come gudice supremo," *Ius Ecclesiae* 7 (1995) 44. See also: Idem, "I tribunali," (footnote 41) 416-417.

together with all future editions of both the Latin and Eastern Codes.[61] Yet, given the shortcomings of *PB* in not taking the Eastern legislation fully into account, Archbishop Grocholewski refers to the pope's directive and states, "However, this will require, perhaps, necessary adaptations.[62]

There is no doubt that *Pastor bonus* is an integral part of the one *Corpus Iuris Canonici* of the Catholic Church but it must also be stressed that the other two essential parts, *CIC* and *CCEO,* were promulgated by the same Legislator. In accord with *CCEO* canon 1493 §1, *CCEO* and *PB* are defined as common law.[63] Regarding these laws issued by the same Legislator, there are general norms that apply in the entire Church. One important general norm is that later laws abrogate or derogate from earlier laws in certain cases. As in *CIC* canon 20, *CCEO* canon 1502 §1 establishes: "A later law abrogates or derogates from an earlier law if it states so expressly, is directly contrary to it, or completely reorders the entire matter of the earlier law."[64] Therefore, consonant with *CCEO* canon 1502 §1, there are three situations in which a later law abrogates or derogates from an earlier law: i) if it states so expressly; ii) if it directly contradicts the former law; or iii) if the new law completely reorders the previous law. Since the first two situations do not apply in our case, *CCEO* canon 1063 §3 will have derogated from the competence of the Roman Rota in *PB* art. 128 if it is shown that the new law has completely reordered the former law regarding appeals from tribunals of the patriarchal Churches. Before examining that issue, however, one other question needs to be asked regarding the possible application of *PB* art. 128 to the patriarchal Churches.

Notwithstanding the rule contained in *CCEO* canon 1502 §1, does *PB* art. 128 apply by virtue of the saving clause in *CCEO* canon 1062 §1? One might argue that the general norm in *CCEO* canon 1502 §1 does not apply in the case of the competence of the apostolic tribunal of the

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[61] See: Funghini, "La competenza della Rota Romana," (footnote 44) 163; and Alwan, "Il tribunale apostolico," (footnote 44) 30.

[62] Zenon Grocholewski, "I tribunali," (footnote 41) 417-418.

[63] *CCEO* c. 1493 §1 states: "Under the name *common law* in this Code come, besides the laws and legitimate customs of the entire Church, also the laws and legitimate customs common to all the Eastern Churches."

[64] Cf., however, Alwan, "Il tribunale apostolico," (footnote 44) 42-43. Stating that "the legislation of *PB* is a *lex propria*," Alwan proceeds to apply *CCEO* c. 1502 §2, regarding common law derogating from particular law and particular law derogating from more particular law.

Roman Rota since its competence was saved vis-à-vis the provisions of *CCEO* canon 1063 §3 by the last minute addition of the clause "without prejudice to the competence of the Apostolic See" to *CCEO* canon 1062 §1, which describes the synod of bishops as the superior, not the supreme, tribunal of a patriarchal Church. However, this theory that applies *PB* art. 128 by way of *CCEO* canon 1062 §1 to the Eastern patriarchal Churches, despite *CCEO* c. 1063 §3, does not square with the legislative history of the *CCEO* canons. During the *iter* of *CCEO* canon 1062 §1, the last change to that norm was certainly made to distinguish the competence of the Apostolic Signatura as the supreme tribunal of the Catholic Church (see *PB* art. 121).[65] Even from the initial formulation of the norm, the *Coetus de processibus* had stated that the canon needed to specify that the Apostolic Signatura is the supreme tribunal of the universal Church.[66] Probably because this was still not done for the 1982 Schema, the *Praenotanda* to that schema explained, with regard to the draft of *CCEO* c. 1063, that the hierarchy of the tribunals in the patriarchal Church was thereby complete but that it did not exclude "the concurrent and prevalent competence of tribunals of the Supreme Pontiff."[67] This statement could not have meant to include the Roman Rota because it would have contradicted the *Coetus*' intention stated earlier in the same *Praenotanda* to exclude

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[65] See also, Ivan Žužek, "Alcune note," in *Understanding* (footnote 41) 141. Žužek states: "Besides, the 'tribunal ordinarium Ecclesiae patriarchalis' that the patriarch must constitute becomes a kind of 'Rota' for the patriarchal Churches, that can judge in all the 'gradus iudicii' (can. 1063). There was some difficulty regarding how to indicate the competence of the tribunals of the Apostolic See; this was resolved by the clause 'salva competentia Sedis Apostolicae' introduced in §1 of can. 1062. One had in mind the Apostolic Signatura which, in the universal Church, 'consulit ut iustitia recte administretur' according to art. 121 of the apostolic constitution *Pastor Bonus*."

[66] The *Coetus de processibus* reported: "The consultors formulated the canon to correspond to Eastern traditions, in conformity with the nature of each Eastern Church being *sui iuris*, without going into specifics regarding the relations between the Synod of Bishops, as supreme tribunal of an Eastern Church, and the Supreme Tribunal of the Apostolic Signatura, something which could be treated later." See *Nuntia* 5 (1977) 12-13 (c. 8).

[67] The *Coetus de processibus* stated: "The ordinary tribunal of the patriarchal Church, as proposed in can. 9 of the schema, becomes the appellate tribunal in second and further instances for cases already decided in the lower tribunals. With this canon, the hierarchy of tribunals (eparchial, metropolitan, patriarchal) in the patriarchal Church is complete, but it does not exclude, in fact, the concurrent and prevalent competence of tribunals of the Supreme Pontiff in these cases." See *Nuntia* 14 (1982) 6.

appeals from tribunals of the patriarchal Churches to the dicasteries of the Roman Curia.[68] Essentially, the explanation meant to highlight the competence of the Apostolic Signatura but the reference, in the plural, to "tribunals of the Supreme Pontiff" evidently must have also intended the tribunals of the Holy See, conceivably including the Apostolic Penitentiary or even the Rota, designated on an *ad hoc* basis by the pope to deal with cases within his sole competence.

Apart from the legislative history of *CCEO* canon 1062 §1 which opposes the theory that the clause "without prejudice to the competence of the Apostolic See" intended to save out the competence of the Roman Rota even in relation to the patriarchal Churches, the argument is also inconsistent with the overall intent and organization of the *CCEO* canons regarding the competent forum. If, for example, appeals in contentious cases of bishops or eparchies are made to the synod of bishops without any further appeal being allowed (*CCEO* c. 1062 §4),[69] it is hardly conceivable that the Legislator would intend, by way of *CCEO* canon 1062 §1, to allow for appeals to the Roman Rota in cases involving the Christian faithful in general. Instead, as *PCCICOR* consistently stated with regard to the intention of *CCEO* c. 1063 §3, these appeals are to be handled up to the final sentence by the ordinary tribunal of the patriarchal Church.

Now, one might argue that, if the Legislator only wished to highlight the competence of the Apostolic Signatura in *CCEO* canon 1062 §1, the added clause would have read "without prejudice to the competence of the Apostolic Signatura."[70] The use of "Apostolic See," on the other

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[68] The *Coetus de processibus* stated: "In revising the canons of the Apostolic Letter *Sollicitudinem nostram*, the consultors of the *Coetus a Studiis de Processibus* followed the principles approved by the Plenary Assembly of the members of the Commission which met from March 18-23, 1974. Among other things, the Plenary Assembly of the members of the Commission expressed the opinion that the setup of the tribunals in the Patriarchal Churches be more suitable to their *sui iuris* status and, therefore, that cases be finished within the territory of these Churches, excluding appeals to dicasteries of the Roman Curia (*remotis appellationibus ad Romanae Curiae Dicasteria*), however, saving always the right of any one of the Christian faithful to have recourse to the Roman Pontiff according to canon 5 of the schema." See *Nuntia* 14 (1982) 4.

[69] *CCEO* c. 1062 §4 states: "An appeal in these cases (contentious cases of bishops or eparchies) is made to the synod of bishops of the patriarchal Church, any further appeal being excluded, without prejudice to can. 1059."

[70] See, Alwan, "Il tribunale apostolico," (footnote 44) 34-35. Alwan states: "That (the expression Apostolic See) includes the causes that are the

hand, intends other dicasteries of the Roman Curia including the Roman Rota. However, the fact is that, in *CCEO*, the Legislator never names the individual dicasteries of the Roman Curia.

3.3. Has *CCEO* Canon 1063 §3 Derogated from *PB* art. 128

Having dealt with the question regarding the exclusionary clause in *CCEO* canon 1062 §1, we can now turn to answering whether or not *CCEO* canon 1063 §3 has derogated from *PB* art. 128 on the competence of the Roman Rota since, in the specific context of appeals from the tribunals of the patriarchal Churches, the new law has completely reordered the former Eastern legislation. Among the minority, it has been held that, with the promulgation of the Eastern Code (in particular *CCEO* c. 1063 §3), the Legislator has not expressly abrogated the former law in *SN* (especially c. 73) and, therefore, the competence of the Roman Rota described in *PB* art. 128 still applies in relation to appeals from tribunals of the Eastern patriarchal Churches.[71] However, it would seem that, given the three distinct circumstances in which later laws abrogate or derogate from earlier laws (*CCEO* c. 1502 §1), the Legislator need not also make an express declaration where the new Eastern norms have completely reordered the canons *de foro competenti*. In fact, the conclusions drawn from an overall review of the *iter* of the relevant *CCEO* canons show that *CCEO* canon 1063 §3 has derogated from the competence of the Roman Rota established in *PB* art. 128, not because the Eastern norm states so expressly and not so much because it directly contradicts *PB* art. 128, but because the new law has completely reordered the previous law in *SN* by precluding appeals to the Holy See.[72]

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competence of the Tribunal of the Roman Rota and the Apostolic Signatura. Certainly, it is not a question here of only the Tribunal of the Apostolic Signatura, as some authors, without valid reasons, want to interpret the expression; otherwise, one would have to assert clearly '*salva competentia Supremi Tribunalis Seganturae* (sic) *Apostolicae*'."

[71] See, for example, Alwan, "Il tribunale apostolico," (footnote 44) 40. Alwan states: "The absence of an excluding expression or a derogating, abrogating or revoking norm of the preceding norm regarding the competence of the Rota, both in the text of *PB* and the contents of canon 1063 and even in the text, itself, of the 'guiding principles,' puts in doubt the presumed exclusivity of the *mens legislatoris* in favour of the Patriarchal Tribunals."

[72] See footnote 77, below. See also: Fürst, "Lex prior derogat posteriori?", (footnote 41) 276. The author states: "But such a derogation (of *PB* art. 128) in relation to the cases of tribunals within the territory of an Eastern (patriarchal)

At the level of the common law, *CCEO* canon 6, 1° (see also *CIC* c. 6 §1, 3°) foresees an example in which the rule stated in *CCEO* canon 1502 §1 is to be applied. *CCEO* c. 6, 1° stipulates: "With the entry into force of the Code, all common or particular laws contrary to the canons of the Code or which concern matters which are integrally reordered in this Code are abrogated." Basically, the issue comes down to whether or not, with the promulgation of *CCEO*, the legislator intended to reorder integrally the former common laws (*SN* cc. 73 and 408) with particular regard to appeals from tribunals of the patriarchal Churches to the Roman Rota.

It is clear that, when the 1974 plenary assembly of *PCCICOR* approved a rule to allow for the patriarchal Churches to deal with cases in all three instances up to the final sentence, the chief preoccupation of members who intervened in the debate concerned recourse (*provocatio*) or appeals to the Holy See which, in the past, caused delays or abuses in the right administration of justice.[73] *SN* canon 73, which foresaw the possibility of appeals from tribunals of the patriarchal Churches to the Roman Rota, was identified then and, in 1975, when the *Coetus de processibus* met to draft the 1975 provisional Schema, the members of the study group simply omitted *SN* canon 73 as they had decided to adhere to the guiding principle adopted by *PCCICOR*.[74] At the same time, the *Coetus* formulated the draft of *CCEO* canon 1063 §3, which the relator described as "something quite new."[75]

Church has now actually resulted, as the redaction history of CCEO cc. 1059 §2 and 1063 §3 shows."

[73] See *Nuntia* 30 (1990) 66-67. See also: Jobe Abbass, "The Roman Rota," (footnote 41) 457-460.

[74] The *Coetus de processibus* reported: "Regarding this canon which constitutes the most important point of the whole section *de Processibus*, the *Coetus* had very specific norms in the "guiding principles," already cited, namely, that each Eastern Church must have a judicial setup such that it be able to resolve all cases in all three instances, up to the final sentence, saving always the possibility of the *provocatio ad Romanum Pontificem*.... The text of the canon was examined and reexamined several times, and it was also reviewed by the *Coetus centralis*, to which it seemed acceptable in substance." See: *Nuntia* 5 (1977) 12-13 (c. 8).

[75] The relator stated: "On the other hand, §2 is something quite new. In drafting this paragraph and omitting, at the same time, *SN* c. 73, the *Coetus* adhered to the "guiding principle," mentioned above, by proposing that the patriarchal tribunal can handle cases in all three instances, saving always the *provocatio ad Romanum Pontificem*, which is dealt with in can. 5 of this schema." See *Nuntia* 5 (1977) 14 (c. 9).

The *Praenotanda* to the subsequent 1982 Schema quite clearly expressed the intention of the *Coetus de processibus* to integrally reorder the Eastern norms regarding the competent forum. Bringing together various canons which "were here and there" throughout *SN*, the study group intended to give a "new order" to these canons on the competent forum and place them under the one title *de foro competenti*.[76] As a result of this revision, the *Coetus* again proposed the draft of *CCEO* canon 1063 §3, which the *Praenotanda* explained was consistent with the principle approved by *PCCICOR*, namely, that the organization of the tribunals in the patriarchal Churches should be more suited to their *sui iuris* status and, therefore, that cases be finished within the territory of these Churches "excluding appeals to dicasteries of the Roman Curia."

> Regarding the proposed draft of *CCEO* c. 1063 §3 in the 1982 Schema, the *Coetus de processibus* reported: "In revising the canons of the Apostolic Letter *Sollicitudinem nostram*, the consultors of the *Coetus a Studiis de Processibus* followed the principles approved by the Plenary Assembly of the members of the Commission which met from March 18-23, 1974. Among other things, the Plenary Assembly of the members of the Commission expressed the opinion that the setup of the tribunals in the Patriarchal Churches be more suitable to their *sui iuris* status and, therefore, that cases be finished within the territory of these Churches, **excluding appeals to dicasteries of the Roman Curia (*remotis appellationibus ad Romanae Curiae Dicasteria*)**, however, saving always the right of any one of the Christian faithful to have recourse to the Roman Pontiff according to canon 5 of the schema. (Emphasis added)[77]

When the 1982 Schema was revised by a special group of experts, they opted for a maximum conformity of the Eastern procedural norms with the new *CIC*. Nevertheless, they decided to keep, as proposed by the *Coetus de processibus*, the "rather different setup" for the canons on

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[76] The *Coetus de processibus* reported: "The Chapter on the Competent Forum (canons 4-23) assembles canons 14-39, 46-51 and 72-76 of the Ap. Lett. *Sollicitudinem nostram*, which, having been reviewed, is given a new order, whereby it is greatly hoped that it might provide, with greater clarity, with respect to the norms which, regarding the grades of tribunals and their kinds as well as their competence, are now found here and there. All things considered, it seems that all these norms for one reason or another at least can be brought together under the title *de foro competenti*." See *Nuntia* 14 (1982) 5.

[77] See *Nuntia* 14 (1982) 4.

the competent forum.[78] The special study group did not alter the approved principle, contained in the draft of *CCEO* canon 1063 §3, that, within the territory of a patriarchal Church, cases are to be handled up to the final sentence and that appeals to the Roman Rota are excluded. Nor was this principle ever contradicted subsequently in the reported *iter* of *CCEO* canon 1063 §3.

It therefore seems clear that *CCEO* canon 1063 §3 has abrogated the former law contained in *SN* canon 73. Consequently, as a later law to *PB* art. 128, *CCEO* c. 1063 §3 also derogates from *PB* art. 128 inasmuch as the competence of the Roman Rota established there does not apply in relation to appeals from tribunals of the Eastern patriarchal Churches. However, since a *dubium* has arisen in this matter, we would still welcome an authoritative explanation or interpretation of *CCEO* canon 1063 §3 from the Legislator or the Pontifical Council for Legislative Texts in the continuing efforts to find the Eastern Code's correct place and relationship within the Church's one body of canon law.

Conclusion

In celebrating the thirtieth anniversary of the promulgation of the *Codex Canonum Ecclesiarum Orientalium*, we thank the Lord for the gift to the entire Church of the first, complete Code for the Eastern Catholic Churches. As we recall Pope St. John Paul II, who promulgated the Eastern Code as well as the Latin Code and *Pastor bonus,* it was he who declared that all three are integral parts of one *Corpus Iuris Canonici* of the Catholic Church. However, as we saw in the canonical provisions examined in this study, it is sometimes difficult to define properly the relationship the Eastern Code has with the Latin Code and *Pastor bonus* and then correctly situate all three within that one body. Frankly, even after thirty years, it could be argued that we are still at the bare bones. In the next thirty years, canonists and, indeed, the whole Church will look to the Legislator for continued guidance in order to give flesh to those bones and breathe life and spirit into that one body of canon law for the good of all.

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[78] The expert study group stated: "Despite a literal conformity in a majority of canons with the texts of the new *CIC*, the study group, for circumstances peculiar to the Eastern Churches, has kept, as already proposed by the preceding *coetus*, a rather different setup for the canons *De foro competenti* together with the canons *De tribunali secundae instantiae*..." See *Nuntia* 17 (1983) 73.