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Editorial

COMMUNIS VITA AND *DE CONCORDIA INTER CODICES*: A COMPARATIVE NOTE

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Though there were serious deliberations and arguments in favour of a single code for the universal Catholic Church, the general differences between the Latin Church and Eastern Churches and the inherent similarities and unity among the latter twenty three Churches motivated the legislator to go for two codes in the Church: one "universal law" for the entire Latin Church and a "common law" for the Eastern Churches. This fact is very well reflected in the famous expression of the legislator who promulgated both the codes: "the Church, gathered by the one Spirit breaths, as it were with the two lungs of East and West, and burns with the love of Christ, having one heart, as it were, with two ventricles" (John Paul II, Ap. Cons. *Sacri canones*). With the provision of CIC c. 17 and CCEO c. 1499 the codes illustrate that both codes have certain amount of complementarity.

There is, however in the Church an attempt, especially under the pontificate of Pope Francis, to minimise, as much as possible, the differences, especially regarding the non-fundamental elements and to extend the harmonization. While acknowledging the fact that both codes have their unique independent character based on their different traditions, customs and practices the Holy Father "expressed constant solicitude for a concordance between the two Codes of the Catholic Church" in his motu proprio *De Concordia inter codices*. According to Jobe Abbass there are "several unresolved questions" between the codes as far as harmonization is concerned and that "these issues remain and represent a certain disharmony between the two Codes of the Church" and hence "the work of harmonization and clarification needs, perhaps to continue" ("De concordia," *Iustitia*, Vol. 8, n. 1 (2017) 16, 29).

In the codes of canon law we see some canons with indications as to how to resolve certain things that are wanting or doubtful and not clear in the code. For any such *lacuna* in either of the codes, therefore,

the practioners of law and academicians, both professors and students, should consult, if there is anything in the counter part of the Latin or Eastern code respectively.

It is clear that neither is it possible for any legal system to foreknow any and every instance or case that might eventually arise in the society nor solve such cases with the existing legislation. It is equally impossible for the Church also to foresee and provide legal coverage to every problem that might, in the course of time, unexpectedly or depending on new developments in the world and Church, emerge in the various realms of the Churche's life related, for example, to hierarchs, preists, religious, lay faithful or such other matters. The revolutionary changes that take place in and around the Church in the secular realm are so fast, enormous and tremendous. It is, therefore, quite normal that consequently new problems may arise or a prevailing issue might take new turns and forms that would make the legal provisons or norms in force inadequate to resolve a particular question. Sometimes even the amendments and reforms that are being eventually introduced can become obsolete very soon.

Hence the Church, reading the signs of the times, addresses the need for reforms in the prevailing codes in order to better adapt to the new developments. The motu proprio *Communis vita* treats a new phenomenon or rather an issue which, though exceptional, now is occurring with new proportions and in an augmented frequency, that is, the issue of religious absenting themselves from their respective religious community for an unconstitutional longer period of time neither with due permission from the competent authority nor for any legitimate grave reason.

This is a reform introduced into the CIC and as such, it does not affect the CCEO. However, regarding this amendment added to the Latin Code, the question arises, if it is a matter very unique and particular to the religious of the Latin Church alone or is it a possible general difficulty that might disturb any religious irrespective of Latin or Oriental.

Though according to the socio-political, traditional and cultural factors there may be defference in the thought pattern, style of life and functioning among different communities and people in general, there are various elements which bind a particular category of people - just for example bishops, priests, religious, parish priests, families - together or issues which may affect in the same manner anyone of that particular category depending on the homogenous faith dimension

and religious spirit. Accordingly though the charisms, habits and life style may be different in various religious institutes belonging to different Churches *sui iuris*, there are certain basic characteristic features such as community life, profession of the evangelical counsels and their observation, submission to religious rules and superiors which are constitutively common to consecrated life in a monastery, order or congregation, be it Latin or Oriental.

The reform under discussion, that is, the new restriction imposed on religious who absent themselves for more than one year from the community, could be assessed in this sense. The third ground added to the CIC c. 694, namely, the norm on the reasons of dismissal is that the location of the one who "has been illegitimately absent from the religious house, pursuant to can. 665 §2, for 12 consecutive months, … may be unknown" (Pope Francis, *Communis Vita,* 2019).

In the very opening words of the motu proprio, the Holy Father, reforming some of the norms of the CIC reinstates and emphasizes the value and importance of community life: "Life in community is an essential element of religious life"(*Com. Vita*).

As this is added to CIC, obviously the current reform is applicable, *ipso iure,* only to the Latin Church. However, considering the nature and purpose of the matter, it does not seem to be a deviation or reality that is occurring only among members belonging to the religious institutes of the Latin Church. Rahter it is a phenomenon, though exceptional, that could eventually occur equally among the religious of the Oriental Church as well. Hence, the doubt arises, will not extending the applicability of the norm to the latter also be helpful to evade the emergence of potential issues or confusions and unnecessary comparisons, especially when and where there is co-existence and collaboration of religious belonging to both East and West.

Regarding the use of inclusive language in the codes, CCEO c. 1505 instructs that in places where it is not very evident, the "nature of the matter" should be considered. CIC c. 17 (CCEO c. 1499) stipulates that the context of a law is important and so also in case of absence of a law or doubt and obscurity regarding a law in one code, "parallel places," "purpose" and "circumstances of law" besides the "mind of the legislator" should be taken into account.

In the light of the experiences of applying the current law to practical modern situations, especially, pastoral now there is an attempt to minimize the differences and bring about more harmony between the two codes. The twin modifications enacted through the motu proprios

Mitis et Misericors Iesus and *Mitis iudex dominus Iesus* (2015) could be read in this perspective.

It is interesting to note that even the very title of the motu proprio, with which Pope Francis amended some of the CIC canons, is *De Concordia inter codices* (May 31, 2016). "These changes have come 33 years after the promulgation of the CIC and 26 years after that of CCEO. During that time, hierarchs and pastors experienced many problems that suggested the need to better harmonize CIC and CCEO. Canonists likewise observed legal discrepancies and practical difficulties which impeded the pastoral and legal application of the norms," and the efforts to bring about "better correspondence and harmony between the Latin and Eastern Churches, ha[s]d the ulterior goal of enhancing and rendering Church's legal and pastoral services more effective," and, "to mitigate the negative pastoral consequences of two contradictory sets of laws" (see, *Iustitia,* 2017, p. 6).

By a comparison of the two motu proprios, it seems that on the one hand experiences of difficulties in applying the contradictory laws in the two codes inspired the legislator to bring about better harmony and on the other hand the introduction of a reform only into CIC without considering CCEO seems to be not in correspondence with the attempt towards *concordia*. When we consider the nature of the matter, purpose or circumstances of the new norm, there does not appear to be great difference between the two codes regarding content of the newly introduced reform. The rapid changes in the society and subsequently in the Church have not left untouched the religious life either, not only of the Latin but also of the Oriental Churches.

The second issue of the special decennial volume continues to discuss some of the process seen in the CIC and CCEO. Frederic Easton's article, "Appeal and Recourse Procedures against Ecclesiastical Penalties according to the Code of Canons of the Eastern Churches," authoritatively handles the provisions in CCEO covering the penal processes involving recourses – against extrajudicial administrative decrees imposing penalties - and appeals to higher authority. The article clarifies possible doubts as to who is the competent superior for recourses and which is the tribunal to which appeals are to be addressed? After having elucidated the right of the accused for self defence, right to recourse and appeals, the author examines the pertinent CCEO canons and recent motu proprios and other relevant documents thoroughly to determine who the competent authority for recourse is and indicates the differences in this regard in relation to reserved and non-reserved delicts also taking into consideration the

type of delicts and the territory, namely, whether from within or outside the proper territory the recourse is levelled. Regarding delicts "not reserved to the Apostolic See," the author says, "one must consider whether the hierarch who issued the extra-judicial decree was within the territorial boundaries of a patriarchal church or of a major archiepiscopal church or outside those territorial boundaries" (see below, p.157).

Adoppilly Thomas Mathew, in his article, "Procedural Norms for the Laicization of Clerics" exposes and analyses the ways in which a cleric can lose his clerical status: a judicial sentence or administrative decree that declares the invalidity of sacred ordination; a penalty of dismissal legitimately imposed for some crime specified in church law; and a rescript of the Apostolic See, commonly called "laicization." Besides explaining the meaning of the law and the values underlying the canons on the loss of clerical status, this article treats the practical implementation of these canonical procedures in the current CIC and CCEO. Explaining the nuances of clerical status and its loss the author says, "though there are canonical procedures to remove from a cleric his clerical status, there is no canonical procedure to make him cease to be a cleric. In other words, a cleric cannot be "declericalised," he can only be "defrocked" (see below, p. 173). The article treats in detail the process of laicization and the juridical effects of it.

Rosmin's article "Transfer between Religious Institutes: Requirements, Process and Effects" discusses, one of the canonical provisions in the codes, namely "transfer" of religious. Having stated that "transfer within the religious institutes is not a complete break-up from religious life but rather it is a possibility, a door for a new beginning in another religious institute" the author exposes the reasons of transfer, like incompatibility issues between him/her and the charism or life style of the current institute; issues related to "emigration, political turmoil" causing geographic dislocation; a greater, more intense and profound 'call within the call." Thus "if a religious feels that he or she has made a wrong choice in the selection of a right spiritual patrimony, he or she is given a provision to change his or her choice to another" (see below p. 201). It is with a view to helping the religious with such challenges as well as their superiors that the author examines the provision of transfer from one religious institute to another – monasteries, orders and congregations -, its procedures, regulations, and juridical effects.

Sebastian Payyapilly deals with a practical and relevant issue regarding marriage between a Catholic and an unbaptized in his

article, "The Juridical Competence of the Catholic Church in Annulling the Marriage of the Unbaptized." Having discussed the fundamentals of any licit and valid marriage and pointed out the differences between a contract and covenant in relation to marriage, the author treats the intricacies involved in handling the marriage or remarriage between a Catholic and an unbaptized person indicating the dissimilar approaches various tribunals maintain towards the same juridical issue. The author, however, holds that "a civil divorce decree is not sufficient to prove the free state of an unbaptized who wishes to marry a Catholic" (see below, p. 212). The author concludes saying that "the marriage nullity cases of the unbaptized, do not belong to the ecclesiastical judge by the law itself. But the judge may handle such cases only when there is a necessity to prove the free state of the unbaptized before the Church" (see below, p. 217).

Varghese Koluthara's article "*Communis vita* and Oriental Religious Institutes" discloses his concern for the religious institutes of Oriental Churches in the light of the recent motu proprio of Pope Francis effecting reforms into one of the norms on religious life for the Latin religious. The author, having exposed the characteristic features, especially of the communitarian dimension of religious life, and considering the nature of the matter of current reform, evaluates that the non-applicability of the above-mentioned moptu proprio to the Eastern religious, creates a vacuum in CCEO. Hence, indicating some of the reasons in favour of a similar norm also for the Oriental Churches, the author says, "it is an urgent need, especially for religious institutes with simple vows who are having more apostolates as part of their charism in comparison with monasteries and orders who are not challenged by exposure to different apostolates carried out in the name of the Church" (see below, p. 234).