

THE POWER OF THE ROMAN PONTIFF IN RELATION TO THE CHURCHES *SUI IURIS*: AN ANALYTICAL STUDY OF CCEO C. 43 WITH SPECIAL REFERENCE TO THE PATRIARCHAL CHURCHES IN AN ECUMENICAL PERSPECTIVE

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Abstract

Canon 43 of the Eastern Code is the crux of the Catholic teaching on the primacy of the Bishop of Rome. Is papal primacy a stumbling block for ecumenism, as once observed by the late Pope Paul VI in his address to the members of the Secretariat for the Unity of Christians? Does canon 43 promote ecumenism or remain a hindrance to it? How far is it acceptable to the non-Catholic Eastern Churches? Should the Catholic Church do anything more to make this mode of primacy more acceptable to the Easterners? The Catholic Church should think of formulating an ecclesiology that gives more prominence to the heads of particular Churches *sui iuris*, especially the patriarchs.

Keywords: Roman Pontiff, primacy, ecumenism, Church *sui iuris*, patriarchal Churches.

Introduction

Working on a licentiate dissertation and doctoral thesis under Prof. George Nedungatt SJ, an erudite professor of canon law at the Pontifical Oriental Institute, was a great privilege. A scholarly article published by Prof. Nedungatt in 2001, "Patriarchal Ministry in the Third Millennium,"¹ motivated and prompted me to choose the topic

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¹ George Nedungatt, "Patriarchal Ministry in the Third Millennium," *The Jurist* 61 (2001) 1-89.

for my research. Prof. Nedungatt guided the research with great diligence, critical observations and scholarly insights. Though outwardly stern and unapproachable, getting acquainted, one realizes that he is open to any question in canon law and has a considered answer. Moreover, Prof. Nedungatt proved to be not only a research guide but a man of compassion and goodwill who could console and encourage his students at difficult times. The profound and lasting legacy he has left behind still enlightens, guides and encourages his students worldwide.

During a homily in the Vatican Basilica in the presence of Dimitrios I, Archbishop of Constantinople and Ecumenical Patriarch, Pope John Paul II invited pastors and theologians to seek the forms in which the Petrine ministry “may accomplish a service of love recognized by all concerned.”² Citing this in the encyclical letter *Ut unum sint*, the Holy Father exhorted the leaders and theologians of the Churches to engage with him in a “patient and fraternal dialogue” to arrive at a perfect communion.³ The following words of the Holy Father seemingly demonstrate an acknowledgement of mistakes in the exercise of primacy in the past: “... for a great variety of reasons, and against the will of all concerned, what should have been a service sometimes manifested itself in a very different light” (UUS 95). However, in the same paragraph, the late Holy Father affirmed that it was out of his conviction of doing the will of Christ that he was exercising this ministry.

History tells us that the Eastern Churches often responded negatively to the primacy assertions of Rome in the first millennium. The mutual conflicts and continued schisms till the great schism of 1054 reveal this. As per Metropolitan John Zizioulous of Pergamon, “the most important and at the same time the most difficult problem in the Roman Catholic-Orthodox relations is undoubtedly that of papal primacy.”⁴ Pope Paul VI also rightly observed in an address to the

² Homily in the Vatican Basilica in the presence of Dimitrios I, archbishop of Constantinople and Ecumenical Patriarch (6.12.1987), AAS 80 (1988) 714.

³ John Paul II, encyclical letter, *Ut unum sint* (UUS), (25.5.1995), 95, AAS 87 (1995) 921-982.

⁴ John Zizioulous, “Primacy in the Church: An Orthodox Approach,” in James F. Puglisi, ed., *Petrine Ministry and the Unity of the Church: “Towards a Patient and Fraternal Dialogue,”* A Symposium Celebrating the 100th Anniversary of the Foundation of the Society of the Atonement, Rome,

members of the Secretariat for the Unity of Christians that papal primacy was the greatest stumbling block in the path of ecumenism.⁵ However, in his discourse of presentation of CCEO on 25 Oct. 1990, Pope John Paul II made the following affirmation: "There is no norm in the Code that does not promote the path of unity among all Christians."⁶ Here comes the question of papal primacy as expressed in canon 43 of the Eastern Code. How far is it acceptable to the non-Catholic Eastern Churches? Does it affect the communion with the Orthodox Churches? How do the canonical formulations based on canon 43 affect the ecumenical relations of the Catholic Church with the Orthodox Churches? All these are relevant questions for which we do not have handy answers.

1. The primacy of the Bishop of Rome

Codex Canonum Ecclesiarum Orientalium (CCEO),⁷ canon 43, deals with the power of the Roman Pontiff in the Catholic Church. The formulation of this canon is as follows: "The bishop of the Roman Church, in whom continues the office (*munus*) given by the Lord uniquely to Peter, the first of the Apostles, and to be transmitted to his successors, is the head of the college of bishops, the Vicar of Christ and pastor of the entire Church on earth. By virtue of his office (*munus*) he possesses supreme, full, immediate and universal ordinary power in the Church which he is always able to exercise freely."⁷

Canon 43 formed part of the schema of *Lex Ecclesiae Fundamental* (c. 29 §2).⁸ This is the sum and the substance of the idea of primacy in the

December 4-6, 1997 (Collegeville, MN: The Liturgical Press, 1999) 115-125, 116.

⁵ Pope Paul VI, *Address to the members of the Secretariat for the Unity of Christians*, April 28, 1967: IS 2 (1967) 4.

⁶ "Non vi è norma nel Codice che non favorisca il cammino dell'unità tra tutti i cristiani ...": *Nuntia* 31 (1990) 17-23, 22.

⁷ CCEO c. 43: *Codex Canonum Ecclesiarum Orientalium*: AAS 82 (1990) 1033-1363. For a commentary on the canon see George Thekkekara, "Title III: The Supreme Authority of the Church (cc. 42-54)," in John D. Faris and Jobe Abbas, ed., *A Practical Commentary to the Code of Canons of the Eastern Churches*, v. 1 (Canada: Wilsonrd' & Lafleur Ltée, 2019) 173-188. I have made use of my doctoral dissertation for this commentary. Therefore, the contents published in this commentary are also used in this article without giving any reference to it.

⁸ During the Codification of the Eastern and the Latin Codes, a mixed group containing members of both the Commissions was entrusted to collect

Catholic Church. The specific titles and attributes of power of the Roman Pontiff enlisted in canon 43 makes it a synopsis of the Catholic teaching on the role and power of the Roman Pontiff. Canon 43 affirms that Peter was the first of the Apostles by the will of the Lord and received a special *munus*, which is continued in the Bishop of Rome and transmitted to his successors. The canon also enlists the different titles of the Roman Pontiff and the attributes of powers he enjoys. The specifications regarding the power of the Roman Pontiff, which are based on *Lumen Gentium* 22 and *Christus Dominus* 2, have as a source the First Vatican Council document *Pastor Aeternus*⁹ and the teaching of the Council of Florence.¹⁰

Canon 42 of the Eastern Code makes an analogy between the Apostolic College and the Episcopal College based on the ecclesiology of Vatican Council II, especially *Lumen Gentium* 22: "Just as by the Lord's decision Saint Peter and other Apostles constitute one college, so in a like manner the Roman Pontiff, the successor of Peter, and the bishops, successors of the Apostles are joined together."¹¹ As against the Catholic understanding of *succession* the Orthodox theologians maintain that "the apostolic college, with Peter as its head, is an unrepeatable "*unicum*" in the history and structure of the Church."¹²

the canons related to the Roman Pontiff and the episcopal college: *Nuntia* 22 (1986) 38-39; *Nuntia* 29 (1989) 57; For *Lex Ecclesiae Fundamental* see *Communications* 13 (1981) 44-82, 45; Ivan Žužek, "La *Lex Ecclesiae Fundamental* et les deux Codes," in *L'année canonique* 40 (1998) 19-48, 34.

⁹ Vatican Council I, dogm. const. *Pastor Aeternus*, sessio IV, caput III. The translation above and the text quoted is as given in Tanner, *Decrees of the Ecumenical Councils*, v. 2 (Washington D. C.: Georgetown University Press, 1990) 813.

¹⁰ For the citation from the Council of Florence see Norman P Tanner, ed. & trans., *Decrees of the Ecumenical Councils*, v. 1 (Washington, D. C.: Georgetown University Press, 1990) 528. The 1917 Code of Canon Law used the text of the First Vatican Council to formulate the canon on the Roman Pontiff (c. 218 §1). The previous Eastern legislation regarding the Roman Pontiff in *Cleri Sanctitati* (CS 162 §§ 1, 2) also used the same formulation.

¹¹ LG 22: "Just as the role that the Lord gave individually to Peter, the first among the apostles, is permanent and was meant to be transmitted to his successors, so also the apostles' office of nurturing the Church is permanent" (Translation as in Tanner, *Decrees of the Ecumenical Councils*, v. 2, 864).

¹² Salvatore Manna and George Thekkekkara, "The Supreme Authority in the Church (cc. 42-54)," in George Nedungatt and Georges Ruyssen, ed., *A*

According to them, Peter's particular position in the apostolic college is not handed on to the Bishop of Rome. Papal primacy, for them, is not of divine law, but a reality developed in the course of history.¹³

Besides the political importance, Rome had the advantage of having the tombs of the 'glorious apostles Peter and Paul. As Tillard writes: "The bishops of Rome succeed each other in order to preserve the work of Peter [and Paul], and make present until the end of time the leadership which Peter especially was called to exercise in the once-for-all apostolic event,"¹⁴ in their office as "successors of Peter." Gradually, the Roman Pontiffs underscored the apostolic succession to Peter's throne alone to substantiate their primacy claims.¹⁵ Mt 16: 13-23 is often cited to explain the unique role of Peter in the Christian tradition.¹⁶

1. 1. Vicar of Christ and Pastor of the Universal Church

As Peter's successor and Vicar of Christ, the Roman Pontiff has absolute juridic independence and supreme power over the whole Church. This power is at the same time episcopal and sacramental since the source of this authority is Christ, and the scope is to guide the Church as the universal pastor. As the "pastor of the universal Church," the bishop of Rome has extensive powers to intervene in the

Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches, second revised edition, Kanonika 10 (Rome: PIO, 2020) 153-180, 154.

¹³ Manna and Thekkekara, "The Supreme Authority in the Church," 155.

¹⁴ Jean M. R. Tillard, *The Bishop of Rome*, trans., John de Satge (Wilmington, Delaware, 1982) 101.

¹⁵ S. Damasus, *decr.*, *Post has omnes*, a. 382: PCRCICO, *Fontes III*, v. 1, 75; S. Innocentius I, *litt. In requirendis*, 7 ian. 417: PCRCICO *Fontes III*, v. 1, 105; PL, 20, 582-588; Mansi III, 1071; JK 321; S. Bonifacius I, *litt. Inter caeteras*, a. 419: PCRCICO, *Fontes III*, v. 1, 112, are a few examples. The First Vatican Council constitution *Pastor Aeternus* affirms: "... to this day and forever (Peter) lives and presides and exercises judgement in his successors, the bishops of the Holy Roman See, which he founded and consecrated with his blood Therefore, if anyone says that it is not by the institution of Christ the Lord himself (that is to say, by divine law) that blessed Peter should have perpetual successors in the primacy over the whole Church, or that the Roman Pontiff is not the successor of Blessed Peter in this primacy, let him be anathema": *Pastor Aeternus*, IV, II: Tanner, *Decrees of Ecumenical Councils*, v. 2, 813.

¹⁶ Tertullian is the first to quote *tu es Petrus* as evidence for Roman Primacy: *De Praescriptionibus* 22: PL 2: 33-34, ca. 200 AD.

affairs of each Particular Church or eparchy with full and immediate powers. This possibility is well established in canon 45 of CCEO as follows: “The Roman Pontiff, by virtue of his office (*munus*), has not only power over the entire Church but also possesses a primacy of ordinary power over all the eparchies and groupings of them by which the proper, ordinary and immediate power which bishops possess in the eparchy entrusted to their care is both strengthened and safeguarded.” That means the Bishop of Rome exercises episcopal power over the entire Catholic Church. He acts as “the visible principle and foundation of the unity of the bishops and of the multitude of the faithful” (LG 23). The Roman Pontiff is entitled to do all the functions of a bishop in any of the eparchies, because, by his office, he “possesses a primacy of ordinary power over all the eparchies and groupings of them” (c. 45 §1).

Several organs render cooperative assistance to the Roman Pontiff in exercising supreme power. These bodies or organs include the synod of bishops of the universal Church, the college of cardinals, the Roman curia, pontifical legates and other persons and various institutions according to the needs of the times (c. 46 §1). Therefore, the role assigned in canon law to these institutions and dicasteries concerning the universal Church or the particular Churches *sui iuris* is to be seen as participation in the primatial power of the Roman Pontiff.¹⁷

2. The Powers of the Roman Pontiff over the Churches *sui iuris*

2.1. A Church *sui iuris*

A terminological clarification regarding a Church *sui iuris* is fundamental to the understanding of the exercise of primatial power by the Roman Pontiff.¹⁸ In Roman Law, the term *sui iuris* signified the juridic status of a citizen who was independent (*persona sui iuris*) and

¹⁷ See CCEO c. 48, which states: “In this Code the term “Apostolic See” or “Holy See” applies not only to the Roman Pontiff but also, unless it is otherwise specified by the law or is clear from the nature of the matter, to the dicasteries and other institutions of the Roman curia.”

¹⁸ The Latin term *sui iuris* is formed from two genitives: 1) the genitive form of the reflexive pronoun third person singular *se* (oneself, itself, himself, herself); 2) the genitive of the neuter noun, *ius*, meaning “law”, or “a legal system”. Therefore, *sui iuris* means “of its own law”, “of one’s own law” etc., which is generically termed “independent”: P. G. W. Glare, ed., *Oxford Latin Dictionary* (Oxford: Clarendon Press, 1983) s.v., “*ius*”.

not under the paternal authority (*patria potestas*) of another.¹⁹ It was an equivalent of the Greek adjective "αὐτονομος" used to denote the freedom of a person or a State (αὐτονομιον). The English equivalent for "αὐτονομος" is "autonomous", meaning "living under one's own laws" or independent. The verb "αὐτονομέομαι" means "to be independent."²⁰ In canon law, the term refers to a Church's legal status depending on the "capacity or right to govern itself according to its own law."²¹ The Eastern Code uses the term "Church *sui iuris*" to explain a Church's autonomous or self-governing nature.²² The term "particular Church" is often used to denote an autonomous Church, as described above. Though OE uses the term "Particular Churches or Rites" (OE 2-4), the term particular Church is used differently in different decrees of the Vatican Council II.²³

¹⁹ A. Valiyavilayil, *The Nature of a sui iuris Church*, doctoral dissertation at PIO, Rome, 1992, 134.

²⁰ Greek αὐτονομέομαι is the term used to denote the freedom of a state to use its own laws, or independence. See Henry G. Liddell and Robert Scott, *Greek-English Lexicon with a Revised Supplement* (Oxford: Clarendon Press, 1996) s.v. "αὐτονομ-έομαι."

²¹ George Nedungatt and Lorenzo Lorusso, "Churches *sui iuris* and Rites (cc. 27-41)," in George Nedungatt and Georges Ruysen, ed., *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, second revised edition, Kanonika 10 (Rome: PIO, 2020) 121-152, 121.

²² A mixed group of the two commissions (*Coetus Specialis Studii "de Lege Ecclesiae Fundamentali*), had adopted the term *Ecclesia ritualis sui iuris* (e.g., LEF c. 2 §2: "Varie Ecclesiae particulares in plures coniunguntur ...sunt Ecclesiae rituales sui iuris ...": *Com* 12 (1980) 31. PCCICOR later dropped *ritualis*, "since some of the Eastern Churches of the same tradition were said to have the same rite," as in the case of "the Byzantine rite. For the discussions made by the Study Groups see *Nuntia* 22 (1986) 23. Though the Latin Code used *Ecclesia ritualis sui iuris* (CIC c. 112) the term "ritual" was removed by an amendment made in 2016 (See Pope Francis, Apostolic Letter, mp, *De Concordia inter Codices*, on variations to the Code of Canon Law, dated 31.05.2016: https://www.vatican.va/content/francesco/it/apost_letters/documents/papa-francesco-lettera-ap_20160531_de-concordia-inter-codices.html, accessed on 10.08.2022).

²³ For further explanation see George Nedungatt, "Ecclesia universalis, particularis, singularis," in *Nuntia* 2 (1976) 75-87, 76. See also Nedungatt and Lorusso "Churches *sui iuris* and Rites," 125, footnote, 10. The Apostolic Constitution *Praedicate Evangelium* uses the term "particular Church" in the sense of a diocese or an eparchy. For example, see article 38: "In keeping with the tradition and the prescriptions of canon law, the Pastors of each particular

The Churches *sui iuris* obtain that status only with the express or tacit recognition of the supreme authority of the Church (c. 27). The authority or power of the Roman Pontiff is evident in the very origin of a Church *sui iuris*.²⁴ Therefore, “the autonomy of Churches *sui iuris* is *relative* and *gradated*. It is *relative* insofar as no entity within the Catholic Church can be absolutely independent of the supreme authority of the Church ... Autonomy is also *gradated* according to the status of the hierarchical head of the Church ... The CCEO enumerates four kinds of autonomous churches.”²⁵ They are patriarchal, major archiepiscopal, metropolitan, and other Churches *sui iuris* under the Roman Pontiff, governed by the Eastern Code and the particular laws of each Church.²⁶ These Churches belong to ~~the~~ different ecclesiastical

Church make the *ad limina Apostolorum* visit at predetermined times.” Article 40 §1: “The Pastors of each particular Church called to participate in the visit must prepare for it with care and diligence, submitting to the Apostolic See at the times indicated a detailed report on the state of the Diocese or Eparchy entrusted to them, including a report on its financial and patrimonial situation.”

²⁴A Church *sui iuris* is explained in the Eastern Code as “a community of the Christian faithful, which is joined together by a hierarchy according to the norm of law and which is expressly or tacitly recognized as *sui iuris* by the supreme authority of the Church” (c. 27). The sources given for this canon include LG 23, OE 2-3, UR 16 and *Postquam Apostolicis Litteris*, c. 303 §1, 1°. That means, no source of the first millennium is available for this canon. Though the term supreme authority denotes the Roman Pontiff and the ecumenical council (college of bishops together with the head), this article deals with the authority of Roman Pontiff alone.

²⁵ John D. Faris, *The Eastern Catholic Churches: Constitution and Governance According to the Code of Canons of the Eastern Churches* (New York, 1992) 145.

²⁶ In the Eastern Code there are 67 references to “the particular law of a Church *sui iuris*” and 73 references to “particular law”, which can even be an eparchial statute, the statutes of a religious institute, etc. There are also other possibilities of making particular laws without contradicting the common law. (The number of references are as given in James Thallachelloor, “Particular Law of the Syro-Malabar Church,” in Francis Eluvathingal, ed., *Syro-Malabar Church Since the Eastern Code: An Evaluation and Future Prospects. Particular Laws, Statutes, Decrees, Bibliography* (Trichur: Marymatha Publications, 2003) 100-116, 102.

traditions such as Alexandrian, Antiochian, Armenian, Chaldean and Constantinopolitan.²⁷

Here we confront many questions: How does the Roman Pontiff exercise his supreme power with the various Churches *sui iuris*? Can this exercise of primatial power hinder future union with the Orthodox Churches? The Roman Pontiff exercises his power of governance – the legislative, executive and judicial functions – over the Churches *sui iuris* in different ways.

2.2. Roman Pontiff as the Supreme Legislator

Since the power of governance of the Roman Pontiff is supreme, ordinary, full and immediate, he is the supreme legislator of the universal Church and has full and immediate legislative power. In ecclesiastical matters, no legislative authority is superior to the Roman Pontiff because of this primatial power.²⁸ The Roman Pontiff can legislate on any matter related to the governance of the universal Church or particular Churches. This power embraces all the phases of the mission and life of the Church, i.e., those of faith, morals, sacramental life, discipline and governance.²⁹ This legislative power "belongs to the Roman Pontiff not as a physical person but in so far as he is the incumbent of the primatial office."³⁰ Therefore, he may even delegate this law-making power (c. 985 §2; CIC c. 135 §2).³¹ However, nobody else can validly make or modify laws regarding the universal Church when the Apostolic See is vacant.³² Canon 47 of the Eastern

²⁷ These five traditions are termed *ritus* in the Eastern Code (c. 28 §2). These traditions are enumerated in alphabetic order, without any consideration to the precedence existed among the patriarchal Churches, since they are of equal dignity: *Nuntia* 22 (1986) 23.

²⁸ In the legislation of the Latin Church, making recourse against an act of the Roman Pontiff in an ecumenical council or the college of bishops is considered as a delict which is to be punished with a censure (CIC c. 1372). There is no corresponding canon in CCEO.

²⁹ Davide Cito, "Il Papa supremo Legislatore," *QDE* 13 (2000) 32-45, 37.

³⁰ Cito, "Il Papa supremo Legislatore," 36.

³¹ Canon law, however, forbids a legislator below the supreme authority to delegate this power, unless the common law provides otherwise (CCEO c. 985 §2).

³² *Universi dominici gregis*, art. 4: "During the vacancy of the Apostolic See, laws issued by the Roman Pontiffs can in no way be corrected or modified, nor can anything be added or subtracted, nor a dispensation be given even from a part of them, especially with regard to the procedures governing the

Code prohibits any alteration in the governance of the entire Church when the Roman See is vacant. So also, the laws enacted by this authority cannot be changed unless by the same authority, and no other inferior legislative authority can validly contradict the laws established or promulgated by the supreme authority of the Roman Pontiff (c. 985 §2).

The supreme nature of this power is further evident from the fact of the universally binding nature of these laws: "Laws issued by the supreme authority of the Church bind everywhere all those for whom they were enacted, unless they were established for a particular territory" (CCEO c. 1491 §1). The matters concerning "faith or morals or declarations of divine law, explicitly decide questions regarding these Christian faithful, or favours which contain nothing contrary to the Eastern rites" bind the Eastern Churches too (CCEO c. 1492).³³ The decisions and laws made by the synod of bishops of a patriarchal or major archiepiscopal Church are applicable only within the territorial boundaries of that particular Church *sui iuris* unless they are liturgical norms. However, if the Apostolic See approves these disciplinary laws and decisions, they become universally binding (c. 150 §§2, 3).

2.3. The Executive Power of Governance of the Roman Pontiff

Roman Pontiff exercises administrative power mainly through the dicasteries of the Roman Curia. The administrative power of the Roman Pontiff concerns the entire Church and is not territorially limited (c. 986). Besides the powers of hierarch or local hierarch (c. 984 §§1, 2), the Roman Pontiff has specific powers concerning those matters the common law reserves.

A bishop governs the diocese entrusted to him in his own name. He is the vicar and legate of Christ, and his power is proper, ordinary and

election of the Supreme Pontiff. Indeed, should anything be done or even attempted against this prescription, by my supreme authority I declare it null and void":https://www.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_22021996_universi-dominici-gregis.html, accessed on 20.09.2022.

³³ CCEO c. 1492: "Laws issued by the supreme authority of the Church, which do not expressly indicate the passive subject, affect the Christian faithful of the Eastern Churches only insofar as they concern matters of faith or morals or declarations of divine law, explicitly decide questions regarding these Christian faithful, or concern favours which contain nothing contrary to the Eastern Rites."

immediate. However, the supreme authority of the Church ultimately regulates the exercise of this power. If the common good of the Church requires it, the supreme authority can impose certain limitations on the power of the bishops (c. 178).

The Roman Pontiff has the power of vigilance over the whole Church. This vigilance is not to find fault but to give the necessary help, generally understood as the principle of subsidiarity.³⁴ The subsidiarity principle refers to the help (*subsidium*) rendered to the lower authorities by the higher administrative authority when the former find themselves in a difficult situation. So also, this supervisory role of the Roman Pontiff serves as a check and balance on the lower authorities' indiscriminate use of power. That is why on several occasions, the administrative authority of the Churches *sui iuris* requires the consent or approval of or consultation with the Apostolic See of Rome. So also, there are occasions foreseen in the Code when the Apostolic See can intervene if the competent lower authorities fail to fulfil the right or duty proper to them within the prescribed time.³⁵

2.4. The Judicial Powers of the Roman Pontiff

Being the supreme judge, the Roman Pontiff is not judged by anyone (c. 1058). The competence of the Roman Pontiff as the supreme judge is further evident in reserving certain judgements or remission of penalties to himself (c. 1060 §1, 1°-4°). For example, the judgement and the remission of penalties for *delicta graviora* (SST Norms, articles 1-6) are dealt with by the Dicastery for the Doctrine of Faith. Only the Roman Pontiff can remit the punishment for using physical force against the Roman Pontiff (c. 1445 §1). This delict is not enlisted among the *delicta graviora*. However, the Roman Pontiff determines who adjudicates the delict, for which a major excommunication is

³⁴ The term 'subsidiarity' originates from the Latin *subsidium*, meaning 'help'. The principle of subsidiarity was one of the "Guidelines for the Revision of the Code of Oriental Canon Law," which were approved at the First Plenary Assembly of the Commission of March 18-23, 1974 (*Nuntia* 3 (1976) 3-24). According to this principle the higher authorities should leave to the lower authorities those matters which are within their competence, interfering only when the latter find themselves in difficult situations.

³⁵ For example, if the election of the patriarch or major archbishop is not completed within fifteen days from the opening of the synod the matter devolves to the Roman Pontiff (c. 72 §2).

foreseen in the Code.³⁶ In the Eastern Code, there is also reservation of remission of the sins of direct violation of sacramental seal and absolution of an accomplice to the Apostolic See (c. 728 §1, 1°-2°).

Further, only the Roman Pontiff can grant a dissolution from a marriage *ratum et non-consummatum* (c. 862) and dissolution of the marriage bond in favour of faith.³⁷ So also, any Christian faithful can bring any case at any stage or grade of judgement before the Roman Pontiff (c. 1059 §1). The Roman Pontiff may call the case to himself, depriving all other judges of their competence (c. 1059 §2).

As the supreme judge, the Roman Pontiff may render the judgement personally or through the dicasteries of the Roman Curia,³⁸ the tribunals of the Apostolic See or the judges he has delegated. No judge can review the acts or documents explicitly confirmed by the Roman Pontiff without his prior mandate (c. 1060 §3). Moreover, the Roman Pontiff exercises the power of vigilance over the administration of

³⁶ Frederick C. Easton, "Title XXVII. Penal Sanctions in the Church," in Faris and Abbass, ed., *A Practical Commentary*, v. 2, 2581. The terminology of the Latin Code is a bit different. As per CIC c. 1370 §1 "a person who uses physical force against the Roman Pontiff incurs a *latae sententiae* excommunication reserved to the postolic See." That means this delict will be handled by that dicastery of the Roman Curia, which is given competence by the Roman Pontiff.

³⁷ Congregation for the Doctrine of the Faith (at present, Dicastery for the Doctrine of Faith), *Norms on the preparation of the process for the dissolution of the marriage bond in favour of the faith*, 30 April 2001: Art. 1: "A marriage entered into by parties, of whom at least one is not baptised, can be dissolved in favour of the faith by the Roman Pontiff, provided that it has not been consummated after both parties have received baptism": https://www.Vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20010430_favor-fidei_en.htm, accessed on 20.09. 2022.

³⁸ For example, the petition for dissolution for non-consummated marriages are handled by the Roman Rota (*Praedicate Evangelium*, article 200 §2); the Dicastery for the Clergy handles the petitions for dispensation from clerical celibacy (*Praedicate Evangelium*, article 116 §2); the Dicastery for the Doctrine of Faith handles the *delicta graviora* and all matters concerning the *privilegium fidei* (*Praedicate Evangelium*, article 74). By mandate of the Roman Pontiff, the Supreme Apostolic Tribunal of this dicastery will judge Cardinals, Patriarchs, Legates of the Apostolic See and Bishops, as well as other physical persons, in conformity with canonical provisions (*Praedicate Evangelium*, article 76 §§1, 2).

justice in the Catholic Church through the supreme tribunal of Apostolic Signatura.³⁹

The Roman Pontiff has legislative, executive and judicial powers over the different Churches *sui iuris*. He may make laws common to all the Churches *sui iuris* or particular laws for a specific Church *sui iuris*. The common law reserves many functions in the Church to the Roman Pontiff or the Apostolic See of Rome. On many occasions, the law necessitates the consent, approval or assent of the Roman Pontiff so that the highest authority in a Church *sui iuris* may validly perform an act of governance.⁴⁰ Though the patriarchal Churches enjoy greater autonomy and self-governance, Roman Pontiff can exercise power in different ways concerning the patriarchal Churches, as specified in the Eastern Code. The patriarch and the synod are sometimes obliged to inform the Roman Pontiff or get the consent or confirmation for validly placing a juridic act in their respective Churches *sui iuris*. This does not mean that these Churches are entirely devoid of all self-governance. As already mentioned, there is more space for particular laws in the Eastern Code, which leaves more freedom for self-governance to the Churches *sui iuris* than in the previous legislation.

However, one cannot rule out the possibility of further enhancement and empowerment of self-governance of these Churches, making them more independent. Within the territory of the patriarchal Church, where the patriarch has jurisdiction, the intervention of the Roman Pontiff is lesser compared with the other Churches *sui iuris*. It is, in fact, due to an effort to re-establish the rights and privileges of the patriarchal Churches following "the ancient tradition of each of the Churches and the decrees of the ecumenical councils" (OE 9).

³⁹ *Praedicate Evangelium*, article 194; 198, 1.

⁴⁰ Concerning the patriarchal Churches, there are more than fifty canons in the CCEO, each directly referring to the Roman Pontiff or the Apostolic See. For example, see canons 57 §3; 78 §2; 85 §1; 126 §2; 182 §3; 185 §1, etc. For a detailed study see George Thekkekara, "The Power of the Roman Pontiff in Relation to the Patriarchal Churches: An Ecumenical Perspective of CCEO," in *Eastern Legal Thought* 16 (2020) 39-83. See also George Thekkekara, "Ecclesiastical Discipline and Ecumenism in the Light of CCEO," in Varghese Palathingal, ed., *Prospects for Renewal in Ecumenical Ethos*, Rev. Dr. Joseph Koikakudy Endowment Lectures, the Institute of Eastern Canon Law, PVP, Kottayam, 22-24 October 2021, Qanona 8 (Kottayam: OIRSI, 2021) 69-108, especially, 83-90.

However, at a close glance, one may notice that this prospect of the Vatican Council II envisaged in OE 9 is not yet fully realized.

3. The Early Sources of canon 43

The Code of Canons of the Eastern Churches enlists about 95 sources for canon 43. Among these, 50 sources dates before 1054, the year of the Great Schism between the East and the West. The early sources here mean the letters of the Roman Pontiffs until 1054 asserting primacy on account of Petrine succession. Rome claimed the final word concerning faith and morals, as evident in many of these letters.⁴¹ This period's history intermingles with the Roman Empire's political history. Even the influential popes often struggled to retain their supremacy in Church matters, keeping away the intruding emperors, either Byzantine or Frankish. The primacy claims become deep-rooted from the 4th century onwards. Despite everything, the emperors played a significant role in Church affairs, and often political alliances became necessary for the bishops of Rome to retain their power as they claimed. At the same time, the less powerful popes remained victims of many Emperors' "caesaro-papist"⁴² tendencies. The Eastern Churches, though they admitted the unique position of Rome on account of religious and political motives, never tolerated a direct interference of the bishops of Rome in their internal affairs, except when it was indispensable. These interventions sometimes led to a range of schisms in various centuries.

4. Canon 43 and Ecumenical Unity⁴³

How does the central theme of canon 43, i.e., the supreme power of the Bishop of Rome, affect the ecumenical unity of the Church? How may the various Eastern non-Catholic patriarchal Churches accept this

⁴¹ In this article no analysis of these sources is made. For the published sources see Pontificia Commissio ad Redigendum Codicem Iuris Canonici Orientalis, *Acta Romanorum Pontificum*, Fontes, Series III, v. 1, Vatican Press, 1943.

⁴² Encyclopedia Britannica defines "Caesaropapism" as a "political system in which the head of the state is also the head of the church and supreme judge in religious matters. The term is most frequently associated with the late Roman, or Byzantine Empire": <https://www.britannica.com/topic/caesaro-papism>, accessed on 22.09.2022.

⁴³ This has already been published as an article in the *Eastern Legal Thought*. See George Thekkekara, "Canon 43 of CCEO and Ecumenical Unity," in *Eastern Legal Thought* 6 (2007) 44-78.

canon, which asserts the Roman Pontiff as the successor of Peter, the head of the college of bishops, the vicar of Christ and the pastor of the universal Church? How do they see the supreme, full, universal power of the Roman pontiff, a power which he exercises freely? Can the exercise of primatial power over the Eastern Churches within the Catholic communion affect the ecumenical progress adversely? Does any further development of ecumenism require a fundamental change in the exercise of the ministry of the Roman Pontiff as the successor of Peter, especially when it is the case in Eastern Churches? If so, what shall be the new mode of exercise of power by the Roman Pontiff? These are some questions of concern, and their answers may contribute positively to the development of ecumenical dialogue.

The Eastern Churches have a three-tier ecclesiastical structure. There are eparchies headed by bishops, a particular Church *sui iuris* headed by a patriarch, major archbishop, metropolitan or a bishop, and the universal Church headed by the Roman Pontiff. The Catholic ecclesiology considers only the episcopacy and the papacy as divinely instituted.⁴⁴ The intermediary structures, including the patriarchate, are considered ecclesiastical institutions. The CDF document on primacy admits the role of other apostolic sees in the early Church, especially those of Antioch and Alexandria instituted by apostle Peter; however, it considers them only as a development guided by divine providence and not divinely instituted.⁴⁵ The bishops of Rome were always concerned about their *munus* as successors of Peter. The See of Peter gained prominence because of the particular position of St. Peter in the apostolic college. However, it is equally important to consider the position of other apostles among the apostolic college and

⁴⁴ "The episcopacy and the primacy, reciprocally related and inseparable, are of divine institution": The Congregation for the Doctrine of the Faith, *The Primacy of the Successor of Peter in the Mystery of the Church*, 6, dated 31.10.1998: https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19981031_primato-successore-pietro_en.html, accessed on 10.08.2022.

⁴⁵ "In particular, the Catholic Church is well aware of the role of the apostolic sees in the early Church, especially those considered Petrine - Antioch and Alexandria - as reference-points of the Apostolic Tradition, and around which the patriarchal system developed; this system is one of the ways God's Providence guides the Church and from the beginning it has included a relation to the Petrine tradition": CDF, *The Primacy of the Successor of Peter*, 6.

succession to the apostolic Sees established by them.⁴⁶ A reappraisal of Catholic ecclesiology is needed to admit a three-tier ecclesiology, giving due space to the primacy of the heads of the patriarchal Churches and their synods within the proper territory.⁴⁷

Ivan Žužek makes the following statement regarding the primatial power of the supra-episcopal or supra-metropolitan power: “The whole group of canons concerning patriarchs is placed in the first section [*De suprema potestate deque iis qui eiusdem sunt canonico iure participes*], which regards those who *canonico iure* share the supreme authority of the Church. It cannot be otherwise, since they have supra-episcopal and also supra-metropolitan power, which can be no other thing but a participation in the supreme authority of the Church, originating not from *ius divinum*, but *canonicum ius* (or *ecclesiasticum ius* in the wording of the Latin Code of 1917).”⁴⁸ However, it is equally important to re-establish the patriarchal institution in its ancient glory as envisaged by the Vatican Council II (OE 9).⁴⁹ Vatican Council II, more specifically *Orientalium Ecclesiarum*, desired to re-

⁴⁶ Among the Orthodox Churches, there exist three types of episcopal primacy: 1) the regional primacy of a metropolitan archbishop in a particular geographic region, 2) the primacy of the head of an autocephalous Church, and 3) the unique and distinctive primacy of the patriarch of Constantinople, the ecumenical patriarch: Michael A. Fahey, *Orthodox and Catholic Sister Churches: East is West and West is East*, The Père Marquette Lecture in Theology 1996 (Milwaukee: Marquette University Press, 1996) 15.

⁴⁷ Thekkekara, “Canon 43 of CCEO and Ecumenical Unity,” 65-68. The new Apostolic Constitution on the Roman Curia, *Praedicate Evangelium*, though explains primacy in paragraphs 5, 6 and 7, the intermediary ecclesiastical structure is not referred to anywhere. Paragraph 7, moreover, equates the Episcopal Conferences with the Eastern structures, without making any differentiation even in the case of Synod of Bishops of the Patriarchal or Major Archiepiscopal Churches. (“... Episcopal Conferences, including their regional and continental groupings, together with the relative hierarchical structures of the Eastern Churches, are presently one of the most significant means for expressing and preserving ecclesial communion in different places, together with the Roman Pontiff as guarantor of unity of faith and of communion”).

⁴⁸ Ivan Žužek, “The Authority and Jurisdiction in the Oriental Catholic Tradition,” in *Pro Oriente* 9 (1998) 101-114, 475:

⁴⁹ This is to be evident in the order of precedence of the patriarchs. At present, patriarchs who are cardinals have their special position soon after the cardinal dean and bishop cardinals. That means, a patriarch who is not a cardinal cannot have this precedence.

establish the rights and privileges of the patriarchal Churches according to "the ancient traditions of each Church and the decrees of the ecumenical councils" (OE 9). The council further states that "the rights and privileges in question are those which flourished when the East and West were in union, though they should be somewhat adapted to modern conditions." In CCEO, we see such adaptations, which expressly represent the developments in the West. How far shall the non-Catholic Eastern Churches admit these adaptations, given a future union, is a matter of ecumenical dialogue.

5. Conclusion

How is it possible to reconcile the Catholic and Orthodox views regarding primacy? "There is no doubt regarding the prominent role and position of the Roman Pontiff in the Catholic Church. However, in the ecumenical realm, it is a real ordeal to present the concept of a universal pope acceptably to all the Churches if such an effort should not divest any element from the current role of the Roman Pontiff. There is no doubt the essentials are to be retained."⁵⁰ Now the problem is to determine what these essential elements shall be.

A study on the primatial power in relation to the Eastern Churches must consider the position of the Orthodox Churches in general on this matter. However, the prospect for such a study is limited in this article. The Orthodox say they are ready to accept the bishop of Rome as 'the First' but not as one with the power of jurisdiction over them.⁵¹ This idea of primacy as a mere honorary title without any jurisdictional role creates a complicated situation that is not easy to resolve.

Many eminent theologians like Ratzinger, Congar, Kasper, and others have focussed their attention on the problem of primacy and have proposed valuable suggestions in their writings. One of the

⁵⁰ Thekkekara, "Canon 43 of CCEO and Ecumenical Unity," 77.

⁵¹ See the document of the Joint International Commission for Theological Dialogue Between the Catholic Church and the Orthodox Church (as a whole), Chieti): Dicastery for Promoting Christian Unity, Synodality and Primacy during the First Millennium: *Towards a Common Understanding in Service to the Unity of the Church*, 21 September 2016: <http://www.christianunity.va/content/unitacristiani/en/dialoghi/sezione-orientale/chiese-ortodosse-di-tradizione-bizantina/commissione-mista-internazionale-per-il-dialogo-teologico-tra-la/documenti-di-dialogo/testo-in-inglese1.html>, accessed on 20.09 2022.

suggestions was a “rereading,”⁵² or a “re-reception,”⁵³ of the teaching of the Vatican Council I on primacy.⁵⁴ According to Kasper the “ecclesiology of *communio* of the first millennium,” can be a good “hermeneutical framework for the First Vatican Council” to integrate primacy “into the context of the whole ecclesiological tradition.”⁵⁵ That means a solution to make *jurisdictional primacy* more acceptable shall be the application of synodality in the mode of exercising primacy.

The Roman Pontiff is the pastor of the universal Church, a communion of different Churches *sui iuris*. In the communion ecclesiology, the heads of different Churches are to be given due consideration as far as the governance of the universal Church is concerned. In the present universal Church administrative system, the Cardinals are given prominence, as evident from the institution of a “Council of Cardinals” in 2013.⁵⁶ Though the Eastern Catholic patriarchs or major archbishops who are cardinals may be appointed council members,⁵⁷ there is no permanent structure that gathers all the heads of the Churches *sui iuris* as advisors or collaborators of the Roman Pontiff.

⁵² Ratzinger, *Das neue Volk Gottes: Entwürfe zur Ekklesiologie* (Patmos: 1969) 140.

⁵³ Yves Congar, *Diversité et communion: Dossier historique et conclusion théologique* (Paris : Édition du Cerf, 1982) 141.

⁵⁴ Walter Kasper, *That They May All Be One: The Call to Unity Today* (London: Burns & Oates, 2004) 140. Kasper calls this process a “re-interpretation”.

⁵⁵ Walter Kasper suggests four hermeneutical principles for this. 1) integration of primacy within the whole context of ecclesiology; 2) a rereading of Vatican I in the light of the whole tradition, and its integration in it; 3) historical interpretation, i.e., in the sense that they were declared; 4) interpretation of Petrine ministry according to the Gospel: Kasper, *That They May All Be One*, 141ff.

⁵⁶ See the Chirograph by Pope Francis establishing a “Council of Cardinals” to assist the Holy Father “in the governance of the universal Church and of studying a project for the revision of the Apostolic Constitution Pastor Bonus on the Roman Curia”: https://www.vatican.va/content/francesco/en/letters/2013/documents/papa-francesco_2013_0928_chirografo-consiglio-cardinali.html, accessed on 10 September 2022. However, in *Praedicate Evangelium*, the new Apostolic Constitution on the Roman Curia, this Council is called “the Council for the Economy (articles 205-211).

⁵⁷ The appointment is for a term of five years (*Praedicate Evangelium*, article 206 §1).

The Roman Pontiff has at his disposal various bodies and organs which help him exercise his Petrine ministry. They are either consultative organs or bodies having vicarious power. There is no synodal structure in making important decisions concerning the universal Church. An organ similar to that of the synod of bishops – whether in the form of ordinary assembly, extraordinary assembly, or special assembly – can significantly help in seeking information and finding possible solutions to specific problems. However, it cannot be a substitute for a body of heads of different Churches *sui iuris*, which is capable of making decisions, together with the Roman Pontiff, concerning all the Catholic Eastern Churches. The Roman Pontiff exercises primacy always in communion with the patriarchs and the heads of all the Churches *sui iuris*. However, suppose at least the patriarchs, major archbishops and metropolitans of the Eastern Churches are given a more significant role in decision-making in the universal Church, especially those affecting the Eastern Churches. In that case, it will be a significant step forward for unity and communion among the Churches.