

ADMINISTRATION OF JUSTICE AND RELEVANCE OF OIKONOMIA IN CANONICAL PROCEDURES

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Abstract

Administration of justice involves application of canonical norms to resolve disputes, address grievances and promote justice and equity. *Oikonomia* emphasises the importance of mercy and compassion. The common goal is salvation of souls and promotion of the common good. The author seeks to elucidate the spirit of the principle of *Oikonomia* and unveils the perspectives of the Catholic Church and the Orthodox Churches in its application in canonical procedures.

Keywords: Justice, *Oikonomia*, *Ecclesia supplet*, Tribunal, Orthodox, Catholic Church, Salvation of Souls

Introduction

The administration of justice within the Eastern Catholic Churches has always been deeply rooted in their rich canonical heritage and ecclesial traditions. This heritage, marked by its distinctiveness and autonomy, played a pivotal role during the first Plenary Assembly of the Commission for the Revision of the Oriental Canon Law, held from March 18–23, 1974.¹ At this assembly, the Guidelines for the revision process were approved, charting a path to ensure that the revised canons reflected the particular structure of these Churches while simplifying canonical procedures for greater accessibility and relevance.

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¹ *Nuntia* 3 (1976) 18 – 24.

A central focus of the revision was to uphold the traditional autonomy of the Eastern Catholic Churches, particularly in the sphere of administering justice, while maintaining fidelity to the supreme authority of the Roman Pontiff. The judicial system was reformed to address the demands of modern times, drawing on ancient traditions and the teachings of the Second Vatican Council. This process included revisiting the previous canonical legislation, *Sollicitudinem Nostram*,² to align it with both contemporary needs and the enduring wisdom of the Eastern Churches.

Pope John Paul II highlighted the significance of sacred canons as the foundational framework of Church order.³ The Guidelines for the revision echoed this vision, emphasizing unity within diversity: "The legal heritage of the oriental Churches is to a great extent founded on the same ancient canons that are to be met with in almost all Oriental canonical collections and on common traditions...These canons and these traditions provide a common basis for a single code applicable to all the Oriental Churches."⁴

This paper explores the administration of justice within the Eastern Catholic Churches, examining how the revised canonical procedures balance fidelity to tradition with responsiveness to contemporary challenges. It also explores the concept of *oikonomia*, a hallmark of Eastern canonical practice, and its relevance in shaping a compassionate, pastoral approach to justice in ecclesial life.

1. Justice and Economy

Justice (*dikaiosisynē*) involves strict adherence to the law, ensuring that rules are applied fairly and consistently. In canon law, justice serves to uphold the rights and dignity of all individuals, particularly the vulnerable. It often entails enforcing accountability through punishment for wrongdoing and providing restitution for harm caused.

² *Sollicitudinem Nostram* (SN) is the motu proprio issued by Pius XII on 06 January 1950 and acquired force of law on 06 January 1951. This was the canonical legislation for the Eastern Churches till the promulgation of the Code of Canons of The Eastern Churches. It deals with ecclesiastical trials. For a detailed study on SN, cf. Varghese Palathingal, "Court Procedures in the Eastern Churches Seventy Years after the Promulgation of *Sollicitudinem Nostram*, *Iustitia*, 11/1 (2020) 11-33.

³ John Paul II, Apostolic Constitution, *Sacri Canones*, 18 October 1999, AAS 82 (1990) 1034: "...sacri canones non immerito ea conspicua sane pars eiusdem patrimonii esse censentur, quae universarum harum Ecclesiarum ordinationis unum atque commune canonum fundamentum constituit."

⁴ *Nuntia* 3 (1976) 18. cf. also *Nuntia* 1 (1975) 4-8; *Nuntia* 26 (1988) 102-104.

In contrast, *oikonomia*—commonly understood as economy or dispensation—introduces flexibility and discretion in the application of the law. It advocates "wise administration of a household prudent management of this work by the Church, flexibility or accommodation in contrast to exactness (*akribia*) in the matters of certain matters of canon law."⁵ Rooted in pastoral sensitivity, *oikonomia* considers individual circumstances and emphasizes mercy, compassion, and understanding. Rather than focusing solely on punishment, it seeks the healing and restoration of individuals, prioritizing their spiritual and communal well-being. *Economia* was well expressed in the enactments of Church law. Aligning with the Sacred Scriptures and dogma the Sacred Canons of the first millennium helped the Church to prolong the divine dispensation of salvation because it expressed the eternal in what is temporal.

2. Administration of Justice

The maxim "*Quam primum salva iustitia*" ("as soon as possible while safeguarding justice") serves as a guiding principle in canonical procedural law, emphasizing the balance between timeliness and fairness. The adages "justice delayed is justice denied" and "justice hurried is justice buried" underscore the importance of resolving cases efficiently yet prudently. Canonical norms have long sought to set reasonable limits on trial duration. For instance, the 1917 Code of Canon Law (c. 1620) and *Sollicitudinem Nostram* (1950, c. 135) recommended a maximum trial length of two years in the first instance and one year in the second.

Ignatius Gordon, S.J.⁶, known as *doctor celeritatis* ("doctor of swiftness"), proposed reducing the ideal duration to 12 months for the first instance. His proposal was accepted by the 1983 CIC Code Commission and incorporated as an ideal norm in CIC c. 1453 and CCEO c. 1111. Delays in ecclesiastical trials, however, persist and cause significant harm, including:

- Spiritual harm, affecting individuals' faith and moral well-being.

⁵ Kevin Schembri, *Oikonomia, Divorce and Remarriage in the Eastern Orthodox Tradition*, Pontificio Istituto Orientale, Kanonika 23/2017, Roma 2017, p. 77.

⁶ Ignacius Gordon was a well-known canonist of the Catholic Church. His contributions to the discipline of canonical procedural law are recognized across the world. He taught canon law from 1960 until 1985 at the Pontifical Gregorian University, Rome.

- Psychological frustration and irreparable damage, such as lost opportunities to marry a specific person or to bear children.
- Erosion of trust in the Church's judicial processes.

3. Briefer Matrimonial Process

To address some of these issues, the Church has introduced alternative procedures for declarations of nullity of marriage. The 2015 reforms, inspired by discussions at the Third Extraordinary Synod of Bishops (October 2014), introduced a briefer matrimonial process before the bishop⁷ (CCEO cc. 1369–1373, art. 5; CIC cc. 1683–1687, art. 5). This procedure applies when the nullity of the marriage is evident and specific conditions are met: “From this perspective, it is a very important mission of the bishop – who, according to the Teaching of the Eastern fathers, acts as judge and physician – that man, having been wounded and having fallen (*peptokos*) by original sin and his own faults, and thus having been weakened, attain shealing and mercy from the medicinal means of penance offered by God and is reconciled with the Church. For indeed the bishop having been constituted a model of Christ and standing in his place (*eis typon kai topon Christou*) – is above all a minister of divine mercy; therefore, the exercise of juridical power is a privileged place where, using the laws of *oeconomia* or *acribia*, he himself imparts the Lord’s healing mercy to the Christian faithful in need of it.”⁸

Although an exception to the ordinary process, the briefer process retains its judicial nature. It allows cases to be instructed, concluded, and decided within a reasonably short period, bypassing some formalities of the ordinary process. This significant innovation aims to reduce delays and alleviate the harm caused by protracted cases.

4. Causes of Delays

Delays in ecclesiastical trials often stem from two primary causes:

- Negligence or distraction: Judges and ministers, preoccupied with other duties, may fail to prioritize their judicial responsibilities, resulting in illegitimate delays at various stages,

⁷ Francis, apostolic letter issued mp, *Mitis et Misericors Iesus*, 15 August 2015, AAS 107 (2015) 946–957;

apostolic letter issued mp, *Mitis Iudex Dominus Iesus*, 15 August 2015, AAS 107 (2015) 958–970.

⁸ Francis, mp. *Mitis et Misericors Iesus*, 955

from the examination of the *libellus* to the publication of the sentence.

- Overburdened judges: An excessive number of cases prevents timely adjudication within stipulated periods.

The object of a trial is strictly juridical: to examine whether the alleged nullity of a marriage is proven. The tribunal is not tasked with determining which marriages are intolerable, nor is it a facility for healing unhappy marriages. Rather, its sole aim is to uphold justice by ascertaining the validity or nullity of the marital bond.⁹

5. Ecclesial Ministry of Tribunal

The Apostolic Constitution *Praedicate Evangelium* describes the tribunal ministry as a service of justice and charity to the ecclesial community. In fulfilling the mandate of Christ to preach the Good News of the Kingdom of God (Mk 16:15; Mt 10:7-8), the disciples provide service to the Church, individuals, and humanity in the modern world. It states:

The service provided by the institutions of justice is one of the essential functions in the governance of the Church. The aim of this service, pursued by each institution within its respective competence, aligns with the Church's mission to proclaim and inaugurate the Kingdom of God. By applying canonical equity, it seeks the salvation of souls, which is always the supreme law in the Church (*Praedicate Evangelium*, 189 §1).¹⁰

The tribunal ministry is, therefore, a ministry of justice, truth, and charity¹¹, marked by the key virtues of diligence, expeditiousness, and fidelity to the Magisterium.

The tribunal ministry serves both the unity and charity of the ecclesial community and the individuals involved in its processes.¹² In his

⁹ William L. Daniel, "Contribution of Ignacius Gordon to the Discipline of Canonical Procedural Law," *Periodica*, 111 (2022) 15-22 (Commemorative volume at his 20th death anniversary).

The objectives of an ecclesiastical trial are: administration of justice, search after truth with certitude, protection of rights, safeguarding the common good, and salvation of souls. Moral certitude involves exclusion of all founded reasonable doubt, avoiding the two extremes: absolute certitude (the highest degree of certitude; every possible doubt of truth is excluded) and quasi certitude (probability of truth).

¹⁰ AAS 114 (2022) 438.

¹¹ Charles Scicluna, "The Ecclesial Nature of Tribunal Ministry," *Eastern Legal Thought*, 1(2002) 1 - 14.

¹² John Paul II, *Allocution to the Roman Rota*, 17 January 1998, AAS 90 (1998) 781 - 785.

address to the judges of the Roman Rota on January 18, 1990, John Paul II cautioned against the risk of false compassion, which can degenerate into mere sentimentality or superficial pastoral appearance. Such deviations from justice and truth, he warned, ultimately alienate individuals from God and undermine their good faith.¹³ He exhorted the members of the Apostolic Tribunal on 29 January 2005: "The judge who truly acts as a judge, in other words, with justice, neither lets himself be conditioned by feelings of false compassion for people, nor by false models of thought, however, widespread these may be in his milieu. He knows that unjust sentences are never a true pastoral solution, and that God's judgement of his own actions is what counts for eternity."¹⁴ Thus, the tribunal ministry exemplifies the Church's commitment to justice and charity, fostering the salvation of souls through faithful adherence to truth and equity.

6. Remedy of Injustice in Tribunal Ministry

A judicial remedy for addressing injustice in canonical legislation is characterized by two types of nullity: *remediable defect of nullity* and *irremediable nullity of sentence*. These remedies are grounded in either ecclesiastical law or natural law, with the right of defence firmly rooted in natural law.

Violations of the right of defence can manifest as either a total denial of this right or as a substantial violation during an essential phase of the trial. When a complaint of nullity is raised, it is crucial to determine whether the violation constitutes a total or substantial denial of the right. As stated:

In order for the right of defence to be [...] preserved, it is sufficient that the party know the *libellus* and the object of the litigation, be cited by the judge for the judicial examination, be able to bring forward petitions and proofs to sustain his or her argument, and especially, once the instruction of the cause is completed, not be impeded from knowing the proofs adduced by the opposing party and from presenting his or her own defence [...].¹⁵

¹³ John Paul II, *Allocution to the Roman Rota*, 18 January 1990, AAS 82 (1990) 872 – 877.

¹⁴ John Paul II, *Allocution to the Roman Rota*, 29 January 2005, AAS 97 (2005) 164–166.

¹⁵ Arokiaraj, Decree, February 15, 2023, nullity of Marriage, B. 21/2023, *Decisions of the Roman Rota*, The Catholic University of America Press, Washington, 2/1 (2024) 79–80.

A person is considered deprived of the substantial right of defence if he/she is unable to challenge the actions of the opposing party, contest evidence during the instruction phase, make their own declarations, or present arguments during the trial. It is the judge's responsibility to ensure that both parties are given these opportunities diligently, preserving the right to be heard and informed.¹⁶

The right of defence comprises both passive and active elements, which are significant at various stages of an ecclesiastical trial:

- The Right to Information (Passive Element): This involves a party's ability to receive notifications and be informed about the proceedings. It requires only a willingness on the part of the individual to accept and comprehend the information provided.
- The Right to a Hearing (Active Element): This entails a party's ability to engage actively in the trial, such as presenting arguments, challenging evidence, and making declarations. It presupposes prior receipt of relevant notifications and requires proactive participation in the proceedings.¹⁷

As these two elements are intimately connected, the effective exercise of the right of defence depends on the harmonious balance between being informed and being heard. By ensuring these rights are upheld, ecclesiastical trials can maintain justice and equity in accordance with canonical and natural law.

7. Healing of a null Sentence

By healing a null sentence (CCEO c. 1302; CIC c. 1619) values are safeguarded on the part of the judge. This is how he assures the course of justice and does not allow it to be obstructed by insignificant errors or dilatory tactics or other procedural irregularities. The sober judge would be keen to preserving the integrity of the judicial decisions. *Signatura Apostolica* stipulates that if a party acts in a trial without a legitimate mandate and the party appeals against the sentence but does not allege nullity of the sentence, the judge could find the defect cured by the acquiescence of the party to the activity of the one with no mandate.¹⁸

¹⁶ Arokiaraj, Decree, February 15, 2023, *Decisions of the Roman Rota*, 2/1 (2024) 80; Stankiewicz, Decree, 27 May 1994, *Romanae Rotae Tribunalis Decreta*, 12 (1994) 120.

¹⁷ Stankiewicz, Decree, 27 May 1994, *Romanae Rotae Tribunalis Decreta*, 12 (1994) 120.

¹⁸ Lex Propria 52 §1 of *Signatura Apostolica*.

8. Significance of Oikonomia

Oikonomia is regarded as a principle capable of resolving seemingly insoluble issues, wielding an influence even greater than that of formal law. This concept is particularly emphasized in the Greek Orthodox Churches but is not equivalent to any Latin legal institution designed to mitigate the strictness of laws, such as dispensation, *sanatio in radice*, or canonical equity. Importantly, *oikonomia* does not form an integral part of the Orthodox Church's legal framework, although its application produces legal effects. It is distinct from *epieikeia*,¹⁹ a category rooted in Aristotelian philosophy, and should not be confused with equity as understood in Roman law. The origins of *oikonomia* are neither grounded in philosophical theory nor in pragmatic wisdom.

The significance of *oikonomia* lies in its orientation toward Christ, the Risen One. In the early Christian community, this Christocentric focus was so strong that an elaborate legal system was deemed unnecessary. The community's faith held that the Spirit of Christ sustained them, guiding them through their diverse needs. The relevance of *oikonomia* is encapsulated in the idea that:

The bishop, the *oikonomos* of the house of God, turns to the Risen One and brings the insoluble situation before Him. Through an *analogia fidei*, he searches and seeks how the Lord in His power would heal a wound, redress an injustice, or bring peace where it is needed. Then, because the Church has the power to 'bind and loose,' the *oikonomos* himself (never less than a bishop, nor a synod of bishops) brings redemption into the situation where everything seemed amiss.²⁰

¹⁹ Aristotle introduced the concept of *epieikeia* in his articulations on the virtue of justice in the *Nicomachean Ethics*. It is said that the very nature of law is such that in certain cases, it grants imperfect justice only, or no justice at all. In such a context the *epieikeia* has relevance: "The reason is that all law is universal, but about some things it is not possible to make a universal statement which shall be correct...For when the thing is indefinite, the rule also is indefinite." According to Aristotle *epieikeia* is an integral and indispensable component of every legal system. Justice can be achieved in many of the cases through the judicious application of law and in some cases at least, justice can be administered when *epieikeia* prevails. Dispensation is a sort of *epieikeia* or a favorable intervention of a superior. When the literal observance of law led to injustice, equity is applied which is justice tempered with sweetness of mercy. It is a flexible legal system applied by the Romans, cf. Ladislav Oersy, "Literary Forms in the Code", p. 42.

²⁰ Ladislav Oersy, "Commentary on General Norms – Literary Forms in the Code, cc. 1-203", in *The Code of Canon Law: A Text and Commentary*, eds., James Coriden et al., TPI, Bangalore, 1986, pp. 41 – 44, at 44.

Oikonomia defies definition or categorization as a legal maxim. Its operation transcends human comprehension because it is rooted in the power of Christ present in the ecclesial community. Therefore, it cannot be explained through legal interpretation or reasoning.

The power of Christ invoked through *oikonomia* is entrusted exclusively to sacramentally ordained bishops or legitimately convened synods of bishops. The bishop, as the *oikonomos* or steward of God's household, is the competent authority to exercise this power, embodying Christ's forgiveness and healing within the Church. The Eastern theological mindset, deeply attuned to the mystery of faith, perceives in *oikonomia* a medicinal power that is both profound and transformative. Its application is considered a treasure of the Eastern Churches' rich tradition.

9. Mercy Beyond the Law

Oikonomia reflects a merciful intervention by an ecclesiastical superior, addressing situations that the law cannot remedy through dispensation. It provides a pastoral solution to otherwise insoluble cases, exercising the executive power of governance: "The Church struggles in the application of her laws because she has the mission to find equitable and just solutions as well as a balance between the virtues of mercy and justice, between repetitive, contradictory or obsolete canons and the concrete present situation that has to be solved; between faithfulness to the authoritative ideal of the canons and attention to the limitations of human persons."²¹ While *oikonomia* is rich in theological depth, its lack of canonical precision has prevented its incorporation into the norms of the Code of Canon Law.

The notion of *aequitas* (equity) has a connection with *oikonomia*. It is because *aequitas* as an ethical principle avoids juridical formalism "by searching for an interpretation and enforcement of the law that is faithful to the meaning of the legislation and, at the same time, takes into account the situation of the persons, the concrete circumstances of the case, and the overall purpose of the law."²²

10. Marriage and *Oikonomia* in the Malankara Orthodox Church

The Malankara Orthodox Church views marriage as a profound mystery, a covenant, and a holy bond of unity. In Syriac, the term *sauthophutho* refers to marriage, partnership, and conjugal union, but it is also used to denote Holy Communion and the fellowship of the

²¹ Kevin Schembri, *Oikonomia, Divorce and Remarriage*, 85-86.

²² Kevin Schembri, *Oikonomia, Divorce and Remarriage*, 99.

Holy Spirit. This dual usage underscores the dignity and importance that the Church Fathers attribute to the sacrament of matrimony.²³

Regarding divorce and remarriage, the Malankara Orthodox Church does not issue declarations of nullity. Instead, a special committee presided over by the Catholicos examines each case on its merits. This committee, comprising legal and canonical experts, deliberates and decides on a case-by-case basis, ensuring a merciful and pastoral approach in alignment with the principles of *oikonomia*.²⁴

11. Canonical Relevance of Oikonomia

A subcommittee of the Pontifical Commission for the Revision of the Eastern Code conducted an extensive study on the feasibility of incorporating the concept of *oikonomia* into the Code of Canons of the Eastern Churches. The study concluded that *oikonomia* is primarily a theological concept, rooted in the divine plan for the salvation of all humanity. It is a manifestation of divine wisdom, wherein God the Father sent His Son into the world with the authority necessary to accomplish the mission of salvation (cf. Mt. 28:18). This power was entrusted by Christ to the Church, permeating its entire pastoral mission and extending far beyond the juridical-canonical sphere. Consequently, the concept of *oikonomia* transcends the scope of the Code itself.²⁵

²³ Mathew Varghese, "The Sacrament of Matrimony According to the Malankara Orthodox Syrian

Church," in *The Sacrament of Marriage: Theology and praxis of Kerala's Christian Churches*, ed., Joy George Mangalathil, OIRSI-QANONA 10, Kottayam, 2024, p. 35. Patriarch Timothee II (1318-1332) in his *Septem causis Sacramentorum* described marriage as union between Christ and the Church. Thus, the love of the husband sanctifies the wife. The spouses drink from the same chalice transformed into the blood of Christ and which symbolizes the union of the spouses (*sawtaputa*). Cf. P.Yousif, "La celebration du marriage dans la rite chaldeen", in *La Celebrazione Cristiana del matrimonio – Simboli e Testi*, Roma, 1986, pp. 228-229.

²⁴ Mathew Varghese, "Matrimony in the Malankara Orthodox Church", 44.

²⁵ *Nuntia* 10 (1980) 92 – 94. During the discussion on the draft of the canons on dispensation three texts were presented by three consultants: Text 1. *Oikonomia per quam lex quaedam ecclesiastica non urgetur, sed magis, sub pastorali sollicitudine et vigilantia Hierarchae Ecclesiae, ad opus salvificum Domini Nostri Jesu Christi provacatur, magni habenda est*; Text 2. §1. *Oikonomia ecclesiastica intelligitur competentia Ecclesiae exercendi opus salvificum Domini Nostri Jesu Christi supplendo ex abundantia eius gratiae et amoris id quod homini in concreto sumpto deest, ut sit in plena conformatione cum sacris canonibus; quapropter Hierarchae, in lege canonica urgenda, magis salutem animarum quam strictam oboedientiam litterae legis intendant.* §2. *Hierarchae debent Oikonomiam sollicitudine, vigilantia et cautela exercere, et caveant ne abusus et morum relaxatio christifidelium in hoc exercitio*

12. Canonical Implications: Ecclesia Supplet

In seemingly insolvable situations, canonical legislation provides for the application of the principle of *ecclesia supplet*, which addresses instances of common error within a community of the faithful. The Church supplies the necessary executive power of governance in both external and internal forums:

In factual and legal common error in positive and probable doubt of law or of fact, the Church supplies executive power of governance for the external and internal forum (CCEO c. 994; CIC c. 144 §1).

This principle ensures a merciful intervention by the Church, which automatically supplements legal force by directly conferring the delegated power required by law. The ultimate purpose of this governance and its exercise is the service of the Church and the salvation of souls.

13. Oikonomia in Sacraments and Marriage

Disputes concerning the validity of sacraments have arisen due to the varying applications of *oikonomia* by the Patriarchate of Constantinople and certain Orthodox Churches. These applications have sometimes led to arbitrary changes, sparking theoretical and practical debates among theologians, particularly between the Orthodox and non-Orthodox Churches (e.g., Catholic, Anglican, Armenian, and Protestant Churches).

Orthodox theologians have upheld different interpretations of *oikonomia*, leading to divergent schools of thought:

1. *Oikonomia* can make what is invalid valid and what is valid invalid.
2. *Oikonomia* can render what is valid invalid but not what is invalid valid.
3. *Oikonomia* cannot make what is valid invalid but can make what is invalid valid.
4. *Oikonomia* can neither make what is valid invalid nor what is invalid valid.²⁶

irrepserint; Text 3. *Oikonomia ecclesiastica* qua opus salvificum Domini Nostri Jesu Christi applicatur ita exerceatur sub vigilantia Hierarcharum loci ut ubi observantia legum humano modo difficillima evadit, misericordia divina et amor eternus Ecclesiae suppleat (p. 93).

²⁶ Francis J. Thomas, "Economy", *The Journal of Theological Studies*, XVI (1965) 35.

Catholic canonists have consistently rejected these interpretations, as Orthodox theologians often view canon law not as supporting the salvific mission of the Church but as a mere supra-structure necessary for the Church as a societal entity. Cyril, Patriarch of Alexandria (412–444),²⁷ likened the use of *oikonomia* to sailors discarding part of their cargo during a tempest to avoid a shipwreck—an action taken for survival or advantage.

During the revision of the Code, theologian/canonist Žužek offered a nuanced perspective:

It seems that in the ship itself, in our case the Code, which rules the discipline of those aboard, there are adequate means for the salvation of souls; in common cases as well as in exceptional ones where the common rules cannot be applied, one finds the most profound *oikonomia* safeguarded in the best form.²⁸

14. Institutional and Pastoral Economy

The concept of *oikonomia* can be categorized into two types:

1. Institutional (Ecclesial) Economy: This pertains to judgments about the ecclesial character of a Church as a community and the validity of sacraments administered within it.
2. Pastoral Economy: This emphasizes mercy and clemency granted to individuals in specific pastoral situations.

In Orthodox theology, *oikonomia* applies only to human law, not to divine law, unless the Church exercises its vicarious authority entrusted by Christ. It is not a privilege or indulgence, nor does it abrogate the law. Instead, *oikonomia* is best understood within the framework of valid acts that may be unlawful and invalid acts that require rectification.

15. Marriage, Divorce, and Nullity

Orthodox theology of marriage permits the application of *oikonomia* in addressing pastoral issues arising from divorce and remarriage. Grounds for nullity or invalidity may include defects of consent rooted in natural law or impediments derived from divine law. In such cases, the norms of canon law must be observed. However, if the defect arises from ecclesiastical law, such as grave fear, fraudulent error, conditioned consent, or human law impediments, the Orthodox

²⁷ *Patrologia Graeca*, 77, 320.

²⁸ Ivan Žužek, “L’économie dans la travaux de la Commission Pontificale pour la revision du code de droit canonique oriental,” *Kanon* VI (1983) 70.

Church follows its respective disciplinary norms.²⁹ The concession of a new marriage granted through *oikonomia* under certain conditions.

The Orthodox have a different view point: "Marriage is indissoluble, and yet it is also constantly broken through sin, ignorance passion, selfishness, and lack of faith and lack of love. The Church recognizes the dissolution of a marriage but does not dissolve. She merely recognises that here and now in this concrete situation the marriage has broken down is finished. A second marriage, compassionately allowed by the Church, is no longer *Mysterion*, the 'sacrament' which the first was. However, it does not exclude the partners from the community. The essence of Eastern teaching on marriage lies in the paradoxical tension between the belonging to Christ and Kingdom and hence the inner solidity of the marriage – and its being rooted in human weakness and sinfulness – and hence its liability to breakdown."³⁰

The Catholic Church, however, has consistently maintained a distinct approach. The Supreme Tribunal of the Apostolic Signatura, in a declaration on October 20, 2006,³¹ highlighted the lack of clarity in the Orthodox perspective on marriage. Unlike the Catholic Church, Orthodox Churches do not differentiate between divorce, declarations

²⁹ Joseph Ratzinger, Introduction, "Concerning some Objections to the Church's Teachings on the Reception of Holy Communion by Divorced and Remarried Members of the Faithful," Congregation for the Doctrine of the Faith, *On the Pastoral Care of the Divorced and Remarried* (Documenti e Studi 17), Vatican City, Libreria Editrice Vaticana, 1998, 20-29; Lorenzo Lorusso and George Gallaro, "Divorce and Remarriage in Eastern Orthodox Churches," *Studia Canonica* 50 (2016) 485 – 502, at 501; Pablo Gefaell, "Oikonomia for Failed Marriages? A Catholic Perspective based on Pastoral Sensitivity," in Society for the Law of the Oriental Churches ed., *Oikonomia, Dispensatio and Aequitas Canonica*, Kanon XXXIV, Hennef, Edition Roman Kovar, 2016, 246-262; cf. also Paulachan Kochappilly, "Oikonomia and Akribia Perfection through Compassion," in *In the Service of Justice: Exploring Canon Law, Civil Law and Theology* (A Festschrift in Honor of Prof. Dr Varghese Koluthara), ed., Benny Sebastian Tharakunnel, Dharmaram Publications, Bengaluru, 2025, pp. 267-293.

³⁰ Peter Huizing "The Indissolubility of Marriage and Church Order," *Concilium* 8/4 (1967) 25-31, at 27.

³¹ *Signatura Apostolica*, Declaration, 20 October 2006, *Communicationes* 39 (2007) 66-67. Cf. also William Daniel ed., *Ministerium Iustitiae: Jurisprudence of Supreme Tribunal of Apostolica Signatura*, Montreal 2011, 759-761. The Pontifical Council for Legislative Texts, on 20 December 2012, further provided guidelines through *Nota Explicativa quoad pondus canonicum divortii Orthodoxi*. Moreover, Pope Francis, in his *Motu Proprio, Mitis et Misericors Iesus*, 15 August 2015, made a reference to the Eastern principle of *oikonomia*. This *motu proprio* is an apostolic letter on reform of canonical procedure for nullity of marriage in CCEO.

of nullity, and dissolution of marriage. Consequently, the Catholic Church cannot accept Orthodox declarations of nullity, as these are, in effect, divorce judgments.

The Apostolic Signatura affirmed that marriages between two Orthodox faithful celebrated according to Orthodox norms are valid (CCEO c. 779; CIC c. 1060). However, for an Orthodox party to enter a new marriage in the Catholic Church, a declaration of free state by the Orthodox Church is insufficient. The Orthodox party is only free to marry within the Catholic Church after a competent Catholic tribunal has declared the invalidity or nullity of the prior bond and executed the ecclesiastical sentence.³²

Conclusion

The Eastern approach to the administration of justice differs significantly from that of the West. The synodal structure, which was integral to the Eastern Churches during the first millennium, is gradually gaining recognition in contemporary times. The *Code of Canons of the Eastern Churches* (CCEO) represents a significant step in alignment with Pope Francis' reforms, particularly in simplifying canonical processes and advocating for the necessary transformation of both administrative and judicial structures.

The principle of *oikonomia* (economy), central to the Orthodox Churches, is a pastoral approach applied to address justice in cases such as broken marriages. Although rich in theological depth, *oikonomia* was not included in the CCEO due to its lack of canonical clarity and precision.³³ From the Eastern theological and mystical perspective, the Church's pastoral mission to ensure the salvation of souls transcends rigidly juridical, legalistic, formalistic, and abstract frameworks.

It is an undeniable fact that the Universal Church comprises over one billion Latin Catholics and eighteen million Eastern Catholics. Additionally, two hundred and fifty million Eastern Orthodox Christians and eighty-six million Oriental Orthodox Christians share similar life situations, cultural contexts, and religious traditions with the Eastern Catholics.

The autonomy and self-governance of Patriarchal and Major Archiepiscopal Churches have been recognized, at least partially,

³² CCEO cc. 781, 802 §2; CIC cc. 1085 §2, 1671; Instruction *Dignitas Connubii*, art. 4 §1, 5 §1.

³³ *Nuntia*, 10 (1980) 92 – 94.

within the CCEO. Reforms such as the *motu proprio Mitis et Misericors Iesus* and *Mitis Iudex Dominus Iesus* have contributed to the simplification of processes for the effective and efficient administration of justice. Pope Francis in view of enabling the married partners living in difficult situations to experience the mystery of salvation through pastoral accompaniment, discernment and gradual integration to the mystery of Church, indicates the path of *oikonomia*: "There are two ways of thinking which recur throughout the Church's history: casting off and reinstating. The Church's way, from the time of the Council of Jerusalem, has always been the way of mercy and reinstatement...The way of the Church is not to condemn anyone forever, it is to pour out the balm of God's mercy on all those who ask for it with a sincere heart...For true charity is always unmerited, unconditional and gratuitous."³⁴ However, excessive legalism and procedural formalities remain alien to the Eastern mindset.

Nearly a decade after the promulgation of these *motu proprio*, and in light of the current emphasis on synodality, Pope Francis on the occasion of the inauguration of the Judicial year recalled in his discourse delivered on 31 January 2025 to the Tribunal of Roman Rota: "Likewise the recent reform was intended to favour not the nullity of marriages, but the speed of processes – the speed – as well as the simplicity due them, lest the clouds of doubt overshadow the hearts of the faithful (*Mitis Iudex proemio*). Indeed, to avoid that, as a result of overly complex procedures, the saying *summum ius summa iniuria* (Cicerone, *De Officiis*, I, 10, 33) become a reality, I abolished the need for a dual conforming judgment and encouraged more rapid decision-making in trials in which nullity is manifest, aiming at the good of the faithful and wishing to bring peace to their consciences."³⁵

There is hope that the Church will more fully embrace the values of justice and *oikonomia*. This integration is essential for addressing the complex realities of modern life in a manner that harmonizes tradition with pastoral sensitivity.

³⁴ Francis, *Amoris laetitia*, Post-synodal Apostolic Exhortation on love in the family, 10 March 2016, Vatican City: Libreria Editrice Vaticana, 2016, no. 296.

³⁵ *Eastern Legal Thought*, 21 (2025) 271 – 274, at 273.