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**TRANSFER OF ASCRIPTION IN A CHURCH *SUI IURIS*
WITH PARTICULAR APPLICATION TO THE ARCHDIOCESE
OF ALBA-IULIA, ROMANIA**

by
Rev. László NAGY

A dissertation submitted to the Faculty of Canon Law
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2001



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ABSTRACT

Prior to the Second Vatican Council, and even in the years immediately following, there was confusion in the Church regarding the meaning of the term "rite". In many instances, the official documents used the word in the sense of a Church itself; but, in others, the term referred principally to the various ceremonies and liturgical practices. Vatican II intended to apply the expression "Particular Church" to the Churches *sui iuris* existing in the East (a number of which comprised many Metropolinates and eparchies), but this was not in accordance with its use in other documents where the expression referred to a diocese or the equivalent. Various compromises in vocabulary were attempted. Yet, it was only with the promulgation of the *Codex canonum Ecclesiarum orientalium* in 1990 that the terminology was clarified.

To illustrate this point, the expression "transfer of rite" can be considered. While previously, the expression referred to a transfer of membership in a Church *sui iuris*, according to the 1990 legislation, the correct expression would now be "transfer of membership". The norms governing transfer of membership are examined in detail, comparing the canons of the 1983 *Code of Canon Law* with those of the 1990 Oriental Code. There are significant differences.

Because of the vicissitudes of history affecting Romania, the Latin Archdiocese of Alba-Iulia has experienced serious difficulties in determining the status of membership of many of the faithful who often changed adherence according to the political situation. To explain this, we must recall that Transylvania was part of Hungary; later, following the two World Wars, certain parts were annexed to Romania. An overview of the various facts leading to this complicated situation and papal and curial efforts to help clarify issues relating to membership are noted.

In the final chapter of the dissertation, a number of practical issues are examined, keeping in mind their eventual relevance to the Archdiocese of Alba-Iulia. However, we must recognize at times that it is not only a question of law. The personalities involved sometimes influence the way in which the law is applied. The various calls to cooperation and inter-Church activity found in official Church documents are noted, more particularly, Pope John Paul II's Apostolic Letter for the third centenary of the union of the Greek-Catholic Church of Romania with the Church of Rome, May 7, 2000.

The study concludes by noting that something must be done to respect the wishes of various Catholics who, in recent times, have transferred membership for a number of reasons (not all of which are recognized as canonically valid today), but who nevertheless are living in a somewhat ambiguous situation. Some points for future clarification are noted.

TABLE OF CONTENTS

TABLE OF CONTENTS	I
ACKNOWLEDGEMENTS	VI
ABBREVIATIONS	VII
INTRODUCTION.....	IX
CHAPTER I:	
DEVELOPMENT OF THE CANONICAL NOTION OF RITES IN THE CATHOLIC CHURCH AND OF LEGISLATION CONCERNING RITES	1
INTRODUCTION.....	1
A. NOTION OF RITE IN DOCTRINAL AND CANONICAL STATEMENTS	2
1. Origin of "Rites"	2
a) Apostolic Faith Experience	3
b) Socio-Cultural Background.....	5
c) Oriental-Occidental Division	5
2. Etymology of "Rite".....	7
3. Chronological Development of the Meaning of "Rite"	9
4. Definition of "Rite"	12
B. LEGISLATION REGARDING THE RECOGNITION OF RITES PRIOR TO 1952.....	13
1. Elementary Usage of <i>Rite</i> as a Legal Term in the Teachings of Popes and Councils	14
2. Pope Benedict XIV to Pope Pius IX	19
3. <i>Schema De ritibus</i> of First Vatican Council	22
4. Encyclical Letter <i>Orientalium dignitas</i> of Pope Leo XIII	23
5. <i>Codex iuris canonici</i> of 1917 and the Concept of Rite	28
a) <i>Rite</i> in the Liturgical Sense	29
b) <i>Rite</i> in the Canonical Sense.....	30
c) Canons 98 and 756	33

C.	CONCEPT OF RITE IN THE <i>MOTU PROPRIO POSTQUAM APOSTOLICIS LITTERIS</i> (9 FEBRUARY 1952)	37
1.	Material Element of Canonical Rite.....	41
2.	Formal Element of Canonical Rite.....	42
D.	ORIENTAL LAW ON PERSONS, <i>CLERI SANCTITATI</i> , CANONS 7-15	43
E.	ROLE OF THE VARIOUS VATICAN CONGREGATIONS.....	49
1.	Historical Background of the Congregation for the Eastern Churches.....	49
2.	Documentation Involving Transfer of Rites	53
	CONCLUSION.....	56
	CHAPTER II:	
	VATICAN II AND SUBSEQUENT LEGISLATION RELATED TO TRANSFER OF MEMBERSHIP IN A CHURCH <i>SUI IURIS</i>	58
	INTRODUCTION.....	58
A.	VATICAN COUNCIL II AND THE CONCEPT OF RITE.....	60
1.	Different Meanings of the Term <i>Ritus</i> in the Decree <i>Orientalium Ecclesiarum</i>	63
a)	Rite as Particular Church	63
b)	Rite as the Patrimony of the Church	65
c)	Rite as Liturgy	67
2.	Equality of the Churches	68
B.	CONCEPT OF <i>RITE</i> IN THE NEW LATIN AND ORIENTAL CODES 71	
1.	<i>Ritus</i> and <i>Ecclesia Particularis</i>	72
2.	<i>Ecclesiae Rituales Sui Iuris</i>	73
3.	Change from <i>Ecclesiae Rituales Sui Iuris</i> to <i>Ecclesiae Sui Iuris</i>	76
4.	Later Modifications of Canon One of <i>De ritibus</i>	77
5.	<i>Ecclesia Sui Iuris</i> and <i>Ritus</i> in <i>CCEO</i>	78
C.	PRESERVATION OF RITES ACCORDING TO <i>CCEO</i>	83
1.	Preservation of Liturgical Patrimony	86
2.	Preservation of the Theological Patrimony	87
3.	Preservation of Disciplinary Patrimony	88
4.	Preservation of Cultural Patrimony	89
5.	Preservation of Spiritual Patrimony	91

D. COMMON ELEMENTS AND DISTINCT ELEMENTS IN BOTH LAWS.....	92
1. 1983 Legislation.....	95
a) Permission from the Apostolic See (1°).....	98
b) A formal declaration of transferring (2°).....	98
c) Children under the age of fourteen (3°).....	100
2. 1990 Legislation.....	102
CONCLUSION.....	110
CHAPTER III:	
ARCHDIOCESE OF ALBA-IULIA AND THE PRESENCE OF CATHOLICS OF SEVERAL RITES	114
INTRODUCTION.....	114
A. A BRIEF OVERVIEW OF TRANSYLVANIA AND ITS PEOPLES ...	116
1. Hungarians.....	117
2. Saxons	120
3. Romanians	121
B. CATHOLIC CHURCH IN ROMANIA.....	123
1. Greek Catholic Church in Romania	125
a) Archeparchy of Făgăraș and Alba-Iulia	128
b) Eparchy of Oradea	129
c) Eparchy of Cluj-Gherla	130
d) Eparchy of Lugoj	131
e) Eparchy of Maramureș.....	131
2. Armenian Catholic Church.....	133
3. Latin Catholic Church in Romania	134
a) Romanian Latin Catholic Church (București, Iași).....	135
b) Hungarian Latin Catholic Church.....	136
(i) Diocese of Oradea (Nagyvárad).....	136
(ii) Diocese of Satu-Mare (Szatmárnémeti).....	136
(iii) Diocese of Timișoara (Temesvár).....	138
C. ARCHDIOCESE OF ALBA-IULIA (GYULAFEHÉRVÁR).....	138
1. Development	138
2. Current Status.....	139
3. Transfer of Membership.....	140
4. Romanian Bishop's Conference.....	147

D.	JURISDICTION OF OTHER HIERARCHS IN THE SAME TERRITORY	149
1.	In the Austro-Hungarian Monarchy	150
2.	Diverse Rites in the same Territory	152
E.	PASTORAL GUIDELINES AND INTER-ECCLESIAL NORMS FOR THE ARCHDIOCESE OF ALBA-IULIA	154
1.	Interecclesial Communion and Activity	154
2.	Interecclesial Communion in Practice	157
3.	Interecclesial Relations in the Context of Alba-Iulia	158
4.	Rights and Duties of the Christian Faithful in the Liturgical Life of their Churches <i>sui iuris</i>	160
	CONCLUSION	161
	CHAPTER IV: APPLICATION OF THE CANONICAL NORMS TO THE ARCHDIOCESE OF ALBA-IULIA	165
	INTRODUCTION	165
A.	THE SITUATION OF CHILDREN BORN OF PARENTS OF DIFFERENT CHURCHES <i>SUI IURIS</i>	167
1.	Transfer before the age of fourteen	168
2.	Transfer after the age of fourteen	170
B.	POLICIES TO BE APPLIED IN CASES OF TRANSFER	171
1.	Transfer of membership in a Church <i>sui iuris</i> through lawful empowerment	172
2.	Transferring membership in a Church <i>sui iuris</i> by virtue of special permission	177
3.	Rules of Procedure and Registration	182
C.	THE SELECTION OF CANDIDATES FOR ORDINATION	185
1.	Bi-ritualism	186
2.	Adaptation to Another Church <i>sui iuris</i>	189
D.	TRANSFER TO ANOTHER RELIGIOUS INSTITUTE IN THE LATIN AND EASTERN CATHOLIC CHURCHES	191
1.	Transfer from one Monastery <i>sui iuris</i> to another	191
2.	The Conditions for Transfer to Another Religious Institute	193

TABLE OF CONTENTS

v

E.	REASONS FOR TRANSFER	194
1.	Sufficient reasons	194
2.	Insufficient reasons	195
3.	Non-reasons.....	195
F.	FORCING ONE TO TRANSFER MEMBERSHIP	196
G.	PARTICULAR APPLICATIONS TO THE ARCHDIOCESE OF ALBA-IULIA.....	198
1.	Interecclesial Committee.....	198
2.	Competent authority for granting a transfer of membership.....	200
3.	Procedures to be applied in cases of transfer of membership	200
4.	Formal requirements of transfer of membership.....	202
5.	Particular Registration Norms.....	203
6.	Some additional remarks	204
	CONCLUSION.....	205
	GENERAL CONCLUSION.....	210
	APPENDIX NO. 1 STATISTICS	221
	APPENDIX NO. 2 CATHOLIC CHURCH IN ROMANIA.....	224
	APPENDIX NO. 3 GREEK CATHOLIC CHURCH IN ROMANIA	225
	APPENDIX NO. 4 LATIN CATHOLIC CHURCH IN ROMANIA	226
	APPENDIX NO. 5 SAMPLE FORMS.....	227
	BIBLIOGRAPHY	249

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Finally, I dedicate this study to my mother and father, calling to mind the words of Scripture: "Remember that through your parents you were born, and what can you give back to them that equals their gift to you?" (Sirach 7: 28).

ABBREVIATIONS

AAS	Acta Apostolicae Sedis
ABBOTT	W. M. ABBOTT (dir. /ed.), The Documents of Vatican II
AG	Ad gentes
art.	Article
ASS	Acta Sanctae Sedis
c. cc.	Canon, Canons
CCEO	Codex Canonum Ecclesiarum Orientalium
CD	Christus Dominus
CIC/1917	Codex iuris canonici, 1917
CIC/1983	Codex iuris canonici. 1983
CICO	Codex iuris canonici orientalis
CLD	Canon Law Digest
CLSA	Canon Law Society of America
CS	Cleri sanctitati
DH	Dignitatis humanae
DV	Dei verbum
ed. eds.	Editor, Editors
FLANNERY	A. FLANNERY (dir. gén. / gen. ed.), Vatican Council II
Fontes	P. GASPARI + A. SERÉDI (dir. / eds.), Codici iuris canonici fontes
LEF	Lex Ecclesiae fundamentalis
LG	Lumen gentium
MANSI	G. D. MANSI (dir. / ed.). Sacrorum conciliorum nova et amplissima collectio

ABBREVIATIONS

viii

no. nos.	Number, Numbers
OD	Orientalium dignitas
OE	Orientalium Ecclesiarum
PAL	Postquam Apostolicis Litteris
PCCICOR	Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo
PCCICR	Pontificia Commissio Codici Iuris Canonici Recognoscendo
Prot.	Protocol
SCICO	Schema Codici Iuris Canonici Orientalis
UR	Unitatis reintegratio
vol. vols.	Volume, Volumes

INTRODUCTION

The Church is a living organism and is subject to growth and change. Consequently, it is quite understandable that its laws, (except unchangeable divine laws) which regulate its life will become outmoded and outdated unless they are reformulated from time to time. This process of renewal provides the possibility of delving deeper into the doctrines of the Church. The most recent reform of Church laws officially began with the announcement of Pope John XXIII, on 25 January 1959, that an ecumenical Council would be convoked.¹ The purpose of this Council, as outlined in his first encyclical, *Ad Petri Cathedram*,² was the updating of the Church in an effort to achieve unity with our separated brethren. In this encyclical he also expressed his intention of updating the whole canonical discipline of the Church and "of revising the Code of Canon Law to meet the needs of the contemporary world and of forming a new Code of the same kind for the Churches of Oriental Rite."³ To this Council he gave the task of completely revising the laws of the entire Catholic Church, and he also put a halt to the codification of the laws for the Eastern Catholics.

In addition to significant changes of a doctrinal nature, the Second Vatican Council added new legislative material which had to be expressed in legal

¹ JOHN XXIII, *Allocution*, 27 February 1959, in *AAS*, 51 (1959), pp. 65-69.

² JOHN XXIII, Encyclical Letter, *Ad Petri Cathedram*, 22 July 1959, in *AAS*, 51 (1959), 497-531.

³ "Ac praeterea, quod nuntiavimus, Nobis in animo esse Oecumenicum Concilium ac Romanam Synodum celebrare, itemque Codicem iuris canonici, hodiernis necessitatibus accommodatum apparare, novumque eiusdem generis Codicem pro Orientalis ritus Ecclesia edere, id placuit admodum multorum obtinuisse consensum, communemque aluisse spem fore ut omnium animi ad veritatem satius altiusque agnoscendam, ad redintegrandos salutariter christianos mores, et ad restituendam unitatem, concordiam et pacem feliciter excitarentur." Cf. *ibid.*, p. 498.

norms. For instance the Council introduced some important changes with regard to the recognition of the true legal nature of the Eastern Catholic Churches within the Universal Catholic Church. These new insights were incorporated into the Eastern codification.

The Code of Canons of the Eastern Churches, the common Code of all Eastern Catholic Churches, was promulgated 25 years after the Second Vatican Council. This Code rests on the solid foundation of the Conciliar documents. As the post-Conciliar law of the Church it imbibes its spirit from the theological and ecclesiological vision of the Council. Promulgating the Code of Canon Law of the Latin Church, Pope John Paul II said in 1983 that the new Code can be viewed as a great effort to translate into canonical terms the authentic teaching of the Second Vatican Council in general, especially its ecclesiological doctrine.⁴ Similarly in promulgating the Eastern Code the Holy Father said:

The Code of Canons of the Eastern Churches which comes to light must be considered a new complement to the teachings proposed by the Second Vatican Council, and by which at last the canonical ordering of the entire Church is completed.⁵

Therefore the Eastern Code, too, is deeply rooted in the new ecclesiological teachings of the Second Vatican Council.

The Holy Father underlined the fact that both Codes followed the teachings of the Council for their codification. Yet we observe variations between them

⁴ "Instrumentum, quod Codex est, plane congruit cum natura Ecclesiae, qualis praesertim proponitur per magisterium Concilii Vaticani II in universum spectatum, peculiarique ratione per eius ecclesiologiam doctrinam. Immo. certo quodam modo, novus hic Codex concipi potest veluti magnus nisus transferendi in sermonem *canonicum* hanc ipsam doctrinam, ecclesiologiam scilicet conciliarem." Cf. JOHN PAUL II, Apostolic Constitution, *Sacrae Disciplinae Leges*, 25 January 1983, in *AAS*, 75 [pars II] (1983), p. xi.

⁵ JOHN PAUL II, Apostolic Constitution, *Sacri Canones*, 18 October 1990, in *AAS*, 83 (1990), p. 1037.

regarding the implementation of these teachings. One such difference, which is the scope of our study, focuses on the transfer of membership.

A conclusion at which W. W. Bassett arrived in his thorough research devoted to the question of rites, was that the weakest point of all the rules about rites – in force at the time of his writing – was the lack of flexibility and adaptability; this being the reason why by mid-century those rules could no longer apply to the exigencies of essentially different local needs. In the conflicts between very different social and ecclesial interests, characteristic of interecclesial territories, the norms relating to belonging to a certain Church *sui iuris* could no longer fulfill their function.⁶

The teachings of the Second Vatican Council, which were invoked as the guiding principle for the codification process, declared as especially valuable the patrimony of the Eastern Catholic Churches which reaches back to the tradition of the apostles: consequently they called for protecting and promoting the Eastern Catholic Churches so that they may fully flourish. In view of this, it would be only natural to ask what steps have been undertaken by the competent legal authorities to eliminate the deficiencies of the old code? To answer this question we have first to identify some principal tendencies in the process of codification that were to define the value-order and goal-orientation of the laws pertaining to rites.

Although the expressions “member of rite”, “transfer of rite” have taken root also in the common language, today we no longer refer to the groups of particular Churches which constitute the individual Eastern Catholic communities in terms of the earlier expression as (legal or autonomous) *rite*; rather we call them *Churches*. Already, the Second Vatican Council in several documents used the term *Ecclesia particularis*; however, since this was traditionally the name of a

⁶ Cf. W.W. BASSETT, *The Determination of Rite*, Rome, Gregorian University Press, 1967, *Analecta Gregoriana* 157, p. 238.

particular Church under the direction of a single diocesan bishop (and not groups of them), there seemed to be need for finding (even if *ex post facto*) a more precise terminology. This was realized through the publication of the Eastern Code which uses the expression *Ecclesia sui iuris* for the communities in question. In consequence, the language specific to canon law no longer uses such expressions as “member of rite”, or “transfer of rite”; instead it speaks about “membership in a Church *sui iuris*” and “transferring the membership from/to a Church *sui iuris*”. Therefore, in this dissertation we are going to use the earlier familiar terms “rite” and “transfer of rite” only in reference to events and documents antedating the promulgation of the Eastern Code in 1990; after that date our terminology will refer to transfer of membership from one Church *sui iuris* to another.

The new usage of words expressly states that an Eastern Catholic community is primarily a hierarchically defined part of the people of God, a true “ecclesiofania”, i.e., a specific manifestation of ecclesial communion.⁷ Its typical socio-cultural signs (such as living the Catholic faith according to their particular life-style, manifest in the totality of their special liturgical, theological and, last but not least, disciplinary practice), although they carry the values of the universal Church, in comparison to ecclesiastical dimensions, are manifestly of a secondary order. According to this way of thinking, it is from membership in a Church *sui iuris* that the source of living and practicing the Christian faith in a certain manner (rite) evolves; it is not the rite which grants the person membership in a Church *sui iuris*. For this very reason, we considered important to call attention to the change of terminology and the new approach described above.

When a person becomes a member of the Church, he/she not only adheres to the universal Church and to a diocese, but also would belong to one of the

⁷ D.M. JAEGER, “Alcuni appunti in margine al nuovo codice dei canoni delle Chiese orientali”, in *Communio*, 123 (1992), p. 58.

Churches *sui iuris*. This latter membership – since it includes subordination to a well-defined hierarchy and to its proper disciplinary order – could significantly influence that person's freedom of action.

To become a member of a given Church *sui iuris* can be accomplished in three different ways – depending on the state of the person in question: (1) those not yet baptized can become members through baptism; (2) Catholic Christians can, through transfer of membership, enter into another Church *sui iuris* within the Catholic Church; (3) non-Catholic Christians gain membership through acceptance of full communion with the Catholic Church. Our dissertation will deal exclusively with transferring membership.

This dissertation attends to emphasizing the differences between the two codes of the Catholic Church. Despite these differences and the characteristics that distinguish the Latin and Eastern codes as independent of each other, they are not so separate and distinct as to be unrelated. Indeed, when the legislator himself presented the Eastern code to the universal Church, he effectively highlighted the interrelationship of the two codes by stating that they, together with *Pastor bonus*, form one body of canon law in the Church.⁸ The aim of this dissertation, then, is to examine some of the interrelationships of the Latin and Eastern codes. While it could in no way intend to be exhaustive, the study nevertheless endeavors to describe the relationship between the two codes by approaching the subject through the question of transfer of membership.

⁸ When John Paul II presented the new Eastern Code to the twenty-eighth General Congregation of the Synod of Bishops (25 October 1990), he urged “that a proper and comparative study of both codes be promoted in Faculties of Canon Law,” since the pope regards the Eastern code, together with the Latin code and *Pastor bonus*, as “one *Corpus Iuris Canonici*.” Cf. *AAS*, 83 (1991), p. 491. The pope repeated this call for comparative studies of the Latin and Eastern codes while addressing the international symposium held at the Vatican (19-24 April 1993) to celebrate the tenth anniversary of the promulgation of the Latin code. Cf. *Communicationes*, 25 (1993), pp. 13-14.

The legislator's call could not have aimed solely at promoting a knowledge of the two codes as separate and unrelated parts of the Church's one body of canon law. Rather, the call must have also meant to urge a thorough study of their interrelationship within that same perspective. Therefore, as the third millennium begins, canonical science, too, must begin further to articulate and define the ways in which the legislator has expressly established the interrelationship of the two codes. Indeed, such investigation will be vital if the Latin and Eastern codes are truly to form and animate the one body of canon law of the Catholic Church.

Ever since parts of the Eastern Churches have been reunited with Rome, the question has arisen as to whether they would have to adopt the discipline of the Catholic West or could be allowed to keep their own discipline. At a theoretical level, this question of principle has never been a difficulty. All the popes have declared that the Eastern Churches, on reunion, should remain Eastern, and preserve their own spiritual heritage.

The multi-rite constitution of the Catholic Church in Transylvania presents its own problems in concrete pastoral life. Canon Law, both Eastern and Latin, and canonical practice determine rigid boundaries for membership in one's church with hardly any possibility of change.

We often hear that Transylvania is a pluri-cultural, pluri-religious and pluri-linguistic country. But, it is not so widely known that Transylvania is also a pluri-ritual country within the Catholic communion, and uniquely so.

The challenges the Church in Transylvania has to face arising from the vicissitudes of history, the social, cultural and religious context in which it lives today, its theological, liturgical and missiological traditions, experiences it has made and their effects, continue to influence contemporary attitudes, approaches, evaluations, possibilities and decisions.

Every local Church must interpret the signs of the times and give new expressions to the one faith in Jesus Christ. Signs of the times are not in the sky, but are found in the history of each Church, the cultures and religions of peoples, the history of evangelization and present and future needs of the Church.

As is more than clear, the very term *rite* has diverse meanings even in church and canonical usage. Looking at a fairly large dictionary to find out what such a word really means in contemporary usage, we see that primacy is given to the several liturgical senses of the word: a ceremonial act or a ceremonial procedure like baptismal rites; a system of such practices, like the Mozarabic rite. Only secondarily is the term used for the differentiation of churches themselves or of groups of churches. We may speak of various dimensions of rite, such as the liturgical, canonical, ecclesiological and anthropological aspects (customary observances or the like, such as rites of passage, whether religious or not). In this dissertation our focus will be on the ecclesiological-canonical senses of rite which refer to the distinctions of those rites which are much more properly called churches, that is, churches which may indeed be distinguished according to their rite, whether liturgical or otherwise.

There has been much discussion about the notion of rite before and after the Second Vatican Council. The Council itself honored the then current usage of this term without however claiming to define its precise meaning. Indeed, one of the guidelines for the *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo* (=PCCICOR) stated: "The notion of Rite should be re-examined and a new term agreed upon to designate the various Particular Churches."⁹ The final result of this re-examination is offered in canons 27 and 28 of the Eastern Code.

⁹ *Nuntia*, 3 (1976), p. 22. For revision, see pp. 44-47; *ibid.*, 22 (1986), pp. 22-24.

The effective spiritual care of the faithful of a given rite will consist of grouping them in communities, so as to render it easier for them to live their christian life according to those forms and rites through which they received it and to which they are accustomed. And if these faithful, for any reason whatever, happen to live outside the territory of their own rite in the midst of other rites, the Church should extend also to them its maternal solicitude, making present their particular Church with its rites and manner of living religion, making easy and secure the full participation in the mystery of Christ.

Whether Oriental or Latin, the rites ought not to be regarded as something abstract or purely theoretical. Rather, they ought to be considered a living reality, incarnate and expressed in the everyday life of the people. The rites are in fact a definite form of life, of practicing the gospel teaching received by each believer under the garb that best suits his or her temperament, situation, mode of thinking and acting; so much so that the different formulae, the different rites and liturgical actions, as well as the various ways of administering the sacraments and of celebrating the sacred liturgy, and even the several types of hierarchical government are nothing but a particular form of receiving the teaching of the Gospel, of living it and making of it a living spirit.

It is precisely for this that the diverse rites grew up in the Church; and it is precisely for this that Christ wanted to give to his Church an almost infinite capacity to adapt itself to the temperament and character of each people, so that every person, every nation may without betraying itself, accept and live the Gospel. And the Church must honor the will of its founder, as it has always done by giving shape to particular Churches.

To deprive the faithful of the possibility of practicing their own rite and, in a way, to force them to conform to another mode of life, would surely not be to provide for their spiritual good. This applies to all Christians, to whatever Church

sui iuris they belong. As it would be a direct contradiction of the principles mentioned alone to oblige the faithful of the Latin Church to practice an Oriental rite, so too it would be wrong to deprive those of an Oriental rite of the spiritual help of their own rite and constrain them to concur with the Latin Rite, or with a different Oriental Rite.

The Council has therefore acted quite logically, when, desirous of promoting the spiritual welfare of the faithful, it wanted to safeguard each particular Church, and see it prosper through the normal ecclesiastical organization of parishes and dioceses, or, to use the very words of the Council, through the constitution of a hierarchy of the respective rite.

Hence, in this dissertation we make a comparative and exegetical study of the relevant canons of both codes on the basis of their sources to show the advances introduced by the Eastern Code regarding the competence of the Catholic Church in transfer of membership. The methods used for this purpose are historical and analytical.

The **first chapter** proposes to present and evaluate the canonical notion of rite. Also, it will focus on the canonical sources, tracing briefly the various developments of the concept of rite from the beginning to the present.

Chapter two is a comparative and exegetical study of the Latin and the Eastern codes regarding the transfer of membership. In both codes we can see many notable changes in respect to the previous legislation of the Church. This chapter presents the relevant law and official interpretations regarding transfer of membership and related matters in both codes. This chapter remains on the level of principle and gives a general summary of current law, surveying certain problems of interpretation. It will also investigate the common and different approaches by the two Codes in referring to transfer.

Chapter three devotes special attention to the historical development of the Archdiocese of Alba-Iulia and deals with the presence of various Churches and Hierarchs in the same territory.

The focus of the **fourth chapter** is to investigate possible pastoral applications both in general and in Alba-Iulia, and also discuss problems that can arise from the application of the different sets of legislation. We attempt to approach the subject matter from two levels: theoretical and practical. From a theoretical point of view, we will attempt to clarify important notions and juridic principles pertinent to the topic. On the practical level, we will strive to identify problems arising from the application of the law in particular cases.

However, in the process of our research, especially in light of a better understanding of the concept of rite, it was believed that more people could possibly benefit from our analysis, specifically those who actually are interested in the Latin and the Eastern codes. Our study ends with general conclusions drawn from our research which, it is hoped, will lead not only to a more broadly based understanding of what is involved in transfer of membership, but also to more discussion and study of its possible applications.

CHAPTER I

DEVELOPMENT OF THE CANONICAL NOTION OF RITES IN THE CATHOLIC CHURCH AND OF LEGISLATION CONCERNING RITES

INTRODUCTION

The various rites of the Catholic Church find their origins largely in the geographic, cultural, and political diversity that accompanied their growth and development. The early Church contained a great variety of liturgical forms and disciplinary organization. Furthermore, the division of the Roman Empire into East and West influenced the development of rites as ecclesiastical organization modeled itself on the political reality. Subsequent heresies and later schisms between East and West also contributed to the development of rites. Centralizing tendencies (particularly the association of smaller churches under the leadership of the bishop of the chief place of the area) led gradually to the adoption of similar forms and eventual canonical regulation. The interrelations of the rites may be seen through their derivation from such various centers. The discipline governing the transfer to another Church *sui iuris* developed slowly in the Church. In the early days, transfer was not systematically organized; people were subject to the local hierarchy and to local legislation.

Rites in the Church comprise the various forms of worship, theology, institutions and discipline, spiritual heritage, and usages which have developed from the early apostolic days as the Christian message spread to various peoples of

the world.¹ The traditions of the Eastern Catholic Churches, as Second Vatican Council says, are very ancient and venerable.² The existence of various *Ecclesiae sui iuris* shows the unity in diversity which exists within the Catholic Church.

The purpose of this chapter is to present and evaluate the notion of *rite*. Also, it will focus on the canonical sources and trace briefly the various developments of the concept of rite from the beginning to the present.

A. NOTION OF RITE IN DOCTRINAL AND CANONICAL STATEMENTS

1. Origin of "Rites"

In the primitive Church there was great variety in liturgy and discipline in the various regions and provinces, and the differences were influential in the formation of particular Churches. Among the general and historical processes that caused the origin of the various canonical rites, both external and internal factors were at work.³

To understand the semantic evolution of *rite* it is necessary to consider the Eastern Catholic Churches in their relationship to the Western Church.⁴ Eastern

¹ See N. HALLIGAN, "Some Inter-Ritual Norms", in *The Jurist*, 42 (1982), p. 164.

² SECOND VATICAN COUNCIL, Decree on the Catholic Eastern Churches, *Orientalium ecclesiarum* (=OE), 21 November 1964, nos. 10, 13, 22, 24, in *Acta Apostolicae Sedis* (=AAS), 57 (1965), pp. 76-89. English translation found in A. FLANNERY, gen. ed., *Vatican Council II: Volume I: The Conciliar and Post Conciliar Documents* (=FLANNERY, *Vatican II*), rev. ed., Northport, New York. Costello Publishing Company, 1996, pp. 441-451. All English translations of Vatican II texts are from this source.

³ See M.M. WOJNAR, art. "Rites, Canonical", in *New Catholic Encyclopedia*, vol. 12, 1967, p. 515.

⁴ See Y. CONGAR, *Diversity and Communion*, London, SCM Press, 1984, pp. 82-83.

Catholic Churches arose from the Alexandrian, Antiochean, Armenian, Chaldean, and Constantinopolitan traditions.

A variety of differences developed in the rites, whether they be understood as the liturgical uses in the celebration of the Eucharist, the administration of the sacraments, fasting, etc. or in a broader sense as the laws and discipline of a local Church. But since various Eastern Churches frequently use the same liturgical rite and people of the same ethnic or national group belong to different rites, a distinction must be made between the various Eastern liturgical rites and the various Eastern Churches. The apostolic foundation of a Church, however, is by itself no ground to vindicate superior rights over another Church. Moreover, apostolicity or "apostolic experience" cannot account for the diversity of rites in the Church, whatever be its usefulness in accounting for the theological pluralism of biblical authors. According to G. Nedungatt, the origin of the various rites is not to be explained by applying a theory *a priori*, but *a posteriori* from history.⁵

a) Apostolic Faith Experience

The Resurrection event, culminating in Pentecost, urged the apostles to bear testimony to Jesus and to preach His message to the entire world, according to the final commandment of their divine Master.⁶ From this same apostolic preaching, evangelical seeds were sown in a variety of soils belonging to different cultural, social and human situations.⁷ It is from this background that the Churches and

⁵ See G. NEDUNGATT, "Equal Rights of the Churches in the Catholic Communion", in *The Jurist*, 49 (1989), p. 4.

⁶ Mk 16:15; Mt 28:18-20; Lk 24:47-48; Acts 1:8; Jn 21:24; cf. R.E. BROWN, et al. (eds.), *The Jerome Biblical Commentary*, London, Geoffrey Chapman, 1995, pp. 629, 674, 721, 728, 985.

⁷ See A.M. ABATE, *I Ministeri nella missione e nel governo della Chiesa*, Rome, 1976, p. 12.

communities of the faithful came into existence. This diversity did not touch their interior aspect nor the visible ecclesial elements of divine origin, but extended only to the manifestations of different human expressions and decisions according to the historical periods or cultural ambients. Particular legislation, as regards both its formulation and its application, developed in different ways and according to different norms, but without affecting the unity of faith and government in the Church.⁸ Thus a theological, spiritual, liturgical and proper juridical patrimony was formed around these communities. This is not only their wealth but also that of the entire Church, for it is proof that the same Church is destined for all peoples and that it is related to the apostolic origins of Christianity, through the Apostles.⁹

The diversity of rite is based on certain objective elements, namely, the nature, psychology, culture, sensibilities, history and mentality of a particular group of people or community.¹⁰ According to M. Gnesko “a rite is based on deeply rooted elements: ethnic, psychological, emotive, affective, which elements cannot be overlooked or degraded. A rite reflects so to speak the soul of a community.”¹¹ Such a diversity is not the cause of division in the Church. Rather, it enriches the unity of the universal Church.

⁸ K. RAHNER and J. RATZINGER, *The Episcopate and the Primacy*, Herder Freiburg, Palm Publishers Montreal, 1962, pp. 20-24.

⁹ See ABATE, *I Ministeri nella missione e nel governo della Chiesa*, pp. 18-19; see also RAHNER and RATZINGER, *The Episcopate and the Primacy*, p. 22.

¹⁰ See M.M. GNESKO, *Interritual Relations*, notes for the private use of the students, Ottawa, Faculty of Canon Law, Saint Paul University, 1981, pp. 10-11; see also I. ŽUŽEK, “Opinions on the Future Structure of Oriental Canon Law”, in *Concilium*, 8 (1967), p. 71.

¹¹ GNESKO, *Interritual Relations*, pp. 10-11.

b) Socio-Cultural Background

The various socio-cultural environments, philosophical systems, national and ethnic tendencies, as well as the needs of different places, spontaneously contributed towards the development of different rites within the Catholic Church. Thus the liturgy, which is one in substance, became multiplex in its celebration and gave rise to the development of liturgical types, each different from the other in shape and in structure. In brief, differences in cultural and theological formation, as well as in the psychological and national tendencies of peoples, contributed to the formation of different Churches.¹²

c) Oriental-Occidental Division

The Oriental-Occidental division is historically based on the jurisdictional division of the Roman Empire in the year 395 after the death of Theodosius under the Emperors Honorius and Arcadius.¹³ The local Churches in the Eastern Roman Empire and those which received Christianity from these Churches are generally called Eastern Churches,¹⁴ while the Churches which developed in the Western Roman Empire or received Christianity from it are called the Western Church.¹⁵

¹² See WOJNAR, "Rites, Canonical", p. 515.

¹³ BASSETT. *The Determination of Rite*, p. 9.

¹⁴ The term "Eastern Churches" refers to the Churches that developed in the eastern half of the Roman Empire along with those communities that were founded in dependence upon them even though the dependent Churches were found outside of the boundaries of the empire.

¹⁵ The East and West of which the media frequently speak mean quite different things from the East and West in church language. This latter still harks back to the dividing line between East and West traced by the Emperor Diocletian in the third century to mark off the Eastern and Western halves of the Roman Empire. That line ran from north to south through Illyricum, roughly the present day Yugoslavia. The territories of Sicily, Calabria, Illyricum and Greece itself initially were under the jurisdiction of Rome. All the local Churches that lay or originated east of that line were called Eastern. The Church centered in Rome was therefore Western. Eastern and Western Churches were not only geographically distinct, but slowly developed their own identity in liturgy,

By the end of the fourth century, crystallization of fundamental ritual types became evident within the provincial and diocesan boundaries of the patriarchal jurisdictions. The major churches, because of their apostolic origin or size and civil importance and because of the fact that they were often the mother church, began to transmit their own liturgical forms and rituals of feasts and fasts to the smaller communities surrounding them.¹⁶ The imperial prestige and immense missionary vitality gave the Byzantine Church predominance over other Patriarchal Churches of the period.

The Nestorian (431) and the Monophysite heresies (451), as well as the later Byzantine Schism (1054), not only broke the union with the Western Church, but also influenced the development of new canonical rites or autonomous Churches.¹⁷

For those who from the sixteenth century onwards gradually returned to unity with the Catholic Church, the Holy See, as a rule, always respected their liturgical rites and ceremonies, corrected only where heterodox expressions might

theology, spirituality, and discipline or law, the ensemble of which is now designated by the term *rite*. The qualification Eastern and Western has stuck, although today it often creates misunderstanding when taken in a purely geographic sense without the above-mentioned historical perspective.

The historical details summarized here are taken substantially from A.A. VASILIEV, *History of the Byzantine Empire*, Madison and Milwaukee, University of Wisconsin Press, 1964, vol. 1, pp. 43-68; L. BRÉHIER, *Bizánc tűndöklése és hanyatlása* (The Rise and Fall of the Byzantine Empire), Bizantinológiai Intézeti Alapítvány, Budapest, 1999, pp. 19-41; G.A. MALONEY, art., "Eastern Churches", in *New Catholic Encyclopedia*, vol. 5, New York, McGraw-Hill Book Company, 1967, pp. 13-21; F. DVORNIK, art., "Eastern Schism", in *ibid.*, pp. 21-25. For a brief historical overview of Eastern and Western Churches, see V. POSPISHIL, *Eastern Catholic Marriage Law According to the Code of Canons of the Eastern Churches*, Brooklyn, NY, Saint Maron Publications, 1991, pp. 70-120; and J.D. FARIS, *The Eastern Catholic Churches: Constitution and Governance According to the Code of Canons of the Eastern Churches*, New York, Saint Maron Publications, 1992, pp. 1-66.

¹⁶ BASSETT, *The Determination of Rite*, p. 15.

¹⁷ See WOJNAR, "Rites, Canonical", p. 515.

have crept in. This principle, to which the present variety of liturgical rites in the Catholic Churches is due, was already affirmed by Leo IX when he wrote to Michael Cerularius: "For the Roman Church knows that different customs in time and place are no obstacle to the salvation of believers when one faith, doing what good one can in charity, commends everyone to the one God."¹⁸

Ritual differences were first territorial. By the ninth and tenth centuries exceptions to the general rule were common, and acknowledged as the normal, legitimate condition of the Church. Mutual accusations of schism and heresy in the succeeding centuries were some of the reasons for suspicion and intolerance among rites. The historical context of the Crusades all the more aggravated the situation.

It is during these crucial years of pillage that Rome came in close contact with many of the Eastern communities. Ritual law and the concept of rite were interwoven in the coarse threads of rivalry and mutual contempt. On the heels of retreating crusaders came the Muslim power; and the curtain of ignorance separated the great Patriarchal Sees from the West. In the midst of these strange conditions, the subsequent use of the term rite has been neither consistent nor free of prejudice.

2. Etymology of "Rite"

Today the word *rite* belongs almost exclusively to ecclesiastical vocabulary and reminds us of cultic ceremonies.¹⁹ At first we could be tempted to define the original meaning of the word *ritus* by retracing its etymology, then drawing out a

¹⁸ J. MANSI, *Sacrorum conciliorum nova et amplissima collectio*, Paris, Florence, (=MANSI), 1901-1927, vol. 19, col. 652.

¹⁹ See W.W. SKEAT, *An Etymological Dictionary of the English Language*, ed., Oxford, Clarendon Press, 1961, xiiv, p. 521.

general meaning which could explain the different uses to which the word has been put, but this would involve a vicious circle; *ritus* has no precise etymology.²⁰ There are nevertheless different opinions on the origin of the word.²¹ For some, *rite* has the Indo-european root $\sqrt{ar-}$, which surfaces in Sanskrit with *rta*, *rtam*, meaning order prescribed by religion. For others, *rite* is derived from the Sanskrit substantive, *riti*, meaning style, disposition or mode of use, and from the verb *ri*, which means to go.

Philologists have tried to trace the derivation of the Latin word *ritus* from other languages. Originally, the Latin word *ritus* had a liturgical meaning.²² Some hold that it is derived from the Greek *rhyo*, a variation of *rheo*, which means to flow: thus, *ritus* signifies the course, the progress, the development of details of an action. Still others are of the opinion that *ritus*, as are *ratus*, *ratio*, *reus*, is derived from the Sanskrit *ra*, which expresses the idea of account, or augmentation, or accommodation. No matter which opinion is held, we can grasp from the efforts that have been made to determine the etymology of the word *ritus*, that this word first of all expresses *order* in an action, the way of performing an act, but not the act itself.²³ Later on, it seems that the action thus organized by rite would be primarily a religious one, but this limitation is not derived from the original

²⁰ ENCYCLOPEDIA CATTOLICA, Città del Vaticano, (1948-1954), vol. 10, *Rito*, pp. 1005-1008.

²¹ For a concise summary of different origins of the word *rite*, see E. PARTRIDGE, *Origins: A Short Etymological Dictionary of Modern English*, 2nd ed., New York, Macmillan, 1959, pp. 562-563.

²² H. DAUSEND, *Das interrituelle recht im Codex iuris canonici*, Paderborn, Schöningh, 1939, p. 48; GNESKO, *Interritual Relations*, p. 4; see also J.A. DUSKIE, *The Canonical Status of the Orientals in the United States*, Canon Law Studies, no. 48, Washington, DC, The Catholic University of America, 1928, p. 23.

²³ A. JOUBEIR, *La notion canonique de rite: Essai historico-canonique*, Analecta Ordinis S. Basilii Magni, ser. 2, sec. 1, vol. 14, Rome, 1961, p. 5.

meaning of *rite*. Countless examples, throughout the course of the centuries, confirm that the concept of *ritus* extends well beyond the framework of cultic actions.

For the Romans, the word *rite* denoted customs and sometimes religious acts, especially in administering sacred functions.²⁴ For example, in the *Digesta*, the second title of Book XXIII is given as *De ritibus nuptiarum*. In the sixty-eight paragraphs that follow, there is not any allusion to either cultic actions or a religious ceremony.²⁵ For A. Forcellini, the term means the laws concerning the contracting of marriage.²⁶ In the Roman world, the word *ritus* signified principally the manner,²⁷ ceremony, custom or formality of doing something of religious or legal import, or the ensemble of such acts related to a single institution.²⁸

3. Chronological Development of the Meaning of "Rite"

In the twelfth century, the word sometimes has the global sense of a "way of doing" (*consuetudo*). It seems to have been when the Latins encountered the Greeks in southern Italy, and from the time of the Fourth Crusade, that *ritus* in the singular came close to having the sense which we give the word when we say, for example, "the oriental rite". According to I. Hergenröther this began with Pope

²⁴ SKEAT, *An Etymological Dictionary of the English Language*, p. 521. See also A. HERMAN, "De 'Ritu' in iure canonico", in *Orientalia Christiana*, 32 (1933), p. 96.

²⁵ JOUBEIR, *La notion canonique de rite*, p. 4.

²⁶ "Ritus nuptiarum sunt leges de matrimonio ineundo", A. FORCELLINI, *Totius Latinitatis Lexicon*, vol. IV, Patavii, Typis Seminarii, 1827-1831, p. 960, quoted in BASSETT, *The Determination of Rite*, p. 22.

²⁷ The correct manner, the recognized manner of performing an action, including therefore also the traditional manner, then the action itself, whether it be religious, juridical or social.

²⁸ Cf. BASSETT, *The Determination of Rite*, p. 23.

Celestine III (1191-1198).²⁹ Pope Innocent III, who succeeded Celestine III, said that everyone has to be ordained and to celebrate in accordance with his rite: the word has a specific meaning, “what is done regularly”, and not yet the modern sense of “the rite”.³⁰

Thomas Aquinas always makes his concepts precise. Evidently he uses the word *ritus* in the plural in the sense of ceremonies.³¹ But in more formal passages Thomas gives *ritus* (in the singular) the precise sense of the conditioned expression of a religion.³² So *ritus*, used in the singular, signifies ordinances, the whole of the expressions of a religion.³³ This is throughout a religious ordering as seen from the outside.

The Council of Florence uses *consuetudo* in connection with the eucharistic rite, whether speaking of the Greeks and leavened bread, or of the Latins and unleavened bread, which are said to be of equal worth.³⁴

It was above all after the Council of Trent – a new organization of Roman centralization – that the popes and canon lawyers came to be preoccupied with rites. Thus the rite becomes an institution which takes place in its normal church

²⁹ I. HERGENRÖTHER, “Die Rechtsverhältnisse der verschiedenen Riten innerhalb der katholischen Kirche”, in *Archiv für katholisches Kirchenrecht*, 7 (1862), p. 171.

³⁰ HERMAN, “De ‘Ritu’ in Iure Canonico”, p. 97.

³¹ See THOMAS AQUINAS, *Summa Theologiae*; English translation by the Fathers of the English Dominican Province, Westminster, Carroll Press, 1981, Ia IIae q. 102 a. 6 ad 11; IIa 2ae q. 10 a. 11.

³² Ibid., IIIa q. 63 a. 3; a. 4. ad e; a. 6 ad 1 and 2.

³³ Ibid., Ia IIae q. 103 a. 4 ad 1; IIa IIae q. 96 a. 2 ad 3; IIIa q. 75 a 2 c.

³⁴ See H. DENZINGER, *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*. (=DS) quod emendavit, auxit, in linguam germanicam transulit et adiuvante H. HOPING edidit P. HÜNERMANN, ed. 37, Friburgi Brisgoviae, Basileae, Romae, Vindobonae, Herder, 1991, no. 1303. p. 450.

sphere. It becomes as independent entity. With Pius V, who was charged by Trent to unify the Latin liturgies, the rite is seen above all from a liturgical perspective. Under Pius IV and Pius V the rite had already taken on a kind of distinct personality and ultimately came to denote a tradition in its entirety, considered as a system of laws with a life of its own, which in theory one could discuss independently of the people who made use of it. In this way, Pius IV spoke of the *ritus germanicus* and Pius V of the *ritus graecus*.³⁵ These are not rites or customs but entities which have their own consistency: the Greek Rite. This way of using the word is relatively rare in pontifical documents. One might cite Pius IX and his decree *Romani Pontifices* of 6 January 1862, creating the *Sancta Congregatio pro negotiis rituum Orientalium*, where he speaks of the *ritus orientalis gentes*.³⁶

There are numerous papal texts which promise the Orthodox Churches that their rites will be respected in any union.³⁷

The notion of the rite has evolved from the time of Pius IX so that it is now identified with the liturgy insofar as there are laws for its celebration. Since Second Vatican Council, the *Annuario pontificio* has had a few pages of historical notes on the rites. There we find: "Rite properly signifies the organization of

³⁵ JOUBEIR, *La notion canonique de rite*, p. 15; cf. PIUS IV, Constitution *Romanus Pontifex* of 16 October 1564, in *Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis*, Auctoribus Presbyteris S.J. e Domo B.V.M. Sine Labe Conceptae ad Lacum, Friburgi Brigaviae, Herder, 1870-1892, vol. 1, p. 79; PIUS V, Constitution, *Providentia Romani Pontificis* of 20 August 1566, in *ibid.*, p. 85.

³⁶ Cf. *Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis*, vol. 2, pp. 557-558; see also *Acta Pii IX*, vol. 3, pp. 402-416. Pius XII speaks the same sense of rite in his encyclical *Orientalis Ecclesiae* of 9 April 1944. Cf. *AAS*, 36 (1944), p. 137.

³⁷ See I. SCHWEIGL, "De unitate Ecclesiae orientalis et occidentalis restituenda, documentis S. Sedis ultimi saeculi (1848-1938) illustrata", in *Periodica*, 28 (1939), pp. 209-233.

official prayer or the norm of liturgical action fixed by authority, which has its public and specific expression in the liturgy.”³⁸

The decree *Orientalium ecclesiarum* of 21 November 1964 began with a section *De Ecclesiis particularibus seu ritibus*. This title sought to link the notion of the rite with the reality of a particular church, in short, to define the rite by the church and not the church by the rite.

Second Vatican Council also put forward an *ecclesiological* view of the rite, not purely a liturgical one, far less one which did not go beyond rubrics (*LG*, no. 23; *UR*, nos. 15-17). The rite is then taken as the multiple and coherent expression of the faith which a church has and continues to experience. It includes above all the liturgy, steeped in dogmatic truth, the images, the style of monastic life, the disposition of the churches, the presiding genius in the ordering of church life.

4. Definition of “Rite”

It is difficult to find a unique, fundamental meaning of the word *rite* among the numerous meanings that the word can have today. Historically, all rites have been influenced by more than one tradition. There is no *pure* rite. The word itself has never been used with a determined or consistent meaning. It means different things for different jurists, none of whom has provided a common definition.³⁹

The definition of *rite*, which had been more commonly used by canonical writers in the past, was one given by A. Herman. He uses the term in a canonical sense when he speaks of rite as: “An order of ecclesiastical law by which not only liturgical matters but also the entire discipline of one portion of the universal

³⁸ E. LANE, “La Conception post-tridentine de la Primauté et l’origine des Églises unies”, in *Irénikon*, 52 (1979), p. 7.

³⁹ Cf. GNESKO, *Interritual Relations*, p. 4.

Church is ordered.”⁴⁰ A number of essential elements of a *rite* are involved in this definition, as we shall see later. He modified this definition somewhat at a later date, while still retaining the emphasis on the canonical aspect of the term:

A rite is a group of faithful who are governed by laws and customs of their own, based on ancient traditions not only in regard to liturgical matters, but also in respect to the canonical order, and which group is acknowledged by the Holy See as autonomous and distinct from others.⁴¹

B. LEGISLATION REGARDING THE RECOGNITION OF RITES PRIOR TO 1952

Examining the various rescripts of the popes, as well as other documents, especially the decisions of the ecumenical councils until the Council of Florence, which was the largest, most determined and last universal council specifically directed towards reuniting East and West, Bassett concludes that the concept of *rite* itself was vague, its usage indefinite and even contradictory. Departing from the prime analogate in classical Latin of a sacred act or liturgical function, its use was extended far beyond the liturgy. Customs and traditions, particular law, jurisdiction and the complex of religious regulations, discipline and even elements of faith are included in the term.⁴²

⁴⁰ HERMAN, “De ‘Ritu’ in iure canonico”, p. 105: “Ritus est ordo iuris ecclesiastici quo non solum res liturgicae sed universa quoque disciplina unius partis Ecclesiae universalis ordinatur.”

⁴¹ A. HERMAN, “De Conceptu Ritus”, in *The Jurist*, 2 (1942), pp. 338-339: “Ritus juxta significationem de qua agimus intellectus definiri potest: Coetus fidelium qui propriis regitur legibus et usibus antiqua traditione innixis, non solum quod ad res liturgicas sed etiam ad canonicam disciplinam attinet, et qui tamquam autonomus et a ceteris distinctus a Sancta Sede agnoscitur.”

⁴² The different nations or ethnic communities, such as the Romanians, Ruthenians, were simply called *rites*. See BASSETT, *The Determination of Rite*, pp. 33-34.

1. Elementary Usage of *Rite* as a Legal Term in the Teachings of Popes and Councils

The issue of transferring from one rite to another should be viewed in the perspective of historico-political struggles between Rome and Constantinople.⁴³ Some Popes in spite of general statements to the contrary, could be said to have manifested a certain opposition to the Byzantine Rite and even appear to have encouraged the Latinization of the East, particularly in the twelfth and thirteenth centuries.⁴⁴

The preservation of the *rites*, indeed, meets with various difficulties, such as assimilation by a stronger *rite*, abusive intermixing of *rites*, intolerance, dislike, improper zeal in encouraging others to transfer their *rite* in the hope of building one Church according to the perceived wish of the Lord. History, as a matter of fact, presents to us two main cases of assimilation: Byzantinization and Latinization. Both are based not on Christian principles, but on socio-political expediency.

Apart from these unfortunate instances, however, the sovereign pontiffs, especially since Gregory the Great (590-604), have stressed the necessity of the

⁴³ Cf. VASILIEV, *History of the Byzantine Empire*, pp. 43-65. See G. DOWNEY, art. "Constantinople (Byzantium, Istanbul)", in *The Catholic Encyclopedia*, vol. 4, 1967, pp. 231-237.

⁴⁴ Cf. P. MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", in *Apollinaris*, 38 (1965), p. 175; These popes were Innocent III (1198-1216), Innocent IV (1243-1254) and Nicholas III (1277-1280). In more recent times the policies of Benedict XIV (1740-1755) in *Etsi pastoralis* (26 May 1742), and *Allatae sunt* (26 May 1755), of Pius IX (1846-1878) in *Ea semper* (18 July 1907), and of the 1929 decree of the Sacred Congregation for the Oriental Church, *Cum data fuerit*, may be viewed as reflections of this ambivalent attitude. Cf. BASSETT, *The Determination of Rite*, pp. 27-33; for more details on this matter, see H. HOFFMANN, "De Benedicti XIV Latinizationibus", in *Apollinaris*, 27 (1965), pp. 77-161.

For further details about the Latinization process, see B. KODACKAL, *The Validity of Inter-church Marriage in India: A Comparative Study of the Latin and the Oriental Legislation*, Doctoral dissertation, Ottawa, Saint Paul University, 2000, pp. 19-27.

preservation of rites, forbidding transfers in favor of the Latin rite and exhorting the Eastern Churches to preserve their proper religious customs.⁴⁵ One searches in vain for norms regulating transfers of rite in the early centuries of the Church. The rule seemed to be the territorial maxim: *dum Romae sum, more romano vivo*.⁴⁶ With the major heresies and schisms of the fourth century, a plurality of conflicting hierarchies developed, which necessitated canonical clarifications of status and jurisdiction. Accordingly, the focus of Oriental law became primarily more personal than territorial, especially with the later Islamic domination of the eastern territories.⁴⁷

Outside of such regions, where there was an interritual mixture, territorial law kept its force with the vicissitudes of changing political jurisdictions. Inevitably, given this sociological intermixture, a degree of assimilation by both East and West of elements of each other's rites occurred, particularly on the part of emigrants. Having changed domicile, an emigrant quietly assumed the rite of his

⁴⁵ Cf. MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", p. 175. Most papal pronouncements have continually reflected a fairly constant attitude toward Oriental Catholics, that is, firmness in regard to points of faith and morals; in matters of rite and discipline, some legislation has patently discriminated against Orientals, where they are a minority among a Latin majority, to favor the Latins. W. Bassett mentions numerous instances of papal intervention and direct instruction on the zealous latinization and abjuration of the Byzantine rite throughout the twelfth, thirteenth and fourteenth centuries. Cf. BASSETT, *The Determination of Rite*, pp. 24-33.

⁴⁶ Cf. M. RIZZI, "Transitus Ritus", in P. PALAZZINI, *Dictionarium Morale et Canonicum*, vol. 4, Rome, 1968, p. 540.

⁴⁷ By the end of the seventh century, the Holy Land was already under Mohammedan control; the Mohammedans rapidly occupied the Sinai Peninsula, Egypt, and the territories today known as Libya, Tunisia, Algeria and Morocco. By the beginning of the eighth century they had crossed via Gibraltar and conquered Visigothic Spain entering later southwestern France at Aquitaine where they were defeated and stopped at Tours by Charles Martel in 741. The Byzantine Empire had in effect irreparably lost control along the eastern shores of the Mediterranean Sea. In Italy, the Lombards became masters of more than half the Peninsula. Cf. S. RUNCINMAN, *A History of the Crusades*, New Brunswick, New Jersey, Rutgers University Press, vol. 3, 1951-1954, pp. 9-19.

new residence without formality or authoritative intervention, but when a community emigrated, in general it retained its rite. Thus, by the fourteenth century, large numbers of Greeks (with their Byzantine rite) who had settled in southern Italy gradually had assumed the Latin rite without prior authorization.⁴⁸ Already by the eleventh century, in spite of some efforts at Latinization, many Popes were careful to stress mutual respect for the differences in the *rites*.

Pope Leo IX (1049-1054) emphasized, "No Greek may be disturbed about or kept from his paternal tradition without being encouraged and persuaded to observe it."⁴⁹ Under Innocent III (1198-1216), at Lateran IV in 1215 the principle of coexistence of different *rites* was declared.⁵⁰

Because of the ambiguity, confusion and variety of interpretations given to *rite* in its various usages in previous times, the decrees of the Council of Florence⁵¹ of 1439 for the Orientals deliberately avoided the term *rite* and substituted in its place terms such as *mos*, *consuetudo*, *natio*, where *rite* had been

⁴⁸ RIZZI, "Transitus Ritus", p. 540.

⁴⁹ Ibid., p. 537. See BASSETT, *The Determination of Rite*, p. 18; see also RUNCINMAN, *A History of the Crusades*, p. 289.

⁵⁰ "Licet Graecos, in diebus nostris ad oboedientiam Sedis Apostolicae revertentes, fovere ac honorare velimus, mores ac ritus eorum, in quantum cum Domino possumus, sustinendo, in his tamen illis deferre nec volumus nec debemus, quae periculum generant animarum et ecclesiasticae derogant honestati." H. DENZINGER, *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum*, 37th ed. by P. HÜNERMANN (Latin text with German translation), Friburgi Brisgoviae - Basileae - Romae - Vindobonae, Herder, 1991, no. 810. p. 363; see also DUSKIE, *The Canonical Status of the Orientals in the United States* p. 23.

⁵¹ The attitude of the Council of Florence is strongly reflected in the apostolic constitution of Pope Nicolas V (1447-1455) *Pervenit ad aures nostras* (6 September 1448). See *Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis*, Auctoribus Presbyteris S.J. e Domo B.V.M. Sine Labe Conceptae ad Lacum, Friburgi Brisgaviae, Herder, 1870-1892, vol. 2, pp. 601-602.

used earlier.⁵² The union bulls, produced by the Councils of Ferrara, Florence and later in Rome drafted for the Greeks, Armenians,⁵³ Copts,⁵⁴ Syrians, Chaldeans and Melkites, referred to them as nations and peoples, but never as *rites*. Concerning liturgical usage, for example, the practice of using leavened or unleavened bread in the Holy Eucharist was rendered by the term *custom* rather than *rite*.⁵⁵ To prevent transfers of rite, Pope Nicholas V issued a decree in 1448 making *rite* a canonical attribute of a particular people or community.⁵⁶ With the Council of Trent, the term *rite* received an almost exclusively liturgical application. where in five sessions the Council used the terminology *ritus ac*

⁵² On the eve of the Council of Florence, the concept of rite itself was vague, its usage indefinite and even contradictory. "Customs and traditions, particular law, jurisdiction and the complex of religious regulations, discipline, practice and even elements of faith are included in the word *rite*". BASSETT, *The Determination of Rite*, p. 34; see also JOUBEIR, *La notion canonique de rite*, p. 11.

⁵³ "Nam et pridem magnam illam Graecorum unionem multas longe lateque continentium nationes et linguas, hodie vero hanc ipsam Armenici populi, qui per septentrionem et orientem in magna copia diffusus est, in eodem fidei et caritatis vinculo cum sede apostolica stabilivit." *Conciliorum Oecumenicorum Decreta*, curantibus J. ALBERIGO (et. al.), consultante H. JEDIN, ed. 3a. Istituto per le Scienze Religiose, Bologna, Rome, 1973, Sessio VIII, 22 November 1439, *Bulla unionis Armenorum*, p. 535.

⁵⁴ For the Copts, the Bull says: "Primo etenim Graeci et hi, qui subsunt quatuor patriarchalibus sedibus multas gentes nationesque et ydiomata continentibus, deinde Armeni, multorum populorum gens, hodie vero Jacobini, magni etiam per Egiptum populi, sanctae sedi apostolice uniti sunt." Ibid., Sessio XI, 4 February 1442, p. 568.

⁵⁵ "Item in azymo sive fermentato ... unumquemque scilicet iuxta suae ecclesiae sive Occidentalis sive Orientalis consuetudinem." Ibid., Sessio VI, 6 July 1439, *Definitio sanctae oecumenicae synodi Florentinae*, p. 527; see also JOUBEIR, *La notion canonique de rite*, p. 11.

⁵⁶ "Pervenit ad aures nostras, quod in locis, quae Catholicis in Graecia subjecta sunt, multi catholici praetextu unionis ad Graecos impudenter transeunt ritus. Mirati admodum sumus mirarique non desistimus, nescientes quid sit, quod eos a consuetudine ac ritibus, in quibus nati enutritique sunt in alienigenarum ritus transposuit; nam, etsi laudabiles Orientalis Ecclesiae ritus sint, non licet tamen Ecclesiarum ritus miscere, neque id unquam Sacrosancta Synodus Florentina permisit." *Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis*, vol. 2, p. 601.

caeremoniae in eight different places,⁵⁷ with various meanings such as blessing,⁵⁸ anointing,⁵⁹ vestments and external gestures,⁶⁰ and *mysticas benedictiones, lumina, thymiata, vestes aliaque id genus*.⁶¹ After Trent, the accepted meaning of *rite* became “the ordering of liturgical functions and rubrics”.

Later, Pope Clement VIII, in his *Instructio super aliquibus graecorum* (30 August 1595), clearly departs from the Tridentine norm and once again intends by the term *rite* the whole constitution of a particular community, its discipline and practice.⁶² At the turn of the century the transfer of rite meant the adaptation and acceptance not only of external differences in worship and devotion, but also of particular law and the structure of disciplinary practice. The transfer of rite was generally attended to on a local level and was without vital concern to the universal Church.

⁵⁷ Session VII, *De Sacramentis in genere*, can. 13; Session XIV, *De Sacramento Extremae Unctionis*, can. 3; Session XXII, *De Sacrificio Missae*, Capitulo 5, cans. 7-9; *Decretum de observandis et evitandis in celebrationes Missae*; Session XXIII, *De Sacramento Ordinis*, can. 5; and Session XXIV, *De Sacramento Matrimonii*, can. 11; see N.P. TANNER, *Decrees of the Ecumenical Councils*, London, Sheed & Ward; Washington, DC, Georgetown University Press, 1990, vols. 1-2.

⁵⁸ Ibid., Session XXIV, *Benedictiones et alias caeremonias*, can. 11.

⁵⁹ Ibid., Session XXIII, can. 5.

⁶⁰ Ibid., Session XXII, can. 7.

⁶¹ Ibid., Session XXII, can. 5.

⁶² Pope CLEMENT VIII, “*Instructio super aliquibus Ritibus Graecorum*”, 30 August 1595, in *Collectanea Sacrae Congregationis de Propaganda Fide, seu Decreta, Instructiones, Rescripta*, Romae, 1907, vol. 1, pp. 1-4.

2. Pope Benedict XIV to Pope Pius IX

Pope Benedict XIV (1740-1758), the architect of law on ritual transfer,⁶³ issued three documents which determined a later development of the *rite*. The apostolic constitution *Etsi pastoralis* (26 May 1742) asserted that the Latin rite was preeminent over all other rites because it is the mother and teacher of all the Churches.⁶⁴ Nevertheless, Benedict formulated the principle, "Dissidents coming to Catholic unity shall not change *rite*."⁶⁵ He further forbade any missionary to induce any Greek desiring to return to the unity of the Catholic Church to lay aside his proper *rite*.⁶⁶

The apostolic constitution *Demandatum coelitus*⁶⁷ (24 December 1743), allowed "latinized" Melkites who absolutely wished to remain Latins not to be prevented from doing so.

⁶³ Cf. BASSETT, *The Determination of Rite*, p. 48.

⁶⁴ RIZZI, "Transitus Ritus", p. 537; *Collectanea Sacrae Congregationis de Propaganda Fide, seu Decreta Instructiones, Rescripta*, vol. 2, Romae, ex Typographia Polyglotta Sacrae Congregationis de Propaganda Fide, vol. 1, art. II, no. 14, pp. 118-130; *Etsi pastoralis* legislated for the Greek colonies in Italy and on the neighboring islands of Sicily and Corsica which persevered in their Byzantine rite, but it grievously failed to reflect a concern for the integrity of that rite.

⁶⁵ RIZZI, "Transitus Ritus", p. 537.

⁶⁶ Some of its major provisions were: Caput VIII, 7, rules that a Latin husband may not observe the rite of a Greek wife; Caput VIII, 8, similarly rules that a Latin rite wife may not observe the rite of a Greek husband; Caput VIII, 9, allows a Greek husband to follow the Latin rite of his wife and the Greek wife to follow the Latin rite of her husband; in this latter case, she is not free to return to the Greek rite after the death of her husband. For further details see W. PASKA, *Sources of Particular Law for the Ukrainian Catholic Church in the United States*, Canon Law Studies, no. 485, Washington, DC, Catholic University of America, 1968, pp. 128-129.

⁶⁷ This constitution was addressed to the Melkite patriarch. *Iuris Pontificii de Propaganda Fide Pars Prima*, vols. 1-7, Romae: ex typographia Polyglotta S. C. Propaganda Fide, 1838-1897, vol. 3, art. 16, p. 128; MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", p. 180; RIZZI, "Transitus Ritus", p. 541; BASSETT, *The Determination of Rite*, p. 53.

Pope Benedict XIV, through his encyclical letter *Allatae sunt*⁶⁸ (26 May 1755), divided the Oriental rites into four major liturgical families: Greek, Armenian, Syrian and Coptic.⁶⁹ This was the first official document in the history of the Catholic Church which distinguished Oriental Catholics according to different rites. The encyclical letter *Allatae sunt* reiterated already formulated policy on the coexistence and preservation of *rites*.⁷⁰

With the prescriptions of Benedict XIV, transfer of rite clearly could not occur without the intervention of the Apostolic See, except in the cases noted in *Etsi pastoralis*.

Pope Pius VI. in his encyclical letter *Catholicae communionis* (24 May, 1787), spoke of rites and ceremonies. in contrast to usages, institutions and customs. and added. in the first Arabic translation of the Roman Catechism, that these are the usages of the Latins from which the Orientals were to be exempt.⁷¹

⁶⁸ BENEDICT XIV. Encyclical Letter. *Allatae sunt*. 26 May 1755. in *Opera omnia*, vol. 17. Prati. 1839-1846. pp. 249-272; *Fontes*, vol. 2, no. 434, pp. 456-474.

⁶⁹ § 3. "Orientalem autem Ecclesiam omnibus notum est quattuor Ritibus constare, Graeco videlicet. Armeno, Syriaco et Coptico, qui sane Ritus universi sub uno nomine Ecclesiae Graecae, aut Orientalis intelliguntur, non secus ac sub Ecclesiae Latinae Romanae nomine, Ritus Romanus, Ambrosianus, Mozarabicus, et varii peculiare Ritus Ordinem Regularium comprehenduntur." Cf. *Fontes*, vol. 2, no. 434, p. 458.

Later divided in five major groups. The enumeration of the five rites is given in Canon 303, § 1. 1º. of the *motu proprio* of Pope Pius XII *Postquam apostolicis*. This listing of five primary historical and liturgical rites is of little help in ascertaining a juridical clarification of the actually existing rites. "Ritus orientale de quibus canones decernunt sunt alexandrinus, antiochenus, constantinopolitanus, chaldaeus et armenus, aliique ritus quos uti sui iuris expresse vel tacite agnoscit Ecclesia." Cf. *AAS*, 44 (1952), p. 144.

⁷⁰ Benedict XIV repeats the decrees of a long list of his predecessors in the pontificate since the separation between East and West. Their positive pronouncements all favored the preservation of the Eastern rites. Cf. *Iuris Pontificii de Propaganda Fide Pars Prima*, vols. 1-7, Romae: ex typographia Polyglotta S. C. Propaganda Fide, 1838-1897, vol. 3, pp. 598-621. See also DUSKIE, *The Canonical Status of the Orientals in the United States*, p. 26; BASSETT, *The Determination of Rite*, p. 53.

⁷¹ "... ritibus ac caeremoniis pro sacramentorum administratione edisserantur, quae Ecclesiae Latinae disciplinae consona sunt, ac a vestris proinde usibus, atque institutis plerumque

Pope Pius VII (1800-1823) personally renewed an indult⁷² admitting Latins to the Basilian Order, effecting *ipso facto* transfer from the Latin to the Byzantine Rite.

Pope Pius IX, in his encyclical *In suprema* (6 January 1848), promised to do everything in his power to preserve the esteemed Oriental liturgies. With this promise he indicated that preservation of rite meant preservation of liturgy.⁷³ Shortly after setting up the Oriental Section of the Propaganda, he affirmed once more the thinking of the Holy See in regard to the preservation of the purity of the Oriental Rites. In his encyclical letter on the Oriental Rites, *Amantissimi humani generis* (8 April 1862), he condemned those who still stood for Latinization.⁷⁴ Finally, through his apostolic letter *Non sine gravissimo* (24 February 1870), he ordered the unification of canonical discipline throughout the whole Church to avoid the confusion that existed between discipline and rite, as well as the re-establishment of what had been altered or destroyed.⁷⁵

different. velle nos, ut sanctissimas Orientalis Ecclesiae consuetudines..." DE MARTINIS, vol. 4, p. 318. Cited in BASSETT, *The Determination of Rite*, p. 56.

⁷² Through the Propaganda Fide, the Procurator General of the Order had requested this indult to provide for an increase in the membership which had been declining.

⁷³ PIUS IX, Encyclical Letter, *In suprema*, 6 January 1848, in *Pii LX Pontificis Maximi Acta*, Roma, vol. 1, pp. 78-91.

⁷⁴ PIUS IX, Encyclical Letter, *Amantissimi humani generis*, 8 April 1862, in *Pii LX Pontificis Maximi Acta*, vol. 3, pp. 424-436.

⁷⁵ §5. "Qua in re ne praetermittas Armenos omnesque Orientales edocere, quantum discriminis disciplinam inter et ritum intercedat, cuius utriusque confusio illorum fidelium mentem perturbat ... Equidem Nos una cum Praedecessoribus Nostris Orientales ritus servandos esse declaravimus, quoties neque Fidei et unitati catholicae repugnarent, neque ecclesiasticae derogarent honestati. Quod quidem minime impedit, quominus, in his praesertim quae Ecclesiasticum regimen respiciunt, canonica disciplina quoad praecipua saltem capita ubique cohaereat, et ubi incerta vel collapsa fuerit restituatur." Cf. *Litterae Apostolicae, Non sine gravissimo*, 24 February 1870, in *Pii LX Pontificis Maximi Acta*, vol. 5, pp. 129-135; *Fontes*, vol. 3, no. 555.

3. *Schema De ritibus* of First Vatican Council⁷⁶

Pope Pius IX set up the commission, *Super missionibus et Ecclesiis orientalibus*, to prepare the *Schema de ritibus*, to be presented to the First Vatican Council. The commission found it very difficult to formulate a definition of rite, which would be compatible with the pope's concept of rite as liturgy.⁷⁷ However, the opinion of the members of the commission was that the Council should take a strong stand on the matter of Oriental discipline. Most of the members were convinced that the source of difficulties was a dualism which existed between the discipline of the East and the West, that is, *dualismum inter disciplinam orientalem et occidentalem*.⁷⁸ Finally, the commission decided to preserve the liturgical customs and usages,⁷⁹ but introduced the distinction between primary and secondary liturgical rites. Through this act, it also recognized some kind of canonical autonomy among the different groups of Oriental Christians (i.e., those who belonged to the same primary rite – Greeks, Melkites, Russians, Bulgarians, Serbians, Romanians, etc. – constitute the Byzantine Rite).⁸⁰ Although Vatican I ended prematurely without discussing the schema *De ritibus*, the minutes of meetings held between 1867 and 1870 are a very valuable source in revealing the prevailing views on the nature of the rite. According to changing times and

⁷⁶ This schema *De ritibus* was never discussed by the First Vatican Council nor did it ever receive pontifical approval. Cf. HERMAN, "De Ritu in Iure Canonico", p. 101; See also BASSETT, *The Determination of Rite*, p. 62.

⁷⁷ BASSETT, *The Determination of Rite*, p. 62.

⁷⁸ MANSI, vol. 49, col. 987. See also HERMAN, "De Conceptu Ritus", p. 337.

⁷⁹ MANSI, vol. 53, col. 897.

⁸⁰ I. ŽUŽEK, "Che cosa è una Chiesa, un Rito Orientale?", in *Seminarium*, 15 (1975), p. 264. See also BASSETT, *The Determination of Rite*, p. 66.

contexts, multiple and ambiguous uses of the term *rite* continued for a long time.⁸¹ Nedungatt described the situation at the time: the word *rite*, for all its various meanings, came into more frequent use to designate any or all of the following three things: (i) liturgical ceremony; (ii) a complex of liturgical ceremonies, customs and practices including canonical discipline; (iii) the communities of faithful with or without their own hierarchy, who were received into direct communion with Rome but with their own *rite* in senses 1 and 2. Nearly a century later, the Second Vatican Council employed the term *rite* in all these three senses without precisely defining the concept, a task which devolved on the *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo* (1972-1991).⁸²

4. Encyclical Letter *Orientalium dignitas* of Pope Leo XIII

By the end of the nineteenth century, definitive legislation was emerging from the Holy See on transfer of rite. Through the encyclical letter *Orientalium dignitas*, Pope Leo XIII wished to establish a fundamental discipline for all the Oriental Rites in the Near East.⁸³ In this letter, the Pope consistently used the term

⁸¹ See. FARIS, *Eastern Catholic Churches: Constitution and Governance According to the Code of Canons of the Eastern Churches*, pp. 147-148; see also BASSETT, *The Determination of Rite*, pp. 48-105. In the *CIC* of 1917 the meaning of the term remained unclear because the term could designate either the five generic rites or the various specific rites that rose from each generic tradition. Similarly, in, the *motu proprio*, *Postquam apostolicis*, c. 303, § 1, 1°, the term meant both the major liturgical traditions and the individual communities. It states: "The Eastern rites which the canons treat are the Alexandrian, the Antiochene, Constantinopolitan, the Chaldean and the Armenian, and other rites which the Church either expressly or tacitly recognizes as *sui iuris*."

⁸² G. NEDUNGATT, *The Spirit of the Eastern Code*, Placid Lecture Series, no. 15, Bangalore, Dharmaram Publications, 1993, p. 64.

⁸³ Pope Leo XIII reformed and updated the discipline on transfer to another Rite. His Apostolic Letter gave thirteen norms concerning the preservation of oriental Rites. These norms were almost entirely included in the 1917 Code. LEO XIII, Apostolic Letter, *Orientalium dignitas*, (=OD), 30 November 1894, in *Leonis Papae XIII, Allocutiones, Epistolae, Constitutiones, Aliaque Acta Praecipua*, Brugis et Insulis, Desclée de Brouwer, (1887-1921), vols. 5, (1891-1894), pp. 303-

rite in the canonical sense and admitted the *sui iuris* character of different ecclesiastical communities which belong to one of five liturgical families, each hierarchically distinct from the other, but all subject to the Roman Pontiff.⁸⁴

In reference to ritual membership and jurisdiction, canon 9 of the same letter stated that an Oriental living outside the patriarchal territory and under the administration of the Latin clergy, remains ascribed to his own proper rite. If he should return to the patriarchal territory, he is immediately subject to the patriarch of his own rite.⁸⁵ Besides this principle, Pope Leo XIII gave permission to all Oriental Catholics who had transferred to the Latin rite to return to their former rite on petition to the Holy See.⁸⁶ At the same time, he punished with a *suspensio a divinis ipso facto incursa* any Latin missionary, whether from the secular or regular clergy, who by counsel or in any other way induced any Oriental into the Latin rite:

Let any Latin missionary, of the secular or regular clergy, who induces any easterner to the Latin rite by his advice or aid, in addition to suspension *a divinis* which he incurs *ipso facto* and the other penalties inflicted by the constitution *Demandatum*, be deprived of and excluded from his office.⁸⁷

311: *Fontes*, vol. 3, no. 627, pp. 454-459; *Collectanea*, vol. 2, no. 1883; *Leonis XIII, Pontificis Maximi, Acta*, Rome, Ex Typografia Vaticana, 1881-1905, vol. 14, pp. 195-214.

⁸⁴ See ŽUŽEK, "Che cosa è una Chiesa, un Rito Orientale?", pp. 264-265.

⁸⁵ Can. XI. "Quicumque Orientalis, extra patriarchale territorium commorans, sub administratione sit cleri latini, ritui tamen suo permanebit adscriptus; ita ut, nihil diuturnitate aliave causa ulla suffragante, recidat in ditionem Patriarchae, simul ac in eius territorium revererit."

⁸⁶ Can. VII. "Orientalibus qui ritum Latinum, etiamsi ex pontificio rescripto susceperint, revertere ad pristinum, Apostolica Sede exorata, licebit."

⁸⁷ "... missionarius quilibet latinus, e clero saeculari vel regulari, qui orientalem quem piam ad ritum latinum consilio auxiliove inducat, praeter suspensionem a divinis quam ipso facto incurret, ceterasque poenas per eandem Constitutionem *Demandatum* inflictus, officio suo privetur et excludatur." *OD*, p. 363; RIZZI, "Transitus Ritus", p. 538. These penalties were omitted in the Latin Code (c. 98, § 2) and in the Eastern Code (*Cleri sanctitati*, c. 7), although both Codes

Orientalium dignitas contained two further amplifications alluded to above:

1. It will be permitted for easterners who have accepted the Latin rite, even by pontifical rescript, to return to their original rite, provided the Apostolic See is petitioned.⁸⁸

2. If any person, community or family of dissidents comes for Catholic unity, stipulating as a necessary condition that he (they) embrace the Latin rite, let him (them) retain membership in that rite for a time, but let it be possible for him (them) to return at another time to his (their) original Catholic rite. If a condition of this kind has not been stipulated, but the community, family, or person is served by Latin priests because eastern priests are lacking, he (they) must return to his (their) own rite as soon as an eastern priest can be supplied.⁸⁹

Thus, the Pope enlarged the sphere of freedom by permitting the choice of a rite, no matter which. Eastern or Latin, provided however that those easterners who opted for the Latin rite posit this option as a *conditio sine qua non* to embrace the Catholic faith. In the meantime, they could remain provisionally Latins: *ad tempus*, the time to belong to the Latin rite is not determined. One could, consequently, remain so in all good conscience until death. In the case of such a condition, that is that the new convert make his conversion dependent upon his belonging to a given rite, the permission of the Apostolic See was no longer

contained a prohibition against such inducement. See DUSKIE, *The Canonical Status of the Orientals in the United States*, p. 28.

⁸⁸ OD, no. 7; in footnote 86; cf. MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", p. 180.

⁸⁹ OD, no. 11; "Si qua ex dissidentibus communitas vel familia vel persona ad catholicam unitatem venerit, conditione velut necessaria interposita amplectandi latini ritus, huic tituli remaneat ea quidem ad tempus adstricta, in eius tamen potestate sit ad nativum ritum catholicum aliquando redire. Si vero eiusmodi conditio non intercesserit, sed ideo ipsa communitas, familia, persona a latinis presbyteris administretur quia desint orientales, regrediendum ipsi erit ad ritum suum, statim ut sacerdotis orientalis fuerit copi." Cf. MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", p. 180; and see also RIZZI, "Transitus Ritus", p. 543.

required. On the other hand, Easterners who have become Latins may petition the Apostolic See for authorization to return to their original rite.⁹⁰

In the apostolic constitution, *Tradita ab antiquis*⁹¹ (14 September 1912), Pius X abolished any restrictions regarding the reception of Holy Communion in another rite, and the new discipline was assumed into the *Latin Code of Canon Law* as canon 98, § 5.⁹²

Pope Pius XI's decree *Nemini licere* (6 December 1928) conceded to papal legates (nuncios and apostolic delegates) the faculty to grant a transfer of rite except for a priest who petitioned for such a transfer.⁹³ The reason for the delegation was to facilitate and expedite the increasing number of cases submitted to the Holy See. The legates were required to report annually the number of petitions granted, and this practice existed for twelve years (1928-1940). On 23

⁹⁰ M.M. WOJNAR, "Decree on the Oriental Catholic Churches", in *The Jurist*, 25 (1965), p. 186; see also J. MARBACH, *Marriage Legislation for the Catholics of the Oriental Rites in the United States and Canada*, Canon Law Studies, no. 243, Washington, The Catholic University of America, 1946, p. 128.

⁹¹ A person shall remain in his native rite even if he has long kept the practices of communicating in another rite; no one shall be granted the faculty to transfer his rite, unless he offers just and legitimate reasons, which the Sacred Congregation for the Propagation of the Faith shall adjudge. The custom, even if daily, of communicating in another rite cannot be given as one of these reasons. Cf. *AAS*, 4 (1912), pp. 609-617.

⁹² RIZZI, "Transitus Ritus", p. 539; *Codificazione Canonica Orientale*, Fonti, Parte I, Città del Vaticano, Typographia Polyglotta Vaticana, no. 161, p. 133; cf. BASSETT, *The Determination of Rite*, p. 69.

⁹³ Cf. *AAS*, 20 (1928), pp. 416-417; RIZZI, "Transitus Ritus", p. 545; *Fonti* no. 578, pp. 763-765. Pius XI refers to the following documents to support his action; *Etsi pastoralis*, 26 May 1742; *Praeclaris*, 18 March 1746 and *Allatae sunt*, 26 July 1755 by Benedict XIV; *Inter gravissimas*, 3 February 1832 by Gregory XVI; *Orientalium dignitas*, 30 November 1894 by Leo XIII; and *Tradita ab antiquis*, 14 September 1912 by Pius X. Cf. English translation in *Canon Law Digest* (=CLD), vol. 1 [covering period 1917-1933], ed. T.L. BOUSCAREN, Milwaukee, Bruce Publishing Co., 1934, pp. 85-87. This decree was issued through the new Congregation for the Oriental Church.

November 1940, Pope Pius XII (1939-1958) in the decree *Quo firmior*⁹⁴ revoked the faculty, and transfers of rite were again reserved to the exclusive competence of the Congregation for the Eastern Church.⁹⁵ Pope John XXIII (1958-1963) through a rescript of the Oriental Congregation (23 December 1962) granted certain papal legates⁹⁶ the restricted faculty *ad tempus* to concede transfer of rite in those cases in which either the Ordinary of the rite *a quo* or the Ordinary of the rite *ad quem* has provided a *votum* for the transfer.⁹⁷

Throughout the course of history strong efforts at Latinization were exerted in the Near East;⁹⁸ the instances were numerous and extensive. They began at the

⁹⁴ *AAS*, 33 (1941), pp. 27-28.

⁹⁵ Cf. M. RIZZI, "Transitus Ritus", p. 545; MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", p. 183. The reason given was to have a more firm discipline pertinent to the rite of any particular member of the faithful. The motu proprio *Cleri sanctitati* (2 June 1957), is discussed in the next part relative to transfer of rite.

⁹⁶ Cf. *ibid.* The faculty does not extend, however, to granting a transfer of rite to priests or candidates for the priesthood.

⁹⁷ To summarize, the directives of the papal documents discussed disclose in general: (i) a prohibition against forcing Orientals to transfer of rite, even in cases of acceptance into the Catholic faith; (ii) complete freedom for non-catholic Orientals desiring to rejoin the Catholic Church in their choice of rite, either to remain in their own rite or to adopt another from among the Oriental rites; (iii) if there is a preference for the Latin rite, the new convert should solicit authorization for it from the Apostolic See; but if for his conversion the candidate poses a condition *sine qua non* that he belong to the Latin rite, the authorization of the Holy See is no longer necessary; (iv) apostates do not have that freedom of choice since they must rejoin the rite which was theirs at the time of their defection. Cf. MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", p. 181.

⁹⁸ HERMAN, "De 'Ritu' in iure canonico", p. 125. When canon 11 of the motu proprio *Cleri sanctitati* abrogated the discipline enacted in *Orientalium dignitas*, the reaction of the Melkites was very strong (see I. ŽUŽEK, "Oriental Canon Law: Survey of Recent Developments", in *Concilium*, 8 [1963], p. 72). The Patriarch Maximos IV said that the canon "authorizes the Latins to latinize", that is, to accept Oriental non-Catholics into the Latin rite, but does not authorize the Orientals to admit Occidental dissidents into their Church. In fact, the Holy See never considered a converted Protestant juridically as an Oriental, if he chose an Oriental rite in some way other than by a permission from the Holy See. Canon 11 really gives the impression of being based on the *praestantia iuris* of the Latin rite.

time of the Crusades with the erection of Latin Patriarchates in oriental patriarchal sees including Constantinople. Strong tendencies toward Latinization were prevalent during the pontificate of Benedict XIV. In his Constitution, *Esti pastoralis* (26 May 1742), the eminence of the Latin Rite over all others was asserted, because it was regarded as the *rite* of the "Holy Roman Church, mother and teacher of all Churches." The same Pontiff, in another Constitution, *Allatae sunt* (26 July 1755), proclaimed that the Latin Rite was to be preferred to all the others and, for this reason, it was not permissible to transfer from the Latin Rite to the Greek Rite. However, the transfer from the Oriental to the Latin Rite was not forbidden in the same way.

Generally speaking, Latinization has occurred less in the Churches of the Byzantine Rite. With the recent development of the ecumenical movement and the increased awareness by the Eastern Catholic Churches of their mission to the Orthodox, the resistance to Latinization has become stronger. It has resulted in the firm declaration of principles given by Vatican II.⁹⁹

5. *Codex iuris canonici* of 1917 and the Concept of Rite

The notion of rite as a particular community, juridically distinct and exclusive within the unity of the Church, was adopted from pre-Code interritual legislation and incorporated into the prescriptions of the then current law. This contemporary acceptance of rite as a technical designation of what may now be called a *particular church* is apparent not only in legislation concerning the determination and transfer of rite in the *Codex iuris canonici* of 1917 and in the

⁹⁹ See N. EDELBY, "Unity or Plurality of Codes. Should the Eastern Churches have a Special Code?", in *Concilium*, 8 (1967), pp. 20-25; see also P. RAI, "Église Locale et Église Rite", in *Proche Orient Chrétien*, 21 (1970), pp. 284-285.

motu proprio *Cleri sanctitati*¹⁰⁰ of the codification of canon law for the Oriental Churches, but it is also explicit in the decree *De Ecclesiis orientalibus catholicis* of the Second Vatican Council.

In the 1917 *Code of Canon Law*, the term *rite* is used in multiple and ambiguous ways, taking its usage from the different liturgical and interritual sources applied in the codification. The main distinction, given by the 1917 Code, was between the liturgical and canonical significance in the usages of the word *rite*.

a) *Rite in the Liturgical Sense*

The word *rite* can mean a formal liturgical or religious act as contained in the approved liturgical books.¹⁰¹ Following the Tridentine sense, *rite* is indicated by rubrical regulations and is frequently linked with ceremonies.¹⁰² The rite can also mean a complex of liturgical acts and ceremonies that together comprise one single action, such as the conferral of a sacrament or a sacramental.¹⁰³

Another meaning of *rite* is the universal complex of liturgical laws and customs which brings out the distinction between the Latin Church and the Eastern

¹⁰⁰ PIUS XII. Motu proprio, *Cleri sanctitati* (=CS), 2 June 1957, in *AAS*, 49 (1957), pp. 433-603.

¹⁰¹ CIC/1917 c. 1169, § 2. "Etiam ecclesiarum campanae debent consecrari vel benedici secundum ritus in probatis liturgicis libris traditos." Cf. cc. 1148, § 1; 1174, § 1; 1205, § 1; 1206, § 3; and 773, § 1.

¹⁰² The expression *Ritus et caeremoniae* is used frequently in the 1917 Code. Cf. cc. 2; 249, § 1; 253, § 1; 755-760; 814-820; 823, § 2; 851, § 1; 866; 945-947; 1002-1005; 1100; 2141; and 2378.

¹⁰³ For example, conferral of a sacrament or a sacramental: cc. 789; 1993, § 3; 576, § 1; 1171; 1181; 1262, § 2; 1102, § 2 and 2270, §§ 1-2.

Churches.¹⁰⁴ In this sense, there are five generic liturgical and paraliturgical types used in the Oriental Churches,¹⁰⁵ namely *Alexandrian, Antiochean, Armenian, Chaldean, and Constantinopolitan*. The liturgies preserved in the Oriental Churches today are derived from one of these five original sources. Together with the liturgy generally used in the Latin Church, there are six distinct liturgical rites used in the Catholic Church today. Finally it has a broader meaning which is called *rite* in the canonical or juridical sense.

b) *Rite in the Canonical Sense*

Before the development of the canonical sense of *rite*, many commentators on the Code proposed that the liturgical notion of *rite* did not exhaust the meaning of the term. For instance, basing himself on canon 98 of the 1917 Code, G. Michiels, who was the first to introduce the clear notion of juridical or canonical rite to the terminology of canon law, said that rite is a determined Church, ruled by its own peculiar traditional laws and customs, not only in regard to the form of its liturgy, but also in its hierarchical constitution, regime, and discipline.¹⁰⁶ Later, this

¹⁰⁴ CIC/1917 c. 1 clearly distinguishes the *Ecclesia Latina* and the *Ecclesia Orientalis*: "Licet in Codice iuris canonici Ecclesiae quoque Orientalis disciplina saepe referatur, ipse tamen unam respicit Latinam Ecclesiam, neque Orientalem obligat, nisi de iis agatur, quae ex ipsa rei natura etiam Orientalem afficiunt." Cf. cc. 1004; and 257, § 1.

¹⁰⁵ H. CICOGNANI and D. STAFFA, *Commentarium ad Librum Primum Codicis Iuris Canonici*, Romae, 1939, vol. 1, pp. 12-13; see A. COUSSA, *Epitome Praelectionum de Iure Ecclesiastico Orientali*, Città del Vaticano, Typis Polyglottis Vaticanis, 1940-1950, vol. 1, p. 12; see also HERMAN, "De 'Ritu' in Iure Canonico", p. 113.

¹⁰⁶ "Ritus" hic non intelligitur sensu restricto et mere liturgico quo designat determinatum modum peragendi aliquam functionem sacram sed sensu latiore, quo designat complexum non solummodo omnium functionum sacrarum (ut sunt administratio sacramentorum, celebratio S. Missae Sacrificii aliaque officia divina ad cultum publicum pertinentia), ratione habita peculiaris formae magisque in specie peculiaris linguae liturgicae in iis exercendis adhiberi solitae, sed et omnium particularitatum constitutionis hierarchicae, regiminis atque disciplinae, quae auctoritate ecclesiastica fuerunt constitutae, vel usu et consuetudine introductae ac postea ab auctoritate ecclesiastica approbatae, quatenus sunt determinare universalis Ecclesiae parti propriae, ita ut

understanding was accepted substantially by Cicognani-Staffa in their *Commentarium ad Librum Primum Codicis Iuris Canonici*.¹⁰⁷

According to A. Herman, a *rite* is an ordered complex of laws and customs by which the total ecclesiastical life of one part of the Church and its subjects is regulated.¹⁰⁸ In arriving at this notion of rite, he relied on canons 98 and 756 of the 1917 Code, which deal with ascription into a rite, transfer from one rite to another, the baptism and ascription into a rite in case of mixed marriages, and other interritual relations. To belong to a *rite*, he observed, or to transfer from one rite to another means a great deal more than merely a change from one generic liturgical practice to another. Since this is so, *rite* itself must apply in this context to more than merely the liturgy and must be particularized to fit both the law and the existing juridical reality of the Church. Later, in view of the possibility of the promulgation of one code for all the Oriental Churches, which would have upset the foundation of this definition by subtracting a major part of the law followed in a particular rite from this separate ecclesiastical order, Herman substituted the group itself as the essential element of the definition instead of its juridical order.¹⁰⁹ Therefore, in his second definition, he

"ritus" in materia nostra substantialiter idem designet ac *Ecclesia determinata, quae peculiaribus regitur legibus et usibus antiqua traditione innixis, non solummodo ad universam liturgiae formam quod attinet, sed etiam vero quod spectat ad hierarchicam constitutionem, regimen atque disciplinam.*" Cf. G. MICHIELS, *Principia Generalia de Personis in Ecclesia; Commentarius Libri I Codicis juris canonici. Canones praeliminares 87-106*, Tornaci, 1955, p. 260; L. BENDER, *Normae generales de personis: commentarius in canones 87-106*, Roma, Desclée, 1957, p. 225; C. DeCLERCQ, "De ritu et adscriptione ritui apud orientales catholicis", in *Ephemerides Liturgicae*, 46 (1932), p. 475.

¹⁰⁷ Vol. 1, pp. 12-13. This definition is also quoted in BASSETT, *The Determination of Rite*, p. 86; ŽUŽEK, "Che cosa è una Chiesa, un Rito Orientale?", p. 265.

¹⁰⁸ "Ritus est ordo juris ecclesiastici quo non solum res liturgicae sed universa quoque disciplina unius partis Ecclesiae universalis ordinatur. Est enim non multitudo legum per se stantium, sed ordinatus complexus legum et consuetudinum quo tota vita ecclesiastica illius partis Ecclesiae et subditorum eius ordinatur." HERMAN, "De 'Ritu' in Iure Canonico," p. 105.

¹⁰⁹ See BASSETT, *The Determination of Rite*, p. 86.

defined rite as a group of faithful, ruled by their own proper laws and customs drawn from ancient tradition, not only in regard to liturgy, but also determining their own canonical discipline, which group is acknowledged by the Holy See as autonomous and distinct from every other such community.¹¹⁰ For Posnihil, this is the best definition of the term *rite* from the canonical point of view.¹¹¹ When we compare these two basic definitions, Michiels gives more importance to the element of hierarchy than to the legal element in rite. However, we cannot avoid a significant element in Herman's definition, that is, acknowledgement on the part of the Holy See.

For Bassett, the traditional meaning of a *Church* as a particular community of the faithful corresponds to the usage of *rite* in the Code and to the tradition of interritual legislation and juridical practice. 1917 Code canons 782, § 4; 819; 820; 851; 866; 881; 905; 966; 1004 and 1006, § 4, in addition to canons 98 and 756, use *rite* in this canonical sense as a particular church.¹¹²

The prescriptions of canon law regulating ritual determination and change have been binding on all the faithful since the promulgation of the Code. Of its very nature interritual legislation, even though expressed in the Latin Code, involves also Orientals and thus is binding upon them, according to the norm of canon 1.¹¹³ Thus, by particular legislation until the promulgation of the *Code of Canon Law*, and since then by general legislation, the determination and transfer

¹¹⁰ See footnote 41. The formal element in the constitution of a rite, as is clear from this definition, is the recognition given by competent authority. Cf. COUSSA, *Epitome praelectionum de iure ecclesiastico orientali*, vol. 1, p. 15.

¹¹¹ V.J. POSPISHIL, *Code of Oriental Canon Law: The Law on Persons, Rites - Persons in General - Clergy, Hierarchy - Monks and Religious - Laity, (=The Law on Persons)*, Ford City, PA. St. Mary's Ukrainian Catholic Church, 1960, p. 9.

¹¹² BASSETT, *The Determination of Rite*, p. 87.

¹¹³ "...nisi de iis agatur, quae ex ipsa rei natura etiam Orientalem afficiunt", CIC/1917, c. 1.

of rite has been regulated by the same norms for all the faithful of the Church, irrespective of the particular rite to which they belong.¹¹⁴ Membership in a rite, its determination and what may be involved in abandoning it to adopt another ritual affiliation, cannot be different then for a Latin than it is for one who belongs to another rite. The meaning of rite ascribed to the Latin Church is also the meaning ascribed to a parallel Oriental rite.

c) Canons 98 and 756

The discipline of the 1917 Code concerning transfer of rites was clearly established in canon 98, § 3. Canon 98 provides a measure of protection and promotion of the Eastern rites by forbidding clerics in any way to induce Latins to transfer to an Oriental rite, or Orientals, to the Latin rite.¹¹⁵ Additionally, the intervention of the Holy See is prescribed for any transfers which may be requested.

No one is allowed without permission from the Holy See to go over to another Rite. or after a legal transfer to return to the former Rite.¹¹⁶

¹¹⁴ F. CAPPELLO, *Summa iuris canonici*, 5th ed, Roma, Universitas Gregoriana, 1951, vol. 1, pp. 52-53.

¹¹⁵ "Clerici nullo modo inducere praesumant sive latinos ad orientalem, sive orientales ad latinum ritum assumendum." *CIC/1917* c. 98, § 2. Cf. Benedict XIV, *Demandatum, Allatae sunt*; Leo XIII *Orientalium dignitas*. The Code makes no provision for penalties, as provided by Benedict XIV and other popes, attached to the violation of the law. See M. BROGI, "I Cattolici orientali nel Codex iuris canonici", in *Antonianum*, 58 (1983), pp. 218-227. See also DUSKIE, *The Canonical Status of the Orientals in the United States*, pp. 72-84.

¹¹⁶ Canon 98, § 3: "Nemini licet sine venia Apostolicae Sedis ad alium ritum transire, aut, post legitimum transitum, ad primum reverti"; cf. Decree of Pope Urban VIII issued through the Propaganda Fide on 7 February 1624; decrees of Propaganda Fide dated 8 March 1757; 12 March 1759; 20 November 1838; 6 October 1863. Benedict XIV, *Praeclaris* (18 March 1746) and *Etsi pastoralis* (26 May 1742); Leo XIII, *Orientalium dignitas* (30 November 1894); Pius X, *Ea semper* (14 June 1907).

There was no uniform interpretation of this law. Some claimed that the permission of the Holy See was required for the validity of the transfer, while others, in view of the terms *venia* and *licet*, maintained that the permission of the Holy See was required only for the liceity of the transfer. M. Gnesko opts for the second opinion because of the prescription of canon 11 of the 1917 Code.¹¹⁷ In the light of this canon, Gnesko feels that the elements required to make the law *irritans* or *inhabilitans* are not found in canon 98, § 3 of the 1917 Code. This oversight was corrected in *Cleri sanctitati* canon 8, § 1 as we shall see later. The difference in the wording of this canon as compared with the corresponding norm of the 1917 Code needs no further explanation.

Canon 98 further notes that the custom of receiving Holy Communion in another rite, even daily, does not effect a transfer of rite.¹¹⁸

Baptism incorporates a person into the membership of the Church,¹¹⁹ but that membership itself is determined by association with a particular rite or particular Church within the universal Church.¹²⁰ According to canon 98, rite is decided at

¹¹⁷ "Irritantes aut inhabilitantes eae tantum leges habendae sunt, quibus aut actum esse nullum aut inhabilem esse personam expresse vel aequivalenter statuitur." Cf. GNESKO, *Interritual Relations*, p. 30.

¹¹⁸ "Mos, quamvis diuturnus, sacrae Synaxis ritu alieno suscipiendae non secumfert ritus mutationem", c. 98, § 5.

¹¹⁹ "Incorporated into the Church through baptism, the faithful are consecrated by the baptismal character to the exercise of the cult of the Christian religion", *LG*, no. 8; "In explicit terms He (Christ) Himself affirmed the necessity of faith and baptism (Cf. Mk. 16:16; Jn. 3:5) and thereby affirmed also the necessity of the Church, for through baptism as through a door men enter the Church", *LG*, no. 14.

¹²⁰ "That Church, Holy and Catholic, which is the Mystical Body of Christ, is made up of the faithful who are organically united in the Holy Spirit through the same faith, the same sacraments, and the same government and who, combining into various groups held together by a hierarchy, form separate Churches or rites." *OE*, no. 2.

baptism usually by the rite in which the ceremonies are performed.¹²¹ Three exceptions to that provision are enumerated.¹²²

(i) Fraud.¹²³ The conferral of baptism which deceives a person into believing he is a member of one rite when by law he should be a member of another is illicit and neither transfers the rite nor affects the status of the person who is the victim of such deception.¹²⁴ Baptism administered fraudulently, although sacramentally valid, violates the rights of the proper pastor in the absence of an excusing circumstance. A ruling by the Code Commission of the Latin Church (16 October 1919) declared that a person who, at the request of his parents, contrary to the prescriptions of canon 756,¹²⁵ has been baptized by a minister of a rite not his own, does not belong to the rite in which he was actually baptized, but to the rite in which, according to the prescription of canon 756, he should have been baptized.¹²⁶

¹²¹ "Inter varios catholicos ritus ad illum quis pertinet, cuius caeremoniis baptizatus fuit, nisi forte baptismus a ritus alieni ministro vel fraude collatus fuit, vel ob gravem necessitatem, cum sacerdos proprii ritus praesto esse non potuit, vel ex dispensatione apostolica, cum facultas data fuit ut quis certo quodam ritu baptizaretur, quin tamen eidem adscriptus maneret", c. 98, § 1.

¹²² See J. ABBO and J. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, St. Louis, Missouri, Herder Book, II vols., 1952, pp. 141-142; see also DUSKIE, *The Canonical Status of the Orientals in the United States*, pp. 74-76; S. WOYWOD - C. SMITH, *A Practical Commentary on the Code of Canon Law*, New York, 1943, II vols., p. 43.

¹²³ Cf. Benedict XIV, *Demandatum* (24 December 1743); Decree of Propaganda Fide, 6 October 1863.

¹²⁴ DUSKIE, *The Canonical Status of the Orientals in the United States*, p. 74; ABBO and HANNAN, *The Sacred Canons*, p. 41.

¹²⁵ Canon 756, § 1 "Proles ritu parentum baptizari debet. § 2 Si alter parentum pertineat ad ritum latinum, alter ad orientalem, proles ritu patris baptizetur, nisi aliud iure speciali cautum sit. § 3 Si unus tantum sit catholicus, proles huius ritu baptizanda est."

¹²⁶ *AAS*, 11 (1919), p. 478; English translation in *CLD*, vol. 1, p. 85; ABBO and HANNAN, *The Sacred Canons*, p. 41.

(ii) Necessity.¹²⁷ In cases of urgent need which may arise in circumstances where a minister of the proper rite is unavailable or cannot be approached because of imminent danger of death, distance, length of time, or other grave difficulty, children may be baptized by a minister of a rite that is not their own.¹²⁸ In such situations, the child remains a member of the rite in which he should have been baptized.

(iii) Apostolic dispensation. Since the canon does not provide for other exceptions, a dispensation from the requirements of the law is required to allow a person to receive baptism in another rite without the obligation of adhering to that rite.¹²⁹

Finally, canon 98, § 4¹³⁰ stipulates that a woman married to a man of another rite may embrace his rite either upon entering the marriage or during it. When the

¹²⁷ Cf. BENEDICT XIV, *Etsi pastoralis* (26 May 1742); Decree of Propaganda Fide. 6 October 1863; Leo XIII, *Orientalium dignitas* (30 November 1894); *AAS*, 6 (1914), p. 42.

¹²⁸ DUSKIE, *The Canonical Status of the Orientals in the United States*, pp. 74-75; ABBO and HANNAN, *The Sacred Canons*, pp. 141-142.

¹²⁹ Ibid. pp. 75-76; ABBO and HANNAN, *The Sacred Canons*, p. 142. Canon 6, § 2 of *Cleri sanctitati* later removed this requirement for papal dispensation, and the permission of the hierarchy in whose rite the baptism should have taken place must be obtained instead. Cf. POSPISHIL, *The Law on Persons*, p. 31; BASSETT, *The Determination of Rite*, p. 205. Canon 6, § 2 states, "If the baptism was administered by a minister of another rite in case of grave necessity, when a priest of the proper rite could not be present, or because of some other just reason with the permission of the proper hierarchy, or because of fraud, the person thus baptized shall be regarded as belonging to that rite according to the ceremonies of which he ought to have been baptized." Canon 6, § 1 is a reformulation of *CIC*/1917 c. 98, § 1, "Among the various rites a person belongs to that one according to the ceremonies of which he has been legitimately baptized." Cf. POSPISHIL, *The Law on Persons*, pp. 26-27.

¹³⁰ "Integrum est mulieri diversi ritus ad ritum viri, in matrimonio ineundo vel eo durante, transire; matrimonio autem soluto, resumendi proprii ritus libera est potestas, nisi iure particulari aliud cautum sit", c. 98, § 4. The law does not make it obligatory for the wife to transfer to the rite of her husband.

marriage is dissolved, she is free to return to her own rite, unless particular law provides otherwise.¹³¹

Canon 756 fixes juridically the rite in which a person is to be baptized under various circumstances, particularly if the parents belong to different rites or if only one of them is Catholic.¹³² The law itself is a statement of the duties and rights of parents and is relatively easy to fulfill when both parents belong to the same rite. In cases of mixed rites, however, the rite of the father must be followed. In the opinion of some commentators if the mother becomes a widow and chooses to return to her former rite, the children still remain in the rite of their deceased father.¹³³ The obligation to educate the children according to the rite of their father would then also remain.

C. CONCEPT OF RITE IN THE *MOTU PROPRIO POSTQUAM APOSTOLICIS LITTERIS* (9 FEBRUARY 1952)

When the Pontifical Commission for the Redaction of the Code of Oriental Canon Law began its work in 1935,¹³⁴ the members were not sure of the exact

¹³¹ ABBO and HANNAN, *The Sacred Canons*, p. 143; cf. Benedict XIV, *Etsi pastoralis* (26 May 1742): a Greek woman who has transferred to the rite of her Latin husband may not resume her own rite when the union is dissolved. See DUSKIE, *The Canonical Status of the Orientals in the United States*, p. 82.

¹³² DUSKIE, *The Canonical Status of the Orientals in the United States*, pp. 85-90.

¹³³ Ibid., p. 87; BENEDICT XIV, *Demandatum* (24 December 1743), in *Bullarium Pontificium Sacrae Congregationis de Propaganda Fide*, vol. 3, Romae, Typis Collegii Urbani, 1841-1859, pp. 96-105.

¹³⁴ AAS, 27 (1935), pp. 306-308. On 25 June 1935, Pope Pius XI established the *Pontificia Commissio Codicis Orientalis Redigendo*. Before the establishment of this Commission there existed a *Collegio o Consiglio di Presidenza*, started in 3 August 1927, by Pope Pius XI according to the recommendation of the Sacred Congregation of the Eastern Churches with himself as president. Cf. I. ŽUŽEK, "Les textes non publiés du Code de droit canon oriental", in *Nuntia*, 1 (1975), pp. 121-137. See also H.J. CICOGNANI, "De Codificatione Canonica Orientali", in *Apollinaris*, 5 (1932), pp. 86-95; A. COUSSA, "De Codificatione Canonica Orientali", in *Acta Congressus*

meaning of the term *rite* in canonical terminology.¹³⁵ On the one hand, there existed the disparity of disciplinary practices among the communities attached to the same liturgical rites and, on the other, there existed the concept of canonical rite which had been illustrated in the 1917 Code.¹³⁶ As a consequence different schemata were made for *De ritibus* which included the enumeration of all the Oriental Churches.¹³⁷ This was rejected because of ambiguity and on the principle that a Code should not enumerate which communities are *rites*, but only describe the norms to be verified for the recognition of a community of faithful as a rite in the canonical sense.

On 25 June 1941 the schema *De ritibus*¹³⁸ was submitted to the Plenary Session of the cardinal members of the Commission for the Oriental Code. The commission of the cardinals accepted the canon with some amendments including the change of the name "Byzantinus" to "Constantinopolitanus", because the Byzantine kingdom extended beyond the confines of the Constantinopolitan rite.

Iuridici Internationalis, 4 (1937), pp. 491-532; A. GIANNINI, "Sulla Codificazione del Diritto Canonico Orientale", in *Il diritto ecclesiastico*, 58 (1947), pp. 193-204. This council functioned until 13 July 1929, when the name was changed to the *Commissione per la Codificazione Orientale sotto la presidenza dei Cardinali: P. Gasparri, L. Sincero, B. Ceretti e F. Ehrle della Sacra Congregazione Orientale*. On 27 November 1929, Pope Pius XI constituted the *Commissio Cardinalitia pro Studiis Praeparatoriis Codificationis Orientalis*. Cf. *AAS*, 21 (1929), p. 669. The first meeting was held on 14 February 1930, and recommended that there be one code for the entire Catholic Church which could take into account the particular disciplinary matters of the Eastern Churches. Cf. J.D. FARIS, "The Codification and Revision of Eastern Canon Law", in *Studia canonica*, 17 (1983), pp. 449-485.

¹³⁵ ŽUŽEK, "Che cosa è una Chiesa, un rito orientale?", p. 265; See WOJNAR, "Rites, Canonical", p. 515.

¹³⁶ BASSET, *The Determination of Rite*, p. 88.

¹³⁷ ŽUŽEK, "Che cosa è una Chiesa, un rito orientale?", pp. 225-265.

¹³⁸ "Orientales ritus de quibus Codex statuit sunt alexandrinus, antiochenus, byzantinus, chaldaeus et armenus qui primarii habentur aliique ritus quos, licet derivatos, uti autonomos expresse vel tacite agnoscit Ecclesia." Cf. *ibid.*, p. 267.

that is, Antioch and Africa were part of the same kingdom. This was the first time the canons on the rites came to be formally discussed and approved in the history of the codification of the Eastern Canon Law. When the text was submitted to the Supreme Pontiff on 31 October 1941, it provided for this.¹³⁹

In the third draft of the *Codex iuris canonici orientalis* (=CICO) (1943) the canon on the various rites was removed from the canons *De ritibus* and put under the title of *De verborum significatione* without any modification, except the addition of the word *hic* in front of the word *Codex*.¹⁴⁰ Finally, the canon was promulgated on 9 February 1952, as canon 303, § 1 in the motu proprio *Postquam apostolicis litteris* with two changes.¹⁴¹ The text of canon 303, § 1 is:

The Oriental rites that the canons treat are the Alexandrian, Antiochean, Constantinopolitan, Chaldean and Armenian, and other rites that the Church either expressly or tacitly recognizes as *sui iuris*.¹⁴²

This canon clearly reflects the two distinct aspects in relation to the liturgical and canonical notions of rite within the general norm *de quibus canones decernunt*, which is basically a legal norm for the general and specific division of

¹³⁹ “Orientales ritus de quibus Codex decernit sunt alexandrinus, antiochenus, constantinopolitanus, chaldaeus et armenus, alique ritus quos uti autonomos expresse vel tacite agnoscit Ecclesia.” Cf. *ibid*.

¹⁴⁰ *Ibid*.

¹⁴¹ *Ibid*. The modification was that the words *canones decernunt* replaced *hic Codex decernit* and the words *uti sui iuris* were used in place of *uti autonomos*.

¹⁴² Canon 303, § 1: “Ritus orientales de quibus canones decernunt sunt alexandrinus, antiochenus, constantinopolitanus, chaldaeus et armenus, alique ritus quos uti sui iuris expresse vel tacite agnoscit Ecclesia.”

the rites.¹⁴³ The rites actually mentioned in the canon are identified by historical-liturgical criteria, in relation to the division commonly accepted by various authors.¹⁴⁴ For Wojnar and Joubair, this canon gives us a strictly canonical criterion¹⁴⁵ in which *rite* is measured as *explicitly or tacitly acknowledged by the Church as autonomous or sui iuris*.¹⁴⁶ Although the phrase *aliique ritus* pointed out the actually existing, autonomous rites, to be such and technically denominated in canon law as rites, these are not the liturgical rites, because they are *sui iuris*. In legal terminology *sui iuris* can be applied only to a juridically independent and self-subsistent physical or moral person and it can hardly be applied to a system of laws.¹⁴⁷

The canonical sense of rite is very clear in the canons related to the ascription to a determined rite by means of baptism and transfer from one rite to another. For example, the canons of the *motu proprio Cleri sanctitati* under the title of *De ritibus orientalibus* clearly mention their binding force for the clergy and the faithful of the entire Church, regardless of rite, the Latin Rite not excluded.¹⁴⁸

¹⁴³ "Additur *de quibus canones decernunt*, ut apparet, sine dubio agi de canonibus, seu de iure canonico, non de divisione rituum liturgicorum ut talium." Cf. A. HERMAN, "De motu proprio *Postquam Apostolicis Litteris*", in *Monitor ecclesiasticus*, 77 (1952), p. 259.

¹⁴⁴ BASSET, *The Determination of Rite*, p. 89.

¹⁴⁵ M.M. WOJNAR, "The Code of Oriental Canon Law, *De ritibus orientalibus* and *de personis*", in *The Jurist*, 19 (1959), p. 279.

¹⁴⁶ JOUBEIR, *La notion canonique de rite*, p. 30.

¹⁴⁷ BASSET, *The Determination of Rite*, p. 89.

¹⁴⁸ Canons 6; 7-15; especially c. 15 says: "Praescriptis cans. 1, § 2; 4; 5; 7; 10; 11, § 2; 13 tenentur clerici et fideles cuiusvis ritus, latinis haud exclusis."

1. Material Element of Canonical Rite

Canonists are generally agreed that a *rite* is constituted by two elements, the material and the formal ones.

The material element of a canonical rite comprehends a group of faithful with their own hierarchy, their own discipline, both canonical and liturgical, and their own homogenous spiritual heritage.¹⁴⁹ The group of faithful is the personal subdivision of this element. As Vatican II taught, this group should be held together by a hierarchy.¹⁵⁰ The personal element, the *coetus fidelium*, shows that a canonical rite is not limited to territorial limits.¹⁵¹ The Legislation of the Eastern Church considers in detail the situation of the faithful who are outside of their territory but still belong to their rite.¹⁵²

The spiritual heritage or patrimony of a group of faithful also comes under the material element of rite which includes a distinct theological system and expression, a special kind of spiritual and monastic life, religious art, methods of instruction, etc.¹⁵³

¹⁴⁹ WOJNAR, "Rites, Canonical", pp. 515-518.

¹⁵⁰ SECOND VATICAN COUNCIL, Decree on the Pastoral Office of the Bishops in the Church, *Christus Dominus* (=CD), 28 October 1965, in *AAS*, 58 (1966), pp. 673-696; here at no. 11, pp. 677-678; FLANNERY, *Vatican II*, p. 569. Ibid., Dogmatic Constitution on the Church, *Lumen gentium* (=LG), 21 November 1964, in *AAS*, 57 (1965), pp. 5-71; here at nos. 25, 26, 28, pp. 29-31, 31-32, 33-36; FLANNERY, *Vatican II*, pp. 379-381, 381-382, 384-387. Ibid., The Constitution on the Sacred Liturgy, *Sacrosanctum concilium* (=SC), 4 December 1963, in *AAS*, 56 (1964), pp. 97-138; here at no. 41, p. 111; FLANNERY, *Vatican II*, pp. 14-15.

¹⁵¹ *CIC/1917* c. 216; *CD*, no. 22; *AAS*, 58 (1966), pp. 683-684; FLANNERY, *Vatican II*, p. 576.

¹⁵² *CS*, cc. 22, § 3; 216, § 2 2°; *AAS*, 49 (1957), pp. 442, 497; see also Pius XII, *motu proprio Crebrae allatae* (=CA), 22 February 1949, in *AAS*, 41 (1949), pp. 89-119; here at c. 86, § 3 3°, pp. 107-108.

¹⁵³ WOJNAR, "Rites, Canonical", p. 516.

2. Formal Element of Canonical Rite

The formal constitutive element of canonical rite is the acknowledgment or recognition by the Church, either express or tacit, that a certain canonical rite is *sui iuris*, or *autonomous* and distinguished from others.¹⁵⁴ The express acknowledgement by the Church would be the formal establishment or recognition by the supreme authority of the Church of a new canonical rite. Since there seems to be no example of such a formal acknowledgement, it is necessary to examine tacit acknowledgement, which is given by equivalent facts, for example, that a certain rite is mentioned in a document of the Holy See such as "Romanian Rite", or a proper hierarchy is instituted in a place where another hierarchy already exists, or laws are declared applicable to the faithful of a certain distinct rite, or, that transfer from one group to another requires permission from the Holy See.¹⁵⁵

¹⁵⁴ See footnote 125; cf. HERMAN, "De Conceptu Ritus", p. 340; WOJNAR, "Rites, Canonical", p. 516; BASSET, *The Determination of Rite*, p. 91. The autonomy of a canonical rite means that one rite is independent of another. Since all rites are equal juridically, no one can belong to two or more rites at the same time.

¹⁵⁵ HERMAN, "De Conceptu Ritus", p. 340; *ibid.*, "De ritu in iure canonico", pp. 112-113; WOJNAR, "Rites, Canonical", p. 516; *ibid.*, "De ritu in Codice iuris canonici orientalis", pp. 534-535. This formal recognition could either be given expressly or in a form equivalent to it. (Cf. COUSSA, *Epitome praelectionum de iure ecclesiastico orientali*, vol. 1, p. 15.) According to Herman express verbal recognition so as to constitute a new rite was never given by the Holy See and consequently he enumerates the following as signs of equivalent approbation:

- I. In Pontifical documents a special name is assigned to a community;
- II. A proper hierarchy is established for a group in a place where already exists another hierarchy;
- III. The Holy See declares that some laws which it has made, bind only the faithful of a certain community;
- IV Transfer from one community to another is permitted only with the previous permission of the Holy See.

D. ORIENTAL LAW ON PERSONS, *CLERI SANCTITATI*, CANONS 7-15

Just as canons 98 and 756 of the Latin Code summarized and reformulated pre-code legislation, so also canons 7-15 of *Cleri sanctitati* (2 June 1957),¹⁵⁶ the Oriental law on persons pertinent to transfer of rite, represented a collation and some modification of preceding legislation. *Cleri sanctitati* contains canons which oblige clerics and faithful of all rites, including the Latin, namely canons 1, § 2; 4; 5; 7; 10; 11, § 2 and 13.¹⁵⁷ This list does not seem to be exhaustive since other canons of the *motu proprio* affect Latins indirectly as well.

Because of the complete analogy between the laws and the circumstances contemplated by the legislator, with canons nearly identical in wording, and since they originated from the same lawgiver, the Roman Pontiff, the corresponding canon of *Cleri sanctitati* must be accepted as an authentic interpretation of the respective canon of the CIC.¹⁵⁸

For those Orientals who lack their own hierarchy in a particular territory, although subject by law to a hierarch or pastor of another rite, the *motu proprio* provides that they retain membership in their own Oriental rite.¹⁵⁹

¹⁵⁶ *AAS*, 49 (1957), pp. 433-603.

¹⁵⁷ Canon 15 of *Cleri sanctitati*: the prescriptions of cc. 1, § 2; 3; 4; 5; 7; 10; 11, § 2 and 13 oblige the clergy and faithful of any rite whatsoever, those of the Latin rite not excluded. Cf. POSPISHIL, *The Law on Persons*, p. 41.

Canons 10, 11, 12, 13, 14 and 15 have no corresponding legislation in the Latin Code. Canon 8 is not listed among those binding the Latin rite because transfer of rite is already prohibited to Latins through c. 98, § 3. Cf. BASSETT, *The Determination of Rite*, p. 99.

¹⁵⁸ POSPISHIL, *The Law on Persons*, p. 42.

¹⁵⁹ Canon 14: "The faithful of an Eastern rite who are lawfully subject to a hierarch of a different rite continue to remain members of their own rite." Cf. POSPISHIL, *The Law on Persons*,

Canon 7 of *Cleri sanctitati* repeats the injunction of 1917 Latin Code c. 98, § 2 prohibiting proselytism; but the injunction now affects both clergy and laity.¹⁶⁰

Canon 8, § 1 strengthens preceding legislation by imposing an express sanction of invalidity on a transfer made without adhering to the prescriptions of canon law.¹⁶¹ Provisions for transfer from one Oriental rite to another, especially those using the same matter for the Eucharist, are abolished.¹⁶² Hence, any transfer of rite requires the permission of the Holy See.¹⁶³ Requests for transfer of rite must be supported by sufficient canonical reasons. Among the acceptable reasons are: (i) return to the rite of one's ancestors; (ii) moral impossibility to follow or use one's rite because of a permanent or prevailing cause, e.g., great distance, not having been reared in the rite; (iii) the adoption of a child of a different rite; (iv) education by a mother of a different rite if one's father has died or has become derelict; (v) entrance into religious life in another rite; (vi) incardination into or the choice of working in the service of a diocese of a different rite.¹⁶⁴ Poor or unacceptable reasons may include: (i) lack of parochial facilities, such as a school or youth program, in a parish of one's own rite; (ii) mere desire for the experience of belonging to another rite; (iii) personal dissatisfaction with one's own rite, clergy or hierarchy.¹⁶⁵

p. 41: *Orientalium dignitas*, art. 49; *Ea semper*, art. 31; *Cum episcopo*, art. 20; *Cum data fuerit*, art. 29.

¹⁶⁰ "No one shall presume to induce in any manner anyone from among the faithful to join another rite." Cf. POSPISHIL, *The Law on Persons*, p. 31.

¹⁶¹ "No one can validly transfer to another rite, nor after a lawful transfer return to the former rite, without permission of the Apostolic See." Cf. POSPISHIL, *The Law on Persons*, p. 33; CIC/1917, 98, § 3.

¹⁶² Decree of Propaganda Fide, *Schismatici orientales* (20 November 1838).

¹⁶³ WOJNAR, "The Code of Oriental Law de Ritibus Orientalibus and de Personis", p. 233.

¹⁶⁴ RIZZI, "Transitus Ritus", pp. 544-546; POSPISHIL, *The Law on Persons*, p. 36.

¹⁶⁵ POSPISHIL, *The Law on Persons*, pp. 36-37.

Canon 10¹⁶⁶ provides that, before puberty, children should follow the father if he transfers rites; in a mixed marriage, they follow the Catholic mother.¹⁶⁷ The canonical age of puberty is fourteen for males and twelve for females.¹⁶⁸ Children under these ages need not be mentioned in a petition for transfer of rite since the law itself effects such. Older children must themselves apply for transfer. Illegitimate children of a non-Catholic father follow the rite of their mother, unless the father himself becomes a Catholic of a rite different from that of the mother. When the marriage of their parents is contracted, the children automatically transfer rites provided they have not yet attained the canonical age for puberty.¹⁶⁹

Practically speaking, canon 11, § 1¹⁷⁰ was abrogated by the Vatican II Decree on the Eastern Catholic Churches. However, it merits historical consideration. Bassett explains why it was inserted into the 1957 *motu proprio*:

The canon clarified the former law and added three very important considerations. First, the canon itself solved all doubt that might have existed previously. Secondly, the choice of rite was explicitly extended to all Oriental converts, not merely to those in the Near East and of Russian extraction. Thirdly, the provisional character

¹⁶⁶ "If the father lawfully transfers to another rite, or in a mixed marriage, the Catholic mother, the children who have not yet reached the age of puberty are by law itself transferred to the same rite."

¹⁶⁷ WOJNAR, *"The Code of Oriental Law de Ritibus Orientalibus and de Personis"*, p. 234.

¹⁶⁸ CS, c. 17, § 2; AAS, 49 (1957), p. 440.

¹⁶⁹ Cf. POSPISHIL, *The Law on Persons*, p. 38.

¹⁷⁰ "Baptized non-Catholics of an Eastern rite may embrace the rite they prefer when they are admitted into the Catholic Church; however it is desired that they retain their own rite."

Many Oriental bishops and canonists strenuously attacked the provision of a free choice of rite for Oriental converts as a great injustice and an inducement to latinization. Their objections accordingly received particular attention at the Second Vatican Council. Cf. BASSETT, *The Determination of Rite*, p. 225.

of article XI of *Orientalium dignitas, ad tempus*, was eliminated and absolutely no reference was made to the choice of the Latin rite being accorded only when made a necessary condition of conversion. The new law mentioned only that such a convert could join the rite he preferred. There remained, however, the prohibition against inducing a change of rite. Furthermore, the provision of *Orientalium dignitas* that the desire of the convert to change rites be expressly formulated was dropped.

Canon 11, § 1 speaks expressly about baptized non-Catholics of the Oriental rite. Upon their joining the Catholic Church, they could select any rite they preferred including the Latin, although the law expressed a desire to have them retain their own rite.

Canonists are careful to distinguish between baptized dissidents, i.e., those who were never in the Catholic Church, and apostates, i.e., those who consciously have renounced the Catholic faith and again wish to return to it.¹⁷¹ Dissidents enjoy the privilege of choosing the rite to which they wish to adhere, but apostates must rejoin the Church in that rite to which they had belonged at the time of their apostasy.¹⁷²

¹⁷¹ Cf. *ibid.*, p. 234.

¹⁷² WOJNAR, "*The Code of Oriental Law de Ritibus Orientalibus and de Personis*", p. 235. The term "apostasy" is not used in the sense of the present c. 751 of the 1983 Code where apostasy is a total rejection and repudiation of the Christian (not only catholic) faith which is received in baptism. It must be a total rejection; if it were merely partial it could constitute heresy but not apostasy. It implies much more than a withdrawal, distancing, separation, or abandonment of the faith. Apostasy requires full knowledge, deliberation, and persistence; it is neither sudden nor momentary. Such a rejection could take place if a person formally joined another sect which e.g. denied the divinity of Christ or totally abandoned any religion. (It could mean converting to Judaism, Islam, Buddhism, Hinduism, or merely the abandonment of religion.) Mere failure to practice one's religion, or even defection from the Church by a formal act (see cc. 1086, § 1; 1117; 1124), would not necessarily constitute apostasy." Cf. *New Commentary on the Code of Canon Law*, edited by J.P. BEAL, - J.A. CORIDEN and T.J. GREEN, New York, Mahwah, N.J., Paulist Press, 2000, p. 916. See also the *Canon Law, Letter and Spirit, A Practical Guide to the Code of Canon Law*, Prepared by the Canon Law Society of Great Britain and Ireland in association with The Canadian Canon Law Society, Collegeville, Minnesota, Liturgical Press, 1995, p. 418.

Cleri sanctitati specifically mentions only Oriental dissidents. Baptized protestants, however, are usually considered non-Catholics of the Latin rite, although some of them have certainly abandoned long ago the genuine characteristics of the Latin rite from which their denomination had its origins. Nonetheless, some canonists argued that this affiliation with the Latin rite was sufficient to prevent them from transferring rites, just as it was for Catholics. Canon 11, § 1 exempted Oriental converts from this norm and, in the absence of a similar exemption for Western non-Catholics, baptized Protestants had to remain in the Latin rite on conversion.¹⁷³ Other canonists, however, maintained that the mere absence of specific legislation on the transfer of rite did not restrict the freedom of Western converts entering the Catholic Church.¹⁷⁴ Bassett notes that no legislation exists forbidding priests of the Oriental rite to accept into their rite converts from Protestantism.¹⁷⁵ Hence it would seem that Protestants too, during this period before Vatican II, enjoyed the freedom of choice of rite upon conversion.

The Vatican II Decree on the Eastern Catholic Churches makes explicit reference to all rites, including the Latin rite, in restricting choice of rite for Protestants as well as Orientals.¹⁷⁶ All the baptized, according to the conciliar discipline, whether they were originally Protestant or Oriental dissidents, now are expected to retain their particular rite upon entering the Catholic Church; choice of

¹⁷³ Cf. BASSETT, *The Determination of Rite*, p. 228.

¹⁷⁴ POSPISHIL, *The Law on Persons*, pp. 38-39. The Latin Code makes no mention of a determination of rite for converts.

¹⁷⁵ BASSETT, *The Determination of Rite*, p. 232.

¹⁷⁶ Art. 3: "... individual Churches, whether of the East or the West..."; art. 4: "...each and every Catholic, as also the baptized member of every non-Catholic Church...", in W.M. ABBOTT, gen. ed., *The Documents of Vatican II*, New York, Guild Press, 1966, pp. 374-375.

rite is no longer an option.¹⁷⁷ Only the unbaptized have complete freedom to choose whichever rite they prefer in joining the Church, even if they profess to be Christians.¹⁷⁸ Missionaries as well may not deny this right to their converts. Under the age of puberty, children of unbaptized parents who select a rite follow their parents into that rite. After puberty, they are free to choose a rite for themselves.¹⁷⁹

Transfer to another rite granted by the Holy See becomes effective at the time of oral declaration of transfer made in the presence either of the hierarch of the new rite, or of the pastor of the same rite, or of a duly delegated priest together with two other witnesses.¹⁸⁰ A wife upon entrance into marriage must make a written declaration; if she chooses to transfer rites during her marriage, an oral declaration as described above suffices, without the intervention of the Holy See.¹⁸¹

Transfer of rite must then be duly recorded¹⁸² in the baptismal register of the church where it had taken place. Notification should be given to the pastor of the

¹⁷⁷ BASSETT, *The Determination of Rite*, p. 228.

¹⁷⁸ Canon 12: "A non-baptized person may freely choose the rite in embracing the faith." POSPISHIL, *The Law on Persons*, p. 39; BASSETT, *The Determination of Rite*, p. 235.

¹⁷⁹ BASSETT, *The Determination of Rite*, p. 235; WOJNAR, "The Code of Oriental Law *de Ritibus Orientalibus* and *de Personis*", p. 236.

¹⁸⁰ Canon 13, § 1: "Except when the rescript of the Apostolic See orders otherwise, the transfer to another rite takes legal effect from the moment of the declaration made before the proper hierarch or pastor of the new rite or before a priest delegated by either of them and two witnesses, with the exception of a transfer which takes place at the time of entering marriage, which shall be preceded by a written declaration of the wife." Cf. POSPISHIL, *The Law on Persons*, p. 40.

¹⁸¹ WOJNAR, "The Code of Oriental Law *de Ritibus Orientalibus* and *de Personis*", p. 238. POSPISHIL, *The Law on Persons*, p. 41.

¹⁸² Canon 13, § 2: "This declaration shall be recorded without delay in the baptismal register, and shall be brought by the pastor of the new rite to the knowledge of the pastor of the parish where the baptism of the person who changed rite was to be recorded according to canon law, in order that the change of rite might be mentioned in the baptismal register, and in the case of a further transfer of rite, also the pastor of the rite which was held in the meantime shall be informed." Cf. POSPISHIL, *The Law on Persons*, p. 40.

church where the applicant (and children if any) had been baptized so that an annotation may be made in the baptismal register there. The transfer of rite involving one received into full communion must be noted in the register of the parish where he was received into the Church.

E. ROLE OF THE VARIOUS VATICAN CONGREGATIONS

1. Historical Background of the Congregation for the Eastern Churches¹⁸³

Prescinding from the complex historical evolution of the Roman Curia as a whole, we note that the Congregation for the Eastern Churches, which forms part of the curia, enjoys a colorful and unique development.¹⁸⁴ Its remote beginnings and predecessor can be found with the establishment of the Congregation for the Propagation of the Faith by Pope Gregory XV (22 June 1622) through the constitution *Inscrutabili divinae providentiae*.¹⁸⁵ This organ was to have exclusive

¹⁸³ For further details see V. PERI, *Orientalis varietas: Roma e le Chiese d'oriente – Storia e diritto canonico*, Roma, Pontificio Istituto Orientale, Kanonika 4, 1994, p. 500. For the competence of the Congregation for the Eastern Churches see M. VATTAPPALAM, *The Competence of the Congregation for the Eastern Churches with Particular Reference to the Patriarchal Churches*, Rome, Pontificium Institutum Orientale, 1999, p. 95.

¹⁸⁴ B. OJETTI, art. "Roman Congregations", in *The Catholic Encyclopedia*, 1913, vol. 13, pp. 136-147. A. PETRANI, "De Sacra Congregatione pro Ecclesia Orientalia eiusque Facultatibus", in *Apollinaris*, 10 (1937), pp. 28-46; D. STAFFA, "De Sacrae Congregationis pro Ecclesia Orientalia Competentia", in *Apollinaris*, 11 (1938), pp. 358-376; M.W. DZIOB, *The Sacred Congregation for the Oriental Church*, Washington, Catholic University of America, 1945, pp. 3-46. Canon Law Studies no. 214; see also P. GUILDAY, "The Sacred Congregation de Propaganda Fide (1622-1922)", in *The Catholic Historical Review*, 6 (1920-1921), pp. 478-494.

¹⁸⁵ *Codicis iuris canonici fontes*, cura Emm. Petri Cardinali GASPARRI editi vols. 1-6, cura et studio Emm. Iustiniani Cardinali SERÉDI editi vols. 7-9, Romae, Typis polyglottis Vaticanis, 1923-1939, vol. 1, no. 200, pp. 381-383; *Bullarium Pontificium Sacrae Congregationis de Propaganda Fide*, vols. 5, (2 appendices and analytic index), Romae, Typis Collegii Urbani, 1841-1859, vol. 1, pp. 26-30; STAFFA, "De Sacrae Congregationis pro Ecclesia Orientalia

competence in all affairs which concerned mission lands, superceding the competence of the other Congregations;¹⁸⁶ *graviora causa* (more serious matters) were to be referred to the Pope himself. Initially, the new Congregation busied itself less with the missions to the pagans than with those to the schismatics of the Oriental rites and with the challenge of the Protestant districts where the care of souls met with grave obstacles.

Pope Urban VIII (1623-1644) succeeded Gregory XV (1621-1623), and during his pontificate there was significant documentation relating to problems involving Orientals handled by *Propaganda*, as the Congregation came to be called.¹⁸⁷ Within this Congregation, Urban VIII set up two commissions to administer Oriental affairs: one treated questions of the Oriental rites; the other, charged with editing the liturgical books of the Greek rite, was expanded by Clement XI (1700-1721) in 1719 to the Congregation for Editing the Books of the Oriental Church.¹⁸⁸

Competentia", p. 360: DZIOB, *The Sacred Congregation for the Oriental Church*, pp. 3-23; see DUSKIE, *The Canonical Status of the Orientals in the United States*, p. 29.

A transition to more permanent, organized Congregations assigned to definite matters takes place in the early sixteenth century. Pope Sixtus V instituted fifteen permanent congregations by his constitution *Immensa aeterni* of 22 January 1587. For whatever reason, the Oriental Churches were not included among them, and special commissions continued to handle issues involving Orientals.

¹⁸⁶ About its competency, see DZIOB, *The Sacred Congregation for the Oriental Church*, pp. 30-45.

¹⁸⁷ *Fonti*, no. 40, p. 45, and no. 42, pp. 48-49. See also GUILDAY, "The Sacred Congregation de Propaganda Fide (1622-1922)", pp. 478-494.

¹⁸⁸ For more comprehensive review of this interesting project, see C. KOROLEVSKY, "Liturgical Publications of the Congregation for the Eastern Church", in *Eastern Church Quarterly*, 6 (1945-46), pp. 87-96 and 7 (1947-48), pp. 388-399. The separate congregation for editing the books was later abolished by Pope Pius IX in the constitution *Romani Pontifices* of 6 January 1862 and reintegrated into the Propaganda as a department. See STAFFA, "De Sacrae congregationis pro Ecclesia orientalia competentia", p. 362; PETRANI, "De Sacra congregatione pro Ecclesia orientalia eiusque facultatibus", p. 30.

Pope Pius IX (1846-1878), more than two centuries later, however, divided Propaganda into two sections, one pertaining to the Latin Church and the other to the Oriental by means of the constitution *Romani Pontifices* (6 January 1862).¹⁸⁹ This constitution set up as a distinct section of the Congregation of the Propagation for the Faith, the *Sacra Congregatio de Propaganda Fide pro negotiis ritus orientalis*, which was to deal exclusively with matters pertaining to the Oriental rites. The so-called mixed business matters (*negotia mixta*), which either by reason of object or persons involved, concerned both the Oriental and the Latin Churches, likewise were allocated to the jurisdiction of the *Congregation de Propaganda Fide pro negotiis ritus orientalis* with the limitation that the *graviora* cases had to be referred to the Pope.¹⁹⁰ These vast powers were continued even after the reform of the Roman Curia under Pope Pius X (1903-1914) by the constitution *Sapienti consilio* (29 June 1908),¹⁹¹ but in 1917 the Oriental Congregation was separated from Propaganda and given complete autonomy for Oriental affairs.¹⁹² Pope Benedict XV (1914-1922) established this distinct congregation for Oriental affairs through his *motu proprio Dei providentis* (1 May

¹⁸⁹ PIUS IX, Constitution *Romani Pontifices*, 6 January 1862, in *Pii IX Pontificis Maximi Acta*, Roma, part I, vol. 3, p. 402; see also DZIOB, *The Sacred Congregation for the Oriental Church*, p. 53; STAFFA, "De Sacrae congregationis pro Ecclesia orientalia competentia", p. 361.

¹⁹⁰ Cf. *ibid.*, p. 405; see DZIOB, *The Sacred Congregation for the Oriental Church*, pp. 53-55. See also R.H. SONG, *The Sacred Congregation for the Propagation of the Faith*, Canon Law Studies, no. 420, Washington, D.C., The Catholic University of America, 1961, pp. 106-107.

The purpose of the new congregation was to protect the rites and discipline proper to Orientals. Rite here in the canonical sense has a wider comprehension than the liturgical sense.

¹⁹¹ *Acta Sanctae Sedis, Romae, ex typographia polyglotta S. C. de Propaganda Fide*, 1872-1908, vol. 41 (1908), pp. 425-440.

¹⁹² R. HOFFMAN, art. "Congregation for the Propagation of the Faith", in *New Catholic Encyclopedia*, vol. 11, 1967, pp. 840-844. See also DZIOB, *The Sacred Congregation for the Oriental Church*, p. 84; AAS, 9 (1917), p. 530.

1917), effective 1 December of the same year.¹⁹³ This action by Benedict XV effectively dispelled suspicions on the part of some who were displeased with the arrangement whereby the Congregation for the Affairs of the Oriental Rite remained annexed to the Congregation for the Propagation of the Faith as a kind of subordinate.¹⁹⁴

In his motu proprio *Sancta Dei ecclesia*¹⁹⁵ of 25 March 1938, Pius XI completely suppressed the competence of the Congregation for the Propagation of the Faith in all territories where Orientals form the great majority of the Christian population.¹⁹⁶

The Congregation for the Eastern Church was not immune from the curial reform under the pontificate of Pope Paul VI (1963-1978). The deepening of understanding of the ecclesial character of the Eastern Churches at Vatican II led to a change in the reference of the Congregation to "for the Eastern Churches," each of these Churches now being recognized as equal in its individual ecclesial character of autonomous or *sui iuris* to the numerically mighty Latin Church. The apostolic constitution *Regimini Ecclesiae universae*¹⁹⁷ (15 August 1967), changed

¹⁹³ *AAS*, 9 (1917), pp. 529-531; see also STAFFA, "De Sacrae congregationis pro Ecclesia orientalia competentia", p. 362; *Fonti*, no. 161, p. 189; SONG, *The Sacred Congregation for the Propagation of the Faith*, p. 108.

¹⁹⁴ *AAS*, p. 530.

¹⁹⁵ *Ibid.*, 30 (1938), pp. 157-159.

¹⁹⁶ Staffa ("De Sacrae congregationis pro Ecclesia orientalia competentia", pp. 364-365, footnotes 13 and 14) remarked that not all the regions of the Christian Orient in which the greater number were Catholics of the Oriental Rite or dissidents thereof were assigned to the full and exclusive jurisdiction of the Sacred Congregation for the Oriental Church by the motu proprio *Sancta Dei Ecclesia*; he mentioned the territory of Romania as not having been so assigned. In the Concordat between the Holy See and Romania it is stated that in regard to the Latin Rite the archdiocese of Bucharest with its four suffragan sees passed from the jurisdiction of the Congregation for the Propagation of the Faith to that of all the other Congregations for the Latin Church. Cf. *AAS*, 31(1938), pp. 366-369.

¹⁹⁷ *AAS*, 59 (1967), pp. 885-928.

the name of the dicastery to the *Sacred Congregation for the Eastern Churches* in order to express the plurality of Churches in Eastern Catholicism. With the reform of *Pastor bonus*¹⁹⁸ (28 June 1988), the name of the dicastery was abbreviated to *Congregation for the Eastern Churches*.¹⁹⁹

2. Documentation Involving Transfer of Rites

Having reviewed some historical and canonical highlights regarding the Congregation for the Eastern Churches, we now present a selected chronological documentary list relevant to transfers of rite authorized by this Congregation or its predecessors.

Pope Urban VIII (7 February 1624) decreed that Ruthenian unitates, for any reason, even the most urgent, could not transfer to the Latin rite without the special delegation of the Apostolic See, under pain of nullity of such action even if the mutual consent of the authorities of both rites is exchanged.²⁰⁰

The discipline of faculties enunciated by Pope Benedict XIV and the ensuing common law were reinforced by decrees of Propaganda Fide, 8 March 1757 and 12 March 1759:

Let all know that the faculty of changing rite is withdrawn... Henceforth, let no one without consulting the Apostolic See presume any longer to transfer from the Latin to the Oriental or from the Oriental to the Latin rite.²⁰¹

¹⁹⁸ According to the latest reform of the Roman Curia, the name is *Congregatio pro Ecclesiis Orientalibus*. (JOHN PAUL II, apostolic constitution, *Pastor bonus*, 28 June 1988, in *AAS*, 80 [1988], pp. 841-912.)

¹⁹⁹ For further details see F. McMANUS, "The Code of Canons of the Eastern Catholic Churches", in *The Jurist*, 53 (1993), pp. 39-40.

²⁰⁰ *Fonti*, no. 584, p. 771.

²⁰¹ *Collectanea*, vol. 1, no. 403, p. 257; and *ibid.*, no. 414, pp. 264-265.

The decree, *Schismatici orientales* (20 November 1838), contained norms for transfer of rite within the oriental rites, exclusive of the Latin rite, as follows:

(i) Schismatics and heretics who return to the fold of the Catholic Church must be allowed to embrace that oriental rite which better pleases them, excluding the Latin rite.²⁰²

(ii) Transfer of rites was forbidden without the consent of the Apostolic See between a rite which used leavened bread and one which used unleavened bread. Where there was no disparity in the material used for the Eucharist, it was sufficient that a transfer take place with only the consent of the two bishops, *a quo* and *ad quem*.²⁰³

On 11 December 1838, it was decreed that papal legates could not permit a transfer to another rite unless they had been granted that specific faculty. Such a faculty was usually not granted until 1928 in virtue of *Nemini licere*.²⁰⁴

On 7 April 1859 it was stated that apostates, i.e., those who at that time by their own action fell into heresy or schism, did not enjoy the privilege of selecting a different rite if they returned to the Catholic Church.²⁰⁵

On 25 July 1887, among responses to questions involving the 1757 decrees which elaborated on the discipline promulgated by Benedict XIV, Propaganda decided that the choice of a wife to follow the rite of her husband was equivalent

²⁰² *Fonti*, no. 669, p. 881; see also MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?," p. 178; RIZZI, "Transitus ritus", p. 541, and p. 543.

²⁰³ *Fonti*, no. 581, p. 767. The consent of both bishops did not grant the transfer, but it was the condition for the transfer; the transfer took place *a iure*. This manner of disposition prevailed even after promulgation of the Latin Code. There were others who thought it still prevailed even after *Cleri sanctitati*. Cf. *Collectanea*, vol. 1, no. 878, p. 500; RIZZI, "Transitus ritus", pp. 544-555.

²⁰⁴ RIZZI, "Transitus ritus", p. 545.

²⁰⁵ *Ibid.*, p. 544; Cf. MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?," p. 178.

to a true transfer of rite so that she was bound by all the obligations of her husband's rite, even after his death.²⁰⁶

A decree of the Propaganda (4 February 1895) reiterated, in its interpretation of *Orientalium dignitas*, that the freedom accorded to new converts in the choice of the oriental rite which they preferred, was retained.²⁰⁷

The decree *Cum data fuerit* (1 March 1929), appearing shortly after *Nemini licere*, by Pius XI (6 December 1928) gave explicit instructions governing transfer of rite, but contained essentially the same provisions as *Cum episcopo* promulgated fifteen years previously,²⁰⁸ with these differences: (i) the penalties of *Cum episcopo* were not mentioned; (ii) the consent of the Ordinary was no longer required in situations involving grave inconvenience; (iii) a woman who chooses to follow the rite of her husband at the time of marriage or during its continuance transfers to his rite. after the marriage has been dissolved is free to return to her own original rite.

The Oriental Congregation, in two decrees dated 23 November 1940²⁰⁹ (i) reserved to itself the faculty of granting to clerics and to the faithful, Latins not excluded, a transfer of rite, and (ii) renewed *Cum data fuerit* for another ten years.

A private reply of the Oriental Congregation (11 July 1952) affirmed that children born of a dissident Oriental father and a Latin Catholic mother and wrongfully baptized in the dissident Oriental Church belong to the Latin rite.²¹⁰

²⁰⁶ *Collectanea*, vol. 2, no. 1678, § 2, pp. 96-96; *Fonti*, no. 587, pp. 775-776; RIZZI, "Transitus ritus", p. 541.

²⁰⁷ Cf. MAHFOUD, "Quel rite doit adopter le fidèle oriental acatholique qui rejoint l'Église catholique?", p. 180.

²⁰⁸ *AAS*, 21 (1929), pp. 152-159.

²⁰⁹ *Ibid.*, 33 (1941), p. 28.

²¹⁰ *CLD*, vol. 3, p. 302.

CONCLUSION

Christianity first made its appearances in the Roman Empire which, by the fourth century, had become divided into East and West. These two parts differed vastly not only in language but also in spirit, tradition and culture. In the West, Roman influences held sway, while in the East, Greek culture prevailed. Christianity was not immune to developments in these cultures. The freedom afforded the Church after Constantine encouraged a unique period of great expansion. Although the Christian faith was one in principle and belief, its expression took on the external national and philosophical influences of its great centers. The dualism of East and West became a political, social and theological rivalry.

The purpose of this chapter has been to provide the basis for a better understanding and appreciation of the concept of rite. The intent was to see briefly, but precisely, the development of the concept of *rite*. The term had significance not only in the Church but also in the secular field, especially in Roman culture. Therefore, the word *rite* has different meanings and nuances, such as liturgy, customs, ceremonies, ways of living, liturgical rules, attributed to particular people and communities, nations, and traditions. One issue that awaits a more detailed definition is that of rite for neither the Oriental Code (legislation) nor any commentator has given an undisputable or final summation of rites and their extension. The Code affirms that in addition to the Alexandrine, Antiochian, Constantinopolitan, Chaldean and Armenian rites, other Eastern rites exist which are recognized, expressly or tacitly, in law.²¹¹ It would appear that this reference in canon 303, § 1 of *Postquam apostolicis litteris* is a historical reminiscence,

²¹¹ This broad basis for an understanding of rites is given in c. 303, § 1 of the motu proprio *Postquam apostolicis litteris*.

without determining value.²¹² Nevertheless, the term rite is used in the Oriental Code not merely in a liturgical sense, but rather in a canonical sense. Probably no taxative enumeration of rites was given because the number can vary.²¹³

The evolution of the term continued until the encyclical letter *Orientalium dignitas* of Pope Leo XIII, in which he recognized the *sui iuris* character of different ecclesiastical communities. From that time onwards, there was a continuous attempt in the Church to give a precise meaning to the concept of *rite*. The *Code of Canon Law* of 1917 and, later the motu proprio *Postquam apostolicis litteris*, were the first stages in this process.

²¹² POSPISHIL, *The Law on Persons*, p. 10.

²¹³ BASSETT, *The Determination of Rite*, p. 90.

CHAPTER II

VATICAN II AND SUBSEQUENT LEGISLATION RELATED TO TRANSFER OF MEMBERSHIP IN A CHURCH *SUI IURIS*

INTRODUCTION

As we have seen in the previous chapter, several popes before Vatican II, most prominently among them Leo XIII, issued solemn statements about the Eastern Churches.¹ They all reaffirmed Rome's respect for the latter. Unfortunately, however, these Churches were seen more as *rites* than as complete Churches on their own. The pertinent documents of Vatican II are of a totally different inspiration: they treat Eastern Catholics as full-fledged Churches, on a par with the Roman Church, equally of apostolic origin, equally faithful to the same apostolic heritage, endowed with the same apostolic institutions, so that all these Churches together constitute the one, true, complete and universal Church; one in its lawful diversity – lawful because it derives from their apostolic origin.² The term *rite* is still used, but henceforth it means more than just liturgical customs.³

¹ For a list of these statements see W. ABBOTT and J. GALLAGHER, eds., *The Documents of Vatican II*, New York, NY, America Press, 1966, p. 374, footnote 5.

² See *OE*, no. 2 and especially no. 3; see also ABBOTT and GALLAGHER, *The Documents of Vatican II*, p. 374, footnote 7: "By stressing the equal dignity of the different Catholic rites, the Council condemns clearly the theory of those who, mostly in the 18th century, taught that the Roman rite enjoyed some kind of preference over the others."

³ The ABBOTT and GALLAGHER, edition of the conciliar decrees, p. 374, footnote 6, makes, very pertinently, the following observation: "The word *rite* means more than liturgical

Since the Council, the expression *Ecclesia sui iuris* now replaces *Ecclesia particularis* mentioned in *OE*, as well the term “Oriental Catholic Church” as in the title of the decree *OE*. It also takes the place of what used to be called a “rite” in previous legislation. In this chapter, we intend to analyze the concept of a *rite* in Catholic ecclesiology and in canon law. The term preceded the present expression *Ecclesia sui iuris*. The notion of rite in canon 28 of the Eastern Code, although emptied of its ecclesial content, is relevant ecclesiologically and juridically, since it is the means whereby a Church *sui iuris* expresses its own manner of living the faith. Hence, as a precedent term to denote a Church *sui iuris* and as a means of the expression of the faith of a Church *sui iuris* at present, understanding it both in its juridical and ecclesiological content is essential to a total understanding of the notion of a Church *sui iuris*.

Having set this base, a comparative and exegetical study of the Latin and Eastern Codes regarding the transfer of membership is then carried out in this chapter. In the Latin Code (*CIC/1983*) and in the Oriental Code (*CCEO/1990*) we can see many notable changes in respect to the previous legislation of the Church. The changes introduced in these Codes are based on the ecclesiological principles introduced by the Second Vatican Council. Especially for the East, the Code was based not only on Second Vatican Council, but also upon the canonical patrimony, that is, the Sacred canons, of the East.

This chapter presents the relevant law and official interpretations regarding transfer of membership and related matters in both the Latin and Eastern Codes. Included also is a presentation of the current Vatican guidelines for transfer of

customs. It could be called the style of Christian life of a community which, according to the Decree on Ecumenism (nos. 15, 16, 17) is to be found in the particularities of worship, of canon law, of asceticism and monasticism and also in the peculiar theological system. The consideration of the Church for the Eastern rites is emphasized in the Decree on Ecumenism.”

membership cases and the post-conciliar teachings on the transfer of membership. This chapter remains on the level of principle and gives a general summary of current law, surveying certain problems of interpretation. It will also investigate the common and different approaches by the two Codes in referring to transfers.

A. VATICAN COUNCIL II⁴ AND THE CONCEPT OF RITE

The Second Vatican Council tells us that the universal Church is a *corpus Ecclesiarum*⁵ which, though diversified, are in *ecclesiastica communione*.⁶ The diversity can also include ritual variety,⁷ giving rise therefore to ecclesiastical communion at two different levels: first within *particular Churches*, and then in embracing the vaster communion at the level of the entire Church.⁸ This has been made explicit in article 2 of *Orientalium ecclesiarum*.

⁴ For some pertinent reflection on Second Vatican Council, see M. BROGI, "Codificazione del diritto comune delle Chiese orientali cattoliche", in *Revista española de derecho canónico*, 45 (1988), pp. 15-16; O. BUCCI, "Il Codice di diritto canonico orientale nella storia della Chiesa", in *Apollinaris*, 55 (1982), pp. 405-410; and J.M. HOECK, "Decree on Eastern Catholic Churches", in *Commentary on the Documents of Vatican II*, ed., H. Vorgrimler, vol. 1, New York, Herder and Herder, 1967, pp. 307-331.

⁵ LG, no. 23. See M. BROGI, "Strutture delle Chiese Orientali sui iuris secondo il CCEO", in *Apollinaris*, 65 (1992), pp. 301-302.

⁶ LG, no. 13.

⁷ "Each Church has the right to keep up her unique traditions and discipline. CCEO has imbibed these ecclesiological principles and it has translated them into canonical terms. In the light of these principles CCEO presents the universal Church as a communion of Churches *sui iuris*." See K. BHARANIKULANGARA, "An Introduction to the Ecclesiology and Contents of the Oriental Code", in J. CHIRAMEL and K. BHARANIKULANGARA, eds., *The Code of Canons of the Eastern Churches. A Study and Interpretation. Essays in Honour of Joseph Cardinal Parecattil*, President, Pontifical Commission for the Revision of Eastern Canon Law, Alwaye, 1992, p. 15.

⁸ G. NEDUNGATT, "Ecclesia Universalis, Particularis, Singularis", in *Nuntia*, 2 (1976), p. 80; C. PUJOL, *The Care and Organization of Particular Churches* (Second Vatican Council, Decree *Orientalium Ecclesiarum*, n. 4), Rome, 1970, pp. 209-224; see also ID., *Decretum Concilii Vaticani II. Orientalium Ecclesiarum. Textus et Commentarium*, Romae, 1970, pp. 1-30.

In the schema *De Ecclesis orientalibus*, which was prepared in 1963, the Eastern Catholic Churches were no longer described by the word *ritus*, as in the 1917 *Code of Canon Law* and in the motu proprio *Cleri sanctitati* of 1957, but by the expression *Ecclesiae particulares*.⁹ Those who expressed the wish to retain the word *ritus* in the sense of *Ecclesia orientalis* received a negative response that emphasized, first of all, “that a clear definition of the term *rite* should be given.”¹⁰ However, the schema itself was not in line with this view.¹¹ Very few voices were in opposition, but in the first vote for articles 2 and 4, the most important of the text, the necessary two-thirds majority was not received,¹² mainly because of the terminological discrepancy between this schema and the drafts of the Dogmatic Constitution *Lumen gentium* and the Decree *Christus Dominus*.¹³ In these two documents, the expression *Ecclesia particularis* simply indicates a diocese,¹⁴

⁹ Cf. I. ŽUŽEK, “The *Ecclesiae sui iuris* in the Revision of Canon Law”, in R. Latourelle, ed., in *Vatican II: Assessment and Perspectives Twenty-Five Years After (1962-1987)*, New York, 1989, vol. 2, p. 288.

¹⁰ “... deberet dari clara definitio termini ritus.” Cf. *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. 3, pars IV, Typis Polyglottis Vaticanis, 1974, p. 498.

¹¹ Ibid., p. 745.

¹² Ibid., vol. 3, pars V, *Congregationes Generales CXII-CXXVII*, Typis Polyglottis Vaticanis, pp. 269 and 279.

¹³ The terminological problem is also linked to the analogous use of *Ecclesia particularis* in the various documents of the Council. It means a diocese in *LG*, nos. 23, 27, 45; *AG*, no. 6; *CD*, nos. 11, 23, 28, etc., while it means an intermediate ecclesial communion in *OE*, nos. 2-4, 16, 17, 19; *LG*, no. 13 and *UR*, no. 14. It is not our aim to enter into a discussion on the terminological usage of *Ecclesia particularis* and *Ritus*. Cf. P. SZABÓ, “Opinioni sulla natura delle Chiese ‘Sui iuris’ nella canonistica odierna”, in *Folia Theologica*, 7 (1996), pp. 235-247.

¹⁴ *LG*, nos. 23, 27, 45; *CD*, no. 11. At the time of the Second Vatican Council, however, Latin canonical terminology had not identified *particular Churches* exclusively with the bishops and their dioceses. For example, canon 329, § 1 of the 1917 Latin Code referred to dioceses as *peculiar Churches* and canon 1495, § 2 of the same Code called dioceses *singular Churches*. For a treatment of the status of this terminological question during the Second Vatican Council and in the

while in *Orientalium ecclesiarum* this term indicates the *coetus Ecclesiarum particularium*, or even *Ecclesiae locales*.¹⁵ In *Ad gentes* (7 December 1965) *particular Church* means all the Churches in a given region or socio-cultural context.¹⁶

Of those who gave a favorable vote,¹⁷ about fifty wanted the word *ritus* to be introduced into the schema as an equivalent of *Ecclesia particularis*, or the use of other terms, such as *coetus Ecclesiarum particularium*. The subcommission examined these proposals and accepted the use of both terms: *De Ecclesiis particularibus seu ritibus*.¹⁸ Finally, the definition was accepted by the entire commission.¹⁹

There is no doubt that the principal reason for the reversal of the previous decision to speak only of *Ecclesiae particulares* was the need for greater consistency with the schemata of *Lumen gentium* and *Christus Dominus*, but in fact the confusion originated partly in the lack of clarity in the conciliar texts themselves. Thus, the inconsistency in the use of the term *rite* continues even in

years immediately following, see J.D. FARIS, *The Communion of Catholic Churches: Terminology and Ecclesiology*, Brooklyn, NY, Saint Maron Publication, 1985, pp. 85-129.

¹⁵ LG, no. 23.

¹⁶ SECOND VATICAN COUNCIL, Decree on the Church's Missionary Activity, *Ad gentes* (=AG), 7 December 1965, nos. 19-20; AAS, 58 (1966), pp. 947-990, here at pp. 969-972; FLANNERY, *Vatican II*, pp. 835-838.

¹⁷ *Acta Synodalia*, vol. 3, pars VIII, *Congregationes Generales CXII-CXXVII*, Typis Polyglottis Vaticanis, pp. 561, 563-565.

¹⁸ Ibid., pp. 563-564.

¹⁹ "Ob difficultates in usu dictionis *Ecclesiae particulares*, opportunum visum fuit dictionem hanc aequiparare aliis, nempe *Ritibus*, quae huiusque in usu est, tum canonico cum quotidiano, tum etiam in ipso schemate, proposito; hoc modo maior claritas obtinetur tum quoad alia schemata, tum quoad usum quotidianum; ubi dictio *ritus* sensu liturgico adhibetur, id clare notatur." Ibid., p. 558.

Orientalium ecclesiarum, so much so that it is necessary to define the precise meaning, article by article, on the basis of the context.²⁰

1. Different Meanings of the Term *Ritus* in the Decree *Orientalium Ecclesiarum*

a) Rite as Particular Church

We do not find the technical designation of rite as a Particular Church until the decree *De Ecclesiis orientalibus catholicis* of Vatican II. The concept of rite in this decree is characterized by three principal attributes: (i) all the rites are equal (we shall see this in the next section) in all aspects in the universal Church; (ii) rites are personal without any definite territorial circumscription; (iii) each rite is autonomous and for that reason they are mutually exclusive.²¹

In the years before the Council there had been increasing dissatisfaction with the conventional use of *rites* as synonymous with *churches*, particularly so because rite has been generally identified with liturgical rite alone and because the distinct and at least relatively autonomous status of the Eastern particular churches was compromised or neglected.

Many times the term *rite* is used in *Orientalium ecclesiarum* in the sense of a particular Eastern Church:²² any of the twenty-one Eastern Churches can be

²⁰ Cf. ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", pp. 289-290.

²¹ For an analysis of the meaning of rite in *OE*, see C. PUJOL, "Conditio fidelis orientalis ritus extra suum territorium", in *Periodica*, 73 (1984), pp. 494-504.

²² The term "Eastern" in the mind of the Decree, does not mean only the opposite of "Western" nor does it refer to ethnic association, but to a Church's apostolic origin in the East and its continuity with this origin. The connotation of Eastern or Western Churches is not a geographical but a theological one. And as stated in *Orientalium ecclesiarum* at the end of

called a rite. In this sense, the Council used both the expression *particular Churches* or *rites*²³ and *individual Churches* or *rites* in the same decree.²⁴ Although the Council accepted the term *particular Churches* or *rites* as the official expression, it also used terms like *Eastern Churches*,²⁵ *Churches of the East*,²⁶ *Eastern Rite*,²⁷ or simply *rite*.²⁸ All these expressions seem to be equivalent. In the revised Latin Code, however, the term *particular Church* is used to designate a diocese or its juridical equivalent.²⁹ In order to avoid confusion, the new Eastern Code does not refer to an Eastern Church (Catholic or Orthodox) as a *particular Church*; rather it is called a *sui iuris* or *ritual Church*.³⁰ Hence, neither *rite* nor *particular Church* will be synonymous with an Eastern Church at least from a juridical point of view. Furthermore, the definition of a Church *sui iuris* will not be applicable to any non-Catholic church or ecclesial communion.³¹

paragraph 3, all these different Churches have the same rights and obligations, even with respect to preaching the Gospel to the whole world (Mk. 16: 15).

²³ *OE*, no. 2.

²⁴ *Ibid.*, no. 10.

²⁵ *Ibid.*, nos. 5, 6, 8, 9, 11, 17, 19, 22, 24, 29, 30.

²⁶ *Ibid.*, nos. 5, 6.

²⁷ *Ibid.*, nos. 6, 14.

²⁸ *Ibid.*, nos. 7, 16, 21.

²⁹ See cc. 368; 431.

³⁰ See cc. 111; 112.

³¹ See NEDUNGATT, "Ecclesia Universalis, Particularis, Singularis", pp. 75-85.

b) Rite as the Patrimony of the Church

According to article 3 of *Orientalium ecclesiarum*, the word *ritus* should be used for the whole *patrimonium liturgicum, disciplinare, spirituale et theologicum*. Within the complex of elements which characterize ecclesial rite as a heritage, or even as a contemporary sign, of a particular church, the forms and elements of liturgical worship (which are themselves conditioned by culture, theology, history, and spirituality) are surely the most evident and significant. A rite is also something more fundamental, rooted in the culture and history of a distinct people. This respects the historical base for the development of the various Churches *sui iuris*, and provides a means to root the continued existence of Churches *sui iuris* in our day. The Code's description of the elements in a *rite* may also open the way to recognizing further rites within the Catholic communion.³² Despite this broader understanding, some have continued to argue that *ritual Churches sui iuris* (as the 1983 Code termed them) were really only a liturgical expression and that *rite* did not include distinct juridical authority.³³ For *Unitatis redintegratio*, it is a heritage handed down by the Apostles.³⁴ Therefore, the Decree emphasizing the importance of the preservation of the patrimony of the Eastern Churches, says:

³² See F. McMANUS, "The Possibility of New Rites in the Church", in *The Jurist*, 50 (1990), pp. 435-458.

³³ See C. PUJOL, "Distinctio inter 'ritum' et 'iurisdictionem'", in *Periodica*, 70 (1981), pp. 193-219. ID., "Conditio fidelis orientalis ritus extra suum territorium", in *Periodica*, 73 (1984), pp. 489-504. ID., "De extensione iurisdictionis Ecclesiarum orientalium", in *Periodica*, 65 (1976), pp. 509-528.

³⁴ SECOND VATICAN COUNCIL II, Decree on Ecumenism, *Unitatis redintegratio* (=UR). November 21, 1964, nos. 14, 15; in *AAS*, 57 (1965), pp. 90-112, here at pp. 101-102; FLANNERY, *Vatican II*, pp. 464-466.

Everyone should realize that it is of supreme importance to understand, venerate, preserve and foster the rich liturgical and spiritual heritage of the Eastern Churches in order faithfully to preserve the fullness of Christian tradition, and to bring about reconciliation between Eastern and Western Christians.³⁵

The conciliar concept of patrimony implies a complex of goods, doctrines, culture, history, discipline, community and traditions, which inseparably exercises an influence on some person or institution. The Church embraces and makes its own the cultural, philosophical, religious, social and legal patrimony of the nation in which it is incarnated, in so far as this agrees with the Christian Faith.

Therefore, the same Council solemnly declared that the Churches of the East, like those of the West, have the right and duty to govern themselves according to their own special disciplines.³⁶ This right to govern themselves is possessed by the Eastern Churches as something inherent in their ecclesial nature, and not by concession from the popes. While this was affirmed by Pope Paul VI in respect to the Eastern non-Catholic Churches, it would seem that it should apply equally to the Eastern Catholic Churches. In the Directory on Ecumenism, *Euntes in mundum*, we read:

The Decree with utmost clarity underlines that the autonomy which the Eastern Churches enjoy in respect to discipline does not flow from some privileges granted by the Roman Church but from the law itself with which these Churches were endowed since apostolic times.³⁷

³⁵ *UR*, no. 15. "Ditissimum Orientalium patrimonium liturgicum et spirituale cognoscere, venerari, conservare et fovere omnes sciant maximi esse momenti ad plenitudinem traditionis christianae fideliter custodiendam et ad reconciliationem orientalium et occidentalium Christianorum perficiendam."

³⁶ *OE*, no. 5.

³⁷ *AAS*, 80 (1988), p. 950; cf. V.J. POSPISHIL, *Eastern Catholic Marriage Law According to the Code of Canons of the Eastern Churches*, Brooklyn, NY, 1993, p. 48.

c) Rite as Liturgy

The focal point of ecclesial life is liturgy. The sacred liturgy is principally the worship of the divine majesty. Reflection on the Church automatically leads to the reflection on the liturgy and vice versa. The two are inseparably linked.³⁸ Before the recent appearance of the expression Church *sui iuris*, it was the common practice to identify a Church by its liturgical rite. Therefore we can understand the identification between the *rites* and *individual Churches*.³⁹ This shows the closeness, many a time an identification, of a particular Church with its liturgy. Bassett writes:

The liturgy is the most apparent element of the rites (Particular Churches), a sign of the diversity of the ancient traditions. In many instances it has given a name to the canonical rites, and in the norms for the conservation of the rites coming from the Apostolic See most often it is the liturgy that is referred to in the first place.⁴⁰

In the first article of *Orientalium ecclesiarum*, *rite* means the complex of liturgical laws, which is specified as *ritus liturgicos*.⁴¹ Therefore, the Council urges all members of the Eastern Churches to preserve their own legitimate

³⁸ P.R. ROCHA, "The Principal Manifestation of the Church (SC 41)", in R. Latourelle, ed., in *Vatican II: Assessment and Perspectives Twenty-Five Years After (1962-1987)*, New York, 1989, vol. 2, p. 4.

³⁹ E. KILMARTIN, *The Particular Liturgy of the Individual Church: The Theological Basis and Practical Consequences*, Bangalore, India, Dharmaram, 1987, pp. 44-45.

⁴⁰ W.W. BASSETT, *The Determination of Rite*, Analecta Gregoriana, vol. 157, Rome, Gregorian University Press, 1967, p. 247.

⁴¹ "Orientalium Ecclesiarum instituta, ritus liturgicos, ... Ecclesia catholica magni facit." Cf. *OE*, no. 1.

liturgical rites and way of life.⁴² The liturgical patrimony includes the sacraments, the sacramentals, the divine office, liturgical year, church architecture and liturgical art, liturgical music, liturgical language, liturgical vestments, etc.

Thus, since the term *rite* is used in various ways in the decree *Orientalium ecclesiarum*, that is, in the sense of church, patrimony and liturgy, it is sometimes very difficult to distinguish the various connotations of the word *rite* in many parts of the decree.

2. Equality of the Churches⁴³

As we have already seen, in the universal Church there are different *Ecclesiae sui iuris*, which are equally entrusted to the pastoral guidance of the Roman Pontiff. As Supreme Pastor of the universal Church, the Roman Pontiff is the defender and guarantor of unity and of the *bonum commune* of the Church, its *summus iudex* and *arbiter*, who intervenes only where necessary and to the extent that the unity and purity of the faith require it.⁴⁴ Here the Bishop of Rome will be the visible center of communion.⁴⁵

In the guiding principles approved by the plenary assembly of the Commission for the Revision of the Eastern Canon Law in 1974 we read:

⁴² *OE*, no. 6.

⁴³ Equality of Churches does not mean a non-recognition of the particular merits of any given Church. For further comment, see G. NEDUNGATT, "Equal Rights of the Churches in the Catholic communion", in *The Jurist*, 49 (1989), pp. 1-21.

⁴⁴ HOECK, "Decree on Eastern Catholic Churches", p. 315.

⁴⁵ J.M. TILLARD, "The Church of God is a Communion: The Ecclesiological Perspective of Vatican II", in *One in Christ*, 17 (1981), pp. 126-127.

As regards the structure of the various Particular Churches, the juridical effects of the principle of the equality of all the Churches of the East and of the West, which was asserted by the Second Vatican Council (*OE*, no. 3), should obtain recognition in the new Code.⁴⁶

The 1983 *Code of Canon Law* has overlooked the conciliar norm referring to the juridical equality of the Churches in the Catholic communion. It might even seem at first glance that the code is too concerned with “only the Latin Church”⁴⁷ to attend to inter-ecclesial relations. Likewise, this fundamental conciliar norm of ecclesial equality (which has the value of a magna charta for the Eastern Catholic Churches), found no place in the *Schema codicis iuris canonici orientalis*.⁴⁸ The conciliar statement of equal dignity and equal rights and obligations of the Churches of the East and of the West points to one area where this principle must be applied in practice, namely evangelization.

These Churches are of equal rank, so that none of them is superior to the others because of its rite. They have the same rights and obligations, even with regard to the preaching of the Gospel in the whole world (cf. Mk 16:15), under the direction of the Roman Pontiff.⁴⁹

⁴⁶ See Nuntia, 3 (1976), p. 22; see also NEDUNGATT, “Equal Rights of the Churches in the Catholic communion”, pp. 1-2.

⁴⁷ Canon 1 of 1983 *CIC*: “... unam Ecclesiam latinam.”

⁴⁸ *Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo, Schema Codicis Iuris Canonici Orientalis*, (=SCICO), in Nuntia, 24-25 (1986), pp. 1-278. English translation: *Code of Eastern Canon Law: 1986 Draft*, Brooklyn, New York, U.S. Eastern Catholic Bishops Consultation, 1987, p. 305.

⁴⁹ *OE*, no. 3.

This conciliar statement clearly emphasizes the fundamental equality of all the *Ecclesiae sui iuris*, both those of the West as well as the East, in dignity, rights and obligations.⁵⁰

In its decree on the Eastern Catholic Churches, the Council described the Church of Christ as a communion of the faithful belonging to various *Churches* distinguished by *rite*. All these ritually distinct Churches, united in the same faith and in the same government under the Roman Pontiff, together constitute the one Catholic Church.⁵¹ This is a communion of Churches, in which no single Church is to be regarded as superior to the others by reason of rite.⁵² The recognition and

⁵⁰ HOECK, "Decree on Eastern Catholic Churches", p. 315. For centuries canonists and theologians held the pre-eminence of the Latin Rite (*praestantia Latini ritus*). This perpetuated unequal conditions for the Oriental Catholics under the Latin hierarchy. There even was the belief in the West that the Latin rite was safer and better for achieving one's salvation. Latins were hardly ever placed under an oriental prelate while Orientals were obliged to accommodate themselves to the Latin rite. In his letter (11 June 1847) to the Archbishop of Palermo, Pope Pius IX strongly upheld the theory of the superiority of the Latin rite over the oriental rites. Pope Leo XII was also an ardent supporter of the theory of "*praestantia Latini ritus*". During the Vatican Council many prelates pointed out the subconscious identification of the Latin rite with the universal Church and the tendency to consider the Oriental rites as appendages. Finally this defect in the decree was corrected and the equality of the rites was unequivocally affirmed. See BASSETT, *The Determination of Rite*, pp. 109-111; R. ERNI, "Das neue kirchliche Gesetzbuch für die katholischen Ostkirchen – Grundsätzliche und konkrete Erwägungen", in *Una Sancta*, 15 (1960), pp. 156-157; A. PETRANI, "An adsit ritus praestantia?", in *Apollinaris*, 6 (1933), pp. 74-82; see also I. ŽUŽEK, "Incidenza del 'Codex Canonum Ecclesiarum Orientalium' nella storia moderna della Chiesa universale", in *Pontificium consilium de legum textibus interpretandis*, (ed.), *Ius in vita et in missione Ecclesiae*, Città del Vaticano, 1994, pp. 694-697.

⁵¹ *OE*, no. 2.

⁵² *Ibid.*, no. 3. With this conciliar teaching is quietly set aside a doctrinal error at first taught against the Greek Church and put into canonical practice since the time of Pope Benedict XIV, namely, that the Latin rite was superior to the Oriental rites. This doctrine was widely held in the West after the Council of Trent. Cf. *Acta et Decreta Sacrorum Conciliorum Recentiorum, Collectio Lacensis*, vol. 2. p. 510: "Ritus enim Latinus propter suam praestantiam, eo quod sit ritus Sanctae Romanae Ecclesiae ... supra Graecum ritum praevalet...." John Paul II has repeatedly stressed that the Church is not only Western but also Eastern. Rites are, then, ecclesial specializations of the People of God. See John Paul II, Apostolic Letter, *Egregiae virtutis*, 31 December 1980, in *AAS*, 73 (1981), pp. 258-262; *ID.*, Apostolic Letter, *Euntes in mundum*, 25 January 1988, in *AAS*, 80 (1988), pp. 935-956.

the acceptance of the equality of the *Ecclesiae sui iuris* by the Council is a clear mandate to provide equal opportunities to all the *Ecclesiae sui iuris* in fulfilling their missionary activities⁵³ and to advance their full flourishing within the universal Church. A rite witnesses to the Gospel not only on behalf of a particular culture or ethnic group, but also on behalf of the whole world.

B. CONCEPT OF *RITE* IN THE NEW LATIN AND ORIENTAL CODES

The concepts of *ritus* and *Ecclesia particularis* as used in the Conciliar Decree *Orientalium ecclesiarum* received great attention from both the Pontifical Commission for the Revision of the Code of Eastern Canon Law and the Commission for the Revision of the Code of Canon Law of the Latin Church. A first proposal regarding the word *ritus* was put forward by the Faculty of Canon Law of the Pontifical Oriental Institute at the beginning of 1973, proposing that the concept of rite should be re-examined and reserved solely to rites in the liturgical sense, as this is more natural and more commonly used,⁵⁴ and to view it separately from the *particular Church* in order to avoid this terminological confusion.⁵⁵ After proper examination and study by the Commission for the Revision of the Code of Oriental Canon Law, this proposal was formally submitted for the approval of the members who met in March 1974 to draw up guidelines for the revision of the Oriental Code. The Commission decided that

⁵³ Cf. M. McGUILL, *Family Law and the Preservation of Rite*, Romae, Pontificia Studiorum Universitas a S. Thomas Aq. in Urbe, 1984, p. 5.

⁵⁴ ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", p. 290. See also *Nuntia* 3 (1976), p. 22.

⁵⁵ See *Nuntia*, 26 (1986), p. 110; see also *ibid.*, 30 (1990), pp. 55-63; *Communicationes*, 8 (1976), pp. 81-84.

"the concept of *rite* should be re-examined and a new term agreed upon to designate the various particular Churches of East and West."⁵⁶

1. *Ritus and Ecclesia Particularis*

The Commission for the Revision of the Code of Oriental Canon Law entrusted the canons *De ritibus* to the study group *De normis generalibus*. At its third session in January 1976, after lengthy study and discussion, the Commission decided to separate the concept *Ritus* from that of *Ecclesia particularis*, in the sense used in *Orientalium ecclesiarum*,⁵⁷ and determined that the terms should no longer be used as synonyms, *Ecclesiae particulares seu ritus*.⁵⁸ The word *ritus* was reserved for the whole *patrimonium liturgicum, disciplinare, spirituale et theologicum*⁵⁹ of an *Ecclesia particularis*, whereas the latter expression would mean a community of the faithful organized hierarchically according to the norms of the Law which is recognized as *sui iuris* by the Roman Pontiff or an Ecumenical Council.⁶⁰ As a result, these two concepts were defined in canon 1 of the Oriental Schema as follows:

⁵⁶ Pontifical Commission for the Revision of the Oriental Code, Guidelines for the Revision of the Code of Oriental Canon Law, in *Nuntia*, 3 (1976), p. 22. For revision, see *ibid.*, pp. 44-47; *ibid.*, 22 (1986), pp. 22-24. See also ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", p. 291; A. VALIYAVILAYIL, "The Notion of *Sui Iuris* Church", in J. CHIRAMEL and K. BHARANIKULANGARA, eds., *The Code of Canons of the Eastern Churches*, pp. 57-60.

⁵⁷ *OE*, no. 2.

⁵⁸ For a very detailed commentary, see N. EDELBY and I. DICK, *Les Églises orientales catholiques: décret Orientalium Ecclesiarum, Unam Sanctam*, 76, Paris, Éd. du Cerf, 1970, 507 p

⁵⁹ *OE*, no. 3.

⁶⁰ "...coetus fidelium hierarchica ad normam iuris iunctus, quem uti sui iuris expresse vel tacite agnoscit Romanus Pontifex vel Oecumenica Synodus." Cf. J. JARAWAN, "Les canons *rites orientaux*", in *Nuntia*, 3 (1976), p. 45; ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", p. 292.

Canon. 1, § 1. By the term rite in this Code, unless otherwise stated, is understood the liturgical, disciplinary, spiritual and theological patrimony, founded in the Alexandrian, Antiochene, Constantinopolitan, Chaldean, and Armenian traditions, and legitimately evolved in the conditions of people and by which each particular Church expresses its proper mode of living the faith.

§ 2. By the term particular church is understood in this Code the group of faithful, bound together by a hierarchy according to the norm of Law, and which is acknowledged by the Roman Pontiff or Ecumenical Synod as autonomous.⁶¹

2. *Ecclesiae Rituales Sui Iuris*⁶²

A special difficulty which always faced the *Coetus mixtus de lege Ecclesiae fundamentalis* was the meaning of the expression *Ecclesia*

⁶¹ JARAWAN, "Les canons rites orientaux", p. 45. Can. 1, § 1. "Nomine ritus, hoc in Codice, nisi aliud constet, intelligitur patrimonium liturgicum, disciplinare, spirituale et theologicum, fundatum in traditionibus Alexandrina, Antiochena, Constantinopolitana, Chaldaea et Armena. et legitime evolutum conditionibus populorum, quo modo fidei vivendae uniuscuiusque Ecclesiae particularis proprio exprimitur.

§ 2. Nomine Ecclesiae particularis, hoc in Codice, intelligitur coetus fidelium hierarchiae ad normam iuris iunctus, quem uti sui iuris expresse vel tacite agnoscit Romanus Pontifex vel Oecumenica Synodus." Cf. ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", p. 293.

⁶² On Church *sui iuris*, see ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", pp. 288-304. We intend to retain the Latin term *sui iuris*, which is difficult to translate. Likewise, the translation of "*Ecclesia sui iuris*" is problematic. "Autonomous" is one meaning of *sui iuris*, although when the term is used within an ecclesial context it must also take into consideration the communion nature of the Church. Another meaning of *sui iuris* is "self-governing," having the full exercise of one's rights. The English word "autonomy" is derived from the Greek composite word *autonomous* qualifying states; it meant "independent, living under own laws" (*autos + nomos*), is adapted in the latin as *autonomia* and is the exact rendering of the latin phrase *sui iuris*; it means to have one's own law or to govern with proper law.

The Preparatory Commission for the Vatican II *Decree on the Eastern Catholic Churches* rejected the use of the term "canonical autonomy" because it felt that the term could easily give rise to misinterpretation. See I. ŽUŽEK, "Animadversiones Quaedam in Decretum de Ecclesiis Orientalibus Concilii Vaticani II", in *Periodica*, 65 (1966), p. 278.

The term "autonomous church" was specifically avoided by the *PCCICOR*. "En effet, le mot *autonome* est difficile à comprendre, et prête à confusion, ce même mot étant employé seulement en sens analogique par les Orthodoxes." Cf. *Nuntia*, 3 (1976), p. 46.

particularis.⁶³ In *Lumen gentium* and *Christus Dominus*, *Ecclesia particularis* is used mainly to refer to dioceses.⁶⁴ Being faithful to these documents, the drafts of the *Lex Ecclesiae fundamentalis*⁶⁵ and the Latin Code also use *Ecclesia*

⁶³ For a detailed study of the terminological question, cf. FARIS, *The Communion of Catholic Churches*, pp. 85-160. See also G. ROUTHIER, "'Église locale' ou 'église particulière' querelle sémantique ou option théologique?", in *Studia canonica*, 25 (1991), pp. 277-334; P. CHOUINARD, "Les expressions 'Église locale' et 'Église particulière' dans Vatican II", in *Studia canonica*, 6 (1972), pp. 115-161; W. AYMANS, "Die communio Ecclesiarum als Gestaltgesetz der Kirche", in *Archiv für katholisches Kirchenrecht*, 139 (1970), pp. 69-90; J.H. ERICKSON, "The Code of Canons of the Eastern Churches: a Development Favoring Relations Between the Churches?", in *The Jurist*, 57 (1997), pp. 288-303; G. NEDUNGATT, "Autonomy, Autocephaly, and the Problem of Jurisdiction Today", in *Kanon*, 5 (1991), pp. 20-23. For a discussion of the usage "particular church" to identify the local Christian community see C.G. FÜRST, "Ostkirche(n) – Ritus (Riten) – Ostkirchenrecht", in *Folia Theologica*, 6 (1995), pp. 47-51; P. GRANFIELD, "The Church Local and Universal: Realization of Communion", in *The Jurist*, 49 (1989), pp. 452-457; G. GHIRLANDA, "Universal Church, Particular Church, and Local Church at the Second Vatican Council and in the New Code of Canon Law", in *Vatican II Assessment and Perspectives*, pp. 233-271. See also M. WOJNAR, "Inter-ritual Law in the Revised Code of Canon Law", in *The Jurist*, 43 (1983), pp. 191-192.

⁶⁴ LG. nos. 23, 27, 45; CD. no. 11. The use of the expression *particular church* is also quite common throughout *Pastor bonus* (AAS, 80 [1988], pp. 841-930). Though *Pastor bonus* does not define *particular Churches*, a definition can be found in the Latin Code of Canon Law. In canon 368 *particular church* refers to a diocese: "Particular churches in which and from which exists the one and unique Catholic Church are first of all dioceses; to which unless otherwise evident are likened a territorial prelature, a territorial abbacy, an apostolic vicariate, an apostolic prefecture, and an apostolic administration which has been erected on a stable basis."

⁶⁵ *Lex Ecclesiae Fundamentalis* (=LEF), c. 2, § 1: "Ecclesia Christi universa in *particularibus Ecclesiis* et ex iisdem existit, ita ut sit etiam Corpus Ecclesiarum, quae singulae sunt portio populi Dei, sub Episcopo proprio una cum presbyterio per Evangelium et Eucharistiam in Spiritu Sancto congregata, in qua vere inest, operatur et crescit una sancta, Catholica et apostolica Ecclesia."

In order to indicate an autonomous Oriental Church, LEF used the term *Ecclesia sui iuris*. LEF, c. 40, § 1: "In *Ecclesiis Orientalibus sui iuris* Patriarcha in omnes Episcopos, haud exceptis Metropolitibus, clerum et populum potestate gaudet iuxta normas in Codice Iuris Canonici Orientalis definitas, secundum antiquas traditionem et Synodorum Oecumenicorum decreta, probante suprema Ecclesiae auctoritate."

The schema was presented to the 1971 Roman Synod of Bishops. See *Communicationes*, 3 (1971), pp. 179-180. For a detailed analysis of the different schemas of the LEF, see FARIS, *The Communion of Catholic Churches*, pp. 100-105.

particularis to refer to a diocese and similar structure.⁶⁶ Yet, as we have seen, in the schema *De ritibus* of the Oriental Code, *Ecclesia particularis* is used for a Church governed by *Orientalium ecclesiarum*,⁶⁷ and *Ecclesia singularis* is used for diocese.⁶⁸ Many consultors had a great desire to eliminate this difficulty and to

⁶⁶ *CIC*, cc. 368; 372; 272; 274. In the Oriental Code *Ecclesia particularis* is used only once in the sense of *OE*, nos. 2, 3, 4. Cf. *Nuntia*, 23 (1986), pp. 4-5.

⁶⁷ *OE*, no. 2.

⁶⁸ *Nuntia*, 9 (1979), p. 5, c. 1; *ibid.*, 19 (1984), p. 52, c. 145. In both of these *Nuntia* references, the canon has the same wording as follows: "Eparchia est populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda conceditur, ita ut, pastori suo adhaerens ab eoque per Evangelium in Spiritu Sancto congregata, Ecclesiam singularem constituat, in qua vere inest et operatur Una Sancta Catholica et Apostolica Ecclesia."

In the canonical legislation of the Eastern Catholic Churches, there is no equivalent canon that defines *particular Churches*. In fact, the expression *particular Church* appears only once in the Eastern Code. *CCEO* c. 177, § 1 states: "An eparchy is a portion of the people of God which is entrusted for pastoral care to a bishop with the cooperation of the presbyterate so that, adhering to its pastor and gathered by him in the Holy Spirit through the Gospel and the Eucharist, it constitutes a particular Church in which the one, holy, catholic and apostolic Church of Christ is truly present and operative."

Like its comparable c. 369/*CIC*, c. 177, § 1/*CCEO* does state that an eparchy constitutes a *particular Church*. Some of the other *particular Churches* defined by *CIC* c. 368 would be called exarchies according to *CCEO* c. 311. See J.A. RENKEN, "Particular Churches and their Groupings", in J.P. BEAL, - J.A. CORIDEN and T.J. GREEN, *New Commentary on the Code of Canon Law*, pp. 501-511.

In fact, when compared with other Latin canons that employ the expression *particular Church*, similar *CCEO* canons, if found, will almost always use the term *eparchy*.

There are no equivalent *CCEO* canons to the following *CIC* canons which use the expression *particular Churches*: cc. 157; 362; 363, § 1; 364; 368; 372; 374, § 1; 431, §§ 1&2; 433, § 1; 439; 440, § 1; 443, § 3, 1°; 443, § 5; 448; 516, § 1; 782, § 2.

This follows a decision made by the *Coetus de coordinatione* in the formulation of *CCEO*. See *Nuntia*, 23 (1986), p. 5. Each *CIC* canon (*particular Church*) is followed by its comparable *CCEO* canon (*eparchy*) in parentheses: 265 (357, § 1); 266, § 1 (358); 267, § 1 (361); 267, § 2 (364); 268, § 1 (360, § 2); 269, 1° & 3° (366, § 1, 1° & 4°); 271, § 2 (362, § 2); 271, § 3 (362); 272 (363); 333, § 1 (45, § 1); 373 (177, § 2); 391, § 1 (191, § 1); 515, § 1 (279).

In other cases, the wording of the *CCEO* canons either does not incorporate the Latin reference to *particular Church* [the *CIC* canons are followed by their comparable *CCEO* canons in parentheses: 268, § 2 (428); 271, § 2 (360, § 1); 460 (235); 756, § 2 (608); 1255 (1009, § 1)] or will refer to *eparchy* and/or Church *sui iuris* to allow for the ecclesiological reality of the Eastern Churches in those cases [the *CIC* canons are followed by their comparable *CCEO* canons in parentheses: 271, § 1 (361); 134, § 1 (984, § 1); 209, § 2 (12, § 2); 257 (352, § 3)].

have a uniform terminology in both Codes as far as possible. The problem was discussed in the *Coetus mixtus* in 1974 and again in 1976. It was finally decided to use the expression *Ecclesiae rituales sui iuris* for a Church and *Ecclesia particularis* for an eparchy (diocese).⁶⁹ This expression corresponds well to both the *motu proprio Postquam apostolicis litteris*, canon 303,⁷⁰ and the above-mentioned draft of the first canon *De ritibus*, in which these Churches are called “*coetus fidelium ... sui iuris*”.⁷¹ In this sense, without implying any supremacy, the Latin Church itself is one of the *Ecclesiae rituales sui iuris*.⁷²

3. Change from *Ecclesiae Rituales Sui Iuris* to *Ecclesiae Sui Iuris*

The expression *Ecclesiae rituales sui iuris* was adopted by the Commission for the Revision of the Code of Canon Law of the Latin Church and it appears in the promulgated text of 1983 Latin Code.⁷³ It was also adopted by the Commission for the Revision of the Oriental Code; however, the term *ritualis* is not used in the Oriental Code because it is considered superfluous and counterproductive when speaking of *Ecclesiae sui iuris*, especially since there are different *Ecclesiae sui iuris* belonging fundamentally to the same *ritus*. With the

⁶⁹ *Communicationes*, 2 (1977), p. 298; *Nuntia*, 23 (1986), p. 4. c. 145; *ibid.*, 24-25 (1987), p. 32. c. 175; *CCEO*, c. 177; ŽUŽEK, “The *Ecclesiae sui iuris* in the Revision of Canon Law”, pp. 294-296.

⁷⁰ Canon 303, § 1. 1. “Ritus orientales de quibus canones decernunt sunt alexandrinus, antiochenus, constantinopolitanus, chaldaeus et armenus, aliique ritus quos uti sui iuris expresse vel tacite agnoscit Ecclesia.”

⁷¹ *Nuntia*, 3 (1976), p. 45. c. 1.

⁷² R.J. AUSTIN, “The Particular Church and the Universal Church in the 1983 Code of Canon Law”, in *Studia canonica*, 22 (1988), p. 351.

⁷³ *CIC/1983*, cc. 111; 112.

exception of the Armenian Rite, the various rites or traditions are concretized in various Churches *sui iuris*, which are distinguished one from another not so much because of their position as *rituales* but precisely because they are *sui iuris*, that is, hierarchically organized under one of the forms approved by the supreme authority of the Church. They are: (i) Churches with a status of Patriarchal Churches (cc. 55-150); (ii) Churches with a status of Major Archiepiscopal Churches (cc. 151-154); (iii) Churches with a status of Metropolitan Churches (cc. 155-173); (iv) and the remainder Churches (cc. 174-176), some of which are *de facto* made up only of one diocese or even of a single *exarchy*, although at least potentially they are capable of developing into one of the other three forms.⁷⁴

4. Later Modifications of Canon One of *De ritibus*

Basing its definition on the new understanding of the terms, the *Coetus Centralis* in April 1980 made the necessary modifications. The title *De ritibus* was changed to *De Ecclesiis sui iuris et de ritibus*. The first part of the canon itself was itself divided into two: the first part is the definition of *rite* and the second enumerates the five traditions from which the various rites are derived. Another modification is that *Ecclesia particularis* was changed to *Ecclesia sui iuris*, according to the decision of the *Coetus mixtus*. The expression *conditionibus populorum* was clarified as *cultura ac rerum adiunctis historiae populorum*

⁷⁴ ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", pp. 296-297; CCEO, Titles IV, V, IV. Some Churches *sui iuris* (e.g., Russian Catholic Church) are only potentially existent and have no hierarchy.

distinctum.⁷⁵ With these modifications canon one of *De Ritibus* was published as canon 9 of Title I, *De Ecclesiae sui iuris et de ritibus*, in a new draft.⁷⁶

The special Commission which convened in January 1984 made no substantial changes, but introduced one minor one: the inversion of the order of the two paragraphs.⁷⁷ This canon was published as canon 27 of the *Schema Codicis iuris canonici orientalis*, under Title II, *De Ecclesiis sui iuris et de ritibus*, without any change.⁷⁸ Later the *Coetus de expansione observationum* meeting in November 1987 and January 1988, again divided canon 27 of the Schema into two separate canons, which appear as canons 27 and 28 in the *Codex canonum ecclesiarum orientalium*⁷⁹ as promulgated.

5. *Ecclesia Sui Iuris and Ritus in CCEO*

An *Ecclesia sui iuris*, a juridic structure, is defined as a group of Christian faithful bound together according to the norm of law by a hierarchy, and which is expressly or tacitly acknowledged as *sui iuris* by the supreme authority of the

⁷⁵ *Nuntia*, 19 (1984), pp. 5-6.

⁷⁶ *Ibid.*, p. 21. Canon 9, § 1, 1°. "Nomine ritus intelligitur patrimonium liturgicum, theologicum, spirituale, et disciplinare, cultura ac rerum adiunctis historiae populorum distinctum, quod modo fidei vivendae uniuscuiusque Ecclesiae sui iuris proprio exprimitur.

2°. Ritus de quibus hoc in Codice agitur sunt, nisi aliud constet, illi oriundi ex traditionibus alexandrina, antiochena, armena, chaldaea, vel constantinopolitana.

§ 2. Coetus fidelium hierarchia ad normam iuris iunctus quem uti sui iuris expresse vel tacite agnoscit Suprema Ecclesiae universalis Auctoritas vocatur in hoc Codice Ecclesia sui iuris."

⁷⁷ Cf. *Nuntia*, 22 (1986), pp. 22-23.

⁷⁸ *Ibid.*, 24 (1987), p. 5.

⁷⁹ *Ibid.*, 28 (1989), pp. 18-20.

Church (c. 27).⁸⁰ The canon stipulates four essential elements for a Church *sui iuris*, namely, a community of Christian faithful, a hierarchy, according to the norm of law, and recognition by the supreme authority of the Church.⁸¹ The canon tries to give a strictly juridical character to a Church *sui iuris*. First of all, there should be a community of Christian faithful. The ecclesial reality of a person is realized only through particular ecclesial existence in a community. Through baptism one is incorporated into an ecclesial community and thereby becomes a member of the universal Church. Secondly, this community is to be united under a legitimately constituted hierarchy and thus organized as a Church. Thirdly, an express or tacit recognition from the supreme authority of the Church is required for an ecclesial community to be called a Church *sui iuris*.⁸²

The expression *sui iuris* signifies the autonomy of a Church to govern itself according to its own proper discipline. The autonomous (*sui iuris*) nature of these Churches is relative in the sense that they can govern themselves only in

⁸⁰ CCEO c. 27. "Coetus christifidelium hierarchia ad normam iuris iunctus quem ut sui iuris expresse vel tacite agnoscit suprema Ecclesiae auctoritas, vocatur in hoc Codice Ecclesia sui iuris." English translation: *Code of Canons of the Eastern Churches*, Latin-English edition, translation prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1990.

⁸¹ For a criticism of the circular nature of this statement see VALIYAVILAYIL, "The Notion of a *Sui Iuris* Church", p. 60, note 9, cited by T.A. ONUFERKO, "The New Code of Canons of the Eastern Churches: Ecclesiological Presuppositions", in *Logos*, 35 (1994), p. 147. See also D. SALACHAS, "Le 'status' d'autonomie des Églises catholiques orientales et leur communion avec le Siège Apostolique de Rome", in *L'Année canonique*, 38 (1995), pp. 77-78.

⁸² For a more detailed discussion of this point, see K. MAMACHEN, *The Nature of a Sui Iuris Church* (An interpretation of SCICO c. 27), Romae, Pontificium Institutum Orientale, Unpublished Doctoral Dissertation, Facultas Iuris Canonici Orientalis, 1992, xxxiv, p. 297; SALACHAS, D., "Ecclesia Universa et Ecclesia sui iuris nel Codice latino e nel Codice dei Canonici delle Chiese Orientali", in *Apollinaris*, 65 (1992), pp. 65-76; ID., "Le 'status' ecclésiologique et canonique des Églises orientales 'sui iuris' et des Églises orthodoxes autocephales", in *L'Année canonique*, 33 (1990), pp. 29-56.

accordance with the norm of law approved by the supreme authority.⁸³ Among the Churches *sui iuris* themselves, the autonomy is not necessarily of the same grade.

Rite is, however, defined in the Eastern Code as the liturgical, theological, spiritual and disciplinary patrimony, culture and historical circumstances of distinct peoples, and by which each *sui iuris* Church expresses its own manner of living the faith.⁸⁴

⁸³ According to Erickson: "The term *ecclesia sui iuris* may be a convenient juridical designation for these various ecclesial entities, but it is a term singularly lacking in theological resonance and ecclesiological depth. In effect, the code says that an *ecclesia sui iuris* is an entity which the supreme authority of the Church recognizes as an *ecclesia sui iuris*." (Cf. ERICKSON, "The Code of Canons of the Eastern Churches: a Development Favoring Relations Between the Churches?", p. 288). But, at the same time, he admits that there is still also lacking in Orthodox theology a clear ecclesiology of intermediary ecclesiastical organisms between the universal church and the diocese or eparchy. G. Fürst tried to answer this canonical problem: "Now these organisms exist and one cannot simply give up the possibility of a certain regulation of these organisms only because of a still insufficient theological reflection. Thus precisely canon law considered in its juridic nature offers this possibility of regulation and offers also the possibility of a choice of a theologically temporary yet necessarily indistinct concept." Cf. C.G. FÜRST, "Response to John Erickson", in *The Jurist*, 57 (1997), p. 312.

⁸⁴ *CCEO* c. 28, § 1. "Ritus est patrimonium liturgicum, theologicum, spirituale et disciplinare cultura ac rerum adiunctis historiae populorum distinctum, quod modo fidei vivendae uniuscuiusque ecclesiae sui iuris proprio exprimitur.

§ 2. Ritus, de quibus in Codice agitur, sunt, nisi aliud constat, illi, qui oriuntur ex traditionibus Alexandrina, Antiochena, Armena, Chaldaea et Constantinopolitana."

For a more detailed discussion of this point, see J.E. LYNCH, "The Eastern Churches: Historical Background", in *The Jurist*, 51 (1991), pp. 1-17.

ŽUŽEK explains why the term *ritualis* was dropped from the definition of a *sui iuris* Church and is put in a separate essential canon. According to him, the preoccupation of some who considered the adjective *ritual* foreign to the concept of *sui iuris* Church does not seem to be justified, even though the terminology "autonomous ritual church" used in *CIC* 111, § 1 and 112 is acceptable. He explains this in detail as follows: "...with a reservation as to the word *ritualis*, which (at least in the context of the Eastern Code) is considered superfluous and counterproductive when speaking of *Ecclesiae sui iuris*, especially since there are different *Ecclesiae sui iuris* belonging fundamentally to the same Ritus. Thus, various traditions or *Ritus generici* are concretized in various churches *sui iuris*, which are distinguished from one another not so much because of their position as *rituales* but precisely because they are *sui iuris*; in other words, hierarchically organized under one of the forms of "special status" approved by the supreme authority of the Church." Cf. ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", p. 296.

This definition describes the three characteristic elements of a rite: (i) a complex of liturgical, theological, spiritual and disciplinary heritage; (ii) differentiation of this heritage due to culture and circumstances of the history of peoples; (iii) the dynamic mode in which each Church *sui iuris* lives and expresses⁸⁵ the faith in its heritage.

Rite is in fact the true expression of the *modus vivendi* of the faith of the Christian faithful of a Church *sui iuris*. Each Church *sui iuris* witnesses, professes, and celebrates the one and the same faith manifested through its rite.⁸⁶

Rite is described here as a triply qualified heritage.⁸⁷ Understood as "heritage", it is very rich in its content. It is the mode whereby a Particular Church lives its faith traditions. This heritage is closely linked to the culture and circumstances of the history of a people but is not fully identical with them. Nedungatt writes:

Contentwise, surely, "culture and the history of a distinct people" (CCEO) cannot be identified *tout court* with rite. Rather these are factors that condition and shape the genesis and evolution of a rite, which is some thing that belongs to a church (a community

⁸⁵ Here a distinction is called for. The present forms of one's rite can be authentic or non authentic. See B. LONERGAN, *Method in theology*, London, Darton, Longman & Todd, 1975, p. 80; G.D. GALLARO, "Codex Canonum Ecclesiarum Orientalium: Noteworthy Issues", in *CLSA Proceedings*, 53 (1991), p. 168.

⁸⁶ D. SALACHAS, "Teologia e Nomotecnica del *Codex canonum Ecclesiarum orientarium*", in *Periodica*, 83 (1994), p. 514.

⁸⁷ G. NEDUNGATT, *A Companion to the Eastern Code: For a New Translation of Codex canonum Ecclesiarum orientarium*, Rome, Pontificio Istituto Orientale, 1994, p. 21.

Rite is defined in c. 28, § 1 as a heritage which has four constituent elements, namely liturgy, spirituality, theology and canonical discipline. Cf. *Nuntia*, 21 (1985), pp. 74-75. This definition is based on a collage of several conciliar texts: *LG*, no. 23; *UR*, no. 17; *OE*, no. 3. Rite is called a heritage, following the conciliar usage of the term in a metaphorical sense. "Patrimonium" in a metaphorical sense is "heritage" rather than "patrimony", which stands closer to the literal, juridical meaning of "patrimonium".

of faithful, c. 27) as its heritage. In this sense, rite is the cultural expression of a Church.⁸⁸

According to canon 28, § 2, the term *rite* designates the specific form of the tradition as it is observed by a Church *sui iuris*. Rite is not a tradition itself, but the specific form of a tradition experienced and expressed in the life of a Church *sui iuris*. As it originates from a tradition that has come from the Apostles through the Fathers, it belongs to the common patrimony of the universal Church.⁸⁹ As rite is fundamental to the faith-existence of a Church *sui iuris*, each such Church has the right and duty to preserve it everywhere. Considering this importance, the Eastern Code has devoted even a separate chapter to deal with the preservation of rite in which is established the obligation of all the hierarchs, of all other clerics and members of institutes of consecrated life and other Christian faithful to observe of their own rite, irrespective of the place where they are living.⁹⁰

So, the new Code for the Orientals⁹¹ makes a clear distinction between *Church* and *rite*. It is here that a *novus habitus mentis* is necessary: we must *not*

⁸⁸ Ibid., p. 22. It is worth making a distinction between the liturgy as a heritage and certain distinctive elements of a particular liturgy that make it the specific liturgy of a particular Church. The latter elements are influenced by the culture and circumstances of history. They can be proper and related to a people or, at times, can be borrowed or imported because of circumstances of history.

⁸⁹ SECOND VATICAN COUNCIL, Dogmatic Constitution on Divine Revelation, *Dei verbum* (=DV), 18 November 1965, no. 8; AAS, 58 (1966), pp. 817-836, here at pp. 820-821; FLANNERY, *Vatican II*, pp. 754-755; see G. NEDUNGATT, *The Spirit of the Eastern Code*, Placid Lecture Series, no. 15, Bangalore, Dharmaram Publications, 1993, pp. 65-70.

⁹⁰ CCEO Title II, Chapter II, c. 40. Faithful adherence to the observance of rite is further obligated by a number of canons in CCEO such as 330, § 2; 343; 346, § 1, 6°; 354; 369, § 1; 405; 576, § 1; 713, § 2.

⁹¹ In certain ecumenical circles a distinction is made between the terms *Eastern* and *Oriental*. However here they are used as interchangeable and synonymous. The distinction, though practical, is far from being universally accepted, one reason being that most European languages including Latin lack a synonymous pair like the English *Eastern* and *Oriental*.

speak of *rite* when we should be speaking of *Church*.⁹² The terms *Church* and *rite* are not synonymous, nor are they interchangeable as in the past. *Church* refers to a communion of persons, while *rite* to something that belongs to a Church. *Church* is a moral person and *rite* is something that belongs to it, constituting its property or patrimony and consisting of six constitutive elements, namely liturgy, theology, spirituality, canonical discipline, culture, and history of a distinct people.⁹³ When we analyze the distinction between *Church* and *rite*, we must not emphasize Church as hierarchy alone.

C. PRESERVATION OF RITES ACCORDING TO CCEO

Beginning with Pope Innocent III in the 13th century, the popes have insisted that the various rites be preserved and have prohibited any fundamental exchanges or mixing of the rites. The authority to make any change in the liturgy or discipline of the rites was reserved to the Holy See. In the light of this constant teaching of the popes, the Legislation for the Eastern Churches (CS, c. 1) requires

⁹² One wishes the *Annuario pontificio* would reorganize its listing, see "I riti nella Chiesa", in *Annuario pontificio per l'anno 2000*, pp. 1224-1227.

⁹³ NEDUNGATT, "Equal Rights of the Churches in the Catholic Communion", p. 3. It may be helpful here to recall the threefold division of Roman law as it deals with *persons*, *things*, and *actions*. Church would then come under *persons* who form a faith community, while rite is a *thing* shaped by culture and history. Rite stands for the complex of elements that shapes the identity of the Particular Churches in the Catholic communion, namely liturgy or worship, spirituality, theology and canonical discipline. These constitute their *patrimony*, which does not mean something static. Nor does it exclude the future evolution of rites or the birth of new rites under the impact of culture and history. However the present legislation concerns only the existing secondary rite.

As a person is distinct from a thing, so is Church distinct from rite. Church is not only the universal Church, but also *ecclesia particularis* (OE), as well as dioceses/eparchies. However, as is well known, in most conciliar and later documents including *CIC*, *ecclesia particularis* is not a univocal term, as it is used for dioceses, whereas in *OE*, nos. 2-4 it stands for an intermediate level of faith community between the diocese and the universal church. (So, to avoid confusion *PCCICOR* looked for a substitute and produced a purely canonical term, *ecclesia sui iuris*, which is but a variation of *ritus sui iuris*, a term used already in *PAL* c. 303, § 1 which supplied a sort of precedent).

the preservation of Oriental rites and imposes on Oriental hierarchs the obligation to promote the accurate observance of rites and not to permit or tolerate any change.

Following the same line of the *motu proprio Cleri sanctitati*⁹⁴ the new Code of the Eastern Churches dedicated three canons very precisely to the preservation of rites under the heading of *De ritibus servandis*.⁹⁵ Affirming the divine unity in the diversity of Catholic faith, canon 39 of the Eastern Code exhorts every member of the Church so see to it that the rites of the Eastern Churches, as the patrimony of the universal Church, are religiously preserved and fostered. Following this common affirmation canon 40, § 1 particularly asks the hierarchs of the various *Ecclesiae sui iuris* to watch over and take care of the observance of their own rite. In the same way, § 2 and § 3 of the same canon speak about the obligations of all clerics and the members of the institutes of consecrated life and other Christian faithful for vigilance and observation of their rite in their day-to-day life. In the case of Christian faithful, § 3 further affirms their obligation in the observance of their rite everywhere unless the law makes some exception.⁹⁶ Thus the Catholic Church reaffirms its position regarding the preservation of the patrimony of each *Ecclesia sui iuris*. In other words, through the preservation of this venerable antiquity, we preserve the ornament of the entire Church.⁹⁷ Finally, canon 41 exhorts all *Ecclesiae sui iuris* to give adequate instructions for their

⁹⁴ PIUS XII, *motu proprio Cleri sanctitati*, Titulus I, "De ritibus orientalibus" cc. 1-15, in *AAS*, 49 (1957), pp. 435-603. See M.M. WOJNAR, "Decree on the Oriental Catholic Churches", in *The Jurist*, 25 (1965), pp. 184-191.

⁹⁵ *CCEO*, Caput II, *De ritibus servandis*, cc. 39; 40; 41.

⁹⁶ "Ceteri quoque christifideles proprii ritus cognitionem et aestimationem foveant eumque ubique observare tenentur, nisi iure aliquod excipiat." Cf. *CCEO* c. 40, § 3.

⁹⁷ *CS*, c. 1, § 1.

faithful regarding their rites in order to fulfill their ministry within their own *Ecclesia sui iuris*.⁹⁸

We have already seen and treated “The Concept of Rite and its historical development”. However, let us now consider some notion concerning the preservation of rite in general. It is noteworthy that canon 28 of the Eastern Code speaks of rite as a patrimony, *ritus est patrimonium*. This is followed by an enumeration of the constitutive elements of this *patrimonium* or rites.

The use of the term rite in the documents of the Second Vatican Council is a complex of doctrine, culture, history, discipline, rites, traditions, etc., which are inseparable from a person or institution.⁹⁹ The use of the term in *OE*, nos. 1, 3 and 5 speaks of the spiritual patrimony of the Churches, both universal and particular. In the Latin Code the word is used to mean both material and immaterial things. Thus, in canons 1283, 1285 and 1291, in the context of the canons on the temporal goods of the Church, patrimony has a material connotation, while canons 251, 578, 586 refer primarily to the spiritual patrimony of the institutes of consecrated life. From this brief analysis we can understand that the term *patrimonium* has a well-established theological and juridical content.¹⁰⁰

According to the Eastern Code essential elements of this *patrimonium* are liturgy, theology, spirituality, discipline, culture and the vicissitudes of the history of a distinct people (c. 28). By it an *ecclesia sui iuris* expresses its own manner of

⁹⁸ J. ABBASS, “The Interrelationship of the Latin and Eastern Codes”, in *The Jurist*, 58 (1998), p. 6.

⁹⁹ X. OCHOA, “Modus Determinandi Patrimonium Constitutionale Cuiusvis Instituti Perfectionis Proprium”, in *Commentarium pro Religiosis*, 46 (1967), p. 342.

¹⁰⁰ VALIYAVILAYIL, “The Nature of a *Sui Iuris* Church”, p. 41.

living the faith. Thus we can say rite is a complex of a whole. We will proceed by briefly analyzing the important element of patrimony.

1. Preservation of Liturgical Patrimony

We have seen that the notions of liturgy and rite are closely linked. Many ecclesiastical writers made attempts to define liturgy, but due to its living and dynamic character, it cannot easily be reduced to concepts.¹⁰¹ Through the encyclical *Mediator Dei*¹⁰² Pius XII expressly rejected the definitions which stressed only the externals of liturgy:

It is an error, consequently, and a mistake to think of the sacred liturgy as merely the outward or visible worship or as an ornamental. No less erroneous is the notion that it consists solely in a list of laws and prescriptions according to which the ecclesiastical hierarchy orders the sacred rites to be performed.¹⁰³

To avoid this external mentality, Pius XII defines liturgy as public worship. This teaching was assumed by the Second Vatican Council and defined (SC, nos. 7, 26). Therefore, liturgy, as the exercise of the priestly office of Christ and as the celebration of the salvific mysteries, is common to the entire Mystical Body, the Church of Christ, and here one cannot make ritual differences. The ritual differences occur when rites or the signs, symbols, prayers and the corresponding actions are employed in various liturgies. Only in this way can we understand the liturgical patrimony of an *ecclesia sui iuris* as the sum total of all the external

¹⁰¹ Ibid., p. 42.

¹⁰² PIUS XII, Encyclical Letter *Mediator Dei*, in *AAS*, 39 (1947), pp. 521-595.

¹⁰³ Ibid., p. 532.

manifestations of the signs, symbols, texts, language and mode of celebration used in the worship and the spiritual life of the Church.¹⁰⁴

Therefore, liturgy is an essential element of the particular churches, but it is not necessarily a distinctive element. As we know, within the general pattern of the liturgy one can find various rites; variations in language and other minor rubrical changes may be distinctive. This is evident in various *ecclesiae sui iuris* because they used different languages, feasts, calendar changes and popular devotions in the same liturgical rite.

2. Preservation of the Theological Patrimony

Another important element of this patrimony is theology. According to the Conciliar Decree *Orientalium ecclesiarum* no. 3, the constitutive elements of this patrimony are liturgy, ecclesiastical discipline and spiritual tradition. But, the Dogmatic Constitution *Lumen gentium* no. 23 speaks also of a theological patrimony. Similarly, the Decree on Ecumenism foresees the need for proper freedom, while keeping unity in essentials in various matters in order to preserve the various forms of spiritual life, discipline and liturgical rites, which include freedom of theological elaborations of revealed truth (*UR*, no. 4). Theological patrimony is not simply the content of the theological wealth of a rite, but a method of theologizing itself that is proper to a Church (*UR*, nos. 4, 17). The aim of theologizing is reincarnating and reinterpreting the Christ event to nations and peoples and making it an ever-living tradition and patrimony according to the principles of scientific investigation.¹⁰⁵ As the Council said:

¹⁰⁴ VALIYAVILAYIL, "The Nature of a *Sui Iuris* Church", p. 43.

¹⁰⁵ *Ibid.*, pp. 46-47.

With regard to the authentic theological traditions of the Orientals, we must recognize that they are admirably rooted in Holy Scripture, are fostered and given expression in liturgical life, are nourished by the living tradition of the apostles and by the works of the Fathers and spiritual writers of the East.¹⁰⁶

An important characteristic of Oriental theologising is its relation to liturgy (*UR*, no. 17), for it lives and teaches theology through liturgy. In this regard John D. Zizioulas writes: "The metahistorical, eschatological and iconological dimension of the Church is characteristic of the Eastern tradition, which lives and teaches theology liturgically; it contemplates the being of God and the being of the Church with the eyes of worship, principally of eucharistic worship, image of the 'eschata' par excellence."¹⁰⁷

3. Preservation of Disciplinary Patrimony

The preservation of disciplinary patrimony means the sum total of laws and the spirit of the law which regulate every aspect of ecclesial life so that the tranquility of order may be preserved in both universal and particular Churches. Authors are in general agreement, therefore, Bassett writes, "that a distinctive element of the particular churches is that law which is proper to them and which binds their members..."¹⁰⁸ This is substantiated by Vatican II, when it declared that "the Churches of the East like those of the West have the right and duty to govern themselves according to their own special discipline" (*OE*, no. 5). To remove any

¹⁰⁶ *UR*, no. 17.

¹⁰⁷ J.D. ZIZIOULAS, *Being as Communion: Studies in Personhood and the Church*, New York, Creswood, St. Vladimir's Seminary Press, 1985, p. 18.

¹⁰⁸ BASSETT, *The Determination of Rite*, p. 245; HERMAN, "De Conceptu Ritus", p. 339; CICOGNANI-STAFFA, *Commentarium ad librum primum Codicis Iuris Canonici*, vol. 1, p. 11.

preoccupation or doubts, the Council again reaffirmed more solemnly “that the Churches of the East, while keeping in mind the necessary unity of the whole Church, have the power to govern themselves according to their own disciplines, since they are better suited to the character of their faithful and better to foster the good of souls” (*UR*, no. 16). Again the Guidelines for the Revision of the Code of Oriental Canon Law pointed out that a common code is not detrimental to the disciplinary patrimony of each Church.¹⁰⁹ Therefore, this discipline, which is a constitutive element of the rite, in fact makes a Church *sui iuris* with its own law.¹¹⁰

In order to keep intact the disciplinary patrimony of each *ecclesia sui iuris*, both Codes left ample space or provisions for particular laws. The particular law of an *ecclesia sui iuris* is made up of the complex of laws, legitimate customs, decrees, and instructions, statutes and regulations, proper to the Church in question.¹¹¹ Besides, the very word *ecclesia sui iuris* means a Church with its own proper law, a Church *ratione iuris proprii*. At the same time we can say that particular law is a part of the rite and is a constitutive and necessary element for expressing the life of an *ecclesia sui iuris*, but it is not a constitutive element of an *ecclesia sui iuris*.

4. Preservation of Cultural Patrimony

There are many definitions of culture, one of the most famous being that of Edward Tylor, who defines culture as “that complex whole which includes

¹⁰⁹ *Nuntia*, 3 (1976), pp. 18-19.

¹¹⁰ VALIYAVILAYIL, “The Nature of a *Sui Iuris* Church”, p. 49

¹¹¹ M. BROGI, “Particular Law in the Future Oriental Code of Canon Law”, in C. PYNGOT, ed., *Homage to Mar Cariattil, Pioneer Malabar Ecumenist*, Rome, 1987, p. 93.

knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society.”¹¹² In this definition we understand that the human society becomes the criterion of culture which a human being learns, or acquires, as a member of society. But in the Second Vatican Council, especially in the Apostolic Constitution *Gaudium et spes*, the word “culture” is used in a general sense to refer to all those things which go to refining and developing man’s diverse mental and physical endowments (GS, no. 53). In other words, it is one of the properties of the human person through which he can achieve true and full humanity. At the same time cultures are, indeed, greatly variable and unique because the way one society tries to meet the needs of its members differs from that of other societies.

Again, both GS and AG speak about the patrimony proper to each human society. According to the Council, the heritage of its institutions forms the patrimony proper to each human community which arises from different styles of living and different scales of values, of working and self-expression, of practicing religion and of behaviour, of establishing laws and juridical institutions, of developing science and arts, of cultivating beauty (GS, no. 53). In this particular situation the decree on the Church’s Missionary Activity *Ad gentes* exhorts that, “therefore, whoever is to go among other people must hold their patrimony, language and way of life in great esteem” (AG, no. 26).

The Declaration on Christian Education, *Gravissimum educationis*, speaks of the patrimony of the culture of mind and spirit, and points out that education develops a capacity for sound judgment and introduces the people to the cultural heritage or patrimony bequeathed to them by former generations. It clearly says

¹¹² E.B. TYLOR, *Primitive Culture: Researches Into the Development of Mythology, Philosophy, Religion, Language, Art, and Custom*, London, J. Murray, vol. 1, 1903, pp. 1-2.

that generations are involved in the formation of a cultural patrimony and this patrimony is faithfully transmitted from one generation to the other (*GE*, no. 5).

Since Vatican II, the problem of inculturation has been actively discussed by officials of the Church, theologians and a variety of people concerned about ministry and pastoral care. All these works culminated in the exhortation of Pope Paul VI in *Evangelii nuntiandi*.¹¹³ Every possible aspect of the relationship of the Catholic faith to the cultures of the world is discussed in this exhortation. However, Pope John Paul II's encyclical *Redemptoris missio*¹¹⁴ goes on further and provides clarity in this regard.¹¹⁵

The Church has had an impressive tradition of adaptation to local cultures, customs, languages, and style of life; when one looks at the variety of rites in the Church, it is remarkable to note how careful it was to respect local customs and languages.

5. Preservation of Spiritual Patrimony

Spirituality in the strict sense consists of the particular way of conceiving and realizing the Christian life. Hence we have a plurality of spiritualities which have three elements corresponding to the three important components of a human

¹¹³ PAUL VI, Apostolic Exhortation *Evangelii nuntiandi*, in *AAS*, 68 (1976), pp. 1-96. The most important statement about the problem reads as follows: "The Gospel, and therefore evangelization, are certainly not identical with culture, and they are independent in regard to all cultures. Nevertheless, the Kingdom which the Gospel proclaims is lived by men who are profoundly linked to a culture, and the building up of the Kingdom cannot avoid borrowing the elements of human culture or cultures. Therefore, although the Gospel and evangelization do not properly belong to any culture, ..." (Cf. *AAS*, 68 [1976], pp. 18-19, no. 20).

¹¹⁴ JOHN PAUL II, Encyclical Letter *Redemptoris missio*, in *AAS*, 83 (1991), pp. 249-340.

¹¹⁵ For responding to the relationship between faith and culture see, *ibid.*, pp. 299-301, nos. 52, 53.

being: intelligence to be satisfied with doctrine, will with piety, and the inner being with intimacy with God.

The spiritual patrimony of a Church means the various theoretical and practical means used by the Church for the sanctification of its members, that is, for the realization of the Gospel in the life of its children.

The spiritual patrimony of a particular group or a particular Church is the distinctive expression of its historical religious experience. It is found interwoven in its liturgical rites, discipline, doctrine, institutions, and the character of its members.¹¹⁶ But, in the decree on Ecumenism, *Unitatis redintegratio*, this spiritual patrimony is described as *character* (UR, no. 16). According to the decree on Eastern Churches, *Orientalium ecclesiarum*, the special characteristic of the spiritual life is the peculiarity and the authenticity of the ecclesial life and Christian witness of a particular group of people. Emphasis in OE, nos. 5 and 6 is on the "preservation of the spiritual heritage of Eastern Churches" which includes the liturgical, ecclesiastical and spiritual heritage and the right to govern themselves according to their own discipline. All these elements exist in an organic unity among themselves and this unity forms part of the spiritual heritage.

D. COMMON ELEMENTS AND DISTINCT ELEMENTS IN BOTH LAWS

No Church can avoid inter-ecclesial relations and remain in the Catholic communion. It is evident that neither the Latins nor the Orientals can ignore each other's Code. Relations are between *persons* either individually or collectively, but not between *things*. Hence it is proper to speak of *inter-ecclesial* relations

¹¹⁶ Cf. BASSETT, *The Determination of Rite*, p. 246.

rather than of *inter-ritual* relations.¹¹⁷ The term *inter-ecclesial*¹¹⁸ is appropriate because each of these communions is an *ecclesia catholica* and the universal Church is itself a *coetus* or communion of Catholic churches. In common parlance, these Catholic churches have been generally referred to as *rites*, and, thus, the term *inter-ritual* was employed.

In canon 1 of the 1983 Latin Code it is said that "the canons of this code concern only the Latin Church." This is too peremptory and has been widely noted to be an oversimplification. There are as many as 18 canons in the Latin Code which apply to Eastern Churches, mostly still called *ritus*.¹¹⁹

In the Eastern Code, unlike in the Latin Code, the first canon speaks openly of relations with the Latin Church.¹²⁰ According to the same canon 1 of the

¹¹⁷ For terminological explanation see J. FARIS, "Inter-ritual Matters in the Revised Code of Canon law", in *Studia canonica*, 15 (1983), pp. 239-259, especially footnote 1; see also D. SALACHAS, "Problematiche interrituali nei due Codici orientale e latino", in *Apollinaris*, 67 (1994), pp. 635-690.

¹¹⁸ For an example of this use of the term, see X. KOODAPUZHA, "The Inter-Ecclesial Relations in the Indian Context", in *Christian Orient*, 5 (1984), pp. 62-77.

¹¹⁹ Canons 383, § 2; 450: 535, § 2; 1015, § 2; etc. See FARIS, "Inter-ritual Matters in the Revised Code of Canon law", pp. 239-259.

¹²⁰ Canon 1 of *CCEO*: "The canons of this Code affect all and solely the Eastern Catholic Churches, unless, with regard to relations with the Latin Church, it is expressly stated otherwise."

This canon contains explicitly two positive statements and implicitly a negative statement. First of all, positively, that this new legislation affects only the Eastern Catholic Churches. This means, implicitly, that *CCEO* is not imposed upon the Eastern Orthodox Churches. It also announces obliquely that *CCEO* contains norms to regulate inter-ecclesial relations with the Latin Church. Indeed *CIC* too has canons for inter-ecclesial relations with the Oriental Catholic Churches, though its c. 1 fails to say so.

The twofold codification, the Latin and the Eastern, has its foundation in the ecclesiology of the constitution *Lumen gentium*: "By divine providence it has come about that various Churches, founded in various places by the apostles and by their successors, have in the course of time become joined together into several groups, organically united, which, while maintaining the unity of faith and the unique divine constitution of the universal Church, enjoy their own discipline, their own liturgical usage, and their own theological and spiritual patrimony. Among these there are some, especially the ancient patriarchal Churches, like matrices of the faith, which have given birth to

Eastern Code, the norms apply to the Latin Church only where it is expressly so stated. In fact there are 9 canons in which there is express mention of the Latin Church.¹²¹ As a rule, what is expressly established in law can be indicated either explicitly or implicitly.¹²² While nine Eastern Code canons explicitly regard the Latin Church, still others implicitly concern the Latin Church in relation to the Eastern Catholic Churches. These implicit references to the Latin Church in the Eastern Code arise, for example, due to the use of the expression “Church *sui iuris*” or because of the nature of the matter (*ex natura rei*), such as the ascription or transfer to another Church *sui iuris*. In the case of ascription or transfer involving the Latin and an Eastern Catholic Church, a comparative study of the relationship between the Eastern Code canons 29-38 and the Latin canons 111-112 proves indispensable.

But there are also other canons in which, although the Latin Church is not expressly named, it is included. In canons 111 and 112 of the Latin Code, for instance, the Particular Churches of the East and of the West in the Catholic communion are canonized as *ecclesiae rituales sui iuris* or simply *ecclesiae*

others as daughters: and right down to our own times they are more closely bound to these Churches by the bond of charity in sacramental life and in mutual respect for rights and duties.” Cf. *LG* no. 23.

¹²¹ Canons 37; 41; 207; 322; 432; 696; 830; 916; 1465. These eastern canons are very clearly suppletory law to the *CIC*. See N.R. RACHFORD, “Two Lungs, Two Ventricles: the Eastern Canons as Suppletory Law”, in *CLSA Proceedings*, 56 (1994), pp. 158-164; D.J. WALKOWIAK, “Sacramental Law and the Code of Canons of the Eastern Churches: An Inter-Ecclesial Perspective”, in *CLSA Proceedings*, 55 (1993), p. 216; M. BROGI, “Il nuovo codice orientale e la Chiesa latina”, in *Antonianum*, 66 (1991), pp. 35-61; see also ABBASS, “The Interrelationship of the Latin and Eastern Codes”, pp. 4-12.

¹²² For example, the nature of *CCEO* cc. 29-38, concerning the enrolment of Eastern catholics in a Church *sui iuris* or their transfer to another, implicitly regards the Latin Church. Cf., L. CHIAPPETTA, *Il Codice di Diritto Canonico – Commento giuridico pastorale*, Rome, Dehoniane, 1996, vol. 1, p. 38. See also J. ABBASS, “Canonical Dispositions for the Care of Eastern Catholics Outside Their Territories”, in *Periodica*, 86 (1997), pp. 330-331.

rituales or even *ritus*, but these terms are not defined in the Latin Code. However, given the context of the *Lex Ecclesiae fundamentalis* these are surely the equivalent of canon 27 of the Eastern Code, but, according to Žužek, the Latin Church does not fit into any of the four types of *sui iuris* churches mentioned in the Eastern Code.¹²³ This shows once again that Particular Churches are not the exact equivalent of *Ecclesia sui iuris*.¹²⁴

1. 1983 Legislation

With the promulgation of the revised *Codex iuris canonici* the rules on membership underwent some changes. The Eastern Code contains very detailed norms regarding church membership,¹²⁵ especially in comparison to the Latin

¹²³ It is clear from the Latin Code (*CIC*, cc. 111 and 112) that the Latin Church is also a *sui iuris* Church. In an ecclesiological sense all the *sui iuris* Churches can be considered on the same level. But in regard to structure, governance, canon law etc., "it is worth observing that the nature of the Latin Church is such that it cannot be fitted into any of the juridical forms listed, even though the titles of the Roman Pontiff include that of 'patriarch'". It is a *sui iuris* Church of its own kind. See ŽUŽEK, "The *Ecclesiae sui iuris* in the Revision of Canon Law", pp. 297-298; K. BHARANIKULANGARA, "An Introduction to the Ecclesiology and Contents of the Oriental Code", in J. CHIRAMEL, and K. BHARANIKULANGARA, eds., *The Code of Canons of the Eastern Churches. A Study and Interpretation*. Essays in Honour of Joseph Cardinal Parecattil, President, Pontifical Commission for the Revision of Eastern Canon Law, Alwaye, 1992, p. 19; see also ABBASS, "The Interrelationship of the Latin and Eastern Codes", pp. 12-16.

¹²⁴ It is important to note that *Ecclesia sui iuris* is a canonical term and as such is no adequate substitute for the ecclesiological term *ecclesia particularis* used in *OE*.

A comparison of *CIC* and *CCEO* for *ritus-Ecclesia sui iuris* terminology is instructive. Compare *CIC* c. 214 with the corresponding *CCEO* c. 17; also 383, § 2 with 192, § 1; 476 with 246; 518 with 280, § 1; 535, § 2 with 296, § 2; 1015, § 2 with 748, § 2; 1021 with 752; 1109 with 829, § 1; 1127, § 1 with 834, § 1. Cf. NEDUNGATT, "Ecclesia Universalis, Particularis, Singularis", pp. 75-85.

In *CIC ritus* is used in the sense of *ecclesia (ritualis) sui iuris* in the following: cc. 214; 372, § 2; 383, § 2; 450, § 1; 476; 479, § 2; 518; 535, § 2; 991; 1015, § 2; 1021; 1109; 1127, § 1.

¹²⁵ Membership is not a canonical concept. Membership in the Church has been the topic of theological, canonical, and sociological research since the council. See for example, H.H. ALFEYEV, "Membership of the Body of Christ: Sacraments of Initiation", in *The Greek Orthodox Theological Review*, 43 (1998), pp. 565-572; W. AYMANS, "Die kanonistische Lehre von der

Code. The canons fill a number of lacunae¹²⁶ found in the Latin Code's rather sketchy treatment, and attempt to harmonize the canonical discipline of the Eastern and Western Churches. The Church's law speaks of those who are "in communion" or "in full communion".¹²⁷ Anyone who is baptized is joined to Christ and in that sense is a "member" of Christ's body, the Church.¹²⁸ But to be a Catholic, one must be in the full communion of the Catholic Church; to be in full

Kirchengliedschaft im Lichte des II. Vatikanischen Konzils", in *Archiv für katholisches Kirchenrecht*, 142 (1973), pp. 387-418; C.S. CALIAN, "Means of Membership According to the Reformed Tradition: Seeking Common Ground Between Orthodox and Reformed Ecclesiologies", in *The Greek Orthodox Theological Review*, 43 (1998), pp. 605-615; F. COCCOPALMERIO, "Quid significet verba 'Spiritus Christi Habentes' Lumen gentium 14:2", in *Periodica*, 68 (1979), pp. 253-276; V. DePAOLIS, "Communio in Novo Codice Iuris Canonici", in *Periodica*, 77 (1988), pp. 521-552; A. DULLES, *The Resilient Church: The Necessity and Limits of Adaptation*, Garden City, N.Y., Doubleday, 1977, pp. 133-151; M. HUGHES, "The Juridical Nature of the Act of Joining the Catholic Church", in *Studia canonica*, 8 (1974), pp. 45-74, 379-431; A. KAPTIJN, "L'inscription à l'Église de droit propre", in *L'Année canonique*, 40 (1998), pp. 49-70; J. MADEY, "Church Membership According to the CCEO", in *Ephrem's Theological Journal*, 3 (1999), pp. 59-71; K. MÖRSDORF, "Persona in Ecclesia Christi", in *Archiv für katholisches Kirchenrecht*, 131 (1962), pp. 345-393; H. MÜLLER, "Zugehörigkeit zur Kirche als Problem der Neukodifikation des kanonischen Rechts", in *Österreichisches Archiv für Kirchenrecht*, 28 (1977), pp. 81-98; G. NEDUNGATT, "The Spirit of the Eastern Code", pp. 103-107; K. RAHNER, "Anonymous Christianity and the Missionary Task of the Church", in *Theological Investigations*, 12 (1967), pp. 161-178; ID., "Membership in the Church According to the Teaching of Pius XII's Encyclical 'Mystici Corporis Christi'", in *Theological Investigations*, 2 (1957), pp. 1-88; I.R. TORRANCE, "Membership of the Body of Christ", in *The Greek Orthodox Theological Review*, 43 (1998), pp. 559-564.

¹²⁶ *CIC* c. 19 and *CCEO* c. 1501 provide the legal basis in supplying for the lacuna. A *lacuna legis* (void in the law) occurs, as the canon states, when an express provision of universal or particular law or a custom is lacking to provide a solution for a concrete case. See ABBASS, "The Interrelationship of the Latin and Eastern Codes", pp. 31-32. According to L. Örsy, a "lacuna in the proper sense occurs when there is a right that must be supported, or an injustice that cries for redress, or a freedom that needs protection, and there is no appropriate provision in the legal system." Cf. L. ÖRSY, "General Norms: Canons 1-28", in *The Code of Canon Law: Text and Commentary*, J.A. CORIDEN, T.J. GREEN, D.E. HEINTSCHEL, eds., commissioned by the Canon Law Society of America, New York, Paulist Press, 1985, p. 37.

¹²⁷ See *CIC* c. 205; *CCEO* c. 8.

¹²⁸ See *CIC* c. 204; *CCEO* c. 7.

communion, one must be enrolled in a Church *sui iuris*. There are two main divisions: ecclesial enrollment before baptism, and enrollment after baptism which is often commonly called a “transfer of membership”.

The prescription¹²⁹ contained in canon 112, § 1 of the Latin Code is substantially the same as canon 98, § 3 of the 1917 Code concerning the norm on transfer to another Church *sui iuris*.

c. 112, § 1. - After the reception of baptism, the following are enrolled in another ritual Church *sui iuris*:

1° a person who has obtained permission from the Apostolic See;

2° a spouse who, at the time of or during marriage, has declared that he or she is transferring to the ritual Church *sui iuris* of the other spouse; when the marriage has ended, however, the person can freely return to the Latin Church;

3° before the completion of the fourteenth year of age, the children of those mentioned in nn. 1 and 2 as well as, in a mixed marriage, the children of the Catholic party who has legitimately transferred to another ritual Church; on completion of their fourteenth year, however, they can return to the Latin Church.¹³⁰

¹²⁹ Though “ascribe” and “ascription” in English do not normally have the meaning of the corresponding Latin words “ascribere” and “ascriptio”, we use them as technical terms susceptible of bearing a new meaning, which is unmistakable in the context. What used to be generally called transfer of rite is in *CCEO* terminology a transfer of Church enrollment or ascription. The terms used in *CCEO* cc. 31-37 are “ascription”, “transit”, “return”, to an *Ecclesia sui iuris*. Orthodox who come into full communion with the Catholic Church, however, should “retain their rite” (c. 35). In *CIC* however, which has not clearly defined *rite* and *Church*, the old confusion between the two continues. For instance compare *CIC* c. 383, § 2 with the corresponding *CCEO* 193, §§ 1 and 2; 476 and 479, § 2 with 244; 518 with 280; 535, § 2 with 296, § 2; 846, § 2 with 674, § 2; 1015, § 2 with 748, § 2, etc.

¹³⁰ 112, § 1. “Post receptum baptismum, alii Ecclesiae rituali sui iuris adscribuntur:

1° qui licentiam ab Apostolica Sede obtinuerit;

2° coniux qui, in matrimonio ineundo vel eo durante, ad Ecclesiam ritalem sui iuris alterius coniugis se transire declaraverit; matrimonio autem soluto, libere potest ad latinam Ecclesiam redire;

3° filii eorum, de quibus in nn. 1 et 2, ante decimum quartum aetatis annum completum itemque, in matrimonio mixto, filii partis catholicae quae ad aliam Ecclesiam ritalem legitime transierit; adepta vero hac aetate, iidem possunt ad latinam Ecclesiam redire.”

This canon concerns the transfer of membership. It can be accomplished in one of three ways.

a) Permission from the Apostolic See (1°)

The Apostolic See can grant permission (*licentia*) for Latin Catholics to be enrolled in another Church *sui iuris*. This canon does not expressly state if the permission from the Holy See is required for the validity of the transfer. However, the transfer of an Eastern Catholic to the Latin Church requires for validity consent (*consensus*) of both the eparchial bishop and the diocesan bishop (CCEO 32. § 2). In such a case, the canon presumes the consent of the Apostolic See.¹³¹

According to M. Thériault, it seems, *prima facie*, that Latins can transfer illicitly but validly to an Eastern Catholic Church without the *licentia* of the Holy See, but that *consensus* of the Holy See is required *ad validitatem* in the case of an Eastern Catholic who wishes to transfer to another Eastern Catholic Church or to the Latin Church.¹³²

b) A formal declaration of transferring (2°)

A more complicated situation develops in the revised Latin Code canon 112. § 1, 2°¹³³ which states that a spouse (man or woman) who on entering

¹³¹ J. ABBASS, *Two Codes in Comparison (Kanonika, 7)*, Roma, Pontificio Istituto Orientale, 1997, p. 287.

¹³² M. THÉRIAULT, "Canonical Questions Brought about by the Presence of Eastern Catholics in Latin Areas in the Light of the 'Codex Canonum Ecclesiarum Orientalium'", in *Ius ecclesiae*, 3 (1991), p. 212. See also Cf. A. de FUENMAYOR, "The canonical Status of Physical Persons", in M. THÉRIAULT and J. THORN (eds.), *Code of Canon Law Annotated*, Montreal, Wilson & Lafleur Limitée, 1993, p. 132.

¹³³ CIC c. 112, § 1, 2° provides for the transfer of a spouse to the Ritual Church *sui iuris* of the other spouse. CCEO c. 33 limits this right, for Eastern Catholics, to the wife.

marriage, or during its course, has declared that he or she is transferring to the Church *sui iuris* of the other spouse, becomes a member of that other Church; on the dissolution of the marriage, that person may freely return to the original Church *sui iuris*. This expands on the provision of *Cleri sanctitati* (CS, c. 9) which permitted only the woman to transfer enrollment. It is now possible for a Latin husband to join the Eastern Church *sui iuris* of his wife. An Eastern husband did not have the same right to join the Latin Church of his spouse, however, since he was still bound by *Cleri sanctitati*. This difference in discipline makes inter-ecclesial marriage a fairly sensitive issue.¹³⁴

The replacement of the term "mulieri" (wife) with "coniux" (spouse)¹³⁵ allows for the husband to declare his intention to transfer to the Church *sui iuris* of the wife. The *CIC* apparently is granting equality to both the husband and the wife in the opportunity to transfer from one Church *sui iuris* to another. No longer does the Church consider the husband "the head of the household". Only a (public) declaration¹³⁶ is required (and not a written document), so a lack of precision as to which Church *sui iuris* the family belongs could now arise. However, using canon 1126 by way of analogy, we understand that this declaration should be made before an appropriate pastor and put in writing.

¹³⁴ For the disparity between the different disciplines, see V. POSPISHIL, *Eastern Catholic Church Law*, 2nd rev. ed., Staten Island, New York: Saint Maron Publications, 1996, pp. 118-119.

¹³⁵ This change put the canon back where it had been in CS, c. 9, where the wife was free but not the husband to change to the others' *Ecclesia sui iuris*. Actually it could be a disguised resurgence of Oriental tradition, which is now legalized in *CCEO*, creating an inconsistency between *CIC* and *CCEO* as regards man-woman equality before the law. This may be seen better by asking how an analogous clause would fare in modern secular law even if discrimination against the male sex is not a great issue in cultures that are moving towards greater parity of rights.

¹³⁶ Any transfer, however, requires an appropriate declaration and annotation. Cf. *CIC* c. 535, § 2.

c) Children under the age of fourteen (3°)

Latin children under 14 years of age transfer with their parents if they transfer by indult of the Apostolic See, or if the Latin parent transfers to the Church of the Eastern spouse, or if the Catholic parent transfers by indult in a religiously mixed marriage. Latin children 14 or older are unaffected by parental transfers and would need an indult to change with them. For Eastern Catholics the norm remained as it was in *Cleri sanctitati* (until *CCEO*), which used puberty as the determining age, so that girls 12 or older remained unaffected by parental transfers; boys, however, were now treated the same in Eastern and Latin Churches alike.

An innovation in the 1983 Code is that Latin children who are under 14 and who transfer enrollment with their parents are entitled to return to the Latin Church when they reach 14. There was no similar provision for Eastern children in *Cleri sanctitati*. The 1983 Code does not contain any specifics as to when the transfer in enrollment takes effect¹³⁷ (is it with the rescript from the Apostolic See, or from the receiving bishop, or at some other time?) so the provisions of *Cleri sanctitati* canon 13 continued in the interim to serve as supplementary law for the Latin Church. Canon 36 of the Eastern Code prescribes that it takes place when the petitioner makes a declaration before the local hierarch or proper pastor or a priest delegated by either of them and two witnesses, unless the rescript of the Apostolic See provides otherwise.

¹³⁷ Echoing the provisions of *Cleri sanctitati*, the Eastern code provides details on when the transfer actually takes place. It happens when the person who is transferring, either in virtue of an indult or by provisions in the law, declares this in the presence of a hierarch or pastor of the new Church *sui iuris*, or of a priest delegated by either of them, and two witnesses (*CCEO* c. 36). Of course, the rescript from the Apostolic See can make other provisions.

But what of a child under fourteen who is of an unwed mother or of unknown parents or who is adopted or born of non-baptized parents? Canon 29 of the Eastern Code supplies for the lack of these norms in the Latin Code.

What about baptized non-Catholics coming into full communion with the Catholic Church? While the Latin Code is silent, the canon 35 of the Eastern Code,¹³⁸ prescribes that they be enrolled in the Church *sui iuris* equivalent to the one in which they were formerly enrolled as non-Catholics. This means that non-Catholic Western Christians are automatically enrolled in the Latin Church and that non-Catholic Eastern Christians are enrolled in the equivalent Eastern Catholic Church *sui iuris*.

It has to be said though that this subscribes to the line of ecumenical thinking found in the Eastern Code, to which this latter devotes an entire section. This heading contains the modalities for entering in full communion; for obvious reasons, no mention is made in this section of transfer into a Church *sui iuris*.

Ascription to a Church *sui iuris* requires a formal recognition and declaration. It does not occur by osmosis, by custom, or by regular attendance at liturgical events. Even prolonged practice does not effect a transfer in membership.¹³⁹

Canon 112, § 2, in the Latin Code which has no equivalent in the Eastern Code, affirms that "the practice, however prolonged, of receiving the sacraments

¹³⁸ CCEO c. 35: "Baptized non-Catholics who come to full communion with the Catholic Church should retain and practice their own rite everywhere in the world and should observe it as much as it is humanly possible. Thus, they are to be enrolled in the Church *sui iuris* of the same rite with due regard for the right of approaching the Apostolic See in special cases of persons, communities or regions."

¹³⁹ Enrollment is not subject to prescription in the 1983 Code, which continues the legal tradition that the custom of receiving the sacraments does not effect a change in persons to the Church *sui iuris* in which they are participating liturgically.

according to the rite of another Church *sui iuris* does not entail enrollment in that Church.”¹⁴⁰

This latter disposition is interesting, especially if one knows that the previous law, both Latin and Oriental, clearly established a connection between the rite and enrollment in a Church. I. Žužek speaks in this case of a rather curious dialectic, according to which in order to know to which *ecclesia* the child shall belong, one would have to know in which *ritus* he/she would be baptized, and to know that, one has to know to which *ecclesia* the parents belong, so as to be convinced that the child will definitely belong to the *ecclesia* of the parents.¹⁴¹ This means that transfer of church membership occurs in one of the three ways provided for in paragraph one of the canon.

2. 1990 Legislation

When the *Code of Canons of the Eastern Churches* took effect October 1, 1991, the rules for membership in a Church *sui iuris* underwent another change. The Eastern Code contains five canons that regulate transfer to another Church *sui iuris* after baptism. The Eastern Code generally affects only Eastern Catholics, but it can affect Latin Catholics when it expressly states so. Membership in a Church *sui iuris* is not subject to prescription. There is no canon in the Eastern Code corresponding to the Latin provision that the custom of receiving the sacraments in another Church *sui iuris*, no matter how prolonged, does not entail enrollment in that Church (*CIC* c. 112, § 2); this Latin canon provides suppletory law for the Eastern Churches. But the Eastern Code has an even more significant provision,

¹⁴⁰ “Mos, quamvis diuturnus, sacramenta secundum ritum alicuius Ecclesiae ritualis sui iuris recipiendi, non secumfert adscriptionem eidem Ecclesiae.”

¹⁴¹ See ŽUŽEK, “The *Ecclesiae sui iuris* in the Revision of Canon Law”, p. 327.

which provides suppletory law for the Latin Church: even if people are committed to the care of the hierarchy of another Church *sui iuris*, this does not change their enrollment (CCEO c. 31).¹⁴² After this canon, the CCEO looks at cases in which transfer to another Church *sui iuris* is nevertheless permitted.

As with the Latin Code, the Eastern law requires an indult from the Apostolic See for most cases of transfer of membership (CCEO c. 32, § 1).¹⁴³

The general norm is stated in this canon which remains substantially unchanged from the old law (CIC c. 98, § 3 which is equivalent to CS, c. 8). The new norm removes the doubt raised about the old law, whether the permission of the Apostolic See was for the validity of the transfer or only for its liceity. According to the Eastern Code, the *consent* would appear to be required for

¹⁴² According to KAPTIJN "Ce canon s'inscrit directement dans la ligne des déclarations du concile Vatican II, qui, à plusieurs reprises, a affirmé qu'il faut pourvoir au maintien et au développement des Églises orientales." Cf. KAPTIJN, "L'inscription à l'Église de droit propre", p. 59.

¹⁴³ "Nemo potest sine consensus Sedis Apostolicae ad aliam Ecclesiam sui iuris valide transire." This canon demonstrates how the law insists that every member of the faithful observe his own rite and remain enrolled in his proper Church *sui iuris*. Furthermore, it is interesting to see that the CIC in c. 112, § 1, 1° prescribes the same norm, except that it requires not the *consent*, but a *licentia*, permission, of the Holy See. (*Communicationes*, 14 [1982], p. 42.) Moreover, since the text of the CCEO that was initially proposed had been taken from the CIC, it also mentioned *licentia* (see *Nuntia*, 19 [1984], p. 22, c. 11, § 1: "Nemo potest sine *licentia* Sedis Apostolicae ad aliam Ecclesiam sui iuris valide transire.") Later, in the 1986 schema of the consolidated text of the oriental code, this was replaced with the term *consensus* (*Nuntia*, 24-25 [1987], c. 30, § 1: "Nemo potest sine consensus Sedis Apostolicae ad aliam Ecclesiam sui iuris valide transire.") Through this modification the distance in regard to previous legislation has been widened, since the *Motu proprio Cleri sanctitati* also required a *licentia*. This change appears to have been done deliberately, but to our knowledge the reasons for it are not noted in the published explanations. Thus we can only speculate: was it considered that *licentia* was too easy for such a passage, considering that in canonical norms *licentia* generally refers to an act which is licit, while *consent* refers to validity? However, we cannot maintain that the absence of *licentia* or of *consent* would always be sanctioned by illegitimacy or invalidity of the act. It seems we could say that in the majority of the norms in the two Codes, *licentia* touches the *licitas* of the act, but in certain norms, in reverse, *licentia* guarantees its validity. Therefore it is not possible to conclude definitively that the Commission for the Revision of the Oriental Code replaced the term *licentia* by *consensus* in order to make the consequences more weighty. See P. SZABÓ, "Sajátjogú egyháztagság a hatályos jog szerint (CIC 111-112. és CCEO 29-38. kk)", in *Kánonjog* 1 (1999), pp. 50-51.

validity. This may be considered with reference to the special role of “the see of Peter to safeguard the legitimate varieties <in the Church> while at the same time to keep watch that these differences do no harm to unity but rather contribute to it” (*LG*, 13). The same See is also “the supreme inter-ecclesial arbiter” (*OE*, 4). However, there are some expanded possibilities given within the law itself. For instance, § 2 of canon 32 complements § 1, even as primacy and episcopacy are complementary. The new norm in § 2 is a consequence of the revaluation of episcopacy in Vatican II and was proposed as a way of “tempering the rigidity” of § 1.¹⁴⁴

If the eparchs of the two Churches are in the same territory and they agree to the change in writing, the permission of the Apostolic See is presumed (*CCEO* c. 32, § 2).¹⁴⁵ This norm clearly applies to transfers between Eastern Churches *sui iuris*. The wording of the canon is that the permission of the Apostolic See “is presumed”. As such this is not an exception to the law, but the extension of a

¹⁴⁴ See *Nuntia*, 3 (1976), p. 50.

¹⁴⁵ “Si vero agitur de christifideli eparchiae alicuius Ecclesiae sui iuris, qui transire petit ad aliam Ecclesiam sui iuris, quae in eodem territorio propriam eparchiam habet, hic consensus Sedis Apostolicae praesumitur, dummodo Episcopi eparchiales utriusque eparchiae ad transitum scripto consentient.”

The only condition is that the two eparchial bishops have their respective eparchies in the same territory. Regarding this phrasing of the canon, J. Faris notes the difficulty of knowing what is meant by “in the same territory”: does it mean bishops of the same nation, or bishops of the same socio-cultural region, or bishops of the same bishops’ conference? See J. FARIS, *Eastern Catholic Churches: Constitution and Governance According to the Code of Canons of the Eastern Churches*, New York, Saint Maron Publications, 1992, p. 181, note 13.

CCEO c. 32, § 2 recognizes implicitly that the eparchial/diocesan Bishop is normally in a better position to know the difficulties of the Christian faithful than the authorities in Rome. The Bishops may use their new authority responsibly having in view both the private good of the petitioner and the common good of their *Ecclesia sui iuris*. This change in law and decentralization, finally, can help us all realize better that as there is “in the Catholic doctrine a Hierarchy of truths” (*UR*, no. 11), so too in the Church’s code there is a hierarchy of laws.

favor; it would seem, therefore, that it is not subject to a strict interpretation and can serve as suppletory law even for the Latin Church.

Canon 11 of the 1984 Schema had a similar formulation, but its second paragraph was slightly different. It stated: "However, when there is serious reason, the permission of the Holy See is presumed if hierarchs of the Churches *a qua* and *ad quam* consent in writing." The 1986 Schema removed the "serious reason" and introduced "who wished to transfer", thus simplifying the process of transfer without the need to approach the Holy See.

In light of canon 32, § 2 of Eastern Code, a *dubium* was raised¹⁴⁶ concerning the applicability of the "presumption" of the canon also to the Latin faithful. The Pontifical Council for the Interpretation of Legislative Texts studied this *dubium* and came to the conclusion that the permission can be presumed as often as one of the Christian faithful of the Latin Church has petitioned for the transfer to another Church *sui iuris* which has its eparchy within the same territory, provided that the diocesan bishops of both dioceses agree with each other about it in writing. On 26 November 1992, the Supreme Pontiff approved that opinion.¹⁴⁷

¹⁴⁶ See *Communicationes*, 24 (1992), p. 14. The norm of § 2 applies to transfers to the Latin Church as well, as is clear from the context of the origin and development of § 2. However, doubt was raised if the norm applies to a Latin Catholic petitioner and to a Latin bishop: can the latter too issue the rescript in question? See FARIS, *Eastern Catholic Churches*: p. 181, footnote 14.

¹⁴⁷ This is a short summary of the official text which reads, "Ad normam can. 112, § 1, 1° Codicis Iuris Canonici, quisque vetatur post susceptum Batismum alii ascribi Ecclesiae rituali sui iuris, nisi licentia ei facta ab Apostolica Sede. Hac de re, probato iudicio Pontificii Consilii de Legum Textibus Interpretandis, Summus Pontifex Ioannes Paulus II statuit eiusmodi licentiam praesumi posse, quoties transitum ad aliam Ecclesiam ritalem sui iuris sibi petierit Christifidelis Ecclesiae Latinae, quae Eparchiam suam intra eosdem fines habet, dummodo Episcopi dioecesani utriusque dioecesis in id secum ipsi scripto consentiant." See *AAS*, 85 (1993), p. 81. For a study of this issue, see J. CANOSA, "La presunzione della licenza di cui al can. 112, § 1, 1° del Codice di diritto canonico", in *Ius ecclesiae*, 5 (1993), pp. 613-631; see also M. BROGI, "Licenza presunta della Santa Sede per il cambiamento di Chiesa *sui iuris*", in *Revista española de Derecho Canónico*, 50 (1993), pp. 661-668.

This is a significant decree for the relationship between the two Codes. The reason for the interpretation was the opinion by some that canon 32, § 2 of the Eastern Code did not apply to the Latin Church. This canon presumes the permission of the Apostolic See when a person wishes to transfer from one Church *sui iuris* to another provided both eparchial bishops agree in writing. Those who maintained that canon 32, § 2 did not apply to the Latin Church argued that it did not comply with the condition of canon 1 of the Eastern Code since it did not use the term *Ecclesia latina* and it used only the terms *eparchia* and *episcopus eparchialis* rather than or in addition to *diocesis* and *episcopus dioecesanus*. Therefore it did not apply to the Latin Church and permission would have to be sought from the Apostolic See in every case of a transfer involving the Latin Church. The 1992 interpretation, then, establishes the principle that the Eastern Code can include the Latin Church even when using proper Eastern terminology. More significantly, the actual words *Ecclesia latina* do not need to be used for the

An outline of the procedure to be followed in cases involving a situation of this kind could be as follows:

1. The petitioner writes a petition requesting permission to transfer from one specific *sui iuris* Church to another, stating the reasons. The petition is addressed to the receiving bishop (*ad quem*).
2. The pastor of the petitioner writes a letter of endorsement, addressing it to the receiving bishop.
3. These two letters and a recent baptismal certificate are sent to the receiving bishop.
4. The receiving bishop notifies the releasing bishop (*a quo*), forwarding copies of the documentation.
5. The releasing bishop needs to render a *votum*. He can carry out a canonical investigation to assist in rendering the *votum*.
6. The releasing bishop sends his *votum* to the receiving bishop. If the *votum* is unfavourable the receiving bishop may request permission from the Apostolic See through the Apostolic Nunciature. If the *votum* is favourable, the receiving bishop issues a document stating that the permission to transfer is granted. This is sent to the pastor of the petitioner.
7. The petitioner signs a document accepting the transfer. This is signed in the presence of the pastor or bishop's delegate and signed by the pastor and two witnesses.
8. The pastor notifies the petitioner's parish of the baptism to enter the appropriate notation. He sends confirmation of the acceptance to the releasing bishop. See *CLSA Newsletter*, June 1993, p. 4.

Latin Church to be included in a canon of the Eastern Code according to the norm of canon 1 of the Eastern Code. It is sufficient that the term *ecclesia sui iuris* be used and that the text and context¹⁴⁸ of the law make it clear that the matter in question involves relations with the Latin Church. The interpretation also establishes the fact that the Latin Church is a Church *sui iuris*.¹⁴⁹ This is apparent because canon 32, § 2 of the Eastern Code refers only to a transfer from one Church *sui iuris* to another and yet the interpretation states that the Latin Church is included. It is a Church *sui iuris* and the matter affects relations with the Latin Church. Therefore, the terms of canons 1 and 32, § 2 of the Eastern Code, must apply to the Latin Church as well. That the Latin Church is a Church *sui iuris* is important in understanding that the Latin Code is the particular law of the Latin Church *sui iuris*.

The provision of canon 32, § 2 is certainly applicable to the transfer of a member of an Eastern Church *sui iuris* to another Eastern Church *sui iuris*. But can the same provision be applied to a case in which a member of an Eastern Church *sui iuris* who wishes to transfer to the Latin Church? According to A. Mendonça, as long as the bishops (eparchs) *a quo* and *ad quem* are within the same territory and they consent to the transfer in writing, a member of an Eastern Church *sui iuris* can validly transfer to the Latin Church. As in the previous case, here the consent of the Apostolic See is presumed to be present.¹⁵⁰

¹⁴⁸ Cf. *CIC* c. 17; *CCEO* c. 1499.

¹⁴⁹ RACHFORD, "Two Lungs, Two Ventricles: the Eastern Canons as Suppletory Law", pp. 154-156. ABBASS, "The Interrelationship of the Latin and Eastern Codes", pp. 12-16. SALACHAS, "Problematiche interrituali nei due Codici orientale e latino", p. 638.

¹⁵⁰ In his comments on this canon, FARIS states: "The question has arisen whether the consent of the Apostolic See is presumed if an Eastern Catholic and Latin Catholic bishop reach such an agreement. If the procedure formulated in canon 32 is strictly reserved to hierarchs of the Eastern Catholic Churches, it may be that the consent of the Apostolic See cannot be presumed in

No involvement of a bishop or eparch is required for the traditional situation of a marriage between persons of different Churches *sui iuris*. However, the Eastern Code is more restrictive than the Latin one as to whom this possibility applies. As with *Cleri sanctitati*, only the woman can change enrollment in this situation, changing to the Church of her husband at the time of the wedding or any time during married life; when the marriage is dissolved, she can return to her original Church (CCEO c. 33).¹⁵¹ The net effect is that a Latin husband may

cases involving a Latin Catholic. However, a special faculty could be accorded to the Latin diocesan bishops." (FARIS, *Eastern Catholic Churches*, p. 181, note 14). Whereas, PROVOST says: "The wording of the canon (CCEO c. 32, § 2) is that the permission of the Apostolic See 'is presumed'. As such this is not an exception to the law, but the extension of a favor; it would seem, therefore, that it is not subject to a strict interpretation and can serve as suppletory law even for the Latin Church" (J.H. PROVOST, "Some Practical Issues for Latin Canon Lawyers from the Code of canons of the Eastern Churches", in *The Jurist*, 51 [1991], p. 56). A. MENDONÇA, *Interecclesial Legislation*, notes for the private use of the students, Ottawa, Faculty of Canon Law, Saint Paul University, 1996-1997, p. 47.

¹⁵¹ We can see right away the difference between the two Codes. Where does this difference come from? In the first Schema of the CCEO the text was formulated as in the Latin Code, that is, it permitted the transfer for both spouses, man or woman. (See *Nuntia*, 19 [1984], p. 22. c. 12: "Integrum est coniugi ad Ecclesiam alterius coniugis transire in matrimonio innuendo vel eo durante: matrimonio autem soluto libere potest ad pristinam Ecclesiam redire.") But this text provoked strong reactions among those consulted. The majority of them wanted to return to the norm of the previous legislation (CS. c. 9) which authorized transfer solely to the wife, arguing that in the Orient the principle "the wife follows the rite of her husband" is in force. Two responses proposed the introduction of diverse norms for the latin territories and the oriental territories. Fearing that the choice of the spouse would tend toward the latin Church, especially if the husband belongs to the latter, these two responses formulated a text in order for the oriental spouse to transfer only to an oriental Church *sui iuris*; further, within the oriental territories they wanted to allow the latin spouse to transfer to the oriental Church of the other spouse. Outside of those territories one spouse could transfer to the Church of the other spouse, whichever that Church may be. There was a long debate over this proposal. None of the consultors in the Commission wanted to introduce a diversified discipline. At this stage of the process, the mentality of the predominance of the husband was rejected in all its forms as contrary to all canonical norms. In any case, the notion was retained that the husband not be permitted to transfer to the Church of his wife. Finally, the positions taken in the Commission were such that four consultors wanted to retain the norm of the earlier legislation, four others desired full equality in total liberty between the two spouses, and three expressed their desire to suppress this canon completely. Finally, all the consultors agreed to include into the text the clause: "unless particular law established by the Apostolic See provides otherwise" (*nisi ius particulare a Sede Apostolica statutum aliud fert*). (See *Nuntia*, 22 [1986], pp.

transfer to the Church *sui iuris* of his Eastern wife, but an Eastern husband may not transfer to the Church *sui iuris* of his wife, whether she is Latin or a member of some other Eastern Church *sui iuris*.

The laws governing ascription may seem relatively rigid. More importantly, however, the validity of acts that affect individual lives may depend upon their observance.

28-30.) Thus the freedom of transfer was guaranteed to the two spouses and the text in this form was published in the complete Schema of 1986. (See *Nuntia*, 24-25 [1987], c. 31: "Integrum est coniugi ad Ecclesiam alterius coniugis transire in matrimonio celebrando vel eo durante, nisi ius particulare a Sede Apostolica statutum aliud fert.") Again, the reactions to this text were less than favourable. It was said that in the Orient it was dishonourable for the husband to transfer to the Church of his wife. Moreover, the fear was great that the minority oriental Churches would disappear, and especially that the oriental faithful amidst the latin faithful in the western regions would be "absorbed". To this the reporter replied that it is necessary both in the East as well as in the west to respect the basic rights of the spouses. (See *Nuntia*, 28 [1989], pp. 25-26.) Later the Plenary Assembly in 1988 discussed this canon again at length and on this occasion the Secretary once more recalled that one has to be careful not to deny the fundamental rights to the spouses and the parents, strengthening his admonition by citing the Apostolic Letter *Mulieris dignitatem* (15 August 1988) calling for parity between men and women in every aspect. The members of the Plenary Assembly for their part once again recalled the mentality, traditions and social context in the Orient and the dangers for the survival of the oriental Churches in the diaspora. The fact that almost all members of the Plenary Assembly had their say about this subject revealed, in our opinion, the great emotions which this norm has provoked. At the end, the majority of the votes were cast for maintaining the text, in other words, to keep the proceeding legislation in effect. In the voting on 10 November 1988, tradition won out against innovation and the provision for the parental choice of children's rite fell through. (See NEDUNGATT, *The Spirit of the Eastern Code*, p. 104, footnote 8).

As to the rite of the children, the consultors had to make a difficult choice between, on the one hand, respect the primary rights of the parents, placing man and woman on the same level and, on the other hand, conform to the oriental traditions and mentality an action that might be necessary to safeguard the oriental Churches. Finally, the consultors accepted as a tentative solution to their dilemma the adding of the clause "with due regard to particular law established by the Apostolic See". Cf. *Nuntia*, 22 (1986), pp. 24-27. But Pope John Paul II did not yield and insisted in his address two days later on the "legal guaranty" of the equality of parental rights. Thus it permitted the woman alone to transfer to the Church *sui iuris* of her husband and the clause regarding the eventual particular law to be established by the Holy See, was suppressed. (See *Nuntia*, 29 [1989], pp. 36-48.) See also NEDUNGATT, *The Spirit of the Eastern Code*, pp. 104-105; and see our footnote 135.

CONCLUSION

There had been much discussion about the notion of rite before and after the Council. Without seeking an impossible concordance of a discordant tradition, in which different meanings of *rite* were mixed up and confused, *PCCICOR*, after prolonged study, settled on a uniform usage of the term *rite* for the future. Negatively, rite no longer is to be used in the sense of a Church or an ecclesial community of persons. In the sense of liturgical action or ceremony, too, rite is avoided except in one celebrated case, *ritus sacer*, referring to the marriage form (c. 828. CA 85). Positively, rite is to refer to a *patrimony* belonging to and often distinguishing the particular Churches.¹⁵²

A distinction was thus made between primary rite (generic liturgical families) and secondary rites, that is, "derived communities that enjoyed juridical independence within the generic liturgical families."¹⁵³ Not even the primary rites or liturgical families were officially classified until *Postquam apostolicis*.

Later, the Second Vatican Council tried to give a better, more realistic notion and was successful to some extent. However, there was still a lack of clarity owing to confusion in usage of the term in the various conciliar documents. The Code Commission almost resolved the problem, particularly in the codification period of the *Latin Code of Canon Law* of 1983, but was not fully successful.

Before the promulgation of the Eastern Code, various terms – *rite*, *particular church*, *individual church*, *ritual church* – were used to signify the different Churches in the Catholic communion. Among them the term *rite* was

¹⁵² *Nuntia*, 21 (1985), pp. 74-75.

¹⁵³ *MANSI*, 50, p. 1131.

employed very often in the Church documents in a liturgical as well as a juridical sense which was imprecise and misleading. Finally, a clear notion of the concept of *rite* came into existence through the promulgation of the Oriental Code in 1990, in which the notions of *rite* and *Church* are clearly stated in canons 27 and 28.

Canon 27 is mainly an answer to the problem of terminology to designate the intermediate level of ecclesial communion. Secondly, it gives us the constitutive elements of such an ecclesial community, that is, the group of Christian Faithful and the hierarchy that forms it into a Church *sui iuris*. Thirdly, it specifies the characteristics of such an intermediate ecclesial communion, namely, that it is *sui iuris*. Fourthly, it determines the manner in which a Church is recognized as *sui iuris*. Finally, this canon indicates the relationship an intermediate ecclesial communion has with the higher and lower levels of communion; hence its relation with the whole Church. According to canon 27, a *sui iuris* Church is recognized as *sui iuris*. The expression *sui iuris*, which has its roots in Roman Law, is seldom used in modern law and hence it evades proper comprehension. The best translations would be “autonomous” or “self-governing” as many canonists tend to say.

The new Eastern Code in canon 28 first gives a definition of rite and then repeats the list of primary rites. As is clearly stated, rite is far more comprehensive than liturgical tradition; it is a distinctive patrimony. It is important to remember that one does not belong to a rite but to an autonomous Church. The Code maintains the prudent policy agreed upon at the time of the First Vatican Council. Nowhere does it attempt to list the secondary rites or the autonomous Churches.¹⁵⁴

¹⁵⁴ For the listing of the autonomous Churches one must sift through the *Annuario Pontificio* and consult brave authors.

Thus, with the promulgation of the new Oriental Code, the age-long confusion regarding the *concept of rite* was resolved and a clear distinction between *Ritus* and *Ecclesia sui iuris* was established.

Our study aims to explain the distinction between a Church *sui iuris* and rite, as presented in the Eastern Code. As we have seen, Church *sui iuris* is the term which the eastern Code introduces to signify the juridical nature of a Church. It is a moral person endowed with rights and obligations. On the other hand, rite is that which belongs to a Church *sui iuris*. One becomes a member of a Church *sui iuris* and not of a rite, as rite is not a moral person.

In the evaluation of canons 111 and 112 of the Latin Code there are two fundamental considerations that seem germane. The first is that of religious liberty. The Second Vatican Council upheld the right of every individual to religious freedom, to worship in a manner congruent with his convictions.¹⁵⁵ The Council was concerned, for the most part, about the religious freedom of the individual within the context of civil society. However, this same principle of religious freedom would perforce be upheld within the Church itself. A person has the inherent and inalienable right to worship in a manner most suited to his spiritual and cultural needs (*CIC* c. 214). The second principle that must be taken into account is the spiritual integrity of the family which must be maintained. The Second Vatican Council refers to the family as a domestic church.¹⁵⁶ If the member of one family belong to different Churches *sui iuris*, the life of worship within the family would obviously be somewhat impeded. This was a situation that even the 1917 Code desired to avoid, in that it afforded the wife the

¹⁵⁵ SECOND VATICAN COUNCIL, Declaration on religious liberty, *Dignitatis humanae* (=DH). 7 December 1965, no. 2; *AAS*, 58 (1966), pp. 929-941, here at pp. 930-931; FLANNERY, *Vatican II*, pp. 800-801.

¹⁵⁶ *LG*, no. 11.

opportunity to belong to the Church *sui iuris* of her husband during their married life; thus would the family be sharing the same faith traditions.

CHAPTER III

ARCHDIOCESE OF ALBA-IULIA AND THE PRESENCE OF CATHOLICS OF SEVERAL RITES

INTRODUCTION

In this chapter we intend to analyze the political, ethnical, cultural, and historical situation of Transylvania. The two largest and most significant national minorities, the Hungarians and the Germans, played a dominant role in the historical development of the country and the evolution of its culture. It must be pointed out here that the Romanian people, as the national majority, have always had social, economic, and cultural traditions very different from those of the national minorities in present-day Romania.¹ In the territory of Transylvania, Romanians (Vlachs) first were mentioned in historical records from the thirteenth century. The basis of the development of the feudal system, which started in the thirteenth – fifteenth centuries was the alliance of the three nations: the Hungarian nobles in the counties, the Székelys, and the free peasants and tradesmen of the autonomous Saxon territories.

As a result of the penetration of Ottoman Turkish power into Central Europe, the medieval Hungarian kingdom disintegrated into three parts (1541). Transylvania as a principality was relatively independent between 1542 and 1688,

¹ It must be noted that there are various English spellings for “Romania”. In some works, the name of the country is transcribed as “Roumania”, in others, “Rumania”, and so forth. We have retained the spelling used by the various authors.

without giving up its ties with Hungary. After the defeat of the Turks, the Habsburgs made Transylvania into an Austrian crown colony (1687), ruled according to special statutes as a Grand Principality (1688-1867). The Habsburg rule contributed beyond doubt to the stability and development of western culture and Catholicism in Transylvania. In 1918 Transylvania became part of the newly established Romania.

In his Apostolic Letter of 20 July 2000 for the Third Centenary of the Union of the Greek-Catholic Church of Romania with the Church of Rome, Pope John Paul II said:

In that land, many peoples – Romanians, Hungarians, Armenians and Saxons – shared a common and sometimes difficult history, which left its marks on the human and religious make-up of the inhabitants. Unfortunately, the unity which characterized the Church in the early centuries was never achieved again, and your history too was marked by division and tears with increasing intensity.²

Catholicism in Romania is dominated by two factors: the church's own national diversity and the state's particularly antagonistic policy against the Church. There are 2.5 million Catholics in Romania, belonging to the Latin and the Eastern Churches.

By virtue of the Concordat concluded on 10 May 1927 between the Holy See and the Romanian Government, Catholics in Romania hierarchically had eleven Dioceses, of which five were for the faithful of the Byzantine Church and six for the faithful of the Latin Church, as well as one Ordinariate for the Armenians.

² Cf. JOHN PAUL II, "Pressing the Quest for Catholic-Orthodox Unity: Apostolic Letter of Pope John Paul II for the Third Centenary of the Union of the Greek-Catholic Church of Romania with the Church of Rome (7 May 2000)", in *The Pope Speaks*, 45 (2000), p. 329.

In this chapter we will devote special attention to the historical development of the Archdiocese of Alba-Iulia and deal with the presence of various Churches and other Hierarchs in the same territory.

A. A BRIEF OVERVIEW OF TRANSYLVANIA AND ITS PEOPLES

Transylvania³ and its nationalities are a specific phenomenon in the development of Europe. Transylvania's ethnic composition is very different from that of the rest of present-day Romania, not only geographically but also historically and economically. It is a region of national, religious, linguistic, and cultural diversity, and is of key importance with regard to the Catholic Church. Even though the ways the various national groups have lived and the goals they have pursued have diverged over the centuries, the ethnic groups of the province have nonetheless been linked by a number of shared traditions and a common history. But at least to the same extent as the other factors, European great-power politics have determined much of Transylvania's history and prevented true integration of the nationalities.

³ The internationally used name "Transylvania" is the Latin translation of the Hungarian name "Erdély" or "Erdőelve", as it was used and spelled in the tenth, eleventh, and twelfth centuries, meaning "Beyond the Forest". Officially, the Romanians are using the name "Transylvania". However, in their own native tongue, they still refer to it as "Ardeal", which word derives phonetically from the Hungarian "Erdély". The Germans, who were settled there during the 13th century by Hungarian kings, call it "Siebenbürgen", due to the seven administrative districts with a centrally located fortification, "Burg", in each. Today, when we speak of Transylvania, we understand the entire territory of 103, 903 square kilometers, which was taken from Hungary and annexed by Romania after World War I, with a population of 5,257,467, of which 2,838,454 were Romanians, (53.8%), 1,661,805 were Hungarians, (31.6%), 654,789 were Germans, (10.7%), and the remaining 3.9% were other nationalities.

See Appendix no. 1 for census details Á. VARGA, "Hungarians in Transylvania between 1870-1995, Supplementary Table 1-9", <http://kia.hu/konyvtar/erdely/SUPPLEM.HTM> (7 February 2001). See also ID., "Erdély Magyar népessége 1870-1995 között" (Hungarian Population of Transylvania Between 1870-1995), in *Magyar Kisebbség*, 3-4 (1998), pp. 331-407.

Today, the name Transylvania is applied to all the territory transferred from Hungary to Romania by the Trianon Treaty of 4 June 1920.

1. Hungarians

Around 2000 B.C. the territory of present-day Transylvania was inhabited by Indo-Germanic tribes. The Agathurs appeared in the fifth century B.C., followed by the Scythians, who were in turn replaced by the Thracian-Geto-Dacian state. This state was overthrown between 105 and 107 A.D. by the Roman legions of Trajan, and Dacia (a part of present-day Transylvania) became a Roman province. In 271 the area was occupied by the Goths, who a century later (in 376) were expelled by the Huns. The Gepids and the Avars later occupied the area of present-day Transylvania.⁴ The Avar Empire, which also extended over the Hungarian Plane, was overthrown by the armies of Charlemagne at the end of the eighth century. Finally, at the beginning of the ninth century, Transylvania came under Bulgarian sovereignty, a change of rule that brought no significant change in the region's ethnic composition.

But, toward the end of the ninth century, the migrations of peoples and the frequent changes in sovereignty were brought to an end by the Magyar conquest of the Carpathian Basin. The Hungarians brought order and stability and were the first to establish what could be considered to be a permanent state in the area. The conquest and the subsequent Christianization of the area made Transylvania part of Western civilization; the region, in turn, served as a bastion of protection for that civilization. From the time of the conquest until 1918, Transylvania shared in

⁴ B. HÓMAN and GY. SZEKFÜ, *Magyar történet* (Hungarian History), Budapest, Királyi Magyar Egyetemi Nyomda, 1935-1936, vol. 1, pp. 15-75.

From the third to the eighth centuries, a succession of barbarian invaders swept over eastern Europe: Goths, 271-375, Huns, 375-453, Gepids, 453-566, and Avars, 566-799.

the development of the Hungarian kingdom and was an integral part of the framework of the Hungarian state.⁵

As Transylvania became consolidated politically, three groups or “nations”⁶ assumed a leading role, the Magyar, the Székely, and the Saxon.⁷ After the Reformation, the churches of these nations constituted the four “received” religions – *recepta religio*⁸ – (Catholic, Reformed or Calvinist, Evangelical or

⁵ On the Hungarian conquest of Transylvania, the following works provide detailed information: L. MAKKAI, *Erdély Története* (History of Transylvania), Budapest, Renaissance Könyvkiadó Vállalat, 1944, p. 536; ID., *Histoire de Transylvanie*, Paris, Les Presses Universitaires de France, 1946, p. 382; L. MAKKAI and A. MÓCSY, *Erdély Története* (History of Transylvania), Budapest, Akadémiai Kiadó, 1987, vols. 1-3; HÖMAN and SZEKFÜ, *Magyar történet*, vols. 1-5; E. MOÓR, *A honfoglaló magyarság megtelepedése és a székelyek eredete* (The Settlement of the Hungarian Conquerors and the Origin of the Székler), Szeged, 1944, p. 111; E. HARASZTI, *The Ethnic History of Transylvania*, Astor Park, Florida, Danubian, 1971, p. 218; C.A. MACARTNEY, *Hungary and her Successors: The Treaty of Trianon and its Consequences 1919 – 1937*, London, New York, Toronto, Oxford University Press, 1968, pp. 251-355; GY. ZATHURECZKY, *Transylvania: Citadel of the West*, 2nd ed., Astor Park, Florida. Copyright by the Danubian Press, 1967, p. 61.

⁶ Membership in the three nations was not determined by nationality. Indeed, the idea of nation (*natio*) at this time implied quality rather than quantity; it did not automatically encompass everyone of the same ethnic origin, but only those persons who had acquired special rights and immunities. The Romanian *natio* did not exist; the laws of the land did not mention it.

⁷ The three Transylvanian nations united in 1437; their agreement came to be known as the *Unio trium nationum* (Union of the Three Nations). Subsequent legislation and compilations of laws, which formed the basis of the Transylvanian constitution, are: *Tripartitum* (1526), *Approbatæ Constitutiones* (1540-1653), and *Compilatae Constitutiones* (1654-1669). On 4 December 1691 Emperor Leopold I (1657-1705) issued a diploma which was to serve as the foundation of public law in Transylvania until 1848. This so-called *Diploma Leopoldinum* confirmed the rights and privileges of the three nations and the four churches and recognized the autonomy of Transylvania. (J. MARTON, *Az Erdélyi (Gyulafehérvári) Egyházmegye története* (History of the Diocese of Erdély [Alba-Iulia]), Kolozsvár, Gloria, 1993, pp. 72-73, 83-88.) Cf. I. LUPAŞ, *Documentele istorice transilvane: 1599-1699*, (Documents of History of Transylvania), Cluj, 1940, vol. 1, pp. 439-446.

⁸ For further study about received and recognized denominations see L. LÁSZLÓ, *Church and State in Hungary 1919-1945*, unpublished doctoral dissertation, Faculty of Political Science of Columbia University, 1973, vol. 1, pp. 24-26.

Lutheran, and Unitarian).⁹ The religious composition closely followed the ethnic divisions. Hungarians are Roman Catholic, Calvinist, and Unitarian; the Saxons are Lutherans. Romanians were further excluded from public life, in Transylvania, since they, together with their Orthodox faith, were simply "tolerated".¹⁰

The Székely (Széklers), about one-third of the Hungarians in Transylvania, differ neither linguistically nor ethnically from the other Hungarians; the name was an inheritance from their historical development.¹¹ The rulers of Hungary ordered the Székely to protect the kingdom's eastern frontiers at a time when Transylvania became consolidated in the Carpathian Basin. The Székely were "free border guards" with privileges similar to those granted to the Saxon settlers. By the fifteenth century, the feudal political structure in Transylvania had consolidated and was organized locally into Hungarian counties and the Székely and Saxon "seats" (*szék*, *Stuhl*), an organization of public administration that lasted for four centuries.

⁹ Cf. M. ENDES, *Erdély három nemzete és négy vallása autonómiájának története* (The History of the Autonomies of the three Nations and four Religions of Transylvania), Budapest, Sylvester Irodalmi és Nyomdai Intézet, 1935, pp. 171-263; F.S. von LIBLOY, *Siebenbürgische Rechtsgeschichte*, 2nd ed., Hermannstadt, 1867, vol. 1, pp. 380-385; J. BENKŐ, *Transsilvania sive Magnus Transsilvaniae Principatus olim Dacia Mediterranea dictus*, 2nd ed., Cluj, 1834, vol. 2, pp. 2-5.

¹⁰ N. CORNEANU, *The Romanian Church in Northwestern Romania Under the Horthy Scourge*, Bucharest, Publishing House of the Bible and Mission Institute of the Romanian Orthodox Church, 1986, p. 26.

¹¹ For further information on the origin of the Széklers, (Székely): B. HÓMAN, "Der Ursprung der Siebenbürger Szekler", in *Ungarische Jahrbücher*, 2 (1922), pp. 9-36; J. NÉMETH, "La question de l'origine des Sicules", in *Archivum Europae Centro-Orientalis*, 6 (1940), pp. 208-241; GY. GYÖRFFY, "Der Ursprung der Szekler", in *Ungarische Jahrbücher*, 22 (1942), pp. 130-142.

2. Saxons

The first group of German-speaking people to migrate to Transylvania were the Saxons (*Sibenbürger Sachsen*).¹² It is now generally accepted that the Transylvanian Saxons immigrated primarily from middle Franconia and the left banks of the Rhine and Moselle rivers. A small number of them came from Westfalia, Hesse, Bavaria, and Thuringia. The Hungarian King, Géza II (1141-1162), called these Saxons to Transylvania as guests to defend the southeastern frontier and to settle in the so-called *Königsboden*¹³ region, then uninhabited and lying between Hermannstadt/Sibiu, Leschkirch and Grosschenk. The Germans were also settled in northeastern Transylvania. In 1224, King Endre II (1205-1235) granted territorial, political, and religious autonomy to the Saxons through his so-called "Golden Charter" (*Goldener Brief Andreanum*). The Saxons now formed the third privileged "nation" (alongside the Hungarian nobles in the counties and the Székelys) in Transylvania. They lived in privileged regional, political and cultural autonomies, called "Universitas". The autonomy of the *Königsboden* and of the Transylvanian Saxons was temporally abolished by the reforms of the Habsburg Emperor Joseph II (1780-1790) but was restored by his brother and successor Leopold II (1790-1792). The historical privileges enjoyed by the Transylvanian Saxons were severely limited when the province passed to Romania.

¹² The name "Saxon" comes quite likely from a word in Latin, the official language of Hungary in the Middle Ages. On the history of the Transylvanian Saxons see, for example: G.D. TEUTSCH and F. TEUTSCH, *Geschichte der Siebenbürger Sachsen für das sächsische, Hermannstadt, 1907-1926*, vols. 1-4.

¹³ "Königsboden", (or in Latin "Fundus regius" because it had been a direct grant from the king) the name of a large part of the area inhabited by the Saxons, consisted of Saxon seats and districts.

3. Romanians

The origin of this southeast European people is still disputed and subject to various interpretations, which are not analyzed in this work. According to Romanian and certain other historiographers, the Romanian people grew out of the intermingling of Dacians with Romans (the Daco-Roman theory).¹⁴ The earliest documentary evidence places their settlement in the southern Carpathians at the end of the twelfth and beginning of the thirteenth centuries, at a time when Transylvania's inhabitants also included, in addition to the Hungarians and Saxons, some sparsely settled Slav-Bulgarian tribes. After 1200 there is mention of small patriarchal Slavonic-Romanian communities in the mountains of Transylvania. These Romanian hamlets, according to later (thirteenth and fourteenth century) documents were administered by the Hungarian state when fortified border areas were organized and put under the direction of a Hungarian official, the *ispán*. But because they were semi-nomadic shepherds, the Romanians were not able to develop well-defined territorial settlements until much later. When the first semi-nomadic Romanians arrived in Transylvania, they sought refuge from invading and marauding Turks and found it in the mountains and isolated valleys of the region. By the fourteenth century they had begun to give up their nomadic way of life and to settle in villages. But the process was still

¹⁴ On the history of the Romanians see, for example, N. JORGA, *Istoria Românilor* [The History of the Romanians], Bucharest, 1936-1939, vols. 1-10; ID., *A History of Roumania, Land, People, Civilization*, New York, AMS Press, 1970, p. 284; ID., *Histoire des Roumains de Transylvanie et de Hongrie*, Bucharest, 1916, vols. 2; R.W. SETON-WATSON, *A History of the Roumanians*, Archon Books, Cambridge University Press, 1963, p. 596; K. HITCHINS, *The Rumanian National Movement in Transylvania, 1780-1849*, Cambridge, Massachusetts, Harvard University Press, 1969, p. 316; ID., *The Idea of Nation the Romanians of Transylvania, 1691-1849*, Bucharest, Editura Științifică și Enciclopedică, 1985, p. 221; M. PĂCURARIU, *Istoria Bisericii Ortodoxe Române*, (The History of the Romanian Orthodox Church), The Biblical and Missionary Institute of the Romanian Orthodox Church, București, 1981, vols. 3.

incomplete as late as the eighteenth century, and a Romanian middle class did not emerge until the nineteenth century. The Transylvanian Romanians did not constitute one of the privileged “nations”, nor was their Orthodox Church one of the “received” religions.¹⁵

The development of Romanian national consciousness began around 1700. At that time, a part of the Transylvania Romanian intelligentsia adopted the Uniate (the Greek Catholic) faith with its spiritual center at Rome, and hence they came into contact with Western culture and with the national consciousness that began to develop in Central Europe in the course of the eighteenth century. Although the national endeavors of the Transylvanian Romanians found some support in the policies of the Habsburg rulers, for various reasons none of the Romanian demands for political rights were fulfilled prior to 1848 when the old feudal order was abolished and the Romanian serfs emancipated. Under the Dual Monarchy of Austria-Hungary and the Hungarian nationality law of 1868, the Transylvanian Romanians were citizens with equal rights and obligations due to all citizens, of whichever nationality, within the Kingdom of Hungary, of which Transylvania was an integral part. However, the demands for recognition of their collective rights, such as an autonomous territory with Romanian administration, were not granted.

Politically, though Romania had been accorded autonomy, it lacked sovereignty as late as 1871, and belonged at least legally to the Ottoman Empire. On 24 April 1877, Russia, after making preliminary political compromises with Austria, declared war on the Ottoman Empire. Romania proclaimed its independence, and formally entered the Russo-Turkish War. After the war, it was recognized as an independent sovereign state.

¹⁵ HITCHINS, *The Rumanian National Movement in Transylvania*, p. 11; cf. CORNEANU, *The Romanian Church in Northwestern Romania*, pp. 23-26.

B. CATHOLIC CHURCH IN ROMANIA¹⁶

To understand the unique situation which faces Catholics in Romania, one has to examine its history and geography, to see how the separate branches of the church originated and developed. Romania comprises three provinces: Wallachia, which lies south of the great arc of the Carpathian Mountains; Moldavia to the northeast and east; and Transylvania a triangle bounded by Wallachia, Moldavia, and Hungary. Wallachia and Moldavia (together known as the Old Kingdom) were vassal principalities of the Turks from 1504 to 1714, but remained Orthodox.¹⁷

¹⁶ For a brief review see Appendix no. 2. For Church and State relationship, see I. RENCSIK, "Az Egyház és az Állam kapcsolata a Román Köztársaságban", in *Keresztény Szó*, 10 (1998), pp. 13-17; *ibid.*, 11 (1998), pp. 23-26; *ibid.*, 12 (1998), pp. 21-23. ID., "Die rechtlichen Beziehungen zwischen Staat und Kirche in Rumänien", in *Folia Theologica*, 6 (1995), pp. 149-159. ID., "La relación Iglesia y Estado en Rumanía", in *Revista Española de Derecho Canónico*, 51 (1994), pp. 191-198; see also E.C. SUTTNER, *Beiträge zur Kircheneschichte der Rumänen*, Wien, Verlag Herold, 1978, pp. 179-206.

¹⁷ The information available for the beginning of the thirteenth century shows the Church of Gothic Dacia as being part of the Orthodox Church. From that time until the second half of the nineteenth century the Romanian Orthodox Church was under the Ecumenical Patriarchate of Constantinople. The Romanian Church became independent from the Patriarchate only as a result of a long and complex process, which began when an independent Romanian State came into being in 1859 under the name of the United Romanian Principalities. The first constitution of the Kingdom of Romania of 1866 stated that "the Romanian Orthodox Church is independent". (Romanian Constitution of 1866, in *Monitorul Oficial*, no. 142, 1 July 1866.) But recognition of its independence (autocephalous status) was not granted by the Patriarchate of Constantinople until 1885. (Romanian Orthodox Church Autocephalous, in *Monitorul Oficial*, no. 27, 5 May 1885.) The independence of the Romanian Church was a consequence of the political independence of the Romanian State. The organization on new grounds of the Romanian Orthodox Church, its nationwide unification, was an important achievement in the organization of religious life; this occurred by inclusion of the Churches in all provinces united to the motherland, the creation of the Patriarchate of the Romanian Orthodox Church and the Romanian Orthodox Church's declaration of Autocephaly through the Organization Law and Statute of the Romanian Orthodox Church of May 1925. (PĂCURARIU, *Istoria Bisericii Ortodoxe Române*, pp. 394-395, 397.) Cf. B.J. KIDD, *The Churches of Eastern Christendom from A.D. 451 to the Present Time*, New York, Burt Franklin, 1974, pp. 348-349; N.V. DURA, "The Protos in the Romanian Orthodox Church According to its Modern Legislation", in *Kanon*, 9 (1989), pp. 143-146; ID., "100 de ani de la recunoașterea autocefaliei (1885-1985) și 60 de ani de la întemeierea Patriarhiei Române (100 years since the recognition of the autocephaly [1885-1985] and 60 years since the foundation of the Romanian Patriarchate)", in *Marturie Ortodoxa*, 5 (1986), pp. 63-97; ID., "Autocefalia Bisericii

The leaders of both the Eastern rite church and the Orthodox church continued to cooperate, particularly in the promotion of Romanian independence.¹⁸

On 1 December 1918, a meeting representative of the Transylvania Romanians at Alba-Iulia proclaimed the Union of Transylvania with Romania and of all Romanians in one State. With the entry of Transylvania into the new Romania, the two Catholic churches faced a change in status.¹⁹

Ortodoxe Române și bazele ei canonice (Autocephaly of the Romanian Orthodox Church and its canonical bases)", *Marturie Ortodoxa*, 4 (1985), pp. 91-107; see also G.R. ROBERSON, *The Eastern Christian Churches: A Brief Survey*, revised 6th ed., Rome, Orientalia Christiana, 1999, pp. 72-73.

¹⁸ Significantly, in 1918 an Orthodox bishop, Miron Cristea, and a Catholic bishop, Iulius Hossu, journeyed to Bucharest together to announce to Emperor Ferdinand their Diet's decision to unite Transylvania with the Old Kingdom to form modern Romania.

¹⁹ Whereas previously the Latin Rite church had shared the privileged position of its Hungarian and German members, now it found itself in a country to some extent hostile to it. By contrast, the Eastern Rite church, by the Constitutions of 1923 and 1938, was placed second only to the Orthodox church; the latter was the "church of the majority", the former received "priority over other cults" (Romanian Constitution of 1923, in *Monitorul Oficial*, no. 282, 29 March 1923).

By the provisions of Law no. 54 of 1928, and its amendments, a general regime was established for the religious denominations. However, from the point of view of status, the denominations were divided into several groups as follows:

1. National Churches. This term was applied to the Romanian Orthodox Church (dominant church) and the Greek Catholic (Uniate) Church.
2. Roman Catholic Church. It had its own status defined by the Concordat with the Holy See of 1927, which was also applied to the Uniate Church.
3. Historical but not national Churches: Calvinist, Evangelical Lutheran, Unitarian, Armenian-Gregorian, Jewish, and Mohammedan.
4. The so-called "religious associations," also called "minor denominations." This term was applied to a variety of sects. After 1933 this group was divided into two categories:
 - a). those which acquired the status of a legal entity under the Law on Non-profit Corporations and which were officially recognized and allowed to function; and
 - b). those which were considered dangerous to public order and morality and were therefore prohibited. (General Regime of Cults, Law no. 54, in *Monitorul Oficial*, no. 89, 22 April 1928.)

Cf. G. ROSU, - M. VASILIU, - G. CRISAN, "Church and State in Romania", in V. GSOVSKI, ed., *Church and State Behind the Iron Curtain*, New York, Published for the Mid-European Studies Center of the Free Europe Committee, Inc., 1955, p. 262. SUTTNER, *Beiträge zur Kirchengeschichte der Rumänen*, pp. 31-40.

1. Greek Catholic Church in Romania²⁰

Since the Romanians were unrepresented in the diet and the Gubernium and lacked any sort of political autonomy, the Orthodox Church assumed a dominant role in their civil as well as in their spiritual life. An organized church seems to have been functioning at least as early as the fourteenth century. A metropolis with its seat at Alba-Iulia was in existence by the middle of the fifteenth century.²¹ The metropolitan of Alba-Iulia was under the jurisdiction of the metropolitan of Ungro-Valachia in Bucharest, (Wallachia), and from the beginning of the seventeenth century had been elected by the synod of bishops of Ungro-Valachia and consecrated by the metropolitan.²²

A campaign to convert the Romanian Orthodox was planned and executed by the Roman Catholic hierarchy of Hungary under the personal direction of Cardinal Leopold Kollonics (1631-1707), the Roman Catholic Archbishop of Esztergom and Primate of Hungary.²³

²⁰ For Regional Distribution see Appendix no. 3. For historical background of the Greek Catholic Church in Romania, see D. BARBU, "Chiesa unita di Romania: quando il passato rifiuta il presenta", in *La Nouva Europa*, 5/5 (1996), pp. 25-39.

²¹ I. LUPAȘ, *Istoria bisericească a Românilor ardeleni*, [Transylvania Romanians' Church History], Sibiu, 1918, pp. 23-27.

The Metropolitan Damian signed the reunion decree at the Council of Florence (1438-1445), but the Romanian "Orthodox" Church did not accept his act, and he was thereupon obliged to live in Rome. For almost three centuries there were only very rare attempts of a prince or of a bishop to effect a union with Rome. The Hungarian Calvinists and Saxon Lutherans became powerful in Transylvania, and there was little hope for a Catholic reunion movement.

²² I. MATEIU, *Contribuțiuni la istoria dreptului bisericesc: Epoca dela 1848-1868*, Bucharest, 1922, vol. 1, pp. 30-34, 53.

²³ G. POPOVICI, *Uniunea Românilor din Transilvania cu biserica romano-catolică sub împăratul Leopold I*, Lugoj, 1901, pp. 27-28; S. DRAGOMIR, "Românii din Transilvania și unirea cu biserica Romei", in *Studii și materiale de istorie medie*, 3 (1959), pp. 323-337.

When the Austrian victory over the Turks in 1683 brought Transylvania into the Habsburg Empire, Emperor Leopold I wanted to reestablish Catholicism.²⁴

²⁴ According to Roberson, "it was imperial policy to encourage Orthodox within the Empire to become Byzantine Catholics by sending Catholic missionaries (mostly Jesuits) to work among them, and by denying full civil rights to Orthodox subjects." Cf. R.B. ROBERSON, "The Revolutions of 1989 and the Catholic-Orthodox Dialogue", in *Christian Orient*, 13 (1992), p. 197. For a similar opinion, see J. MARTON, *Az Erdélyi Egyházmegye története*, p. 88; I. BRIA, "Evangelism, Proselytism, and Religious Freedom in Romania: An Orthodox Point of View", in *Journal of Ecumenical Studies*, 36 (1999), pp. 170-171.

Also Roberson concludes that "the motivations of the government leaders were usually mixed: while many were faithful Catholics who wished to do what they could to reconcile divided Christian communities, most were also guided by political considerations. This is particularly clear in the formation of the Greek Catholic Church in Transylvania, where it was in the interest of the Austrian government to weaken the links of its Romanian citizens in Transylvania with the Romanian Orthodox population outside the Empire in Wallachia and Moldavia, and to increase their bonds with the rest of the country, which was largely Catholic." Cf. *ibid.*, p. 198.

Austrian diplomacy knew the rivalry between the three Transylvanian nations and the four religions and intended to use it to its own advantage. The Imperial Court of Vienna did not trust the Protestant Hungarians, relying instead on the Catholics and on the Transylvanian Saxons. Since both of these latter groups were numerically few, with little political clout, Vienna looked toward the Romanians as potential supporters. At that time the Transylvanian Romanians sought for ways to escape from under the Calvinist-Hungarian domination. Thus the interests of Vienna and the Transylvanian Romanians seemed to coincide: the Court by promoting union with Rome would gain loyal Catholic subjects in the Romanians, while the latter would be liberated from the Calvinist-Hungarian influence and advance toward a more developed and recognized nationhood. We cannot ignore the very important political consideration which motivated Vienna in its quest to promote the union of the schismatics with Rome, namely, the imperial rivalry between the Habsburgs on the one hand, and the Russian Czars on the other. Since the expansionist policies of Emperor Peter the Great, there had been an ever increasing Russian push toward the Balkans, accompanied by the fostering of the Orthodox religious consciousness of the small Balkan nations. Russian imperial ambitions and their use of Orthodoxy as a political tool was well known in Vienna. Empress-Queen Maria Theresa perceived this as a real danger for her empire which contained many millions of Ruthenians (Ukrainians), Romanians, and Serbs, of the Orthodox faith. To counter Russian imperialism and to bind these aforementioned peoples to the Habsburg Empire through the ties of the Catholic religion, must have seemed not only a deeply satisfying accomplishment for the sincerely devout Maria Theresa, but also an excellent idea, a brilliant political move for those responsible for the foreign policies of her Empire. Cf. ENDES, *Erdélyi három nemzete és négy vallása autonómiájának története*, pp. 321-324; ZS. SZÁSZ, *Az erdélyi katolicizmus múltja és jelene* (The Past and Present of the Transylvanian Catholicism), Dicsőszentmárton, 1925, pp. 125-130; see also G. SZAMOSVÖLGYI, "A katolicizmus Romániában" (The Catholicism in Romania), in *Magyar Szemle*, 4 (1928), pp. 284-287; L.M. GAZDA, "Az Erdélyi Katolikus Egyház a két háború között" (The Transylvanian Catholic Church Between the Two Wars), in *Katolikus Szemle*, 4 (1988), pp. 362-363.

Finding Protestantism too firmly²⁵ entrenched among the Hungarians and Germans, he turned to the Orthodox Romanians, offering them the same rights as Catholics if they would accept the Four Articles of the Council of Florence.²⁶ A synod at Alba-Iulia in 7 October 1698, led by Bishop Athanasius, accepted the proposed union as the best way of escaping from Calvinist proselytizing. On 4 September 1700, the date which marks the formal conclusion of the Union, a general synod of the Orthodox Church solemnly accepted the Four Articles of the Council of Florence.²⁷

²⁵ For more details about the Reformation among the Transylvania Romanians and the Protestant influence see I. RÉVÉSZ, "A Reformáció az Erdélyi Oláhok Között", in *Erdélyi Füzetek*, 2 (1938), pp. 1-27; Á. BITAY, "Az erdélyi románok a protestáns fejedelmek alatt", in *ZS. SZÁSZ, Az erdélyi katolicizmus múltja és jelene*, Dicsőszentmárton, 1925, pp. 83-103.

²⁶ In return for equality with the Catholic clergy, the Romanian clergy had only to accept: the Pope of Rome as the visible head of the Christian church; the existence of Purgatory; the *filioque* in the creed; and the use of unleavened bread at mass, while they would be allowed to retain their own liturgy and married priesthood. Cf. I.M. MOLDOVANU, *Acte sinodali*, Blaj, 1869-1872, vol. 2, p. 120; O. BEJAN, *De Hierarchia Ecclesiae Romenorum Unitorum Secundum Vigentem Disciplinam*, Romae, Apud Custodiam Librariam Pontificii Instituti Utriusque Iuris, 1942, p. 21; see also E.C. SUTTNER, *Kirche und Natione: Beiträge zur Frage nach dem Verhältnis der Kirche zu den Völkern unter der Völker zur Religion*, Würzburg, Augustinus – Verlag, 1997, pp. 125-126.

According to the Acts of Union, these "Uniates" or Greek Catholics, as they were called within the Empire of the Habsburgs, besides gaining civil rights and a measure of equality with their Latin rite brethren, could keep their Eastern rite liturgy and certain customs, e.g. their priests were allowed to marry; however, they became totally subjected to the discipline of the Vatican and were being slowly but inexorably latinized, not in the linguistic sense, but in their laws and practices. In Hungary, and indeed in all of the Habsburg empire, the official name for the Eastern Orthodox religion was [and still is] Greek Orthodox, while the Uniates are identified as Greek Catholics. In order to avoid confusion we are using the more familiar and precise [Eastern] Orthodox and Greek Catholic designations.

²⁷ MANSI, vol. 36, pp. 858-868; N. NILLES, *Symbolae ad illustrandam historiam Ecclesiae Orientalis in Terris Coronae S. Stephani*, 2 vols, Innsbruck, 1885, vol. 1, pp. 247-259. For the circumstances of the formation of this union, see K. HITCHINS, "Religion and Rumanian National Consciousness in Eighteenth-century Transylvania", in *The Slavonic and East European Review*, 57 (1979), pp. 214-239; MARTON, *Az Erdélyi Egyházmegye története*, pp. 100-102; see also SUTTNER, *Beiträge zur Kircheneschichte der Rumänen*, pp. 217-224.

At first this union included most of the Romanian Orthodox in the province. But in 1744, under the leadership of the monk Visarion, a popular uprising against the union took place. In spite of government efforts to enforce the union with Rome, resistance was such that Empress Maria Theresa reluctantly allowed the appointment of a bishop for the Romanian Orthodox in Transylvania in 1759. In the end, about half of the Transylvanian Romanians returned to Orthodoxy.²⁸

The Dioceses of the Byzantine rite of Romania, according to the definition fixed by the Apostolic constitution *Solemni conventione*²⁹ (5 June 1930), included one archeparchy and four eparchies.

a) Archeparchy of Făgăraș and Alba-Iulia

The Greek Catholic Archdiocese of Făgăraș and Alba-Iulia, with its center at Blaj, began as the Diocese of Alba-Iulia of the Romanian Church united with Rome. This Union began under Bishop Teofil (1697-1700) and was completed under his successor, Athanasius Anghel (1700-1713).³⁰ The initial residence was at Alba-Iulia; it was then moved to Făgăraș, according to the Bull *Rationi congruit*³¹ of Pope Innocent XIII, 15 June 1721. The diocese received the title of

²⁸ See HITCHINS, *The Idea of Nation: The Romanians of Transylvania, 1691-1849*, pp. 11-40.

²⁹ Pope PIUS XI, Apostolic constitution, *Solemni conventione*, 5 June 1930, in *AAS*, 22 (1930), pp. 381-386.

³⁰ NILLES, *Symbolae ad illustrandam historiam Ecclesiae Orientalis in Terris Coronae S. Stephani*, vol. 1, pp. 164-200, 245; *Fonti*, vol. 8, pp. 539-543; see also SZÁSZ, *Az erdélyi katolicizmus múltja és jelene*, pp. 129-139.

³¹ *Bullarium Pontificium Sacrae Congregationis de Propaganda Fide*, Romae, Typis Collegii Urbani, 1839-1841, vol. 1, pp. 3-6; NILLES, *Symbolae ad illustrandam historiam Ecclesiae Orientalis in Terris Coronae S. Stephani*, pp. 438-442; *Fonti*, vol. 8, pp. 481, 504, 507. For more details for this issue, see J.F. MARBACH, *Marriage Legislation for the Catholics of the Oriental Rites in the United States and Canada*, Canon Law Studies, no. 243, Washington, D.C., The Catholic University of America, 1946, pp.105-108.

“Făgăraș and Alba-Iulia”. The next bishop was Ioan Inocentius Micu Klein (1728-1751). He moved the residence to Blaj in 1738.³²

The Bull of Pope Pius IX, *Ecclesiam Christi ex omni lingua*,³³ (26 November 1853) established the Metropolitan See of Făgăraș and Alba-Iulia for the united Romanians.³⁴ In 1855 the Romanian Eastern Church united with Rome was raised to the rank of Archbishopric and Metropolitanate, the Romanian Greek-Catholic dioceses being removed from under the jurisdiction of the Archbishopric of Esztergom.³⁵ The suffragan dioceses of the newly created Archbishopric were Oradea Mare, Gherla and Lugoj.

b) Eparchy of Oradea

The first ecclesiastical organization of the Greek-Catholic Romanians in the Bihor region, after the Union of 1700, began under the Latin Bishop of Oradea,

³² A. KING, *The Rites of Eastern Christendom*; with a forward by His Grace the Apostolic Delegate to Great Britain, Rome, Catholic Book Agency, 1948, vol. 1, p. 40.

³³ *Ius Pontificium de Propaganda Fide, Cura ac studio Raphaëlis de Martinis, Romae*, Ex Typographia Polyglotta, 1888-1909, vol. 6, pars I, pp. 203-209; *Fonti*, vol. 8, pp. 481-482; MANSI, vol. 42, pp. 619-626.

³⁴ Cf. C. DeCLERCQ, “Note historicae circa fontes iuris particularis Orientalium Catholicorum”, in *Apollinaris*, 4 (1931), pp. 413-415.

³⁵ “...motu proprio, certa scientia ac matura deliberatione nostra, deque apostolicae potestatis plenitudine, dioecesim Fogarasiensem in Transylvania, quae iam inde a sua institutione metropolitico iuri Archiepiscopi Strigoniensis ad haec usque tempora obnoxia fuit, ab eodem iure et subiectione eiusdem metropolitani Antistitis, accedente consensus praemissio, auctoritate apostolica eximimus et dissolvimus, ita ut ipsius dioecesis Antistites graeci-ritus catholici uniti, ... utriusque sexus personae cuiuscumque gradus, ordinis et conditionis, a pristina, cui antea suberant, Metropolitae Strigoniensis iurisdictione et quavis alia potestate et praerogativa iurisdictionali in perpetuum pariter exemptae sint et liberatae. Insuper Magno-Varadinensem dioecesim, ... ab eadem iurisdictione et potestate, de Metropolitae ipsius libero consensus et resignatione, in perpetuum ea ratione distrahimus et avellimus.” Cf. *Ius Pontificium de Propaganda Fide*, vol. 6, pars I, p. 204.

For a period of approximately ninety years from the date of the union, the Uniate bishops were supervised and controlled by Jesuit priests sent from Rome.

Emeric Czaky, who appointed Canon Paul Vasile archdeacon of the Romanian Catholics of Byzantine Church.

In 1748, Pope Benedict XIV appointed the Romanian united priest Meletium Kovács³⁶ auxiliary and vicar of the Latin Bishop Paul Forgach, for the Romanian Greek-Catholic parishes. But the Romanians were not happy with this form of pastoral care. The Empress Maria Theresa decided to seek for the separation of the Vicariate of the Greek-Catholic Romanians from the Latin Bishopric of Oradea and the creation of an autonomous diocese of the Church United with Rome. The new diocese was canonically constituted with the Bull *Indefessum personarum*³⁷ (16 June 1777) issued by Pope Pius VI. Under Bishop Vasile Erdeli (1843-1862), the diocese of Oradea was removed from the jurisdiction of the Archbishopric of Esztergom and became suffragan of the Romanian Eastern Metropolitanate of Făgăraș and Alba-Iulia.

c) Eparchy of Cluj-Gherla

The Greek-Catholic Romanians around Cluj were first under the pastoral care of the Bishops in Blaj. When the Bishopric of Făgăraș and Alba-Iulia became a Metropolitanate, the diocese of Gherla was created by Pope Pius IX through the

³⁶ This decree, issued by the Sacred Consistorial Congregation on 12 July 1748, at the order of Pope Benedict XIV, can be found in his *De Synodo dioecesisana*, Lib. II, cap. XII, no. 5; see also *Opera Omnia*, vol. 11, pp. 49-50; Benedictus XIV, ep. *Etsi ipsa*, (30 August 1748), cf. *Fonti*, vol. 8, p. 505.

³⁷ *Fonti*, Series I, vol. 8, pp. 506, 559-560. See also *Schematismus historicus Venerabilis Cleri diocesis Magno-Varadinensis graeci ritus catholicorum pro anno iubilari 1900*, M. Varadini 1900, pp. 25-32.

papal Bull *Ad Apostolicam Sedem*³⁸ of 26 November 1853; eventually, its see was transferred to Cluj.

d) Eparchy of Lugoj

The attempts of the Romanians in Banat to join the Catholic Church date back before the Union of 1700. Indeed, in 1454, only 15 years after the conclusion of the Council of Florence, Saint John of Capistrano preached in these regions, and many Romanians subsequently joined the Roman Church. In 1738, the Latin Bishop Béla Falkenstein informed Vienna that more and more Romanian priests and faithful were seeking reunion with Rome. He proposed to the Imperial Court the creation of a Catholic Diocese of Byzantine rite for the Romanians whose pastor he had already become.

Pope Pius IX created the Diocese of Lugoj, with the Bull *Apostolicum ministerium*,³⁹ 26 November 1853.

e) Eparchy of Maramureş

The Eparchy of Maramureş was founded as a consequence of the Concordat between the Holy See and the Romanian State concluded on 10 May 1927⁴⁰ and ratified on 10 June 1929.⁴¹

³⁸ *Ius Pontificium de Propaganda Fide*, vol. 6, pars I, pp. 198-203; *Fonti*, vol. 8, pp. 565-567; MANSI, vol. 42, pp. 632-638.

³⁹ *Ius Pontificium de Propaganda Fide*, vol. 6, pars I, pp. 194-198; *Fonti*, vol. 8, pp. 481, 563-565; MANSI, vol. 42, pp. 627-632.

⁴⁰ *Sollemnis Conventio inter Sanctam Sedem et Romaniae Regnum*, 10 May 1927, in *AAS*, 21 (1929), pp. 441-451. See *Inter Sanctam Sedem et Romaniae regnum sollemnis conventio*, in *Apollinaris*, 3 (1930), pp. 505-514; see also *De Concordato inter Sanctam Sedem et Rumaniam*, in *Apollinaris*, 3 (1930), pp. 581-600.

With the Apostolic constitution *Sollemni conventione*⁴² of 5 June 1930, the Catholic Hierarchy of both rites was established over all the territory of the Romanian Kingdom; it was at that moment that the creation of a new Diocese of Maramureş was decided, a suffragan of the Metropolitanate of Făgăraş and Alba-Iulia and including all the Ruthenian parishes existing on Romanian territory.

On 1 December 1948, the Governmental Decree no. 358 suppressed the Romanian Greek Catholic Church and all of its institutions; its real and moveable properties were confiscated and taken over by the State (given either to the state or to the Romanian Orthodox Church). This was one more act whereby the Government carried out its campaign of persecution. The result in practice was that most Catholics continued to attend the same churches as before, although some had become Orthodox, and some attended Latin Rite churches, while others managed to retain their identity by organizing an efficient catacomb church. They kept the same priests and more or less the same services, all now officially Orthodox, but tacitly understood that if and when the opportunity arose, they would revert to their allegiance to Rome.⁴³ On 31 December 1989 the new Romanian Government by Decree no. 9 declared null and void the decrees of 1948 against the Romanian Catholic Churches.

The present day Greek Catholic Church's position has been summed up in the phrase *restitutio in integrum*: the demand that, as a matter of justice, all the

⁴¹ Cf. *AAS*, 21 (1929), p. 456. See Concordat between Romania and the Holy See, in *Monitorul Oficial*, no. 151, 12 June 1929.

⁴² *AAS*, 22 (1930), pp. 382-383.

⁴³ For an account of the suppression of the Romanian Greek Catholic Church, see I. RATIU, "The Communist Attack on the Catholic and Orthodox Churches in Rumania", in *Eastern Churches Quarterly*, 8 (1949-1950), pp. 163-197.

property that was illegally taken from the Greek Catholic Church in 1948 and given to the Orthodox should be returned.⁴⁴

2. Armenian Catholic Church

The Armenians settled in Transylvania during the reign of Prince Mihály Apafi. The Turks in 1671 wreaked terrible destruction in Moldavia, which had been already devastated by internal strife. This prompted the Armenians who had been engaged in handicraft and trade in Moldavia for some 400 years to ask in 1672⁴⁵ for permission to settle in Transylvania. Bishop Oxendie Versirescu had them unite with Rome in 1686. Their freedom was confirmed by the royal edict of Leopold I in 1696, reconfirmed by Maria Theresa in 1746 and 1758, and again later by Joseph II in 1786.⁴⁶ After the death of Bishop Oxendie in 1796, the Armenians were placed under the authority of the Latin Rite bishop of Transylvania.⁴⁷ The concordat in 1929 decreed that “there will be administrator

⁴⁴ For a succinct overview of this situation, see D. IONESCU, “The Orthodox-Uniate Conflict”, in *Report on Eastern Europe*, 2 August 1991, pp. 29-34. R.F. TAFT, “Anamnesis not amnesia: The Healing of Memories and the Problem of Uniatism”, 1 December 2000, <http://www.utoronto.ca/stmikes/theology/taft-kelly2000.htm> (10 March 2001); see also S. LAVINIA, “The Romanian Orthodox Church and Post-communist Democratisation”, http://www.findarticles.com/cf_0/m3955/8_52/69279626/print.jhtml (10 March 2001).

⁴⁵ See ENDES, *Erdély három nemzete és négy vallása*, p. 219; see also SUTTNER, *Kirche und Nation: Beiträge zur Frage nach dem Verhältnis der Kirche zu den Völkern unter der Völker zur Religion*, pp. 277-278.

⁴⁶ ENDES, *Erdély három nemzete és négy vallása*, p. 334.

⁴⁷ B. BANGHA, *Katolikus Lexikon*, Budapest, A Magyar Kultúra kiadása, 1932, see vol. 3, Örmények, pp. 353-354, 466-467.

with the seat of Gherla for all the Armenians of the Kingdom”, known as the *Administrator Apostolicus pro Armenis*.⁴⁸

The Decree of 14 December 1991, prot. no. 40/65 of the *Congregatio pro Ecclesiis Orientalibus* appointed György Jakubinyi Archbishop of Alba-Iulia as *Administrator Apostolicus “ad nutum Sanctae Sedis” Ordinariatus pro Armenis Catholicis in Rumenia*.⁴⁹

3. Latin Catholic Church in Romania

As a result of the Treaty of Trianon (4 June 1920), the Romanian Catholic Church of the Latin rite consists of two main parts. Based on language affiliation, there is a Romanian-speaking Catholic Church (in the area of the Old Kingdom) and a Hungarian-speaking one (in the area of Transylvania). The Dioceses of the Latin Catholic Church of Romania according to the Apostolic constitution *Solemni conventione*⁵⁰ (5 June 1930), were six in number, including one archdiocese (Metropolitan) and five dioceses.

The Communist Government with its Decree of 8 August 1948, “On the General Administration of Religions” reduced the Dioceses of the Latin rite to two: (i) the Archdiocese of Bucharest, and (ii) the Diocese of Alba-Iulia, adducing

⁴⁸ “Volumus denique ut fideles Armeni, qui in Romanica dicione morantur, quoad spirituale regimen sub iurisdictione sint Ordinarii ab Apostolica Sede eligendi, qui eidem immediate subiectus erit et *Administrator Apostolicus pro Armenis* denominabitur ac in urbe *Gherla* habitualement sedem habeat.” Cf. *AAS*, 22 (1930), p. 385. See also SUTTNER, *Kirche und Nationen: Beiträge zur Frage nach dem Verhältnis der Kirche zu den Völkern unter der Völker zur Religion*, p. 280.

⁴⁹ See Archives of the Ordinariate for the Armenians in Alba-Iulia, prot. no. 8/1992.

⁵⁰ *AAS*, 22 (1930), pp. 381-386.

as a pretext that at least 750, 000 faithful were required to have a diocese in accordance with the new disposition of the Decree on Religions.⁵¹

a) Romanian Latin Catholic Church (București, Iași)

The Catholic Church of the Latin rite had been present since the end of the 14th century in the Romanian provinces – Moldavia and Wallachia – but had no diocesan organization as such until the 17th century. Up to that time it consisted merely of several Catholic missions. The Archdiocese of Bucharest was established by the Apostolic letter of Pope Leo XIII, *Praecipuum munus*⁵² (27 April 1883) for the province of Wallachia. After the ratification of the Concordat between the Holy See and Romania in 1929, the Archdiocese of Bucharest was elevated to a Metropolitan See⁵³ with five suffragan dioceses⁵⁴ (one Romanian Latin Catholic Diocese and four Hungarian Latin Catholic Dioceses).

The Apostolic letter of Pope Leo XIII, *Quae in Christiani*⁵⁵ (27 June 1884) established the diocese of Iași, which covers all of Moldavia province. This diocese was suffragan of the Archbishop of Bucharest, who was the highest Roman Catholic prelate in the Old Kingdom.

⁵¹ When implementing this Decree, in November of the same year, the Communist Government discarded three of the five Latin Bishops left and put them on a “for disposal” list. (Cf. L. GUSSONI and A. BRUNELLO, *The Silent Church*, New York, Veritas Publishers, 1954, pp. 136-137).

⁵² LEONIS XIII, *Pontificis Maximi Acta*, 23 vols., Typographia Vaticana, Romae, 1881-1905, vol. 3, pp. 216-217.

⁵³ *Sollemnis Conventio inter Sanctam Sedem et Romaniae regnum*, 10 May 1927, in *AAS*, 21 (1929), pp. 441-451.

⁵⁴ *AAS*, 22 (1930), pp. 381-386.

⁵⁵ LEONIS XIII, *Pontificis Maximi Acta*, vol. 4, pp. 106-107.

b) Hungarian Latin Catholic Church⁵⁶**(i) Diocese of Oradea (Nagyvárad)**

The foundation of the Diocese of Oradea dates back to the time of King Saint Stephen. A bishopric was founded in Bihar next to Oradea, which was attached to the Archbishopric of Kalocsa around 1010. Since the Cumanians destroyed the castle of Bihar in 1091, King Saint László moved the bishopric to Oradea.

The Trianon Treaty divided the diocese into two parts: forty percent of the territory including the seat of the diocese was annexed to Romania, while the rest remained in Hungary.

(ii) Diocese of Satu-Mare (Szatmárnémeti)

After the death of Bishop Károly Eszterházy, the Eger diocese was partitioned. Francis I (1792-1835), Emperor of Austria, King of Hungary, in virtue of his right of *Royal Supreme Patronage* over the Roman Catholic Church in Hungary, divided the large diocese of Eger and, by his deed of foundation (Vienna, 23 March 1804), created the new dioceses of Satu-Mare and Košice.⁵⁷

Pope Pius VII confirmed the king's order by his Bull *Quum in supremo* (9 August 1804).⁵⁸ After the Trianon Treaty, the new state borders made the ruling of the diocese very difficult (the seat of the diocese with 44 parishes was annexed to

⁵⁶ For Regional Distribution see Appendix no. 4.

⁵⁷ *Litterae Fundationales Episcopatus Satmariensis Francisci Regis Hungariae* by his Royal Bull *Quod nos in*, no. 2950/1804. Cf. *Schematismus Satmariensis*, 1882. See also HÓMAN and SZEKFÜ, *Magyar történet*, vol. 5, p. 165.

⁵⁸ *Schematismus Cleri Almae Diocesis Satmariensis; Bulla Erectionis Episcopatus Satmariensis Pii PP VII 1804*, 1893, pp. 33-52.

Romania). The diocese was then partitioned between Hungary, Czechoslovakia and Romania. According to the concordat between the Holy See and the Romanian government, the dioceses of Satu-Mare and Oradea were united. The Holy See terminated the union of these two dioceses on 28 July 1941 by the Decree *Dioecesium circumscriptionum immutatio*.⁵⁹ The new diocese was subordinated directly to the Holy See, Áron Márton, the diocesan bishop of Alba-Iulia being named *Apostolic Administrator* (1 October 1941).

On 9 April 1948 the Holy See again united the diocese of Satu-Mare and Oradea and, because of the political situation of that time, the secret ordination of bishops was provided for the new diocese.

On the 4th of August 1948 the Romanian government suppressed the Diocese of Satu-Mare. It was annexed to Alba-Iulia. Foreseeing this, the Holy See through the decree of *Nominatio substitutorum*, 29 June 1948, instructed the diocesan bishop to name two *ordinarius substitutes*.⁶⁰ The Holy See for the second time terminated the union of the Satu-Mare and Oradea Dioceses by the decree *Quando quidem* (18 October 1982).⁶¹

Since 1990, the diocesan bishop appointed by the Apostolic See leads the diocese.⁶²

⁵⁹ Cf. I. TEMPFLY, "A Szatmári Püspökség rövid története" (Brief History of Bishopric of Satu-Mare), in *Szatmári Schematismus*, Szatmárnémeti, 2000, pp. 3-5.

⁶⁰ Ibid., p. 6. See also L. BURA, "Szakítópróba (1)", in *Keresztény Szó*, 12 (2001), pp. 8-13.

⁶¹ TEMPFLY, "A Szatmári Püspökség rövid története" p. 6. This decree was executed on 27 May 1983 in Alba-Iulia.

⁶² CONGREGATION OF BISHOPS, *Provisio ecclesiarum*, 14 March 1990, in *AAS*, 82 (1990), p. 468.

(iii) Diocese of Timișoara (Temesvár)

The most commonly accepted date for the founding of the Bishopric of Csanád is 1030 by King Saint Stephen. In 1526 it came under Turkish occupation. In 1719 after the rule of the Turks, when Transylvania became part of the Habsburg Empire, the seat of the diocese was moved to Szeged and then later to Timișoara in 1738. After the Trianon Treaty, the diocese was partitioned between Romania, Yugoslavia and Hungary. At that time an Apostolic Administrator in Timișoara governed the Romanian part of the diocese. The Apostolic constitution *Sollemni conventione* in 1930 decreed the foundation of the Bishopric of Timișoara, suffragan to the Archbishop of Bucharest. This entailed the partitioning of the Csanád Bishopric into the dioceses of Timișoara and of Szeged-Csanád, sanctioned by the Holy See.⁶³

C. ARCHDIOCESE OF ALBA-IULIA (Gyulafehérvár)

1. Development

In Transylvania an organization of its own kind has developed within the Catholic Church. A Catholic diocese was established in Transylvania in 1009 by the first Hungarian King Saint Stephen (1000-1038). At that time the bishop used the title *episcopus Ultrasylvanus*. From the thirteenth century onwards, his title was *episcopus Transilvanus* (erdő-eli, erdélyi püspök).⁶⁴ In the sixteenth century Transylvania found itself partly isolated; indeed, from 1542 to 1716 the diocese in Transylvania had no bishop and no ordained clergy of the Latin rite. During this

⁶³ AAS, 22 (1930), pp. 381-386.

⁶⁴ SZÁSZ, *Az erdélyi katolicizmus múltja és jelene*, p. 16.

period Catholic laymen of the Latin rite organized parochial councils and established a central council called the *Status Romano-Catholicus Transylvanicus*.⁶⁵

The Diocese of Transylvania changed its name according to the Concordat (under the pressure of circumstances) to the Diocese of Alba-Iulia.⁶⁶

2. Current Status

On 5 July 1991 the bishopric of Alba-Iulia was elevated to an Archbishopric,⁶⁷ directly subject to the Holy See. According to Bishop Péter Erdő, consideration of the interests of the Hungarian minority was the reason behind this

⁶⁵ A. PERUGINI, "Conventio de interpretatione articuli IX Concordati die 10 Maii 1927 inter Sanctam Sedem et Romaniae Regnum initi", in *Apollinaris*, 5 (1932), pp. 443-457; see SZÁSZ, *Az erdélyi katolicizmus múltja és jelene*, pp. 395-422; MARTON, *Az Erdélyi Egyházmegye története*, pp. 74-75, 103-106, 163-168; J. SCHEFFLER, "Az Erdélyi Katolikus Státus küzdelmes húsz éve" (Twenty Years of Struggle for Transylvanian Catholic Status), in *Magyar Szemle*, 40 (1941), pp. 299-310; ZS. SZÁSZ, "Az Erdélyi Római Katolikus Státus", in *Magyar Szemle*, 17 (1933), pp. 193-200; 290-296; *Ibid.*, 18 (1933), pp. 97-104; P. KÖMÁLI, "Az erdélyi Katolikus Státus új helyzete", in *Katolikus Szemle*, 50 (1936), pp. 194-195; K. MELICHÁR, "Az Erdélyi Római Katolikus Státus megszűnése", in *Katolikus Szemle*, 47 (1933), pp. 181-196.

⁶⁶ S. CONGREGATIO CONSISTORIALIS, *Decretum, mutationis tituli diocesis Transilvaniensis*, 22 March 1932, in *AAS*, 24 (1932), p. 146.

⁶⁷ JOHN PAUL II, Apostolic Constitution, *Quod satis constat*, 5 August 1991, in *AAS*, 83 (1991), pp. 917-918.

"La Santa Sede ha promesso di provvedere per creare una provincia transilvana per le Quattro diocesi, con la sede metropolitana in Alba-Iulia. Finora però, per motivi non solo di espressa manifestazione della disapprovazione da parte delle due diocesi romene ma anche a motivo di protesta veemente dello Stato romeno, la Santa Sede non ha provveduto." G. KOVÁCS, *Sostentamento del clero secondo il CIC/1983: attuazione della normative canonica in Romania, particolarmente nell'arcidiocesi di Alba Iulia*, Roma, Pontificia Università lateranense, 1996, p. 16, footnote 36.

change in status which seems to be somewhat unique within the overall reorganization of the European Latin rite dioceses.⁶⁸

3. Transfer of Membership⁶⁹

Hungarian constitutional law considered the transfer of membership as the internal affair of the churches.⁷⁰ There was an agreement in 1848 between the Latin Bishop of Alba-Iulia and the Greek Catholic Bishop of Blaj in Transylvania, that in case of a transfer of membership the authorization of both bishops was required. Then on 5 April 1864, the Congregation for the Doctrine of the Faith made any transfer of membership dependent on the authorization of the Pope. Hungarian legislation in 1868⁷¹ and 1895 made a transfer of membership

⁶⁸ P. ERDŐ, "A magyar és európai egyházmegyék alakulása az utóbbi tíz évben", (The Development of the Hungarian and European Dioceses During the Past Ten Years), in *Magyar Egyháztörténeti Vázlatok*, 3-4 (1998), pp. 275-276.

⁶⁹ For background on this topic, see G. SALACZ, *A magyar katolikus egyház a szomszédos államok uralma alatt* (The Hungarian Catholic Church Under the Rule of the Neighbouring States), München. Aurora Könyvek, 1975, pp. 89-103.

⁷⁰ Accordingly, a royal resolution dated 4 October 1814 and an order from the Council of the Governor General expressly declared that nobody should be enticed to transfer of rite; everyone should decide voluntarily. It should be permitted only for very important reasons and the agreement of the bishops of both rites is required. For an in-depth presentation on this topic, see F. HANUY, *A vallásváltoztatás az egyházjog és a magyar államjog szerint* (The Change of Religion According to Canon Law and Hungarian State Law), Pécs, 1905, pp. 5-213.

⁷¹ The Law 1868/LIII on the equality and reciprocity of the Christian denominations did not regard the transfer of membership as change of religion, and for that reason it did not deal with the issue. The civil law, however, made a transfer of membership possible without episcopal or papal permission, where there was an interim change of religion, or (after 1895), the person had declared himself as being without any religious denomination. This type of apostasy, whose purpose was to allow people to transfer membership, occurred often. Cf. *ibid.*, pp. 221-224; see also G. SALACZ, *Egyház és Állam Magyarországon a dualizmus korában 1867-1918*, (Church and State in Hungary the Period of the Dual Monarchy 1867-1918), München, Aurora Könyvek, 1974, pp. 23-24.

possible.⁷² But since the Eastern rite Churches, both Orthodox and Catholic, were national churches⁷³ (Romanian, Ruthenian, etc.) in Hungary and Transylvania, their bishops – especially the Romanian Greek Catholic ones – did not give the permission for their believers to transfer to the Latin Church or postponed it as long as possible because of reasons relating to nationality. As the result of the developments of many centuries, the Romanian, Ruthenian and Hungarian-speaking Greek Catholics who lived in mixed marriages were assimilated into each other's nationality depending on their family and economical relationships. In Transylvania – as already mentioned – most of the Greek Catholics were and are Romanian-speaking, but there are also some Hungarian and Ruthenian-speaking ones. The Greek Catholics in the Transylvanian vicariate of the Hajdúdorog Diocese declared themselves Magyar or Székely and protested against being considered of Romanian origin. Some of them, around the turn of the XXth century, tried already to transfer to the Latin Church, in order to avoid even the appearance of having Romanian roots.⁷⁴ The Greek Catholics living in the area of

⁷² Further legislation, notably Act LIII of 1868 and Act XLIII of 1895 defined the scope and limits of the freedom of conscience and worship and regulated the legal status of religious groups outside of the "received" churches. Cf. *ibid.*, pp. 226-228; D. MÁRKUS, *Corpus Iuris Hungarici*, Budapest, 1896, vols. 1-2, pp. 506-508; 306-315. For a concise summary of the provisions of Acts LIII of 1868 and XLIII of 1895, see I. EGYED, *A mi alkotmányunk* (Our Constitution), Budapest, 1943, pp. 161-163; see also S. CSEKEY, *Die Verfassung Ungarns*, Budapest – Leipzig, 1944, pp. 240-242; SALACZ, *Egyház és Állam Magyarországon a dualizmus korában 1867-1918*, pp. 22-27; 89-97; F. BERKI, *A magyarországi Ortodox Keleti Egyház szervezése*, Budapest, Királyi Magyar Egyetemi Nyomda, 1942, pp. 78-83.

⁷³ BRIA, "Evangelism, Proselytism, and Religious Freedom in Romania: An Orthodox point of View", pp. 164-166.

⁷⁴ Some of the Romanian Greek Catholics who had assimilated to the Hungarian nation in Greater Hungary before the Trianon Peace Treaty, tried to transfer to the Latin Church around the turn of the century. Since the Romanian Greek Catholic prelates hindered this by refusing or delaying the permission, this made more and more believers leave the Catholic Church. The numerical loss of the Greek Catholics was, however, compensated by the conversion of many more Orthodox to the Greek Catholic Church.

the Latin dioceses of Alba-Iulia and Satu-Mare became Magyarized and wanted to transfer to the Latin Church, because both the Greek Catholics and the Orthodox considered their religion as an expression of their nationality affiliation, i.e., Romanian.

Considering the extremely frequent transfers of membership in Transylvania, the Latin Bishop of Alba-Iulia, Gusztáv Károly Majláth, made any admission to the Latin Church dependent on pontifical/episcopal permission for Protestants or those without denomination who had originally been Latin, Greek Catholic or Armenian Catholic (10 September 1904).⁷⁵ Through this order he wanted to set straight the transfers of membership by obtaining the permission of the Greek Catholic bishops or that of Rome. He wanted those Greek Catholics who had left the Church because they were Hungarians or had declared themselves Hungarian, to return to the Catholic Church. Bishop Majláth brought the problems around the transfer of membership to the attention of Holy See.

Pope Pius X then authorized Bishop Majláth in writing (18 February 1905).⁷⁶ and confirmed verbally in a papal audience on 24 December, to deal with the problem by recourse to a general permission granted by the Pope. This implied, in effect, that if Greek Catholics suffered spiritual harm because their bishops had not given permission for a transfer of membership, they could join the Latin Church even against the will of the Greek Catholic Bishop⁷⁷. In 1918, the

⁷⁵ Episcopal Archives (=EA) of Alba-Iulia, prot. no. 4161/1904.

⁷⁶ Ibid., prot. no. 463/1905.

⁷⁷ Majláth, empowered by the permission – as he wrote in his letter to the Congregation for the Oriental Churches on 25 September 1928 – received many people from the Greek to the Latin Church, especially during the war. According to the report sent to Cardinal Tisserant, Secretary of the Congregation for the Oriental Churches (1938), based on the data recorded in the Episcopal Archives, from 1905 to 1928 Majláth received 513 Greek Catholics from 41 localities to the Latin Church. Cf. EA prot. no. 4129/1928.

1917 *CIC* came into operation, and its canon 98 made the transfer of membership still dependent on the permission of the Holy See. The competent Congregation for the Oriental Churches required the permission of both bishops. The Code did not declare however invalid or revoke any faculties concerning a transfer of membership, which had been earlier given.⁷⁸

The withdrawal of the authorization given to Bishop Majláth coincides with the implementation of the new Romanian Law on Cults, promulgated on 22 April 1928.⁷⁹ This ensured equal freedom for all the historical churches. The Law defined the formalities of the transfer of religion/membership in detail.⁸⁰

After the implementation of the Law on Cults through the introduction of the *numerus valachicus*, the number of transfers of membership rose dramatically,

The Romanian constitution promulgated on 28 March 1923 considered the Orthodox and Greek Catholics as of Romanian nationality including the Hungarian-speaking ones living under the jurisdiction of Greek Catholic Bishops. Many of them transferred to the Latin Church with the authorization of Bishop Majláth.

The Romanian Greek Catholic bishops began to question the validity of the transfer of membership without their permission. Bishop Majláth, in his 1928 letter, asked the Congregation for the Oriental Churches to confirm these transfers of membership and to settle the issue. The Congregation did not question the validity of the transfers of membership which occurred in the past but, in fact, withdrew the privilege granted to Bishop Majláth, and from 1 January 1929 entrusted the nuncios with the authorization of the transfer of membership. Cf. Congregation for the Oriental Churches, prot. no. 2910/1928, see also *EA* prot. no. 4129/1928.

⁷⁸ It is not known whether any other bishop in the church had received the same kind of authorization, or whether his authorization had not been invalidated earlier because the editors of the Code of Canon Law had overlooked it.

⁷⁹ The 1928 Law of Cults declared the Orthodox Church as the "reigning" church, and it considered the transfer of membership as a change of religion. Cf. *EA* prot. no. 2922/1928. See also ROSU – VASILIU – CRISAN, "Church and State in Romania", pp. 261-265.

⁸⁰ The transfer should be registered at the office of birth registry which then informs the concerned priest minister. The declaration could be cancelled within 30 days; after that it became definitive. Every citizen older than 18 could transfer. The children followed the religion of the parents. In cases of mixed marriages, the father declares the religion of the children at the registration of the birth. Cf. *EA* prot. no. 3574/1928.

especially for those transferring to the Greek Catholic Church, and even more so to the Orthodox Church.⁸¹

These transfers were valid only from the point of view of state law. The Romanian Greek Catholic bishops, however, did not judge them to be transfers of membership, valid in Canon Law. Those who had transferred this way were considered by them – ignoring the official formalities of canon law – as still belonging to their church.

Since transfers of membership, ignoring canon law, among the Székelys became more and more frequent, on 6 July 1937 auxiliary bishop Adolf Vorbuchner informed the nuncio of Bucharest of the problems arising from the differences between the canonical and the constitutional law and asked for the direction of the Holy See. Cardinal Eugene Tisserant, the secretary of the Congregation for the Oriental Churches went to Transylvania personally to examine the case. In his letter of 14 January 1938,⁸² he recognized that the reason for most of the transfers of membership was nationality, the cause of political and economical hardships for many, but this did not nullify the fact that there was a danger of apostasy.⁸³ He emphasized that the rite is a side-issue and that the interest of souls is what matters.

⁸¹ In the interests of the expansion of the Orthodox Church (70 percent of the whole population in 1920), those who converted were rewarded by jobs, promotions. It happened many times that remaining in the job was possible only through joining the reigning church.

⁸² E. TISSERANT, *Recueil Cardinal Eugène Tisserant "Ab Oriente et Occidente"*. Publié par Sever Pop, avec la collaboration de Louvain, Centre international de dialectologie générale, 1955, vol. 2, pp. 666-772.

⁸³ The Hungarian speaking Greek Catholics became Protestant rather than becoming members of the national church (Orthodox or Romanian Greek Catholic).

On 30 August 1940 with the Vienna Decision,⁸⁴ Northern Transylvania was annexed to Hungary and this altered the transfer of membership procedures. After becoming a part of Hungary, those Latin Catholics who had converted because of force or adaptation to the power, began to return to their original church. The change of power was influencing very seriously most of all the Romanian Greek Catholic Church. Several vicarages of the Archdiocese of Făgăraș and Alba-Iulia belonged to the territory returned to Hungary. The suffragan dioceses of Maramureș, Cluj-Gherla, and Oradea having belonged to the Archdiocese, were returned to Hungary. Very serious controversies, broke out in the regained North Transylvania. Beside the canonical controversies there were grave political disputes, too. A very important element of the state and national unity was the integration of the returning Greek Catholic Church into the Church of the motherland. The Romanian Greek Catholic Church has been forced to compete with the Romanian Orthodox Church since the time of its establishment. The consequence was that the Transylvanian hierarchy of the Greek Catholic Church has been forced to undertake a leading role in Romanian national movements. This activity has increased since 1918. In the period of 1940-1944, it had to save the national character within the framework of the Hungarian state.⁸⁵

The transfer of membership and a return to the Latin Church was still possible in civil law, because the Hungarian government never invalidated the

⁸⁴ In accordance with the second Vienna Decision of 30 August 1940, 2 185 546 inhabitants of Transylvania returned to Hungary. Among them 1 123 216 (51,4 per cent) were Hungarians, and 42, 1 per cent Romanians. Of these more than one million Romanians about 450 000 were Orthodox and 550 000 Greek Catholic. Cf. J. GERGELY, "Az észak-erdélyi görög katolikus román egyházmegyék jogállása és sérelmeik 1940-1944", (The Legal Status and the Grievances of the North Transylvanian Romanian Greek Catholic Dioceses 1940-1944) in *Magyar egyháztörténeli vázlatok*, 5 (1993), p. 83.

⁸⁵ *Ibid.*, pp. 83-85.

1928 Romanian "Law on Cults" directive concerning the transfer of membership. The frequent transfers in the Székely areas caused consternation in the Congregation for the Oriental Churches.⁸⁶

Tisserant revoked the authorization for a transfer of membership from the jurisdiction of Nuncio, Angelo Rotta of Budapest, and gave it to the Congregation. He sent an apostolic visitor in 1943 to examine the transfers of membership which were considered valid in civil law. The report of this visitor is unknown. The outcome of the war did not bring a solution. The Hungarian-speaking Greek Catholics remained under the jurisdiction of the Romanian bishops.

When North Transylvania again became part of Romania, the return of Latin Catholics to the Greek Catholic Church resumed. In 1948, the dissolution of the Greek Catholic Church made its believers automatically members of the Orthodox Church according to the civil law.

⁸⁶ Large numbers of Greek Catholics in the Székely areas tried to transfer to the Latin Church. Their situation was complicated, however, because by being annexed to Romania they were transferred from the Hungarian Greek Catholic Diocese to the jurisdiction of the Făgăras Archdiocese, and Romanian priests and Romanian language liturgy were forced on them. During the Romanian reign they had already attended Latin language liturgy and now they wanted to legalize it. One of the reasons was that they wanted to avoid being considered as of Romanian nationality.

The Congregation for the Oriental Churches entrusted the nuncios in 1928 with the authorization for the transfer of membership and this resulted in the growth of the Transylvanian Romanian Greek Catholic Church. When the political situation had changed, and Northern Transylvania was returned to Hungary (1940), Tisserant was afraid that the Nuncio Angelo Rotta, working in Budapest since 1930, would help the Greek Catholics to return to the Latin Church in accordance with the will of the Hungarian government. For that reason, on 23 November 1940, he revoked the authorization given on 6 December 1928, motivating the decision by "quo firmior teneatur disciplina".

"Quo firmior teneatur disciplina de cuiusvis fidelis ad nativum ritum pertinentia, Ssmus D. N. Pius div. Prov. Pp. XII, in Audientia diei 23 mensis Novembris anno 1940, referente infrascripto Cardinali a secretis, statuere dignatus est facultatem transeundi ab uno ad alium ritum a S. Sede tantum esse concedendam. Cessat igitur facultas qua fruebantur Nuntii ac Delegati Apostolici ex Decreto <Nemini licere>, die 6 mensis decembris, anno 1928 dato (Cf. *AAS*, 20 [1928], p. 416), atque huic S. Congregationi directe reservatur iudicium de iis omnibus quae referuntur ad transitum ab uno ad alium ritum, sive de clericis sive de fidelibus agatur." Cf. *AAS*, 33 (1941), p. 28.

4. Romanian Bishop's Conference

The Second Vatican Council recognized the principle of multiple jurisdictions in the same territory. In these territories, the Council advocated unity of action among the bishops of different Churches *sui iuris*. For this purpose, periodic gatherings were encouraged. For the effective promotion of the good of religion and of ecclesiastical discipline they were asked to work together⁸⁷ for the common good of the region which they represented.

This unity of action was also emphasized by Pope John Paul II in his Encyclical letter *Orientale lumen*⁸⁸ (2 May 1995) on the occasion of the centenary of the Apostolic constitution *Orientalium dignitas* of Pope Leo XIII (30 November 1894):

A particular thought goes to the lands of the diaspora where many faithful of the Eastern Churches who have left their countries of origin are living in a mainly Latin environment. These places, where peaceful contact is easier within a pluralist society, could be an ideal environment for improving and intensifying co-operation between the Churches in training future priests and in pastoral and

⁸⁷ See *CCEO* c. 202. The canon follows almost the same wording of *Orientalium Ecclesiarum* no. 4 which reads as follows: "Hierarchae vero variarum ecclesiarum particularium in eodem territorio iurisdictionem obtinentes, cunctis, collatis consiliis in periodicis conventibus, unitatem actionis fovere, et, viribus unitis, communia adiuvere opera, ad bonum religionis expeditius promovendum et cleri disciplinam efficacius tuendam."

CCEO c. 322 wishes to suggest and legislate for the official meeting of the hierarchs of several autonomous Churches, as a rule of a nation, or perhaps also a region, provided the meeting has on its agenda the discussion of problems specific to the Eastern Churches; Latin bishops can also be invited for these interecclesial meetings.

⁸⁸ "Singulari autem cogitatione prosequimur dissipationis terras in quibus vitam agunt, in ambitu ubi maior pars est Latina, multi fideles orientalium Ecclesiarum quae nativas terras reliquerunt. Haec loca, ubi facilius fit serena necessitudo intra societatem multiplicem, fieri possunt optimus ambitus ad meliorem efficiendam augendamque mutuam inter Ecclesias operam in futurorum sacerdotum institutione, in pastoralibus et beneficis inceptis, etiam pro Orientalium terris patriis." Cf. JOHN PAUL II, Encyclical Letter, *Orientale lumen* (2 May 1995) no. 26, in *AAS*, 87 (1995), 745-774, at here p. 772.

charitable projects, also for the benefit of the Orientals' countries of origin.

In its present day form, The Romanian Bishop's Conference came into being on 16 March 1991, on the basis of Protocol no. 855/1990 of the Congregation for Bishops and of the Congregation for Oriental Churches.⁸⁹ The Conference includes all the diocesan Bishops, as well as the coadjutor and auxiliary Bishops. The general session may be attended also by the Archbishops and Bishops emeriti or by other invited guests. The Romanian Bishops' Conference has two subsections: the Latin subsection and the Council of the Greek-Catholic Bishops. The President and Vice-president are elected by observing the alternance of the two rites.⁹⁰

⁸⁹ Protocol no. 855/1990. "Romaniae – De Conferentiae Episcoporum Statutorum recognitione: *Decretum*, Summus Pontifex Ioannes Paulus, Divina Providentia PP. II, in Audientia dei 16 mensis Martii anno 1991, Conferentiam Episcoporum Romaniae erexit."

The Conference of Bishop has a special juridical physiognomy: in fact it is composed of bishops of two rites. This physiognomy 'sui generis' provides that the competence of the Conference of Bishop described in the *CIC/1983* pertains to the Latin bishops section of the Conference of Bishops of Romania, (on this problem see P. ERDŐ, "La participation des Évêques Orientaux à la Conférence épiscopale. Observations au 1er § du canon 450", in *Apollinaris*, 64 [1991], pp. 295-308). The conference gathers according to the norm of the Statute: "Art. 12 – Conventus plenarii Ordinarii bis singulis annis habentur; extraordinarii autem, quoties Praeses, vel tres saltem Conferentiae sodales id postulaverint."

⁹⁰ We can compare this structure with that in effect in India where there are established hierarchies of three Churches *sui iuris*. For further details, see F.M. FERNANDEZ, *The Figure of a Bishop in the Episcopal Conference: A Commentary on "Directorium de pastorali ministerio episcoporum", Including an Inquiry into the Pastoral Relevance of Having an "Inter-ritual" Regional Episcopal Council for the Multi-ritual Church in Kerala, South India*, Roma, Pontificia Universita Lateranense, 1981, pp. 105-154.

D. JURISDICTION OF OTHER HIERARCHS IN THE SAME TERRITORY

The restriction of the jurisdiction⁹¹ of patriarchs and patriarchates and archiepiscopates to the regions of their historical origin must be freed from the limitations which now belong to the past, at least in the Catholic Church. The ancient church of the Roman Empire had established the axiom that, in the territory of a diocese, there should be but one metropolitan or bishop. According to Victor J. Pospishil this norm was finally abandoned in the Catholic Church in the 1600s, when parallel hierarchies of several Eastern Catholic churches, alongside the Latin Church, were permitted to co-exist in one and the same city and region of Eastern Europe.⁹²

The element of territoriality does not enter into the description of a Church *sui iuris* as given in canon 27 of the Eastern Code. This does not mean that the territorial element is completely ignored. It plays its role in the exercise of one's power of governance. The Code always distinguishes the faithful of a Church *sui*

⁹¹ "When ecclesiastical jurisdiction is specified by the criterion of territory, it becomes specifically territorial jurisdiction; when specified by rite, it should become ritual, and not be called simply personal (Persons as persons offer no criteria of specification of jurisdiction nor determine the subjects that come under it)." G. NEDUNGATT, "Autonomy, Autocephaly, and the Problem of Jurisdiction Today", in *Kanon*, 5 (1981), p. 27, footnote no. 19. For more details, see C. PUJOL, "Distinctio inter 'Ritum' et 'Iurisdictionem'", in *Periodica*, 70 (1981), pp. 193-219; ID., "De extensione iurisdictionis Ecclesiarum particularium orientalium", in *Periodica*, 65 (1976), 509-528; M. WOJNAR, "Decree on the Oriental Catholic Churches", in *The Jurist*, 25 (1965), pp. 173-255; SALACHAS, "Le 'status' d'autonomie des Églises catholiques orientales et leur communion avec le Siège Apostolique de Rome", pp. 79-85.

⁹² V.J. POSPISHIL, "The Constitutional Development of the Eastern Catholic Churches in the Light of the Re-codification of their Canon Law", in *Kanon*, 5 (1982), p. 49.

iuris according to their living within the territory and outside the territory of their Church *sui iuris*.⁹³

1. In the Austro-Hungarian Monarchy

The jurisdiction of Latin ordinaries over Orientals as decreed in canon 9 of the Fourth Lateran Council (1215), was exercised through an Oriental bishop-vicar given to the Latin bishop.⁹⁴ This manner of exercising jurisdiction was especially in use in the Austrian Monarchy during the eighteenth century, although already in

⁹³ For further details for Patriarchal authority outside his territory, which it is not our intention to introduce here, see J. ABBASS, "Canonical Disposition for the Care of Eastern Catholics Outside Their Territories", in *Periodica*, 86 (1997), pp. 321-362; I. ŽUŽEK, "Canons Concerning the Authority of Patriarchs over the Faithful of their own Rite who Live Outside the Limits of Patriarchal Territory", in *Nuntia*, 6 (1978), pp. 3-33.

⁹⁴ For the text of the canon, see cf. MANSI, vol. 22, p. 998: see also *Decrees of the Ecumenical Councils*, vol. 1, p. 239; Pope Benedict XIV in his constitution *Etsi pastoralis* (26 May 1742), prescribed that where a Latin and a Greek bishop had jurisdiction, each was to have only care of his Latin or Greek subjects respectively. "Ubi vero sunt duo episcopi ejusdem loci a Sancta Sede Apostolica deputati, unus Latinus, alter Graecus ... Episcopus Latinus Latinorum, Episcopus vero Graecus Graecorum dumtaxat curam, regimen et jurisdictionem respective habeant et exercent." Cf., *Acta et Decreta Sacrorum Conciliorum Recentiorum. Collectio Lacensis*, vol. 2, p. 519.

"In 1937, Schroeder in commenting on Constitution 9, Lateran IV stated outright that the axiom of canon law that the same city or diocese not have more than one bishop was abolished and wherever there were communities of the 'Uniate rites,' there was a Catholic Bishop for each rite." Quoted from F.J. MARINI, *The Power of the Patriarch: An Historical-Juridical Study of Canon 78 of the Codex Canonum Ecclesiarum Orientalium*, Romae, Pontificium Institutum Orientale Facultas Iuris Canonici, 1994, pp. 144-146, especially footnote no. 301. See also ID., *The Power of the Patriarch: Patriarchal Jurisdiction on the Verge of the Third Millennium*, New York, Saint Maron Publications, 1998, pp. 68-74. NEDUNGATT, "Equal Rights of the Churches in the Catholic Communion", pp. 10-11.

Brian McNEIL said that "an ecclesiology which would adhere to c. 9 of the Fourth Lateran Council, which forbids multiple Episcopal jurisdiction in one see and provides for the pastoral care of the faithful of another rite through Episcopal vicars, is unable to make theological sense of the fact of the simultaneous existence in one and the same territory of a plurality of local Churches with bishops exercising ordinary jurisdiction ..." Cf. B. McNEIL, *One City, One Bishop?: Ecclesiological Reflections on the Eastern Catholic Churches*, Bangalore, Dharmaram Publications, 1988, p. 41.

1234, by an “interesting coincidence”, for a short period of union between Constantinople with Rome, Gregory IX (1227-1241) in a letter addressed to King Béla IV (1235-1270) of Hungary stated that the *Episcopi Latini Cumanorum* were to appoint an Episcopal vicar for the Wallachians and Romanians.⁹⁵ However, it was not until after the Turks were driven out of Eastern Europe (1683), and a permanent union was established with the Orientals living there, that canon 9 of the Fourth Lateran Council was consistently applied. But even this policy later fell into disuse during the reign of Emperor Joseph II (1765-1790).

On 30 May 1688, Leopold I (1658-1705) had Longin Raič (Raisch) appointed as Oriental bishop-vicar to the Latin ordinary of Syrmium (Mitrovica) to administer to the Wallachians living there.⁹⁶ In 1748 Benedict XIV (1740-1758) in his Letter *Etsi ipsa* of 30 August. appointed a bishop-vicar to the Latin ordinary of Oradea (Nagyvárad).⁹⁷ Similarly all bishop-vicars appointed for Orientals living among Latins and in their dioceses had only a restricted jurisdiction. However, even during this time the Holy See established for the Romanian Greek Catholics a new bishopric at Făgăraș and exempted it from any other jurisdiction.⁹⁸

⁹⁵ Cf. *Fonti*, vol. 8, p. 488; *ibid.*, vol. 10, p. 867, no. 1219; MANSI, vol. 31, p. 1035; see also BERKI, *A magyarországi Ortodox Keleti Egyház szervezése*, pp. 27-28.

⁹⁶ J. FIEDLER, “Die Union der in Ungarn zwischen der Donau wohnenden Bekenner des griechisch-orientalischen Glaubens”, in *Sitzungsberichte der philosophisch-historischen Classe der kaiserlichen Akademie der Wissenschaften*, 38 (1862), p. 284.

⁹⁷ “Deputandum esse Episcopum Suffraganeum, seu Vicarium, Reverendum Meletium Ritus Graeci ad formam Canonis IX Concilii Lateranensis IV seu Capituli *Quoniam, de officio Iudicis Ordinarii*, cum dispensatione super irregularitate ob schismata et haeresim incursa, necnon cum assignatione tituli Episcopalis, et congruae pro eius substantatione in florenis mille et quingentis illarum partium super fructibus mensae Episcopalis Varadinensis.” Cf. *Fonti*, vol. 8, p. 517; J. HERGENRÖTHER, “Die Rechtsverhältnisse der verschiedenen Riten innerhalb der katholischen Kirche”, in *Archiv für katholisches Kirchenrecht*, 7 (1862), p. 257.

⁹⁸ “...et ut novus Grex Dominicus huiusmodi eorum propriam Sedem, propriumque haberent Pastorem ... a quacumque alia Ordinaria iurisdictione divisit, et separavit, illaque omnia et Clerum ac Populum Ritus huiusmodi, quoad legem Dioecesanam, ab Episcopi Latini

2. Diverse Rites in the same Territory

Originally the diverse rites in the Church developed and were distinguished by territory. The Second Vatican Council reflects this when it notes that it was through the close cooperation of neighboring bishops in meeting various needs that the “organically connected” groupings arose. These have their own discipline, proper liturgy, and specific theology and spirituality.⁹⁹

Due to historical circumstances, and since the determinant elements of a rite are not territorial in themselves, the rites have intermingled in the same territory.¹⁰⁰ Now the basic attachment to rite is by person, not by territory.¹⁰¹ Within Oriental Regions considerable cooperation is not only urged, it is made automatic by the Council. Faculties granted without restriction by one hierarch in the area, may be used for all persons and places of all rites in the territory, unless

Transylvaniensium Superioritate, Jurisdictione, Potestate, Subiectione, Visitatione, et Correctione, si qua in eos consueverat prorsus eximit et liberavit, ac Oppidum Fogarasiense praeactatum [sic] in Civitatem erexit, illiusque incolas Civium nomine, titulo et honore decoravit, illudque et in eo Ecclesiam Divo Nicola dicatam in Cathedralem Ritus Graeci praefati ... pro uno Episcopo Ritus Graeci redigi faceret, nec non Episcopalem Iurisdictionem, auctoritatem in omnes et singulos Graecos, Ruthenos, Valachos, et Rascianos praefatos, tunc, et pro tempore in universa Provincia prae[c]tata commorantes et commoratuos exercere, omniaque, et singula, quae Iurisdictionis, quodque Ordinis, et cuiuslibet muneris Episcopalis erant.” Cf. *Appendix ad Bullarium S.C. de Prop. Fide*, vol. 2, pp. 3-4; *Fonti*, vol. 8, p. 504; NILLES, *Symbolae ad illustrandam historiam ecclesiae Orientalis in terris Coronae S. Stephani*, pp. 438-442.

⁹⁹ LG, no. 23.

¹⁰⁰ The Second Vatican Council often gives directives to “hierarchs who have jurisdiction in the same territory” (OE, no. 4). And it explains: “Without prejudice to the territoriality of jurisdiction, the canon intends to provide for multiple jurisdiction in the same territory, in view of the good of souls” (OE, no 16). According to Nedungatt; “the problems associated with multiple jurisdiction in certain places arise not from the diversity of the *rites* itself but mostly from want of Christian virtues, or lack of proper structures for coordination, or both”. See NEDUNGATT, “Equal Rights of the Churches in the Catholic Communion”, p. 11.

¹⁰¹ OE, no. 4.

another hierarchy expressly restricts this with regard to his own rite.¹⁰² Since the bishop is the supreme authority in pastoral matters within his diocese, such interchangeability of faculties could raise problems. The pastoral directives of one hierarchy could conceivably go counter to those of another within the same area, confusing the priests instead of promoting the desired assistance. However, the Council compromised by asking that the hierarchs of an area collaborate in interecclesial/interritual conventions to establish common disciplinary and pastoral practices.¹⁰³

The situation of diverse rites sharing the same area resembles interdiocesan cooperation where assistance is expressed especially through a sharing of clergy, and both are direct expressions of interecclesial communion. They differ in that interdiocesan cooperation is usually between dioceses of the same rite and not in the same territory. Moreover, cooperation in the communion of rites exists on both the diocesan and ritual levels, whereas interdiocesan cooperation in the earlier sense exists principally on the diocesan level. The supradiocesan level of Conferences of Bishops has yet to be developed to the extent of ritual communion.

In comparison, interdiocesan cooperation appears as one of many forms of aid to a diocese. All these types of cooperation are related to interecclesial communion, but in various manners. Direct expression of interecclesial

¹⁰² Ibid., no. 16.

¹⁰³ Ibid., no. 4; CD, no. 38, 6°. Outside the Oriental Regions, the normal rule is that the local bishop is to care for faithful of other Churches *sui iuris* who are within his diocesan territory. He does this by: (i) providing priests or pastors of these rites; (ii) or (also) providing an Episcopal Vicar for the various rites; (iii) or even fulfilling the functions of an Ordinary of other rites himself (Cf. CD, no. 23). In the context of the Archdiocese of Alba-Iulia, four parishes were established for the Armenian people together with the Latin faithful. Pospishil opines that "this could be done, if the number of each group of faithful does not permit the erection of separate parishes, but joined together it would be possible, and the discrepancies of Rite, language, extraction are not too great." V.J. POSPISHIL, *Interritual Canon Law Problems in the United States and Canada*, Chesapeake City, Maryland. Saint Basil's, 1955, p. 26.

communion is found in interdiocesan assistance and in interecclesial/interritual cooperation, especially when the rites share the same territory. This is ecclesial activity by a church, moderated through the bishops in collegial affection and action, involving in a special manner the clergy and people of particular churches. Such interecclesial communion affirms the legitimate extradiocesan concerns of bishops, and evidences the unity in diversity of the Catholic Church.

E. PASTORAL GUIDELINES AND INTER-ECCLESIAL NORMS FOR THE ARCHDIOCESE OF ALBA-IULIA

The structures of the Church expressed in universal law operate on various levels. Their proper coordination is assured by hierarchical communion. On the universal level, there is the ministry of the Roman Pontiff and the College of Bishops. On the regional level we have the various rites and their corresponding interecclesial/interritual conventions, as well as the conferences of bishops and, at times, groupings of these various entities. On the local level, we have the particular church or diocese, often associated with others in interdiocesan cooperation. This cooperation involves (a) many hierarchs in the same territory; (b) regular meetings on an interecclesial platform; (c) objects of these meetings, namely, (i) the good of religion; (ii) the discipline of clerics. In the concrete; problems of school, press, radio, television, charity, Catholic Action, catechism, missions, pastoral meetings, etc.

1. Interecclesial Communion and Activity

Interecclesial communion is a complex reality. Indeed, the characteristic element of interecclesial activity is that it expresses a communion between churches. This appears most clearly in the field of missionary cooperation. The

missionary dimension of the Church as such places greater emphasis on the universal perspective of each local church.

The bishop is the principal agent of interecclesial activity. With neighboring bishops he promotes regional activity. In a more structured manner, he assures interecclesial activity with all the dioceses of the Conference of Bishops. He is “by all suitable means” to extend his concern to the faithful of other Churches *sui iuris* committed to his care.¹⁰⁴

Interecclesial communion (encompassing a variety of activities) exists within the activities of a diocese in the traditional forms, especially though missionary cooperation. These are prayer, fostering of vocations and the organization of material aid.¹⁰⁵ A more intense involvement of the local church in the needs of others is expressed by a sharing of personnel (for instance in case of shortage of priests).¹⁰⁶ Interecclesial communion, therefore, is that organic reality joining together the various particular churches in the one Church of Christ through the collegial union of their pastors, the successors of the Apostles, cooperating in missionary concern and pastoral solicitude.

Catholics of the Latin and Eastern Churches tend to be insular in their awareness and knowledge of any church *sui iuris* other than their own.¹⁰⁷ In order

¹⁰⁴ See *CCEO* c. 193 and *CIC* c. 383, § 2. For further details see J. ABBAS, “Latin Bishops’ Duty of Care Towards Eastern Catholics”, in *Studia canonica*, 35 (2001), pp. 7-31.

¹⁰⁵ *LG*, no. 13.

¹⁰⁶ This is a common theme in several conciliar documents. See for example: *CD*, no. 6; *AG*, no. 38; *PO*, no. 10. With regard to priests, the Council proposes as the ideal that they become permanently engaged in the service of the needy area. This ideal situation is not always possible or desirable for every volunteer, so the Council urges even temporary service to meet the requirements of the times. In the context of the Archdiocese of Alba-Iulia, diocesan priests are working/serving among the Armenian faithful.

¹⁰⁷ Cf. *CCEO* c. 41; *CS*, c. 2, § 2; *OE*, no. 6.

to avoid such difficulties, the faithful who have frequent contact with members of other churches *sui iuris* should be informed about the rites, discipline, doctrine, history and character of those churches.¹⁰⁸ In the Archdiocese of Alba-Iulia, there are theological faculties in the University of Babeş-Bolyai for the Eastern and Latin rite faithful. It could in the future be an interecclesial faculty.

The Congregation for Catholic Education issued a circular letter dated 6 January 1987, about the need to educate everyone, especially those who are in priestly formation programs, about the Eastern Catholic and non-Catholic churches.¹⁰⁹

Canon 343 of the Eastern Code deals with an important aspect of clerical formation in interecclesial seminaries.¹¹⁰ Hence Latin seminaries accepting Oriental candidates as well as Oriental seminaries accepting Latin candidates cannot be satisfied with one uniform formation imparted to one and all. What is said about seminary formation holds good also for the formation of religious destined for sacred orders (*CCEO* c. 536). Similarly, superiors of religious institutes of the Latin Church will have to take account of the Eastern Code if they

¹⁰⁸ ABBASS, "Canonical Disposition for the Care of Eastern Catholics Outside Their Territories", pp. 334-335.

¹⁰⁹ Cf. A. SCHUMACHER and J.J. CUNEO, (eds.) "Circular Letter Concerning Studies of the Oriental Church", in *Roman Replies and CLSA Advisory Opinions 1988*, Washington, 1988, pp. 12-20. During the twentieth century, this circular letter was preceded by the motu proprio *Orientis catholici* (15 October 1917) of Benedict XV (*AAS*, 9 [1917], pp. 531-533.) and the encyclical letter of Pius XI, (8 September 1928) *Rerum Orientalium* (*AAS*, 20 [1928], pp. 277-288).

¹¹⁰ "Alumni, etsi in seminarium alterius Ecclesiae sui iuris vel plurium Ecclesiarum sui iuris commune admissi, proprio ritu instituantur reprobata contraria consuetudine." *CCEO* c. 343.

admit Oriental candidates into their institutes.¹¹¹ The same norm applies to admission of oriental candidates to Latin monasteries.¹¹²

The eparchial bishops in consultation with the Latin bishops could and may be more proficient in establishing interchurch tribunals for various Churches *sui iuris*, including the Latin dioceses.¹¹³

In a case of a marriage between Catholics who are members of different Churches *sui iuris*, which we call an interecclesial marriage (formerly interritual marriage), the parties follow their own law; those of the Latin Church, that of the Latin Code, those of one of the Churches *sui iuris*, that of the Eastern Code and any applicable particular law.¹¹⁴ Obviously, it is not possible here to delve into all the other details about Latin-Oriental relations contained in the Latin and the Eastern Codes

2. Interecclesial Communion in Practice

Interecclesial communion is an essential manifestation of the life of the Church. This form of cooperation is effected through the collegial union of the pastors of the particular churches concerned. The bishops of the dioceses of various rites are the ones directly involved in establishing the program and seeing to its effective operation. It is not a question of one party being subordinate to the

¹¹¹ CCEO c. 517, § 2.

¹¹² Ibid., c. 451. This is not a new law. The old law made more explicit mention of "Orientales in Religionibus latinis..." (PA, c. 74, § 2, 6°).

¹¹³ CCEO cc. 1066-1068.

¹¹⁴ For more details, see V.J. POSPISHIL, *Eastern Catholic Marriage Law According to the Code of canons of the Eastern Churches*, Saint Maron Publications, Brooklyn, New York, 1991, pp. 382-384.

other, for cooperation is effected through consultation and collaboration, with due respect for the legitimate authority of each bishop.

According to the Second Vatican Council, there are various expressions of interecclesial communion. It will therefore help to clarify how the cooperation between the Latin and Eastern Churches in the Archdiocese of Alba-Iulia qualifies as interecclesial communion if we consider it in the light of the Council's teachings.

Cooperation is a form of interecclesial communion since it includes the necessary elements, as seen above. In effect it is a practical application of that solicitude every bishop is to have for the churches, especially those in need.¹¹⁵ The Council urges that Conferences of Bishops take a notable part in moderating interecclesial communion.¹¹⁶ To "moderate" interecclesial cooperation, as viewed by the Council and experienced in fact, leaves considerable latitude to diocesan initiative.

3. Interecclesial Relations in the Context of Alba-Iulia

The spirit of unity and collaboration among the churches *sui iuris* should manifest itself, first and foremost, in jointly facing the challenges of evangelization in today's Transylvania. The relations in the field of evangelization have been the subject of much study and discussion. We do not wish to enter into all aspects of the complex question. Rather, our intention is to focus attention on a few pertinent theological and canonical issues.

In the relationship between the various churches *sui iuris*, there seem to be a few dominant models of evangelization at work. The first one could be called an

¹¹⁵ *CD*, no. 6.

¹¹⁶ *AG*, no. 38.

organizational model. According to it, evangelization would consist mainly in marking the responsive areas of the country with churches, educational and charitable institutions, and with religious houses. Where this model is at work, the apportioning of territories among the various ecclesial traditions, the strength of each one of them in terms of material and personnel resources, turns out to be a crucial issue leading at times to conflicts and rivalries. For a correct understanding of the inter-relationship among the various churches in the field of evangelization, it is important to widen our horizons of thought and begin from a different framework. The relationship needs to be based on a deeper theological vision. The present, socio-political, cultural, religious and missionary context is very challenging to the evangelizing work of the various rites.

The second and most important principle for fruitful inter-relations among the various Churches *sui iuris* is the recognition and promotion of legitimate *pluralism* among those peoples who are evangelized. Pluralism is ultimately *acceptance of the other* individual, people, nation, in their otherness. The Second Vatican Council recognized the legitimate place and rights of the Oriental Churches in the universal communion of the Catholic Church, and has stated that their traditions, liturgical rites and Christian ways of life are to be accorded due place and promoted. In this context, the Council has spoken also about the richness of the pluralism, the diversity represented by the various individual Churches and rites.¹¹⁷ A beneficial collaboration between the various Churches *sui iuris* is possible only when considerations of territory are pushed to the background to concentrate on pressing questions affecting the country; questions of national integration, communal harmony, justice, human rights, etc.

¹¹⁷ OE, no. 2.

The vicissitudes of past history still weigh heavily on the various churches *sui iuris* in Transylvania, affecting their inter-relationship in fulfilling their missionary task. And yet, this is the time when understanding and collaboration are most called for. There are many things, both past and present, for which every individual ecclesial tradition in Transylvania has to repent. Repentance is the way to reconciliation and establishment of fresh relations. This is required as much from those who are evangelized as those who evangelize.

4. Rights and Duties of the Christian Faithful in the Liturgical Life of their Churches *sui iuris*

In the "Decree on the Catholic Eastern Churches", the Second Vatican Council enforces upon the faithful of the Eastern Catholic Churches the obligation to retain their own rite wherever they are, and to follow it to the best of their ability.¹¹⁸ This obligation is at the same time one of the basic rights of the Christian faithful. The Code therefore includes among the rights of the faithful their right to worship according to the prescriptions of their own Church *sui iuris* and to follow their own form of spiritual life.¹¹⁹ This inalienable right of the Christian faithful imposes an obligation on the clergy to administer sacraments according to the prescriptions of their own Church *sui iuris*.

¹¹⁸ *OE*, no. 4.

¹¹⁹ See *CCEO* c. 7. The new Oriental Code intended to represent a well established Oriental discipline, "suited to the customs of their faithful and [...] more suitable for assuring the good of souls." See *Nuntia*, 3 (1976), p. 19.

CONCLUSION

In Europe there were always peoples of different races, different languages, different religious beliefs and different cultures living together in the same organized framework of statehood; Transylvania is no exception. Therefore Transylvania is a country characterized by a diversity of religions and a mosaic of ecclesial traditions. The minority problems of Transylvania, showing the characteristics of change-reactions, followed in a chronological sense, when the Hungarian majority became an ethno-linguistic minority, in an even larger multinational complexity: the Habsburg Empire.

As the experience in Transylvania shows, there is a system of keeping people of different nations, cultures, beliefs, etc. equal, but at the same time respecting their different ways of worship. Although belonging to different churches, they are of one faith and the members do intermingle by marrying each other and worshipping in each other's churches. Such a situation may arise where one spouse belongs to one Church *sui iuris* and the other is a member of another one.

Within the Latin Church in the Archdiocese of Alba-Iulia and similarly in the Eastern Churches, some people desired to transfer their membership to the church of the parish to which they belonged.

The transfer of membership in Transylvania had not only a socio-cultural, but also a political-economical background. The change of political regime from Hungarian rule to Romanian (in the wake of World War I), then back to Hungary in the Northern half of Transylvania (during World War II), and then again to Romania, had a definite impact on the number of requests for transfer of membership, in the majority of cases favouring the predominant religion of the then ruling nation. Thus under Hungarian domination the transfers tended to be to

the Latin Church, while under Romania the Eastern Churches were preferred. The people perceived political and economical advantage, notably better career prospects, by joining the preferred religion of the ruling nation.

Generally speaking, a major problem for any minority which seeks to preserve itself is that of its potential assimilation into the majority. Canon Law itself provides significant occasions for assimilation into the dominant rite.

The idea of evangelization and the goal of "*salus animarum*" became distorted by the ambition of certain Church leaders' racial pride, concern for keeping the social status and clinging to old traditions, among other things. Now that the Churches are free, and all have learned lessons from history,¹²⁰ they need to come together and to plan and launch common programs for better evangelization and for a more authentic Transylvanian discipline to be lived in the present day. They have the call to transform society by infusing the "mind of Christ" into the mentality, customs, laws and structures of the world in which they live. The Holy Father urges this:

However, since communion among the Churches can never be considered a goal definitively reached the gift of unity offered by the Lord Jesus once and for all must be answered with a constant attitude of acceptance, the fruit of each one's inner conversion. The changed circumstances of the present time require, in fact, that

¹²⁰ JOHN PAUL II emphasised in his Apostolic Letter that "the way was never easy for the Greek-Catholic Church of Romania, as her suffering shows. She was asked to bear a painful and demanding witness of fidelity to the evangelical requirement of unity. Thus she became in a special way the Church of the witnesses to unity, truth and love. Despite the many difficulties encountered, the Greek-Catholic Church of Romania increasingly appeared to the whole Christian world as an extraordinary witness to the indispensable value of ecclesial unity. But it was especially in the second half of the twentieth century, in the age of communist totalitarianism, that your Church had to suffer a very harsh trial, rightly earning for herself the title: "Church of Confessors and martyrs". It was then that the struggle between the *mysterium iniquitatis* (2 Thes 2: 7) and the *mysterium pietatis* (1 Tm 3: 16) at work in the world became even more apparent." Cf. "Third Centenary of the Union of the Greek-Catholic Church of Romania with the Church of Rome", p. 330.

unity be pursued within a broader ecumenical horizon, in which we must be willing to listen to the Spirit and courageously rethink our relationships with the other Churches and with all our brothers and sisters in Christ, with the attitude of those who can “hope against all hope” (cf. Rom 4: 18).¹²¹

By this authentic and renewed Christian discipline, the Church in Transylvania may prove the value of unity in diversity in the modern world, and may help to resolve the problems Romania faces today.

Interecclesial communion is not just the activity of the bishops. The entire community of the local church is involved, for this is an ecclesial communion. Activity expressing interecclesial communion results in structured groupings of churches. Historically, the organic groupings of churches known as rites have developed in this way. Today, the Romanian Bishops' Conference is expressive of this same process, the spirit of communion being expressed in a structure suited to the times. Indeed, the Conference of Bishop resembles rites in many ways as it develops its own legislation, makes opportune adaptations in the liturgy to meet its own socio-cultural situation, and expresses the spiritual and theological tenor of its region or nation.

The one most important thing which the Archdiocese of Alba-Iulia and its neighbouring Eastern Catholic Churches needs, is true flexibility. In the region on the diocesan level the churches must be given the flexibility necessary for them to grow, to develop effective interrelationships, and to adjust to the changing needs of the times.

This flexibility is assured if the “moderating” function of the Conference of Bishop is maintained. Such moderating includes stimulating, supporting and directing the initiatives of others. The Second Vatican Council had made a

¹²¹ Ibid., p. 333.

provision for such flexibility. It has called for the drawing up of pastoral directories.¹²²

¹²² *CD*, no. 44.

CHAPTER IV
APPLICATION OF THE CANONICAL NORMS TO THE
ARCHDIOCESE OF ALBA-IULIA

INTRODUCTION

Canon law provides significant occasions for assimilation into the dominant Church *sui iuris* through the institutes of transfer of membership by marriage and in the family. We are dealing with a paradox here in that the family is the place where the consciousness of membership in a given rite is often strengthened and passed on to a new generation. On the other hand, the family can also be the place of a weakening of ritual identity, of ritual conflict, or even a means for ritual assimilation into the dominant group. The potential for assimilation into the dominant Church is easier after the promulgation of the 1983 Code which, as we shall see below, makes it convenient for parents and children to choose the dominant Church in a certain number of situations.

We can see, however, that there is significant legal tension on the one hand, between the wish of the legislator to preserve the Eastern rites, and on the other to provide suitable opportunities for transfer of membership for individuals and families. At the very least we must face the fact that many individuals will find it less convenient to maintain their ties with a traditional Eastern rite rather than be absorbed into Latin Catholic culture. The canonist must use all his skill and wisdom to find a just balance between the two conflicting impulses. The spiritual good of souls is the highest and decisive purpose, the *ultima ratio*, of ecclesiastical law but not a reason for transfer.

We find that the best means for the preservation of minority rites is the strengthening of the local community context of church life for the scattered members of Eastern rites. The current law could even be developed and adapted to realize this potential. With these optimistic thoughts, we hope that this chapter will contribute at least in some small way to the vibrancy of the Eastern Churches and to wholesome interecclesial relations.

Transfer of membership generally occurs with the permission of the Apostolic See. There is a good reason for the Apostolic See to reserve the right of granting permission to transfer one's membership, that is, the fear of the possible extinction of some minority rites. As Second Vatican Council says:

The Catholic Church values highly the institutions of the Eastern Churches, their liturgical rites, ecclesiastical traditions and their ordering of Christian life. For in those churches, which are distinguished by their venerable antiquity, there is clearly evident the tradition which has come from the apostles through the Fathers and which is part of the divinely revealed, undivided heritage of the Universal Church. This holy, ecumenical synod, therefore, has a special care for the Eastern Churches, which are living witnesses of this tradition, and wishes them to flourish and to fulfill with new apostolic strength the task entrusted to them.¹

Therefore, "the Catholic Church wishes the traditions of each particular Church or rite to remain whole and entire ..."²

The focus of this chapter will be to investigate possible pastoral applications and also discuss problems that can arise from the application of the different legislations. We attempt to approach the subject matter from two levels:

¹ *OE*, no. 1.

² *Ibid.*, no. 2.

theoretical and practical. From a theoretical point of view, we will attempt to clarify important notions and juridic principles pertinent to the topic. On the practical level, we will strive to identify problems arising from the application of the law in particular cases, particularly in the Archdiocese of Alba-Iulia.

A. THE SITUATION OF CHILDREN BORN OF PARENTS OF DIFFERENT CHURCHES *SUI IURIS*

Membership in the Catholic Church arises out of the reception of valid baptism and, in the case of non-Catholic baptism, through entrance into full communion with the Catholic Church. There cannot be a *catholicus vagus* because no one is ever "at large" in the Catholic Church, and everyone necessarily belongs to a Catholic Church *sui iuris*. The enrollment of a person in a specific Church *sui iuris* is determined according to the provisions of the law. Membership is a very important factor because it determines the hierarchy and the laws to which a person is subject.³

The position of children with regard to membership is based on two general principles: (i) Before they complete fourteen years of age, children have no option but to belong to the Church of their parents as provided for in the canons.⁴ (ii)

³ See A. MENDONÇA, *Interecclesial Legislation*, notes for the private use of the students, Ottawa. Faculty of Canon Law, Saint Paul University, 1996-1997, p. 38; J. FARIS, *Eastern Catholic Churches: Constitution and Governance According to the Code of Canons of the Eastern Churches*, New York, Saint Maron Publications, 1992, pp. 153 and 165; M. THÉRIAULT, "Canonical Questions Brought About by the Presence of Eastern Catholics in Latin Areas in the Light of the 'Codex canonum Ecclesiarum Orientalium'", in *Ius ecclesiae*, 3 (1991) p. 208. For interecclesial law concerning children, see M. WOJNAR, "Interritual Law in the Revised Code of Canon Law", in *The Jurist*, 43 (1983), pp. 192-194; ID., "Interritual Law in the Revised Code of Canon Law", in *Christian Orient*, 6 (1985), pp. 52-53.

⁴ "A child of parents who belong to the Latin Church is ascribed to it by baptism, or if one or the other parent does not belong to the Latin Church and both parents agree in choosing that the child be baptized in the Latin Church, the child is ascribed to it by reception of baptism; but if the

Those to be baptized who have completed fourteen years of age can freely choose to be baptized in the Latin Church or another Church *sui iuris*, and in this case they belong to Church which is chosen.⁵

1. Transfer before the age of fourteen

Children ascribed to the Latin Church who have not yet completed the fourteenth year of age transfer automatically when both parents transfer to another Church *sui iuris*, or when, in the case of a mixed marriage, the Catholic parent transfers (c. 112, § 1, 3°).⁶ In the case of Eastern catholic children who have not yet completed fourteen years of age, where only one parent transfers to another Church *sui iuris*, such children transfer with the parent in question only if both parents agree (CCEO c. 34); otherwise, they continue to belong to the Church *sui*

agreement is lacking, the child is ascribed to the Ritual Church to which the father belongs" (CIC c. 111, § 1).

Canon 29 of CCEO is more detailed than CIC/83. It states: "§ 1. By virtue of baptism, a child who has not yet completed his fourteenth year of age is enrolled in the Church *sui iuris* of the Catholic father; or the Church *sui iuris* of the mother if only the mother is Catholic or if both parents by agreement freely request it, with due regard for particular law established by the Apostolic See.

§ 2. If the child who has not yet completed his fourteenth year is:

1° born of an unwed mother, he is enrolled in the Church *sui iuris* to which the mother belongs;

2° born of unknown parents, he is to be enrolled in the Church *sui iuris* of those in whose care he has been legitimately committed are enrolled; if it is a case of an adoptive father and mother, § 1 should be applied;

3° Born of non-baptized parents, the child is to be a member of the Church *sui iuris* of the one who is responsible for his education in the Catholic faith."

⁵ "Anyone to be baptized who has completed the fourteenth year of age can freely choose to be baptized in the Latin Church or in another Ritual Church *sui iuris*, and in this case the person belongs to that Church which is chosen" (CIC c. 111, § 2).

"Anyone to be baptized who has completed the fourteenth year of age can freely select any Church *sui iuris* in which he or she then is enrolled by virtue of baptism received in that same Church, with due regard for particular law established by the Apostolic See" (CCEO c. 30).

⁶ See CIC c. 1125, 1° and CCEO c. 814, 1°

iuris in which they were ascribed. Thus, when parents transfer to another Church *sui iuris*, their children who have not completed their fourteenth year transfer *ipso iure* to the Church of their parents according to the provisions of the Codes applicable to them.

This principle is meant to promote family unity and facilitate the religious education of the children. When the parents request permission to transfer, they should include in the petition, the names, dates of birth, reception of first Holy Communion and confirmation of all children under the age of fourteen years.⁷

Those children who were automatically transferred to another Church *sui iuris* through the transfer of their parents, may return to their original Church any time after they have completed the fourteenth year of age.⁸ Apropos of this norm we can detect a certain subtlety that developed during the editing of the Eastern Code. since the first schema proposed that the children follow the father in his transfer to another Church *sui iuris* and follow the mother only if the father is not Catholic.⁹ Quite quickly, seeing the reaction of the consultative organs to this text, the commission changed the “father” to the “parents”.¹⁰ Thereafter this canon did not elicit much discussion.

⁷ FARIS, *Eastern Catholic Churches: Constitution and Governance*, p. 172.

⁸ See *CIC* c. 112, § 1, 3°; *CCEO* c. 34. During its second session (9-12 December 1967) the *coetus* “De questionibus specialibus libri II” formulated the canon allowing minors below the age of fourteen years to transfer automatically with their parents to another Church *sui iuris* and permitting them to revert to their original Church only after they reached the *age of majority* (see *Communicationes*, 21 [1989], pp. 125-126). However, the *coetus* “De populo Dei” in its meeting (18 October 1979), decided on the age of fourteen years complete for return to the original Church *sui iuris*, instead of the age of majority (see *Communicationes*, 12 [1980], p. 76).

⁹ “Si ad aliam Ecclesiam sui iuris legitime transeat pater, aut in mixto matrimonio mater catholica, filii impuberes ad eandem Ecclesiam, ipso iure transeunt; ceteri vero filii minoris aetatis transire possunt, si ipsi volunt.” See *Nuntia*, 19 (1984), p. 22, c. 13.

¹⁰ *Ibid.*, 22 (1986), pp. 30-31.

It seems that the children need not follow the procedure for transfer. However, since returning to the original Church has juridic implications, this has to be done through a declaration before the pastor and two witnesses. This fact of return should also be noted in the baptismal register.¹¹

2. Transfer after the age of fourteen

Children who have already completed their fourteenth year of age at the time of transfer of the parent or parents are governed by the norms of canon 112, § 1, 1°. that is to say, they do not automatically transfer with their parents and the law requires them to make the decision personally.¹² If they do not make any

¹¹ The following authors are of the opinion that the return to the original Church can be done through declaration:

“When the child who transferred membership by virtue of the transfer of parent(s) attains the age of fourteen, he or she is free to return to the original church at any time. (See also *CIC* c. 112, § 1, 3°).

Because it is a public act, a clear expression and record of the intention to transfer membership should be made (cc. 36-37)”, cf. FARIS, *Eastern Catholic Churches: Constitution and Governance*, pp. 172-173.

“[...] when or after the child completes 14 years of age, the child can revert to its original Church, upon declaration (*CIC* c. 112, § 1, 3°; *CCEO* cc. 34 and 36; the declaration is implied in the Latin Code but nevertheless necessary, because of the requirement of annotating the baptismal register of the child, cf. *CIC* c. 535, § 2; *CCEO* c. 296, § 2)” Cf. A. de FUENMAYOR, “The Canonical Status of Physical Persons”, in M. THÉRIAULT and J. THORN (eds.), *Code of Canon Law: Annotated*, Montreal, Wilson & Lafleur Limitée, 1993, pp. 132-133.

“Compiuti tuttavia i 14 anni, hanno facoltà di ritornare liberamente alla Chiesa latina. A norma del can. 535, § 2, il cambiamento di rito dev’essere debitamente annotato nel registro dei battesimi” Cf. L. CHIAPPETTA, *Il Codice di diritto canonico – Commento giuridico pastorale*, Rome. Dehoniane, 1996, vol. 1, p. 135.

¹² Prior to *CIC/83* and *CCEO*, children who had attained *legal puberty* could petition for transfer on their own. In other words, boys who had completed their fourteenth year and girls their twelfth year could present personally signed petitions for themselves. See *CS*, c. 10; V.J. POSPISHIL, *Code of Oriental Canon Law: The Law on Persons, Rites - Persons in General - Clergy, Hierarchy - Monks and Religious - Laity*, Ford City, PA, St. Mary’s Ukrainian Catholic Church, 1960, pp. 37-38; NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *Guidelines for the Transfer of Rite Cases*, approved by the Congregation for Oriental Churches on 19 December 1978, p. 2.

decision, they are held not to have transferred to the Church to which their parents have enrolled. In other words, minors who have completed the age of fourteen years “may transfer with their parents if they wish, but they must sign the petition or declaration of acceptance of transfer together with their parent[s]. If such children did not transfer with their parents, they may do so later by presenting a petition of their own with the annotation that they wish to transfer to the new Rite of their parents; they must go through all the formalities prescribed for transfer to another Rite.”¹³

A second possibility for transfer to another Church *sui iuris* occurs when contracting marriage. The transfer requested at the time of or during the marriage through a legitimate declaration takes place by law itself. In this situation, the intervention of the Apostolic See or the Ordinary is not required.¹⁴

B. POLICIES TO BE APPLIED IN CASES OF TRANSFER

A valid change of boundaries of a Church *sui iuris* by the very nature of the matter is exclusively within the jurisdictional power of the supreme ecclesiastical authority. This norm is applicable not only in geographical terms, but also to persons. The Eastern norm in this respect is unambiguous in that it states that “no one can validly transfer to another Church *sui iuris* without the consent of the Apostolic See.”

This consent of the Apostolic See would not necessarily have to take the form of an authoritative intervention in a particular case, since a person – given certain definite circumstances – could, in conformity with the law issued by the

¹³ MENDONÇA, *Interecclesial Legislation*, p. 54.

¹⁴ See THÉRIAULT, “Canonical Questions Brought About by the Presence of Eastern Catholics in Latin Areas in the Light of the ‘*Codex canonum Ecclesiarum Orientalium*’”, p. 212.

Supreme Legislator, transfer to another Church *sui iuris*. Canon law in force today would consider the following circumstances as allowing for exceptions: (1) certain cases of mixed marriages, and also (2) cases of changes in church affiliation of the parents. Accordingly, we can divide the cases of transfer of membership in Churches *sui iuris* into two principal types depending on whether the person can do this automatically, making use of the possibilities granted by the law, or whether he/she needs particular authorization from the ecclesial authorities.

1. Transfer of membership in a Church *sui iuris* through lawful empowerment

1) In the case of a marriage of Catholics of different Churches *sui iuris*,¹⁵ for the promotion of the unity of rite in the family, in certain cases the law permits the spouses to transfer automatically to the Church *sui iuris* of the other spouse.

Regardless of the terms canon 112, § 1, 2° in the Latin Code uses, in the case of Catholic marriages of mixed rites of spouses belonging to the Eastern Church (whether the intended transfer is to the Latin, or to another Eastern Catholic Church) only the *woman* can claim automatic transfer (*CCEO* c. 33).¹⁶ In the case of Latin persons – since the appropriate canon speaks about the possibility

¹⁵ "... in matrimoniis mixti ritus inter latinos et italo-graecos, nec Clemens VII, neque Benedictus XIV, siverunt latinos sequi graecum compartis, sed e converso uxore agebatur, illa latino ritu semel suscepto neque post obitum mariti sui ad graecum ritum redire poterat." Cf. A. PETRANI, *De relatione iuridica inter diversos ritus in Ecclesia catholica*, Taurini-Romae, 1930, pp. 36-37.

¹⁶ *Nuntia*, 3 (1976), p. 50; *CS* c. 9: "Integrum est mulieri diversi ritus, ad ritum viri, in matrimonio ineundo vel eo durante, transire; matrimonio autem soluto, libere potest proprium ritum resumere."

of transfer of the spouse without making any distinction as to sex,¹⁷ unlike the Eastern law which explicitly restricts this to the *woman*¹⁸ – since 27 November 1983 the automatic right in question pertains also to the man.¹⁹ In the case of an Eastern man this was not possible, either by canon 9 of CS, or its replacement by the Eastern Code.²⁰ Although prominent authors of the codification were of the opinion that the Latin Code formally amended canon 9 of CS,²¹ this view is incompatible with the model defining the new general relationship between the Eastern and the Latin legislations.²² Therefore, canon 9 of the CS retained its force

¹⁷ Cf. CIC/1917, c. 98 § 4; *Communicationes*, 6 (1974), pp. 97-98; *ibid.*, 21 (1989), p. 124; see also M. BROGI, "I Cattolici orientali nel Codex Iuris Canonici", in *Antonianum*, 58 (1983), pp. 231-232.

¹⁸ CIC c. 112, § 1, 2° "coniux qui, in matrimonio ineundo vel eo durante, ad Ecclesiam ritualement sui iuris alterius coniugis se transire declaraverit, matrimonio autem soluto, libere potest ad latinam Ecclesiam redire"; contrary to the CCEO c. 33 – "Integrum est mulieri ad Ecclesiam sui iuris viri transire ..." (Emphasis added).

¹⁹ This entitlement cannot be used, however, to circumvent the law of celibacy. On this point we are confronted by a veritable *lacuna legis*, gap in the law (cf. c.19 of CIC). "The best way to fill this gap seems to be to apply the general principle of law according to which what is prohibited to someone in one way, should not be made available in another way: *Cum quid una via prohibetur, alicui ad id alia non debet admitti.*" See P. SZABÓ, "Sajátjogú egyháztagság a hatályos jog szerint (CIC 111-112. és CCEO 29-38. kk.)", in *Kánonjog*, 1 (1999), p. 47, footnote no. 54.

²⁰ In the Oriental legislation CS, c. 9, only the wife had the right to this transfer of membership by law itself. That right was not extended to the husband. Since the prescription of CS, c. 9 has been reiterated in c. 33 of CCEO, the effect of c. 112, § 2 is not applicable to an Eastern Catholic husband. In the discipline as it exists today, an Eastern Catholic husband can transfer his membership only in virtue of permission from the Apostolic See. Canon 112, § 2 implies that a Latin husband of an Eastern Catholic wife or the Latin wife of an Eastern Catholic husband is free to join the Church of the other spouse at the time of entering the marriage and during the marriage, and he or she is permitted to resume membership in the former Church after the dissolution of the marriage. See *Nuntia*, 29 (1989), pp. 37, 43-48; M. GNESKO, *Interritual Relations*, notes for the private use of the students, Ottawa, Faculty of Canon Law, Saint Paul University, 1981, pp. 35-36.

²¹ Cf. I. ŽUŽEK, "Presentazione del Codex canonum ecclesiarum orientalium", in *Monitor ecclesiasticus*, 115 (1990), pp. 596-597.

²² For further comment, see SZABÓ, "Sajátjogú egyháztagság a hatályos jog szerint (CIC 111-112. és CCEO 29-38. kk.)", pp. 42-52.

until 1 October 1991. Thus we can conclude that Eastern Catholic men were not permitted, even during the period from 1983 to 1991, to transfer automatically to their wife's Church *sui iuris*.²³

In the case of a lawful termination of a marriage, persons who had transferred to another Church *sui iuris* have the right to return to their original Church.²⁴ In the absence of any specific provision in this matter, the affected person can make use of this right at any time, i.e., it is not restricted to the moment of the termination of the marriage. The return to the original Church during the duration of the marriage is, however, possible only by obtaining permission from the Church authorities.²⁵ At such a return a modified form of the statement of

²³ *Az Egyházi Törvénykönyv. A Codex Iuris Canonici hivatalos latin szövege magyar fordítással és magyarázattal.* (szerkesztette, fordította és magyarázta P. Erdő), Budapest, 1997, pp. 156-157. See also J.D. FARIS and V.J. POSPISHIL, *The New Latin Code of Canon Law and Eastern Catholics*, Brooklyn, NY, Diocese of Saint Maron, 1984, p. 23.

²⁴ Cf. H. PREE, "Ad can. 112", in *Münsterischer Kommentar zum Codex Iuris Canonici*, K. LÜDICKE. (ed.), Essen, Ludgerus Verlag, 1985, 112/7.

²⁵ In his commentary on c. 33 of *CCEO*, Pospishil says that according to this canon the wife is free to join permanently the Church *sui iuris* of her husband at any time during the marriage, but she can return to her former Church after the marriage has been terminated by death or by a declaration of nullity, and probably also after a permanent separation sanctioned by the bishop. He goes on to explain the reason for retaining the tenor of the prescription of c. 9 of *CS* as follows: "Most Eastern Catholics live among a majority of Catholics of the Latin Church. This leads to frequent interecclesial marriages, resulting in a great loss of members of the Eastern Catholic Churches to the Latin Church, while the opposite occurs less frequently due to sociological circumstances. The wish has been voiced that Church law should protect the Eastern Catholics against the absorption of the Eastern Catholic communities by the Latin majority. The draft of this canon recognized the legal equality of the sexes and granted the husband the right to transfer to the Church of the wife during marriage and to return to his former Church after the dissolution of the marriage. However, at the insistence of the patriarchs and bishops, members of the Codification Commission, this was changed in the promulgated text, returning the legal situation as before. Yet, the couple can still decide to have their children become members of their mother's Church, again with the exception of an, as yet, hypothetical exception of a contrary particular law, to be sanctioned by the Pope (c. 29, § 1), and the husband is at liberty to accommodate himself fully to the Church of the wife." See V.J. POSPISHIL, *Eastern Catholic Marriage Law According to the Code of Canons of the Eastern Churches*, Brooklyn, NY, Saint Maron Publications, 1991, p. 60.

intention must be repeated, such as was required at the time of the original transfer, and also the registration of the fact.

2) Through lawful empowerment, (*ipso iure*) the church membership of a child under the age of fourteen whose parents belonging to the same Church *sui iuris* transfer to another Church *sui iuris* automatically changes.

The Eastern Code, besides making the text legally more precise,²⁶ regulates also the possibility that when, in a marriage between Catholics, only one of the spouses transfers to another Church *sui iuris*, their child follows the parent in the transfer only if the other parent consents (CCEO c. 34). Although the text of the present canon demands only *consent*,²⁷ (thus not necessarily formal expression of an act of will) canon 29, § 1, as a presumably parallel provision which is to be taken into consideration in interpreting the law,²⁸ makes it clear that an *explicit* expression of the act of will is also required in this case.

To define the possible forms for the expression of this act of the will, one would welcome particular legal norms which would prescribe that, for the change in status of the child, a declaration signed by both parents would be required and that this declaration, on the one hand, would be attached to and kept with the document concerning the change of status of the parent and, on the other, the parish where the baptism of the child had taken place be notified in order to make the necessary notation in the register.²⁹

²⁶ Cf. CCEO c. 34; "*ipso iure* transeunt." See D. SALACHAS, "L'appartenenza giuridica dei fedeli a una Chiesa orientale *sui iuris* o alla Chiesa latina", in *Periodica*, 83 (1994), pp. 42-44.

²⁷ "*Si ambo parentes consenserunt ...*"; compare with: "*si ambo parentes concordii voluntate petunt...*" (CCEO c. 29, § 1).

²⁸ CCEO c. 1499.

²⁹ In many cases the place of the transfer is not the baptismal parish of the person, thus the notice required in c. 37 of CCEO might never be inscribed in the baptismal register because of lack

If, in a mixed marriage, the Catholic party is transferring to another Church *sui iuris*, his/her child under fourteen years of age would follow automatically.³⁰ In such a case – similar to the case of transfer of two Catholic parents – the transfer of membership of the child is not an act of law (legal act), but is independent of the will of the child under the age of fourteen; it is a fact of law (legal fact). Although neither Code specifically mentions it, the same reasoning would apply to a Catholic, married to a non-Christian, who transfers to another Church *sui iuris*.

A child born outside of lawful marriage follows the membership of the mother (*CCEO* c. 29, § 2, 1°). If the parents later contract a valid (sacramental) marriage, their child under fourteen years of age automatically becomes a member of the father's Church, unless the father explicitly stated that he wished to have his child remain in the membership of the mother's Church. There is no direct provision for such cases in either Code. However, this conclusion can be deduced from canon 1140 of the Latin Code which states that legitimated children are equivalent to legitimate children in all respects, unless it is otherwise expressly provided by the law.³¹ There was a similar norm in canon 106 of *Crebrae allatae*.³²

of notification. For this reason it would have been advisable to have included in this norm of the *CCEO* an explicit obligation on the part of the new pastor to notify the Church of baptism. Since this is not done in the general legislation, for the sake of clarity it should be dealt with by particular law. (Logically, that same authority who receives the transfer should be obliged to notify the pastor of the place of baptism).

³⁰ *CIC* c. 112, § 1, 3°; *CCEO* c. 34.

³¹ "As far as canonical effects are concerned, legitimated children are equivalent to legitimate children in all respects, unless it is otherwise expressly provided by the law."

³² "Filii legitimated per subsequens matrimonium, ad effectus canonicos quod attinet, in omnibus aequiparantur legitimis, nisi aliud expresse cautum fuerit." See *AAS*, 41 (1949), p. 112.

2. Transferring membership in a Church *sui iuris* by virtue of special permission

Outside the cases mentioned above, transfer in membership in a Church *sui iuris* can be effected – according to both Codes – only on the basis of special permission from the Apostolic See. The somewhat faulty drafting of the Latin norm, however, led again after 1983 to the emergence of various interpretations by different authors. Like the 1917 Code, the 1983 Code does not indicate – as we have explained above – whether the necessary involvement of the Apostolic See in the transfer of membership in a Church *sui iuris* is a condition for the *validity*, or only for the *liceity* of such a transfer. We can see, however, that the Latin codification has also emphasized that the participation of the Apostolic See is a constitutive element³³ of the transfer, which implies that it is a condition for the validity of the act (cf. *CIC* c. 124, § 1).³⁴ As was noted by several authors, the Eastern norm could have been applied to an authoritative interpretation of the parallel Latin canon, and, as such, it refuted earlier doubts about the need for intervention of the Holy See as a condition for the validity of the transfer.³⁵ It seems to us, therefore, that, the intervention of the Holy See is thus a precondition also for the validity of leaving the Latin Church.

On the other hand, it is not necessary to turn to the Apostolic See when the person wishing to transfer lives on the territory where both his/her Church *sui iuris* and also the other Eastern Church to which the transfer is to be made, have their own dioceses. In such a situation, the consent of the Apostolic See is presumed,

³³ *Communicationes*, 21 (1989), p. 51.

³⁴ See parallel *CCEO* c. 934, § 2, 1°.

³⁵ See B. PRIMETSHOFER, “Interrituelles Verkehrsrecht im CCEO”, in *Archiv für katholisches Kirchenrecht*, 160 (1991), p. 353.

provided that the eparchial/diocesan bishops of both dioceses consent to the transfer in writing (CCEO c. 32, § 2). The canon restricts this right to the existence of dioceses; having a proper hierarchy is not sufficient. Thus according to canon 916, § 5 of the Eastern Code, an eparchial bishop of the person's Church *sui iuris* but from another diocese cannot make use of this said procedure.³⁶

Certain authors propose that the expression "same territory" could encompass a whole nation, or the region under an episcopal conference, or a socio/cultural unit.³⁷ It is debatable though whether the word *territorium* could be interpreted in such a broad way (in some cases ignoring even the concrete boundaries of the particular churches involved). A more acceptable interpretation ties the jurisdictional authority of the eparchial bishops to at least partial coincidence of the territory of their dioceses, emphasizing that it should be sufficient if even a minimal part of the territory of their particular churches would coincide.³⁸

Another interesting question is whether the mutual consent of the bishops must, for validity, be in writing? According to canon 1516 of the Eastern Code, subordinate clauses introduced by the conjunction *dummodo*³⁹ denote conditions for validity; however, this canon refers to administrative acts,⁴⁰ while here we are dealing with a law of universal application. Nevertheless – at least for the sake of preserving evidence – written records are indispensable.

³⁶ Cf. *Nuntia*, 22 (1986), pp. 27-28.

³⁷ This possibility is assumed by FARIS, *Eastern Catholic Churches: Constitution and Governance*, p. 181.

³⁸ Cf. PRIMETSHOFER, "Interrituelles Verkehrsrecht im CCEO", p. 354.

³⁹ Cf. *AAS*, 84 (1993), p. 81; see also *Apollinaris*, 66 (1993), p. 116.

⁴⁰ Cf. P. ERDŐ, *Egyházjog*, Budapest, Szent István Társulat, 1991, p. 131.

Since canon 32, § 2 of the Eastern Code does not make explicit reference to the Latin Church, it was asked after the promulgation of the Eastern Code – in view of the autonomy of both codes noted in their very first canons/paragraphs – whether the presumption would exist also in case of transfer between the Latin and an Eastern Church. Although certain authors defended this possibility,⁴¹ others emphasized that the meaning of the authentic interpretation of the law given in answer⁴² to this question proves that in this respect the Eastern Code did not expand the jurisdiction of the Latin diocesan bishops.⁴³ An authentic interpretation which is presented by way of a law has the same force as the law itself; it is not retroactive.⁴⁴

According to Archbishop M. Brogi, the norm of canon 32 of the Eastern Code applies without any difficulty if the two churches are both eastern, but there is doubt when the Latin Church is involved. Brogi notes that the 1992 rescript regulates transfer from the Latin Church to an Eastern Church, but not the reverse and, since the Eastern Code treats only of the transfer from one Eastern Church *sui iuris* to another, one should, according to Brogi, ask for the explicit consent of the

⁴¹ See J.H. PROVOST, "Some Practical Issues for Latin Canon Lawyers from the Code of Canons of Eastern Churches", in *The Jurist*, 51 (1991), p. 56.

⁴² *AAS*, 85 (1993), p. 81.

⁴³ The question presented to the Pontifical Council for the Interpretation of Legislative Texts (cf. *AAS*, 85 [1993], p. 81) was in reference to the expansion of the Eastern Code (i.e. whether c. 32, § 2 of *CCEO* would authorize also the Latin diocesan bishops to give the required written consent). However, the authoritative interpretation by the Apostolic See, having the force of law, instead of giving an affirmative answer to the above question, empowered the Latin bishops through an amendment of their own Code (*CIC* c. 112, § 1, 1°) to find the right local procedure in cases of requests for transfer from their Church; cf. M. BROGI, "Licenza presunta della Santa Sede per il cambiamento di Chiesa *sui iuris*", in *Revista española de derecho canónico*, 50 (1993), pp. 665-667.

⁴⁴ Cf. *CIC* c. 16, § 2.

Apostolic See.⁴⁵ Brogi arrived at this conclusion by considering the terminology used in the Eastern Code as well as in the rescript itself. If we accept this interpretation, it would imply that the terminology had to be applied always in the strictest sense, that means that the term “diocesan bishop” can never be applied to an eparchial bishop and that this latter term never applies to a diocesan bishop. Even if we are encouraging total clarity of terminology, this seems to us a truly minimalist interpretation which, in our view, is rejected by the very same rescript speaking of the “diocesan bishops of the two dioceses”.⁴⁶ That is why we think that a transfer from an Eastern Church *sui iuris* to the Latin Church could take place validly through written consent by the two bishops in question which presumes the *licentia* of the Apostolic See.

The rescript also shows us that the term *licentia* of the 1983 Code could be interpreted as consent, since it speaks of two bishops who *in id secum ipsi scripto consentient*. But it should be noted that nowhere does the rescript speak of the validity of transfer. On the other hand, it does not give any indication as to how to interpret the notion “same territory” which is mentioned in the canon 32, § 2, of the Eastern Code since it says “transfer to another Church *sui iuris* which has its own eparchy in the same territory.”⁴⁷ Given that the Latin Church is present everywhere in the world, this would most likely always be the case.

Consequently, before the publication of this rescript, any transfer from the Latin Church to one of the Eastern Catholic Churches dealt with on the local level

⁴⁵ BROGI, “Licenza presunta della Santa Sede per il cambiamento di Chiesa *sui iuris*”, pp. 665-666.

⁴⁶ “... Episcopi dioecesani utriusque dioecesis...”, cf. *AAS*, 85 (1992), p. 81.

⁴⁷ *Ibid.*

– because of the lack of proper faculty – was invalid.⁴⁸ In such cases –provided the intention and valid motives for the transfer remain – the procedure should be repeated.

Summing up what has been said:

1. Children under fourteen: when the Latin parents change (or when the Catholic parent changes, in a mixed marriage), the child transfers automatically (*CIC* c. 112, § 1, 3°). When the Eastern parents change (or when the Catholic parent changes, in a mixed marriage), the child transfers automatically (*CCEO* c. 34). In a marriage between Catholics, if only one parent transfers, the children transfer only if both parents agree to this transfer (*CCEO* c. 34).

2. Children over fourteen: the Latin child may revert to the Latin Church, upon declaration. Likewise, the Eastern child may revert to the Eastern Church, upon declaration (*CCEO* c. 36).

3. The husband on the occasion of marriage: the Latin husband may transfer to the Church *sui iuris* of the wife by a declaration (*CIC* c. 112, § 1, 2°). The Eastern man, however, cannot do so; he needs the consent of the Apostolic See (*CCEO* cc. 32, § 2, 33).

4. The wife on the occasion of marriage: the Latin wife may transfer to the Church *sui iuris* of the Eastern husband by declaration (*CIC* c. 112, § 1, 2°). Likewise, she may transfer to the Latin Church by declaration (*CCEO* c. 36) if she belongs to an Eastern Church.

5. The husband during the marriage: the Latin husband may transfer to the Church *sui iuris* of his Eastern wife by declaration (*CIC* c. 112, § 1, 2°). The

⁴⁸ A similar opinion is held by FARIS, *Eastern Catholic Churches: Constitution and Governance*, p. 167; and also J. CANOSA, “La presunzione della licenza di cui al can. 112, § 1, 1° del Codice di diritto canonico”, in *Ius ecclesiae*, 5 (1993), p. 625.

Eastern husband cannot transfer by declaration; he needs the consent of the Apostolic See (*CCEO* cc. 32, § 2, 33).

6. The wife during the marriage: the Latin wife may transfer to the Church *sui iuris* of the Eastern husband by declaration (*CIC* c. 112, § 1, 2°). The Eastern wife may transfer to the Latin Church by declaration (*CCEO* cc. 33 and 36).

7. On the dissolution of the marriage (death, dissolution, or declaration of nullity): the Latin spouse may freely return to the Latin Church by declaration (*CIC* c. 112, § 1, 2°). Likewise, the Eastern wife may freely return to the Church of origin by declaration (*CCEO* cc. 33 and 36).

3. Rules of Procedure and Registration

The permission to transfer membership could be obtained through the cooperation of the respective diocesan bishops. The petition for transfer should be written by the petitioner in his or her own words and contain an accurate description of the situation concerning the request for change: the name, surname, age, domicile, civil status, ethnic origin of the petitioner, the reason why the petition is made, and any other pertinent information that would complete the description of the matter and be helpful in forming a right and just agreement in the matter. It seems most proper for the petitioner to send his petition, duly signed by his own hand, to the diocesan bishop to whose Church he wishes to transfer.

Unless there is an explicit provision to the contrary, the transfer takes effect at the moment when a person empowered by law, or through special authorization, makes a declaration in due legal form to that end (*CCEO* c. 36).⁴⁹ This declaration

⁴⁹ This point of law was apparently overlooked by J. Canosa when he wrote that the transfer of membership is realized at the moment when the respective rescript receives the signature of the issuing authority, thus, so-to-speak it happens automatically, without waiting for the individual's

of will – unless the rescript of the Apostolic See provides otherwise – has to be made either before the hierarchy of the Church to which the transfer is made, or the proper pastor of the same Church, or a priest delegated by either of them, and two witnesses (*CCEO* c. 36).⁵⁰ It can be asked when does the transfer to another Church *sui iuris* take effect. Concerning transfer *de iure* which is granted by the consent of the Apostolic See or the two bishops, the person in question has to declare this transfer to the competent ecclesial authorities. The transfer takes effect from that moment.

Since the Latin Code does not deal with this matter, according to the rule pertaining to laws enacted in similar matters, in cases of transfer of membership by its faithful, the norms of the Eastern Churches would be applied.⁵¹

When the written consent of the two diocesan bishops has been obtained, the declaration needed for the transfer could be made either in the presence of the new diocesan bishop or the pastor who becomes the proper pastor in the Church of transfer. The *form* of this declaration of will – not defined in the codified law – calls for an appropriate particular law. Failing that, any reasonable form would suffice.

When dealing with a transfer of membership in virtue of the law, the person transferring has to declare, on the one hand, the intention to make use of the possibility offered by the appropriate canon of the Code, and on the other, the file

solemn declaration. Cf. CANOSA, “La presunzione della licenza di cui al can. 112, § 1, 1° del Codice di diritto canonico”, p. 624.

⁵⁰ Before the marriage ceremony, the spouse wishing to transfer his or her church membership signs the declaration of transfer to become effective at the time of exchange of marriage vows; the signing of the declaration must be witnessed by the pastor “*ad quem*” and two other witnesses; all three witnesses sign the document. It must be noted here that such a declaration is valid only for a determinate interecclesial marriage between two determined persons.

⁵¹ Cf. *CIC* c. 19.

number in the baptismal register should be provided as definite proof of eligibility for transfer.

If the legal title for transfer is based on a particular authorization, in the document – besides indication of the identity of the issuing authority and the file number of the rescript – the person seeking transfer should declare that he/she wishes to make use of the permission and from that moment on regards him/herself as a member of “x” Church *sui iuris*, i.e., the Church to which the permission to transfer was given. It is advisable that the document be signed not only by the person making the declaration, but – for the sake of authenticity – also by the issuing authority (and possibly by the witnesses) before whom the declaration was made. When the state of a child under fourteen years of age, or of the spouse, would also change, these facts could also be noted in the same document, adding the signature of the spouse to it.

If it is not the first time that the person has transferred membership, notification should be sent both to the pastor of the place of baptism and to the pastor of the Church which he/she is leaving. This was expressly prescribed by canon 13, § 2 of CS. If these rules were established firmly in particular legislation, they would greatly help the smooth application of inter-ecclesial procedures. If the person who is transferring membership in a Church was not baptized in the Catholic Church, but converted later, in such a case there is no obligation to notify the non-Catholic pastor in whose Church the baptism took place. However, in conformity to the rule mentioned above, the authority before whom the transfer took place, as well as the one whose Church *sui iuris* is now being left should be notified.

As proof of the authenticity of the notification of transfer of membership, the statement should mention the fact which made the change of state possible. This could be, i.e., in case of marriage the serial number in the appropriate

baptismal register, through which one could verify the right of automatic transfer due to the mixed marriage of the parents. If the legal entitlement arises from a singular rescript issued by the appropriate authority (two diocesan bishops, or perhaps the Eastern Congregation), its file number is to be included in the notification. In view of the limited number of transfers of Church membership, it could be easily done. At the same time, it would significantly increase legal security, if a particular law would prescribe – as is the case for the registration of marriages – that the pastor of the place of baptism acknowledge in writing the receipt of the notification and its recording in the parish baptismal registry.⁵²

C. THE SELECTION OF CANDIDATES FOR ORDINATION

If candidates from Eastern Churches join a Latin religious institute, the norms of the Eastern Code regarding their admission, formation and, in the case of clerical candidates, ordination, are to be observed.

In short, till the late nineteenth century, Eastern candidates who joined a Latin institute adopted the Latin rite and became Latins through assimilation. When such free transfers threatened to deplete the fragile Eastern Churches in the Middle East, Pope Leo XIII in 1894 forbade Latin institutes from receiving Eastern candidates without the testimonial letter of their hierarchs.⁵³

⁵² Canon 37 of *CCEO* deals with enrollment in a Church *sui iuris* according to the legal norms or the transfer to another Church *sui iuris* which took place *ipso iure*. These should be recorded in the baptismal register of the parish where the baptism was celebrated, even as the case may be, in the Latin parish; if this cannot be done, it is to be kept by the proper pastor in another register in the archives of the parish. The *CIC* does not require recording, in the parish baptismal register, of the enrollment into a Church *sui iuris* at the moment of baptism, but in *CCEO*, c. 535, § 2 it is prescribed that the transfer of church membership is to be noted in this register.

⁵³ “Nulli, utriusque sexus, Ordini vel instituto religioso latini ritus, quemquam orientalium inter sodales suos fas est recipere, qui proprii Ordinarii testimoniale non ante exhibuerit.” Cf. *Leonis XIII Pontificis Maximi Acta*, vol. 14, p. 366.

Now, the permission of the Congregation for the Eastern Churches is to be obtained, according to the law (*CCEO* cc. 451; 517, § 2), before the admission of the candidate to the novitiate. If, in practice, for some reason this has not been observed, and the permission is asked before profession, the Congregation grants an indult (with retroactive effect as it were) allowing the institute to admit the candidate and giving the faculty to the candidate to conform to the Latin rite.⁵⁴

1. Bi-ritualism

In present practice, the indult does not transfer, but rather authorizes bi-ritualism to those in sacred orders; it does so from the moment of their ordination. Bi-ritualism is the faculty granted to a cleric (bishop, presbyter or deacon) to exercise the sacred ministry in a second rite besides his own.⁵⁵ Bi-ritual faculties can be obtained from the Apostolic See.⁵⁶ In practice, they are given by indult from the Congregation for the Eastern Churches to presbyters or deacons who request it, showing sufficient pastoral justification. It is usually granted for a

The testimonial letter of the local Ordinary, which candidates entering Latin religious institutes had to present, according to the prescription of Pope Leo XIII, was not a permission but a certificate. It proved inefficacious, so that since 1912 explicit permission of the Holy See was required. This norm entered into c. 542, 2° of *CIC*/1917. See M. BROGI, "Ammissione di candidati di rito orientale in istituti religiosi latini", in *Antonianum*, 54 (1979), pp. 716-721.

⁵⁴ See D.J. WALKOWIAK, "Sacramental Law and the Code of Canons of the Eastern Churches: an Inter-ecclesial Perspective", in *CLSA Proceedings*, 55 (1993), pp. 231-232.

⁵⁵ The practice of the Holy See has been not to transfer the ritual membership. It grants only what is known as an "accommodation of rite", i.e., the person remains a member of the Rite of origin, but acts in every way as a member of the Rite he serves. This seems to imply an allegiance to the rite of origin and simultaneously a call to give allegiance and support to the Rite he is called to serve and build up. See S. ARULSAMMY, "The Issue of Rites: A Pastoral Perspective", in *Indian Theological Studies*, 30 (1993), pp. 281-282.

⁵⁶ *CCEO* c. 674, § 2.

determined period of time, but is renewable.⁵⁷ It relies on the hierarch *ad quem* to make sure that the cleric is sufficiently familiar with the laws and customs of the Church in which he will be exercising ministry.⁵⁸

Bi-ritualism, although useful for a individual to respond to a concrete pastoral need, is not an adequate solution in religious institutes, and this for two reasons. First, only clerics (bishops, presbyters and deacons) can obtain the indult. Hence, it is not available to clerical candidates before ordination or to other non-clerical religious (brothers, sisters). Secondly, the object of bi-ritualism is restricted to liturgy, to the sacred minister's part. Yet, rite is more extensive than administering the sacraments. According to the new notion of rite, it is a six fold complex, and it includes not only liturgy but theology, spirituality, culture, history and canonical discipline. In other words, *rite* in bi-ritualism does not correspond to the full extension of *rite*, as defined in canon 28, § 1 of the Eastern Code. Hence, the faculty of bi-ritualism, obtained individually or even collectively for a house or for a province as a whole,⁵⁹ is an ambiguous and inadequate response to the demands of the Eastern Code.

Bi-ritualism, as it has been known, has not only been largely superseded by the Eastern Code but outdated by the practice of the Holy See since 1968. Before the promulgation of *PA* in 1952, in the regular practice of the Eastern Congregation, the permission to Eastern candidates was granted: (i) to enter the novitiate of a Latin religious institute, and (ii) to adapt to the Latin rite, but they

⁵⁷ See HALLIGAN, "Some Inter-ritual Norms", p. 169.

⁵⁸ Cf. BROGI, "Ammissione di candidati di rito orientale in Istituti Religiosi Latini", p. 725.

⁵⁹ See E. OLIVARES, "Privilegia pro Societate Iesu a S. Ignatio obtenta", in *Periodica*, 80 (1991), p. 365; C. PUJOL, "Regimen domus orientalis ritus in religione latina", in *Periodica*, 50 (1981), pp. 137-159; see also G. NEDUNGATT, *The Spirit of the Eastern Code*, Bangalore, Dharmaram Publications, 1993, pp. 118-120, especially footnote no. 19.

had (iii) to apply again to the Congregation before profession to transfer to the Latin rite. After 1952, the Congregation suppressed the third step and granted permission to be admitted to the novitiate and to profession while enlarging the faculty to adapt to the Latin rite *in everything*, although the novice was to retain his/her own rite Church *sui iuris* ascription.⁶⁰ In 1957, with the promulgation of *CS*, a restriction was introduced as regards ordination, which according to canon 37 had to be received in one's own rite. The adaptation to the Latin rite was permitted in everything except for ordination. In effect, the ordination had to be received in one's own rite and the ordained priest had to apply for the indult of bi-ritualism if he wanted to use his own rite besides the Latin rite.

When a person is about to receive sacred orders for service in a Church *sui iuris* other than his own, or when a person is entering religious life, it has been the practice of the Apostolic See to grant special indults of accommodation of rite to these persons. These indults do not constitute a transfer of enrollment, but allow a person to function on a permanent basis according to the rite of another Church *sui iuris* as long as the person is serving in that Church *sui iuris* or remains a member of the religious community. Such indults are granted because the Church desires to preserve all the rites in the Church and is therefore reticent to grant transfers to persons entering the clerical or religious life in a Catholic Church other than his or her own.

However, if the particular law of the Church *sui iuris* so prescribes, it is also required for the licit transfer to an eparchy of another Church *sui iuris* that the eparchial bishop releasing the presbyter obtain the consent of the authority determined by the same particular law (*CCEO* c. 365, § 2).

⁶⁰ BROGI, "Ammissione di candidati di rito orientale in istituti religiosi latini", p. 726. With this adaptation "in everything (in omnibus)" the religious was, for all practical purposes, considered Latin while still retaining a nominal Eastern ascription.

The conditions to be verified in the exercise of the indult are: (i) the care of souls and a determined need; (ii) the conformity of the celebrant not only to the proper ritual of the rite employed but also to local diocesan regulations; (iii) the advising of the proper Ordinary or his representative; (iv) a Latin priest is not to use the indult to offer an Eastern rite Mass in a Latin church without the permission of the Ordinary of the rite employed, and the same is true of an Eastern rite priest celebrating a Latin rite Mass in an Eastern rite church.

When there is a true need and when the favorable opinion of the interested Ordinaries has been obtained, the Congregation for the Eastern Churches will grant a bi-ritual indult for a designated period to a permanent deacon. In the case of a transitional deacon, the indult is usually granted only until his ordination to the priesthood whereupon he must seek a new one.

2. Adaptation to Another Church *sui iuris*⁶¹

The Congregation for Eastern Churches has introduced into its practice the possibility of temporary transfer or ascription to another Church *sui iuris*.⁶² This was provided especially for immigrant faithful.

⁶¹ The distinction between “adoption of” and “adaptation to”, when not taken seriously, may give the impression of being only of academic value. While “adaptation to” implies a change, external and necessarily internal, of one’s behavior, attitudes, etc., so as to conform to new or changed circumstances, thus suggesting flexibility; “adoption of” implies a choice and entering into a certain relationship, especially that of a member of a family or community of the rite adopted. No such relationship and commitment are necessarily involved in mere adaptation which basically remains a non-committal, external and more of a passive acceptance of the persons or things involved. Cf. S. DIAS, “Should One Adapt to or Change/Adopt the Rite?”, in *Vidyajyoti: Journal of Theological Reflection*, 54 (1990), p. 530.

According to G. Nedungatt, as regards, “adoption” of another rite, we should distinguish: (i) those who *pass* to another ritual Church; (ii) those who *adopt* another rite, while retaining their original rite (biritualism); (iii) those who merely *attend* the services in another rite. The first two can be validly effected only by the Holy See or according to law; attendance, however prolonged, of a ritual Church does not effect transition to that Church (*CIC* c. 112). Cf. NEDUNGATT, “Equal Rights of the Churches in the Catholic Communion”, in *The Jurist*, 49 (1989), p. 8, footnote 7.

For the liceity of the admission of an Eastern Catholic into a Latin institute or to an institute of another Eastern Church *sui iuris*, or of the admission of a Latin into a Eastern institute, the permission of the Apostolic See is required, except when the candidate is destined for a province or a house of his or her own Church. Canon 517, § 2 of the Eastern Code reads:

No one is admitted lawfully to the novitiate of a religious institute of another Church *sui iuris* without the permission of the Apostolic See, unless it is a candidate who is destined for a province or house, mentioned in can. 432, of his own Church.

This norm requires only the permission of the Apostolic See for a person to be admitted to a religious institute of an autonomous Church different from his own and such a permission is necessary only for the liceity of the admission.⁶³ In this case, when the time for ordination approaches, another petition should be sent to the Apostolic See either for total transfer or for adaptation. Ordinarily, those who enter a religious clerical institute with the intention of becoming priests, are given a full transfer rather than adaptation.

Seminarians who wish to be ordained to work for a certain period of time in a diocese of a Church different than their own, may also petition for adaptation. In this case the same norms applied in the case of a religious should be followed.

⁶² Cf. FARIS, *Eastern Catholic Churches: Constitution and Governance*, p. 165.

⁶³ Some canonists are of the opinion that this violates the “religious freedom” of the candidates (*DH*, no. 2) and goes against prescriptions of both the Latin and Eastern Codes. See ARULSAMY, “The Issue of Rites: A Pastoral Perspective”, p. 283. According to J. Thayil, “all Christ’s faithful have the right to be immune from any coercion whatever in the choice of a state of life” (*CIC* c. 219; *CCEO* c. 22). Cf. J. THAYIL, “Vocation from the Syro-Malabar Church to Religious Institutes of the Latin Church”, in *Vidyajyoti: Journal of Theological Reflection*, 56 (1992), pp. 608-615.

Usually, total transfer is granted with the possibility of returning to one's Church after a new petition.

Canon 758, § 1, 5° of the Eastern Code states that the Eastern candidate for sacred ordination must receive the lower orders according to the norms of particular law of each Church *sui iuris*. Dimissorial letters can be sent from the proper eparchial bishop to any bishop of the same Church; not, however, to a bishop of a Church different from that of the candidate, without the permission of those mentioned in canon 748, § 2, of the Eastern Code, namely, the Apostolic See and the patriarch.⁶⁴

Similarly, canon 1021 of the Latin Code obliges Latin diocesan bishops to obtain an apostolic indult to send dimissorial letters to a bishop of a Church *sui iuris* different from the Church of the candidate. A Latin bishop cannot ordain licitly a member of an Eastern Church without an indult from the Apostolic See.⁶⁵

D. TRANSFER TO ANOTHER RELIGIOUS INSTITUTE IN THE LATIN AND EASTERN CATHOLIC CHURCHES

1. Transfer from one Monastery *sui iuris* to another

When the parallel Latin and Eastern norms regarding transfer from one monastery *sui iuris* to another are examined, three different situations emerge for possible comparison: (i) with respect to transfer from one monastery *sui iuris* to another of the same confederation (*CIC* c. 684, § 3; *CCEO* c. 487, §§ 1, 3, 5); (ii)

⁶⁴ *CCEO* c. 752. See SALACHAS, "Problematiche interrituali nei due Codici orientale e latino", pp. 652-653.

⁶⁵ *CIC* c. 1015.

outside the same confederation (*CCEO* c. 487, § 2); (iii) outside the same Church *sui iuris*.

With respect to the transfer between monasteries of different Churches *sui iuris*, canon 487, § 4 of the Eastern Code is again characteristic of that Code. It establishes:

For a valid transfer to a monastery of another Church *sui iuris* the consent of the Apostolic See is also required.

Although this norm was not contained in the previous Eastern legislation, it was incorporated by the *Coetus de monachis* into the first draft of canon 487.⁶⁶ After some modification,⁶⁷ the norm appeared as SCICO canon 485, § 4,⁶⁸ which was already identical to canon 487, § 4 of the Eastern Code. No observation contrary to the norm was reported during its *iter* within PCCICOR.

Although canon 487, § 4 of the Eastern Code is characteristic of the new Eastern Code, it nevertheless also concerns the Latin Church.⁶⁹ For, although the Latin Church is not explicitly mentioned in canon 487, § 4 of the Eastern Code, it is implicitly included since the Latin Church is also a Church *sui iuris* (*CIC* c. 111, § 2). As a result, canon 487, § 4 of the Eastern Code becomes a norm that is common to both the Eastern and Latin legislation. Therefore, besides the other

⁶⁶ See, *Nuntia*, 6 (1978), p. 54 (c. 1, § 4). Canon 1, § 4 stated: "For transfer to a monastery of a different rite, permission of the Apostolic See is required".

⁶⁷ For the 1979 provisional schema, the *Coetus* added the requirement "*ad validitatem*" (see, *Nuntia*, 8 [1979], p. 48 [c. 75, § 4]). For the subsequent *iter* of the norm up to the 1986 SCICO, see *Nuntia*, 11 (1980), p. 34 (c. 74, § 4); *ibid.*, 16 (1983), pp. 61-62 (c. 74, § 4).

⁶⁸ See, *Nuntia*, 24-25 (1987), p. 91 (c. 485, § 4).

⁶⁹ *CCEO* c. 1 states that the canons of the Code affect the Latin Church only where expressly (*expresse*) established.

consents required by law, for a religious to transfer from an Eastern Catholic monastery *sui iuris* to a monastery *sui iuris* of the Latin Church, or from a Latin monastery *sui iuris* to one of the Eastern Catholic Churches, the consent of the Holy See is required for validity.⁷⁰

2. The Conditions for Transfer to Another Religious Institute

With the written consent of the eparchial bishop of the place, a member of a congregation of eparchial right can validly transfer to another religious institute of eparchial right following the other formalities required by law. If he/she belongs to a religious institute not of eparchial right and within the territorial boundaries of a patriarchal Church, written permission of the patriarch is required to transfer validly to another religious institute. If the institutes are established outside the patriarchal territory, the consent of the Apostolic See is required.⁷¹ Regarding the exclusive competence of the Apostolic See to grant consent to religious to transfer to another religious institute, canon 544 of the Eastern Code establishes:

§ 3. In other cases, the member cannot validly transfer to another religious institute without the consent of the Apostolic See.

§ 4. The consent of the Apostolic See is required for the validity of a transfer to a religious institute of another Church *sui iuris*.

It is also the sole competence of the Holy See to grant such consent with respect to a transfer to a religious institute of another Church *sui iuris*. Although

⁷⁰ “The member transferring to another monastery need not repeat the *novitiate*, *profession* or undergo a *probationary period* unless the typikon states otherwise.” See POSPISHIL, *Eastern Catholic Church Law*, p. 333.

⁷¹ See SALACHAS, “Problematichne interrituali nei due Codici orientale e latino”, pp. 654-655.

canon 544, § 4, of the Eastern Code, which establishes this rule, is unique to the Eastern Code, it also concerns the Latin Church *sui iuris* for the reasons stated above.

E. REASONS FOR TRANSFER

The indult is not granted unless there is genuine and sufficient reason to do so. CS, canon 8, § 2, gave the most acceptable reason: “Among the reasons on account of which transfer to another Rite is usually granted, the desire to return to the Rite of one’s ancestors is eminent.” The praxis of the Congregation for Eastern Churches takes the following into consideration:

1. Sufficient reasons

1. The unification of Rite in a family: whenever an important member of a family, e.g., the mother, the adoptive parents, belongs to a different Church *sui iuris* and this diversity of Rites proves to be a serious inconvenience because of the different calendars, holidays, days of fast and abstinence, prohibited times and different matrimonial impediments. This also applies when a child loses his or her father and is being educated by the mother who belongs to a Church *sui iuris* different from that of the father.

2. Return to the Church *sui iuris* of one’s ancestors. In the past (especially in Transylvania), a person’s family could have transferred to another Church *sui iuris* but their descendents now desire to return to the original Church and live their faith according to the tradition of their ancestors.⁷²

3. The case of the husband who wishes to transfer to the Church *sui iuris* of his wife (or vice versa), for the sake of peace and unity in the home. In the case of

⁷² CS, c. 8, § 2.

the nuclear family, children over the age of fourteen might desire to transfer membership along with their parents in order that there be unity of worship.

4. Domicile and/or activity among people who almost totally belong to another Church *sui iuris*.

5. Physical or moral impossibility caused by permanent circumstances to use and practice one's own Rite.

6. Entry into the religious life or under the influence of a different rite.

7. Incardination or entering the seminary to serve a diocese of a different Churches *sui iuris*.⁷³

2. Insufficient reasons

Individually, the following reasons are not sufficient; however, they may accumulate and may thus be considered as sufficient when taken together:

1. Education acquired in a different Church *sui iuris*.

2. Going to a school of a different Church *sui iuris*.

3. Attending Churches of a different Church *sui iuris*.

4. Reception of sacraments in a different Church *sui iuris*.

5. Ignorance of one's own Church *sui iuris* and instead a good knowledge of the other Church *sui iuris*.⁷⁴

3. Non-reasons

1. Merely stating in a general sense "for the good of the soul" is not a reason because it would presuppose that belonging to a certain Church *sui iuris* is

⁷³ See MENDONÇA, *Interecclesial Legislation*, pp. 49-50; see also FARIS, *Eastern Catholic Churches: Constitution and Governance*, p. 169.

⁷⁴ *Ibid.*, p. 50.

harmful and impedes the salvation of one's soul. Such a supposition is contrary to the teaching and spirit of the Second Vatican Council.

2. The reason for "peace of mind or conscience" as such is not a reason that can be judged in the external forum.

3. Defects in certain organizational situations with which at one time or another all rites or Churches or parishes are beset, but which can be overcome by applying the principles of justice and Christian charity, cannot serve as a valid reason for transfer.

4. The mere desire to transfer to another Church *sui iuris* if it is not supported by sufficient reasons will not be considered by the Holy See.⁷⁵

Since persons are free to observe any rite with regard to the reception of most sacraments and can participate in the life of any parish without being a canonical member of the Church *sui iuris* of that parish, transfers for the sake of the enhancement of one's spiritual life are rarely justified. Not all the reasons indicated are of equal importance and each one should be evaluated on its own merits.

F. FORCING ONE TO TRANSFER MEMBERSHIP

The prohibition on forcing another person to transfer his or her membership has a long history. Pope Benedict XIV severely prohibited and condemned induction to transfer membership. Clerics were punished with *latae sententiae* penalties from the celebration of sacraments.

The prohibition, but without the sanctions, was included in canon 98, § 2 of the 1917 Code: "Clerics should not presume to induce, in any manner, either latins to Oriental Rite, or orientals to Latin Rite." This prohibition refers only to clerics.

⁷⁵ Ibid.

Retaining the prior norm contained in *Cleri sanctitati*, canon 7,⁷⁶ canon 31 of the Eastern Code states: “No one can presume in any way to induce the Christian faithful to transfer to another Church *sui iuris*”. Because the Latin Church is also a Church *sui iuris*, the “no one” implicitly concerns anyone in the Latin Church. Indeed, the norm affects the Latin Church since it is explicitly mentioned in canon 1465 of the Eastern Code, which prescribes an ecclesiastical penalty for those who contravene canon 31 of the Eastern Code.⁷⁷ Canon 1465 of the Eastern Code establishes:

One who, belonging to any Church *sui iuris*, including the Latin Church, and exercising an office, a ministry or another function in the Church, has presumed to induce any member of the Christian faithful whatever to transfer to another Church *sui iuris*, contrary to can. 31, is to be punished with an appropriate penalty.

Therefore, a bishop, priest or other person ministering in one Eastern Catholic Church is not to induce a Latin or Eastern Catholic of another Church *sui iuris* to transfer to their Church. Since canon 31 of the Eastern Code is also common to the Latin Church, a bishop, priest or other person ministering in the Latin Church is obliged in the same way with respect to Eastern Catholics.⁷⁸

While future spouses of different Catholic Churches may discuss in which Church their children will be baptized and reared, any pressure to transfer one's ecclesial affiliation should be avoided. Persons are not to be pressured to join

⁷⁶ CS, c. 7 stated: “Nemo quemvis fidelem, ad alium ritum assumendum, ullo modo inducere praesumat.” The reference to *ritus* was changed to *Ecclesia sui iuris*; see *Nuntia*, 22 (1986), p. 37.

⁷⁷ See c. 22 of the 1984 *Schema*, and c. 34 of the 1986 *Schema*.

⁷⁸ Cf. CS, c. 15: “Praescriptis cc. 1, § 2; 4; 5; 7; 10; 11, § 2; 13 tenentur clerici et laici cuiusvis ritus, latinis haud exclusis”. See M. BROGI, “Il nuovo codice orientale e la Chiesa latina”, in *Antonianum*, 66 (1991), p. 55.

another Catholic Church for ethnic, nationalistic, political, or social considerations.

G. PARTICULAR APPLICATIONS TO THE ARCHDIOCESE OF ALBA-IULIA⁷⁹

1. Interecclesial Committee

In our time the process of globalization is creating new, urgent problems for all humankind and thus it is imperative for the various interecclesial communities to search together for reliable answers. From this perspective the most practical issues for a creative interecclesial dialogue are those unique themes that humanity confronts with such intensity today.

In many cases, a group of people exists in the midst of a ruling religious majority that imposes on it its own will and norms. Increasingly in our time, especially in the large cities, we live in a situation of religious pluralism. The only way to live peacefully in such an environment, and to avoid interecclesial conflicts and struggles, is to accept the religious freedom of others and to be involved in a sincere, peaceful "dialogue of life". This dialogue of life offers various possibilities among the Churches *sui iuris*.

In the following paragraphs we would like to make some suggestions as to what type of particular laws and norms should be employed in the archdiocese of Alba-Iulia to regulate and facilitate transfers between the various Churches *sui iuris*. In the interest of effective implementation of the legal norms it would be useful to have the Romanian Episcopal Conference encourage the bishops under

⁷⁹ See Appendix no. 5 for a number of sample forms (in English) that could be used are purposed.

its iurisdiction to establish interecclesial committees and offices in their respective dioceses.

To preside over such an office, the bishop could appoint the chancellor or another competent person. His duty would be:

1. The coordination and regulation of the transfer of membership, giving direction in solving the problems arising because of the co-existence of different churches/rites in the diocese, the cultivation of interecclesial relationships, oversight for the application of interecclesial norms;
2. Dialogue with similar offices in other dioceses and keeping in touch with them. Promote, in collaboration with other diocesan bodies, cooperation in such areas as education, public and private morality, and also matters connected with culture.
3. Participation in carefully prepared yearly interecclesial meetings.
4. Offer help and encouragement by such means as workshops and seminars for interecclesial formation of both clergy and laity, for the appropriate realization of an interecclesial dimension in all aspects of life.
5. Promote a deeper understanding and appreciation of other faiths through dialogue.
6. Promote and implement the teaching and directives of the Second Vatican Council on interecclesial affairs, as well as those of the post-conciliar documents emanating from the Holy See, Synods of Eastern Catholic Churches, Episcopal Conferences, and bilateral and multilateral dialogues.
7. Maintain relation with the Bishops' Committee for Interecclesial Affairs, the National Association of Diocesan Ecumenical Officers, and other international, national, regional and local organizations promoting ecumenism as well as interecclesial, and interreligious dialogue.

2. Competent authority for granting a transfer of membership

1. With the exception of cases of spouses and of children, a transfer to another Church *sui iuris* can be legally accomplished only by an indult of the Apostolic See (CCEO c. 32, § 1).

2. The consent of the Apostolic See is presumed if the eparchial bishops of both eparchies consent to the transfer in writing (CCEO c. 32, § 2). Canon 32, § 2 of the Eastern Code introduces the possibility for an Eastern Catholic to transfer to another Church *sui iuris* with the permission of both hierarchs on the basis of the presumed permission of the Apostolic See. Canon 112, § 1 of the Latin Code does not provide for such a possibility. In 1992, however, Pope John Paul II extended this faculty to the transfer of a Latin Church member to one of the Eastern Churches.

3. Procedures to be applied in cases of transfer of membership

The process of transfer from one Church *sui iuris* to another can occur in a variety of active and passive forms:

1. The petitioner requests the transfer to the hierarch *ad quem* enclosing with the petition the (favourable) *votum* of the hierarch *a quo*.

a) If the bishop *a quo* is not favourable, that *votum* would not be sent by the petitioner to the bishop *ad quem*.

b) The bishop *ad quem* would in any case have to write to the bishop *a quo* to ask for his *votum*, if one was not sent.

2. a) If both hierarchs are favourable and it is a case provided for by canon 32, § 2 of the Eastern Code – i.e., both eparchies are in the same territory – the consent of the Apostolic See is presumed.

b) If both hierarchs are favourable and it is not the case provided for by canon 32, § 2 of the Eastern Code – i.e., both eparchies are not in the same territory –, canon 32, § 1 of the Eastern Code, is operative and the consent of the Congregation for the Eastern Churches has to be obtained.

3. If at least one hierarch is not favourable to the request, the file is sent to the Congregation for the Eastern Churches.

4. Whenever the bishop *a quo*, having studied the petition gives a negative *votum*, he should also give his reasons for doing so.

5. The bishop *a quo* should never ignore the matter when he is asked for his *votum*. It is his pastoral duty to try to address the matter for the benefit of all concerned.

6. If the bishop *a quo* stubbornly refuses to give his *votum*, he could then be admonished by the Nuntio that if nothing is heard from him within a month's time, his silence would be considered as a declaration that he has no reasonable objection to the transfer of one his flock to another Church *sui iuris*.

7. If the decision of the competent authority is favourable to the petition, the indult will be sent to the Ordinary *ad quem*. This Ordinary forwards it to the pastor, his subject, who in turn will request the petitioner to appear before him for the purpose of formally accepting the indult and transferring to the new Church *sui iuris*.

8. When the written consent of the two diocesan bishops has been obtained, the declaration needed for the transfer could be made either before the new diocesan bishop or the pastor who becomes the proper pastor in the Church of transfer.

9. The applicant, the spouse, and all their children both under the age of fourteen as well as those who have completed the fourteenth year of age and had joined with the father or mother in the request for transfer, will then, in the

presence of the pastor of the Church *sui iuris ad quem* or a priest delegated by him for this purpose, and two witnesses, sign a short declaration to the effect that they accept the Indult and that from this moment they will consider themselves as belonging to the new Church *sui iuris*. At this time, the transfer becomes effective.

10. When the parents request permission to transfer, they should include in the petition; the names, address, date and place of birth, membership in a Church *sui iuris*, religious background, indicating the date and place of baptism, reception of first Holy Communion, and confirmation, of all children under the age of fourteen years. The information should also cover marital status, family statistics.

11. Offspring over the age of fourteen can also be included in the petition provided that they sign it.

12. In the case wherein one parent is requesting to transfer to a Church *sui iuris* other than that of the spouse, the petition should indicate whether the parents have agreed to transfer the enrollment of their children.

4. Formal requirements of transfer of membership

1. Those children who were automatically transferred to another Church *sui iuris* through the transfer of their parents, may return to their original Church any time after they have completed the fourteenth year of age.

2. Since returning to the original Church has juridic implications, this is to be done through a declaration before the pastor and two witnesses. This fact of return should also be noted in the baptismal register.

3. The Congregation for Eastern Churches recommends that petitions for a transfer of membership be presented only by one who has legally attained majority, except in the case a minor contracting marriage.

4. The favourable rescript or indult should be implemented within six months from the date of its reception by the applicant; otherwise the rescript or the indult ceases to be effective. Then a new petition will have to be presented giving the reasons for not putting the first indult into effect.

5. The pastor will ask the petitioner to appear before him to accept the indult formally.

6. Notice of the transfer will then be sent back to the hierarch who has to see to it that the appropriate authority of the Church *a quo* be notified so that the baptismal register be properly annotated.

7. In the case of transfer with the presumed consent of the Apostolic See an analogous procedure will be followed for recording the transfer.

8. After the transfer takes place, the person is not free to return to membership in the original Church *sui iuris* without observing the same procedure as articulated in canons 32 and 33 of the Eastern Code.

5. Particular Registration Norms

1. The petition for transfer should be written by the petitioner in his or her own words, and contain an accurate description of the situation concerning the request for transfer. The pastor or other person may assist in the preparation of the petition, but no one except the petitioner can initiate the request (*CCEO* c. 31).

2. This declaration of will has to be made either before the hierarch of the Church to which the transfer is made, or the proper pastor of the same Church, or a priest delegated by either of them and two witnesses (*CCEO* c. 36). For this form of declaration of will see the appendix.

3. The original enrollment in a Church *sui iuris* and a transfer to another is to be noted in the baptismal register of the parish where the baptism

took place, or a corresponding document shall be kept in the archive of the parish and the diocesan archive (*CCEO* c. 37).

4. Baptismal registers and certificates should include a space for indicating the enrollment in a Church *sui iuris* or transfer from one Church *sui iuris* to another.

5. The Diocese could establish the policy that all transfers should be recorded in the diocesan curia.

6. The declaration should not be accompanied by any liturgical or para-liturgical act.

7. If it is not the first time that the person has transferred membership, notification should be sent to both the pastor of the place of baptism and the pastor of the Church which he/she is leaving.

8. As proof of the authenticity of the notification of transfer of membership, the statement should mention the fact which made the change of state possible.

9. If the legal entitlement arises from a singular rescript issued by the appropriate authority, its file number is to be included in the notification.

10. The pastor of the place of baptism acknowledges in writing the receipt of the notification and its recording in the parish baptismal registry.

6. Some additional remarks

The Archdiocese of Alba-Iulia provides for pastoral care of the Armenian parishes.

1. Ordination has to be received in one's own rite; however, since in the Archdiocese of Alba-Iulia there is a shortage of Armenian priestly vocations,

in practice Latin rite priests had to apply for the indult of bi-ritualism if they wished to use the Armenian rite besides the Latin rite.

2. The petition for adaptation should be sent to the Holy See. In this case the same norms applied in the case of a religious should be followed.

3. For a religious to transfer from an Eastern Catholic monastery *sui iuris* to a monastery *sui iuris* of the Latin Church, or vice-versa, the consent of the Holy See is required for validity and following the procedure of transfer of membership.

CONCLUSION

Since adaptation, assimilation, intermarriage and other changes in the status of an individual are constantly occurring facts, it becomes difficult sometimes to discover the factual ascription of an individual. It is not uncommon, that for certain personal reasons, this fact is not revealed or even hidden from proper ecclesiastical authorities. Many faithful sometimes are offended and, perhaps not always unjustly, feel themselves victimized by being forced to retain in their personal lives a kind of fictional link with the spiritual tradition or a national heritage for which they no longer feel any empathy, or to which they honestly feel psychologically unable to conform.

Where it is definitely possible for individuals to maintain the spirit and traditions of their proper ritual ascription, the injunction of Vatican II should be heeded without exception:

All Eastern Rite members should know and be convinced that they can and should always preserve their lawful liturgical rites and their established way of life, and these should not be altered except by way of an appropriate and organic development. Easterners themselves should honor all these things with the greatest fidelity.

Besides, they should acquire an ever-greater knowledge and a more exact use of them. If they have improperly fallen away from them because of circumstances of time or personage, let them take pains to return to their ancestral ways. Those who, by reason of their office or an apostolic assignment, are in frequent communication with the Eastern Churches or their faithful should, in proportion to the gravity of their task, be carefully trained to know and respect the rites, discipline, doctrine, history and characteristics of Easterners.⁸⁰

In the matter of transfer to another Church *sui iuris*, that is, after having been baptized, there are two possibilities: (i) either the faithful takes the initiative; (ii) or he/she belongs to one of the categories of persons for whom the law itself authorizes the transfer. These latter categories of persons are above all members of the same family. One can see that the legislator wanted to protect and further the unity of the family. In the first case, the faithful ought to ask the consent of the Apostolic See or at least obtain its presumed consent. In the second case, no explicit procedure is required but one has to take care to register the transfer.

Enrollment to a Church *sui iuris* can occur, besides through baptism or conversion to Catholicism, in exceptional circumstances by obtaining the necessary documents for transferring of membership. According to the universal norm, for someone who wishes to become a member of another Church *sui iuris*, it is necessary to receive the permission and consent of the Apostolic See. The Latin Code mentions only "the permission of the Apostolic See" without further specification, while the Eastern Code requires consent *ad validitatem*.

Concerning the permission from the Apostolic See, required by canon 32, § 2 of the Eastern Code for cases where the transfer occurs on the same jurisdictional territory, Pope John Paul II's rescript *Ad normam* about canon 112

⁸⁰ *OE*, no. 6.

(26 November 1992)⁸¹ has expanded canon 112, § 1, 1° of the Latin Code, stating specifically that prior to the publication of this papal rescript the instructions contained in canon 32, § 2 of the Eastern Code did not apply either to the Latin faithful, nor to the Latin bishops, not even *ex natura rei*. Permission for transfer can be presumed when a member of the faithful belonging to the Latin Church is requesting transfer into another Church *sui iuris* which has an eparchy within the same territory and if the two bishops agree to this in writing. It should be noted, first of all, that the rescript considers transfer from the Latin Church into an Eastern Church, but does not deal with the reverse case; the latter, according to M. Brogi, would still require the explicit consent of the Apostolic See.⁸² We do not share this opinion of Brogi, because under canon 32 §2 of the Eastern Code in a broader sense the Churches *sui iuris* include also the Latin Church.

Although the rescript uses the term *Christifidelis*, Brogi thinks that in the case of clerics and religious and, perhaps also in the case of postulants for monastic or religious orders, the intervention of the Apostolic See would be necessary.

We would like simply to indicate some particularities of the Eastern law regarding the status of persons since one should know that a priest can be enrolled – the Latin law would say incardinated – into another Church *sui iuris* without a change in his enrollment into his own Church *sui iuris*.⁸³ It would be wise to distinguish these two types of enrollment, and even more so, since the Eastern Code uses for both cases the term “enrollment”.

⁸¹ Cf. CANOSA, “La presunzione della licenza di cui al can. 112, § 1, 1° del Codice di diritto canonico”, p. 625.

⁸² BROGI, “Licenza presunta della Santa Sede per il cambiamento di Chiesa ‘sui iuris’”, p. 666.

⁸³ Cf. CCEO cc. 365, § 2; 366, § 1, 2°; 748, § 2.

A similar rule applies to religious. A monk or a nun can enter into a monastery or into a religious institute of another Church *sui iuris* without changing his/her enrollment into his/her Church *sui iuris*.⁸⁴ For the transfer of a monk or a nun to a monastery or religious institute of another Church *sui iuris*, it is the same.⁸⁵

In regard to the process of editing, we perceive concern for fidelity to the teaching of the Second Vatican Council, and this to the point that the drafters did not wish to introduce sanctions of invalidity or illicity for certain acts on which the council had not spoken. This is understandable since it has to do with an ecumenical council, the *par excellence* organ of the College of Bishops, and also since the Commission for the Revision of the Eastern Code was explicitly charged to remain faithful to the spirit of the Council.

We have also seen that the equilibrium between the safeguarding of the basic rights, especially the freedom, even of minors, and the equality between men and women, on the one hand, and the respect for the traditions and oriental mentality on the other, was often fragile. The balance inclined sometimes to one side, sometimes to the other. This shows us all the difficulties which we can also find in debates on the universality of human rights and it helps us to discover the possibilities and limits of inculturation. Legislation which is to be applied everywhere in the world necessarily needs to integrate means of adaptation to local circumstances. This was done in several instances in the canons concerning enrollment through the clause “with due regard to particular law established by the Apostolic See”. It seems to us, that in spite of numerous inconstancies, the canons we have presented have succeeded in safeguarding a certain hierarchy of values.

⁸⁴ Cf. *CCEO* cc. 451; 517, § 2; 559, § 1.

⁸⁵ Cf. *CCEO* cc. 487, § 4; 544, § 4; 562, § 1 and 432.

The Archdiocese of Alba-Iulia, because of its unique historical conditions, is an ideal place for the call to cooperation to become effective. If clear procedures are carefully elaborated, they can help all Catholics – no matter to which Church *sui iuris* they belong – to work together in harmony to continue bulding up the Body of Christ.

GENERAL CONCLUSION

In the introduction, we mentioned the motive for this dissertation: to offer a comparative study of the transfer of membership according to the Latin and Eastern codes. It intended to bring together the relevant canons of both laws, arrange them in parallel order and compare and study them closely. By employing this comparative method we ultimately wanted to note points of similarity and as well as differences regarding transfer of membership in the two codes. Then we wished to apply the principles to the Archdiocese of Alba-Iulia in Romania.

The Eastern Code was promulgated seven years after the Latin one. It had the same orientation as the Latin Code in many matters. As a result, a great number of canons of these codes are identical. But we can see some differences as well. In certain areas the Eastern Code makes advances, introducing changes and necessary corrections, benefiting from the time it had to evaluate the weaknesses of the Latin Code

The universal Church does not exist in abstract terms, but is realized in its specific existence, established in various places by the apostles and their successors joined together in a multiplicity of organically united groups or Churches. Between these Churches there exists a strong bond of communion. They are equal in dignity and enjoy the same rights and obligations. They are distinguished as Churches themselves and not as ethnic, cultural or linguistic groups.

These Churches have their own liturgical, theological, spiritual and disciplinary heritages. This heritage differentiated by culture and the circumstances of the history of a people is called a rite. A rite is not a juridical person, nor is it equal to jurisdiction; but it is the whole faith-expression or manner

of living of a Church; it is the ecclesial heritage of a Church *sui iuris*. A Church cannot be separated from its rite, nor a rite separated from its Church. Both the Church and its rite are to be preserved and promoted.

The 1917 Code¹ and the 1957 motu proprio *Cleri sanctitati*² spoke of *ritus*, a term that had been used equivocally for centuries. The 1963 draft of the Vatican II Decree on the Eastern Catholic Churches, therefore, avoided the term *ritus*, preferring instead *Ecclesiae particulares*.

When it was objected that in the Constitution on the Church *Lumen gentium* (LG, no. 23) and in the Decree on the Bishops' Pastoral Office *Christus Dominus* (CD, no. 11) the term *Ecclesia particularis* indicated a diocese, the decision was made to use both terms in the Decree on Eastern Catholic Churches. But, what could not be risked at the council is now boldly proclaimed in canon 27 of the Eastern Code: the term *ritus*, which cannot be defined juridically, is as the heritage belonging to each Church *sui iuris*. The canon then specifies that the rites dealt with in the code are those "which arise from the Alexandrian, Antiochian, Armenian, Chaldean, and Constantinopolitan traditions." These various traditions or generic rites are concretized in Churches *sui iuris*.

The churches consequently recognize as a fundamental Christian right under certain conditions, the right of the faithful, to transfer their membership. Given the fact that the Universal Declaration of Human Rights has included in its 18th article the right to "freedom in changing one's religion",³ analogously or

¹ Canon 98 § 1 and § 2 of the 1917 code referred to the Latin and Eastern *rites* which comprise the Catholic Church

² *AAS*, 49 (1957), p. 436.

³ J.W. MONTGOMERY, *Human Rights and Human Dignity*, Grand Rapids, Michigan, Zondervan Publishing House, 1986, p. 228.

perhaps even *a fortiori*, even though it might not be popular to say so, the faithful should have the freedom to transfer their Christian membership. While proselytism should be avoided, the demands of inculturation may indicate in certain cases that a transfer of membership is a better course of action than remaining as a foreign body isolated from the surrounding religious culture. It is not up to the pastors to make the decision for the members of their flock, but, as public church authorities it is their duty “to foster the conditions and the means which are capable of promoting Christian life among all the faithful.”⁴

To accomplish this, we looked at different ecclesial communities in Transylvania. Examining the origin and development of the communities there, we saw how the juridical situations of the Church fluctuated due to the influence of different cultures and political powers, and how these influences caused divisions and segregation in the Church, leading to different denominations.

A brief overview of the legislation concerning rites

In the course of our dissertation we have dealt with a number of theoretical questions: however, for the sake of practical application we consider important to summarize the most important universal rules about the rites.

1. Anyone to be baptized who has completed fourteen years of age – in the absence of contrary particular papal legislation – is free to choose to which Church *sui iuris* he or she wishes to join (CCEO c. 30).

2. As a general rule, Catholic who wishes to transfer membership *validly* needs the special consent of the Apostolic See. This consent, however, can be presumed if the territories of the two particular Churches *sui iuris* affected by

⁴ Cf. GS, no. 59. This conciliar statement applies as well to the function of public authority in the Church with regard to rites in so far as rites are the cultural expression of a Particular Church.

this transfer overlap and their diocesan bishops give their written consent to the change.

3. A man belonging to an Eastern Catholic Church *sui iuris*, even though marrying someone belonging to another Church *sui iuris*, can transfer to another Eastern Catholic Church, or into the Latin Church, only by obtaining the aforementioned consent from the Holy See, or from the two diocesan bishops. On the other hand, Latin Rite spouses (both the husband and the wife), and also an Eastern rite wife, are permitted by law to transfer to the Church *sui iuris* of their spouses at the celebration or during the marriage. When the marriage has legally ended, they can freely return to their original Church *sui iuris* (CCEO c. 33 – CIC c. 112. § 1).

4. By virtue of the law itself, children under fourteen years of age whose parents belong to the same Church *sui iuris* and transfer to another Church *sui iuris* automatically follows their parents (they are not just eligible for transfer as in the previously listed cases). The same holds true when, in case of a mixed marriage, the spouse whose rite the child has been following transfers to the church of the other spouse. Similarly, in the case of a mixed marriage (*matrimonium mixtum*), the child under fourteen follows the transfer of the Catholic spouse (CCEO c. 34 – CIC c. 112, § 1). If, in a marriage of Catholics, only one parent transfers to another Church *sui iuris*, the child transfers only if both parents consent. Upon completion of the fourteenth year of age, the child can return to the original Church *sui iuris* (CCEO c. 34).

5. The transfer to another Church *sui iuris* takes effect at the moment when a person eligible by virtue of the law or by special permission from the authorities makes a formal declaration of his/her intent before the local hierarch or the proper pastor of the same Church or a priest delegated by either of them and two witnesses (CCEO c. 36). Every enrollment in a Church *sui iuris* or transfer to

a Church should be recorded in the baptismal register of the parish where the baptism was celebrated.

Concluding remarks to the overview of the laws on rites

1. In the teaching of the Second Vatican Council, the place and role of the Eastern Catholic Churches has been considerably enhanced. While in the past these communities were appreciated mainly as kind of “ornaments”⁵ decorating the Church, today we see their importance in that their rites are the first witnesses within the Catholic communion of that tradition, which came to us from the apostles through the Fathers of the Church and which is part of the indivisible heritage of the divine revelation given to the universal Church (*OE*, no. 1). Thus it is not an accident that the Second Vatican Council wished to promote the flourishing of these communities, not just their mere survival.⁶ Their spiritual and ecclesiastical heritage was considered by the Council as the common property of the universal Church of Christ (*OE*, nos. 1, 5) and it prescribed that care should be taken throughout the world to promote the growth and protection of each and every Church (*OE*, no. 4).

2. The most important change in regard to the laws of rites – i.e., the equal right given to both parents in determining the membership of their children – does not safeguard the Eastern communities, but to the contrary, at least in territories where they live sparsely scattered, it could result in their speedy assimilation and disappearance.⁷ The cause of the negative consequence of the free

⁵ In the formulation of the previous law one could sense such an allusion; cf. *CS c.* 1, 1.

⁶ See *Nuntia*, 22 (1986), p. 35.

⁷ This was recognized even by the editors of the new code. Cf. *Nuntia*, 22 (1986), p. 26.

choice is the fact that many Eastern Catholic immigrants to the West see their chances for socio/economic advancement greatly enhanced through integration into Western society, and for this end they tend to abandon their Eastern identity. As was pointed out, among others, also by M. Brogi, the possibility of free parental agreement in such sociological circumstances results in frequently having the Eastern men make use of the possibility to transfer their children into the Latin Church.⁸ Other authors speak in this context of a so-called "ethnofugal" phenomenon, i.e., an outright rejection of one's cultural and religious heritage.⁹ Pope John Paul II, in his address to the Synod of Bishops on the occasion of the presentation of the Eastern Code, explicitly affirmed his readiness to correct procedures perceived to be harmful for the Eastern Churches through the special papal legislation provided for in the Eastern Code "in as much as this proves to be necessary for the support and flourishing of the Eastern Churches in territories where the Eastern Catholics are in minority."¹⁰ No such particular law, however, has been issued in the eleven years following the promulgation of the Eastern Code. Since, in the opinion of some legal experts, even this prospective particular law of the Holy See would not go further than prescribing the obligatory following of the father's membership¹¹ (in other words the return to the rules of the old system of codification), it can be stated that in the matter of changes in the rules

⁸ M. BROGI, "I cattolici orientali nel Codex Iuris Canonici", in *Antonianum*, 58 (1983), p. 225.

⁹ Cf. M. THÉRIAULT, "Canonical Questions Brought about by the Presence of Eastern Catholics in Latin Areas in the Light of the 'Codex Canonum Ecclesiarum Orientalium'", in *Ius ecclesiae*, 3 (1991), p. 202.

¹⁰ *Nuntia*, 31 (1990), p. 15.

¹¹ Cf. P. SZABÓ, "Sajátjogú egyháztagság a hatályos jog szerint (CIC 111-112. és CCEO 29-38. kk.)", in *Kánonjog*, 1 (1999), p. 61.

concerning transfers between churches – primarily as a consequence of the emphasis placed on the equality of rights of the mothers in raising the children as a fundamental right¹² – the present codification creates legal conditions less favourable to the Eastern Catholic Churches than the previous rules were.

3. The rights of the faithful (*Christifideles*) as manifestations of individual autonomy are not considered in canon law as “constitutional” or “fundamental” rights; thus, in the case of appropriately weighty reasons, the legislator can impose restrictions.¹³ At the same time, considering relevant manifestations by the legislator, we consider any leaning toward such a policy as highly unlikely in the near future.¹⁴ Since the legislative framework is not fully suitable to ensure the fulfillment of the guiding principles of Vatican II, it seems that one should strive for their realization through the application of the law, i.e. on the level of ecclesiastical administration. In this respect, in our opinion, the prevailing law provides us with some indications, worthy of our attention.

Such would be the required cooperation of the Apostolic See in transfers of membership, according to canon 112, 1 § 1 of the Latin Code (*licentia*), which makes it possible for the Latin bishops, when their faithful ask for permission to transfer into an Eastern Church, to be able to grant this in practically every instance with great flexibility.

¹² That this consideration received such primary importance was largely due to the teaching of the Apostolic Letter *Mulieris dignitatem* (no. 24); in *AAS*, 80 (1980), p. 1653, *Nuntia*, 29 (1989), p. 44; *ibid.*, 31 (1991), p. 15.

¹³ This is attested to, not only through the promise of a particular law from the Holy See, but also by the fact that the automatic right of transfer to another Church *sui iuris* of the Eastern rite husband at marriage – which was according to the codifiers and other eminent iurists also a fundamental right – was, nevertheless, denied by the legislator. Cf. *Nuntia*, 28, (1989), p. 26; *ibid.*, 29, (1989), p. 44; B. PRIMETSHOFER, “Interrituelles Verkehrsrecht im CCEO”, in *Archiv für katholisches Kirchenrecht*, 160 (1991), p. 352.

¹⁴ See *Nuntia*, 31 (1990), pp. 14-15.

As is known, in the classical understanding, the granting of transfer of membership through an administrative action is a favour (*gratia*), i.e., it is a singular decree by the competent authority which no one can claim as a right.¹⁵ The permission (*licentia*), on the other hand – as it is expressly stated by several authors – is not an act of favour – at least in the Latin legal system – but a singular decree which presupposes that a certain action would be performed in conformity with the law, in hierarchical communion with the superior authority.¹⁶

Some authors again would emphasize that *licentia* means empowerment to practice a right which already forms a part of the person's sphere of subjective rights. Accordingly, the right to obtain the permission (*licentia*), such as the choice of membership in a Church *sui iuris*, would become in canon law a subjective right, whose practice could be limited by the competent authorities in certain cases, but only in the interest of the common good.¹⁷

Behind the intention to transfer of membership and the right of authorities to discern such requests, lies the tension between the *autonomy of the individual* and the interest of the *common good*. In any case, the Eastern codification took decisive steps in the direction of favouring the autonomy of the individual when it gave preference to the freedom of parents and of the children over the age of fourteen to decide about which church to belong.¹⁸

¹⁵ J. CANOSA, "La presunzione della licenza di cui al can. 112, § 1, 1° del Codice di diritto canonico", in *Ius ecclesiae*, 5 (1993), p. 616.

¹⁶ P. ERDŐ, *Egyházjog*, Budapest, Szent István Társulat, 1991 p. 87.

¹⁷ CANOSA, "La presunzione della licenza di cui al can. 112, § 1, 1° del Codice di diritto canonico", p. 623.

¹⁸ *Nuntia*, 28 (1989), pp. 20-21, 23.

4. All Churches *sui iuris* are legally equal, thus on the basis of rite none of them preceeds any other; their rights and obligations are the same (*OE*, no. 3). From this principle, as established by the Council, stems the legal opinion that also in inter-ecclesial relations every Church has the same status. The principal goal of *OE*, no. 3 was to proclaim in the Ecumenical Council the end of one-sided privileges based on the principle of “*ritus praestantia*” that favoured the Latin Church. The realization of this conciliar directive that prescribed the preservation in living form of all Eastern rites, would be possible only if all competent legal authorities assumed this as their enhanced sacred duty.

5. The effectiveness of the laws regarding the rites has been greatly influenced by the unfortunate fact that after 1983 – partly as a consequence of the sometime unclear formulations in the Latin Code – well-known authors offered contradictory interpretations of their meaning.¹⁹ How little agreement is found in the scholarly literature regarding the interpretations of the relationship between the codes is shown by the fact that even those canonists who regard the codes as models of autonomous legal systems, in practice often arrive at widely differing conclusions. From what has been said, it can be deduced that with regard to the laws concerning the rites, one of the most urgent tasks is to create consensus among the scholars. Until this is done, there will be continued confusion in the application of the law.

6. In order that the universal rules dealing with affiliation to a Church *sui iuris* fulfill their role effectively, there is need for substantial advance in two areas. Firstly, we should eliminate the *lacunae* of law found in the practical

¹⁹ The legal practice based on these divergent interpretations would be more difficult to reconcile, than perhaps a somewhat disadvantageous rule that is to be, however, applied *uniformly and consistently*. In the latter case the root of the tension is evidently of an objective nature and as such it should be easier to correct.

application of the rules in the Code, through new norms and directives, taking into consideration local circumstances and needs. Secondly, ecclesiastical authorities ought to secure the implementation of these norms through effective sanctions. As we have seen, today in most cases, diocesan bishops can grant the required authorization for the transfer to another Church *sui iuris*, which means that there is no practical obstacle in the way of development of a more flexible praxis. True, the former under-secretary of the Eastern Congregation, when interpreting the rescript of the Apostolic See issued in connection of canon 32 of the Eastern Code and canon 112 of the Latin Code, emphasized that the goal of these new rules was not so much to make it easier to change someone's Church affiliation and transfer to another Church *sui iuris*, but rather to simplify the process. He then continued to say, however, that to transfer one's membership is a step which results also in a break away from one's national traditions, from one's very roots. Therefore, the procedure for the transfer has to include a thorough evaluation of the motives which prompted the desire to transfer. Thus the legislator – in the interest of the legal defense of the rite (cf. *OE*, no. 4; *CCEO* c. 40) – continues to regard the living of one's faith according to one's liturgical, theological, spiritual and disciplinary heritages as the fundamental right of the believers, while it imposes restrictions as to the possibility of renouncing one's own membership.²⁰

While it is true that to grant permission for a transfer of membership always requires careful deliberation, it is equally true that it is not the fact of the transfer that causes the break with tradition. In the overwhelming majority of cases, the break has occurred much earlier; the petition for transfer was made to free them from the tension caused by the discrepancy between their actual situation and their formal legal status.

²⁰ M. BROGI, "Licenza presunta della Santa Sede per il cambiamento di Chiesa *sui iuris*", in *Revista española de Derecho Canónico*, 50 (1993), p. 668.

It seems for this very reason that, in deciding about membership in a Church *sui iuris*, there ought to be much greater weight given to the considerations of the person's free decision.

It seems to be beyond argument that a person is truly not a member of a Church *sui iuris* who is simply listed in statistics and baptismal registers, but rather the one who – independently of formal affiliation – identifies with the community and lives the Christian faith by actively following its liturgical, disciplinary, spiritual and theological tradition.

The practical situations faced in the Archdiocese of Alba-Iulia, many of which are based on the vicissitudes of history, illustrate clearly how these unclear situations need to be addressed more carefully.

We look forward to further development, study and discussion concerning the conclusions presented here.

APPENDIX No. 1

STATISTICS

The Statistics of the Church in Romania According to Annuario Pontificio 2000

	<i>dioceses</i>	<i>fideles</i>	<i>paroeciae</i>	<i>sac. dioec.</i>	<i>sac.reg.</i>	<i>sac.tot.</i>
1.	Alba Iulia (latin)	491.763	211	282	26	308
2.	Bucuresti (latin)	105.000	62	71	14	85
3.	Iasi (latin)	267.731	122	187	62	249
4.	Oradea (latin)	108.682	58	69	4	73
5.	Satu Mare (latin)	108.000	57	63	1	64
6.	Timisoara (latin)	112.630	71	88	11	99
	Summa Latinorum	1.193.806	581	760	118	878
1.	Cluj-Gherla (rom)	750.000	125	147	15	162
2.	Fagaras et Alba I. (rom)	362.000	624	189	7	196
3.	Lugoj (rom)	40.000	93	83	2	85
4.	Maramures (rom)	132.310	63	132	6	138
5.	Oradea (rom)	101.000	110	122	8	130
	Summa Rom.	1.385.310	1015	673	38	711
1.	Gherla (arm.)	1.000	4	-	-	-
	Summa Armenorum	1.000	4	-	-	-
	Summa tot. cath. RO	2.580.000	1600	1433	156	1589

**APPENDIX No.1
STATISTICS**

222

The population of Transylvania according to denomination, 1869–1992*

Year	Total	Orthodox	Greek Catholic	Roman Catholic	Calvinist	Lutheran	Unitarian	Jewish	Other
Number									
1869 ^a	4,224,436	1,613,502	1,000,740	712,262	517,360	231,099	54,001	90,487	4,985
1880 ^a	4,032,851	1,498,181	936,335	712,921	498,723	221,528	55,389	105,675	4,099
1890 ^a	4,429,564	1,593,017	1,042,331	807,296	559,714	234,101	59,721	130,088	3,296
1900 ^a	4,840,722	1,696,034	1,137,698	908,182	625,346	249,029	64,476	157,622	2,335
1900	4,874,772	1,704,205	1,143,279	918,296	631,392	251,517	64,987	158,707	2,389
1910 ^b	5,262,495	1,807,917	1,245,318	995,390	694,930	263,016	68,759	182,471	4,694
1910	5,259,918	1,807,268	1,245,235	994,606	694,498	262,376	68,752	182,489	4,694
1919	5,208,345	1,815,854	1,274,935	910,601	689,669	266,191	67,374	170,943	12,778
1930	5,548,363	1,932,356	1,385,445	947,351	696,320	274,415	68,330	192,833	51,313
1992	7,723,313	5,360,102	206,833	854,935	796,682	36,264 ^c 20,184 ^d	75,978	2,768	369,567
Percentage									
1880 ^a	100.0	38.2	23.7	16.9	12.2	5.5	1.3	2.1	0.1
1880 ^a	100.0	37.1	23.2	17.7	12.4	5.5	1.4	2.6	0.1
1890 ^a	100.0	36.0	23.5	18.2	12.6	5.3	1.4	2.9	0.1
1900	100.0	35.0	23.5	18.8	12.9	5.2	1.3	3.2	0.1
1910	100.0	34.3	23.7	18.9	13.2	5.0	1.3	3.2	0.1
1919	100.0	34.9	24.5	17.5	13.2	5.1	1.3	3.3	0.2
1930	100.0	34.8	25.0	17.1	12.6	4.9	1.2	3.5	0.9
1992	100.0	69.4	2.7	11.0	10.3	0.5 ^c +0.3 ^d	1.0	0.0	4.8

*According to valid administrative borders at the time of the censuses

^a Civilian population

^b Value calculated with respect to the undivided population of settlements divided by the border

^c Lutheran of the Augustan Confession

^d Synod-Presbyterian Evangelical

APPENDIX No.1
STATISTICS

223

The population of Romania according to nationality, 1930–1992*

Nationality	1930	1956	1966	1977	1992
Total	14,280,729	17,489,450	19,103,163	21,559,910	22,810,035
Romanian	11,118,170	14,996,114	16,746,510	18,999,565 ^a	20,408,542 ^b
Hungarian	1,423,459	1,587,675	1,619,592	1,713,928 ^c	1,624,959 ^d
Gypsy	242,656	104,216	64,197	227,398	401,087
German	633,488	384,708	382,595	359,109 ^e	119,462 ^f
Ukrainian	45,875	60,479	54,705	55,510 ^g	65,764 ^h
Russian, Lipovan	50,725	38,731	39,483	32,696 ⁱ	38,606 ^j
Turkish	26,080	14,329	18,040	23,422	29,832
Serbian	50,310 ^k	46,517 ^k	44,236 ^k	34,429	29,408
Tatar	15,580	20,469	22,151	23,369	24,596
Slovak	50,772 ^l	23,331	22,221	21,286	19,594
Bulgarian	66,348	12,040	11,193	10,372	9,851
Jewish	451,892	146,264	42,888	24,667	8,955
Croatian	...	...	...	7,500 ^m	4,085
Czech	...	11,821	9,978	7,683	5,797
Polish	15,804	7,627	5,860	4,641	4,232
Greek	23,161	11,166	9,088	6,262	3,940
Armenian	12,175	6,441	3,436	2,342	1,957
Other	49,182	13,357	4,681	5,279 ⁿ	8,602 ^o
No response	5,052	4,165	2,309	452	766

* According to present borders

^a Including 982 Aromanians and 1,176 Macedonians

^b Including 21,736 Aromanians and 6,867 Macedonians

^c Including 1,075 Szeklers

^d Including 817 Szeklers

^e Including 6,016 Saxons and 4,346 Swabians (Germans)

^f Including 1,708 Saxons and 6,330 Swabians

^g Including 1,057 Ruthenians

^h Including 290 Ruthenians

ⁱ Of these: 21,206 Russians and 11,090 Lipovans

^j Of these: 7,983 Russians and 30,623 Lipovans

^k Including Croatians and Slovenians

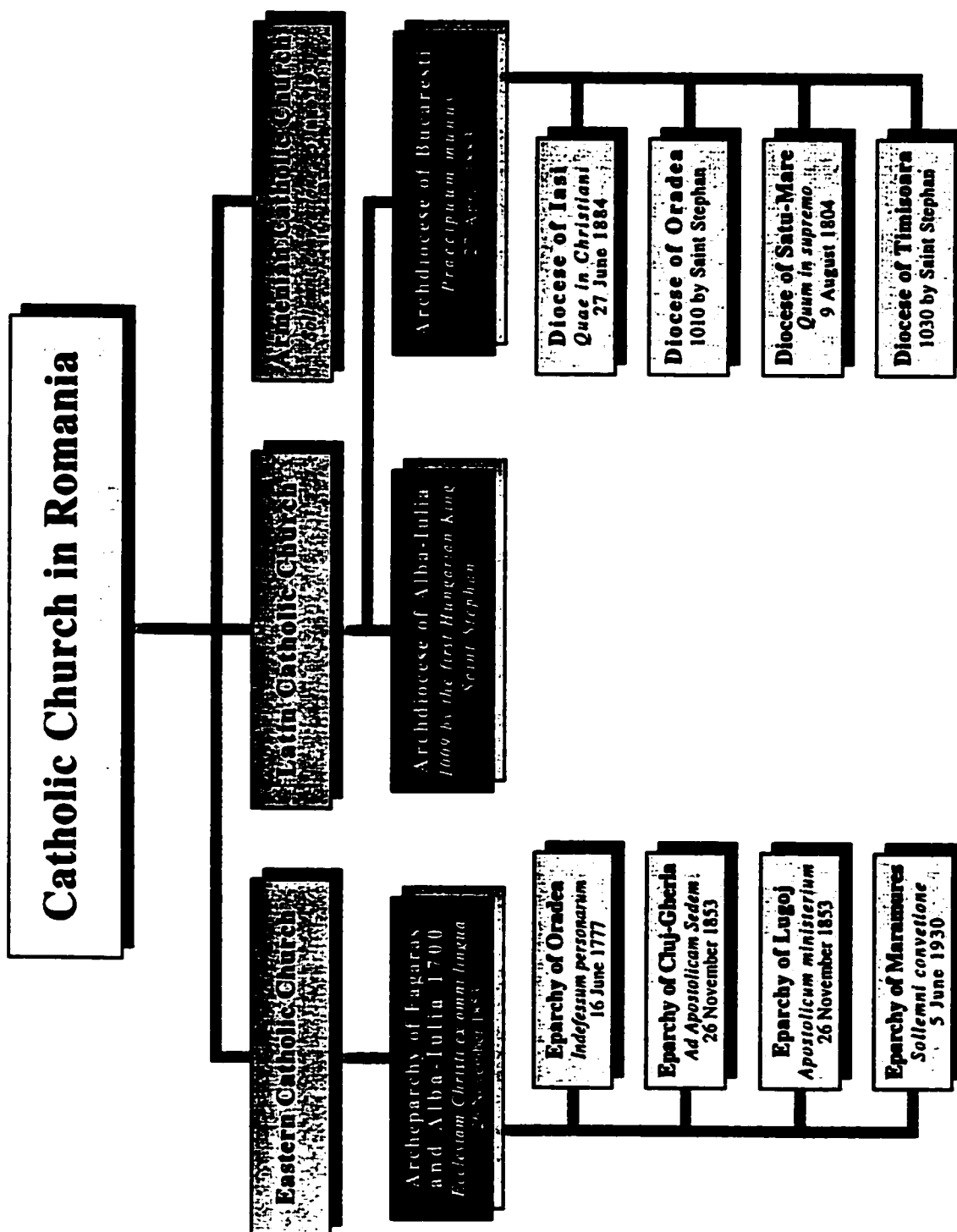
^l Including Czechs

^m Including Crassovans

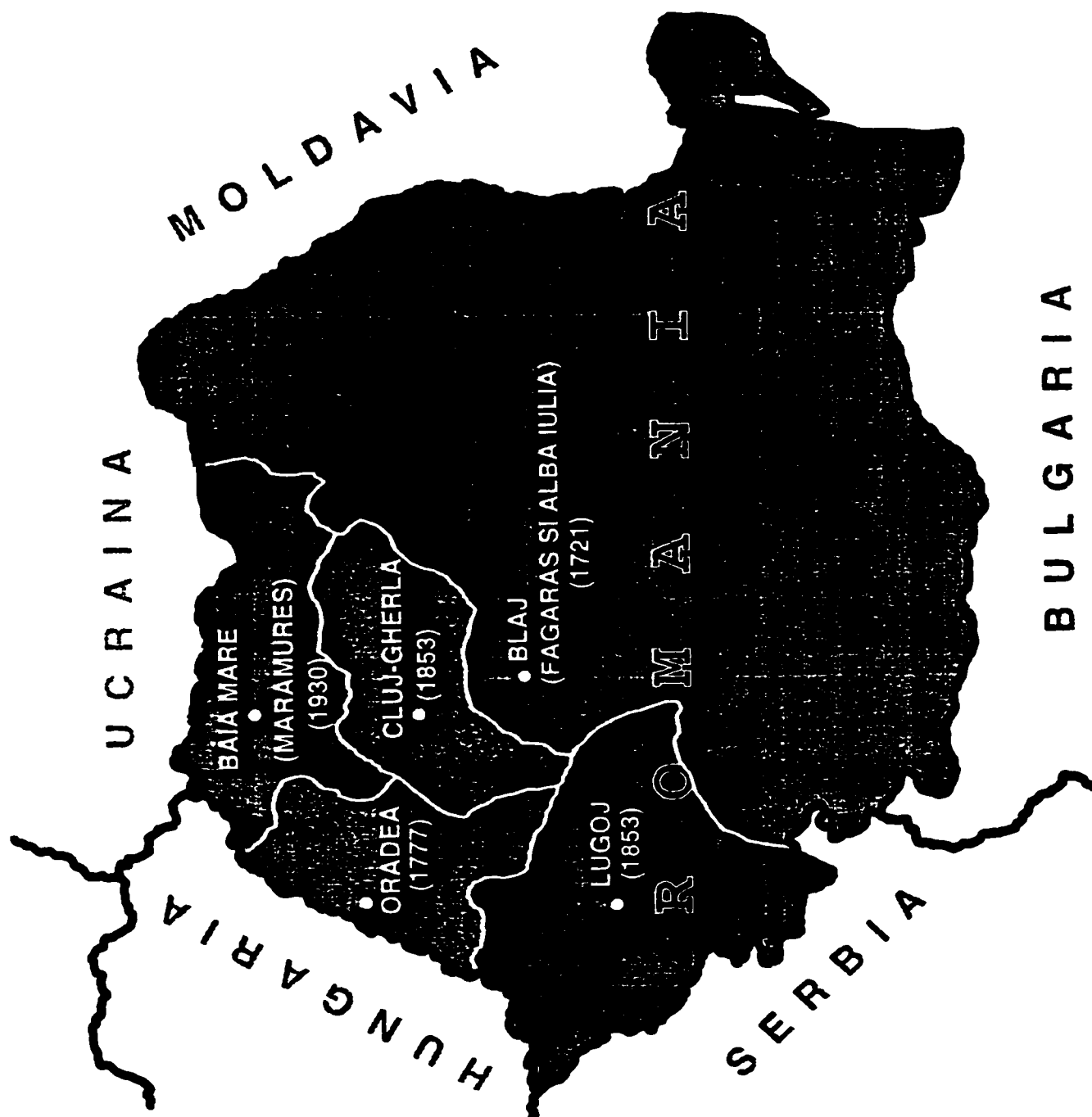
ⁿ Including Csángós (Hungarians outside the Carpathians) and 1,251 Slovenians

^o Of these: 2,723 Crassovans, 2,062 Csángós, 1,356 Italians, 276 Slovenians and 55 Gagausians

APPENDIX No. 2
CATHOLIC CHURCH IN ROMANIA



APPENDIX No. 3
GREEK CATHOLIC CHURCH IN ROMANIA



APPENDIX No. 4
LATIN CATHOLIC CHURCH IN ROMANIA



APPENDIX No. 5

SAMPLE FORMS

ARCHDIOCESE OF ALBA-IULIA

The Chancery

21 Mihai Viteazul Street

2500 Alba-Iulia, Romania

Tel: (058) 811-689

Fax: (058) 811-454

FORM 1

Prot. No. _____

**DECISION OF A LATIN SPOUSE TO
TRANSFER OF CHURCH MEMBERSHIP TO
THE CHURCH OF THE OTHER SPOUSE WHO IS
EASTERN CATHOLIC**

WHEREAS, I, the undersigned, _____, a member
of the Latin Church, am presently married to _____
_____, a member of the _____
Church *sui iuris*; and

WHEREAS, it is my desire to practice my Catholic Faith according to the
_____ Tradition and to follow my said spouse in the practice of my
faith in the _____ Church; and

WHEREAS, I have the right pursuant to the provisions of Canon 112, § 1,
2° of the *Codex Iuris Canonici* to transfer to the Church of my spouse, which right
it is my desire and intent to exercise at this time;

NOW, THEREFORE, in the presence of the undersigned, the Reverend
_____, Pastor of _____ Catholic
Church, in _____, _____, in the Eparchy of
_____ and the two witnesses
hereunto subscribed, I do hereby publicly **DECLARE** and **ELECT** to transfer my

APPENDIX No. 5
SAMPLE FORMS

228

enrollment from the Latin Church to the _____
_____ Church *sui iuris* effective immediately.

IN TESTIMONY WHEREOF, I have hereunto set my hand at
_____, _____, this _____ day of _____,
A.D. _____.

Signature

Attest:

Pastor

WITNESSES:

ARCHDIOCESE OF ALBA-IULIA

The Chancery

21 Mihai Viteazul Street
2500 Alba-Iulia, Romania
Tel: (058) 811-689
Fax: (058) 811-454

FORM 2

Prot. No. _____

**DECISION OF AN EASTERN CATHOLIC WIFE
(AND MINOR CHILDREN) TO TRANSFER CHURCH MEMBERSHIP
TO THE CHURCH OF THE HUSBAND WHO IS LATIN**

WHEREAS, I, the undersigned, _____, a member of the _____ Church *sui iuris*, am presently married to _____, a member of the Latin Church; and

WHEREAS, it is my desire to practice my Catholic Faith according to the Latin Tradition and to follow my husband in the practice of my faith in the Latin Church; and

WHEREAS, I have the right pursuant to the provisions of Canon 33 of the *Codex Canonum Ecclesiarum Orientalium* to transfer to the Church of my husband, which it is my desire and intent to exercise at this time; and

WHEREAS, it is the desire of my husband and myself that our minor children, by name _____, all under fourteen years of age at the present time, who are also members of the _____ Church *sui iuris*, transfer to the Latin Church;*

*Delete this paragraph if there are no minor children who belong to the Church *sui iuris* of the Wife.

NOW, THEREFORE, in the presence of the undersigned the Reverend _____, Pastor of _____ Roman Catholic Church in, _____, _____, and the two witnesses hereunto subscribed, I do hereby publicly **DECLARE** and **ELECT** to transfer my enrollment and that of my afore-named minor children from the _____ Church *sui iuris* to the Latin Church *sui iuris* effective immediately.

IN TESTIMONY WHEREOF, I have hereunto set my hand at _____, _____, this _____ day of _____, A.D. _____.

Signature of Wife

I agree to the transfer of our minor children to the Latin Church *sui iuris*

Husband**

Attest:

The Reverend

Witnesses:

**Delete if there are no minor children who belong to the Church *sui iuris* of the Wife.

ARCHDIOCESE OF ALBA-IULIA

The Chancery
21 Mihai Viteazul Street
2500 Alba-Iulia, Romania
Tel: (058) 811-689
Fax: (058) 811-454

FORM 2

Prot. No. _____

**DECISION OF AN EASTERN WIFE TO
TRANSFER CHURCH MEMBERSHIP TO
THE CHURCH OF THE OTHER SPOUSE WHO IS
A ROMANIAN GREEK CATHOLIC**

WHEREAS, I, the undersigned _____, a member of
the _____ Church *sui iuris*, am presently married
to _____, a member of the Romanian Greek Catholic
Church *sui iuris*; and

WHEREAS, it is my desire to practice my Catholic Faith according to the
Romanian Tradition and to follow my said spouse in the practice of my faith in the
Romanian Greek Catholic Church; and

WHEREAS, I have the right pursuant to the provisions of Canon 33 of the
Codex Canonum Ecclesiarum Orientalium to transfer to the Church of my
husband, which it is my desire and intent to exercise at this time;

NOW, THEREFORE, in the presence of the undersigned The Reverend
_____, Pastor of _____ Romanian
Greek Catholic Church, in _____, _____, and the
two witnesses hereunto subscribed, I do hereby publicly **DECLARE** and **ELECT**
to transfer my enrollment from the _____ Church *sui iuris* to the
Romanian Greek Catholic Church *sui iuris* effective immediately.

APPENDIX No. 5
SAMPLE FORMS

232

IN TESTIMONY WHEREOF, I have hereunto set my hand at
_____, _____, this _____ day of _____,
A.D. _____.

Signature of the Eastern Wife

Attest:

Pastor

WITNESSES:

ARCHDIOCESE OF ALBA-IULIA

The Chancery

21 Mihai Viteazul Street
2500 Alba-Iulia, Romania
Tel: (058) 811-689
Fax: (058) 811-454

FORM 3

Prot. no. _____

**DECISION OF AN EASTERN CATHOLIC WIFE
(AND MINOR CHILDREN) TO TRANSFER CHURCH MEMBERSHIP
TO THE CHURCH OF THE HUSBAND WHO IS A MEMBER OF
ANOTHER EASTERN CHURCH**

WHEREAS, I, the undersigned, _____, a member of the _____ Church *sui iuris*, am presently married to _____, a member of the _____ Church *sui iuris*; and

WHEREAS, it is my desire to practice my Catholic Faith according to the _____ Tradition and to follow my said husband in the practice of my faith in the _____ Church; and

WHEREAS, I have the right pursuant to the provisions of Canon 33 of the *Codex Canonum Ecclesiarum Orientalium* to transfer to the Church of my husband, which it is my desire and intent to exercise at this time; and

WHEREAS, it is the desire of my husband and myself that our minor children, by name _____, all under fourteen years of age at the present time, who are also

APPENDIX No. 5
SAMPLE FORMS

234

members of the _____ Church *sui iuris*, transfer to the
_____ Church;¹

NOW, THEREFORE, in the presence of the undersigned the Reverend
_____, Pastor of _____ Catholic
Church, _____, _____ and the two witnesses
hereunto subscribed, I do hereby publicly **DECLARE** and **ELECT** to transfer my
enrollment and that of my minor children from the _____
_____ Church *sui iuris* to the _____
Church *sui iuris* effective immediately.

IN TESTIMONY WHEREOF, I have hereunto set my hand at
_____, _____, this _____ day of _____,
A.D. _____.

Wife

I agree to the transfer of our minor children to the
_____ **Church *sui iuris*.**

Husband

Attest:

Pastor

Witnesses:

¹Delete this paragraph if there are no minor children who belong to the Church *sui iuris* of the
Wife.

**TABLE OF TRANSFER OF CHURCH MEMBERSHIP
DECISION TO TRANSFER TO THE CHURCH OF THE OTHER SPOUSE
AT THE TIME OF OR DURING THE MARRIAGE**

A. TRANSFER OF THE WIFE TO THE CHURCH OF THE HUSBAND

Wife	Husband	Possible	Applicable Law	Form
Latin	Eastern	Yes	<i>CIC</i> Canon 112, § 1, 2°	Form 1
Eastern	Latin	Yes	<i>CCEO</i> Canon 33	Form 2
Eastern	Other Eastern	Yes	<i>CCEO</i> Canon 33	Form 3

B. TRANSFER OF THE HUSBAND TO THE CHURCH OF THE WIFE

Husband	Wife	Possible	Applicable Law	Form
Latin	Eastern	Yes	<i>CIC</i> Canon 112, § 1, 2°	Form 1
Eastern	Latin	No	<i>CCEO</i> Canon 33	N/A
Eastern	Other Eastern	No	<i>CCEO</i> Canon 33	N/A

KEY TO TABLE:

Latin = a member of the Latin Catholic Church;

Eastern = a member of any Eastern Catholic Church *sui iuris*;

Other Eastern = a member of a Eastern Catholic Church *sui iuris* different from that of the transferring spouse.

ARCHDIOCESE OF ALBA-IULIA

The Chancery

21 Mihai Viteazul Street
2500 Alba-Iulia, Romania

Tel: (058) 811-689

Fax: (058) 811-454

Prot. No. _____

N. N.

by the Grace of God and the Favor of the Apostolic See

Archbishop of the Archdiocese of Alba-Iulia

**NOTIFICATION OF TRANSFER OF ASCRIPTION
BETWEEN CHURCHES *SUI IURIS***

WHEREAS, _____, a member of the Greek Catholic Church with a domicile in the Eparchy of Cluj-Gerla in Cluj-Napoca, has petitioned the Most Reverend _____ Archbishop of the Archdiocese of Alba-Iulia, that the Petitioner, together with his minor children under the age of fourteen completed years; namely, _____ and _____, be permitted to transfer from the Greek Catholic Church to the Latin Church, in order that they might be permanently ascribed to the Latin Church; and

WHEREAS, the canonical reasons advanced by the Petitioner for this favor are the facts that although he was Baptized as an infant according to the Greek Catholic Ritual at _____ Roman Catholic Church in _____, and received his other Sacraments in the Greek Catholic Church, he has worshiped regularly together with his wife and children for the last sixteen years at _____ Latin Catholic Church in Cluj-Napoca, that he is very attached to the Latin Church and Liturgy, and that his said minor children know no other Church; that he and his children are very active in the life of _____

_____ Latin parish and wish to normalize their status by formally transferring to the Latin Church; and

WHEREAS, His Excellency, the Most Reverend _____, Eparch of Cluj-Gerla, the Ordinary of the Petitioner, has no objection to this transfer and has granted his *nihil obstat* in writing for the same; and

WHEREAS, the Most Reverend _____, Archbishop of the Archdiocese of Alba-Iulia, is favorably inclined toward said petition; and

WHEREAS, since both the Bishop *ab quo* and the Bishop *ad quem* agree to the petitioned transfer, the permission of the Apostolic See may be presumed according to the authentic interpretation of Canon 112, § 1, 1^o of the *Codex Iuris Canonici* (Cfr. *AAS*, 85 [1993], p. 81) and pursuant to the provisions of Canon 32, § 2 of the *Codex Canonum Ecclesiarum Orientalium*;

NOW, THEREFORE, the Most Reverend _____, Archbishop of the Archdiocese of Alba-Iulia, hereby **GRANTS** permission for _____, together with his minor children under the age of fourteen completed years, namely, _____ and _____, to transfer from the Greek Catholic Church to the Latin Church as requested in his petition.

The transfer(s) will become effective only at the time the Petitioner _____ publicly declares his intention to assume membership in the Latin Church. This declaration is to be made before the local Latin Pastor, Parochial Vicar, or another priest delegated by either of them or by this Chancery, and is to be done within the boundaries of the jurisdiction of these individuals, and in the presence of two (2) witnesses.

The priest before whom the rescript is exercised shall take great care that:

- 1) The transfer be noted as soon as possible in the Baptismal Register of the Latin Catholic parish;
- 2) Notice of the transfer be sent, directly or through the Chancery, to the Pastor of the Church of Baptism. He, in turn, will note the change on the

Record of Baptism, and will inform the sender that the notification has been entered.

Should this rescript not be exercised within six (6) months of the date hereof, the same shall lose all force and shall be of no further effect.

Servatis tamen ceterum de iure servandis.

GIVEN at Alba-Iulia, at the Chancery of the Archdiocese of Alba-Iulia, this _____ day of _____ in the year of Our Lord the Two Thousand and One (*Anno Domini* MMI).

By delegation of the Most Reverend Archbishop:

Very Reverend

Vicar for Administrative and Canonical Services

Attest:

Diocesan Notary

Transmitted for Execution to:
The Reverend

ARCHDIOCESE OF ALBA-IULIA

The Chancery
21 Mihai Viteazul Street
2500 Alba-Iulia, Romania
Tel: (058) 811-689
Fax: (058) 811-454

Prot. No. _____

**PETITION FOR TRANSFER TO ANOTHER
CHURCH *SUI IURIS***

**To His Holiness
Pope**

I, _____, son/daughter of _____
and _____, born at _____ on
_____ 19 ____, and baptized at _____ on
_____ 19 ____, have to this time belonged to the _____ Church
sui iuris.

After prayer, consultation and discernment, I hereby request a transfer of
membership to the Latin Church for the following reasons: _____

This, I declare to be the truth, so help me God.

Signed at _____, this _____ 19 ____.

Signature

I hereby approve.

Signed in Alba Iulia,

the _____

the _____

Archbishop of Alba Iulia

Eparch of

Attach Baptismal Certificate and those of children under fourteen years old,
individual requests of children over fourteen years and baptismal certificates.

ARCHDIOCESE OF ALBA-IULIA

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Prot. No. _____

NOTIFICATION
TRANSFER TO ANOTHER CHURCH *SUI IURIS*

_____,
Name Address
Has obtained permission to transfer from the _____ Church *sui iuris* to the _____ Church *sui iuris*, and will hereafter be regarded as validly enrolled in the _____ Church *sui iuris* with all rights and obligations arising therefrom.

The above mentioned person was baptized on _____ at _____ Church

Address

Please make note of the transfer in your Parish Baptismal Register.

Dated in _____

Chancellor
the _____

One Copy for Annotation in the original Parish Baptismal Records.
One Copy for information to the _____ Eparchy.

ARCHDIOCESE OF ALBA-IULIA

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Prot. No. _____

AGREEMENT
TRANSFER TO ANOTHER CHURCH *SUI IURIS*

Petitioner

has petitioned to obtain permission to transfer from the _____
Church *sui iuris* to the _____ Church *sui iuris*, and hereafter be
regarded as validly enrolled in the _____ Church *sui iuris* with all
rights and obligations arising therefrom.

In accordance with canon 112 of the Latin Code and canon 32 of the
Eastern Code, permission is hereby granted.

The transfer takes effect immediately.

Dated at Alba Iulia

this _____

this _____

Archbishop/Delegate

Eparch/Delegate

ARCHDIOCESE OF ALBA-IULIA

The Chancery
21 Mihai Viteazul Street
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Fax: (058) 811-454

Prot. No. _____

**DECLARATION OF ACCEPTANCE OF TRANSFER
TO ANOTHER CHURCH *SUI IURIS*
AFFIDAVIT**

I, _____, son/daughter of _____ and _____, born at _____ on _____ 19____, baptized at _____ on _____ 19____, and confirmed at _____ on _____ 19____, have, to this time, belonged to the _____ Church *sui iuris*.

Following an agreement between the two Ordinaries dated _____ authorizing my transfer to the _____ Church *sui iuris*, I hereby declare, in the presence of two witnesses, my intention of belonging from this day forward to the _____ Church *sui iuris* with all rights and obligations arising therefrom.

This I declare to be the truth, so help me God.

Signed at _____, this _____ 19____.

Witness

Signature

Witness

Archbishop/Delegate

This Declaration, duly executed, must be returned to the Chancery Office.

ARCHDIOCESE OF ALBA-IULIA

The Chancery

21 Mihai Viteazul Street

2500 Alba-Iulia, Romania

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Fax: (058) 811-454

Prot. No. _____

Dear Father:

Re: TRANSFER TO ANOTHER CHURCH SUI IURIS

_____, has obtained permission to transfer from the _____ Church *sui iuris* to the _____ Church *sui iuris*, and will hereafter be regarded as validly enrolled in the _____ Church *sui iuris* with all rights and obligations arising therefrom.

The transfer takes effect the moment the Petitioner declares to you, in the presence of two witnesses, his/her intention of freely becoming a member of the _____ Church *sui iuris*, and signs the **DECLARATION OF ACCEPTANCE OF TRANSFER TO ANOTHER CHURCH SUI IURIS**.

Please make note of this transfer in your own Parish Baptism Register.
The authorization loses all force six months after the date of its issuance.

Sincerely,

Chancellor

Date: _____

ARCHDIOCESE OF ALBA-IULIA

The Chancery
21 Mihai Viteazul Street
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Prot. No. _____

TRANSFER OF MEMBERSHIP

I, the undersigned _____ born at _____,
son/daughter of _____ and _____ born at
_____, and baptized at _____ Parish,
_____, have to this time been enrolled in the Latin Church.

Following an agreement between His Excellency, Most Rev.
_____, Bishop of _____ and His Excellency, Most Rev.
_____, Bishop of _____ authorizing my transfer to the
_____ Church *sui iuris*, I hereby declare, in the presence of witnesses, my
intention of belonging from this day forward to the _____ Church *sui*
iuris.

This I declare to be the truth, so help me God.

Place

Date,

Petitioner

Pastor (or delegate)

Witnesses

ARCHDIOCESE OF ALBA-IULIA

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Prot. No. _____

DECLARATION OF TRANSFER OF MEMBERSHIP

In accordance with the provisions of canon 112, §2 of the Code of Canon Law for the Latin Church, I hereby declare that I am transferring to the Church *sui iuris* of my spouse.

I kindly request that in accordance with the provisions of canon 535, §2 of the same code a notation of this transfer be made into the baptismal register of

(name and address of church of baptism)
baptism)

(date of

Date
Place

Signature of Transferee

Witnessed by _____

Seal

ARCHDIOCESE OF ALBA-IULIA

The Chancery
21 Mihai Viteazul Street
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Prot. No. _____

**NOTIFICATION OF TRANSFER OF MEMBERSHIP
TO CHURCH OF BAPTISM**

In accordance with the provisions of canons 112, §2 and 535, §2 notification is hereby supplied that on _____, _____
(date) (name of transferee)
declared his/her transfer from the Latin Church to the _____ Church *sui iuris* of his/her spouse. May I kindly ask that the necessary notation be entered into your baptismal register for the transferee. His/her date of baptism was _____.

Date

Pastor (or delegate) of transferee

Seal

ARCHDIOCESE OF ALBA-IULIA

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Prot. No. _____

**CANONICAL INVESTIGATION FOR
TRANSFER OF MEMBERSHIP**

Name of Petitioner _____, address _____
_____, member of the _____ Church *sui iuris*.

Please question the Petitioner as indicated below, giving complete information.

1. How long have been attending the Latin Church?
2. When was your last contact with the Byzantine Church?
3. What was the nature of your last contact with the Byzantine Church?
4. Describe your religious upbringing.
5. Why do you wish to transfer to the Latin Church?
6. How long have you been considering this decision?
7. Were both of your parents members of the Byzantine Church?
8. If you are married, to which Church does your spouse belong?
9. Do you have any children? If so, what are their names and ages?
10. Describe the events that led up to your decision to petition for a transfer of membership (who suggested it, when, why, etc.).
11. Why do you feel that a legal transfer to the Latin Church will benefit your Christian life?

I swear under oath that the above information is true and that I have carefully read the answers I have given and certify their truth by my signature.

Petitioner

Date

(To be answered by the priest-investigator after the petitioner has signed above.)

APPENDIX No. 5
SAMPLE FORMS

248

**I offer the following observations concerning the sincerity and honesty of the
Petitioner:**

Priest-investigator

Date

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