Rite and Liturgical Law in Eastern Canon Law

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Summary: Introduction; I. Liturgical Law as a Basic Element of a "Rite"; 1. The Concept of "Rite"; 2. The Concept of "Liturgical Law"; a) Relationship between "Liturgy" and "Law"; b) Problems Concerning the Notion "Liturgical Law"; 3. The Significance of Liturgy/Liturgical Law within a "Rite" and its Consequences; a) Value and Importance of the "patrimonium liturgicum"; b) Consequences at the Level of Liturgical Law; II. "Rite" as Constitutive Element of an "*Ecclesia sui iuris*"?

Introduction

The following considerations will focus upon the relationship between the concepts of "rite" (c. 28 CCEO), "liturgical law" (cf. cc. 3, 150 § 2, 710, 836, 667, 674 §§ 1 and 2 CCEO) and "*Ecclesia sui iuris*" (ESI, c. 27 CCEO). In order to clarify these relations, the lecture will be subdivided into two major parts: The first one (I.) is dedicated to the liturgical law as a basic element of any rite, and tries to draw some conclusions from the results of the analysis. The second part (II.) deals with the problem of the rite as a substantial element of an ESI and argues with a thesis of Federico Marti.

I. Liturgical Law as a Basic Element of a "Rite"

1. The Concept of "Rite"

C. 28 §1 CCEO reads: Rite is a liturgical, theological, spiritual and disciplinary heritage, which is differentiated by the culture and

the circumstances of the history of peoples and which is expressed by each Church *sui iuris* in its own manner of living the faith.[1]

The elements liturgy, theology, spirituality and discipline as basic elements of a rite are taken from Vat II, especially from LG 23 d; OE 3 and UR 17.[2] All these elements together form, as the heritage of a given Church *sui iuris*, a unity and have to show a certain degree of homogeneity, since, according to the *Instruction for the Application of the Liturgical Prescripts of the Code of Canons of the Eastern Churches* (1996)[3], "si compenetrano e si condizionano a vicenda", "costituiscono altrettanti raggi provenienti dall'unico Signore" (nr. 9). In the liturgy of each ESI all these elements have to flow together, otherwise her patrimony/heritage would run the risk of restricting itself to external formalities (nr. 13).

Due to the circumstances of history as well as to the cultural development of peoples, the basic elements of a rite took shape and continue doing so, in a particular institutionalized form. In other words: "Through rites the Churches express their own specific manner of

1 Cf. Ivan Žužek, "Che cosa è una Chiesa, un Rito Orientale?", in *Seminarium* 27 (1975) 263–277; *Commento al Codice dei Canoni delle Chiese Orientali,* Pio Vito Pinto (ed.), Città del Vaticano 2001, [Dimitrios Salachas] 36–41; Elias Sleman, "De *Ritus* a *Ecclesia sui iuris* dans le Code des Canons des Églises orientales", *L'Année Canonique* 41 (1999) 253–276 (257–267); George Nedungatt, *The Spirit of the Eastern Code,* Rome-Bangalore 1993, 60–84; George Nedungatt, *A Guide to the Eastern Code,* (Kanonika 10) Rome 2002, 110–117.

2 In view of the authentic oriental theological traditions, UR 17 declares that they are firmly rooted in Holy Scripture; that they are nurtured and given expression in the life of the liturgy; they derive their strength from the living tradition of the apostles and from the works of the Fathers and spiritual writers of the Eastern Churches. UR 17 culminates in the declaration, that "*totum hoc patrimonium spirituale ac liturgicum, disciplinare ac theologicum in diversis suis traditionibus ad plenam catholicitatem et apostolicitatem Ecclesiae pertinere".*

3 Congregazione per le Chiese Orientali, *Istruzione per l'applicazione delle prescrizioni liturgiche del Codice dei Canoni delle Chiese orientali* (6 January 1996), Città del Vaticano 1996.

living one and the same faith of the Catholic Church."[4] The process of handing down the heritage of the apostles during history, as well as the contents of this heritage is called "tradition". Therefore, the value and the identity of a particular rite derive from and depend on tradition.[5] Thus, tradition understood as a process, results in giving the specific manner of living the faith within a given community of faithful in a certain historical and cultural context its institutional and juridical shape. Tradition results, with the help of particular law[6] in inculturation.

CCEO lists the five main oriental traditions, from which the different rites derive their origin, in alphabetical order: Alexandrian, Antiochian, Armenian, Chaldean and Constantinopolitan (c. 28 § 2 CCEO). From each one of these traditions, except the Armenian, evolved more than one rite; from the Constantinopolitan at least seven rites.[7] Earlier, these five main traditions have been called "primary rites" or "principal rites"- in contrast to the more particular "minor rites" or "subrites" (secondary rites) derived from them.[8] Nevertheless, there is no absolutely "pure" rite, because rites always have been influenced by more than just one tradition.[9]

4 Nedungatt, *The Spirit* (note 1), 70. "Il rito non viene identificato con la Tradizione, ma è una sua storica e reale espressione", in *Commento al Codice* (note 1), 40. [Salachas]

5 Cf. Natale Loda, "Tradizione, cultura e storia nelle Chiese *sui iuris:* il rapporto con i cc. 27–28 *Codex Canonum Ecclesiarum Orientalium",* in *Folia Canonica* 2 (1999), 161–184 (178); Francisco Martín-Vivas, *L'influenza del trascorso del tempo nell'identità rituale*, in *Cristiani orientali e pastori latini,* Pablo Gefaell (ed.), Milano 2012, 435–449.

6 Cf. Natale Loda, *Il Diritto particolare come strumento di inculturazione,* in *Diritto particolare nel sistema del CCEO. Aspetti teoretici e produzione normativa delle Chiese orientali cattoliche,* Simon Marincák (ed.), Kosice 2007, 13–37.

7 George Nedungatt, *Churches* sui iuris *and rites (cc. 27–41),* in *A Guide* (note 1), 99–128 (114).

8 Nedungatt, *The Spirit* (note 1), 69; Nedungatt, *Churches* sui iuris (note 7), 114.

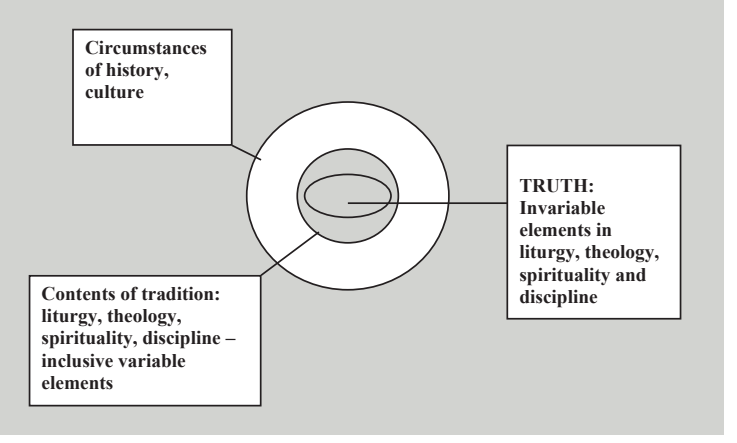
9 Nedungatt, *The Spirit* (note 1), 68 f.

The relationship between the basic elements of a rite, tradition, and the factors that cause the differences between the rites, can be demonstrated by concentric circles[10] as follows:

The innermost circle is formed by the basic elements of a rite (liturgy, theology, spirituality and discipline) which are closely and firmly connected with each other. Each of these elements includes an immutable nucleus which derives from the origin, from the apostolic tradition. Immutability refers to the substance, not necessarily to the form of an element of the heritage.[11] The outer circle means the historical and cultural factors (e.g. mentality, customs and religious culture of a people, language, arts), in which the four elements are imbedded. These factors give rise to the development of different forms of living the faith and are *ex natura rei* changeable.

10 In an analogous way to the „hierarchy of truths" according to Vat II UR 11, which refers to the *diversus nexus (veritatum) cum fundamento fidei christianae.* In my opinion, there is a similar grading of the elements and factors that make up a „rite", in relation to their basic nucleus.

11 To determine the boundary between immutable nucleus and mutable elements of the heritage, is not possible once and for all, but is an ever lasting task of theology and canon law. The problem is very alike to the one of the *ius divinum*. We can never grasp its divine nucleus once and for all (as *ius mere divinum*), but it presents itself always in a human, changeable shape, in human words, that grasp the proper content more or less. To this problem see: Péter Szabó, *Segni di "pluralità teologica" nel CCEO: progressi e limiti,* in Pontificio Consiglio per i Testi Legislativi, *Attenzione pastorale per i fedeli orientali. Profili canonistici e sviluppi legislativi.* Atti della Giornata di Studio tenutasi nel XXV anniversario della promulgazione del Codice dei Canoni delle Chiese Orientali, Roma Sala San Pio X, 3 ottobre 2015, Città del Vaticano 2017, especially 1–8.



A rite is characterized by continuity[12] but not by immutability. Vat II OE 2 establishes that each Church should retain its traditions whole and entire and should adapt its way of life to the different needs of time and place. Vat II OE 6 demands: the legitimate liturgical rite and the established way of life of each Church may not be altered except to obtain for themselves an organic improvement ("ratione proprii et organici progressus"). This need for adaption can affect each of the basic elements of a rite, liturgy too.[13] As Péter Szabó correctly pointed out, the requirement "organic" refers to the authenticity of the rite, not to the method to be followed in restoring the authentic form.[14] The *Instruction* (1996) presents criteria for recovering the authentic

12 Cf. Vat II OE 2: „*ut salvae et integrae maneant uniuscuiusque Ecclesiae seu ritus traditiones";* 4; 6; 24. CC. 39–41 CCEO; *Istruzione* (note 3), nr. 10.

13 Armando Cuva, "Diritto liturgico", in *Nuovo Dizionario di Liturgia,* Domenico Sartore / Achille M. Triacca (ed.), Cinisello Balsamo (Milano) 1988, 342–352 points out "unità, non uniformità", "pluralismo e decentralizzazione" and "progresso, nel rispetto della tradizione" among the specific principles of liturgical law (349 f.).

14 Péter Szabó, *Return to the "Ancestral Traditions" (OE 6[a]),* in *Ostkirchliche Studien* 66 (2017) 2, 256–284 (260).

traditions of any Church's own identity, which in some cases requires to restore the original purity. The organic improvement means, first of all, to take into account the very roots, from which the development of the heritage (*patrimonium*) had startet out. Any modification of a rite has to prove itself as *coherent* with the own tradition and as logic and spontaneous result of the already existing norms (nr. 12).

Both Vat II[15] and CCEO ("nisi aliud constat": c. 28 § 2)[16] leave open the possibility of new rites in the future – new primary as well as new secondary rites.

2. *The Concept of "Liturgical Law"*

a) Relationship between "Liturgy" and "Law"

Only a small number of canonists explains this relationship in detail; most of them content themselves with making short observations without giving reasons. As far as they express an opinion to it, the answers are diverging and in dispute.

In Cyril Vasil's opinion, the norms of the liturgical books do not have *per se* juridical character, but a spiritual and liturgical one. He holds that the CCEO *attraverso numerosi canoni – per così dire – le "canonizza", attribuendo ad esse un valore non solo spirituale e liturgico, ma anche canonico. Tale atteggiamento trova la sua base principale nelle direttive del CCEO cc. 39-41 "De ritibus servandis"*[17]. But he sees

15 The wording in Schema SC 4 „omnes ritus legitime vigentes" has been changed into „ … legitime agnitos" in order to leave open the possibility of new rites: Josef A. Jungmann, Commentary to SC, in *Lexikon für Theologie und Kirche,* Josef Höfer – Karl Rahner (Hrsgg.), Suppl. I, Freiburg/Br. ²1966, 17; Federic M. McManus, "The Possibility of New Rites in the Church", in *The Jurist* 50 (1990) 435–458 (456).

16 Nedungatt, *The Spirit* (note 1), 65, 78 f.

17 Cyril Vasil', *Norme riguardanti l'edizione dei libri liturgici,* in Congregazione per le Chiese Orientali, *"Ius Ecclesiarum Vehiculum Caritatis".* Atti

a *rapporto implicito esistente fra la liturgia e le norme canoniche … testimoniato già dai "sacri canones".*[18]

Dimitri Salachas sticks to the juridical character of the liturgical prescriptions, and gives the following reasons for it: the CCEO often refers to liturgical laws and declares them applicable; the liturgical books belong to the legal order ("vero ordinamento giuridico"), which is necessary for the manifestation of the spiritual life and the real consistency of the Church.[19] But the reasons presented by the Author seem not to be sufficient for substantiating the juridical character of the liturgical books and prescriptions: to say, the references of the CCEO to the liturgical prescriptions are the reason for their juridical character, seems to be a positivistic argument that does not take into account neither the substance of liturgy nor the substance of law. This defect is attached to the theses of Pighin, Cuva and De'paolis-D'auria, too: For Pighin, the liturgical law seems to be a matter of liturgy, not of law.[20] Cuva some years ago held the opinion, the liturgical prescriptions would have a minor (smaller) degree of giuridicity ("una minore giuridicità")[21], compared with norms of law; meanwhile he changed his mind in favour of the acknowledgement of the real ju-

del Simposio Internazionale per il Decennale dell'entrata in vigore del *Codex Canonum Ecclesiarum Orientalium,* (eds.) Città del Vaticano 19–23 nov. 2001, Città del Vaticano 2004, 363–391 (365 f.).

18 Vasil', *Norme* (note 17), 388. Also Gugerotti takes liturgy and law as two different realities: "due generi giustamente e necessariamente diversi per loro intrinseca natura, cioè la liturgia, nel suo modo di essere e di formularsi secondo un genere narrativo o deprecatorio …, e il diritto, per sua natura invece fondato su premesse razionali e ampiamente automotivantesi": Claudio Gugerotti, *Diritto e Liturgia nelle Chiese Orientali Cattoliche,* in *"Ius Ecclesiarum"* (note 17), 263.

19 Dimitri Salachas, "Le prescrizioni liturgiche del *Codice dei Canoni delle Chiese Orientali* alla luce dell'Istruzione della Congregazione per le Chiese orientali (6 gennaio 1996)", in *Ecclesia Orans* 15 (1998) 239–273 (242).

20 Bruno Fabio Pighin, *Diritto sacramentale,* Venezia 2006, 26–31 (40).

21 Cuva, *Diritto liturgico* (note 13), 345.

ridical character ("valor jurídico") of liturgy.[22] Also De Paolis-D'Auria in their Commentary on the General Norms of the Latin Code assert the juridical character of the liturgical norms: "Va osservato che con l'espressione 'diritto liturgico' non si intende un diritto diverso, per il suo valore normativo, da quello contenuto nel codice; si dice quindi "liturgico" solo per il suo contenuto."[23] But all these Authors go without explaining the reasons for their assessments. As Peter Krämer states, liturgy and law are not "zwei Wirklichkeiten, die erst im nachhinein einander zugeordnet werden müssten. Vielmehr entsteht Recht bereits aus liturgischen Vollzügen selbst" – e.g. the human person becomes a member of the Church by baptism.[24]

To verify or to refute the juridical character of the liturgical prescriptions requires connecting the essence and concept of liturgy with the essence and concept of law. The Authors which followed this method claim the juridical character of the liturgical prescriptions: Bruno Esposito[25], Eduardo Baura[26], Carlos J. Errázuriz[27], Massimo Del Pozzo[28].

22 Armando Cuva, "Ley litúrgica", in *Diccionario General de Derecho Canónico,* Javier Otaduy – Antonio Viana – Joaquín Sedano (dir.), Pamplona 2012, vol. V, 93–96 (93).

23 Velasio De Paolis – Andrea D'Auria, *Le Norme Generali. Commento al Codice di Diritto Canonico,* Città del Vaticano ²2014, 71 (note 6).

24 Peter Krämer, "Das Zueinander von Recht und Pflicht im Gottesdienst. Kirchenrechtliche Überlegungen", in *Liturgisches Jahrbuch* 53 (2003) 3–22 (3).

25 Bruno Esposito, "Il rapporto del Codice di diritto canonico latino con le leggi liturgiche. Commento esegetico-sistematico al can. 2 del CIC/1983", in *Angelicum* 82 (2005) 139–186 (164): "Ovviamente il Diritto liturgico è parte del Diritto Canonico e quindi ha lo stesso carattere di giuridicità."

26 Eduardo Baura, *Il sistema normativo liturgico. Natura e tipologia del provvedimenti regolativi del culto,* in *Diritto e norma nella liturgia,* Eduardo Baura – Massimo Del Pozzo (ed.), Milano 2016, 217–252.

27 Carlos José Errázuriz M., *L'intrinseca doverosità liturgica e giuridica del culto ecclesiale,* in *Diritto e norma* (note 26), 29–58 (also in *Ius Ecclesiae* 28 [2016] 301–322).

28 Massimo Del Pozzo, *La dimensione giuridica della liturgia. Saggi su ciò che è giusto nella celebrazione del mistero pasquale,* Milano 2008; Idem, "La dovero-

"Liturgy"[29] stands for the public exercise of the priestly office of Christ, directed to the glory of God ("anabatical dimension") as well as to man's sanctification ("katabatical dimension") under the guise of signs perceptible by the senses. As full public worship, every liturgical celebration is an action of Christ and of the Church, and is performed "*nomine Ecclesiae a personis legitime ad hoc deputatis et per actus ab auctoritate ecclesiastica approbatos*" (c. 668 § 1 CCEO). The Church has the duty to administer the sacraments and all the other spiritual goods ("*Ecclesia dispensare tenetur*": c. 667 CCEO); the faithful have the fundamental right to receive spiritual help from the pastors, especially the word of God and the Sacraments: c. 16 CCEO (c. 213 CIC).[30]

The essential elements of "law", on the basis of Thomas Aquinas' doctrine that can be described as "juristic realism"[31], are: interpersonal relationship ("*alteritas*"), "*suum cuique tribuere*": the obligatory character of a "*debitum ex iustitia*" ("*ipsa res iusta*") on the basis of a "title" as reason for the obligation (e.g. a treaty, unlawful damage etc.). Law is therefore an internal element of interpersonal relations.[32] Also the spiritual goods, especially the Word of God and the Sacraments, are a matter/object of a duty to administer as well as of a right to receive.

tà liturgica, morale e giuridica del culto ecclesiale", in *Ius Ecclesiae* 21 (2009) 549–568; Idem, *Autorità ecclesiastica e diritti dei fedeli nella liturgia,* in *Diritto e norma* (note 26), 111–154.

29 Vat II SC 7; cc. 667 f. CCEO; c. 834 §§1 and 2 CIC; CCC 1066–1075. Cf. Salvatore Marsili, "Liturgia", in *Nuovo* (note 13), 676–692; José Luis Gutiérrez-Martín, "Liturgia", in *Diccionario* (note 22), 201–207; Michael Kunzler, *Die Liturgie der Kirche* (Amateca – Lehrbücher zur katholischen Theologie, vol. X), Paderborn 1995.

30 Astrid Kaptijn, *Il diritto al rito liturgico,* in *Diritto e norma* (note 26), 155–189.

31 STh II–II q. 57. Cf. Jean-Pierre Schouppe, *Le réalisme juridique,* Bruxelles 1987; Carlos J. Errázuriz, *Il diritto e la giustizia nella Chiesa. Per una teoria fondamentale del diritto canonico,* Milano 2000.

32 Errázuriz, *Il diritto e la giustizia* (note 31), 95–99.

Liturgy, in particular its salvific dimension, moves within interpersonal relations with rights and duties on the part of Church's Authority as well as on the part of the faithful[33] who seeks the spiritual goods, on the basis of a special divine "title", the sanctifying office of the Church. Therefore, liturgy as such is a juridical good and is an object of a "*debitum ex iustitia*", in other words: liturgy has an intrinsec juridical dimension. Hence, the liturgical prescripts are "law" in the proper sense of the word, not because the Codes issues rules on liturgical matters, but due to the juridical (interpersonal and obligatory) character of the liturgy itself.[34]

But the nature of liturgy does not consist only of law; liturgy surpasses law from several points of view: the effect of the sacramental signs and acts goes far beyond the juridical consequences; the spiritual and salvific dimension and the giving of divine grace surpass the level of law. Liturgy is the most evident and most dense manifestation of what LG 8/1 calls the complex divine-human reality which is the Church.

b) Problems Concerning the Notion "Liturgical Law"

Whoever tries to define the "liturgical law", meets immediately with a whole string of problems: The oriental Code uses many differ-

33 del Pozzo, *Autorità ecclesiastica* (note 28); Kaptijn, *Il Diritto al rito* (note 30); Errázuriz, *L'intrinseca doverosità* (note 27); Krämer, *Recht und Pflicht* (note 24); Tomás Rincón-Pérez, "Derecho administrativo y relaciones de justicia en la administración de los sacramentos", in *Ius Canonicum* 28 (1988) 59–84; Paolo Moneta, "Il diritto ai sacramenti dell'iniziazione cristiana", in *Monitor Ecclesiasticus* 115 (1990) 613–626.

34 Baura, *Il sistema* (note 26), 218–228. The *Instruction for the Application of the Liturgical Prescriptions* (1996) clearly confirmes this result, since it declares, in view of all kinds of liturgical rules (liturgical books, norms of the *ius commune* and *ius particulare* in liturgical matters): "Tutte queste prescrizioni, quelle del Diritto comune come quelle del Diritto particolare, hanno forza di legge" (Nr. 26).

ent expressions, such as *praescripta librorum liturgicorum (*cc. 3, 710, 836), *leges liturgicae* (c. 150 § 2), *libri liturgici* (c. 657), *quae in libris liturgicis continentur* (c. 674 § 1), *praescripta liturgica* (c. 674 § 2), *textus liturgici* (c. 657) etc. Besides that, in terms of content the norms of CCEO refer to liturgical matters in many different ways: e.g. c. 3 arranges the relationship between the Code and the liturgical law outside the Code;[35] other canons affect directly a liturgical action (as in cc. 698, 706, 718, 775 § 1), or they rule external aspects of liturgy, such as cc. 672 §§1 and 2, 673, 688-691, 203-705); others refer to the particular (liturgical) law of the ESI (cc. 377 f.), or require the approbation of liturgical books and rule competences in liturgical matters (e.g. cc. 655-657, 668 f.).[36] Are all these kinds of rules "*leges liturgicae*"?

And finally, if we compare the Canons of the CCEO that in some way refer to liturgy, with the liturgical books from the point of view of (legal) language, we notice immediately a great difference: the liturgical books do not make use of the legal language (formulating *canones* for establishing rights, duties, legal consequences); they rather describe how to carry out liturgical ceremonies and refer prayers and other religious texts. Especially this characteristic of liturgical prescriptions made Latin canonists distinguish between "liturgical law in a wider sense" (liturgical-disciplinary law) and "liturgical law in a narrower sense" (mere liturgical law).[37] The first type is to be found

35 Cf. Lorenzo Lorusso, "Il rapporto del Codice dei Canoni delle Chiese Orientali con le prescrizioni dei libri liturgici. Commento al Can. 3 del CCEO", in *Folia Canonica* 8 (2005) 163–182.

36 The canons of the CCEO, that in some way affect the matter "liturgy" are compiled in Lorusso, "Il rapporto" (note 35), 175–180.

37 Cf. Heribert Jone, *Commentarium in Codicem Iuris Canonici,* Paderborn 1950, vol. I, 15; Marcel Noirot, "Liturgique (droit, dans l'Église latine)", in *Dictionnaire de droit canonique,* René Naz (par), VI, Paris 1957, 535–594 (561); Petrus Palazzini, "Ius liturgicum", in *Dictionarium morale et canonicum,* vol. II, Romae 1965, 891; Esposito, Il rapporto (note 25), 163 f.; in *Münsterischer Kommentar zum Codex Iuris Canonici,* Klaus Lüdicke (Hrsg.), Essen 1985ss, I,

primarily in the norms of the Codes in liturgical matters, and does not rule liturgical ceremonies as such, but disciplinary items of the liturgy (conditions for the validity and "*liceitas*", protective norms in favour of the liturgy etc.). The last one regulates the liturgy as such, primarily in the form of liturgical books.

Some scholars regard only the liturgical-disciplinary rules as "law", whereas the liturgy and the liturgical books are considered as being a non-juridical reality. For this reason, Massimo Del Pozzo refutes the before mentioned distinction. In his view all kinds of liturgical prescriptions, independently where they are to be found - in a Code or in a liturgical book – are "law" respectively have juridical character.[38] By holding up this view, Del Pozzo, in my opinion, overshoots the mark. In my opinion, he correctly claims the juridical character of any kind of liturgical prescriptions, but at the same time he overshoots the mark by refuting the distinction between liturgical disciplinary and liturgical law. In other words, this distinction between liturgical-disciplinary and liturgical norms is essential and indispensable at least for the following reason.

The methodical rules regarding the interpretation, the "*lacunae legis*" ("gaps" in the law) and the application of laws (cc. 1499-1501 CCEO) cannot be applied, *ex natura rei,* to the *praescripta librorum liturgicorum* (liturgical laws in the narrow sense of the word) in the same way as they are applicable to the liturgical-disciplinary laws: the method has always to comply with the object in question.[39] As is known, the

(nr. 3) *[Hubert Socha]*; de Paolis – D'Auria, *Le Norme Generali* (note 23), 72 f.; *Communicationes* 3 (1971) 83; 5 (1973) 42 f.; 23 (1991) 110.

38 del Pozzo, *La dimensione giuridica* (note 28), 51 f. In his opinion, the distinction would be a positivistic shortening and would finally mean: the more something is authentically liturgical, the less the same thing is juridical.

39 Cf. Rainer Carls, "Methode", in *Philosophisches Wörterbuch,* Walter Brugger/ Harald Schöndorf (ed.), Freiburg i.B. 2010, 301–303. To interpret the mere liturgical law according to its own principles does not mean to refute its immanent juridical character. The liturgical laws are, by their very nature, at the

mere liturgical law, e.g. the Divine Liturgy according to John Chrysostomus[40], is to be interpreted according to the theological principles of the liturgy itself. They are to be found in the liturgical books, in official documents of the *Magisterium* relative to liturgy, such as: Vat II SC; LG 23, UR 14-17, OE 5, 6, 12-29; and last but not least in the *Instruction for the application of the liturgical prescripts* of 1996[41].

In contrast to that, the legal rules concerning the coming into force of a law (promulgation, cc. 1488-1490 CCEO), the authentic interpretation (c. 1498 CCEO), the non-delegability of legislative power (c. 985 § 2 CCEO) as well as the derogation of laws and customs (cc. 1502 f., 1509 CCEO), find application to the liturgical prescriptions (books), too.[42]

How is the distinction to be made between the two types of liturgical law? The assignment of a given liturgical norm to the one or the other type does evidently not depend on the source of the norm

same time liturgical and juridical; in the mere liturgical laws the juridical character is implicit and, due to the shape of liturgical acts, not always apparent, although present, since the meaning and the effects of a liturgical act always exceeds and surpasses its juridical meaning and consequences, as has been already said; on the contrary: in the liturgical-disciplinary law, the juridical character is explicit and apparent.

40 *Die göttliche Liturgie unseres Heiligen Vaters Johannes Chrysostomus,* München-Eichstätt-Paderborn 2013.

41 Nr. 4 speaks about "principi e norme" that have to be applied in the field of the oriental liturgies. Nr. 5 declares, the Instruction wants to prevent the risk that the liturgical laws could remain "ignorate, mal coordinate e mal interpretate". Thus the Instruction is one of the main keys for the interpretation of the liturgical norms, especially of the mere liturgical law.

42 Cf. Esposito, *Il rapporto* (note 25), 177–184. Although Esposito deals with c. 2 of the Latin Code, his arguments seem to be applicable to the oriental law, too – due to the far reaching correspondence of the respective rules. Baura, Il sistema normativo liturgico (note 26) takes also the rules on interpretation as applicable to the liturgical prescriptions of any kind; but he does not give any reasons for this assessment (236).

(liturgical book or Code) since in some cases the Code regulates a liturgical question in the narrowest sense of the word, and vice versa liturgical books sometimes contain commands and prohibitions. The assignment follows the content of the norm, even in the case, that the norm encompasses disciplinary as well as pure liturgical elements: if they are separable from each other, each element has to be interpreted according to its own method; if they are not separable – as e.g. c. 706 CCEO that deals with the requirements and qualities of bread and wine as essential for the validity of the Divine Liturgy – the interpretation, in case of a doubt, has to be carried out in a way that meets both the theological and the juridical criteria as much as possible.

3. *The Significance of Liturgy/Liturgical Law within a "Rite" and its Consequences*

a) Value and Importance of the "patrimonium liturgicum"

As the *Instruction* (1996) points out, the Oriental Churches "nei testi (dei Padri) e nello spirito mantengono il senso della liturgia come dossologia incessante, come richiesta di perdono e come epiclesi ininterrotta con formule insieme ricche e suggestive. Esse vantano una spiritualità direttamente attinta alla Sacra Scrittura. … Per ragioni storiche e culturali esse hanno mantenuto una più immediata continuità con l'atmosfera spirituale delle origini cristiane…" (nr. 9). The liturgy – "*la fede celebrata*" (nr. 23) - is the most outstanding manifestation of the whole heritage of an *Ecclesia sui iuris* (nr. 13); their liturgical heritage is the source of their identity (nr. 16). Nr. 14 which dedicated to the "eminenza della liturgia", declares: "L'intero ambito liturgico ricopre nella Chiesa, fin dei suoi albori, un ruolo di assoluta centralità."[43]

43 The text continues: „il senso vivo che tutta la vita nuova di fede culmini nella grande azione di culto di Cristo e della Chiesa a lui unita, è infatti un elemento fondante già a partire dall'età apostolica" (nr. 14). Cf. Péter Erdő, "Le liturgie

The high value of the liturgy finds expression in a huge number of canons which either regulate a liturgical matter directly or indirectly (e.g. protecting liturgy or establishing competencies) or refer to the liturgical prescriptions or books[44], and, in particular, in the importance of these rules. This importance can be read from norms like c. 3 – its systematic position in the CCEO (similar to c. 2 CIC) is worth noting – and all the other canons which underline and insist on the compliance with the liturgical prescriptions[45] as well as the numerous rules in favour of the protection of the liturgy and its authenticity[46].

To the liturgical heritage, as an important or even outstanding element of a "Rite", normally is given the first place in the official texts, like in Vat II OE 3, c. 28 § 1 and c. 406 CCEO, which try to list the key elements of a rite.[47]

orientali dopo la *Sacrosanctum Concilium* – Aspetti teologici e giuridici", in *Folia Theologica et Canonica* (2013), 147–158 (155). "La liturgia esprime la teologia, la spiritualità e la disciplina della Chiesa sui iuris": Lorenzo Lorusso, *Gli orientali cattolici e i pastori latini. Problematiche e norme canoniche* (Kanonika 11), Rome 2003, 155. Cf. Loda, *Tradizione* (note 5) 174 f.

44 Cf. Ivan Žužek, *Index Analyticus CCEO* (Kanonika 2), Roma 1992: you can find there the canons which explicitly refer to liturgical items, like "Divina Eucharistia" (100 f.), "Libri liturgici" (181) etc. But to get a complete picture of the presence of liturgical items in CCEO, you have to take into account also the canons which only in terms of content refer to liturgical issues without using a typical liturgical term, like c. 403 § 2 CCEO. Norms that touch liturgical matters, evidently are not limited to Title XVI (*De cultu divino et praesertim de sacramentis*). As for the liturgical books: Erdő, *Le liturgie orientali* (note 43), 150–156; Péter Szabó, "I libri liturgici orientali e la Sede Apostolica. Sviluppo della prassi e stato attuale", in *Folia Canonica* 7 (2004), 261–287; Andriy Tanasiychuk, "I libri ecclesiastici nell'attuale legislazione orientale", in *Nikolaus* 35 (2008), 157–175; A. Raes, "Livres liturgiques des èglises orientales", in *Dictionnaire* (note 37), (1957) 606–610.

45 E.g. cc. 3, 39–41 (implicitly), 150 § 2, 199 § 1, 200, 278 § 1, 3°; 289 § 2, 309, 403, 674 §§ 1 and 2 CCEO.

46 Like cc. 668 § 2, 669, 655 § 3, 656, 657, 1442, 1443 CCEO.

47 Cf. Vasil', *Norme riguardanti* (note 17), 366. Explicitly referring to the liturgical heritage, Elias Sleman makes the following remark: "Étant la plus popu-

From an ecumenical point of view, the rite, in particular the common liturgical heritage[48] results to be an essential factor within the process of fostering the unity of the Church. The Eastern Catholic Churches have a special duty ("*speciale munus*") of promoting the unity of all Christians, especially Eastern Christians, according to the principles of ecumenism … by religious fidelity to the ancient Eastern traditions (OE 24). Thus, the rite is not only a substantial element of each ESI, but is, and has to remain the common heritage of the respective Eastern tradition, shared between Catholic and non-catholic Churches.[49]

b) Consequences at the Level of Liturgical Law

The outstanding importance of the liturgical law as key element of each rite and in the life of the oriental Churches results from the basic and central position that holds liturgy in the religious life of these Churches.[50]

laire et la plus pastorale des quatre composantes religieuses du 'rite', elle est à la base de la definition du 'rite' dans le *CCEO*. C'est pourquoi, il est le premiere element évoqué dans le can. 28 § 1. Pourtant il est un element parmi d'autres qui constituent le mot 'rite'": Sleman, "De *Ritus"* (note 1), 260.

48 *Instruction* (1996) nr. 21 on "valore ecumenico del patrimonio liturgico comune": "In ogni sforzo di rinnovamento liturgico si dovrà pertanto tenere conto della prassi dei fratelli Ortodossi, conoscendola, stimandola ed allontanandosene il meno possible per non accrescere le separazioni esistenti, ma anzi intensificando gli sforzi in vista di eventuali adattamenti, da maturare ed operare congiuntamente." Cf. Sleman, "De *Ritus"* (note 1), 258–267.

49 Sviatoslav Shevchuk, "Le Chiese orientali cattoliche e il loro ruolo nel dialogo ecumenico con gli ortodossi", in *Ephemerides Iuris Canonici* 51 (2011), 257–269. Cf. Guideline nr. 3 on the ecumenical character of the Eastern Catholic Code: Nuntia 3, 18–24; cf. Sunny Kokkaravalayil, *The Guidlines fort he Revision of the Eastern Code: Their Impact on CCEO* (Kanonika 15), Rome 2009, 179–216; Hèctor Vall Vilardell, *Il ruolo teologico ed ecclesiologico delle Chiese Orientali Cattoliche nel Dialogo Ecumenico tra Oriente e Occidente,* in *"Ius Ecclesiarum"* (note 17), 975–987.

50 Cf. Vat II UR 15; *Orientale lumen* (2.5.1995), Nr. 6 and 11; *Instruction* (1996), nr. 2, 14–16.

The following three examples should make apparent the basic value of liturgical law in the life of each oriental Church.

1. To issue laws and other binding norms in liturgical matters is an essential element of the Power of Governance and belongs to the key competencies of the respective offices. In contrast to other matters, the competence in liturgical affairs is always explicitly and specially provided: at the level of the *ius commune* (competence of the Holy See): cc. 668 § 2, 669 CCEO. At the level of the ESI the Patriarch/ Major Archbishop, who needs the recognition of the Apostolic See and the consent of the Synod of Bishops, and also the Metropolitan of a Metropolitan ESI after the recognition by the Holy See and with the consent of the *Consilium Hierarcharum*.[51] The Eparchial Bishop is not primarily a legislator in liturgical matters, but has the duty to be "*moderator, promotor atque custos*" of the whole liturgical life of his eparchy (cf. CD 15); he has to ensure that liturgy is promoted, ordered and carried out according to the liturgical prescriptions as well as to the lawful customs of the own ESI.[52] In this way, the Bishop participates in the higher authority which rules the liturgy of his ESI.[53] Only within these restricted bounds could the Bishop establish rules in liturgical matters. This is the most obvious manifestation of the basic importance of the (higher) liturgical law.
2. The object of the fundamental right of the faithful "*ut cultum divinum persolvant secundum praescripta propriae Ecclesiae sui*

51 *Instruction* (1996) nr. 22. As for the particular law in matters of public worship: Salachas, *Le prescrizioni liturgiche* (note 19), 244–247. The *Instruction* (1996) provides that the ESI should issue their own liturgical *Directories* on the basis of the common principles laid down in the *Instruction* (nr. 5–6).

52 C. 199 § 1 CCEO; *Instruction* (1996) nr. 23.

53 *Instruction* (1996) nr. 23.

iuris"[54] are the liturgical prescriptions of their own ESI. At the same time, they are obliged to observe everywhere their own rite, except for expressly foreseen cases (c. 40 § 3 CCEO).[55] The aforesaid right completes the right to receive the salvific goods (c. 16 CCEO) and results to be a manifestation of religious freedom within Church.[56] On the part of the minister there is the corresponding obligation to celebrate "*secundum praescripta liturgica propriae Ecclesiae sui iuris"* (c. 674 § 2 CCEO).[57]

3. C. 150 § 2 CCEO runs: "*Leges a Synodo Episcoporum Ecclesiae patriarchalis latae et a Patriarcha promulgatae, si leges liturgicae sunt, ubique terrarum vigent…"* This rule, the only one that uses "*leges liturgicae*" within CCEO, clearly displays the importance of liturgical law not only from theological or theoretical reasons, but also at the practical level; and gives rise to the following questions:
   Liturgical laws have the force of law all over the world, throughout the Patriarchal Church, also outside its territory – in contrast to disciplinary laws and decisions. This world-wide effectiveness is guaranteed by other norms, too: cc. 17, 657 §§

54 C. 17 CCEO. Cf. Kaptijn, *Il diritto al rito liturgico* (note 30). The author brings out that the canon, as well as c. 214 CIC, encompasses two rights that are closely connected with each other, but differ from each other due to the different object. Cf. also Daniel Cenalmor, *Comment on c. 214 CIC,* in *Comentario exegético al Código de derecho canónico,* Ángel Marzoa – Jorge Miras – Rafael Rodríguez Ocaña (dir.), Pamplona [1996], II, 99–108. Cf. cc. 31, 38, 1465 CCEO; c. 112 § 2 CIC (new version).

55 Exceptions are, e.g. cc. 403 § 1; 883 CCEO.

56 Cf. Salachas, *Le prescrizioni liturgiche* (note 19), 249 f.

57 All others than the competent authority it is strictly prohibited to add, remove or change anything in matters of liturgy: c. 668 § 2 CCEO. Cf. Vat II SC 22 § 3; CCC nr. 1125. The faithful have therefore the right, that liturgy be celebrated authentically and unadulterated.

1 and 2, 674 § 2 CCEO.[58] The reason is the duty of all faithful to observe everywhere their own rite (c. 40 § 3 CCEO) and the obligation of the Patriarchs and Hierarchs to take care for the faithful preservation and accurate observation of their rites (c. 40 § 1 CCEO), as was the case already according to CS c.1 § 1.[59] What is the meaning of "*leges liturgicae*" in c. 150 § 2 CCEO? The canon itself confronts *leges liturgicae* with *leges disciplinares.* Undoutedly, the norm refers exclusively to liturgical "laws" (*leges*), not to customs (*ius consuetudinarium*). John Faris rightly makes the following remark: "The division between a liturgical law and a disciplinary law is not as self evident as one might presume; for example, is the minimum age required for a sponsor on the occasion of baptism a liturgical law or a disciplinary law?"[60] In my opinion, the key point is: Do the liturgical-disciplinary laws belong to the liturgical laws or to the disciplinary laws?

An old rule of interpretation in Canon Law says: *Ubi lex non distinguit, nec nostrum est distinguere.*[61] This argument results in the interpretation of "*leges liturgicae"* as encompassing the liturgical laws (in a narrow sense) as well as the liturgical-disciplinary laws. This interpretation is confirmed by the following arguments:

58 Cf. Carl Gerold Fürst, "Die Bedeutung des *Codex Canonum Ecclesiarum Orientalium* für die ostkirchliche Diaspora", in *Österreichisches Archiv für Kirchenrecht* 42 (1993), 345–375 (361).

59 Cf. John D. Faris, Cc. 55–150, in Nedungatt (ed.) *A Guide* (note 1), 155–200 (196).

60 John D. Faris, *The Particular Law of the Maronite Church with a Special Focus on Territorial Restrictions,* in *Particular Law,* Richard Potz – Eva *Synek* (Hrsg.), in *Kanon* [Jahrbuch der Gesellschaft für das Recht der Ostkirchen], Band XXIII, Hennef 2014 [= Università degli Studi di Bari – Istituto di Teologia Ecumenico – Patristica "San Nicola", «Leggi particolari e questioni attuali nelle Chiese», XXI° Congresso della Società per il Diritto delle Chiese Orientali, Bari 10–13 settembre 2013], 88–108 (98 f.).

61 Cf. L. de Mauri, *Regulae Iuris,* Milano [11]1936 (rist. 1990), 136.

The canon does not use the words *praescripta librorum liturgicorum* or an equivalent expression, that clearly refers only to liturgycal law in the narrow sense of the word. Whenever the CCEO refers exclusively to the contents of the liturgical books, it never uses "*leges liturgicae".*

Besides that, the liturgical norms of a given ESI form a complex unity, whose elements are interrelated and coherent. Thus, reduce the meaning of "*leges liturgicae*" in c. 150 § 2 to liturgical laws in the narrow sense would tear and destroy the coherence of the liturgical heritage of this ESI.

Last, but not least, this interpretation is confirmed by the rules on the competencies in liturgical matters: The Patriarch (with the consent of the Synod of Bishops and prior *recognitio* of the Holy See) is entitled to regulate liturgical matters ("*ordinatio cultus divini publici"):* c. 668 § 2 CCEO. This competence encompasses not only the right to publish liturgical books, since that is especially provided in c. 657 CCEO.[62] The "*ordinatio*" of c. 668 § 2 must go beyond and is to be understood as a competency on its own, also in terms of content.

Therefore, "*leges liturgicae*" in c. 150 § 2 CCEO stands for the liturgical law in the narrower sense as well in the sense of "liturgical-disciplinary law", and encompasses both kinds. There are no counter-arguments to be found in *Nuntia:* Neither the question of the competencies in liturgical matters nor the expression "*leges liturgicae*" gave rise to specific discussions. Only the worldwide binding character of the liturgical laws has always been beyond any doubt.[63]

62 To the history and the development of the rules concerning the edition of liturgical books: Vasil', *Norme riguardanti* (note 17), 371–391.

63 Cf. Nuntia 6, 31 f. At the suggestion of the Secretariat, the expression „*praescripta librorum liturgicorum*" has been accepted: *Nuntia* 22 (1986), 14 f. As for the work in the revision of the oriental Code on this matter: Ivan Žužek, *Canons concerning the Authority of Patriarchs over the Faithful of their own Rite*

> The Synod of Bishops is not entitled to legislate *in re liturgica.* This competence rests upon the Patriarch, who needs the prior *recognitio* of the Holy See and the consent of the Synod of Bishops. Therefore the wording of c. 150 § 2 *Leges a Synodo Episcoporum latae, si leges liturgicae sunt* is incorrect and incompatible with c. 668 § 2 CCEO.[64] This competence of the Patriarch belongs to his powers that he is entitled *iure communi* to exercise all over the world according to c. 78 § 2 CCEO.
> Each ESI has its own liturgical laws. Although they derive from and belong to one of the five main rites, they are also a factor of identity of the ESI at the level of the secondary rites. More ESI can participate in the same main ("mother"-) rite, as results from c. 27 CCEO, that doesn't require any kind of exclusivity of rites related to ESI.
> At the same time, each ESI can and should develop its liturgical law in the way of an "organic progress" (OE 6).[65]

II. "Rite" as Constitutive Element of an "*Ecclesia sui iuris*"?

The legal definition of "ESI" in c. 27 CCEO doesn't mention the element "rite". This is vehemently criticised by Federico Marti in

who live outside the Limits of Patriarchal Territory, in Id., *Understanding the Eastern Code* (Kanonika 8) Roma 1997, 29–69 (52–69).

64 Lorenzo Lorusso seems to overlook this fact, when he says:"Nelle Chiese patriarcali, il culto divino pubblico è regolato dal Sinodo dei Vescovi della Chiesa patriarcale …Spetta allo stesso Sinodo, secondo il can. 150 § 2, emanare leggi liturgiche, promulgate dal Patriarca …": Lorenzo Lorusso, "Il rapporto del Codice dei Canoni delle Chiese Orientali con le prescrizioni dei Libri liturgici. Commento al can. 3 del CCEO", in *Folia Canonica* 8 (2005), 163–182 (170). The *Instruction* (1996) correctly lists the Patriarch (with the consent of the Synod of Bishops) as the responsible authority at the level of the ESI (nr. 22).

65 Cf. *Instruction* (1996) nr. 11, 12. Cf. Salachas, *Le prescrizioni liturgiche* (note 19), 244–247.

his interesting and challenging reflections about the canonical and ecclesiological nature of suprametropolitan structures and in particular about the very notion of ESI and Eastern Catholic Church.[66] His main arguments are: C. 27 CCEO created "*una nozione esclusivamente canonico-positiva",* that is different from *ecclesia ritualis sui iuris* as well as from *Ecclesia particularis seu ritus* used in Vat II. Being an exclusively juridical definition, "ESI" would be evidently inadequate and unsuited for expressing the full reality of a catholic oriental Church.[67] It would be necessary to distinguish clearly between the concept of an oriental church *quale realtà ecclesiologica e dunque ecclesiofania* and the concept of "ESI". The latter is nothing but an external juridical form (*forma giuridica esteriore*), a *status* conferred by the Supreme Authority to a reality ecclesiologically already existent (independent of this Authority).[68] Before becoming ESI, they are "ritus" (*patrimonium* according to c. 28 CCEO), since it is the rite that makes an *Ecclesia particularis seu ritus* out of a *coetus fidelium,* not the decision of the Supreme Authority.[69] A consequence of the essential importance of the rite as *causa formalis* of an oriental Church seems to be, for Marti, that each ESI has to correspond to the basic ecclesiological reality; in other words: a particular rite (e.g. the Byzantine) can give rise only to one ESI.[70] And finally the Author argues: a rite

66 Federico Marti, "Le strutture giurisdizionali sovrametropolitane delle Chiese cattoliche orientali. Spunti per una riflessione circa la loro natura canonica ed ecclesiologica", in *Ius Ecclesiae* 27 (2015), 83–104.

67 Marti, *Le strutture* (note 66), 90 f.

68 Marti, *Le strutture* (note 66), 92 f.

69 Marti, *Le strutture* (note 66), 94.

70 Marti, *Le strutture* (note 66), 95. „Il fatto che la realtà mostri diverse *ecclesiae sui iuris* che condividono lo stesso identico rito, non smentisce ma conferma quanto qui si va sostenendo, ossia che quello di *ecclesia sui iuris* è semplicemente uno status giuridico e come tale può essere applicato, seppur in maniera impropria, a prescindere da una effettiva corrispondenza con la realtà ecclesiologica sottostante" (95).

has also an innate juridical dimension ("il *ritus* ha anche una nativa dimensione giuridica").[71]

This thesis gives rise to critical questions and has, in my opinion, to face at least the following counterarguments.

The ecclesiological and the juridical character of an oriental church are not two "realities" that could be separated from each other. They are rather two different aspects of the same reality (a particular Church). An ESI without a rite cannot exist or be acknowledged[72] as "ESI" by the Holy See. Therefore, c. 27 CCEO is not an exclusively positive, juridical and external form (a form without matter, a body without soul), as Marti assumes. C. 27 CCEO must be seen and interpreted together with c. 28 CCEO; c. 27 presupposes the rite in each ESI, but doesn't intend to present an ecclesiologically exhausting definition. C. 27 presents the *form,* c. 28 the *matter*. Both rules form an inseparable unity.[73] "Le can. 28 § 1 fait le lien entre 'rite' et *Ecclesia sui iuris.* Par le 'rite' la manière propre des divers peoples 'de vivre la

71 Marti, *Le strutture* (note 66), 102.

72 It would exceed the purpose of this contribution to enter into the discussion about some open questions relative to the act of acknowledgement, such as the problem of a tacit acknowledgement (cfr. c. 27 CCEO); the juridical status of a group of faithful that shares a rite not yet existing within the Catholic Church, prior to the acknowledgement by the *suprema Ecclesiae auctoritas* (are they *Ecclesiae orientales* in the sense of c. 1 CCEO?); or the juridical status of those "ceterae Ecclesiae sui iuris" according to cc. 174–176 CCEO, which do not (yet) have an own hierarchy (*Ecclesiae sui iuris in fieri* according to Péter Szabó): cf. Péter Szabó, *L'attività legislativa sui iuris delle Chiese "minori" di tradizione bizantina,* in Pontificio Consiglio per i Testi Legislativi, *Il Codice delle Chiese orientali. La storia, le legislazioni particolari, le prospettive ecumeniche,* Città del Vaticano 2011, 305–344 (308–311); Luis Okulik, Configurazione canonica delle Chiese orientali senza gerarchia, in Id., (a cura di), *Le Chiese* sui iuris. Criteri di individuazione e delimitazione, Venezia 2005, 209–228.

73 Cf. Ivan Žužek, Le "Ecclesiae sui iuris" nella revisione del Diritto Canonico, in Žužek, *Understanding* (note 63), 94–109 passim; Pablo Gefaell, *Le Chiese* sui iuris: *"Ecclesiofania" o no?*, in *Le Chiese* sui iuris (note 72), 7–26.

foi est manifestée dans chaque Église *sui iuris.*"[74] The CCEO in many canons presupposes the existence of a rite as essential element of each ESI, e.g. cc. 39-41 and the numerous canons about liturgy (as a factor of identity of each ESI).[75]

To leave out the element of rite in the juridical definition of "ESI" has obvious advantages: the element "ritus" in the wording of c. 27 CCEO would cause serious problems of interpretation, or, as Žužek says: "si entra in un vasto campo di indistinti, giuridicamente indefinibili".[76] Besides that, the Commission for the Revision of the Oriental Code wanted to make sure that "è possible essere Chiesa *sui iuris* senza distinguersi ritualmente, in modo giuridicamente definibile, da qualche altra Chiesa *sui iuris.*"[77] In spite of the same rite, each ESI has its own identity which flows not from the rite (alone), but from the juridical element, the acknowledgment by the Holy See; strictly speaking: from the juridical connection between rite and acknowledgement.

It is also possible that more ESI participate in the same secondary rite: e.g. the Ruthenian rite is a secondary rite to the Byzantine mother-rite, and is shared by the Ukrainian Greek-Catholic Church

74 Sleman, "De *Ritus"* (note 1), 267. Cf. *Nuntia* 22 (1986), 22–24; 28, 18–20.

75 For Loda, *Tradizione* (note 5), the rite is a „elemento costitutivo" for each ESI (174).

76 Ivan Žužek, "Presentazione del «Codex Canonum Ecclesiarum Orientalium»", in Id., *Understanding* (note 63), 110–135 (122). „Se ‚in iure omnis definitio est periculosa', questo è particolarmente vero quando si tratta di circoscrivere l'esatta figura giuridica di una *Ecclesia sui iuris.* Evidentemente, se la definizione strettamente giuridica è scarna, la realtà di una *Ecclesia sui iuris* è talmente ricca e complessa che risulta impossibile darne una adeguata descrizione (122).

77 Žužek, "Presentazione" (note 75), 122. The Author continues: „Richiedere che ogni *Ecclesia sui iuris* debba essere di un *Ritus* distinto da tutte le altre Chiese *sui iuris,* escluderebbe la suddetta possibilità, che *de facto* si verifica nelle diverse Chiese orientali" (122). Cf. Nedungatt, *Churches* sui iuris *and Rites* (note 7), 114 f.

as well as by the Ruthenian Church, which has been created in 1924 (appointment of separate eparchial bishops, Apostolic Exarchy founded on 8 may 1924). Similarly the Greek Catholic Church of Greece and the Italo-Albanian Church share the same secondary rite, both deriving from the Byzantine mother-rite.[78]

It seems to be an open problem if there can exist an ESI that encompasses more rites (e.g. the Eparchia of Krizevci).[79] Within the Latin Church there is more than one liturgical heritage established and permitted: the Ambrosian[80] in the Archdiocese of Milan, the Mozarabic[81] and the Anglican[82] "rite".

C. 27 CCEO defines a determined and special juridical quality of Eastern catholic Churches, but does in no way reduce their ecclesiological richness; it is a juridic-formal definition for the purposes of the

78 Nedungatt, *The Spirit* (note 1), 69.

79 Cf. Žužek, *Presentazione* (note 76), 123: „Dubito anche se si possa chiamare *Ecclesia sui iuris* la eparchia di Krizevci in Jugoslavia, del resto fiorente, tuttavia composta dai fedeli di cinque diverse *ritus* e dunque appartenenti alle varie *Ecclesiae sui iuris …"*

80 Achille M. Triacca, "Ambrosiana, liturgia", in Sartore/ Triacca (a cura di), *Nuovo Dizionario di Liturgia* (note 13), 15–48.

81 Andreas Heinz, "Liturgien IV. Abendländische L.", in *Lexikon* (note 15), (1997) col. 980–984; Susana Zapke-Rodríguez, "Mozarabische Liturgie", in *Religion in Geschichte und Gegenwart. Handwörterbuch für Theologie und Religionswissenschaft,* Hans D. Betz (Hrsg.), Band 5, Tübingen ⁴2002, col. 1556–1557.

82 Ioannes Paulus II, const ap. *Anglicanorum coetibus* [qua personales ordinariatus pro anglicanis conduntur qui plenam communionem cum Catholica Ecclesia ineunt], 4. IV. 2009, in AAS 101 (2009) 985–990 and "Norme complementari" of the same day, issued by the Congregation of Doctrine of the Faith. Christoph Ohly, "Ritus est patrimonium. *Anmerkungen zur Ritusfrage im Kontext der Apostolischen Konstitution* An-glicanorum coetibus", in *Clarissimo Professori Doctori Carolo Giraldo Fürst*. In memoriam Carl Gerold Fürst, Elmar Güthoff – Stefan Korta – Andreas Weiss (Hrsgg. von), Frankfurt/ Main 2013, 407–419; Gianfranco Ghirlanda, "La costituzione apostolica *Anglicanorum coetibus*", in *Periodica* 99 (2010), 373–430.

law, but in terms of content, the definition is characterized by a very useful openness.

In view of the historical development of the primary or mother-rites it seems to be necessary, more than ever, to distinguish between them and the secondary rites which derived from them. The duty of the Hierarchs of each ESI to protect the own rite and to make changes only "*ratione eius organici progressus*" (c. 40 § 1 CCEO), refers immediately to the secondary rites (where they do exist). The responsible subject for this development is the ESI. Thus, also liturgy – the most basic element of each rite: "*la fede celebrata*" – develops at the level of the ESI (*ius liturgicum particulare*). In this way the primary rite develops indirectly: by means of the development of the secondary rites.

Therefore, c. 27 CCEO cannot be seen as an impoverishment or disfigurement of the catholic oriental churches, and does not create a new, bloodless notion of oriental churches, distinct from *Ecclesia ritualis sui iuris.* The concept of "ESI" has been created not to change the notion of oriental churches, but in order to gain an unequivocal notion of "rite" which in the future not should be confused with the concept of "church", and in order to mark a terminological difference in regard of the latin "*Ecclesia particularis*" (the diocese).[83]

83 Cf. Žužek, *Le "Ecclesiae sui iuris"* (note 73) passim; Guidelines for the Revision of the Code of Eastern Canon Law (*Nuntia* 3 (1976), 18–24: English version). Nr. 7: "The notion of Rite should be re-examined and a new term agreed upon to designate the various Particular Churches of the East and of the West." Cf. Kokkaravalayil, The Guidelines (note 49), 300–362: "Effecting conceptual clarity, this Guideline helped put an end to the confusion that had reigned in the terminological field thus far" (362); Sleman, "De *Ritus"* (note 1), 258–270.

abstract

L'articolo Nella sua prima parte, l'articolo cerca di precisare la nozione di "diritto liturgico" sullo sfondo della nozione di "*ritus*" nonché di chiarire la relazione fra diritto e liturgia; e far vedere le consequenze giuridico-canoniche dell'importanza della liturgia e del diritto liturgico ("*patrimonium liturgicum*") a livello di un "*ritus*". Nella seconda parte, l'articolo affront ail problema, se e in che senso un "*ritus*" forma un elemento costitutivo di una *Ecclesia sui iuris.*