

# Eastern Catholic Faithful and their Latin Proper Hierarchs who are not Designated by the Roman Apostolic See or the Patriarch (CCEO c. 916 §5)

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Summary: 1. Canonical Situation of the Faithful Mentioned in c. 916 §5; 2. Competence of the Proper Hierarchy; 3. Proper Parish Priest; 4. Conclusion

The canon studied in this article is, “In places where not even an exarchy has been erected for the Christian faithful of a certain Church *sui iuris*, the local hierarchy of another Church *sui iuris*, even the Latin Church, is to be considered as the proper hierarchy of these faithful, with due regard for can. 101.<sup>1</sup> If, however, there are several local hierarchies, that one whom the Apostolic See has designated is to be considered as their proper hierarchy or, if it concerns the Christian faithful of a certain patriarchal Church, the one whom the patriarch has designated with the assent of the Apostolic See” (c. 916 §5).<sup>2</sup> This canon is a provision for the pastoral care of the faithful who live outside the territory of their Church, eparchy or exarchy. This norm, as it expressly establishes that it concerns also the Latin hierarchies, is bind-

- 1 Canon 101: “In his own eparchy, in stauropegial monasteries and other places where neither an eparchy nor an exarchy has been erected, the patriarch has the same rights and obligations as an eparchial bishop.” The main abbreviations used in this study: CCEO – *Codex Canonum Ecclesiarum Orientalium*, CIC – *Codex Iuris Canonici*, LEV – Libreria Editrice Vaticana, PIO – Pontifical Oriental Institute, RAS – Roman Apostolic See.
- 2 Translation of the CCEO canons in this study is from *Code of Canons of the Eastern Churches*, Washington DC, Canon Law Society of America, 2001.

ing not only on the faithful, but also on the hierarchs in accordance with c. 1: “The canons of this Code concern all and only the Eastern Catholic Churches, unless, with regard to relations with the Latin Church, it is expressly established otherwise.”

In this article, we are studying the juridical relationship of the faithful, who are in the situation described in the first sentence of this canon, with their proper hierarchs. Those faithful live outside the territory of their Church, and in the place where they live, there is not even an exarchy of their *sui iuris* Church. Therefore, they are living within the territory of another *sui iuris* Church, and in that place, a single local hierarch is exercising the power of governance, or, in popular terms, there is no multiple jurisdiction in that place. Even without any special designation by the RAS or the patriarch, the local hierarch of that place becomes their proper hierarch. Such situations can emerge mainly because of isolated cases of migration or shifting of residence for work.

Our concentration, in this study, goes mainly to the question whether the present canonical norms and their formulation address adequately the pastoral needs of those faithful who are in the situation studied in this article. The subject matter of this study will require a special attention to the juridical consequences of recognising that local hierarch as the proper hierarch of those faithful. As part of this study, we will highlight certain problems which we have come across, especially owing to lack of sufficient clarity of norms. We do not directly deal with all the competences of the local hierarch in relation to those faithful. We limit ourselves, rather, to certain particular issues, to norms which may need further clarification, and to those norms which may be implicit. Although there is no immediate answer to certain questions, in my opinion, it is worth considering those questions, because they might help in determining, in a later legislation, the competence of the proper hierarchs of the Eastern Catholics who are outside the territory of their Churches. The situation of c. 101 is outside the purview of this study. Similarly, we do not deal with ordi-

nariates erected for Eastern faithful of various Churches in countries like Argentina, Spain, etc.

1. Canonical Situation of the Faithful Mentioned in c. 916 §5

The situation of the Eastern faithful subject to Latin hierarchy is more frequent than that of the Latin faithful subject to the Eastern hierarchy, or the faithful of an Eastern Church subject to the hierarchy of another Eastern Church. The norm of c. 916 §5 is applicable in different situations, and there may be different factors which affect them as we see below.

A – a place where there is the jurisdiction of only a single local hierarchy (he could be Latin or Eastern):

1. The Eastern Catholic faithful, referred in this study, are residing in a place outside the territory of their Church, where there is no eparchy or exarchy of their Church (example, Ethiopian sui iuris Church's faithful residing in Munich);
2. The Eastern faithful residing in such a territory may belong to a single Eastern Church, or they may be small communities from different Eastern Churches (example, the Eastern faithful residing in Munich may belong to a single sui iuris Church like Ethiopian, or to different Churches such as Ethiopian, Chaldean, Coptic, etc.);
3. The eparchy/diocese of that territory does not belong to the Church of any of those Eastern faithful (example, in Munich, there is the jurisdiction of only one Eastern Catholic Church (Ukrainian Church),<sup>3</sup> and no eparchy or exarchy of any other Eastern Church is erected in Germany; thus all Eastern faithful in Munich, except those of the Ukrainian Church, are subject to a hierarch who is not from their own Church);

3 The apostolic exarchate for the faithful of the Ukrainian Church of Germany and Scandinavia, see *Annuario Pontificio* 2017, 1121.

4. Those Eastern faithful may be scattered in different parts of the country where they live; and if there are different local hierarchs in that country, they will belong to different eparchies/dioceses of that country, depending on the place of residence of each of them (example, the Ethiopian Catholic faithful residing in Germany may be living in the territory of the dioceses of Munich, Berlin, Cologne, etc., and in that case, the local hierarchs of all these places will have power of governance over the Ethiopian faithful living in the territory of the respective dioceses, that is to say, those faithful are not united under a single proper hierarch).

B – a place where there is the jurisdiction of two or more local hierarchs (multiple jurisdiction), and those eparchies/diocese may be of the Eastern Churches or/and of the Latin Church:

1. It is generally in the competence of the RAS to designate one of those local hierarchs as the proper hierarch of those Eastern faithful (example, in Munich there is the jurisdiction of the Latin bishop and of the Ukrainian apostolic exarch, but there is no jurisdiction of the Ethiopian Church; the RAS may entrust the Ethiopian faithful to the Latin bishop of Munich);
2. However, if those faithful belong to a patriarchal Church, the patriarch, with the assent of the RAS, can designate one of those local hierarchs as their proper hierarch (the Coptic patriarch may entrust the faithful of his Church residing in Munich to the Ukrainian exarch of Germany and Scandinavia);
3. If those Eastern faithful belong to different *sui iuris* Churches, all those communities may be entrusted to a single local hierarch or those of each Church may be entrusted to a different local hierarch (example, all the Eastern faithful of Munich, who are in the situation described in c. 916 §5, may be entrusted to the Latin bishop of Munich, or the faithful of one Church may be entrusted to the Latin bishop of Munich and

those of another Church may be entrusted to Ukrainian ex-arch of Germany and Scandinavia);

4. All faithful of an Eastern Church, scattered in a country, could be entrusted to a single local hierarch (for example, the Coptic faithful living in any part of Germany could be entrusted to the care of the Latin bishop of Munich, and the Ethiopian faithful residing in any part of Germany could be entrusted to the Latin bishop of Berlin). In that case, the other local hierarchs of that country will not have power of governance over those faithful, even if they live in the territory of those hierarchs; they will be exempt from those hierarchs.

C – with respect to personal parish, the faithful, who are considered in this study, could be in one of the two situations:

1. The place where they stay may be in the territory of a personal parish of their *sui iuris* Church; in that case, they will automatically belong to that parish<sup>4</sup> (example, if there is a parish of the Ethiopian Church in Munich, all the faithful of that Church residing in the territory of that parish will automatically belong to that parish);
2. In that place, there may not be a personal parish of their *sui iuris* Church. In that case, will they automatically belong to the Latin parish of the territory where they live or will they have no parish until a parish is designated for them by the proper hierarch? We will see below that a clear answer is not available from the present legislation: neither Latin nor Eastern.

Having visualised all these various possible canonical situations and factors, in order to set the scope of this study, we presume a situation of the Eastern Catholic faithful, who have domicile or qua-

4 According to c. 280 §1 or CIC c. 518, personal parishes may be erected for the faithful on the basis of their belonging to a different *sui iuris* Church.

si-domicile outside the territory of their sui iuris Church, where not even an exarchy or personal parish is erected for the faithful of that Church; and in that place, only a single local hierarch exercises power of governance, and that hierarch belongs to the Latin hierarch. Therefore, those faithful belong automatically to the diocese of that Latin local hierarch, and he will be their proper hierarch (example, the faithful of the Ethiopian Church living in the territory of the diocese of Munich). This is the canonical situation which we assume in this study. When other situations are considered, we will explicitly mention it. This clarification will help us avoid unnecessary insertion of conditional clauses and repetitions while explaining the situation of the faithful which we study here.

Before entering into the main part of this study, it is to be clarified that the faithful of a Church, even if they live outside the territory of their Church, or outside the territory of any other ecclesiastical circumscription of their Church like eparchy, exarchy or even parish, will always remain members of their Church (c. 38) until they change that membership with the consent of the RAS observing the prescription of c. 32. Thus the faithful of an Eastern Church, even if they are under the jurisdiction of a Latin hierarch, will not become automatically members of the Latin Church (example, the faithful of the Ethiopian Church residing for a long time in Munich will never be members of the Latin Church, but will continue to be members of the Ethiopian Church, unless they have the permission of the RAS as required in c. 32).

According to c. 148 §2, patriarchs can seek, by sending a visitor, appropriate information about the faithful of their Churches who are subject to the hierarch of another Church. One of the main duties of such visitors is to enquire the situation of the faithful described in c. 916 §5. Those visitors should begin their visitation after presenting themselves to the proper hierarch of those faithful. The proper hierarch cannot forbid that visitation.

## 2. Competence of the Proper Hierarch

Canon 916 §5 states clearly that the proper hierarch of the faithful, who live outside the territory of their Church, eparchy or exarchy, is the hierarch who has jurisdiction in that territory. In case various hierarchs have jurisdiction in that territory, either the RAS or the patriarch concerned, if the faithful belong to a patriarchal Church, will designate one of those local hierarchs as the proper hierarch of those faithful. The patriarch can do it only with the assent of the RAS. As stated above, in this article, we visualise the situation where there is the jurisdiction of a single hierarch. Such faithful should consider that hierarch, even if he is of the Latin Church, as their proper hierarch; and that hierarch has a duty to consider those faithful as his subjects. Therefore, he will become automatically their proper hierarch, that is to say, there is no need of any formal act of designation of that hierarch as their proper hierarch, because the law itself makes that designation. The consequence of this consideration is that he has to extend his pastoral care also to those faithful, and he will have all the rights and duties of the local hierarch of those faithful, unless otherwise specified in the common law or by the RAS with some special law.

In an eparchy, the local hierarch is not only the eparchial bishop and the eparchial administrator, but also the protosyncellus or vicar general and the syncelli or episcopal vicar (c. 246, CIC c. 476) (c. 984 §2). Thus, in a Latin diocese, the diocesan bishop or the diocesan administrator, the vicar general and the episcopal vicar (if there is) will have power of governance over the Eastern faithful who are under their pastoral care, because they will be the proper hierarchs of those faithful.

The proper hierarch will have power of governance over those faithful, and he can exercise it legitimately on them as on any faithful in his diocese (c. 178). The proper hierarch will have all the rights and duties of the local hierarch in relation to those faithful, as recognised in the code/codes, unless otherwise established by the common law or

by the RAS with some special law. The exercise of his power is limited by common law itself in certain instances; for example, if he has to confer sacred orders on some of those faithful, he will require the permission of the RAS. In case this candidate for ordination belongs to a patriarchal Church and has domicile or quasi-domicile also within the territory of that Church, this permission can be granted by the patriarch of that Church (c. 748 §2). The proper hierarch can erect parishes for those faithful, observing the norms for erecting personal parishes (c. 280 §1, CIC c. 518), and appoint parish priests for them. If he is considerate, he can even bring priests belonging to the same Church of those faithful and appoint them as their proper parish priests. In the erection of personal parishes for those faithful, sufficient number of faithful is a practical determining factor, although not a constitutionally determining element.

In the exercise of his pastoral duties, if the proper hierarch is of the Latin Church, is he obliged to apply the norms of CCEO in relation to those faithful, or has he the right to choose between CIC and CCEO? This question emerges because of the ambiguity in the case: 1) one may argue that the faithful have the right and duty to observe their rite, and the proper hierarch should apply only their law; 2) on the other hand, the proper hierarch may argue that his law (CIC) does not oblige him to apply the law of the Eastern Churches, except in those cases where the Eastern code expressly obliges him. The answer to this question can determine the pastoral programmes and the course of action in relation to the Eastern faithful under the pastoral care of that hierarch. For example, if two Eastern faithful subject to him wish to marry each other, with dispensation from the canonical form of marriage, who is competent to give the dispensation?: proper hierarch or the RAS? If the proper hierarch applies the CIC norm of c. 1127 §2, the local hierarch can give dispensation from the canonical form of marriage; if the proper hierarch applies the CCEO norm of c. 835, he cannot give that dispensation, but should make the faithful



have recourse to the RAS.<sup>5</sup> If he makes them have recourse to the RAS, he is applying the law of CCEO (of the faithful). Many argue that in such cases, the hierarch should apply the law of the faithful. “The Latin Ordinary would not be able to dispense [from the required canonical form] since he must safeguard the rights of the faithful entrusted to his care. This can also be deduced from an interpretation of the *Ecumenical Directory*.<sup>6</sup> The local Ordinary, outside a case of danger of imminent death, cannot dispense from the canonical form of the celebration of marriage between two Catholics, but it will be up to the Apostolic See; this applies also to the Latin Bishops.<sup>7</sup> During the codification process, it was discussed whether to grant the faculty to dispense from canonical form also to the local hierarchs, as is the case in the CIC, but it was held that this does not conform to Eastern traditions.<sup>8</sup> Consequently, with due regard for the exceptions foreseen in CCEO c. 796 §1 (danger of death) and CCEO c. 852 (radical sanitation),<sup>9</sup> dispensation from canonical form is reserved to the Apostolic

5 However, in some extraordinary situation, the local hierarch (including the one of c. 916 §5) can also dispense from the canonical form in accordance with CCEO c. 796 §1.

6 In the original text here there is a footnote, n. 119, which reads: “The local Ordinary of the Catholic partner, after having consulted the Local Ordinary of the place where the marriage will be celebrated, may for grave reasons and without prejudice to the law of the Eastern Churches, dispense the Catholic partner from the observance of the canonical form of marriage’ (ED 154). The note refers to CCEO c. 835: ‘Dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the patriarch, who will not grant it except for a most grave cause.’”

7 In the original there is a footnote here, which is 120, and it reads: “Response of the Pontifical Commission for the Interpretation of the Code of Canon Law: AAS 77 (1985) 771.”

8 Original footnote n. 121 reads: “*Nuntia* 15 (1982) 85; 28 (1989) 116-117.”

9 Original footnote n. 122 reads: “According to Pospishil, if one is dealing with a radical sanitation of invalidity arising from canonical form, the Patriarch or eparchial Bishop have the same competence: V. Pospishil, *Eastern Catholic*

See, the Patriarch and the Major Archbishop.”<sup>10</sup> Another instance, in which the application of CCEO or CIC can make a difference, would be erecting a parish in the church of a monastery of an Eastern Church, situated in the territory of a Latin diocese, and to appoint a monk as parish priest of that parish. For this erection and appointment, if CCEO is applied, the proper hierarch should get the consent of the RAS, whereas according to the CIC prescription, the consent of the competent religious superior is sufficient (c. 480, CIC c. 520 §1).<sup>11</sup> These illustrations are sufficient to indicate that a lack of clarity in this regard (whether the proper hierarch is bound or not to apply CCEO) can create confusion in the pastoral care of those faithful.

A close look at certain canons in CCEO reveals that in principle the Latin local hierarch of the Eastern faithful is bound to apply the law of the faithful, mainly because they have a right and duty to observe their rite, which consists also in their discipline.<sup>12</sup> Moreover, applying CIC c. 383 §1, Latin local hierarchs of Eastern faithful should care for those faithful, as this canon demands them to care for all faithful entrusted to them. Besides, in the Eastern code, there are some canons which recognise explicitly or implicitly the right and duty of the Eastern faithful to observe the rite of their sui iuris Churches wher-

*Church Law*, 2<sup>nd</sup> ed. (New York, 1996) 604; J. Prader holds the opposite opinion, *Il Matrimonio...*, 243; P. Szabó is also in favour of the dispensation on the part of the eparchial Bishop: “La competenza del Vescovo eparchiale per la sanazione in radice del matrimonio,” *Folia Canonica* 1 (1998) 151-161.”

10 Lorenzo LORUSSO, *Eastern Catholics and Latin Pastors*, John D. FARIS, tr. & Eng. edition, Washington DC, Canon Law Society of America, 2013, 248-249.

11 Lorenzo LORUSSO, *Gli orientali cattolici e i pastori latini* (Kanonika 11), Rome, PIO, 2003, 102.

12 See Urbano NAVARRETE, “Questioni sulla forma canonica ordinaria nei codici latino e orientale,” *Periodica de re canonica* 85 (1996), 489-514, at p. 501-503; Lorenzo LORUSSO, “I matrimoni degli orientali in ambito latino,” in Pablo GEFAELL, ed., *Cristiani orientali e pastori latini*, Milano, Giuffrè Editore, 2012, 305-351, at p. 332.

ever they are, even if they are outside the territory of their Church, and even if they are settled outside an eparchy or parish of their *sui iuris* Church; and those canons regard the ecclesiastical authorities' corresponding duty to provide for this observance. As examples of such norms, we can refer to the right to worship God according to the prescriptions of one's *sui iuris* Church (c. 17); rites are to be observed and promoted conscientiously (c. 39); all (hierarchs, clergy, religious, and laity) are to faithfully observe their rites (c. 40); lay people have the right and obligation to observe everywhere their rite, although they have the freedom to participate in the liturgical celebrations of any *sui iuris* Church (c. 403 §1); lay people are encouraged to study their rite, because a deep knowledge of one's own rite will help one to understand that the variety of rites does not harm the common good of the society in which one lives, but rather may daily contribute to that same good (c. 405); obligation of the eparchial bishop to care for the faithful of other *sui iuris* Churches<sup>13</sup> entrusted to his care, through presbyters, and if possible through syncellus, of the Churches of those faithful, that they may be helped to observe the rite of their Church (c. 193); eparchial bishop is the guardian of the entire liturgical life and is to be vigilant that it is to be ordered according to the prescriptions and legitimate customs of his Church. If there is a group of faithful of another *sui iuris* Church entrusted to his care, he should be vigilant that they have the celebrations in accordance with the prescriptions and legitimate customs of their Church (c. 199). From these canons it is clear that the Church is asking the authorities, to whom the Eastern faithful are subject, to apply the law of those faithful in relation to them whenever it is possible, and that there should be a serious reason for not applying it.

13 In this case, the term *sui iuris Church* may include also the Latin Church according to the explanatory note of the Pontifical Council for Legislative Texts of 8 December 2011: see *Communicationes* 43 (2011), 315-316.

Applying the law of the faithful would also mean that the proper hierarchy has no competence to give dispensation to the Eastern faithful in those matters which the common law reserves to the RAS or the patriarch. The patriarch can give such dispensation only within the territory of his Church. In matters, the dispensation of which is reserved to the patriarch, the faithful outside the territorial boundaries of patriarchal Churches should approach the RAS, as the patriarch has no power of governance over them.

In this regard, it is good to remember a controversy which existed among canonists on whether the local hierarchy, mentioned in c. 916 §5, can legally delegate a deacon to bless a marriage of his Eastern subjects. While some canonists held that he could legally do it, others held the opposite view. Some of those canonists argued that the Latin local hierarchy was not bound by the law of the Eastern Churches, and that in his territory only his law (CIC) would be applicable.<sup>14</sup> Recently, however, the *motu proprio De Concordia inter codices* art. 6, adding a 3<sup>rd</sup> paragraph to CIC c. 1108, has clarified the norm.<sup>15</sup> Thus, after the promulgation of *De Concordia*, only a bishop or priest can validly bless the marriage of a couple, of whom at least one party is of an Eastern Church, Catholic or non-Catholic. However, the ambiguity of the principle on which those canonists based their arguments still exists.

14 See those views in Joseph PRADER, *Il matrimonio in oriente e occidente* (Kanoniika 1), Roma, PIO, 1992, 38, 201; Dimitrios SALACHAS, *Il sacramento del matrimonio nel nuovo diritto canonico delle Chiese orientali*, Roma-Bologna, Edizione Dehoniane, 1994, 55-56; Urbano NAVARRETE, "Questioni sulla forma canonica ordinaria nei codici latino e orientale," *Periodica de re canonica* 85 (1996), 489-514, at p. 503-506; Jobe ABBASS, "Canonical Dispositions for the Care of Eastern Catholics outside their Territory," *Periodica de re canonica* 86 (1997), 321-362, at p. 354-359; Lorenzo LORUSSO, "I matrimoni degli orientali in ambito latino," in Pablo GEFAELL, ed., *Cristiani orientali e pastori latini*, 343.

15 Approved on 31 May 2016, and published on 15 September of the same year. See an unofficial English translation of *De Concordia* in Jobe ABBASS, "De Concordia inter Codices: A Commentary," *Studia Canonica* 50 (2016), 323-345.

If the only hierarch of the place is of an Eastern Church, CCEO c. 193 §1 is binding on him; if that hierarch is of the Latin Church, in relation to his subjects of Eastern Churches, he is bound directly by CIC c. 383 §2 and indirectly by CCEO c. 193 §1. If he is of the Latin Church, he may not be considered, strictly speaking, juridically bound by the CCEO norm of c. 193 §1, namely “by serious obligation of providing everything” to help the faithful retain the rite of their Church.<sup>16</sup> CIC c. 383 §2 requires the Latin bishop of the place to provide for the spiritual needs of the faithful of other Churches who are in his territory either by means of priests or parishes of the same rite or by an episcopal vicar; but this canon does not oblige him to do “everything” (as does CCEO c. 193 §1) to help the faithful to observe their rite.

CIC c. 214 declares: “Christ’s faithful have the right to worship God according to the provisions of their own rite approved by the lawful Pastors of the Church; they also have the right to follow their own form of spiritual life, provided it is in accord with the Church teaching.”<sup>17</sup> Parallel to this canon, there is the CCEO norm: “The Christian faithful have the right to worship God according to the prescriptions of their own Church *sui iuris* and to follow their own form of spiritual life in accord with the teaching of the Church.” Based on these two norms of CIC and CCEO, the proper hierarch is in duty bound to encourage the faithful to observe their own rite, which includes the discipline of their Church.

In this context, it may be useful to ask whether an Eastern proper hierarch, who has Latin subjects in his eparchy, can give dispensation to the Latin faithful from the canonical form of marriage. The an-

16 On the direct non-binding character of this CCEO canon on the Latin bishops, see Jobe ABBASS, “*De Concordia Inter Codices: A Commentary*,” *Studia Canonica* 50 (2016), 323-345, at p. 324-328. However, applying the explanatory note of the Pontifical Council for Legislative Texts of 8 December 2011, this canon should be binding equally on the Latin bishops.

17 Translation is from *The Canon Law Letter & Spirit*, London, The Canon Law Society of Great Britain and Ireland, 1995.

swer is obviously in the affirmative (CIC c. 1127 §2). Thus, the Eastern proper hierarch is prohibited to give dispensation only to Eastern faithful (c. 835), because of those faithful's obligation to follow the canonical form of marriage. The obligation to observe the canonical form of marriage is addressed to the faithful, and not to the hierarchs. Similarly, the Latin local hierarch can give dispensation from the obligation to observe the canonical form of marriage only to Latin faithful, and not to his Eastern subjects. A somewhat similar question is whether an Eastern deacon can assist and bless, with duly obtained faculty, the marriage of a Latin couple. The answer is in the affirmative, because it is the Eastern couple who are prohibited to marry without priestly blessing (c. 828 §1), whereas Eastern deacon is not prohibited to bless or assist the marriage of the Latin faithful.

“In places where there are not a few Christian faithful lacking a pastor of the Church *sui iuris* in which they are ascribed, the eparchial bishop should designate a presbyter of that Church, if it is possible, who should administer baptism” (c. 678 §2, see also c. 193 §2, CIC c. 383 §2). Respecting this canon, the Latin bishop may appoint a priest of the Church of those faithful to celebrate baptism for those who should be legitimately ascribed to that Church. However, respecting c. 677 §2, he should not be appointing a deacon as ordinary minister of baptism, because according to this canon, deacons can baptise only in case of necessity, and not as an ordinary minister. Whereas according to CIC c. 861 §1 deacon is an ordinary minister of baptism.

If there is a considerable number of faithful of a *sui iuris* Church in his territory, the diocesan bishop may appoint a syncellus for them (c. 246, CIC c. 476). “The proper Hierarch of these faithful is the local Hierarch and, consequently, these faithful are subject to him; thus, it is solely for him to appoint a syncellus for these faithful, and not the Hierarch of the Church *sui iuris* to which they are ascribed.”<sup>18</sup>

18 Lorenzo LORUSSO, *Eastern Catholics and Latin Pastors*, John D. FARIS, tr.& Eng. edition, 96.

The representatives of those faithful, mentioned in c. 916§5, may be invited to participate in various councils such as eparchial assembly, diocesan synod (c. 238 §2, CIC c. 463 §2), eparchial/diocesan pastoral council (c. 273 §3, CIC c. 512 §1), and parish pastoral council (c. 295, CIC c. 536 §1). Their personal parish priests may have sufficient representation in the diocesan council of priests (c. 266, CIC c. 497). However, for the pastoral care of those faithful the local hierarch need not hold a separate curia, offices, tribunal, and other organs. In the case of a common ordinariate for all the Eastern faithful of a country, if there is a considerable number of those faithful, it is advisable to have a separate presbyteral council, pastoral council, finance council, etc. proper to the ordinariate. It is not prohibited to have such councils common to the entire diocese, including the Eastern faithful. Similarly, there could be other institutions and associations common to all the faithful of the diocese.

A religious, with the final profession, loses his own eparchy (cc. 469, 531). This norm is applicable not only to the clergy who are already ascribed in some eparchy before joining the religious institute, but also to any religious. In the situation, studied in this article, which will be the eparchy which the religious would be losing? We can presume that it would be the eparchy/diocese, of which he was member when he joined the religious institute. Thus in this case, if an Eastern faithful belonged to a Latin diocese according to c. 916 §5, it would be that diocese which he loses. A direct juridical consequence of this loss would be that the proper hierarch ceases to be the proper hierarch of the religious; he may continue as the local hierarch of that religious if that religious stays in a house situated in the territory of that local hierarch (c. 913). Such a faithful could be a non-cleric member of a secular institute, living outside his community.<sup>19</sup> If he is

19 In order to erect a community of a secular institute in a diocese, the written consent of the bishop is required (cc. 566, 509 §1).

in the situation foreseen in c. 916 §5, he should either be entrusted to one of the local hierarchs (if there is more than one) by the RAS or by his patriarch with the consent of the RAS; if there is only one local hierarch, that hierarch will be his proper hierarch.

If there are vocations from among those faithful to clerical state, to which seminary should those persons be sent? It is good to send them to a seminary of their own *sui iuris* Church. If that is not possible, they could be sent to the seminary of another *sui iuris* Church where they can get at least part of the formation in their Church's heritage (see c. 343). If they are ordained for the Eastern faithful, their ascription will be in the same eparchy (cc. 357-366), but they will be ordained by a bishop of their own Church (c. 537 §2, 748 §2). A deacon from among those Eastern faithful can do pastoral ministry also among the Latin Christians of that diocese, and he is not prohibited to assist the marriage, with proper delegation, of two Latin Catholics.

According to c. 614 §4, homily is reserved to priests and to deacons; but to this latter, particular law (not necessarily of a *sui iuris* Church) can impose a prohibition to preach homily. An example may better illustrate this norm. If the particular law of the Ethiopian Church prohibits its deacons to preach homily, they cannot preach it in the churches and other institutions of the Ethiopian Church. However, strictly interpreting (c. 1500), if the churches and other institutions of the Ethiopian Church are not prohibited to hold homilies by the deacons of other Churches, the deacons of other Churches may be invited to preach in the churches and other institutions of that Church, because the prohibition is applicable only to deacons of the Ethiopian Church. Similarly, the prohibition affects only within the territory of the Ethiopian Church. A deacon of the Ethiopian Church, ordained for a Latin diocese outside the former's territory, is not bound by that prohibition, and thus he may preach in the churches of that Latin diocese, including in the personal parish churches erected in that Latin diocese for the faithful of the Ethiopian Church, if the proper hierarch does not prohibit him, because the norms of particular law have



no binding force outside the territory of the Church for which they are promulgated (however, if they are liturgical laws or if they are approved by the RAS, they will be binding also outside, c. 150 §§2-3).

In this context it is useful to clarify that the eparchial bishop mentioned in c. 916 §4<sup>20</sup> often belongs to the same Church of the faithful who are subject to him, unlike in the case of §5 of the same canon. That bishop has jurisdiction in the place where the faithful reside. They lack only a parish and a parish priest of their own Church in the place where they live.<sup>21</sup> In such a situation, that bishop is to appoint a priest of another *sui iuris* Church, with the permission of that priest's bishop, as the proper parish priest of those faithful.<sup>22</sup> For example, the Ukrainian Catholic apostolic exarch has power of governance on all faithful of that Church residing in Germany. It is possible that in some place in Germany, a parish may not be erected for the Ukrainian faithful or that he may not find a priest belonging to the Ukrainian Church to appoint as the parish priest of those faithful. In that case, he may appoint a priest of any *sui iuris* Church (including the Latin Church) as their parish priest with the permission of the bishop of that priest. It is the exclusive competence of the eparchial bishop of the place to appoint parish priest or syncellus for the faithful (c. 284 §1). Canon 916 §4 may visualise a situation of an eparchy/exarchy which is outside the territorial boundaries of its *sui iuris* Church.

20 "If there is no pastor for the Christian faithful of a certain Church *sui iuris*, the eparchial bishop for those same faithful is to designate the pastor of another Church *sui iuris*, who is to assume their care as their proper pastor, with the consent, however, of the eparchial bishop of the pastor to be designated."

21 Luis NAVARRO, "Persons and Juridical Acts," in George NEDUNGATT, ed., *A Guide to the Eastern Code* (Kanonika 10), Rome, PIO, 2002, 619-633, at p. 624-625.

22 In somewhat a similar norm, c. 247 §4 establishes that an eparchial bishop can take protosyncellus and syncelli from another *sui iuris* Church, but with the consent of their eparchial bishop.

In this section, we have made an overview of the competence of the local hierarchs who have Eastern Catholics as their subjects in the situations foreseen in c. 916 §5. He has an obligation, although not always juridical, to provide for everything to help those faithful to observe the rite of their Church. We have also seen certain points which could raise some ambiguity, especially as to whether the Latin local hierarch is obliged to apply the CCEO norms in relation to the Eastern faithful or he can choose to apply the CIC norms. In the codes, there is no general prescription which gives a clear answer to this question. We cannot always take it for granted that all the local hierarchs will respect the rights and duties of the Eastern faithful even if they are subjects of those hierarchs. Thus it is advisable to mention explicitly that those hierarchs should apply the law of the Eastern faithful, and if they do not apply that law there should be a serious reason which prevents its application. The absence of a clear norm in this regard points to the need of further clarification through adequate legislation.

### 3. Proper Parish Priest

It is worth examining the competence of the parish priest of the Eastern faithful considered in this article. From c. 916 §5, it is clear that the only local hierarch will be automatically the proper hierarch of those faithful; but it is not very evident from this canon that the local parish priest would be automatically their proper parish priest. If there is a parish of the *sui iuris* Church of the faithful in the place where they live, they will be automatically part of that parish, and its parish priest will be their proper parish priest. If, however, there is no parish of the Church of the faithful in that place, will the parish priest of the place be automatically their proper parish priest, or should the proper hierarch designate through a formal act the parish priest of the place (or another priest) as the proper parish priest of those faithful? If the local parish priest is not automatically their proper parish priest, who will be their parish priest until there is a formal designation of

the parish priest by the proper hierarch? All Catholics, who have a domicile, normally have a parish (at least one, because it is possible that some have a domicile and a quasi-domicile in different places and in that case they could have two parishes). Until the formal designation of proper parish priest, should those faithful be considered having only eparchial domicile or quasi-domicile according to c. 916 §2, or are they transients as per c. 916 §3? The local parish priest belongs presumably to the Latin Church (the Church of the proper hierarch). If so, can he be automatically the proper parish priest of the Eastern faithful? There is no canon in CCEO which makes us conclude that the local parish priest would be automatically the proper parish priest of the faithful even without any special designation; neither is there any canon which makes us conclude the contrary.

A faithful becomes a member of a parish through domicile or quasi-domicile and membership in his sui iuris Church (c. 916 §1). Unlike the parallel Latin norm (c. 107 §1), which requires only domicile or quasi-domicile for membership in a parish, this CCEO norm considers also the membership in the sui iuris Church to obtain membership in a parish. Thus membership in a sui iuris Church is a criterion for determining one's parish and eparchy, and domicile and quasi-domicile are not the only criteria. Therefore, if a faithful has domicile or quasi-domicile within the territory of a parish of his own sui iuris Church, he will automatically be a member of that parish. If, however, there is no parish of his own sui iuris Church, will he be member of any parish until the local hierarch designates the local (or some other) parish priest as his proper parish priest? Since a clear answer is lacking in the legislation, there are at least two diverging opinions: some hold that he will not be member of any parish, and some others hold that he will be automatically a member of the parish of the place, even if it is not of his Church. Here is a relevant opinion: "In such a case if such a provision [designation of the proper parish priest by the proper hierarch] is not made, these faithful will remain without a proper parish priest: for the common law does not provide that their

parish priest is the *local* one (of the place of domicile, quasi-domicile or actual dwelling) of the Church *sui iuris* of the proper hierarch of these faithful. Therefore these local parish priests cannot validly officiate at the marriage of these faithful without the proper delegation which they must secure from the proper hierarch of the faithful.<sup>23</sup> This position means that if one's own Church's parish is not present in the place where one lives, one will become a member of the parish of another *sui iuris* Church only with a formal designation by the proper hierarch. Without such a formal designation, a faithful will not be member of any parish, and the local parish priest will not be his proper parish priest even if he is in the territory where that parish priest has jurisdiction. Such a position presupposes that the local parish priest is appointed for the faithful of his Church, and the faithful of other Churches can be his subjects only with special designation, that is, they are not automatically his subjects. However, there are also those who hold that the parish priest of the place becomes automatically the proper parish priest of those faithful.<sup>24</sup> They would hold that the parish priest is the *longa manus* of the eparchial bishop, that is, he acts on behalf of that bishop, and thus all the faithful who are subject to the bishop of a place are subject also to the parish priest of the place, unless the same bishop (local hierarch) or a superior authority, exempts those persons from the care of the parish priest. Thus the parish priest's care includes everybody and everything who or which are included in the jurisdiction of the bishop. Since there is difference of opinion, this has to be clarified by the competent dicastery.

The reason why the canon is silent about considering the only parish priest of the place automatically as proper parish priest could

23 Luis NAVARRO, "Persons and Juridical Acts," in George NEDUNGATT, ed., *A Guide to the Eastern Code*, 625-626.

24 A list of those who hold this opinion is given in Luis NAVARRO, "Persons and Juridical Acts," in George NEDUNGATT, ed., *A Guide to the Eastern Code*, 626, note 22.

probably be that there is the possibility for the proper hierarch (the only local hierarch) to appoint a separate parish priest for the Eastern faithful, one different from the local parish priest.

If the local parish priest is not the proper parish priest of those Eastern faithful, that local parish priest will have no obligation of pastoral care of those faithful, and will not have the faculty for celebrating those sacraments for them for which special faculties are required (baptism, chrismation and marriage). In that case, that parish priest cannot bless the marriage of two Eastern Catholic faithful unless delegated by the proper hierarch.<sup>25</sup>

Do Latin parish priests of the Eastern faithful need special faculty to bless the marriage of their Eastern subjects? A response of the commission for the codification of the Eastern code, given on 16 June 1983, answers this question. “It is known that the Orientals who have domicile or quasi-domicile in the territories where there is only Latin Hierarchy, as in the case of Bombay, are simply subjects of the Ordinary of the place, Latin, according to can. 22 §§ 1 and 3 of the *Motu proprio Cleri Sanctitati* (see canon 86 §3 nos.1 and 3 of the *MP Crebrae Allatae*) to all legal effects, not excluding the ‘delegation’ mentioned in the first and third question of His Excellency Archbishop of Bombay. All priests who have ‘proper delegation’ of the Latin Ordinaries of territories, here circumscribed, can validly assist the marriages of Orientals, subjects of these Ordinaries.”<sup>26</sup> This response

25 Joseph PRADER, “La forma di celebrazione del matrimonio,” in *Il matrimonio nel codice dei canoni delle Chiese orientali* (Studi giuridici 32), Vatican, LEV, 1994, 283-300, at p. 285.

26 X. Ochoa, *Leges Ecclesiae* VI, Romae, 1987, n. 4985, col. 8650-8651, cited in Pablo GEFAELL, “L’ambito territoriale della giurisdizione dei patriarchi orientali. Riflessi sulla forma canonica del matrimonio,” *Ius Ecclesiae* 5 (1993), 245-268, at p. 252 note 22. The first and third question, mentioned in the citation, are formulated as follows: 1. “Is this Canon 1109 [CIC 1983] to be so interpreted that priests of the Latin Rite, even if they have proper delegation from the Latin Ordinary, have no faculty to assist at marriages of two Orientals?” 3. “Can a

is incorporated as a norm in CCEO c. 829 §§1-2 and in CIC c. 1109. From this norm, it is clear that if a couple of an Eastern Church is subjects of a Latin parish priest, he can bless their marriage even without any other special faculty from his local ordinary, because these faithful are his subjects. The same Latin parish priest can bless the marriage of the faithful, without any special faculty, in his territory even if they are not his subjects, provided at least one of them belongs to the Latin Church. The Latin parish priest, if he is ascribed to the Latin Church, has to celebrate marriage using the ordinary canonical form of the Latin Church, unless he has an indult to celebrate in the rite of the faithful. However, if the Latin parish priest is ascribed to the Church of the faithful he can celebrate the marriage in their rite even without any special indult for celebrating in the faithful's rite.<sup>27</sup> "A Latin pastor in the territory of the Latin Church, where there is neither an Eastern hierarchy nor an Eastern parish, but only a Latin hierarchy, validly blesses the marriage of two Eastern Catholics who reside in his parish territory, if he was granted the faculty by the

Latin Ordinary give faculties for a priest to validly assist at a marriage of two Orientals, it being presumed of course that the marriage is to take place within the territory of the Latin Diocese, and no Oriental Ordinary has jurisdiction over the territory?" X. Ochoa, *Leges Ecclesiae* VI, n. 4985, col. 8650. Italian original is: "È nota che gli Orientali che hanno domicilio o quasidecilio nei territori ove vi è soltanto Gerarchia Latina, come nel caso di Bombay, sono semplicemente sudditi dell'Ordinario del luogo, latino, secondo il can. 22 §§ 1 e 3 del Motu proprio *Cleri Sanctitati* (cfr. can. 86 §3 nn. 1 e 3 del M.P. *Crebrae Allatae*) a tutti gli effetti giuridici, non esclusa la 'delega' menzionata nel primo e terzo quesito dell'Ecc.mo Arcivescovo di Bombay. Tutti i sacerdoti che hanno 'proper delegation' degli Ordinari Latini di territori qui circoscritti, possono assistere validamente ai matrimoni di Orientali, sudditi di questi Ordinari." Translation is mine.

- 27 In India, many Syro-Malabar priests are incardinated in Latin dioceses and are working there as parish priests. They can bless the marriage of their Syro-Malabar subjects in the Syro-Malabar rite without any special indult to celebrate in that rite.

proper local Ordinary.<sup>28</sup> Proper parish priest does not need a special faculty, it is granted to him ex-officio, because they are his subjects. He can bless their marriage only if they are his subjects,<sup>29</sup> or (if they are not his subjects), if at least one of the spouses is ascribed to his sui iuris Church (c. 829 §1, CIC 1109). In short, all their proper parish priests will have the faculty to celebrate sacraments for them validly without any special delegation, even if they are not priests belonging to the Church of those faithful.

The proper parish priest, even if the priest belongs to the Latin Church, baptises the children of Eastern couples according to c. 677 §1. Baptism should be administered according to the liturgical prescriptions of the sui iuris Church in which the baptised should be ascribed according to law (c. 683). For the Eastern faithful who are subject to the Latin bishops, observance of this norm may not be always possible. Thus, the Latin proper parish priest may baptise using the Latin liturgical prescriptions of baptism, unless he has the faculty to celebrate it in the rite of the baptised. The Latin parish priests of the Eastern faithful can also administer chrismation to those faithful who are their subjects (c. 696 §3).

There could be an assistant parish priest for a specified part of the parish, a section of the faithful (c. 301 §2, CIC c. 545 §2). If the parish priest is unable to exercise direct pastoral care over the Easterners, he could be assisted by an assistant priest. That assistant will work under the Latin parish priest, and directly and ordinarily, he may be in-charge of those faithful.

As part of the formality of becoming a member of a parish and eparchy/diocese, a newly arriving faithful may be asked to bring the certificate of baptism and other sacraments which he has received,

28 Lorenzo LORUSSO, *Eastern Catholics and Latin Pastors*, John D. FARIS, tr.& Eng. edition, 257.

29 See Lorenzo LORUSSO, "I matrimoni degli orientali in ambito latino," in Pablo GEFAELL, ed., *Cristiani orientali e pastori latini*, 338, 339.

especially, of chrismation and of marriage (if married), from the previous parish. If he is an unmarried adult, he may be also asked to bring a free-state certificate in view of his future marriage or other states of life.

In a personal parish of an Eastern Church, erected outside its territory, in a Latin diocese, which particular law will be applied: the particular law of the Eastern Church of that parish or of the Latin diocese? In a Syro-Malabar parish of the Diocese of Munich, can there be parish *yogam* (institution proper to Syro-Malabar law for the administration of parish, especially temporal goods), or can the local ordinary of Munich prohibit its introduction? It is useful to clarify this point. Juridically, the norms of particular law of a *sui iuris* Church are not binding outside the territory of that Church. However, the application of the particular law proper to a Church is recommended, as much as possible, even outside.

This section revolves around the question: who is the parish priest of the Eastern faithful who are in the situation foreseen in the first part of c. 916 §5? A faithful acquires his parish priest through domicile or quasi-domicile and membership in his *sui iuris* Church (c. 916 §1). If in the place of one's domicile or quasi-domicile there is no parish of one's own Church, does he not acquire a parish or parish priest automatically? The question is relevant only when there is no parish of the *sui iuris* Church of the faithful in the place where those faithful live. Can such a faithful consider the local parish priest, as he can legitimately consider the local hierarch as proper hierarch, as the proper parish priest until the proper hierarch makes some other provision by designating some other priest as their parish priest? The answer is not clear from the present Catholic legislation. We have also explored certain competences of the proper parish priests of those faithful.



#### 4. Conclusion

We have tried to understand the canonical situation of the faithful of an Eastern Catholic Church, having domicile or quasi-domicile outside that Church's territory, and in the place where they live, only a bishop of the Latin Church is exercising power of governance. Consequently, those faithful become automatically subject to the Latin local hierarch and consider him as their proper hierarch, because of their domicile or quasi-domicile in that territory where there is not even an exarchy of their Church (c. 916 §5). This study is an attempt to understand the juridical consequences of recognising that local hierarch as the proper hierarch of those faithful.

The most evident juridical consequence of the recognition of the local hierarch as the proper hierarch is that he will have all the rights and duties of the local hierarch over those Eastern faithful, unless otherwise stated in the common law or established by the RAS with some special law. The proper parish priest will also have all the rights and duties of a parish priest in accordance with the law, unless otherwise established by the common law, special law by the RAS or by the local ordinary. Therefore, he can validly bless their marriage, because they are his subjects. However, in the case of baptism, it is preferable that a priest of the same Church of the baptised be delegated to administrate it and he may be given the faculty to celebrate chrismation for the newly baptised.

Before dealing with the general competences of the proper hierarch of those faithful over them, it is necessary to ask whether he is obliged to apply the law of the Eastern Churches in relation to those faithful or is he free to hold himself not bound to apply it? Some canonists hold that the Latin bishops are not bound by the Eastern code norms, unless it is explicitly mentioned, in inter-ecclesial matters.<sup>30</sup>

<sup>30</sup> For some such positions, see Jobe ABBASS, "Setting Limits on the Application of the Eastern Code to the Latin Church," *Studia Canonica* 51 (2017), 25-54, at p. 27-28.

Some local hierarchs, who are not experts in canon law, could hold the same position even today. However, the Pontifical Council for Legislative Texts, in an explanatory note of 8 December 2011, clarified that each time when CCEO uses the term *sui iuris Church* expressly, the Latin Church is to be considered included in it.<sup>31</sup> Consequently, the Latin bishops will be bound by the CCEO norms affecting the inter-Church relations as they are contained in the Eastern code, when they refer to *sui iuris Churches*. Moreover, from the spirit of CCEO, it can be derived that the mind of the Church is that the law of the faithful should be applied. Given the ambiguity of the matter, however, it is worth clarifying this point in a future legislation.

A faithful becomes a member of a parish through domicile or quasi-domicile and membership in his *sui iuris Church* (c. 916 §1). Thus domicile or quasi-domicile and membership in a *sui iuris Church* are the conditions to become member of a parish of that *sui iuris Church*. If there is a personal parish for the faithful of a specific Eastern Church, all the faithful belonging to that Church will automatically become members of that parish. In the situations foreseen in c. 916 §5, if there is no parish of one's own Church, in which parish will one be member: in the existing local parish (independent of the *sui iuris Church* to which it belongs), or to no parish? Will the faithful have no parish until his proper hierarch formally designates a parish for him? From the code, the answer is not clear. The question is relevant because its answer will determine whether the local parish priest is that faithful's proper parish priest or not, and accordingly whether he has a duty towards those faithful for the general pastoral care, which is to be distinguished from celebrating certain sacraments like marriage. In the case of the sacraments, marriage blessed by him will be invalid if he is not their parish priest, or if he does not have delegation. Also in this case, there are those who hold that he will not become auto-

31 *Communicationes* 43 (2011), 316.

matically their proper parish priest, and those who hold the opposite view. This ambiguity can also be removed with a clear legislation.

The hierarchy may appoint a priest, different from the parish priest of the place where the faithful live, as the parish priest of that faithful. It is possible that within the territory of the entire diocese, there is only one parish priest for the faithful of a certain *sui iuris* Church or for all the Eastern faithful residing within that diocese. In future legislation, it may be useful to specify that in situations as foreseen in c. 916 §5, unless the local hierarchy makes other provisions, the local parish, if there is only one parish in that locality, will automatically be the faithful's parish.

Although the present c. 916 §5 is useful in the situations foreseen in it, a more detailed specification of certain questions will be helpful or even demanded by today's needs. To be precise, effective application of the norm of the first part of c. 916 §5 requires answer to two specific questions: 1) whether a Latin proper hierarchy is obliged to apply the law of the Eastern Churches (CCEO) in relation to his subjects who belong to Eastern Churches; 2) when a parish of the *sui iuris* Church of those faithful is absent in the territory where they live, which/who is to be considered their parish/parish priest until their proper hierarchy designates for them a proper parish/parish priest. Only with the addition of these two answers, can we say this norm addresses adequately the pastoral needs of those faithful.

## **abstract**

Quest'articolo studia la situazione canonica dei fedeli di una Chiesa cattolica orientale, che hanno domicilio o quasi-domicilio fuori del territorio di quella Chiesa, e nel luogo in cui vivono, solo un vescovo della Chiesa latina esercita la potestà di governo. Di conseguenza, quei fedeli diventano automaticamente soggetti al gerarca del luogo latino e lo considerano come il loro gerarca proprio, a causa del loro domicilio o quasi-domicilio in quel territorio in cui non c'è nemmeno un esarcato della loro Chiesa (c 916 § 5). La conseguenza giuridica più evidente del riconoscimento del gerarca del luogo come gerarca proprio è che egli avrà tutti i diritti e doveri del gerarca del luogo su quei fedeli orientali, a meno che non sia stabilito diversamente nel diritto comune o dalla RAS con qualche legge speciale. Anche il parroco proprio avrà tutti i diritti e doveri di un parroco in conformità con la legge, a meno che non sia stabilito diversamente dal diritto comune, dalla legge speciale della RAS o dall'ordinario del luogo. Lo studio si sofferma su due domande specifiche: 1) se un gerarca latino è obbligato ad applicare la legge delle Chiese orientali (CCEO) nei confronti dei suoi sudditi che appartengono alle Chiese orientali?; 2) quando una parrocchia della Chiesa sui iuris di quei fedeli è assente nel territorio in cui vivono, quale o chi deve essere considerato la loro parrocchia o il loro parroco fino a quando il loro gerarca proprio non designa per loro una parrocchia o un parroco proprio? Solo con l'aggiunta di queste due risposte, possiamo dire la norma di c. 916 §5 affronta adeguatamente i bisogni pastorali di quei fedeli. Vale la pena chiarire questi punti in una futura legislazione.