

The Authority Competent to Dispense Religious according to the Code of Canons of the Eastern Churches

Sunny KOKKARAVAYIL

Summary: The Common Law Provisions; Possibility of further Clarification and Legislation; 1. Religious Superiors; 2. Eparchial Bishop; 3. Patriarch; Conclusion

According to the Eastern Catholic canon law, under certain circumstances, an eparchial bishop is competent to dispense the Christian faithful, over whom he exercises power, from certain norms of the common law and those of the particular law of his sui iuris Church unless a reservation has been made by the authority which issued these laws (c. 1538 § 1).¹ Any hierarch (including the major superiors of the clerical institutes of pontifical and patriarchal right – c. 984 § 3), can dispense their subjects if it is difficult for those subjects to approach the authority to which the dispensation has been reserved (c. 1538 § 2); but they can do it only in a situation of emergency. In the CCEO, there is no canon which clearly states which authority can dispense religious outside a situation of emergency. It is true that the religious superiors can dispense from some norms of their typica or statutes; but our question is who will dispense religious from the

1 The main abbreviations used in this study: OE – Vatican II decree *Orientalium Ecclesiarum*, PAL – motu proprio *Postquam Apostolicis Litteris* of Pius XII (9 Feb. 1952), RAS – Roman Apostolic See.

norms of the common law and of the particular law as the eparchial bishops dispense the Christian faithful entrusted to their care according to c. 1538 § 1. Our question may be formulated as *who are competent to grant dispensation to religious outside a situation of emergency?*

The immediate reason for this study is a concrete situation. Canons 465 and 526 § 2 permit a period of maximum six years for a religious, after the first profession, to make the final profession. The CIC c. 657 § 2 permits a period of maximum nine years between the first profession and the final profession.² In some institutes, the six-year period is too short for necessary formation before perpetual profession, especially, formation for apostolate. In order to extend this period, many superiors seek dispensation from this norm from the Oriental Congregation.³ One wonders whether it is necessary that all types of religious institutes always should have recourse to the Oriental Congregation for dispensation from this norm.

The question about the competent authority to grant dispensation to religious is not limited to the issue of the six-year period of the temporary profession. There may be various norms, of the common law and of the particular law, from which religious and their communities, just like any other faithful, would require dispensation. Some examples could be: to erect and suppress houses in a way different from what is prescribed in the law because of special circumstances (cc. 435-440), to invite a deacon to preach even if the particular law does not permit deacons to preach (cc. 612 § 2), if the superior of a sui

2 Here we do not consider the special case of readmission of the one who leaves the institute after novitiate or during the profession; it is up to the supreme moderator to determine an appropriate probation period before the temporary profession and the time of vows to precede the perpetual profession (CIC c. 690).

3 See Jobe ABBASS, *Monks and other Religious* in *A Guide to the Eastern Code*, edited by George NEDUNGATT (Kanonika 10), Rome 2002, 345–392, 382; see also George NEDUNGATT, “The Eastern Code on the Apostolate of Religious Needs Revision”, in *Ius Ecclesiae* 24 (2012) 381–400, 391.

iuris monastery has to carry out the duty of the finance officer of the same monastery (c. 447 § 2), if a person has dispensable impediments to be admitted to an institute (c. 450), if some exceptions have to be made in the norms on the acquisition, possession, administration or alienation of temporal goods (c. 425) and in the prescriptions on the formation of religious (cc. 471-480), etc. Thus, looking at the question from a wider perspective, we may ask whether it is necessary for religious to have recourse to the Oriental Congregation for any dispensation from any law. The CCEO does not seem to offer a clear answer.

It is clear that for dispensation, any religious institute can approach the Oriental Congregation, which is competent to give legitimate dispensation to the members or communities of any kind of religious institute of the Eastern Catholic Churches. Considering this fact, the absence of a clear norm on the authority competent to dispense religious from laws does not generally create a serious problem in the life of religious institutes. However, it is desirable that law itself make clear provision for dispensation of religious through ordinary channels, that is, by enacting laws for it. Regular and frequent interventions of the Roman Apostolic See (RAS) in such ordinary and foreseeable cases are not advisable, because that may be considered a weakness of the existing law.⁴ Otherwise, the RAS would look like a super patriarch. Therefore, we may ask whether, at least in future, the typicon/statutes of religious institutes can determine the authority competent to give dispensation from the common law and the particular law, or whether there can be a directive which permits the Church authorities, to whom religious institutes are directly subject, to give dispensation to religious respecting cc. 1536-1539. Since the answer is not clear from a single norm of the common law, we have to interpret the existing norms with the help of sources and the foundational principles of the CCEO.

4 NEDUNGATT, "The Eastern" (fn. 3), 391.

In canon law, dispensation is understood as the legitimate removal of the obligation to observe a law by a competent authority in a particular case for a just reason.⁵ It is not the removal or suppression of a law, but of the *obligation to observe it*. Obviously, we are dealing with the dispensation of dispensable laws, which we may call legitimate dispensation.⁶ Dispensation is possible not only from positive requirements of law (for example, from the requirement of canonical form of marriage) but also from impediments (for example, from the impediment of public perpetual vow of chastity for a valid marriage). In this study, we search only for an answer regarding the competent authority to give dispensation to religious; and we will not deal with other aspects of dispensation such as the seriousness of the situation in order to give dispensation or the conditions for the validity of dispensation, etc. It is good to clarify here that in this study, what is said about religious may be applied also to the members of other institutes of consecrated life *mutatis mutandis*. In this study, we do not discuss the competence of the Oriental Congregation as it has the competence, respecting the prescriptions of cc. 1536-1539, to give dispensation to religious of any institute of the Eastern Catholic Churches from the norms of the common law and from those of the particular law of their sui iuris Churches and also from their typica or statutes.

- 5 Edward M. REILLY, *The General Norms of Dispensation*, Washington [D.C.] 1939, I.
- 6 Dispensation is possible only from disciplinary laws: see John M. HUELS, “Categories of Indispensable and Dispensable Laws”, in *Studia canonica*, 39 (2005) 41–73. This article examines elaborately the distinction between dispensable and indispensable laws. According to c. 1537, the eparchial bishop cannot give dispensation from “constitutive laws, namely, laws that determine the essentially constitutive elements of juridic institutes and acts” (p. 41). He cannot dispense, similarly, from the procedural and penal laws. The indispensable laws are more abundant than what one would normally expect.

The Common Law Provisions

In this section, we will study the provisions which the present Eastern code makes for dispensing religious from the norms of the common law and those of the particular law. In normal cases, a faithful can seek dispensation from a law from his eparchial bishop. The relevant canon says: “An eparchial bishop, whenever he judges that it contributes to their spiritual good, is able to dispense in special cases the Christian faithful, over whom he exercises power according to the norm of law, from laws of the common law and laws of the particular law of his own Church *sui iuris*, unless a reservation has been made by the authority which issued the laws” (c. 1538 § 1).⁷ The power of the eparchial bishop is ordinary proper, not delegated by any other authority. It is a matter of administrative function (executive power, c. 1510).⁸ The eparchial bishops’ power to dispense is extended to others who are equivalent to them such as administrators of eparchies (c. 229) and exarchs (c. 313). In this context, it is useful to ask whether religious fall under the category of the Christian faithful to whom an eparchial bishop can give dispensation. Before giving a “yes” or “no” answer, we have to analyse certain canons.

A relevant canon in this regard states “Under the designation ‘superior of monks and other religious’ does not come either the local hierarch or the patriarch, with due regard for the canons that assign to the patriarch or local hierarch power over them” (c. 418 § 2). This canon is sufficiently clear that the competence of the eparchial bishop over religious is limited to the canons which assign him power over religious.

7 Translation of the CCEO canons in this study is from CANON LAW SOCIETY OF AMERICA, *Code of Canons of the Eastern Churches*, Washington [D.C.], 2001.

8 Eduardo BAURA, Commentary on CIC Canon 87, in *Exegetical Commentary on the Code of Canon Law*, Angel MARZOA – Jorge MIRAS – Rafael RODRÍGUEZ-OCAÑA (eds.), Montreal-Chicago 2004, vol. 1, 655–660, 656.

Indeed, the religious superiors can give dispensation to their subjects at least in certain cases. In this regard, the law says, “In what pertains to monasteries and congregations of eparchial right, it is for the eparchial bishop: to give dispensations from the same typica or statutes, which exceed the power of the religious superiors and which are legitimately requested from him, in single cases and on individual occasion” (c. 414 § 1, 2^o). This norm clarifies two points: 1) the superiors have the power to give dispensation from certain norms of their typica or statutes; and 2) the eparchial bishop can dispense from the norms of the typica or statutes in matters which are reserved to him in the same typica or statutes. According to this canon, the competent religious superiors can give dispensation from the norms of the typica/statutes in all cases which are not reserved to the eparchial bishop or to a higher authority. The typica or statutes have to determine which superior (local, provincial or general) has the competence to give dispensation and from which norm, and similarly, which norms are reserved to the eparchial bishop or a higher authority. The patriarchs have similar power to dispense from the norms of typica or statutes of the institutes of patriarchal right in matters which are reserved to them in the same typica or statutes (c. 414 § 2). This canon, however, does not say anything about the competence of the eparchial bishop and the patriarch to give dispensation to religious from the norms of the common law and those of the particular law of their (the bishop’s and the patriarch’s) *sui iuris* Churches.

Canons 441 and 511 state that the superiors and synaxes of religious institutes have that power which is determined by the common law and typica or statutes. These canons identify a certain kind of power within religious institutes. Even in those institutes, in which the superiors have no power of governance (cc. 441 § 1, 511 § 1), we can speak of a proper, ordinary, vicarious, and delegated power, necessary

for their internal governance.⁹ As an example, we can say that the power of a superior general in an institute of nuns is ordinary and proper, and that of its vicar general is ordinary and vicarious (c. 981), although, technically speaking, it is not the power of governance. The power of superiors of the institutes of all canonical status (pontifical, patriarchal and eparchial, and clerical and non-clerical) to dispense from certain norms of their typica or statutes (c. 414 § 1, 2^o) springs from this power.

Canon 1510 §§ 1, 2, 3^o requires executive power of governance in order to be able to give dispensation. The major superiors of the clerical institutes of pontifical and patriarchal right have executive power which is part of the power of governance. However, since there is no canon which explicitly recognises their power to dispense their subjects, as the eparchial bishop has according to c. 1538 § 1, they cannot dispense those subjects (with the exception of emergency situations as prescribed in c. 1538 §2). Moreover, the common law calls for strict interpretation not only of a dispensation but also of the power to dispense (c. 1512 § 4). "... any extensive interpretation remains rejected. That is, any interpretation that goes beyond the literal sense of the words, broadening the dispensation to other subjects or to other obligations of law or other cases not explicitly outlined in the act of concession."¹⁰ Thus only those authorities who are explicitly stated in the common code can grant dispensation. Hence, according to c. 1512 § 4, an extension of the scope of the power of superiors to include the norm of c. 1538 § 1 is not justified.

Under certain circumstances, however, religious can seek dispensation from their hierarchs (patriarchs, metropolitans heading a metropolitan Church, local hierarchs or major superiors of clerical insti-

9 Yuji SUGAWARA, "La natura della potestà interna presso gli istituti religiosi non clericali," in *Folia Canonica* 8 (2005) 279–290, 280–283.

10 Baura, Commentary on CIC Canon 92, in *Exegetical* (ftn. 8), 673–674, at 674.

tutes of pontifical and patriarchal right, c. 984). These hierarchs can dispense their subjects from the norms of the common law, the norms of the particular law of their (hierarchs') sui iuris Churches, and the norms of the typicon or statutes of the institutes of those religious if it is difficult for those subjects to approach the authority to which dispensation is reserved and at the same time there is danger of great harm in delay (c. 1538 § 2). As the canon states clearly, this power can be exercised only in situations of emergency. According to c. 1496, however, in case of a doubt about a fact, these hierarchs can dispense from laws, provided that, if it is a reserved dispensation, the authority to whom it is reserved usually grants it. Thus, hierarchs may grant dispensation, even when there is a doubt about a fact; but they will give it only when they have the certainty that the authority, to whom the dispensation is reserved, would grant it.

There are certain canons which state explicitly the competence of the eparchial bishops and the hierarchs of the institutes of consecrated life to give dispensation to their subjects. In this regard, c. 767 § 1 states, "The eparchial bishop or the hierarch of an institute of consecrated life can dispense his subjects from ... [some] impediments of receiving or exercising sacred orders ..." Consequently, from some of the impediments for receiving sacred orders, listed in c. 762 § 1 (for example, a neophyte, n. 8°), the eparchial bishop and the hierarch of institutes of consecrated life can give dispensation. Can an eparchial bishop grant this dispensation to a religious of an institute of eparchial right, whose major superior is not a hierarch? The answer seems to be in the affirmative. We will discuss it below.

The overview made here demonstrates that the authority competent to give dispensation to religious from the norms of the common law and of the particular law is not clearly indicated in the CCEO, except in a few cases. This fact justifies our further enquiry.

Possibility of further Clarification and Legislation

An overview on the CCEO norms regarding the competent authorities to give dispensation has revealed that there is not much clarity about such authorities, below the RAS, who can give dispensation to religious outside a situation of emergency. We are now in a position to interpret certain other canons in order to find an answer to our initial question. We will seek the support of some of the canonical sources and foundational principles of the CCEO.

The usually asked questions can be formulated as follows: 1) what is the extent of the competence of the religious major superiors to give dispensation?; 2) can the eparchial bishop give dispensation to the members of the institutes of eparchial right?; 3) can the patriarch give dispensation to the members of the institutes of patriarchal right?

I. Religious Superiors

We have seen above that according to cc. 414 § 1, 2°; 767 § 1; and 1538 § 2, religious superiors have certain power to dispense their subjects under certain conditions. Among these, only superiors who are hierarchs (major superiors of clerical institutes of pontifical and patriarchal right) have the power according to c. 1538 § 2, which an eparchial bishop has in an ordinary situation as per c. 1538 § 1. The superiors who are not hierarchs do not have the power according to c. 1538 § 2; they may dispense their subjects from certain norms of their institutes' typica or statutes if it is established so in those typica or statutes (c. 414 § 1, 2°). However, a religious superior cannot dispense a religious, who has lost the clerical state, from the obligation of celibacy (c. 396).

The drafts of c. 526 § 2 (which limits the period of temporary profession to maximum six years)¹¹ show that in the first phase of revision,

11 "This [temporary] profession can be renewed several times in accord with the norm of the statutes but in such a manner that, all together, the time is never less than three years nor longer than six years" (c. 526 § 2).

the maximum period allotted between the temporary profession and the final profession was nine years.¹² It was only during the second phase of revision (*denua recognitio*) that this period was reduced to six years; the reason for this change is not given in detail.¹³ A small note clarifies the intention of the drafting commission. The note reads: "... instead, § 2 is omitted, due to the flexible re-formulation of the canon, leaving to the statutes [the competence for] every further determination, even with regard to eventual dispensation in this matter."¹⁴ The reference to § 2 in this note is about omitting a paragraph which was part of this canon (526) in the first phase of revision. This note intends to say, first of all, that the reformulated version of the canon, as it is presented in the second phase of revision, has a certain amount of flexibility, and that all what is not specified in this norm are left to the statutes to determine, including the question of dispensation in this matter. What is clearer is that in the mind of the commission, the authority determined by the typicon or statutes could legitimately give this dispensation. In that way, it would be within the competence of the superiors, determined in the statutes, to dispense from the law prescribing a maximum of six years as the period of temporary profession; or the same statutes could determine the ecclesiastical authority whom the religious (or his superior) should approach for that dispensation (c. 414 § 1, 2° and § 2). However, the present code does not seem to have given weight to this mind of the commission, and so seems the canonical practice since the promulgation of the code. Many of the superiors who have recourse to the Oriental Congregation for dispensation from this norm may not be aware of this mind

12 *Nuntia* 8 (1979), 57 c. 110 § 2, and *Nuntia* 11 (1980), 43 c. 108 § 2.

13 *Nuntia* 16 (1983), 84–85 c. 108 § 2.

14 *Nuntia* 16 (1983), 85. The Italian original reads: "... invece il § 2 si omette, data la riformulazione più flessibile del canone, lasciando agli statuti ogni ulteriore determinazione, anche per quanto riguarda le eventuali dispense in questa materia." Translation is mine.

of the commission underlying the present formulation of c. 526 § 2;¹⁵ and, as a result, I wonder whether any institute may have determined in its statutes the authority who could give this dispensation.

Applying c.1538 § 2, also the religious superiors (hierarchs) exercise the power, only in situations of emergency, which the eparchial bishop has according to § 1 of the same canon. In similar situations, also the CIC c. 87 § 2 permits the religious superiors who are ordinaries to dispense from even those laws whose dispensation is reserved to the RAS. Normally, according to the CIC, the power, which exceeds the religious superiors to dispense, is exercised by the RAS. As an example, we may recall that the impediments for admission to the novitiate of religious institutes, established by the common law, can be dispensed by the RAS.¹⁶ Nonetheless, a future code could think of

15 Canon 526 § 2 has its source in PAL c. 110 § 2, which permits only six years of temporary profession. However, according to a decree of the Oriental Congregation, of 27 June 1972, the maximum period of temporary profession is nine continuous years (see *Nuntia* 3 (1976), pp. 37–41, at p. 40 n. 12; see the Italian translation of this decree in *Enchiridion Vaticanum* 4, 11th ed., 1980, p. 1077). Thus, the CCEO norm of c. 526 § 2 has gone backward in relation to the norm contained in this decree. This backward movement is in a way a confirmation of the claim of the commission that the formulation of c. 526 § 2 is flexible and that the statutes could determine the authority to dispense from this norm. Generally, a later law does not take such a more restrictive position unless it has foreseen a way of overcoming the difficulty created by the restriction. Thus, on the one hand a norm may take a more restrictive position in relation to a previous norm, but on the other hand, simultaneously, it may provide for an easier means to overcome the difficulty created by that restriction. In the case of c. 526 § 2, the commission may have thought that the competence of the internal authorities to dispense would be the means to overcome that difficulty created by the restrictive time period of temporary profession. See in this regard *Nuntia* 3 (1976), pp. 20–21: the guideline *Pastoral character* which says that the code should not be over-rigid, and *Nuntia* 4 (1977), p. 3 for the decision against excessive juridicism in the canons on religious. In addition, we may consider the fact that the authority to whom a sui iuris monastery is subject can grant the power of governance to its superior if he is a cleric (c. 441 § 2).

16 Velasio DE PAOLIS, *La vita consacrata nella Chiesa*, Venezia 2010, 451.

expanding the power, which the eparchial bishops have in ordinary situation (as in c. 1538 § 1), to religious major superiors, at least to those who are hierarchs, for dispensing from the dispensable norms of the common law and from those of the particular law of their sui iuris Churches, even outside a situation of emergency.

2. *Eparchial Bishop*

Here we examine whether the eparchial bishops can give dispensation to religious of the institutes directly subject to them. Canon 413 states, “Unless the law provides otherwise, religious institutes are subject with respect to internal governance and religious discipline directly and exclusively to the Apostolic See if they are of pontifical right; if they are of patriarchal or eparchial right, they are directly subject to the patriarch or eparchial bishop, with due regard for can. 418 §2.” Canon 418 § 2 states that under the designation *superior of religious*, local hierarch or patriarch is not included.

According to c. 413, institutes of eparchial right are directly subject to the eparchial bishop with respect to internal governance and religious discipline, although he is not their superior. Moreover, he is the hierarch of the institutes of eparchial right, and he exercises power of governance in those institutes, because their superiors and synaxes, even if they could be clerical (c. 505 § 3), do not have power of governance (cc. 441 § 2; 511 § 2). Thus, as their hierarchs, the eparchial bishops have a special relationship with respect to the institutes of eparchial right. Here, our question is whether he can dispense the religious of the institutes of eparchial right because of his exercise of power over them. Canon 1538 § 1 recognises his competence to dispense any Christian faithful over whom he exercises power, under the circumstances explained in that canon. Since he has certain power over the religious of eparchial right because of the immediate subjection of their institutes to him, it could be deducible that he has the power to dispense them from the norms of the common law,

from the norms of the particular law of his *sui iuris* Church, and from the norms of the *typica* and statutes, “which exceed the power of the religious superiors and which are legitimately requested from him, in single cases and on individual occasion” (c. 414 § 1, 2°). Thus, it seems that complying with the requirements for granting dispensation (cc. 1536-1539), he is competent to dispense the members of the institutes of eparchial right, because those institutes are directly subject to him (c. 413), he has power of governance over them (c. 414 § 1), and he is their hierarch (cc. 441 § 2; 511 § 2).

There are various canons in the CCEO which make us understand the power of the eparchial bishop over religious institutes of eparchial right. As examples, we can point out a few.

- Local hierarch (not only eparchial bishop) can visit the houses of religious as prescribed in cc. 414 § 1, 3°; 415 § 2; and 420 § 3. But if he visits the houses of institutes of pontifical and patriarchal rights his competence is limited to the areas specified in law such as public celebration of divine worship, preaching the word of God, catechetical and liturgical instructions, works of apostolate, etc. (cc. 415 §1; 205 § 3). If it is a house of an institute of eparchial right his power is greater.
- Canon 417 says, “If abuses have crept into the houses of institutes of patriarchal or pontifical right or their Churches and the superior, having been warned by the local hierarch, has failed to take care of it, the same local hierarch is bound by obligation to defer the matter immediately to the authority to which the institute itself is immediately subject.” If, instead, the house is of an institute of eparchial right, the local hierarch can intervene with more power; he need not limit himself to deferring the matter to other authorities.
- According to c. 612 § 1, the superiors of clerical institutes of the pontifical and patriarchal right can regulate preaching in their institutes. In the institutes of eparchial right, it is up to the eparchial bishop to regulate preaching.

- The eparchial bishop can dispense a religious from the impediment of public perpetual vow of chastity made in a congregation of eparchial right (c. 795 § 1, 2°).
- Canon 1022 § 1 speaks about the eparchial bishop's role of vigilance of the administration of temporal goods within the eparchial boundaries, except those which are not removed from his power of governance. The institutes of eparchial right, both of male and female and clerical and non-clerical, are not removed from the power of the eparchial bishops, and thus they have the duty of vigilance of the administration of temporal goods in the institutes of eparchial right.
- If the statutes of a juridic person do not determine the acts which exceed the limits and manner of ordinary administration, the authority to whom the juridic person is immediately subject is competent to determine such acts (c. 1024 § 2). We may note the expression "authority to whom the juridic person is immediately subject". The same expression is found in c. 413 (direct subjection of an institute of eparchial right to the eparchial bishop). Thus, if that juridic person is an institute of eparchial right, the eparchial bishop can decide in this matter, because it is directly subject to him, and patriarch can decide in the case of an institute of patriarchal right, if their statutes are silent about the matter.
- As per c. 1052 § 5, the superiors general of clerical institutes of pontifical or patriarchal right have the power of eparchial bishops in reducing the number of the celebrations of mass under certain conditions as mentioned in §§ 3-4 of the same canon. In the institutes of eparchial right, this power can be exercised by the eparchial bishop.

The term *hierarch* in c. 1538 § 2 would include also local hierarch. Observing this norm, not only the religious hierarchs but also local hierarchs and other hierarchs such as patriarchs can dispense from all dispensable laws in situations of emergency. Thus, the eparchial

bishop, as local hierarch, may grant dispensation also to the members of the institutes of pontifical and patriarchal right in emergency situations as described in c. 1538 § 2. In such situations, therefore, religious can legitimately seek dispensation from their own hierarch (major superiors of clerical institutes of pontifical and patriarchal right) or from their local hierarch or still from patriarch or metropolitan of a metropolitan Church. Also religious of non-clerical institutes of pontifical and patriarchal right can make use of this provision to obtain dispensation from the eparchial bishop as their local hierarch, if situation is so urgent. In an ordinary situation, the eparchial bishop does not have the competence to give dispensation to religious of the institutes of pontifical and patriarchal right. Although religious of the institutes of pontifical and patriarchal right are part of Christian faithful, they are not entrusted to the local hierarch for their ordinary governance, except in those cases which explicitly attribute to him power (for example c. 415 § 1). Thus, the eparchial bishop cannot dispense these religious from the norms of the common law and of the particular law of his *sui iuris* Church as he would do with other Christian faithful over whom he exercises power (c. 1538 § 1).

An eparchial bishop, as local hierarch, may give dispensation to a religious from the laws regarding those matters in which they are subject to him: public celebration of divine worship, preaching of the word of God to people, religious and moral education of the Christian faithful, especially of children, catechetical and liturgical instructions, the decorum of the clerical state, as well as various works that regard the apostolate (c. 415 § 1). In these matters, the eparchial bishop may be able to dispense religious of the institutes of any canonical status because of their subjection (c. 1538 § 1) to him in these matters.

The scope of an eparchial bishop's competence to give dispensation includes *his* *sui iuris* Church's particular law, and not the particular law of the *sui iuris* Church of the religious who seeks dispensation. This distinction is relevant when the religious seeking dispensation belongs to a different *sui iuris* Church in relation to the eparchial

bishop's Church. If the *sui iuris* Churches of the eparchial bishop and of the religious, who seeks dispensation from a norm of the particular law of the religious' own Church, are different, the religious may have to make the request to the competent authorities of his/her own *sui iuris* Church. This provision is not clearly foreseen in the CCEO.

According to the previous Eastern Catholic legislation, a local hierarch had the competence to dispense religious from common law (PAL c. 170, see also CIC-1917 c. 620).

From all these canons, we may legitimately deduce that the dispensatory power of the eparchial bishop includes within its scope the religious of the institutes of eparchial right, just as other Christian faithful referred to in c. 1538 § 1, that is to say, he can give dispensation to religious of the institutes of eparchial right, even in an ordinary situation, from the norms of the common law and of the particular law of his *sui iuris* Church. However, although the necessary principles supporting this conclusion are present in the code, the norm is not clearly articulated. Thus in many cases religious do not approach eparchial bishops for dispensation, and if approached, they seem to hesitate to give it. In an ordinary situation, however, he cannot give dispensation to a religious or to a religious community of pontifical or patriarchal right, except in those matters in which they are subject to him (example, c. 415 § 1).

3. *Patriarch*

Canon 414 § 2 states, "These rights belong to the patriarch with respect to orders and congregations of patriarchal right that have their principal house within the territorial boundaries of the Church." Which are "these rights"? The canon's § 1 answers it. Accordingly they are: to approve the *typica* of monasteries and the statutes of congregations of patriarchal right (n. 1°); "to give dispensations from the same *typica* or statutes, which exceed the power of the religious superiors and which are legitimately requested from him, in single cases and on

individual occasions” (n. 2°); and to visit monasteries and houses of orders and congregations of patriarchal right (n. 3°). What interests us here is that patriarchs, in the case of institutes of patriarchal right, can “give dispensations from the same typica or statutes, which exceed the power of the religious superiors and which are legitimately requested from him, in single cases and on individual occasions” (c. 414 §1 n. 2° and §2). The reason for this power of patriarch is that institutes of patriarchal right are directly subject to him (c. 413). This direct subjection is somewhat similar to the subjection of the institutes of eparchial right to the eparchial bishop. The similarity is not total because in the clerical institutes of patriarchal right, the superiors have power of governance and are hierarchs, whereas in the institutes of eparchial right they do not have that power and are not hierarchs (cc. 441 § 2; 511 § 2; 984 § 3); this distinction makes a lot of difference.

However, our initial question remains: who is the authority competent to give dispensation to religious of the institutes of patriarchal right in an ordinary situation from the norms of the common law and those of the particular law of the patriarch’s sui iuris Church? Canon 1538 § 1 authorizes the eparchial bishop to give dispensation from the common law and the particular law in individual cases if that is necessary for the good of the person. Such an authorization is not given to the patriarchs and the heads of other sui iuris Churches; indeed, the patriarchs can dispense from the common law norms in certain cases, with which we will deal below. Thus, while the eparchial bishop can give dispensation to the faithful subject to him, the patriarch cannot give that to the faithful of his entire Church and to religious of the institutes of patriarchal right. As the eparchial bishop, he can give it to the faithful of his eparchy, and he may give it to the religious of the institutes of eparchial right of the same eparchy.

In fact, there are certain norms in common law which explicitly reserve the power of dispensation to the patriarch, for example, from the form of marriage (c. 835), from the matrimonial impediments of conjugicide and public perpetual vow of chastity in the congregations

of any juridical condition (patriarchal and pontifical (c. 795 § 2)).¹⁷ Nonetheless, this dispensatory power of the patriarch does not authorise him to dispense religious of the institutes which are directly subject to him as patriarch.

In stauropegial monasteries, the patriarch has the right of local hierarchy as those monasteries are directly subject to him (c. 486 § 2). In those monasteries, the patriarch has practically all the power of an eparchial bishop in a monastery of eparchial right. Thus the patriarch may exercise the power, which is recognised for an eparchial bishop in c. 1538 § 1, towards the monks and others who live in those monasteries.

Since the patriarch and metropolitan of a metropolitan Church are hierarchs (c. 984 § 1), religious of the institutes of any canonical status are entitled to approach them for dispensation in situations of emergency as foreseen in c. 1538 § 2. That is to say, they can dispense them if it is difficult for them to approach the authority to whom the dispensation is reserved, and, at the same time, if there is danger of great harm in delay; but in that case, they cannot dispense from the obligation of clerical celibacy (c. 396). The situation foreseen in c. 1538 § 2 is an exceptional case, and the power used in such cases cannot be extended to an ordinary situation to give dispensation to religious.

The direct subjection of the institutes of patriarchal right to the patriarch with respect to internal governance and religious discipline (c. 413) should have been considered sufficient reason to recognise his right to dispense religious of those institutes from law as in c. 1538 § 1.¹⁸ According to the present law, he does not have that power. Only

17 However, in the congregations of eparchial right, the eparchial bishop can give dispensation from this vow (c. 795 § 1, 2°).

18 It is interesting to note that during the codification, in one of the first drafts of the canons on religious, there was a norm which recognized the power of the patriarch to give dispensation to religious also from the common law norms (*Nuntia* 8 (1979) 37–38, 39 c. 7). However, in the draft of the following year,

the eparchial bishops have the power to dispense the Christian faithful over whom they exercise power.

The post-Vatican II Eastern code was intended to incorporate the teaching of that council. Paul VI, in his speech, inaugurating the work of codification, insisted that the code should be made according to the mind of the fathers of Vatican II and the genuine Eastern tradition.¹⁹ The guidelines for the codification of the CCEO require the code-in-the-making to follow closely the teaching of this council. Accordingly, the Eastern code was to implement the teaching of Vatican II “in accordance with the principles and spirit of the same Council.”²⁰ John Paul II affirms that the Eastern code has been faithful to the conciliar teaching. He says: “The *Code of Canons of the Eastern Churches* should be considered as a new complement to the teaching proposed by the Second Vatican Council.”²¹ One of the central teachings of the decree *Orientalium Ecclesiarum* (OE) is the need of “scrupulous fidelity to the ancient traditions” (OE 24). The same decree teaches “that their [the patriarchs’] rights and privileges be restored in accordance with the ancient traditions of each church and the decrees of ecumenical synods” (OE 9).²² In the time of union, as the same decree states, between east and west (OE 9), it would be impossible to think that the patriarchs (fathers and heads of their Churches) are not entitled to dispense religious of the institutes which are subject to them, and that such religious are to have recourse to the RAS each

that norm was not included; and no real reason was given for excluding it. The only reason given is that it would not be appropriate to have it in the code (“in Codice inopportunos”): *Nuntia* II (1980) 7.

19 *Nuntia* I (1975) 6–7.

20 See the preamble of the guidelines in *Nuntia* 3 (1976) 18.

21 See his apostolic constitution *Sacri Canones*, promulgating the CCEO, on 18 October 1990. Translation is from *Code of Canons of the Eastern Churches Latin-English Edition*, xxv.

22 Translation is from Norman P. TANNER (ed. & tr.), *Decrees of the Ecumenical Councils*, London-Washington [D.C.] 1990, vol. 2, 903.

time when they need dispensation from the norms of the common law and the particular law. Thus, respecting the teaching of Vatican II, the canon law of the Eastern Churches would do well in authorising the patriarchs to dispense religious of the institutes which are directly subject to him from the norms of the common law and those of the particular law of the *sui iuris* Churches of those patriarchs in keeping with the prescriptions of cc. 1536-1539.

Conclusion

The eparchial bishops have the power to dispense the faithful from the norms of the common law and of the particular law according to the norm of law (c. 1538 § 1). The patriarchs have certain amount of power over religious of the institutes of patriarchal right. The religious superiors and synaxes of the clerical institutes of pontifical and patriarchal right have power of governance over their subjects. The *typica* or statutes of an institute can determine the authority competent to give dispensation from the norms of the same *typica* or statutes (c. 414 § 1, 2°). The eparchial bishops and the patriarchs can dispense religious of the institutes respectively of eparchial and patriarchal right from the norms of their *typica* and statutes, “which exceed the power of the religious superiors and which are legitimately requested from him [them], in single cases and on individual occasions” (c. 414 § 1, 2° and § 2). However, the CCEO does not say anything about these authorities’ general power (as in c. 1538 § 1) to dispense religious of the institutes of eparchial and patriarchal right. The eparchial bishop seems to have that power over religious of the institutes of eparchial right on three grounds: 1) those institutes’ direct subjection to him, 2) he is their hierarch, and 3) the provision in c. 1538 § 1 to dispense the faithful over whom he exercises power. However, this conclusion is not explicit from the canon. It has to be deduced from the norms that we have analysed above.

The code, however, does not give any evidence of such power in the case of the patriarchs in relation to religious of the institutes of patriarchal right. There is no canon which says explicitly that a patriarch can dispense the faithful over whom he exercises power. Only in a situation of emergency, can the patriarch, as hierarch, dispense them (c. 1538 § 2). The common law does not extend to the religious superiors the faculty of the eparchial bishops to dispense from the common law and the particular law norms (c. 1538).²³ Thus the question emerges: if a religious needs dispensation from a norm of the common law or of the particular law of his sui iuris Church, who is competent to give that dispensation, in addition to the RAS?

In general, dispensation from the norms contained in the particular law of the institute is given by the authority which has approved it (eparchial bishop, patriarch, RAS). However, the same law may specify that the internal authorities can give dispensation from certain disciplinary norms of that law (fast and abstinence, participation in certain communitarian activities, divine praises, etc.).²⁴ Here we talk about dispensation from the particular law of the institute (typical/statutes), not the common law, and not even the particular law of the sui iuris Church concerned.

In the case of dispensation, a clearer doctrine has yet to be developed, especially in relation to religious. To a great extent, a solution can be found by leaving the matter to the particular law in harmony with the foundational principles of the CCEO such as the application of the principle of subsidiarity at various levels with decentralization of power and respect for the particular law.²⁵ The application of the principle of subsidiarity was repeatedly invoked during the work of codification of the CCEO, especially in the work of drafting the can-

23 DE PAOLIS, *La vita consacrata* (ftn. 16), 132.

24 DE PAOLIS, *La vita consacrata* (ftn. 16), 226–227.

25 *Nuntia* 28 (1989) 73 c. 540.

ons on religious.²⁶ There was also another principle, invoked during the codification of the CCEO, namely, the principle of healthy juridical flexibility and mobility in order to favour the pastoral needs of the Church.²⁷ Dispensation, as foreseen in c. 1538 § 1, being a relatively minor issue, there is no need to involve the highest authority (pope or RAS) in it all the time, because it can be handled by the authorities of the institutes concerned (major superiors) or by the authorities to whom the institutes are directly subject (eparchial bishop, patriarch, RAS). If we demand that all requests from religious for dispensation should come to the Oriental Congregation, we would be going against the above-mentioned foundational principles of the CCEO.

Finally, in order to clear any doubt in this matter and to avoid all institutes having recourse to the Oriental Congregation, it may be good to grant a general permission to the ecclesiastical authority (especially the eparchial bishop and the patriarch), to whom an institute is directly subject, to dispense the members (and communities if needed) of that institute in accordance with cc. 1536-1539. However, such a provision should respect the competence which the religious superiors already have to give dispensation from certain laws as determined in their typica or statutes (c. 414 § 1, 2°), and from certain common law norms such as c. 767, which authorises the hierarchs of the institutes of consecrated life to dispense their subjects from some impediments for receiving and exercising sacred orders. In addition, such permission should state clearly that the eparchial bishop and

26 *Nuntia* 4 (1977) 3. Already in the first meeting of the study group *De monachis* (7–12 Oct. 1974), it was decided to include as minimum as possible norms in the common code and to leave the rest to the particular law of each institute respecting its character and charism of foundation. In that meeting, the application of the principle of subsidiarity was explicitly invoked.

27 *Nuntia* 3 (1976) 20–21: the guideline *Pastoral character* says that the code should not be over-rigid. See also *Nuntia* 4 (1977) 3 where the study group decided against excessive juridicism in the canons on religious.

patriarch may grant dispensation to religious only with the consent of their major superior. Otherwise, this provision may be open to abuse. One of the advantages of leaving the power of dispensation to these ecclesiastical authorities, and not to the religious superiors, is that there will be the possibility of an objective evaluation of the situation and of the need. For making this provision, we need not wait until the next revision of the Eastern code. The Oriental Congregation could intervene, granting a general permission, in order to remedy the present insufficiency.

abstract

The present codes of canon law (CIC and CCEO) do not give clear norms regarding the authority competent to give dispensation from law to religious. The article discusses this question. Analysing various canons of the CCEO, the article comes to the conclusion that the eparchial bishop could give dispensation to the members of the institutes of eparchial right, whereas the patriarchs do not have the same power in relation to the members of the institutes of patriarchal right, except in the case of monks of stauropegial monasteries. In keeping with the foundational principles of the CCEO, that power should have been recognised for the patriarchs. Finally, the article proposes that the Oriental Congregation may give a general permission to the patriarchs to grant dispensation to the members of the institutes of patriarchal right, just as the eparchial bishops can do it in relation to the members of the institutes of eparchial right. Such permission should respect the competence which the major superiors have in granting dispensation in certain cases.