

Eastern Canonical Legislation and Second Vatican Council

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Introduction

The Intention of Pope John XXIII to convoke the Second Vatican Council was to strengthen the doctrine and to improve the ecclesiastical discipline. With this end in view he promulgated the Apostolic Constitution *Humanae Salutis* on 25 December 1961 whereby he officially and publically summoned the Council to meet in 1962. The Second Vatican Council was formally inaugurated on 11 October 1962 by John XXIII and concluded by Paul VI on 08 December 1965.¹ The objectives of the Council were the better internal ordering of the Church, unity among Christians, and the promotion of peace in the whole world. As the greatest ecclesial event in the twentieth century the Second Vatican Council brought about a renewal in Liturgy as celebration of the Word of God proclaimed and offered through the sacramental signs of Bread and Wine. The whole mystery of Christ is represented by these symbols. Another contribution of the Vatican II is a better understanding of the Church as Communion of particular Churches and Churches *sui iuris*. This communion ecclesiology finds its expression in the saving presence of the one Church of Christ in the universal Church being present in the various entities which are Churches themselves (Acts 8: 1; 11: 22; I Cor. 1: 2; ; 16: 19; Gal 1: 22; Rev 2: 1, 8). Another uniqueness of the Vatican II is dialogue as the Way of being the Church. Dialogue is the tool for its mission today. With Vatican II a new era of

¹ As the greatest renewal programme in the Church, the Second Vatican Council was attended by 2540 fathers, as compared with 750 at the First Vatican Council and 258 at the Council of Trent. For a detailed critical study of the context, nature and documents of the Council, see, Rene Latourelle, ed., *Vatican II: Assessment and Perspectives, Twenty-five Years after (1962 – 1987)*, III Vols., Paulist Press, Mahwah, New Jersey, 1988.

mutual understanding and cooperation among the Churches and ecclesial communities was inaugurated. As a fruit of the Vatican II the erection and functioning of the two secretariats and of the Church, the Pontifical Council for Ecumenism and the Pontifical Council for Inter- religious Dialogue provided a world - wide dimension for the mission of the Church. In the context of the phenomenon of globalization Vatican II presents Church facing challenges in evangelization entailing new ardour, new methods and new expressions to counter the effects of being as relative, subjective and secular.²

Autonomy and Right for Self- Rule

Before the convocation of the First Vatican Council (1869 – 1870) Prefect of *Propaganda Fide* made an enquiry from certain Bishops of Eastern Churches asking for suggestions and opinions to be included in the agenda of the possible new Ecumenical Council.³ The Melkite patriarch Gregory Youssef replied demanding a proper canon law for the Eastern Churches. Lack of a canon law rendered administration of justice very difficult and resulted in arbitrariness and abuses in Church discipline. Joseph Papp-Szilagyi argued for restoration of canonical norms, almost a complete Code like penitential canons, canons concerning fasting, disciplinary norms for offenders of the Church discipline, especially not frequenting to sacraments and deferring the sacrament of reconciliation to the last moment of life.⁴

The Chaldean Patriarch Mar Audo Joseph VI argued for a hierarchical structure of the Church in conformity with the Eastern tradition so that they may conserve their individuality, identity, autonomy and venerable patrimony. Moreover, the representatives of the Armenian as well as Romanian Churches insisted on the need for preservation of the sacred heritage and ancient traditions of the Eastern Churches. The Preparatory commission for missions and Eastern Churches held a detailed discussion about the need for a Code of laws. During the discussion the Latin patriarch Joseph Valerga emphasised on a common code for East and West with due consideration for the specific Eastern customs with prior approval

² Shaji George Kochuthara, ed., *Revisiting Vatican II: 50 Years of Renewal*, vol. I, Dharmaram Publications, Bangalore 2014, 27 – 31.

³ Ioannes Dominicus Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio*, 54 vols., H. Welter: Paris 1901 – 1927, vol. 49, p. 182.

⁴ Mansi, *Conciliorum*, 49, 198 – 200; *AAS* 82 (1990) 1048.

from Apostolic See.⁵ Another proposal was to have a code of common conduct or manual of law containing norms of ecclesiastical discipline. Although there were similar proposals from the part of the spokespersons of the Eastern Churches the disciplinary commission of the Council rejected them all at the outset.⁶

During the debate in the preparatory commission of the Council it was argued that Latin discipline was the universal ecclesiastical discipline properly developed over centuries. On the other hand, the Eastern discipline was impeded from development due to schism or lack of unity between the East and West.⁷ The deliberations of the Council were centred on these burning issues. An eastern hierarch meanwhile argued that there already existed an eastern code and Trullan code was identified as the Code of the Eastern Churches approved in canon 2 of the Council of Trullo (691/692).⁸ Amidst the heated discussions the Commission was fully convinced that the Eastern Churches were in need of a Code of canon law. Such a Code would be of great authority, complete and common to all nations, and suited to all circumstances of space and time.⁹ The predominant opinion of the Council was in favour of a universal discipline and any idea of a dual code or anything in favour of the Eastern Churches was staunchly opposed. Therefore, the Commission decided to omit from the schema all references to Eastern code.¹⁰ Due to the pressure of circumstances the commission opted for a disciplinary unity. It was followed by a serious debate in the Council hall. In this context the observations of Mar Audo Joseph VI, Patriarch of the Chaldean Catholic Church deserve special attention. He defended the principle of variety as the hallmark of catholicity. He pleaded for a variety in those things other than matters of faith in as much as they are proof of divine power and omnipotence in the unity of Catholic Church. He stood for a new canon law to be codified corresponding to the ancient canons as well as the wishes of the Council and that he assured it would be submitted for approval of the Council

⁵ Mansi, *Conciliorum*, 49, 987, 1012; 50, 31 – 34, 45 – 46, 74 – 75; *AAS* 82 (1990) 1048.

⁶ Mansi, *Conciliorum*, 50, 45.

⁷ Mansi, *Conciliorum*, 49, 993 – 994; 50, 33.

⁸ Mansi, *Conciliorum*, 50, 544; 52, 383; Ivan Zuzek, *Understanding the Eastern Code*, PIO: Rome 1997, 214 - 215.

⁹ Mansi, *Conciliorum*, 49, 1012.

¹⁰ Mansi, *Conciliorum*, 50, 75.

fathers. Patriarch Audo and Patriarch Youssef defended the antiquity and apostolicity of the Eastern Churches and opted for a unified common code for Eastern Churches to ensure their autonomy and right to self-rule.¹¹ There were three proposals that emerged from the discussions and deliberations: A single code for the Universal Church; two common codes for Latin Church as well as the Eastern Churches; a separate code for each of the churches *sui iuris*. Since the Franco-Prussian war broke out the council sessions came to an abrupt end on 20 October 1870 and a decision could not be taken in this regard.

Two decades after the adjournment of the First Vatican Council Pope Leo XIII ordered that revision of canonical discipline of the Eastern Churches shall be undertaken by individual Churches and shall be submitted to the Apostolic See for approval. He was well informed about the richness of the sacred heritage of the Eastern Churches and praised the variety of the Eastern liturgy and ecclesiastical discipline. He rightly pointed out that such variety is indeed the mark of catholicity in the Church of Christ.¹²

Second Vatican Council

The intention of John XXIII was to convoke a ‘pastoral’ council. It is evident from the discussions and deliberations of the council that pastoral emphasis on the documents directly affected the discipline and ecclesial activity. The Plenary Assembly for the Revision of Latin Canon Law was convoked on 20 November 1965 by Paul VI and in his inaugural address he stressed on the relationship between Revision of Canon Law and the precepts of Second Vatican Council: “Now, however, with changing conditions – for life seems to evolve more rapidly – Canon Law must be prudently reformed; specifically, it must be accommodated to a new way of thinking proper to the Second Ecumenical Council of the Vatican, in which pastoral care and new needs of the people of God are met.”¹³ On several occasions Paul VI spoke high of the interrelationship of Church law and discipline, life of faith and role of *magisterium*. He linked Church law and the conciliar teaching: ‘formulate in concrete terms the deliberations of Vatican Council II (1964)’; ‘Accommodate Canon law to the new way

¹¹ Mansi, *Conciliorum*, 50, 513 - 516; 52, 133 – 137, 671 – 676; AAS 82 (1990) 1048.

¹² Leo XIII, Apostolic letter, *Orientalium Dignitas*, 30 November 1894, in *Acta of Leo XIII*, 14 (1894) 201 – 202; see also Preface of Latin edition of CCEO, AAS 82 (1990) 1048.

¹³ *Communicationes*, 1 (1969) 41.

of thinking of Vatican Council II (1965, 1973)'; 'Express more clearly the doctrinal and disciplinary thrust of the Council (1970).'

The Supreme Pontiff Paul VI established the Pontifical Commission for the Revision of the Code of Oriental Canon Law (PCCICOR) on 10 June 1972. PCCICOR was given the mandate to revise the canons promulgated with the four apostolic letters issued *motu proprio* of Pius XII on marriage (1949), ecclesiastical trials (1950), Religious and Temporal Goods (1952) and Persons & Rites (1957). Besides, the mandate also included the duty to revise, in the light of the precepts of the Second Vatican Council, the norms of the Eastern Canon Law already prepared but not promulgated.¹⁴ The immediate reason for the establishment of the Pontifical commission for the revision of the Eastern Canon law is the unwelcome incident experienced by Melkite Patriarch Maximos in a Roman dicastery: "It seems that the dispositions of the decree (OE) have irritated even the high members of the Roman Curia, A high dignitary of one of the Roman dicasteries, replied to objections which Patriarch Maximos V had drawn from the Vatican II's documents: 'here there is no Council! There is Canon Law!' And the Melkite Patriarch continues: 'sure, I was scandalized, but I understood why John XXIII convoking the Council, established at the same moment, the Commission for the revision of the Latin canon law...A documented note was carefully prepared. I remitted it to Pope Paul VI of venerated memory ... A few days later, the members of the Commission for the revision of the Oriental Law were appointed.'"¹⁵

Fidelity to Ancient Heritage

About ninety years after the close of First Vatican Council there appeared a paradigm shift in the perspective about ecclesial realities. After the Trinitarian model the Church of Christ began to be viewed as one and many. Unity in diversity was inclusive of all Eastern Churches and ecclesial communities: "Church as communion reflects the Trinitarian communion in unity and diversity. As each person in the Trinity is full in Divinity, each individual Church is full in its ecclesiality. As the communion of the three persons in one reality, Triune God, the communion of the Churches is also one reality, the universal Church. As each person is Trinitarian, each individual

¹⁴ *Nuntia* 1 (1975) 6 – 7.

¹⁵ John Madey, *Orientalium Ecclesiarum: More than Twenty Years After*, OIRSI, Kottayam, 1987, 27 - 28. See also Clemens Pujol, *Decretum Concilii Vaticani II 'Orientalium Ecclesiarum'*, PIOS, Roma, 1970.

Church is One, Holy, Catholic and Apostolic. According to the Trinitarian perichoretic principle, the individual Church and the Universal Church are inside one another. An individual Church is wholly the Church, but not the whole Church. It is fully the Church only in communion with the other Churches.”¹⁶ The Second Vatican Council endorsed the possibility of pluralism in theological formulations. Such diversity in dogmatic formulations does not damage unity of faith: “In such cases, these various theological expressions are often to be considered as mutually complementary rather than conflicting” (UR 17). The Council stressed that the authentic theological traditions of the Eastern Churches have their roots in Holy Scripture and have expression in liturgical life; they derive their strength from the living tradition of the apostles and fathers and spiritual writers of the Eastern Churches; they promote the right ordering of life and lead to the full contemplation Christian truth. The Instruction of CDF on ecclesial vocation of theologians elucidated that the theological pluralism is legitimate to the extent that the unity of faith in its objective meaning is not jeopardized.¹⁷

An example of this diversity of theological formulations of Churches *sui iuris* is the common Christological Declaration signed by Pope John Paul II and the Catholicos – Patriarch Mar Dinakha IV of the Assyrian Church of the East in the mutual agreement about the expressions used for Blessed Virgin Mary as ‘Mother of God’ and ‘Mother of Christ’, signed on 11 November 1994.¹⁸ After a profound study and mature deliberation the theological formulation was accepted by both the Catholic Church and the Assyrian Church of the East as follows: “...the Assyrian Church of the East is praying the Virgin Mary as ‘the Mother of Christ our God and Saviour’. In the light of this same faith the Catholic tradition addresses the Virgin Mary as the ‘Mother of God’ and also as the ‘Mother of Christ’. We both recognize the legitimacy and rightness of these expressions of the same faith and we both respect the preference of each Church in her liturgical life and piety.”¹⁹

¹⁶ Mathew Vellanickal, “Theology of Individual Churches”, in *Mar Thoma Margam: The Ecclesial Heritage of the Saint Thomas Christians*, edited by Andrews Mekkattukunnel, OIRSI. Kottayam, 2012, 45.

¹⁷ Congregation for the Doctrine of Faith (CDF), *Donum Veritatis* in *L'Osservatore Romano*, 34, 02 July 1990, 3.

¹⁸ *AAS* 87 (1995) 685 – 687.

The positive signs of inclusiveness of various Eastern Churches, Orthodox sister churches and non-Christian religions manifests a new way of thinking. The decree on Eastern Churches elucidates the concept of Church and rite: “The holy catholic Church, which is the mystical body of Christ, is made up of the faithful who are organically united in the Holy Spirit by the same faith and sacraments and by the same government and who, growing together in various hierarchically linked groups, make up the various churches or rites. There is a remarkable interchange between them, so that the variety within the Church not only does no harm to its unity, but rather makes it manifest. For the Catholic Church wishes that the traditions of each individual Church or rite be kept whole and entire; it also wishes to adapt its way of life to the various needs of time and place.” (OE 2)²⁰

The prophetic words of John Paul II are pertinent in this context: “In the wonderfully great variety of rites, that is, of the liturgical, theological, spiritual, and disciplinary heritage of those Churches that have their origins in the venerable Alexandrian, Antiochene, Armenian, Chaldean and Constantinopolitan traditions, the sacred canons are rightly regarded as a notable constituent of that same heritage, constituting a single, common canonical foundation of Church order.”²¹ The revised canon of the Eastern Churches reads as follows:

Can. 28 #1. A rite is a liturgical, theological, spiritual, and disciplinary heritage, differentiated by the culture and circumstances of the history of peoples, which is expressed by each Church *sui iuris* in its own manner of living the faith.

#2. The rites dealt with in this Code, unless it is established otherwise, are those which arose from the Alexandrian, Antiochene, Armenian, Chaldean and Constantinopolitan traditions.

The term rite designated either: a) a liturgical ceremony; b) a complex of liturgical ceremonies; customs and practices including canonical discipline;

¹⁹ Pope John Paul II and Catholicos-Patriarch Dinkha IV, “Common Christological Declaration”, in Mar Aprem, *The Assyrian Church of the East in the Twentieth Century*, Saint Ephrem Ecumenical Research Institute – SEERI, Kottayam, 2003, 236 – 239; see page 237.

²⁰ Norman P. Tanner, ed., *Decrees of the Ecumenical Councils*, vol. II, Sheed & Ward and Georgetown University Press, London/Washington, 1990, 900 – 901.

²¹ John Paul II, *Sacri Canones*, 18 October 1990, AAS 82 (1990) 1034.

c) communities of faithful, with or without their own hierarchy, who were received into full communion with Rome while retaining their own liturgical ceremonies, customs and practices.²² The definition of rite in CCEO is based on several conciliar texts like LG 23, UR 17, OE 1, 3 and 5. These texts serve to show the intimate relationship between Churches and rites.

By divine providence it has come about that various churches, founded in various places by the apostles and by their successors, have in the course of time become joined together into several groups, organically united, which, while maintaining the unity of faith and the unique divine constitution of the universal church, enjoy their own discipline, their own liturgical usage and their own theological and spiritual patrimony. (LG 23).²³

Where the authentic theological traditions of the eastern Church are concerned, we must recognize the admirable way in which they have their roots in holy scripture, how they are nurtured and given expression in liturgical life, how they derive their strength from the living tradition of the apostles and from the works of the fathers and the spiritual writers of the Eastern Churches, and how they promote the right ordering of life and, indeed, pave the way to the full contemplation of Christian truth...It declares that all this heritage of spirituality and liturgy, of discipline and theology, in its various traditions, belongs to the full catholic and apostolic character of the Church. (UR 17)²⁴

The catholic church highly esteems the in situations, liturgical rites, ecclesiastical traditions and way of Christian life of the Eastern Churches. For in them as renowned for their venerable antiquity, shines forth a tradition which exists through the fathers from the apostles and which constitutes part of the divinely revealed and undivided heritage of the whole church.” (OE 1)²⁵

Although individual churches of this kind, both of the east and west, differ somewhat in what are called rites, such as liturgy, ecclesiastical order and spiritual heritage, still they are entrusted on an equal footing to the pastoral guidance of the Roman Pontiff, who by divine right succeeds blessed Peter in primacy over the whole Church. Thus the same churches enjoy equal dignity, so that none of them ranks higher than the

²² George Nedungatt, *The Spirit of the Eastern Code*, Dharmaram Publications, Bangalore 1993, 64.

²³ Norman P. Tanner, *Decrees of the Ecumenical Councils*, Vol. II, 868.

²⁴ Norman P. Tanner, *Decrees of the Ecumenical Councils*, Vol. II, 917, 918.

²⁵ Norman P. Tanner, *Decrees of the Ecumenical Councils*, Vol. II, 900.

others by reason of their rite, and they enjoy the same rights and are bound by the same laws, even as regards preaching the gospel throughout the whole world (Mk 16, 15), under the direction of the Roman Pontiff. (OE 3)

Hence it solemnly declares that the churches of the east and west enjoy the right, and are bound by duty, to govern themselves in accordance with their own particular rules, seeing that they are recommended by venerable antiquity, are more suited to the customs of their faithful and seem more suitable for assuring the good of souls. (OE 5)²⁶

The teachings of the Second Vatican Council were translated into canonical language by the promulgation of canonical legislations in ten Church, namely, Code of Canon Law of the Latin Church (1983) and the Code of Canons of the Eastern Churches (1990). John Paul II in his apostolic Constitution with which he promulgated the Cod of Canons of the Eastern Churches emphasized on the need for having two codes in the Church: “From the very beginnings of the codification of the canons of the Eastern Churches, the constant will of the Roman Pontiffs has been to promulgate two codes: one for the Latin Church, the other for the Eastern Churches. This demonstrates very clearly that they wanted to preserve that which in God’s providence had taken place in the Church: that the Church, gathered by the one Spirit breathes, as it were, with the two lungs of East and West, and burns with the love of Christ, having one heart, as it were, with two ventricles.”²⁷

Particular Law of Churches *sui iuris*

On the occasion of the promulgation of the common code of the Eastern Churches John Paul II invited those with legislative power to formulate at the earliest particular legislations for the churches concerned in conformity with the customs, historical circumstances, culture and religious traditions: “Furthermore, in this area full attention should be given to all those things that this code entrusts to the particular law of individual churches *sui iuris*, which are not considered necessary to the common good of all of the Eastern Churches. Our attention regarding these things is that

²⁶ Norman P. Tanner, *Decrees of the Ecumenical Councils*, vol. II, 902.

²⁷ John Paul II, Apostolic Constitution, *Sacri Canones*, 18 October 1990, *AAS* (1990) 1037. The possibility of a third lung is also discussed apart from a Latin west and a Greek orient, namely, a Syriac orient. A treatise on the possibility of a third lung cf. Sebastian P. Brock, “The Syriac Orient: A Third Lung for the Church?” *Orientalia Christiana Periodica* 71 (2005)5.

those who enjoy legislative power if each of the Churches should take counsel as soon as possible for particular norms, keeping in mind the traditions of their own rite and the precepts of the Second Vatican Council.”²⁸

The disciplinary autonomy and right to self- rule were emphasized by the Supreme Pontiff after in the Post- Synodal Apostolic Exhortation, *Ecclesia in Asia*, in the following words: “The situation of the Catholic Eastern Churches, principally of the Middle East and India, merits special attention. From apostolic times that have been the custodians of a precious spiritual, liturgical and theological heritage. Their traditions and rites, born of a deep inculturation of the faith in the soil of many Asian countries, deserved the greatest respect. With the Synod fathers, I call upon everyone to recognize the legitimate customs and the legitimate freedom of these Churches in disciplinary and liturgical matters, as stipulated by the Code of Canons of the Eastern Churches.”²⁹ Accordingly, the Syro-Malabar Church formulated the Code of Particular Law and promulgated it in 2003 and Syro-Malankara Church promulgated their Particular Code of Canons of the Syro-Malankara Church in 2012.³⁰

Administration of Justice

The juridical patrimony of the Church with regard to administration of justice was developed by individual churches over centuries. The rich heritage of the Churches *sui iuris* is protected by the variously by the ancient canons of the councils, fathers, synods and canonical collections. The ancient rules and regulations contained in the sacred canons of the first millennium were received or adapted in the new Code. The judicial power of the Synod of bishops is mentioned in canon 74 of the apostolic canons: “If any bishop has been accused of anything by men worthy of credit, he must be summoned by the bishops; and if he appears, and confesses, or is

²⁸ AAS 82 (1990) 1037 – 1038.

²⁹ John Paul II, Apostolic Exhortation, *Ecclesia in Asia*, 06 November 1999, Libreria Editrice Vaticana, Vatican City, 1999, 83.

³⁰ The Syro-Malabar Church was raised to a Major Archiepiscopal status by John Paul II on 16 December 1992 by the Apostolic Constitution, *Quae Maiori*. See *Synodal News* 1 (1993) 12. The Syro Malankara Church, on the other hand, was first a Metropolitan *sui iuris* Church and later it was raised to a Major Archiepiscopal status by John Paul II through the Apostolic Bull, *Ab ipso Sancto Thoma*, of 10 February 2005. See *Malankara: Synodal Acts and Voice of the Syro-Malankara Catholic Church*, 1 (2012) 12.

convicted, a suitable punishment must be inflicted upon him. But if when he is summoned he does not attend, let him be summoned a second time, two bishops being sent to him, for that purpose. (If even then he will not attend, let him be summoned a third time, two bishops being again sent to him). But if even then he shall disregard the summons and not come, let the synod pronounce such sentence against him as appears right, that he may not seem to profit by avoiding judgement.”³¹ The canons treat in detail the procedure of the tribunal, credibility of parties and witnesses and the probative value of their depositions. The fourth canon of the Council of Nicaea I (325) recognized the Synodal structure of the Church and canon five required the conformity of ecclesiastical discipline. The Synod of Antioch (341), Synod of Sardica (343 – 344), First council of Constantinople (381), Synod of Constantinople (394), Synod of Isaac (410), Synod of Carthage (419), council of Chalcedon (451), Council of Trullo (691/692); the particular synods of second millennium, like, synod of Diamper of The Syro-Malabar Church (1599), Maronite Synod of Mount Lebanon (1736), The Romanian Synod, Provincial Synod of Alba Julia and Fagaras (1872), Melkite Synod of sciarfe (1888), Alexandria Coptic Synod (1898); the Canonical collections, namely, the Rules of Ecclesiastical Judgements and of succession of Patriarch Timothy I (709 – 805), Fiqhan Nasraniyah of Ibn At Tayib (+ 1043), *Synodicon*, Nomocanon, The Rules of Ecclesiastical Judgements of Ebed Jesus are some examples that unveil the gradual development of the procedural norms in the Eastern Churches with respect to administration of justice. A gradation of adjudication and final judgement by bishops, metropolitans and patriarchs are characteristic features of the Eastern Churches. Gradually the power of the Roman Pontiff gets established the supreme judge to decide on the possible appeals and resources from the orient. A shift of emphasis from Monarchical system to a collegial act is evident.

The Second Vatican Council affirmed that the Churches of the East have the right to govern by themselves in accordance with their own proper discipline. This right is sanctioned by the venerable antiquity and it is in conformity with character customs of the people and in assurance of the good of souls: “Moreover, from the earliest times the Eastern Churches followed their own disciplines, which were sanctioned by the approval of

³¹ Henry R. Percival, ed., *The Seven Ecumenical Councils of the Undivided Church*, XV (1988) 599.

the fathers of the Church and of the synods, even of ecumenical synods... This synod solemnly declares that the Churches of the East, while mindful of the necessary unity of the whole church, have the right to govern themselves according to the disciplines proper to themselves..." (UR 16).

The Second Vatican Council played a pivotal role in bringing about reform and renewal of the Roman curia. The reforms enabled the organs of the Roman Curia to a large opening to new situations, unification of competencies, remedy of possible abuses, greater clarity in procedure, better juridical technique. In the light of the teachings of second Vatican Council the apostolic Constitution, *Pastor Bonus* by Pope John Paul II (1988) addressed the needs of the time. The Apostolic Tribunal of Roman Rota began to exercise the threefold function in the Universal Church: to safeguard the rights of persons, to provide for the unity of jurisprudence and to be of assistance to the other ecclesiastical tribunals.

The tribunal processes have their aim to avoid the arbitrariness in adjudication and to be faithful to the observance of canonical norms leading to greater certainty, security and credibility. The rights of the parties in a case should be respected. They have the right to know the issue in all stages of a procedure; they have the right to be cited; they have the right to know the ground; right to appoint an advocate or a procurator or both right to present witnesses, right to know the names of the witnesses, right to examine the acts of the process (relating to publication of acts), right to propose other elements of proof, right to reply to the observations and pleadings, right to know the decision (related to publication of sentences), right to challenge the decision (CCEO cc. 1190 p 1309; CIC cc. 1372 – 1628).

Tribunal Structure in Eastern Churches

The competence and autonomy of tribunals in Eastern Churches are conspicuous. The Synod of Bishops of the Patriarchal/Major Archiepiscopal Churches is known as superior tribunal. The previous Eastern legislation foresaw legislative and administrative/executive powers as principal areas of competence of synod of bishops. Formerly, the judicial authority was entrusted to patriarch/Major Arch bishop or together with permanent synod. Synod of bishops adjudged only causes of serious nature (*Sollicitudinem Nostram*, cc. 17, 18; *Cleri Sanctitati*, cc. 243, 248). The guiding principle for the revision of Eastern canon law envisaged more judicial authority to the patriarchal/Major Archiepiscopal Synod as a tribunal of

major criminal/penal actions with due regard for the right to *provocatio ad Sedem Apostolicam* (SN c. 32). It was integrated into CCEO as an exception and does not constitute a real appeal.³² During the revision of the CCEO it was observed that CIC (1917) c. 1578 did not consider necessary for the bishop to exercise his judicial power in his diocese. It was because it is odious and less suitable to his character as father.³³ It was also discussed that the figure of patriarch cannot be a judge by divine right for the entire Patriarchal/Major Archiepiscopal Church. However, the tribunal of the Synod of Bishops is endowed with the power of administration of justice. The tribunal of the Synod of Bishops is competent to judge contentious cases of eparchies and bishops. This is a recognition of the ancient heritage of the Patriarchal/Major Archiepiscopal Churches of the East. This system is in fidelity to the patrimony of the Eastern tradition as well as in conformity with the spirit of the teachings of Second Vatican Council: “The Churches of the East and the West enjoy the right, and are bound by duty, to govern themselves in accordance with their own particular rules” (OE 5).³⁴

From the beginning the churches of the east have had a treasury from which the western church has drawn extensively – the liturgical practice, spiritual tradition and canon law” (UR14).³⁵

The churches of the east, while mindful of the necessary unity of the whole Church, have the right to govern themselves according to the disciplines proper to themselves, since these are better suited to the character of the faithful, and more for the good of their souls (UR 16).³⁶

The tribunal of Synod of bishops is competent to judge contentious cases of eparchies and bishops. It is thus the ancient heritage of the Churches of the East is acknowledged. On the other hand, in the Latin Church the Apostolic Tribunal of Roman Rota adjudicates the bishops and dioceses in contentious cases. (CIC c. 1405 #3. *Pastor Bonus* at. 129 #1). In cases of the diaspora of the Patriarchal Churches and other Churches *sui iuris* the

³² The development of the Canons on judicial power of the ‘Synod as supreme tribunal’ see *Nuntia* 5 (1977) 13; *Nuntia* 14 (1982) 20; *Nuntia* 21 (1985) 41; *Nuntia* 24 – 25 (1989) 132.

³³ *Nuntia* 5 (1977) 13.

³⁴ Norman P. Tanner, *Decrees of the Ecumenical Councils*, Vol. II, Sheed and Ward & Georgetown University Press, London/Washington, 1990, 902.

³⁵ Norman P. Tanner, *Decrees of the Ecumenical Councils*, Vol. II, 916.

³⁶ Norman P. Tanner, *Decrees of the Ecumenical Councils*, Vol. II, 917.

tribunals of the Apostolic See are competent to judge such cases (CCEO c. 1060 #2; 1061). Appeals of the sentence of the tribunal of Synod of Bishops are forwarded to the Synod of Bishops. But the right to deferral of the case to the apostolic Tribunal is safeguarded.

The previous Eastern legislation prescribed three types of tribunals in a patriarchal Church: The permanent synod, Patriarchal/Major Archiepiscopal ordinary tribunal and the tribunal proper to the eparchy of the patriarch. The Patriarch/Major Archbishop together with the permanent synod was competent to judge contentious cases within the proper territory and the appellate authority in further instances was the tribunals of the Apostolic See. (SN cc. 17 – 20, 74). The previous law authorized Patriarch/Major Archbishop (SN 18 #3) to adjudge certain civil cases of bishops. So also minor criminal cases were adjudged by the patriarch with the permanent synod. With respect to major criminal cases the instruction of the case was conducted by the patriarch together with the permanent synod and the acts of the case were transmitted to the Apostolic See for decision. In Major archiepiscopal Churches, Major Archbishops together with permanent Synod had competence only to instruct minor criminal cases of Bishops and to transmit the acts to the Apostolic See (SN c. 17 #2). Moreover, in contentious cases permanent synod was endowed with the power to adjudicate contentious cases of Bishops and eparchies within the proper territory in first instance and the appellate authority was always the apostolic See. (SN cc. 18, 73, 74).

The Pontifical Commission for the Revision of the Code of Eastern Canon Law tried to translate the directive principles of the Second Vatican Council into canonical language in fidelity to the venerable patrimony of the Sacred Canons. Thus the intention of the Code Commission was to recognize the authority and autonomy of the Patriarchal Churches to constitute their own tribunals in all grades and degrees up to the final instance. Moreover, the Code Commission also intended to accord the competence to patriarchal synod to adjudicate the major criminal cases without prejudice to the right to deferral to the Apostolic See. After a careful and mature study and deliberation, the study group reached a consensus to reserve all disputes and controversies concerning Patriarchs and Major Archbishops and all penal cases of bishops to the Roman Pontiff.³⁷ After several modifications at different phases of the development

³⁷ *Nuntia* 5 (1977) 11 – 12; *Nuntia* 14 (1982) 4; *Nuntia* 23 (1986) 114.

of together CCEO c. 1062 the Code Commission clarified that the Synod of bishops is an autonomous higher tribunal. According to the spirit of the Second Vatican Council (OE 9), without prejudice to the supremacy of the *Signatura Apostolica* in the Universal Church, the Synod of Bishops is recognized as the superior tribunal, unique to the Eastern patriarchal/Major Archiepiscopal churches.³⁸

Ecumenical Ethos and the Second Vatican Council

From a narrow post-Tridentine counter reformation understanding a new atmosphere was generated with the Vatican II for a modern ecumenism. The teachings enshrined in *Lumen Gentium*, *Orientalium Ecclesiarum*, *Unitatis Redintegratio* and the post Vatican documents, namely, the Ecumenical Directory, *Ad totam Ecclesiam* (published in two parts - 1967 and 1970, the Instruction, In *Quibus rerum circumstantiis* (1972) The Code of Canons of the Eastern Churches, especially, the title XVII on Baptized non-Catholics coming into full Communion and the title XVIII on Ecumenism or Fostering the Unity of Christians, Directory for the Application of Principles and Norms on Ecumenism (1993), *Ut Unum Sint* (1995), Ecumenical *Vademecum* (2020) stressed the commitment of the Catholic Church to Ecumenism, promotion of ecumenism within the Catholic Church, in its relations with other Christians and the correct application of the principle of *communicatio in sacris* in inter-ecclesial relationships. The ecclesiastical discipline in CCEO as regards ecumenical cooperation reads as follows: “It is desirable that the Catholic faithful, while observing the norms on *communicatio in sacris*, undertake any project in which they can cooperate with other Christians, not only by themselves, but together: for example, charitable works and works of social justice, the defence of the dignity and the fundamental rights of the human person promotion of peace, days of commemoration for one’s country, national holidays.” (Canon 908). The canon follows as a rule the principle “do together, and not alone, what can be done conjointly.”

³⁸ CIC 1917 c. 158 articulated that a bishop though being the only judge in the diocese by divine right did not exercise judicial power. A fortiori, a patriarch not being a judge by divine right for the entire patriarchal church is inappropriate to have judicial power alone or together with the permanent synod. Cf. *Nuntia* 5 (1977) 13.

Conclusion

Sixty years of renewal have elapsed since the convocation of the Second Vatican Council. This Ecumenical Council is often considered as the beginning of a new era in the life of the Church. This life of the Church consists in pre-conciliar, conciliar and post-conciliar Catholicism as both a unity and a plurality. The renewal movements in local communities in world at large, religious congregations and Churches *sui iuris* of different ecclesial traditions have been taken up together with the living Word of God, the treasure of the Church's tradition and its authentic interpretation by the catholic *Magisterium* in the period of the Council. The breakthrough of the Second Vatican Council is explicit with respect to the Eastern Churches. There was a drastic change and a paradigm shift in perspectives and a progress from the First Vatican Council to the Second Vatican Council. From a single Code for the universal Church, two common codes and a particular code for each church *sui iuris* is a development of the understanding of the doctrine, interpretation and discipline of the Church.

The communion ecclesiology in the model of the Trinitarian communion very well reflects the mystery of Church as *unum et plura*. Tertullian's vision of ecclesiology is relevant in this context. The Church which is the body of the Trinity – Father, Son and the Holy Spirit – is present where the divine persons are present (*Ubi tres, id est pater et filius et spiritus sanctus; ibi ecclesia quae trium corpus est*).