

## ***Rights of the Eastern Catholic Churches Recognised in «Orientalium Ecclesiarum» of Vatican II: a Brief Reflection***

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**Summary:**

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### **§1. A Brief Introduction**

2008 was a year marked by reflections, lectures and discussions on human rights, that being the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights* by the UN (10 Dec. 1948). For example, at Pontifical Salesian University, Rome, on 31 Oct. there was a symposium on the rights of minors and of the family; at Pont. Oriental Institute, Rome, on 11 December, a symposium was held on human rights; at Angelicum, Rome, on 12 December the symposium was on "Women and Human Rights." Is human right a question of individual rights only? Or is it also a question of the rights of the community which is indispensable for individuals to realise their potential? A long treatise is not necessary to prove that human right is also a question of community rights. A community without certain rights will not be able to help its individuals to live a dignified life.

Vatican II in *OE*<sup>1</sup> declared solemnly, «[The Eastern Catholic Churches] enjoy equal dignity, (...) and they enjoy the same rights (...)»<sup>2</sup> According to the Code of Canons of the Eastern Catholic Churches (*CCEO*) the *sui iuris* Churches are *ipso iure* juridical persons (c. 921 §2), and thus they have certain rights and obligations which correspond to their nature (c. 920). These affirmations of the Council and of *CCEO* confirm that the Eastern Catholic Churches have certain rights.

A person who has a right can exercise or claim it, respecting the rights of the others and when not restricted by a higher authority for common good. Someone who remains ignorant of his rights and does not know how to exercise them will be a virtual slave. On the other hand constant reminders of his rights will enlighten him and resuscitate his innate human dignity. This is true not only of human persons, but also of nations and institutions. Nearly

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<sup>1</sup> *OE* stands for the decree *Orientalium Ecclesiarum* of Vatican Council II. In this study, "Eastern Churches" means "Eastern Catholic Churches."

<sup>2</sup> In this study translation of the texts of *OE* is taken from TANNER N. P., ed., *Decrees of the Ecumenical Councils*, London: Sheed & Ward, Washington DC: Georgetown University, 1990.

forty-five years from the promulgation of *OE*, I think time has come for us, involved in the specific service of the Eastern Churches, to call to mind the rights of the Eastern Churches, recognised by the Council.

In this study we attempt to highlight the rights of the Eastern Churches, recognised implicitly or explicitly by Vatican Council II in its decree on the Eastern Catholic Churches, *OE*. The rights of the Eastern Churches as juridical persons and of the members of these Churches are both dealt with here. We do not intend to deal with here the history of the formulation of this decree, the controversies and ambiguities involved, the feasibility of its application, the duties demanded of the Eastern Churches, the legal norms laid down by the Council, its theology, the Orthodox reaction to it, an evaluation of it from different angles, a general interpretation of it, its influence on *CCEO*, etc. We limit ourselves to considering the decree from the viewpoint of the rights of the Eastern Churches.

All what we highlight as rights are not rights in the same sense; they can be qualified as faculties, competencies, freedom, possibilities, etc. In this study we call them mostly by the general term "right." These rights can be exercised and claimed by those who have them, for the good of the Church. Naturally the supreme authority of the Catholic Church can curtail their exercise when it judges such intervention necessary.

Different categories of rights can be identified: some are fundamental, others are helpful for the Eastern Churches to flourish and fulfil effectively their mission; some are explicit, others are implicit. We can speak of optional rights (those the exercise of which is optional), the right to fulfil one's duty and of the duty to exercise certain rights. For example, the exercise of the right to life cannot be optional. The fulfilling of a duty can become a right. If one has an obligation to obey the authority, the latter has the right to demand obedience from the former. When somebody poses obstacles to the fulfilling of a duty, the holder of the duty can claim the freedom for its fulfilling as his right. The Christian faithful have a duty to participate in Sunday mass. But if a parish priest poses obstacles regularly to the participation of the faithful in Sunday mass, they can claim it as their right, to establish the situation in which they can participate in Sunday mass. The fulfilment of a duty requires the situation favourable to that, and the subject of the duty has the right to claim such a situation.

*OE* can be analysed with the key *autonomy-in-communion*: autonomy of the Eastern Catholic Churches in self-governing, rooted in their spiritual, theological, liturgical and disciplinary tradition, and maintaining communion among themselves and with the universal Church. The rights of the Eastern Churches enhance their *autonomy-in-communion*.

## **§2. Eastern Catholic Churches: their Identity and Rites**

If we read between the lines of the laudation in *OE* 1, we can see the implicit recognition of the right of the Eastern Catholic Churches to existence as Church communities within the Catholic communion, that is, with ecclesial character, and not merely as rites. The right to existence is taken for granted. Before their right to flourish, to fulfil their task, and to

possess institutions, liturgical rites, ecclesiastical traditions and the way of Christian life, comes their right to exist. The whole decree *OE* addresses how these Churches should exist and function.

A fundamental right recognised implicitly in *OE* 1 is the right to take steps toward their flourishing and fulfilling effectively their task. The right of the Eastern synods to care for legislation and other matters helpful for their Churches, left to them by the Council and the Roman See, is recognised in *OE*, 1.

The right to preserve and observe the liturgical, theological, spiritual and disciplinary tradition of the Eastern Churches is often repeated in *OE* in various ways and words. «The strikingly frequent repetition of this (...) [right] might appear rather remarkable and suspicious, but this is justified and understandable in the context of the warnings of the past»<sup>3</sup>.

The legitimate variety among the Eastern Churches manifests the unity within the Catholic Church (*OE*, 2). This declaration implicitly recognises the right of Eastern Churches to maintain variety. The Eastern Churches have a right to keep whole and entire their tradition, and, at the same time, to adapt their way of life to various needs of time and place (*OE*, 2).

The Churches of the East and of the West are entrusted on an equal footing to the pastoral care of the Roman Pontiff (*OE*, 3). This declaration is an implicit recognition of the right of the Eastern Churches to receive sufficient pastoral care from the pope.

The decree explicitly recognises that the Churches of the East and of the West have equal dignity, and that none of them is higher than the other by reason of rite, and that they have the same rights, even in preaching the gospel throughout the whole world (*OE*, 3). This latter is an “evangelical right” (Mt. 28: 19, Mk. 16: 15).<sup>4</sup>

When the decree prescribes, «Steps should therefore be taken for the preservation and enlargement of all the individual churches throughout the world» (*OE*, 4), it acknowledges that these Churches have a right to work for their own protection and advancement. Similarly, the promotion of common activities undertaken by all Churches of a locality, the instruction of those who aspire for priesthood and of the laity in the rites and rules in inter-ritual matters, the observance of the proper rite by the Catholics and those who join the Catholic Church after baptism, etc. can also be interpreted as rights in certain contexts, especially when such practices are challenged.

The decree observes that the traditions and ecclesiastical institutions of the Eastern Churches deserve high esteem (*OE*, 5). This appreciation contains an implicit recognition of the right of these Churches to uphold their ecclesiastical and spiritual heritage.

<sup>3</sup> HOECK J.M., *Decree on Eastern Catholic Churches*, (trans. by LALIT ADOLPHUS), in HERBERT VORGRIMLER, ed., *Commentary on the Documents of Vatican II*, vol. 1, Germany: Herder and Herder, 1967, 318.

<sup>4</sup> See JALAKH M., *L'identità ecclesiologicala delle Chiese orientali cattoliche a partire dall'Orientalium Ecclesiarum 30* (unpublished doctoral dissertation), Rome: Pontificium Institutum Orientale, 2008, 64.

The right of the Eastern Churches «to govern themselves in accordance with their own particular rules» is solemnly and explicitly recognised in the decree (*OE*, 5).

All Eastern Christians have a right to «preserve their own lawful liturgical rites and way of life» (*OE*, 6). This is not merely a right of the individual Christians, but of the Church communities. On the other hand, the Eastern Churches have the right to make changes in the liturgical rites and way of life for their proper and organic development (*OE*, 6). This prescription contains two rights: (i) to be on the guard against the introduction or imposition of changes foreign to the rite and way of life, (ii) to introduce changes when it is required for the organic development. Besides the right to «acquire greater knowledge of these matters [Eastern liturgical rites and discipline] and more perfect practice of them», the Eastern Churches have also the right to have recourse to their ancestral tradition, if they have fallen unduly away from the observance of their rites and discipline (*OE*, 6).

Even in the prescription, «Those persons, however, who by reason of their office or of an apostolic ministry have frequent contact with the Eastern Churches or their faithful are to be carefully instructed in the knowledge and practice of their rites, law, teaching, history and nature of Eastern Christians, in keeping with the importance of the office they hold»<sup>5</sup> we can find an element of right. For example, if a Latin religious is asked by his superiors to work among the Eastern Christians without any special formation in Eastern Christianity, he can invoke this conciliar prescription and ask for a special formation. The Latin religious institutes have a right to establish houses and provinces within the jurisdiction of the Eastern Churches for greater apostolic efficacy (*OE*, 6).

### §3. *Patriarchs*

The decree declares, «The patriarchal function has been flourishing in the church from the earliest times, already recognised by the first ecumenical synods»<sup>6</sup>. Two words are noteworthy here, namely, “Church” and “recognised.” The patriarchal system is not limited to the Eastern Churches, but flourished in the *whole Church*; and this system was not *instituted* by the first ecumenical councils, but *recognised* by them.<sup>7</sup> An analysis of this statement of the decree, taking into account the above-highlighted nuances, will reveal that it is an implicit recognition that the rights of the patriarchs and their Churches are of the whole Church, not only of the Eastern Churches, and that they were not *given* by any authority like ecumenical councils or the pope, but only *recognised*.

An implicitly recognised right of the patriarch is that he has «jurisdiction over all bishops (including metropolitans), clergy and faithful of his territory or rite in accordance with the norm of law»<sup>8</sup>. The authorities

<sup>5</sup> *OE*, 6.

<sup>6</sup> *OE*, 7.

<sup>7</sup> HOECK J. M., *Decree on Eastern Catholic Churches*, in *Commentary on the Documents of Vatican II*, vol. 1, 320.

<sup>8</sup> *OE*, 7.

of a patriarchal Church have the right to demand the hierarchs of that Church, appointed outside that Church's proper territory, to remain attached to the central hierarchy of the same Church (OE, 7). All the patriarchal Churches are of equal dignity (OE, 7), and consequently they have equal rights in the Catholic Church.

The rights and privileges of the patriarchs, which were in force at the time of union between the East and the West, are to be restored (OE, 9). These rights and privileges are not personal to the patriarchs; they are to be used for the good of the Church of which the patriarch is the father and chief. Thus they become the rights and privileges of the respective Churches. Besides, a sincere application of this prescription necessarily implies the restoration of the rights and privileges of the Roman See which it exercised at the time of union in relation to the patriarchal Churches. The restoration of one alone, without the other, is not possible, because they are correlative.

The patriarchs together with their synods have the right to make up the higher tribunal for all matters concerning their Churches, «including the right of setting up new eparchies and of appointing new bishops of their own rite within the confines of their own patriarchal territory» without prejudice to the right of the Roman Pontiff to intervene (OE, 9).

#### **§4. Sacraments and Relation with other Churches**

The decree, commending the ancient legislation on the sacraments of the Eastern Churches and the practices in their celebration, recognises the right of these Churches to restore these legislation and practices, if necessary (OE, 12). The priests of the Eastern Churches have the faculty to be the ministers of the sacrament of confirmation (OE, 13-14).

The Eastern Churches have the right to restore the institution of permanent diaconate where it has fallen into disuse, and to lay down norms regarding the subdiaconate and minor orders (OE, 17).

The patriarchal and metropolitan (archiepiscopal) Churches have the right to establish, to transfer and to abolish the feast-days belonging to their respective Churches, with due consideration for the other Churches in the territory (OE, 19).

Patriarchs and the highest ecclesiastical authority of a locality have the right to reach an agreement with all Christian authorities of the place to celebrate the Easter on the same day in order to promote Christian unity (OE, 20).

A Catholic who lives outside the territory of his Church has the freedom to follow the law about sacred times which is in force in the place where he lives (OE, 21). It seems that this freedom is not for the individual faithful alone, but the eparchies constituted outside territory may also have the right to make concerning laws in conformity with the regulations practised by the majority of the place, and apply those laws in the whole eparchy. In inter-Church families the members can follow the law of any one of their Churches (OE, 21).

Another right enshrined in a duty is that the Eastern clerics, religious and the lay faithful can celebrate the divine praises in accordance with the law and tradition of their own Church (OE, 22).

The competent authorities of the Eastern Churches have the right to regulate the use of languages in the liturgy, and, after reporting to the Roman See, to authorise the translations of the liturgical texts into vernacular (*OE*, 23).

The Eastern Churches have the right to take steps, in accordance with the principles laid down in the decree on ecumenism («*Unitatis Redintegratio*»), to improve relationship with the non-Catholic Churches, especially the Eastern ones (*OE*, 24).

The authorities of Eastern Churches have the right to establish norms regulating the exercise of the sacred orders of the Eastern non-Catholic clergy who join as members of the Eastern Catholic Churches of those authorities (*OE*, 25).

The local hierarchs of the Eastern Churches have the right to establish rules and regulations to guide *communicatio in sacris*<sup>9</sup> in accordance with the norms laid down in *OE* 26-29 (*praesertim* 29).

### §5. A Brief Conclusion

The declaration «all these provisions of the law are made according to present conditions and until the catholic church and the separated eastern churches come together into the fullness of union»<sup>10</sup> may have a bearing on the firmness of the rights of the Eastern Churches also. That is to say, just as the legal provisions made in the decree are provisional, the rights recognised to the Eastern Churches can also be provisional, at least in their expression.

These rights are to be placed and understood not merely from a legalistic point of view, but well beyond that, upon theological and humanitarian grounds. Many of these rights are recognised or given that these Churches may grow and flourish in their apostolic vigour, that they may be rooted in their own culture and ecclesiastical tradition, that they may live and proclaim the gospel values effectively. Such an understanding of these rights will enable us to use (or abstain from) them, depending on what is good for the Church and for the individual, and will save us from a merely legalistic view of them and the rigidity attached to such a view. They are not only part of the legal reform of the Church, but, much more, part of a deeper self-awareness of the nature of the Church and of its mission.

Church rights flow from Church dignity, just as human rights flow from human dignity. Probably that is the reason for the recognition of the dignity of the Churches almost at the outset of the decree (*OE*, 3). The fact that these are the rights of the Eastern Churches means that these Churches need not appeal to the benevolence and charity of anyone for their exercise, and that they have grounds for grievance when they are denied the possibility of the exercise of these rights.<sup>11</sup> The rights are not mere concessions or permissions granted by the Council. Most of them are only

<sup>9</sup> About ecumenism and *CCEO*, see CECCARELLI MOROLLI D., *Ecumenismo nel CCEO*, in E. F. FARRUGIA, ed., *Dizionario Enciclopedico dell'Oriente Cristiano*, Roma 2000, Pontificium Institutum Orientale, 259-261.

<sup>10</sup> *OE*, 30

<sup>11</sup> BENN S. I., *Rights*, in P. EDWARDS, ed., *The Encyclopedia of Philosophy*, New York: The Macmillan Company & The Free Press, vol. 7, 1967, 198-199.

recognised by the Council; they originate from the dignity of these Churches, the recognition of which is fundamental to the recognition of rights. The dignity of these Churches permits them the freedom of self-determination to a great extent.

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