

The Spirit of the New Eastern Code of Canons

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Підсумок

Автор статті «Дух нового східнього кодексу канонів», о. Францис Моррісей, є членом римокатолицького місіонарського чину отців Облятів та професор канонічного права в Університеті св. Павла в Оттаві. Він з'ясовує коротко історію нової кодифікації східньо-католицького церковного права: як вона мала впровадити в життя вчення Другого Ватиканського Собору. Пізніше автор підкреслює принципи, які стаповили інтелектуальне підложжя цього процесу кодифікації. Перше автор вяснює принципи кодифідації латинського права, а відтак у подробицях вяснює споріднені принципи, якими руководилася східня комісія. Рішено, що повинно бути одне спільне право для всіх східніх католицьких Церков. Це право повинно базуватися на традиційній дисципліні східніх Церков. Автор особливо тут згадує невдоволення багатьох східніх католицьких ієрархів з обмеження юрисдикції патріархів і синодів до старинної території даних Церков. Нове право повинно в екуменічному дусі брати під увагу працю православних каноністів. Нове право треба трактувати як суто юридичний а не богословський твір. Згідно з душпастирським характером цього права, воно повинно наголошувати справедливість злагіднену милосердям. Субсидіярність - полагодження справ на найнижчому рівні, з відкликами до вищих інстанцій тільки в випадку ясної потреби, мусить бути збережена. До східніх католицьких Церков застосовується термінологію *ecclesiae sui iuris*, щоб означити їхню автономність. Правда рівність усіх

вірних має бути збережена, щоб підкреслити місію мирян у Церкві. Закони Церкви повинні рівно захищати як наставників так підданих. У кримінальному праві збережено поняття лікувального аспекту покаяння наложеної за провинку.

У дальшій частині статті автор подає аналіз пристосування помічених принципів у новому кодексі та з'ясовує випадки, де не вдалося це зробити. Стаття закінчується закликом до серйозних студій над цим кодексом, його історично-юридичним контекстом та над принципами, які становлять підложжя його правильної інтерпретації.

The promulgation of the *Code of Canons of the Eastern Churches* marks a milestone for the Eastern Churches, and indeed for the entire Catholic Church. For the first time in its history, the Church has updated laws that apply to all its members, both Eastern and Western. These laws are similar, yet different. At times, they are almost literally the same; at other times, though, they are quite distinct, with the risk that the difference might be overlooked by the casual reader.

This new Code has many characteristics, of which we shall examine only some. As with any human undertaking, the Code probably also has its deficiencies. Just as it takes time to see any inherent faults or structural weaknesses in a new building, or even to recognize the lack of appropriate architectural drawings and plans, so too with legislation. Moreover, because it is so new, it will take some time before it is fathomed and understood. It will also take some time to be fully implemented since many of the canons rely on complementary norms constituting the proper law of the various particular Churches, some of which are not in a position at this moment in history to begin drafting such legislation on account of very serious social and political considerations. Therefore, we should not expect, simply because the Code has been in effect since October 1, 1991, that it is fully operative. (Indeed, the same could be said for the Latin Code in those instances where Conferences of Bishops have been unable to date to prepare the required complementary norms).

Canon 1499 of the Eastern Code tells us that laws—such as the Code—are to be understood in their text and context. In the case of doubt, recourse is to be had to parallel places, if there are any, to the purpose of the laws and its circumstances, and to the mind of the legislator. *A good part of the context of the Eastern Code could be found, it seems, in the spirit underlying the legislation and in the mind of the legislator.* For this reason, the guiding principles that were used during the drafting process not only must be kept in mind, but must also be fully understood. Otherwise, we risk giving an interpretation to a canon that is not only defective, but also wrong. Therefore, in this overview we shall spend some time examining the principles that were approved by the Commission to serve as guideposts, since they provide a suitable backdrop against which to evaluate the various norms.

However, before doing so, it is important to recall certain high points of the revision process itself to see where the various principles are situated. Then after considering each principle in turn, we shall try to evaluate its implementation in the new Law, keeping in mind that nearly twenty years have elapsed since these guidelines were first prepared, and that circumstances have changed significantly in the meantime.

The High Points of the Revision Process

On August 3, 1927, the working group eventually leading to the establishment of the Pontifical Commission for the Codification of the Oriental Law was formed by Pope Pius XI, and a Preparatory Commission established two years later on July 13, 1929.¹ The actual Commission was formed on June 17, 1935 under Cardinal Luigi Sincero (and the announcement made on July 17, 1935). A certain number of general guiding principles were adopted at that time. Among these we could note two: evident imperfections in the 1917 Code were to be eliminated, and, where there were debatable points or points that were unclear in the Latin legislation, no change was to be made unless a clear

¹ Y. Zuzek, "Les textes non publiés du Code de droit canon oriental," *Nuntia* 1 (1975) 23-31; cf. 25.

solution to the difficulty had emerged.² A complete text of the proposed Eastern Code was printed in 1945 and distributed to a restricted number of persons for consultation; but it was not yet judged ready for promulgation. In the meantime, in December 1946, work began on identifying the Eastern canonical sources so that these could be indicated in the promulgated text. On March 13, 1948, the Commission presented its work to Pope Pius XII. As we know, it was decided not to issue the Code as a whole, but rather in parts. Four sections were issued between 1949 and 1957. Pius XII died on October 9, 1958, just before the other documents were to be issued. These texts, that had been approved by Pius XII and were ready to be promulgated, did not see the light of day, even though they were in final form and had even been printed for distribution.³ Instead, Pope John XXIII decided to suspend further promulgation until the Second Vatican Council had completed its work.

On June 10, 1972, a new Commission, headed by Cardinal Joseph Parecattil of Ernakulam, was instituted by Paul VI.⁴ Shortly afterwards, the Faculty of Canon Law of the Pontifical Oriental Institute drew up a list of principles to be applied in revising the Code. These were forwarded to the Commission of April 17, 1973, and reflect, to some extent, the ones previously approved for the revision of the Latin Code, but with some significant differences.⁵ These proposals were examined and slightly revised by the Commission during its plenary session of March 18-23, 1974.⁶ It is the final document and its results that we wish to examine in this study.

In a procedure somewhat similar to that used in revising the Latin Code, various sections of the Eastern law were distributed on a regular basis to consultative organisms. The text

² *Ibid.* 27-28.

³ *Ibid.* 31.

⁴ *Nuntia* (Special issue, not part of the collection also entitled *Nuntia*) 1 (1973) 2.

⁵ Text in *Nuntia* (special issue) 20-33.

⁶ "Guidelines for the Revision of the Code of Oriental Canon Law," *Nuntia* 3 (1976) 18-24.