

Enrollment in the Church *sui iuris* with respect to conversions in Germany according to can. 35 CCEO

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English Abstract: In a first step, this article introduces the issue of enrollment in a particular Church *sui iuris*. Then, conversion to the Catholic Church with regard to the situation in Germany is described. According to can. 916 § 5 CCEO and to the decree of the Congregation for the Oriental Churches from November 30, 1994, the faithful of Eastern Catholic Churches (except for the Ukrainian Greek Catholic Church) fall under the jurisdiction of the local Latin ordinaries. The conversions are regulated in can. 35 CCEO. Although the legal nature of this canon is disputed, baptized non-Catholics coming into full communion with the Catholic Church are obliged to retain and practice their own rite.

The following article presents the issue of admissions to the Church *sui iuris* with special regard to the conversions according to can. 35 CCEO in Germany.

1 Enrollment in the Churches *sui iuris*

There is no doubt that enrollment in a particular Church *sui iuris* is of fundamental importance for the canonical status of a person of faith. The person of faith is incorporated into the Catholic Church through baptism (can. 96 CIC). But this does not yet determine into which Church *sui iuris* he is enrolled. Only canons 111–112 CIC (after the promulgation of the MP *De concordia inter Codices*)¹ and 29–38 CCEO determine this and regulate the specific membership in the Catholic Church. To simplify matters,² it can be said that, according to the regulation of both codes of canon law, a person who is to be baptized and who is under the age of 14, primarily follows the church affiliation of his Catholic father, unless only the mother is Catholic, or the parents have agreed that the child should belong to his mother's church.

¹ AAS 108 (2016), 602–606.

² Here, neither the discussion is addressed as to whether, after the entry into force of the CIC, its can. 111 § 1 also replaced the corresponding norm of CS, can. 6 (so e.g. *Fürst, Carl Gerold*, Das Sakrament der Taufe: Der „Status“ der Getauften Gläubigen in der Kirche im Lichte des CIC und des CCEO, in: *Ius et iustitia. Acta VI. Symposii Iuris Canonici anni 1996, Spišská Kapitula 1997*, 101–125, 115 f.), or whether the two codes retained their relative autonomy (so e.g. *Szabó, Péter*, L'ascrizione dei fedeli orientali alle Chiese *sui iuris*: Lettura dello *ius vigens* nella diaspora, in: *Cristiani orientali e pastori latini*. Hg. v. Pablo Gefaell, Milano 2012, 152–232, 165–168), nor does it deal with the problem of transfer to another Church *sui iuris*. The recently issued MP *De concordia inter Codices* is the latest contribution to solving some ambiguities and loopholes in the CIC and the relations between the CIC and the CCEO. On this see e.g. *Sabbarese, Luigi*, Commento alle modifiche apportate al Codice con il m.p. „De concordia inter Codices“, in: *Ephemerides Iuris Canonici* 2 (2017), 589–632; *Dvořáček, Jiří*, Komentář k motu proprio De Concordia inter Codices, in: *Revue církevního práva* 66 (2017), 27–38.

In the previous canon law this problem was regulated in canons 98 § 1 and 756 CIC/1917, eventually, for oriental Catholics, in can. 6 MP *Cleri sanctitati*.³ The legal situation during this period was based on the following principles: Enrollment in a church took place according to the liturgical rite in which the person to be baptized was baptized. Baptism should lawfully take place in the rite of the church of the parents of the person to be baptized, or if the parents belonged to different Catholic churches, in the rite of the father's church, or if only one parent was Catholic, in his church (can. 756 CIC/1917). The only exceptions to this rule were forced or fraudulent baptisms by a foreign administrator, a serious emergency, and a dispensation from the Apostolic See (can. 98 § 1 CIC/1917), or a permission from one's own hierarch (can. 6 CS). In practice, the procedure was as follows: If the person to be baptized was not legally baptized in the relevant rite according to the criteria mentioned, the situation was automatically assessed as a "gravis necessitas" and the person to be baptized was assigned *ex lege* to the church according to the liturgical rite in which he was to be baptized (can. 6 § 2 CS). In fact, the ecclesiastical affiliation of his Catholic parents (or the Catholic parent) was decisive.⁴

This legal situation, with the prevalence of the father, remained unchanged in the period between 1983 and 1991, i.e. after the promulgation of the CIC in 1983 and before the CCEO came into force. Ecclesiastical affiliation was now given by canons 111 § 1 CIC and 6 CS. The problem in can. 111 § 1 CIC prior to the promulgation of the CCEO for inter-ecclesiastical marriages, lay in the fact that the parental agreement was only required for enrollment in the Latin Church, but not for integration into the Eastern Catholic Church. In the case of the Latin father and the Greek Catholic mother, the child was always and automatically *ex lege* enrolled in the Latin Church according to can. 111 § 1 CIC. The possible agreement of the parents about the membership in an Eastern Catholic Church was irrelevant; it was first regulated in the CCEO, but not yet in CS.

The situation was more complicated in the case of a mixed marriage, where the father was Orthodox and the mother belonged to the Catholic Church. If the child is baptized Orthodox in the father's Church, which Church will the child be enrolled in? Can. 29 § 1 CCEO, as the relevant norm, is clear when it states that, in this case, the person to be baptized is always enrolled in the corresponding Eastern Catholic Church *sui iuris*. Some authors contradict this with the following argument: Since can. 29 § 1 CCEO (as well as can. 111 § 2 CIC, after the MP *De concordia inter Codices* came into force on December 16, 2016), is purely ecclesiastical law, according to can. 1 CCEO it does not apply if a child was baptized in a non-Catholic Church.⁵ However, several reasons speak for a different view: On the one hand, enrollment takes place according to can. 29 § 1 CCEO *ipso iure*. On the other hand, this interpretation, corresponding to the *mens legislatoris*, results from the preparatory work

³ The CIC/1917 applied to Oriental Catholics only until 24.03.1958; for from 25.03.1958 to 30.09.1991 they were guided by the MP *Cleri sanctitati*, which was legally replaced by the CCEO on 01.10.1991.

⁴ See Fürst, Sakrament der Taufe (Fn. 2), 112 f.

⁵ So e.g. Ahlers, *Reinhild*, Rituszugehörigkeit und Rituswechsel nach CIC und CCEO, in: *Ius Canonicum in Oriente et Occidente: Festschrift für Carl Gerold Fürst zum 70. Geburtstag*. Hg. v. Hartmut Zapp / Andreas Weiß / Stefan Korta, Frankfurt am Main 2003, 426–428; Gefaell, *Pablo*, Commenti al M.P. „De concordia inter Codices“, in: *Ius Ecclesiae* XXIX, 1 (2017), 159–174, 162. The problem, however, is that such children, if as a result of their Orthodox upbringing they were to accept their father's Church as their own and actively participate in it, would, from a Catholic perspective, expose themselves to the penalty of excommunication within the meaning of can. 1364 CIC (can. 1437 CCEO). See Gefaell, *Commenti* (Fn. 5), 162.

of the CCEO: At that time, the proposal that a mother, if only she was Catholic, should “discreetly attempt” have the child ascribed to her Church, was rejected.⁶

2 Conversion to the Catholic Church with regard to the situation in Germany

Now we come to the situation in Germany. In this territory only the Ukrainian Greek Catholic Church has its own local hierarchy, namely the Apostolic Exarch; no other Eastern Catholic Church has its own hierarchy in Germany. Therefore, according to can. 916 § 5 CCEO, the faithful of these Churches *sui iuris* who reside in Germany, fall under the jurisdiction of the local hierarchy of that Church, which has its hierarchy here. According to the decree of the Congregation for the Oriental Churches, published on November 30, 1994,⁷ these Oriental Catholics (except for the Ukrainians) are subject to the jurisdiction of the local Latin ordinaries.

As a result of migration, there can often be cases in Germany in which non-Catholic Oriental Christians will strive to convert to the Catholic Church. In principle, this matter of conversions is regulated in can. 35 CCEO.

Can. 35 CCEO – Baptized non-Catholics coming into full communion with the Catholic Church should retain and practice their own rite everywhere in the world and should observe it as much as humanly possible. Thus, they are to be enrolled in the Church sui iuris of the same rite with due regard for the right of approaching the Apostolic See in special cases of persons, communities or regions.

Thus, baptized non-Catholics coming into full communion with the Catholic Church should retain their own rite and will be enrolled in the Church *sui iuris* of the same rite. Canon 35 CCEO does not exclude the possibility of exceptions to the principle anchored here of maintaining the previous rite in special cases.

According to can. 896 CCEO, no obligation except that which is necessary can be imposed on the Christian faithful who have been baptized in non-Catholic Churches or ecclesial communities and who ask of their own accord to enter into full communion with the Catholic Church.⁸ If a person of faith from one of the Eastern non-Catholic Churches applies to join the Catholic Church, this conversion takes place according to can. 897 CCEO with only the profession of the Catholic faith, after doctrinal and spiritual preparation according to each one's condition. Confirmation should not be required for these faithful because they received the Chrismation together with the baptism and the Eucharist as children.⁹ The right of receiving anyone, cleric or lay person, individuals or groups, into the Catholic Church generally belongs to the local hierarchy. The right of receiving individual lay people, but no groups, belongs also to the parish priest, unless this is forbidden by particular law. Eastern

⁶ Nuntia 28 (1989), 22. The proposed amendment to the second part of can. 29 § 1 CCEO read: “... si vero sola mater catholica est, discrete conetur, ut infans ascribatur Ecclesiae ad quam ipsa pertinet, salvo iure particulari a Sede Apostolica statuto.” See Szabó, L'ascrizione (Fn. 2), 180.

⁷ Decree of the Congregation for the Eastern Churches, 30.11.1994, Prot. Nr. 193/94.

⁸ Salachas, Dimitrios, Receiving Other Christians in the Church (cc. 896–901), in: A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches. Hg. v. George Nedungatt (= Kanonika 10), Rome 2002, 598 f.

⁹ Pontifical Council for Promoting Christian Unity, Directory for the Application of Principles and Norms on Ecumenism, March 25, 1993, Nr. 99.

non-Catholic bishops can be received, aside from the Roman Pontiff, only by the Patriarch with the consent from the Synod of bishops of the patriarchal Church, or by the Metropolitan of a metropolitan Church *sui iuris* with the consent of the council of hierarchs (can. 898 CCEO).¹⁰

While there is no doubt that Eastern non-Catholics coming into full communion with the Catholic Church should follow the same rite and, thus, be enrolled in the Church *sui iuris* of the same rite, in case of converting Protestants the issue is not clear enough. In fact, canon 901 CCEO concerns explicitly the conversion of non-Catholics, who belong to reformed Churches or ecclesial communities. They are to be received into the Catholic Church like the Eastern non-Catholics, provided they have been validly baptized, but observing the norms in can. 896-900 CCEO with the necessary adaptations. As a rule, Protestants should preserve the Latin rite and are to be ascribed to the Latin Church, which applies without question for Anglicans and Lutherans. However, the presumption that Protestants should generally follow the Latin rite is questionable and, therefore, they are to be deemed free to be ascribed to any Church *sui iuris*.¹¹

3 The legal nature of can. 35 CCEO

There is a long-standing debate on the legal nature of can. 35 CCEO, namely whether can. 35 CCEO is prescriptive (is binding *ad validitatem*) or exhortative (*ad liceitatem*). Some canonists affirm the latter because there is no reference to a nullity sanction here.¹² In this sense, the Pontifical Council for Legislative Texts (PCLT) had clearly expressed itself in its statement on November 5, 2012.¹³ However, another fraction of canonists understands can. 35 CCEO as prescriptive, i.e. that the ascription to the Latin Church of converting non-Catholics is invalid without the consent of the Congregation for the Oriental Churches and that such a person of faith will automatically be ascribed to the corresponding Church *sui iuris* of the same rite.¹⁴ Regarding the determination of the legal nature of this canon, it is not a question of querying its binding character (the norm *ad liceitatem* binds the person of faith as much as the norm *ad validitatem*!), but of determining the seriousness of the consequences for the person of faith in not complying with it.

¹⁰ *Salachas*, Receiving Other Christians (Fn. 8), 599–602.

¹¹ This problem is addressed by *Szabó, Péter*, Un protestante ammesso alla piena comunione è obbligato ad iscriversi alla Chiesa latina? Osservazioni intorno al can. 35 CCEO, in: Oriente e Occidente: respiro a due polmoni. Hg. v. Lorenzo Lorusso / Luigi Sabbarese, Città del Vaticano 2014, 231–254. See also PCLT, Prot. Nr. 14839/2015, Response (17.04.2015).

¹² *Salachas, Dimitrios*, Istituzioni di diritto canonico delle Chiese cattoliche orientali, Bologna 2001, 89 f., or *Gefaell, Pablo*, Impegno della Congregazione per le Chiese orientali a favore delle comunità orientali in diaspora, in: Nuove terre e nuove chiese: le comunità di fedeli orientali in diaspora. Hg. v. Luis Okulik, Venezia 2008, 125–146, 138 f. See also *Nuntia* 22 (1986), 31, and the meaning of OE 4. See also *Huels, John*, Valid Ascription and Marriage in the Latin Church of an Eastern Christian without a Rescript from the Apostolic See, in: Roman Replies and CLSA Advisory Opinions 2016. Hg. v. Sharon A. Euart, RSM / John A. Alesandro / Thomas J. Green, Washington DC 2016, 117–123, 120.

¹³ Attached to Prot. 13812/2012, in: <http://www.delegumtextibus.va/content/dam/testilegislativi/risposte-particolari/cceo/Considerazioni%20esplicative%20per%20la%20corretta%20applicazione%20del%20c.%2035%20CCEO.pdf> (downloaded: 18.09.2021).

¹⁴ This interpretation is held by *Nedungatt, George*, Churches *sui iuris* and Rites (cc. 27–41), in: A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches. Hg. v. George Nedungatt (= Kanonika 10), Rome 2002, 125, fn. 60.

4 Possible problems in practice

In practice, the following situations may occur:

No problem arises if an Eastern non-Catholic converts to the Catholic Church and wants to keep his rite. He is then enrolled in the respective Eastern Catholic Church *sui iuris* of the same rite. According to can. 36 and 37 CCEO, this transfer takes effect at the moment a declaration is made before the local hierarch or the proper pastor of the same Church or a priest delegated by either of them and two witnesses, and should be recorded in the baptismal register of the parish where the conversion was celebrated. But because in Germany, apart from the Ukrainian Greek Catholic Church, none of the Eastern Catholic Churches have their own local hierarchs, can. 916 § 5 CCEO comes into play: according to the above-mentioned decree of the Congregation for the Oriental Churches published on November 30, 1994, these Oriental Catholics (except for the Ukrainians) are subject to the jurisdiction of the local Latin ordinaries. The Latin priest, who has been commissioned by his local ordinary for the pastoral care of these Eastern Catholics, or the local ordinary himself is responsible for the admission of these Eastern non-Catholics who wish to convert to the respective Eastern Catholic Church. In the baptismal register it must be noted in which Eastern Catholic Church the convert is enrolled. In principle, the consent of the Oriental Congregation is not required for such cases.

A problem can occur, on the other hand, when an Eastern non-Catholic converting to the Catholic Church wishes to be enrolled in the Latin Church. The competence for this lies with the local ordinary of the Church or the proper pastor or a priest delegated by either of them (can. 112 § 3 CIC). For the conversion to be allowed, however, the consent of the Congregation for the Oriental Churches is needed, because this is an exception for reasons of “special cases of persons, communities or regions” (can. 35 CCEO).

In this context, also the following question arises: Could such a conversion be carried out with the presumed consent of the Apostolic See if, according to can. 32 § 2 CCEO, provided that the eparchial bishops of both eparchies consent to the transfer in writing? The PCLT statement cited above explicitly takes it into account. However, this transfer by agreement of the bishops with the presumed consent of the Apostolic See is only possible where the territories of the two dioceses / eparchies of these Churches *sui iuris* – *a quo* and *ad quem* – overlap. In the case of Germany, the only in this sense ‘overlapping’ Eastern Churches’ structure is the Ukrainian exarchate; no other Eastern Catholic Church has its own eparchy here. In Germany, it would result in the following scenario: If the convert was from one of the Ukrainian Orthodox Churches, he would be enrolled in the Ukrainian Greek Catholic Church. A convert from any other Eastern non-Catholic Church should then be automatically enrolled in the corresponding Eastern Catholic Church *sui iuris*. If these kind of converts subsequently wished to transfer to the Latin Church, only the convert enrolled in the Ukrainian Greek Catholic Church could ask for consent of both bishops according to can. 32 § 2 CCEO. In all other cases, the Apostolic See would need to be approached.

But what happens if the consent of the Congregation for the Oriental Churches is not granted and the receiving priest or bishop would enroll the Eastern non-Catholic in the Latin Church? Will this conversion be illicit yet still be valid, or will it be *ipso iure* invalid as well? The above-mentioned statement of the Pontifical Council for Legislative Texts brings little light into the darkness since it states that if a Latin priest receives Orthodox faithful into the Latin Church without permission of the Apostolic See, and they then marry before him, the marriage is

void for defect of form (Nr. 4 of the above-mentioned statement). However, this conclusion contradicts what the PCLT specifies the same statement, i.e. that can. 35 CCEO is exhortative and its non-observance does not result in nullity (Nr. 1 of the statement). But these two principles are hardly compatible. Fortunately, according to PB, Art. 154–158, the statements of the PCLT are not binding. However, even if we are inclined to understand can. 35 CCEO as exhortative (i.e. in favour of the validity of otherwise unauthorized conversions), this should mean in no case that conversions of Eastern non-Catholics into the Latin Church without the consent of the Congregation for the Oriental Churches become the rule and are, so to speak, legitimized. Anyway, as can. 35 CCEO quotes, these Eastern non-Catholics are obliged to retain and practice their own rite and should observe it as much as possible.

Often, however, it may not be easy even for an ordinary who receives a convert to the Catholic Church to determine specifically which Church *sui iuris* the convert should be enrolled in. Indeed, can. 35 CCEO specifies only the obligation to observe the same rite; it does not speak of enrollment in a particular Church *sui iuris*. Thus, for example, if the convert is from the Serbian Orthodox Church at least two Churches come into consideration: the Macedonian Church and the Byzantine Church in Croatia and Serbia. However, when joining the Catholic Church, it is always necessary to record in the baptismal register the specific Church *sui iuris* which the convert is enrolled in, so that in the case described above it will be up to the convert to decide whether he wants to be enrolled in the Macedonian Church (i.e. specifically in the Eparchy of Skopje), in the Croatian Eparchy of Križevci or in the Serbian Eparchy of San Nicola in Ruski Krstur. For this reason alone, it would make more sense to leave the decision to choose a Church *sui iuris* up to the convert and not to automatically enroll him in the Eastern Catholic Church. This also seems to be the main argument for understanding can. 35 CCEO only *ad liceitatem*.

If the convert does not wish to transfer to a Church *sui iuris* of the same rite, he should nevertheless duly apply to the Eastern Congregation for enrollment in a Church *sui iuris* of a different rite because of the special cases of persons, communities and territories as provided for in can. 35 CCEO. It should be noted, however, that such requests have usually been rejected because of the protection of the Oriental traditions.

5 Conclusion

The basic norm regulating conversions is can. 35 CCEO, while the conditions for the admission of baptized non-Catholics into full communion with the Catholic Church are regulated in can. 896–901 CCEO. This is a complex issue that involves some ambiguities, both legal and factual. It would be ideal, of course, if the competent Vatican authorities were to express themselves clearly not only on the binding nature of can. 35 CCEO, but also on the possibility of requesting an exception concerning “persons, communities or territories”. But whatever the case, baptized non-Catholics coming into full communion with the Catholic Church are obliged to retain their own rite, to practice and to observe it.