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THE CATHOLICOS OF THE MALANKARA CATHOLIC CHURCH

On February 10, 2005, the Vatican Press Office published the following news: „The Holy Father raised the Syro-Malankara Metropolitan Church *sui iuris* to the rank of a Major Archiepiscopal Church and promoted His Excellency Cyril Mar Baselios Malancharuvil, O.I.C., to the dignity of Major Archbishop of Trivandrum of the Syro-Malankarians”¹ The Apostolic Nuncio in India who communicated this news to the public explained that the new dignity is equivalent to that of catholicos.

1. What is a Major Archbishop, what is a Catholicos?

The title of *major* archbishop does not have a long tradition. It was used for the first time by the famous Greek-Melkite canonist Acacius Coussa² in order to distinguish this class of archbishops who enjoy patriarchal rights in almost all aspects. Vatican II took up this title in its decree *Orientalium Ecclesiarum* (OE) saying: „What has been said of patriarchs is valid also, in accordance with the norms of law, in respect to major archbishops who rule the whole of some individual Church or rite.”³ This statement stresses, before all, the supra episcopal and even the supra-metropolitan authority of the major archbishop.

From *OE*, the term came into the *Code of Canons of the Eastern Churches* (1990) where four canons are devoted to the major archiepiscopal Churches⁴:

- a major archbishop is a metropolitan who presides over an entire Church *sui iuris*;
- the norms regarding patriarchal Churches and patriarchs are generally applicable to archiepiscopal Churches and major archbishops;

¹ *Bollettino della Sala Stampa della Santa Sede* (in Italian).

² *Epitome Praelectionum de iure ecclesiastico orientali*, vol. I, Grottaferrata 1948. The author eventually became the pro-Secretary and Secretary of the Oriental Congregation (the Pope being himself the prefect then) and cardinal.

³ No. 10.

⁴ *CCEO* cc. 151-154.

– the major archbishop is elected in the same manner as patriarchs. In contrast to patriarchs who ask the Roman Pontiff for ecclesiastical communion, the major archbishop must petition the *confirmation* of his election from the Roman Pontiff;

– major archbishops hold precedence of honour immediately after patriarchs according to the order in which the Church over which they preside was erected as a major archiepiscopal Church.

Within the communion of the *Catholic* Churches we have to distinguish

a) the apostolic patriarchal Churches:

Rome: St. Peter's primatial see Church of the Occident)⁵

Alexandria: Coptic Church

Antioch: Maronite Church (Syro-Antiochian tradition)

Greek Melkite Church (Byzantine tradition)

Syriac Church (Syro-Antiochian tradition)⁶

b) the patriarchal Churches of later origin⁷:

Babylonia: Chaldean Catholicate-Patriarchate of the East
(Syro-oriental tradition)

Cilicia: Armenian Catholicate-Patriarchate (Armenian tradition)

c) the major archiepiscopal Churches⁸:

Ukraine: Ukrainian or Kyivan Church (Byzantine tradition)

Ernakulam-Angamaly: Syro-Malabar or Indo-Chaldean Church (Syro-oriental tradition)

Trivandrum: Syro-Malankara Church (Syro-Antiochene tradition)

This survey reveals that two Catholic Churches *sui iuris* are catholicates recognised as equivalent to patriarchates. The title of catholicos has been originally used outside the ancient Roman Empire to designate the chief hierarch of a Church because of his universal (*catholic*) jurisdiction. In fact, in the Armenian and in the Chaldean Churches, the title of catholicos is more ancient and superior to that of patriarch. The two Orthodox Armenian patriarchates of Jerusalem and of Istanbul are titular patriarchates and depend on the Supreme Catholicos⁹ of All the Armenians in Etchmiadzin. The patriarchal title was later added to that of catholicos.

⁵ Other Roman Catholic prelates are archbishops having the title of patriarch *ad honorem*, but they do not enjoy the patriarchal authority (e. g. Jerusalem, Venice, Goa, Lisbon).

⁶ We have followed the order of precedence according to *CCEO* c. 59 § 4.

⁷ According to *CCEO* c.59 § 3, the Chaldean Catholicate-patriarchate has precedence because it was re-established in 1553, while the Armenian one in 1742.

⁸ Cf. *CCEO* c. 154. The major archbishops follow immediately the patriarchs according to the time the Church over which they preside was recognised its major archiepiscopal status.

⁹ At present the Armenian Apostolic (Orthodox) Church has two catholicos, His Holiness the Supreme Catholicos and His Beatitude the Catholicos of the Great House of Cilicia who resides in Beirut, Lebanon.

The former legislation mentions the *catholicos*¹⁰ as well as the *maphrian*¹¹, while the CCEO does not mention them at all. These two dignities are seen as (major) archbishops. The *motu proprio Cleri sanctitati* stated in regard to the *catholicos*: „The *Catholicos* who does not have the title of patriarch is equal to an archbishop”, and in regard to the *maphrian* (*mafryōnō*): „The metropolitan who has the title and dignity of a *maphrian* is equal to an archbishop without prejudice to the duties which come from his subjection to the authority of the patriarch”¹²

Maphrian is a title particular to the Syriac Church of Antioch. It concerns that part of the Church, which is situated in the ancient empire of the Sassanides. This office has its beginning in 628/629. The designation „*maphrian*” (the fructiferous) was given to the chief metropolitan in Persia in the 11th century, because he transmitted the Holy Spirit in the ordination of the bishops. It points to his authority in the territories outside the ancient Roman Empire. He was entitled, as the patriarch’s delegate, to appoint and ordain metropolitans and bishops as well as to consecrate the holy *mūrōn* (μύρον) for all the eparchies belonging to the *maphrianate*¹³. Being the highest hierarch after the patriarch, the *maphrian* had the right to consecrate and enthrone the Patriarch of Antioch. In contrast to the *catholicos*, the *maphrian* was not elected by the synod of bishops, but appointed by the patriarch. Therefore he could be removed at the will of the patriarch. The *maphrians* resided successively at Tagrit, Mossul (1089-1155) and at Mar Mattai monastery

Consequently the terms *catholicos* and *maphrian* are not interchangeable, as could be supposed and occurred. In the document of establishment of the Catholicate in India (1912), Patriarch Mar Agnātiyos ‘Abd al-Masīh used the two words in the same sense: „In response to your appeal we installed a *Maphrian*, that is, *Catholicos*, with the name *Baselios*”¹⁴ The document does not say anything that the Catholicate in India is a reestablishment of the former *Maphrianate* (Catholicate) that existed outside the boundaries of the ancient Roman Empire, i. e. in Mesopotamia, as a continuation of the former Syriac Metropoly of the East, till the 18th century. Also it does not mention the title „of the East”, which is nowadays used by both the non-Catholic Indian *catholicoi*, the one in communion with the Syriac Orthodox Patriarch of Antioch as well as the other claiming autocephaly.

The Roman document (2005) is raising Cyril Mar *Baselios* to the dignity of *Major Archbishop (catholicos) of Trivandrum* avoiding thus any misinterpreta-

¹⁰ PIUS XII, *Cleri sanctitat* (1957), c.335 § 1.

¹¹ *Ibid.* c. 335 § 2.

¹² The *maphrian* was not entitled to having an apocriary, i.e. procurator, at the Roman Apostolic See (CS cc. 220 and 331, CCEO c. 61). This is the exclusive right of patriarchs and major archbishops.

¹³ Cf. V. J. POSPISHIL, *Code of Oriental Canon Law: The Law of Persons*, Ford City, Pa., 1960, 159; W. H(AGE), in: *Kleines Wörterbuch des christlichen Orients*, Wiesbaden 1975, 251; J. D. FARIS, *Eastern Catholic Churches: Constitution and Governance*, New York 1992, 368.

¹⁴ Quoted from G. CHEDIATH, *The Malankara Catholic Church*, Kottayam 2003, 86; cf. IDEM, *The Catholicos of the East*, Trivandrum 2005, 97.

tion, because the Syro-Malankara Catholic Church is in no way dependant on the Syriac Catholic Patriarchate of Antioch, but an autonomous Church *sui iuris* within the communion of Catholic Churches.

2. Patriarch and Catholicos

The Catholicos of the Syro-Malankara Catholic Church has neither the title of patriarch nor of catholicos-patriarch. Vatican II emphasises that „special honour is due to the patriarchs of the East [...] since they preside over their own Patriarchate as Father and Head. The patriarchs with their synods constitute the higher authority for all the affairs of the Patriarchate, not excluding the right of establishing new eparchies and appointing bishops of their own Rite within the limits of the patriarchal territory, save for the inalienable right of the Roman Pontiff to intervene in individual cases” (OE no. 9). The *Code of Canons of the Eastern Churches* expressly says that the patriarch „enjoys the power over all bishops including metropolitans and other Christian faithful of the Church over which he presides according to the norm of law approved by the supreme authority of the Church” (c. 56). The canon makes plain that there are different levels of authority in virtue of the power of jurisdiction: The Roman Pontiff enjoys supreme (full, immediate and universal) ordinary power in the Church¹⁵ patriarchal and major archiepiscopal authority is supra metropolitan, while metropolitans exercise supra-episcopal authority within their province.

With the exception of the major-archiepiscopal Ukrainian and the Syro-Malabar Churches, there are no metropolitan structures established in any patriarchal Church. So the patriarch or major archbishop exercises the metropolitan authority in those places where provinces are not erected and eparchial authority in his own eparchy, in patriarchal („stauropegial”) monasteries and in places of the patriarchal territory where neither an eparchy nor an exarchate is established¹⁶

The Syro-Malankara Church is at present organised in one only metropolity with its suffragan sees¹⁷ This does not mean that further metropolities could not be established. In that case, the Catholicos who is the first among the metropolitans would continue as the Head and Father of the Church enjoying quasi-patriarchal authority.

3. Election of the Catholicos

As a rule the catholicos (major archbishop) is elected by the synod of bishops, however, as the first Catholicos of the Malankara Catholic Church was promoted to this dignity being already the Metropolitan of Trivandrum, the

¹⁵ CCEO c. 43.

¹⁶ Cf. CCEO c. 101.

¹⁷ Tiruvalla, Battery, Marthandom, Moovattupuzha.

chief hierarch of this Church, and thus recognised by the Roman Pontiff, the head of the college of bishops, as the father and head of the Malankara catholicate, neither an election nor an express confirmation was needed. This means that c. 153 of the *CCEO* will be applied only in regard to his successors.

The rules of election are the same as for patriarchs. Only the synod of bishops has the right to elect him. The canonical election has to be executed within fifteen days after the convocation of the electoral synod. Elected is that candidate who obtains two thirds of the votes, unless particular law offers the possibility that, after an appropriate number of ballots, at least three, an absolute majority of votes suffices. If the votes are equal after this and eventually a fourth ballot, this person is to be deemed elected who is senior by sacred ordination¹⁸ If the synod fails in its efforts, the matter devolves to the Pope of Rome who then can directly nominate the future catholicos. He also can give orders to repeat the election once again¹⁹

Members of the electoral synod are exclusively ordained bishops of the pertinent Church *sui iuris*: (a) the eparchial bishops inside and, if there are some, outside the territory of the Catholicate, (b) coadjutor bishops, (c) auxiliary bishops, (d) bishops of the curia, (e) retired bishops.²⁰ The participation in the synod is obligatory. Resigned bishops, however, have the right to be summoned to the synod, but are not obliged to attend²¹

The electoral synod is presided over by the administrator of the Catholicate who is either the senior bishop according to episcopal ordination of the curia or, if there are not any, among the bishops who are members of the permanent synod²². During the first session of the synod, a president is to be elected by the participants for this particular assembly. The administrator is also eligible for this function²³ The one who presides over the electoral synod has the duty to inform the person about his election²⁴ and also to proclaim who is elected²⁵ The manner in which this happens is settled by the particular law.

4. Acceptance and confirmation of the election

The elected one has to declare, within two days, whether he accepts the election. If he does not accept it or does not respond, he loses all rights acquired by the election. The Syriac Synod of Sharfet, Lebanon, describes the election of the

¹⁸ Cf. *CCEO* c. 183 §§ 3-4.

¹⁹ This was done for the latest election of the Chaldean Patriarch Mar Emmanuel III (Delly) in 2003.

²⁰ See *CCEO* c. 102.

²¹ Cf. *CCEO* c. 104 § 1.

²² See *CCEO* c. 127.

²³ See *CCEO* c. 70.

²⁴ See *CCEO* c. 73.

²⁵ See *CCEO* c. 956 § 2.

patriarch in detail. After the ballots, the president proclaims that the Most Reverend N. was elected as Patriarch and Father. „Therefore, in the name of the whole synod I proclaim and declare that the Most Reverend Mar N. was elected the Father and Patriarch of all of ours and of the whole nation [...]’. If the elected one is present and gives his agreement, the first of the Fathers with two bishops and two secretaries approaches him, kneels down towards him and says: ‘The Holy Spirit calls you to be the Patriarch of Great Antioch and all the jurisdiction of this apostolic see, that is the Father of all our people’ Then all the Fathers and the two secretaries bow their knees. Then also the elected one, kneeling and after a short prayer, says: ‘I accept and obey’”²⁶ In a similar way, the ritual of acceptance of the catholicos’s election would be conducted in the Syro-Malankara Church which also is following the Syro-Antiochene liturgical rite.

After the acceptance of the election by the new catholicos (major archbishop), the *synod* of bishops (that is identical with the electoral college) has to send a synodal letter to the Roman Pontiff in order to notify him that the election was conducted canonically. The one elected to office for his part is obliged to send a personally signed letter in order to petition the confirmation of his election²⁷

Here the procedure differs from that in the patriarchal Churches *sui iuris*, where the new patriarch requests ecclesiastical communion from the Roman Pontiff²⁸. As others we are not able to grasp the reason for this difference. During the Roman Synod of 2001 the former Syriac Patriarch of Antioch who eventually became the Prefect of the Congregation for the Oriental Churches, Mār Agnāṭīyos Mūsā I (cardinal Daūd), said in his intervention in regard to the election of hierarchs i.a.: „[...] we should entrust the canonical research made (by the Patriarch and) the bishops of the Synod and to come back to the ancient and traditional practice on the matter [...] that the name of the hierarch elected by the Synod may be published immediately and that the elected hierarch then asks the Pope to accord ecclesiastical communion to him”²⁹

Having been granted ecclesiastical communion or obtained the confirmation, the elected one has to make a profession of faith and promise to carry out his office faithfully in the presence of the synod of bishops. Afterwards he is to be proclaimed as the Catholicos and enthroned at which time he obtains full rights to exercising his office³⁰ Before his confirmation (receiving the ecclesiastical communion), the catholicos (or patriarch) is not entitled to summon

²⁶ *Synodus Sciarfensis Syrorum in Monte Libano celebrata anno MDCCCLXXXVIII*, Rome 1896, 219-221.

²⁷ „If, however, the confirmation is denied, a new election is to be conducted within the time established by the Roman Pontiff” (CCEO c.153 § 4).

²⁸ CCEO c. 76 § 2.

²⁹ „Bollettino Synodus Episcoporum” of October 11, 2001, in: *www.vatican.va* (Information Service); cf. J. MADEY, *The Catholic Syro-Malankara Church. Some Reflections on its Canonical Status Today and Tomorrow*, „The Harp” 16 (2003), 212f.

³⁰ See CCEO c. 153 § 3; cf. c. 77 § 1.

a synod of all the bishops³¹ of his Church *sui iuris* nor to ordain bishops. However, if he is not yet an ordained bishop, the enthronement can take place only after his episcopal ordination.

5. The power of the catholicos

Canon 55 names the patriarch and/or the catholicos „father and head” of his Church. According to the canons and the legitimate customs, all bishops including the metropolitans (if there are) and the other Christian faithful of his Church are subordinate to the power of the catholicos³² This power is ordinary and proper, but personal which means that it may not be delegated to a vicar for the entire Church *sui iuris*³³ It is ordinary, because it is obtained with the office and is not received from the Roman Pontiff through a separate act. It is proper, because it is exercised on the strength of proper right and not of a vicarious, delegated power. Neither the patriarch nor the catholicos is a representative of the Pope of Rome or the delegate of the bishops of his Church *sui iuris*. It is also personal, because it remains tied to the person of the patriarch or catholicos. This is why he cannot appoint a protosyncellus (vicar general) for the patriarchal Church, although he can delegate occasionally certain powers. A delegation of the full patriarchal power to somebody else would make the election of the patriarch or the catholicos more or less absurd. Therefore normally there cannot be a coadjutor with the right of succession for a patriarch or catholicos. However, being also the bishop of an eparchy, like any other bishop he has to appoint a protosyncellus for it³⁴

From what has been said, follows that the patriarch's or catholicos's power is not immediate, because in his relations with the faithful he cannot ignore the respective metropolitan or bishop. He exercises an immediate, *eparchial authority*

1. in his own eparchy,
2. in a stauropegial (i.e. autonomous) monastery,
3. in those places where neither an eparchy nor an exarchy has been established³⁵,
4. in a vacant eparchy until an eparchial administrator is appointed³⁶

³¹ Not only the bishops working or residing in the territory of the Catholicate are to be invited, but also those of the eparchies existing eventually in the diaspora. Until now neither the Coptic Catholic nor the Malankara Catholic Church have got bishops established in other continents.

³² See CCEO c.56; cf. Vatican II, Decree on the Eastern Catholic Churches *Orientalium Ecclesiarum*, no. 7. This saying is based on the ecumenical councils of Nicea, c. 6, Constantinople I, c. 4, Constantinople IV, c. 17, and the Motu proprio *Cleri sanctitati* of Pope Pius XII, c. 216. It equally refers to a patriarch as well as to a catholicos (major archbishop).

³³ See CCEO c. 78 § 1.

³⁴ See *ibid.* c. 245.

³⁵ See *ibid.* c. 101.

³⁶ *Ibid.* c. 220 no. 2.

The power of the catholicos is, like that of the patriarch, *not absolute*, boundless. He exercises his power according to the norm of law. The limits of this power are strictly defined. This power is also *not universal*, because the patriarch or catholicos exercises his power validly only within the territorial limits of his Church *sui iuris*, „unless the nature of the matter or the common or particular law approved by the Roman Pontiff establishes otherwise”³⁷ Though the patriarch or catholicos is the *Father and Head* of the faithful of his Church everywhere, his jurisdiction outside the territorial limits of his Church *sui iuris* exists only in exceptional cases, because it is the Roman Pontiff, as the head of the college of bishops, who possesses there the immediate jurisdiction for all the Catholics of oriental tradition³⁸ This fact could be explained also otherwise: Outside the limits of the patriarchal Church the Pope exercises a patriarchal jurisdiction over the bishops and the other faithful of this Church, unless in those cases in which the CCEO or the particular law approved by the Roman Pontiff establishes otherwise. So the bishops outside the limits of the patriarchal Church have the same rights and obligations with regard to the synods as the other bishops³⁹. Patriarch (catholicos) and Synod can enact laws and directions in liturgical matters that are binding all over the world⁴⁰ In other matters, the laws promulgated by the synod, receive binding force for the diaspora eparchies, i.e. the eparchies outside the patriarchal territory, when the respective eparchial bishop, as far as this is within his competence, promulgates them as particular law. If this does not happen, these laws need the approbation of the Roman Apostolic See.

6. Relations with the Roman Apostolic See

As regards the relations with the Roman Pontiff and the dicasteries of the Roman Apostolic See, the patriarch/catholicos is so to speak a mediator. Documents of the Roman Pontiff or his curia concerning bishops or others to whom it may concern are to be communicated through the patriarch/catholicos, unless in a case the Apostolic See has directly communicated it⁴¹

The catholicos can have a procurator, i.e. an apocrisiary at the Roman Apostolic See after having obtained the prior assent of the Roman Pontiff⁴² The appointment of a procurator is not obligatory, but prior assent is needed before an appointment is made⁴³

³⁷ *Ibid.* c. 78 § 2.

³⁸ See *ibid.* cc. 146-150.

³⁹ See *ibid.* c. 150 § 1; cf. c.102 § 2.

⁴⁰ See *ibid.* c. 150 § 2.

⁴¹ See *ibid.* c. 81.

⁴² See *ibid.* c. 61.

⁴³ At present, the Syriac Church of Antioch, the Melkite Church of Antioch, the Maronite Church of Antioch, the Chaldean Church, the Armenian Church and the Ukrainian Church have their respective procurator at the Roman Apostolic See (See *Annuario Pontificio 2004*, Vatican City 2004. 4-9).

7. Competencies of the catholicos

By his own right, the catholicos can issue, within the scope of his competence, decrees that determine the precise modes in applying and observing the laws. He has further the right to publish instructions for the faithful of his Church *sui iuris* that explain the sound doctrine, foster the piety, correct abuses, approve and recommend practices that favour the spiritual life. Last but not least he can address encyclicals to his entire Church concerning questions with regard to the Church and its rite⁴⁴. As he has the right to communicate with all the members of his Church through encyclicals, he can order the hierarchs as well as the other clerics and the religious of his Church to read and explain publicly his decrees, instructions, and encyclicals⁴⁵. The catholicos will normally consult in advance the bishops of the Permanent Synod or the synod of bishops in all more serious affairs⁴⁶.

The catholicos has also the right and the duty to conduct a pastoral visitation in the eparchies of the other bishops. Particular law determines the time. The chief responsibility, the right and obligation of the eparchial bishop of canonically visiting his own eparchy remain intact⁴⁷. For serious reasons, however, the catholicos can, with the agreement of the permanent synod, conduct a canonical visitation of a church, a city or an eparchy either in person or through another bishop. During the visitation he can do all those things the eparchial bishops can do during a canonical visitation. As the visitation by the catholicos is a serious interference into matters that pertain to the eparchial bishop, it can take place only for very urgent reasons and with the consent of the permanent synod. Traditionally this would be the obligation of the metropolitan⁴⁸, but if there is no proper metropolitan⁴⁹, it goes over to the duties of the catholicos⁵⁰. When the catholicos himself is the proper metropolitan of the respective eparchy, he has not the obligation to obtain the consent of the permanent synod, because the metropolitan has this obligation in virtue of the law.

8. Establishment of new eparchies and appointment of bishops

As mentioned above, Vatican II expressly recognises the right of the patriarch and of the catholicos with their synod to establish new eparchies and to

⁴⁴ *Ibid.* c. 82 § 1.

⁴⁵ *Ibid.* c. 82 § 2.

⁴⁶ *Ibid.* c. 82 § 3.

⁴⁷ *Ibid.* c. 83 § 1.

⁴⁸ See *ibid.* c. 133 no. 5.

⁴⁹ With the exception of the Syro-Malabar Church, there are no metropolies with their respective suffragan eparchies within the territory of the patriarchates and major archiepiscopates/catholicates.

⁵⁰ See *CCEO* c. 80 no. 1.

appoint bishops within the limits of their territory. Canon 85 § 1 affirms this right adding however, that this can be done „for a serious reason” and that „after having consulted the Apostolic See” he can establish provinces and eparchies, modify their boundaries, unite, divide, suppress, and modify their hierarchical status and transfer the eparchial see”

As regards the election of bishops, „unless particular law approved by the Roman Pontiff states otherwise, the synod of bishops of the patriarchal Church is to examine the names of the candidates and compile a list of the candidates by secret ballot, which is to be transmitted through the patriarch [catholicos] to the Apostolic See to obtain the assent of the Roman Pontiff (c. 182 § 3). The assent of the Roman Pontiff once given for an individual candidate is valid until it has been explicitly revoked, in which case the name of the candidate is to be removed from the list” (c. 182 § 4). This prescription has met with serious objections from Oriental Churches⁵¹

⁵¹ See, e.g., fn. 30. The Melkite Greek Catholic Holy Synod established a commission of four bishops to study this issue. The document elaborated by this commission was studied and adopted by the Fathers of the synod in January 2000 and sent to the Holy Father. We quote according to the French translation of the original Arabic text, published in *Le Lien. Revue du Patriarcat Grec-Melkite-Catholique* 67/1 (2002), 46f.: „Regarding the patriarchal jurisdiction the Melkite Greek Catholic Church declares: 1. The election of the bishops on the patriarchal territory is due to the Holy Synod. The practice to draft a list of episcopable candidates confirmed by Rome is an innovation that goes back to the 50s (1956). This practice has been reinforced after Vatican II and was ratified in canon 192, paragraphs 3 and 4 of the Code of Canons of the Eastern Churches (CCEO). This new canon, result of a Roman decision, is contrary to the fundamental principles of the ecclesiology of the East and constitutes an obstacle in the ecumenical dialogue. It is equally a practice foreign to the traditional ethos of the Melkite Church, as well before as after her union with Rome. Authentic oriental tradition on the contrary recognises the Oriental patriarchs and their respective synods as the higher authority in all matters, not excluding those regarding the election of the bishops, save for the inalienable right of the Roman Pontiff to intervene in ‘individual cases’ Consequently the Holy Synod asks the abolition of the paragraphs 3 and 4 of the canon 182 of the CCEO. 2. The Holy Synod also asks for a change of the canon 149 of the CCEO regarding the election of bishops *outside the patriarchal territory*. This right belongs, as for the patriarchal territory, to the Holy Synod. Indeed, patriarchal jurisdiction concerns all the faithful of the patriarchate which place they ever may be, because these faithful continue to be of the rite of the patriarchate, which is defined as »*the liturgical, theological, spiritual and disciplinary patrimony, culture and circumstances of history of a distinct people, by which its own manner of living the faith is manifested in each Church sui iuris*« (CCEO canon 182, § 1). Further, the patriarchal jurisdiction, inside and outside the patriarchal territory, is based theologically on holy Baptism and holy Myron. It is well known that the consecration of the holy Myron is reserved to the patriarch who distributes it to all the bishops. This *liturgical* custom is a theological and ecclesiological proof of his jurisdiction over all his faithful, wherever they are. One can also emphasise another theological aspect characterising the Oriental Catholic Churches. An Oriental Catholic bishop is in communion with the bishop of Rome through the intermediation of his patriarch and his Holy Synod. This theological principle is applied to every bishop as well inside as outside the patriarchal territory [...]. The fact that Rome reserves for herself the nomination of the bishops for the countries of emigration is contrary to the theological and ecclesiological principles quoted above”

This was the case still more with regard to eparchial bishops, coadjutor bishops or auxiliary bishops *outside* the boundaries of the patriarchal Church. The actual legislation prescribes, that the synod of bishops has to elect three candidates and to propose them to the Roman Pontiff for appointment⁵² Here the right of the patriarch or catholicos with their respective synods is reduced rather to that of some German cathedral chapters.

At present, the Malankara Catholic Church does not yet have any eparchies outside the boundaries of its territory. The Apostolic visitor looking for the pastoral care of the emigrants in Europe and North America is an auxiliary bishop of the eparchy of the catholicos. The issue, however, would become acute when the establishment of an eparchy in the diaspora would be treated by the synod of bishops.

Within the boundaries of the catholicate, the catholicos, with the consent of the synod, can give a coadjutor bishop or an auxiliary bishop to an eparchial bishop⁵³ For a grave reason he can also transfer a metropolitan, eparchial bishop or titular bishop to another metropolitan, eparchial or titular see. If the bishop refuses this measure, the synod of bishops has to resolve the matter or defer it to the head of the college of bishops, the Roman Pontiff⁵⁴ The catholicos is also competent, with the consent of the *permanent* synod, to erect, modify and suppress exarchies⁵⁵ The patriarch or catholicos has to inform the Roman Apostolic See about these decisions as soon as possible⁵⁶

He is also competent to give the elected metropolitan or bishop a letter of canonical provision (*staticon*). This letter should be remitted within ten days after the election. The patriarch or catholicos has also the right to ordain and enthrone metropolitans and bishops, either personally or, if impeded, through other bishops. Particular law has to be observed⁵⁷ There is no restriction as regards the territory. By virtue of law he also possesses the faculty to ordain and enthrone a metropolitan and other bishops of his Church appointed by the Roman Pontiff outside the boundaries of the same Church „unless in a special case it is expressly stipulated otherwise”⁵⁸ The Roman Apostolic See should be notified as soon as possible of the episcopal ordination and enthronement⁵⁹

For his curia, the catholicos can ask the Fathers of his synod to elect some bishops, though not more than three, if provision is made for their support. He

⁵² See CCEO c. 149.

⁵³ *Ibid.* c. 85 § 2 # 1; cf. c.181 § 1, 182-187 and 212.

⁵⁴ *Ibid.* c. 85 § 2 # 2.

⁵⁵ *Ibid.* c. 85 § 3. This paragraph does not concern the *Apostolic* exarchies that are under the jurisdiction of the Roman Pontiff. The Maronite Church has two *Patriarchal* exarchies, the Syriac Church four, the Armenian Church two, the Melkite Church two, and the Ukrainian Church three (see *Annuario Pontificio* 2004, Vatican City 2004, 1059-1062).

⁵⁶ *Ibid.* c. 85 § 4.

⁵⁷ *Ibid.* c. 86 § 1.

⁵⁸ *Ibid.* c. 86 § 2.

⁵⁹ *Ibid.* c. 86 § 3.

confers on them the office with residency in the curia⁶⁰ Retired bishops are not counted among the bishops of the curia⁶¹, even if they fulfil some activities there.

The catholicos has the duty and the right to exercise vigilance over all clerics, i. e. bishops, presbyters and deacons, according to the norm of law. He is to take action against a cleric, if he merits punishment and the hierarch to whom he is immediately subject, disregards the catholicos's warning⁶².

Furthermore, he can charge any cleric of his Church *sui iuris*, after having consulted with the eparchial bishop or the major superior of a religious institute, with a function of conducting affairs, which regard the entire Church. He can also subject the cleric immediately to himself for the time he is exercising this function⁶³ It is equally within his competencies to confer a dignity in his Church on any cleric with due regard for c. 430⁶⁴; he needs, however, the written consent of the eparchial bishop or the major superior to whom the cleric is subject. It is not reasonable to petition from Rome western prelatial titles for clerics of a Church *sui iuris* of oriental tradition⁶⁵ The same is valid in regard to conferring dignities to clerics of the Church of the West.

9. „Stauropegion”

For an important reason and after having *consulted*⁶⁶ with the eparchial bishop and obtained the consent of the Permanent Synod, the catholicos can grant, within the boundaries of his Church, a place or a juridical person, which is not linked with a religious institute, exemption from the eparchial bishop and

⁶⁰ *Ibid.* c. 87.

⁶¹ There are two curial bishops in the Coptic, two in the Syriac, two in the Melkite, three in the Maronite, two in the Chaldean, and one in the Armenian Churches (see *Annuario Pontificio 2004*, Vatican City 2004, 3-7).

⁶² See *CCEO* c.89 § 1.

⁶³ *Ibid.* c. 89 § 2. – The Armenian Church is having a particular institute for the patriarchal clergy (Bzommar, Lebanon). The members of this institute are under the immediate authority of the Catholicos – Patriarch of Cilicia. See N. SETIAN, *Das armenisch-katholische Patriarchat*, in: *Die Kirche Armeniens*, ed. F. HEYER, Stuttgart 1978, 229.

⁶⁴ „It is not permitted to confer on religious merely honorific titles of dignities or offices; unless the typicon or statutes permit this in regard to the title of major superior which the religious already has exercised”

⁶⁵ „Monsignor” (either Chaplain of His Holiness, or Papal honorary prelate, or Protonotary Apostolic). – Still in recent years, Melkite patriarchs conferred the title of archimandrite to priests of other Churches *sui iuris* who did not even enjoy the privilege of „bi-ritualism” Syriac patriarchs sometimes granted the dignity of chorepiscopus to merited Latin-rite priests. – Cf. Congregation for the Oriental Churches, *Istruzione per l'Applicazione delle Prescrizioni Liturgiche del Codice dei Canonici delle Chiese Orientali*, Vatican City 1996, no. 78; J. MADEY, *Liturgy and Canon Law in the Light of the Instruction „Il Padre Incomprensibile” of the Congregation for the Oriental Churches*, [HIRS 10], Changanassery 1996, 70.

⁶⁶ Although the catholicos must consult with the eparchial bishop, he does not need to obtain the latter's consent in order to confer exemption.

subject it immediately to himself⁶⁷ So exemption could be granted to certain schools, a major seminary, hospitals or other institutions whose importance and impact transcend by far the limits of an individual eparchy. This power has its origin in the ancient right of the *stauropegion*⁶⁸ It comprises all the buildings and persons, the members of a community and its employees. Also monasteries can be stauropegial. A stauropegial monastery is directly subject to the catholicos in such away that only he enjoys the rights and obligations of an eparchial bishop toward the monastery, its members and the persons who dwell day and night in the monastery. Other persons connected with the monastery are subject directly and exclusively to the catholicos only in those aspects which concern their duties and offices⁶⁹

10. Catholicos and Liturgy

Being the Father and Head of a Church *sui iuris*, the catholicos must celebrate the Divine Liturgy for all the faithful of his Church on feast days established by particular law⁷⁰

As an eparch, the catholicos should also celebrate the Divine Liturgy for the people of his eparchy⁷¹ By celebrating the Eucharist for the entire Church over which he presides, he also fulfils the obligation of celebrating the Divine Liturgy for the eparchy entrusted to him.

Furthermore it is a right of the catholicos to be commemorated immediately after the Roman Pontiff in accordance with the liturgical books as well in the Divine Liturgy as the canonical hours (divine praises); this applies to all the churches of the catholicate inside and outside its boundaries. The commemoration is to be done by all the bishops and other clerics belonging to the catholicate Church⁷² In this way their communion with the catholicos and also the orthodoxy of the celebrating community find their explicit expression. A conscious, intentional omission of the commemoration has to be seen as a schismatic act on the part of the cleric and can result in the imposition of an appropriate penalty, not excluding a major excommunication⁷³

The catholicos himself must commemorate the Roman Pontiff⁷⁴ as a sign of full communion with him according to the prescriptions of the liturgical books, as

⁶⁷ CCEO c. 90.

⁶⁸ See J. D. FARIS, *Eastern Catholic Churches* 262.

⁶⁹ CCEO c.486 § 2.

⁷⁰ CCEO c.94; see also. 96.

⁷¹ CCEO c. 101.

⁷² *Ibid.* c. 91.

⁷³ *Ibid.* c. 1438. *Major excommunication* corresponds to what formerly was called an *anathema*.

⁷⁴ It has been an ancient custom that patriarchs and other heads of autocephalous or autonomous Churches commemorate all the heads with which they are in full communion. The Syriac Orthodox liturgical books have a commemoration of the Coptic Pope and Patriarch. Should not the

well in the Divine Liturgy as in the divine praises⁷⁵ It is also his duty to see that all the bishops and other clerics do this faithfully. Liturgical commemoration of the Roman Pontiff is not only a prayer for him or in his intentions, but also a public declaration of ecclesiastical (hierarchical) communion with him⁷⁶

11. Obligations of the Catholicos

The Catholicos has the obligation to manifest the hierarchical communion with the Roman Pontiff, successor of St. Peter. It finds an expression in the loyalty, veneration and obedience due to the head of the college of bishops⁷⁷ In order to keep the Pope informed about the status of his Church *sui iuris*, the catholicos is required to submit periodic reports to him, however, no reference is made to the required frequency or the formula to be observed for such reports in the Code⁷⁸

Although the catholicos is to reside in his see⁷⁹, he enjoys the liberty to absent himself for reasonable motives, for instance, when he visits his faithful living in different continents or in order to take part in ecumenical gatherings or others having universal character.

The catholicos also has to see that the eparchial bishops faithfully fulfil their pastoral duties in their respective eparchies and reside in their eparchy. He should encourage them in their ministry. If a bishop has transgressed Church laws in serious matters, the catholicos has to discuss the matter with the members of the permanent synod and then warn him. If the warning does not result in the desired effect, he is to defer the matter to the Roman Pontiff⁸⁰

The catholicos is to convoke the *permanent synod* and to preside over it⁸¹, at least twice a year and whenever he deems it necessary. This means he has to convoke the permanent synod whenever that require the consultation or the consent of the permanent synod must be carried out⁸².

He also has to convoke the synod of bishops of his Church *sui iuris* and to preside over it⁸³. Alone the catholicos has this right. The bishops alone, without

Catholicos of the Malankara Catholic Church commemorate, after the Roman Pontiff, at least the Syriac Catholic Patriarch of Antioch, the highest representative of the Syro-Antiochene liturgical rite, not as a sign of subordination, but of full ecclesiastical and sacramental communion?

⁷⁵ In some Churches, the Roman Pontiff is commemorated numerous times (e.g. in Byzantine-Slav Churches), while in others, only bishops do it. In any case, the commemoration of the Roman Pontiff occupies always the first place.

⁷⁶ CCEO. c. 92 § 2.

⁷⁷ *Ibid.* c. 92 § 1.

⁷⁸ See J.D. FARIS, *Eastern Catholic Churches* 265.

⁷⁹ CCEO c. 93.

⁸⁰ *Ibid.* c. 95 § 2.

⁸¹ *Ibid.* c. 116 § 1.

⁸² See *Ibid.* c. 120.

⁸³ *Ibid.* c. 103.

the patriarch or catholicos, cannot convoke the synod, not even through a collective act. This indicates that the personal participation of the catholicos is required. The only exception to this rule is the case of a vacant patriarchal or catholicate see. Then the administrator has to convoke the synod of bishops for the election of a successor⁸⁴

12. Rights of the Catholicos

According to the Syro-Antiochene tradition, the patriarch as well as the catholicos alone has the right to consecrate the holy *mūrōn* (myron, μύρον) and distribute it to all the eparchies belonging to their respective Churches.⁸⁵ „Accepting the Holy Myron from the Head of the Church [...] signifies the unity of the local community with the entire Church *sui iuris*”⁸⁶

According to c. 829 § 3 the catholicos is endowed with the faculty to personally bless marriages everywhere in the world, as long as at least one of the parties is enrolled in the Church over which he presides, observing the other requirements of law. This paragraph is important, because it constitutes an exception from the general rule according to which his power is validly exercised only inside the territorial boundaries of the Church over which he presides⁸⁷ The former legislation on matrimony still restricted the patriarchal power to the territorial boundaries of his Church⁸⁸ Consequently Eastern Catholics may have nowadays their marriage blessed by the patriarch or catholicos anywhere in the world. „Because of the wider territorial scope of the patriarch’s [catholicos’s] faculty, the canon in question also becomes more significant for the Latin Church. In the case of marriages of Eastern faithful subject to a Latin bishop (CCEO c. 916 § 5), the patriarch [catholicos] has the personal faculty to bless these marriages anywhere in the world. With regard to interecclesial and interritual marriages, Latin local ordinaries and pastors will be aware that, by law, the patriarch [catholicos] can also bless these marriages”⁸⁹

⁸⁴ *Ibid.* c. 65 § 1.

⁸⁵ Bishops had this right till the 10th or 11th century, as is witnessed by Yahya ibn Ğarir, *Al-Muršid*, ch. 32 (Ms Šarfeh 5/5, p. 220). The reservation to the patriarch or catholicos became established law already before the time of Barhebraeus (Mār Grīgōr abu l-Faraġ ibn al-‘Ibrī, 1226-1286). See his *Nomocanon* III, 1 (ed. P. BEDJAN, *Nomocanon Gregorii Barhebraei*, Paris 1898, 29). Cf. also above, fn. 50.

⁸⁶ R.J. WHETSTONE, R.J. FLUMMERFELT, *The Mystery of Chrismation with Holy Myron*, in: *Comparative Sacramental Discipline in the CCEO and CIC*, ed. F.J. MARINI, Washington, D.C., 2003, 25.

⁸⁷ CCEO c. 78 § 2.

⁸⁸ PIUS XII, *Cleri sanctitat* (1957), c. 284 # 2.

⁸⁹ G. D. GALLARO, *The Sacramental Mystery of Marriage*, in: *Comparative Sacramental Discipline in the CCEO and CIC*, ed. F. J. MARINI, 186.

As regards the dispensation from the form for the celebration of marriages, it is reserved to the Apostolic See or the patriarch [catholicos] who will not grant it except for a most grave case. In this regard, the so-called „Kerala Agreement”, which is approved by the Roman Apostolic See, is also to find due consideration⁹⁰

Katolikos Katolickiego Kościoła Malankarskiego

Streszczenie

W lutym 2005 r. decyzją papieża Katolicki Kościół Malankarski został podniesiony do rangi Kościoła arcybiskupiego większego. Ten sam tytuł przypadł również zwierzchnikowi Kościoła, którym obecnie jest Cyril Mar Baselios Malancharuvil O.I.C. Nuncjusz apostolski w Indii, podając do publicznej wiadomości decyzję papieża, wyjaśnił jednak, że nowy tytuł odpowiada tytułowi katolikososa. Nawiązując do tego wydarzenia, Autor artykułu przedstawia szczegółowo zakres praw i obowiązków przypadających katolikosowi Katolickiego Kościoła Malankarskiego. W Kościele tym tytuł katolikososa jest niemal tożsamy z tytułem patriarchy. Katolikos jest „Ojcem i Głową” Kościoła. Granice kompetencji katolikososa wyznaczone są z jednej strony przez prymat papieża, który jest głową całego kolegium biskupów, z drugiej zaś przez inne struktury o charakterze kolegialnym w ramach katolikatu, zwłaszcza synod stały Kościoła oraz synod biskupów.

R. Porada

⁹⁰ See J. MADEY, *The Ecclesiological and Canonical Background of the so-called »Kerala Agreement«*, „The Harp” 11-12 (1998-99), 99-112.