

THE HISTORICAL DEVELOPMENT AND CURRENT PROCEDURAL NORMS OF ADMINISTRATIVE RECOURSE TO THE APOSTOLIC SIGNATURA*

2. Procedure in the Second Section

The procedure for the Second Section is set forth in Articles 97 to 125 of the *Normae Speciales*¹. As previously mentioned, these «provisional norms,» which were published under the authority of Pope Paul VI in 1968, are presently under revision². What

* The first part of the article is published in *Periodica* 90 (2001) 455-496.

¹ *Normae speciales in Supremo Tribunali Signaturae Apostolicae ad experimentum servandae post Constitutionem Apostolicam Pauli PP. VI «Regimini Ecclesiae Universae»*. These provisional norms were published in *Periodica* 59 (1970) 75-161; *Apollinaris* 53 (1970) 249-280; I. GORDON-Z. GROCHOLEWSKI, *Documenta recentiora circa rem matrimonialem et processualem*, vol. I, Romae 1977, 372-398.

² For other commentaries, see e.g., I. GORDON, «Normae Speciales Supremi Tribunalis Signaturae Apostolicae, Editio aucta introductione, fontibus et notis», *Periodica* 59 (1970) 75-113; Z. GROCHOLEWSKI, «La *Sectio Altera* della Segnatura Apostolica, con particolare riferimento alla procedura in essa seguita», *Apollinaris* 54 (1981) 30-71; E. LABANDEIRA, *Tratado de derecho administrativo canónico*, Pamplona 1988, 753-777; K.K. SCHWANGER, «Contentious-Administrative Recourse before the Tribunal of the Apostolic Signatura», *The Jurist* 58 (1998) 188-195.

follows is an explication of the procedure with certain recommendations for modifications, clarifications, deletions and amendments.

2.1 *Preliminary Observations*

At the outset of the discussion of the procedure at the Second Section, it seems worth repeating that the Signatura does not review *de novo* the merits of the case. Rather, it considers whether a violation of law in proceeding or deciding should cause the act to be declared illegitimate and the case to be remanded for appropriate disposition. The Signatura does not take upon itself the correction or the substitution of the acts³. In the event that the Signatura determines a violation of law to exist, it is the proper role of the hierarchical superior who authored the decree to correct it.

In the Second Section of the Apostolic Signatura, the Promoter of Justice functions as the principal voter or consultor. The *Normae Speciales* make occasional reference to an Undersecretary, but in reality, no such office exists. Since cases involving the nullity of marriages are rare at the Apostolic Signatura, the Substitute Promoter of Justice, the Defender of the Bond or the Substitute Defender of the Bond – as well as any of the consultors – may be appointed by the Secretary as a Deputy Promoter of Justice for an individual case.

³ D. Card. STAFFA, «De Supremo Tribunali Administrativo seu de Secunda Sectione Supremi Tribunalis Signaturae Apostolicae», *Periodica* 61 (1972) 26; and A. SABATTANI, «Iudicium de legitimitate actum administrativorum a Signatura Apostolica peractum», *Ius Canonicum* 16/2 (1976) 233-234.

Pursuant to Article 97, processes in the Second Section are conducted in secrecy for the protection of the privacy of the parties⁴. The parties and their counsels, of course, always retain the right to inspect the acts. Section 1 of Article 98 permits the Secretary to release decisions to other parties who show just cause, provided that the Prefect, at the request of the parties or *ex officio*, has not commanded the decision of the Signatura be kept secret⁵. Archbishop Grocholewski has observed that the contentious-administrative process in the Second Section is secret with respect to persons involved in the process but not with respect to the subject of the process⁶. In his view, publicity of the subject of the process is advantageous to the explication of the principles of administrative justice⁷. To this end, it is the prerogative of the Cardinal Prefect, after hearing the Secretary, to grant the petition of third parties to obtain the decisions of the Second Section, even when the Prefect has previously decreed that the decision be kept secret⁸. It is understood that in such publications the identity of the parties and the names of the places are suppressed.

⁴ *Normae Speciales*, Art. 97.

⁵ *Normae Speciales*, Art. 98 § 1.

⁶ Z. GROCHOLEWSKI, «La Sectio Altera» (cf. nt. 2), 33. See also E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 754-755.

⁷ Z. GROCHOLEWSKI, «La Sectio Altera» (cf. nt. 2), 33-34.

⁸ *Normae Speciales*, Art. 98 § 2.

2.2 *Phase I: Introduction of the Recourse*

2.2.1 Thirty-Day Peremptory Period

Article 105, Section 1, establishes a peremptory period of thirty days within which recourse must be made to the Second Section⁹. The thirty-day period commences on the date on which the petitioner actually received, or had actual knowledge of, the decrees, or acts, which are being challenged. It is computed according to «*tempus utile*»¹⁰. Sections 2 refers to the receipt («*syngrapha*») that proves that the petitioner mailed the recourse within the time period. It must be included in the acts as proof that the recourse was submitted in time. Section 3 addresses a special situation with regard to the

⁹ *Normae Speciales*, Art. 105 § 1. Cf. *Pastor Bonus*, Art. 123; and «*Regolamento Generale della Curia Romana* (Die 4 m. februarii a. 1992)», AAS 84 (1992) Art. 119 § 2.

¹⁰ The computation of time for the thirty day period follows the rules established in *CIC-1983*, cc. 200-203. Article 123 of *Pastor Bonus* explicitly refers to «*tempus utile*.» The concept of «*tempus utile*» affords an individual that holidays, weekends, precept days, etc. will not be counted as part of the peremptory period. The thirty days is given for the person to be able to prepare a recourse and to submit it. Regarding preparation, it would seem that the person would be impeded on holidays, weekends, precept days, etc., only if the work of preparation had been impeded on those days. However, in regard to the submission of the recourse, it is clear that if the thirtieth day fell on such a day, so that it was impossible to send or personally deliver the recourse to the Signatura, the time limit would not expire on that day. Additionally, there is the question of ignorance, which would have to be proven, pursuant to *CIC-1983*, c. 15. See F. J. URRUTIA, *De Normis Generalibus, Adnotationes in Codicem: Liber I*, Roma 1983, 129-131.

peremptory period. A special-circumstances exception to the statute of limitations is permitted when recourse cannot be made directly to the Chancery or where some obstruction to communication exists in places outside of Europe¹¹. There may be some question as to whether the thirty-day period stipulated in Article 123 of *Pastor Bonus* abrogates the special circumstances exception contemplated in Section 3 of the *Normae Speciales*¹². When a true difficulty has seriously impeded a party's ability to bring recourse within the peremptory period, one would hope that the supreme administrative tribunal of the Church, with due deference to judicial order, would not refuse to hear the case¹³. A liberal interpretation of the principle of «*tempus utile*» would seem to permit the Signatura to hear the case when an authentic impediment prevented satisfaction of the thirty-day period.

¹¹ Referring to the last sentence of the previous section, Section 2 of Article 105 of the *Normae Speciales* requires that the written statement be annexed to the acts by the interested party. Section 3 deals with geographic locations outside of Europe where for some reason the means of communication are obstructed by some special difficulty, for example, war, a government's refusal or inability to facilitate communications, or some severe atmospheric condition that disrupts the normal means of communication.

¹² Z. GROCHOLEWSKI, «I tribunali», in P.A. BONNET – C. GULLO (eds.), *La Curia Romana nella Cost. Ap. «Pastor Bonus»*. Studi Giuridici XXI, Vaticano 1990, 406.

¹³ In such cases, the Secretary may act to establish special times. See E. LABANDEIRA, «El objeto del recurso contencioso-administrativo en la Iglesia y los derechos subjetivos», *Ius Canonicum* 20/2 (1980) 241-254.

2.2.2 Particulars of the Written Recourse

The *Normae Speciales* provide a detailed listing of the particulars which must be included in the recourse. Article 104 stipulates that the recourse must be drawn-up in accord with the common norms for procedure as provided for in the *CIC-1917*¹⁴. Evidently in order to avoid unnecessary delays, the *Normae Speciales* specify these particulars¹⁵. Article 106 requires that the written recourse must report: (1) the name and domicile or residence of the petitioner; (2) the act or decree which is being challenged, as well as the date of the notification according to the norms of law; (3) a summary of the facts of the case, the reasons for the recourse, the laws which have allegedly been violated, and conclusions; and (4) the signature of the petitioner, and/or of the procurator-advocate, and in the case of the latter either a copy of the mandate to the procurator-advocate or the terms thereof¹⁶. The requirement of Article 106, Number 3, that the recourse contain both the reasons for the recourse and the laws, which have been violated, seems somewhat redundant. Since the only reason or ground upon which a recourse can be legitimately accepted by the Apostolic Signatura is that a violation of law has occurred, to distinguish between the reasons and the laws may be a superfluous

¹⁴ *Normae Speciales*, Art. 104. It seems reasonable to conclude that the reference to the canons of the *CIC 1917* must now be replaced with the corresponding provisions of the *CIC 1983* which start at c. 1502.

¹⁵ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 45.

¹⁶ *Normae Speciales*, Art. 106. Cf. *CIC-1983*, cc. 1502, 1503, 1504.

aspect of the written recourse¹⁷. Such a distinction would be appropriate, however, if the competence of the Apostolic Signatura were to be expanded to include more than violations of law.

In addition to the particulars for the recourse set forth in Article 106, Article 109 requires that the following documents be submitted along with the recourse: (1) as many copies of the recourse as are necessary so that all parties who have an interest in the contentious matter may receive notification; (2) the signed special mandate, if any, which has been certified by ecclesiastical authority, and directed to an approved procurator-advocate; (3) a copy of the challenged decree, unless it is unavailable because the authority who issued the decree refuses to make it available or because it could not be obtained within the peremptory time period for proposing the recourse; (4) the documents which the petitioner asserts support the recourse; and (5) a prorated sum of money which is deposited to obtain the benefit of legal assistance¹⁸. The issue of fees for the procurator-advocate is somewhat more complex than Number 5 of Article 109 suggests. The Apostolic Signa-

¹⁷ G. LOBINA, *La competenza del Supremo Tribunale della Segnatura Apostolica con particolare riferimento alla «Sectio Altera» e alla problematica rispettiva*, Roma 1971, 115.

¹⁸ *Normae Speciales*, Art. 109. Number 5 of Article 109 requires a deposit of money to be paid by each of the parties at the outset of the case. The deposit is to be submitted in accordance with the annual fee schedule set by the Prefect (presently five thousand United States dollars). In the absence of the monetary deposit, a petition, supported by the pertinent documents demonstrating financial hardship, may be made for gratuitous legal assistance.

tura maintains a list of those procurator-advocates who are approved to represent private parties in the contentious-administrative process. These, often laymen, may charge an appropriate fee for their services. Number 5 reflects the Apostolic Signatura's practice of charging a certain stipend, which in no way represents the actual, much greater, financial cost to the Church for handling a case. Part of this cost results from the Signatura's practice of attempting to honor requests of parties for free legal aid in securing a procurator-advocate. Like many civil jurisdictions in Europe, the Apostolic Signatura places the burden for fees on the party who receives the adverse decision. The private individual, who successfully challenges some decree from an ordinary or dicastery, would theoretically not bear the financial burden of the case. On the other hand, such a practice could serve as a disincentive to a private individual to make recourse, if the individual fears that an adverse decision carries financial consequences. Concerning Article 109, Number 3 of Article 110 establishes that a petitioner, who omits the inclusion of a copy of the challenged decree on the ground that the public authority refuses to render it, must demonstrate that a timely request for the decree was made by submitting to the Apostolic Signatura proof of the registered, return-receipt, letter sent to said authority¹⁹.

Article 111 imposes a residency requirement on either the petitioner or counsel in order that proper notification during the process may be made in Rome. In the absence of a Roman residence, the

¹⁹ *Normae Speciales*, Art. 110.

Article continues that notification will be made at the Chancery of the Apostolic Signatura²⁰. It is presently required that the procurator-advocate, through whom the petitioner acts, have a domicile in Rome. Finally, pursuant to Article 108, if the petitioner seeks suspension of the challenged decree, such a request must be appended to the recourse. The request for suspension should, of course, include a statement of the favorable reasons and/or the supporting documents²¹. Thus, it is clear from the Article that a recourse to the Apostolic Signatura does not automatically suspend the effects of a decree²².

Upon receiving the recourse, the Secretary of the Apostolic Signatura conducts a «preliminary examination» to determine if the recourse is null or in need of correction²³. According to Article 107, Section 1, the recourse may be null for two reasons: (1) it lacks the signature as stipulated in Article 106, Section 4; or (2) it is unclear as to the identity of the petitioner or the object of the recourse²⁴. When a recourse is declared null, the administrative act may not be challenged until the petitioner has submitted the recourse

²⁰ *Normae Speciales*, Art. 111.

²¹ *Normae Speciales*, Art. 108.

²² There are certain circumstances in which suspension is automatic. See *CIC-1983*, c. 700 (dismissal of a member of an institute of consecrated life); c. 1353, (imposition of a penalty); c. 1747 § 3, (removal of a pastor precludes appointment of a new pastor while recourse is pending); and 1752 (c. 1747 applies to transfer of a pastor).

²³ «[I]l Segretario della Segnatura Apostolica fa un *primo esame* per accertare che esso non sia nullo o correggibile»; Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 47.

²⁴ *Normae Speciales*, Art. 107 § 1.

anew²⁵. In the alternative, where the recourse contains some other defect the Secretary may issue a decree which requests that the petitioner correct the recourse within a certain period of time mentioned in the Secretary's decree²⁶.

2.3 *Phase II: Admitting or Rejecting the Recourse*

2.3.1 Notice Requirement

Once it has been determined that all the initial requirements for the submission of the recourse have been satisfied, the first phase of the process in the Second Section commences²⁷. Article 112 delineates the notice requirement²⁸. First, the Secretary notifies the dicastery, which has issued the challenged decree as well as all other interested parties, that the petitioner has presented a facially valid recourse. Presumably, «other interested parties» would include the party to whom the dicastery's decision was favorable²⁹. Second, the Secretary requests that the dicastery transmit to the Signatura all the acts and

²⁵ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 47. See also G. LOBINA, *Elementi di procedura amministrativa canonica*, Roma 1973, 33.

²⁶ *Normae Speciales*, Art. 107 § 2. See E. LABANDEIRA, «El procedimiento contencioso-administrativo ante la Signatura Apostólica» *Ius Canonicum* 43 (1982) 254.

²⁷ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 47; E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 760-762.

²⁸ *Normae Speciales*, Art. 112.

²⁹ In other words, this would mean notifying either the private person who originally brought the recourse to the dicastery, or the superior against whose decree the recourse was taken.

documents, which pertaining to the controversy, within a period of thirty days after the dicastery has received notification of the Secretary's order. Third, the Secretary invites all the parties who have a contrary interest to that of the petitioner to answer the recourse with appropriate acts and documents within thirty days after notification³⁰. Finally, just as with Article 109, Number 5, the Secretary requests that the petitioner deposit a set amount of money.

2.3.2 Suspension of the Challenged Decree

If the petitioner has made a motion to suspend the effects of the challenged decree, Article 113, Section 1, calls for the Prefect to determine, after hearing the Secretary and the Promoter of Justice, whether the motion for suspension should be rejected from the outset as without merit³¹. When the Prefect determines that the motion for suspension ought not to be dismissed at the outset, then the Secretary must notify the opposing parties who have thirty days to establish counsel and to produce documents that seem helpful to the settlement of the motion. Section 2 specifies that upon completion of the thirty-day period, the Secretary shall invite the Promoter of Justice to express an opinion within ten

³⁰ Concerning the expression «*oppositum recursum*» («counter recourse»), Archbishop Grocholewski suggests that since it is not possible to initiate a counter-suit in the Second Section, it would be preferable simply to say that the opposing party makes a defense or answer. Z. GROCHOLEWSKI, «*La Sectio Altera*» (cf. nt. 2), 47-48, note 85.

³¹ *Normae Speciales*, Art. 113 § 1. See E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 761.

days after receiving the pertinent materials³². The ultimate decision to grant or to deny suspension, according to Section 3, must be made within sixty days from the time that the recourse with the suit for suspension arrived at the Chancery of the Apostolic Signatura³³. Given the sixty-day period from the time the petitioner motions the Signatura to suspend the decree to the ultimate decision, it seems fair to pose the question as to whether in certain cases the sixty-day period may be too long. For example, when a recourse is brought against the dicastery's affirmation of the diocesan bishop's decision to raze a parish church, the church might well be razed subsequent to the receipt of the dicastery's decree but prior to the ninety-day period (thirty days to make recourse to the Signatura plus sixty days for the ultimate decision as to the suspension). Thus, in the example, the decision as to the suspension might well be moot by the time it is reached by the Signatura. Perhaps, the *Normae Speciales* need an amendment which provides for a temporary suspension or restraining order during the interim period. Finally, Section 4 calls for a prompt notification where a decision has been reached to grant suspension³⁴.

2.3.3 Presentation and Rejoinder of Arguments and Proofs

Article 114, Section 1, pertains to the situation in which a petitioner has introduced a facially valid

³² *Normae Speciales*, Art. 113 § 2.

³³ *Normae Speciales*, Art. 113 § 3.

³⁴ *Normae Speciales*, Art. 113 § 4.

recourse to the Apostolic Signatura without the advice of counsel³⁵. When the mandate is conferred on counsel subsequent to the introduction of the recourse, but prior to the expiration of the thirty-day period between introduction and notification of the other interested parties, Section 1 permits counsel to amend the recourse and to tender additional documentation in support of the recourse.

Grocholewski has demurred to two aspects of Section 1. First, language in the paragraph seems to cast the petitioner in the role of a defendant³⁶. The petitioner in the administrative process is, of course, not a defendant, but the one who bears the burden of demonstrating that some violation of law has taken place. Accordingly, Grocholewski suggests removal of the inexact language³⁷. Second, under the terms of Section 1, it is possible that notification will occur prior to the emendation of the recourse by counsel. This necessitates two responses by the opposing party: first, to the recourse as originally introduced; and second, a subsequent response to the amended recourse. For the purpose of judicial economy, Grocholewski has proffered that notification be postponed until counsel for the petitioner has corrected and completed

³⁵ *Normae Speciales*, Art. 114 § 1.

³⁶ Specifically, Grocholewski questions the use of the phrases «restrictum defensionalem» («tight defense») and «pro recurrentis defensione» («for a recurring defense») in describing the petitioner's amended petition. Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 48, note 86.

³⁷ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 48, note 86.

the recourse, thus avoiding the necessity of a second response³⁸.

Concern for judicial economy is warranted in light of Sections 2 and 3 of Article 114 which afford the petitioner the opportunity to correct further the recourse and submit documents after the petitioner has had the opportunity to inspect the responses submitted by the opposing parties. Once again, the *Normae Speciales* establish a period of thirty days, commencing from the time the petitioner receives the responses, in which the petitioner may complete the modifications and additions to the recourse. Section 4 recognizes the right of the opposing parties to respond to the new arguments and documents submitted by the petitioner under the previous sections of Article 114³⁹. A period of twenty days is prescribed for the response. It is interesting to note that the Section contemplates the possibility of a «contrary recourse» or «counterclaim» by the opposing parties⁴⁰. While the procedural device of a counterclaim is well established in judicial proceedings, it seems somewhat peculiar that it would be incorporated at this level into an administrative proceeding⁴¹.

³⁸ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 48, note 86. See also E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 762.

³⁹ *Normae Speciales*, Art. 114 § 4.

⁴⁰ The Latin phrase utilized is «*contrarium recursum*».

⁴¹ See *CIC-1983*, c. 1463 §1. In comparison, American civil law permits the possibility of a counterclaim by any defendant in a judicial suit, but there is no such device in administrative proceedings. A government agency that seeks to sue a private individual must do so in the courts and not in administrative proceedings.

Essentially, it proposes the possibility that a public administrative organ of the Church, in this case the dicastery which issued the challenged decree, would bring an action against a private individual. In order to safeguard the rights and interests of such a person, Grocholewski has recommended deleting entirely the notion of counterclaim from the *Normae Speciales*, and retaining the opposing parties' right to defend against the allegations of the petitioner's recourse⁴².

2.3.4 Opinion Concerning the Truth of the Matter

At this point in the procedure, the time for submitting arguments and proofs has terminated, and now the Secretary hands over all the acts to the Promoter of Justice or his deputy. Pursuant to Article 115, Section 1, the Promoter of Justice reviews the materials so as to express an opinion concerning the truth of the matter⁴³. Section 2 obliges the official to render an opinion within thirty days of receipt of the acts, and provides that the Secretary notify the parties within ten days of receipt of the opinion⁴⁴. The section further provides that the parties may respond to the opinion within a period of ten days from receipt of the Secretary's decree.

⁴² Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 48, note 85.

⁴³ *Normae Speciales*, Art. 115 § 1.

⁴⁴ *Normae Speciales*, Art. 115 § 2. See E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 763.

2.3.5 Opportunity To Be Heard

It is fundamental to due process that parties have the opportunity to be heard. At this juncture in the proceedings in the Second Section: (1) the petitioner has introduced the recourse; (2) the opposing parties have received notification and have had the opportunity to respond; (3) if the mandate for counsel was not granted, counsel has had the opportunity to correct and amend the recourse; (4) in such a case, the opposing parties may respond once again; (5) upon receipt of the opposing parties' responses, the petitioner may once again correct and amend the recourse; (6) the opposing parties may respond to the petitioner's latest set of corrections and amendments; and finally, (7) the parties may respond to the opinion concerning the truth of the matter formulated by the Promoter of Justice. Although the opportunities for the presentation and rejoinder of arguments and proofs may seem somewhat cumbersome, the general effect of the procedure is to insure that all concerned parties have, without doubt, been afforded the opportunity to be heard⁴⁵.

2.3.6 Congressus

After all the documents are gleaned, it must be decided whether to admit or reject the recourse. Article 116 specifies that the determination is reached by the Prefect with the intervention of the Secretary, the

⁴⁵ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 51; E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 761.

Promoter of Justice, and a non-existent Undersecretary⁴⁶. Since there is, in fact, no Undersecretary at the Apostolic Signatura, the Secretary and the Promoter of Justice may be assisted by other officials including the Defender of the Bond, Substitute Promoter of Justice, Substitute Defender of the Bond, and other consultors. It seems important to clarify the nature of the Congressus. The decision to accept or reject the recourse belongs solely to the Prefect who may be assisted by the other officials of the Signatura. Of the officials mentioned in Article 116 – the Prefect, the Secretary, the Promoter of Justice and the non-existent Undersecretary – only the Prefect may vote as a judge at the Apostolic Signatura⁴⁷. As weighty as their respective responsibilities are, the other officials of the Signatura, including in addition to those mentioned the Defender of the Bond, Substitute Promoter of Justice, Substitute Defender of the Bond, as well as the invited voters and referends, exercise only a consultative function⁴⁸. Thus, the so called «*inferior Congressus*» is technically composed of one judge and a number of consultors.

Certain prerequisites concerning the challenged decree, the petitioner's recourse, and the petitioner must be fulfilled in order for the Congressus to reach a decision to admit the recourse to discussion. First, the challenged decree must have emanated from an

⁴⁶ *Normae Speciales*, Art. 116.

⁴⁷ Z. GROCHOLEWSKI, «*La Sectio Altera*» (cf. nt. 2), 51.

⁴⁸ I. GORDON, «*Normae Speciales*» (cf. nt. 2), 99, n. 52. In this regard, see also Pius Pp. XI, «*Constitutio Apostolica Ad incrementum decoris* (Die 15 m. augusti a. 1934)», 125, 141, AAS 26 (1934) 517, 520.

act of ecclesiastical administrative power. Decrees issued directly by the Roman Pontiff or an ecumenical council may not be challenged⁴⁹. Moreover, the particular act must have been posited in the external forum outside of a trial⁵⁰. Further, the challenged act must be definitive; generally, it is a decree emanating from a dicastery of the Roman Curia⁵¹. Second, the petition for recourse must allege that the decree involved the violation of some law in either proceeding or deciding⁵². In addition, the petition must have been lodged within the peremptory time period of thirty days from notice of the challenged decree⁵³. Third, the person who petitions for recourse must possess «active legitimation» in the controversy.

⁴⁹ See «Iurisprudentia Supremi Tribunalis Signaturae Apostolicae, Sectio Altera, I, Decisiones: 1 - De Signaturae Apostolicae competentia (Die 10 m. maii a. 1968)», *Apollinaris* 43 (1970) 465; also *Periodica* 60 (1971) 328. See also «Iurisprudentia Supremi Tribunalis Signaturae Apostolicae, Sectio Altera, I, Decisiones: 4 - De remotione a munere (Die 25 m. iulii a. 1968)», *Apollinaris* 43 (1970) 467; also *Periodica* 60 (1971) 330.

⁵⁰ Cf. *CIC-1983*, c. 1732.

⁵¹ See «Iurisprudentia Supremi Tribunalis Signaturae Apostolicae, Sectio Altera, I, Decisiones: 5 - De expulsionem a quodam perfectionis Instituto (Die 24 m. martii a. 1969)», *Apollinaris* 43 (1970) 467, n. 5; also *Periodica* 60 (1971) 331.

⁵² See G. LOBINA, «Acta Sanctae Sedis: Rassegna di Giurisprudenza della Sectio Altera del Supremo Tribunale della Segnatura Apostolica (1968-1973) (Die 18 m. maii a. 1971)», *Monitor Ecclesiasticus* 98 (1973) 303, n. 17.

⁵³ If the petitioner fails to meet the statute of limitations, a petition may be made to the Roman Pontiff for reinstitution of the case. See also the decision of the Congressus in the case of *Romana*, prot. n. 9119/77 CA, cited in Z. GROCHOLEWSKI, «La Sectio Altera» (cf. nt. 2), 54, note 105, and 56, note 112.

That is, the interest in the controversy must be personal and direct⁵⁴. Certainly, active legitimation presumes that a private individual or juridic person has experienced a harm or injury as a result of a single administrative act⁵⁵.

The essential proposition entertained by the Congressus is whether the recourse must be rejected «on the ground that it is manifestly lacking a foundation»⁵⁶. When is it possible to say that the recourse is manifestly without foundation? According to Grocholewski, one is able to consider this question from two diverse points of view⁵⁷. One school of thought proffers that the proper role of the Congressus is to decide whether to admit the recourse to discussion on the basis that the recourse satisfies the procedural requirements, and not to evaluate the merits of the case⁵⁸. Grocholewski suggests that this approach is «not a judgment in the strict sense» because it lacks «a mature weighing of the arguments»⁵⁹. It could allow a frivolous case to be admitted to discussion when the case should clearly be dismissed. An alternative school of thought argues that the determina-

⁵⁴ See the Definitive Decree of the Cardinal Judge, November 21, 1987, *Communicationes* 20 (1988) 91, n. 5, stating that the renovation of a Church does not entail active legitimation under Canon 214.

⁵⁵ Cf. *CIC-1983*, cc. 113-123, especially c. 116.

⁵⁶ «[...] quia manifeste ipse caret fundamento»; *Normae Speciales*, Art. 116. See E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 763-766.

⁵⁷ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 56-57.

⁵⁸ E. GRAZIANI, *De iustitia administrativa* (lezioni tenute allo Studio Rotale), Roma 1973, ed. ciclostilata, 51-52.

⁵⁹ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 57.

tion of a lack of foundation requires a consideration of the facts and the law involved in the case⁶⁰. This way of understanding the role of the Congressus, Grocholewski indicates, runs the risk of settling the case before it reaches the discussion and vote of the panel of judges⁶¹. Pursuant to Article 116, the Congressus must reach the decision whether to admit or reject the recourse within twenty days of the distribution of the completed writings. If the Congressus decides to reject the petition for recourse, the petitioner may appeal the decision of the Congressus to the panel of judges⁶².

2.4 Phase III: College of Judges

When a case has serious foundation, it is admitted to the College of Judges. In ordinary practice, the Prefect convokes a panel of five or more judges to hear the case, although in exceptional cases the entire college of judges may sit *en banc*. The ordinary and the full assemblies of the judges are consistent with the manner of proceeding in the Dicasteries of the Roman Curia as stipulated in *Pastor Bonus*⁶³.

⁶⁰ This approach seems to be reflected in the decisions of November 17, 1970, *Periodica* 60 (1971) 344, and of June 21, 1972, *Monitor Ecclesiasticus* 98 (1973) 305, n. 20.

⁶¹ Z. GROCHOLEWSKI, «La *Sectio Altera*» (cf. nt. 2), 58.

⁶² Although in practice such an appeal may now be viewed as automatic by some advocates, it ought not be used as a tactic to delay the final outcome of the case.

⁶³ *Normae Speciales*, Art. 117 §§ 2 and 3.

2.4.1 Summary Oral Examination

Article 117 establishes a «summary oral examination» of the case. Section 1 of this article requires the Secretary of the Apostolic Signatura to convene the parties or their procurator-advocates, within thirty days from the decision of the Congressus to admit the recourse⁶⁴. It is, in practice, only the procurator-advocates who are present at the meeting. During this meeting, the Secretary determines the basic limits and terms of the controversy. This stage of the administrative process bears a general similarity to the joinder of issues during an ordinary contentious trial⁶⁵. It seems important to note that like the judge at a contentious trial, the Secretary, and not the parties, acts as the agent. Unlike many civil proceedings, the summary oral examination is not an oral argument in which the parties plead the issues before a judge. Subsequent to the meeting of the parties, the Secretary, with the parties' mutual consent, may order further investigation, production of documents and statements, and if necessary, the completion of the discussion. If the parties fail to agree, the judges may order such further inquiry⁶⁶. In cases that present particularly complex or thorny legal issues, the Prefect may issue a decree that requires an opinion about the matter from an expert in administrative law, who leads a holy and upright life⁶⁷. In order to be a true expert in admi-

⁶⁴ *Normae Speciales*, Art. 117 § 1.

⁶⁵ Cf. *CIC-1983*, cc. 1513-1516.

⁶⁶ *Normae Speciales*, Art. 117 § 2.

⁶⁷ *Normae Speciales*, Art. 117 § 3.

nistrative law, consistent with the *Normae Speciales*, one must unite an intellectual mastery of the law with holiness of life. Within thirty days after the completion of the summary oral examination or any further investigation or discussion, the petitioner is responsible to deposit as many copies of the acts («*summarium processus*») as the Secretary deems necessary in the Chancery⁶⁸. In addition, the parties have the option to deposit, within the same time period, a conclusive brief of all the documents and all the arguments, based in fact and law, pertaining to the case⁶⁹.

2.4.2 Session of the Judges

Once the requirements of Article 118 have been fulfilled, the judges convene within sixty days to hear the case⁷⁰. The Session of Judges may be composed of five or more judges or, in select cases, the entire College of Judges⁷¹. Section 1 of Article 120 envisions that one of the judges serves as the «*Ponens*» or «*Relator*» who presents the case to the other judges⁷². Section 2 provides for the possibility that following the presentation, the

⁶⁸ *Normae Speciales*, Art. 118.

⁶⁹ For the manner in which all the pertinent documents are to be reproduced for study by the judges, see *Normae Speciales*, Art. 119.

⁷⁰ *Normae Speciales*, Art. 120 § 1.

⁷¹ Z. GROCHOLEWSKI, «La Sectio Altera» (cf. nt. 2), 61; E. LABANDEIRA, *Tratado de derecho administrativo canónico* (cf. nt. 2), 769. See also *Normae Speciales*, Art. 1 § 3.

⁷² *Normae Speciales*, Art. 120 § 1.

Promoter of Justice may speak his opinion on the truth of the matter⁷³.

After the judges have heard the Promoter of Justice on the truth of the matter, Article 121 requires that they seclude themselves to deliberate and to reach a decision in the case⁷⁴. The provision that excludes the attendance of any but the judges at this point might be interpreted to mean that others, for example the parties and their advocates, are permitted to be present at other points in the Signatura's administrative proceedings, such as during the Congressus, the meeting of the judges during the presentation of the case and the opinion as to the truth of the matter. To the contrary, the express provision for the privacy of the judges' deliberations is intended to emphasize the dignity of the proceedings and the need for confidentiality. Even if the parties were permitted to be present up to this point, however, the process does not intend the presentation of oral-contentious argument by either side. Throughout the procedure the parties have been afforded ample due process in the opportunity to be heard. By the time the assembly of the judges has arrived, the role of the parties is passive. Their advocates should encourage them to await the decision of the judges in trust and respect.

Once a decision has been reached, it is the duty of the *Ponens* to record it, in a document signed by each of the judges, and to deliver it immediately to

⁷³ *Normae Speciales*, Art. 120 § 2. Although the Section provides that the Promoter of Justice may provide his opinion, the opinion is, in fact, always provided.

⁷⁴ *Normae Speciales*, Art. 121.

the Secretary. Generally, the judges attempt to render a decision with regard to the petitions before them with reasons in fact and law⁷⁵. Exceptionally, in certain cases where there is an urgent need, they may elect to render a decision with respect to only certain claims and counterclaims in the case⁷⁶. If the judges decide not to pronounce a decision or to pronounce one only in part, according to Article 123, they can order the production of additional witnesses, experts and examinations in order to arrive at the truth⁷⁷. The judges may delegate the conduct of such additional evidentiary proceedings to the care of some other competent ecclesiastical authority or tribunal who must exercise assiduous care⁷⁸. Once it has been rendered, the decision of the judges has force of law, and the matter is *res iudicata*. This is true even where the judges omit to include reasons in fact and law that substantiate the decision⁷⁹. Section 3 of Article 122 provides that the judges may decree that the Promoter of Justice set forth the reasons for the decision in writing⁸⁰. In practice, the *Ponens* usually writes the decision. The decision is published according to the norms of law, and there is no appeal from the decisions of the Second Section⁸¹. Presumably,

⁷⁵ See E. LABANDEIRA, *Tratado de Derecho Administrativo Canónico* (cf. nt. 2), 770-771.

⁷⁶ *Normae Speciales*, Art. 122 § 1.

⁷⁷ *Normae Speciales*, Art. 123 § 1.

⁷⁸ *Normae Speciales*, Art. 123 § 2.

⁷⁹ *Normae Speciales*, Art. 122 § 2.

⁸⁰ The practice is consistent with the *Normae Speciales*, Art. 122 § 3.

⁸¹ Recently, restitutio was granted by the College of Judges against a final decision of the Signatura. See Prot. N. 181190/86 CA.

the other dicasteries of the Roman Curia would comply in executing the decrees of the Second Section. However, there is no explicit provision in the law to insure the authority of the Second Section over a dicastery⁸². Staffa has indicated that the Signatura might take disciplinary action or make an intercession to the Roman Pontiff against some recalcitrant hierarchical superior, presumably including a dicastery⁸³. In any event, the area of the executive authority of the Second Section to enforce its decrees seems in need of official clarification.

Several specific procedural issues which are raised by the *Normae Speciales* would benefit from further clarification. First, the Apostolic Signatura requires that an individual party to an administrative recourse demonstrate some direct and personal nexus to the alleged injury. Perhaps, the Signatura might afford a fair amount of flexibility to concerned groups of the Christian faithful who wish to challenge some administrative decision. Second, the question of the identity of the resisting party remains unsettled at the Second Section. Is it the lower authority who initially issued the challenged decree, or is it the dicastery from which originates the decree now challenged at the Second Section? Third, the Second Section might benefit from a non-cumbersome procedure by which a party, who brings recourse against a decree of a dicastery, may obtain

⁸² See R. COPPOLA, «Annotazioni in margine all'interpretazione autentica sulla giurisdizione di legittimità nel diritto canonico», *Il Diritto Ecclesiastico* 83 (1972) 393.

⁸³ D. Card. Staffa, «Dissertationes de administratione iustitiae in Ecclesia», *Periodica* 61 (1972) 29.

in a speedy manner the suspension of the effects of the challenged decree, pending the outcome of the contentious-administrative process at the Signatura. Finally, there remains a question about the authority and enforcement of the Second Section's decisions. Because the Second Section constitutes the supreme administrative tribunal in the Church, it would seem that the other dicasteries and hierarchical superiors would show deference to its decrees by promptly executing them. The question of enforcement, however, remains unresolved.

Conclusion

Consistent with its evolution through medieval, Tridentine and Napoleonic phases of development, the modern Apostolic Signatura serves as the ultimate tribunal for the resolution of contentious-administrative cases. The origins of this historical development may be traced to the Justinian office of «referendary», the adoption of which by officials of the Holy See dates to the turn of the last millennium. Such an official would sign his «signatura» to petitions granted by the Roman Pontiff. In the fifteenth century, the body of these officials was organized into the Signatura of Grace and Commissions. In a concomitant development by the close of the medieval period, extrajudicial appeal and supplication along with hierarchical recourse were well-established as co-existing safeguards of ecclesiastical administrative justice.

The Renaissance witnessed the creation of the «duplex Signatura», characteristic of a system of double jurisdiction, with the division of the Church's

supreme tribunal into the Signatura of Grace and the Signatura of Justice. The Tridentine reform of the Roman Curia led to the erection of the Roman Congregations and further clarified the role of the duplex Signatura. Later canonical literature from this period discloses that the concept of extrajudicial appeal, or single jurisdiction, was gradually being supplanted by that of hierarchical recourse. During the nineteenth century, the structure of the duplex Signatura rendered it readily adaptable to the Napoleonic Code's system of double jurisdiction. Long after the demise of French control of the Papal States, the Signatura of Justice continued to function much like the French Court of Cassation.

The Apostolic Constitution *Sapienti consilio* of Pope Pius X in 1908 marked a transition in which single jurisdiction or extrajudicial appeal was officially abolished in favor of hierarchical recourse to the dicasteries of the Roman Curia. The reform had two principal effects on administrative justice. First, it created the modern Apostolic Signatura with jurisdiction to hear petitions of remedy against the judicial acts of the Sacred Roman Rota. Second, recourse from the non-judicial acts of superiors was removed from the ordinary judicial tribunals and placed under the jurisdiction of the Roman Congregations. The reform of Pius X may be understood as affording a necessary transitional phase that clearly distinguished judicial from administrative power. It also established the unitary tribunal of the Apostolic Signatura with competence over judicial sentences, but which eventually would be vested with competency to hear appeals from acts of judicial and administrative power. The transition was affirmed when Pope Benedict XV promulgated the first Code of Canon Law in 1917.

The fulfillment of the transition is evident in the most recent developments of ecclesiastical administrative justice, in which the Apostolic Signatura has evolved as a unified supreme tribunal with distinct judicial and administrative jurisdictions and procedures. The modern period may be subdivided around the Apostolic Constitutions *Regimini Ecclesiae Universae* and *Pastor Bonus*. The first of the two Constitutions acknowledged the Second Section of the Apostolic Signatura as the supreme administrative tribunal of the Church. It would be ahistorical to suggest that *Regimini Ecclesiae Universae* created the Second Section ex nihilo. Instead, an appreciation of the Signatura's historical development suggests that the establishment of the Second Section represents a retrieval of that which was lost during the transition from its medieval, Tridentine and Napoleonic antecedents. The Second Section, with competence over the contentious-administrative process, supplements the system of hierarchical recourse. Together with the First and Third Sections, it constitutes a unified judicial tribunal with some of the characteristics of a system of double jurisdiction. Yet, the Signatura is far from a pristine system of double jurisdiction, which requires completely independent and separate judicial and administrative tribunals. Whether or not the juridic structures of ecclesial administrative justice might evolve to incorporate another feature of double jurisdiction with the creation of local administrative tribunals remains to be seen. Although this option for local administrative tribunals was ultimately rejected in the promulgation of the *CIC-1983*, the function of the Second Section of the Apostolic Signatura, as the supreme administrative tribunal, in the contentious-administrative

process was, nonetheless, confirmed by the universal law of the Church. The second Constitution, *Pastor Bonus*, further delineated the competence of the Apostolic Signatura in the contentious-administrative process. The supreme administrative tribunal possesses the limited competence to determine if a violation of law in proceeding or deciding has occurred. *Pastor Bonus* also allowed for the provision of damages by the Second Section in the contentious-administrative process.

An examination of the *Normae Speciales* reveals that the procedure for recourse at the Second Section may be understood as a process consisting of three major phases. During the first phase of the process, a written complaint, which alleges the violation of law and recites facts to support the allegation, must be presented to the Signatura. The process requires that the aggrieved individual present the complaint within thirty days of receipt of the challenged decree. The Secretary then conducts a preliminary inquiry as to whether or not the complaint fulfills the requirements of procedural law. A second major phase in the process commences with notification to all concerned parties, collection of the proofs and arguments, and the opportunity to be heard. At this point, the Congressus renders a determination as to whether or not a *prima facie* case has been presented so as to require consideration by the College of Judges. If a case has been determined to possess serious foundation, it is admitted to the College of Judges. In this third phase of the process, the judges hear the case following the reception of all proofs and arguments by the interested parties. The judges then render a final decision. Certain aspects of the *Normae Speciales* require further clarification. When the

revised procedural norms are promulgated, the Apostolic Signatura will continue, no doubt, to afford a last opportunity for recourse to the individual aggrieved by an act of administrative power.

This sketch of this historical development and current procedures of the Apostolic Signatura illustrates the evolution of ancient juridic structures into a well-developed supreme tribunal with distinct judicial and administrative competencies and procedures. Thus, consistent with its history, the Apostolic Signatura fulfills a crucial role in the ecclesial community. It is designed to enhance the Church's continuing endeavor to secure fundamental fairness for all its members through the contentious-administrative process. From a theological perspective, this juridic structure seeks to communicate the healing grace of the Redemption when damage has been done to even the least member of the Mystical Body of Christ. Whatever its future progress, the Apostolic Signatura must be true to this high purpose so deeply rooted in its long historical development.

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