

CONTENTIOUS-ADMINISTRATIVE RECOURSE TO THE SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA

The Apostolic Constitution on the Roman Curia, *Pastor bonus*, in art. 123, § 1, states that the Supreme Tribunal of the Apostolic Signatura "adjudicates recourses, lodged within the peremptory limit of thirty useful days, against individual administrative acts whether issued by Dicasteries of the Roman Curia or approved by them, whenever it is contended that the impugned act violated some law either in regard to the substance of the decision (*in discernendo*) or in regard to the procedure used (*in procedendo*)".

Furthermore, "in addition to the judgement regarding illegitimacy of the act, it can also adjudicate, at the request of the recurrent party [the person making recourse], the reparation of damages caused by the illegitimate act" (art. 123, § 2). Such a question would be subordinate to the principal question.

For the purpose of illustration, the following information will refer to individual administrative acts of a diocesan bishop and to decisions of a Congregation of the Roman Curia, but the reader should understand that other persons in authority (such as major religious superiors) can issue individual administrative acts and that the Roman Curia includes other Dicasteries (such as Pontifical Councils).

1. THE OBJECT OF THE RECOURSE

a. The recourse must be against one or more individual administrative acts, that is, acts arising from the exercise of administrative or executive power in the Church (e.g. on the part of a diocesan bishop).

Thus it cannot concern an act of judicial power (e.g. the decision of a tribunal) or of legislative power (e.g. statutes issued by a diocesan bishop).

b. The individual administrative acts must be either issued by a Dicastery (Congregation or other organ) of the Roman Curia, or else must have been approved by such.

Thus one cannot have recourse directly to the Apostolic Signatura against an administrative act of a diocesan bishop; one would have to first make recourse to the competent Congregation (the competence is determined by the nature of the decision).

If the Congregation confirms the original decision, recourse could then be made to the Signatura against the act as approved by the Congregation.

If the Congregation issues another decision, recourse can be made to the Signatura against the decision of the Congregation by whichever party feels aggrieved by the new decision (for example, by the diocesan bishop whose decision was overturned, or by the original recurrent party who is dissatisfied with the decision of the Congregation). In particular, if the Congregation decides to reject the recourse because it was made after the time limits set by law had expired or because the person making recourse lacked legal standing, recourse to the Apostolic Signatura could only

concern that decision and not yet the original decision.

c. The recourse must concern a violation of the law.

This element is fairly clear concerning alleged violations of the law in regard to the **procedure** followed (*in procedendo*): the diocesan bishop -- or the Congregation -- either followed the procedures required by canon law or did not. However, if the Apostolic Signatura decides that it has been proven that he did violate the law in this way, it is possible that he could repeat his decision, this time observing the correct procedure. For this reason, persons contemplating recourse to the Apostolic Signatura against an administrative act of a diocesan bishop as confirmed by a Congregation of the Roman Curia should realize that, if their recourse concerns only an alleged violation of the law *in procedendo*, in the end the outcome may not have been changed, but only delayed.

The question of an alleged violation of the law regarding the **substance** of the decision (*in discernendo*) is more difficult. It is not sufficient that a person disagree with the decision in question, even for reasons which appear to be sound.

While a Congregation can make a judgement regarding the opportuneness, relative wisdom, prudence etc. of the administrative act in question, and has the power not only to confirm or nullify but also to amend the decision (can. 1739), the Apostolic Signatura is competent only to decide whether or not the law was violated.

Thus, for many administrative decisions canon law has no particular requirements concerning the reasons for the decision; for these decisions it is sufficient that there be a just reason. In the absence of such specific requirements, the discretionary power of the diocesan bishop is very broad; thus it would be extremely difficult to prove that he violated the law in this regard. Such would be the case, for example, in decisions involving substantial changes in a parish (union, division, suppression, change in boundaries, etc.).

On the other hand, if it could be proven that the reasons given by the bishop for the decision were substantially unfounded, there could be some basis for an alleged violation of the law *in discernendo*.

Likewise, if canon law requires specific reasons for a particular type of decision (see, for example, cann. 1740-1741, concerning the removal of a pastor), and it could be proven that such requirements were not observed, there could be some basis for an alleged violation of the law *in discernendo*.

2. WHO CAN MAKE A RECOURSE?

The question of who has legal standing to make recourse is not simple. For example, someone who is not personally and directly affected by an administrative act cannot make recourse against it.

Furthermore, if the recourse is made against an administrative act subsequently confirmed by a Congregation, only a person who had first made recourse to the Congregation against that act can subsequently make recourse to the Apostolic Signatura against the decision of the Congregation.

Moreover, a group or organization of the Christian faithful which lacks the recognition mentioned in can. 299, § 3, and is not a "juridic person" in the Church cannot make recourse as a group or organization as such. It is possible, however, that members of the group could make recourse as individuals, even if a number of them join together for this purpose.

3. LEGAL REPRESENTATION

While a person can present an initial recourse in his or her name, from that point on the recurrent party can participate in the contentious-administrative process only through a qualified procurator-advocate, that is, one admitted to practice before this Tribunal in such cases. Once the advocate has been named, all further information should be sought from (and all communication with the Apostolic Signatura should be made through) that legal representative. A list of qualified advocates can be obtained from the Apostolic Signatura.

The fees for the procurator-advocate are to be paid by the recurrent party directly (see below, under "Expenses").

4. TIME LIMITS AND THE MANNER OF MAKING RECOURSE

When a Congregation has made a decision, an aggrieved party who wishes to challenge that decision must first, within the period of ten days of receiving official notice of the decision, ask the Congregation to revoke or modify its decision ("Regolamento Generale della Curia Romana", 1999, art. 135, § 1).

In any case, recourse can be presented to the Apostolic Signatura within the period of thirty useful days of receiving an official communication of the decision of the Congregation (*ibid.*, art. 135, § 2, and "Pastor bonus", art. 123, § 1).

This means that within the time limit the person making recourse, or a procurator who has received and presents with the recourse a special mandate to act in that person's name, must bring or at least send to the Signatura a **signed original document** in which he or she indicates, at least briefly:

- the object of the recourse (the decision being challenged)
- the reasons for the recourse (the alleged violation(s) of the law).

A document sent by fax is not accepted as a signed original document; thus if a copy of the recourse is sent by fax, the original signed document must still be sent within the time period.

Whenever a recourse is sent to the Signatura, it

should be sent in such a way that the recurrent party retains proof that it was sent within the time limit (for example, by registered mail or a courier service).

The classification of this time period of thirty days as "useful" or "available" time means that the time does not run when the person is prevented from acting, e.g. by serious illness (can. 201, § 2). This does not mean that the period extends for thirty "working days" (since the time normally runs even on Sundays and holidays); nonetheless, should the **last day** of this period fall on a day when it is impossible to present the recourse because the Signatura itself or the local post office is closed, then the time limit is extended to include the next day when it is possible to present the recourse.

Furthermore, "useful" or "available" time does not run when the person is ignorant, e.g. of the right to make recourse to the Apostolic Signatura, but ignorance would have this effect only in those rare cases when it can be proven both that the person was truly ignorant and that the person was not negligent in any way in seeking the necessary information. Ignorance of the law, and thus of the right to have recourse to the Apostolic Signatura or of the time limit established by law for doing so, is not presumed (can. 15, § 2).

5. THE BURDEN OF PROOF.

The burden of proof rests with the person who is alleging that the law was violated (can. 1526, § 1).

6. EXPENSES

The usual initial deposit to be made when presenting the recourse is 3,000,000 Italian lire (1,550 Euro), or its equivalent in another currency, paid directly to the Apostolic Signatura or through the local Apostolic Nunciature or Apostolic Delegation. At the end of the process it will be decided whether any (or the full) amount of this deposit will be returned to the recurrent party or whether he or she will have to pay an additional sum.

If the recurrent party does not have the means to pay the deposit in full, he or she can ask that the deposit be waived entirely, or reduced or paid in installments. Such a request should be made with the recourse and should be supported by proof of financial condition.

Likewise, if the recurrent party cannot afford to pay for a procurator-advocate, a request can be made for the favor of gratuitous legal assistance, that is, for the appointment of an *ex officio* procurator-advocate without cost to the recurrent party. Such a request should also be supported by proof of financial condition.

A request for reduction or waiver of the deposit, or a request for gratuitous legal assistance will be granted only under two conditions:

- that the financial need has been demonstrated;
- that the recourse has **some** foundation -- in other words, that it is not obviously futile.

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