PROTECTION OF SUBJECTIVE RIGHTS AGAINST THE ADMINISTRATIVE ACTS OF THE ORDINARY OF THE PLACE

by

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It is the service of positive law to afford effective safeguards for the protection of rights and, where rights have been violated, to extend effective means for their prompt restoration. For, law is a rule of reason. To be such a rule, law has to be based on justice. And justice demands that everyone should have in his possession what is his due.

Within this context, canon 1667 gives provision that every individual right is protected by action, unless another thing is expressly determined. The first clause of the said canon establishes legal action as the ordinary or normal means of safeguarding individual rights against any violation. The succeeding clause except some cases from the protection of legal action. The exception, however, does not necessarily mean that a means of protection will not be afforded them. It merely signifies that some cases, due to special circumstances, are placed outside the competence of legal action. Express disposition of law will determine what is to be done in these particular cases.

One of the excepted cases is the case of subjective rights allegedly violated by the administrative acts of the Ordinary of the place. This case is expressly placed by the Codex under the protection of recourse of canon 1601, which says: "Against the decrees of the Ordinaries an appeal or recourse to Sacred Rota is not conceded; but the Sacred Congregations have an exclusive cognizance concerning these kinds of recourses".[91]

However, many questions arise because of this exception. Among them are the following:

1. Why are subjective rights in conflict with administrative acts of the Ordinary not protected by legal action?

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[91] Canon 1601: "Contra Ordinariorum decreta non datur appellatio seu recursus ad Sacram Rotam; sed de eiusmodi recursibus exclusive cognoscunt Sacrae Congregationes."

2. Does recourse offer better oportunity for justice to be rendered to the aggrieved individual than legal action?

3 How effective is recourse in protecting the subjective rights of the individual against the administrative acts?

4. Does the administrative organ in its review of recourse against the acts of the Ordinary render justice to both parties, namely, the petitioner and the respondent?*

For the sake of clarity it is good to have in mind the following definitions of terms.

1. **Administrative Act.** Administrative act is the actual exercise of an executive power possessed by an authority legitimately constituted with jurisdiction, the purpose of which is to encourage the subjects to observe the prescriptions of law, to prevent, suppress or punish crimes against social order.[02] It usually comes out as decrees, precepts or any other dispositions related to the administrator's executive power. For the present study we take up only the administrative acts of the Ordinary of the place.

2. **Administrative Justice.** Administrative justice is a juridical institution, which is self-contained and autonomous beyond the pale of human contract or agreement, the purpose of which is to know and to resolve, according to the rules of law, controversies or contentions that come up between private individuals and public administrators.[03] It is a body created by law to solve questions of subjective rights of individuals in conflict with an administrative act. It is, therefore, differentiated from **arbitration**, whose existence depends on the agreement of the contending parties.[04]

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* Fr. Medroso discusses these questions in an unpublished thesis, "Protection of Subjective Rights Against the Administrative Acts of the Ordinary of the Place", presented at the Faculty of Canon Law, University of Sto. Tomas, February 1974. This article, after the definitions of terms, gives our readers the fifth (last) chapter of the thesis. — Editor.

[02] Ottaviani distinguishes three acts of the executive power, namely: 1) *governmental*, which deals with the rule of persons; 2) *administrative*, which looks after the goods of society; and, 3) *coactive*, which makes use of physical power to attain the end of society. (*Institutiones Iuris Publici Ecclesiastici*, Vol. I., edit. III, Typis Polyglottis Vaticanis, 1947, p. 108) Hence for him the administrative act in the strict sense is only one of the three acts of the executive power. But in a more general acceptance, it is identified with the executive power. In Church's law the Superiors who have executive power are commonly called administrators.

[03] Ignacio Gordon, "De Iustitia Administrativa Ecclesiastica," *Periodica* 61 (1972), p. 278.

[04] Cf. canon 1929.

3. **Recourse and Appeal**...**Recourse** is a complaint to a proper authority of an injustice or error committed by an administrator in the exercise of his executive power. It is a written reference of one who believes to be aggrieved by an act of his immediate superior to the latter's superior for a review of the case. It is a means of protection of subjective rights against the arbitrary exercise of the administrative power; it is a title by virtue of which the member of society aggrieved by administrative act is guaranteed a review of the case by the higher authority.

Appeal is a complaint to a superior court of an injustice or error committed by an inferior court.[05]

Recourse is distinguished from appeal on two counts. First, recourse and appeal can be distinguished by reason of origin of the case. Recourse refers to a case of an injustice or error done by an administrative act; appeal refers to a case of an injustice or error allegedly committed by the judge in strict judicial proceedings. Second, they can be distinguished by reason of the persons to whom they are preferred. Recourse is lodged to a superior administrator for an administrative review of the case, while appeal is forwarded to an ordinary tribunal for a court litigation.

THE PROTECTION OF RIGHTS AFTER VATICAN II

To be dealt with in the this article is the protection of subjective rights against the acts of the Ordinary of the place after Vatican II. It will study how the Church in the modern world copes with this specific problem and how efficient is her attempt. Related documents of Vatican II will be laid down, the Constitution **"Regimini Ecclesiae Sanctae"** and the **"Normae Speciales"** for carrying out into practice the administrative tribunal established by this Constitution, side by side with the practices of the newly created tribunal and the opinions of some authors will closely studied. Some personal observations, comments and recommendations are then set in order.

VATICAN II's CONCEPT OF AUTHORITY

The protection of rights against the administrative acts of the Ordinary of the place is founded on the concept of hierarchy and ultimately of authority. In many civil societies, the executive, legislative and judicial powers are distributed respectively among separate persons, whether physical or moral. This practice occurs

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[05] Canon 1879; cf. *Diccionario de Derecho Canonico*, Gerona: Libreria de Grases, 1852.

when civil societies decide eventually that autonomy of powers or the concentration of all the powers in one person lends itself easily to abuse. The distribution of powers among separate persons more or less minimizes such a hazard. The Church, however, has a different outlook in the matter of government. Following faithfully the divine-positive law, she puts a premium on absolute power, the concentration of the executive, legislative and judicial powers, in the hands of the Ordinary of the place. This autonomy is inherent in the office of the Bishop within his jurisdiction. Needless to say, this is a basic doctrine of the Church which finds concrete legal expression in canon 335, & 1.

In Vatican II, several documents touching on the concept of authority and hierarchy are discussed. Studying their ramifications closely is relevant to our treatise as they may confirm practices still sanctioned by the existing Code or may open up new avenues to a better or more efficient protection of subjective rights against the administrative acts of the Ordinary.

Vatican II actually retains the basic concept of hierarchy and authority of the Church, a concept held on to by the Church since her foundation, a doctrine that cannot be changed by her because of its divine origin. But the Council does give it a new perspective,[1] offering a reasonable hope for perfecting the manner of dispensing justice to individuals, safeguarding their rights which might be violated by the administrative acts of the Ordinary.

The following are the salient features of the Vatican II's concept of Church's authority and hierarchy:

1. The Church is the People of God.[2]

2. The People of God consists of the bishops, priests deacons and the laity.[3]

3. A fundamental equality exists among them as all of these are called to the same vocation, same faith, same baptism.[4]

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[1] Jose Ma. Tinoko, *Church and Law* (a dissertation presented for Doctoral degree in Canon Law), Rome: May 1973, p. 5.

[2] Dogmatic Constitution on the Church ("*Lumen Gentium*"), n. 9: "This was to be the new People of God. For those who believe in Christ who are reborn not from a perishable but from an imperishable seed through the word of the living God (Pet. 1:23), are finally established as 'a chosen race, a royal priesthood, a holy nation, a purchased people ... who in times past were not a people, but are now the people of God' (1 Pet. 2:9-10)".

[3] *Ibid.*, n. 10.

[4] Ibid., n. 32: "Therefore, the chosen People of God is one: 'one Lord, one faith, one baptism' (Eph. 4:5); sharing a common dignity as members from their regeneration in Christ; having the same filial grace and the same vocation to perfection; possessing in common one salvation, one

4. Some members of the People of God are specially called to an office and thereby endowed to exercise authority over the other members of the Church.[6]

5. This hierarchical authority must be exercised as service.[6]

Consequently, bishops, priests, deacons and the laity form the people of God; they share the same vocation, the same faith, the same baptism. Fundamentally they are equal. That bishops, priests and deacons are given a power and position that set them above the community is also a basic doctrine of Vatican II. But they are and still remain members of that community. The reason for their vocation is not to set them apart from the community, but to make them organic and functional parts of the community, members who have the special task to serve the purpose of the community. An authority has its reason for being in the context of the community. This authority is given, not to all the members of the community, but to some few. But this authority is to be exercised as a service to the community.

All authority is relative to the purpose and function of a society. The community of the People of God purports ultimately to sanctify itself, putting to effective use the elements necessary to further that end. The hierarchy, the group of men given this authority, is primarily geared, by special mandate, to the furtherance of this unique purpose and function of the People of God. In other words, the authority in the Church is not absolute, but relative to its purpose. It has its limitation: the sanctification of the community, that is. Hence, the authority exercised by way of thwarting the sanctification of the community, is not a true authority. It can only be a true authority when it serves the furtherance of the sanctification of the Church.

The act of exercising authority for the sanctification of souls is called service or ministry. The persons exercising this authority

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hope and one undivided charity. There is, therefore in Christ and in the Church no inequality on the basis of race or nationality, social condition or sex, because 'there is neither Jew nor Greek; there is neither bond nor free; there is neither male nor female. For are all one in Christ Jesus' (Gal. 3:28)."

[5] *Ibid.*, n. 32: "And if by the will of Christ some are made teachers, pastors and dispensers of mysteries on behalf of others, yet all share a true equality with regard to the dignity and to the activity common to all the faithful for the building up of the Body of Christ. For the distinction which the Lord made between sacred ministers and the rest of the People of God bears within it a certain union, since pastors and the other faithful are bound to each other by a mutual need."

[6] *Ibid.*, n. 32: "Pastors of the Church, following the example of the Lord, should minister to one another and to the faithful."

are ministers. Vatican II uses another word for ministers, namely, pastors.

The law is one of the necessary instruments for the exercise of authority. What, therefore, can be said of authority, can also be said of law. As authority is founded for the sole purpose of furthering the spiritual good of the community, so is law. Hence, this spiritual good must become a more compelling concern than the maintenance of some prescribed and accustomed procedures and practices of law that may not accrue to this good.

Procedures and formalities effect harmonious interaction based on justice and charity in the community. Or, stating the proposition in relation to our thesis, procedures and formalities of recourse are issued to promote and safeguard, in the most effective way, the subjective rights of the individuals that may be endangered by the exercise of the administrative acts. This statement, again, shows clearly that procedures and formalities of law are not absolute goods in themselves. They are instituted for a purpose. In our case, they are issued to promote and administer to justice. Hence, if these procedures and formalities obstruct the safeguarding of justice or make the process of imparting of justice too lengthy, then, they have to be re-examined.

The administration of justice, as it is one of exercise of authority, is service. The Council Fathers of Vatican II opens a horizon that sets a guideline to the reform of administrative justice. How these doctrines of authority are expressed in a legal language, which in its turn creates a juridical system of administrative justice, will immediately be discussed.

RECOURSE AS PROVIDED FOR IN "REGIMINI ECCLESIAE UNIVERSAE"

First we will discuss the meaning of the provision of the Constitution **"Regimini Ecclesiae Universae,"** n. 106 and its implications in our administrative cases. This study will revolve around the nature of the newly created court, its area of competence, the conditions of recourse for its acceptance, its specific subject matters, and the procedures to be followed by the tribunal.

1. The Nature of the Tribunal

N. 106 of the Constitution reads:

> "Per alteram Sectionem Signatura Apostolica contentiones dirimit ortas ex actu potestatis administrativae ecclesiasticae, et ad eam, ob interpositam appellationem seu recursum adversus decisionem competentis Dicasterii, delatas, quoties

contendatur actum ipsum legem aliquam violasse. In his casibus videt sive de admissione recursus sive de illegitimitate actus impugnati".[7]

Recent authors are contending on the nature of the Second Section of the Supreme Apostolic Signature Tribunal. Some hold that this tribunal is an ordinary judicial court of justice, a court not independent from the First Section of the Apostolic Signature, but a special department of this court whose sole function is to judge administrative cases involving private rights and public administration.[8] It is a tribunal in the strict sense which, having jurisdictional power, offers a judicial protection to the subjective rights, in conflict with administrative acts. Pushed to a conclusion, the tribunal partakes the same nature as that of the **provocatio ad causam** court or extrajudicial tribunal which had existed before the Codex. Others hold that it is a court separate and independent from the first Section of the Supreme Apostolic Signature. It is not an ordinary tribunal of judgment, but strictly an administrative court.[9] D. Staffa, Cardinal Prefect of the Supreme Apostolic Signature Tribunal explains the Second Section in this way:

> "There is no doubt that the Second Section, established by the celebrated Constitution within the Apostolic Signature, is a **tribunal.**
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> "For it is the organ, to which the Supreme Authority committed the public office of resolving controversies through the application of the law to particular cases, whose deliberations oblige the parties.
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> "That it is an adminitrative tribunal, and not a judicial one, this can be deduced from the fact that, since it is not erected within the First Section, which is a judicial tribunal, it is independent from it; it resolves questions between private individuals and public administration, or between the different parties of the latter, by a process distinct from ordinary judges".[10]

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[7] *AAS* (1967) 59, n. 106.

[8] "Se introducia de este mode, en el ordenamiento canonico, el control judical de la actividad administrativa: la llamada jurisdiccion contencioso-administrativa." (Antonio Delgado, "La Actividad de la Signatura en su Seccion Segunda," *Ius Canonicum*, 12, 1972, p. 67)

Coppola, R., "Brevi Note," *Apollinaris*, 44 (1971), p. 403, describes the Second Section as "una sezione speciale di un tribunal ordinario."

[9] P. Moneta, "Il Provedimiento Amministrativo Impugnabile vel Diritto Canonico," *Ephemerides Iuris Canonici*, 27 (1971) p. 76, describes the Second Section Tribunal as "nuevo Tribunale amministrativo."

Ignacio Gordon, "De Iustitia Administrativa Ecclesiastica," *Periodica*, 61 (1972) p. 311, states: "...ex consensu maioris partis canonistarum, videtur thesis de tribunal administrativo in Sectione Altera erecto saltem ut probabilior esse habenda."

[10] "De Supremo Tribunali Administrativo" published by: *Periodica* 61 (1972), p. 21: "Non est dubium quin Secunda Sectio, a memorate Constitutione apud Signaturam Apostolicam instituta, Tribunal sit.

For us, the questions whether it is a special department of the First Section or it is an entirely independent section of the Apostolic Signature is not an important one. What is important to observe is the unanimity of opinions that the Second Section of the Apostolic Signature is an administrative tribunal which protects both the subjective rights of the private section of society and public rights of the administration. Having jurisdictional power independent from the active administration of the Sacred Congregations and of the bishops, it offers better opportunity of giving justice to the individual members of the Church by being impartial in its decision. And being an administrative tribunal, specialized in the matter due to its exclusive handling of administrative cases, it can protect better the public rights of the active administration.

In sum, the Second Section of the Apostolic Signature is an administrative tribunal distinct from the ordinary judicial court and from the active administration of the Sacred Congregations.

1. **Area of Competence**

A priori we can say that the controversies which are to be brought up to the Second Section of the Apostolic Signature, are those which are the object of the recourse as provided for in canon 1601 and before this, the object of extrajudicial recourse. As discussed in Chapter I, the subject matter of recourse and of the extrajudicial recourse are the subjective rights of private individuals allegdely violated by the administrative acts of the Bishops. Hence, the area of competence of the Second Section of the Apostolic Signature is limited to controversies touching on subjective rights in conflict with the administrative acts.

Since, the establishment of the new administrative court and the passage of the "Special Norms" to be followed **ad experimentum,**[11] many cases have already been field. Among the cases filed are controversies touching the subjective rights of individuals. To cite some of them: about the right of the parish priest allegedly violated by an unjust removal from the parish;[12] about the contract

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"Est enim organum, cui Suprema Auctoritas publicum munus commisit dirimendi controversias per legis applicationem ad casus particulares, cuiusque deliberationes obligant partes.

"Quod autem Tribunal administrativum, non iudiciale, sit, ex eo erui potest quod, cum non sit erectum apud Primam Sectionem, quae est Tribunal iudiciale, ab eo distinctum est et id spectat, ut quaestione, inter privatos publicamque administrationem, vel inter diversas huius partes, dirimat, processu distincto a iudiciis ordinariis."

[11] Normae Speciales in Supreme Signaturae Apostolicae" (ad experimentum servandae), published by: *Periodica* 59 (1970), pp. 114-165.

[12] "December 6," *Periodica* 69 (1971), pp. 331-333.

violated by the Bishop, agreed by the Bishop himself and the parish priest;[13] about the rights of the Chapters to certain distributions allegedly violated by the decree of the Bishop.[14]

These cases, as anybody can observe, are cases regarding subjective rights in conflict with public administration. Although some of them are rejected due to some defects, some were accepted for discussion. **A posteriori,** therefore, we can say that the area of competence of the newly erected administrative tribunal includes conflicts between subjective rights of private individuals and the acts of administrator.

And yet, reading through the provision of **"Regimini Ecclesiae Universae"** n. 106, one can see that this administrative court seemed to be erected to look after controversies, not purely of subjective rights and administrative acts, but rather a mixture of controversies, that is, of subjective rights and of legitimacy of the decision of the Dicastery with priority of the latter. The first clause of the Constitution states that the Second Section is established by the Church to resolve controversies arising from the exercise of the ecclesiastical administrative power allegedly violating a certain law, brought up to this court through a recourse against the decision of the competent Dicastery. The second clause of the said Constitution lays down the procedure to be followed in dealing with the cases, that is, by seeing either the admissibility of the recourse or the illegitimacy of the questioned act.[15]

Because of this provision, the questions come out: does the Administrative Tribunal resolves questions purely concerning the legitimacy or illegitimacy of the decision of the competent Dicastery? Or, does it also look after the questions of subjective rights of the individuals allegedly violated by the decision of the Dicastery and the administrative act of the Bishop? Does the word **"contentiones"** of the **"Normae Speciales"**, art. 96,[16] mean contentions on the legitimacy of the decision handed down by the Dicastery, or does it include the contentions on subjective rights, the allegedly violated rights? In short, does the Administrative Tribunal merely review the procedures in deciding the case or does it also look after the merit of the case?

The answers to those questions are very important, on three counts. 1) First, they would point out as to the limitation or the area of competency of the Administrative Tribunal. 2) Second, they would determine the kind of procedure the Tribunal has to follow.

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[13] "December 7," *ibid.*, pp. 333-337.
[14] "December 8," *ibid.*, pp. 337-340.
[15] *AAS* 59 (1967) n. 106.
[16] *Loc. cit.*, p. 148.

If the Tribunal only looks after the legitimacy or illegitimacy of the decision, then, it is limited to mere administrative review. If the Tribunal also looks after the subjective rights allegedly prejudiced by the administrative act of the Bishop, it may introduce strict judicial litigation in its proceedings. 3) Third, inferior administrative tribunals may be introduced in regions and provinces under the direct supervision of the Supreme Apostolic Signature Tribunal and perhaps to be patterned after this Administrative Tribunal. To know beforehand their competency and way of proceeding with the case is, no doubt, important.

The answers to the proposed questions will be dealt with below, in number 4, when the specific subjective matter of taking cognizance of administrative cases will be treated. In the meantime, we will discuss the series of steps which would lead to a recourse to this Administrative Tribunal.

3. Recourse and its Series of Steps

For recourse against the administrative acts of the Bishop to reach the Administrative Tribunal, a series of steps have to be followed.[17] Actually, two kinds of series of steps can happen in the whole process.

Type A. 1) The Bishop, with his power of administration, executes an administrative act. 2) An individual — as for example, a parish priest — thinks himself aggrieved by the administrative act of the Bishop. 3) The aggrieved party makes a recourse to the competent Sacred Congregation, as provided for by canon 1601. 4) The Sacred Congregation makes a decision of the matter, upholding the act of the Bishop. 5) The aggrieved party files his recourse to the Second Section of the Apostolic Signature, against the decision of the Sacred Congregation, because he believes that the decision is prejudicial to him.

In this series of steps, the petitioner is the aggrieved person; the respondent is immediately the Dicastery and perhaps mediately the subject matter is the administrative act of the Bishop sustained by the decision of the Dicastery; and the motive of recourse is the alleged violation of law.

Type B. In the fourth step of **Type A**, the Sacred Congregation reverses the act of the Bishop. The latter, feeling himself aggrieved by the decision of the Dicastery, files a recourse against the decision of the Dicastery.

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[17] Pablo Manzano, "Problematica del Recurso Contencioso Administrativo en la Iglesia," *Ius Canonicum*, 12 (1972), pp. 183-185.

Here, the petitioner to the Administrative Tribunal is the Bishop; the respondent is the Dicastery; the object is the decision of the Dicastery; the motive is the allegedly violation of law.

Going back to the text of the "**Regimini Ecclesiae Universae,**" it may be asked whether both A and B types or only Type A can be admitted into the Administrative Tribunal. Some argue that only Type A is admissible to the Administrative Tribunal.[18] They did not give reasons to this opinion, but it seem the reason is that the administrative act of the Bishop together with the decision of the Dicastery must be the proper and specific matter of the Second Section Tribunal. Now, the Constitution provides that the motive of the petition should be: ". . . as often as it may be alleged that the act itself violated a certain law".[19] The Legislator here repeated the word "act" and therefore seems to mean the administrative act of the Bishop. Without this act of the Bishop, the recourse cannot be accepted. Therefore, the Administrative Tribunal can only admit that type of recourse which includes not only the decision of the competent Dicastery, because this is expressly provided for by the Constitution as a **conditio sine qua non** for admittance, but also the administrative act of the bishop, as this is the act that causes the origin of controversy. Now, only type A has this element. Therefore, only type A can be admitted by the Administrative Tribunal.

Others hold the opinion that both types can be admitted by the Administrative Tribunal. The reason out that either the act of the bishop alone or the decision of Dicastery alone or both together can be administrative acts that violate a certain law. Although the administrative act of the bishop alone cannot be a valid motive of recourse to this Tribunal the Constitution is explicit in the necessity of the decision of the Dicastery, the decision of the Dicastery alone, as it is also an administrative, act can be admitted in the Administrative Tribunal. Now, type B is such a case. Therefore, types A and B can be admitted in Administrative Tribunal.[20]

For this writer the second opinion is more probable. After all, the Administrative Tribunal is erected to resolve cases involving public administrative and subjective rights of individuals without determining who is going to be the petitioner and who is going to be the respondent.

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[18] Ranaudo, "Il Contenzioso Amministrativo Canonico," *Monitor Ecclesiasticus* 93 (1968) 561.

[19] *AAS* 59 (1967) n. 106.

[20] Ignacio Gordon, "*Normae Supremi Tribunalis Signaturae Apostolicae,*" Periodica 59 (1970) p. 102.

4. The Subjective Matter of Review

To the many intriguing questions concerning the subjective matter of review that is, whether the Administrative Tribunal resolves questions that are purely of legitimacy or illigitimacy kind, or whether it also judges questions of subjective rights allegedly violated by the administrative act of the Bishop, many diverse opinions have come out.

Some hold that the object of review by the Administrative Tribunal is purely on the question of legitimacy or illegitimacy of the decision. They fuse the two propositions of the Constitution by stating that the Administrative Tribunal resolves controversies arising administrative act which violates a certain law, by seeing whether recourse is to be accepted or the questioned act is to be annulled.[21] It does not look at the merit of the decision, the strict legal right of the contending parties. It only sees whether the decision of the Dicastery is the result of correct procedure, as for example, whether it has competency in the case at hand, or whether the documents have been properly signed. This opinion seems to be confirmed in 1971 by the answers of the doubts addressed to the Pontifical Commission for the Interpretation of the documents of Vatican II. Here are the doubts and the corresponding answers of the commission:

> "1. .D. — Whether it can recurred to the Supreme Apostolic Signature Tribunal — Second Section — against the the decision of the competent Dicastery as often as the decision from the part of the inferior ecclesiastical authority is wanting.
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> "R. — Affirmative.
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> "2. D. — Whether the admission to the discussion should immediately be sent only to the party having interest from the adversary, or also to the competency Dicastery, which gives the questioned decision.
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> "R. — Negative to the first; affirmative to second; or the admission to discussion must immediately be communicated not only to the party having an interest from the adversary, but also to the competent Dicastery, which gives the questioned decision.

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[21] Cf. Gordon, "De Justitia Administrative Ecclesiastica," *Periodica.* 61 (1972) pp. 331-332. He alleged that some authors, as Ranaudo, hold on to this opinion.

"3. D. — What should be the meaning of the clause as often as it is contended that the act itself violated a certain law, as provided for in n. 106 of the Apostolic Constitution of 'Regimini Ecclesiae Universae'.

"R. — For violation of law is meant the error of law either in proceeding or in deciding.

"4. D. — Where in the case of the third doubt, the Supreme Apostolic Signature Tribunal — Second Section — should see only question concerning illegitimacy of the contested act or also concerning the merit of the case.

"R. — Affirmative to the first, negative to the second; or the Supreme Apostolic Signature Tribunal — Second Section — see only question concerning the illigitimacy of the contested act.[22]

From these answers, the opinions that holds to only one object of review, puts up this argument, to give judgment, not only about ligitimacy, but also about controversy of subjective right, would be to judge also **de manito**. which is excluded from the competency of the Second Section by the answer of the Commission.[23]

Others, however, opined that the Second Section of the Apostolic Signature Tribunal looks at the case not only on the questions of ligitimacy of the decision, but also, if the case may be, on question of subjective rights allegedly violated by the administrative act.[24]

For this writer the second opinion is more feasible. It gives better interpretation of the provision of the Constitution "Regimini Ecclesiae Universae". For, all the word of the law have their own proper signification and should not be deprived of its meaning. Now, when the Constitution states that ,"it resolves controversies arising from the act of an ecclesiastical administrative power," it would actually not resolve controversies in many instances, if the interpretation of the single object of review is followed. It deprives thereby the provision of its meaning. It is good, if all the case that are brought to this court are decided as favorable to the decision of the Dicastery or that all decisions of the competents Dicastery are always legitimate. It can, however, happen that the

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[22] AAS 63 (1971) 329-330, sub II: "1. D. Utrum recurri possit ad Supremum Signatura Apostolicae Tribunal — Sectionem Alteram — adversus decisionem Competentis Dicasterii, quoties defuerit decisio ex parte auctoritatis ecclesiasticae inferioris. R. Affirmative.

[23] Gordon, *Op. cit.*, p. 332.

[24] *Ibid.*, pp. 332-339.

Tribunal, reviewing the proceedings and legitimacy of the decision of the competent Dicastery, sees the decision to be illegitimate and thereby annuls the decision of the said Dicastery. In this case, the controversy is not resolved, the case remains open, as if restored in "**integrum**". Or, should the controversy be sent back to the Dicastery to again look after the proceedings of the case? This kind of procedure has no precedence published up to now. Or, should the Administrative Tribunal, after annulling the decision of the competent Dicastery, give instruction to the bishop concerned to revoke his administrative act, as for example, to return the removed priest to his own parish and pay whatever damages he had done through his administrative act? If the Administrative Tribunal does this instruction, then it must have looked after and judged over the subjective rights of the individual and the administrative act of the bishop. Whereas, if we hold on to the opinion of two objects of review, the meaning of the word "resolves" is conserved. Based on this opinion, the Administrative Tribunal first looks after the legitimacy of the decision of the competent Dicastery. Second, if the decision of the Dicastery is annuled, then, it proceeds to the litigation of subjective rights.

It does not mean, of course, that the Administrative Tribunal must resolve all cases brought up to its forum. Actually the magazine, **Periodica**, reproduced many cases rejected by this Tribunal.[25] But the rejection in this cases as due to the fact that these controversies were not within the competence of this Administrative Tribunal. They belong to the First Section of the Supreme Apostolic Signature, although intimately connected with this Second Section. Hence, they were rejected to a disceptation by the Second Section.

In art. 96 of "**Normae Speciales**" the word "**contentiones**" caused.[26] What does "**contentiones**" mean? In art, 104, when the "**Normae Speciales**" give the procedure to be followed in the filling of recourse, it used the word "**controversiae**"[27] instead of "**contentiones.**" Canon 1552, having used the word controversy in judicial litigation, can be used as an analogy to understand the signification of the words "**contentiones**" or "**controversiae**" in the administrative process of review. As in judicial litigation, controversy means the act by which the plaintiff and the respondent dispute their rights before the judge, so in administrative process of review "**contentiones**" or "**controversiae**" mean the acts by which the petitioner and the respondent dispute the subjective rights allegedly violated by an administrative act before the administrative court. In other words "**contentiones**" or "**controversiae**" should not only be limited

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[25] 69 (1971), pp. 328-331.
[26] *Normae Speciales*, art. 17, *op. cit.*, p. 148.
[27] *Ibid.*, art. 104, pp. 152-153.

to the dispute on formalities of laws leading to the decision of the Dicastery, but should include the subjective rights themselves. This interpretation is strengthened by art. 99 of the Norms when the **"patroni"**, the persons who stand before the court in the name of the contending parties to defend the latters cause, are introduced.[28] The introduction of the "patroni" presupposes a disputes on subjective rights and not just disputes on formalities of laws.

Again, this opinion is based on the actual practice of the administrative Tribunal, when it resolves the question of the Constitution of the common fund of the Chapter and its distribution among the members.[29] In its solution to this case, the Tribunal did not give pronouncement on the nulity of the decision of Dicastery, against which the recourse had been filed, but made a real constitutive judgment. Here is the judgment of the Tribunal:

> "The most Eminent Cardinal Fathers, Members of the Supreme Apostolic Signature Tribunal, legitimately assembled in the seat of the same Tribunal, on the 26th of June 1971, to decide the case mentioned above, answered to the proposed doubts:
>
> "To I: The Chapter fund, in the case, is composed of all income, direct or indirect — **supplemento congruae non excluse** — which come into the Head Chapter and to each individual chapters:
>
> "To II: The Chapter fund thus formed must be distributed equally among all and each individual Chapters, according to the prescription of canon 395 & 1, and the answer of the Sacred Congregation of Counsel of the 10th of July, 1925;
>
> "To III: The common law, the statutes of the Chapter and its practice, must be observed:
>
> "To IV: The processuals expenses and the honorarium of the Patron must be taken from the chapter fund, to which the money has been committed, against the answers to the first and second, retained from the 1st of January 1964, strengthened by legal pact".[30]

Therefore, we safely conclude that the Administrative Tribunal looks at cases not only on the legitimacy of the decision of the Dicastery, but also, if the case calls for it, on subjective rights.

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[28] *Normae Speciales*, art. 99, *op. cit.*, p. 150.

[29] *Periodica*, 61 (1972), 185.

[30] *Ibid.* The Facti species of the case: "Decreto dici iunii 1969, Episcopus Dioecesis X, ratione habita tum prioris decreti diei 14 augusti 1967 tum litterarum quas Sacra Congregatio pro Clericis die 28 novembris 1968 dedit, normas Capitulo Cathedrali impertiebat circa communis massae capitularis constitutionem eiusque inter membra Capituli distributionem.

The objection that the Pontifical Commission for the interpretation of the documents of Vatican II explicitlystates, in the answers to the proposed doubts, that the Administrative Tribunal does not look at the merit of the controversy, is well answered by Gordon.[82] He said that the fourth doubt was placed in relation to the first doubt. For, the fourth doubt reestates the case proposed in the third doubt which in turn is related to the first doubt, namely, the violation-of-law doubt is directed to the decision of the Dicastery doubt; and then it puts down the only doubt whether in this case the Second Second should see only the illegimacy or also the merit of the case. The proposed doubt, then, was with in the area of legitimacy or illegitimacy of the decision of the Dicastery. It has not touched on the area of the subjective rights allegedly violated by the Administrative act of the Bishop. Hence, the answer given by the Commission was directed to the proposed dobut, that is, in the review of the decision of the Dicastery the Second Section does not look at the merit of the case.

"Adversus hoc decretum cononicus D.Filrecursum, a suo Patrono postea completum, die 1 iulii 1969 apud Sectionem Alteram Signaturae Apostolicae interposuii.

"Die 7 iulii 1970, in Congressu habito corum El no Cardinali Praefecto, decretum est: Recursum esse admittendum disceptationem: (cf. *Apollinaris*, 43, 1970), pp. 524-526).

"Termini autem controversias sequentes die 7 octobris definite sunt: 1) Quibusnam reditibus componatur massa capitularis, in casu; (2) quomodo distribuenda sit massa capitularis, firma manent canone 395, & 1, C.I.C., inter capitulares; 3) quodnam in specie emolumentum debeatur, in casu, canonico que munere fungatur etiam parochi, quipue munere quandam accipit retributionem ex Municipio Z; 4) quaenem consectaria oriantur ex responsionibus ad praccedentia dubia etiam quod attinet ad cause expensas et honoraria patronorum." Cf. *Periodica*, 61 (1972), p. 183. To these questions, the answer of the Second Section of the Apostolic Signature were made:

"E.mi Patres Cardinales, Membra Suprema Tribunalis Signaturae Apostolicae, in sede eiusdem Tribunalis legitime congregati, die 26 iunii 1971, ad decidendam causam de qua supra, propositis dubiis responderont:

"Ad I: Messa capitularis, in casu, omnibus componitur reditibus, directis et indirectis — supplemento congruae non excluso —, qui Capitulo singulisque eius Capitularibus obveniunt:

"Ad II: Massa capitularis sic efformata distribuenda est aequaliter inter omnes et singulos Capitulares, firmo praescripto canonis 395, & 1 et responsione Sacrae Congregationes Concilii diei 10 iulii a. 1925;

"Ad III: standum esse iuri communi, statutis Capituli nec non eius praxi;

"Ad IV: Processuales expensas et Patronorum honoraria esse solvenda ex massa capitulari, in quam est immittenda pecunia, contra responsa ad nn. primum et secundum, retenta a die I inauarii a. 1964, aucta foenore legali. (*Periodica*, 61 (1972) 185).

[31] Gordon, "De Iustitia Administrativa," *loco cit.*, p, 338.

From the foregoing reasons, we can conclude with probability that the object or subject matter of review of the Second Section of the Apostolic Signature is twofold :

1. Question in the legitimacy of the decision of the competent Dicastery.

2. If the case may have it, the question on the subjective rights allegedly violated by the administrative act of the Bishop.

Accordingly, we can also conclude that the Second Section of the Supreme Apostolic Signature Tribunal resolves the case in two ways, as the case may be, namely:

1. By administrative review.
2. By strict judicial litigation.

OBSERVATIONS, COMMENTS AND RECOMMENDATIONS

The introduction of the administrative tribunal is no doubt a big stride towards the realization of an efficient way to the safeguarding the subjective rights which may be violated by the administrative acts of the Ordinary of the place. As a tribunal, it can judge a case not only on its processes and formalities, but also on its on merits. As a juridical institute of justice, independent from the line of active administration, it stands as a court with qualification of being impartial offering a promise that it is not a respecter of persons, but of rights. To the members of the Church, it gives them a renewed hope that after all the Church is not indifferent, but rather solicitous in finding ways and means most efficient to the protection of their subjective rights. To the administrators, it affords them confort and relief that here is a court which can help them perceived more keenly whether their acts are right or not.

The administrative tribunal is relatively new; the special norms that should govern its proceedings are yet in the experimental stage **(ad experimentum)**. It is, therefore, still in the proceeds of perfecting itself. Comments, criticisms and recommendations about it may yet still be in order.

For one thing, the court is situated in Rome, a place faraway from the many members of the churh. Distance, as observed in Chapter 3, is one of the disadvantages of recourse. This, too, is the same disadvantage which this administrative tribunal has to contend with. Many members of the Church would rather forego an injustice done to him or suffer in silence his grievance rather than make a recourse of his case to a far-distant tribunal. The

pupose for which this tribunal is instituted may, in many cases. be foiled due to distance. It is erected to dispense justice to all the members of the Church, but it cannot do so, because of its near inaccessibility to them. It is, therefore, suggested that this tribunal should established regional or even provincial courts of justice, patterned after it and placed under its direct surveillance and supervision.

However, this establishment of regional or provincial courts of justice would not solve the problem of inaccessibility, if no amendment is made to the Constitution **"Regimini Ecclesiae Sanctae"**. As pointed out clearly, this tribunal has jurisdiction only on administrative cases already decided by the Dicastery. Hence, to approach this court for a redress of grievance, one has first to file his case to the proper Sacred Congregation, which, needless to say, is a far-distant body, being situated in Rome. The problem of near inaccessibility, therefore, still stands.

Two recommendations are possible, namely, 1) to establish regional or even provincial body of the Sacred Dicasteries; or 2) to amend the Constitution, that is, to place the administrative cases directly under the jurisdiction of these regional or provincial courts of justice. The first suggestion is, of course, demanding too much. The second suggestion, we believe, is more reasonable. The demand implied by it is much, no doubt. But for justice to have its hand, we believe that the suggestion is not asking too much.

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