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THE SUPREME ADMINISTRATIVE TRIBUNAL

HIS EMINENCE, DINO CARDINAL STAFFA*

The establishment of a Supreme Administrative Tribunal in the Church was effected by the Apostolic Constitution, *Regimini Ecclesiae Universae*, which bears the date of August 15th, 1967.¹ Its establishment was welcomed with unanimous approval, as it was intended to fill a lacuna in the juridical arrangement of the Church or at least in the organization of the Roman Curia. Indeed, it has been said that such an institution changed the manner of conceiving the relationships among the diverse categories of the faithful because, through the means of administrative justice, both those in higher positions and their subjects are equal before the law.² It is evident that such a statement exceeds the limits of the truth. Whether it was a question of those in higher positions or their subjects, even before 1968, the ecclesiastical law provided for duties, rights, and sanctions. In the Church, however, through divine right, clerics are differentiated from laymen³ and there are diverse hierarchical levels.⁴ Nonetheless, it is certain that the Administrative Tribunal was established for the guardianship of the rights of all those who consider themselves injured by an administrative act.⁵

It is possible that the administrative organs, although operating in good faith and with the most upright intention, may do harm to the rights either of the faithful or of the members of the diocesan or religious clergy. Prior to the *Regimini Ecclesiae Universae*, the faithful laity, the priest, or the religious, could have recourse to the superior administrative organ and after that to the supreme one, but could in no case bypass the administrative order, which has its own way of proceeding and does not offer the guarantees and the means of defense which are characteristic of a tribunal. The administrative order could not be circumvented even when the norms prescribed by the law for the very administrative provisions themselves may have been violated.⁶

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¹ 59 ACTA APOSTOLICAE SEDIS 921 (1967).

² 98 MONITOR ECCLESIASTICUS 583 (1973).

³ CANON 107.

⁴ See CANON 218 (Pope); CANON 222 (Ecumenical Councils); CANON 329 (Bishops).

⁵ See *Regimini Ecclesiae Universae*, 50 ACTA APOSTOLICAE SEDIS 921 (1967).

⁶ See CANON 2142.

If the organization of the Church, unlike that of the civil State, had not hitherto admitted the existence of Administrative Tribunals this was due to the grave difficulties which would accompany their establishment and operation. I do not intend here to take into consideration the difficulties that manifest themselves in the presentation of Administrative Tribunals of lower levels. Limiting myself, therefore, to the establishment of a Supreme Administrative Tribunal to which recourse may be taken against the administrative acts that have had the approval of a department of the Holy See, we immediately find ourselves face to face with a difficulty of the gravest importance.

The Roman Congregations act "vicariously in the name of the Supreme Pontiff" and from this point of view might be called superior to the Apostolic Tribunals which make decisions in their own name. For this reason, the *Regulae* of 1912 of the Apostolic Signatura stated in Article 1 that the Supreme Apostolic Tribunal could not pronounce judgments "*de restitutione in integrum*" against the decisions of the SS. *Congregazioni* "*nisi ex Commissione SS. mi.*" The grave difficulty was solved through the ever-more insistent request for a Tribunal that might control the exercise of executive power and assure subjective rights and correct application of the law in the best manner and with the most effective guarantees.

In fact, a system in which the public administration is, right up to the last instance, judge of its own acts is obviously unsatisfactory. The manner in which the aforementioned difficulty was overcome does not in any way take away from the prestige of the SS. *Congregazioni*, whose proceedings under the *Regimini Ecclesiae Universae* are not subjected to an ordinary judicial Tribunal, but to an Administrative Tribunal.

History tells us that the *Signatura gratiae*, which was empowered by Pope Sixtus V to decide conflicts of competence, to grant favours even connected with the exercise of judicial power, and to accept recourses against the decisions of the Sacred Congregation, were presided over by the Holy Father himself. "We," Pope Sixtus V stated, "according to the custom followed by the Roman Pontiffs, Our Predecessors, are the Head of them [the SS. *Congregazioni*]." That the Second Section, established by the aforementioned Constitution of the Apostolic Signatura, is a Tribunal cannot be questioned. In fact, it is an organ which the Supreme Authority has entrusted with public functions to settle controversies of an administrative character, through the application of the law to individual cases, with decisions binding the parties concerned. That the Second Section is an Administrative and not a Judicial Tribunal appears to be confirmed by the fact that it was originally conceived as a separate Tribunal, and by the fact that although it exists side by side with the First Section of the Apostolic Signatura, which is a judicial Tribunal, it is distinct from it, and its functions are directed toward the settling of questions between private

⁷ 4 ACTA APOSTOLICAE SEDIS 188 (1912).

⁸ Pope Sixtus V, COST., *Immensa* diei 22 ianuarii 1588, 8 BULLARIUM ROM. 985-99.

individuals and the public administration, or even between different organs of public administration with a procedure which differs from that of ordinary judicial procedure.

With the *Regimini Ecclesiae* we have departed from the preceding system in which the petitioner against a provision of the administrative power could not depart from the sphere of that very same administrative power, with the result that conflicts which had arisen through the exercise of the administrative power could only be settled by the administrative power itself. Thus we have entered upon the *system of twofold jurisdiction*: judicial (in the first section of the Apostolic Signatura) and administrative (in the second section).

There do exist, in fact, three systems of administrative justice: the *first* is the *system of the administration-judge*, in which the administrative authority, and it alone, can give decisions regarding the controversies arising from its own administrative acts. The *second* is the so-called *system of twofold jurisdiction*, in which there is a double jurisdiction: the *administrative*, to which administrative acts are subjected, and the *judiciary*, independent of the first, for the other controversies. This is in vigor in France, Italy, Belgium, Luxembourg, Holland, Sweden, Greece, Portugal and, after the law of January 21st, 1960, in Germany. The *third* is the *system of single jurisdiction*, in which the rendering of all administrative justice is entrusted to ordinary or judicial tribunals. This third system may assume diverse aspects. There are, in fact, juridical arrangements in which controversies between private and public administration come to be judged by ordinary tribunals following normal civil procedure, as in Brazil, or with a special administrative procedure, as in England, the United States, Canada, Israel, Switzerland, Norway, and Denmark. There are other arrangements in which, within the ordinary judiciary organization itself, there are erected special tribunals for settling administrative controversies, as in Spain and Costa Rica. The legislations of Uruguay and of Guatemala are practically reduced to this same type.⁹

The special character of the system adopted by the ecclesiastical legislator proceeds from a double principle: first, recourse to an administrative tribunal is not taken until after recourse to the supreme administrative organ has been taken, that is, not until the administrative path has been followed to the termination of its hierarchical grades, in such a way that the administrative power is given every opportunity to correct eventual errors that it may have committed. Second, the Administrative Tribunal is not composed of judges named by and dependent upon the public administration, but of Cardinals, that is, judges completely independent of the executive power. In this way, it is possible to avoid the inconveniences of which the system of twofold jurisdiction is accused, namely, the conflict between administrative and judicial authority and the dependence of judges upon executive power.

⁹ See Gordon, *De tribunalibus amministrativis*, 57 PERIODICA 613 (1968).

Given the particular nature and functions of the Administrative Tribunal established in the Apostolic Signatura, it is obvious that the first requisite for having recourse to it is that the opposed provision should be an administrative act in the true sense, an act, that is emanating from an organ of the public administration such as a diocesan Ordinary, a religious Superior, or an Episcopal Conference. In fact, the *Regimini Ecclesiae Universae* states: "The Apostolic Signatura, by means of the Second Section, settles controversies arising from an act of the administrative power."¹⁰ Consequently, recourse cannot be taken to the Second Section of the Apostolic Signatura against acts of judicial or legislative organs, even though the acts may be administrative in nature.

In Italian law, the criterion of distinction between ordinary and administrative jurisdiction is derived from the distinction between *subjective right* and *legitimate interest*: an ordinary judge pronounces judgment upon the former, while an administrative judge pronounces judgment upon the latter.¹¹ Such a criterion is characteristically one of Italian law and jurisprudence and has not been accepted by Germany, the Scandinavian countries, Belgium, or even France.¹² Indeed, we can say that Italian doctrine itself is subjecting the notion to deep criticism. In connection with this G. Treves has written:

There is considered known that which is still unknown, in so far as legitimate interest is defined as starting from the type of jurisdictional protection accorded to it, whereas it is exactly this type of protection that depends upon the existence of a legitimate interest. It is certainly not by summing up two erroneous propositions that one obtains a correct element of judgment. The Council of State usually specifies that it is called upon to defend private interest only when it coincides with public interest. But without indulging in any dissimulation, the very mechanism of the administrative process carries it, even though it may be with some limitation, to set itself up as the defender of the individual's interest, even if in this way a public interest is protected. It is a departure from reality to sustain that the citizen tends to re-establish the legality of the administration, rather than his own injured interest, that the articles 103 and 113 of the Constitution place upon the same level as subjective right, exception being made for the judge who acts as its guardian. Since against its violation the citizen may appeal to a judge for motives of legitimacy, it may be said that under this aspect the legitimate interest is not very different from subjective right. Both belong to one and the same category, opposed to mere interest. [Thus,] [c]ertainty about one's own right is lacking even with regard to that element which should be the most certain, that is to say, the judge to whom to apply.¹³

A. M. Sandulli was not any more kindly disposed when he lamented,

¹⁰ *Supremum Tribunal Signaturae Apostolicae* § 105, 59 ACTA APOSTOLICAE SEDIS 921 (1967).

¹¹ See also ITALIAN COST. arts. 103, 113.

¹² See Treves, *La Giustizia amministrativa italiana nel contesto europeo*, 123 GIURISPRUDENZA ITALIANA, parte IV, cols. 49-60 (1971).

¹³ *Id.* at cols. 51-52.

“the inconveniences which derive from the grave uncertainties regarding the distinction of the sphere of jurisdiction of ordinary tribunals from that of administrative tribunals (uncertainties nurtured especially by the difficulty—confirmed every day as insuperable—of the distinction between subjective rights and legitimate interests).”¹⁴

As can be seen, the opposition to such a criterion goes down to the very foundation upon which such a criterion is founded, or rather the distinction between subjective right and legitimate interest. S. Satta has stated:

It is well known to all that the discrimination between the concept of legitimate interest and subjective right has constituted and still constitutes the crux of the problem for students of public law, and fifty definitions could be listed, none of which would give complete satisfaction. And in reality, such a definition cannot be satisfactory as long as we remain in a conceptual position, because on an abstract plane the difference between subjective right and legitimate interest does not exist: what we mean is that both the one and the other are subjective positions protected by the juridical order, and in so far as they are protected they are subjective rights, if we wish to adopt, as is just, this name which is, after all, one of clear, even if conventionally clear, significance.¹⁵

M. S. Giannini, after having expressed his praise of English Administrative Law, has posed a serious question: “Administrative Law on the continent has revealed itself to be complicated and troublesome. Has not the time arrived to destroy it?”¹⁶

I have lingered over this problem because, at present, it constitutes one of the keenest and most discussed arguments of this infant stage of canonical administrative doctrine.

Prior to the *Regimini Ecclesiae Universae*, the controversies determined by the administrative acts of the Ordinaries were not within the competence of the Tribunals, but rather of the Sacred Congregations. The discipline has remained fundamentally the same even after 1968, with the addition of the new element which I have mentioned, namely the possibility of having recourse against the decisions of the Sacred Congregations whenever it is considered that the administrative act has violated the law.

Numerous authors claim that the distinction between subjective rights and legitimate interests already exists in the Code of Canonical Law.¹⁷ Without penetrating more deeply into this investigation, because this is not the place to do so, we can affirm that such a distinction does not exist in the Code, nor does the expression “legitimate interest” or its equivalent exist therein. Consequently, it remains for us to ask ourselves whether it is fitting to introduce this distinction now. We have seen that in Italy itself, where we have attained constitutional summits, such a

¹⁴ A.M. SANDULLI, *MANUALE DI DIRITTO AMMINISTRATIVO* 692-93 (10th ed. 1971).

¹⁵ S. Satta, in A. PADOVA, *SOLILOQUIES AND CONVERSATIONS OF A JURIST* 384 (1965).

¹⁶ M.S. Giannini, in H. WADE, *ENGLISH ADMINISTRATIVE LAW* 19 (M.S. Giannini trans. 1969).

¹⁷ Gordon, *De iustitia administrativa ecclesiasticae*, in 61 *PERIODICA* 350-65 (1972).

distinction is condemned by the most famous authorities on administrative law. Thus, there is reason to hope that the attempt to graft upon the reborn body of ecclesiastical laws a branch that is about to die will remain unsuccessful. I have spoken of grafting because it would concern an element until now extraneous to our system of ideas. Such a distinction would be quite superfluous because the canonical system provides for the protection of all subjective rights, even of those which Italian administrative doctrine calls weakened, or rather, of legitimate interests. Canon 1667 of the Code of Canon Law declares, in fact, that "every right" (it is understood as subjective right) "is provided with an action" (it is understood as a judiciary action) "unless a different disposition is expressly made." The limitation to judicial action for the defense of one's own rights is included in Canon 1601 of the Canon Law which states that "against the administrative decrees of Ordinaries recourse may be made only to Sacred Congregations," and after the establishment of the Second Section at the Apostolic Signatura, the last recourse may be taken before this very Section.

In Canon Law, as G. Zanobini has written, harking back to Amorth:

There is no logical reason to prevent us from retaining that the same norm may provide contemporaneously for the protection of two distinct interests: general interest and individual interest: all the more so since these two interests are so intermingled and connected with each other as to render the protection of the second interest a natural, and not accidental, effect of the protection of the first interest.¹⁸

It has been written that the petitions made to the Synod of Bishops in 1967

serve to demonstrate that the system prevailing in the canonical system to refer to administrative channels the protection not only of legitimate interests but also of subjective rights for damage caused by an administrative act, reveals itself insufficient for a full jurisdictional guarantee of subjective right, even in confrontation with the public administration of the Church.¹⁹

One must reply, however, that the Synod considered insufficient the guardianship of subjective rights as envisaged by the Code of Canon Law and requested the establishment of Administrative Tribunals, so that "in them the defence of *rights* would have its own proper, canonical procedure."²⁰ Nor does any reference to the distinction between subjective rights and legitimate interests appear, much less is such a distinction quoted as a criterion to determine competence between ordinary and administrative jurisdiction. I am, consequently, of the same opinion as some others, that it is not advisable to borrow such a criterion from Italian Law.²¹

¹⁸ G. ZANOBINI, 1 COURSE IN ADMINISTRATIVE LAW 193 (2d ed. 1964). See also Amorth, *A New Systematizing of Administrative Justice*, in 1 REVISTA DI DIRITTO PUBBLICO, No. 7, at 65 *passim*.

¹⁹ G. LOBINA, THE COMPETENCE OF THE SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA WITH PARTICULAR REFERENCE TO THE SECTIO ALTERA, 104-05 (1971).

²⁰ 1 *Communicationes* 83 (1969) (emphasis added).

²¹ See Coppola, *Reflexions on the Establishment of the Second Section of the Apostolic*

To the motives adopted by the previously quoted authorities on Italian Administrative Law, we may add others, based on Canon Law itself. It does not, in fact, seem fitting in our system of ideas to place before ordinary or judicial tribunals controversies regarding injuries done to subjective rights by the public administration. This is the conclusion of long historical experience. The basis of the reform of the Roman Curia effected by Pope Sixtus V is precisely in having withdrawn such questions from the competence of ordinary tribunals. The reform of Saint Pius X did not alter that principle. Nor does it seem to me changed by Pope Paul VI with the creation of the first supreme administrative tribunal. This new organism, in its capacity as a contentious tribunal, is in a condition to provide in an effective way for the protection of subjective rights which are asserted to have been violated; in its capacity as an administrative tribunal, independent of administrative organs, it may exercise guardianship in a fitting way over the public administration.

There are two aspects in relation to the disputes between private persons and the Public Administration: private and public. It is therefore convenient that it should be a Court of Justice, an Administrative Court rather than an ordinary one, which is competent to deal with both aspects to settle such disputes.

One must not, however, conclude that in the canonical system there is lacking any reference at all to the civil system. Even in the German system, for example, that which under the Italian system is a legitimate interest is considered a subjective right,²² and "the administrative process aims at the protection of private interest, not public interest."²³ Finally, one must not forget the universality of Canon Law, whereas the distinction between subjective rights and legitimate interests and the consequent criterion of division of competence between ordinary tribunals and administrative tribunals are quite far from being universally accepted or acceptable.

According to the standard fixed by the Apostolic Constitution which established the Supreme Administrative Tribunal, the requirements to have recourse to it are two: 1) an administrative act subject to opposition, and 2) a violation of the law. I will not delay here over the first requirement, which I have dealt with several times,²⁴ in order to say a few words about the second requirement.

Signatura, 43 APOLLINARIS 361-62 (1970); Gordon, *De iustitia administrativa ecclesiastica*, in 61 PERIODICA 365 *passim* 613 (1972).

²² See Treves, *La Giustizia Amministrativa Italiana nel Contesto Europeo (Italian Administrative Justice in the European Context)*, in 123 GIURISPRUDENZA ITALIANA, parte IV, cols. 53-54 (1971); Franchi, *Contenzioso Amministrativo (Administrative Litigation)* (comparative law), in 4 ENCICLOPEDIA DEL DIRITTO (ENCYCLOPEDIA OF LAW) (1961).

²³ G. TREVES & P. MONETA, 1 IL CONTROLLO GIURISDIZIONALE SUGLI ATTI DELL' AUTORITA AMMINISTRATIVA NELL' ORDINAMENTO CANONICO, 263 (1973) (Jurisdictional Controls over Acts of the Administrative Authority in the Canonical System).

²⁴ See *Archiv für Katholisches Kirchenrecht* 509-14 (1971) (Archives for Catholic Church Law); 61 PERIODICA 21-29 (1972).

It is agreed by all that the word *law* comprehends any legitimate, objective norm, written or customary, general or particular. But if a superior by his administrative act injures the juridical order, such an act must be considered illegitimate. It must be said that this one *offense of the violation of the law* contains to a large extent, the other causes of illegitimacy that are accepted by civil administrative law, especially French and Italian. In the administrative act vitiated by *incompetence*, there exists, according to our system, a violation of the law in that the act has emanated from an organ different from that which is prescribed by the law: either in the administrative system itself (for example, an act from the Vicar General, whereas the act, to be considered valid is reserved to the Bishop),²⁵ or in a different order (for example, if a judicial act is accomplished by the Vicar General this is not at the same time Officialis),²⁶ or even in a different forum (for example, if a judicial act of the external forum is placed by the canon Penitentiary).²⁷

On the notion of *excess of power* not all are in agreement, but all admit that excess of power exists, at least when power is used in a way different from that prescribed by the law, such as when facts are perverted, justice or logic offended, a decision emitted which contradicts the motives of the decision itself, or the object of the controversy or its prerequisites is evaluated in a way that is different from that prescribed by the law. In such cases, recourse is made to the Second Section because the Superior has violated the law, whether he has done so voluntarily, through fear or through error, affirming that under the vice of violation of the law, our system includes definitely also the other two. Thus we are not far from the conclusion that M. S. Giannini reached in regard to Italian Law, for Giannini, referring to the three defects indicated in Article 26 of the *Testo Unico del Consiglio di Stato*,²⁸ which are *incompetence, the violation of the law, and the excess of power*, wrote the following: "In the three defects indicated by the legislator, no value can be recognized other than a descriptive one. The defect is, in reality, one only: the violation of the law, which coincides absolutely with illegitimacy."²⁹

I believe I have been able to illustrate some aspects of the new institute in the ecclesiastical system, and precisely those which, in my opinion, are of keener interest owing to their convergences with, or their divergences from, the civil legal systems. As far as divergences and their fundamental motives are concerned, I believe it useful at this point to conclude by quoting the words pronounced by Pope Paul VI on the 13th of December, 1972:

²⁵ Cf. CANON 113; CANON 368, par. 1.

²⁶ Cf. CANON 1557, par. 2.

²⁷ CANON 399, par. 3.

²⁸ *Testo Unico del Consiglio di Stato*, art. 26 (Unique Text of the Council of State).

²⁹ See Administrative Act No. 27, in *ENCYCLOPEDIA OF LAW* (1961).

Canon Law . . . is a law of a special, hierarchical nature, and it is so through the very will of Christ. It is inserted entirely in the action of salvation, by means of which the Church continues the work of redemption. This being the case, the juridical establishments of civil society cannot, except with great caution, be transferred to the Church.³⁰

³⁰ 64 ACTA APOSTOLICAE SEDIS 781 (1972).

