

THE RIGHT OF DEFENCE IN THE ADMINISTRATIVE PROCESS OF THE REMOVAL OF A PARISH PRIEST

Part II: Recourse against the Decree of Removal and Resolution of the Recourse

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The author, having dealt with the canonical causes and process of removal of parish priests in the Part I of this article, here addresses various canonical questions related to the right of defense against the removal like, recourse against the decree of removal, possibilities of recourse by the parish community, the hierarchical authority for recourse in different Churches *Sui iuris*, contentious administrative recourse to the *Signatura Apostolica*, procedures in the *Signatura Apostolica*, provisions for the removed parish priest, provisions for the right of defense in the procedure for the removal of parish priests. As a conclusion he proposes certain suggestions for revision to uphold right of defense of the accused in this administrative procedure.

Introduction

Once the decree of removal of a parish priest is legitimately intimated in writing (CCEO cc. 974 §2, 1511; CIC cc. 193 §4, 54 §2), the one removed can no longer function as a parish priest (CCEO c. 1396 §1; CIC c. 1747 §1). If he wishes to retain the office, he can only lodge recourse against the decree of removal. Therefore, this part is dedicated to an exposition of the norms for lodging recourse before the *Signatura Apostolica*. In addition, an analysis on the effectiveness of the

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protection of individual rights in the administrative field together with suggestions for improvement is described with due importance.

1. Recourse against the Decree of Removal

A person aggrieved by an administrative decision can make recourse to the ecclesiastical authority superior to the one who issued the decree (*CCEO* c. 997 §1; *CIC* 1737 §1), except against the acts of the Roman Pontiff and that of Ecumenical Councils since they have full and universal power.¹ Such hierarchical recourse serves a dual purpose. On one hand, it recognizes the canonical right of physical and juridical persons to defend themselves against unjust administrative acts. On the other hand, it acknowledges that even those with ecclesiastical authority must comply with the norms established by law. Their work must always be lawful, oriented to the common good, and the fruit of reason, not the result of error, impulse, or arbitrariness.²

Before one can make hierarchical recourse or recourse proper, the Codes of Canon Law demand reconciliatory efforts through informal resolution of administrative conflict/alternative dispute resolution (*CCEO* c. 998 §1; *CIC* c. 1733 §1) and a petition to the author of the decree to withdraw or modify it (*CCEO* c. 999 §1; *CIC* c. 1734 §1).

1.1. Informal Resolution of Administrative Conflicts

Informal resolution of administrative conflict or alternative dispute resolution occurs before formal recourse has been lodged. They serve to avoid controversy and settle the dispute between the aggrieved person and the author of the decree amicably.

CCEO c. 998 §1 (*CIC* c. 1733 §1) stipulates:

¹*CCEO* cc. 43, 50, 1008, 1058, 1059 §1, 1060 §1, 4^o and §3; *CIC* cc. 331, 337, 1273, 1256, 1404, 1405 §§1 and 2, 1417.

²“La razionalità del ricorso gerarchico può essere così sinteticamente espressa: da una parte si tratta del riconoscimento del diritto soggettivo delle persone fisiche e delle persone giuridiche mediante i loro rappresentanti di potersi difendere di fronte ad atti amministrativi posti dall'autorità ecclesiastica; dall'altra si tratta di riconoscere che anche l'autorità, nella sua azione, deve rispettare le regole stabilite dell'ordinamento; per cui il suo operare deve sempre risultare legittimato, frutto della ragione, e del buon governo, orientato al bene commune e non frutto di azioni intempestive o di errori di valutazione o di interventi arbitrari.” Mario Marchesi, “I Ricorsi Gerarchici presso i Dicasteri della Curia Romana,” *Ius Ecclesiae* 8 (1996) 77-78. The text given above is a translation by the author.

If a person considers himself or herself aggrieved by a decree it is particularly desirable that there be no contention between that person and the author of the decree, but that it be dealt with by seeking an equitable solution between them possibly using the mediation and effort of serious-minded persons in such a way that the controversy is settled through voluntary emendation of the decree, just compensation or another suitable way.

Alternative dispute resolution consists of conciliation and arbitration. In conciliation, or mediation, the parties attempt to reach a solution themselves. The mediator does not make a decision regarding substantive matters.³ The contrary is true in arbitration, in which the arbitrator determines the outcome. To be precise, "in conciliation, a neutral person mediates with the hope of reaching a mutually satisfactory solution; in arbitration, the parties create a binding contract in which they voluntarily agree in advance to abide by the decision of the arbitrator."⁴ Neither conciliation, nor arbitration itself constitutes hierarchical recourse, since a hierarchical superior is not involved.

When attempts for informal resolution on administrative conflicts fail, the removed parish priest can proceed to administrative recourse. There are two stages of administrative recourse: (1) a petition to withdraw or to modify the decree and (2) a formal request to the higher administrative authority.

1.2. Petition for the Revocation or Modification of the Decree

A petition to withdraw or to modify the decree to the one who issued it is the preliminary stage for lodging a formal administrative recourse or recourse proper (*CIC* c. 1734 §1; *CCEO* c. 999 §1). This is generally mandatory and it must be made to the author of the decree in writing within the peremptory time period of 10 days, which are computed from the day the decree was intimated. In ecclesiastical law, this simple petition (*supplicatio*) implies a request to suspend the execution of the decree (*CCEO* c. 999 §1; *CIC* c. 1734 §§1 and 2).

³Daniel Roseman, "Mediation in the Church: A Review of the Literature and of the Key Elements of Mediation," *Studia Canonica* 47 (2013) 159-160.

⁴Thomas J. Paprocki, *Vindication and Defense of the Rights of the Christian Faithful through Administrative Recourse in the Local Church: Excerpta ex dissertatione ad doctoratum in facultate iuris canonici* (Rome: Pontificiae Universitatis Gregoriana, 1991) 65.

Before a parish priest can seek hierarchical recourse against his removal, he must first petition the eparchial bishop who issued the decree of removal to revoke or emend it. In law, the priest has 10 days from the date the decree was intimated to make this request (*CCEO* c. 999 §1; *CIC* c. 1734 §§1-2). As noted above, the petition of the parish priest for reconsideration contains an implicit request for suspension of the execution of the decree of removal (*CCEO* c. 999 §1; *CIC* c. 1736 §1). However, according to John P. Beal, it is always better to explicitly request the suspension of decree's execution at the same time one petitions for reconsideration.⁵

This petition to modify or withdraw the decree helps the injured party (removed parish priest) to preserve his right of defense, at least to a certain extent, by initiating a dialogue between the author of the decree and the injured party. Thus, it gives the latter an opportunity to seek a possible amicable settlement by presenting his own arguments and evidence against the decree of removal. If the author's subsequent decision does not satisfy the aggrieved party, the latter can further defend himself by challenging the decree through hierarchical recourse.

1.3. Recourse Proper/Hierarchical Recourse

Hierarchical recourse or recourse proper is a formal request submitted in writing to the higher administrative authority (*CCEO* c. 997 §1; *CIC* c. 1737 §1) and it is "to be proposed before the immediate hierarchical superior of the administrative authority who issued the challenged administrative act (*CIC* c. 1737 §1)."⁶

Regarding the time limits, *CCEO* c. 1001 (*CIC* cc. 1737 §2, 1734 §3, 1735) stipulates:

§1. Recourse must be lodged within the peremptory time limit of fifteen days.

§2. The time limit of fifteen days runs:

1° in a case in which the petition for the revocation or emendation of the decree must be sent beforehand, from the day of intimation of the decree, by which the author of the prior decree amended or rejected the petition, or if he decreed nothing, from the thirtieth day computed from the receipt of petition.

2° in other cases, from the day on which decree has been intimated.

⁵John P. Beal, "Hierarchical Recourse: Procedure at the Local Level," *CLSA Proceedings* 62 (2000) 102.

⁶John P. Beal, "Hierarchical Recourse: Procedure at the Local Level," 98.

If the author of the decree does not revoke it, amend it in a way acceptable to the aggrieved party, or does not respond within the peremptory time period of 30 days, the aggrieved party can pursue formal hierarchical recourse. This must be done within 15 available/canonical days from the notice of the new decree, if there is one. If the author has not issued a new decree, the 15 days run from the thirtieth day after the decree's author received the petition for reconsideration (CCEO c. 1001 §2, 1°; CIC c. 1737 §2 and 1735).

Against the decrees of removal of a parish priest, the time limit of fifteen days for lodging *recourse proper* runs from the day of the intimation of the new decree upon the initial petition that amends or confirms the previous one, or if there is no response, then within 15 days after the 30th day counted from the receipt of the petition. If the diocesan bishop rejects the petition to modify or withdraw the decree of removal, then the time limit of 15 days runs from the day of intimation of the rejection decree (CCEO c. 1001; CIC cc. 1735, 1737 §2).

The person making hierarchical recourse has the right to have the service of a procurator or advocate. If the recurring party does not appoint a legal representative and the hierarchical superior thinks that such assistance is necessary, the superior can appoint a procurator or advocate *ex officio*. Even if there is a legal representative, the one submitting recourse should have to appear personally to respond to enquiries made by the superior about the issues raised by recourse (CCEO c. 1003; CIC c. 1738).

Administrative Silence: What is the aggrieved party to do when the higher authority does not respond to the recourse proper? CCEO c. 1002 clearly stipulates that "the higher authority must issue a decree by which a recourse is decided within sixty days computed from receipt of the recourse, unless particular law of the proper Church *sui iuris* establishes other time limits." If the silence of the higher authority to the recourse lasts longer than the time limit, and if the particular law has not stipulated another time limit, the second clause of the same canon demands that the injured party lodge a second petition to the same authority. If the higher authority does not respond within thirty days from the receipt of that second petition, then the injured party's request for recourse is to be considered rejected and the party can lodge a higher recourse against that authority who was unwilling

to resolve the recourse petition.⁷ Here the matter of recourse is the administrative silence of that authority (CCEO c. 1518).

According to CIC c. 57 §1, when a person lawfully seeks recourse, the higher authority is to issue a decree within three months unless a different period of time is prescribed by law. If the time period has expired without any reply from the higher authority, then the party may conclude that the plea is rejected (CIC c. 57 §2) and can lodge a new recourse to the higher authority of the one that remained silent. Hence, if a parish priest does not receive 90 days/3 months, a parish priest aggrieved by the decree of removal has the right to approach higher authority against the administrative silence of his immediate superior,

2. Effects of the Recourse against the Decree of Removal

Ordinarily, recourse against an administrative act does not automatically suspend the execution of the challenged decree, as with appeals from a sentence (CCEO c. 1319; CIC c. 1638). As an exception to this rule, recourse against the decree of removal of parish priest does automatically suspend the decree's execution.⁸ Consequently, the bishop cannot appoint a new parish priest while recourse against a decree of removal is pending. Until the recourse is resolved, the diocesan/eparchial bishop is to provide a parochial administrator (CCEO c. 1396 §3; CIC c. 1747 §3) who enjoys the same rights and duties as a parish priest, unless he determines otherwise (CCEO c. 299 §1; CIC c. 540 §1).

In commenting on recourse against the decree of removal of a parish priest (CIC c. 1747 §3), Mendonça notes that "the opportunity for recourse in this canon enables the parish priest to vindicate his rights which he might feel are unjustly trampled upon by the bishop; but at the same time the right of the parish community to receive appropriate pastoral care is also safeguarded adequately by upholding the right of the bishop to appoint a parish administrator while the recourse is

⁷Pio Vito Pinto, "Recourse against Administrative Decrees (cc. 996-1006)," in *A Guide to the Eastern Code*, 684.

⁸While responding to the question regarding CIC 1917 c. 2146 §3, *Pontifica Commissio Decretis Concilii Vaticani II Interpretandis* on July 1, 1971, affirmed the legitimacy of automatic suspension of the execution of decree of removal when one makes recourse against it. Cf. AAS 63 (1971) 860, n. ii. See also John P. Beal, "Hierarchical Recourse: Procedure at the Local Level," *CLSA Proceedings* 62 (2000) 102.

pending."⁹ However, even here, the rights of the parish priest are safeguarded only to a limited extent: resolution of the recourse is left to 'the discretion of the administrative authority,' not to the judicial forum.

3. Can the Christian Faithful Make Recourse?

Whether the Christian faithful can make recourse against the removal of their parish priest is disputable. In a June 20, 1987 response, the Pontifical Commission for the Authentic Interpretation of Legislative Texts affirmed that a group of the faithful cannot collectively lodge hierarchical recourse when the group lacks juridic personality or even the recognition of a private juridic person mentioned in *CIC* c. 299 §3 (*CCEO* c. 573 §2). However, the same interpretation also affirmed that the members of such a group, either individually or together, could legitimately make such recourse, provided they really had suffered harm. Moreover, the Commission added that the judge must enjoy appropriate discretion in evaluating this grievance.¹⁰ Although individual parishioners are clearly not juridic representatives of the parish (*CIC* cc. 118, 532; *CCEO* c. 290 §1), they have an interest in its welfare and can make recourse when the decision adversely affects them.¹¹

Based upon the commission's interpretation, the *Signatura Apostolica*, on June 20, 1992, granted two parishioners legal standing to make recourse against the Archbishop of Chicago's decision to close their church.¹² In the same way, in 1995, the *Congresso* of the *Signatura* granted two persons from the Diocese of Newport standing to lodge recourse against the decree of their bishop to close a church,¹³ and the College of Judges issued a definitive sentence in the matter on May 4, 1996.¹⁴ In another similar case, on January 16, 1993, the *Signatura*

⁹Augustine Mendonça, "The Effect of the Recourse against the Decree of Removal of a Parish Priest," *Studia Canonica* 25 (1991) 153.

¹⁰*Acta Commissionum*, AAS 80 (1988) 1818.

¹¹Thomas J. Green, "Possible Recourse of Congregation against Removal of Pastors," in *Roman Replies and CLSA Advisory Opinions* 2003, 110.

¹²Prot. no. 22036/90 CA. Cf. Thomas J. Green, "Possible Recourse of Congregation against Removal of Pastors," in *Roman Replies and CLSA Advisory Opinions* 2003, 111-112.

¹³Decree of *Congresso*, May 3, 1995, Prot. no. 24388/93 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 503-513.

¹⁴Agustoni, *Coram*, May 4, 1996, Prot. no. 24388/93 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 3-7.

recognized the legal standing of the individual parishioners.¹⁵ Thus, it is possible for parishioners to seek recourse against the decree of removal of a parish priest provided they really had suffered harm by it.

4. The Hierarchical Superior in Recourse against Removal in CCEO and CIC

The two codes of canon law envision different hierarchical administrative structures for the Latin and Eastern Churches. While the Latin Code presupposes a two-tiered hierarchical administrative structure consisting of the diocesan bishop and the Roman Pontiff, the Eastern Code envisages a three-tiered system with an intermediate level between eparchial bishops and the pope.¹⁶ Because of this major distinction, the recourse procedures in the Eastern Churches differ from those established for the Latin Church. To better understand these variations, we will discuss them in detail below.

4.1. The Hierarchical Superior in Recourse against Removal in the Eastern Churches

4.1.1. In Patriarchal Churches *Sui iuris*

Inside the proper territory of a patriarchal/major archiepiscopal Church, hierarchical recourse against the decision of a bishop or exarch is to be directed to the patriarch/major archbishop. Depending on the matter concerned, the patriarch/major archbishop will be empowered to issue a decision by himself, with the advice or consent of the permanent synod, or of the entire synod of bishops.¹⁷

As per CCEO c. 1006, the special three-bishop tribunal elected by the synod of bishops (CCEO c. 1062 §2) is competent to receive administrative recourse against a decree of the patriarch by the Christian faithful immediately subject to him as well as recourse against decrees by which he decides recourses administratively, unless referred to the Roman Curia. As per CCEO c. 1006, a decision of this episcopal tribunal regarding recourse can be challenged only through an extra-ordinary recourse to the Roman Pontiff (CCEO c. 1059). This positive *provocatio* to the person of Roman Pontiff can occur before,

¹⁵Prot. no. 21883/90 CA. Cf. Thomas J. Green, "Possible Recourse of Congregation against Removal of Pastors," in *Roman Replies and CLSA Advisory Opinions* 2003, 111-112.

¹⁶Jobe Abbass, "CCEO and CIC: A Comparative Study," in *A Guide to the Eastern Code*, 855.

¹⁷Victor J. Pospishil, *Eastern Catholic Church Law*, 689-690.

during or after the recourse procedure by the group of three bishops, and enhances the dignity of the patriarch by its extraordinary nature.¹⁸

Hence, CCEO c. 1006 leaves two possible modes of *□rovocation*. In the first, recourse to the group of bishops (CCEO c. 1062 §2) against the decree of a patriarch where the decision of this group is not challenged under ordinary hierarchical recourse but the matter is deferred to the Roman Pontiff in person as an extraordinary recourse in accordance with CCEO c. 1059. In the second, recourse against the decree of patriarch is deferred to the Apostolic See and consequently to the Second Section of the *Signatura Apostolica*.¹⁹

Therefore, recourse against the removal of a parish priest in the patriarchal Church is made first to the patriarch/major archbishop. Then, it is made either to (1) the special episcopal tribunal according to the norm of particular law, with no further recourse except to the Roman Pontiff in person in an extra-ordinary way (CCEO c. 1059); or to (2) the Apostolic See, i.e., to the Congregation for the Oriental Churches (CCEO c. 48; PB art. 56 and art. 58 §1), with the further possibility of 'contentious administrative recourse' before the *sectio altera* of the *Signatura Apostolica*.²⁰ On the merit of CCEO c. 1059, there remains the final possibility to make an extraordinary recourse to the

¹⁸Pio Vito Pinto, "Recourse against Administrative Decrees (cc. 996-1006)," in *A Guide to the Eastern Code*, 686-687. A decision of this Episcopal group over the contentious cases of eparchies, bishops or titular bishops, unlike its decision over an administrative recourses, can be challenged before the Synod of bishops within the territorial boundaries of the patriarchal/major archiepiscopal Churches with any further appeal excluded, without prejudice to CCEO c. 1059 (CCEO c. 1062 §§1-4).

¹⁹John John Kallarackal, *Recourse against Administrative Decrees in the Catholic Church: Excerpta ex Dissertatione ad Doctoratum* (Rome: Pontificio Istituto Orientale, 2002) 23-24.

²⁰RGCR art. 136 §4: "Contro singoli atti amministrativi posti da Dicasteri della Curia Romana o da essi approvati sono ammessi, entro il termine stabilito, i ricorsi alla Segnatura Apostolica, la quale li esamina per violazione di legge nel deliberare o nel procedere e, su richiesta del ricorrente, circa la riparazione dei danni eventualmente causati dall'atto illegittimo." AAS 91 (1999) 683-684; See also Art. 34 §1, *Motu proprio Antiqua Ordinatione, Lex Propria Supremi Tribunalis Signaturae Apostolicae*, Benedict XVI, June 21, 2008, AAS 100 (2008) 521.

Roman Pontiff personally even after an affirmative decision by the supreme tribunal of *Signatura Apostolica*.²¹

4.1.2. In Metropolitan Churches *Sui iuris*

With regard to administrative recourse, the heads of the Eastern Catholic Metropolitan Churches *sui iuris* have almost the same rights as the patriarch. Against a decree issued by such a metropolitan, perhaps with his council of bishops, recourse is made to the Apostolic See. Thus, a parish priest removed by a diocesan bishop in a Metropolitan Church *sui iuris* can approach first the metropolitan, then the Apostolic See,²² and finally, the *Signatura Apostolica* (RGCR art. 136 §4).

4.1.3. In Other Churches *Sui Iuris*

These Churches are neither patriarchal, nor major-archiepiscopal, nor metropolitan. As they depend immediately on the Apostolic See (CCEO cc. 174-175), resolution of recourse against an administrative decree belongs to the Apostolic See. Therefore, a parish priest aggrieved by a decree of removal is to approach the Apostolic See, here, the Congregation for the Eastern Churches.

4.1.4. Outside Proper Territory

The Christian faithful outside the proper territory are not subject to the power of governance of the heads of their Churches, whether patriarchs, major-archbishops or metropolitans, but to the Roman Pontiff, i.e., the Congregation for the Oriental Churches. Even if metropolitans exist outside the proper territory of the Church in question, recourse against administrative decisions of bishops then should be made to the Roman Pontiff.²³ Hence, a parish priest removed from office outside the proper territory should approach the Congregation for the Oriental Churches for hierarchical recourse (PB arts. 56 and 58 §1).

A person aggrieved by a decision of the Congregation for the Oriental Churches can directly make further recourse to the *Signatura* (RGCR

²¹Jorge Miras, "The Manner of Procedure in Administrative Recourse and in the Removal or Transfer of Parish Priests," in *Exegetical Commentary on the Code of Canon Law* vol. IV/2, 2055.

²²Victor J. Pospishil, *Eastern Catholic Church Law*, 690.

²³Victor J. Pospishil, *Eastern Catholic Church Law*, 690.

art. 136 §4).²⁴ As per the dicastery's *lex propria*, such recourse is to be lodged within 60 useful days.²⁵

4.2. The Hierarchical Superior in Recourse against Removal in the Latin Church

Unlike the Eastern Code, the Latin Code presupposes a two-tiered hierarchical-administrative structure²⁶ consisting of diocesan bishops and the Apostolic See. Because "diocesan bishops have no superiors below the level of the Holy See, recourses against their administrative acts must, in the present dispensation, be directed to the competent dicasteries of the Holy See."²⁷ Therefore, "where the original decree was issued by the bishop himself, then recourse can be made to the competent dicastery of the Roman Curia, provided that first revocation or emendation has been sought from the bishop."²⁸ In concrete, a Latin parish priest aggrieved by a decree of removal issued by his bishop has to lodge recourse before the Congregation for the Clergy (*PB* art. 93).

In mission territories of the Latin Church, a different dicastery is competent to hear the recourse. Recourse against the decrees of Latin bishops belonging to the mission countries from Asia and Africa is sent to the Congregation for the Evangelization of Peoples (*Propaganda Fide*).²⁹ Therefore, a parish priest removed from a parish in a Latin mission territory is to approach the *Propaganda Fide* for hierarchical recourse.

When recourse reaches the concerned Congregation, the general rule is to examine the questions brought before it diligently and give an answer without delay or, at least, to send a written acknowledgment of receipt (*PB* 26 §3). If the Congregations do not respond to the legitimate request within three months (*CIC* c. 57), the request can be considered rejected unless it has extended the time limit by explaining the reasons and the party can approach *Signatura* for this negative

²⁴See also Art. 34 §1, *Antiqua Ordinatione*, AAS 100 (2008) 521.

²⁵Art. 74. §1: "Recurus exhibendus est intra terminum peremptorium sexaginta dierum utilium a die peractae actus notificationis." *Antiqua Ordinatione*, AAS 100 (2008) 529.

²⁶John John Kallarackal, *Recourse against Administrative Decrees in the Catholic Church*, 22-23.

²⁷John P. Beal, "Hierarchical Recourse: Procedure at the Local Level," 94.

²⁸Kurt Martens, "Administrative Procedure in the Roman Catholic Church; Difficulties and Challenges," *Ephemerides Theologicae Lovanienses* 76 (2000) 358.

²⁹*Congregation for the Evangelization of Peoples*, Prot. No. 5630/08, December 19, 2008.

response (RGCR art. 136 §2). Likewise, decrees of the Congregations of Roman Curia resolving hierarchical recourses can be challenged by contentious administrative recourse to the Second Section of the Apostolic *Signatura*.³⁰

Hence, the recourse procedure against removal of a parish priest by a Latin bishop proceeds in the following way. The aggrieved priest first petitions the decree's author to revoke or change it, then the competent Congregation of the Roman Curia, and finally the *Signatura Apostolica*.³¹ In resolving recourse, the Roman congregation have wide authority (CIC c. 1739) and 'there are several cases of resolution of recourse by the Roman congregation where clauses asking bishops to provide a suitable parish to the removed parish priest were added, though the bishop's decision to remove was upheld.'³² The below given table provides a statistical data of recourses against the removal of parish priests lodged before the Congregation for the Clergy for the last 10 years of 2006-2015.³³

Year	Number of recourses
2006	1
2007	1
2008	5
2009	5
2010	-
2011	1
2012	4
2013	5
2014	4
2015	3
TOTAL	29

As it was mentioned about Oriental Churches, there is always the possibility to approach the Roman Pontiff personally in an

³⁰Art. 136 §4, RGCR, AAS 91 (1999) 683-684; Art. 34 §1, *Antiqua Ordinatione*, AAS 100 (2008) 521. See also John John Kallarackal, *Recourse Against Administrative Decrees in the Catholic Church*, 25.

³¹Jorge Miras, "Recourse Against Administrative Decrees," in *Exegetical Commentary on the Code of Canon Law* vol. IV/2, 2083-2084; Thomas J. Green, "Possible Recourse of Congregation Against Removal of Pastors," in *Roman Replies and CLSA Advisory Opinions* 2003, eds. F. Stephen Pedone and James I. Donlon (Washington DC: Canon Law Society of America, 2003) 111.

³²James H. Provost, "Recent Experiences of Administrative Recourse to the Apostolic See," *Jurist* 46 (1986) 150.

³³Archive, Congregation for the Clergy, Città del Vaticano.

extraordinary recourse made (CIC c. 1417 §1) outside the ordinary system. This is generally made after the injured party has exhausted the administrative route by means of contentious administrative recourse before the *Signatura Apostolica* (PB. 123; CIC c. 1445 §2).³⁴

5. Recourse against Removal before the *Signatura Apostolica*

The procedure for handling administrative recourse in a judicial forum is available only at this stage and "the contentious-administrative process may culminate with an appeal to the so-called 'Second Section' of the *Apostolic Signatura*, which exercises competency according to a set of special procedural norms."³⁵ The unified judicial organ of the Roman Curia, it is the highest judicial authority in the Catholic Church since 1908³⁶ and "as the supreme tribunal for administrative causes under contention, the *Signatura* admits petitions only after hierarchical recourse has been exhausted."³⁷

Article 34 §1 of the present *Lex Propria Supremi Tribunalis Apostolicae*, promulgated by Pope Benedict XVI on June 21, 2008, the 100th year of the tribunal's constitution, stipulates that recourse against single administrative acts of the dicasteries of the Roman Curia, either issued or approved by them, can be presented to the *Signatura Apostolica* within sixty useful days whenever the impugned act violates some law either in the decision (*in discernendo*) made or in the procedure (*in procedendo*) used.³⁸

³⁴Jorge Miras, "The Manner of Procedure in Administrative Recourse and in the Removal or Transfer of Parish Priests," in *Exegetical Commentary on the Code of Canon Law* vol. IV/2, 2055.

³⁵J. J. Coughlin, "The Historical Development and Current Procedural Norms of Administrative Recourse to the Apostolic Signatura," *Periodica De Re Canonica* 90/3 (2001) 456.

³⁶Pope Pius X, in the year 1908, through his Apostolic Constitution "*Sapientis Consilio*" established *Apostolic Signatura* as supreme judicial organ in the Catholic Church. Cf. Pius X, *Constitutio Apostolica de Romana Curia Sapientis Consilio*, June 29, 1908, AAS 1 (1909) 15. See also William L. Daniel, "The competence of the Supreme Tribunal of the Apostolic Signatura over Recourse against the Rejection of a New Proposition of a Cause by the Roman Rota," *Studia Canonica* 47 (2013) 91-97.

³⁷Kenneth K. Schwanger, "Contentious-Administrative Recourse before the Supreme Tribunal of Apostolic Signatura," *The Jurist* 58/1 (1998) 196.

³⁸*Lex Propria Supremi Tribunalis Signaturae Apostolicae* Art. 34 §1: "Signatura Apostolica cognoscit de recursibus, intra terminum peremptorium sexaginta dierum utilium interpositis, adversus actus administrativos singulares sive a Dicasteriis Curiae Romanae latos sive ab ipsis probatos, quoties contendatur

5.1. Parties before the *Signatura Apostolica*

i. *Pars recurrens*: The recurrent party before the Apostolic *Signatura* is either the individual who started the proceedings by requesting the revocation of the decree of the bishop, or the bishop himself, depending on who is aggrieved with the decision of the Roman dicastery. A person who has not made a hierarchical recourse cannot be admitted as a recurrent party (*Pars recurrens*) before the Apostolic *Signatura*. As shown already, members of Christian faithful can individually or jointly seek recourse against a decree of a diocesan bishop provided that they have truly suffered great injury.³⁹ The *Signatura* has accepted such recourse on various occasions.⁴⁰

ii. *Pars resistens*: The defendant (*Pars resistens*) is always the dicastery that produced the decree, since only such a decree is the possible object of challenge before the *Signatura*. If the dicastery confirms the original decision, the bishop also may be considered a co-defendant before the *Signatura*.⁴¹

5.2. Objects of Recourse before the *Signatura Apostolica*

i. *Material Object of Recourse*: In contentious-administrative cases, Pastor Bonus art. 123 §1 defines the material object of recourse as a “singular administrative act, whether issued by the dicasteries of Roman Curia or approved by them.” Contentious recourse directly against a singular administrative act of a diocesan bishop is not heard by the *Signatura*. Such recourses go to the concerned dicastery of the Roman curia.

ii. *Formal Object of Recourse*: The Formal Object of Recourse as envisaged by Pastor Bonus art. 123 §§1 and 2 is both violation of law in the decision making process or in the procedure used in issuing a singular administrative decree, and adjudication on reparation of

num actus impugnatus legem aliquam in decernendo vel in procedendo violaverit.” *Antiqua Ordinatione*, AAS 100 (2008) 521.

³⁹Acta Commissionum, AAS 80 (1988) 1818.

⁴⁰Agustoni, *Coram*, May 4, 1996, Prot. no. 24388/93 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 514-528; *Il Diritto Ecclesiastico* 108/II (1997) 3-7; Prot no. 21883/90 CA. Cf. Thomas J. Green, “Possible Recourse of Congregation Against Removal of Pastors,” in *Roman Replies and CLSA Advisory Opinions* 2003, 111-112.

⁴¹Charles Scicluna, “Recourse against Singular or Particular Administrative Acts of the Diocesan Bishop: Request for Revocation or Amendment; Hierarchical Recourse to the Holy See; Procedure before the Apostolic Signatura,” *Forum* 16/1 (2005) 104.

damage if the concerned party requests it.⁴² A claim for damages cannot be made before the *Signatura* unless it was joined to the recourse against the administrative act.⁴³

5.3. Procedure in the *Signatura Apostolica*

As it is very well observed, "from the decision or non-decision of the competent congregation, the final step in the administrative recourse process is to the second section of the Apostolic *Signatura*, the only administrative tribunal in the church."⁴⁴ The present norms on contentious administrative recourse before the *Signatura Apostolica* is stipulated in articles 73-105 of *Lex Propria Supremi Tribunalis Signaturae Apostolicae*, promulgated as *Motu proprio Antiqua Ordinatione*.⁴⁵

Recourse before the *Signatura Apostolica* must be submitted within the peremptory time limit of sixty useful days from the day of notification of the act that is being challenged.⁴⁶ The petition for recourse must contain the necessary elements, including the details of the petitioner, the act which is being challenged, what is claimed, the basis for recourse, the date on which the notification of the impugned act was received and the signatures of the recurrent, etc.⁴⁷

⁴²*Lex Propria Supremi Tribunalis Signaturae Apostolicae*, art. 34 §§1 and 2, AAS 100 (2008) 521.

⁴³Kenneth K. Schwanger, "Contentious-Administrative Recourse before the Supreme Tribunal of Apostolic Signatura," *The Jurist* 58/1 (1998) 178-181.

⁴⁴John C. Meszaros, "Procedures of Administrative Recourse," *The Jurist* 46 (1986) 127.

⁴⁵Benedict XVI, *Motu proprio Antiqua Ordinatione*, June 21, 2008, AAS 100 (2008) 529-534. The previous procedural norms which governed contentious administrative recourse to the second section of *Signatura Apostolica* were described in articles 97-123 of 'Normae Speeciales in Supremo Tribunali Signaturae Apostolicae ad experimentum servandae of Pope Paul VI dated March 25, 1968. Cf. *Periodica de re Morali Canonica Liturgica* Vol. 59, fasc.1 (1970) 149-162.

⁴⁶*Lex Propria Supremi Tribunalis Signaturae Apostolicae* Art. 74. §1: "Recurus exhibendus est intra terminum peremptorium sexaginta dierum utilium a die peractae actus notificationis." *Antiqua Ordinatione*, AAS 100 (2008) 529. The peremptory time period for this was thirty days according to art. 105 §1 of the previous *Normae Speeciales* of Pope Paul VI. Cf. *Periodica de re Morali Canonica Liturgica* Vol. 59, fasc.1 (1970) 153. See also Kenneth K. Schwanger, "Contentious-Administrative Recourse before the Supreme Tribunal of Apostolic Signatura," *The Jurist* 58/1 (1998) 188-189.

⁴⁷*Lex Propria Supremi Tribunalis Signaturae Apostolicae* Art. 73, *Antiqua Ordinatione*, AAS 100 (2008) 529.

After hearing the promoter of justice, the secretary of the *Signatura* determines whether the petition is acceptable, correctable, or null due to a missing signature, lack of standing before the tribunal, or absolute uncertainty of concerning the persons or objects in the recourse. If the secretary rejects the recourse, the aggrieved party can approach the *congresso* against this decision within the peremptory time limit of ten days.⁴⁸ If the recourse is admitted by the *congresso*, "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*."⁴⁹ If the *congresso* rejects the recourse, the aggrieved party can make recourse to the college of judges against the decree of rejection.⁵⁰ With the procedures completed (*Lex Propria* arts. 85-87), the college of judges renders a sentence resolving the contention (*Lex Propria* arts. 88-90).

A sentence of the *Signatura Apostolica* is *res iudicata* (CCEO c. 1310, 1^o; CIC c. 1629, 1^o) and ends the case. However, a party aggrieved by the sentence of the *Signatura* can again approach it on the basis of *restitutio in integrum* and the prefect can refer the matter to another college of judges.⁵¹ Moreover, as a last chance, there remains the possibility of

⁴⁸*Lex Propria Supremi Tribunalis Signaturae Apostolicae* Art. 76, *Antiqua Ordinatione*, AAS 100 (2008) 529-530. In order to have a glance at the practice in the *Signatura* according to the previous special norm, see Joseph R. Punderson, "Hierarchical Recourse to the Holy See: Theory and Practice," *CLSA Proceedings* 62 (2000) 19-48.

⁴⁹J. J. Coughlin, "The Historical Development and Current Procedural Norms of Administrative Recourse to the Apostolic *Signatura*," *Periodica De Re Canonica* 90/4 (2001) 680.

⁵⁰*Lex Propria Supremi Tribunalis Signaturae Apostolicae* Art. 84, *Antiqua Ordinatione*, AAS 100 (2008) 531. See the example of a sentence by the college of judges in recourse against the decree of *congresso* in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 137-140 and the definitive decree of the college in resolving recourse against it *Coram Sabattani*, April 26, 1986, Prot. no. 17083/85 CA, in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, 140-157.

⁵¹*Lex Propria Supremi Tribunalis Signaturae Apostolicae* Art. 91 §1: "Adversus Collegii sententias, cauta tamen semper Supremi Tribunalis natura, tantum remedia querelae nullitatis ac petitionis restitutionis in integrum suppetunt.

§2. Praefectus, si casus ferat, rem statim ad Collegium Iudicum deferre potest." *Antiqua Ordinatione*, AAS 100 (2008) 531-532.

The previous 'Normae Speciales in Supremo Tribunali Signaturae Apostolicae ad experimentum servandae' of Pope Paul VI did to include this provision. However, some canonists like Grochowski proposed the possibility of challenging the sentence of *Signatura* on the basis of *restitutio in integrum* as

extraordinary recourse to the person of Roman Pontiff (CCEO c. 1059; CIC 1417), which is not part of any procedure.⁵² Hence, once a sentence from the *Signatura Apostolica* is obtained or a decision on the basis of *restitutio in integrum* is passed, a dispute over the decree removing a parish priest is resolved. If the parish priest acquires an affirmative decision on the recourse, he simply resumes his ecclesiastical office; a new decree of appointment is not needed.⁵³ Otherwise, he loses that ecclesiastical office.

6. Provisions for the one Removed

The sustenance of the parish priest removed from his office is an age-long practice as we find in the decrees of conformation issued by the

per CIC cc. 1645-1648 (CCEO cc. 1326-1329). A sentence of the first panel of *Signatura Apostolica* (*coram* Palazzini, December 17, 1988, Prot. No. 18190/86 CA) which nullified a decision of the Congregation for the Clergy that affirmed the decree of removal of a parish priest was annulled by the second panel of *Signatura* under *restitutio in integrum*, as the first time in the history of *Signatura*. Hence, the college of 7 judges of the second panel of *Signatura* under *restitutio in integrum* confirmed the decree of the Congregation for the Clergy cancelling the sentence of the first panel of judges of *Signatura* on this matter. Cf. Augustine Mendonça, "Justice and Equity at Whose Expense?," in *The Art of the Good and Equitable*, ed. Fredrick C. Easton, *CLSA Annual Convention* (1999) 198-226; See also Kenneth K. Schwanger, "Contentious-Administrative Recourse before the Supreme Tribunal of Apostolic Signatura," *The Jurist* 58/1 (1998) 195.

⁵²"Sententia Signaturae Apostolicae est definitiva, ita ut contra eam non detur recursus nisi ad Supremum Pontificem." Dino Card. Staffa, "De Supremo Tribunali Administrativo seu de Secunda Sectione Supremi Tribunalis Signaturae Apostolicae," *Periodica De Re Morali Canonica Liturgica* 61/1 (1972) 28; See also John A. Barry, "Trials in General," in *The Canon Law, Letter and Spirit: A Practical Guide to the Code of Canon Law*, eds. Gerard Sheehy et al., (Dublin: Veritas Publications, 1995) 813; Kenneth K. Schwanger, "Contentious-Administrative Recourse before the Supreme Tribunal of Apostolic Signatura," *The Jurist* 58/1 (1998) 195; Jorge Miras, "The Manner of Procedure in Administrative Recourse and in the Removal or Transfer of Parish Priests," in *Exegetical Commentary on the Code of Canon Law* vol. IV/2, 2055.

⁵³Jorge Miras, "The Procedure for Removal or Transfer of Parish Priests," in *Code of Canon law Annotated: Latin-English edition of the Code of Canon law and English language Translation of the 5th Spanish-language edition of the Commentary Prepared under the Responsibility of the Instituto Martín de Azpilcueta*, eds. E. Caparros, M. Thériault, and J. Thorn (Montréal: Wilson & Lafleur Limitée, 1993) 1079.

sacred Congregation.⁵⁴ As per CCEO c. 977 (CIC c. 195), “if a person is removed not by the law itself, but by a decree of competent authority from an office that provides the person’s support, the same authority is to take care that support is provided for a suitable time, unless other provision is made.” Other provisions for support can be made through civil unemployment compensation if available, some secular employment or some other church office etc. In such cases, the Church authority is to determine the length of the “suitable time” until when the person shall receive monetary support.⁵⁵ CCEO c. 1395 and CIC c. 1746 state that, when a parish priest has been removed, the bishop is to provide for him through an assignment to another office, if he is suitable for this, or through a pension, as the case requires and circumstances permit.⁵⁶

The bishop should pay special attention to the one removed and sick because “one of the pastorally important concerns the bishops must have for their priest is to show utmost compassion to those who are sick, the poor and those advanced in age.”⁵⁷ As per CCEO c. 1396 §2 and CIC c. 1747 §2, if a sick parish priest is removed but cannot be transferred to another parish by a decree, he should be left in the rectory, which he can maintain for his exclusive use while sick. These two canons deal with equity, not mere charity, and provision for the sick priest is part of the bishop’s obligation in administering justice. In

⁵⁴Sacra Congregatio Concilii, “4156, Limbuergen., 27 iun. 1857,” in *Codicis Iuris Canonici Fontes VI*, ed. P. Gaspari (Rome: Typis Polyglottis Vaticanis, 1932) 448-449; Sacra Congregatio Concilii, “4158, Limbuergen., 19 dec. 1857,” in *Codicis Iuris Canonici Fontes VI*, 450-451; Sacra Congregatio Concilii, “4201, Bergomen., 8 iul., 12 aug. 1865,” in *Codicis Iuris Canonici Fontes VI*, 515.

⁵⁵James H. Provost, “Ecclesiastical Offices,” in *New Commentary on the Code of Canon Law*, 227.

⁵⁶This is an age long practice. In the year 1604, Sacred Congregation for Bishops and Regulars issued a decree addressed to the bishop of Novara, near Milan, Italy, regarding the removal of a parish priest named Giovanni through which the Sacred Congregation allowed the bishop to give him one more chance to improve his life taking good of the community into consideration and, if not improving, the bishop was to remove him and ask him to live in another part of the diocese by providing sustenance of his life. Cf. *Sacra Congregatio Episcoporum et Regularium*, “1629. Novarien., 12 ian 1604,” in *Codicis Iuris Canonici Fontes IV*, ed. P. Gaspari (Rome: Typis Polyglottis Vaticanis, 1926) 710.

⁵⁷Augustine Mendonça, “The Bishop as a Father, Brother and Friend of his Priests,” *Canonical Studies* (1999) 24; See also *Philipine Canonical Forum* 4 (2002) 89.

a recent reply on the question of removing parish priests with total infirmity of mind or body, the Pontifical Council for the Legislative Texts insists that the bishops have the duty to grant such parish priests even exclusive use of the rectory after removal, if he cannot transfer the parish house without discomfort, and as long as the situation prolongs.⁵⁸

7. Right of Defense Observed and/or Denied: an Analysis

The right of defense in the administrative removal of a parish priest is a delicate issue in which ecclesiastical authority must consider the rights of both the parish priest and the Christian faithful. Under the present norms for administrative removal of a parish priest, it is possible for an aggrieved party, invoking the right of defense, to seek recourse from an administrative decree even up to the supreme tribunal of the *Signatura Apostolica*. At that final level, the recourse may be sought through judicial procedure whenever the impugned act violates some law either in the decision made (*in decernendo*) or in the procedure used (*in procedendo*).⁵⁹

The right of defense in a trial, as per the *Signatura*, includes the opportunity to introduce proofs, to know the proofs presented by the adverse party, to present arguments, allegations and defenses and to respond to the arguments, allegations and defenses of the adverse party.⁶⁰ By analogy, these same rights apply also to the administrative procedure for removing parish priests. In the present procedure, the right of defense is found in: repeated invitations to the parish priest to inspect the acts (CCEO c. 1393 §1; CIC c. 1744 §1); provisions to respond in writing with reasons why he should not resign and to adduce proofs during the second invitation (CCEO c. 1394, 1°; CIC c. 1745, 1°); two discussions with the parochial assessors (CCEO cc. 1391 §1, 1394, 2°; CIC cc. 1742 §1, 1745, 2°); right to have a written decree that sets forth the causes and arguments (CCEO c. 1394, 3°; CIC c. 1745,

⁵⁸Prot. N. 13903/2012, September 25, 2014, Archive, *Pontificio Consiglio per i Testi Legislativi*.

⁵⁹*Lex Propria Supremi Tribunalis Signaturae Apostolicae* Art. 34 §1, *Antiqua Ordinatione*, AAS 100 (2008) 521.

⁶⁰"In concreto, ius defensionis seu contradictorium iudiciale consistit praecipuae: a) in facultate inducendi probationes in iudicio; b) in facultate cognoscendi probationes a parte adverse adductas; c) in facultate exhibendum proprias deductiones, allegationes et defensiones; d) in facultate respondendi, slate semel, deductionibus, allegationibus et defensionibus partis adversae." *Coram Sabbattani*, January 17, 1987, *Periodica de Re Morali Canonica Liturgia* 77 (1988) 341.

3°); and right to seek hierarchical recourse against the decree (CCEO c. 1396 §3; CIC c. 1747 §3) upto the *Signatura Apostolica*.

However, in effect, administrative procedures do not protect the right of defense as well as judicial ones because “the ordinary is the investigator of the offence, the prosecutor of the offence, and the judge of the offence.”⁶¹ The procedure for the removal of parish priests remaining administrative, it is the bishop who accuses the parish priest of inefficiency or harmfulness in the ministry of his parish and it is he who decides to remove him. This process is contrary to the principle of Gratian, the father of canon law, who in the 12th century warned that the petitioner and the judge in a case must not be one and the same.⁶² Yet this is the case in the administrative removal of parish priests, which therefore poses significant risk to the accused priest’s right of defense.

Two mandatory discussions with the two assessors selected from the group of priests elected by the Presbyteral council protect the right of defense to a certain extent. However, though there was a proposal from among the members of the commission for the revision of CIC 1917 to grant these two pastors the power of deliberative vote in the decision to remove parish priests, it was rejected by the group of consultors.⁶³ Consequently, under the present law, the role of the two pastors is purely consultative (CCEO cc. 1391 §1, 1394, 2°; CIC cc. 1742 §1; 1745, 2°) and the right of defense remains at the discretion of the bishop.

Moreover, recourses have arisen before the *Signatura Apostolica* alleging procedural irregularities in connection with the designation of the assessors by the bishop. For example, the recourse under Prot. no. 29531/98 CA alleged that bishop selected an assessor not legitimately elected by the presbyteral council. Giving its decision in this matter, the *Signatura* quoted two of its own decisions – namely *coram* Fagiolo, February 17, 1993, Prot No. 18190/86 CA, and *coram* Stickler,

⁶¹William Richardson, “An Appalling Vista? The Future of Judicial Penal Trials in the Latin Code,” *Studia Canonica* 46 (2012) 348.

⁶²Causa 4, Questio 4, c. 2: “Accusatores uero et iudices non iidem sint, sed per se accusatores, per se iudices, per se testes, per se accusati, unusquisque in suo ordine.” Gratianus, *Decreti, Secunda Pars*, in *Corpus Iuris Canonici Editio Lipsiensis Secunda Ad Librorum Manu Scriptorum et Editionis Romanae Fidem Recognouit et Adnotatione Critica Instruxit Aemilius Friedberg Pars Prior Decretum Magistri Gratiani*, ed. Aemili Ludouici Richter (Lipsiae: Ex Officina Bernhardi Tauchnitz, 1879) 541.

⁶³*Communicationes* 11 (1979) 289-290, c. 438.

December 16, 1989, Prot. No. 18467/86 CA - that had been adjudged on the same ground.⁶⁴ These recourses further demonstrate that the parish priest's right of defense can be negated at this stage of the administrative removal.

As a prerequisite for lodging hierarchical recourse, the codes of canon law demand that an aggrieved party first petition the decree's author to revoke or amend it (CCEO c. 999 §1; CIC c. 1734 §1). Hence, a removed parish priest should also perform meet procedural obligation. Unfortunately, since "the ecclesiastical official who issued the administrative act being challenged is the equivalent of the "defendant" in the procedure"⁶⁵ it is therefore meaningless to present a petition before the author of the decree: in this case, the accused and the judge who decides the petition become one and the same person. It is against the principle of Gratian who clearly distinguished the roles of judge, witness, petitioner and defendant prohibiting one from performing other's role and decreed that 'judges must employ equity, defenders extenuation to minimize the case.'⁶⁶ Therefore, it is difficult to find a rationale behind resolving the petition with a decision by the defendant, except for further delay.

The immediate and actual possibility of defending one's right against an infringed decree is making hierarchical recourse. It is true that "the right to hierarchical recourse entails an opportunity to exercise the right of defense by opposing an individual administrative decree and lodging recourse to a competent hierarchical superior."⁶⁷ However, it does not completely fulfill the intended merit of defending individual rights in the administrative field⁶⁸ through administrative tribunals,⁶⁹

⁶⁴Cf. *Supremum Tribunal Signatura Apostolicae, Coram Cacciavillan*, June 28, 2003, Prot. no. 29531/98 CA, *Studies in Church Law* 2 (2006) 275-296.

⁶⁵John P. Beal, "Hierarchical Recourse: Procedure at the Local Level," *CLSA Proceedings* 62 (2000) 97-98.

⁶⁶Causa 4, Questio 4, c. 1: "Nullus umquam presumat accusator simul esse et iudex uel testis, quoniam in omni iudicio quatuor personas semper esse necesse est, id est iudices electos, et idoneos accusatores, defensores congruos atque legitimos testes. Iudices autem debent uti equitate, testes ueritate, accusatores intentione ad amplificandam causam, defensores extenuatione ad minuendam causam." *Decretum Magistri Gratiani, Decreti, Secunda Pars*, 541. English trans. William Richardson, "An Appalling Vista? The Future of Judicial Penal Trials in the Latin Code," *Studia Canonica* 46 (2012) 343.

⁶⁷Jiri Kasny, *The Right of Defense in the Administrative Procedures*, 174.

⁶⁸"...la tutela dei diritti dell'uomo non può essere lasciata alla discrezionalità nell'ambito amministrativo." *Communicationes* 14 (1982) 87.

⁶⁹The 7th guideline given to the PCCICR. Cf. *Communicationes* 1 (1969) 83.

since the protection of it is still left to the administrative discretion and "the appearance of impartiality is weak, even when the superior is most fair and is highly competent in dealing with recourse."⁷⁰

In addition, the decision resolving recourse is another decree that also is disputable. Administrative justice for a removed parish priest would be attained better if, as it was proposed by the PCCICR, administrative tribunals were given competence to accept recourse against decrees removing parish priests.⁷¹

A dismissed member in perpetual vows can either make hierarchical recourse against the decree of dismissal or make a request that the case be handled judicially as per *CCEO* c. 501 §2. This provision is helpful to protect the right of defense of those dismissed from religious institutes (*CCEO* c. 553). However, a parish priest administratively removed from his office is not given the same opportunity for a judicial procedure in the present Codes of Canon Law. Now the only provision for him is hierarchical recourse followed by a judicial procedure at the *Signatura Apostolica* at the end of the case. Thus, the aggrieved parish priest must approach different authorities to obtain a judicial sentence against an unlawful decree.

One of the guiding principles approved at the first plenary meeting of PCCICOR with regard to canons 'De Processibus' advocated for administrative tribunals of different grades and kind to ensure defense of rights by providing legal protections impartially to superiors and subjects alike.⁷² In addition, there were canons on administrative

⁷⁰James H. Provost, "The Nature of Right in the Church," *CLSA Proceedings* 53 (1991) 15.

⁷¹"Contro il decreto di rimozione, il parroco può seguire o il ricorso gerarchico o quello al tribunale amministrativo." *Communicationes* 6 (1974) 43. PCCICR had prepared canons on the administrative tribunal and they were about to publish in the form of Motu Proprio named *Administrativae Potestatis* by Pope Paul VI. But they were left in the archive of the Commission. Cf. PCCICR XIII De Procedura Administrativa: Preparazione Motu Proprio Invio alla Segreteria di Stato dei Progetto di Motu Proprio sulla Procedura Administrativa (3281/73), Archive, *Pontificio Consiglio per i Testi Legislativi*, Città del Vaticano. For the entire canons on administrative tribunal prepared by the Commission, see Kurt Martens, "The Law That Never Was: The Motu Proprio *Administrativae Potestatis* on Administrative Procedures," *The Jurist* 68 (2008) 178-222.

⁷²"Il faut affirmer que, dans le droit canon, le principe de la tutelle juridique s'applique, de la même façon, aussi bien aux supérieurs qu'aux

tribunals of different grades in the schema approved by *Coetus Specialis* of PCCICOR held in February 1980⁷³ and in the published schema of 1982.⁷⁴ Despite these facts, the CCEO also does not contain a provision for an administrative tribunal because the commission took the position that 'all Catholics might have the same procedural norms.'⁷⁵ Therefore, the Eastern Code of Canon Law also does not contribute much to uphold right of defense in removing parish priests administratively.

Article 5 of the new Motu Proprio *Come Una Madre Amorevole* stipulates that 'the decision of the Congregation to remove a bishop must be submitted for the specific approval of the Roman Pontiff, who before making a definitive decision will take counsel with a special College of Jurists designated for this purpose.'⁷⁶ This provision of 'taking counsel with special College of Jurists' before issuing a decree is not granted to a parish priest who is to be removed, although the bishop is obliged to consult two presbyters called assessors who are not necessarily jurists (CCEO cc. 1391 §1, 1394, 2°; CIC cc. 1742 §1, 1745, 2°). The right of defense assured to a bishop at stage in the procedure

sujets, de sorte que disparaisse absolument tout soupçon d'arbitraire dans l'administration ecclésiastique.

On atteindra cette fin seulement par le moyen de recours sagement établis par le droit, de manière à ce que si quelqu'un en vient à estimer son propre droit lésé à l'instance inférieure, celui-ci puisse être efficacement rétabli à l'instance supérieure. D'où la nécessité d'organiser des tribunaux administratifs de degrés et d'espèces divers, afin que la défense des droits jouisse d'une procédure canonique propre et dûment suivie et observée par les autorités de divers degré." *Nuntia* 3 (1976) 16-17.

⁷³PCCICOR Prot. 324/2 Archive, *Pontificio Consiglio per i Testi Legislativi*.

⁷⁴*Nuntia* 14 (1982) 102-106.

⁷⁵"Si desidera che tutti i cattolici abbiano le stesse norme processuali." *Nuntia* 3 (1976) 9. An exception in CCEO is the reference to a special group of bishops with a general moderator and two other bishops elected by the synod of bishops of the patriarchal church to which contentious cases of eparchies and bishops (c. 1062 §§2 and 3) as well as recourse against the administrative decree of patriarch (a decree that regards the eparchy of patriarch or a decree by which the patriarch decided a recourse) can be made (c. 1006).

⁷⁶Art. 5: "La decisione della Congregazione di cui agli artt. 3-4 deve essere sottomessa all'approvazione specifica del Romano Pontefice, il Quale, prima di assumere una decisione definitiva, si farà assistere da un apposito Collegio di giuristi, all'uopo designati." Pope Francis, Motu Proprio *Come Una Madre Amorevole*, June 4, 2016, Città del Vaticano, https://w2.vatican.va/content/francesco/it/motu_proprio.index.html, accessed on 23/07/2016.

is simultaneously denied to the parish priest whose removal he decreed.

8. Suggestions for Revision

(i) The present provision for removing parish priests administratively is to be reconsidered immediately, modeled after the new Motu Proprio *Come Una Madre Amorevole*, which introduced norms for the removal of bishops,⁷⁷ and the recent amendment in the procedures for matrimonial cases in both the Codes of Canon Law, through which Pope Francis avoided unnecessary delay in the achievement of justice.⁷⁸

(ii) To avoid any suspicion of arbitrariness in ecclesiastical administration⁷⁹ and to attain the principle enunciated in the preparatory discussion of *CIC* 1983 that ‘the protection of human rights shall not be left to the discretion of administrative authorities,’⁸⁰ the canonical provision in the ‘administrative procedure where the bishop can become investigator and judge’⁸¹ must be reconsidered according to the judicial model in which one who made investigation in a particular case cannot be a judge in the same case (*CCEO* c. 1468 §3; *CIC* c. 1717 §3).

(iii) Instead of bishops becoming judge in the administrative removal of parish priests, a group of legal experts distinct from the bishop may better provide in the ecclesiastical law to decide upon this matter.

⁷⁷Pope Francis, Motu Proprio *Come Una Madre Amorevole*, June 4, 2016, Città del Vaticano, https://w2.vatican.va/content/francesco/it/motu_proprio.index.html, accessed on 23/07/2016.

⁷⁸Motu Proprio *Mitis et Misericors Iesus* has substituted *CCEO* cc. 1357-1377 and Motu Proprio *Mitis Iudex Dominus* substituted *CIC* cc. 1671-1691 with new canons on procedures for declaring nullity of marriage. Cf. Pope Francis, Motu Proprio: *Mitis Iudex Dominus Iesus e Mitis et Misericors Iesus*, August 15, 2015 (Città del Vaticano: Libreria Editrice Vaticana, 2015) 5-68.

⁷⁹The 7th guiding principle given to PCCICR stated: “Proclamari idcirco oportet in iure canonico-principium tutelae iuridicae aequo modo applicari superioribus et subditis, ita et quaelibet arbitrarieratis suspicio in administratione ecclesiastica penitus evanescat.” *Communicationes* 1 (1969) 83. See also the similar directive given in no. 5 of guidelines regarding canons ‘*De Processibus*’ by PCCICOR in *Nuntia* 3 (1976) 23-24.

⁸⁰*Communicationes* 14 (1982) 87.

⁸¹William Richardson, “An Appalling Vista? The Future of Judicial Penal Trials in the Latin Code,” *Studia Canonica* 46 (2012) 348.

(iv) Following article 5 of the new *motu proprio Come una Madre Amorevole*, according to which the Pope is to take counsel with a special College of Jurists before approving the decision of the Congregation to remove a bishop,⁸² the decision-making stage in the removal of parish priests also is to be reconsidered in the like manner.

(v) Since the present norms regarding administrative recourse are minimal and the resolution of recourse does not fully guarantee the right of defense,⁸³ detailed and accurate norms should be introduced exclusively for administrative recourse against the decree of removal.

(vi) Disregarding the general norm that a decree may be issued in summary fashion (*CCEO* c. 1519 §2; *CIC* c. 51), and taking into account the great responsibilities of the parish priests, the law should demand that a decree removing a parish priest must give a full explanation of the reasons that prompted the removal.⁸⁴

(vii) As expressed in the guiding principles given to the commissions for the revision of canon law,⁸⁵ in the discussions of the revision commissions on procedures from the very beginning,⁸⁶ in the first complete draft of *CIC* published in 1980 (cc. 1688-1728),⁸⁷ and in the schema of canons for the Eastern Churches published in 1982,⁸⁸ administrative tribunals of different grades are to be introduced at the local level in order to handle recourse against the decree of removal

⁸²Pope Francis, *Motu Proprio Come Una Madre Amorevole*, June 4, 2016, Città del Vaticano, https://w2.vatican.va/content/it/motu_proprio/index.html, accessed on 23/07/2016.

⁸³Kevin Mathews, "The Development and Future of the Administrative Tribunal," *Studia Canonica* 18/1 (1984) 175.

⁸⁴The Commission for Revision of *CIC* 1917, taking the great responsibility of parish priests into consideration, wanted to give special procedural norms for removal of parish priests with norms other than the general norm that governs other administrative procedure. Cf. *Communicationes* 6 (1974) 42-43. However, since the present codes do not say anything particular about the manner of issuing a decree in the case of removing parish priests, the bishop can satisfy the law with a decree containing reasons in summary fashion.

⁸⁵*Communicationes* 1 (1969) 83; *Nuntia* 3 (1976) 9.

⁸⁶*Communicationes* 4 (1972) 35-38; PCCICOR Prot. 322/1, 323/1, 324/2, Archive, Pontificio Consiglio per i Testi Legislativi.

⁸⁷PCCICR, *Schema Codicis Iuris Canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque Ecclesiasticarum necnon Superiorum Institutorum Vitae Consecratae Recognitum* (Città del Vaticano: Libreria Editrice Vaticana, 1980) 372-377.

⁸⁸*Nuntia* 14 (1982) 102-106.

and so to uphold individual rights by avoiding possible arbitrariness in administrative acts.

Conclusion

The ever-held preoccupation of the Church, 'justice with equity and charity,' is reflected in both the procedure to remove a parish priest and to make recourse against the decree of removal. That standard, however, is not yet fully attained under the present procedural norms. Though the very purpose of the process for removal of a parish priest outlined in CCEO cc. 1389-1396 (CIC cc. 1740-1747) is to provide appropriate pastoral care to a particular parish community, the spirit of the law requires that the legitimate rights of individual priests are not violated while implementing this procedure.

In light of PCCICR's admonition that 'the protection of human rights cannot be left to the field of administrative discretion,'⁸⁹ its intent to 'apply law in an equal manner to everybody for avoiding suspicion of arbitrariness in the ecclesiastical administration,'⁹⁰ and its efforts 'to ensure the juridic protection of individual rights in an impartial fashion to superiors and subjects alike for removing suspicion of arbitrariness in the administrative field by introducing administrative tribunal,'⁹¹ one can rightly state that a parish priest does not enjoy the full right of defense when the bishop who removes him functions as "*investigator, prosecutor and judge*" in the administrative procedure.⁹²

⁸⁹"...la tutela dei diritti dell'uomo non può essere lasciata alla discrezionalità nell'ambito amministrativo." *Communicationes* 14 (1982) 87.

⁹⁰"Proclamari idcirco oportet in iure canonico-principium tutelae iuridicae aequo modo applicari superioribus et subditis, ita et quaelibet arbitrarieratis suspicio in administratione ecclesiastica penitus evanescat." *Communicationes* 1 (1969) 83.

⁹¹"Bisogna dichiarare che nel diritto canonico il principio della tutela giuridica si applica in modo equanime sia ai superiori che ai sudditi così che sparisca del tutto qualsiasi aspetto di arbitrarietà nell'amministrazione ecclesiastica.

Questa finalità si può conseguire soltanto mediante ricorsi stabiliti sapientemente dal diritto in modo tale che se qualcuno creda l'eso il proprio diritto nell'istanza inferiore, nella superiore lo si possa efficacemente ristabilire. Da qui la necessita di ordinare tribunali amministrativi secondo gradi e specie diverse, affinché la difesa dei diritti abbia una propria e canonica procedura che sia debitamente seguita presso le autorità di diverso grado." *Nuntia* 3 (1976) 9.

⁹²William Richardson, "An Appalling Vista? The Future of Judicial Penal Trials in the Latin Code," *Studia Canonica* 46 (2012) 348.

Additionally, the procedures on hierarchical recourse are designed primarily not to protect the rights of the faithful but to examine the legitimacy of administrative acts. Consequently, "its primary focus on the legitimacy of administrative acts makes it a rather blunt instrument for protecting the rights of the faithful in the Church administrative process."⁹³ Even though recourse against the decree of removal of parish priest (CCEO c. 1396 §3; CIC c. 1747 §3) is designed to vindicate his unjustly infringed rights, it doesn't contribute much since "administrative recourse does not fulfill the call for local administrative tribunals."⁹⁴ Hence, to the fundamental question of whether the rights of the Christian faithful listed in the present Codes are well-protected, one cannot but remember the words of the famous canonist and procedural specialist, James H. Provost, who lamented: "It seems to me that the most realistic evaluation of rights in the Church is that, at the present time, they are at most an ideal. Regrettably, at times they may even qualify as "fluff."⁹⁵

Fortunately, article 5 of the recent Motu Proprio *Come una Madre Amorevole* which requires the Roman Pontiff to consult the special College of Jurists before approving the decision removing a bishop brings a positive sign that the removal of parish priests may be changed in like manner. Likewise, the recent and revolutionary elimination of the long-established mandatory appeal in marriage nullity cases may inspire canonists to devise crucial changes and new models that will more effectively vindicate individual rights. In the immediate future, a parish priest's right of defense against a decree of removal can be protected by introducing local administrative tribunals to the ecclesiastical legal system. In this way, it will be clear from the start of the preliminary investigation to the final recourse before the *Signatura Apostolica* that *salus animarum suprema lex*.

⁹³John P. Beal, "Hierarchical Recourse: Procedure at the Local Level," *CLSA Proceedings* 62 (2000) 105.

⁹⁴Kevin Mathews, "The Development and Future of the Administrative Tribunal," *Studia Canonica* 18/1 (1984) 175.

⁹⁵James H. Provost, "Rights in Canon Law: Real, Ideal or Fluff?," *CLSA Proceedings* 61 (1999) 341.