



SUPREMUM
SIGNATURAE APOSTOLICAE
TRIBUNAL

PALAZZO DELLA CANCELLERIA
00120 CITTÀ DEL VATICANO

31. Juli 2013

Prot. n. 48042/13 CA

Sehr geehrter Herr Bart!

In der Anlage zu diesem Schreiben übersenden wir Ihnen das Dekret (vgl. Anlage A), mit dem Ihre Beschwerde vom 9. Juni 2013 gemäß Art. 76 *Legis propriae* der Apostolischen Signatur zurückgewiesen wurde.

Sollten Sie gewichtige Gründe haben, um dieses Dekret anzufechten, müssen Sie innerhalb der **Ausschlussfrist** von zehn Tagen (vgl. Art. 76, § 3 *Legis propriae Supremi Tribunalis Signaturae Apostolicae*) ab Erhalt dieses Dekrets sowohl den Rekurs als auch € 1550,00 als Kautions für die Prozesskosten mit einem auf den Namen *Supremo Tribunale della Segnatura Apostolica* ausgestellten Scheck absenden. Den Scheck können Sie durch die Apostolische Nuntiatur in Den Haag übermitteln lassen (vgl. Informationsblatt, Anlage B).

Weiters ist innerhalb der Frist von dreißig Tagen ab Erhalt dieses Schreibens ein Anwalt, der zugleich als Prozessvertreter wirkt, aus der beigefügten Liste (vgl. Anlage C) zu bestellen und das von Ihnen und Ihrem Anwalt unterschriebene Mandat diesem Gericht zukommen zu lassen.

Ihrem Rekurs kommt keine aufschiebende Wirkung zu.

Hochachtungsvoll

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+ Frans DANEELS, o. praem.
Sekretär

An Herrn
C.H.M. BART
Arendsweg 61
1944 JA Beverwijk
NETHERLANDS

(mit 3 Anlagen)



SUPREMUM
SIGNATURAE APOSTOLICAE
TRIBUNAL

PALAZZO DELLA CANCELLERIA
00120 CITTÀ DEL VATICANO

Prot. n. 48042/13 CA
HARLEMEN. – AMSTELODAMEN.
Reductionis ecclesiae in usum profanum
(D.nus C.H.M. Bart et alii – Congregatio pro Clericis)

DECRETUM

Ad instantiam organi v.d. *Kerkbestuur* paroeciae S. Eligii, Exc.mus Episcopus Harlemensis-Amstelodamensis decreto diei 19 decembris 2011 ecclesiam Matris Boni Consilii in pago v.d. *Beverwijk*, seu ecclesiam filialem praefatae paroeciae, in usum profanum non sordidum reduxit. Quo decreto die 1 ianuarii 2012 publici iuris facto, D.nus C.H.M. Bart et multi alii diebus 8 et 10 eiusdem mensis frustra eius revocationem petierunt.

Rebus sic stantibus, idem D.nus Bart cum octo aliis die 2 februarii 2012 recursum hierarchicum interposuit coram Congregatione pro Clericis, quae die 26 iulii 2012 sine fausto exitu ulteriorem conatum pacificae solutionis commendavit et dein decreto diei 15 aprilis 2013 recursum reiecit.

Die tandem 9 iunii 2013 D.nus Bart cum aliis ad H.S.T. provocavit.

Petitis ac receptis actis pro examine praeliminari,

SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL

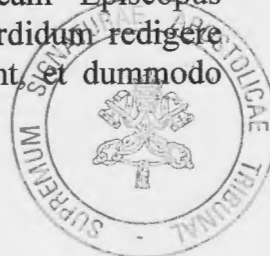
Re sedulo examini subiecta;

Praemisso quod obiectum recursus coram hac Signatura Apostolica est asserta illegitimitas decreti Congregationis pro Clericis diei 15 aprilis 2013;

Considerato quoad legitimationem activam recurrentium quod:

- Eadem carent coram H.S.T. ii qui suo tempore ad Congregationem pro Clericis non recurrerunt;
- Pariter eadem carent coetus qui in Ecclesia agniti non sunt (cf. PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Responsum ad propositum dubium*, 29 aprilis 1987, in AAS 80 [1988] 1818);

Attento quod, ad normam can. 1222, § 2, "Ubi aliae graves causae suadeant ut aliqua ecclesia ad divinum cultum amplius non adhibeatur, eam Episcopus dioecesanus, audito consilio presbyterali, in usum profanum non sordidum redigere potest, de consensu eorum qui iura in eadem sibi legitime vindicent, et dummodo animarum bonum nullum inde detrimentum capiat";



Perpenso quod in procedendo:

- Exc.mus Episcopus die 8 aprilis 2011 consilium presbyterale rite ad rem audivit;

- Iuxta pernotum decretum H.S.T. diei 21 novembris 1987, prot. n. 17447/85 CA, "Iura de quibus sermo fit in canone sunt praesertim iura patrimonialia vel eis assimilata, quae magna ex parte e fundatione vel aedificatione ecclesiae exsurgunt", quae vero iura, iuxta iurisprudentiam H.S.T. sunt probanda et in casu a recurrentibus nullo modo probantur, adeo ut eorum consensus haudquaquam requiratur;

Perpenso quod in decernendo:

- Congregatio pro Clericis recte agnovit inter graves causas pro reductione ecclesiae insufficientiam oeconomicam paroeciae S. Eligii ad ecclesiam filialem Matris Bonii Consilii conservandam;

- Ad rem invocari nequit pia voluntas anno 2010 ab Exc.mo Episcopo accepta, cum heres consentiat cum eius destinatione et inter recurrentes non inveniatur;

- Saluti animarum satis consulitur, cum aliae ecclesiae non nimis distant, dum e converso ipsae actiones recurrentium eidem graviter nocent et ipsam reductionem ecclesiae in usum profanum commendant;

Animadverso quod iterati conatus pacificae compositionis controversiae naufragaverunt;

Praetermissis aliis quoque ad rem forte animadvertendis;

Audito Rev.do Promotore Iustitiae substituto;

Vi art. 76, § 1 *Legis propriae* H.S.T.,

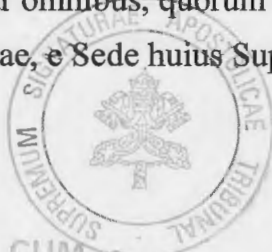
decrevit:

Recursum in limine reiciendum esse et facto reici ob defectum praesuppositi, sin minus ob evidentem defectum cuiusvis fundamenti.

Adversus hoc decretum datur recursus ad Congressum intra peremptorium terminum decem dierum ab eodem recepto (cf. art. 76, § 3 *Legis propriae* H.S.T.).

Et notificetur omnibus, quorum interest, ad omnes iuris effectus.

Datum Romae, e Sede huius Supremi Tribunalis, die 31 iulii 2013



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+ Franciscus DANEELS, o.praem.
Archiepiscopus tit. Bitensis
Secretarius

CONCORDAT CUM ORIGINALI

die 31. iulii 2013

Josephus Ferdinandus MEJIA YAÑEZ,
Moderator Cancellariae

Josephus Ferdinandus MEJIA YAÑEZ, M.G.
Moderator Cancellariae

PROCURATORES-ADVOCATI
ad patrocinandum apud hoc Supremum Tribunal admissi
 (in ordine alfabetico)
 (*Annuario Pontificio 2011, pp. 1275 – 1276*)

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Ex Lege propria Supremi Tribunalis Signaturae Apostolicae (AAS 100 [2008] p. 517):

Art. 16. § 1. Partes stare in iudicio possunt solummodo per patronum, seu procuratorem-advocatum.

§ 2. Quod si pars recurrens, de re certior facta, intra praestitutum terminum non providerit nec idoneam excusationem attulerit vel grätuitum patrocinium obtinuerit, Secretarius causam declarat peremptam.

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

The Apostolic Constitution on the Roman Curia, *Pastor bonus*, in art. 123, § 1, states that the Supreme Tribunal of the Apostolic Signatura "adjudicates recourses, lodged within the peremptory limit of thirty useful days, against individual administrative acts whether issued by Dicasteries of the Roman Curia or approved by them, whenever it is contended that the impugned act violated some law either in regard to the substance of the decision (*in discernendo*) or in regard to the procedure used (*in procedendo*)" (This time limit was extended to sixty days by the *Lex propria* of the Apostolic Signatura, effective from 1 November 2008).

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

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

1. THE OBJECT OF THE RECOURSE

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

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

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

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

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

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

concern that decision and not yet the original decision.

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

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

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

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

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

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

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

2. WHO CAN MAKE A RECOURSE?

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

Furthermore, if the recourse is made against an administrative act subsequently confirmed by a

Congregation, only a person who had first made recourse to the Congregation against that act can subsequently make recourse to the Apostolic Signatura against the decision of the Congregation.

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

3. LEGAL REPRESENTATION

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

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

4. TIME LIMITS AND THE MANNER OF MAKING RECOURSE

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

In any case, recourse can be presented to the Apostolic Signatura within the period of **sixty** useful days of receiving an official communication of the decision of the Congregation (art. 135, § 2 and *Lex propria*, art. 34, 74, § 1).

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

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

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

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

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

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

5. THE BURDEN OF PROOF.

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

6. EXPENSES

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

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

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

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

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

(Revised December 2008)