

## TABLE OF CONTENTS

LIST OF ABBREVIATIONS .....	15
FOREWORD .....	17
INTRODUCTION .....	23
The subject matter .....	23
Delimitation of the subject matter .....	24
The choice of the topic .....	24
Methodology .....	26
Acknowledgements .....	26

### Chapter I INTRODUCTION TO THE NORMS AND STANDARDS IN CHURCH ADMINISTRATION

I. Concepts and Terms .....	27
A. The administrative act .....	28
1. The definition .....	28
2. Characteristics of a singular administrative act .....	28
3. Types of administrative acts .....	30
B. The administrative procedure .....	31
1. The terms «process», «procedural», «procedure» and «proceeding» .....	31
2. The standard procedure .....	35
3. The canonical procedure .....	36
4. The administrative procedure .....	38
II. The common norms of administrative procedure .....	40
A. The norms « <i>De Procedura in Decretis Extra Iudicium Ferendis</i> » ..	40
B. The aspects of the common norms of administrative procedure .....	41
1. Substantive .....	42

2. Procedural .....	44
3. Formal .....	45
C. Classes of administrative procedures .....	46
1. Common and special procedures .....	46
2. Formalized and non-formalized procedures .....	47
 <b>Chapter II</b>	
<b>THE DEVELOPMENT OF NORMS AND STANDARDS FOR ADMINISTRATIVE PROCEDURE</b>	
I. Introduction .....	49
II. The Development of Norms and Standards for Administrative Procedure .....	50
A. The Previous Standards .....	50
1. The « <i>stilus et praxis Curiae</i> » .....	50
2. The <i>Regulae Apostolicae Cancellariae</i> (14 <sup>th</sup> -15 <sup>th</sup> centuries) .....	52
B. The Apostolic Constitutions on the Roman Curia .....	54
1. The <i>Immensa Aeterni Dei</i> (1588) .....	54
2. The <i>Sapienti Consilio</i> (1908) .....	57
3. The <i>Regimini Ecclesiae Universae</i> (1967) .....	58
4. The <i>Pastor Bonus</i> (1988) .....	60
C. The General Rules of the Roman Curia .....	62
1. The <i>Ordo Servandus in Sacris Congregationibus Tribunalibus Officiis Romanae Curiae</i> .....	62
2. The <i>Regolamento Generale della Curia Romana</i> (1968) .....	66
3. The <i>Regolamento Generale della Curia Romana</i> (1999) .....	66
D. The Introduction of the Formal Category of Administrative Act .....	67
E. The Project of the <i>Lex de Procedura Administrativa</i> .....	70
1. The <i>Pontificia Commissio Codici Iuris Canonici Recognoscendo</i> (PCCICR) .....	70
2. The « <i>Parvus Coetus de Procedura Administrativa</i> » .....	72
3. The <i>Specialis Commissio Pontificia «De Procedura Administrativa»</i> .....	73
F. The Codes of Canon Law .....	75
1. The Pio-Benedictine Code (1917) .....	75
2. The CIC83 and the CCEO .....	76
IV. Some Standard Procedures and Procedural Standards .....	77
A. The Development of Some Standard Procedures .....	78
1. The distinction between matters of minor or major importance .....	78
2. The distinction between judicial and extrajudicial matters .....	79

B. The Development of Some Procedural Standards .....	80
1. Diligence and Care .....	80
2. Collaboration and coordination .....	81
3. Efficiency and Celerity .....	81
4. Pastorality .....	82
5. Procedural Fairness .....	83
 <b>Chapter III</b>	
<b>THE INITIATION PHASE</b>	
I. Introduction .....	85
II. Normative Sources of the Initiation Phase .....	86
A. The regulations for the initiation phase in the judicial process and in the administrative procedure .....	87
B. The CIC83, c. 57 .....	88
1. The promulgated text .....	88
2. The <i>iter</i> of its formulation .....	89
a. In the Schema II .....	89
b. In the Schema III .....	90
c. In the Schemata IV and V .....	91
d. In the Schema VI .....	91
e. In the non-promulgated MP <i>Administrativae Potestatis</i> .....	93
f. In the Schemata of 1980 and 1982 .....	93
C. The CCEO, c. 1518 .....	94
1. The promulgated text of the canon .....	94
2. The <i>iter</i> of its formulation .....	96
a. In the Schema of 1980 .....	96
b. In the Schema of 1986 .....	96
3. Some observations .....	96
III. The Initiation Procedure .....	97
A. Two ways to initiate .....	98
1. The <i>ex officio</i> initiative .....	98
a. Decrees and Rescripts given <i>ex officio</i> .....	99
b. The <i>ex officio</i> initiative and the principle of good adminis- tration .....	99
2. <i>Ad instantiam</i> initiative .....	100
a. Juridical effects of <i>ad instantiam</i> initiative .....	100
b. <i>Ad instantiam</i> initiative and the issuance of decrees .....	100
B. The subjective requirements .....	101
1. Notes on juridical capacity and capacity to act .....	101
2. The competent authority .....	102
a. The capacity to act of the competent authority .....	103
b. The area of competence: freedom and limitation .....	104
c. The reservation of competence .....	105

3.	The petitioner .....	106
a.	The right to petition .....	106
b.	The personality of the petitioner .....	106
c.	The protection of the right to petition .....	107
C.	The objective and formal requirements of the petition .....	108
1.	The contents of the petition .....	109
2.	The formal requirements .....	110
a.	The written form .....	110
b.	By word of mouth .....	111
3.	Possible Attachments .....	112
D.	The possibility of desistance .....	113
IV.	Relative Formal Acts .....	113
A.	Reception of the petition or its rejection .....	113
B.	Assignment of protocol number and registration of the petition .....	114
V.	The Initiation Phase and the Protection of Subjective Rights .....	115
A.	The administrative silence .....	115
B.	The responsibility of the damage .....	116

## Chapter IV

### THE SUBSTANTIATION PHASE

I.	Introduction .....	119
1.	Substantiation or Instruction .....	120
2.	The importance and purpose of substantiation .....	120
II.	Normative Sources of the Substantiation Phase .....	121
A.	Regulations for the instruction in the judicial process and in the administrative procedure .....	121
B.	The CIC83, c. 50 .....	123
1.	The promulgated text .....	124
2.	The <i>iter</i> of its formulation .....	124
a.	In the Schema I .....	124
b.	In the Schema II .....	126
c.	In the Schema III .....	126
d.	In the Schema IV .....	127
e.	In the Schema V .....	127
f.	In the Schema VI .....	128
g.	In the Schema Canonum Libri I de Normis Generalibus .....	129
h.	In the schemata of 1980 and 1982 .....	130
3.	Recapitulation .....	130
a.	The elements of the draft .....	131
b.	The grammatical form and style .....	131
c.	The omitted parts .....	131

C. The CCEO, c. 1517 §§1-2 .....	132
1. The promulgated text .....	133
2. The <i>iter</i> of its formulation .....	134
a. In the CCEO Schema of 1980 .....	134
b. In the CCEO Schema of 1986 .....	134
3. The regulatory advancement .....	134
D. Other normative sources in the CIC83 .....	135
1. The CIC83, c. 695 §2 .....	135
2. The CIC83, c. 697 .....	136
3. The CIC83, c. 1745 .....	137
III. Important Procedural Acts of Instruction .....	138
A. The gathering of necessary information and proof .....	139
1. Investigations .....	139
2. The manner of investigating .....	140
3. Some objective requisites on information and proofs .....	141
4. The «necessary» information and proof .....	143
B. The audience of those whose rights would be harmed .....	144
1. The determination of the clause « <i>Quorum iura laedi possint</i> » .....	144
2. Hearing and consultation .....	145
3. Invitations or exhortations .....	147
C. The subjective requisites .....	149
1. The competent authority .....	149
2. The Petitioner .....	152
3. The Investigator .....	153
4. Legal advocate .....	154
5. The experts .....	155
a. The norms on experts .....	155
b. The qualification and appointment of experts .....	157
c. The intervention of the experts .....	158
6. The notaries .....	159
D. The temporal requisite .....	160
IV. The Substantive Phase and the Protection of Subjective Rights ..	161
A. The right to defense .....	161
B. The Publication of the Procedural Acts .....	162

## Chapter V

### THE CONCLUSION PHASE

I. Introduction .....	163
II. Normative Sources for the Conclusion Phase .....	164
A. Regulations for decision-making in the judicial process and in the administrative procedure .....	164

B. The CIC83, c. 51 .....	165
1. The <i>iter</i> of its formulation .....	165
2. Schema I .....	166
3. Schema II, III, IV, V .....	167
4. The non-promulgated MP <i>Administrativae Potestatis</i> .....	169
5. The Schema of 1980 .....	170
6. The Schema of 1982 .....	170
C. The CCEO, c. 1519 .....	172
1. The drafts from <i>De Normis Generalibus and the Schema Codicis Iuris Canonici Orientalis</i> .....	172
2. The promulgated text of the CCEO, c. 1519 §1 .....	173
3. The promulgated text of the CCEO, c. 1519 §2 .....	174
4. Some considerations .....	174
D. Other normative sources .....	175
1. The CIC c. 1739 .....	175
2. The Apost. Const. <i>Pastor Bonus</i> .....	176
3. The <i>Regolamento Generale della Curia Romana</i> .....	177
III. The two important procedural acts of the conclusion phase .....	179
A. Interrelation of Reason-giving and Decision-making .....	180
B. The Motivation of the act .....	181
1. The intrinsic and extrinsic form .....	181
2. Some purposes of the requirement to motivate the act .....	183
3. The motivation « <i>si agatur de decisione</i> » .....	185
4. The distinction of decision and provision .....	187
5. The motivation expressed « <i>saltem summarie</i> » .....	190
6. Some criteria on when to motivate .....	191
7. Legal binding of motivation .....	193
C. The Canonical Administrative Decision-Making Procedure ....	196
1. The canonical norms on decision-making .....	198
a. The «related» norms .....	198
b. A case of lacuna legis? .....	198
2. The canonical context of decision making .....	200
a. Legality and decision-making .....	201
b. Illegality and flexibility .....	202
c. Arbitrariness in decision-making .....	203
d. Pastorality is not equivalent to arbitrary .....	203
e. Discretionality and decision-making .....	204
f. The control of discretionality .....	206
3. The determination of the will .....	207
a. The structure of administrative decision-making .....	208
b. Prudence in decision-making .....	210
c. Personal and collegial decision-making .....	211
4. Some qualities of a good decision .....	213
a. Decision-making, as service to the faithful .....	213

b. Impartiality .....	214
c. Rationality and congruence in decision .....	215
5. The participation of the lay faithful in decision-making ...	217
IV. Other Formal Requisites .....	220
A. Determination of the language to be used .....	220
B. The issuance .....	222
C. The requirement of the written form .....	222
D. The handwritten signature .....	224
1. The uniqueness of handwritten signature .....	224
2. The handwritten signature in canon law .....	226
3. Handwritten signature as a requirement for validity .....	227
E. Notarial authentication .....	228
F. The use of the <i>sigillum</i> .....	230
V. The Notification Phase .....	231
VI. The Conclusion Phase and the Protection of Rights .....	232
1. The indication of remedies .....	232
2. The juridical basis of the indication of remedies .....	233
CONCLUSION .....	235
BIBLIOGRAPHY .....	241