

Vatican

Guido Astuti*

The birth of the Vatican (*Stato della Città del Vaticano*) as it is today is linked to a formal act of recognition by Italy in the typical forms of international law. It is contained in the Lateran Pact dated 11 Feb. 1929.¹ This treaty put an end to the "Roman problem" which had arisen during the Italian *Risorgimento* (wars of unity and independence) following the annexation of the old Papal States and finally the annexation of the city of Rome itself, See of the Papacy, by the new unitary state (1870).

It is not necessary to look into the controversial problems related to the grounds for the Holy See's claim to temporal power, to *civilis principatus* as a guarantee of the Holy See's international sovereignty and total independence in the exercise

of the spiritual and religious action of supreme government of the Holy Roman Church. Neither is it necessary to consider the relationship between the new state, the former *Patrimonium Sancti Petri* (Saint Peter's heritage), the previous political and territorial sovereignty of the Holy See and the sovereign jurisdiction it exercised, in fact or law, over the Vatican Palaces and their appurtenances during the period from 1870 to 1929, owing to the self-imposed limitation of sovereignty made by the Italian state with the Law of Guarantees (13 May 1871 no. 214) which acknowledged that the Supreme Pontiff and the Holy See had some of the characteristic prerogatives of sovereignty.

I. CONSTITUTIONAL SYSTEM

This *sui generis* state exhibits peculiarities and anomalies as regards population, territory, sovereignty and government in its constitutional system.

1. Nationality

The population of the Vatican is not united by blood ties or linked by nationality. Vatican citizenship is granted on the basis of residence and function to those who live permanently in the state by reason of office, rank, appointment, or employment, or by special concession from the Holy See, as well as to their spouses, children, ascendants, brothers and sisters as long as they live in the household of a citizen and are authorized to do so; and to cardinals resident in Rome, although living outside the Vatican City (see Law on Citizenship and Residence of 7 June 1929 no. III, *infra* II/LX). It is therefore a functional citizenship, which is lost when one of the essential elements is missing. It is not exclusive in character as the citizenship of birth is potentially preserved. According to the Lateran Pact, Vatican citizens are subject, when on Italian territory, to Italian law if they were

originally Italian citizens and to the law of the state of origin if they were originally foreign citizens.

2. Territory

The territory of the Vatican is delimited in an irrevocable manner by Appendix I of the Lateran Pact (*supra* Introduction). It includes the Vatican Palaces with their appurtenances, gardens and some adjacent streets as well as St. Peter's Basilica and Square (the latter is however open to the public and subject to the powers of the Italian police authorities). This tiny territory is the object not only of territorial sovereignty but also of full ownership by the Holy See. There are no territorial subdivisions.

3. State Organs

The Supreme Pontiff is the supreme organ of the Vatican, assuming civil and political sovereignty as an accessory power of supreme government of the Church. He has autocratic and unlimited powers in the exercise of the legislative, executive

*Judge at the Constitutional Court, formerly Professor, Faculty of Law, University of Rome (Italy).

¹ Recueil Martens, third series, vol. 21, 18; 130 B.F.S.P. 801; Acta Apostolicae Sedis 7 June 1929 no. 6.

and judicial functions and fully represents the Vatican in international relations.

These absolute powers are delegated in part to special organs.

a. The governor (*governatore*) appointed and recalled by the Pontiff is directly responsible to him. The normal exercise of government and administrative power is delegated *ex lege* to him, except for special acts reserved to the Pontiff.

b. The general counsellor (*consigliere generale*) is also appointed and recalled by the Pontiff and is not under the obligation to assume Vatican citizenship and residence. He is a consultant organ and must give advice when it is required by law or requested by the Pontiff (see Fundamental Law on the Vatican City of 7 June 1929 no. I, *infra* II/IX).

All administrative organs depend on the governor of the state: he is assisted by a central council, formed by the directors of the offices that administer all the departments of the governorship (office

of the secretary, monuments, museums and galleries, technical services) and by a president, who has special technical-administrative duties (see Law on the Administrative System of 7 June 1929 no. IV, *infra* II/IX).

4. The Judiciary

Judicial power belongs to the Supreme Pontiff. He delegates it to jurisdictional organs, which he appoints and recalls and which exercise it in his name. For less important disputes in civil matters and for petty offences, the judicial function is exercised by a single judge (respectively, the President of the court of first instance or a judge appointed by him, and an administrative official appointed by the governor). In all other cases, the court of first instance is composed of a president, two regular judges and a substitute judge. The court of appeal is the Sacred Roman Rota (*Sacra Romana Rota*). Finally, an extraordinary recourse to the Supreme Court of the Apostolic See is admitted.²

II./IX. SOURCES AND CONTENTS OF LAW

There is no written constitution in the modern meaning of the term; the sovereignty of the Holy See is that of an absolute elective monarchy and its nature is autocratic, proprietary and outside time. Subjects of the Vatican have no political rights at all and no participation in the exercise of government powers. There are no constitutional guarantees of civil rights. The Holy See exercises a sovereignty which appears more as dominion over territory than as governmental authority over the population in view of the non-political aims of the Vatican. It is a typical theocratic-hierarchical state, instituted in order to assure complete autonomy of the temporal and political affairs to the Pope and the Roman Curia and not intended to satisfy the collective interests of a community.

The legal system of the Vatican is based on six fundamental laws published by the Holy See on 7 June 1929 at the same time as the exchange of ratifications of the Lateran Pacts. Law no. I is on the Vatican City, Law no. II is on the Sources of

Law, Law no. III is on Citizenship and Residence, Law no. IV is on the Administrative System, Law no. V is on the Economy, Commerce and the Professions, Law no. VI is on Public Security (*Acta Apostolicae Sedis* 7 June 1929 no. 6).

Law no. II classifies the Vatican's sources of law as principal and supplementary.

The principal sources are (1) the *Codex Juris Canonici* and apostolic constitutions; (2) Laws issued for the Vatican by the Pontiff or authorities empowered by him (art. 1).

Supplementary sources, in matters on which the principal sources do not make provision, are the Italian civil, commercial, procedural and penal laws in force, together with the general regulations of the province and the municipality of Rome. Reserved are, of course, the amendments specified by Vatican law and the precepts of divine law and the general principles of Canon law as well as the provisions of the Pact and the Concordat (art. 3). Any possible gaps may be filled by the judge, keeping in mind the precepts

² Fundamental Law on the Vatican City of 7 June 1929 no. I art. 9-18 and Law on the Sources of Law of 7 June 1929 no. II art. 9-18, *infra* II/IX.



x
of divine and natural law and the general principles of the Canonical order, using the criterion he would apply if he were a legislator (art. 22).
Texts of legal sources: *Patti Lateranensi - Convenzioni e accordi successive tra il Vaticano e l'Italia*

(Rome 1946); *Acta Apostolicae Sedis - Supplemento per le legge e disposizione per lo Stato della Città del Vaticano no. 1 ss.* In this special supplement all laws and regulations of the Vatican are published with their date of issue and a progressive number.

X. SELECTIVE BIBLIOGRAPHY

Arangio Ruiz, La Città del Vaticano: Riv.dir.pub. 1929, 600 ss.; *Jemolo*, Carattere dello Stato della Città del Vaticano: Riv.dir.int. 1929, 2 ss.; *Rousseau*, Etat de la Cité du Vatican: Revue gén.dr.int. 1930, 145 ss.; *Raeber*, Der neue Kirchenstaat. Eine Studie über Entstehung und Natur der Vatikanstadt (Einsiedeln 1930); *Oeschey*, Lo Stato della Città del Vaticano: Z. f. Völk. 1930, 640 ss.; *Donati*, La Città del Vaticano nella teoria generale dello Stato (Padova 1930); *Ruffini*, Lo Stato della Città del Vaticano: Atti della Reale Accademia delle Scienze di Torino 1931, 123 ss., Scritti Giuridici minori I (1936) 295 ss.; *Bracci*, Italia, Santa Sede e Città del Vaticano (Padova 1931); *Cammeo*,

Ordinamento giuridico dello Stato della Città del Vaticano (Florence 1932); *D'Amelio*, L'ordinamento giuridico dello Stato della Città del Vaticano (Florence 1932); *Miele*, Santa Sede e Città del Vaticano (Pisa 1933); *D'Avack*, Chiesa, Santa Sede e Città del Vaticano nel ius publicum ecclesiasticum (Florence 1937).

Ciprotti, Appunti di diritto privato vaticano (Rome 1938); *Fragonard*, La condition des personnes dans la Cité du Vatican (Paris 1930); *Pasquazi*, Constitutio Status Civitatis Vaticanae: Apollinaris 1930, 97 ss.

(Completed in December 1972)

I. CONSTITUTIONAL SYSTEM

The State of Vatican is a federation, that is to say, a single Vaticanian nationality. As shown in the introduction to the Reform of the Law on Naturalization of 21 July 1937, the citizens have the same civil rights as citizens with legal limitations, but they lack political rights; their activity is governed by the Law of August 31 July 1937 and by the Law of the August 11 June in Vatican of 20 July 1937.

The Law on Naturalization of 21 July 1937 provides in which original nationality is involved. In the case of the citizen by birth, the naturalization is granted and he becomes an original citizen of the State of Vatican. In the case of the citizen by naturalization, the original nationality is not lost, but he becomes a naturalized citizen of the State of Vatican.

in the old General Citizenship of Venezia before political transformations began in 1848, even when they now form part of another state, unless the territorial change have been agreed upon in treaties validly entered into by the Republic (art. 2 par. 2). The principle of jus sanguinis is applied in two cases: in the first place, those born in a foreign territory are automatically Vaticanian by birth, when both parents are Vaticanian by birth. If only one parent meets the requirement, original nationality is obtained when the naturalized party becomes resident in the territory of the Republic or declares his willingness to accept Vaticanian nationality (art. 11 no. 2). In the second place, when either or both parents are naturalized Vaticanian (however acquired) and the naturalized party is born abroad, he must take up residence in the territory of the Republic before his eighteenth birthday and declare his willingness to accept Vaticanian nationality before his twentieth birthday in order to acquire original Vaticanian nationality (art. 11 no. 4).