

CONSIDERATIONS ON THE POSITION OF VATICAN IN THE SYSTEM OF PUBLIC INTERNATIONAL LAW

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Abstract

Offering a territorial identity to the Holy See, the state of Vatican is acknowledged as national territory under international law, although the Holy See is the legal body that manages the international relations, negotiates the international agreements, respectively sends and receives diplomatic representatives.

Key words: *Vatican, public international law, international relations.*

Introduction

Vatican is one of the oldest political and religious existent institutions. It is one of the diplomatic centres of the world, and, in terms of territory, the smallest among the suzerain states. Vatican occupies, as breadth, a territory of only 44 Ha, and has only around 600 permanent inhabitants. Despite all these, it directs and leads million Catholics, spread worldwide.

1. Brief history of Vatican

The name of the place is antic predating Christianity. It is supposed that this part of Rome originally uninhabited (ager vaticanus) was always considered a sacred place or at least unavailable for living, even before the arrival of Christianity¹.

The origin of the word "Vatican" is unknown. Some state that it comes from the name of the Etruscan town, Vatican – disappeared long time ago – and, according to others, (as its Latin etymology certifies) from "Vaticinia" namely the prophecy or prediction of destiny, which used to take made on Vatican hill by Etruscan prophets, and later by roman augurs.

Another theory considers that the name comes from Latin Mons Vaticanus, Vatican Choline. It is a part of Mons Vaticanus and of the former Vatican fields where Saint Petru Basilica was built. Here is situated as well the residence of popes named Apostolic Palace with the Sistine Chapel and the museums of Vatican, as well as with many other buildings. The area was never entirely incorporated in the urban crowd of Rome until the end of past century being separate from the city by Tiber River.

For Christians, Vatican acquired a high signification due to the fact that, in the year 67 our era, Saint Petru was crucified there.

King Constantin, decreeing the "religious pace", built on Vatican hill a basilica, in the honour of Saint Petru. Before him, Constantin accommodated Melhiade pope on Laterano hill, where the popes began to live. In 326 the first church, basilica of Constantin, was built on the tomb of Saint Petru, who was buried in an usual cemetery from that place, and starting then the area began to populate².

Leon III surrounded the entire Rome over Tiber with a wall, using the help received from emperor Lotar and the donations gathered from the entire Christian world. The works began in 852. Thus, a strong fortress was built, 40-feet high, the first contour of the future city of Vatican. Later on, Pope Nicolae V built a great part of Vatican palace and founded the Library of Vatican. Therefore, Sixt III built the well-known Sistine Chapel. In April 1506, Iuliu II founded the current basilica of Saint Petru. During the time of Sixt V, the construction of palace and of basilica was completed, and later on, the popes only attached thereof museums and libraries. After the agreement from Lateran it was built the railway, it was founded the post office, a radio station, being established as well telegraphic connections with the outside world.

As for Papal States, they began to exist after the reconciliation of Constantin with the church and pursuant to the agreement between the pope and Carol the Great. The first papal state was founded in 781 in the region which includes Rome, Romagna and the region of the 5 cities (Rimini, Pesaso, Fana, Sinigaglia and Ancon)³. But popes were ruling there only by name and until XV century they did not effectively rule they states. When they reached the highest prosperity - at the beginning of XVI century – "the papal states included the dukedoms Padua, Piacenza, Modena, Romagna, Urbino, Spoleto and Castro, Marca Ancona and Bologna provinces, Perugia and Orvietano. Until the year 1860 they had a surface of 15.774 square miles, with a population of three million inhabitants. In the year 1860, when the last Papal States – Romagna, Maca Anota and Urbino – were attached to the new kingdom of Italy, the pope ruled only Rome and Latium province."

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¹ Grigore Geamănu – *Drept internațional public*, vol. II, Didactic and Pedagogic Publishing House, 1983.

² Dumitru Mazilu - *Drept internațional public*, vol. I + II, Lumina Lex Publishing House, Bucharest, 2002.

³ Adrian Năstase, Dumitru Popescu, Florian Coman - *Drept internațional public*, "Șansa" S.R.L. Publishing House and Press, Bucharest, 1994.

The popes, in their secular role, began to arrive to rule the neighbouring regions and by Papal States, they ruled a great part of Italic peninsula for more than one thousand years until the middle of XIX century, when most of the territory of Papal States was occupied by the newly created kingdom of Italy.

In 1871, the Italian government adopted "the law of borders". The Italian state guaranteed that "the personality of Supreme Pontiff is saint and inviolable". By this law, the pope obtained as well the right to maintain troupes for the protection of his patrimony: Italian government is compelled to pay the pope the amount of 3.225.000 liras annually, as permanent and inalienable income, and the pope continues to use his palaces. These palaces, including Vatican and Laterano Palace, became "inappellable properties" and were exempted of taxes⁴.

The representatives of foreign governments, accredited near the Holy See, enjoyed all prerogatives and the diplomatic immunity stipulated in the international law. The bishops were released from the obligation to make an oath before the king.

There were however divergences between Vatican and Italian government, and the main reason of these disputes was the liberal, ancient character – of this govern that was persistently opposing to conclude a concordat with Vatican. Despite all these, in the year 1919, pope Benedict XV, understanding that the conclusion of a concordat was out of question, declared that he was disposed to reach an agreement with Italian govern, even without signing a concordant. After 1922, when fascist regime was installed in Italy, the successor of Benedict, Pope Pius XI, who – pursuant to the declarations of doctor Binchey – he had no sympathy for democratic regime and for parliament institutions, began the treaties for the conclusion of concordat, which would have determined that in Italy, Catholicism became a state religion, and the Catholic Church would have enjoyed an entire range of privileges, among which the right of control over public education.

In 1870, the possession of pope remained in an uncertain situation when Rome itself was attached by Piedmont after a nominal resistance of papal forces. The popes were left between 1870 and 1929 in a situation similar to that of the last Chinese emperor, not disturbed in their palace, but without an official statute acknowledge by Italian state.

Other states maintained the international acknowledgement of the Holy See as a suzerain entity and in practice Italy did not try to interfere. During this period, it was fashionable to speak about pope as "prisoner". The situation was solved on February 11th 1929 under the prime-minister Mussolini by the three treaties from Lateran, which set forth the independent status of Vatican and offered Catholicism a special status in Italy. The Cathedra (seat) of Rome episcopo, the pope, is the Basilica from Lateran, the cathedral of Rome. Lateran is one of the seven cholines of Rome, Caelian⁵.

The area was thus considered an agricultural land outside the city and it was not included in the area surrounded by the walls of the city. In the year 1929 where were drawn up the documents of the Treaty of Lateran, the fact that a great part of the proposed territory was already surrounded by wall, determined the current form of the state. For some parts of the frontier without walls, there was the line of some buildings which completed the frontier part, and for some parts it was built a modern wall.

After long treaties, it was signed the agreement of Lateran, by which the Vatican territory was acknowledged as independent and suzerain state. Italy acknowledged however the suzerainty of Holy See and undertook to pay to pope 750 million liras in cash and Italian state annuities amounting to one billion Italian liras. Thus, in February 1929, it was founded the State of Vatican in its current form⁶.

The territory includes the Saint Petru Square which couldn't be isolated by the rest of Rome and thus, a great part of the imaginary border with Italy follows the extremity of square and units with Piazza Pio XII and Via Paolo VI. Although, from a technical point of view, there were not included in the territory of Vatican pursuant to the Treaty of Lateran, some properties of the Holy See have an extraterritorial status similar to that of foreign embassies. They include the papal summer residence from Castelgandolfo on the hills in the neighbourhood, the Lutheran Basilica, the Basilicas Santa Maria Maggiore and Saint Paul beyond the walls as well as a range of buildings from Gandolfo Castle⁷.

These are patrolled by police agents of Vatican and not by Italian Police. In Saint Petru Square the order is assured by both police services.

The entire territory of the state Vatican is registered in 1984 on the list of the Global patrimony of humanity.

2. Chief of state

⁴ Dumitru Mazilu - *Drept international public*, vol. I + II, Lumina Lex Publishing House, Bucharest, 2002.

⁵ Carmen Grigore, Ionel Cloșcă - *Drept international public*. Course notes and documents, vol. I, book I, "Dacia Europa Nova" Publishing House, Lugoj, 1996.

⁶ Adrian Năstase, Dumitra Popescu, Florian Coman - *Drept international public*, "Șansa" S.R.L. Publishing House and Press, Bucharest, 1994.

⁷ Adrian Năstase, Cristian Jura, Bogdan Aurescu – *Drept international public. Sinteze pentru examen*, All Beck Publishing House, Bucharest, 1999.

The chief of the state is the pope, who, besides the executive, legislative and judicial supreme authority, he is also the head of govern. This is a non-hereditary elective monarchy with a suzerain who exercises the absolute authority, namely the legislative, executive and judicial supreme power not only over Vatican state, but also over the Holy See. The suzerain is elected for life in conclave of cardinals under 80 years old. His main subordinates in terms of state administration are the State Secretary, the president of Pontifical Committee for the State of Vatican and the governor of Vatican state.

3. Policy of Vatican

Due to historical reasons, the government of state is a unique structure. The most important persons are the State Secretary, the president of pontifical commission for the state of Vatican and the Governor of Vatican. They, as all the other officials, are appointed and recalled by pope.

The governor of Vatican, known sometimes as president, has similar obligations to those of a mayor, including local security, except for international relations. Vatican holds modern bodies of security, the famous Swiss Guard, a military force based on voluntariate formed of Swiss men. The Guard is not an authentic army, but rather a police force and a body guard for pope.

The legislative power is invested in the pontifical commission for the state of Vatican led by a president. Members are the cardinals appointed by pope for a 5-year mandate.

The juridical functions are managed by three law courts — *Signatura apostolica*, *Rota romana* and *Penitentia apostolica*, which represent as well the juridical tool of the Holy See. The legal system relies on canon or ecclesiastic law; if canonical law is not applicable, special laws of territory are applied, usually adapted to Italian disposals.

Vatican has its own post office, supermarket, bank (the cash machines are the only one in the world which use Latin), railway station, station generator of electric power and publishing house. Vatican issues its own coins and stamps and controls its own internet domain (.va). Vatican Radio, the official radio station, is one of the most influent in Europe. *L'Osservatore Romano* is the semi-official newspaper. It is published by Catholic laics, but it includes official information⁸.

The chief officer is the State Secretary, whose title is similar to that of the minister of foreign affairs of United States of America and who exercises in fact these functions and that of prime-minister in other countries.

The administration of Holy See is separate. The pope governs it by *Roman Curia*. This is formed of the State Secretary, nine congregations, three Tribunals, 11 pontifical councils and a complex of offices which manages the church business on the highest level. The State Secretary coordinates the Curia by State Secretary Cardinal.

Among the most active institutions of state are the Congregation for the doctrine of faith, which supervises the doctrine of church; the Congregation for episcopos, which coordinates the appointments of episcopos in the two Americas and in Europe; the Congregation for the evangelization of people, which supports the missionary activity; the pontifical council for justice and peace, which deals with international peace and social problems.

The Holy See has three tribunals: *Penitentia Apostolica* which deals with consciousness; *Rota Romana* is liable for appeals, including annulment of marriages and *Signatura Apostolica* the last court of appeal.

The Prefecture for economic business coordinates the finances of the departments of Holy See and supervises the administration of its patrimony, a fund of investment dating since the Treaty of Lateran.

4. International relations of Vatican

Due to the limited territory of the state, the foreign embassies attached to the Holy See are situated on the Italian territory of Rome; Italy shelters even its own embassy attached to the Holy See⁹.

The Holy See is a permanent observer in the United Nations, in July 2004 received all rights of a member state except for the voting right. According to the Archbishop Celestino Migliore, the permanent observer of Holy See, "we do not have a voting right as this is our choice." He added that Vatican considers its current status as "a fundamental step which does not close any way to the future. Holy See fulfils all conditions to be a member state and if wanted in the future, this resolution won't prevent it to demand this right."

The Holy See entertains formal diplomatic relations with 174 suzerain states, with the European Union and the Order of Malta; 69 of these maintain permanent resident diplomatic missions near the Holy See.

The others have missions of dual accreditation outside Italy since the Holy See does not approve a dual accreditation with an embassy situated in Italy. It also entertains special relations with Russia (mission with an ambassador) and the Organisation for the liberation of Palestine (office with one director). The Holy See maintains 179 permanent diplomatic missions outside (of which 106 are accredited in suzerain states). The

⁸ Adrian Năstase, Dumitra Popescu, Florian Coman - *Drept internațional public*, "Șansa" S.R.L. Publishing House and Press, Bucharest, 1994.

⁹ Adrian Năstase, Cristian Jura, Bogdan Aurescu – *Drept internațional public. Sinteze pentru examen*, All Beck Publishing House, Bucharest, 1999.

diplomatic activities of Holy See are maintained by the State Secretary (Vatican) (coordinated by a State Secretary Cardinal) by the department for the relations with states.

The Holy See is active in the international organisations. It has diplomatic relations with European Union (EU) in Bruxelles; it is a permanent observer attached to the United Nations (UN). The state of Vatican is member or observer in many other international organisations.

In 1971, the Holy See announced its decision to adhere to the Treaty of non-proliferation of nuclear weapons in order to offer its "moral support to the principles which form the base of the treaty itself."

The Holy See has a delegate attached to Arabian League in Cairo.

Conclusions

It is deemed that its state legal personality is not complete (it does not include all elements of complete statehood)¹⁰:

- It has suzerain jurisdiction, but not complete suzerainty;
- has administrative organisation in religious issues, but public services belong to Italian state;
- the citizenship of Vatican is special and functional (it is acquired under conditions determined by rank and domicile and it is lost upon the occurrence of these conditions without the original citizenship to be affected).

An event with major impact on the state of Vatican in the public international law marked the end of XX century. It is the conclusion of a new treaty between Italy and Vatican on the date of February 18th 1984, treaty which it replaces that of 1929. In the new treaty it is consecrated the abolishment of „special relations" instituted by the Treaty of Lateran, the catholic church and the Italian state being now „independent and suzerain", Catholicism ceasing to be the official religion of Italy, and teaching religions in Italian schools becomes optional.

On February 1st 2001, Pope Ioan Paul II promulgated the new fundamental Law of the State of Vatican.

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