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## THE GOVERNING SYSTEM OF THE VATICAN CITY STATE UNDER THE FUNDAMENTAL LAW OF THE VATICAN CITY STATE OF 2023

## ABSTRACT

On 7 June 2023 the Fundamental Law of Vatican City State promulgated by Pope Francis entered into force. This article aims at characterising the *constitution* of the Vatican City State with particular attention given to the amendments introduced in 2023. At the beginning of the article the reasons for the reform will be presented. For this purpose, the origins, the concept and the specificity of the Vatican City State as guarantor of the independence and sovereignty of the Holy See will be described. This will be followed by a characterisation of the governing system of the Vatican City State. This issue requires an in-depth analysis due to the fact that the Vatican City State, despite being an absolute monarchy in which the Sovereign enjoys full power, has specialised bodies equipped with legislative, executive and judicial functions, which they always exercise on behalf of the Pope.

Pope Francis justified the necessity of the reform by *the needs of our time*. In this context, he recalled that the Vatican State was created in 1929 as an instrument to ensure the Holy See's independence and guarantee its sovereignty also in the international arena. It must be pointed that the structure of the Pontifical Commission for the Vatican City State has been changed, which can also include *other members*, thus also lay persons.

The article will use the historical-legal and dogmatic-legal methods.

**KEYWORDS:** *Vatican City State, fundamental law, sovereignty of the Holy See in the international arena, Pontifical Commission for Vatican City State, Pope Francis*

## INTRODUCTION

On 13 May 2023, Pope Francis promulgated the Fundamental Law of Vatican City State (Francesco, 2023a, accessed 20 August 2024 from [https://www.vatican.va/content/francesco/it/motu\\_proprio/documents/20230513-legge-fond-scv.html](https://www.vatican.va/content/francesco/it/motu_proprio/documents/20230513-legge-fond-scv.html)), which, according to its Article 24, entered into force on 7 June 2023 and completely replaced the previous Act of 26 November 2000 (*Fundamental Law of Vatican City State*, accessed 20 August 2024 from [https://uniset.ca/microstates2/va\\_Vatican\\_Fundamental\\_law\\_2000\\_en.pdf](https://uniset.ca/microstates2/va_Vatican_Fundamental_law_2000_en.pdf)). The Pope directed that the original Act, bearing the seal of the Vatican City State, be deposited in the Archives of the Laws of the Vatican City State, while its text was published first in the newspaper *L'Osservatore Romano* and then in the Supplement to the *Acta Apostolicae Sedis*.

This article aims at characterising the current *constitution* of the Vatican City State with particular attention given to the amendments introduced in 2023. First, the reasons for the reform, as set out by the Pope in his introduction to the Fundamental Law, will be presented. For this purpose, the origins, the concept and the specificity of the Vatican City State as guarantor of the independence and sovereignty of the Holy See will be described. This will be followed by a characterisation of the governing system of the Vatican City State. This issue requires an in-depth analysis due to the fact that the Vatican City State, despite being an absolute monarchy in which the Sovereign enjoys full power, has specialised bodies equipped with legislative, executive and judicial functions, which they always exercise on behalf of the Pope.

## 1. REASONS FOR THE REFORM

In the introduction to the Fundamental Law of the Vatican City State, the legislator indicated that the need for the reform was a response to the *needs of our time*. In this context, two fundamental points with regard to the specificity of the Vatican were recalled (Dicasterium pro Communicatione, Direzione Editoriale, 2024, accessed 20 August 2024 from <https://press.vatican.va/content/salastampa/it/info/2023/05/13/articolo-vatican-news—legge-fondamentale-dello-stato-della-cit.html>): firstly, the Vatican City State as an instrument of the Holy See's independence and sovereignty in the international arena, and secondly, its autonomous legal system – both vis-à-vis other states and vis-à-vis the Roman Curia.

### 1.1 THE VATICAN CITY STATE AS A GUARANTOR OF THE INDEPENDENCE AND SOVEREIGNTY OF THE HOLY SEE IN THE INTERNATIONAL ARENA

The Vatican State ensures the absolute and visible independence of the Holy See for the fulfilment of its mission in the world and guarantees its unquestionable sovereignty also in the international arena (*Legge fondamentale*, Introduction, Article 2(1)).

The Vatican City State was created on 11 February 1929 based on the Lateran Treaty signed between the Holy See and the Italian State.

The State has all the elements essential to any state, i.e. its own territory (44 hectares), population and authority, divided – in accordance with the Fundamental Law – into the legislative, executive and judicial powers. The purpose of the existence of the Vatican City State is to ensure the independence of the Holy See *by creating the conditions of a real sovereignty that has a territorial basis* (Sitarz, 2018, col. 2030). Thus, temporal (territorial) sovereignty is concretised in the Vatican City State (Romanko, 2017, p. 69). Already in Article 2 of the Lateran Treaty it is stated that *Italy recognises the sovereignty of the Holy See in the international field as a property which, according to its tradition and the requirements of its mission in the world, belongs to its nature* (Lateran Treaty of 1929, accessed 20 August 2024 from <https://spcp.prf.cuni.cz/dokument/lateran.htm>). This is why, in order to confirm this spiritual sovereignty of the Holy See in the world and to restore its temporal sovereignty (which it lost in 1870), the Vatican State was created (Krukowski, 2013, p. 183).

### 1.2 THE AUTONOMOUS LEGAL SYSTEM OF THE VATICAN CITY STATE

The Vatican City State has a specific and autonomous legal system which, unlike that of the Roman Curia, is characterised by the recognition of canon law as the first normative interpretative criterion (*Legge fondamentale*, Introduction; Article 2(2)). This formulation corresponds to the regulation contained in the Act on the Sources of Law of 1 October 2008 (N. LXXI – *Legge sulle fonti del diritto*, 2008, pp. 65-70), according to which *the first normative source of law and interpretative criterion of Vatican legislation is canon law* (Article 1(1)).

At this point, it is important to point out the fundamental differences between the Holy See and the Vatican City State. According to Can. 361 of the 1983 Code of Canon Law [CIC] (*Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, 1983, pp. 1-317), the Holy See is conceived of as the Bishop of Rome and the Roman Curia. In turn, the Roman Curia – which is a body that provides service to the universal Church – consists of a set of dicasteries and institutions that provide assistance to the Bishop of Rome in the exercise of the highest pastoral ministry. Its structure and competences were reformed by Pope Francis through the Apostolic Constitution *Praedicate Evangelium* of 19 March 2022 (Francis, 2022, accessed 20 August 2024 from

[https://www.vatican.va/content/francesco/en/apost\\_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html](https://www.vatican.va/content/francesco/en/apost_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html)). According to this normative act, only the Dicastery for Communication *makes use of the connectivity and network infrastructures of the Vatican City State, in accordance with the particular legislation and international commitments undertaken by the Holy See* (Art. 187).

The Holy See designates the supreme authority in the Church (Jakubowski, 2002, p. 54). It is the subject of spiritual sovereignty, as an intrinsic attribute of the nature of the Church, consistent with its mission (Sitarz, 2014, pp. 219-220). It should be added that the Church as a divine-*cum*-human institution does not have a constitution in the formal sense (unlike the Vatican City State), but a material one, which is the Scriptures.

## **2. THE GOVERNING SYSTEM OF THE VATICAN CITY STATE**

The Vatican City State is an absolute monarchy (*Organi dello Stato*, accessed 20 August 2024 from <https://www.vaticanstate.va/it/stato-governo/organi-stato/organi-dello-stato.html>). The sovereign of the state is the Pope, who has full legislative, executive and judicial powers. The legislative function, except in cases that the Pope intends to reserve to himself, is exercised by the Pontifical Commission for the Vatican City State, composed of cardinals and other members appointed by the Pope for a 5-year term. The executive function is exercised by the President of the Pontifical Commission for the Vatican City State, who is the President of the Governorate, assisted by the Secretary General and the Deputy Secretary General. The judicial function is exercised on behalf of the Pope by the Tribunal, the Court of Appeal, the Court of Cassation and the Promoter of Justice.

### **2.1 THE SOVEREIGN OF THE VATICAN CITY STATE**

The Pope, who is the sovereign of the Vatican City State, has full powers of governance, which include legislative, executive and judicial powers (*Legge fondamentale*, Article 1; see also Canon 135 § 1 CIC: The power of governance

is distinguished as legislative, executive, and judicial). During *sede vacante*, occurring as a result of the death or resignation of the Bishop of Rome (Canon 332 § 2; Canon 416 in connection with Canon 19 CIC), power is exercised temporarily by the College of Cardinals (Canon 359 CIC), which ensures the continuity of the functions of the State (*Legge fondamentale*, Article 3(1)). The College can only issue acts of statutory rank in cases of necessity and urgency, valid only during the vacancy, unless they are subsequently approved by the Pope (*Legge fondamentale*, Article 3(2)).

## 2.2 TERRITORY AND POPULATION

Pope Francis has affirmed in the Fundamental Law that the Vatican City State enjoys sovereignty and exercises all related authority over the territory, in accordance with the provisions of the Lateran Treaty (*Legge fondamentale*, Article 4(1); see also Article 3 of the Lateran Treaty: *Italy recognizes the full ownership, exclusive dominion, and sovereign authority and jurisdiction of the Holy See over the Vatican as at present constituted, together with all its appurtenances and endowments, thus creating the Vatican City, for the special purposes and under the conditions hereinafter referred to [...]* and Article 4 of the Lateran Treaty: *The sovereignty and exclusive jurisdiction over the Vatican City, which Italy recognizes as appertaining to the Holy See, forbid any intervention therein on the part of the Italian Government, or that any authority other than that of the Holy See shall be there acknowledged*). Furthermore, the organs of the State exercise their powers both within the boundaries of *Città del Vaticano* and in the buildings and territory where the institutions of the State or the Holy See operate, where the guarantees and immunities provided by international agreements apply (*Legge fondamentale*, Article 4(2)).

The community of the Vatican City State is composed not only of citizens, but also of persons who perform specific tasks in the service of the State or the Holy See (*Legge fondamentale*, Article 5). According to the statistics available on the Vatican website, the population of the State (i.e. citizens and non-citizens) totals 764 (the last update of the statistics – according to the website – took place on 26 June 2023, see *Popolazione*, accessed 20 August 2024 from <https://www.vaticanstate.va/it/stato-governo/note-general/popolazione.html>).

Approximately half of the citizens do not live in the State but in other countries, especially for official reasons (e.g. diplomatic staff).

### 2.3 REPRESENTATION IN RELATIONS WITH SUBJECTS OF INTERNATIONAL LAW

The Vatican City State is endowed with legal personality and is a subject of international law. Therefore, in its relations with states and other subjects of international law (e.g. in diplomatic relations and for the purposes of concluding agreements), the State is represented by the Supreme Shepherd. In practice, this representation is exercised through the Secretariat of State (*Legge fondamentale*, Article 6(1)). In other matters, representation is exercised by the President of the Governorate (*Legge fondamentale*, Articles 6(2) and (4)). In addition, the Governorate participates in the name and on behalf of the Vatican City State in international institutions of which the Holy See is a member (*Legge fondamentale*, Article 6(3); *Partecipazioni ad Organizzazioni Internazionali*, accessed 20 August 2024 from <https://www.vaticanstate.va/it/stato-governo/rapporti-internazionali/partecipazioni-ad-organizzazioni-internazionali.html>; *Rapporti diplomatici*, accessed 20 August 2024 from <https://www.vaticanstate.va/it/stato-governo/rapporti-internazionali/rapporti-diplomatici.html>).

### 2.4 LEGISLATIVE FUNCTION

The legislative function – with the exception of those matters that the Pope reserves to himself – is exercised by the Pontifical Commission for Vatican City State (*Legge fondamentale*, Article 7; see e.g. *N. DCLVII – Decreto della Pontificia Commissione per lo Stato della Città del Vaticano con il quale viene promulgato il Regolamento Generale sulla protezione dei Dati personali*, 2024, accessed 20 August 2024 from <https://www.vaticanstate.va/phocadownload/leggi-decreti/normativa-generale/N.%20DCLVII.pdf>). The Commission is composed of cardinals and *other members* appointed by the Pope for a five-year term (*Legge fondamentale*, Article 8(1)). It should be noted that a novelty introduced in the current Vatican constitution is the addition to the Commission of members who are not cardinals but clerics who, as commentators point out, can also be lay persons (*Nowa konstytucja Państwa Watykańskiego. Zmiany m.in. w sądownictwie*, accessed 20 August 2024 from <https://www.ekai.pl/nowa-konstytucja-panstwa-watykanskiego-zmiany-m-in-w-sadownictwie/>; *Watykan: nowa*

*konstytucja Państwa Watykańskiego*, accessed 20 August 2024 from <https://www.niedziela.pl/artukul/91504/Watykan-nowa-%E2%80%9Ekonstytucja-Panstwa>).

In particular, the Pontifical Commission:

1. creates the law – it uses the cooperation of the State Counsellors, the Legal Office of the Governorate or other experts in drawing up the relevant drafts (*Legge fondamentale*, Article 10(1)). Before promulgation, laws are subject to the direct assessment by the Pope (*Legge fondamentale*, Article 10(2));
2. makes an authentic interpretation of the State law (*Legge fondamentale*, Article 10(3));
3. issues general rules on matters not reserved by law (*Legge fondamentale*, Article 10(4));
4. annually establishes, by means of statutory instruments, the budget estimates and the final balance sheet, and decides on the three-year financial plan; it submits these acts directly (and not, as envisaged in the previous Fundamental Law, through the Secretariat of State of the Holy See) to the Pope for approval (*Legge fondamentale*, Article 13(1)).

In addition, the President of the Commission may issue orders, decrees and other provisions implementing the legal or executive norms (see e.g. N. DCLIX – *Decreto del Presidente della Pontificia Commissione per lo Stato della Città del Vaticano riguardante i Servizi doganali e transito delle merci*, 2024, accessed 20 August 2024 from <https://www.vaticanstate.va/phocadownload/leggi-decreti/normativa-generale/N.%20DCLIX.pdf>), while in urgent cases it can issue decrees with the force of law, which lose their effect if they are not transformed into law by the Pontifical Commission within 90 days of their promulgation (*Legge fondamentale*, Article 11).

The laws enacted by the Pontifical Commission for the Vatican City State are published in a special supplement to the *Acta Apostolicae Sedis* [*Supplemento degli Acta Apostolicae Sedis*] (*Organi funzione legislativa ed esecutiva*, accessed 20 August 2024 from <https://www.vaticanstate.va/it/stato-governo/organi-stato/organi-funzione-legislativa-ed-esecutiva.html>).



## 2.5 EXECUTIVE FUNCTION

The executive function is exercised by the Governorate of the Vatican City State, composed of 3 bodies: President, Secretary General and Deputy Secretary General (*Legge fondamentale*, Articles 15-17; *Organi di Governo*, accessed 20 August 2024 from <https://www.vaticanstate.va/it/stato-governo/struttura-del-governatorato/governo.html>). The organisation and functions of the Governorate are regulated by the Act on Government (*N. CCLXXIV – Legge sul Governo dello Stato della Città del Vaticano*, 2024, accessed 20 August 2024 from <https://www.vaticanstate.va/phocadownload/leggi-decreti/Legge%20CCLXXIV%20Legge%20sul%20Governo%20dello%20Stato%20della%20Citta%20del%20Vaticano.pdf>) and the regulations adopted by the Pontifical Commission for the Vatican City State or its President (*Legge fondamentale*, Article 19(1)).

The Cardinal President of the Pontifical Commission for the Vatican City State assumes the title of President of the Governorate and exercises the executive function (see e.g. *N. DCLII – Decreto del Presidente del Governatorato dello Stato della Città del Vaticano recante Disposizioni speciali in materia di affidamento dei contratti pubblici relativi all'acquisizione di servizi, forniture, lavori e opere per il Giubileo 2025*, 2024, accessed 20 August 2024 from <https://www.vaticanstate.va/phocadownload/leggi-decreti/normativa-generale/DecretoGiubileo2025%20DEF.pdf>) in accordance with the territorial jurisdiction set out in Article 4 of the Fundamental Law (*Legge fondamentale*, Article 15; *Legge sul Governo*, Article 2(1)).

The President is assisted in his functions by the Secretary General, who – in the absence or impediment of the President – substitutes for the former, except for the enactment of laws and the adoption of other normative acts. In addition, the Secretary General, among other things, implements the directives and orders of the President, supervises the administration, coordinates the work of the bodies of the Governorate, and oversees personnel management (*Legge fondamentale*, Article 16; *Legge sul Governo*, Article 3).

The Deputy Secretary General cooperates with the President and the Secretary General, performs other functions assigned to him, and supervises the preparation and drafting of documents and correspondence. He substitutes for the Secretary General in the event of his absence or impediment (*Legge fondamentale*, Article 17; *Legge sul Governo*, Article 4).

## 2.6 JUDICIAL FUNCTION

In the Fundamental Law, the lawmaker refers to special provisions stating in general terms that the judicial function is exercised on behalf of the Pope by bodies created in accordance with the judicial system and by other bodies to which the law confers competence in specific matters (*Legge fondamentale*, Article 21(1)). Therefore, according to the act of 16 March 2020 on the judicial system of the Vatican City State (*N. CCCLI – Legge sull'ordinamento giudiziario dello Stato della Città del Vaticano*, 2020, accessed 20 August 2024 from <https://www.vaticanstate.va/phocadownload/leggi-decreti/normativa-generale/legge%20CCCLI%20All.%203.pdf>), taking into account the previous amendments (Francesco, 2021, accessed 20 August 2024 from [https://www.vatican.va/content/francesco/it/motu\\_proprio/documents/papa-francesco-motu-proprio-20210430\\_competenza-organigiudiziari.html](https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20210430_competenza-organigiudiziari.html); Francesco, 2023b, accessed 20 August 2024 from [https://www.vatican.va/content/francesco/it/motu\\_proprio/documents/20230412-motu-proprio-leesigenze.html](https://www.vatican.va/content/francesco/it/motu_proprio/documents/20230412-motu-proprio-leesigenze.html); Francesco, 2024, accessed 20 August 2024 from [https://www.vatican.va/content/francesco/it/motu\\_proprio/documents/20240327-motu-proprio.html](https://www.vatican.va/content/francesco/it/motu_proprio/documents/20240327-motu-proprio.html); *N. DCXXVI – Legge recante disposizioni per la dignità professionale, l'inquadramento retributivo e il trattamento di quiescenza dei magistrati ordinari del Tribunale e dell'Ufficio del Promotore di Giustizia dello Stato della Città del Vaticano*, 2023, accessed 20 August 2024 from <https://www.vaticanstate.va/phocadownload/leggi-decreti/normativa-generale/Legge%20DCXXVI%20Disposizioni%20Dignita%20Magistrati.pdf>), the judicial function in the Vatican State is carried out by the Tribunal, the Court of Appeal, the Court of Cassation, and – for investigative tasks – the Promoter of Justice. The judges are appointed by the Pope and in the exercise of their functions they are subject only to the laws in force.

The relevant powers with regard to the exercise of the judicial function are defined by the civil, criminal or administrative laws in force in the Vatican City State (*Normativa in materia penale e amministrativa*, accessed 20 August 2024 from <https://www.vaticanstate.va/it/norm-penale-amministrativa.html>), which are also repeatedly referred to in the cited Act on Sources of Law.

## 2.7 FLAG, COAT OF ARMS AND SEAL

The legislator, in Article 23 of the reformed Fundamental Law, left unchanged the regulations concerning the flag, coat of arms and seal of the Vatican City State.

## CONCLUSION

Based on the analysis of the Fundamental Law of the Vatican City State amended in 2023, the following conclusions must be drawn:

Pope Francis justified the necessity of the reform by *the needs of our time*. In this context, he recalled that the Vatican State was created in 1929 as an instrument to ensure the Holy See's independence and guarantee its sovereignty also in the international arena.

The structure of the Pontifical Commission for the Vatican City State has been changed, which – in addition to the cardinals – can also include *other members*, thus also lay persons. Consequently, the lay persons – if appointed by the Pope as members of the Commission – can participate in the law-making procedure. It should be emphasised that, according to the current Fundamental Law, as well as the Act on Sources of Law, *the first normative source of law and the interpretative criterion of Vatican legislation is canon law* (Article 1(1)). Meanwhile, according to Can. 129 § 1 CIC *Those who have received sacred orders are qualified, according to the norm of the prescripts of the law, for the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction, while lay members of the Christian faithful can cooperate in the exercise of this same power according to the norm of law* (Canon 129 § 2 CIC). However, the nature of lay participation in the Pontifical Commission for the Vatican City State should be clarified.

The Vatican City State is an entity of international law that is separate from the Holy See, although they are united by the person of the Pope. Despite the establishment in the past by Pope Francis of bodies (especially financial bodies, e.g. the Council for Economic Affairs, the Secretariat for Economic Affairs) with specific competences in relation to simultaneously both the Holy See and the Vatican City State, a move away from the creation

of such *joint* bodies can already be seen in the current law – both concerning the Roman Curia (*Praedicate Evangelium*) and the Vatican City State (Fundamental Law). This is reflected, *inter alia*, in the fact that in the amended Fundamental Law, the budget of the Vatican City State is submitted by the Pontifical Commission directly to the Pope and not – as previously – through the Secretariat of State of the Holy See.

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