Renata Świrgoń-Skok¹

Małgorzata Trybus²

Judicial Power in the Vatican City State

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Słowa kluczowe: Państwo Miasto Watykan, władza sądowa, sąd, sędzia

Abstract

The aim of this article is to present the development and structure of the judiciary in the Vatican City State, which is an absolute and elective monarchy, while the Supreme Pontiff of the Universal Church enjoys full legislative, executive and judicial power. In turn, the system of public authorities' power has a complex structure and is completely different from the construction of the political system in other countries. This in turn implies the original judicial structure in the Vatican City State.

Streszczenie

Władza sądownicza w Państwie Mieście Watykan

Celem artykułu jest przedstawienie rozwoju i struktury sądownictwa Państwa Miasta Watykańskiego, które jest monarchią absolutną i elekcyjną, oraz w którym pełnię władzy, tak ustawodawczej, wykonawczej jak i sądowej, ma Najwyższy Kapłan Kościoła Po-wszechnego. Z kolei system władzy organów publicznej ma złożoną strukturę i jest całko-wicie odmienny od budowy systemu politycznego w innych państwach. To zaś implikuje oryginalną strukturę sądownictwa Państwa Miasta Watykan.

¹ ORCID ID: 0000-0003-2635-6462, PhD, D.Sc., Department of Roman Law, Institute of Law Sciences, College of Social Sciences, University of Rzeszów. E-mail: rskok@op.pl.

² ORCID ID: 0000-0002-3053-3145, PhD, Department of Criminal Law, Institute of Law Sciences, College of Social Sciences, University of Rzeszów. E-mail: trybus.m.m@gmail.com.

I. Introductory Remarks

The Vatican City State³ was created by the Lateran Treaty of February 11, 1929, concluded between Italy and the Holy See, which recognized “the unlimited ownership and the exclusive absolute power and the sovereign jurisdiction of the Vatican” (Article 3)⁴. The Vatican City State is a special entity of public law. Its existence is intricately connected with the Holy See⁵. According to the preamble to the Basic Law of 2000⁶, the purpose of the existence of the Vatican State is “to safeguard the real and visible independence of the Roman Pontiff in fulfill-

³ The Treaty between the Holy See and Italy of February 11, 1929 (*Acta Apostolicae Sedis. Commentarium Officiale*, R. 21, No. 6); the Concordat between the Holy See and Italy of February 11, 1929 (*Acta Apostolicae Sedis. Commentarium Officiale*, R. 21, No. 6). The official names of the Vatican State are *Status Civitatis Vaticanae*, or *Stato della Città del Vaticano*.

⁴ On the genesis and political system of the Vatican City State: J. Gordziałkowski, *Historia Państwa Kościelnego*, Kraków 2007; W. Jakubowski, M. Solarczyk, *Ustrój Kościoła Rzymskokatolickiego*, Warsaw 2002, pp. 116–131; W. Jakubowski, *Ustrój Państwa Miasta Watykańskiego*, [in:] *Systemy polityczne wybranych państw*, ed. K.A. Wojtaszczyk, Warsaw 2004, pp. 199–220; M. Zubik, *Rozwiązania ustrojowe Państwa Watykańskiego*, “Państwo i Prawo” 2004, No. 4, p. 82; R. Świrgoń-Skok, *Zasady podziału władzy w Watykanie*, [in:] *Zasady podziału władzy we współczesnych państwach europejskich*, vol. II, eds. S. Grabowska, R. Grabowski, Rzeszów 2016, pp. 307–318; N. Picardi, *System prawny Państwa Watykańskiego*, tr. K. Kozak, “Prawo, Administracja, Kościół” 2005, No. 4, pp. 73–78.

⁵ P. Bogacki, *Stolica Apostolska jako podmiot prawa międzynarodowego*, Warsaw 2009; J. Czaja, *Prawnomiędzynarodowy status Watykanu*, Warsaw 1983; A. Koprowski, *Administracja i dyplomacja watykańska – struktura i ukierunkowania: wizja porządku międzynarodowego*, “Przegląd Powszechny” 2004, No. 5; pp. 103–120; A. Kosicki, *Problem podmiotowości europejskich „minipaństw” w świetle prawa międzynarodowego*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2002, No. 1, p. 105; A. Mezglewski, *Stolica Apostolska i Państwo Watykańskie jako podmioty prawa międzynarodowego*, “Studia z Prawa Wyznaniowego” 2005, vol. 8, pp. 295–303; B. Mielnik, *Stolica Apostolska i Watykan – podmiotowość w prawie międzynarodowym*, “Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji” 2007, vol. 76, pp. 103–119; K. Papciak, 75 lat państwa watykańskiego: Watykan czy Stolica Apostolska?, “Znaki Nowych Czasów” 2004, No. 10; J. Staszaków, *Podmiotowość Watykanu i Stolicy Apostolskiej w prawie międzynarodowym publicznym*, “Krakowskie Studia Międzynarodowe” 2006, No. 3, pp. 201–211.

⁶ La legge fondamentale dello Stato della Città del Vaticano – F. Longchamps de Bérier, M. Zubik, *Ustawa Zasadnicza Państwa Miasto Watykan oraz inne akty ustrojowe. Wstęp, wybór*

ing his mission in the world”. Thus, the Vatican State was created to guarantee the sovereignty and independence of the Holy See. For this reason, the political system of the Vatican City State, including the structure of the judiciary, is fundamentally different from the solutions adopted in other modern countries⁷.

Although it is a “miniature” state, as for example San Marino and Monaco, it is different from them in a form of the political system. It is an absolute and electoral monarchy in which the Supreme Pontiff of the Universal Church has full power (legislative, executive, and judicial). In turn, the system of power of public bodies has a complex structure and is completely different from the structure of the political system in other countries. Then it implies the original structure of the judiciary in the Vatican City State. It also influences the division of competences between individual judicial authorities, which is different than it is traditionally assumed. This issue will be discussed in this article.

II. Formation of State Judiciary

The State of the Vatican City has a structure of state judiciary, separate from the Holy See. The Vatican also has separate church courts since 1987. Pursuant to the *Motu Proprio Con la legge* of Pius XII, church matters were examined in the first instance by the First Instance Court in a special composition. By virtue of the *Motu Proprio Quo Civum iura* of John Paul II in 1987, a separate Church Tribunal for the Vatican City State was created, which works like a diocesan court⁸.

i tłumaczenie, Warsaw 2008, p. 5, note 2; W. Jakubecki, *O Roma Felix. Geneza, specyfika i przeobrażenia instytucji politycznych Państwa Miasta Watykańskiego*, Warsaw 2005.

⁷ H. Andrzejczak, *Teoretyczne i praktyczne aspekty pozycji Stolicy Apostolskiej w publicznym prawie międzynarodowym*, “Roczniki Teologiczno-Kanoniczne” 1967, No. 14, p. 117; J. Czaja, *Sytuacja prawnomiędzynarodowa Watykanu*, “Życie i Myśl” 1979, No. 6, p. 50; *Z papieżem przez dzieje*, ed. W. Adamczewski, Warsaw 2007, p. 30; B. Węgrzyn, *Historia Kurii Rzymskiej, od początków do reformy Pawła VI w 1967 r.*, [in:] *Państwo – prawo – jednostka. Problemy państwa, prawo oraz nauk pokrewnych*, eds. Cz.P. Kłak, K. Kaczmarczyk, A. Kiełtyki, Rzeszów 2006–2007, pp. 41–50; K. Górski, *Papieżstwo w Rzymie*, Kraków 1990, pp. 131–133; J. Kowalczyk, *Nowa konstytucja Państwa Watykańskiego*, Lublin 2001, p. 25.

⁸ P. Kowalczyk, *Wyrok w imieniu Najwyższego Kapłana – charakterystyka władzy sądowej w Państwie Mieście Watykan*, “Studia Iuridica Toruniensia” 2014, vol. XIV, pp. 103–119; R. Świrgoń-Skok, E. Ejankowska, *Rozwój sądownictwa państwowego w Państwie Miasta*

In 1929, the Basic Law and the Vatican Legal Regulations delegated jurisdiction to competent courts. They exercised their authority on behalf of the Pope. The structure of the judiciary included the First Instance Tribunal, which ruled in civil and criminal matters, as a three-person bench. The appeal instance for the First Instance Tribunal was the Tribunal of the Sacred Roman Rota. In turn, the Supreme Tribunal of the Apostolic Signature was the cassation institution.

Pursuant to the Basic Law of 1929, the First Instance Tribunal consisted of the President, two real judges and one deputy. The right to appoint and dismiss judges belonged to the Pope. The Supreme Tribunal of the Apostolic Signature exercised disciplinary power. In matters of minor importance, the office of the judge was usually performed by the President of the First Instance Tribunal or one of the judges of the Tribunal appointed by him. In more complex cases, the Tribunal adjudicated as a three-member bench.

Pursuant to the Act on Sources of Law of June 7, 1929, the executive and jurisdictional powers were conferred on a judge of peace or a first-instance judge and exercised by the President of the First Instance Tribunal. Civil cases, provided that the value of their subject did not exceed five thousand lire and cases regarding the proprietary right were subject to the jurisdiction of the President of the First Instance Tribunal⁹.

Moreover, the courts were competent to hear criminal cases relating to offences committed in the territory of Vatican City State, unless the defendant was hiding on the territory of Italy or they were indicted there. However, cases of misdemeanours were outside the jurisdiction of the First Instance Tribunal. One or more administrative officials appointed by the Governor had jurisdiction in cases of misdemeanours. There was an interesting legal situation in this regard as the cases of misdemeanours were within the competence of the administrative officer who gave a judgment. In the Act he was not called a judge and was not, as the judges of the First Instance Tribunal, appointed by the Supreme Pontiff, but by the Governor, yet despite this he issued a judgment like a judge. W. Jakubowski calls this administrative offi-

Watykańskiego w XX wieku, [in:] *Sądownictwo w Europie w XIX i XX wieku*, eds. E. Leniart, R. Świrgoń-Skok, W.P. Właźlak, Kraków 2016, pp. 131–146.

⁹ *Acta Apostolicae Sedis*, Supplemento per le Leggi e Disposizioni dello Stato della Città del Vaticano, R. 1, No. 1.

cial a justice for misdemeanours. The appeal instance against the decisions of the First Instance Tribunal was the Sacred Roman Rota. "In an extraordinary event," the case could then go to the highest court in the hierarchy – the Supreme Tribunal of the Apostolic Signature, which served as the cassation court and exercised the disciplinary authority over the other courts.

The Sacred Roman Rota and the Supreme Tribunal of the Apostolic Signature are the courts of the Catholic Church. In the early years of the Vatican City State's existence, the state judiciary was performed to some extent by the indicated church courts as the systems were partly connected. Church courts were charged with secular judicial functions¹⁰.

In 1946, during the pontificate of Pius XII, a thorough reform was conducted, which formally separated the judiciary of the Vatican City State from the judiciary of the Holy See. The powers of the Sacred Roman Rota and the Supreme Tribunal of the Apostolic Signature were taken over by the newly created Court of Appeal and the Court of Cassation, respectively.

III. The Structure of the Judicial Authorities

By virtue of the *Motu Proprio Con la legge* of May 1, 1946¹¹, issued by Pope Pius XII, the structure of state courts included: The Office of the Judge, the First Instance Tribunal, the Court of Appeal and the Court of Cassation. This structure has survived to the present day because it was maintained by the new court regulations in force since 1987.

Currently, the judicial system of the Vatican City State has the following structure: the Judge of the Vatican City State sitting individually (*Giudico Unico*), the First Instance Tribunal (*Tribunale [di prima istanza]*), the Court of Appeal (*Corte d'Appello*) and the Court of Cassation (*Corte di Cassazione*).

The Judge of the Vatican City State (*Giudico Unico*) is appointed by the Pope. He deals with civil and criminal matters. He may also act as a judge of the Tribunal. The notary and two court officials are subordinate to him. The prosecutor's office is performed by the Justice Promoter of the Tribunal. The

¹⁰ P. Kowalczyk, *op.cit.*, p. 103 et seq.

¹¹ *Acta Apostolicae Sedis, Supplemento per le Leggi e Disposizioni dello Stato della Città del Vaticano*, R. 58, No. 12.

Judge has the Vatican's citizenship and must have permanent residence in its territory. In case of any obstacles, the Judge of the Vatican City State is replaced by one of the judges of the Tribunal¹².

In turn, the First Instance Tribunal (*Tribunale [di prima istanza]*) competent in civil and criminal matters, consists of the President and judges, appointed by the Pope. One of the judges acts as an investigating judge, another of the judges acts as an executive judge. All the judges, the officials of the Tribunal and other associates take an oath. The judges take it before the President of the Court of Appeal, while others before the President of the Tribunal. Once 75 years old, the judges and officials are required to resign. There are specific cases in which this time may be extended. If the appointed judges cannot rule in a case, then there is a replacement unless the rule of law requires the preservation of the *quorum*. In such a situation, the oldest judge replaces the President.

The First Instance Tribunal also performs an appellate function against the decisions of the Judge of the State. In this situation, the composition of the Tribunal cannot include the judge adjudicating on this matter in the first instance. This Tribunal, until the appointment of the Second Church Tribunal of the Vatican by John Paul II in 1987, had also examined cases in the scope of canonical jurisdiction in civil matters. At that time, it was composed of an auditor of the Roman Rota Tribunal as the chairman, and in addition, of the President of the Tribunal and one of its judges. At present, the Second Church Tribunal of the Vatican rules in the composition of an auditor of the Roman Rota Tribunal as the chairman and two synodal judges of the Vicariate of Rome nominated for one year by the President of the Court of Appeal in agreement with the chairing auditor.

The Court of Appeal (*Corte d'Appello*), however, consists of the President and judges appointed by the Pope for a five-year term. The Court includes the Dean of the Tribunal of the Roman Rota, as its chairman, and in addition two auditors and two judges appointed by the chairman at the beginning of each court stay. In case of obstacles for judges, other auditors replace them. The chairman is replaced by the judge oldest by his rank. Court officials of the First Instance Tribunal provide the service. Judgments are passed by a three-per-

¹² F. Longchamps de Brier, M. Zubik, op.cit., p. 30.

son bench. Judges of the Court of Appeal take an oath before the President of the Court of Cassation¹³. It is different in cases within the scope of ecclesiastical jurisdiction, which were terminated by a judgment of the First Instance Tribunal because, according with canon law, it is the Tribunal of the Roman Rota that adjudicates in subsequent instances¹⁴.

The Court of Cassation (*Corte di Cassazione*) consists of the Cardinal Prefect of the Supreme Tribunal of the Apostolic Signatura¹⁵ as the chairman and two other Cardinals of the Signature who are appointed by the chairman. In case of obstacles, substitute judges, are appointed by the Prefect from among the members of the Tribunal of the Signature. In the absence of the chairman, he is replaced by the judge oldest by his rank. The President appoints the promoter of justice. Court officials of the First Instance Tribunal provide the service. The Court of Cassation, with few exceptions, with the Pope's consent, has the exclusive legal competence in criminal matters against cardinals and bishops. Whereas cases of ecclesiastical jurisdiction, brought to the First Instance Tribunal, which passed an appeal in the Rota, are heard at the last instance, according with canon law, by the Supreme Tribunal of the Apostolic Signatura¹⁶.

IV. Judges, Prosecutors and Advocates

The judges adjudicating in the justice administration of the Vatican must have the citizenship of the Vatican City State, but they are not required to have legal education, proper professional training, or a predisposition to perform this function. A comparable situation occurs with promoters of justice who act as prosecutors. It is different, however, with advocates who must meet strict formal criteria to appear before the Vatican's judiciary administration. However, upon reaching the age of 75, the judges and officials of the First Instance Tribunal are obliged to resign. There are specific cases in which this time may be extended.

¹³ Ibidem, pp. 375–376.

¹⁴ Canon 1443–1444 Codex Iuris Canonici (1983).

¹⁵ The competences of the Supreme Tribunal of the Apostolic Signatura were regulated in Canon 1445 Codex Iuris Canonici (1983).

¹⁶ F. Longchamps de Bérrier, M. Zubik, op.cit., p. 30.

A promoter of justice is appointed at the Tribunal to ensure compliance with the law. They play the role of the prosecutor in the Vatican City State. He is equal in rank to a judge of the Tribunal. In the secular administration, this function corresponds to the General Public Prosecutor. The Pope nominates the promoter of justice. He also collaborates with the Judge sitting individually.

In addition, since most cases are pending before the Court of Appeal and the Court of Cassation, an auxiliary promoter is also appointed. In case of a legal obstacle, he is replaced by another official by the President of the Court of Appeal, and the President of the First Instance Tribunal is notified of it¹⁷.

The promoter of justice at the Court of Appeal is appointed by the Supreme Pontiff, like the judges of this court, for a five-year term. Unfortunately, there is no provision governing what should be done in case of an obstacle preventing the operation of the promoter of justice at the Court of Appeal, but it should be considered that the procedure is the same as in the case of a judge of the Court of Appeal.

The regulations regarding the promoter of justice at the Court of Cassation look slightly different. He is not appointed by the Supreme Pontiff, but by the President of the Court of Cassation for the judicial year out of *volantes* of the Supreme Tribunal of the Apostolic Signatura, that is members of one of the advisory colleges of the supreme court of the Catholic Church.

When presenting the state judiciary of the Vatican City State, it is also worth describing the provisions regarding advocates who may appear before the courts of that State. Defendants may only choose those advocates who are entered on a special list kept by the court secretary under the supervision of the President of the Tribunal. The advocates of the Roman Rota who have completed secular university law studies are entered on the list. The entry may also be sought by people, "especially proficient in legal matters"¹⁸. The decision on their entry is taken by the chairman of the Court of Appeal. He may also allow an unlisted person to act as an advocate in a particular case. Entry on the list entitling to act as an advocate before the Court of Cassation is

¹⁷ W. Jakubowski, *O Roma...*, pp. 373–374.

¹⁸ Article 24 of the Act approving the judicial system of the Vatican City State.

subject to even stricter requirements. It can be obtained by consistory advocates or lecturers (also retired) of secular or church universities. In addition, the chairman of the Court of Cassation may authorize, on a permanent or temporary basis, other persons to appear before the Court of Cassation, besides the statutory regulations.

V. Jurisdiction of the Court

Based on the applicable legal acts, the jurisdiction of the courts of the Vatican City State can also be determined. These courts have jurisdiction in respect of all events concerning citizens of the Vatican City State and persons residing in its territory with a permission for an indefinite period of time, as well as cases concerning the inheritance of the mentioned persons, and events concerning foreigners, if their subject is the right to property or other right on real estate located in the Vatican City State, or concerning contracts and other obligations. Every year, around 1000 cases are pending before the Vatican courts. Most litigation is before the Vatican courts regarding theft, which is probably related to the number of pilgrims visiting the Vatican¹⁹.

VI. Final Remarks

In a summary, it can be said that the Vatican City State formed in 1929 formally adopted the principle of the separation of powers. However, the general legislative, executive, and judicial power belongs to the Supreme Pontiff, that is the sovereign, in the person of the Pope. Strong ties with the Catholic Church are also noticeable in the judicial system of the Vatican City State.

The first legal regulations regarding the exercise of judicial power were included in the Basic Law of 1929 and the Regulations of the Vatican City State. Then, under the pontificate of Pius XII, a thorough reform was conducted, which formally separated the courts of the Vatican City State from the judiciary of the Holy See. The final structure of the state justice system was formed after the publication by Pius XII of the *Motu Proprio Con la legge* in 1946 and

¹⁹ Cf. Constitution, op.cit., p. 29; W. Jakubecki, op.cit., p. 375.

still exists because it was maintained by the new court regulations in force since 1997. Although the formal separation of these two judicial systems (secular and ecclesiastical) took place then, close relations between them still remain, e.g. personal ones.

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