

Independent Justice in the Name of His Holiness? Vatican Tribunals and International Law Requirements

Kevin Grimmeiß*

University of Würzburg, Würzburg, Germany

kevin.grimmeiss@uni-wuerzburg.de

Abstract	897
Keywords	898
I. Introduction: The Vatican – An Atypical State	898
II. The Vatican Financial Trial	899
1. Facts of the Case	900
2. Defendants' Arguments on Judicial Independence	901
3. Reasoning of the Tribunal	903
III. ECHR Fair Trial Requirements	905
1. Establishment by Law	905
2. Independence from the Executive and the Parties	907
3. Right to Democracy?	909
IV. Applicability of Fair Trial Guarantees to the Vatican	910
1. Legal and Practical Relevance of ECHR Requirements for the Vatican	911
2. Fair Trial Principles in Customary International Law?	912
V. Vatican Compliance with Fair Trial Guarantees	914
1. Aspects of Vatican Judicial Organisation	914
2. Particularities of the Vatican Legal Order	916
3. Aspects of Public International Law	917
VI. Conclusion: The Vatican – An Accepted Partner in International Cooperation	919

Abstract

In a judgment of 2023, the Vatican City State Tribunal imposed prison sentences and fines on several laypersons and clerics involved in a London real estate transaction. The judges used a significant portion of their statement of reasons to explain why the proceedings did not violate European fair trial principles. In contrast, defence counsel had argued that the pope's position as absolute monarch of the Vatican is incompatible with the notion of judicial independence. The present article weighs the conflicting

* Research associate at the chair for German and foreign public law, public international law and European law at the University of Würzburg and judge at the Administrative Court of Würzburg.

arguments, considering both the implications of the European Convention on Human Rights and the purpose and special nature of the Vatican City State.

Keywords

European Convention on Human Rights – Vatican City State – fair trial – court established by law – judicial independence

I. Introduction: The Vatican – An Atypical State

Few introductions to public international law can do without at least a glance at the Catholic church. They typically cover its governmental organ,¹ the Holy See, a fully accepted non-state subject of public international law.² It is represented by the pope, maintains diplomatic relations with almost all states through its ambassadors, the apostolic nuncios, and has concluded a number of treaties. The international standing of the Holy See is based on a century-long acceptance of the pope's spiritual position and does not, therefore, depend on a territorial basis, which formerly existed in the Papal States but was lost in 1870.³ These characteristics make the Holy See a rather unusual case.

The Vatican City State, on the other hand, is much closer to the typical subject of public international law. It owes its existence to the Holy See and forms the territorial basis of its activities.⁴ Admittedly, the State territory in the centre of Rome encompasses little more than Saint Peter's Basilica and the Apostolic Palace. Still, the Vatican also possesses a permanent population as well as a government and thereby meets all criteria for

¹ James Crawford, *The Creation of States in International Law* (2nd edn, Clarendon 2006) 225–226; Graham Butler, 'The Legal Relations of the European Union with the Vatican City State and Holy See', *European Foreign Affairs Review* 27 (2022), 263–282 (267).

² See only Giovanni Distefano, *Fundamentals of Public International Law* (Brill Nijhoff 2019), 223–225; Malcolm N. Shaw, *International Law* (9th edn, Cambridge University Press 2021), 224–225; Markus Krajewski, *Völkerrecht* (3rd edn, Nomos 2023), chapter 7, para. 133; Samantha Besson, *Droit international public* (Stämpfli 2024), paras 874–881; Matthias Herdegen, *Völkerrecht* (23rd edn, C.H. Beck 2024), chapter 9, para. 1. Also see these references for the following description of the Holy See.

³ Hyginus Eugene Cardinale, *The Holy See and the International Order* (Colin Smythe 1976), 82; Crawford (n. 1), 226; Fulvio Maria Palombino, *Introduzione al diritto internazionale* (Laterza 2024), 184.

⁴ Crawford (n. 1), 230–231; Butler (n. 1), 267.

statehood.⁵ Like most contemporary states, it has a written constitution, the Fundamental Law of the Vatican City State (FL).⁶ But a mere reading of Art. 1 FL illustrates that the Vatican system of government is markedly different from modern standards: It unites all authority, be it legislative, executive or judicial, in the supreme pontiff, the pope. With this expressly absolutist concept, the Vatican stands out in today's international community, most members of which regard themselves as democracies bound by human rights and the rule of law.⁷

A 2023 judgment from the Vatican, which found several defendants guilty of financial crimes, highlights this discrepancy. While defence counsel argued that the Vatican system of government is incompatible with fair trial principles and independent justice as guaranteed by public international law, the judges saw no such violation. The present article will give a summary of both of these positions at the outset. It will go on to outline the organisational requirements of Art. 6 European Convention on Human Rights (ECHR) as invoked by defence counsel and analyse their relevance for the Vatican, but also take a look at fair trial principles in customary international law. Considering the special purpose and particular legal order of the Vatican, the article will argue that the city state should be – and is in fact, by the international community – regarded as adhering to fair trial requirements.

II. The Vatican Financial Trial

On 16 December 2023, the Vatican City State Tribunal, the court charged with, *inter alia*, the administration of (non-canonical) criminal justice in the Vatican City State,⁸ handed down prison sentences and fines against several laypersons and clerics who had been involved in a London real estate transac-

⁵ Gerd Westdickenberg, 'Holy See' in: Rüdiger Wolfrum and Anne Peters (eds), *MPEPIL* (online edn, Oxford University Press 2025), para. 5.

⁶ Legge fondamentale dello Stato della Città del Vaticano of 13 May 2023, Bollettino no. 365. Due to the particular nature of the Vatican City State, this document is not a constitution in the sense of higher-ranking fundamental rules, even though it contains certain stipulations typical for constitutions, see Giuseppe Dalla Torre, *Lezioni di diritto vaticano* (2nd edn, Giappichelli 2020), 76-77.

⁷ In many cases, however, this generous self-assessment is unconvincing.

⁸ Stephen E. Young and Alison Shea, 'Separating State from Church: A Research Guide to the Law of the Vatican City State', *L. Libr. J.* 99 (2007), 589-610 (599-601); Norbert Witsch, 'Der Vatikanstaat' in: Stephan Haering, Wilhelm Rees and Heribert Schmitz (eds), *Handbuch des katholischen Kirchenrechts* (3rd edn, Friedrich Pustet 2015), 538-542 (541).

tion.⁹ The judgment attracted criticism based on the alleged lack of judicial independence, with one of the accused complaining to the United Nations (UN) Special Rapporteur on independence of judges and lawyers.¹⁰ The following section will outline the facts of the case, covering, in particular, the defendants' arguments on judicial independence as well as the respective reasoning of the court.

1. Facts of the Case

The proceedings before the Vatican City State Tribunal¹¹ revolved around a 350-million-euro investment in a real estate fund which the Secretariat of State, a central department of the Roman curia, made in 2013 and 2014. The fund was managed by a broker of Swiss and British nationality and held, among other assets, a property in Chelsea, London, which it sought to redevelop. When no progress was made in the development, the Secretariat of State planned to directly acquire and administer the property in 2018. The

⁹ Tribunal of the Vatican City State (TSV), *Carlino et al.*, judgment of 16 December 2023, no. 45/19 Reg. Gen. Pen. The judgment is available online at <<https://drive.google.com/file/d/1M2TmzVL0-2IGoN259k-nP6VkuyaPTxA3/edit>>, last access 8 July 2026. The case has since moved to the Court of Appeal of the Vatican City State, which, by an order of 17 March 2026, declared the first instance procedure partially void. This gives the accused, *inter alia*, a broader access to the files than before. As regards the matters discussed in this article, however, the appellate proceedings have not yielded any new insights yet. See Salvatore Cernuzio, 'Processo vaticano, decretata "nullità relativa" del primo grado. Si riapre dibattito', Vatican News, 17 March 2026, <<https://www.vaticannews.va/it/vaticano/news/2026-03/processo-fondi-santa-sed-e-ordinanza-corte-appello-17-marzo-2026.html>>, last access 8 July 2026; 'Immobilienprozess im Vatikan muss neu aufgerollt werden. Teils geschwärzte Unterlagen', Domradio online, 18 March 2026, <<https://www.domradio.de/artikel/immobilienprozess-im-vatikan-muss-neu-aufgerollt-werden>>, last access 8 July 2026.

¹⁰ Nicole Winfield, 'Defendant in Vatican Trial Takes Case to UN, Accuses Pope of Violating His Rights with Surveillance', Associated Press, 20 June 2024; Mario Trifunovic, 'Medien: UN-Menschenrechtsbeschwerde gegen Vatikan-Justiz', katholisch.de, 18 June 2024, <<https://katholisch.de/artikel/54077-medien-un-menschenrechtsbeschwerde-gegen-vatikan-justiz>>, last access 8 July 2026.

¹¹ The case details are outlined in extenso in TSV, *Carlino et al.* (n. 9), 84–610. Shorter overviews are provided by 'Documenti e testimonianze contenuti nella richiesta di citazione a giudizio', Vatican News, 3 July 2021, <<https://www.vaticannews.va/it/vaticano/news/2021-07/documenti-e-testimonianze-contenuti-richiesta-di-citazione.html>>, last access 8 July 2026; Philip Püllella, 'Cardinal Among 10 Indicted by Vatican for Financial Crimes', Reuters, 3 July 2021, <<https://www.reuters.com/world/europe/vatican-judge-indicts-10-including-cardinal-alleged-financial-crimes-2021-07-03/>>, last access 26 July 2026; Roland Juchem, 'Von einer Londoner Immobilie zum Mammutprozess im Papst-Staat', Domradio online, 5 July 2021, <<https://www.domradio.de/artikel/von-eine-londoner-immobilie-zum-mammutprozess-im-papst-staat-der-vatikanische-finanzskandal>>, last access 8 July 2026.

transaction ultimately closed did not, however, yield the results intended by the Secretariat of State, for the Italian agent acting on behalf of the Vatican had retained all voting shares, requesting an additional payment for their transfer. The developments came to light when Vatican police raided the offices of the Secretariat of State and the Vatican financial regulator as well as a private apartment in late 2019 and early 2020.

The Promoter of Justice, the Vatican prosecutor, alleged criminal misconduct by several brokers and advisors as well as Vatican officials involved in the deal. In June 2021, he brought several charges including embezzlement, money laundering, fraud, extortion, corruption, and abuse of office against ten laypersons and clerics, amongst them a cardinal. The Vatican City State Tribunal issued a complex verdict on 16 December 2023, finding a few of the accused persons guilty of some of the charges and acquitting them of others, while, at the same time, requalifying a number of accusations. The court pronounced prison sentences of up to seven years as well as pecuniary fines. It further ordered some of the defendants to pay damages totalling about 200 million euros. The Chelsea property had meanwhile been sold, reportedly incurring a loss of more than 200 million euros for the Vatican.¹²

2. Defendants' Arguments on Judicial Independence

The defendants argued that the judicial proceedings before the Vatican City State Tribunal violated the ECHR, particularly its Art. 6, which guarantees a fair hearing by an independent and impartial tribunal established by law. They criticised restrictions in document access as well as four rescripts, decrees by Pope Francis, which gave extraordinary powers to investigators in deviation from general Vatican law, namely to intercept communication.¹³

¹² Francesco Antonio Grana, 'Vaticano, il processo sul palazzo di Londra: "Le perdite della Santa Sede ammontano a 217 milioni di euro"', *Il Fatto Quotidiano* online, 28 February 2022, <<https://www.ilfattoquotidiano.it/2022/02/28/vaticano-il-processo-sul-palazzo-di-londra-le-perdite-della-santa-sede-ammontano-a-217-milioni-di-euro/6510732/>>, last access 8 July 2026. Conversely, Philip Pullella, 'Vatican Takes Big Loss in Sale of London Building at Heart of Trial', *Reuters*, 1 July 2022 reports a loss of 140 million euros, <<https://www.reuters.com/world/uk/vatican-sells-london-building-heart-corruption-trial-bain-capital-2022-07-01/>>, last access 8 July 2026.

¹³ Nicole Winfield, 'At Vatican Trial, Defense Questions the Legal System Itself', *Associated Press*, 4 October 2021, <<https://apnews.com/article/europe-religion-trials-london-vatican-city-2213fff3d492899a15254ad911d1d0a4>>, last access 8 July 2026; Nicole Winfield, 'Lawyers: Papal Decrees Violated Fraud Suspects' Human Rights', *Associated Press*, 18 February 2022, <<https://apnews.com/article/pope-francis-business-europe-religion-vatican-city-c93a8193908d92946c3636aa4134fd87>>, last access 8 July 2026.

Going beyond the specific case, the accused questioned the independence and impartiality of Vatican judges on the grounds that supreme judicial power is vested in the pope, to whom magistrates swear loyalty and obedience.¹⁴ In essence, defence counsel argued that the Vatican's organisation as an absolute monarchy made it impossible for its courts to attain internationally accepted standards of fair trial.

This reasoning rests on the assumption that contemporary international law contains norms obliging the Vatican to guarantee an independent judiciary. To start with, Art. 6 ECHR as invoked by the defendants does not, however, directly bind the Vatican. According to the *pacta tertiis* principle enshrined in Art. 34 Vienna Convention on the Law of Treaties (VCLT),¹⁵ international agreements apply only to their parties, not to third states. While the Holy See holds an observer status in the Council of Europe, neither this entity nor the Vatican City State are a party to the ECHR.¹⁶ Hence, there is no (or at least no direct) obligation of the Vatican to adhere to the human rights that the convention stipulates.

The defence counsel in the Vatican Financial Trial nevertheless considered the Vatican bound by the principles enshrined in Art. 6 ECHR.¹⁷ They pointed to the fact that the Vatican has entered into a monetary agreement with the EU,¹⁸ which under Art. 8 obliges the Vatican to adopt all appropriate measures, through direct transposition or equivalent action, with a view to implementing certain annexed EU norms.¹⁹ These norms include Directive 2005/60/CE, the 3rd Anti-Money-Laundering Directive, whose recital 48 states:

‘This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights[.]’

¹⁴ Winfield, ‘Vatican Trial’ (n. 13).

¹⁵ Vienna Convention on the Law of Treaties of 23 May 1969, 1155 UNTS 331.

¹⁶ See Council of Europe Parliamentary Assembly (CoE-PA), ‘The Council of Europe and Its Observer States: the Current Situation and a Way Forward’, Report of 22 December 2007, Doc 11471, paras 2, 77; Cedric Ryngaert, ‘The Legal Status of the Holy See’, *GoJIL* 3 (2011), 829–859 (835–836, 847).

¹⁷ The argument is reproduced verbatim in TSV, *Carlino et al.* (n. 9), 18–19. Similarly, Paolo Cavana, ‘Osservazioni sul processo vaticano contro il cardinale Becciu e altri imputati’, *Stato, Chiese e pluralismo confessionale* (4/2023), 1–31 (5–6).

¹⁸ Monetary Agreement between the European Union and the Vatican City State of 17 December 2009, OJ 2010 C 28/13.

¹⁹ Butler (n. 1), 272–280.

The accused regarded the criminal proceedings against them as a violation of the guarantee of an independent judiciary and, consequently, as an application of Directive 2005/60/CE incompatible with Art. 6 ECHR.

3. Reasoning of the Tribunal²⁰

The Vatican City State Tribunal dismissed this allegation. The judges' reasoning on the question of judicial independence was threefold: They rejected the notion that the Vatican was bound by Art. 6 ECHR, but accepted corresponding safeguards under canon law. Proceeding on this basis, they found that the legal rules governing the establishment and operation of the court ensured a sufficient level of judicial independence.

The tribunal began its reasoning by stating that Vatican law recognised the fair trial principle. It cited canon 221 paras 2-3 Codex Iuris Canonici (CIC),²¹ which gives all faithful the right to be tried and sentenced according to law and on a non-discriminatory basis, as well as canon 1321 para. 1 CIC, which contains the presumption of innocence. Further reference was made to papal statements.

Only in a second step did the tribunal decline the applicability of the ECHR and dismiss the argument that Directive 2005/60/CE indirectly binds the Vatican.²² It stressed that the city state had only undertaken, in Art. 8 of the European Union (EU)-Vatican monetary agreement, to 'adopt all appropriate measures', a formulation which does not imply direct applicability of the Anti-Money-Laundering Directive, but a mere duty to implement its contents into national law.²³ The magistrates further substantiated their reasoning by emphasising the legal effects of EU directives in general, which according to Art. 288 para. 3 Treaty on the Functioning of the European Union (TFEU)²⁴ bind member states as to the result to be achieved but leave the choice of form and methods to the national authorities. If, consequently, there is no direct applicability of a directive within EU member states, this must be even more so for states which are not part

²⁰ The reasoning of the tribunal regarding judicial independence and Art. 6 ECHR can be found at TSV, *Carlino et al.* (n. 9), 16-27.

²¹ Codex Iuris Canonici of 25 January 1983, Acta Apostolicae Sedis 75 (1983) II.

²² On the (supreme) role of canon law in the interpretation of transformed foreign legislation, see Alessio Sarais, 'Il principio di legalità nel sistema penale vaticano: alcune considerazioni', *Sicurezza e Giustizia* 2014, 44-46 (46).

²³ Monetary Agreement EU/Vatican City State (n. 18).

²⁴ Consolidated version of the Treaty on the Functioning of the European Union of 26 October 2012, OJ 2012 C 326/47.

of the EU.²⁵ The tribunal additionally pointed to Art. 39 para. 2 Directive 2005/60/CE, which obliges member states to ensure appropriate administrative measures and sanctions ‘in conformity with their national law’. The judges held that the respect for national legal particularities evidenced by this section was an absolute necessity in criminal law, given the diverse European traditions in that field. In this context, they also referred to the margin of appreciation granted to state parties of the ECHR by the European Court of Human Rights (ECtHR). Moreover, the tribunal turned to the recital in question, stressing that it lacked normative character and focussed on the interpretation and application of the directive, thereby underscoring the fact that the latter was not directly applicable.

Applying the canonical standard of fair trial, the tribunal found that it disposed of the necessary independence and impartiality. It considered, *inter alia*, Art. 2 paras 1-2 Legge n. CCCLI,²⁶ which stipulate:

‘[I]n the exercise of their functions, [the magistrates] are subject only to the law. The magistrates exercise their duties with impartiality, on the basis and within the limits of the competences defined by law.’

Previously, the law had contained a reference to the magistrate’s hierarchical dependence on the supreme pontiff. Following an amendment in 2023, the relevant section now merely reads: ‘The magistrates are nominated by the Supreme Pontiff’. The court found both the former and current formulations unproblematic, given that the judicial function must be exercised in complete independence. Concerning the magistrates’ oath of loyalty and obedience to the pope, the judges reiterated the equal importance of the second part of the promise, ‘to exercise the judicial duties with truth and diligence’, and employed it as a further argument for their independence. The magistrates additionally cited foreign courts, two from Switzerland²⁷ and one from Italy,²⁸

²⁵ Direct applicability of a directive, which is possible under extraordinary circumstances (see Marios Costa and Steve Peers, *Steiner & Woods EU Law* (14th edn, Oxford University Press 2017), 117-120; Robert Schütze, *European Constitutional Law* (3rd edn, Oxford University Press 2021), 170-172), was implicitly rejected by the court in finding that Directive 2006/60/CE was ‘extremely complex and detailed’.

²⁶ Legge n. CCCLI sull’ordinamento giudiziario dello Stato della Città del Vaticano of 16 March 2020, Bolletino Sala Stampa della Santa Sede, n. 162.

²⁷ Federal Criminal Court, judgment of 26 February 2021, no. RR.2020.305, para. 2; Federal Criminal Court, judgment of 24 November 2021, no. RR.2021.144, para. 2.3. Both cases were initiated by one of the accused in the Vatican Financial Trial, who sought to prevent legal assistance to the Vatican by Switzerland, his country of residence.

²⁸ Supreme Court of Cassation, judgment of 12 October 2021, no. 1396, para. 1.4 (diritto). The case concerned the remand of one of the accused, which had been ordered by a lower Italian court on the initiative of the Vatican Promoter of Justice.

which had previously held that the Vatican courts fulfilled all fair process requirements.

III. ECHR Fair Trial Requirements

The defendants in the Vatican Financial Trial argued, albeit unsuccessfully, that Vatican court organisation is inherently incompatible with the ECHR guarantee of judicial independence, considering the pope's position as an absolute monarch with supreme power over the judiciary. They accordingly understood Art. 6 ECHR as a far-reaching stipulation also affecting state structure, an assumption that the following section will analyse in more detail. It will highlight three particular aspects of the guarantee, namely the 'established by law' criterion, the independence requirement and a potential right to democratic statehood.

1. Establishment by Law

Art. 6 para. 1 sentence 1 ECHR demands that courts must be established by law. Stressing the importance of this requirement for the rule of law, the ECtHR has repeatedly held that any institution failing to meet this requirement lacks the legitimacy 'in a democratic society' to issue binding decisions on individual cases.²⁹ On the court's account, this is meant to ensure that judicial organisation is not left to the discretion of the executive but 'regulated by law emanating from parliament'.³⁰ An act of parliament which establishes a court structure and defines the respective competences therefore is a law within the meaning of Art. 6 para. 1 sentence 1 ECHR.³¹ However, according to the ECtHR, the term also covers any other provision of the domestic legal order the disrespect of which would render the participation of one or more judges in the adjudication

²⁹ ECtHR, *Lavents v. Latvia*, judgment of 28 November 2002, no. 58442/00, para. 114; ECtHR, *Gorgiladze v. Georgia*, judgment of 20 October 2009, no. 4313/04, para. 67; ECtHR, *Kontalexis v. Greece*, judgment of 31 May 2011, no. 59000/08, para. 38.

³⁰ ECtHR, *Coëme and Others v. Belgium*, judgment of 22 June 2000, nos 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, para. 98; ECtHR, *Gurov v. Moldova*, judgment of 11 July 2006, no. 36455/02, para. 34; ECtHR, *Chim and Przywieczerski v. Poland*, judgment of 12 April 2018, nos 36661/07 and 38433/07, para. 137. In a similar vein already, ECmHR, *Zand v. Austria*, report of 12 October 1978, no. 7360/76, para. 69.

³¹ ECtHR, *Lavents* (no. 29), para. 114; ECtHR, *Richert v. Poland*, judgment of 25 October 2011, no. 54809/07, para. 41

of a case unlawful.³² The constitution, international treaties, ordinances, and decrees can equally form part of this legal basis.³³

No court can function without judges, which is why an adequate appointment process is also a precondition for courts to be established by law.³⁴ There is nothing in Art. 6 ECHR to prohibit, in principle, the appointment of judges by the executive or legislative branches of government, provided that the appointees are able to exercise their duties without undue influence or pressure.³⁵ The established by law standard aims at the prevention of ad-hoc courts,³⁶ but Art. 6 para. 1 sentence 1 ECHR does not necessarily exclude exceptional or transitional institutions like special bodies for war crimes.³⁷

The foregoing principles and case-law use established separation of powers terminology and refer to the law establishing courts as emanating from ‘parliament’.³⁸ One might thus assume that Art. 6 ECHR requires states to comply with a Montesquieu system of government in which public authority is divided between a parliamentary legislator, the executive, and the judiciary.³⁹ Indeed, the ECtHR attaches a growing importance to ‘the notion of separation of powers between the political organs of government

³² ECtHR, *Pandjigidze and Others v. Georgia*, judgment of 27 October 2009, no. 30323/02, para. 104; ECtHR, *Gorgiladze* (no. 29), para. 68.

³³ ECmHR, *Zand* (n. 30), paras 68-73; ECtHR, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, nos 6878/75 and 7238/75, para. 56; ECtHR, *Jorgic v. Germany*, judgment of 12 July 2007, no. 74613/01, paras 64-71. See Lydia Friederike Müller, *Richterliche Unabhängigkeit und Parteilichkeit nach Art. 6 EMRK* (Duncker & Humblot 2015), 35 for questions reserved for parliamentary legislation.

³⁴ ECtHR (Grand Chamber), *Guðmundur Andri Ástráðsson v. Iceland*, judgment of 1 December 2020, no. 26374/18, para. 227.

³⁵ ECtHR (Grand Chamber), *Maktouf and Damjanović v. Bosnia and Herzegovina*, judgment of 18 July 2013, nos 2312/08 and 34179/08, para. 49; ECtHR, *Guðmundur Andri Ástráðsson* (n. 34), para. 207.

³⁶ Frank Meyer, ‘Art. 6’ in: Ulrich Karpenstein and Franz C. Mayer (eds), *Konvention zum Schutz der Menschenrechte und Grundfreiheiten* (3rd edn, C.H. Beck 2022), 171 (para. 50); Helmut Satzger, ‘Art. 6 EMRK’ in: Helmut Satzger and Wilhelm Schluckebier (eds), *StPO-Kommentar* (5th edn, Carl Heymanns 2023), 2636 (para. 19).

³⁷ ECtHR, *Fruni v. Slovakia*, judgment of 21 June 2011, no. 8014/07, paras 138-140; *Xhoxhaj v. Albania*, judgment of 9 Februar 2021, no. 15227/19, para. 284; for a case of reassignment, see ECtHR, *Babaettin Uzan v. Turkey*, judgment of 24 November 2020, no. 30836/07.

³⁸ See Müller (n. 33), 35; Meyer (n. 36), para. 50.

³⁹ In this vein, Wolfgang Peukert, ‘Art. 6’ in: Jochen Abr. Frowein and Wolfgang Peukert, *Europäische Menschenrechtskonvention* (3rd edn, N.P. Engel 2009), 140 (para. 204); William A. Schabas, *The European Convention on Human Rights* (Oxford University Press 2015), 294. See also the international jurisprudence referred to by Amal Clooney and Philippa Webb, *The Right to a Fair Trial in International Law* (Oxford University Press 2020), 85-86.

and the judiciary'.⁴⁰ Still, it has constantly reiterated that nothing in the ECHR requires states 'to comply with any theoretical constitutional concepts regarding the permissible limits of the powers' interaction'.⁴¹ As concerns criminal justice, it has emphasised the autonomy states enjoy in the establishment of a system of their own choosing, a decision which is, in principle, beyond the court's control.⁴² Literature equally accepts that member states are free to choose the means of implementing the standards set forth in Art. 6 ECHR.⁴³ In this situation, it is useful to assess why the ECtHR requires courts to be established by a parliamentary act: The court wants to rule out any arbitrariness in the organisation of the judiciary, it seeks to avoid the exercise of discretion by both the executive and judicial authorities.⁴⁴ Strasburg's underlying goal is therefore not to reserve judicial organisation to parliament but to protect the independence of the judiciary, no matter who puts it at risk. This understanding is in line with the thrust of Art. 6 ECHR, which is a judicial guarantee, not a parliament-related one.

2. Independence from the Executive and the Parties

Under Art. 6 para. 1 sentence 1 ECHR, everyone is entitled to an independent and impartial tribunal. The notion of independence is directed against undue influence not only by other branches of government but also by the parties to the proceedings.⁴⁵ Independence has a double dimension: It must be attained in a personal and in an institutional kind of way, meaning that it includes both a state of mind of the respective decision-maker and an institutional setup of how magistrates enter into office and exercise their duties free

⁴⁰ ECtHR (Grand Chamber), *Stafford v. The United Kingdom*, judgment of 28 May 2002, no. 46295/99, para. 78; ECtHR, *Ramos Nunes de Carvalho e Sá v. Portugal*, judgment of 6 November 2018, nos 55391/13, 57728/13 and 74041/13, para. 196; ECtHR, *Svilengacianin and Others v. Serbia*, judgment of 12 January 2021, nos 50104/10 and 9 others, para. 64.

⁴¹ ECtHR (Grand Chamber), *Kleyn and Others v. The Netherlands*, judgment of 6 May 2003, nos 39343/98, 39651/98, 43147/98 and 46664/99, para. 193; ECtHR, *Sacilor Lormines v. France*, judgment of 9 November 2006, no. 65411/01, para. 59.

⁴² ECtHR (Grand Chamber), *Achour v. France*, judgment of 29 March 2006, no. 67335/01, paras 44, 51; ECtHR, *Ould Dab v. France*, decision of 17 March 2009, no. 13113/03.

⁴³ Stefan Harrendorf, Stefan König and Lea Voigt, 'Art. 6' in: Jens Meyer-Ladewig, Martin Nettesheim and Stefan von Raumer (eds), *Europäische Menschenrechtskonvention* (5th edn, Nomos 2023), 216 (para. 30); Karsten Gaede, 'Art. 6 EMRK' in: Christoph Knauer, Hans Kudlich and Hartmut Schneider (eds), *Münchener Kommentar zur Strafprozessordnung* (2nd edn, C. H. Beck 2025), 984, para. 23.

⁴⁴ ECtHR, *Coëme* (n. 30), para. 98.

⁴⁵ ECtHR, *Sramek v. Austria*, judgment of 22 October 1984, no. 8790/79, para. 42.

from undue influence.⁴⁶ In its assessment, the ECtHR consequently looks at how the members of a tribunal are appointed, how their term of office is designed and whether there are guarantees against outside pressure and further takes into account if the appearance of the body in question is one of independence or not.⁴⁷

As outlined above, Art. 6 para. 1 sentence 1 ECHR does not rule out the appointment of judges by the executive, but it insists that those appointed be able to exercise their duties free from influence or pressure.⁴⁸ In this regard, the ECtHR has held that the involvement of the French President in the appointment and promotion of judges does not constitute a violation of the right to an independent tribunal.⁴⁹ The court considered several safeguards against undue influence by the President enshrined in French law, namely a constitutionally guaranteed term of judicial office, freedom from instructions by members of the executive and the role of the *Conseil supérieur de la magistrature* in the appointment, promotion, and transfer of judges. The ECtHR has not deduced a minimum term of office from the independence requirement, but it demands that members of a judicial body be irremovable during that term.⁵⁰ In this regard, the court does not insist on a formal stipulation; instead, it is sufficient that the principle of irremovability is respected in practice.⁵¹

The ECtHR has stressed its special concern with the protection of the judiciary against undue influence ‘given the prominent place the judiciary occupies among State organs in a democratic society’.⁵² This wording, particularly in conjunction with the separation of powers terminology discussed above,⁵³ seems to suggest that the independence requirement also imposes a democratic system of government. On the other hand, the court has maintained a clear focus on the judiciary when stating that the notion of independence of a tribunal entails the existence of procedural safeguards to separate

⁴⁶ ECtHR, *Guðmundur Andri Ástráðsson* (n. 34), para. 234; ECtHR, *Dolińska-Ficek and Ozimek v. Poland*, judgment of 8 November 2021, nos 49868/19 and 57511/19, para. 316.

⁴⁷ ECtHR, *Langborger v. Sweden*, judgment of 22 June 1989, no. 11179/84, para. 32; ECtHR, *Kleyn* (n. 41), para. 190; ECtHR, *Ramos Nunes de Carvalho e Sá* (n. 40), paras 153, 156.

⁴⁸ ECtHR, *Maktouf and Damjanović* (n. 35), para. 49; ECtHR, *Guðmundur Andri Ástráðsson* (n. 34), para. 207.

⁴⁹ ECtHR, *Thiam v. France*, judgment of 18 October 2018, no. 80018/12, paras 75–85.

⁵⁰ ECtHR, *Guðmundur Andri Ástráðsson* (n. 34), paras 239–240.

⁵¹ ECtHR, *Campbell and Fell v. The United Kingdom*, judgment of 28 June 1984, nos 7819/77 and 7878/77, para. 80; ECtHR, *Sacilor Lormines* (n. 41), para. 67.

⁵² ECtHR (Grand Chamber), *Danileț v. Romania*, judgment of 15 December 2025, no. 16915/21, para 125.

⁵³ At III. 1.

the judiciary from other powers.⁵⁴ In view of this ambiguity, a closer look at the larger relationship between the ECHR and democratic government might prove useful.

3. Right to Democracy?

If the convention presupposed democratic statehood, the Vatican would necessarily fail to meet the standard of Art. 6 ECHR. Its judges are neither elected by the people nor chosen by its representatives, but exercise their function based on a decision by the supreme pontiff. The latter is an absolute monarch with supreme power over legislation, executive and judiciary. Any requirement of democratic governance directly or indirectly set forth by Art. 6 ECHR would therefore render the Vatican incapable of adhering to the guarantee.

Art. 6 para. 1 sentence 2 ECHR makes an explicit mention of democracy, tying the exclusion of public and press from court proceedings to the interest of morals, public order, or national security ‘in a democratic society’.⁵⁵ Additionally, the ECtHR has referred to democracy as a logical basis for its interpretation of the fair trial principle: It has, first and foremost, regarded the guarantee as one of the ‘fundamental principles of any democratic society’.⁵⁶ It has stated that courts not established according to law lack the legitimacy required in a democratic society to decide legal issues.⁵⁷ It has stressed the role of the judiciary in ‘a democratic State governed by the rule of law’ when including the appointment process in the established by law requirement.⁵⁸ And it has viewed this imperative as a means to ensure that ‘the judicial organisation in a democratic society does not depend on the discretion of the executive’.⁵⁹

Despite all these connections, the ECHR itself contains – unlike Art. 25 International Covenant on Civil and Political Rights (ICCPR)⁶⁰ or Art. 23 American Convention on Human Rights⁶¹ – no right to democratic partici-

⁵⁴ See ECtHR, *Guðmundur Andri Ástráðsson* (n. 34), para. 215.

⁵⁵ The possible consequences of this wording are discussed by Bosko Tripkovic and Alain Zysset, ‘Uncovering the Nature of ECHR Rights: An Analytical and Methodological Framework’, HRLR 24 (2024), 1–22 (13–21).

⁵⁶ ECtHR, *Pretto and Others v. Italy*, judgment of 8 December 1983, no. 7984/77, para. 21.

⁵⁷ ECtHR, *Lavents* (n. 29), para. 114; *Gorgiladze* (n. 29), para. 67.

⁵⁸ ECtHR, *Guðmundur Andri Ástráðsson* (n. 34), para. 227.

⁵⁹ ECtHR, *Coëme* (n. 30), para. 98; ECtHR, *Richert* (n. 31), para. 42.

⁶⁰ International Covenant on Civil and Political Rights of 16 December 1966, 999 UNTS 171.

⁶¹ American Convention on Human Rights of 22 November 1969, 1144 UNTS 123.

pation.⁶² Instead, a guarantee of free elections, one central aspect of democratic government, is enshrined in Art. 3 First Protocol to the ECHR.⁶³ This deliberately chosen structure makes it difficult to construe general democratic deficits as a violation of the convention, provided that they do not touch upon the material content of the individual guarantees contained therein.⁶⁴ Still, there is no clear dividing line between the right to democracy, which is absent from the text of the convention, and ECHR human rights like freedom of thought and of expression, freedom of assembly and freedom of association, all of which are closely connected to the functioning of democracy.⁶⁵ In view of this latter aspect, the ECtHR reached the conclusion that democracy ‘appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it’.⁶⁶ While this is certainly a plausible assumption, it fails to explain why the states involved chose to guarantee only select aspects of democratic statehood, moving the cornerstone of electoral participation to a protocol.

IV. Applicability of Fair Trial Guarantees to the Vatican

The defence counsel in the Vatican Financial Trial had argued that Art. 6 ECHR binds the Vatican. Even though the tribunal was correct in dismissing this argument, the provision still has a legal and practical relevance for the Vatican. The following section will look at how fair trial guarantees can play a role in international legal cooperation and treaty-making before discussing

⁶² Hilary Charlesworth, ‘Is there a human right to democracy?’ in: Cindy Holder and David Reidy (eds), *Human Rights* (Cambridge University Press 2013), 271-284 (276). See also Jude I. Ibegbu, *Right to Democracy in International Law* (Edwin Mellen Press 2003), 88-90, who at 96-214 also discusses general principles and custom as potential sources of a right to democracy. For a sceptical assessment, see Stefan Oeter, ‘Self-Determination’ in: Bruno Simma, Daniel-Erasmus Khan, Georg Nolte and Andreas Paulus (eds), *The Charter of the United Nations* (4th edn, Oxford University Press 2024), Vol. I, 457-484 (para. 41).

⁶³ Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms of 20 March 1952, ETS no. 009. For the drafting history of the provision, see Susan Marks, ‘The European Convention on Human Rights and Its “Democratic Society”’, BYIL 66 (1996), 209-283 (221-224).

⁶⁴ See Rory O’Connell, ‘The Right to Democracy’ in: Nico Bechter and Gabriele De Angelis (eds), *Problems of Democracy* (Inter-Disciplinary Press 2010), 47-54 (48-49).

⁶⁵ Marks (n. 62), 210-214. Steven Wheatley, ‘Democracy in International Law: A European Perspective’, ICLQ 51 (2002), 225-248 (237-238) and Johannes Hendrik Fahner, ‘Revisiting the Human Right to Democracy: A Positivist Analysis’, *International Journal of Human Rights* 21 (2017), 321-341 (326) consequently argue that the ECHR contains a right to democracy.

⁶⁶ ECtHR (Grand Chamber), *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, no. 19392/92, para. 45.

whether such standards might apply to states irrespective of contractual consent to be bound.

1. Legal and Practical Relevance of ECHR Requirements for the Vatican

The ECHR principles discussed above have greater relevance for the Vatican City State than might seem at first sight. There is indeed little to add to the tribunal's finding that the ECHR is neither directly nor indirectly applicable to the Vatican:⁶⁷ There has been no consent to be bound, the EU directive in question is not self-executing and the mere mention of the ECHR in its recitals is much too vague to trigger such a far-reaching commitment. But Art. 6 para. 1 ECHR might still play a role in the field of international legal cooperation, namely as regards the enforcement of Vatican judgments by ECHR member states, or in matters of judicial assistance.⁶⁸

When parties to the convention grant the execution of a foreign verdict, Art. 6 ECHR obligates them to ensure that fair trial standards have been met by the foreign authorities.⁶⁹ Specifically, courts wishing to declare a foreign decision enforceable must duly satisfy themselves that the respective proceedings adhered to the guarantees set forth in Art. 6 ECHR, in particular where the enforceability of the decision is of considerable importance for the parties to the proceedings.⁷⁰ According to ECtHR case law, this duty also comes into play where a national court wishes to render the decision of its ecclesiastical counterpart enforceable, as can be the case for matrimonial matters under certain concordats.⁷¹

⁶⁷ Cavana (n. 17), 5-6 and Geraldina Boni, Manuel Ganarin and Alberto Tomer, 'Il "processo del secolo" in Vaticano e le violazioni del diritto', *Stato, Chiese e pluralismo confessionale* (5/2024), 1-135 (50-66) contest this finding. Alessandro Diddi, 'Il processo penale vaticano e le garanzie del "giusto processo". Riflessioni a margine di una recente sentenza del Tribunale vaticano', *Diritto e religioni* 19 (2024), 629-649 (631) accepts it.

⁶⁸ The latter aspect depends on the (disputed) question of whether matters of international legal assistance fall within the ambit of Art. 6 ECHR, see Meyer (n. 36), paras 35-36. For a general assessment of judicial cooperation with the Vatican, see Cavana (n. 17), 25-29; Diddi (n. 66), 631-634; Boni, Ganarin and Tomer (n. 66), 94-103.

⁶⁹ For an overview with special focus on the Vatican Financial Trial, see Boni, Ganarin and Tomer (n. 66), 103-113.

⁷⁰ ECtHR, *Pellegrini v. Italy*, judgment of 20 July 2001, no. 30882/96, para. 40; ECtHR (Grand Chamber), *Avotiņš v. Latvia*, judgment of 23 May 2016, no. 17502/07, paras 96-100; ECtHR, *Dolenc v. Slovenia*, judgment of 20 October 2022, no. 20256/20, paras 55-60.

⁷¹ ECtHR, *Pellegrini* (n. 69), para. 40.

At the same time, Art. 6 ECHR might set limits for a treaty-based co-operation of member states with the Vatican. One such public international law instrument is the above-mentioned monetary agreement between the EU and the Vatican. Its Art. 8 para. 1 lit. b,⁷² read in conjunction with Art. 6 Council Framework Decision 2000/383/JHA⁷³ obliges the Vatican, *inter alia*, to amend its criminal law to render certain counterfeiting activities punishable.⁷⁴ If it were established that the city state was inherently unable to guarantee a fair trial,⁷⁵ ECHR member states entering into such an agreement could face legal risks: Their cooperation with the Vatican might well be construed as a violation of Art. 6 ECHR.⁷⁶

2. Fair Trial Principles in Customary International Law?

According to newspaper reports, defence counsel might additionally argue on appeal that the Vatican Financial Trial violated ‘well-established international legal obligations applicable to all criminal proceedings’, a formulation suggesting the existence of fair trial guarantees in customary international law.⁷⁷ Relying on this body of law would address one core problem in the defence’s line of argument, the applicability of Art. 6 ECHR. Unlike treaties, which bind only those states that have expressly consented, rules of customary international law come into being through general, not necessarily universal practice and do not, therefore, require the explicit support of each member of the international community.⁷⁸

⁷² See n. 18.

⁷³ Council Framework Decision of 29 May 2000 on Increasing Protection by Criminal Penalties and Other Sanctions Against Counterfeiting in Connection with the Introduction of the Euro, OJ 2000 L 140/1.

⁷⁴ For details, see Roberto Zannotti, ‘Le riforme penali vaticane’, *Diritto e Religioni* 17 (2022), 205–218 (208–209).

⁷⁵ For potential consequences in the realm of liability, see, for example, EGC, *Odigitria AAE v. Council and Commission*, judgment of 6 July 1995, case no. T-572/93, ECLI:EU:T:1995:131.

⁷⁶ Even though Art. 6 para. 2 TEU obliges the EU to become a party to the ECHR, no accession has taken place yet. The contents of the ECHR nevertheless bind the EU as general principles of EU law, see Art. 6 para. 3 TEU.

⁷⁷ Nicole Winfield, ‘The First Outside Legal Analyses of Vatican’s “Trial of the Century” Are In, and They’re Critical’, Associated Press, 19 March 2024, <<https://www.ncronline.org/vatican/vatican-news/first-outside-legal-analyses-vaticans-trial-century-are-and-theyre-critical>>, last access 8 July 2026; Sean O’Neill, ‘Vatican Fights Case in London Court. A British Financier Says He Was Denied Human Rights in a Corruption Trial Driven by the Pope’, *The Times*, 22 June 2024, 13.

⁷⁸ James Crawford, *Brownlie’s Principles of Public International Law* (9th edn, Oxford University Press 2019), 22–23; Krajewski (n. 2), chapter 4, para. 129.

Indications for a customary status of certain fair trial guarantees are not hard to find: Art. 10 Universal Declaration of Human Rights (UDHR) enshrines the right to a fair hearing by an independent and impartial tribunal while Art. 14 ICCPR additionally speaks of a court established by law.⁷⁹ As 174 states have committed themselves to the latter stipulation through their ratification of the covenant, it seems indeed plausible that fair trial principles could form part of customary international law,⁸⁰ particularly when it comes to the proceedings of international criminal tribunals.⁸¹

One typical problem with customary law is to pinpoint the specific contents and requirements of the rule in question.⁸² In this regard, Art. 14 ICCPR provides no particular insights into what exactly customary law might require in terms of judicial organisation. The wording of the guarantee closely resembles Art. 6 ECHR and contains both the established by law element and the independence criterion.⁸³ Questions regarding the content of those two aspects, discussed above with a view to Art. 6 ECHR, equally arise in relation to Art. 14 ICCPR. Compared to Art. 6 ECHR, however, a cogent yes in favour of a democratic, Montesquieu system of government is even more unlikely under Art. 14 ICCPR and customary law. While one might at least argue that a common history of ideas, namely of Enlightenment ideals,

⁷⁹ Art. 14 para. 1 sentence 1 ICCPR.

⁸⁰ Christiane Kamardi, *Die Ausformung einer Prozessordnung sui generis durch das ICTY unter Berücksichtigung des Fair-Trial-Prinzips* (Springer 2009), 251-255; Patrick Robinson, 'The Right to a Fair Trial in International Law, with Specific Reference to the Work of the ICTY', Berkeley J. Int'l L. Publicist 3 (2009), 1-11 (5); Clooney and Webb (n. 39), 13-20; Louise Doswald-Beck, 'Fair Trial, Right to, International Protection' in: Rüdiger Wolfrum and Anne Peters (eds), *MPEPIL* (online edn, Oxford University Press 2025), para. 16 ('a rule of customary international law or, at the very least, there is a trend towards the hardening of such a rule'). Viewing the guarantee (also) as a general principle of international law, as Param Kumaraswamy, 'Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers', E/CN.4/1995/39, para. 32-35 does, makes no difference for the questions discussed here.

⁸¹ Robinson (n. 79), 8-9; John H. Dingfelder Stone, 'Existence of the Right to Translation under the ICCPR', Max Planck UNYB 16 (2012), 159-181 (161, 179-180); Dominik Zimmermann, *The Independence of International Courts* (Nomos 2013), 381-383, 440; similarly Jacob Katz Cogan, 'International Criminal Courts and Fair Trials: Difficulties and Prospects', Yale J. Int'l L. 27 (2002), 111-140 (117-118).

⁸² ILC, 'Report on the Work of the Seventieth Session', ILCYB 2018, Vol. II, Part Two, 1 (93); see also Kumaraswamy (n. 79), para. 36. On the vagueness of the independence principle concerning international judicial organs see Chittharanjan Felix Amerasinghe, *Principles of the Institutional Law of International Organizations* (2nd edn, Cambridge University Press 2005), 259.

⁸³ See also HRC General Comment No. 32 of 23 August 2007, CCPR/C/GC/32, para. 19. Rhona K.M. Smith, *International Human Rights Law* (8th edn, Oxford University Press 2018), 280 states, on this basis, that 'there should be a separation of powers', a result that is not compelling in view of the wording and the arguments outlined at III.

of liberalism and democracy, links the state parties to the ECHR, there is far less intellectual common ground when it comes to the international community as a whole. Against this background, it is difficult to assume that modern states, in all their diversity, could have agreed on one specific model of government as the only setup compatible with international law. In fact, Art. 14 ICCPR has attracted the highest number of declarations and reservations among the guarantees enshrined in the covenant, which underlines that a considerable number of states are unable to effectively secure judicial independence.⁸⁴ Moreover, the UN Basic Principles on the Independence of the Judiciary of 6 September 1985, which were endorsed by the General Assembly in 1985,⁸⁵ carefully avoid any reference to a particular system of government. A global consensus in this regard should not therefore be assumed.⁸⁶

V. Vatican Compliance with Fair Trial Guarantees

There is thus little reason to assume that the Vatican is subject to any public international law standards of fair trial. However, in view of the legal and practical relevance Art. 6 ECHR has for the Vatican, the question of whether or not the city state can guarantee a fair trial is important beyond the judgement of 2023. A conclusive answer must take into account the particular purpose and special legal system of the Vatican. Against this background, the following sections will demonstrate that the Vatican is in fact able to comply with fair trial standards.

1. Aspects of Vatican Judicial Organisation

There is certainly room to argue that the Vatican, with its particular system of government, cannot meet the standard set by Art. 6 ECHR. The unification of all legislative, executive, and judicial power in the supreme pontiff is hard to reconcile with the separation of powers concept that underlies the

⁸⁴ Paul M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (Cambridge University Press 2020), 371.

⁸⁵ UNGA Res 40/32 of 29 November 1985, A/RES/40/32, para. 5; UNGA Res 40/146 of 13 December 1985, A/RES/40/146, para. 2.

⁸⁶ See Michael Bohlander, 'Separation of Powers and the International Judiciary – A Vision of Institutional Judicial Independence in International Law' in: Shimon Shetreet and Christopher Forsyth (eds), *The Culture of Judicial Independence* (Brill 2011), 269–280 (271–273) for a discussion focussing on international tribunals.

notion of an independent court established by law.⁸⁷ This is true even though justice is administered by separate institutions in the Vatican, because those are closely intertwined with the pontiff. Not only do they exercise jurisdiction in his name,⁸⁸ the pope also nominates the magistrates and assigns their duties.⁸⁹ In addition, Art. 21 para. 2 FL entitles the pontiff to assign the investigation and decision of any civil or criminal matter to a special instance created by him.⁹⁰ And finally, the Vatican lacks the parliamentary legislator the ECtHR expressly calls for to establish a court structure. Even if one accepted a non-parliamentary law as a valid legal basis for court organisation, the result remained problematic: Vatican legislation ultimately emanates from the pope, who as supreme legislator is not himself bound by his laws, but free to amend them at will.⁹¹ Any legislation in existence would therefore seem of little practical value for restraining the pope's strong position in the judicial field.

Despite the fundamental differences between the Vatican City State and the system envisaged by the ECHR, certain aspects supporting the independence of Vatican judges remain.⁹² The position of the pontiff as sovereign holding all (judicial) power notwithstanding, judicial organs have been instituted by way of Legge n. CCCLI, a Vatican law issued by the pope. On this basis, judges are appointed by the pope, not by the administration, whose acts they may have to review.⁹³ There is no hard age limit, but similar to the rules for senior clergy, judges are obliged to tender their resignation at the end of the judicial year in which they turn 75, which will become effective upon acceptance by the pope. And finally, both Art. 21 para. 4 FL and Art. 2 para. 2 Legge n. CCCLI guarantee the independence of the judiciary in the

⁸⁷ Konrad Dyda, 'Power and Its Exercise in the Vatican City State', *Ecclesiastical Law Journal* 26 (2024), 259-275 (265-266).

⁸⁸ See Joseph-Thomas Pini, 'Le "droit du Vatican": de la loi de la pesanteur dans l'univers juridique', *Pouvoirs. Revue française d'études constitutionnelles et politiques* 162 (2017), 89-103 (92-93).

⁸⁹ Art. 8 para. 1, Art. 2 para. 1 Legge n. CCCLI. See also Cavana (n. 17), 19-20.

⁹⁰ Cavana (n. 17), 15; Boni, Ganarin and Tomer (n. 66), 82. Even though Legge n. CCCLI now provides for the cessation of judicial office when the age limit is reached, see Dyda (n. 86), 267-268; Geraldina Boni, Manuel Ganarin and Alberto Tomer, 'Qualche "aggiustamento" alle disciplina dei magistrati vaticani', *Stato, Chiese e pluralismo confessionale* (9/2024), 1-23 (3-4), this does not mean that the pontiff would thus be barred from removing a judge, Cavana (n. 17), 19.

⁹¹ Heinrich de Wall and Stefan Muckel, *Kirchenrecht* (6th edn, C. H. Beck 2022), 146; Sarais (n. 22), 45. See canon 331 CIC, which speaks of the pope's 'supreme, full, immediate, and universal ordinary power in the Church, which he is always able to exercise freely'.

⁹² For an overview, see Diddi (n. 66), 640-643; Dyda (n. 86), 267-269.

⁹³ Giuseppe Dalla Torre, 'L'indipendenza della giustizia vaticana', *Stato, Chiese e pluralismo confessionale* (5/2019), 21-33 (27).

exercise of their adjudicating function.⁹⁴ As long as these laws stand, they must be regarded as the legislative *status quo*. The possibility of amendment or dispensation, which is inherent in parliamentary systems, too, can only be considered once such an event has actually taken place.

2. Particularities of the Vatican Legal Order

Certain particularities of the Vatican, which stem from its historic origins, must also be taken into consideration. For centuries, the popes have held temporary power over the Papal States, which ceased to exist following annexation in the course of Italian unification in the 19th century.⁹⁵ The fact that the pope and his court remained in Rome, albeit restricted to the Vatican, begged the famous ‘Roman question’, which remained unresolved until the 1929 Lateran Pacts between Italy and the Holy See. In Art. 3 of the pertaining treaty,⁹⁶ Italy recognised the Vatican City State as a separate entity in international law. The stipulation made an explicit reference to the fact that the creation of the Vatican City State took place ‘for the special purposes and modalities outlined in the treaties’. The general idea was to give the pope as head of the Catholic Church a sovereign territorial basis to ensure the independence of the Holy See and to guarantee its international standing.⁹⁷ In its dealings with states and organisations, the Vatican has often alluded to this by referring to its own nature, universal mission and particular character both in declarations and reservations.⁹⁸ In this sense, the Vatican City State has a purpose quite different from that of other states.⁹⁹ This purpose should be taken into account when assessing whether the Vatican adheres to modern human rights law standards such as Art. 6 ECHR.

Here, a second aspect might come into play: It is often said that the Vatican is an absolute monarchy, and it is indeed true that all public power is held by

⁹⁴ For a discussion of the law, see Giuseppe Dalla Torre, ‘Considerazioni sul nuovo ordinamento giudiziario dello Stato della Città del Vaticano’, *Stato, Chiese e pluralismo confessionale* (12/2020), 89–106. As Dyda (n. 86), 267 points out, popes have never been able to dictate judgments but only to judge themselves.

⁹⁵ See Alessio Sarais, ‘Brevi cenni sul rapporto tra diritto vaticano e diritto canonico orientale’, *Prawo Kanoniczne* 58 (2015), 137–152 (137); Giuseppe Dalla Torre, ‘La nuova legge fondamentale dello Stato della Città del Vaticano’, *Angelicum* 79 (2002), 711–724 (711–712).

⁹⁶ Trattato fra la Santa Sede e l’Italia of 11 February 1929, *Acta Apostolicae Sedis* 21 (1929), 209. The pacts also included a concordat and a financial convention.

⁹⁷ Ryngaert (n. 16), 833; Sarais (n. 94), 138–139; Westdickenberg (n. 5), para. 19.

⁹⁸ For examples, see Multilateral Treaties Deposited with the Secretary-General at Vol. I ch. V-2, 8; Vol. I ch. IV-9, 5; Vol. II ch. XXVII-2, 4; Vol. II ch. XXVI-4, 4; Vol. II ch. XVIII-7, 4–5.

⁹⁹ Witsch (n. 8), 538.

the pope.¹⁰⁰ At the same time, it should not be forgotten that the Vatican Law on Legal Sources places canon law at the top of its hierarchy of norms and makes it the primary criterion of interpretation.¹⁰¹ Canon law, the ecclesiastical rules that govern the organisation of the church and the rights and duties of the faithful, consists of two parts:¹⁰² One, *ius mere ecclesiasticum*, mere ecclesiastical law or man-made law, can be altered by the competent authority. The other, superior part, *ius divinum* or divine law, is beyond man's disposal and cannot be modified or changed. *Ius divinum* includes fundamental principles such as the primacy of the pope, the sacraments or the indissolubility of marriage.¹⁰³ It is not entirely accurate, therefore, to assume that the supreme pontiff is not himself bound by any law when exercising his powers with regard to the Vatican City State.¹⁰⁴ He must instead, for example, respect the equal dignity of all faithful¹⁰⁵ as part of *ius divinum*. In that sense, he resembles a constitutional rather than an absolute monarch.¹⁰⁶

3. Aspects of Public International Law

Beyond Vatican law, public international law offers aspects worth considering when assessing whether procedures such as the Vatican Financial Trial can, in principle, meet fair trial standards. Even the ECtHR accepts that its decisions on Art. 6 ECHR can have far-reaching consequences for the national legal order:¹⁰⁷ The declaration that a court is unlawful or that judges must be removed carries a serious risk of undermining public confidence in the judiciary, reducing legal certainty and thereby causing harm to the rule of law. As a result, the consequences of such a judgment must be weighed

¹⁰⁰ Cavana (n. 17), 14-16; Witsch (n. 8), 539; Franz Norbert Otterbeck, 'Der Vatikan. Ein "Staat des Grundgesetzes"? in: Heinz Finger, Reimund Haas and Hermann-Josef Scheidgen (eds), *Ortskirche und Weltkirche in der Geschichte* (Böhlau 2011), 1005-1016 (1008).

¹⁰¹ Art. 1 para. 1 Legge n. LXXI sulle fonti del diritto of 1 October 2008, Bolletino n. 16. On the role of canon law, see Pasquale Lillo, 'Alcune riflessioni sull'ordinamento vaticano. Ricordando il Maestro', *Stato, Chiesa e pluralismo confessionale* (6/2021), 23-42 (38-41) and, extensively, Geraldina Boni, 'L'"ordinamento canonico" come "primo criterio di riferimento interpretativo" del diritto vaticano: una rilevanza crescente', *Jus-Online* (6/2022), 99-170.

¹⁰² Ulrich Rhode, *Kirchenrecht* (W. Kohlhammer 2015), 16; Ludger Müller and Christoph Ohly, *Katholisches Kirchenrecht* (Ferdinand Schöningh 2018), 39-42.

¹⁰³ Rhode (n. 101), 91-93; de Wall and Muckel (n. 90), 111.

¹⁰⁴ Dyda (n. 86), 273. See also the detailed analysis by Claudio Gentile, 'I limiti al potere legislativo nello Stato della Città del Vaticano', *Archivio giuridico* 156 (2024), 393-422 (393).

¹⁰⁵ Canon 208 CIC, which is part of *ius divinum*, see Müller and Ohly (n. 101), 40.

¹⁰⁶ Similarly Otterbeck (n. 99), 1006.

¹⁰⁷ ECtHR, *Guðmundur Andri Ástráðsson* (n. 34), para. 240.

carefully in order to ascertain whether there is in fact a pressing need of a substantial and compelling character requiring such a decision.

As regards the Vatican, one could consider that the system at hand, namely the central role of the pope, is intertwined with religious convictions.¹⁰⁸ In this vein, canon 331 CIC links the supreme authority of the pope to Saint Peter and his vocation as the first among the apostles, an office instituted by Christ himself. The preamble of the fundamental law equally refers to the *munus petrino* as basis for the pope's sovereignty over the Vatican.¹⁰⁹ Deficits in the separation of powers which ultimately stem from this belief are therefore not merely legislative shortfalls that could easily be remedied but touch upon the very identity of the Vatican.¹¹⁰ Indeed, from a canon law perspective, it might be impossible to fully address them.¹¹¹ The choice is therefore either to accept certain deficits with regard to the material content of Art. 6 ECHR or to declare the organisation of the Vatican City State fundamentally incompatible with this guarantee.

The latter decision would render judicial activities in the Vatican illegitimate or obsolete and contribute to a higher degree of impunity.¹¹² What is more, such a finding would also touch upon central notions of public international law. It seems somewhat unsuitable to invoke the principle of self-determination of peoples here, given that Vatican citizenship is – unlike all other nationalities – tied to a function in the Vatican and typically temporary.¹¹³ But the prohibition of intervention can well be applied to the issue in question. Choosing a system of government is an integral part of the internal affairs of a country, which means that all pertaining decisions belong to the *domaine réservé* of the respective entity and enjoy protection from outside interference.¹¹⁴ This is not

¹⁰⁸ Lillo (n. 100), 34–38.

¹⁰⁹ See, on the ambivalent nature of this reference, Alberto Melloni, 'Potere del papa e giustizia vaticana', *Rivista il Mulino*, 4 December 2023, <<https://www.rivistailmulino.it/a/potere-del-papa-e-giustizia-vaticana>>, last access 8 July 2026.

¹¹⁰ Pini (n. 87), 97–99.

¹¹¹ On this question, see also Cavana (n. 17), 6–9, who argues that canon law requirements need not necessarily apply in full to the Vatican City State as the temporal holdings of the Holy See.

¹¹² As an alternative, the Vatican could also make use of the possibility to cede the exercise of jurisdiction to Italy, as provided for in Art. 22 Trattato fra la Santa Sede e l'Italia. See, for this option, Cavana (n. 17), 12.

¹¹³ Otterbeck (n. 99), 1008; Witsch (n. 8), 539. See, on this point, Jorri C. Duursma, *Fragmentation and the International Relations of Micro-States* (Cambridge University Press 1996), 417–418.

¹¹⁴ Regarding the extent of the *domaine réservé*, the ICJ, *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. USA), merits, judgment of 27 June 1986, ICJ Reports 1986, 14 (para. 204) has famously stated that each state is permitted, by the principle of state sovereignty, to freely choose a political, economic, social and cultural system.

to say that contractually agreed obligations such as the one in Art. 6 ECHR violate the prohibition of intervention. But denying a country the basic public function of adjudication would be hard to reconcile with this cornerstone of the international legal order if it was not based on absolutely striking grounds. In case of the Vatican and in view of the above, the existence of such reasons is more than doubtful.

VI. Conclusion: The Vatican – An Accepted Partner in International Cooperation

Indeed, in their practical dealings, other states do not treat the Vatican as pariah but as fully legitimate partner in international cooperation, which can be trusted with criminal proceedings. In this sense, the monetary agreement¹¹⁵ should be counted as an expression of the EU's confidence in fair trial proceedings by Vatican tribunals. Similar considerations apply with regard to the 190 states bound by the International Convention for the Suppression of the Financing of Terrorism¹¹⁶ as well as the parties of the UN Conventions against Transnational Organized Crime¹¹⁷ and against Corruption,¹¹⁸ all of which equally oblige the Vatican to ensure judicial action. Moreover, Swiss and Italian courts have accepted their Vatican counterparts as legitimate and independent judicial institutions. Finally, a draft section in the Council of Europe Parliamentary Assembly's report on observer states,¹¹⁹ which criticised a lack of democratic institutions in the Vatican, was modified to refer only to the specific nature and mission of the Vatican City State.¹²⁰ A 51 to 1 majority in the Assembly found that the 'status quo should be accepted'.¹²¹ All of this can be seen as state practice to the end that the Vatican system of government does not impair the independent administration of justice. In view of these aspects, the Vatican City State should be treated as a *sui generis* case whose court system guarantees sufficient independence even though typical organisational requirements are not met.

¹¹⁵ See n. 18.

¹¹⁶ International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, 2178 UNTS 197.

¹¹⁷ United Nations Convention against Transnational Organized Crime of 15 November 2000, 2225 UNTS 209.

¹¹⁸ United Nations Convention against Corruption of 31 October 2003, 2349 UNTS 41.

¹¹⁹ CoE-PA Doc 11471 (n. 16).

¹²⁰ Amendment No. 22 to Doc 11471 of 22 January 2008.

¹²¹ Council of Europe Parliamentary Assembly (CoE-PA), 'The Council of Europe and Its Observer States – the Current Situation and a Way Forward', CoE-PA Res 1600 of 23 January 2008.

