

ARTICLES

EXTRADITING PERSONS FROM ITALY TO VATICAN CITY: CHIMERA OR REAL POSSIBILITY?

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“You have to understand that once an indictment has been signed, all countries that are signatories to the U.N. charter will hand a person straight over. You don't have to go through the normal extradition process”
-Tony Greig

ABSTRACT

In the course of the last year Italy was confronted with the unusual request from the Vatican City to extradite an Italian national to face charges of embezzlement and misappropriation of Holy See funds. The Holy See requested the extradition of Cecilia Marogna, a self-described intelligence analyst and private spy from Sardinia, who worked for Cardinal Angelo Becciu, a senior Vatican official who was demoted over embezzlement claims. The case has received considerable press coverage and attention through print and online media worldwide, not least because of its numerous twists and turns such as the arrest of Marogna in Milan on an Interpol warrant issued at the Holy See's request, the sudden drop of the extradition request by the Vatican authorities, and Italy's highest court ruling that Cecilia Marogna never should have been arrested before a court evaluated whether she could be extradited. The aim of this Article is to explore whether the extradition of an Italian national, from Italy to the Vatican, unlike what has been claimed by Marogna's defense lawyers and implicitly accepted by the Vatican authorities that dropped the extradition request, is instead possible. The thesis defends this possibility regardless of the absence of a bilateral extradition treaty between Italy and the Vatican and of an *ad hoc* extradition agreement between Italy and the Holy See. But this is only provided that the request for extradition

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concerns an Italian citizen convicted or accused of corruption-related crimes like Cecilia Marogna. This Article will proceed as follows: after an introduction, Section 1 will discuss and reject an argument that infers a prohibition of extradition from Italy to the Vatican from the wording of Article 22 of the Lateran Treaty of 1929. Sections 2 and 3 will consider and exclude that an obstacle to extradition from Vatican City to Italy may be inferred from the poor quality of the criminal justice system in Vatican City or from the authoritarian character of the Vatican's internal legal order that is only presumed but not demonstrated. Finally, Section 4 will claim and argue that a proper duty to extradite persons not only from the Vatican to Italy but also from Italy to the Vatican should be inferred from Articles 43 to 49 of the United Nations Convention against Corruption (UNAC) of which both Italy and the Vatican City/Holy See are bound as contracting parties.

I. INTRODUCTION

The globally known case of Cecilia Marogna has thrown the spotlight on the question of whether an Italian national could be extradited from Italy to the Vatican to face criminal proceedings.¹ The question is as of yet unresolved as it has not been previously addressed in either the writings of international and ecclesiastic law scholars or in the practice of the diplomatic relations between Italy and the Vatican City. Given the procedural strategy adopted by the Vatican authorities that ultimately decided not to proceed with the request for the extradition of Cecilia Marogna, the question remains hitherto unresolved.² Therefore, theoretical reflection is indispensable in this regard.

The aim of this Article is to provide reflection and answer the question posed

1. Vatican prosecutors have accused Ms. Cecilia Marogna of embezzlement and misappropriation of Holy See funds. They allege she was paid at least 575,000 euros by the Vatican Secretariat of State from 2018-2019 to help liberate Catholic hostages, but that the money was used instead to buy Prada, Chanel and other high-end luxury goods. For further information on the facts of the case, see Marta Duò, *Scandalo Finanziario Travolge il Vaticano, Dalle Dimissioni del Cardinale Becciu a Oggi: Tutte le Tappe*, SOC. POST (Apr. 7, 2021, 8:54 PM), <https://www.thesocialpost.it/2021/10/06/scandalo-finanziario-travolge-il-vaticano-dalle-dimissioni-del-cardinale-becciu-a-oggi-tutte-le-tappe/> [<https://perma.cc/PJQ3-P2FZ>]; Ed Condon, *Vatican Gears Up for 'Imminent' Trial of Cecilia Marogna, and Aho Else - Analysis: Vatican Finances*, PILLAR (Apr. 9, 2021, 7:54 PM), <https://www.pillaratholic.com/p/vatican-gears-up-for-imminent-trial> [<https://perma.cc/UY7G-TVGV>].

2. The investigating judge of the Vatican City State Court, accepting the request formulated by the Office of the Promoter of Justice, on January 13 “revoked the precautionary measure ordered at the time against Mrs. Cecilia Marogna. The initiative intends, among other things, to allow the accused “to” participate in the trial in the Vatican, free from the pending precautionary measure against her.” See Francis X. Rocca, *Vatican Indicts Cardinal, Nine Other People Over London Real-Estate Deal: Trial of Cardinal Giovanni Becciu Will Be the First of a Cardinal in Vatican City's Criminal Court*, WALL ST. J. (July 3, 2021), <https://www.wsj.com/articles/vatican-indicts-cardinal-nine-other-people-in-london-real-estate-deal-11625320841> [<https://perma.cc/2SMK-F87J>].

in the title: is the extradition of an Italian national to the Vatican possible and, if yes, under what conditions and limits? In order to achieve its aim, the article is divided into three major sections plus the present introduction and a conclusion. Section 2 considers whether a prohibition of extradition from Italy to the Vatican can be derived from the Lateran Treaty of 1929, as was suggested in the case of Cecilia Marogna by her lawyers. The following Section 3 considers whether an obstacle to extradition from the Vatican to Italy may be inferred from the poor quality of the criminal justice system in the Vatican. Section 4 examines if such an obstacle may be inferred eventually from the alleged authoritarian character of the Vatican's internal legal order. Section 5 concludes by developing the thesis of this article that a duty to extradite persons from the Vatican City to Italy lies in Articles 43 to 49 of the United Nations Convention against Corruption (UNAC),³ of which both Italy⁴ and the Vatican City⁵ are bound as contracting parties.

II. THE IMPOSSIBILITY TO INTERPRET AND APPLY ARTICLE 22 OF THE LATERAN TREATY AS AN EXTRADITION PROVISION

Article 22 of the Lateran Treaty reads as follows:

3. Adopted by the General Assembly, by its resolution 58/4 of 31 October 2003. In accordance with article 68 (1) of the afore-mentioned resolution, the United Nations Convention against Corruption entered into force on 14 December 2005. G.A. Res. 58/4, United Nations Convention Against Corruption (Oct. 31, 2003) [hereinafter *United Nations Convention Against Corruption*]. For a commentary, see THE UNITED NATIONS CONVENTION AGAINST CORRUPTION: A COMMENTARY 3 (Cecily Rose et al. eds., 2019); see generally Michael Kubiciel & Anna Cornelia Rink, *The United Nations Convention against Corruption and its Criminal Law Provisions, in INTERNATIONAL LAW AND TRANSNATIONAL ORGANIZED CRIME* 219-37 (Pierre Hauck & Sven Peterke eds., 2016); see generally DEVELOPMENT AND ANTI-CORRUPTION AGENDAS ALIGNED: THE CONTRIBUTION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION 401-30 (Nikos Passas ed., 2015); Michael Kubiciel, *Core Criminal Law Provisions in the United Nations Convention Against Corruption*, 9 INT'L CRIM. L. REV. 139 (2009); Mirja Ciesiolka, A CONTRIBUTION TO NORM CONFLICT RESOLUTION IN A FRAGMENTED INTERNATIONAL LEGAL ORDER: THE LEGAL RELATIONSHIP BETWEEN THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AND INTERNATIONAL HUMAN RIGHTS LAW at 3 (Mirja Ciesiolka ed., 2015).

4. In 2009, Italy ratified the United Nations Convention against Corruption (UNCAC), thus bringing its corruption prevention mechanisms in line with international standards. L. 3 Aug. 2009, no. 116, G.U. Aug. 14, 2009, no. 188 (It.) ("Ratifica ed Esecuzione della Convenzione dell'Organizzazione delle Nazioni Unite Contro la Corruzione, Adottata Dalla Assemblea Generale dell'ONU il 31 Ottobre 2003 con Risoluzione n. 58/4, Firmata Dallo Stato Italiano il 9 Dicembre 2003").

5. United Nations Convention Against Corruption, *supra* note 3 ("By acceding to the United Nations Convention against Corruption, the Holy See, acting also in the name and on behalf of Vatican City State, intends to contribute and to give its moral support to the global prevention, repression and prosecution of such crime.").

At the request of the Holy See and on delegation of power, which may be given by the Holy See either in single cases or permanently, Italy will provide within her own territory for the punishment of crimes committed within the State of the Vatican. When, however, an individual who has committed a crime therein takes refuge in Italian territory, he shall be dealt with forth with according to the provisions of Italian law. The Holy See will hand over to the Italian State individuals who have fled within the State of the Vatican charged with acts committed in Italian territory which are considered criminal by the laws of both States. A like procedure will be followed in the case of individuals charged with crime who may have fled to one or other of the properties declared immune in Art. 15 unless those in charge of such property prefer to ask the Italian police to enter and make the arrest.⁶

It has been recently submitted that this Article would be interpreted and applied as allowing extradition of individuals from the Vatican to Italy, but not vice versa.⁷ The rationale behind this narrow interpretation lies in the wording of Article 22 that explicitly refers to “a duty of the Holy See to hand over to the Italian State individuals who have fled within the State of the Vatican charged with acts committed in Italian territory which are considered criminal by the laws of both States.”⁸ However, it is very doubtful whether this rationale is sufficient, per se, to support this reading.

At least seven major counter arguments can be advanced against it. The first, and perhaps the most important one, is that Article 22 cannot be viewed as encompassing an extradition provision or clause. A confirmation in this sense comes from the interpretation of the majority of the commentators of the Treaty of Lateran that Article 22 is a provision aimed instead at avoiding conflicts of jurisdiction between Italy and Vatican City.⁹ A further confirmation comes from the lack of any reference in Article 22 to the general principle of reciprocity, although this has constantly been considered a guiding principle of international

6. Treaty Between the Vatican and Italy, 23 Am. J. Int'l L. Sup 187, 194 (1929).

7. As reported inter alia by LA REPUBBLICA, 20 October 2020.

8. Treaty Between the Vatican and Italy, *supra* note 6, at 194; For the history behind this provision, see Italo Garzia, *Il Negoziato Diplomatico Per I Patti Lateranensi*, 38 IL POLITICO 73 (1973) . See David Durisotto, *Rapporti tra Italia e Stato Città del Vaticano in Materia di Giurisdizione*, 32 ARCHIVIO GIURIDICO FILIPPO SERAFINI 607 (2007) (on the meaning and scope of this article).

9. See Carlo Cardia, *Vaticano e Santa Sede. Dal Trattato lateranense a Giovanni Paolo II*, in VATICANO E SANTA SEDE 22, 29 (Pietro Agostino D'Avack & Carlo Cardia eds., 1994); see also Francesco Margiotta Broglio, *La Rilevanza Costituzionale dei Patti Lateranensi tra Ordinamento Giuridico Fascista e Carta Repubblicana*, 32 RIV. TRIM. DIR. PUBBL 1332 (1983); Andrea Piola, *La Legislazione Ecclesiastica del Governo Fascista (Nel Primo Decennale della Conciliazione)*, in STUDI DI STORIA E DIRITTO IN ONORE DI CARLO CALISSE 241, 242 (Arrigo Solmi et. al. eds, 1940).

treaties on extradition.¹⁰

A second counter argument is that even if Article 22 is interpreted and applied as containing an extradition provision or clause, it cannot be interpreted and applied as also excluding the possibility of extraditions from Italy to the Vatican. In fact, as explained below, there are treaty specific provisions binding both Italy and the Vatican that allow this possibility when the person requested through extradition is formally accused of financial-related crimes.¹¹ A third counter argument is that an interpretation of Article 22 as an extradition provision could hardly be reconciled with the overall purpose of the Lateran Treaty of 1929.¹² As described in its Preamble, the purpose of this Treaty is to assure the absolute and visible independence of the Holy See in the international field.¹³

A fourth counter argument, closely related to the first, is that an interpretation of Article 22 as a unilateral extradition provision would conflict with the very rationale of this Article to avoid any possible risk of interferences of the Vatican in the internal affairs in criminal matters of the Italian State.¹⁴ A fifth counter argument is that Article 22 lacks the requirements that are universally considered essential for an extradition clause.¹⁵ Yet, this is so with the very exception of the general principle of dual criminality that is recalled in the last provision of Article

10. See José Francisco Rezek, *Reciprocity as a Basis of Extradition*, 52 BRITISH Y.B. OF INT'L L. 171, 203 (1981) (on the role of the general principle of reciprocity in international extradition processes); Kenneth E. Levitt, *International Extradition, the Principle of Speciality, and Effective Treaty Enforcement*, 76 MINN. L. REV. 1017, 1022 (1992); INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 421 (Cherif M. Bassiouni ed., 6th ed. 2014); S. Z. Feller, *The Scope of Reciprocity in Extradition*, 10 ISR. L. REV., 427 (1975).

11. See *infra* Section V.

12. On the purpose of the Lateran Treaty, see Luigi D'Ottavi, *The Value of Contracts in a Long-Term Context—An Example Based on the Lateran Treaty and the Concordat of 1984* in THE NATURE OF PURCHASING. MANAGEMENT FOR PROFESSIONALS 109-17 (F. Schupp, H. Wöhner eds., 2020).

13. Treaty Between the Vatican and Italy, *supra* note 6, at 187. As stated in the preamble of the Lateran Treaty, Vatican City is a state created “for the purpose of assuring to the Holy See absolute and visible independence and of guaranteeing to it indisputable sovereignty also in the field of international relations.” See also L'EXTRATERRITORIALITÀ NEL TRATTATO DEL LATERANO 83 (Giuseppe Dalla Torre ed., 2016); DERECHO ECLESIASTICO INTERNACIONAL 82 (Carlos Corral Salvador ed., 2012).

14. See Cardia, *supra* note 9, at 22.

15. See Ved P. Nanda, *Extradition and Mutual Legal Assistance: Recent Trends in Inter-State Cooperation to Combat International Crimes*, in RESEARCH HANDBOOK ON INTERNATIONAL CRIMINAL LAW 334-35 (Bartram S. Brown ed., 2011) (discussing the clear exposition of these requirements); see Ved P. Nanda, *Bases for Refusing International Extradition Requests - Capital Punishment and Torture*, 23 FORDHAM INT'L L.J. 1369 (2000); see also Emily Edmonds-Poli & David A. Shirk, *Extradition as a Tool for International Cooperation: Lessons from the U.S.-Mexico Relationship*, 33 MD. J. INT'L L. 215 (2018); see also BRINGING INTERNATIONAL FUGITIVES TO JUSTICE: EXTRADITION AND ITS ALTERNATIVES 20 (David A. Sadoff ed., 2016).

22.¹⁶ A sixth counter argument might be inferred from the broad and flexible interpretation of Article 22 of the Lateran Treaty that, in combination with Article 3 (2) of the same,¹⁷ was provided during the trial of Mehmet Ali Agca, the Turkish gunman who attempted to assassinate Pope John Paul II in St. Peter's Square in the Vatican City in 1981.¹⁸ According to the Lateran Treaty, Italy may punish persons for crimes committed within the Vatican City even without a formal extradition request from the Vatican to Italy for the prosecution of the accused.¹⁹

And that is not all. A seventh and final counter argument could be derived from the difficulty of otherwise reconciling the adhesion of the Holy See to the Council of Europe's Convention on the Transfer of Sentenced Persons of 1983 (the Transfer of Sentenced Persons Convention)²⁰ that regulates the extradition and social rehabilitation of imprisoned persons with a prohibition to extradite an Italian citizen to Vatican City to face a criminal trial therein.²¹

III. THE IMPOSSIBILITY TO OBSTRUCT THE ENFORCEMENT OF AN EXTRADITION PROCEEDING FROM ITALY TO VATICAN ON THE GROUNDS OF FAIR TRIAL CONCERNS

A possible obstacle to the enforcement of an extradition proceeding from

16. According to the dual-criminality principle a person may be extradited only when his/her actions constitute an offence in both the requesting and requested states. See Lech Gardocki, *Double Criminality in Extradition Law*, 27 *ISR. L. REV.* 288, 296 (1993); Jonathan O. Hafen, *International Extradition: Issues Arising under the Dual Criminality Requirement*, 1992 *BYU L. REV.* 191, 191-92 (1992).

17. Treaty Between the Vatican and Italy, *supra* note 6, at 188 ("It is agreed, however, that the Piazza di San Pietro, although forming part of the Vatican City, will continue ordinarily to be open to the public and subject to the police powers of the Italian authorities. The jurisdiction of these authorities shall not extend beyond the foot of the steps leading to the Basilica although the latter continue to serve for public worship. The police, therefore, will refrain from ascending the steps and entering the Basilica unless they are requested to do so by competent authority").

18. Ali Agca challenged Italian jurisdiction over his case and wanted his trial to take place in the Vatican, but Italian judge Severino Pantiapichi ruled that Italian jurisdiction was authorized by the Treaty of Lateran of 1929. See Stephen E. Young & Alison Shea, *Separating State from Church: Researching the Legal System of the Vatican City State*, 99 *L. LIBR. J.* 589, 595 (2007).

19. Henry Tanner, Italian Prosecutor Requests a Life Sentence for the Pope's Assailant, *N.Y. TIMES*, July 22, 1981, at A6.

20. Convention on the Transfer of Sentenced Persons, Council of Europe, July 1, 1985, C.E.T.S. No. 112.

21. See Jamil Ddamulira Mujuzi, *Legal Pluralism and the Convention on the Transfer of Sentenced Persons in Practice: Highlighting the Jurisprudence of the European Court of Human Rights on the Transfer of Sentenced Persons within and to Europe*, 47 *J. LEGAL PLURALISM AND UNOFFICIAL L.* 324, 328 (2015) (recalling that the principal aim of the Transfer of Sentenced Persons Convention is, according to Article 2, to permit a person sentenced in the territory of a Party to be transferred to the territory of another to serve the sentence imposed on him).

Italy to the Vatican might derive from the lack of right to defense and of fair trial guarantees in the Vatican's criminal proceedings.²² Yet this was one of the key remarks made by the Committee to Protect Journalists, Reporters Without Borders and the OSCE in 2015 in relation to the charges against Gianluigi Nuzzi and Emiliano Fittipaldi, the two Italian reporters who were put on trial by the Vatican for publishing books based on illegally leaked documents that exposed greed, mismanagement and corruption at the highest levels of the Catholic Church.²³ The same remark was made more recently by the lawyers of the Dinoia firm, who assisted Cecilia Marogna during her pre-trial custody in a jail in Milano.²⁴

22. "In criminal matters, the Vatican legislature has made express reference to the Italian codes. In particular, article 7 of Law No. LXXI of 2008 refers to the application of 'the Italian penal code implemented by the law of 7 June 1929, n. II, as amended and supplemented by Vatican laws.' Similarly, for the criminal procedural system, article 8 of Law No. LXXI refers to the 'Italian criminal procedure code implemented by law no. II, as amended and supplemented by Vatican laws.'" Buchanan, *Vatican Criminal Law and Recent Money Laundering Cases*, May 18, 2021, <https://blogs.loc.gov/law/2021/05/vatican-criminal-law-and-recent-money-laundering-cases/> [<https://perma.cc/8745-ZJ3X>]. See IL DIRITTO PENALE DELLA CITTÀ DEL VATICANO. EVOLUZIONI GIURISPRUDENZIALI 10 (Giuseppe Dalla Torre, Geraldina Boni, 2014); Francesco Zanchini, *Tra Conversione del Peccatore e Punizione del Reo. Le Contraddizioni del Processo Penale Canonico, Oggi*, 12 STATO, CHIESE E PLURALISMO CONFESIONALE 126 (2020).

23. In July 2016, after an eight-month trial, the Vatican's criminal court declared that it had no jurisdiction to prosecute them. See Nicole Winfield, *Journalist Prosecuted for 'Vatileaks' Scandal Pens New Book*, AP NEWS (Oct. 31, 2017), <https://apnews.com/article/7f8564dcd8c34666b7d2d332beb7eb00> [<https://perma.cc/NH2X-P66V>]. On the "Vatileaks" case, see Gian Luigi Gatta, *La Sentenza Vaticana sul caso 'Vatileaks'. Brevi Note sui Profili Penalistici*, 21 IL DIRITTO ECCLESIASTICO 157, 165 (2012); *Id.*, *Note a margine della sentenza vaticana sul caso " Vatileaks " (in tema di "furto d' informazioni " attraverso la fotocopia di documenti)* 57 RIVISTA ITALIANA DI DIRITTO E PROCEDURA PENALE 1226 (2013).

24. Int'l Covenant on Civil and Political Rts., art. 14, Dec. 16, 1966, 999 U.N.T.S. 171. ("All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. 2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defense and to

This remark is far from shallow; instead, it is significant for a number of reasons. The most important of these reasons is that domestic courts normally consider human rights claims in general and fair trial claims in particular in extradition proceedings and at times refuse to grant extradition on one or more of these grounds.²⁵ The 1990 UN Model Treaty on Extradition gives an important confirmation of this practice of considering human rights claims in extradition proceedings, in particular when it specifies that the requesting state shall provide minimum guarantees in criminal proceedings as contained in Article 14 of the International Convention on Civil and Political Rights (ICCPR).²⁶ Moreover, the Charter of Fundamental Rights of the European Union prohibits extradition if

communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. 4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him. 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”)

25. See e.g. Jacques Hartmann, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND EXTRADITION* 11 (K.H. Kaikobad & M. Bohlander eds., 2009); Peter Langford, *Extradition and Fundamental Rights: The Perspective of the European Court of Human Rights*, 13 INT'L J. OF HUM. RTS 512 (2009), (defining extradition as a process that involves the individual in an essentially administrative, non-criminal procedure); see John Dugard & Christine Van den Wyngaert, *Reconciling Extradition with Human Rights*, 92 AM. J. OF INT'L L. 187 (1998); see Micheal P. Shea, *Expanding Judicial Scrutiny of Human Rights in Extradition Cases after Soering*, 17 YALE J. INT'L L. 85 (1992); see Christine Van Den Wyngaert, *Applying the European Convention on Human Rights to Extradition: Opening Pandora's Box?*, 39 INT'L & COMP. L.Q. 757 (1990); see Susan Marks, *Yes, Virginia, Extradition May Breach the European Convention on Human Rights*, 49 THE CAMBRIDGE L. J. 194 (1990); see Colin Warbrick, *Coherence and the European Court of Human Rights: The Adjudicative Background to the Soering Case*, 11 MICH. J. INT'L L. 1073 (1989). *But see also* Asif Efrat, Abraham L. Newman, *Defending Core Values: Human Rights and the Extradition of Fugitives*, 57 J. OF PEACE RES. 13 (2016), (recalling that states are increasingly willing to overlook human rights violations to reap the fruits of international cooperation).

26. G.A. Res. 45/116, at art. 3(f) (Dec. 14, 1990).

there are no guarantees that the person would not be “subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”²⁷ These guarantees include, among others, “a fair and public hearing by a competent, independent and impartial tribunal established by law”; presumption of innocence; proper facilities and time for the preparation of one’s defense; a trial without undue delay; not to be compelled to testify against oneself or to confess guilt; and a right to appeal the conviction and sentence.

The remark above is far from undisputed if referring specifically to the Vatican’s criminal proceedings. *Prima facie* one may believe that it would be accurate to conclude in the sense mentioned above. This is all the more due to the fact that the Vatican City State is not a contracting party to the international treaties which allow for appeals to the European Court of Human Rights (ECtHR)²⁸ and thus it is not formally bound by Article 6(1) of the ECHR on fair trial. There is also another reason that the Vatican does not acknowledge human rights and duties unless they are in accordance with the Church doctrine.²⁹

To these arguments, one may also attach the fact that the Holy See³⁰ is a party to the United Nations Convention on the Rights of the Child (CRC),³¹ the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)³² and to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),³³ not the Vatican City,³⁴ and that the Pope retains the right to refer any penal or civil case to a

27. EU Charter of Fundamental Rights art. 19 (“No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”). See Elspeth Guild, *Article 19*, in *THE EU CHARTER OF FUNDAMENTAL RIGHTS A COMMENTARY* (Steve Peers et al. eds. 2021) at 1020 ff.

28. See generally James J. Fawcett, *The Impact of Article 6 (1) of the ECHR on Private International Law*, 56 INT’L & COMP. L. Q. 1 (2007).

29. Law No. LXXI art. 1, Oct. 1, 2008, (“the legal system the Vatican recognizes in the canonical order the first normative source and the first interpretative reference criterion.”). See also Jane Adolphe, *The Holy See and the Universal Declaration of Human Rights: Working toward a Legal Anthropology of Human Rights and the Family*, 4 AVE MARIA L. REV. 323 (2006); see Michael J. Coughlan, *THE VATICAN, THE LAW AND THE HUMAN EMBRYO* (Univ. of Iowa Pr 1990).

30. See William Thomas Worster, *The Human Rights Obligations of the Holy See*, 31 DUKE J. OF COMP. & INT’L L. 352 (2021) (discussing the adhesion of the Holy See to the CRC).

31. UN Comm’n on Hum. Rts., *Convention on the Rights of the Child.*, U.N. Doc.E/CN.4/RES/1990/74 (Mar. 7, 1990).

32. See G.A. Res. 39/46, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (Dec. 10, 1984).

33. See G.A. Res. 2106 (XX), annex, *International Convention on the Elimination of All Forms of Racial Discrimination* (Dec. 21, 1965).

34. On the distinction between the Vatican and Holy See, see Gaetano Arangio-Ruiz, *On the Nature of the International Personality of the Holy See*, 29 REVUE BELGE DE DROIT INTERNATIONAL 355, 356 (1996) (“[T]he acting or contracting party is always, from the viewpoint

special commission with the power to render a sentence conforming to equity and to exclude further recourse.³⁵

However, if this is true then, it is also true, that things are much more complex than one might believe at first sight. Pope John Paul II's encyclical *Sollicitudo Rei Socialis*³⁶ provides that the “social concern of the Church is directed toward an authentic development of man and society which would respect and promote all the dimensions of the human person” and the most recent call of the Holy See for the strict interpretation of international human rights treaties³⁷ as codified in the 1969 Vienna Convention on the Law of Treaties (VCLT)³⁸ offer two good examples of the complexity of the relationship on one side between the Vatican and Holy See and human rights on the other side.³⁹

of general international law, the Holy See (or the Roman Church)”; Edmundo Vargas Carreño, *DERECHO INTERNACIONAL PUBLICO* 283 (Editorial Juridica de Chile 2007); Roman Noel Dias, *Catholic Church & International Law*, 13 *SRI LANKA J. OF INT'L L.*, 107 (2001); *see generally* Matthew N. Bathon, *The Atypical International Status of the Holy See*, 34 *VANDERBILT J. OF TRANSNAT'L L.*, 597-632 (2001); Joseph L. Kunz, *The Status of the Holy See in International Law*, 46 *AM. J. OF INT'L L.* 308, 314 (1952); Pío Ciprotti, *The Holy See: Its Function, Form, and Status in International Law*, 8 *CONCILIUM* 63, 73 (1970), (holding that the Catholic Church is the international legal person but a distinct person from the Holy See); Juan José Ruda Santolaria, *La Iglesia Católica y el Estado Vaticano como Sujetos de Derecho Internacional*, 12 *ARCHIVUM HISTORIAE PONTIFICAEE* 297, 297 (1997); *see generally* J. PUENTE EGIDO, *LA PERSONALIDAD DE LA CIUDAD DEL VATICANO* 3-20 (Consejo Superior de Investigaciones Científicas, Institutio Franciscio de Vitoria, 1965).

35. *See Text of Presentation by H.E. MSGR. Dominique Mamberti, Secretary for Relations with States, of the 'Motu Proprio' of Pope Francis on Criminal Law Matters and Administrative Sanctions*, LASANTA SEDE, https://www.vatican.va/roman_curia/secretariat_state/2013/documents/rc-seg-st-20130711_mamberti-presentazione_en.html [<https://perma.cc/UN8L-22SR>].

36. *See Sollicitudo Rei Socialis*, Vatican (Dec. 30, 1987) https://www.vatican.va/content/john-paul-ii/it/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html [<https://perma.cc/H63P-QD9X>].

37. *See* Fr. Benedict Mayaki, *Holy See Calls for Strict Interpretation of Human Rights Treaties*, VATICAN NEWS (Sept. 3, 2020, 11:10 AM), <https://www.vaticannews.va/en/church/news/2020-09/holy-see-calls-for-strict-interpretation-of-human-rights-treatie.html> [<https://perma.cc/L22F-3A3Q>].

38. U.N. Conference on the Law of Treaties, Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/11/Add.2 (Jan. 27, 1980).

39. *See* William Thomas Worster, *supra* note 29, at 352; NATHALIE LEYNS, *THE HOLY SEE: SOVEREIGN POWER INTERNATIONALLY RECOGNISED: DOES THE AUTHORITY THE HOLY SEE EXERCISES WITHIN THE INTERNATIONAL COMMUNITY GO ALONG WITH A RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS? (European Master's Degree in Human Rights and Democratisation 2011)*; Johannes A. van der Ven, *Three Desiderata for Vatican III: An Appraisal of Vatican II from the Perspective of Human Rights*, *ET STUDIES* (2014) at 217; Francesco Margiotta Broglio, *Sul Nuovo Ruolo dell'Osservatore della Santa Sede alle Nazioni Unite*, 71 *RIVISTA DI STUDI POLITICI INTERNAZIONALI* 555 (2004); Francesco Margiotta Broglio, *Pace, Libertà Religiosa e Diritti Dell'uomo*, 55 *RIVISTA DI STUDI POLITICI INTERNAZIONALI* 217 (1998); Vincenzo Buonomo, *La*

Further examples in the same sense may also be found in other papal encyclicals as well as in the fact that the Vatican's legal system, which is entirely autonomous from the Italian legal system,⁴⁰ offers, especially in the light of the latest reforms of Vatican's criminal proceedings,⁴¹ fair trial guarantees⁴² including the presumption of innocence, the right to a technical defense (by private or *ex officio* legal representation), and the freedom of the judicial college to form an opinion on the basis of evidence in public hearings and in debates between the prosecution and the defense.

Therefore, it would be erroneous to conclude that the enforcement of an extradition request from Italy to the Vatican might be legitimately suspended or blocked on the grounds that lack of human rights guarantees in general and minimum procedural guarantees in particular within the Vatican's legal system.

IV. THE IMPOSSIBILITY TO INFER AN OBSTACLE TO EXTRADITION TO ITALY ON THE BASIS OF THE ALLEGED AUTHORITARIAN CHARACTER OF THE VATICAN'S LEGAL SYSTEM

Closely related to the previously alleged obstacle is the view concerning the authoritarian character of the Vatican's internal legal system. This remark is generally made by non-academic lawyers for different meanings and purposes, including most recently to introduce an additional obstacle for the Vatican City to receive extradition requests from Italy.⁴³ In order to understand and eventually

Dichiarazione Universale dei Diritti dell'Uomo Sessanta Anni Dopo: Tra Tutela della Persona, Diversità Culturali e Crisi Dell'universalità, in LE SFIDE DEL DIRITTO 135-167 (Giuseppe Dalla Torre & Cesare Mirabelli eds., 2009); GIORGIO FILIBECK, I DIRITTI DELL'UOMO NELL'INSEGNAMENTO DELLA CHIESA CATTOLICA 37 (Libreria Editrice Vaticana ed., 1999).

40. For further references on this point, see e.g. Vincenzo Buonomo, *Considerazioni sul Rapporto tra Diritto Canonico e Diritto Internazionale*, 4 ANUARIO DE DERECHO CANÓNICO 13, 15 (2015); see also Arturo Carlo Jemolo, *Carattere dello Stato Città del Vaticano*, 31 ATHENAEUM 193 (1929), specifically with reference to the peculiar status of the Vatican City. WALDERY HILGEMAN, L'ORDINAMENTO GIURIDICO DELLO STATO DELLA CITTÀ DEL VATICANO. ORIGINE E EVOLUZIONE 5 (Lateran University Press ed., 2012).

41. Following the resignation of Pope Benedict, Pope Francis amended the Vatican criminal procedure and expanded jurisdiction of the Vatican City to the all other foreign states. See Philip Pullella, *Pope Will Have Security, Immunity by Remaining in the Vatican*, REUTERS (Feb. 15, 2013, 2:02 PM), <https://www.reuters.com/article/us-pope-resignation-immunity-idUSBRE91E0ZI20130215> [<https://perma.cc/P4Q8-V6RK>].

42. Article 35 of the L IX of 11 June 2013, <https://www.vaticanstate.va/phocadownload/leggi-decreti/normativa-penale/Legge%20n.%20IX%20-%20Norme%20recanti%20modifiche%20al%20codice%20penale%20e%20al%20codice%20di%20procedura%20penal%20e.pdf> [<https://perma.cc/R9ES-XAN7>]. See also Piero Gallo, *Diritto Canonico e Diritto Vaticano Nelle Recenti Riforme della Santa Sede*, 136 IL FORO ITALIANO 245 (2013).

43. For references to these opinions, see Hank Johnston & Jozef Figa, *The Church and Political Opposition: Comparative Perspectives on Mobilization against Authoritarian Regimes*,

share this position, it is indispensable to critically review the most common arguments supporting this assumption.

The primary argument is that the Vatican City State, as governed by the Holy See, is a sacerdotal-monarchical state ruled by the Pope who is also the head of the Catholic Church.⁴⁴ Further supporting arguments concern the legislature of the Vatican City that is deemed to reflect the authoritarian nature of its government, and the language of the Fundamental Laws of Vatican City State⁴⁵ that is often seen as resembling language typical of absolutist constitutions.⁴⁶ Other supporting arguments lie in that the authority to amend the Fundamental Laws is centralized and specifically delegated to the rulers,⁴⁷ and that the Pope is envisaged as holding all power in terms of making, executing, and checking legislation in the Vatican nation state.⁴⁸ The legitimacy of this power to govern the Vatican City is essentially inferred from the notion that the Pope enacts God's will in his nation state and goes on goodwill missions around the globe to further God's reach and the will of the Lord.

Even admitting that all the above-mentioned considerations and facts may prove useful in demonstrating the authoritarian character of the Vatican's internal legal system (and we believe they are not for a number of decisive reasons such as that the Pope is not a dictator but an elected official, that the Vatican lacks a stable population over which to exercise its jurisdiction or imperium⁴⁹ and that most of the residents of the Vatican City are there by their own choice rather than any other reason), they do not show the truth of the conclusion concerning the existence of an impediment or a legal prohibition for the Vatican authorities to formulate requests of extradition from Italy or any other country for prosecution in Vatican City. In fact, there is not a mutually exclusive relationship between the

13 J. FOR SCI. STUDY OF RELIGION 32 (1998). See also Mary Stanik, *Readers React: The Vatican is an Authoritarian Body. Don't Expect it to Change Quickly on Sexual Abuse*, L.A. TIMES (Feb. 26, 2019), <https://www.latimes.com/opinion/readersreact/la-ol-le-catholic-church-abuse-francisc-20190226-story.html> [<https://perma.cc/KAN9-HPAC>].

44. The Pope serves the nation until his death where a committee termed the College of Cardinals chooses his successor. Yet, if this is true, it is also true that the Pope can resign as explicitly allowed by canon 332 of the Code of Canon Law.

45. See Waldery Hilgeman, *La nuova Legge sulle Fonti del Diritto dello Stato della Città del Vaticano: Prime Note ed Osservazioni*, 83 APOLLINARIS 43 (2010).

46. Christina Havrila, *Examining the Vatican City State as an Example of a Religious-based Authoritarian Regime*, MEDIUM (Sep. 26, 2016), <https://medium.com/@havrilac/examining-the-vatican-city-state-as-an-example-of-a-religious-based-authoritarian-regime-84b8b0c29677> [<https://perma.cc/W7Y5-UNGH>].

47. *Id.*

48. While the Pope has the final say in terms of all state decisions, the Pontifical Commission also assists him in terms of passing general rules and regulations of the state. This commission however cannot contradict the Pope's decision and again, legitimizes his authority as the monarch. For further references on this issue, see e.g. M. Carni, *Papa Francesco legislatore canonico e vaticano*, 42 QUADERNI DI DIRITTO E POLITICA ECCLESIASTICA 345-68 (2016).

49. See Cardia, *supra* note 9, at 22.

authoritarian character of a state and the possibility of extradition, in the sense that an authoritarian state may either make or receive extradition requests to and from other countries for extradition offenses that are punishable under the laws of both parties.⁵⁰ This is of course provided only that the state gives sufficient guarantees for the respect of the minimum procedural safeguards indispensable to protect the person requested for extradition against arbitrary treatment and fair access to the courts through its domestic codes of criminal law and of criminal evidence.⁵¹

We return then to what has been observed and discussed in Sections II and III regarding the respect of international human rights rules and standards including the prohibition of life sentences⁵² and the existence of fair trial guarantees in the Vatican's criminal proceedings. Additionally, the Vatican's legal system also contains a legal mechanism for judges to agree with convicts on a form of community service and restorative justice plan as part of their sentence in its internal legal system.⁵³

V. CONCLUDING REMARKS ON THE EXISTENCE OF A DUTY TO EXTRADITE PERSONS FROM ITALY TO THE VATICAN

Returning to the question indicated in the title: is extradition from Italy to Vatican City possible? The answer should be in the positive, though only in the cases and for the reasons detailed below.

The reasons supporting this possibility can be found in the United Nations

50. Incidentally this is indirectly confirmed by the fact that Southeast Asian states that are increasingly authoritarian are often bound by international extradition treaties. See Ben Barber, *A New Breed of Autocrat Seems to be Taking Root in Southeast Asia Today. Is the "Domino Theory" Finally Playing Out?*, FOREIGN SERV. J. (2018), <https://afsa.org/authoritarianism-gains-southeast-asia> [<https://perma.cc/QQ7H-8SPB>]. See also Pauline David et al., ASEAN HANDBOOK ON INTERNATIONAL LEGAL COOPERATION IN TRAFFICKING IN PERSONS CASES, ASS'N OF SE. ASIAN NATIONS (2010), <https://www.asean.org/wp-content/uploads/images/2012/publications/ASEAN%20Handbook%20on%20International%20Legal%20Cooperation%20in%20Trafficking%20in%20Persons%20Cases.pdf> [<https://perma.cc/D9TY-TPN4>].

51. Harmen G. van der Wilt, *Après Soering: The Relationship between Extradition and Human Rights in the Legal Practice of Germany, the Netherlands and the United States*, 42 NETH. INT'L L. REV. 53 (1995); Leslie Anderson, *Protecting the Rights of the Requested Person in Extradition Proceedings: An Argument for a Humanitarian Exception*, 4 MICH. Y.B. LEGAL STUD. 153 (1983); Monica Lugato, TRATTATI DI ESTRADIZIONE E NORME INTERNAZIONALI SUI DIRITTI UMANI (Giappichelli ed., 2006).

52. The death penalty in Vatican City was legal from 1929 to 1969, provided for in the event of an attempted murder of the Pope. It was formally removed through Law L of 21 June 1969. See JUAN IGNACIO ARRIETA, CODICE PENALE VATICANO 3 (Libreria Editrice Vaticana ed., 2020).

53. See Giuseppe Dalla Torre, *Il diritto penale vaticano tra antico e nuovo*, 13 QUADERNI DI DIRITTO E POLITICA ECCLESIASTICA 443 (2014) (specifies that these plans can include: "the carrying out of public utility works, [and] voluntary activities of social importance."

Convention against Corruption (UNAC or Convention) of 2003, also known as the Mérida Convention, of which both Italy and Vatican are contracting parties.

The Convention represents currently the only global, binding international legal tool that comprehensively deals with corruption.⁵⁴ It has an impressive number of State parties who have, to a large extent, refrained from introducing reservations that would compromise the integrity of the treaty.⁵⁵ The State parties have also introduced a mechanism for supervising its enforcement, although belated.⁵⁶ Additionally, the Convention is far more comprehensive than the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)⁵⁷ or any of the regional anti-corruption instruments that preceded it such as the African Union Convention on Preventing and Combating Corruption (AUCPCC).⁵⁸ Interestingly, the Convention does not introduce a definition of corruption as such.⁵⁹ It wisely defines specific acts of corruption that should be considered in every jurisdiction

54. See CECILY ROSE, *INTERNATIONAL ANTI-CORRUPTION NORMS: THEIR CREATION AND INFLUENCE ON DOMESTIC LEGAL SYSTEMS* 97 (Oxford University Press 2015); See also Marco Arnone & Leonardo Borlini, *Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization*, 23 *DIRITTO DEL COMMERCIO INTERNAZIONALE* 37, 110 (2008).

55. What has been observed in the text is true if referred also to the ratification by Italy and Holy See of the treaty. For the ratification status of the Treaty see *United Nations, Ratification and Signature Status*, OFF. ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/corruption/ratification-status.html> [<https://perma.cc/6CJT-8HHM>].

56. ROSE, *supra* note 54.

57. The text of the OECD convention is available in English at: OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD <https://www.oecd.org/corruption/oecdantibriberyconvention.htm> [<https://perma.cc/Y8AL-HSXS>]. On the convention, see Leonardo Borlini, *La Lotta Alla Corruzione Internazionale dall'Ambito OCSE Alla Dimensione ONU*, 15 *DIRITTO DEL COMMERCIO INTERNAZIONALE* 15 (2007); Giorgio Sacerdoti, *The Achievements and Limits of Italian Anti-Corruption Legislation in Light of the International Legal Framework*, 25 *ITALIAN Y.B. INT'L L.* 26 (2015); a Giorgio Sacerdoti, *The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: an Example of Piece-Meal Regulation of Globalization*, 25 *ITALIAN Y.B.* 26 (1999); Robert D. Tronnes, *Ensuring Uniformity in the Implementation of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 33 *GEORGE WASH. INT'L L. REV.*, 97, 100 (2000).

58. The text in English of the treaty is available at the AU's official webpage: African Union Convention on Preventing and Combating Corruption, AFRICAN UNION, <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption> [<https://perma.cc/L6AT-WMB5>]. For a commentary, see Indira Carr, *Corruption in Africa: Is the African Union Convention on Combating Corruption the Answer?*, *J. OF BUS. L.* 111 (2007).

59. See Hannes Hechler, *UNCAC in a Nutshell. A Quick Guide to the United Nations Convention Against Corruption for Embassy and Donor Agency Staff*, U4 ANTI-CORRUPTION RESOURCE CENTRE 1 <https://www.cmi.no/publications/file/3769-uncac-in-a-nutshell.pdf> [<https://perma.cc/TDN3-QMRS>].

encompassed by the Convention. These include embezzlement and bribery, but also money laundering, concealment and obstruction of justice.⁶⁰ Equally interesting, the Convention addresses not only the criminalization of a wide range of conduct involving the public⁶¹ as well as the private sectors, but also international cooperation, the prevention of corruption, and the recovery of stolen assets.⁶²

Of most importance though are the provisions encompassing international cooperation such as extradition (art. 44), mutual legal assistance (art. 46), transfer of sentenced persons (art. 45), transfer of criminal proceedings (art. 47), law enforcement cooperation (art. 48), joint investigations (art. 49) and co-operation for using special investigative techniques (art. 50).⁶³

More specifically regarding extradition, the UNAC requires its contracting States that make extradition conditional on the existence of a treaty to clarify whether the Convention is to be used as a legal basis for extradition matters, and if not, to conclude new extradition treaties in order to implement article 44 (art. 44, para. 6 (b)), as well as bilateral and multilateral agreements to enhance the effectiveness of extradition (art. 44, para. 18).⁶⁴

Given that neither Italy nor the Holy See has made extradition of corruption-related offenses conditional on the existence of a new treaty in their ratification acts, Italy then was obliged to pursue extradition of Cecilia Marogna to face charges of embezzlement in the Vatican City, as in fact it did it. For the reasons mentioned here and above, it was then regrettable that Vatican authorities had

60. United Nations Convention Against Corruption, *supra* note 3 at art 3.

61. *Id.* at art. 2 ¶1. (“Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party. *See also id.* at art .7.

62. *Id.* at art. 43-50.

63. On the UNAC provisions with a specific focus on their limitations, see ROSE, *supra* note 54 (stressing that most of the Convention’s provisions do not impose firm obligations on the State parties).

64. Claire Mitchell, AUT DEDERE AUT JUDICARE: THE EXTRADITE OR PROSECUTE CLAUSE IN INTERNATIONAL LAW (*Graduate Institute Publications ed.*, 2009) (who after having recalled that: “. . . the obligations to prosecute in the . . . UN Convention against Corruption . . . only arise if the alleged offender is not extradited on the basis that he or she is a national of the custodial State, and . . . where asked to do so by the requesting State” stressed that this means that: “a refusal to extradite on other grounds, such as human rights concerns, would not give rise to the subsidiary obligation to prosecute.”).

dropped their extradition request to Italy for Cecilia Marogna that, if pursued to the end, not only would have been successful, but also would have contributed in confirming and clarifying the possibility to extradite Italian nationals accused of corruption or corruption-related crimes from Italy to the Vatican City.