RELIGIOUS JURISDICTIONS IN ITALY

Roberto Mazzola, Alessandria

I. The Resolution of Disputes: The Practices and Norms of Religious Communities

The legacy of Santi Romano in the tradition of Italian Public Law is deep rooted. The principle of pluralism in legal systems means that other forms of domestic justice simultaneously contribute to the administration of state justice, among which, judicial organs of religious denominations may also be found. This concurrent system legitimises the use of the words 'internal justice'; a term civil legal studies have long used to describe the resolution of disputes within associated groups.[1]

In Italy, these forms of *autodichia* involve many churches and religious societies. The only exceptions are those of Muslims and Hindus, omitted by the Constitutive Act of Association, which explicitly refers matters to civil law. Article 7 of the Statute[2] states that although not provided for in this Act or the Articles of Association, associate members refer to the laws in force in the field.

With the exception of the cases mentioned, the legal systems of all existing denominations have some form of internal administration of justice. These forms are characterised by some common factors:

(1) the use of disciplinary measures are considered *extrema ratio,* on the basis of a superior principle of equity and mercy;

(2) the system is mainly used for the resolution of disputes between organs of the religious organisation and co-religionists, or for matters of a disciplinary nature, for which the suggested measures of discipline are expulsion, loss of rights, or other sanctions. In addition, this also covers personal

[1] Cf. A. Licastro, 'L'intervento del giudice nelle formazioni sociali religiose a tutela del fedele espulso', (2005) 13 *Quaderni di diritto e politica ecclesiastica,* pp. 880–922.

[2] [[SOURCE OF THE STATUTE]].

rights and personal status, for example, in matrimonial matters within the Jewish community and the Catholic Church.

(3) Judicial proceedings administered within religious denominations are usually voluntary; that is, the litigating parties decide voluntarily and independently to participate in the proceedings and most importantly, as enforcement agencies do not exist within the religious structure, to abide by their decisions. An example can be found in Article 2 of the Waldenses' Agreement (Law no. 449/1984[3]) where it states that there can be no recourse to the court of State to enforce sanctions in spiritual matters or internal disciplinary procedures.[4]

(4) The application of the principle of dual level jurisdiction[5] and, more generally, adherence to the principle of due process, where not only are the parties permitted to appeal decisions rendered by courts of first instance, but, to completely enforce the principle of due process, albeit with different formal solutions compared to those of the state, ensuring compliance with this principle and the right of defence, while guaranteeing equality between the parties, impartiality of the judge and the defendant, as well as reasonable length of trials or disciplinary proceedings.[6]

1. Disciplinary Measures

It must be noted that most religious statutes suggest dealing with non-conformist believers with a charitable and fraternal attitude. Only persistent and continuous forbidden conduct justifies intervention with strict discipline by the competent authority. As an example, Article 46 of the rules of the Baptist Union[7] states this in relation to serious violations on the part of the minister. In fact, when there is a serious violation of the duties inherent in the function of minister or pastor, the Execut-

3 *Norme per la regolazione dei rapporti tra lo Stato e le chiese rappresentate dalla Tavola valdese,* Gazzetta Ufficiale 222/1984.

4 S. Dazzetti, *L'autonomia delle comunità ebraiche italiane nel novecento. Leggi, intese, statuti, regolamenti* (Torino 2008), p. 282; cf. anche A. Licastro, *Contributo allo studio della giustizia interna alle confessioni religiose* (Milano 1995).

5 G. Dalla Torre, *Lezioni di diritto canonico,* 4th ed. (Torino 2014), p. 239 ff.

6 *Ibid.,* p. 240.

7 *Regolamento dell'Unione Cristiana Evangelica Battista d'Italia,* <http://www.ucebi.it/pdf/documenti/Regolamento 2014.pdf> (30 June 2015).

ive Committee consults with the interested parties, gathering all necessary information before imposing the penalties provided for under Article 45 of the rules, before sending the minister in question a 'brotherly' letter of reprehension. Only continuous unlawful conduct warrants the Executive Committee to bring the case before the Board of Elders so that they may proceed with the application of the penalties provided for under Article 45 of the rules. Even more explicitly in this sense, Article 39 of the 1974 General Regulations of the Evangelical Churches[8] states that the most effective form of discipline is that which is exercised by a 'means of persuasion and in a spirit of Christian charity' and only the failure of this approach justifies the use of more persuasive and coercive forms of justice, such as suspension or exclusion from the privileges of the church.

Although written in a weaker tone, the 2004 Statute of the Lutheran Church[9] provides for more delicate forms of justice. Its Article 11, which relates to the early conclusion of service, insists on prudence in the application of sanctions, such as the removal of a pastor from office or termination of the service relationship. Even more explicit, is the rule of the College of Conciliators (Article 31 of the statute). In this document it is expected that in the event of statutory disputes, conciliation between the parties is attempted first and more drastic means resorted to only when a resolution is impossible, according to Article 11(2) of the statute.

Article 51 of the Statute of the Union of Jewish Communities[10], which covers rules regarding arbitration in certain circumstances, is even more indirect and advocates a friendly and fraternal approach to disputes as well.

2. Dispute Resolution between Organs of the Religious Organisation and Co-Religionists

It is not only the tone, but the object of the judicial function has some common features too. An analysis of the rules or instruments of the constitutions of some minority religious groups, shows that internal justice is developed mainly on two levels: through internal conflicts between statutory authorities, and with disciplinary

8 [[ITALIAN NAME, SOURCE, CF. N. 9]]; cf. G. Long, *Ordinamenti giuridici delle chiese protestanti* (Bologna 2008).

9 *Statuto della Chiesa evangelica luterana in Italia* <http://www.chiesaluterana.it/celi/statuto-della-chiesa-luterana/> (30 June 2015).

10 *Statuto dell'Unione delle Comunità ebraiche* <http://www.ucei.net/documenti/documenti-interni/statuto/> (30 June 2015).

action against defaulters and believers who fail to observe the statutory rules. Regarding the first of the two dimensions of domestic justice, paradigms appear in the powers conferred to the Arbitration Board by Article 50 of the Statute of the Union of Jewish Communities. The jurisdiction of this union is divided between the individual communities and the Union. In fact, one of its roles, is to rule on appeals against decisions to refuse or remove members from the community register or from the electoral roll according to Articles 2(3) and 14(3) of the statute, provided that the appeal is not justified by reasons relating to the interpretation of the Torah and the *Mishnah.* In this case, material jurisdiction would fall upon the other judicial body, the Rabbinic Council.

In this regard, it should be noted, that although Article 52 of the statute calls for a similar organisation within trade unions and political parties, its authority has different dynamics when dealing with the legal organs of associations. In particular, the subject matter of judgements refers to the statutory autonomy of religious denominations and therefore does not fall under State competence. As a result, this organisation cannot be treated as the Council of Arbitrators of the legal system of internal associations, since its cause is a form of legal protection that provides a radical alternative to that offered by the Legal system of the State. Hence, the disciplinary function of the rules is to resolve internal tensions in the interest of unity within the religious community. This is stated in Article 5 of Jehovah's Witnesses' Statute[11], but can also be found in Article 45 of the statute of the Baptist Union. To this end, expulsion of members due to serious non-fulfilment of obligations, expected under the Statute for action contrary to the Holy Scriptures, finds its reasoning in the need to prevent these actions from damaging the religious organisation and causing unrest between members of the religious community. For the Baptist Church, in fact, the pastor who teaches or preaches doctrines that are contrary to the Confession of Faith is considered a danger in the church, as such teachings could be a source of potential disagreements and tensions within the community.

Similarly, if the Consistory of the Lutheran Church were to determine that a pastor has not fulfilled his official duties, Article 11 of its Statute would allow the organ of the Consistory to remove the pastor from office and dissolve the relationship of service, or in the case of the mission, to request its removal at the Church of origin.

However, in some religions, the exercise of judicial domestic authority isn't limited to administrative and disciplinary cases alone; jurisdictional power extends to areas of personal rights of the believer. In this regard, the issue of rabbinical courts

11 *Statuto della Congregazione Cristiana dei Testimoni di Geova,* [[SOURCE]].

should be considered. These courts, while in a separate realm to that of the legal system governed by the statutes, constitute an important part of the internal life of the Jewish communities. Indeed, these courts have jurisdiction over all matters pertaining to the interpretation and application of Jewish law, meaning that jurisdiction is extended to problems occurring outside the administration of a community or the Union. Until 31 December 2008, the jurisdiction of *halachah* in Italy was in fact held by the three rabbinical courts in Rome and Milan. These courts primarily ruled on the resolution of disputes concerning the application of Jewish law, the certification of conversions or divorces. Rabbis may at times also be involved in cases of an administrative nature, such as situations of removal of members of the community from the register or from the electoral roll, but this happens only if there are clear referrals to Jewish Law. In such cases, the rabbis must verify their eligibility to deal with the specific administrative responsibilities of the person elected, interpreting Jewish law in an authentic form.

3. Judicial Proceedings

There are different forms of *autodichia* to build on the principle of voluntary jurisdictional action. In practice, the force of the decisions made under the applicable domestic law is based exclusively on the free acceptance of the faithful to recognise them as binding. The agreement to comply with judgements of the internal organs of the courts is tacitly endorsed at the time of entry into the community. A complex aspect of the judicial authority of the organs of religious organisation is that, it expresses a weakness, in particular based on the absence of a coercive power to enforce decisions, regardless of the will of a person on the one hand, while at the same time it testifies to the strength of confessional autonomy, founded on the force of social solidarity in the religious community. The choice made by Article 2 of the Agreement with the Church of the Seventh-Day Adventists (Law no. 516/1988[12]) and by Article 2 of Waldenses' Agreement, renouncing the secular arm to see internal disciplinary sanctions carried out in spiritual matters, is certainly an act of autonomy, based on the most rigorous separatism. However, a choice of this nature is possible only to the extent that it doesn't weaken the covenant between religious communities and believers. The experience of Judaism is a good example. The Jewish legal sys-

12 *Norme per la regolazione dei rapporti tra lo Stato e l'Unione italiana delle Chiese cristiane avventiste del 7° giorno,* Gazzetta Ufficiale 283/1988, Supplemento Ordinario no. 107.

tem did not have an autonomous use of enforcement in the last two thousand years, or alternatively, in the period during which the Jewish legal system as we know it was formed.[13] In such a situation, common and mutual obligation and the myth of the divine commandment became indispensable elements to the cohesion of the religious community, able to create a supportive network that allows for voluntary recognition that is free of prescriptive disciplinary measures.

The same 'autopoietic' mechanism is found in the *latae sententiæ* penalty, where the faithful face the penalty alone, attempting to use personal power to decide and to form the penalty to be handed down, becoming, if you will, the arbiter in deciding whether to limit rights by giving or not giving effect to the sanction.[14]

4. Due Process

Following this, examinations of the statutes and legal systems of religious organisations show full compliance with this principle. However, in this context, it should be emphasised that within the legal system or statute, respect of this particular principle should not necessarily be protected in the same form that is provided for by State law or the ECHR. In other words, it must exclude the requirement of loyal application – within the religious law – for the development of case law around Article 24 of the Civil Code[15], or the development of case law for due process under Articles 111 and 24 of the Constitution.[16]

Assimilating this Civil law principle into the system, results in more rules on the part of religious organisations. Thus, Article 42 of the 1974 General Regulations of the Evangelical Churches begins by stating that disciplinary measures may be applied only if the rule of contradiction has been followed by all parties, or if the person has had a hearing and has been notified of the decisions taken against him. Moreover, when countering measures taken in disciplinary law, the statute provides that everyone has the right to appeal to the regional executive body, whose decision, in turn, can be appealed before the Regional Assembly.

13 R. Cover, 'Obbligazione ("mitzvah"). Una concezione ebraica dell'ordine sociale', in (2008) 8 *Daimon,* pp. 173–182 (p. 176).

14 Cf. R. Mazzola, *La pena latae sententiae nel diritto canonico. Profili comparati di teoria generale* (Padua 2002), pp. 291 ff.

15 Regio Decreto no. 262/1942, *Approvazione del testo del Codice civile,* Gazzetta Ufficiale 79/1942 as amended.

16 Tribunale di Torino, 15 February 1996, [[NO.]], (1996) *Le Società,* p. 1299.

The same rule also provides that despite the sanctions applied or decisions taken, both in the first and second instances, by the Waldensian Table, the regional assemblies, by the executive or regional ecclesiastical councils and consistories, it is possible to appeal in front of the sessions of the Synod of the area, whose rulings are final and take effect, but cannot be appealed, contrary to the above-mentioned rule.

What seems more incomplete are the rules contained in Jehovah's Witnesses' Statute. According to its Article 9, the Managing Committee is provided with the power to establish special Committees to carry out specific tasks which include judicial proceedings, but doesn't mention the two levels of jurisdiction and the contradictory principle. This omission is not to be found in Article 11 of the Statute of the Lutheran Church. Its Article 11(3) grants the pastor responsible for unlawful conduct a right of recourse to the College of Mediators; a rule that is also provided for in Article 35 of the Statute of the Union of Jewish Communities, where the Arbitration Commission decides on appeals concerning the assessment basis for the calculation of the amount of the community contribution from the decisions of first Instance handed down by Community Councils.

II. Religious Disputes: The Approach of the State

The forms of *autodichia* cannot prevent the right of the faithful to bring disputes to civil court when there is a reasonable suspicion that some fundamental rights have been violated. Regarding this, religious denominations cannot be autonomous movements in which the application of Article 2 of the Constitution[17] is suspended, weakening the level of protection of human rights. Respect for the constitutional reservation of jurisdiction ratified in Article 8(2) of the Constitution which recognises and sanctions the autonomy of the religious order, cannot exclude the intervention of the state if an issue concerns the primary requirements related to the protection of persons, or if the supreme principles of state order are in danger.

In other words, all social groups, including religious groups, must respect human and fundamental rights. In particular, three issues merit more attention: first, how State law regulates the effect of decisions taken by religious courts. Second, whether the parties who have been handed a disciplinary action by a religious authority can call upon State courts to judge the action; and finally, the delicate question of the

[17] *Costituzione della Repubblica Italiana,* Gazzetta Ufficiale 298/1947, as amended.

limits imposed by the State to exercise the right of religious freedom, in cases of conscientious objection.

Regarding the first of the two aspects of the problem, it must be noted that the problem is usually resolved by judicial decision in strict compliance with the principle of separation. The question of the civil effectiveness of judgements passed down by the rabbinical courts regarding divorce is a perfect illustration of this. In fact, after a long period of legal uncertainty, State courts have decided to accept the rulings of the rabbinical courts in divorce cases by mutual consent. In particular, in 1991, the Court of Milan ruled to uphold the decision made by the Rabbinical Court of Rome in the dissolution of a marriage celebrated in Israel between an Italian citizen and an Italian-Israeli citizen, later transcribed in the Italian register of civil status.[18] The decision of the Israeli Rabbinical Court is, in fact, a good precedent for a declaration of invalidity in the Italian legal system, since it comes from a recognised religious judicial authority, in the country of origin of the foreign spouse, it is federal and consequently, considered as being obtained abroad, according to Article 3(2)e of Law no. 898/1970[19]. To give effect to a *get,* it is therefore necessary to resort to channels of international private law, overcoming the prohibition provided for by Article 14(9) of Law no. 101/1989[20], which provides that the State recognises the right to celebrate and dissolve religious marriages according to Jewish law and Jewish tradition, to the Union of Italian Jewish Communities, providing that such decisions do not impact public policy. The issue is far from resolved, since the Bologna Court of Appeal denied the validity of a final judgement of the Rabbinical Court of Jerusalem some years ago, by refusing to recognise a marriage celebrated according to Jewish law in Padua.[21] The Bologna Court of Appeal of was of the opinion that in that case, the rejection of the transcription by the legal officer was justified because the judgement of the Rabbinical Court was contrary to the definitive judgement of the Venice Court of Appeal.[22]

Further, the right to appeal to State Courts, in cases when it is considered that the decision of a religious authority has violated an individual right, can be found under

18 Tribunale di Milano, 5 October 1991, [[NO.]], (1992) 28 *Rivista di diritto internazionale privato e processuale,* pp. 123–127.

19 *Disciplina dei casi di scioglimento del matrimonio,* Gazzetta Ufficiale 306/1970, as amended.

20 *Norme per la regolazione dei rapporti tra lo Stato e l'Unione delle Comunità ebraiche italiane,* Gazzetta Ufficiale 69/1989, Supplemento Ordinario no. 21.

21 Corte di Appello di Bologna, [[DATE, NO]].

22 Corte di Appello di Venezia, [[DATE, NO]].

Civil Section IV of the Ordinary Court of Bari of 2004.[23] There the court revoked the order made one year previously by the Section of Bitonto in the Court itself. In this, the expulsion order against the plaintiff, adopted by the Christian Congregation of Jehovah's Witnesses, was provisionally suspended, revealing that the limits of the Rabbinic Court was contrary to the definitive judgement of the Court of Appeal of Venice.[24]

This illustrates that the State may interfere in the domestic judicial activities of religious organisations when it is considered that the decision of religious authority has violated an individual right, The salient points of the judicial reasoning were as follows:

— According to the Supreme Court, trials regarding expulsion from a religious organisation for religious reasons are prohibited, stating that State courts have no jurisdiction over disputes intended to censor a decision about expulsion.[25]

— Respect for the autonomy of domestic justice within religious organisations does not necessarily mean, however, that justice within the domestic religion with regards to disciplinary sanctions is absolutely unquestionable. This is not only because the statutes of the organisation must not be contrary to State law (Article 8 of the Constitution), but primarily because the disciplinary measures and sanctions should always be respectful of the dignity and honour of the person, either with regard to how the decision is formulated, or with regard to how the decision is publicised.

— Freedom of religious organisations is a factor that must be incorporated and balanced with other fundamental values and principles of the constitution and legal system, including the right of defence.[26] However, generally this must occur with every essential and inalienable principle of the legal order.

— Finally, the freedom and defence of persons within religious organisations must also be incorporated and balanced with the freedom of the religious organisation, since these represent spirituality and faith which also merit

23 Tribunale di Bari, Sezione IV civile, 6 December 2004, [[NO.]].

24 Cf. L. Musselli, "Il riformismo legislativo in diritto ecclesiastico e canonico: aspetti internazionalistici", (2010) *Rivista informatica Stato e Chiese*, <http://www.statoechiese.it/images/stories/2010.7/musselli_il_riformismom.pdf> (9 September 2014).

25 Corte di Cassazione (Sezioni Unite), 27 May 1994, no. 5213.

26 See *supra,* p. 2.

> protection. The difference between the individual and the group cannot be disregarded from the idiosyncrasies of the religious experience.[27]

In addition to the discussion of religious intervention that limits freedom of conscience and its interactions with public policy, another particularly complex issue should also be considered: the position of the State regarding transfusions of blood or blood components and auto-transfusion, as well as the administration of blood products. In short, the decree of the Minister of Health on 1 September1995 established clear guidelines on the subject,[28] which include the legal position of Jehovah's Witnesses. According to Article 4(2) of the decree,

- in the interest of protection, the transfusion will obviously be ordered by the judge;
- in situations where death is imminent, which must be documented in detail in the clinical files, the doctor is permitted to perform a blood transfusion without the consent of the patient;
- where the patient has formally declared that they wish to refuse blood transfusions, the doctor, even in cases where such a transfusion would be required, cannot proceed with the transfusion.

Statutory autonomy of religious organisations is much easier to establish. Article 8(2) of the Constitution states clearly that every religion is free to organise itself as it wishes, on the condition that the statutes are not in conflict with State law. The case of the Statute of the Union of Jewish Communities is illustrative of this. Awarded in 1931 by the State in accordance with the Union of Jewish Communities by Royal Decree no. 1731/1930[29], it was not until the 1989 agreement between the Italian Republic and the Union that an autonomous status was granted to the Jewish communities. This is emphasised in Article 1 of the Union's statute, which rejects any form of interference by the state in the activities of Jewish communities, thus qualifying the communities as social and original groups, organised according to Jewish law and Jewish tradition. This is also found in Article 5 of the General Regulations of the Evangelical Churches, where the prohibition of any form of interference or restriction by civil society is emphasised. Following this, it must be noted that a limit is set by Article 8(2) of the Constitution, which grants public authorities, particularly the Home Office, with a high level of discretionary power. This power extends, for example, to the recognition, or lack thereof, of the legal personality of the religious

27 Tribunale di Bari, Sezione IV civile, 6 December 2004, [[NO.]].

28 [[ITALIAN NAME, SOURCE]].

29 *Norme sulle Comunità israelitiche e sulla Unione delle Comunità medesime,* Gazzetta Ufficiale 61/1931.

faith, knowing that this decision depends, in part, on the interpretation of agreements, and therefore the opportunity to enjoy more favourable legislation than that expressed in Law no. 1159/1929[30].

III. The Catholic Church

Regarding the exercise of the *potestas iudicialis* in the Catholic Church, can. 1401 of CIC 1983, grants the Church the full and exclusive right to judge cases dealing with spiritual affairs and those dealing with the violation of ecclesiastical laws as well as the subsequent determination of guilt and the imposition of penalties. This means that the ecclesiastical judge is the only judge with jurisdiction in these areas, excluding any other judge, in particular a State judge. In this sense, every worshipper can apply to the ecclesiastical judge competent in that area or on the basis of other parameters prescribed by the code. Can. 1407 of CIC 1983, in fact, provides for the criteria that may apply in cases regarding the domicile of the parties, the subject of the litigation, or the proceedings. There are also some areas, concerning cardinals, bishops or papal legates, for which there is a specific jurisdiction, such as in criminal cases, where in accordance with can. 1405 of CIC 1983, jurisdiction lies with the Pope. On the other hand, it must be remembered that objectively, the Pope can always decide to rule on any case, thus rendering the judge who would otherwise have been called to adjudicate the dispute, incompetent. In this regard, any member of the faithful, in any part of the world, has the right to recourse to the judgement of the Pope as the supreme judge in the Church, at any time and for any reason (can. 1417 of CIC 1983). Where cases involve bishops or superiors of monastic congregations or religious institutes of pontifical right, the designated court is the Roman Rota.

The judicial system of the Catholic Church thus forms a part of this framework and its domestic justice is governed by the courts of first instance (can. 1419 of CIC 1983) implemented in each diocese or religious institution, in accordance with the provisions of can. 1427 of CIC 1983. The courts of second instance are usually established by the archdiocese (can. 1438 of CIC 1983). This organisation is integrated with the courts of the Holy See, or the Roman Rota, the Supreme Tribunal of the Apostolic Signatura and the Apostolic Penitentiary. Episcopal Conferences may, depending on the territory and with the consent of the Holy See, set up courts of

30 Gazzetta Ufficiale 164/1929.

second instance. In special cases, the canonical legislature may structure the organisation of courts in a different manner, as occurred in Italy with the *motu proprio* 'Qua cura' by Pius IX on 8 December 1938[31], in relation to matrimonial matters; the only cases which can be judged by regionals courts.

The challenge lies in understanding how the judicial system interacts with the state legal system; whether State and ecclesiastical jurisdiction compete with each other; whether ecclesiastical judgements are relevant to State law. Answers to these questions can be found within the legal framework of the Concordat,[32] as amended by the Agreements of Villa Madama in 1984[33] and the case law of merit and legitimacy that has been consolidated around the normative treaty system since the mid-eighties onwards. What then, are the key problems in the system?

— limitations in the effectiveness of civil judgements on the nullity of marriage through the enforcement procedure;
— the controversial issue of competition between the civil and ecclesiastical jurisdiction in matters of matrimonial nullity;
— the complex relationship between the final civil judgement relating to separation and divorce and the judgements of nullity of marriage;
— the question of whether or not civil judgements on the dissolution of religious, non-consummated marriage are effective.

The need to provide a solution to these problems has forced both the legislature and judges to develop a framework of shared principles, which can be briefly summarised as follows:

— The exclusion of automaticity in the enforcement procedures of judgements on the nullity of marriage pronounced by ecclesiastical courts through the responsible court of appeal, must not violate public policy, according to Article 8(2) of Law no. 121/1985[34]. It is unsurprising, in such cases, that in the end, jurisdiction favours the ecclesiastical courts.
— The competition between civil and ecclesiastical jurisdictions is only weakened by the 'prevention principle' in the nullity of religious marriages

31 AAS [[NO.]].

32 Law no. 810/1929, *Esecuzione del Trattato, dei quattro allegati annessi c del Concordato, sottoscritti in Roma, fra la Santa Sede e l'Italia, l'11 febbraio 1929,* Gazzetta Ufficiale 130/1929, Supplemento Ordinario.

33 *Ratifica ed esecuzione dell'accordo, con protocollo addizionale, firmato a Roma il 18 febbraio 1984, che apporta modificazioni al Concordato lateranense dell'11 febbraio 1929, tra la Repubblica italiana e la Santa Sede,* Gazzetta Ufficiale 85/1985, Supplemento Ordinario.

34 *Ibid.*

civilly recognised. State courts have to apply State law and not Canon law, according to Article 7 of the Constitution.[35]

— Without prejudice to the fact that the matter of property relations between spouses is the responsibility of the State, the *exequatur* of an ecclesiastical sentence of nullity cannot overturn the ruling of the divorce decree concerning the assignment of property, as the judge trained in the field, pursuant to Article 324 of the Code of Civil Procedure[36] remains inviolable under Article 2909 of the Civil Code.

— Finally, the exclusion of the effectiveness of civil dispensation of a valid, unconsummated canonical marriage, fully satisfying the provisions of Article 34 of Law no. 810/1929[37] and Article 17 of Law no. 847/1929[38], was declared unconstitutional by the Constitutional Court.[39]

The Holy See is not just an exponential part of the Catholic Church, but also the representative body of the State of the Vatican[40] In this regard, what matters most is the paradigm shift of interpretation given by the Agreements of Villa Madama in Article 23(2) of the Lateran Treaty[41]. If in the past, the latter recognised the immediate civil effect of judgements and measures taken by the ecclesiastical authority that were officially communicated to the civil authority by the ecclesiastical and religious individuals who dealt with the disciplinary procedures related to religious and spiritual matters, today, under no. 2c of the Additional Protocol to Law no. 121/1985, the effectiveness of such measures in the civil order is subject to their compliance with the constitutionally guaranteed rights of Italian citizens.

This rule does not fully cover the legal relationship between Italy and the Vatican. In the case of the service of civil and commercial documents, the agreement signed in 1932 and enforced by Law no. 379/1933[42], provides that in the case of a notification in the Vatican, the party must make an application to the Prosecutor's Office, who will then turn to the promoter of justice of the Court of First Instance in the

35 Corte di Cassazione, 13 February 1993, no.1824.

36 *Codice di Procedura Civile,* Regio decreto-legge no. 1443/1940, *in materia di "Codice di procedura civile",* Gazzetta Ufficiale 253/1940, as amended.

37 See *supra,* n. 32.

38 *Disposizioni per l'applicazione del Concordato dell'11 febbraio 1929 fra la Santa Sede e l'Italia, nella parte relativa al matrimonio,* Gazzetta Ufficiale 133/1929.

39 Corte Costituzionale, 2 February 1982, no. 18.

40 Cf. F. Finocchiaro, *Diritto ecclesiastico* (Bologna 2003), pp. 242 f.

41 See *supra,* n. 32.

42 *Esecutorietà della Convenzione con dichiarazione annessa, stipulata in Roma, tra la Santa Sede e l'Italia, il 6 settembre 1932, per la notificazione degli atti in materia civile e commerciale,* Gazzetta Ufficiale 107/1933.

Vatican, to proceed with the notification. If the party being brought before the court is the Pope or the Holy See, the summons shall be made in person by the Cardinal Secretary of State. Following this logic, if the Vatican is brought before the court, the summons shall be served to the Vatican Governor. Finally, with regard to criminal jurisdiction under Article 22 of the Lateran Treaty, it provides that the Italian judicial authorities will prosecute those responsible for crimes committed in the Vatican if the Holy See requires, or provides a permanent delegation. If the offender has taken refuge in Italian territory, the procedure may commence without the need to request a delegation. The Treaty also provides that the Holy See commits to handing over individuals who have taken refuge in the Vatican who are accused of acts committed in Italy against the Italian state, provided that such acts are considered criminal by both jurisdictions.[43] It should also be pointed out that in order to complete this framework, when the Vatican delegates criminal proceedings to the Italian courts for the punishment of crimes committed in the Vatican,[44] the Italian court must necessarily prosecute, in accordance with the judgement provisions and apply Italian criminal law in accordance with the preservation of sovereignty.[45]

Finally, the Supreme Court[46], in discussing the sensitive issue of the electromagnetic emissions of the Vatican Radio, has confirmed the line of case law taken thus far regarding Article 11 of the Lateran Treaty, relating to the central body of the Catholic Church. This interpretation is particularly important since only the organs related to that category can enjoy immunity from Italian jurisdiction. In fact, the Supreme Court has reiterated the principle that the duty of non-intervention of the Italian State in the internal corpus of the Church does not imply the renunciation of sovereignty and thus, jurisdiction. Immunity should therefore be adjusted, and be given a restrictive interpretation in order to avoid limits being placed on the sovereignty of the State.

43 E. Vitali and A. G. Chizzoniti, *Manuale breve di diritto ecclesiastico* (Milano 2007), pp. 64 ff.

44 Corte d'assise di Roma, 22 July 1981, [[NO.]].

45 Corte di Cassazione (Penale sezione III), 1 May 1955, [[NO.]].

46 Corte di Cassazione (Sezione I), 9 April 2003, no. 441.