

Article

The International Responsibility of the Holy See for Human Rights Violations

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Abstract: In recent years, the Holy See has been accused of violating its human rights obligations because of acts of sex abuse by the Catholic clergy. Such accusations are based, in various ways, on the authority of the Holy See over the clergy. The Holy See is often referred to as a state and its obligations as state obligations. UN treaty bodies understand that the human rights obligations of the Holy See, as a treaty party, are of a legal—not moral—nature and apply extraterritorially, i.e., beyond the territory of the Vatican City State. The notion of state jurisdiction is, therefore, applied to the Holy See in the same way as to any other state. UN treaty bodies implicitly conclude that, for the purpose of human rights responsibility, the crimes of the clergy must be attributed to the Holy See and that anyone under the religious authority of the Holy See is under its state jurisdiction. However, a closer examination of the nature of the Holy See and its authority under international law, church doctrine, and church law paints a more complex and nuanced picture, where it is hard to describe the clergy as state organs or religious authority as state jurisdiction. Still, there are reasons to understand that certain acts and omissions of the Holy See in the context of the sex abuse crisis can be characterized as violations of its positive obligations of conduct.

Keywords: Holy See; Vatican City State; sex abuse; human rights; international responsibility



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1. Introduction: Religious Authority and Accountability for Sex Abuse by the Clergy

The perception of religious authority has been essential in findings of civil liability against religious organizations for acts of sex abuse committed by their ministers. Manifestations of such authority can be the appointing, training, and supervisory functions of bishops or superiors of religious orders or the alleged authority of the clergy over laypersons.

One underlying rationale for the attribution of liability is that religious organizations could have avoided sex abuse with better use of their appointing or supervisory authority or simply by not vesting clergy with an authority over the lay faithful that could facilitate or be a precursor to acts of sex abuse.

In the case of most religious groups, municipal courts have only had to deal with two levels of religious authority: clergy-laity and clergy-organization. However, some see a third level of authority in Catholicism, i.e., the Pope or the Holy See, to be held accountable. Claims that the Holy See is directly responsible for the acts or omissions of the Pope and/or Vatican officials are accompanied by claims that it is also indirectly responsible for the wrongful acts of Catholic clergy, given its alleged control over them. The fact that the Holy See is a sovereign subject of international law, recognized as a state, and is a party to several human rights treaties, expands the discussion about its liability under municipal law to its responsibility under the international law of human rights.

A cursory reading of those canon law norms describing the authority of the Pope has given claimants in civil lawsuits, as well as international institutions, arguments to accuse the Pope of being the appointer of appointers and the supervisor of supervisors. However, the history and doctrine of Papal authority are much more complex and nuanced. The Holy See is actually not a state, and its responsibilities under international law depend on its specific nature and capacity, in the same way that the responsibilities of international

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