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Thursday, July 11, 2013

ARCHBISHOP DOMINIQUE MAMBERTI EXPLAINS THE IMPORTANCE OF THE LAWS APPROVED BY THE PONTIFICAL COMMISSION FOR VATICAN CITY STATE

Vatican City, 11 July 2013 (VIS) – Published below is the full text of a presentation given by Archbishop Dominique Mamberti, secretary for Relations with States, on the laws approved by the Pontifical Commission for Vatican City State:

“The laws approved by the Pontifical Commission for Vatican City State bring about a broad-ranging normative change, necessary for the function that this State, entirely sui generis, is called upon to carry out for the benefit of the Apostolic See. The original and foundational aim of the Vatican, which consists of guaranteeing the freedom of the exercise of the Petrine ministry, indeed requires an institutional structure that, the limited dimensions of the territory notwithstanding, assumes a complexity in some respects similar to that of contemporary States.

“Established by the Lateran Pacts of 1929, the State adopted the judicial, civil and penal structures of the Kingdom of Italy in their entirety, in the conviction that this would be sufficient to regulate the legal relationships within a State whose reason for existence lies in the support of the spiritual mission of Peter’s Successor. The original penal system – constituted by the Italian Penal Code on 30 June 1889 and the Italian Penal Code of 27 February 1913, in force from 7 June 1929 – has seen only marginal modifications and even the new law on sources of law (No. 71 of 1 October 2008) confirms the criminal legislation of 1929, while awaiting an overall redefinition of the discipline.

“The most recently approved laws, while not constituting a radical reform of the penal system, revise some aspects and complete it in other areas, satisfying a number of requirements. On the one hand, these laws take up and develop the theme of the evolution of the Vatican judicial structure, continuing the action undertaken by Pope Benedict XVI in 2010 to prevent and combat money-laundering and the financing of terrorism. In this regard, the provisions contained in the 2000 United Nations Convention Against Transnational Organised Crime, the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the 1999 International Convention for the Suppression of Financing of Terrorism, are to be implemented, along with other conventions defining and specifying terrorist activity.

“The new laws also introduce other forms of crime indicated in various international conventions already ratified by the Holy See in international contexts and which will now be implemented in domestic law. Among these conventions, the following are worthy of mention: the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1989 International Convention on the Rights of the Child and the 2000 Optional Protocols, the 1949 Geneva Conventions on War Crimes, etc. A separate section is dedicated to crimes against humanity, including genocide and other crimes defined

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by international common law, along the lines of the 1998 Rome Statute of the International Criminal Court. From a substantial point of view, finally, further items of note are the revision of crimes against the public administration, in line with the provisions included in the 2003 United Nations Convention Against Corruption, as well as the abolition of the life sentence, to be substituted by a maximum custodial sentence of 30 to 35 years.

"While many of the specific criminal offences included in these laws are undeniably new, it would however be incorrect to assume that the forms of conduct thereby sanctioned were previously licit. These were indeed punished, but as broader, more generic forms of criminal activity. The introduction of the new regulations is useful to define the specific cases with greater certainty and precision and to thus satisfy the international parameters, calibrating the sanctions to the specific gravity of the case.

"Some of the new categories of criminal activity introduced (for instance, crimes against the security of air or maritime navigation or against the security of airports or fixed platforms) may appear excessive considering the geographic characteristics of Vatican City State. However, such regulations have on the one hand the function of ensuring respect for international anti-terrorism parameters, and on the other, they are necessary to ensure compatibility with the condition of so-called "dual criminality", to enable the extradition of persons charged or convicted of crimes committed abroad should they seek refuge in Vatican City State.

"Special emphasis is given to the discipline of 'civil responsibility of juridical persons derived from a criminal violation' (Arts. 46-51 of the law containing complementary regulations on criminal matters), introducing sanctions for juridical persons involved in criminal activities as defined by the current international legal framework. To this end an attempt has been made to reconcile the traditionally cautious approach observable also in the canonical order, according to which "societas puniri non potest" with the need, ever more evident in the international context, to establish adequate and deterrent penalties also against juridical persons who profit from crime. The solution adopted was therefore that of establishing administrative responsibility of juridical persons, obviously when it is possible to demonstrate that a crime was committed in the interests of or to the advantage of that same juridical person.

"Significant modifications are introduced also in terms of procedure. These include: updates in the discipline of requisition, strengthened by measures regarding the preventative freezing of assets; an explicit statement of the principles of fair trial within a reasonable time limit and with the presumption of innocence; the reformulation of regulations regarding international judicial cooperation with the adoption of the measures established by the most recent international conventions.

"From a technical and regulatory point of view, the plurality of sources available to experts was organised by means of their combination in a harmonious and coherent body of legislation which, in the frameworks of the Church's magisterium and the juridical-canonical tradition, the principal source of Vatican law (Art. 1, Para. 1, Law No. 71 on the sources of law, 1 October 2008) takes into account simultaneously the norms established by international conventions and the Italian juridical tradition, reference to which has always been made by the Vatican legal order.

"In order to better order a legislative work with such broad-ranging content, it has been drafted as two distinct laws. One brings together all the legislation consisting of modifications to the penal code and the code of criminal procedure; the other will instead consist of legislation of a nature which does not permit a homogeneous section within the code structure and is therefore gathered in form of a latere or complementary penal code.
Finally, the penal reform hitherto presented is completed with the adoption by the Holy Father Francis of a specific Motu proprio, also bearing yesterday's date, which extends the reach of the legislation contained in these criminal laws to the members, officials and employees of the various bodies of the Roman Curia, connected Institutions, bodies subordinate to the Holy See and canonical juridical persons, as well as pontifical legates and diplomatic staff of the Holy See. This extension has the aim of making the crimes included in these laws indictable by the judicial organs of Vatican City State even when committed outside the borders of the state.

"Among the laws adopted yesterday by the Pontifical Commission for Vatican City State there is also the law consisting of general legislation on the subject of administrative sanctions. This law had already been proposed in Art. 7, Paragraph 4 of Law 71 on the sources of law of 1 October 2008, and establishes the general principles and regulation of the application of administrative sanctions.

"For some time there has long been an awareness of the expedience of an intermediate tertium genus between penal and civil offences, also in relation to the growing relevance of

administrative offences. As a discipline of principle, the provisions of such a law would be used whenever another law establishes the imposition of administrative penalties for a breach of law, no doubt to specify the procedure for their application to the competent authority and the order of other minor effects.

“One of the cornerstones of the system introduced by this law is constituted by the so-called rule of law, as a result of which administrative sanctions may be imposed only in cases defined by law. The procedure for implementation is divided into a phase of investigation and challenge of the infringement by the competent offices, and a second phase of imposition of the sanction, which will fall within the competences of the President of the Governorate. Finally, there will be the right to appeal heard by a single judge except in more cases of more severe penalties, for which the jurisdiction of the Court is established.

“To conclude this brief presentation, it may be observed that the laws indicated above are notable not only for their undeniable substantial and systematic relevance, but also because they represent a further significant step on the part of the Vatican legislator towards the refinement of its legal code, necessary to assume and promote the constructive and useful proposals of the international Community with a view to more intense international cooperation and a more effective pursuit of the common good”.

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