



EUROPEAN INTER-UNIVERSITY CENTRE FOR HUMAN RIGHTS AND
DEMOCRATISATION

European Master in Human Rights and Democratisation

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?**

E.MA Thesis

Supervisor: Professor Iain Cameron
E.MA Director: Professor Karin Åhman
2nd semester University: Uppsala University
Academic Year: 2010-2011

ACKNOWLEDGEMENTS

Thanks to:

Professor Iain Cameron for supervision and guidance throughout the redaction of my thesis.

My parents, Mady Jones and Georges Leyns, and my brother, Alexandre Leyns, for their continuing support and their love.

My grandmother, Suzette Meres, who cannot see the end of my works, for all her love and faith in me.

Emma Svensson, Erick Grönvall, Antonia Barradas, Stefania Baricello, Leonardo Alves, Karin Tengnäs, Bente Sturm, Merel Overbeeke, Elodie Wagnon, Laura Marcus and Marie Bodart for their support and excellent advices.

ABBREVIATIONS

CAT	The Committee against Torture
CDF	The Congregation for the Doctrine of the Faith
CERD	The Committee on the Elimination of Racial Discrimination
CRC	The Committee on the Rights of the Child
ECHR	The European Convention on Human Rights and Fundamental Freedoms
ECmHR	The European Commission on Human Rights
ECtHR	The European Court of Human Rights
FSIA	The Foreign Sovereign Immunities Act
ICERD	The International Convention on the Elimination of all forms of Racial Discrimination
IHEU	The International Humanist and Ethical Union
ILC	The International Law Commission
UN	The United Nations
UNCAT	The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	The United Nations Convention on the Rights of the Child
UNHRC	The United Nations Human Rights Committee
US	The United States
VCLT	The Vienna Convention on the Law of Treaty

ABSTRACT

The objective of this thesis is to examine the link between the competence and power recognised to the Holy See among the international community of states and international responsibility in case of human rights violations. The first part enlightens the purpose of the creation of the Vatican City State and gives a general background to the unique status the Holy See has been granted with. The second part analyses certain international treaties on human rights the Holy See has ratified and the consequences in case of violation. The Convention on the Rights of the Child is considered as a case study in order to discuss the possible direct responsibility of the Holy See. The third part examines the issue of alleged human rights violations that originated from actions of ecclesiastical members or institutions. Focus lies on liability under the European Convention on Human Rights and the Foreign Sovereign Immunities Act in the United States. As regards the European Convention, it is argued that the European Court may influence church-state relations in matters related to certain human rights principles such as the right to a fair trial, the right to respect for private and family life as well as the right to freedom of expression and freedom of religion. Thus, the third part encompasses an analysis of certain judgments of the European Court where decisions of churches' institutions may have been taken in breach of individual's rights. On the other hand, under the Foreign Sovereign Immunities Act, the special relationship between religious ministers, such as priests, and the Holy See is analysed through the recognition of the possibility for the Holy See to be seen as the priests' employer and thus to engage its liability for clerical sexual abuses committed against children in the United States.

TABLE OF CONTENT

ACKNOWLEDGEMENTS	2
ABBREVIATIONS	3
ABSTRACT	4
Introduction	8
1. The diplomatic recognition of the Holy See and the Vatican City State	11
1.1. The creation of the State of the Vatican City and the international status of the Holy See	11
1.2. The recognition of the Vatican City as a state and the Holy See’s sovereign authority	13
1.2.1. The population and territory of the Vatican City.....	13
1.2.2. The government of the Vatican City and the capacity of the Holy See to engage in international relations.....	15
1.3. The foreign policy of the Holy See	16
2. International human rights law and the possible direct responsibility of the Holy See	20
2.1. The status of the Holy See within the United Nations	20
2.2. United Nations mechanisms to promote and protect human rights	22
2.3. The Holy See and the Convention on the Rights of the Child	24
2.3.1. Within the Holy See’s jurisdiction	25
2.3.2. The Holy See’s reservations to the Convention	26
2.3.3. Implementation of the Convention	30
2.3.4. The problem of sexual child abuses and the submission of reports	31
2.3.5. The reaction of the Church: Catholic rules regarding clerical sexual abuses	34
3. The indirect responsibility of the Holy See in the protection and respect of human rights under the European Convention on Human Rights and Fundamental Freedoms	39
3.1. The status of the Holy See within the Council of Europe	39

3.2. The question of delegation of competence	41
3.3. Some decisions of European Court of Human Rights and their impact on the Holy See	44
3.3.1. <i>Pellegrini v. Italy</i>	45
3.3.1.1. The circumstances of the case	45
3.3.1.2. The decision of the European Court of Human Rights	46
3.3.1.3. The importance of the decision for human rights law	48
3.3.2. <i>Lombardi Vallauri v. Italy</i>	51
3.3.2.1. The circumstances of the case	51
3.3.2.2. The procedure before the European Court of Human Rights.....	53
3.3.3. The key provisions in the European Convention that might influence church-state relations.....	57
3.3.4. <i>Obst v. Germany</i> and <i>Schüth v. Germany</i>	59
3.3.4.1. Introduction	59
3.3.4.2. The Constitutional mapping of the autonomy of religious societies in Germany.....	60
3.3.4.3. Religious expression at the workplace - The labour law of churches and religious societies in Germany.....	61
3.3.4.4. The circumstances of the <i>Obst</i> case	62
3.3.4.5. The circumstances of the <i>Schüth</i> case	64
3.3.4.6. The decision of the European Court on the alleged violation of Article 8	65
i. As regards Mr. Obst	66
ii. As regards Mr. Schüth.....	67
3.3.5. <i>Siebenhaar v. Germany</i>	68
3.3.6. The interests of the cases for the principle of autonomy recognised to religious communities	69
4. The Holy See in the United States, a possible vicarious liability for clerical sexual abuses committed against children: The case of <i>Doe v. Holy See</i>.....	75
4.1. The circumstances of the case and the decision of the District Court.....	76
4.2. The Court of Appeals of the 9th Circuit	77

4.3. On petition for a <i>writ of certiorari</i>	79
4.4. The consequences for the Holy See and the victims: unpredictable application of the FSIA	81
5. Conclusion.....	86
BIBLIOGRAPHY.....	91