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VOLUME I

## NATIONAL REPORTS

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## V/Z

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# Vatican

Guido Astuti*

The birth of the Vatican (*Stato della Città del Vaticano*) as it is today is linked to a formal act of recognition by Italy in the typical forms of international law. It is contained in the Lateran Pact dated 11 Feb. 1929.[1] This treaty put an end to the "Roman problem" which had arisen during the Italian *Risorgimento* (wars of unity and independence) following the annexation of the old Papal States and finally the annexation of the city of Rome itself, See of the Papacy, by the new unitary state (1870).

It is not necessary to look into the controversial problems related to the grounds for the Holy See's claim to temporal power, to *civilis principatus* as a guarantee of the Holy See's international sovereignty and total independence in the exercise of the spiritual and religious action of supreme government of the Holy Roman Church. Neither is it necessary to consider the relationship between the new state, the former *Patrimonium Sancti Petri* (Saint Peter's heritage), the previous political and territorial sovereignty of the Holy See and the sovereign jurisdiction it exercised, in fact or law, over the Vatican Palaces and their appurtenances during the period from 1870 to 1929, owing to the self-imposed limitation of sovereignty made by the Italian state with the Law of Guarantees (13 May 1871 no. 214) which acknowledged that the Supreme Pontiff and the Holy See had some of the characteristic prerogatives of sovereignty.

## I. CONSTITUTIONAL SYSTEM

This *sui generis* state exhibits peculiarities and anomalies as regards population, territory, sovereignty and government in its constitutional system.

### 1. Nationality

The population of the Vatican is not united by blood ties or linked by nationality. Vatican citizenship is granted on the basis of residence and function to those who live permanently in the state by reason of office, rank, appointment, or employment, or by special concession from the Holy See, as well as to their spouses, children, ascendants, brothers and sisters as long as they live in the household of a citizen and are authorized to do so; and to cardinals resident in Rome, although living outside the Vatican City (see Law on Citizenship and Residence of 7 June 1929 no. III, *infra* II/IX). It is therefore a functional citizenship, which is lost when one of the essential elements is missing. It is not exclusive in character as the citizenship of birth is potentially preserved. According to the Lateran Pact, Vatican citizens are subject, when on Italian territory, to Italian law if they were originally Italian citizens and to the law of the state of origin if they were originally foreign citizens.

### 2. Territory

The territory of the Vatican is delimited in an irrevocable manner by Appendix I of the Lateran Pact (*supra* Introduction). It includes the Vatican Palaces with their appurtenances, gardens and some adjacent streets as well as St. Peter's Basilica and Square (the latter is however open to the public and subject to the powers of the Italian police authorities). This tiny territory is the object not only of territorial sovereignty but also of full ownership by the Holy See. There are no territorial subdivisions.

### 3. State Organs

The Supreme Pontiff is the supreme organ of the Vatican, assuming civil and political sovereignty as an accessory power of supreme government of the Church. He has autocratic and unlimited powers in the exercise of the legislative, executive

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[1] Recueil Martens, third series, vol. 21, 18; 130 B.F.S.P. 801; Acta Apostolicae Sedis 7 June 1929 no. 6.

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and judicial functions and fully represents the Vatican in international relations.

These absolute powers are delegated in part to special organs.

a. The governor (*governatore*) appointed and recalled by the Pontiff is directly responsible to him. The normal exercise of government and administrative power is delegated *ex lege* to him, except for special acts reserved to the Pontiff.

b. The general counsellor (*consigliere generale*) is also appointed and recalled by the Pontiff and is not under the obligation to assume Vatican citizenship and residence. He is a consultant organ and must give advice when it is required by law or requested by the Pontiff (see Fundamental Law on the Vatican City of 7 June 1929 no. I, *infra* II/IX).

All administrative organs depend on the governor of the state: he is assisted by a central council, formed by the directors of the offices that administer all the departments of the governorship (office of the secretary, monuments, museums and galleries, technical services) and by a president, who has special technical-administrative duties (see Law on the Administrative System of 7 June 1929 no. IV, *infra* II/IX).

4. The Judiciary

Judicial power belongs to the Supreme Pontiff. He delegates it to jurisdictional organs, which he appoints and recalls and which exercise it in his name. For less important disputes in civil matters and for petty offences, the judicial function is exercised by a single judge (respectively, the President of the court of first instance or a judge appointed by him, and an administrative official appointed by the governor). In all other cases, the court of first instance is composed of a president, two regular judges and a substitute judge. The court of appeal is the Sacred Roman Rota (*Sacra Romana Rota*). Finally, an extraordinary recourse to the Supreme Court of the Apostolic See is admitted.[2]

## II./IX. SOURCES AND CONTENTS OF LAW

There is no written constitution in the modern meaning of the term; the sovereignty of the Holy See is that of an absolute elective monarchy and its nature is autocratic, proprietary and outside time. Subjects of the Vatican have no political rights at all and no participation in the exercise of government powers. There are no constitutional guarantees of civil rights. The Holy See exercises a sovereignty which appears more as dominion over territory than as governmental authority over the population in view of the non-political aims of the Vatican. It is a typical theocratic-hierarchical state, instituted in order to assure complete autonomy of the temporal and political affairs to the Pope and the Roman Curia and not intended to satisfy the collective interests of a community.

The legal system of the Vatican is based on six fundamental laws published by the Holy See on 7 June 1929 at the same time as the exchange of ratifications of the Lateran Pacts. Law no. I is on the Vatican City, Law no. II is on the Sources of Law, Law no. III is on Citizenship and Residence, Law no. IV is on the Administrative System, Law no. V is on the Economy, Commerce and the Professions, Law no. VI is on Public Security (Acta Apostolicae Sedis 7 June 1929 no. 6).

Law no. II classifies the Vatican's sources of law as principal and supplementary.

The principal sources are (1) the Codex Juris Canonici and apostolic constitutions; (2) Laws issued for the Vatican by the Pontiff or authorities empowered by him (art. 1).

Supplementary sources, in matters on which the principal sources do not make provision, are the Italian civil, commercial, procedural and penal laws in force, together with the general regulations of the province and the municipality of Rome. Reserved are, of course, the amendments specified by Vatican law and the precepts of divine law and the general principles of Canon law as well as the provisions of the Pact and the Concordat (art. 3). Any possible gaps may be filled by the judge, keeping in mind the precepts

[2] Fundamental Law on the Vatican City of 7 June 1929 no. I art. 9–18 and Law on the Sources of Law of 7 June 1929 no. II art. 9–18, *infra* II/IX.

of divine and natural law and the general principles of the Canonical order, using the criterion he would apply if he were a legislator (art. 22).

Texts of legal sources: *Patti Lateranensi – Convenzioni e accordi successive tra il Vaticano e l'Italia* (Rome 1946); *Acta Apostolicae Sedis – Supplemento per le legge e disposizione per lo Stato della Città del Vaticano no. 1 ss.* In this special supplement all laws and regulations of the Vatican are published with their date of issue and a progressive number.

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# Venezuela

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Venezuela is designated constitutionally as a republic that "is forever and irrevocably free and independent of any domination or protection by a foreign power" (Constitution of 23 Jan. 1961 art. 1), a formula retained in all constitutional texts since independence from Spain was gained at the beginning of the nineteenth century. In addition, the Republic is a federal state (Const. art. 2), but in a peculiar manner, as a result of the transformation of the country divided in autonomous regions along the lines of the federation established since 1811 and consolidated in 1864. This federation functioned politically until the beginning of this century, but at present there is a growing tendency towards centralization. For purposes of political organization the country is divided into 20 Federal States (Anzoategui, Apure, Aragua, Barinas, Bolivar, Carabobo, Cojedes, Falcón, Guárico, Lara, Mérida, Miranda, Monagas, Nueva Esparta, Portuguesa, Sucre, Táchira, Trujillo, Yaracuy and Zulia); one Federal District (Charter Law of 27 July 1937) in which Caracas, the capital, is situated; two Federal Territories (Amazonas and Delta Amacuro) (Charter Law of 14 Sept. 1948); and Federal Dependencies made up of several islands in the Caribbean (Charter Law of 20 July 1938).

According to the Constitution, the Federated States are autonomous and equal as political entities, even though they are obliged to maintain the integrity of the nation and to comply with and enforce compliance of the national Constitution and the laws of the Republic (Const. art. 16). However, the federal system grants their own powers to the different territorial entities (Republic, Federated States and Municipalities) and any interference and usurpation of functions between them is unconstitutional.

## I. CONSTITUTIONAL SYSTEM

### 1. Nationality

Even though Venezuela is a federation, there is only one single Venezuelan nationality. As there are no nationalities in the Federated States, the source of rules on nationality is the Constitution itself, and the Law on Naturalization of 21 July 1955. Foreigners have the same civil rights as Venezuelans, with legal limitations, but they lack political rights; their activity is governed by the Law on Foreigners of 31 July 1937 and by the Law on the Activities of Foreigners in Venezuela of 29 June 1942.

Acquisition of nationality is subject to different rules, according to whether original nationality or derivative nationality is involved. In the acquisition of the former (by birth) the classical concepts of *jus soli* and *jus sanguinis* are applied. The principle of *jus soli* applies fully in Venezuela as all those born within the territory of the Republic are Venezuelans without exception (Const. art. 35 no. 1). The concept of territory is extended to include all those territories that once belonged to the old General Captainship of Venezuela before political transformation began in 1811, even when they now form part of another state, unless the territorial changes have been agreed upon in treaties validly entered into by the Republic (art. 7 par. 1). The principle of *jus sanguinis* is applied in two cases: in the first place, those born in a foreign country are automatically Venezuelan by birth when both parents are Venezuelan by birth. If only one parent meets this requirement, original nationality is obtained when the interested party becomes resident in the territory of the Republic or declares his willingness to accept Venezuelan nationality (art. 35 no. 3). In the second place, when either or both parents are naturalized Venezuelans (derivative nationality) and the interested party is born abroad, he must take up residence in the territory of the Republic before his eighteenth birthday and declare his willingness to accept Venezuelan nationality before his twenty-fifth birthday in order to acquire original Venezuelan nationality (art. 35 no. 4).

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Acquisition of derivative Venezuelan nationality (by naturalization) is effected by obtaining naturalization papers (art. 36) which are granted at the discretion of the state. Foreigners who by birth have Spanish nationality or that of a Latin-American state enjoy special facilities in obtaining naturalization (Const. art. 36 and Third Transitory Provision).

Derivative Venezuelan nationality is granted compulsorily by the state to foreign women who marry Venezuelans and to foreign minors born to naturalized Venezuelans or adopted by Venezuelans. In all these cases it is sufficient that the interested party expresses his willingness and complies with some requisites as to residency and time-limits (art. 37).

Venezuelan nationality is lost by option or voluntary acquisition of another nationality, or by annulment of naturalization by means of a court decision (art. 39) or by administrative revocation (Const. Fourth Transitory Provision). A Venezuelan woman who marries a foreigner keeps her nationality, unless she declares her intention to the contrary and acquires her husband's nationality in accordance with his national law (art. 38).

### 2. Territorial Divisions of the State

The basic political territorial division of the Republic as a federal state, as has been mentioned *supra* Introduction, is in Federated States. They in turn are divided into districts and the latter into townships (*municipios*). In 1975 there were 187 districts and 711 townships. The States are competent to create, suppress and organize them (Const. art. 17 no. 2). In the administrative system the following are considered to be territorial public entities: the Republic, the States and the Municipalities (*municipalidades*); the latter operate on the level of districts and not on that of townships. The Constitution provides that Municipalities are the primary and autonomous political units within the national organization (Const. art. 25), that are administered in accordance with the principle of local self-government; the creation of inter-municipal associations for services is permitted, and has taken place for urban planning in the Metropolitan Area of Caracas.

### 3. State Organs

a. *General structure.* – In agreement with the federal system, the Constitution makes a distinction between organs proper to national and federal power (*infra* b and c), state power and municipal power (*infra* d). On a national level, state functions are distributed among a national legislative power, a national executive power and a judiciary and are attributed respectively to Congress, to the President of the Republic and other executive organs, and to the Supreme Court of Justice and other courts of justice. A distribution of functions with features of separation of powers is therefore provided even though the Constitution expressly demands collaboration between them for the achievement of the aims of the state (art. 118).

b. *Head of State and Government.* – The President of the Republic is elected every five years by universal, direct and secret voting by means of a relative majority on returns (Const. art. 183 and Charter Law on Suffrage of 6 Sept. 1973). He is at the same time Head of State and of the national executive power (Const. art. 181).

In this latter respect he is the supreme authority in the government and administration of the state and exercises his powers in the Council of Ministers or through the ministers whom he appoints and removes. The following are among his principal powers. He directs the Republic's international relations and enters into and ratifies international treaties, pacts and agreements. He declares a state of emergency, takes the necessary measures for the defence of the Republic, the integrity of the territory and its sovereignty in the case of an international emergency. He summons Congress to extraordinary sessions, issues regulations for the execution of laws, administers the National Treasury, negotiates national loans, enters into contracts in the national interest, appoints and dismisses civil servants, grants pardons, *etc.* (art. 190). In all cases, the President of the Republic is subject to the Constitution and the laws in the exercise of his powers, therefore his activity is of sub-legal rank. Exceptionally, he may enact decrees having the force of law providing extraordinary measures in economic and financial matters, if he has been authorized by special law (art. 190 no. 8), or may suspend or restrict constitutional guarantees and liberties (art. 190 no. 6).

The ministers (Charter Statute on Ministries of 30 Dec. 1950) are the direct organs of the President of the Republic in the government and administration of the state (Const. art. 193). They are responsible for their acts, even when they act under express orders from the President of the Republic, and they must present Congress with a yearly detailed report on the management of their department (art. 196 and 197). Ministers have a right to speak in the legislative Chambers and in their commissions, and they are obliged to appear before them when called up for information or to answer questions (art. 199). They are subject to a vote of censure by the Chamber of Deputies and the latter may by qualified vote decide to remove the minister (art. 153 no. 2).

c. *Legislative body.* – National legislative power is exercised by Congress, made up of two Chambers: the Senate and the Chamber of Deputies (Const. art. 138). The members of both Chambers are also elected every five years at the same time as the President, by universal, direct and secret vote, there being proportional representation through block lists (art. 113, 148 and 151). Basically, Congress is empowered to legislate on matters of national competence and to regulate the operation of the different branches of national power as well as to exercise control over public administration (art. 139 and 160). Each one of the legislative Chambers also has exclusive functions: the Senate is empowered to authorize the national executive to carry out different administrative acts, and the Chamber of Deputies is empowered to open the discussion on the Budget Law (art. 150 and 153).

d. *Authorities of the Federated States and territorial authorities.* – Authorities in the Federated States too are distributed according to the functions they carry out. State executive power is exercised by a Governor appointed by the President of the Republic; he acts in the dual character of head of the state executive and agent of the national executive within the state (Const. art. 21). Popular election of Governors has been authorized constitutionally but Congress has not yet issued regulations on it (art. 22). State legislative power is exercised by a Legislative Assembly, whose members are elected every five years by universal, direct and secret vote, there being proportional representation through block lists (art. 19). The states do not have their own judiciary, as the latter was nationalized as from 1945 and its administration is in the hands of the national power only.

On the municipal level, exception being made for the federal district, the government, administration and legislation of local interests is exercised by a Municipal Council in each district of the Republic. The seven members of the Council are elected every five years by universal, direct and secret vote, there being proportional representation through block lists. The municipality of the federal district is autonomous; local government and administration are in the hands of a Governor appointed by the President of the Republic and local legislation is in the hands of a Municipal Council, its members being elected by popular vote in the same manner as mentioned previously.

## 4. The Judiciary

a. *The constitutional judiciary.* – The Venezuelan Constitution is of the so-called rigid type and therefore it is the supreme source of law of the state, and all acts by public powers and private persons are subordinated to it. The principle of constitutional supremacy and the principle of legality, bases of the state governed by the rule of law, are guaranteed by ample mechanisms for jurisdictional control of the constitutionality of laws and other state acts.

Control over the constitutionality of laws is exercised by two methods. On the one hand, by decentralized control, as any judge of whatever category is empowered to declare a law inapplicable in a concrete case, with *inter partes* effects (CCProc. art. 7). On the other hand, the Constitution itself regulates the centralized control of constitutionality by granting the Supreme Court of Justice competence to annul laws, with effects *erga omnes* and *ex nunc* (Const. art. 215). The latter control, which is initiated by a popular action with no special requirements as to standing or time, may also be exercised in relation to state laws, municipal ordinances, regulations issued by the President of the Republic, and government acts (art. 215 no. 3 and 4).

b. *Organization of law courts.* – The administration of justice is reserved to the national power and it is exercised through the courts of the Republic. They are governed by the Charter Law on the Judiciary of 17 Feb. 1970 and are divided into the following several special jurisdictions: civil courts, commercial courts, penal courts, labor courts (Charter Law on Labor Courts and Procedure of 18 Nov. 1959), juvenile courts (Statute on Minors of 5 Jan. 1950), treasury courts and military courts (Code of Military Justice of 29 Sept. 1945). The courts in each of these special jurisdictions are placed in hierarchical order and are competent according to the amount involved or the importance of the case. They are divided as follows: Township or Parish Courts (*Juzgado de Municipio o Parroquia*), District or Department Courts (*Juzgado de Distrito o Departamento*), Courts of the First Instance (*Juzgado de Primera Instancia*), and Higher Courts (*Cortes Superiores*). In general, court decisions may be appealed to a higher court, but a case cannot be heard by more than two instances. Only against decisions handed down in the second instance by Higher Courts lies an appeal for cassation to the Supreme Court of Justice in accordance with the Code of Civil Procedure of 4 July 1916 and the Code of Criminal Procedure of 21 Jan. 1962.

The Supreme Court of Justice, made up of 15 Justices appointed by Congress (Const. art. 214), exercises its competence on controlling constitutionality in Plenary Sessions. Other cases are decided by the three divisions: the political-administrative; civil, commercial and labor cassations; and penal cassations. The court is governed by the rules of the Charter Law on the Federal Court of 2 Aug. 1953 and the Charter Law on the Court of Cassation of 18 Nov. 1959.

Basically, the Political-Administrative Division is charged with the exercise of contentious-administrative jurisdiction (*infra* c). The two cassation divisions hear appeals for cassation in order to control the legality of some decisions. It may therefore be said that control on legality is exercised by the Supreme Court of Justice at all levels: constitutionality of laws, legality of administrative acts and legality of court decisions.

The appointment of judges is attributed to the Council for the Judicature, an organization with a certain amount of practical autonomy, charged with controlling the administration of the judiciary (Const. art. 217). Its members are appointed by Congress and the executive power in accordance with the Charter Law on the Judiciary. Nevertheless, judges are autonomous and independent of the other organs of public power in the exercise of their functions (art. 205).

c. *Administrative judiciary.* – The principle of subjecting the state to the rule of law implies the submission of public administration to legality. This is guaranteed by the existence of contentious-administrative courts which are integrated in the judiciary. This jurisdiction is exercised by the Political-Administrative Division of the Supreme Court of Justice and some specialized courts such as the Court of Appeal on Income Tax (Income Tax Law of 21 Jan. 1975) and the Court for the Administrative Career (Law on the Administrative Career of 4 Sept. 1970). These courts are competent to "annul general or individual administrative acts that are contrary to law, including abuse of power; to give judgment for the payment of money and the reparation of damage for which the administration is responsible; and to take the steps necessary to reestablish subjective legal situations damaged by administrative activity" (Const. art. 206 par. 2). A Law regulating this jurisdiction has not yet been enacted, and therefore the principles and rules applicable to it have been formulated in the decisions of the Supreme Court of Justice by recourse to the general principles of administrative law. Owing to the lack of a special law, and except for provisions in special laws, contentious-administrative legal proceedings are at present carried out in a single instance before the Supreme Court.

d. *Prosecution.* – The Public Prosecutor's Office is under the direction and responsibility of the Attorney General of the Republic. Its function is to watch over the exact observance of the Constitution and the laws (Const. art. 218). The director of this organization is appointed by the legislative chambers (art. 219). He is charged with the following functions: to watch over respect for constitutional rights and guarantees; to watch over speedy and correct procedure in the administration of justice and to see that the laws are applied correctly in the courts of the Republic in penal cases and in those affecting public order and morality; to bring penal action in cases in which a petition by the injured person is not necessary to commence or continue proceedings, but the court may proceed *ex officio* when the law so determines; to watch over the correct performance of laws and the guarantee of human rights in prisons and other detention centres; to bring the law suits necessary to make effective the civil, penal, administrative or disciplinary responsibility of public servants for violations of their official duties (art. 220). These broad attributions, now regulated by the Charter Law on the Public Prosecutor's Office of 16 Sept. 1970, give this organization powers, in addition to those of Public Prosecutor, that are similar to those of European *ombudsmen*.

## II. SOURCES OF LAW

1. The *Constitution* of 23 Jan. 1961, which is the twentyfifth the Republic has had since 1811, is the supreme source of law. It is a text with 252 articles to which Amendment no. 1 was added by decree on 11 May 1973. Its contents are very ample, meeting the requirements of a developing country such as Venezuela, and it is an example of the constitutionalization of administrative law, characteristic of this branch of law in the contemporary world. In this connection special mention

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must be made of the detailed regulation of economic and social rights (art. 72 to 109) which make Venezuela a social and democratic state governed by the rule of law.

2. *Legislation* on the national level is made up of charter and ordinary laws; the former occupy an intermediate position between ordinary laws and the Constitution (Const. art. 163). Laws that systematically assemble the rules on a specific subject are called codes. The main codes comprising the basic legislation of the country are the following: Civil Code (CC) of 13 Aug. 1942, Commercial Code (Comm.C) of 26 July 1955, Penal Code (PC) of 27 June 1964, Code of Criminal Procedure (CCrim.Proc.) of 27 Jan. 1962, Code of Civil Procedure (CCProc.) of 4 July 1916 and Code of Military Justice of 27 Sept. 1945. The remaining legislation is not codified and the most important laws in addition to those mentioned in other parts of this report are the following: Labor Law of 22 April 1975; Law on Social Security of 11 July 1966; Law on Education of 4 Aug. 1955; Law on Universities of 8 Sept. 1970; Law on National Health of 7 July 1942; Law on Political Parties, Meetings and Demonstrations of 15 Dec. 1964, *etc.*

Due to the federal state system there are three types of legal rules in Venezuela: national, state and municipal. Constitutionally, the federated states are competent in all matters not attributed to national power or municipalities (Const. art. 17 no. 7). However, the centralizing tendency in recent decades has been so strong that very little has been left to the autonomous competence of the states. On the contrary, all ordinary laws and codes are enacted by the Congress of the Republic to whom the Constitution reserved legislation over a series of specific subjects, as well as over those that "by their kind or nature pertain to it" (art. 136 no. 25).

3. The principle of written law prevails in Venezuela, therefore *custom* is considered to be only an auxiliary or subsidiary source of law.

4. *Court decisions* are not a source of law. When there is no written law, the Civil Code (art. 4) considers analogy and the principles of law as formal sources of law. On the latter basis and mainly in administrative matters, the Supreme Court of Justice has been framing the theory of administrative law, in the absence of special legislation on general administrative and on contentious-administrative procedure.

5. National laws are published in the *Gaceta Oficial de la República de Venezuela* (appearing since 1872) in accordance with the Law on Official Publications of 22 July 1941. State laws are published in *gacetas oficiales* of said entities and municipal ordinances are published in the respective *gacetas municipales.* Laws are cited by their titles and the date of promulgation, which coincides with that of publication (Const. art. 174).

The most important official collections are the following: *Leyes y Decretos Reglamentarios de los Estados Unidos de Venezuela* which collect all the texts of laws enacted from 1811 to the date of publication (18 vol., 1942–1944); *Recopilación de Leyes y Decretos de Venezuela* published in 1874 and 1964, which contains all the legislation enacted from 1830 to 1951 (76 vol.); the *Compilación Legislativa de Venezuela* contains (vol. I to III) legislation in force until 1949; starting from vol. IV (1950–1951) it consists of *Anuarios* up to vol. IX (1960–1961); and Public Treaties and International Agreements of Venezuela published between 1924 and 1956 (9 vol.).

Some Supreme Court decisions are published in the *Gaceta Oficial de la República* and they were all published in the *Memorias de la Corte Federal y de Casación* (1874–1949) and in *La Gaceta Forense*, first series (1949–1953) and second series (1953 to date). Decisions of other courts are not normally published. Summaries of the most important decisions have been collected and published by the Ministry of Justice, Institute for Codification and Jurisprudence, under the title *Jurisprudencia de los Tribunales de la República* (since 1950, irregularly).

## III. HISTORICAL EVOLUTION

Despite the declaration of independence from Spain made in 1810, the fundamental rules of private law governing the Republic until 1863 were, according to the Law of 13 May 1825 of the Congress of Colombia, those issued by the Spanish government before 1808 and followed in the territory of Gran Colombia, *i.e.*, the following: The Compilation of the Laws of the Indies (*Las Leyes de la Recopilación de Indias*), the New Compilation of Castille (*La Nueva Recopilación de Castilla*), and *Las Siete Partidas.*

1. In 1862, the first *Civil Code* was enacted, which was basically inspired by the 1857 Chilean Civil

Code, the work of the Venezuelan *Andrés Bello*. This Code, however, was only in force for a short time owing to civil wars which took place in the country in those years. In 1867 a new Civil Code, inspired by the Spanish Civil Code enacted that year, was put into force and it governed the country until 1873. In that year, a new Civil Code was promulgated, modelled upon the Italian Civil Code; it is an important milestone in the evolution of Venezuelan law as it established, in conformity with the liberal-political system of those times, the complete secularization of marriage and the civil registry, and the system of succession in particular. The Code underwent a series of reforms among which those of 1881 and 1922 should be mentioned. Finally, the Civil Code of 13 Aug. 1942, still in force, is a basic stage in the Venezuelan legislative evolution, as it incorporates modern theories requiring application in view of the country's development, particularly in the social field. The provisions in the Civil Code have continually been amended or enlarged in certain areas of social interest, such as, for instance, urban leases, regulated by the Law on Leases of 1 Aug. 1960 and of rural leases, regulated by the Land Reform Law of 5 Nov. 1960, which have considerably limited the autonomy of the parties.

2. In the commercial field, the first *Commercial Code*, dated 15 Feb. 1862, was replaced by the one dated 29 Aug. of the same year. Subsequently, on 20 Feb. 1873 a new Commercial Code was enacted, having as its basic model the French Code, although other influences may also be noted, such as those of the 1829 Spanish Commercial Code, the 1865 Italian Code and some German and English laws. The 1873 Code was replaced by the one enacted on 8 April 1904, which was also influenced by different sources of inspiration. The French influence can be noted, particularly in matters of maritime law and bankruptcy. The German influence is noticeable with respect to the right of retention. Spanish and Latin-American, specially Chilean, influence is noted in the rules on transport, insurance and promissory notes. The 1882 Italian Code had a decisive influence on this Code in the regulation of commercial acts, commercial companies, cheques and arrears. In 1919, there was a reform of the 1904 Code which amended the law on negotiable instruments substantially, adopting the proposals of the 1912 Hague Project, and it received further influences from the 1882 Italian Code. Subsequently, the Code was subjected to some partial amendments in 1938, 1942 and 1945, but most important were the last amendments of 1955, to which *Roberto Goldschmidt* made an important contribution.

## IV. CIVIL LAW

As there is a system of written law, the main direct source of civil law is the Civil Code of 1942 and the special laws that have been enacted to complement some particular aspects of it.

### 1. Persons and Capacity

Any being capable of holding legal rights and obligations is considered to be a person. There are natural persons and legal entities. The Civil Code recognizes public establishments or legal entities of a public nature as legal entities, in addition to territorial public legal entities (Republic, Federated States and Municipalities).

Capacity is a person's ability to be the holder of legal rights and obligations. This general capacity is to be distinguished from the capacity to act, *i.e.*, the ability to perform an act with legal efficacy which usually commences with majority at the age of 21.

### 2. Family

The family is regulated as a patriarchal and monogamous institution. The Constitution considers it as the fundamental nucleus of the state and therefore the latter must watch over its moral as well as economic improvement (art. 73).

The Civil Code in this spirit regulates, in particular, kinship, marriage, filiation, adoption, paternal authority, education and maintenance, guardianship and emancipation, interdiction and disqualification and civil registry. These rules have been complemented or amended by special legislation for the protection of the family institution, especially the Law on Family Protection of 22 Dec. 1961, the Law on the Offence of Violating a Minor's Maintenance Rights of 20 Aug. 1959 and the Law on Adoption of 20 July 1972.

In the matrimonial property system, the community of property (*comunidad de bienes*) is presumed, unless the parties have agreed otherwise in their marriage settlement; the husband administers the community of property. Minors may marry with paternal consent, provided the male is over 14 years of age and the female over 12. Women over the age of 18 do not require said consent. A valid marriage may be dissolved by divorce, but only on the limitative grounds established in the Civil Code (art. 185).

### 3. Obligations

The obligation to compensate and pay damages arises from the different sources of obligations: contracts, *negotiorum gestio*, undue payment, unjust enrichment, tort and the law. For torts the Civil Code expressly establishes the obligation to compensate for damage caused to another party when it has been produced intentionally, through negligence or imprudence, or when the limits fixed by good faith or by the object of a right are exceeded (art. 1185). The Civil Code rules have been completed by some special laws, such as the Surface Traffic Law of 26 June 1962 and the Civil Aviation Law of 9 June 1955.

### 4. Property

The Constitution guarantees the right of ownership (art. 99), which the Civil Code defines as the right to use, enjoy and dispose of a thing in an exclusive manner, with the obligations and restrictions established by law (art. 545). However, ownership is not an unrestricted right as under traditional liberal philosophy, but it must comply with a social function (Const. art. 99). Therefore it is limited by the contributions, restrictions and obligations established by law for purposes of public utility or social interest. In this sense, the Constitution establishes the expropriatory power of the state for reasons of public utility or social interest, but requires a final decision and payment of just compensation (art. 101 and Law on Expropriation for Reasons of Public or Social Utility of 6 Nov. 1947).

In addition, a successive series of limitations to property has been established, basically for reasons of social interest: Law on Separate Interest in Space in a Building of 14 Oct. 1955; Law on Sale of Parcels of Land of 9 Dec. 1960; Law on Sales with Reservation of Ownership of 7 Jan. 1959; Law on Forests, Land and Waters of 26 Jan. 1966; Law for the Protection and Preservation of National Antiquities and Works of Art of 15 Aug. 1945. In particular, the Constitution declares the *latifundia* system to be contrary to social interest (art. 105) and therefore the Land Reform Law of 5 Nov. 1960 has provisions leading to its elimination.

For the transfer of property, a series of registers has been introduced: Real Estate Registry (Public Registry Law of 16 May 1961); Registry of Industrial Property (Law of 14 Oct. 1955); Copyright Registry (Law of 3 Jan. 1963); Merchant Marine Registry (Law on Shipping of 9 Aug. 1944); Aircraft Registry (Law on Civil Aviation of 9 June 1955) and Vehicle Registry (Law on Surface Traffic of 26 June 1963).

### 5. Succession

As one of the forms of acquiring and transferring property and other rights, the Civil Code regulates succession which may be testamentary or intestate. The testator enjoys freedom to dispose of his property, save as regards the part called "legitim". A forced share in full ownership is due to descendants, ascendants and the surviving spouse, unless the spouses had agreed on separation of their property (CC art. 883). The forced share amounts to one half of their share in an intestate succession.

For intestate succession, the Civil Code regulates the capacity to succeed, representation and order of succession, in which both legitimate and illegitimate descendants are included, although they have different rights.

Successions are taxed with rates that have been increasing (Law on Duty in Successions, Gifts and Other Connected Matters of 30 Dec. 1966).

## V. COMMERCIAL LAW

### 1. General Principles

Commercial law governs the obligations and rights of merchants in their commercial obligations and commercial acts even when they are executed by non-merchants (Comm.C art. 1). Sources of commercial law are in the first place the Commercial Code of 26 July 1955 and special commercial laws; in the second place, special or general commercial custom that has been in practice for a long time in the Republic or in certain places; in the third place, analogy to the rules of the Commercial Code itself, rules in special commercial laws and rules in the Civil Code.

Several special laws affecting the commercial field have been enacted during the last few years, owing to state intervention in economic life. The General Law on Banks and Other Lending Institutions of 22 April 1975, the Law on Insurance and Reinsurance Companies of 22 April 1975, the Law on Trusts (*Fideicomisos*) of 17 Aug. 1956, the Law on the Capital Market of 29 April 1975, the Law on Commercial Publicity of 6 Sept. 1944 and the Law on Bonded Warehouses of 7 Nov. 1936.

## 2. Commercial Acts, Merchants and Commercial Companies

a. Two groups of *commercial acts* are distinguished by commercial law: objective and subjective commercial acts. Acts whose commercial nature is independent of the party effecting them, or of the purpose to which they are directed, or of the particular form of their activity or of the relation to which they are subordinated are considered as objective commercial acts (Comm.C art. 2) in an absolute sense. Examples are the bill of exchange, acts of maritime law and stock exchange operations. Other commercial acts are objective, but in a relative sense. These are divided into three classes: acts that are commercial owing to the speculative intention of the party effecting them, such as the purchase, barter of renting of movable goods for the purpose of re-selling, bartering or sub-letting them in the same or in another form; acts which are commercial due to the special form of their exercise, such as those of publishing and printing businesses and bookshops; and, finally, acts that are commercial owing to the commercial nature of the principal act, such as for instance commercial mandate and commission (Comm.C art. 2 no. 4).

On the other hand, subjective commercial acts are any other type of contract and obligation by merchants, unless the contrary appears from the act itself or said contracts and obligations have an essentially civil nature (Comm.C art. 3).

b. All persons who have the capacity to contract and make trading their customary profession are considered to be *merchants* (Comm.C art. 10). Naturally, commercial companies are considered to be merchants.

c. The concept of *company* is set forth in CC art. 1649 requiring that two or more persons agree to contribute towards the achievement of a joint economic purpose, each with his own property or the use of goods or with his own work. Companies having as their object one or more commercial acts are considered to be commercial companies (Comm.C art. 200). These may take four different forms: marketable share companies (*sociedades anónimas*), limited liability companies (*sociedades de responsabilidad limitada*), limited partnerships (*sociedades en comandita*) and partnerships (*sociedades en nombre colectivo*). Among marketable share companies mention should be made of the so-called multinational companies. In the context of the Andean Area Pact for subregional economic integration (Cartagena Agreement of 26 May 1969), of which Venezuela is a member, multinational companies are only those companies domiciled and constituted in one of the countries in the sub-region; a majority of subregional capital in said companies must be reflected in the company being managed by investors who are nationals of at least two member countries; foreign investment in such companies cannot exceed 40 per cent; and the companies must be of sub-regional interest (Decision no. 46 of the Cartagena Agreement Commission on the Uniform System of Multinational Companies of December 1971).

## 3. Bills of Exchange and Cheques

Fundamentally, Venezuelan legislation on bills of exchange abides by The Hague Project of 1912. Every act relating to bills of exchange, as has already been mentioned (*supra* 2 a) constitutes a commercial act, even when effected between non-merchants (Comm.C art. 2 no. 13).

Cheques are scarcely regulated in the Commercial Code. It is considered as an order to pay and it has some affinities with a bill of exchange.

## 4. Bankruptcy

The rules on bankruptcy are included in the Commercial Code itself (art. 898 ss.), but special laws govern the effects of the bankruptcy of certain trading companies, such as banks and insurance companies.

## 5. Legal Regulation of Foreign Trade

As part of the freedom to trade, the freedom to import and export exists in principle in Venezuela. However, the excercise of this freedom is not only regulated by the Commercial Code and the Customs and Excise Law of 23 Dec. 1965, but is also restricted and subjected to a series of administrative and fiscal requisites, the latter being established in the Law on Customs Tariffs of 19 Sept. 1972.

On the other hand, it must be pointed out that Venezuela belongs to the Latin American Free Trade Association (*Asociación Latino-americana de Libre Comercio* -ALALC) established by the Montevideo Treaty of 18 Feb. 1960, which contains a programme for the liberalization of international trade in the area. At the same time and within the ALALC framework, Venezuela is also a member of the Andean Area Pact for sub-regional economic integration, which has already been mentioned (*supra* 2 c). Its object is not only to accelerate the freedom of international trade between member countries but also that of setting up a customs union and therefore a Common External Tariff which is to be completely in force prior to 31 Dec. 1980. The development of this economic integration process has undoubtedly influenced the control of foreign trade in the last few years and will continue to influence it in the future.

It has been attempted to diversify exports in order to decrease the dependency on oil exports. The Foreign Trade Institute (Law of 17 Aug. 1970), an organization made responsible for the management of foreign trade policy, therefore has been developing exports intensely.

## VI. STATE DIRECTION OF TRADE

Constitutionally, the Venezuelan state has as obligation and main object the promotion and stimulation of the country's economic development. It is granted powers by the Constitution to take measures and decisions to diversify production, in order to create new sources of wealth, increase the population's income and strengthen the country's economic sovereignty (Const. art. 95). For this purpose, the Constitution grants the state express powers to issue measures suited to planning, rationalizing and encouraging production and to regulating the circulation, distribution and consumption of wealth (art. 98).

On this basis and as a consequence of the leading role held by the state in the economy, owing to the benefits of oil exploitation, a planning process was started in the country in 1958, through the institution of a Central Office for Coordination and Planning (*Oficina Central de Coordinación y Planificación* – CORDIPLAN) (Decree-Law of 30 Dec. 1958 no. 492). It has been in charge of drafting four National Plans until 1975.

These plans, however, are not ratified by Law, and Congress does not intervene directly in their élaboration; the President of the Republic discloses only the main lines of the plan, accepted by the Council of Ministers, to the legislative chamber (Const. art. 191). Planning therefore only has an indicative nature owing to the lack of a legal imperative.

Among the most recent regulations in the field of production and trade, mention should be made of the regulation on foreign investments in force in Venezuela, in accordance with Decision no. 24 of the Cartagena Agreement Commission on sub-regional economic integration. It establishes a Common System of Treatment of Foreign Capital and limits and regulates the participation of foreign capital in the national economy. This type of regulation was of primary importance to Venezuela as it was the Latin American country with the greatest percentage of foreign investments in its economic activities owing to oil exploitation, now nationalized.

General administrative control of industrial and commercial activities is in the hands of the Ministry for Development which is competent to regulate the prices of goods (Law on Consumers Protection of 2 Sept. 1974 and Law on the Agricultural Market of 21 Aug. 1970) and control their distribution (Law Against Monopolizing Goods and Speculation of 7 Aug. 1947).

The state has also issued regulations on the capital market (Law on the Capital Market of 29 April 1975) and in consequence of the amended development system for exports several provisions for promotion have been issued (Law on Incentives to Exports of 29 April 1975 and Law on the Finance Fund for Exports of 28 Sept. 1973).

At the same time, owing to the importance of activities deriving from oil and mining exploitation, the state has been progressively setting up controls over the industry and participating directly in it. The Law on Hydrocarbons enacted in 1943, and at present in force with later amendments (Law of 8 Aug. 1967), established that the majority of concessions for the exploitation of hydrocarbons granted prior to that date would have reverted automatically to the state in 1983. In order to secure the existence of those properties and the continuity of the industry, the Law on Properties Subject to Reversion in Hydrocarbon Concessions was enacted (in July 1971) granting the state severe powers to control and supervise. Again, active state intervention in the oil and by-products industry has been brought about by the institution of the Venezuelan Oil Corporation (Corporación Venezolana del Petróleo – CVP) as an institution under public law (Decree-Law of 22 April 1960), and by the reservation to the state of the natural gas industry (Law of 26 Aug. 1971) and the nationalization of the domestic market of hydrocarbons and by-products (Law of 22 June 1973). It should be underlined that within this system of intervention in the country's main industry, the Law on Income Tax of 18 Dec. 1970 empowered the state to fix oil reference sales prices for tax purposes and, in this manner, the fall of prices and its negative effects on oil revenues was checked. Finally, in January and August 1975 the iron (Decree-Law of 26 Nov. 1974) and the oil industries (Law of 29 Aug. 1975) were nationalized and the private companies became state-owned.

Moreover, it should be pointed out that the state has control over the country's basic heavy industry (Const. art. 97); therefore, there is direct public investment in important industries such as the petrochemical industry (Decree-Law on the Venezuelan Petrochemical Institute of 30 June 1956), the steel and hydroelectric industries (Decree-Law on the Venezuelan Guayana Corporation of 29 Dec. 1960). These enterprises are mostly public property.

## VII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

### 1. Copyright

The Venezuelan rules on copyright (Law of 3 Jan. 1963) follow the most recent developments on this subject in foreign countries and would even allow Venezuela to join the Berne Convention. However, in the international field Venezuela has only ratified the Geneva Universal Copyright Convention of 1952.

The basic principles governing copyright are the protection of works only by virtue of their creation, but irrespective of the ownership of the material contained in the work and of its disclosure, publication or registration. Registration of copyright therefore has purely declaratory effects.

The law distinguishes in copyright between patrimonial elements, *i.e.*, the right to exploit the work either through presentation or reproduction, and rights of a moral nature. The latter comprise in particular: the right to the paternity of the work, the right to its disclosure, the right to its immutability, the right of access to the material contained in the work, and the right of repentance with regard to the disclosure or publication of the work (revocation of the licence).

In any case, in accordance with a constitutional principle (art. 100) legal protection of copyright is of a temporary nature and it generally covers the author's lifetime and a further 50 years, excepting some special cases.

### 2. Patents and Trademarks

The Law on Industrial Property of 14 Oct. 1955 protects the rights of inventors, discoverers or introducers in creations, inventions or discoveries related to industry. It also protects the rights of producers, manufacturers and merchants over the commercial marks, devices or names used to distinguish the results of their work or activity from similar products.

The rights of inventors or of those who introduce inventions to the country are protected through patents on inventions. The law makes a distinction between four types of patents: patent on invention; patent on improvements to inventions; patent on industrial models or designs; and patent on the introduction of an invention, improvement to an invention or industrial design or model. In particular, a patent of introduction comprises the priority right of the holder of a foreign patent to obtain, within 12 months, registration in Venezuela. As regards other patents, protection is for a limited period of time.

The rights of producers, manufacturers and merchants in distinguishing marks (manufacturing marks, commercial devices and names) are protected by way of obtaining Certificates of Registry. These certificates, which are subject to serious conditions, generally have a duration of 15 years, but they may be renewed for successive periods.

Patents and Certificates of Registry are obtained by means of the registration of the rights in the Industrial Property Registry which is subject to the Ministry of Development. This registry also has merely declaratory effects.

Finally, it should be pointed out that Decision no. 24 of the Cartagena Agreement Commission for economic integration of the Andean Group (*supra* VI) has established special rules on marks, patents, licences and royalties as part of the common system on treatment of foreign capital in the different member countries.

# VIII. PROCEDURE IN CIVIL AND COMMERCIAL MATTERS

## 1. Sources of Law

According to the principles in the Preliminary Chapter of the Code of Civil Procedure of 4 July 1916 which is also applicable to procedure in commercial cases, the hierarchy of sources of law is as follows. Owing to constitutional supremacy, the Constitution (CCProc. art. 7) is in first place; the basic jurisdictional guarantees are also set forth in its text (Const. art. 44 and 60 no. 4, art. 67 and 68).

In the second rank are international treaties and agreements, which take priority before the codes and other Venezuelan laws "in cases of application of private international law" (CCProc. art. 8). In the third rank, there are the Code of Civil Procedure itself, the rules of a procedural nature to be found in other codes and particularly in the Commercial Code and the laws on the organization of the judiciary and administrative laws (CCProc. art. 4 and 5). And finally, in the lowest rank of the hierarchy, gaps in the law may be filled by analogy and the general principles of law (CC art. 4).

## 2. Principles of Procedure

The basic principle of procedure is its accusatory character, in the sense that the parties determine its course. From this the principle of contradiction or bilaterality may be deduced, which implies a conflict of interests that gives rise to civil and commercial law-suits. This principle is illustrated by the fact that court cases are begun by submitting a petition, always in writing (CCProc. art. 236). Therefore proceedings during the entire course of the action are in writing, purely oral interventions being of such an exceptional nature that even oral pleas subsequently must be presented in writing (art. 405).

Furthermore, as law-suits are in writing, the principle of mediacy prevails. This means that the judge is only in indirect contact with the circumstances and facts in the case and knows them only through the submissions of the parties, the witnesses and other evidence brought to the case and recorded in the documents. In virtue of this, the judges' activity must also be guided by the principle of procedural economy, so that time, efforts and money are not wasted in the course of the proceedings.

As the action of the parties is the pivot of the proceedings, the principle of procedural equality is the guarantee of justice in the opposition of interests (art. 21).

One of the ways of guaranteeing the equality of the parties is through the publicity of the proceedings, and this leads to the principle of publicity that requires that "all hearings be public" (art. 19). However, an exception is made for those cases in which the court determines that hearings be *in camera* for reasons of public decency, due to the nature of the case.

A consequence of the accusatory character of proceedings is the principle of truth in proceedings. It requires that the judge issue his decision in accordance with what has been pleaded and proved in the documents of the case; he may not draw on elements other than these, nor rely upon exceptions or facts neither pleaded nor proved (art. 12). As the proceedings are only set in motion by the impetus given by the parties, the principle that proceedings are subject to the control of the parties (*principio dispositivo*) prevails. Accordingly "the judge cannot proceed in civil matters except when petitioned by a party" (art. 11). Nevertheless, the Code itself allows judges to act *ex officio* when authorized by law or if the defence of public order and public morality requires a decision, even if the parties have not petitioned for it.

Finally, the principle that "the parties are within their rights" must be mentioned as one of the most characteristic principles in Venezuelan procedure. This implies that once a summons has been issued inviting objection to the claim, "there will be no need to issue it again for any other act in the case nor will the proceedings be dismissed owing to what has been ordered to be proved, unless the contrary follows from any special provision in the Law" (art. 134). This principle, typical of Venezuelan law, works perfectly as the procedural steps must be entered in the Day-Book of the Court, and the parties in the case and other interested persons have free access to it.

## 3. Types of Proceedings and Arbitration

Aside from ordinary and execution proceedings, the Code of Civil Procedure regulates a series of special proceedings on different subjects, in particular on the status of persons, succession, summary possession, *etc.*

With regard to arbitration, the Code of Civil Procedure expressly establishes that controversies may be arbitrated by one or an uneven number of arbitrators, either before or after the case is heard

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