## VATICAN STATE v. NUZZI AND FITTIPALDI (“VATILEAKS 2”)

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Date of the sentence: December 22, 2016

### Summary and Outcome

The Vatican State Tribunal acquitted two journalists accused of moral complicity in the offence of disclosing confidential information and documents. The two journalists, Gianluigi Nuzzi and Emiliano Fittipaldi, authored the books *Avarizia* and *Via Crucis*, where they revealed cases of misuse of the Vatican finances supported by the documents under scrutiny. Some of these documents were allegedly obtained thanks to some public officials working for COSEA (Pontifical Commission for the Study and Direction of the Economical-Administrative Structure), who leaked and provided them to the journalists. Two out of the three COSEA public officials, that were also accused of disseminating confidential information and documents, were instead found guilty.

### Facts

The 2015 scandal called Vatileaks II follows a first Vatileaks scandal in 2012, when there was a leak of documents regarding the management of the Vatican’s finances and its bank (IOR, Institution for the Works of Religion), uncovering corruption and mismanagement. In the Vatileaks I case, many of these documents were published by journalist Gianluigi Nuzzi in a book called [*His holiness*](https://www.ibs.it/sua-santita-carte-segrete-di-libro-gianluigi-nuzzi/e/9788861900950).

Similarly, the documents under scrutiny in the Vatileaks II scandal regarded economic and administrative activities of some institution of the Holy See in the exercise of their functions. In November 2015, following the publication of some of these documents in the books [*Avarizia*](https://www.ibs.it/avarizia-carte-che-svelano-ricchezza-libro-emiliano-fittipaldi/e/9788807172984) and [*Via Crucis*](https://www.ibs.it/via-crucis-libro-gianluigi-nuzzi/e/9788861904958), the book authors- respectively Gianluigi Nuzzi and Emiliano Fittipaldi- were charged under Article 116 *bis* of the Vatican Criminal Code, as modified by Article 10 of the Holy See’s Law IX (2013), for allegedly disseminating leaked confidential information and documents[[1]](#footnote-1).

Among these documents, for example, we can find some photos regarding a stealing that took place inside the Vatican prefecture in 2014, a letter between high-rank clerics regarding the cardinals “benefits” and a letter to the Pope by the Prefecture’s Revisers Committee expressing “personal concerns and recommendations” about the Vatican’s financial situation. Moreover, among the leaked documents we can find those regarding the so called *Cause dei Santi* (namely, the processes for beatifications and sanctifications), revealing some discrepancies between the declared expanses and the actual ones. According to Nuzzi’s notes following a meeting with COSEA’s members Monsignor Lucio Ángel Vallejo Balda- a Spanish cleric- and Francesca Chaouqui- a PR consultant-, the Vatican hold more than 200 bank accounts in the IOR bank for this activity.

Law No. IX was enacted in July 11, 2013, after Vatileaks I: Article 10 of this Law added Article 116 *bis* in the Criminal Code, among the “crimes against the security of the State”: this provision criminalizes the circumstances under which an individual “illicitly obtains or reveals information or documents whose disclosure is forbidden” and the offence is punished with six months to two years imprisonment or a fine ranging from 1,000 to 5,000 EUR. In cases where the information or documents concern “the fundamental interests or the diplomatic relations of the Holy See or the State”, the offence carries a higher penalty of between four and eight years in prison.

While the trial was ongoing, the original charges against the journalists were dropped and substituted with charges of “moral complicity in the disclosure of confidential information and documents”: the crimes of Nuzzi and Fittipaldi were allegedly committed with the involvement of Balda, Chaouqui and the cleric’s executive secretary, Nicola Maio, to whom the journalists asked- allegedly exercising pressures- confidential documents and information.

Balda worked at the *Prefettura Ecclesiastica*, a peculiar organ taking care of the accounting control of all the Holy See’s institutions. According to the deposition of a witness, a huge quantity of documents from the Prefettura’s confidential archive were photocopied in the weeks when the facts under scrutiny took place. Moreover, according to the analysis of Balda’s online communications (computer and phone) it emerged that he transmitted to journalist Nuzzi some documents related to the works of COSEA. During the process, the defendant Balda confessed to have transmitted to journalist Nuzzi 5 pages containing 85 passwords, opening 85 documents. Moreover, he also gave him the password of its own email account, assuring he did so “in a state of total lucidity, spontaneously”. With regard to Fittipaldi, during the process he declared to have met Balda only four times, when the writing of his book was almost finished. Also, Baldi himself confirmed to have autonomously decided to forward some confidential documents to the journalist.

The journalists were introduced to Monsignor Balda by Francesca Chaouqui, to allegedly inform them about the climate of “resistances” of some curial roman environments for the reformist activity of the new Pope Francesco- following the disastrous situation in the Vatican finances at the time of Pope Benedict XVI resignation- and of the concerns such resistances could frustrate the works of COSEA.

As a consequence of the above mentioned facts, Balda, Chaouqui and Maio were charged with forming an “organised criminal association” with the aim of “committing several illegal acts” by leaking confidential documents, under art. 25 of Law No. IX of 2013. These charges were later dropped, since this provision requires as a founding element the actual establishment of a criminal association, that could not be proved. These charges were substituted with those of disclosing confidential information and documents, under the above mentioned Article 116 *bis* of the Criminal Code.

The prosecutor subsequently called for the acquittal of Mr. Fittipaldi due to a lack of evidence, but asked for a suspended sentence of one year imprisonment for Mr. Nuzzi. The journalists argued that the charges against them constituted a violation of the right to freedom of expression and freedom of the press; furthermore, they maintained that the Vatican State Tribunal lacked jurisdiction to try them since they are Italian citizens.

### Decision overview

The Vatican State Tribunal considered the charges against Mr. Nuzzi and Mr. Fittipaldi for “moral complicity in the disclosure of confidential information and documents”, as well as the charges against Mgr Vallejo Balda, Francesca Chaouqui and Nicola Maio for disclosing the confidential information and documents.

According to the prosecution, the journalists’ moral complicity arose from their “soliciting and exercising pressure, especially on [Msgr] Vallejo Balda, in order to obtain confidential documents and news”, that they subsequently used for their books. In the prosecutor’s view, the pressure and availability to work on this topic of the journalists were the essential reasons behind the decision to disclose the secret dossiers. Roberto Palombi, Mr. Nuzzi’s attorney, argued that the charges unjustly criminalised the journalists for the mere fact of “asking questions”. In response, Vatican co-prosecutor Roberto Zanotti argued that the charges only regarded the allegedly illegal methods used for obtaining the documents under charge. During the process, Balda stated that “giving [the journalists] these documents was somehow a way to pay my freedom. Of course, before meeting the journalists I did not have any idea about doing so”. However, no evidence of effective pressures exercised by the journalists on Balda could be found: he himself declared that he was *feeling* threatened, but was not actually threatened.

Lawyer Palombi also argued that the Vatican State Tribunal had no jurisdiction since the alleged crime of receiving and publishing private documents took place in Italy, not in the Vatican. The lack of jurisdiction was recognized on July 7, 2016, when Mr. Nuzzi and Mr. Fittipaldi were both acquitted: according to the Criminal Code, what is relevant for punishability is the *locus commissi delicti*- namely Italy, in this case. Moreover, in a 2013 *motu proprio,* the Pope specified that the Holy See's jurisdiction over the crimes listed in law IX of 2013 only regarded those acts committed by "public officials" during the exercise of their functions. For the same reasons, the Vatican Court considers its own jurisdiction to be valid in the cases of Balda, Chaouqui and Maio.

Therefore, Msgr Vallejo Balda was sentenced to 18 months of detention (and subsequently received the Pope’s pardon) under Article 116 *bis*, for disseminating confidential information and documents. Francesca Chaouqui was sentenced to 10 months of detention under Article No. 64 (1) of the Criminal Code for (moral) complicity in the crime committed by Balda: she indeed facilitated the activities of revealing and disseminating the documents under scrutiny, in particular introducing the journalists to Mons. Balda. The meetings with the journalists were therefore the means through which the crime could be committed. However, the Court stated that the documents under scrutiny did not concern “the fundamental interests or the diplomatic relations of the Holy See or the State”: therefore, the higher penalties provided by art. 116 (2) were not applied. Finally, Nicola Maio was acquitted for lack of evidence.

In the text of the judgment the Vatican State Tribunal also noted the "recognition and guarantees in favour of freedom of expression and freedom of the press by the divine law”, quoting- among other documents- a 1963 encyclical by Pope Giovanni XXIII, stating that “the man can freely research the truth and disseminate his opinion”.

**Decision Direction**

The ruling has a mixed outcome: it expands freedom of expression in the part where it acquits the two journalists, also explicitly mentioning the importance of recognizing and guaranteeing freedom of expression. It contracts expression in the part where it sentences to a detention penalty two public officials: in particular, it contrasts with the right of the public to the dissemination of public interest’s documents in the name of the defence of the security of the State.

#### National standards, law or jurisprudence

Art. 63, 64 (1), 116 bis and 248 of the Criminal Code

[Law IX of 2013](http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/Law%20N.%20IX%20-%20Amendments%20to%20the%20Criminal%20Code.pdf) (Amendments to the Criminal Code and the Code of Criminal Procedure)

[Encyclical “Pacem in Terris” of Pope Giovanni XXIII, April 11, 1963](http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html) on freedom of expression;

 [Concilio Vaticano II, Decree "Dignitatis humanae”, December 7, 1965, n. 2](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html), specifying it is a duty of every man to adhere to truth;

[Papal Council on the means for social communication "Communio et progressio", May 23, 1971, n. 121](http://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_23051971_communio_it.html).

[*Motu proprio* “Ai nostri tempi” of Pope Francesco](http://w2.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20190326_latutela-deiminori.html), July 11, 2013.

**To be attached:**

* Full sentence:

<http://press.vatican.va/content/dam/salastampa/it/fuori-bollettino/pdf/Sentenza%20Tribunale%20Vaticano_24-12.pdf>

* Short sentence:

<https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2016/07/07/0504/01158.html>

* Press:

<http://www.ilfattoquotidiano.it/2016/07/07/vatileaks-2-nuzzi-e-fittipaldi-prosciolti-condannati-vallejo-balda-e-chaouqui/2888230/>

<https://notiziario.ossigeno.info/2016/07/vatileaks-2-a-happy-ending-and-many-problems-after-8-months-of-distress-71823/>

<http://tg.la7.it/vaticano/pubblicata-sentenza-vatileaks-due-24-12-2016-111176>

1. It is worth to note that the Criminal Code of the Vatican State [corresponds](http://www.vatican.va/roman_curia/labour_office/docs/documents/ulsa_b16_1_it.html) to the 1889 Italian Criminal Code (so called Zanardelli Code) as adopted by the Law of June 7, 1929, and successively modified and integrated by the Vatican laws. [↑](#footnote-ref-1)