

DECREE N. 79 of 8th July 2002

DECLARATION ON THE CITIZENS' RIGHTS AND FUNDAMENTAL PRINCIPLES OF SAN MARINO CONSTITUTIONAL ORDER. COORDINATED TEXT OF LAW N. 59 OF 8TH JULY 1974, WITH THE AMENDMENTS RESULTING FROM LAW N. 95 OF 19TH SEPTEMBER 2000 AND LAW N. 36 OF 26TH FEBRUARY 2002

**We the Captains Regent
of the Most Serene Republic of San Marino**

Having regard to Law N. 59 of 8th July 1974, "Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order", published in the Official Journal N. 3 of 31st July 1974;

Having regard to Law N. 95 of 19th September 2000, "Amendment to art. 4 of Law N. 59 of 8th July 1974", published in the Official Journal N. 9 of 30th September 2000;

Having regard to Law N. 36 of 26th February 2002, "Review of Law N. 59 of 8th July 1974 (Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order)", published in the Official Journal N. 2 of 28th February 2002;

Considering the need for a coordinated text of the above mentioned Declaration for documentation and acknowledgement purposes, without prejudice to the exclusive authenticity of the texts of the three Laws, as respectively published ad valvas according to the law;

Decree, promulgate and order the publication of the coordinated Text of Law N. 59 of 8th July 1974, with the amendments resulting from Law N. 95 of 19th September 2000 and Law N. 36 of 26th February 2002.

(Preamble)
(art. 1, Law N. 36/2002)

The Great and General Council, aware of the Republic's glorious traditions of freedom and democracy, resolved to reject any totalitarian conception of the State and in order to guarantee civil, social, and political advancement to San Marino people, through the existence of the State and its fundamental institutions, has adopted this declaration on the citizens' rights and principles, upon which the organisation and exercise of the constitutional powers shall be based.

Article 1
(art. 2, Law N. 36/2002)

The Republic of San Marino receives generally recognised rules of international law as integral part of its constitutional order, to which it shall conform its acts and conduct. It recognises the provisions set forth in the international declarations on human rights and fundamental freedoms.

It reasserts the right to political asylum. It rejects war as a means to settle disputes between States and, in its international policy, adheres to the principles enshrined in the Charter of the United Nations.

San Marino constitutional order recognises, guarantees and enforces the rights and fundamental freedoms set forth by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Regularly signed and implemented international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict.

Article 2

(art. 2, Law N. 59/1974)

The Republic's sovereignty is vested in its people who shall exercise it through the statutory forms of representative democracy. The law shall govern both the *Arengo* and the other institutions of direct democracy.

Article 3

(art. 3, Law N. 36/2002)

The Office of Head of State shall be held jointly by two Captains Regent.

The Captains Regent, appointed by the Great and General Council, shall represent the State as a national unity. They shall be the supreme guarantors of the constitutional order.

They shall preside over the Great and General Council, which they shall represent in its entirety. They shall preside over other bodies according to law provisions and in the respect for the separation of powers.

In case of urgency and after having heard the opinion of the Congress of State, they may issue Regency Decrees which, under penalty of nullity, shall be ratified by the Great and General Council within three months.

The Captains Regent shall be regularly informed by the Congress of State on any matter concerning the State.

The constitutional law shall establish the guarantees and responsibilities of the Captains Regent, on whom it may confer additional powers. Appointment, organisation, operation and incompatibilities shall be disciplined by a law passed by a qualified majority of the Council's members.

The Great and General Council, made up of 60 members, shall exercise the legislative power, direct and control the Government policy.

The electoral law, passed by an absolute majority, shall govern the election, the causes of ineligibility and disqualification, as well as the incompatibilities of the Council's members. A law passed by a qualified majority shall discipline the guarantees and responsibilities of such members.

The Council's members shall be elected by universal and direct suffrage for the duration of the legislature. Their mandate shall end with the dissolution of the Council or for the reasons indicated in the preceding paragraph.

The internal organisation and the functions of the Great and General Council shall be disciplined by the Council's Rules of Procedure, adopted by an absolute majority of its members. Such Rules of Procedure shall provide for the division of the Council into Commissions and shall govern the role of the Council's various Groups and Representations.

The Congress of State shall be vested with the executive power, according to the principles of collegiality and responsibility. It shall be politically answerable, both

collegially and individually, before the Great and General Council on the basis of the constitutional law.

The members of the Congress of State shall be appointed by the Great and General Council. The constitutional law shall establish and govern their powers. A law passed by a qualified majority shall discipline the organisation and operation of the Congress, specify eligibility requirements, appointment procedures, incompatibilities, disqualification of single members and of the Congress of State and regulate ordinary administration.

The Congress of State may issue legislative acts in the form of regulations, subject to law provisions. It shall issue reasoned administrative decisions in conformity with the law.

The transparency and publication of the acts of the Congress of State shall be guaranteed.

The Congress of State shall direct the public administration, without prejudice to its autonomy. The public administration shall serve the general interest and shall be subject to the law and principles referred to in article 14.

The bodies of the judicial power shall be established by constitutional law, which shall also set forth their relevant responsibilities. Such bodies, subject exclusively to law, shall be guaranteed full independence and freedom of judgement in the fulfilment of their functions.

All judicial functions shall be exercised by the bodies belonging to the judiciary.

Recruitment, appointment and incompatibilities of magistrates, as well as the organisation and operation of magistracy, shall be disciplined by a law passed by a qualified majority.

Each power of the State shall act in the mutual respect for their autonomy and competence.

Article 3 bis

(art. 4, Law N. 36/2002)

The fundamental principles set forth in this Declaration shall be implemented through constitutional laws. The latter shall be approved in their entirety by a two-thirds majority of the members of the Great and General Council. If approved by an absolute majority, they shall be subject to referendum for their confirmation within ninety days since their approval.

Laws passed by a qualified majority shall discipline the operation of all constitutional bodies, as well as the institutions of direct democracy. Such laws shall be approved by the absolute majority of the components of the Great and General Council.

Ordinary laws shall be approved by the Great and General Council by simple majority. The same majority shall be required for the ratification of decrees.

The legislative initiative shall be entrusted to each member of the Council, to the Council's Commissions, to the Congress of State, to the Township Councils and to citizens, on the basis of a law passed by a qualified majority.

The Great and General Council may, by means of a law, delegate to the Congress of State the adoption of decrees having force of law and subject to ratification by the Great and General Council.

Customary law and *ius commune* shall constitute a further source of law in the absence of statutory provisions.

Bills and amendments entailing, with regard to the budget law, a reduction in revenues, new expenses or an increase in expenditure, shall indicate the relevant financial coverage.

Article 4

(art. 5, Law N. 36/2002)

All shall be equal before the law, without any distinction based on sex or personal, economic, social, political and religious status.

All citizens shall have access to public services and elective posts, in accordance with the procedure laid down by law.

The Republic shall guarantee equal social dignity and equal protection of rights and freedoms. It shall promote the conditions for the effective participation of citizens in the economic and social life of the Country.

Article 5

(art. 5, Law N. 59/1974)

Human rights shall be inviolable.

Article 6

(art. 6, Law N. 59/1974)

Everybody shall enjoy civil and political freedoms in the Republic. In particular, personal freedoms, freedom of residence, establishment and expatriation, freedom of assembly and association, freedom of thought, conscience and religion shall be guaranteed. The privacy of any form of communication shall be protected. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary for the protection of public order and general welfare.

Arts, science and education shall be free. The law shall secure education to all citizens, free and at no cost.

Article 7

(art. 7, Law N. 59/1974)

Suffrage shall be universal, secret and direct.

Each citizen, at the age and under the requirements laid down by the law, shall have the right to vote and be voted.

Article 8

(art. 8, Law N. 59/1974)

All citizens shall have the right to form, in a democratic way, political parties and trade unions.

Article 9

(art. 9, Law N. 59/1974)

Each citizen shall have both the right and duty to work. Fair remuneration, annual holidays, weekly rest and the right to strike shall be secured by law.

All citizens shall be entitled to social security.

Article 10

(art. 10, Law N. 59/1974)

Private property and entrepreneurship shall be secured. Limitations shall be determined by law for the purpose of protecting general interest.

Expropriation of private property shall be allowed, under the terms envisaged by the law, in the public interest and against just compensation.

The Republic shall protect its historical and artistic heritage, as well as its natural environment.

Article 11

(art. 11, Law N. 59/1974)

Within the fields of education, work, sports- and leisure activities, the Republic shall promote the development of the personality of the young and shall educate them to a free and responsible exercise of their fundamental rights.

Article 12

(art. 12, Law N. 59/1974)

The Republic shall protect the institution of the family, based on moral and legal equality of spouses.

Mothers shall be entitled to assistance and protection by the community.

Children born outside wedlock shall enjoy spiritual, legal and social protection and be treated on an equal footing as legitimate children.

Article 13

(art. 13, Law N. 59/1974)

All citizens shall abide by the laws and be loyal to the institutions of the Republic, shall participate in its defence and contribute to public expenses in proportion to their capacity.

No other payments in cash or in kind shall be imposed other than those prescribed by law.

Article 14

(art. 14 Law N. 59/1974)

The public administration shall conform its activity to the criteria of legality, impartiality and efficiency.

Administrative measures shall be motivated and the debate among interested parties established by law.

Civil servants shall be held responsible for any acts detrimental to the citizens' rights, according to the provisions laid down by the law.

Article 15

(art. 6, Law N. 36/2002)

Everyone shall be entitled to jurisdictional protection of subjective rights and legitimate interests before the competent ordinary and administrative courts and before the Panel responsible for guaranteeing the constitutionality of any rule.

Everyone shall be entitled to defend himself at any stage of the judicial proceedings.

All judgements shall be pronounced by independent courts within a reasonable time and shall not be subject to undue financial burden. Such judgements shall be made public.

Humane and rehabilitation punishments shall be inflicted only by judges authorised by law to exercise judicial power and according to non-retroactive rules. Their retro-active application shall be possible only if more favourable.

Everyone charged with an offence shall be presumed innocent until convicted. Any form of limitation of personal freedom, also as precautionary measure, shall be admitted only in conformity with the law.

Article 16

(art. 7, Law N. 36/2002)

A Guarantors' Panel responsible for ensuring the constitutionality of rules is hereby established. The Panel shall be composed of three effective members and three substitute members. All members shall be elected for an initial period of four years by a two-thirds majority of the Great and General Council's members, from among university professors of legal subjects, magistrates, and law graduates with at least twenty years of experience in the field of law. After the first mandate, one third of the Panel's members shall be renewed every two years. The substitute members shall replace the effective ones whenever the latter are, for any reason, incompatible also on account of functions previously performed, or in case of impediments or absence.

The Guarantors' Panel shall appoint its President for a two-year term, on the basis of the rotating principle, from among its effective members.

The Guarantors' Panel shall:

- a) verify the conformity of laws, of regulations having force of law, as well as of customary rules having force of law, with the fundamental principles of the constitutional order set forth or mentioned in this Law, upon direct request of at least twenty members of the Great and General Council, of the Congress of State, of five Township Councils, of a number of citizens making up at least 1.5% of the electorate resulting from the latest and definitive annual revision of the electoral lists, and with reference to proceedings pending before the Republic's courts, upon request of judges or the parties involved;
- b) in the cases envisaged by law, decide on the acceptability of referenda proposals;
- c) decide in case of conflicts between constitutional bodies;
- d) act as "Regency Syndicate".

Additional functions may be established by a constitutional law. The constitutional law shall determine the responsibilities of the Guarantors' Panel and of its single members.

A law passed by a qualified majority shall discipline incompatibilities, operation and organisation of the Panel, appeal forms and procedures, the effects of decisions and their implementation modalities.

The annulment of unconstitutionality decisions, without prejudice to the immediate effects of the decision between the parties, shall become effective after six months. Within such period the Great and General Council may make laws on this matter in conformity with the unconstitutionality decisions.

Article 17

(art. 8, Law N. 36/2002)

The provisions of this Declaration may be reviewed by the Great and General Council by a two-thirds majority of its components.

A referendum shall be required to confirm, within ninety days from approval, any law reviewing the provisions of this Declaration which has been approved by the Great and General Council by absolute majority.

Provisional Rule
(art. 9, Law N. 36/2002)

Constitutional laws and laws passed by a qualified majority referred to in the first and second paragraph of Article 3 bis of the Declaration on the Citizens' Rights introduced by this law, shall be proposed within three years since the entry into force of this constitutional review.

The law passed by a qualified majority referred to in the fifth paragraph of Article 16 of this Declaration shall be proposed within six months.

Pending the entry into force of the new judicial system, the members of the Guarantors' panel shall decide:

- a) on jurisdictional conflicts, in proceedings initiated in the courts of the Republic;
- b) on the abstention and challenge of the Judges and of the *Procuratore del Fisco*;
- c) in the last instance, on the appeals submitted in criminal proceedings concerning the legitimacy of precautionary measures adopted in the course of the proceedings or on the execution of penalties;
- d) on the appeals of the interested parties when the civil and administrative sentences of first and second degree differ;
- e) on appeals for review of criminal sentences, for *querela nullitatis* and *restitutio in integrum*.

The functions referred to in the preceding paragraph shall be assigned by the President of the Panel individually to single members, both effective or substitute, according to predetermined criteria and taking into account any reason for incompatibility.

Done at our Residence, on 8 July 2002

CAPTAINS REGENT
Antonio L. Volpinari - G. Francesco Ugolini

MINISTER OF THE INTERIOR
Emma Rossi