

DECREE no. 79 of 8 July 2002

(not subject to ratification as it does not constitute a regulatory source)

REPUBLIC OF SAN MARINO

Declaration of the Citizens' Rights and Fundamental Principles of San Marino Legal System. Coordinated text of Law no. 59 of 8 July 1974, as amended by Law no. 95 of 19 September 2000 and by Law no. 36 of 26 February 2002

We the Captains Regent

of the Most Serene Republic of San Marino

Having regard to Law no. 59 of 8 July 1974, "Declaration of the Citizens' Rights and Fundamental Principles of San Marino Legal System" published in Official Bulletin no. 3 of 31 July 1974;

Having regard to Law no. 95 of 19 September 2000, "Amendment to Article 4 of Law no. 59 of 8 July 1974" published in Official Bulletin no. 9 of 30 September 2000;

Having regard to Law no. 36 of 26 February 2002, "Revision of Law no. 59 of 8 July 1974 (Declaration of the Citizens' Rights and Fundamental Principles of San Marino Legal System)" published in Official Bulletin no. 2 of 28 February 2002;

Considering the need to have a coordinated text of said Declaration only for documentation and examination purposes, without prejudice to the exclusive authenticity of the texts of the three Laws as publicly displayed according to the law;

Decree, promulgate and order the publication of the coordinated text of Law no. 59 of 8 July 1974, as amended by Law no. 95 of 19 September 2000 and by Law no. 36 of 26 February 2002.

(Preamble)

(Article 1, Law no. 36/2002)

The Great and General Council, aware of the Republic's glorious traditions of freedom and democracy, with the firm intention of rejecting any totalitarian conception of the State and in order to guarantee to San Marino people further civil, social and political progress and preserve the continuity of the State and its fundamental institutions, hereby adopts this Declaration of the citizens' rights and of the principles on which the organisation and action of the constitutional powers shall be based.

Article 1

(Article 2, Law no. 36/2002)

The Republic of San Marino shall adopt generally recognised rules of international law as an integral part of its legal system and shall conform its acts and conduct thereto. It shall comply with the provisions set forth in international declarations on human rights and fundamental freedoms.

It shall reaffirm the right to political asylum. It shall reject war as a means of settling disputes between States and shall adhere, in its international policy, to the principles enshrined in the Charter of the United Nations.

San Marino legal system shall recognise, guarantee and enforce the rights and fundamental freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Duly concluded and enforced international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict.

Article 2

(Article 2, Law no. 59/1974)

The Republic's sovereignty shall be vested in the people, who shall exercise it through the statutory forms of representative democracy. The law shall regulate the Arengo and the other institutions of direct democracy.

Article 3

(Article 3, Law no. 36/2002)

The Office of Head of State shall be held by two Captains Regent based on the principle of collegiality.

The Captains Regent, appointed by the Great and General Council, shall represent the State in its 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 compliance with the separation of powers.

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

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

The constitutional law shall establish the guarantees and responsibilities of the Captains Regent, on whom it may also confer additional powers. The appointment, organisation, functioning and

incompatibilities of the Captains Regent shall be governed by a law passed by a qualified majority.

The Great and General Council, made up of 60 members, shall exercise the legislative power, provide policy direction and perform control functions.

The electoral law, adopted by an absolute majority, shall regulate 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 regulate the responsibilities and guarantees of the Council's 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 causes referred to in the preceding paragraph.

The internal organisation and the functions of the Great and General Council shall be governed 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. The Rules of Procedure shall also govern the role of the Council's Groups and Representations.

The Congress of State shall be vested with the executive power, according to the principles of collegiality and accountability. It shall be politically responsible, both collegially and individually, to the Great and General Council on the basis of a constitutional law.

The members of the Congress of State shall be appointed by the Great and General Council. The constitutional law shall specify and regulate their powers. A law passed by a qualified majority shall regulate the organisation and functioning of the Congress of State, shall specify eligibility requirements, appointment procedures, incompatibilities, causes of disqualification of individual members and of the Congress of State as a whole, and shall govern the cases in which it can only deal with ordinary matters.

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

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

The Congress of State shall direct the public administration, while respecting its autonomy. The public administration shall serve the general interest and shall be subject to the law and to the principles set out in Article 14 below.

The bodies of the judicial power shall be established by constitutional law, which shall also regulate their responsibilities. They shall be subject exclusively to the law. They 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 judicial system.

A law passed by a qualified majority shall regulate the recruitment, appointment and incompatibilities of magistrates, as well as the organisation and functioning of the judiciary.

State bodies shall act by mutually respecting their autonomy and competence.

Article 3 bis

(Article 4, Law no. 36/2002)

The fundamental principles enshrined in this Declaration shall be implemented through constitutional laws. Constitutional laws 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 a confirmatory referendum within ninety days from their approval.

Laws passed by a qualified majority shall regulate the functioning of constitutional bodies, as well as the institutions of direct democracy. Such laws shall be approved by the Great and General Council by an absolute majority of its members.

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.

Legislative initiative shall be entrusted to each Council's member, to the Parliamentary 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, which shall be ratified by the Great and General Council.

Customary law and *ius commune* shall constitute supplementary sources of law in the absence of legislative provisions.

Draft laws and amendments entailing, with regard to the budget law, a reduction in revenues, new expenditure or an increase in expenditure shall indicate the means necessary thereto.

Article 4

(Article 5, Law no. 36/2002)

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

All citizens shall have the right of access to public offices and elective posts, in the manner 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

(Article 5, Law no. 59/1974)

Human rights shall be inviolable.

Article 6

(Article 6, Law no. 59/1974)

The Republic shall recognise civil and political freedoms for all. In particular, personal freedom, freedom of residence, establishment and expatriation, freedom of assembly and association, freedom of thought, conscience and religion shall be guaranteed. The secrecy of any form of communication shall be protected. The law may limit the exercise of these rights only in exceptional cases for serious reasons of public order and interest.

Arts, science and education shall be free. The law shall guarantee citizens the right to free education at no cost.

Article 7

(Article 7, Law no. 59/1974)

Suffrage shall be universal, secret and direct.

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

Article 8

(Article 8, Law no. 59/1974)

All citizens shall have the right to democratically associate in political parties and trade unions.

Article 9

(Article 9, Law no. 59/1974)

Work shall be the right and duty of every citizen. The law shall guarantee workers fair remuneration, holidays, weekly rest and the right to strike.

All citizens shall be entitled to social security.

Article 10

(Article 10, Law no. 59/1974)

Private property and economic initiative shall be guaranteed. The law shall establish the relevant limitations for the purpose of protecting general interest.

Expropriation of private property shall be allowed, in the forms 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

(Article 11, Law no. 59/1974)

The Republic shall promote, in the field of education, work, sports and leisure activities, the development of the personality of young people and shall educate them to a free and responsible exercise of fundamental rights.

Article 12

(Article 12, Law no. 59/1974)

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

Every mother shall have the right to be assisted and protected by the community.

The law shall guarantee children born out of wedlock spiritual, legal and social protection, ensuring the same treatment as legitimate children.

Article 13

(Article 13, Law no. 59/1974)

All citizens shall have an obligation to abide by the laws and be loyal to the institutions of the Republic, to participate in its defence and to contribute to public expenditure in accordance with their ability to pay.

No financial or personal contribution shall be imposed except by law.

Article 14

(Article 14, Law no. 59/1974)

The activities of the public administration shall be governed by criteria of legality, impartiality and efficiency.

The law shall establish the obligation to state reasons for administrative measures and to guarantee that the interested parties are heard.

Public officials shall be liable for any acts detrimental to citizens' rights, in the manner and within the limits laid down by law.

Article 15

(Article 6, Law no. 36/2002)

Jurisdictional protection of subjective rights and legitimate interests shall be guaranteed before the bodies of ordinary and administrative jurisdiction and before the Guarantors' Panel on the Constitutionality of Rules.

The right of defence shall be protected at any stage of judicial proceedings.

The law shall ensure that judgements are pronounced by independent judges within a reasonable time, are not subject to undue financial burden and are made public.

Humane and rehabilitation punishments shall be imposed only by the lawful judge according to non-retroactive rules. Their retroactive application shall be possible only if they are more favourable.

Anyone charged with an offence shall not be considered guilty until a final conviction is imposed. Any form of restriction of personal liberty, even as a precautionary measure, shall only be permissible in conformity with the law.

Article 16

(Article 7, Law no. 36/2002)

The Guarantors' Panel on the Constitutionality of Rules is hereby established. It is composed of three full members and three alternates, initially appointed by the Great and General Council for a four-year term, by a two-thirds majority of its members, from among university professors of law, magistrates, law graduates with at least 20-year professional experience in the field of law. After the first mandate, one-third of its members shall be renewed every two years. Alternates shall replace full members whenever the latter become incompatible for any reason, also on account of functions previously performed, or in case of impediments or absence.

The Panel shall appoint the President from among its full members on a rotating basis for a two-year term.

The Guarantors' Panel shall:

- a) upon direct request of at least twenty Council's members, the Congress of State, five Township Councils, a number of voting citizens representing at least 1.5% of the electorate resulting from the last and final annual review of the electoral lists, or in case of proceedings pending before the Republic's jurisdictional bodies, upon request of the judges or of the parties to the proceedings, verify the conformity of laws, regulatory acts having force of law and rules, including customary rules, having force of law, with the fundamental principles of the legal system referred to in this Law or recalled herein;
- b) in the cases provided for by law, decide on the admissibility of referenda;
- c) decide on conflicts between constitutional bodies;
- d) perform the review action on the acts or omissions of the Captains Regent during their six-month mandate.

Additional functions may be provided for by constitutional law. The constitutional law shall establish the responsibilities of the Guarantors' Panel and its individual members.

A law passed by a qualified majority shall regulate incompatibilities, the functioning and the organisation of the Panel, forms and procedures of appeals, the effects of decisions and the manner in which they are enforced.

The effect of the annulment resulting from unconstitutionality decisions shall be postponed for a period of six months, without prejudice to the immediate *res judicata* value between the parties. Within this period, the Great and General Council may legislate on the matter in accordance with the unconstitutionality decisions.

Article 17

(Article 8, Law no. 36/2002)

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

If the laws reviewing the provisions of this Declaration have been approved by the Great and General Council by an absolute majority, they shall be submitted to a confirmatory referendum within ninety days of their approval.

Transitional Rule

(Article 9, Law no. 36/2002)

Constitutional laws and laws passed by a qualified majority referred to in the first and second paragraphs of Article 3 bis of the Declaration of the Citizens' Rights, introduced by this Law, shall be proposed within three years of 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.

Until the entry into force of the new Judicial System, the members of the Guarantors' Panel shall decide:

- a) on conflicts of jurisdiction in proceedings initiated before the Republic's jurisdictional bodies;
- b) on the abstention and objection of Judges and the *Procuratore del Fisco*;
- c) as a last resort, on appeals lodged in criminal proceedings and concerning the legitimacy of precautionary measures taken during the proceedings, or on the enforcement of punishments;
- d) upon request of the parties concerned, in case of discrepancy between civil and administrative judgements of first and second instance;
- e) on appeals for the review of criminal judgements, on *querela nullitatis* and on appeals for

restitutio in integrum.

The functions referred to in the preceding paragraph shall be assigned by the President of the Panel to individual members, either full or alternate members, according to predetermined criteria and taking into account any reasons for incompatibility.

Done at Our Residence, on 8 July 2002/1701 since the Foundation of the Republic.

THE CAPTAINS REGENT

Antonio L. Volpinari - G. Francesco Ugolini