

# The International Review *of* Constitutional Reform

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# 2020



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# San Marino



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## I. INTRODUCTION

When approaching the issue of constitutional reform in San Marino, it is convenient to recall some peculiarities concerning the Sammarinese system of sources of law.

The Sammarinese sources are characterized by centuries of stratification and the constitutional level sources include the *Leges Statutae* (dating back to 1600) and their subsequent reforms (so called *Reformationes*), and the Ancient Customs, integrated by the *ius commune*. Only recently, when compared to the majority of continental Europe legal systems, in 1974, San Marino has adopted the *Dichiarazione dei diritti dei cittadini e dei principi fondamentali dell'ordinamento sammarinese-DD* (Declaration of Citizen Rights and of Founding Principles of the Sammarinese Legal System). Furthermore, since the 2002 reform of the DD, both the European Convention of Human Rights and international covenants protecting rights and freedoms are among the top sources, thus prevailing in case of contrast with domestic legislation.

As the naming of the document suggests, the DD is not a proper constitution. Nevertheless, following the 2002 amendment, at Article 3bis, the DD expressly provides for constitutional laws in order to enact the principles stated in the DD. To be more precise, according to the transitory norms of the DD (introduced with the 2002 amendment), these constitutional laws must be passed within 3 years from the enforcement of the DD. Moreover, the procedure to pass constitutional laws is by a vote by 2/3 majority by the Consiglio Grande e Generale (Grand and General Council), whilst in case of absolute majority a referendum has to be held.

The very same procedure is provided at Article 17 in order to amend the DD. This article, introduced by the 2002 amendment, has given a rigid character to the DD, which it was previously lacking.

In the year 2020, no amendments to the DD were neither proposed nor approved. Nonetheless, it seems convenient to mention that two constitutional laws have been passed: const. law 1/2020 and const. law 2/2020. Furthermore, an important debate has started in 2020 on the necessity for the Sammarinese legal system to undergo a significant constitutional reform in the upcoming years.

## II. PROPOSED, FAILED, AND SUCCESSFUL CONSTITUTIONAL REFORMS

In 2020, the Grand and General Council passed by a qualified majority two constitutional laws.

Const. law 1/2020 deals with a technical amendment to Article 10, paragraph 2 const. law 2/2019 establishing a commission of inquiry within the Grand and General Council on alleged political and administrative liability in the crisis of Sammarinese banks. Whilst the much more relevant const. law 2/2020 modifies Article 2, paragraph 5 const. law 144/2003. Const. law 144/2003 is one of the constitutional laws passed in the aftermath of the 2002 amendment in order to regulate the functioning of the judiciary. The amended paragraph regulates the civil liability regime of the members of the judiciary as well as the competence of the judges responsible for the civil liability procedure (Giudici per l'azione di responsabilità civile).

This latter amendment is of particular interest, because it involves the judiciary, whose reform has been requested by the GRECO (Group of States against Corruption) by the Council of Europe. Furthermore, it seems convenient to address it, because it may be considered as a preliminary step to the institutional reforms that the Republic has announced for the upcoming years.

## III. THE SCOPE OF REFORMS AND CONSTITUTIONAL CONTROL

Even though no amendments to the DD have been passed in 2020, it seems convenient to point out two key elements which will affect any future reform: the scope of any amendment and the role that may be played by the Collegio Garante della Costituzionalità delle Norme (Guarantors' Panel on the Constitutionality of Rules).

With respect to the former, Article 17 DD reads that any provision of the Declaration can be amended. Thus, no rule is explicitly qualified as unamendable. The procedure to pass amendment laws follows the same as for constitutional laws, i.e., either a vote by 2/3 of the Grand and General Council or an absolute majority by the Council and then a referendum. The fact that the DD does not provide for any unamendable rule reflects its character of not being a proper constitution. Moreover, as previously outlined, even the rigidity of the DD is quite recent, dating back only to 2002.

The Guarantors' Panel on the Constitutionality of Rules, which is the Sammarinese constitutional court, is one of the major innovations introduced by the 2002 reform of the DD. In order to better understand the innovative character of this body, it is enough to say that it is the only Sammarinese institution which is not provided for in the *Leges Statutae* of 1600. Moreover, until San Marino did not pass some sort



of rigid constitutional document, i.e., the DD following the 2002 reform, there was no need for a body like the Guarantors' Panel on the Constitutionality of Rules.

With respect to the sources, the Panel can scrutinise only primary legislation and customs having the force of law. Nonetheless, it is worth recalling that since the 2002 DD reform, the European Convention of Human Rights as well as international covenants protecting rights and freedoms are constitutional parameters.

It seems worth noting that microstates are the object of particular scrutiny by the Council of Europe and of its advisory bodies. Indeed, even though not with respect to San Marino, the Council of Europe has scrutinized very closely both the constitutional arrangements and the constitutional reforms of their microstate members (on Monaco constitutional arrangements before its accession in 2004 and on the 2003 constitutional reform in the Principality of Liechtenstein).

When considering the role played by the Panel in the Sammarinese institutional architecture, despite the Panel being a young court, it plays mainly a countermajoritarian role. Nevertheless, considering the micro size, concerns persist over a fully independent judiciary, the majority of the members of the Panel are Italian citizens.

#### IV. LOOKING AHEAD

San Marino is bound to start a significant institutional reform in the upcoming years in order to further modernize the constitutional arrangements and to align the Sammarinese system to the best practices requested by the Council of Europe. In particular, San Marino considers that it is of paramount importance to integrate the new instances and the challenges of the XXI century with the Sammarinese institutional tradition.

Indeed, the principle of institutional continuity is the key principle that has guided all Sammarinese reforms. Therefore, it seems likely that a series of amendments to the constitutional laws will be put forward and amendments also to the DD cannot be excluded.

Following the September 2020 report by GRECO, the first point on the reform agenda is the reform of the judiciary, starting with the Consiglio Giudiziario (Judiciary Council). This body, which represents the judiciary, is however regulated under a qualified law (qualified law 145/2003).

The issues that San Marino has with respect to the independence of the judiciary is shared with all the other microstates.

#### V. FURTHER READING

GRECO, *'Fourth Evaluation Report'* (GrecoEval4Rep (2019), 2020).