



Human Dignity in San Marino

Tania Cucè

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Abstract

San Marino does not have a constitution in the classical sense, but it does have a Declaration of Citizens' Rights and of the fundamental principles of the San Marinese legal order. Human Dignity is not mentioned explicitly in the constitutional order of San Marino, neither does the Constitutional Court often refer explicitly to human dignity. The concept of human dignity in San Marino is reflected in the constitutional order and in the human rights referred to in the San Marinese Declaration. Human Dignity must be understood as a general principle belonging to each person and on which other fundamental rights are based on. Furthermore, the Declaration of Citizen's Rights and of the fundamental principles of the San Marinese legal order recognises the European Convention on Human Rights as an integral part of its own constitutional order.

T. Cucè (✉)
University of Lucerne, Lucerne, Switzerland
e-mail: tania.cuce@unilu.ch

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1 Introduction

The Republic of San Marino, also known as the Most Serene Republic of San Marino, is an enclaved microstate surrounded by Italy. Its size is just over 61 km² with a population of approximately 33,000. It might be one of the smallest countries in the world, but it is considered to be the oldest Republic. San Marino has a long history of freedom and democracy. The Statutes of 1600, a series of six books laying down the order of San Marino and having rules on a constitutional level, are partially still in force. San Marino has always been politically stable. The *Arengo*, which is an assembly of all heads of families in the country, was already provided by the Statutes of 1600 as a democratic instrument. The history of San Marino shows the role of the constitution and why there was no need for a constitution in a classical understanding. Nevertheless, San Marino has implemented the Declaration of Citizen's Rights and of the fundamental principles of the San Marinense legal order defining a constitutional legal framework.

2 The Republic of San Marino

Before reporting on the theme of human dignity in the constitutional order of the Republic of San Marino, it is appropriate to summarise the political system of San Marino and the state organisation.

San Marino does not have an official Constitution as such. The first legal documents mentioning the institutional organs were the Statutes of 1600. Currently, the declaration of Citizen's Rights and of the fundamental principles of the San Marinense legal order sets out the institutional framework. They can only be amended by a two-third majority in the San Marinense Parliament and is therefore considered to be quite rigid. The sovereignty is exercised by the people through a representative democracy (Art. 3bis Declaration of Citizen's Rights; Duursma 1996, p. 211).

The legislative power is exercised by the *Consiglio Grande e Generale*, the San Marinense Parliament. Since the Statutes of 1600, it has been composed of sixty members. The Government – *Congresso di Stato* – and the Head of State – *Capitani Reggenti* – are elected by the Great and General Council among its members. The Great and General Council has the legislative power and among other things also the right of interrogation and interpellation and the right to adopt motions in order to discharge the State Congress. Furthermore, it has the right to ratify the decrees promulgated by the Captains Regent. The Head of State, the *Capitani Reggenti*, is composed of two persons and they exercise their power according to the principle of collegiality. Having two Captains Regent was not uncommon at the end of the

Roman period in the Italian States of the Middle Ages. The Captains Regent are only appointed for a period of 6 months and cannot resign (Duursma 1996, p. 211).

The San Marinense Government, the State Congress, exercises the executive power. It is composed of ten ministers. Decisions taken by the State Congress have to be approved by unanimity. The State Congress prepares draft laws and decrees to be promulgated by the Great and General Council and the Captains Regent and takes care of the execution of the laws and decrees. A remaining institution of the Statutes of 1600 is the *Arengo*. The *Arengo* is an assembly of all San Marinense heads of families. It convenes every 6 months after entry into function of the Captains Regent. According to the Statutes, the *Arengo* had the right to present claims or propositions to the Captains Regent who could submit the requests to the Great and General Council. This procedure has not changed and is nowadays known as a right of petition which belongs to all San Marinense citizens (Duursma 1996, p. 213; Ronzani 2007, p. 18).

In the times when other European Countries started to develop their constitutions, San Marino did not. The San Marinense Sovereign has never been a monarch. Since the Statutes of 1600, the political bodies were collegial and republican. San Marino did not have the need to change their system from an absolute system to a constitutional system. On the whole, San Marino has always been politically stable (Guidi 2003, p. 124).

3 The Declaration of Citizens' Rights and of the Fundamental Principles of the San Marinense Legal Order

Until 1974 San Marino did not have a Constitution as such, nor the Declaration of Citizens' Rights. Some rules we would nowadays count as constitutional rules could be found in the Statutes from 1600. This is not randomness. It is based on the abovementioned lack of need for a constitution as San Marino did not have to react to an absolute system like other European Countries had to in the eighteenth century (Guidi 2003, p. 129). In San Marino before the promulgation of the fundamental law including certain human rights, these rights were protected by unwritten customary law and by the Statutes (Duursma 1996, p. 217). Nowadays the fundamental law defines these rules. It sets forth the inviolability of the home and the right of the freedom of the person, of association, of opinion, and of religion without describing their exact meaning. The exercise of these rights can be limited by the law in exceptional cases, on serious grounds of public order or interest. Moreover, every citizen has the right to vote and to be elected. The right to work, to equal pay, to holidays, and to strike is also guaranteed. The *Dichiarazione dei diritti dei cittadini e dei principi fondamentali dell'Ordinamento sammarinese* has been approved by the Great and General Council in 1974 with 31 votes against 26. The Declaration has only seventeen articles and is rather short. In this sense, it gives more a broad framework of principles from fundamental rights to the organisation of the authorities. The Declaration is not understood as an exhaustive list of fundamental rights and freedoms. The reason to not implement more fundamental rights in their

constitution is based on the history of San Marino. Their long history of freedom proved the San Marinense people that there was no need to institutionalise more rights in the Declaration. They did not see any risk for a breach of law. Beside the Declaration fundamental values, which are not written down, are of great significance. (Guidi 2003, p. 133)

It should be noted that, besides the provisions contained in the Declaration, the constitutional order of San Marino includes, as its integral part generally recognised rules of international law and the Republic shall conform its acts and conduct them. For international law, the San Marinense Declaration goes even further than the Italian Constitution, which shall conform the rules of international law; the Declaration makes them their own. It also recognises the provisions set forth in the international declarations of human rights and fundamental freedoms (Art. 1 para. 1 of the Declaration). The European Convention on Human Rights is the only international treaty explicitly referred to. By doing so, more than only recognising the European Convention on Human Rights, the Declaration awards the Convention constitutional level (Guidi 2003, p. 166). The Declaration also establishes that regularly signed and implemented international agreements on the protection of human rights and freedoms shall prevail over domestic legislation in case of conflict (Art. 1 para. 4 of the Declaration).

The International Conventions are ratified by the Captains Regent and are given full enforcement in San Marino by decree. The rights laid down in a convention, which has been given force of law by a decree, can therefore be invoked before the courts (Duursma 1996, p. 219).

4 Human Dignity and Related Rights

Human dignity, rather than being provided for by a specific constitutional rule, is the consequence or the general principle inspiring the protection of fundamental rights envisaged and governed by the Declaration as such, like, e.g., the right of freedom, the equality of citizens before the law, the prohibition of discrimination, or the protection of the family. The Constitutional order generally protects the fundamental right of the human person, as expressed in the Declaration: “*Human Rights shall be inviolable.*” *Inviolable rights* are, as in other constitutional orders of democratic States, the legal positions of the human person that are considered essential, as innate to human nature and based on the principle of human dignity. The constitutional provision on the inviolability of fundamental rights examined here has a general value and applies to all personal rights, which are specifically protected also by other provisions of the Declaration, such as the right to personal freedom, the right of freedom of thought, and others. Furthermore, the principle of inviolability as provided for also by the European Convention of Human Rights also extends to the right to life, to respect for private and family, to the right to marry and other rights, all related to the general principle of the protection of human dignity. Regarding the right to life and physical integrity, those rights are fully protected by San Marino criminal law (Art. 150 and following of the Criminal Code). The Republic of San Marino abolished the death penalty since the adoption of the Criminal Code in 1875,

long before the ECHR imposed on Member States of the Council of Europe as a condition for being part of the Council of Europe.

Having a look at a broader constitutional framework, the law *Legge 21 Gennaio 2010 N.7* has to be taken into account when talking about human dignity. This law regulates the use of blood, cells, and organs of human being. Article 1 states that the scope of this law is the protection of the person, dignity, personality, and health of human beings. To guarantee this protection, the law refers again to the international conventions on human rights and even if using the word dignity of human beings, it gives no explanation on its meaning.

In 2016 the *Arengo*, the assembly of all San Marinese head of families, presented a proposition to the Captains Regent and demanded from the *Consiglio Grande e Generale* to resolve a legal act additional to the Declaration establishing the principle of dignity and the inviolability of peoples life, without any discrimination based on age, gender, estate, and physical condition starting from conception until the natural end of life (see *Istanza n.4, Arengo del 02/10/2016*). In February 2017, the Great and General Council decided against the establishment of such a right (*Delibera N.21, Seduta del 22 febbraio 2017*). Even if members of the Great and General Council agreed with the idea of having a protection of human dignity and respect to life, they recognised that the proposition was about a prohibition of assisted suicide and abortion. The majority of the Council voted against a restriction of personal freedom (*Giornale San Marino 2017*).

In the *Sentenza 30 Gennaio 2012 N.1*, a decision of the Constitutional Court of San Marino, in a case regarding equal treatment relating to punishment, the Court stated that the awareness of equality for all persons in law and dignity is part of the universal heritage. The claimants in this case complaint about their missing possibility to appeal against a decision on administrative sanctions. In other administrative proceedings, the sanctioned party have the possibility to appeal against the decision, whereas in the present case the claimants did not have the possibility. The Court stated that equal treatment has to be understood in a formal as well as in a substantive way, but this right cannot be exercised absolutely. In the present case, the Court decided that the different treatment was justified by public interest and the unequal treatment not applied to a same situation.

5 San Marino and the European Convention on Human Rights

Similarly to generally recognised rules of international law, San Marino constitutional order transposes in its constitutional charter the European Convention for the Protection of Human Rights (ECHR). Article 1, paragraph 3 of the Declaration lays down:

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.

The ECHR was ratified with Decree no. 22 of 9 March 1989. As already stated above, the European Convention on Human Rights is the only international treaty explicitly referred to in the Declaration of San Marino. This fact shows that the European Convention on Human Rights is of special importance.

The ECtHR had to judge a case from San Marino related to Art. 3 ECHR, which as one of the nonderogable rights belongs to the core elements of Human Dignity. In the case *PODESCHI v. SAN MARINO*, the applicant complained under Art. 3 ECHR about the conditions of his detention. The applicant submitted that he was in a de facto isolation regime and had been kept in the cell for 22 h a day with poor sanitary conditions.

The Court stated with reference to other cases that under Art. 3 ECHR the State must ensure that the conditions of detention are compatible with respect for his human dignity, that the manner and method of the execution do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that his health and well-being are adequately secured by providing him with the requisite medical assistance (*ECtHR, Podeschi v. San Marino*, no. 66357/14, para. 107).

6 Conclusion

In conclusion, it can be held that the San Marinese constitutional order does not contain a rule or an explicit guarantee for human dignity. The rigid and short Declaration of Citizens' Rights and of the fundamental principles of the San Marinese legal order does not include such a provision. However, other laws regarding bioethics refer to human dignity and in political discussion the concept of human dignity is an issue. As it can be recognised by the small number of cases before national courts and before the European Court of Human Rights, San Marino has not been in conflict with the fundamental rights and the protection of human dignity. The long and stable history of the democratic Republic of San Marino is a kind of a guarantee for the San Marinese population. However, by giving the European Convention of Human Rights constitutional level and the guarantee to bring applications before the national and international courts, San Marinese people have a guarantee for the protection of human dignity at least on the level of the concept of human dignity in the jurisprudence of the European Court of Human Rights.

7 Cross-References

- ▶ [Human Dignity and the European Convention on Human Rights](#)
- ▶ [Human Dignity in Italy](#)

8 List of Cases

- ECtHR, Case of Podeschi v. San Marino, 13 April 2017, no. 66357/14
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