

San Marino

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La Repubblica di San Marino (Republic of San Marino) originated in a small monastic community founded by *Saint Marinus* in the 4th century on Monte Titano near Rimini (Romagna, Italy). During the Middle Ages it established itself as a free commune of citizens and

owing to the citizens' love of liberty and the governments' political prudence in always avoiding claims to territorial expansion, San Marino has managed to maintain its autonomy as a sovereign independent state until our days.

I. CONSTITUTIONAL SYSTEM

1. Nationality

The population holding San Marino nationality (although part of the Italian nation in an ethnic and historical sense owing to language, religion and culture) is of only 18 000 residents, but the number of citizens of the Republic living in Italy or in other countries is far greater. Citizenship is acquired only *jure sanguinis* and not *jure soli* and in exceptional cases it is acquired by a rarely granted sovereign concession. Citizenship is maintained with full political rights despite emigration. The acquisition of citizenship is regulated by *Leges Statutae* (Statutory Laws) (Book II no. 474-475; Book V no. 770) and by Laws dated 12 Sept. 1907 and 7 March 1914.

2. Territorial Division

The territory of the State is divided into nine small administrative districts called *castelli* (castles); at the head of each district there is a magistrate called captain of a castle, representing the government.

3. State Organs

The political-administrative system of San Marino preserves the typical features and organs of the Italian communes and republics in the Middle Ages: the *arengo* (assembly of heads of families), the *Consiglio grande e generale* (Grand and General Council), the *capitani reggenti* (Captains Regent), the *Congresso di Stato* (the State Congress), the *consiglio dei XII*

(Council of Twelve), the *Sindaci di governo* (government syndics or auditors). The principle of separation of powers has only been partially established in the development of San Marino's constitution.

a. *Legislative body*. — The *arengo* or assembly of heads of families was originally the organ possessing popular sovereignty, it took the most important decisions and filled all state positions. Its powers today are exercised by the Grand and General Council but heads of families preserve the right of petition and proposal; the constituency is composed of all male citizens possessing civil and political rights and over the age of 21. Women's suffrage was resolved on 15 May 1938 and made operative on 15 May 1964.

The Grand and General Council is formed of 60 members elected by the citizens every five years (in a single constituency, by list voting, with proportional representation). Male citizens over 25 years of age are eligible. This parliamentary assembly, which meets periodically for regular sessions, has all legislative, jurisdictional and administrative powers, it exercises the right to grant pardons, amnesties and rehabilitations, it approves the state budget, ratifies treaties and international conventions, elects the Captains Regent, judges and government bodies, and adopts motions binding upon the government.

b. *Executive power*. — The two Captains Regent, elected for a six-month term from among

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the members of the Grand and General Council, are the supreme representatives of the state and the heads of the executive body; they act together with reciprocal right of *veto*. They preside at the Grand Council and at collegiate government bodies, establishing their agenda. They are empowered to issue, in conjunction, urgent decrees, subject to ratification by the Grand and General Council.

The State Congress, composed of 10 deputies elected by the Grand and General Council from among its members for the duration of the legislature, is the government. Its members are heads of the nine government departments (institutional matters; general services; foreign affairs; economic planning; finance; internal matters; industry and labour; hygiene and social security; education and culture). The heads of the first two departments are called Secretaries of State for Foreign and for Internal Affairs and they co-ordinate the activities of the other government departments.

c. *Other bodies.* — The Council of Twelve, elected by the Grand and General Council for the duration of the legislature, exercises jurisdictional functions, those of non-contentious jurisdiction and of an administrative nature. Two government syndics, who are also elected, represent the state and the Chamber (or Treasury) at law and in acts involving the

disposal of public property or public financial commitments.

4. The Judiciary

Ordinary judicial power is entrusted by the old *Leges Statutae* still in force (Book II no. 94, Book IV no. 665–670) to foreign magistrates (like the administrative heads of medieval communes). The judge of first instance is the legal commissioner in civil matters, and the assistant commissioner and another judge in penal matters; cases on appeal are assigned to the two appeal judges, either civil or penal (*appellatio* and *querela nullitatis*); in civil matters the principle of dual concordant judgments is in force so that, when there is a diversity in judgments, a final appeal may be made to the Council of Twelve (*supra* 3 c) which gives a decision after hearing the opinion of an adviser (*consilium sapientis*, wise counsel). The ordinary judge in administrative matters is the Council of Twelve (Law of 5 June 1923 no. 13); and in special matters a decision is made by the judge of appeal for civil cases.

All the Republic's magistrates and judges, including the Captains Regent, are subject to a judgment of inspection or of responsibility at the end of their term of office, on petition by any citizen and they must account for what has been done and what has not been done.

II./IX. SOURCES AND CONTENTS OF LAW

There is no written constitution in the modern sense, but the first volume of *Leges Statutae* (medieval statutes, drafted in 1295–1302 and 1317, revised several times: 1352–1353, 1491, 1499, 1505, 1544, 1572, and still in force in the text of the six books approved in 1600) contains numerous provisions on the political-administrative, legislative and jurisdictional organs, on their functions and jurisdiction, partly in force still and partly modified by subsequent legislation or by constitutional practice and custom. A recent fundamental law is the Declaration of the rights of the Citizens and of the basic principles of the legal order, contained in the Law of 8 July 1974 no. 59.

A characteristic of the San Marino legal system in matters relating to private, *i.e.* civil and commercial law and to civil procedure, is the preservation of the traditional system of *jus commune*, as was in force in Italy and Europe prior to the *Code Napoléon*. The old *Leges*

Statutae are still in force completed by local custom and by *Justinian's Code* as a general subsidiary source; no attempt has ever been made to codify private law, and proceedings in civil and commercial matters are still regulated by the principles of Romano-Canonical procedure and by local judicial custom. In criminal matters the Penal Code of 25 Febr. 1974 and the Code of Penal Procedure of 2 Jan. 1878 (as amended in 1963 and 1974) are in force. Naturally, a notable amount of legislation took place in San Marino as well during the 19th and 20th centuries, on the most diverse matters of public and private law, and it has in many fields modified the ancient positive system in accordance with the demands of modern life. Leaving aside fiscal, financial and administrative legislation (public services and works; social charity, security and welfare; hygiene and health; public education; civil service), the following Laws should be noted: on mortgages (1854), on bills

of exchange (1882-1914), on bankruptcy, composition and assignment of goods (1917), on companies (1942-1946-1950-1962), on expropriations for public use (1913-1922), and on leasing of urban property (1950-1966).

All laws are published in the *Raccolta Leggi e Decreti* (Collection of laws and decrees) and in the *Bollettino Ufficiale della Repubblica di San Marino* (Official Gazette of the Republic of San Marino).

As regards private international law, the traditional principles of the *jus commune* are applied, following the medieval doctrines of *statuti reali e personali* (real and personal statutes) with amendments introduced by special conventions.

San Marino maintains widespread international connexions with numerous other states and with international organizations (it exchanges legations or consular representatives with 25 European and non-European nations) and it has ratified the most important interna-

tional conventions. Its relations with Italy are ruled by a convention dated 3 March 1939 (*Recueil Martens*, third series, vol. 40, 635; 143 B.F.S.P. 537) integrated by additional agreements and special conventions relating to foreign trade and customs exemptions, communications, currency and transport.¹

Text of legal sources: Leges statutae reipublicae Sancti Marini (Statutory laws of the Republic of San Marino) Arimini 1600 (Forolivii 1834; Florentiae 1895); *Raccolta delle leggi e decreti della Repubblica di San Marino* (Collection of laws and decrees of the Republic of San Marino) I (1900), II (1915), III (1926); *Bollettino Ufficiale* (Official Gazette - Laws and decrees of the Republic since 1924); *Giurisprudenza Sanmarinese* (San Marino Jurisprudence; annual issues since 1901; since 1965 there is a new series of three annual issues, containing the most important decisions and head-notes of decisions in civil, administrative and penal matters).

X. SELECTIVE BIBLIOGRAPHY

1. Books and Articles

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2. Legislative Texts and Translations

Raccolta delle Leggi e Decreti della Repubblica di San Marino (Città di Castello 1900); *Pagliano*, La Repubblica di S. Marino. Ordinamento e Leggi (Rome 1905); Constitution of San Marino: *Blaustein and Flanz* (ed.), Constitutions X [San Marino]; Codice penale e relazione illustrativa: Allegato al Bollettino Ufficiale della Repubblica di San Marino no. 1 (1974); Electoral Law of 29 Dec. 1958; *Peaslee*, Constitutions III (ed. 3) 788-805; Nationality Laws [San Marino] 396-399; Legge bancaria [of 12 Feb. 1986]: Banca e Borsa 1987 I 106-117; Copyright Provisions in Treaty with Italy [extract]; Copyright Laws and Treaties of the World II/2 [San Marino].

(Completed in 1981)

¹ Agreements of 28 Feb. 1946, *Gazzetta Ufficiale del Regno/della Repubblica Italiana*. - G. U. -

no. 110; of 29 April 1953, G. U. 1954 no. 194; of 20 Dec. 1960, G. U. 1962 no. 6.