

THE REPUBLIC OF SAN MARINO AND THE PRACTICE OF WORSHIP IN THE COVID-19 ERA: BETWEEN HISTORY, COMMON LAW AND EMERGENCY DECREES

By Antonello De Oto¹

KEY WORDS

Republic of San Marin – freedom of religion – pandemic – practice of worship

ABSTRACT

The article in question deals with the regulatory provisions prepared by the Republic of San Marino regarding the practice of worship in the Era of the spread of Covid-19, with attention to the historical reconstruction of the previous regulation of 1855 regarding pandemics and a look at the protection of fundamental rights in these small realities that are experiencing a particular condition of suffering in this historical moment, also considering their lack of belonging to supranational communities such as the European Union.

SUMMARY: 1. The disease of 1855 and the emergency “notification” in San Marino yesterday as of today. 2. The closure of religious buildings: Decree no. 52 of 20 March 2020 for the containment of Covid-19.

¹ Associate Professor of Italian and Comparative Ecclesiastical Law and Law of Religions —Alma Mater Studiorum— University of Bologna (e-mail: antonello.deoto2@unibo.it).

1. THE DISEASE OF 1855 AND THE EMERGENCY “NOTIFICATION” IN SAN MARINO YESTERDAY AS TODAY

Only a few years after Garibaldi's “escape” in San Marino, where the hero of the two worlds found hospitality hunted by the Austrians in the most serious hour², a new fearful danger for the survival of the oldest Republic in the world loomed on the horizon. This time it was not the fear of being invaded by the weapons of others, but a subtle and invisible enemy that crossed the borders without showing any documents, just the disease that in 1855 arrived on the Titan, just as today the Coronavirus, silent and deadly, crosses the doors of the Serenissima Republic bringing infection and death. The “Asian disease” that appeared in 1855 in the small State forced the Captains Regent of that time to produce (yesterday as today) an emergency decree on several occasions in an attempt to contain the infection. Certainly the times and the scientific knowledge as well as the hygienic conditions of that time were different, the sovereign diarches of the small State promulgated then “...*a Notification that alerted the population to use every precaution expected by the proximity of the scourge of cholera*”, recommending that the houses be kept clean, forbidding *‘the pouring of unclean materials from the windows and piles of manure near the houses’*...” forbidding furthermore the sale of over-ripe fruit, meat, fish, cold meats and pork, thinking that the spread of evil would also depend on the state of preservation of these foods. And then again and again notifications from the Government in a short period of time, until September 27th 1855 when Captains Regent Gaetano Belluzzi and Francesco Rossini had to admit *coram populo* that “*the ter-*

² On the morning of July 31, 1849 the torn, hungry and tired Garibaldi, pursued by four armies, decided to violate the border of the Republic of San Marino. After exchanging a few words with the Barnabite friar Bassi, the Hero of Two Worlds, who had arrived in the city, he immediately went to the Government Palace where he explained the painful situation his troops were in to Regent Belzoppi who replied: “... *Well come the refugee, this hospitable land welcomes you, O General. The rations are prepared for your soldiers, your wounded are received, and they are cured; you owe us the return, sparing this land feared evils and disasters. I then accept the mandate that you offer me, because to lend it to you is a humanitarian office that I am grateful to perform...*”. See L. SIMONCINI, *Giuseppe Garibaldi e Ugo Bassi a San Marino: appunti storici*, San Marino, 1949.

³ See D. PEZZI, *San Marino. La sofferenza di un Paese impreparato*, in <http://www.libertas.sm/notizie/2019/12/16/san-marino-colera-la-sofferenza-di-un-paese-impreparato.html>, 15.12.2019, 1.

rible disease, which has been infesting the nearby districts for some time, invaded even this our Republic". On October the 20th of the same year, the outbreak ended with a heavy balance, 245 infected citizens of whom 99 dead, a major bill for a small community like that of San Marino in 1855 that counted only 6,000 subjects.

Today as yesterday on the Titano, small state set between the Romagna and Marche regions, in the geographical heart of central-northern Italy and with a population of over 33,000 Italian-speaking people living within its borders, there are emergency decrees aimed at containing a reactive and penetrating virus such as Covid-19. A disease yesterday as it was then, which has slowly crossed the complex and ancient structures of a micro-State of medieval origin that survived free and independent to many political seasons, serving only a short but suffered period of occupation from Cardinal Alberoni⁴.

A micro-State governed by a *mix* of rites and history, a diarchy⁵ with ancient institutions of participatory democracy⁶ that still today have brought the common law being the heart of the legal framework of the Republic⁷, which refers, with her name, to the life and history of the

⁴ In San Marino every 5 February, the celebrations for Sant'Agata, national holiday dedicated to the patron saint of the Republic, are held. It celebrates the anniversary of the end of the Alberonian occupation, which occurred on February 5, 1740. In the Serenissima Republic is a very important anniversary, of those that are celebrated, with the active participation of the Captains Regent who wear collars for the occasion. For further information see M. E. BARTOLI, *Cardinal Giulio Alberoni e San Marino*, Faenza, 1960.

⁵ At the top of the State there is the Institute of the Most Excellent Regency made up of two Captains Regent appointed by the Great and General Council (unicameral Parliament) who act for a period of six months and collectively as Heads of State. See comment F. MORGANTI, *L'Istituto della Reggenza nell'Ordinamento giuridico Sanmarinese*, in AA.VV., *Identità Sanmarinese: Riflessioni sulla libertà e la democrazia fra politica, storia e cultura*, San Marino, 2017, 151.

⁶ Reference is made here to the so-called "Istanza d'Arengo", a typical legal institution in the long history of San Marino, which has come down to us in its modern version, becoming a sort of right of petition with which the people on the occasion of the election of the Captains Regent can bring petitions to the attention of the governing bodies of the Republic. See R. REGOLI-G. BIANCHI di CASTELBIANCO, *Il sistema politico istituzionale e i rapporti Stato-Chiesa nella Repubblica di San Marino*, in *Quaderni di Scienze Politiche-Unicatt*, n. 14/2018, 11-12.

⁷ An important source of San Marino law is still today the common law, formed by Roman law, canon law, Germanic law and statutory law which includes the

founding saint, the Dalmatian stonemason Marino "*libertas auctor*". A Republic that links its institutions in many ways to a confessional fact, as it was founded in that Christian sign⁸, even though it is a secular or rather non-confessional State⁹, having a complex, particular¹⁰ secularity and with a growing rate of secularisation as witnessed by the marriages celebrated in 2019, of which only 23.1% celebrated with religious rite¹¹. On the other hand, it is precisely in the moral heritage of San Marino that lies the legacy of independence, distinctive of its precious freedom. Freedom and secularity expressed in the sentence with which Saint Marino began their independence: "*relinquo vos liberos ab utroque homine*" this is to say "*I leave you free both from the Emperor and the Pope*", the two figures who at the time dominated the political scene. This freedom was always defended with greatest pride, even though without having a professional army, with the weapons of diplomacy; a freedom that has made it famous in history as a space of protection and refuge, as a place of neutrality and culture of peace. Suffice it to say that in 2007 the Republic of San Marino, when holding the Presidency of the Committee of Ministers of the Council of Europe, brought inter-religious dialogue and forms of contemplation of confessional differences in Europe as the guid-

instrument of custom. See L. LONFERNINI, *Elements of San Marino Civil Law. The sources of civil law. The rights of the person. Legal acts and facts.*, Trad. En., San Marino, 2002, 527 which also notes that: "*Canon law after Roman law is the one that most contributed to the formation of common law*".

- ⁸ As noted by L. LONFERNINI, *Diritto costituzionale sammarinese*, San Marino, 2006, 18.
- ⁹ In this sense G. FELICI, *Profili di diritto costituzionale sanmarinese*, San Marino, 1999, 113.
- ¹⁰ For an in-depth analysis on this point see V. PARLATO, *Alcune considerazioni sulla laicità della Repubblica di San Marino*, in <http://ojs.uniurb.it/index.php/studi-A/article/download/65/59>, last visit: 23.03.2020, 1-12.
- ¹¹ The social fabric of the Republic has changed rapidly, and at this stage the political affirmation of the political party Democrazia Cristiana no longer reflects in some social dynamics the San Marino of the past, which was once described precisely on the theme of marriage only thirty years ago in this term: "*Despite the introduction of civil marriage with the law n. 37 of 1953, Catholic marriage has always been, and still is, the marriage of San Marino people, that is, the marriage chosen by almost all the people*" see S. DI GRAZIA, *I rapporti tra matrimonio religioso e matrimonio civile nel diritto Sanmarinese*, in *Quaderni di diritto e politica ecclesiastica*, 1988, 97. On the secularization of marriage in the Republic of San Marino see L. IANNACCONE, *Il matrimonio religioso nella Repubblica di San Marino*, in A. DE OTO-L. IANNACCONE (ed.), *Il fattore religioso nella Repubblica di San Marino*, Il Cerchio, 2013, 57 ff.

ing theme of that period of government, in order to promote intercultural dialogue, political and economic stability and peace among peoples, always and by all legal means.

2. THE CLOSURE OF RELIGIOUS BUILDINGS: DECREE NO. 52 OF 20 MARCH 2020 FOR THE CONTAINMENT OF COVID-19

Article 6, paragraph 1, of the *Declaration of Citizens' Rights and Fundamental Principles of the Order of San Marino*, made operative by Law no. 59 of 8 July 1974, and subsequent amendment of 26 February 2002 no. 36, guarantees freedom of expression of thought, worship and conscience with a formula that prudently takes into account the temporary suspension for emergency reasons and in exceptional cases of civil and political liberties: "...*The law may limit the exercise of these rights only in exceptional cases for serious reasons of public order and public interest*¹²...". In issuing "emergency laws", the San Marino legal system also relies on the conditions of necessity and urgency referred to in article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and article 12 of Qualified Law no. 184 of 15 December 2005. This jumble of arrangements today is useful to manage the Covid-19 emergency which powerfully spreads over the Italian soil and immediately reached the Titan rock, causing several victims in relation to the resident population. The Government then issued an initial Decree Law no. 51 of March 14, 2020, Article 1, letter f) of which states: "*all events organized, conferences, congresses, meetings, as well as events in public or private places, including those of a social, cultural, recreational, sports, religious and trade fair nature, even if held in closed spaces but open to the public, such as, for example, major events, cinemas, theatres, pubs, dance schools, games rooms, betting and bingo halls, discos and similar venues, shall be suspended. All activities are suspended in these places. The violation of the suspensions contained in this letter is punished with an administrative fine of € 2,000.00 (two thousand/00) and with the suspension of the operating licence for 30 (thirty) days*". The sanctioning corollary of the norm refers, given the ten-

¹² On the socio-normative scope of the *Declaration of Citizens' Rights and Fundamental Principles of the San Marino Order* and subsequent amendments see R. REGOLI-G. BIANCHI di CASTELBIANCO, *Il sistema politico istituzionale e i rapporti Stato-Chiesa nella Repubblica di San Marino*, in *Quaderni di Scienze Politiche-Unicatt*, n. 14/2018, 10-13.

or, essentially to commercial businesses but in the abstract, only for the pecuniary part *obviously*, it would seem applicable also to ministers of worship who wish to continue to hold collective rites within demonstrations with religious content. In letter r) of the same article 1 of the Decree it is then noted that: *"...the opening of places of worship is conditioned on the adoption of organisational measures such as to avoid the gathering of people, taking into account the size and characteristics of the venues, and such as to ensure that visitors can respect the distance between them of at least one metre referred to in Annex 1, letter d) of the present decree-law. Civil and religious ceremonies, including funeral ceremonies, are suspended"*. This first rule did not therefore decree the closure of places of worship which, observing the measures of social distancing, were still be frequented. This regime for worship intended buildings, due to the worsening of the overall health situation, lasted only six days until the issue of the new Decree Law no. 52 of March 20, 2020 which completely closes the places of worship at every attendance and use to the new art. 1 letter r) which reads as follows: *"...the places of worship are closed. Civil and religious ceremonies are suspended, including funeral ceremonies, except for the minimum burial service, according to the arrangements given for essential public services"*, thus differentiating itself from the nearby Italian Republic, which has never declared in the six emergency decrees issued in just one month a total closure of places of worship¹³, also because of the difficulties that would be operatively encountered in managing the balance of constitutional values at stake and the nature of the article itself. 19 of the Italian Constitution which presents itself, by the consolidated case-law guidelines, as a perfect subjective fundamental right, not subject to conditions of reciprocity, and unavailable which expressly guarantees the exercise of worship in public¹⁴. In the previous Emergency Decree of 14

¹³ In this sense also the specifications of the Italian Ministry of the Interior, which came as a result of questions formulated by the CEI on the exercise of worship in the country. See <https://www.olir.it/wp-content/uploads/2020/03/Nota-del-Ministero-dellInterno.pdf>, 1.

¹⁴ On the balance of articles 19 and 32 of the Italian Constitution and the solutions adopted to guarantee a limited exercise of worship in the "Belpaese" see F. BALSAMO, *The loyal collaboration between State and religions at the testing bench of the Covid-19 pandemic. A perspective from Italy*, in <https://diresom.net/2020/03/27/the-loyal-collaboration-between-state-and-religions-at-the-testing-bench-of-the-covid-19-pandemic-a-perspective-from-italy/>, 1-8.

March last, the Titan's legislator includes an important arrangement that in art. 4 contemplates the possibility of requisitioning real estate by the Extraordinary Commissioner for the Coordination of Health Emergencies and that will see, if the situation worsens further, certainly involved the San Marino Diocese with a substantial real estate assets, in order to make agreements in this sense. Agreements, however, without prejudice to the third paragraph of article 4 in question: "...without prejudice to the right to define with the private property concerned agreements aimed to obtain the immediate availability of the aforementioned facilities..." and necessary, in the case in point, also for coordination with the arrangement from article 8 of the 1992 Framework Agreement between the Holy See and the Republic of San Marino¹⁵. Article the one relating to the requisitioning of the buildings, which was then entirely re-proposed by the Secretary of Internal Affairs in the formulation of Decree no. 52 of 20 March 2020.

With regard to the measures for the total closure of places of worship that have raised constitutional perplexities, which are, however, overcome at the root by the clear formulation of the articulate formulation on the subject contained in the *Declaration of Citizens' Rights and Fundamental Principles of the Order of San Marino*, which allows this operation in the light of the framework of a very serious health emergency in progress, the Catholic Church has also intervened through a statement from Bishop H.E. Andrea Turazzi, leading the Diocese between two States¹⁶—San Marino-Montefeltro— has shown full understanding of the extent

¹⁵ Article 8 of the Framework Agreement of 2 April 1992 between the Holy See and the Republic of San Marino reads: "1. *The ownership, acquisition, possession, administration, administration and alienation of temporal goods by ecclesiastical bodies, as well as the succession to such goods in favour of the same bodies, are regulated by ordinary laws of general application.* 2. *In the event of the vacancy of an ecclesiastical benefit, the legal representation of it shall be established on the basis of the provisions of canon law.* 3. *The establishment or acceptance of pious foundations, pious legacies, as well as, even for those already existing, the administration of goods and the satisfaction of the relative burdens, are the exclusive competence of the ecclesiastical authority*". For the complete text see https://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19920402_santa-sede-rep-s-marino_it.html, 1.

¹⁶ For more information on the nature, history and structure from the point of view of canon law of the Diocese of San Marino-Montefeltro see P. STEFANI', *Note di diritto canonico sulla Diocesi di San Marino-Montefeltro*, in A. DE OTO-L. IANNACCONE (ed.), *Il fattore religioso nella Repubblica di San Marino*, Il Cerchio, Rimini, 2013, 43 ff.

of the facts taking place in an emergency with unforeseen and unpredictable contours and recognizing clearly the boundaries of governance of spiritual matter with respect to what is the responsibility of Government's power, as per the Concordat approach²⁷: *"Such a radical decision is arousing understandable reactions: the claim of frees exercise of worship and the possibility of the 'open church' as a sign of hope (even if, in fact, one should not go to church because of the limitations of movement already established). Reactions worthy of respect. It is necessary, however, to reflect without emotional impulses and to recognize that the situation that the authorities are called to govern is of a complexity never seen before, of which we can only grasp some evidence. It is not for the Church, but for the State to legislate on public health"*²⁸. So following this decision taken by the San Marino authorities, the Bishop Andrea Turazzi, in order to maintain a lively contact with the ecclesial community, has, in the phase that the country is going through, set up "alternative" garrisons, above all in order to allow the use of the Sunday precept and mass in general, through *streaming* masses also transmitted by the State TV; correlatively encouraging the *social* tool with a page dedicated to the emergency on the Diocese website, and the implementation of the *twitter* page of the diocesan Ordinary.

On 24 March 2020 the Bishop of San Marino, given the emergency situation also from logistic point of view, with the presence of a high number of faithful in danger of death and the expected peak of deaths in our hospitals, decided to issue Decree no. 40 on the subject of *"Absolution to several penitents without prior individual confession"* where it is provided that hospital chaplains in hospitals and nursing homes *"...may impart absolution to several penitents without prior individual confession when the patients admitted to them are in danger of death or are in wards where it is not possible to guarantee the secrecy of the confession and the appropriate health measures"*²⁹, expressly referring in the Preamble of the

²⁷ The Framework Agreement of 2 April 1992 between the Holy See and the Republic of San Marino in its Proemio highlights precisely *"...the mutual respect for independence and sovereignty which each has in its own order..."* see *Acta Apostolicae Sedis*, 85 (1993), 324-334.

²⁸ Statements taken from the SIR Information Agency: *Coronavirus Covid-19: places of worship closed in San Marino*, www.agensir.it, 21 March 2020, 1.

²⁹ See Decree of the Bishop of San Marino-Montefeltro n. 40/2020 *"Assolutions to several penitents without prior individual confession"* (see attachment).

Decree itself to the Note of the Apostolic Penitentiary of 19 March 2020, the orientation of the presidency of the CEI as a service of the Diocese in Italy (given that part of the diocesan territory falls there) and canons 961 and 962 contained in Book IV, Title IV of the 1983 Code of Canon Law on the Sacrament of Penance, as well as nn. 31-35 of the Rite of Penance.

Other micro-States in Europe with legal systems of medieval derivation, the result of complex geo-political balances that have led to elaborate government structures in small territories, are now facing a health emergency of global importance that risks disrupting, much more than other federated States in supranational organizations, economic-political realities survived several times to changes in situations around them. Often small State realities completely surrounded at the level of political borders by one or two large states which, over the years, have played, depending on the historical passages, alternately the role of friend, protector or enemy of considerable proportions from which to beware, small states such as the Co-Principality of Andorra, the Principality of Monaco or the Principality of Liechtenstein, states which today, precisely because of their limited territorial scope and without potential shock absorbers due to their belonging to over-state containers such as the EU, are afraid to emerge from this terrible pandemic economically shattered and broken in their identity structure²⁰.

Of course, even in the serious emergency situation, this is not the ultimate scenario for the Serenissima Republic of San Marino, which, although not belonging to the EU, is a member of many international organizations such as the UN, and specialized agencies such as the ILO, WHO, FAO, UNESCO, UNICEF²¹ and above all because of its relationship with Italy, with which it has always sought a privileged and fraternal relationship, in the respect of the independence of the ancient Republic and in the satisfaction of mutual interests, a collaboration that has been concretely realized also in this emergency with the stipulation of an addi-

²⁰ On the identity factor in the small States, reference should be made to the reflections already made in A. DE OTO, *Piccoli Stati e fattore religioso*, in A. DE OTO-L. IANNACCONE (ed.), *Il fattore religioso nella Repubblica di San Marino*, Il Cerchio, Rimini, 2013, 125.

²¹ See R. REGOLI-G. BIANCHI di CASTELBIANCO, *Il sistema politico istituzionale e i rapporti Stato-Chiesa nella Repubblica di San Marino*, in *Quaderni di Scienze Politiche-Unicatt*, n. 14/2018, 23.

tional agreement to the normal health agreements in force between the two countries, in order to manage together the international emergency caused by the fearsome Covid-19²²*virus*.

²² See *Coronavirus: San Marino-Italy, signed Memorandum of Understanding on mutual cooperation*, in <https://sanmarinortv.sm/news/politica-c2/coronavirus-san-marino-italia-siglato-protocollo-d-intesa-di-mutua-collaborazione-a185813>, 26 marzo 2020, 1.