



# REPUBLIC OF SAN MARINO

## **We the Captains Regent of the Most Serene Republic of San Marino**

*Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;*

*Hereby promulgate and order the publication of the following Constitutional Law, approved by the Great and General Council during its sitting of 3 December 2021 with 43 votes in favour:*

### **CONSTITUTIONAL LAW NO. 1 OF 7 DECEMBER 2021**

#### **THE JUDICIARY. JUDICIAL SYSTEM AND JUDICIAL COUNCIL**

##### **Art. 1**

*(General principles)*

1. The judicial bodies shall perform their functions according to the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. They shall be subject exclusively to law and shall be required to precisely interpret and apply the law in force. They shall be appointed and remain in office on account of their professional skills, objectivity and impartiality.
2. In accordance with the Statutes and with the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, the Magistrates shall perform judicial functions and institutional tasks entrusted to them in the interest of the rule of law and without any relationship of subordination. They shall be liable under the law.
3. Magistrates shall be bound by the duties and shall have the rights specified by law. Moreover, they shall be entitled to the specific independence, personal and economic guarantees, as well as to those connected with their status, which are envisaged by law and by the international treaty and customary law. It shall be the responsibility of the State and of each judge to promote and safeguard the independence of the Judiciary.

##### **Art. 2**

*(Judicial bodies)*

1. The judicial bodies shall be, as a rule, single-judge bodies and shall be distinguished only by the functions they perform, without any hierarchy among them.
2. Magistrates shall be divided into career Magistrates and Magistrates by specific task.
3. Career Magistrates shall be Law Commissioners and Uditori Commissariali (Clerks). Law Commissioners and Uditori Commissariali shall be freely replaceable in the performance of their functions and tasks.
4. Magistrates by specific task shall be the Highest Judge of Appeal, the Judge for Extraordinary Remedies and the Judge for Civil Liability Actions of Magistrates.

5. The Judges of Appeal shall be career Magistrates or Magistrates by specific task, depending on whether they are appointed by career advancement or following a competition. The Judges of Appeal may replace each other in case of impediment or incompatibility of one of them, without prejudice to their assignment to the civil and administrative sector or to the criminal sector.

6. The Procuratore del Fisco (Prosecuting Magistrate) and the Head Magistrate shall also be judicial bodies, in the specific cases and within the limits in which the law attributes judicial functions to them.

7. The Court for Trusts, which shall be governed by a specific constitutional law, shall be part of ordinary jurisdiction.

### **Art. 3**

#### *(Functions of Highest Judges of Appeal and of Judges for Extraordinary Remedies)*

1. The Highest Judge of Appeal and the Judge for Extraordinary Remedies who are experts in civil matters shall adopt decisions on cases and issues related to civil and administrative jurisdiction. The Highest Judge of Appeal and the Judge for Extraordinary Remedies who are experts in criminal matters shall decide on cases and issues related to criminal jurisdiction. Objections and requests for abstention submitted pending decisions on objections shall be decided by the Judge for Extraordinary Remedies who is expert in the matter related to the proceedings where the relevant applications are submitted.

2. The Highest Judges of Appeal shall replace each other in case of abstention, objection, incompatibility or serious impediment of one of them. Likewise, and in the same cases, the Judges for Extraordinary Remedies shall replace each other.

3. To perform the acts falling within their competence, the Highest Judges of Appeal and the Judges for Extraordinary Remedies shall rely on the registry offices and the judicial officers of the Court. Appeals, applications and decisions shall be deposited with the Registry where the relevant proceedings have been registered.

4. The Highest Judge of Appeal shall decide on *forum non conveniens* in civil judgements and on civil and administrative judgements in the third instance. The Highest Judge of Appeal shall decide, as last resort, on appeals in criminal proceedings, also concerning the legitimacy of precautionary measures involving people and property and the enforcement of sentences.

5. The Judge for Extraordinary Remedies shall decide on disputes between civil, criminal and administrative jurisdictions, on appeals for the revision of criminal judgements, on *querela nullitatis* (complaint for annulment) and *restitutio in integrum* (reinstatement) in civil proceedings, as well as on objections of Magistrates and on requests for abstention submitted pending decisions on objections.

6. Proceedings and judgements falling within the competence of the Highest Judges of Appeal and of the Judges for Extraordinary Remedies shall be subject to applicable procedural provisions, including those of Law no. 55 of 25 April 2003 in so far as compatible.

7. The Highest Judge of Appeal and the Judge for Extraordinary Remedies shall be required to abstain and may be objected to by the parties in the cases provided for by law. Abstention and objection of the Highest Judges of Appeal shall be decided by the Judge for Extraordinary Remedies who is expert in the matter related to the proceedings where the relevant application is submitted.

8. Abstentions and objections of the Judges for Extraordinary Remedies and of the Judges for Civil Liability Actions of Magistrates shall be decided by the Guarantors' Panel on the Constitutionality of Rules as a single-judge body. If the application for abstention or objection is admitted, the proceedings shall be transmitted by the Court Registry to the other Judge performing the same judicial functions of the objected one.

### **Art. 4**

#### *(Tasks of the Judge for Civil Liability Actions of Magistrates)*

1. The Judges for Civil Liability Actions of Magistrates shall be appointed as follows: two for the first instance, one for the appeal and one for the third instance. The relevant alternate Judges shall replace them to deal with the cases in the event of abstention, objection, incompatibility or

serious impediment of the full Judges.

2. Civil liability actions of Magistrates shall be entrusted to the Judges for civil liability actions. The Judges for Civil Liability Actions of Magistrates shall also be competent to rule on civil, criminal or administrative proceedings if all competent judges have lawfully abstained or have been legitimately objected to or are otherwise unable to rule because they have already ruled.

#### **Art. 5**

##### *(Procuratore del Fisco)*

1. The Procuratore del Fisco shall be the guarantor of the legality and regularity of criminal proceedings, shall supervise over the formal correctness of the acts and the correct application of the law and shall exercise the functions attributed to him by law.

2. The Procuratore del Fisco shall be appointed on a priority and preferential basis by internal career advancement. In the absence of suitable candidates, the selection shall be made externally from among candidates who are eligible to hold the position of Law Commissioner by external selection.

3. The Procuratore del Fisco shall be bound by duties and shall be subject to regulations on incompatibilities and the civil and disciplinary liability of Magistrates.

4. The Procuratore del Fisco shall be subject to the direction and supervision of the Head Magistrate.

#### **Art. 6**

##### *(Recruitment - Requirements)*

1. Uditori Commissariali shall be recruited by competition from among graduates in law, who are San Marino citizens or residents and under 35 years of age.

2. Law Commissioners shall be recruited on a priority basis by internal selection from among Uditori Commissariali with at least four years seniority and who have successfully passed the second assessment of professional skills. In the absence of suitable candidates, the selection shall be made externally from among Magistrates who have at least eight years' experience abroad, lawyers or university lecturers in law, who have been practising or teaching for at least eight years and are at least 35 years old.

3. Judges of Appeal shall be recruited on a priority basis by internal selection from among Law Commissioners with at least ten years seniority and following an assessment of professional skills. Recruitment by external competition shall take place in the absence of suitable candidates. In this case the selection shall be made from among Magistrates who have at least fifteen years' experience abroad, lawyers or university lecturers in law, who have been practising or teaching for at least fifteen years and are at least 45 years old.

4. The Highest Judge of Appeal, the Judge for Extraordinary Remedies and the Judge for Civil Liability Actions of Magistrates shall be recruited from among those who have served for twenty years as Magistrates, lawyers or university professors, and who are of the highest repute. They shall be appointed by the Judicial Council, by a majority of three quarters of those entitled to vote, for a term of five years, renewable only once for five years.

#### **Art. 7**

##### *(Recruitment - Procedure)*

1. The procedure for recruiting Magistrates shall be initiated following a request of the Head Magistrate to the Judicial Council. The Head Magistrate shall specify in the request the number of posts to be filled in the respective roles and the method of recruitment. Once it has received the request from the Head Magistrate, the Judicial Council shall either accept or reject it. If the request is accepted, the Judicial Council shall transmit to the Great and General Council the reasoned proposal to initiate recruitment procedures, indicating the recruitment method and the number of posts to be filled in the respective roles.

2. The Great and General Council shall either accept or reject the recruitment proposal.

3. If the proposal is approved, the Judicial Council shall proceed with the recruitment.

4. The assessment of the candidates' professional skills shall be carried out by the Judicial Council, which:
  - a) in case of internal career advancement, shall request a specific report from the Head Magistrate;
  - b) in case of recruitment by external competition, shall appoint a Selection Board composed of three members, one of whom acting as Chairman, chosen from among legal experts of repute, including outside the San Marino Judiciary, or from among Magistrates by specific task. Those enrolled in the Professional Registers of Lawyers and Notaries and of Chartered Accountants and Accounting Experts of the Republic shall not be members of the Selection Board.
5. Once the professional skills have been assessed, the Judicial Council shall appoint the selected Magistrates by reasoned decree. The appointed Magistrate shall take an oath before the Captains Regent. In case of career advancement, no new oath shall be taken and the appointment shall be immediately effective.
6. In case of appointment by internal career advancement of Judges of Appeal and Law Commissioners, the assessment of the professional skills required to fill the post shall take into account the following criteria:
  - a) For Judges of Appeal:
    - Specific experience in the matter relevant to the post to be filled;
    - Proven professional skills and knowledge of law, with specific reference to the matter concerned by the post to be filled, also with regard to the qualifications held;
    - Balance in decision-making, understood as a correct balancing of the interests at stake, and proper consideration of the rights of the parties;
    - Efficiency in the organisation of judicial work;
    - Accuracy in decisions and measures taken.Seniority shall only be taken into account when choosing between candidates who have been assessed equally on the basis of the above criteria.
  - b) For Law Commissioners:
    - Practical experience in all areas of jurisdiction;
    - Proven professional skills and knowledge of law;
    - Aptitude for assuming responsibility for the judicial function;
    - Balance and proper consideration of the rights of the parties in the decisions taken;
    - Behaviour respectful of the functions of lawyers, experts, auxiliaries, registrars and staff;
    - Efficiency and accuracy in the organisation of work.Seniority shall only be taken into account when choosing between candidates who have been assessed equally on the basis of the above criteria.
7. In case of external competition, the Law Commissioners shall be recruited by means of a competition, based on a written and an oral test before the Selection Board referred to in paragraph 4, letter b). The assessment of the tests shall be carried out in accordance with the following criteria:
  - Knowledge of San Marino law;
  - Aptitude for factual assessment, reasoning based on evidence and principles, familiarity with interpretation techniques.
8. Uditori Commissariali shall be recruited by means of a competition, based on a written and an oral test before the Selection Board referred to in paragraph 4, letter b). The assessment of the tests shall be carried out in accordance with the following criteria:
  - Knowledge of San Marino law;
  - Aptitude for factual assessment, reasoning based on evidence and principles, familiarity with interpretation techniques.
9. In case of external competition for the recruitment of Judges of Appeal, the comparative assessment of candidates before the Selection Board referred to in paragraph 4, letter b) shall comply with the following criteria:
  - Knowledge of San Marino law;

- Expertise in the matter involved by the post to be filled;
- Practical experience.

The assessment shall be carried out on the basis of the curriculum vitae, qualifications and publications.

10. The comparative assessment of candidates before the Selection Board referred to in paragraph 4, letter b) for the recruitment of Highest Judge of Appeal, Judges for Extraordinary Remedies and Judges for Civil Liability Actions of Magistrates shall comply with the following criteria:

- Knowledge of San Marino law;
- Expertise in the matter involved by the post to be filled;
- Practical experience.

The highest repute shall be assessed on the basis of the curriculum vitae, qualifications and publications.

## **Art. 8** (Career)

1. The Uditore Commissariale shall be subject to two separate assessments of professional skills. After a probationary period of two years from the date of his swearing in, he shall be subject to an initial assessment of his professional skills, during which his ability to deal with and solve theoretical and practical issues independently shall be assessed. If the Uditore Commissariale successfully passes the first assessment, he may start the second probationary period after a further two years. In the second assessment of professional skills, the Uditore Commissariale shall demonstrate that he can independently manage preliminary investigations of proceedings by preparing them for final judgement. In case of failure of the second assessment, it can be repeated after one year. If the new assessment is unsuccessful, the Uditore Commissariale shall cease to hold office.

2. After successfully passing the two assessments of professional skills, the Uditore Commissariale shall:

- a) Be placed on standby duty in the sector to which he is assigned and receive the corresponding statutory allowance;
- b) Be entitled to receive one-fifth of the proceedings-related allowance provided for Law Commissioners;
- c) Be entitled to participate in the selection by internal career advancement to become Law Commissioner.

3. The Uditore Commissariale who has been in service for at least three years from the date of entry into force of this Law shall not be subject to the assessments referred to in paragraph 1 above, and shall therefore, *ex officio*:

- a) Be placed on standby duty in the sector to which he is assigned and receive the corresponding statutory allowance;
- b) Be entitled to receive one-fifth of the proceedings-related allowance provided for Law Commissioners;
- c) Be entitled to participate in the selection by internal career advancement to become Law Commissioner.

4. A Magistrate appointed by career advancement shall not be subject to any probationary period.

5. Magistrates who, following career advancement, are subject to a probationary period at the time of entry into force of this Law shall be confirmed on a permanent basis.

6. Law Commissioners and Judges of Appeal recruited by external competition shall be subject to a probationary period of three years, after which the Judicial Council shall decide whether to confirm them or not. Confirmation shall take place at the end of the assessment of professional skills, which shall take into account full knowledge of San Marino law and the capacity to manage the cases assigned during the probationary period, in terms of readiness, quality and effectiveness.

7. The procedure for assessing professional skills shall ensure that the Magistrate concerned be heard.

## **Art. 9**

### *(Duration and events of the relationship)*

1. Once they have completed their probationary period, career Magistrates shall remain in office until they reach the age of 70.
2. Magistrates shall not be removed from office, except in the event of reaching retirement age, dismissal following the establishment of disciplinary liability or permanent incapacity to perform their duties, which shall be verified by the Judicial Council in consultation with the Magistrate.
3. Career Magistrates who have performed judicial functions for at least ten years may ask to be transferred to the Public Administration for serious personal or family reasons. The Judicial Council decides whether to meet or not such request. If the Judicial Council accepts the request, the Congress of State (Government) shall decide on the assignment of the Magistrate.
4. Career Magistrates shall be subject to the assessment of professional skills every five years, with regard to balance, productivity and professional qualities demonstrated in the exercise of judicial activity. The assessment shall be carried out by the Judicial Council on the basis of a reasoned and documented report by the Head Magistrate and after hearing the Magistrate concerned.

## **Art. 10**

### *(Incompatibilities)*

1. Magistrates shall be prohibited from exercising any form of political or trade union activity and in any case from publicly showing support or aversion to a person or body engaged in political or trade union activities.
2. Magistrates shall be prohibited from being members and from participating in the activities of secret associations, however named, even if established and operating abroad. For the purposes of this Article, secret associations shall be those referred to in Article 2 of Qualified Law no. 2 of 18 June 2015.
3. Taking any subsequent office that requires an oath of allegiance to any State other than the Republic of San Marino shall be incompatible with the role of Magistrate.
4. Career Magistrates shall not exercise the profession of lawyer or notary, nor shall they engage in commercial or industrial activities, take on positions as directors or auditors in companies, or other public or private employment in the territory of the Republic or abroad. Academic or teaching activities shall be excluded from the above provision, provided that they are compatible with the commitment and duties of the office of Magistrate.
5. Magistrates by specific task shall not take on positions as directors and auditors in companies in the territory of the Republic or abroad. They shall not exercise the profession of lawyer or notary, nor shall they engage in commercial or industrial activities, or take on other public or private employment in the territory of the Republic. Academic or teaching activities shall be excluded from the above provision, provided that they are compatible with the commitment and duties of the office of Magistrate.
6. Subject to the incompatibilities provided for by law, Magistrates may take on other positions only in accordance with the needs of the office and after notifying the Judicial Council thereof.
7. Incompatibilities shall cease at the end of the term of office.
8. Career Magistrates who cease to hold office shall be prohibited from practising law in the territory of the Republic for the following two years.
9. Magistrates shall be obliged to declare, within sixty days of the entry into force of this Law and periodically every two years, the absence of incompatibilities or to immediately notify them to the Judicial Council.
10. The Judicial Council shall be competent to verify at any time the incompatibilities of Magistrates on the basis of a report by the Head Magistrate.

**Art. 11**  
*(Civil liability)*

1. Anyone who has suffered damage as a result of a judicial measure taken by the Magistrate through wilful intent, gross negligence or denial of justice, may bring an action against the State to obtain compensation for pecuniary and non-pecuniary damage also arising from the unjust deprivation of personal liberty.
2. In the exercise of judicial functions, the interpretation of law provisions or the assessment of facts and evidence shall not give rise to civil liability, without prejudice to the cases referred to in paragraph 5 and to cases of wilful intent.
3. Denial of justice shall result from any refusal, omission or delay by a Magistrate in the adoption of measures falling within his competence where, after expiry of the statutory time-limit for taking the measure in question, a party has submitted an application for such a measure and, without valid reason, no measure has been taken within sixty days following the date on which the application was lodged with the Court Registry.
4. If no time-limit is envisaged, ninety days shall in any case elapse without any measure being taken following the date on which the application for the measure was lodged with the Court Registry.
5. The following shall constitute gross negligence:
  - a) A serious breach of the law resulting from inexcusable negligence;
  - b) The assertion, due to inexcusable negligence, of a fact the existence of which is indisputably refuted by documents in the case file;
  - c) The denial, due to inexcusable negligence, of a fact the existence of which is indisputably established by documents in the case file;
  - d) The adoption of a decision concerning personal liberty in a case other than those provided for by law or without due reason.
6. The proceedings for compensation for damage shall be brought against the State, represented by the Government Syndics, within two years following the date on which the judgement concerning the damage has become final. The application shall be lodged with the Civil Registry of the Court.
7. Within one year following the compensation for damage, the State shall bring a recovery action against the Magistrate, whose measure or violation caused the damage. During the recovery action, the Magistrate whose liability has been established may be ordered to pay damages up to a maximum of one annuity of his net remuneration. This limitation shall be excluded if the act was committed intentionally.
8. The Magistrate, whose measure is being judged, may intervene at any stage of the proceedings. The decision rendered in the proceedings brought against the State shall not be effective in the recovery action if the Magistrate did not voluntarily intervene in the proceedings.
9. The action shall be brought before the Judges for Civil Liability Actions of Magistrates. The proceedings shall be conducted according to the rules governing ordinary procedure.
10. The final judgement shall be transmitted to the interested Magistrate, the Bureau of the Great and General Council, the Parliamentary Commission for Justice and the Judicial Council for its acknowledgement.

**Art. 12**  
*(Duties of Magistrates - Disciplinary liability)*

1. Magistrates shall demonstrate specific professional skills, objectivity and impartiality, and shall act and appear to act free from any undue influence on judicial proceedings. In the performance of their duties, they shall show sound doctrine and prudent balance, have an irreproachable civil and moral behaviour, protect the rights and freedoms of all persons with no distinction and respect their dignity. They shall be obliged to treat each case with prudence and diligence. In addition, they shall:
  - Apply the laws by interpreting them in accordance with the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order;
  - Always act independently and impartially, ensuring that all parties are entitled to a fair hearing

- and, where appropriate, explaining procedural issues;
- Treat all proceedings with diligence and within the time-limit prescribed by law or, in the absence thereof, within a reasonable time;
  - Decide on the matters entrusted to them, abstaining from judging or refusing to decide only if there are valid reasons established by law;
  - Provide reasons for the judgements and other measures for which the law requires the provision of reasons in a clear and comprehensible way;
  - Encourage, in the cases provided for by law, the parties to reach an amicable settlement;
  - Regularly keep up-to-date and broaden their professional background.
2. Career Magistrates shall actively participate in organisational meetings called by the Head Magistrate and shall ensure their constant presence in Court.
3. The Magistrate's disciplinary liability shall arise if he violates his duties through wilful intent or gross negligence, or if he engages in conduct, either in office or out of office, which, by its objective seriousness, renders him undeserving of the trust and consideration that he should enjoy, or which damages the prestige of the judicial order.
4. The following conduct by a Magistrate in the performance of his duties, whether through wilful intent or gross negligence, shall constitute specific disciplinary offences:
- Failure to inform the Judicial Council of the existence of one of the grounds for incompatibility provided for by the judicial system;
  - Undue interference in the judicial activity of another Magistrate and failure by the latter Magistrate to inform the Head Magistrate of the interference;
  - Conduct giving rise to civil liability on the part of the Magistrate;
  - Repeated or serious failure to comply with the workload provisions adopted by the Head Magistrate;
  - Repeated and unjustified failure to perform the tasks assigned and repeated failure to comply with standby duties;
  - Disclosure, including negligent disclosure, of classified procedural documents, which are prohibited from being published;
  - Giving public statements or interviews about the facts, which are the subject of the proceedings assigned to him, unless expressly authorised by the Head Magistrate.
5. Moreover, the following conduct by a Magistrate outside the performance of his duties shall constitute specific disciplinary offences:
- Taking up extra-judicial duties incompatible with the position held or, although compatible, without the necessary authorisation of the Judicial Council;
  - Exploiting the office of Magistrate in order to obtain unfair advantages for himself or for others or to cause unfair damage to third parties;
  - Visiting or establishing business relationships with a person subject to criminal proceedings assigned to the Magistrate or convicted of offences punishable by imprisonment exceeding second degree or subject to a custodial measure;
  - Participating in or being a member of secret associations.
6. Finally, the Magistrate's disciplinary liability shall arise following the commission of acts constituting offences punishable by not less than second-degree imprisonment, if there has been a final conviction or acquittal due to the existence of a cause for extinction of the offence.
7. The following conduct by the Head Magistrate, through wilful intent or gross negligence, shall constitute specific disciplinary offences:
- Failure to inform the competent body of facts known to him, which may constitute disciplinary offences committed by Magistrates;
  - Serious violation of constitutional principles related to the judicial system in the drafting of the provisions on workload distribution;
  - Undue interference in the merits of the judicial activity carried out by the Magistrates;
  - Serious misrepresentation of the facts in the preparation of reports for career advancements, successful completion of probationary periods and periodic assessments of Magistrates' professional skills.
8. No Magistrate shall be subject to a disciplinary sanction for the violation of a duty not envisaged at the time when the alleged fact occurred.
9. Disciplinary sanctions shall be applied in accordance with the principles of progression and



proportionality and shall be, in ascending order of severity: warning, censure, suspension of remuneration and removal from office. Warning and censure shall consist of a written reprimand for conduct by the Magistrate; suspension of remuneration shall consist in the application of a fine based on the Magistrate's salary and may be applied for a minimum of 30 days and a maximum of 180 days of net remuneration, without prejudice to the amount of the maintenance payment; dismissal shall consist in the termination of the relationship and interruption of functions.

10. The sanction of warning shall apply to violations by Magistrates of the official duties referred to in this Article, which are not so serious as to be punishable by the sanction of censure.

11. A sanction of not less than censure shall be applied in the following cases:

- Violation of the duties provided for in paragraph 1 and conduct entailing the Magistrate's civil liability, where such conduct has caused unjust damage or undue advantage to one of the parties;
- Failure by a Magistrate to inform of any interference in his judicial activity by another Magistrate;
- Repeated and unjustified failure to perform the tasks assigned and repeated failure to comply with standby duties;
- Intentional disclosure of classified procedural documents, which are prohibited from being published;
- Taking up extra-judicial duties incompatible with the position held or, although compatible, without the necessary authorisation of the Judicial Council.

12. The Head Magistrate shall be applied a sanction of not less than censure in the following cases:

- Serious misrepresentation of the facts in the preparation of reports for career advancements, successful completion of probationary periods and periodic assessments of Magistrates' professional skills;
- Failure to inform the competent body of facts known to him, which may constitute disciplinary offences committed by the Court's Magistrates.

13. A sanction of not less than suspension of remuneration shall be applied in the following cases:

- Interference by the Magistrate or the Head Magistrate in the merits of the judicial activity carried out by another Magistrate;
- Taking up extra-judicial duties incompatible with the position held or, although compatible, without the necessary authorisation of the Judicial Council, if, by reason of the scope and nature of the task, the act is particularly serious;
- Exploiting the office of Magistrate in order to obtain unfair advantages for himself or for others;
- Committing acts that constitute offences punishable by not less than third-degree imprisonment, if there has been a final conviction or acquittal due to the existence of a cause for extinction of the offence.

14. The sanction of dismissal shall apply to Magistrates:

- Who are found guilty of exploiting their office in order to obtain unfair advantage for themselves or others or to cause unfair damage to third parties, when the act is particularly serious;
- In respect of whom it is established that they have obtained, directly or indirectly, on anomalous and exceptionally favourable terms, loans or facilities from persons whom the Magistrate knows to be parties to or under investigation in civil or criminal proceedings dealt with by him, from the defending counsels of such persons, from injured parties or witnesses or in any case from persons involved in such proceedings;
- Who are subject to disqualification from public offices of not less than fourth degree as a result of a final conviction;
- Who have been finally convicted, for the commission of an offence, to a sentence of not less than one year's imprisonment, the execution of which has not been subject to probation or the suspension of which has been revoked;
- Who are finally acquitted following extinction of the offence, when it is nevertheless established in the judgement that they committed an offence punishable by imprisonment of not less than third degree.

15. When several sanctions of different severity have to be imposed due to the concurrence of several disciplinary offences, the sanction envisaged for the most severe offence shall be applied.

When several disciplinary offences, committed concurrently, are punished with the same sanction, the next more severe sanction shall apply. In either case, the least severe sanction may also be applied if the facts alleged are not particularly serious.

16. There shall be no disciplinary offence if the fact is of minor importance.

17. The body competent to impose disciplinary sanctions shall be the Judicial Council.

18. The Magistrate's disciplinary liability for the violation of one or more duties shall be established in the framework of a specific procedure, while respecting the right to be heard and the right of defence of the accused.

19. The disciplinary offence shall be time-barred once three years have elapsed since the relevant conduct was committed. The commencement of disciplinary proceedings and the initiation of criminal proceedings relevant to disciplinary purposes shall suspend the limitation period.

20. The limitation period for disciplinary liability in respect of acts committed before the entry into force of this Law shall run from the time of its entry into force.

### **Art. 13** *(Training)*

1. Magistrates shall have the right and duty to participate in initial and continuous training in order to acquire the scientific and professional in-depth knowledge necessary to carry out their function with independence, autonomy, competence and knowledge. By 31 December each year, the Judicial Council shall adopt the annual training plans for Uditori Commissariali and career Magistrates. The Head Magistrate shall prepare and submit to the Judicial Council, by January each year, a report on the training plans of the previous year. The Judicial Council, in agreement with the Ministry of Justice, may enter into agreements with training institutions, including abroad. Training shall also cover economic, social and cultural issues relating to the exercise of judicial functions.

### **Art. 14** *(Head Magistrate)*

1. The Head Magistrate shall be appointed by the Judicial Council from among career Magistrates with a seniority of at least five years, for a period of four years, renewable once for a further four years, after assessment of the activity carried out.

2. The Head Magistrate shall be assigned the following functions:

- a) Organising the work of the Court and of individual Magistrates. Judicial work shall be distributed in such a way as to permit the smooth running of judicial activities, taking into account the professional skills, experience and aptitude of each Magistrate and the need to offer each Uditore Commissariale the opportunity to obtain the necessary training in each area of jurisdiction with a view to the assessments of professional skills;
- b) While respecting the autonomy and independence of each Magistrate in dealing with and concluding the proceedings assigned, exercising supervision over the Magistrates, with the power to access and acquire information useful to perform their functions and, in the cases provided for by law, to present the situation of the Court and the activities carried out by it;
- c) Coordinating and directing judicial offices, by supervising the exercise of administrative functions;
- d) Participating in the Judicial Council and drawing up, in the cases provided for by law, the appropriate reports envisaged by this Law, and in any case those required by the Judicial Council;
- e) Reporting to the Judicial Council any facts that may constitute disciplinary offences perpetrated by Magistrates;
- f) Being heard by the Parliamentary Commission for Justice in secret session when at least one third of it so requests and in the cases provided for by law;
- g) Deciding, by reasoned decree, on applications for abstention within ten days of their receipt, and ordering, if such applications are admitted, the transfer of the file to another judge, in accordance with the established rotation criteria.

3. The Head Magistrate is required, by April of each year, to submit to the Great and General Council, through the Parliamentary Commission for Justice and following acknowledgement by the Judicial Council, the report on the state of justice relating to the previous year, including observations on the judicial work carried out by Magistrates of all instances.
4. In exceptional and contingent circumstances and for a period of no more than three years, renewable once and for a period of no more than two years if the same circumstances persist, the Court Director may be appointed from among persons outside San Marino Judiciary, with the highest repute and proven experience in directing judicial structures or offices. He shall be equivalent to the Head Magistrate for all purposes.
5. On the proposal of the Head Magistrate, the Judicial Council in plenary session shall appoint an Alternate Court Director from among the Magistrates. After notifying the Judicial Council thereof, the Head Magistrate may delegate the following functions to the Alternate Court Director:
  - a) Taking urgent measures on behalf of the Head Magistrate if he is unable to do so in time;
  - b) Collecting and/or processing statistical data necessary to draw up any reports;
  - c) Supervising the work of Uditori Commissariali, with particular regard to their professional development, without prejudice to the principle of autonomy and independence in the performance of their judicial activity and that of the delegating Law Commissioners.
6. In the performance of his duties, the Head Magistrate shall comply with the rules governing the exercise thereof.
7. The Head Magistrate who, through wilful intent or gross negligence, commits one or more disciplinary violations specific to Magistrates, and the seriousness of the violations is such as to prejudice the proper performance of his duties, may be removed from his managerial position by a decree of the Judicial Council, adopted by a majority of three quarters of those entitled to vote.

**Art. 15**  
*(Judicial Council)*

1. The Judicial Council, presided over by the Captains Regent, shall be the body guaranteeing the autonomy and independence of the Judiciary.
2. The Head Magistrate shall be a member of the Judicial Council by right. He shall act as Vice President and, by delegation of the Captains Regent, he shall be responsible for its organisation and operation in accordance with the Rules of Procedure. The Head Magistrate shall not exercise the right to vote and shall not be counted for the purposes of calculating the structural and functional quorum for the adoption of decisions.
3. The Minister of Justice and the President of the Parliamentary Commission for Justice may take the floor during the meetings of the Judicial Council to make communications and to provide or request clarifications. However, they shall not be present when decisions are adopted.
4. The members of the Judicial Council shall be elected as follows:
  - a) Four by the Great and General Council, with a two-thirds majority, chosen from among San Marino citizens, who are not Magistrates, with the qualification of university professors of law, or graduates in law or otherwise having consolidated experience in judicial matters. A maximum of two people enrolled in the Professional Register of Lawyers and Notaries of the Republic of San Marino shall be elected. This incompatibility shall extend to the spouse or cohabiting partner of those enrolled in the aforementioned Professional Register, as well as to their relatives up to the second degree in direct line and up to the third degree in collateral line;
  - b) Four by Magistrates, three of whom chosen from among career Law Commissioners confirmed in office, and one chosen from among career Judges of Appeal or Judges of Appeal by specific task, provided they are confirmed in office, or from among Highest Judges of Appeal. The election shall take place by a two-thirds majority. From the third ballot onward, a simple majority shall suffice. Ballots shall take place at separate meetings, which may also be convened on immediately consecutive days.

To this end, the Captains Regent shall convene the Magistrates referred to in paragraph 5 hereunder and shall chair their meeting.

5. Career Law Commissioners confirmed in office, Judges of Appeal also confirmed in office and Highest Judges of Appeal shall elect, in two separate ballots, the three Law Commissioners and the Judge of Appeal or the Highest Judge of Appeal referred to in paragraph 4, letter b) above, by expressing up to three preferences for the Law Commissioners and one preference for the Judge of Appeal or the Highest Judge of Appeal. In the event of a tie the Magistrate with higher seniority in a position shall be elected. In the event of equal seniority in a position, the Magistrate with higher seniority in general shall be elected and case of equal seniority, old age shall prevail. The elected members referred to in paragraph 4, letter b) shall be eligible for immediate re-election for a single term.

6. The term of office of the Judicial Council shall be four years from its first meeting. The Judicial Council shall meet within two weeks following the election of its members by both Magistrates and non-Magistrates. The elected members referred to in paragraph 4, letter a) shall not be eligible for immediate re-election and, while they are in office, shall not be members of the Great and General Council or of the Congress of State. Elected Magistrates shall continue to exercise their judicial functions and, if they cease to do so, they shall cease to be members of the Judicial Council.

7. After four years from the first meeting of the Judicial Council, and until new members are elected, the Judicial Council shall meet and decide only on matters of ordinary administration. During this period, recruitment procedures for Magistrates may be started, while the assessment of professional skills and the appointment of Magistrates, the appointment of the Head Magistrate and the adoption of decisions on disciplinary proceedings are not possible.

8. The President of the Association of Lawyers and Notaries, the Minister of Justice and the President of the Parliamentary Commission for Justice shall participate, without voting rights, in the meeting of the Judicial Council at which the annual report of the Head Magistrate is discussed.

9. The Judicial Council shall verify at its first meeting the validity of the qualifications of the elected members. It shall decide on the recruitment, appointment, confirmation, advancement, assessment of professional skills and discipline of Magistrates, according to the laws of the judicial system. It shall deliver opinions on general matters relating to the administration of justice and the organisation of judicial offices, at the request of the Minister of Justice or the Parliamentary Commission for Justice. It shall appoint the Head Magistrate of the Court from among the Law Commissioners and the Judges of Appeal with at least five years' seniority in the position they hold.

10. The decisions of the Judicial Council, unless otherwise provided for in this Law, shall be adopted by a majority of those present who are entitled to vote. In the event of a tie, the decisions shall be deemed not to have been adopted.

11. The Judicial Council shall adopt, by a qualified majority, its Rules of Procedure, which shall govern the organisation and operation of its activities, the grounds for disqualification or incompatibility of elected members, and the replacement of the latter by the first non-elected members.

12. The Judicial Council shall adopt a code of ethics for Magistrates by qualified majority.

13. The Judicial Council shall meet, as a rule, every three months. However, meetings may be convened on the initiative of the Captains Regent or at the request of three elected members. The letters convening the Judicial Council, the agenda of its meetings and the decisions adopted by it shall be transmitted to the Parliamentary Commission for Justice and to the Minister of Justice.

14. The members of the Judicial Council shall not be punishable for the opinions expressed and the votes cast in the exercise of their functions.

15. Within four months of the entry into force of this Law, elections of the members of the Judicial Council shall be held in accordance with the provisions of this Law. The Judicial Council in plenary session referred to in Qualified Law no. 145 of 30 October 2003 and subsequent amendments shall remain in office until the Judicial Council appointed pursuant to this Law takes office.

**Art. 16**  
(Disciplinary proceedings)

1. Disciplinary actions against Magistrates may be taken, also on the basis of reports and complaints, however received in a non-anonymous form, in the cases and according to the procedures established by the laws of the judicial system:
  - a) By at least one third of the Parliamentary Commission for Justice;
  - b) By the Head Magistrate.
2. Preliminary investigations of disciplinary proceedings, which concern the application of a sanction other than warning, shall be entrusted to the Law Commissioner appointed by the Judicial Council on a rotating basis for one year. The Law Commissioner shall continue to perform this function in order to finalise the files received during the assignment. The appointed Law Commissioner may request an appropriate report from the Head Magistrate. The appointed Law Commissioner shall not be a member of the Judicial Council and shall not be re-appointed to the same post in the following two years.
3. Upon conclusion of preliminary investigations, the appointed Law Commissioner shall either decide to file the case and issue a reasoned decree noting that the charge is manifestly ill-founded, or take disciplinary action. In the latter case, he shall refer the disciplinary decision to the Judicial Council by means of a reasoned decree.
4. An appeal against the filing of the case may be lodged by the person bringing the disciplinary action, stating the specific factual and legal grounds supporting the appeal. The appeal shall be decided with a reasoned decree by the Judge of Appeal, appointed for this purpose by the Judicial Council on a rotating basis for one year. The Judge of Appeal shall either confirm the decision to file the case or annul and refer it to the Judicial Council for the adoption of the disciplinary decision. The appointed Judge of Appeal may not be a member of the Judicial Council and may not be re-appointed to the same post in the following two years.
5. The precautionary suspension of the accused Magistrate may be proposed by the Law Commissioner exercising disciplinary action. The Judicial Council may also order it *ex officio* or at the request of the body that initiated the proceedings.
6. The Judicial Council shall order precautionary suspension of the accused Magistrate in cases where the charge relates to facts which, pending the disciplinary proceedings, do not allow him to remain in office.
7. The precautionary suspension measure may be challenged by the Magistrate, on grounds of merit or legitimacy, by lodging an appeal to the Guarantors' Panel.
8. Disciplinary decisions against the accused shall be reserved for the Judicial Council, which shall decide by a simple majority.
9. The Judicial Council shall decide on disciplinary action by means of a reasoned decree excluding the charge or applying a disciplinary sanction, other than warning, at the end of an ad hoc discussion hearing, in which the accused Magistrate may be defended and represented by a lawyer, submit pleadings and documents, ask to be heard, propose the hearing of witnesses and the acquisition of documents. The Parliamentary Commission for Justice that initiated the disciplinary action, represented by the State Lawyers' Office, may participate in the discussion hearing and submit pleadings and documents, or propose the acquisition of documents or the hearing of witnesses. The Judicial Council may hear witnesses or acquire documents, if it considers it necessary to adopt the decision.
10. The disciplinary measure adopted by the Judicial Council may be challenged, on grounds of merit or legitimacy, by the person concerned or by the Parliamentary Commission for Justice, which initiated the proceedings and participated in the discussion hearing, by lodging an appeal to the Guarantors' Panel.
11. The provisions of the Code of Criminal Procedure shall apply to disciplinary proceedings in so far as they are compatible.
12. Notwithstanding the provisions of the preceding paragraphs, the procedure for applying only the sanction of warning shall be adopted by the Judicial Council, after hearing the Magistrate concerned, in the form of a summary procedure.

The disciplinary measure adopted may be challenged under paragraph 10.

**Art. 17**  
*(Transitional provisions)*

1. Competition procedures that are ongoing at the date of entry into force of this Law shall be carried out and completed according to the rules indicated in the relevant public competition announcements.

**Art. 18**  
*(Repeal)*

1. Constitutional Law no. 144 of 30 October 2003 and subsequent amendments, Qualified Law no. 1 of 4 May 2009 and Qualified Law no. 145 of 30 October 2003 and subsequent amendments, with the exception of Article 10, and Law no. 138 of 16 September 2011 shall be repealed.

**Art. 19**  
*(Entry into force)*

1. This Law shall enter into force on the fifth day following that of its legal publication.

*Done at Our Residence, on 7 December 2021/1721 since the Foundation of the Republic.*

THE CAPTAINS REGENT  
*Francesco Mussoni - Giacomo Simoncini*

THE MINISTER OF  
INTERNAL AFFAIRS  
*Elena Toninini*