

CONSTITUTIONAL LAW no. 144 of 30 October 2003

REPUBLIC OF SAN MARINO

Judicial Bodies. Establishment, definition and responsibilities

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

Hereby promulgate and order the publication of the following Law, approved by the Great and General Council during its sitting of 30 October 2003:

Art. 1

(General principles)

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.

The judicial bodies shall be single-judge bodies.

Art. 2

(Judicial bodies)

Ordinary jurisdiction shall be entrusted to the Highest Judge of Appeal, the Judge of Appeal, the Law Commissioner, the Conciliating Judge and the *Uditore Commissariale* (clerk).

Administrative jurisdiction shall be entrusted to the Administrative Judge of Appeal and the Administrative Judge of First Instance. The Highest Judge of Appeal shall also exercise administrative jurisdiction.

Extraordinary judicial functions shall be performed by the Judge of Extraordinary Remedies in the cases provided for by law.

Civil liability actions of magistrates shall be entrusted to the Judges for Civil Liability Actions.

The Judges shall perform all judicial functions expressly assigned to them by the law. The *Uditore Commissariale* shall assist the Law Commissioner in his activities; the Law Commissioner may delegate or entrust the *Uditore Commissariale* with preliminary investigation functions in civil and criminal matters.

Every judicial office may be assigned to more than one judge, each of whom shall be guaranteed all judicial functions. The qualified law on the judicial system shall regulate replacements among judges in the same instance, also in case they exercise different judicial functions.

The *Procuratore del Fisco* and the *Pro-Fiscale* shall be prosecuting Magistrates.

Art. 3

(Judicial functions referred to in Article 9 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order)

The judicial functions referred to in Article 9 of Law no. 36 of 26 February 2002 shall be assigned to the Highest Judge of Appeal and to the Judge of Extraordinary Remedies, according to the following provisions.

Highest Judges of Appeal shall be responsible for adopting decisions on *forum non conveniens* in civil judgements and on civil and administrative judgements in the third instance, and, as last resort, on appeals in criminal proceedings concerning the legitimacy of precautionary measures involving people and property and the enforcement of sentences.

The Judge of 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 abstention and objection of Magistrates.

Art. 4

(Organisation of judicial work among the Highest Judges of Appeal and the Judges of Extraordinary Remedies)

The Highest Judge of Appeal and the Judge of 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 of Extraordinary Remedies who are experts in criminal matters shall decide on cases and issues related to criminal jurisdiction. Abstention and objection of Judges of First Instance and of Appeal shall be decided by the Judge of Extraordinary Remedies expert in the matter related to the proceedings in which the relevant applications are submitted.

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 of Extraordinary Remedies shall replace each other.

To perform the acts falling within their competence, the Highest Judges of Appeal and the Judges of 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, at which the relevant proceedings have been registered.

Art. 5

(Abstention and objection of the Highest Judges of Appeal and the Judges of Extraordinary Remedies)

The Highest Judge of Appeal and the Judge of 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 of Extraordinary Remedies expert in the matter related to the proceedings in which the relevant application is submitted.

Abstention and objection of the Judges of Extraordinary Remedies and of the Judges for Civil Liability Actions of Magistrates shall be decided by the Guarantors' Panel on the Constitutionality of Rules.

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. 6

(Applicable procedural provisions)

Proceedings and judgements falling within the competence of the Highest Judges of Appeal and of the Judges of Extraordinary Remedies shall be subject to applicable procedural provisions, including those of Law no. 55 of 25 April 2003 in so far as compatible. Any changes shall be established by means of an ordinary law.

Art. 7

*(Competence for the review action
and for civil liability actions of magistrates)*

The review action of magistrates shall be performed before the Guarantors' Panel on the Constitutionality of Rules.

Civil liability action of magistrates shall be performed before the Judges for Civil Liability Actions, appointed one for the first instance, one for the appeal and one for the third instance, with the relevant alternate Judges who will take over in dealing with the cases in the event of abstention, objection, incompatibility or serious impediment of the effective Judges.

Art. 8

(Review action)

The Magistrates of the Republic shall be liable for the acts performed in the fulfilment of their functions and may be called upon to answer for such acts through the review action.

The review action shall be initiated by the Judicial Council in ordinary session, which shall decide by absolute majority or by at least one third of the members of the Parliamentary Commission for Justice. The decision shall be transmitted by the President of the deciding body to the President of the Guarantors' Panel on the Constitutionality of Rules, who shall immediately assign to a member of the Panel the functions of Magistrate of assessment procedures.

The Magistrate of assessment procedures, to whom the act instituting the review action is transmitted, shall inform the Magistrate concerned thereof and, having obtained all appropriate information and having heard all interested parties, shall decide on the admissibility and merits of the application within a period of three months from the transmission of the act itself. The Magistrate subject to the review action shall have the right to be heard personally or by means of a special attorney and to exercise his rights of defence in the forms provided for by law.

If the action is declared inadmissible, the proceedings shall be filed.

If the application is declared admissible, the Magistrate of assessment procedures shall order the continuation of proceedings and transmit the acts to the President of the Guarantors' Panel on the Constitutionality of Rules. The latter shall assign to another member of the Panel the functions of deciding Magistrate, who shall in turn give two terms to the parties, one to provide evidence and the other to provide counterevidence, each of thirty days to submit supporting evidence to the Court Registry, as well as a term of thirty days to deposit the respective concluding observations; subsequently, within three months, he shall issue a judgement.

The decision concerning the review action shall be transmitted to the interested Magistrate, the Parliamentary Commission for Justice, the Bureau of the Great and General Council and the Judicial Council in plenary session. The latter may establish, in conformity with the decision, the Magistrate's disqualification if it is confirmed that the essential requirements for the fulfilment of the functions are no longer met, or it may decide to remove the Magistrate from his office if it is confirmed that he has compromised his moral and professional integrity, confidence, respect or the prestige of the administration of justice.

The Judicial Council in plenary session may order the precautionary suspension during the review action, pending its conclusion. In this case, the Magistrate shall be entitled to a maintenance payment, the amount of which shall be equal to half the basic remuneration established by law for that office.

Art. 9

(Civil liability of Magistrates)

Any person who has sustained damage as a result of a judicial measure on the part of a Magistrate, who is guilty of intentional fault or serious misconduct in the exercise of his functions, or as a result of denial of justice, may sue the State to obtain compensation for pecuniary and moral damage, also deriving from the wrongful deprivation of personal liberty.

In the exercise of judicial functions, the interpretation of law provisions or the assessment of facts and evidence shall not give rise to liability.

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.

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.

The following shall constitute serious misconduct:

- 1) a serious breach of the law resulting from inexcusable negligence;
- 2) the assertion, due to inexcusable negligence, of a fact the existence of which is indisputably refuted by the case file;
- 3) the denial, due to inexcusable negligence, of a fact the existence of which is indisputably established by documents in the case file;
- 4) the adoption of a decision concerning personal liberty in a case other than those provided for by law or without due reason.

The proceedings for compensation for the damage shall be brought against the Government Syndics within one year following the date on which the judgement concerning the damage

has become final. The application shall be lodged at the Civil Registry of the Court.

Within one year following the compensation for the damage, the State shall bring a recovery action against the Magistrate, whose measure or violation caused the damage.

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.

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.

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. 10

*(Transitional and
coordination rules)*

The Guarantors' Panel for the Constitutionality of Rules shall exercise the judicial functions referred to in Article 9 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order until the Highest Judges of Appeal and the Judges of Extraordinary Remedies have taken their oath. The Guarantors' Panel shall transmit to the Court Registry the proceedings that have not been retained for decision on that date.

Civil liability actions of Magistrates shall continue to be performed before existing bodies, appointed pursuant to Article 15 of Law no. 83 of 28 October 1992, which shall cease to exist at the time of the oath by the Judges for Civil Liability Actions of Magistrates before Their Excellencies the Captains Regent. The Judges for Civil Liability Actions shall take over in the discussion and decision also in proceedings and judgements that are pending on that date.

Art. 11

(Repeal)

The provisions of Law no. 83 of 28 October 1992 and all other rules in contrast or otherwise incompatible with this Law shall be repealed.

Art. 12

(Entry into force)

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

Done at Our Residence, on 3 November 2003/1703 since the Foundation of the Republic.

THE CAPTAINS REGENT

Giovanni Lonfernini - Valeria Ciavatta