

QUALIFIED LAW NO. 145 OF 30 October 2003

REPUBLIC OF SAN MARINO

Provisions on the judicial system

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

(Establishment of the Single Court)

Judiciary bodies shall exercise the ordinary and administrative jurisdiction within a Single Court, which is divided up into two specialised sections corresponding to the two jurisdictions.

The section of the ordinary jurisdiction is in turn divided up according to civil, criminal, juvenile and family matters, to which the single Law Commissioners are assigned by the Head Magistrate, in compliance with law provisions and the criteria on the distribution of work approved by the Judicial Council.

The Magistrates of each specialised section have full competence and therefore they may replace each other in the exercise of the functions and duties pertaining to the relevant section. If necessary, and without prejudice to the judicial work already assigned, the Head Magistrate, in accordance with the criteria established by the Judicial Council, may assign to Judges in one specialised section duties relevant to the other.

The Judges of Appeal in civil, criminal and administrative matters may mutually replace each other in case of serious impediment or incompatibility of one of them. Replacement is automatic if there is a specific law provision, in the event that the position is vacant, or where more than one Judge is appointed for appeals in criminal, civil or administrative matters; in all other cases replacement shall be based on the criteria determined by the Judicial Council.

Art. 2

(Appointment and incompatibilities of Magistrates)

Magistrates shall be appointed, subject to the completion of the procedure referred to in Article 3, last paragraph, following successful participation in a public competition or promotion to higher judicial offices.

The Highest Judges of Appeal, the Judges of Extraordinary Remedies and the Judges for Civil Liability Actions of Magistrates shall be appointed by the Judicial Council in plenary session.

Magistrates shall demonstrate specific professional skills, objectivity and impartiality. In fulfilling their duties, Magistrates shall always have sound knowledge of legal matters, show great composure and have a blameless civil and moral behaviour.

Magistrates shall not hold posts and register in political parties or movements or trade union associations, stand for general or administrative elections, carry out commercial or industrial activities, hold the position of company directors or auditors. In addition, the Magistrates of first instance, Conciliating Judges and *Uditori* (clerks) shall not carry out professional activities and hold other public or private offices and posts both in San Marino and abroad, except for the position of university professor, in so far as compatible.

Judges of Appeal or higher instance Judges shall not carry out professional activities in the territory of the Republic.

Remunerations of Magistrates shall be established by ordinary law.

In compliance with Article 4, paragraph 2 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order, San Marino citizens shall have access to the judicial offices.

Magistrates shall take office by swearing before Their Excellencies the Captains Regent.

Art.3

(Recruitment of Magistrates)

The Highest Judges of Appeal and the Judges of Extraordinary Remedies, two for each office, as well as the six Judges for Civil Liability Actions of Magistrates, one effective and one alternate for each instance,

shall be appointed by the Judicial Council by a two thirds majority.

The Judges of Appeal shall be appointed following a special competition based on qualifications before a selection board composed of six members, three of whom designated by the Judicial Council from among the Judges of Appeal or higher-instance Judges and three by the Great and General Council from among legal experts of repute not belonging to San Marino judiciary. The selection board cannot include people enrolled in the Professional Registers of Lawyers and Notaries and of Accountants (in possession either of a university degree or high school diploma) of the Republic of San Marino, as well as blood relatives or relatives by affinity up to the second degree of those enrolled in these professional registers.

The Law Commissioners, *Procuratore del Fisco* and *Pro-Fiscali* (prosecuting Magistrates), Conciliating Judges, *Uditori Commissariali* (clerks), as well as Administrative Judges of first instance shall be appointed following a competition based on qualifications and written and an oral tests before a selection board composed of three members designated by the Judicial Council from among Judges of Appeal, higher-instance Judges or legal experts of repute, and three members appointed by the Great and General Council from among legal experts of repute not belonging to San Marino judiciary. The selection board shall not include people enrolled in the Professional Registers of Lawyers and Notaries and of Accountants (in possession either of a university degree or high school diploma) of the Republic of San Marino, as well as blood relatives or relatives by affinity up to the second degree of those enrolled in these professional registers

The selection board shall elect its President from among its members appointed by the Great and General Council; in the event of a tie, the President shall have the casting vote.

The ranked list resulting from the competitions, with indication of the winners, shall be transmitted to the Great and General Council for its acknowledgement.

The Judicial Council shall draft a regulation laying down the rules for the appointments of the Highest Judges of Appeal, Judges of Extraordinary Remedies and Judges of Civil Liability Actions of Magistrates, for competitions, publicity of calls, exams, procedure for the formation of selection boards and identification of criteria for the evaluation of the qualifications required. Such regulation shall be transmitted to the Great and General Council for its acknowledgement.

The starting of procedures to appoint Magistrates shall be requested from the Great and General Council by means of a reasoned report drawn up by the Head Magistrate, with the assent of the Judicial Council, or by the Parliamentary Commission for Justice. After having taken note of the request, the Great and General Council shall decide by absolute majority.

Art.4

(Term of office of Magistrates)

The Highest Judges of Appeal, the Judges of Extraordinary Remedies and the Judges for Civil Liability Actions of Magistrates shall appointed for a five-year renewable term.

Following their appointment, the Judges of Appeal, Law Commissioners, Administrative Judges of first instance, Conciliating Judges and *Uditori Commissariali* shall be subject to a trial period of three years. The

Judicial Council shall assess the activity carried out by them and decide on the confirmation of the appointment, on a permanent basis, or on the termination of their office; it shall inform the Great and General Council thereof for the relevant acknowledgement.

Magistrates confirmed permanently shall remain in office until the age of sixty-five, except in case of resignation, removal, disqualification, or employment in the public administration.

Law Commissioners, Administrative Judges of first instance and Conciliating Judges having performed jurisdictional functions for at least ten years may ask the Great and General Council, for serious personal and family reasons, to be employed in the public administration. The Great and General Council, having heard the opinion of the Judicial Council and of the Congress of State, shall adopt a decision within three months following the submission of the request.

Art. 5

(Requirements for the appointment of Magistrates)

The two Highest Judges of Appeal and the two Judges of Extraordinary Remedies shall be chosen from among experts in law of repute meeting the minimum requirements for the Judges of appeal, in such a way as to guarantee that one is specifically competent in civil matters and the other in criminal matters.

The Judges for Civil Liability Actions of Magistrates shall be chosen from among experts in law of highest repute meeting the minimum requirements for the Judges of appeal.

The competition to select the Judge of Appeal in criminal, civil and administrative matters shall be open to Magistrates holding at least the qualification of Magistrate of appeal, or to tenured university professors of law who have attained 45 years of age.

Also Law Commissioners and Administrative Judges of Appeal having served for at least 10 years may be appointed Judges of Appeal. The assessment of the professional skills acquired shall be carried out by the Judicial Council in plenary session, to which the Head Magistrate shall submit a relevant report.

The competition to select the Law Commissioner and the Administrative Judge of first instance shall be open to Magistrates, law graduates - who are tenured university professors of law or that, following a competition, are members of the teaching staff of the university for legal subjects -, as well as lawyers who have exercised the profession for at least six years.

The Conciliating Judges and the *Uditori Commissariali* having served for at least 4 years can be appointed Law Commissioners. The assessment of the professional skills acquired shall be carried out by the Judicial Council in plenary session, to which the Head Magistrate shall submit a relevant report.

The competition to select the *Procuratore del Fisco* and *Pro-Fiscale* shall be open to lawyers who are at least thirty years of age and law graduates who are tenured university professors or who, following a competition, are members of the teaching staff of the university for the legal subjects.

The competition to select the Conciliating Judge shall be open to lawyers being enrolled in the register for at least four years.

Also the *Uditori Commissariali* having served for at least 2 years may be appointed as *Procuratore del Fisco, Pro-Fiscale* and Conciliating Judge. The assessment of the professional skills acquired shall be carried out by the Judicial Council in plenary session, to which the Head Magistrate shall submit a relevant report.

The competition to select the *Uditori Commissariali* shall be open to law graduates.

Art. 6

(Head Magistrate of the Court)

The Head Magistrate of the Court shall be designated for a five-year term by the Judicial Council in plenary session from among Law Commissioners having served for at least ten years.

The Head Magistrate shall be entrusted with the powers to organise and distribute the judicial work according to pre-established criteria, as well as to supervise, without prejudice to the decision-making autonomy of each Judge, coordinate and direct judicial offices, except for merely administrative functions.

The Head Magistrate shall assign the work to the Law Commissioners, Conciliating Judges, *Uditori Commissariali* and Administrative Judges of first instance, taking into account their professional skills, experience and qualifications. Moreover, the Head Magistrate shall determine the criteria for the distribution of work among the Judges of Appeal, in agreement with them.

The Judicial Council shall approve the criteria adopted by the Head Magistrate for the distribution of work at its earliest possible session.

The Law Commissioners, Administrative Judges of first instance, Conciliating Judges and *Uditori Commissariali* shall be required to precisely and promptly fulfil the duties pertaining to their office and to comply with the directions given by the Head Magistrate. Without prejudice to the incompatibilities provided for by the law, any other position may be held only if the needs of the office are met and upon prior authorisation by the Judicial Council in ordinary session. Any non-compliance shall be reported to the Judicial Council in plenary session for the necessary assessment and the adoption of any relevant measures, which will be governed by an ad hoc Regulation approved by the Judicial Council in plenary session.

The Head Magistrate shall be required to annually submit to the Great and General Council, through the Minister of Justice, a report on the state of justice, which shall include comments on the judicial activity carried out by the Magistrates of all instances.

Art. 7

(Judicial Council)

The Judicial Council shall perform representation functions and shall act as guarantor of the judiciary. It shall meet in ordinary and in plenary session.

The Judicial Council in ordinary session shall be composed of the Conciliating Judges, Administrative Judges of first instance, Law Commissioners, Judges of Appeal and Highest Judges of Appeal. It shall be presided over by the Captains Regent or, upon delegation, by the Head Magistrate. The Minister of Justice shall take part in its sessions without voting right.

The Judicial Council in ordinary session shall approve the criteria for the distribution of work adopted by the Head Magistrate under Art. 6, paragraph 4 of this Law, as well as the criteria for the assignment of tasks referred to in Art. 1, paragraphs 3 and 4 and in Art. 11, paragraph 6; it may start the review action according to the procedures established by the constitutional law; it may submit requests and provide opinions concerning the organisation of judicial offices; it shall examine general issues relative to the administration of justice with the power to submit requests and provide opinions; it shall decide on any other issue concerning the organisation of judicial work submitted to it by the Head Magistrate or by the Minister of Justice.

The Judicial Council in plenary session shall be composed of the Conciliating Judges, Administrative Judges, law Commissioners, Judges of Appeal, Highest Judges of Appeal and members of the Parliamentary Commission for Justice. It shall be presided over by the Captains Regent, or in their absence, by the President of the Parliamentary Commission for Justice. The Minister of Justice shall take part in its sessions with voting right.

The Judicial Council shall meet in plenary session to adopt all decisions referred to in Art. 3 of this Law and concerning the appointment of Magistrates, to confirm offices under Art. 4 of this Law and to designate the Head Magistrate; it shall adopt the decisions referred to in Art. 9 of this Law; it shall evaluate the professional skills acquired by the Magistrates under Art. 5 of this Law; in conformity with the constitutional law, it may suspend, as a precautionary measure, the Magistrate subject to the review action and declare his removal or disqualification in compliance with the decision of the Guarantors' Panel on the Constitutionality of Rules; it shall preliminary discuss the annual report of the Head Magistrate; it shall examine the issues concerning relations between judicial bodies and the other bodies of the State, with the power to provide guidance and proposals; it may exceptionally allow additional time to the Judges for the issuance of judgements, decrees and judicial orders, in application of Art. 2, paragraph 4 of Law No. 13 of 5 June 1923; it shall perform all other functions entrusted to the Judicial Council by the law, which are not expressly indicated among those specifically pertaining to the ordinary session.

The Judicial Council shall meet in ordinary session every six months at least twice a year and in plenary session at least once a year for the discussion of the report of the Head Magistrate; in any case, ordinary and plenary session may be convened whenever necessary. In both cases, the Judicial Council shall be convened by the Captains Regents on their own initiative or at the request of the Minister of Justice, of the Head Magistrate or of at least one third of its components.

In order to be valid, decisions adopted both in ordinary and plenary sessions shall always require the presence of at least half of their components. The decisions shall be adopted by absolute majority.

The works of each session of the Judicial Council shall result from the minutes drawn up by the secretary appointed to this end at the beginning of the session.

In all cases of liability, incompatibility and non-qualification of individual Magistrates, the latter shall be heard personally or through a special attorney, but they shall not participate in or be present at the discussions and decisions. Likewise, in case of appointment of Magistrates to higher judicial offices or in case of their confirmation in office and in all cases concerning them, those Magistrates directly involved and the members of the Judicial Council who have been members of the selection board having appointing them shall not participate in the discussions and decisions.

Art. 8

(Parliamentary Commission for Justice)

The Parliamentary Commission for Justice shall be made up of ten parliamentarians appointed by the Great and General Council at the beginning of each legislature with a majority of not less than two thirds. It shall be presided over and convened by the President, appointed by the Commission in its first sitting. The Minister of Justice shall be a full member of the Commission.

The Parliamentary Commission for Justice shall report back only to the Great and General Council.

The Parliamentary Commission for Justice shall meet before the Judicial Council is convened in plenary session with a view to discussing the issues on the agenda; at least one third of its members may start the review action of Magistrates according to the procedures established by the constitutional law; it shall examine the annual report of the Head Magistrate before its submission to the Great and General Council; as a coordination body, it shall supervise over the enforcement of decisions adopted by the Judicial Council in plenary session, which shall be submitted to the Great and General Council or for which administrative measures shall be adopted; it shall exercise the powers provided for by law. The Commission shall have the power to request the opinion of the Head Magistrate, who may also be summoned for hearings.

For the decisions of the Commission to be valid the presence of at least half its members plus one is required. The decisions shall be adopted by absolute majority.

The members of the Great and General Council enrolled in the registers of lawyers and notaries and of accountants (in possession either of a university degree or high school diploma) shall not be members of the Parliamentary Commission for Justice.

Art. 9

(Suspension of Magistrates)

A Magistrate no longer fulfilling, for personal reasons, the necessary requirements to perform jurisdictional functions may request the Judicial Council that his mandate be suspended for a maximum period of six months, during which he shall not be entitled to remuneration.

The Judicial Council may permanently terminate the mandate of a Magistrate whose health or personal conditions are such as to determine absolute and permanent incompatibility with jurisdictional functions.

The Judicial Council may temporarily suspend the Magistrate from his functions in case of temporary incompatibility, for a period of time deemed strictly necessary and in any case not exceeding six months. In this case, the remuneration shall be half the basic remuneration as established by law for that position. If, upon expiry of the suspension period, the incompatibility still applies, the Judicial Council shall order the termination of the mandate.

Art. 10

(Abstention and objection)

The Magistrate shall be required to abstain when there are serious reasons determined by family, affinity, friendship, enmity, economic or work relationships between the Magistrate or one of his close relatives and one of the parties or their defending counsels in civil or administrative proceedings, or the suspect or accused person or the injured party, or their defending counsels in criminal proceedings.

The Magistrate shall also be required to abstain in the event that he has given advice or opinions, or has unduly manifested his own conviction about the facts of the criminal proceedings, as well as for any other conflicts of interest.

The parties may object to the Magistrate if he decides not to abstain in the above-mentioned cases.

The Magistrate may also abstain for opportunity reasons when his impartiality and freedom of Judgement is undermined.

Except when it is proved that the cause for abstention is unexpected or the party demonstrates not to have been aware of such cause, a request for objection shall be mandatorily submitted in civil proceedings in *limine litis*, in administrative proceedings within the time limit of hearing fixed for the first time, and in criminal proceedings within 20 days from the notification of the first act by the Judge.

The limitation period shall be suspended from the date on which a request for abstention or objection is lodged, until the date on which the requesting party is notified of the relevant decision.

Art. 11

(Transitional and coordination rules)

The Judicial Council shall draft the regulation referred to in Article 3 within three months of the entry into force of this Law.

The provisions referred to in Article 5 of this Law relating to the requirements for the appointment of the *Procuratore del Fisco* and of the *Pro-Fiscali*, as well as the provisions on the documents in the criminal proceedings shall apply until the entry into force of the new Code of Criminal Procedure, which will introduce further provisions relating to the judiciary. The offices of the *Procuratore del Fisco* and of the *Pro-Fiscale*

shall terminate upon entry into force of the new Code of Criminal Procedure.

The procedure for the appointment of Magistrates established by this Law shall apply exclusively to Magistrates appointed after its entry into force. The Magistrates currently on duty who have already been conformed for an indefinite period of time shall not undergo any competition. The Magistrates currently on duty for an indefinite period of time, at the expiry of the two-year trial period, may be confirmed by the Judicial Council after assessment of their activity.

By way of derogation from the provisions of this Law, the *Uditori Commissariali* currently on duty, whose professional skills and experience has already been confirmed by the report of the Head Magistrate approved by the Great and General Council, shall be appointed Law Commissioners and shall take office after swearing before Their Excellencies the Captains Regent.

By way of derogation from the provisions of this Law, the Law Commissioner currently on duty with greater seniority in that position shall be appointed Head Magistrate for the term established by Article 6.

The Administrative Judge of Appeal and the Civil Judge of Appeal may be fully replaced in the performance of their functions and shall equally distribute among them the workload of the two offices. The Judicial Council shall lay down the criteria for the distribution of the judicial work between the Administrative Judge of Appeal and the Civil Judge of Appeal.

In all law provisions assigning judicial functions to the Head Magistrate of the Civil and Criminal Court or of the Administrative Court, the Head Magistrate shall be replaced respectively by the Law Commissioner to whom the matter is assigned according to the distribution of the judicial work, or by the Administrative Judge of first instance.

Art. 12

(Repeal)

The provisions of Law No. 83 of 28 October 1992, subsequent amendments and supplements and all other rules in conflict or otherwise incompatible with this Law shall be repealed.

Art. 13

(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

