



JUDICIAL COUNCIL

---

SITTING OF 20 April 2022

DECISION no. 2

---

SUBJECT: Adoption of the Rules of Procedure of the Judicial Council

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THE JUDICIAL COUNCIL  
in its sitting of 20 April 2022

- *Having regard to paragraph 28 of Recommendation CM/Rec (2010) 12 adopted by the Committee of Ministers of the Council of Europe, according to which “Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions”;*
- *Under Article 15, paragraph 11 of Constitutional Law no. 1 of 7 December 2021;*

6 present entitled to vote unanimously

Decides

on the adoption of the Rules of Procedure of the Judicial Council with the relevant text hereunder

**RULES OF PROCEDURE OF THE JUDICIAL COUNCIL**

PART I

**ELECTION OF MEMBERS, INAUGURAL MEETING AND  
SECRETARIAT**

**Art. 1**

*(Election of members)*

1. The Captains Regent shall call elections of the members of the Judicial Council by convening the Magistrates with voting rights.
2. The decision shall indicate the Magistrates with voting rights and the Magistrates eligible for each vote.
3. The meeting shall be presided over by the Captains Regent, also with the assistance of the State Institutional Secretariat for the counting procedures.
4. The vote shall be by secret ballot, on ballot papers indicating the names of the judges eligible for each category. The vote shall be expressed by drawing a cross next to the name of the eligible Magistrates.
5. In the vote for the first category, voters may express three preferences among the Law Commissioners. In the vote for the second category, voters shall express a single preference among the Judges of Appeal and the Highest Judges of Appeal.



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6. Once the voting operations have been completed, the votes shall be counted, the results shall be communicated to the Captains Regent and it shall be indicated whether a two-thirds majority has been reached for each vote.
7. If this last requirement is met, the Captains Regent shall proclaim who has been elected; if not, they shall simultaneously call new elections to be held within five days.
8. If a two-thirds majority is not reached in the second vote, the Captains Regent shall convene a new meeting, to be held within the next five days.
9. Once the voting operations have been completed, the Captains Regent shall proclaim who has been elected.
10. The election of members that are not magistrates shall take place in accordance with the provisions of Article 15, paragraph 4, point a) of Constitutional Law no. 1/2021.

### **Art. 2**

*(Seat)*

1. The Judicial Council shall be based in the Government Building. In extraordinary and exceptional circumstances, the meetings of the Judicial Council may be held at another location as indicated by the Captains Regent.

### **Art. 3**

*(Inaugural meeting and replacements)*

1. The inaugural meeting shall be convened and presided over by the Captains Regent.
2. At its first meeting, the Council shall verify the validity of the qualifications of the elected members and decide on appeals relating to eligibility or electoral operations.
3. If one of the members is ineligible or ceases to hold office for whatever reason, the Captains Regent shall call elections or add a specific item at the first possible meeting of the Great and General Council to appoint a substitute.

### **Art. 4**

*(Incompatibilities)*

1. A member who is in a concrete and current situation of incompatibility or conflict of interest with regard to a given decision shall inform the Judicial Council and abstain.
2. A member subject to disciplinary proceedings shall not take part in meetings and decisions relating to those proceedings.



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### **Art. 5**

#### *(Presidency and Vice-President)*

1. The Judicial Council shall be presided over by the Captains Regent.
2. The Head Magistrate shall act as Vice-President.
3. The Captains Regent may delegate to the Vice-President, either as a general rule or by specific acts, the responsibility of the organisation and functioning of the Judicial Council in accordance with this Regulation.

### **Art. 6**

#### *(Secretariat)*

1. Within thirty days of the inaugural meeting, the Judicial Council shall establish the Secretariat, composed of a Magistrate indicated by the Head Magistrate and an official from the State Institutional Secretariat.
2. The members of the Secretariat shall be appointed by an absolute majority and by open ballot.
3. The members of the Secretariat shall cease to hold office at the end of the Judicial Council's term of office, except in case of dismissal or resignation, and after the end of the term of office they shall continue to perform their duties until new members of the Secretariat are appointed.
4. The members of the Secretariat may only be appointed for a single term of office and may not be re-appointed until two years have elapsed since they ceased to hold office.
5. The Secretariat shall:
  - a) assist the Captains Regent and the Vice-President in the preparation and conduct of the works relating to the organisation and functioning of the Judicial Council;
  - b) ensure that the necessary documents are obtained for each file, to be kept at the disposal of the members of the Judicial Council who request it;
  - c) collect and keep the records and publications on the various matters of interest to the Judicial Council, to be kept at the disposal of the members of the Council who request it;
  - d) provide the Magistrates with non-confidential information on the Judicial Council's activities and with the files concerning them, using telematic means.
6. The Secretariat shall create and keep a computerised file for each case examined, containing the documents relating to the case and indicating:
  - a) the name of the rapporteur;
  - b) the dates of the sittings during which the file is examined;
  - c) the investigative tasks ordered and carried out;



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- d) the decisions adopted;
- e) the final decisions.

### PART II FUNCTIONING

#### **Art. 7** *(Functions)*

1. The Judicial Council shall perform the functions provided for in Constitutional Law no. 1/2021. In particular it shall:
  - a) decide on recruitment and appointment matters;
  - b) carry out the prescribed confirmation and professional skills assessments of Magistrates;
  - f) appoint the Head Magistrate and, on his or her proposal, the Alternate Court Director;
  - g) verify the incompatibilities of Magistrates;
  - h) authorise Magistrates to take up extra-judicial duties;
  - i) decide on requests for transfer of Magistrates in the Public Administration;
  - j) adopt, by 31 December each year, the annual training plans for career Magistrates and Prosecuting Magistrates;
  - k) assess and take note of the Head Magistrate's annual report on the state of justice;
  - l) decide on disciplinary actions against Magistrates;
  - m) decide on appeals and complaints in the cases provided for in this Regulation;
  - n) 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;
  - o) exercise any other function provided for by law.
2. The Judicial Council shall normally meet on a quarterly basis, unless the Captains Regent or at least three elected members specifically request otherwise.
3. In order to ensure the right to information on the decisions adopted and, more generally, on matters relating to the administration of justice, the Judicial Council shall appoint among its elected members a spokesperson for communication.

#### **Art. 8** *(Convocation and agenda)*

1. The Judicial Council shall be convened by the Captains Regent who, after consulting the Secretariat, shall draft the agenda.



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2. Any of the members may request that the Judicial Council be convened urgently to discuss a specific issue. If the Captains Regent decide to accept the request, they shall convene the Judicial Council within fifteen days. If they decide not to accept the request, they shall inform the Judicial Council at the next meeting. If the Council decides to accept the request, it shall set the date for the discussion.
3. In case of impediment, the Captains Regent may delegate to the Vice-President the urgent convocation and the presidency of the Judicial Council.

### **Art. 9** *(Processing of files)*

1. The items on the agenda drafted by the Captains Regent shall be the subject of discussion and decision. The Captains Regent shall appoint from among the elected members a rapporteur for each item.
2. The items on the agenda shall be divided into paragraphs.
3. The agenda shall be accompanied by the documents relating to the discussion of the topic, which, in exceptional cases where it is technically impossible to attach them, shall be made available to the members at the Secretariat, who may examine them and take copies thereof in the five days before the date of the meeting.
4. The notice of the meeting, indicating the agenda and the attached documents, shall be sent to the members by e-mail to the address indicated and shall be received at least five days before the date of the meeting. In case of need or urgency, the notice of the meeting may also be sent to the members the day before the meeting.
5. At the beginning of each meeting, upon proposal of each of its members, the Judicial Council may decide by simple majority to include other items in the agenda in case of particular urgency and relevance. If a member requests it, the discussion of the new item shall nevertheless be postponed to the next meeting.

### **Art. 10** *(Publicity of the sittings)*

1. The meetings of the Judicial Council shall be open to the public, except if there are reasons of security or protection of the secrecy of the criminal investigation or protection of the privacy of the persons concerned. The meeting or parts thereof shall not be open to the public if it is decided upon proposal of a member of the Council, in the absence of an audience, immediately before the examination of the matter.



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2. If the meeting or parts thereof are not open to the public, the public shall leave the room where the sitting is taking place and the television filming, the recording and any disclosure to all media shall cease.
3. When the meeting is open to the public, the Presidency may establish the modalities and the appropriate limitations of access in accordance with the indications of the Judicial Council.
4. The meetings and hearings relating to disciplinary proceedings and to the annual report on the state of justice shall not be open to the public.

### **Art. 11**

*(Validity of the sittings)*

1. The Judicial Council shall be deemed validly constituted if at least half of the elected members are present.
2. The presence quorum shall be established at the beginning of the meeting by roll call. The quorum may be verified during the meeting only upon request of at least one member.
3. If a member leaves the meeting, he or she shall inform the secretary taking the minutes.

### **Art. 12**

*(Order of topics)*

1. The topics shall be discussed following the order in which they are listed in the notice of the meeting, unless the Judicial Council decides by simple majority to bring forward or postpone the topic or to postpone it to another meeting.
2. The Captains Regent may in any case send messages or communications to the Judicial Council, even if not indicated on the agenda or in the notice of the meeting.

### **Art. 13**

*(Discussion)*

1. The modalities and timing of the discussion shall be regulated by the Captains Regent.
2. The rapporteur shall introduce and explain the topic in a clear and concise manner in 15 minutes.
3. Any member wishing to speak during the discussion shall ask to take the floor and shall speak after being authorised by the Presidency for a maximum of ten minutes.
4. Replies of five minutes shall be admitted.



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5. Due to the particular complexity of the subject matter, the Captains Regent may authorise doubling these time limits.

**Art. 14**  
*(Decisions)*

1. Decisions shall be adopted with the favourable vote of the majority of the members present with voting rights, except in cases where the law expressly provides for other kinds of majorities.
2. In the event of a tie, the decisions shall be deemed not to have been adopted.
3. Members who abstain, cast an invalid vote or cast a blank ballot shall also be deemed to be present.
4. Votes shall be expressed by show of hands unless, if they concern persons, they are expressed by means of a ballot paper upon request of a member.
5. The Captains Regent shall announce the result of the vote after the secretary taking the minutes has counted the votes.

**Art. 15**  
*(Closure of the discussion)*

1. At the end of the discussion and, if necessary of the vote, the Captains Regent, after having declared the item closed, shall move on to the next item on the agenda.
2. Once the whole agenda has been discussed, the Captains Regent shall declare the meeting closed.

**Art. 16**  
*(Minutes)*

1. The works of the meetings shall be recorded in the minutes drawn up by the Secretariat and printed in the minute book, which shall be kept and stamped by the Secretariat.
2. The minutes shall be drawn up by summarising the meeting, the introductory remarks, the speeches, the decision and the result of the vote, indicating the names of those who abstained and those who did not vote. The notice of the meeting and the texts of the proposed decisions shall be attached to the minutes.
3. The recording of the meeting shall be organised to facilitate the work of the secretary taking the minutes and shall be kept at the Secretariat. The members present at the meeting who make an express request to the Secretariat, may listen to the recording of the meeting at the Secretariat.



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4. If at least one member present at the meeting requests it, the minutes shall consist of a transcription of the recording, also resorting to an external company.
5. The Secretariat shall prepare the draft minutes within ten days and send them to the members. If no comments on the merits are submitted within five days of transmission, the minutes shall be deemed approved and shall be signed by the Presidency and the Secretary of the meeting; otherwise, the minutes shall be approved by the Judicial Council at its next meeting, after decision on the proposed corrections or additions.
6. In case of urgency, the Council may order the immediate implementation of the decisions adopted, without waiting for the approval of the minutes of the meeting, which shall be submitted for approval at the next meeting.
7. Copies of the minutes or extracts thereof may not be issued until they have been approved, printed and signed by the Presidency of the meeting. On the instructions of the Judicial Council, the Secretariat shall ensure that the decisions are communicated to the subjects and Offices of the Public Administration concerned.
8. Once the minutes have been approved, the Secretariat shall send the adopted decisions to the members of the Judicial Council, the President of the Parliamentary Commission for Justice and the Minister of Justice.

### **Art. 17**

*(Access to documents and taking of copies)*

1. The members of the Judicial Council shall be entitled to request and obtain copies of the minutes from the Secretariat.
2. Anyone shall be entitled to examine or request and obtain a copy of the minutes and decisions adopted in open session.
3. The following documents shall not be accessible:
  - a) documents subject to the obligation of secrecy or a ban on disclosure expressly provided for by law;
  - b) documents which concern the protection of public order, judicial police activities and the conduct of investigations, and the personal safety of magistrates;
  - c) documents which concern people's privacy and health;
  - d) documents which concern the preliminary investigation stage of criminal, disciplinary and administrative proceedings.
4. After consulting the Secretariat, the Presidency shall be responsible for issuing copies or authorisations for examining documents, and may delegate the Vice-President for this purpose, also in general.
5. The examination or the issuance of copies of the acts and documents drafted or acquired during the council procedure in open session shall be authorised upon request of any private or public entity that has a direct, concrete and current interest,





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corresponding to a legally protected situation and connected to the document to which access is requested. In case of documents containing sensitive and/or judicial data, access shall be permitted insofar as strictly necessary and under the terms of Law no. 171/2018 and subsequent amendments and integrations in case of data which could reveal the health status and the sexual sphere.

6. It shall not be permitted to examine or take copies of the minutes and decisions adopted in secret sessions.

7. In disciplinary proceedings which have not yet been finalised, the examination and issuance of copies of the minutes of the proceedings and of the documents drafted or acquired in the same proceedings may be authorised only in cases where such documents are strictly necessary for the applicant to assert, directly and immediately, his or her right or interest in legal proceedings.

8. Reasons shall be given for any decision denying or partially denying access, and such decision may be challenged before the Judicial Council, which shall decide within 30 days.

9. Copies shall also be issued electronically, sending them by e-mail, at the applicant's expense.

### **Art. 18**

*(Secrecy obligation)*

1. The members of the Judicial Council shall be bound to secrecy with regard to Council meetings which are not open to the public. Without prejudice to the obligation to comply with the rules on the confidentiality of personal data, the decisions adopted, the result of votes and the vote cast by each member shall under no circumstances be secret, except in case of security requirements or disciplinary proceedings that are not public yet.

2. The Members of the Secretariat shall also comply with this obligation.

### **Art. 19**

*(Justice Portal)*

Within four months of the entry into force of this Regulation, the Justice Portal shall be created, and the following documents shall be published on the website in electronic format by the Secretariat:

- a) competition and recruitment announcements relating to the recruitment and the career of Magistrates;
- b) the decisions of the Judicial Council, except those which shall remain secret;
- c) any other document which the Council deems appropriate to publish.

2. The Judicial Council shall decide on the form, structure and design of the Portal, as well as the manner in which the aforementioned acts or documents shall be published electronically.



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**PART III**  
**RECRUITMENT, ASSESSMENT OF PROFESSIONAL SKILLS, CONFIRMATION,**  
**APPOINTMENT OF THE HEAD MAGISTRATE AND THE ALTERNATE COURT**  
**DIRECTOR, TRANSFER OF MAGISTRATES IN THE PUBLIC ADMINISTRATION**

**Art. 20**

*(Initiation of the recruitment procedure)*

1. The recruitment procedure shall be initiated upon request of the Head Magistrate, who shall give detailed reasons for the need to fill the post and specify the number of posts to be filled in the respective roles and the method of recruitment.
2. The Judicial Council may ask the Head Magistrate for any additional information, including documents, deemed necessary for the decision.
3. The Judicial Council, after having assessed the request, shall accept or reject it.
4. The reasoned decision of acceptance shall indicate the method of recruitment and the number of posts to be filled in the respective roles and shall be transmitted to the Great and General Council.

**Art. 21**

*(Issuance of internal recruitment announcements and external competition announcements)*

1. After having received the decision of the Great and General Council accepting the recruitment proposal, the Judicial Council shall issue the recruitment or external competition announcement, which shall state:
  - a) the requirements for appointment referred to in Article 6 of Constitutional Law no. 1/2021;
  - b) the tests or qualifications for the external competition, the self-assessment form for the internal recruitment, the assessment criteria established by law and by this Regulation;
  - c) the conditions, incompatibilities and remuneration established by law for fulfilling this mandate;
  - d) the deadline and place for submitting applications to participate;
  - e) the subjects of the written and oral tests, if any;
  - f) the address and e-mail address for communications.
2. The announcements shall be published on the Justice Portal and on the website of the Ministry of Justice. The Council may establish further modalities of publication.



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**Art. 22**

*(Selection Board for the external competition)*

1. After the deadline for submitting applications has expired, the Judicial Council shall appoint the Selection Board for the external competition, which shall be composed of three members, one of whom acting as Chairman, chosen from among legal experts of repute, including outside the San Marino Judiciary.
2. The Secretariat shall notify the members of the Selection Board of their appointment by e-mail.
3. The Board shall meet within 30 days of notification of the appointment.
4. At its first meeting, the Board shall assess the admissibility of applications, admit candidates, establish the criteria for assessing qualifications and the rating to be given and, in case of competitions based on tests, it shall establish the criteria for assessing the written and oral tests and the date of the tests, notifying candidates by e-mail.
5. The Secretariat shall assist the Selection Board.

**Art. 23**

*(External competition on the basis of qualifications)*

1. In the competition for the recruitment of Judges of Appeal, Highest Judges of Appeal, Judges for the Extraordinary Remedies and Judges for Civil Liability Actions, the Board, after verifying the formal compliance of the applications, shall assess the candidates' curriculum vitae, qualifications and publications in accordance with the following criteria:
  - a) knowledge of San Marino law;
  - b) expertise in the matter involved by the post to be filled;
  - c) practical experience.
2. Once the documents have been examined, the Board shall formulate an overall judgement for each candidate, give ratings and draw up the ranked list.
3. The ranked list, together with the competition documents, shall be sent to the Judicial Council through the Secretariat.

**Art. 24**

*(External competition on the basis of tests)*

1. In the competition on the basis of tests for the recruitment of Law Commissioners, Prosecuting Magistrates and Uditori Commissariali, on the day fixed for the written test, the Board shall meet to prepare the test and establish its duration.



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2. The anonymous evaluation of the tests shall be guaranteed.
3. The oral test shall consist of five questions on various professional subjects, drawn by the candidate from a list containing an appropriate multiple number of questions.
4. The tests shall be evaluated in accordance with the following criteria established by law, which shall be added to those indicated by the Examination Board at its first meeting:
  - a) knowledge of San Marino law;
  - b) aptitude for factual assessment, reasoning based on evidence and principles, familiarity with interpretation techniques.
5. Once the written tests have been corrected and the oral test has been held, the Board shall formulate an overall judgement for each candidate, give ratings and draw up the ranked list.
6. The ranked list, together with the competition documents, shall be sent to the Judicial Council through the Secretariat.

**Art. 25**

*(Selection by internal career  
advancement)*

1. Once the deadline for submitting applications, to which a self-assessment form shall be attached, has expired, the Judicial Council shall appoint the Head Magistrate to prepare the report on each candidate, which shall be drawn up in accordance with the criteria established by the law on the judicial system, and shall set a deadline for its submission.
2. The elements for the evaluations shall be acquired through the examination of a sample of the decisions and decisional measures for the selection of the Judges of Appeal, a sample of the case files for the selection of the Law Commissioners, to be formed taking into account the different subjects and difficulties, as well as statistical data, complaints and reports made on previous occasions of promotion, confirmation or evaluation.
3. The report shall show the criteria used for choosing the samples, attaching the statistical data and, while respecting the rights of third parties, the materials used.
4. The Head Magistrate shall transmit the report and attached documents to the Judicial Council through the Secretariat.

**Art. 26**

*(Assessment of professional skills and  
appointment)*

1. After receiving the ranked list or the report of the Head Magistrate, the Judicial Council shall meet within thirty days for the assessment of professional skills of the candidates.



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2. The comparative evaluations carried out by the Selection Board or the Head Magistrate shall not be binding for the Judicial Council, which may autonomously and justifiably depart from them.
3. In the event of a positive outcome, the Judicial Council shall appoint the magistrate who has won the selection or competition by means of a decision giving an account of the comparative evaluations.
4. The participants in the recruitment or external competition procedure shall be informed of the decision through the Secretariat.
5. In the event of appointment by external competition, the Council shall notify the Captains Regent to set the date of the oath.

### **Art. 27**

#### *(Training and assessment of professional skills of the Uditore Commissariale)*

1. The first assessment of professional skills, which takes place two years after taking the oath, shall be aimed at verifying the acquisition of the ability to deal with and solve theoretical and practical issues autonomously.
2. After taking office, the training of the Uditore Commissariale shall be entrusted to Magistrates appointed by the Head Magistrate, who shall prepare a programme aimed at the study and in-depth study of specific procedural or substantive means, also with regard to concrete cases, and communicate it to the Head Magistrate. With regard to civil law, a direct approach to the sources of common law shall be prescribed, through the identification and analysis of the ordering principles, with particular attention to the factual assessment, the theory of interpretation and the grounds of measures. For the purpose of training, and in particular to learn the motivational technique, the magistrate trainers may delegate to the Uditori Commissariali the investigative functions and the drafting of minutes of judgements.
3. Two years after taking the oath, the Head Magistrate shall submit a report to the Judicial Council, accompanied by the Uditore Commissariale's self-assessment form, the reports of the magistrate trainers, a sample of papers and documents, and statistical data.
4. After having received the report of the Head Magistrate, accompanied by the above-mentioned documents, the Judicial Council shall decide on the result of the assessment, stating its reasons. In the event of a negative outcome, the Uditore Commissariale shall be admitted to a further assessment after one year. If the new assessment is unsuccessful the Uditore Commissariale shall cease to hold office.
5. If the Uditori Commissariali have passed the first assessment, they shall continue their training under the guidance and supervision of the magistrate trainers for the following two years, during which they shall demonstrate their ability to independently manage the preliminary investigation stage of the proceedings entrusted to them, preparing them for final judgement.



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6. After having received the report of the Head Magistrate and the documents referred to in paragraph 3 at the end of the apprenticeship for the second two-year period, the Judicial Council shall decide whether the assessment has been passed, stating its reasons.
7. In the event of a positive outcome, the Judicial Council shall notify the competent offices for remuneration purposes through the Secretariat.
8. In the event of a negative outcome, the Uditore Commissariale shall be admitted to a further assessment after one year. If the new assessment is unsuccessful, the Uditore Commissariale shall cease to hold office, and the Secretariat shall communicate the relevant decision to the administrative offices for the relevant measures.
9. The Judicial Council shall decide after hearing the Uditore Commissariale.
10. By virtue of the transitional provisions of Article 8, paragraph 3 of Constitutional Law no. 1/2021, the Judicial Council shall note that Uditori Commissariali who have been in service for at least three years since the entry into force of the law shall not be subject to the relevant assessments of professional skills, and it shall inform the competent administrative offices for remuneration purposes.

### **Art. 28**

*(Assessment of professional skills of the Judge and the Judge of Appeal recruited by external competition)*

1. The assessment of professional skills of the Judge and the Judge of Appeal recruited by external competition, after the three-year probationary period, shall be carried out by the Council on the basis of the report drawn up by the Head Magistrate.
2. The assessment shall take into account the following criteria:
  - a) for Judges of Appeal:
    - proven professional skills and knowledge of San Marino law;
    - 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.
  - b) for Law Commissioners:
    - 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 and Registry staff;
    - balance in decision-making, understood as a correct balancing of the interests at stake, and proper consideration of the rights of the parties;



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- efficiency in the organisation of work;
- accuracy in decisions and measures taken.

3. The Head Magistrate shall prepare a special report on the basis of the self-assessment form prepared by the Magistrate concerned, an examination of a sample of the decisions and case files, to be drawn up taking into account the various matters and difficulties, any complaints and statistical data. The report shall show the criteria used for choosing the samples, the statistical data and, while respecting the rights of third parties, the materials used shall be attached.

4. The Judicial Council shall decide, by means of a reasoned decision, whether to confirm the appointment if the outcome of the assessment is positive or, after hearing the Magistrate concerned, to terminate the appointment if the outcome is negative. The decision shall be communicated by the Secretariat to the competent administrative offices.

### **Art. 29**

#### *(Periodic assessments of Magistrates)*

1. The periodic assessments of professional skills referred to in Article 9, paragraph 4 of Constitutional Law no. 1/2021 shall be carried out according to the procedures referred to in the preceding Article in so far as they are compatible.

2. Before deliberating on the outcome of the assessment, the Judicial Council shall communicate the report of the Head Magistrate to the person concerned and, if necessary, shall convene him/her for the relevant hearing.

3. The Judicial Council shall conclude the assessment procedure by means of a reasoned decision, taking into account the observations and documents prepared by the interested party.

### **Art. 30**

#### *(Appointment of the Head Magistrate and the Alternate Court Director)*

1. The Head Magistrate shall be appointed by the Judicial Council from among career Magistrates with a seniority of at least five years.

2. Before the expiry of the term of office, the Judicial Council shall issue the recruitment announcement. The recruitment shall be carried out on a comparative basis among those who have submitted an application.

3. The Judicial Council shall decide on the basis of an overall assessment of the following criteria:

- a) knowledge in all areas of jurisdiction;
- b) problem solving aptitude;
- c) organisational skills;
- d) knowledge of the administrative services of the Court;
- e) any experience as Alternate Court Director;



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- f) ability to interact with other Magistrates, Lawyers and Registrars and to work also as a team;  
g) any experience in supranational bodies.
4. The assessment shall be carried out on the basis of the candidates' self-assessment forms, attached to the application, the reports on the state of justice and other information contained in the Judicial Council files or acquired by the Secretariat.
5. Any magistrate against whom a disciplinary sanction other than a warning has been imposed or disciplinary action has been taken for acts punishable by sanctions other than a warning may not be appointed Head Magistrate.
6. The Judicial Council shall decide by means of a reasoned decision.
7. In the event of exceptional and contingent circumstances, the Judicial Council may initiate recruitment from among persons outside the San Marino Judiciary of the highest repute and proven experience in the management of judicial structures or offices, explaining in the decision the specific reasons for this and the specific requirements.
8. Once the deadline for submitting applications, which must be accompanied by a *curriculum vitae*, qualifications and any publications, has expired, the Judicial Council, after a comparative assessment of the candidates, shall appoint the Head Magistrate by means of a reasoned decision, selecting the candidate most suitable to meet the exceptional and contingent circumstances leading to the external recruitment.
9. The duration of term of office shall be established by law. The Judicial Council shall decide on the extension of the term of office after a reasoned assessment of the activities carried out.
10. On the proposal of the Head Magistrate, the Judicial Council shall appoint the Alternate Court Director. The proposal shall indicate the appropriate elements to allow the assessment of the capacity of the candidate to perform the tasks referred to in Article 14, paragraph 5 of Constitutional Law no. 1/2021.

### **Art. 31**

*(Extension of the term of office of Magistrates by specific task)*

1. The duration of the term of office of Magistrates by specific task shall be established by law.
2. The extension, accompanied by a self-assessment form, shall be requested by the Magistrate concerned from the Judicial Council which, before the expiry date, shall request a report from the Head Magistrate on the work carried out by the Magistrate.
3. After receiving the report of the Head Magistrate, containing the statistical data and the assessment of the activity carried out according to the criteria established for periodic assessments, in so far as they are compatible, and after hearing, where necessary, the Magistrate concerned, the Judicial Council shall decide on the extension.
4. The decision shall be communicated by the Secretariat to the interested person and to the administrative offices for the relevant subsequent actions.





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### **Art. 32**

*(Transfer to the Public Administration)*

1. A Magistrate with at least ten years seniority may apply to the Judicial Council for being transferred to the Public Administration.
2. The request shall include an adequate explanation of the reasons for the request.
3. The Judicial Council, having assessed the request and heard, where necessary, the Magistrate concerned and the Head Magistrate, shall decide by means of a reasoned decision, also informing the Congress of State of the areas to which the Magistrate may be usefully assigned.
4. After receiving the Judicial Council's decision, the Congress of State shall decide on the Magistrate's position in the Public Administration.

## PART IV

### **DISCIPLINARY PROCEEDINGS**

### **Art. 33**

*(General principles)*

1. Violations of duties prescribed by law shall give rise to disciplinary liability. Violations of the rules of conduct provided for in the code of ethics, if particularly serious or repeated, may give rise to disciplinary liability.
2. The Judicial Council shall be responsible for disciplinary decisions, in accordance with the procedure provided for in Article 16 of Constitutional Law no. 1/2021 and the provisions of this Regulation.
3. The Head Magistrate and at least one third of the Parliamentary Commission for Justice shall be entitled to initiate disciplinary proceedings.
4. Complaints and reports on disciplinary matters shall be addressed to the Head Magistrate or to the President of the Parliamentary Commission for Justice. Complaints and reports received directly by the Judicial Council shall be forwarded by the Secretariat to the Head Magistrate and to the President of the Parliamentary Commission for Justice.
5. Disciplinary decisions shall be taken within one year from the date on which the proceedings are entered in the special register referred to in Article 40 of this Regulation. This term may be extended for a period not exceeding six months by reasoned decision of the Judicial Council.



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6. Disciplinary proceedings shall be based on the principle of reasonable duration and, for anything not expressly provided for, the rules of the Code of Criminal Procedure shall apply, in so far as they are compatible.

**Art. 34**

*(Notifications and Communications)*

1. For the purposes of disciplinary proceedings, the Magistrates shall be considered as having an address for service at the Court, unless they have indicated a different e-mail address for notifications and transmission of documents.
2. The Head Magistrate and the Parliamentary Commission for Justice shall be considered as having an address for service at the respective offices.
3. The Magistrate against whom the precautionary suspension is ordered shall, at the time of execution of the decision, communicate the address at which communications and notifications shall be sent by e-mail.

**Art. 35**

*(Notice of violation transmitted to the Head Magistrate)*

1. Complaints and reports concerning the conduct of Magistrates, addressed to the Head Magistrate, shall be lodged or sent by registered letter with acknowledgement of receipt or by e-mail to the address of the Criminal Registry of the Court.
2. In order to be admissible, complaints and reports, signed by the person lodging them, shall be made in writing and not in anonymous form, and shall contain an indication of the Magistrate to whom the conduct is attributed, a detailed description of the facts that are alleged to constitute a disciplinary offence and the supporting evidence.
3. Investigation secrecy shall not prevent disciplinary reporting.

**Art. 36**

*(Register of reports)*

1. A confidential register of disciplinary complaints and reports shall be kept at the Registry.
2. The Registrar shall enter the reports and complaints received in chronological order in this register.
3. The entry must include the personal details of the reporting person and the reported person, the alleged offence, the time and place of the offence and any evidence.



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4. After the entry, the measures adopted by the Head Magistrate shall be recorded.
5. The register shall be kept confidential by the Registrar and only the Head Magistrate shall be granted access to it. Access to the register shall be recorded by the Registrar.

**Art. 37**

*(Anonymous complaints and reports)*

1. Anonymous complaints and reports shall be directly and immediately filed by the Parliamentary Commission for Justice or the Head Magistrate and shall be destroyed after five years.
2. Complaints and reports that are not authentic or do not allow the author to be identified with certainty shall also be considered anonymous.

**Art. 38**

*(Creation of the file)*

1. The Registry, upon receipt of the report or complaint, shall enter the details and the report of the disciplinary offence in the special register, and shall create a file containing, in addition to the report or complaint, the documents of the Head Magistrate, any investigative measures and the final decision.

**Art. 39**

*(Admissibility and not manifest unfoundedness)*

1. The Head Magistrate, after receiving the file, shall make a preliminary assessment of the admissibility and not manifest unfoundedness of the report or whether the reported offence is time-barred.
2. The report shall be considered inadmissible if:
  - a) it is not in writing;
  - b) it is formulated anonymously;
  - c) it does not contain an indication, not even *per relationem*, of the magistrate accused;
  - d) it does not indicate the facts which allegedly constitute a disciplinary offence;
  - e) in all other cases provided for by the law or this Regulation.
3. The report shall be considered manifestly unfounded if it is clear that the charge is not relevant or that the accused did not commit it.
4. For the purpose of assessing the admissibility and manifest unfoundedness of the report, the Head Magistrate may carry out summary investigations, without the need for an adversarial hearing, by acquiring documents



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and statements and - where necessary - by hearing the Magistrate concerned, the complainant or other persons aware of the facts.

5. Within a time limit of ninety days from receipt of the report or the complaint, which may be extended once by means of a reasoned decision for an additional thirty days, the Head Magistrate shall:

- a) dismiss the report if, also in the light of summary investigations, it is found to be inadmissible, manifestly unfounded or that the disciplinary offence is time-barred, notifying the Judicial Council thereof;
- b) promote the initiation of proceedings, by means of a reasoned decision which must explain the factual and legal grounds on the basis of which there are serious and reasonable grounds to suspect the offence has been committed.

6. The file with the request to initiate proceedings shall be transmitted to the Judicial Council. The request shall be notified to the accused Magistrate and to the person who lodged the complaint or report.

7. In the request, the Head Magistrate may state the existence of serious reasons preventing the accused magistrate from remaining in office, for the purpose of precautionary suspension.

### **Art. 40**

#### *(Registration of disciplinary proceedings)*

1. The Presidency of the Judicial Council, upon receipt of a request to initiate proceedings, shall enter it in the Register of Disciplinary Proceedings kept by the Secretariat, which shall compile the file.
2. The entry shall contain an indication of the body initiating the proceedings, the personal details of the accused magistrate and the reporter, the provisional charge and the documents on which the charge is based.
3. Measures subsequently adopted and investigative acts carried out shall be recorded in the register.

### **Art. 41**

#### *(Investigation)*

1. When proceedings are initiated for acts punishable by sanctions other than a warning, the Judicial Council, having received the file from the Secretariat, shall decide on its transmission to the Law Commissioner in charge of the preliminary investigation, in accordance with Article 16, paragraph 2, of Constitutional Law no. 1/2021, keeping a certified copy.
2. The causes of abstention and objection referred to in Article 10 of Qualified Law no. 145/2003 and subsequent amendments and integrations, on which the Presidency of the Judicial Council shall decide



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after consulting the Secretariat shall be applied. If the incompatibility is ascertained, the designated Law Commissioner shall be replaced by one of the Law Commissioners who is not a member of the Judicial Council, according to the order of replacement indicated in the organisational provision of the Head Magistrate. If the incompatibility concerns all the Law Commissioners who are not members of the Judicial Council, article 4, paragraph 2 of Constitutional Law no. 1/2021 shall apply.

3. For the conduct of the preliminary investigations, the Law Commissioner shall avail himself of the Court Registry.

4. The Law Commissioner shall carry out the investigation exclusively on the disciplinary offence reported in the act initiating the proceedings. If, during the investigations, other facts which may give rise to different or further cases involving disciplinary liability emerge, he shall notify the Head Magistrate and the Secretariat.

5. The Law Commissioner shall inform the Magistrate concerned without delay of the initiation of the proceedings and the results of the preliminary investigation. The communication shall contain an indication of any useful element, an invitation to formulate in writing any observations and deductions and any investigation requests within ten days of receipt, a notice of the right to be assisted by a counsel and of the fact that, if the counsel's address is not indicated as address for service, communications relating to the proceedings shall be sent by registered letter with acknowledgement of receipt to the places and address indicated in Article 34.

6. The Law Commissioner, also upon request of the Magistrate concerned, may hear witnesses, order comparisons and expert opinions, invite the person concerned to make statements with the assistance of his/her counsel, acquire acts and documents.

7. The investigations requested by the accused shall be admitted if deemed relevant. The reasoned decision of rejection may be challenged with the final decision.

8. The activities of the Law Commissioner shall be carried out in adversarial proceedings with the Magistrate concerned, who shall be entitled to ask questions to the witnesses, appoint technical consultants and ask the expert additional questions up to the day on which the expert's operations begin. The taking of evidence shall be documented by means of specific minutes signed by those who took part in the formation of the act.

9. In case of need and urgency, the Law Commissioner may proceed to carry out investigations by means of remote meetings, with audio and video, using a platform that shall ensure secrecy. The Law Commissioner shall be assisted by the Registrar or Actuary who shall draw up the minutes. The provisions of the Code of Criminal Procedure shall apply for the taking of evidence and when carrying out investigative measures in so far as they are compatible.



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### **Art. 42**

*(Conclusion of the investigation and orders of the Law Commissioner)*

1. At the end of the preliminary investigation, if the Law Commissioner considers the charge unfounded or if the evidence does not allow to support the allegation before the Judicial Council, he/she shall order the dismissal of the proceedings by means of a reasoned decision notified to the accused magistrate and to the person who initiated the disciplinary action.
2. Otherwise, he shall take disciplinary action by formulating the charge and, by means of a reasoned decision, shall refer the case to the Judicial Council, to which he shall transmit the acts.
3. The reasoned decision of indictment shall include the charge, with an indication of the facts charged and the rules violated, together with a list of the evidence and, if any, a list of witnesses, and shall be notified to the accused and to the person who initiated the disciplinary action.

### **Art. 43**

*(Appeal against dismissal)*

1. The person initiating the disciplinary action may lodge an appeal against the decision before the Judge of Appeal designated by the Judicial Council, stating the specific factual and legal grounds supporting the appeal.
2. The causes of abstention and objection referred to in Article 10 of Qualified Law no. 145/2003 and subsequent amendments and integrations, on which the Presidency of the Judicial Council shall decide after consulting the Secretariat, shall apply.  
If the incompatibility is ascertained, the designated Judge of Appeal shall be replaced by one of the Judges of Appeal who is not a member of the Judicial Council, according to the order of replacement indicated in the organisational provision of the Head Magistrate. If the incompatibility concerns all the Judges of Appeal who are not members of the Judicial Council, article 4, paragraph 2 of Constitutional Law no. 1/2021 shall apply.
3. The Law Commissioner in charge of the preliminary investigation, upon receipt of the act, shall give the magistrate concerned a time limit of ten days to reply, after which he shall forward the file to the Judge of Appeal.
4. The Judge of Appeal, by means of a reasoned decision, shall confirm the decision to file the case or revoke it and refer it back to the Judicial Council for the disciplinary decision. In this case, the Judge of Appeal shall take disciplinary action by formulating the charge, indicating the facts charged and the rules violated, together with a list of any possible witnesses, and referring the case to the Judicial Council. The measure shall be notified to the accused and to the person who initiated the disciplinary action.



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**Art. 44**

*(Setting of the date of the discussion hearing)*

1. After having received the acts, the Judicial Council shall set the date for the discussion hearing and notify the accused and the person who initiated the disciplinary action at least thirty days in advance.
2. The communication shall include:
  - a) the personal details of the accused;
  - b) a clear and precise statement of the charge, indicating the rules violated;
  - c) an indication of the place, day and time of the appearance before the Judicial Council, with the notice that the accused may be assisted by a counsel and that, in the event of failure to appear not due to legitimate impediment or in the absence of a valid justification, the proceedings shall be conducted in his/her absence;
  - d) the notice that the accused, within the time limit of fifteen days before the date set for the hearing, shall have the right to ask to be heard, to produce documents or request their acquisition, to submit pleadings, to indicate witnesses with a brief description of the circumstances on which they shall report;
  - e) the list of witnesses the Judicial Council intends to hear.

**Art. 45**

*(Discussion hearing)*

1. The causes of abstention and objection referred to in Article 10 of Qualified Law no. 145/2003 and subsequent amendments and integrations, on which the Presidency of the Judicial Council shall decide after consulting the Secretariat, shall apply to the members of the Judicial Council.
2. The accused Magistrate may be defended and represented by a counsel, submit pleadings and documents, make statements and, if he so requests or consents, undergo examination by the Judicial Council, propose the hearing of witnesses and the acquisition of documents, question witnesses or have them questioned.
3. 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.
4. The Judicial Council shall appoint a rapporteur and, if it considers it necessary to adopt the decision, he shall hear witnesses or acquire documents ex officio.



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5. The Judicial Council, by means of a measure that cannot be challenged immediately and independently, shall decide on requests for investigation, accepting them if they are relevant and not manifestly dilatory.

6. In particular:

- a) acquire the documents submitted by the accused;
- b) examine the admitted witnesses;
- c) proceed, either ex officio or upon request of a party, to the admission and acquisition of any further evidence considered relevant for the establishment of the facts, in adversarial proceedings between the parties. The provisions of the Code of Criminal Procedure shall apply for the taking of evidence in so far as they are compatible.

7. For the purposes of the decision, the following may be used:

- a) statements and documents provided by the accused;
- b) statements and documents provided by the accused;

8. Once the investigation has been completed, the Presidency shall open the discussion by giving the floor, in order, to the person who initiated the disciplinary action, the accused and his counsel. However, the accused shall have the right to speak last.

**Art. 46**  
*(Decision)*

1. At the end of the discussion, in the absence of the parties and after hearing the rapporteur, the Judicial Council shall decide by simple majority on the disciplinary action with a judgement excluding the charge if the fact is not envisaged by law as a disciplinary offence, if there is no case to answer or if the fact is of minor importance, if the accused did not commit it or if there is not sufficient evidence of guilt, or with a judgement applying a disciplinary sanction other than a warning if it declares the Magistrate guilty of the offence ascribed to him.

2. The judgement shall be filed within thirty days of the discussion hearing and shall be notified to the accused Magistrate and the person who initiated the disciplinary action.

**Art. 47**  
*(Appeal)*

1. The judgement referred to in Article 46 of the Regulation, within the peremptory time limit of thirty days from its notification, may be appealed to the Guarantors' Panel as a collegiate body, on grounds of legitimacy or merit, by the Magistrate concerned and by the Parliamentary Commission for Justice that initiated the proceedings and participated in the discussion hearing.





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2. In order to be admissible, the appeal, the lodging of which shall suspend the enforceability of the judgement, shall contain a specific indication of the grounds.
3. The hearing before the Guarantors' Panel shall take place on an adversarial basis between the parties.
4. The provisions of the Code of Criminal Procedure shall apply in so far as they are compatible.

**Art. 48**

*(Precautionary suspension)*

1. The Judicial Council shall order precautionary suspension in cases where the charge relates to facts which, pending the disciplinary proceedings, do not allow the Magistrate to remain in office.
2. The precautionary suspension of the Magistrate may be ordered ex officio or upon request of the Head Magistrate and the Parliamentary Commission for Justice at the same time as the initiation of disciplinary proceedings, and may be proposed by the Law Commissioner when disciplinary action is taken.
3. The requests and the proposal shall contain a specific indication of the serious reasons that do not allow the Magistrate to remain in office.
4. The Judicial Council, after hearing the Magistrate, shall decide on the request or proposal within thirty days, by means of a reasoned decision which shall be immediately enforceable and notified to the applicant, the Magistrate, the Head Magistrate and the competent administrative offices.
5. The measure of precautionary suspension may be challenged by the Magistrate within thirty days from the communication, on grounds of legitimacy and merit, by appealing to the Guarantors' Panel, which may suspend its enforceability by reasoned order.

**Art. 49**

*(Procedure for the sanction of warning)*

1. If the offence charged is punishable only by the sanction of warning, the Judicial Council, having received the request to initiate disciplinary proceedings, shall meet within the following thirty days, in a non-public hearing.
2. The accused and the proposer shall be notified of the convocation at least twenty days before the hearing. The communication shall indicate the right of the accused to appoint a counsel, to transmit observations, to produce documents, and to request investigative measures, with the warning that the proceedings shall be conducted in his absence if he fails to appear without a justified reason.
3. The Judicial Council:
  - a) shall ascertain the regularity of the communication to the accused;



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- b) shall provide for the hearing of the accused who intends to answer, if he/she is present;
  - c) shall ask the Head Magistrate, where necessary, for further verifications and clarifications by means of a specific report;
  - d) may, either ex officio or upon request of the accused and the proposer, obtain documents, order to hear witnesses or to obtain further evidence if deemed necessary and relevant. For the taking of evidence, the provisions of this Regulation for the activities of the Law Commissioner responsible for the investigation shall apply;
  - e) shall fix the time of the hearing, giving notice to the accused, the proposer and the admitted witnesses. The accused shall have the right to access the documents during the ten days preceding the date of the hearing.
4. During the hearing, the accused shall have the right to explain his reasons personally or through his counsel and submit questions to the witnesses, who shall be examined by the rapporteur.
5. Once the investigation has been concluded, the proposer and the accused shall take the floor, in order, either personally or through their counsel.
6. Once the discussion is concluded, the Judicial Council, after hearing the rapporteur, shall decide by simple majority to exclude the charge or apply the sanction of warning.
7. The judgement, notified to the accused and to the proposer, may be challenged in accordance with article 47 of this Regulation.

### PART V FINAL PROVISIONS

#### **Art. 50** *(Amendments to the Regulation)*

- 1. Each member shall have the right to propose amendments to this Regulation.
- 2. The Judicial Council shall approve the amendments by absolute majority of the members entitled to vote.

#### **Art. 51** *(Entry into force)*

- 1. This Regulation shall enter into force on the fifteenth day following that of its publication in the Official Bulletin and on the San Marino Justice Portal.