



## JUDICIAL COUNCIL

---

SESSION OF 17 March 2022

DECISION no. 2

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SUBJECT: Adoption of the Code of Ethics of San Marino Magistrates

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THE JUDICIAL COUNCIL  
In its session of 17 March 2022

Considering

- That the Judicial Council, in its plenary session of 28 November 2013, took note of the *"Code of Conduct for San Marino Judges"*, drawn up by the Judges on the basis of the previous laws of the judicial system, in order to strengthen the Magistrates' awareness of their duties and the absolute value of independence and impartiality, so that, through their conduct, they do not undermine the esteem, respect and trust that the Judicial System should enjoy;
- That the approval of the new Law on the Judicial System (Constitutional Law no. 1 of 7 December 2021), which is in line with international standards on the independence of judges and the rule of law, requires a thorough review of this code of conduct, in order to strengthen its scope through more specific indications;
- That the sources at the highest level of the status of Magistrates' independence, related to the regulation of their rights, duties and responsibilities, are provided for in Article 3 of the Declaration on the Citizens' Rights, in Article 1 of Constitutional Law no. 1/2021 on the Judicial System, in the Magna Carta of Judges adopted on 17 November 2010 by the Consultative Council of European Judges, and in Recommendation CM/Rec(2010)12 adopted on the same date by the Committee of Ministers of the Council of Europe, which, in paragraph 11, warns that: *"The external independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts"*;
- That, although the breach of Magistrates' duties, now detailed in Article 12 of Constitutional Law no. 1/2021, may entail disciplinary liability, international standards attach importance to Codes of Ethics for professional and non-professional conduct drawn up directly by Magistrates. According to Recommendation CM/Rec(2010)12, *"Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves"* (par. 72); *"These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes"* (par. 73); *"Judges should be able to seek advice on ethics from a body within the judiciary"* (par. 74). According to paragraph 18 of the Magna Carta, *"Deontological principles, distinguished from disciplinary rules, shall guide the actions of judges. They shall be drafted by the judges themselves and be included in their training"*;



JUDICIAL COUNCIL

---

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---

- That Article 15, paragraph 12 of Constitutional Law no. 1/2021 entrusts the Judicial Council with the task of approving "*a code of ethics for Magistrates*", who are called upon to participate in its drafting;

In the light of the above

THE JUDICIAL COUNCIL

- Under Article 15, paragraph 12 of Constitutional Law no. 1 of 7 December 2021;

Unanimously

Decides

To adopt the Code of Ethics of San Marino Magistrates, proposed after having consulted all Magistrates, who undertake to comply with the relevant text hereunder.

Specifies that

- The Code consists of ethical rules of conduct, which shall be applied together with all principles contained in the Magna Carta of Judges and the Recommendations of the Committee of Ministers of the Council of Europe, constitutional, legislative and regulatory rules, and internal provisions. These rules shall not be invoked to interfere with the independence and impartiality that Judges should have in decision-making.
- These autonomous guidelines shall be aimed at raising standards of conduct, the violations of which shall not automatically entail disciplinary sanctions, since the seriousness of the conduct, the psychological element and the effects shall always be taken into account, nor shall they *per se* constitute the basis for the Magistrate's civil or criminal liability. However, formal compliance with the rules shall not be invoked as a justification for the violation of other and different duties.



## JUDICIAL COUNCIL

---

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---

### CODE OF ETHICS OF SAN MARINO MAGISTRATES

#### Art. 1

##### (Fundamental values)

1. Magistrates shall behave, both in the performance of their functions and in their private life, in a manner appropriate to their position, and their conduct shall be irreproachable.
2. Magistrates shall guarantee and defend the independent and impartial exercise of their functions and shall safeguard the image thereof.
3. In the performance of their duties and in any professional conduct, Magistrates shall act in a disinterested manner, upholding the values of independence and impartiality. Their conduct shall be inspired by personal decorum and reflect impartiality towards the parties and objectivity with regard to facts involved in the proceedings, and shall not be inspired by conditioning, prejudice or bias of any kind.
4. Magistrates shall avoid any involvement in centres or aggregations of power or orientation, especially party or business related, even if they are lawful and manifest, which may compromise even the image of their independence and impartiality.
5. Magistrates shall abstain from taking part in any extrajudicial activities, even if permitted by law, which might nevertheless compromise the dignity of their office, interfere with the performance of their duties or have a negative or compromising effect on their impartiality. They shall not use the resources and employees of the Court for extrajudicial activities.
6. Magistrates shall comply with the provisions of the law on incompatibilities and in any case avoid conflicts of interest, always carefully assessing the occurrence of situations of abstention for serious reasons of expediency.
7. As a general rule, participation as a guest or speaker in conferences on legal subjects shall be permitted, and career Magistrates shall inform the Head Magistrate thereof. Participation in events and conferences organised by political parties or movements, trade unions, private or religious associations, or in any case by bodies or persons whose orientation or opinions may compromise the Magistrates' image of impartiality shall not be permitted.

#### Art. 2

##### (Relations with civil society and users)

1. In relations with the population and users of justice, Magistrates shall behave in a way that is attentive to dialogue, show willingness to listen and respect for the personality and dignity of others,



## JUDICIAL COUNCIL

---

SESSION OF 17 March 2022

DECISION no. 2

---

SUBJECT: Adoption of the Code of Ethics of San Marino Magistrates

---

without any discrimination. In the exercise of their functions, they shall be indifferent to prejudices that may affect the understanding and assessment of facts and the interpretation and application of law.

2. Magistrates shall not use or show that they are using their public role to obtain any kind of personal advantage, and shall not allow anyone to boast or otherwise give the impression of being able to influence their actions.

3. Magistrates shall firmly reject any report, pressure or solicitation aimed at unduly influencing the exercise of their functions and shall promptly notify the Head Magistrate thereof.

### Art. 3

(Relations with the press)

1. Magistrates shall scrupulously observe the secrecy laid down by law and in any case the confidentiality of the information acquired because of their office.

2. Magistrates shall not make public or solicit, in any form whatsoever, the publication of information relating to the activities of their office or work.

3. Magistrates shall not issue make statements or interviews without the authorisation of the Head Magistrate.

4. Magistrates shall not set up confidential or privileged personal information channels, nor shall they use social network services or sites to promote or make the activities pertaining to their office public, or to express opinions that are not consistent with the rule of impartiality.

### Art. 4

(Prohibition to use information pertaining to their office for non-institutional purposes)

1. Magistrates shall not use the information available to them for reasons pertaining to their office and shall not provide or request confidential information on ongoing proceedings, nor shall they make solicitations or reports intended to influence the course or outcome of any proceedings.

### Art. 5

(Political activity and membership of associations)

1. Magistrates shall not be permitted to engage in any form of political or trade union activity, nor to publicly express support for or aversion to movements, parties, persons or bodies engaged in political or trade union activities.



## JUDICIAL COUNCIL

---

SESSION OF 17 March 2022

DECISION no. 2

---

SUBJECT: Adoption of the Code of Ethics of San Marino Magistrates

---

2. Magistrates shall not have contacts with persons politically or actively involved in political or trade union associations or bodies, which could make their impartiality appear publicly compromised, due to the way in which such contacts are carried out.
3. Magistrates' relations with political representatives and bodies shall only be institutional, namely conducted in the cases and forms provided for by law.
4. Magistrates shall inform the Head Magistrate of any relations or personal relationships with persons engaged in political activity.
5. Magistrates shall not join associations that require promises or pledges of loyalty or that do not ensure full transparency on their activities or on the forms of participation of their members.

### Art. 6

(Rules of conduct common to all Magistrates in the exercise of their functions)

1. The duties pertaining to their office shall take precedence over all other activities for which there is no incompatibility by law.
2. The Magistrate shall perform their duties with diligence and industriousness.
3. In the performance of their duties, Magistrates shall be obliged to observe the following rules:
  - Undertake professional training, maintain a high level of professional skills and culture and faithfully administer justice, without being misled by partisan interests, social alarm or fear of criticism;
  - Diligently carry out the work assigned to them and file measures promptly, and in any case within the deadlines established by law, as well as maintain order and decency in all legal proceedings;
  - Draft the grounds of measures in a clear and comprehensible manner, by adequately examining the facts and arguments put forward by the parties;
  - When motivating measures, avoid expressing opinions on facts or persons unrelated to the subject matter of the case, and making judgements or assessments on the professional skills of other Magistrates or defending counsels, or on the personality of anyone involved in the proceedings, when not indispensable for the decision;
  - Observe the timetable of hearings and other activities pertaining to their office, avoiding inconvenience to citizens and defending counsels;
  - Be tolerant, respectful and kind with the parties, witnesses, experts, lawyers and all those who participate in the judicial activities; demand the same behaviour from Court registrars, judicial officers, employees and judicial police officers;
  - Ensure that all persons having an interest in specific proceedings are heard, in accordance with the law; not admit or consider information privately provided by the parties and concerning facts involved in ongoing proceedings or proceedings yet to be initiated, which has not been disclosed to all parties to the proceedings; not meet or talk with the parties without their defending counsels;



## JUDICIAL COUNCIL

---

SESSION OF 17 March 2022

DECISION no. 2

---

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---

- Avoid appointing experts or consultants with regard to whom conditions of incompatibility exist, as determined by current family, marital, non-marital cohabitation, affinity, friendship, enmity, economic or work relationships between them, or any of their close relatives, and the expert or consultant; if the working or economic relationship has ceased, Magistrates shall in any case inform the Head Magistrate thereof;
  - Carry out the judicial work promptly, taking into account the repercussions of their conduct on the work of the registries and defending counsels;
  - Avoid commenting on the measures taken by colleagues with persons other than Magistrates or discrediting them, and ensure that this prohibition is also observed by Court staff;
  - Avoid disclosing to third parties information learned in meetings or conversations with colleagues, Registrars, staff and auxiliaries, and sharing the subject, occurrence and content of such meetings and conversations with outsiders; maintain strict confidentiality on any fact or matter concerning the office;
  - Cooperate with diligence in the processing of administrative procedures; perform even tasks that are not strictly jurisdictional with promptness and professional competence; provide their contribution to the solution of problems by making proposals; cooperate for the efficient organisation of services, refraining from attitudes of indifference for the difficulties that may be encountered by administrative collaborators by reason of the overall workload; act in a coordinated manner with other colleagues with regard to measures, identifying together priority criteria; pursue the primary objective of efficiency and quality of the administration of justice, without allowing individualistic or selfish attitudes to prevail;
  - In their relations with Court employees and auxiliaries, behave in a respectful manner, endeavouring to solve difficulties in the execution of measures and avoiding putting the blame on others for personal errors or failures;
  - Inform the Head Magistrate of any gift or donation, which is not of modest value or whose value exceeds the usual standards of mere courtesy.
4. Relations with Lawyers shall be based on mutual respect for the dignity of the individual and the profession.

### Art. 7

(Specific rules of conduct for Investigating and Deciding Judges in criminal matters)

1. Magistrates entrusted with criminal functions shall perform their role with fairness and impartiality, while consistently respecting the accused person's presumption of innocence and the principles of fair trial.



## JUDICIAL COUNCIL

---

SESSION OF 17 March 2022

DECISION no. 2

---

SUBJECT: Adoption of the Code of Ethics of San Marino Magistrates

---

### Art. 8

(Specific rules of conduct for the Procuratore del Fisco)

1. The Prosecuting Magistrate (Procuratore del Fisco), who is responsible for ensuring the legality of criminal proceedings, shall take a position, if he deems it appropriate, also in favour of the suspected or accused person at any stage and instance of the proceedings.
2. He shall be objective with respect to the decisions of the Investigating and Deciding Judges, shall not receive any solicitation from them, nor shall he consult them in order to know in advance or influence their decisions.
3. He shall limit his contacts with Investigating and Deciding Judges.

### Art. 9

(Specific rules of conduct for the Uditore Commissariale)

1. In performing the investigative functions entrusted to him by the Law Commissioner (Judge), the Uditore Commissariale (Clerk) shall avoid any self-referential attitude and provide the Law Commissioner with all useful information for the correct and timely conduct of the proceedings.
2. He shall comply with the directives and instructions given by the Law Commissioner and shall promptly submit to the latter any controversial or doubtful matters.

### Art. 10

(Specific rules of conduct for the Head Magistrate)

1. In order to guarantee the independence and impartiality of the Magistrates and the correctness of the administrative staff, the Head Magistrate shall avoid any undue internal or external interference in their activities.
2. He shall examine the complaints of users, Lawyers or other persons, shall acquire the appropriate information and shall adopt the consequent measures.
3. He shall encourage the participation and cooperation of Magistrates, administrative staff and Lawyers in the transparent management of the Court's organisational matters.