



REPUBLIC OF SAN MARINO

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

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

Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 24 February 2022:

LEGGE no. 23 of 2 March 2022

AMENDMENTS TO LAW NO. 139 OF 16 SEPTEMBER 2011 - RULES OF PROCEDURE GOVERNING ABSTENTION AND OBJECTION OF MAGISTRATES

Art. 1

(Amendments to Article 2 of Law no. 139 of 16 September 2011)

1. Article 2 of Law no. 139 of 16 September 2011 shall be replaced by the following:

“Art. 2
(Abstention)”

1. The Magistrate facing one of the situations specified in Article 10 of Qualified Law no. 145 of 30 October 2003, for which mandatory abstention is envisaged, shall declare this and shall require the Head Magistrate to be relieved from handling and deciding the case for which incompatibility exists.”.

Art. 2

(Introduction of Article 2-bis to Law no. 139 of 16 September 2011)

1. The following paragraph *2-bis* shall be added after Article 2 of Law no. 139 of 16 September 2011:

“Art. 2-*bis*
(Abstention procedure)”

1. The request for abstention referred to in Article 2 shall be made within ten days after the ground for incompatibility is established or comes to the knowledge of the Judge concerned, who shall indicate the reasons and evidence in support of the request.
2. The request for abstention shall be filed with the Registry and shall be addressed to the Head Magistrate.
3. The Head Magistrate, after obtaining the necessary information and, where appropriate, after hearing the requesting Judge, shall decide on the request for abstention within ten days of its receipt and, if it is accepted, shall order, by reasoned and final decree, the reassignment of the case file to another Judge, according to pre-established rotation criteria.

4. The decree of acceptance and simultaneous reassignment of the case file, together with the request for abstention, shall be attached to the documents of the proceedings and notified to the requesting Judge and the newly assigned Judge, as well as to the parties to the proceedings by the Registry, which, after the notifications prescribed, shall transmit the case file to the newly assigned Judge.

5. If the Head Magistrate, at this stage, does not consider that the conditions for accepting the request for abstention are met, he/she shall give notice thereof by reasoned decree. The Registry shall promptly notify such decree to the requesting Judge and shall attach it to the documents of the proceedings, together with the request for abstention.

6. From the moment of the request for abstention, the requesting Judge shall not adopt any measures in the proceedings in question, except for duly motivated and non-deferrable reasons of urgency."

Art. 3

(Introduction of Article 2-ter to Law no. 139 of 16 September 2011)

1. The following Article 2-ter shall be added after Article 2-bis of Law no. 139 of 16 September 2011:

"Art. 2-ter
(Optional abstention)

1. The provisions of Article 2-bis shall also apply in the case of optional abstention."

Art. 4

(Introduction of Article 2-quater to Law no. 139 of 16 September 2011)

1. The following Article 2-quater shall be added after Article 2-ter of Law no. 139 of 16 September 2011:

"Art. 2-quater
(Objection procedure)

1. A request for objection may be made at any stage of the proceedings.

2. The request for objection shall be placed on records and shall indicate in detail the specific grounds provided for by law and the supporting evidence. The Registry shall promptly communicate the request to the Judge objected to and to the Head Magistrate.

3. From the moment the request for objection is filed, the Judge objected to shall not adopt any measures in the proceedings in question, except for duly motivated and non-deferrable reasons of urgency. If the request for objection is made during a hearing, the Judge shall only take the procedural steps scheduled for that hearing. From the moment the documents are transmitted to the Judge for Extraordinary Remedies and until the filing of the decision, the procedural activities in the relevant case file shall remain suspended.

4. The Judge objected to shall not pronounce a judgement before the decision of the Judge for Extraordinary Remedies declaring the objection inadmissible or rejecting it, unless the request for objection is submitted again and is based on the same grounds.

5. The Judge objected to may, within ten days of the filing of the request for objection, file an application for abstention with the Registry, also for reasons other than and in addition to those indicated by the party. The request shall be immediately transmitted by the Registry to the Judge for Extraordinary Remedies, together with the file of the proceedings, shall be communicated to the Head Magistrate and notified to the parties to the proceedings.

6. If the Judge objected to declares that he/she abstains and the abstention is accepted, the request for objection shall be deemed not to have been made.

7. The Judge objected to who does not submit a request for abstention shall order, by decree, that the Registry immediately transmit the request for objection and the case file to the Judge for Extraordinary Remedies. This decree, together with the request for objection, shall be immediately communicated by the Registry to the Head Magistrate and notified to the parties to the proceedings.

8. Within ten days of the prescribed notification of said decree, the Judge objected to and the parties to the proceedings shall be entitled to file any pleadings with the Registry. Once the time-limit has expired, the Registry shall promptly transmit to the Judge for Extraordinary Remedies any pleadings filed or the notice that the time-limit has expired.”.

Art. 5

(Introduction of Article 2-quinquies to Law no. 139 of 16 September 2011)

1. The following Article 2-quinquies shall be added after Article 2-quater of Law no. 139 of 16 September 2011:

“Art. 2-quinquies
(Decision)

1. The Judge for Extraordinary Remedies shall decide without any formalities on requests for objection and abstention made pursuant to Article 2-quater, paragraph 5 within ten days after the expiry of the time-limit for filing pleadings.

2. The time-limit for the decision shall be extended by 30 days if the Judge for Extraordinary Remedies, by decree, deems further attachments to be necessary, for the submission of which he/she shall assign an appropriate time-limit to the parties and the Judge concerned.”.

Art. 6

(Introduction of Article 2-sexies to Law no. 139 of 16 September 2011)

1. The following Article 2-sexies shall be added after Article 2-quinquies of Law no. 139 of 16 September 2011:

“Art. 2-sexies
(Filing of the decision)

1. The judgement of the Judge for Extraordinary Remedies shall be filed together with the file of the proceedings and shall be notified *ex officio* to the parties and the Judge concerned.

2. If the request for abstention made pursuant to Article 2-quater, paragraph 5 or the request for objection is accepted, the Judge for Extraordinary Remedies shall indicate in the judgement the actions of the proceedings to be performed again, if any, from among those performed by the Judge concerned.

3. With the judgement declaring the objection inadmissible or rejected, the requesting party may be ordered to pay, by way of legal costs, a sum of money ranging from 1,000.00 (one thousand/00) to 6,000.00 (six thousand/00) EUR, without prejudice to any civil or criminal action.”.

Art. 7

(Introduction of Article 2-septies to Law no. 139 of 16 September 2011)

1. The following Article 2-septies shall be added after Article 2-sexies of Law no. 139 of 16 September 2011:

*“Art. 2-septies
(Urgent requests)*

1. During the incidental proceedings of abstention or objection, any urgent requests relating to the main case file shall be examined, upon instruction of the Judge for Extraordinary Remedies, by the competent Judge available for urgent cases; if necessary, he/she shall be replaced in accordance with the ordinary pre-established criteria.”.

Art. 8
(Introduction of Article 2-octies to Law no. 139 of 16 September 2011)

1. The following Article 2-octies shall be added after Article 2-septies of Law no. 139 of 16 September 2011:

*“Art. 2-octies
(Submission of the request for objection)*

1. The request for objection shall be submitted through a qualified counsel registered in the Professional Register of Lawyers and Notaries of the Republic of San Marino.”.

Art. 9
(Introduction of Article 2-nonies to Law no. 139 of 16 September 2011)

1. The following Article 2-nonies shall be added after Article 2-octies of Law no. 139 of 16 September 2011:

*“Art. 2-nonies
(Dilatory request)*

1. If the Judge concerned considers the request for objection to be dilatory, because it is based on factually untrue assumptions or constitutes a mere reiteration of previous requests, he/she shall declare this and, after transmitting the request to the Judge for Extraordinary Remedies, he/she may, pending the judgement on the objection, carry on the proceedings, or he/she may, for reasons of expediency, ask the Head Magistrate to be replaced to allow the proceedings to continue swiftly, even if the Judge concerned considers the objection to be unfounded.
2. This declaration shall be immediately communicated by the Registry to the Head Magistrate and notified to the parties to the proceedings.
3. In the case referred to in the first part of paragraph 1, the Registry shall transmit a copy of the case file to the Judge for Extraordinary Remedies in lieu of the original, and shall promptly make the subsequent updates.”.

Art. 10
(Introduction of Article 2-decies to Law no. 139 of 16 September 2011)

1. The following Article 2-decies shall be added after Article 2-nonies of Law no. 139 of 16 September 2011:

*“Art. 2-decies
(Abstention and objection of the members of the Guarantors’ Panel and of the Judges for
Extraordinary Remedies)*

1. The preceding provisions shall apply, insofar as not otherwise regulated, to abstention and objection procedures of the members of the Guarantors’ Panel and of the Judges for Extraordinary Remedies.”.

Art. 11
(Introduction of Article 2-undecies to Law no. 139 of 16 September 2011)

1. The following Article 2-undecies shall be added after Article 2-decies of Law no. 139 of 16 September 2011:

*“Art. 2-undecies
(Suspension of the limitation period of the crime)*

1. In criminal proceedings, with the exception of the case referred to in Article 2-nonies, paragraph 1, the limitation period of the crime shall be suspended, from the day of the filing of the request for abstention or the request for objection until, in the pre-trial stage, the day on which the requesting party is notified of the decision and, in the trial stage, until the day of the next hearing.”.

Art. 12
(Introduction of Article 2-duodecies to Law no. 139 of 16 September 2011)

1. The following Article 2-duodecies shall be added after Article 2-undecies of Law no. 139 of 16 September 2011:

*“Art. 2-duodecies
(Criminal proceedings)*

1. In criminal proceedings, no request for objection shall be filed once the actions referred to in Article 179 and Article 198, paragraph 3 of the Code of Criminal Procedure have been performed; the deciding Judge shall declare such request inadmissible.”.

Art. 13
(Entry into force)

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

Done at Our Residence, on 2 March 2022/1721 since the Foundation of the Republic.

THE CAPTAINS REGENT
Francesco Mussoni - Giacomo Simoncini

THE MINISTER OF
INTERNAL AFFAIRS
Elena Tonnini