



# 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 18 October 2022:*

### **LAW no. 145 of 21 October 2022**

#### **REFORMING DISCIPLINARY RULES FOR PUBLIC EMPLOYEES**

##### **TITLE I VIOLATIONS AND DISCIPLINARY SANCTIONS**

###### **Art.1**

*(Purpose and scope of application)*

1. This Law shall reform disciplinary rules for public employees in order to:
  - a) make disciplinary rules compatible and coordinate them with the job specifications of the organisational model under Law no. 188 of 5 December 2011 and subsequent amendments;
  - b) simplify disciplinary proceedings and reduce the relevant duration, in accordance with the principles and provisions of Article 43 of Law no. 188/2011 and respecting the right of defence and the right to be heard;
  - c) transpose the relevant case law, with particular reference to the rulings of the Guarantors' Panel on the Constitutionality of Rules.
2. The provisions laid down in this Law shall apply to all employees of the Overall Public Sector, with the exclusion only of salaried personnel of the Public Works Autonomous State Corporation (AASLP) and military personnel of the military Police Corps. Therefore, the following personnel shall fall within the scope of the aforementioned provisions:
  - a) career diplomats;
  - b) permanent employees;
  - c) personnel hired on a temporary basis and on a permanent basis for a job specification (JS), including those hired under the collective labour agreement entered into between the Government and the Trade Unions on 21 February 1992 and subsequent amendments and integrations for the performance of auxiliary and operational support functions in the Overall Public Sector (Quasi-Private Contract);
  - d) directors, regardless of the public or private nature of the employment relationship, including health directors;
  - e) personnel of the Civil Police Corps, until the entry into force of the special disciplinary rules for members of the civil and military Police Forces.

3. Disciplinary bodies shall be: the Director of the Office or Service as defined in paragraph 6, the Director of Human Resources and Organisation and the other members of the Directorate General of Civil Service (DGFP), the Director General of the Social Security Institute (SSI) and the other members of the Executive Committee (EC) as defined in paragraphs 4 and 5, and the Disciplinary Commission.

4. The functions and competences envisaged for the Director of Human Resources and Organisation by this Law shall be exercised with respect to all employees of the Overall Public Sector, with the sole exception of the personnel of the Social Security Institute (SSI), in relation to whom these functions and competences shall be exercised by the Director General of the SSI.

5. If the Director General of the SSI directly initiates a disciplinary action pursuant to Article 5, paragraph 4, he/she shall adopt a decision without obtaining any opinion, if he/she deems that a warning or censure should be imposed; if he/she intends to initiate a disciplinary action for the imposition of suspension from service or dismissal, he/she shall refer the decision to the Disciplinary Commission in accordance with the provisions of Title III. In relation to the application of precautionary measures, the Director General of the SSI shall adopt a decision after hearing the opinion of the Administrative Director and of the Director of Health and Socio-Health Activities.

6. For the purposes of this Law, "Director of the Office or Service" shall mean:

- a) the Director of an Organisational Unit (OU) of the Public Administration with reference to the employees assigned and allocated to such OU, pursuant to Article 21, paragraph 3, letters b) and c) of Law no. 105 of 31 July 2009;
- b) the Director of a Complex Organisational Unit (COU) at the Social Security Institute (SSI) with reference to the employees assigned and allocated to such COU;
- c) the Director of a Department of the Public Administration with reference to the employees directly assigned to such Department, pursuant to Article 21, paragraph 3, letter a) of Law no. 105/2009 and to the Directors of the Organisations Units pertaining to said Department;
- d) the Director of an SSI Department with reference to the Directors of the Complex Organisational Units pertaining to said Department;
- e) the Administrative Director of the SSI with reference to the employees assigned and allocated to the Administration of the SSI;
- f) the Director of the Operations Sector of the Public Utilities Autonomous State Corporation (AASS) with reference to the employees assigned and allocated to such Sector;
- g) the Director General of the SSI with reference to the Directors of the SSI Departments;
- h) the Director of Civil Service with reference to the Directors of Public Administration Departments;
- i) the Director of AASLP, the Director General of the University (UNIRSM), the Director of the Civil Aviation and Maritime Navigation Authority (AACNM) and the Secretary General of San Marino National Olympic Committee (CONS) with reference to the employees assigned to the respective Autonomous Corporation or Public Entity;
- l) the Director of AASS with reference to the Director of Operations and with reference to the employees assigned and allocated to any sectors of the Corporation other than the Operations Sector.

## **Art. 2**

### *(Scope and exercise of a disciplinary action - principle of legality)*

1. Public employees shall be liable for failure to comply with the duties pertaining to their legal status.

2. Public employees shall be liable for the acts they carry out and for their conduct in the performance of their duties, and also, in the cases provided for by this Law, outside their duties.

3. Disciplinary action shall be aimed at establishing violations and applying disciplinary sanctions.

4. No sanction shall be imposed without it being expressly provided for by law, without the charges being established, and without hearing the defence arguments put forward by the employee, as provided for in the following Articles.

### **Art.3**

#### *(Relationship with criminal proceedings)*

1. The application of disciplinary sanctions shall not exclude the application of punishments provided for by the criminal laws in force for the same facts. The application of punishments shall not exclude the application of disciplinary sanctions.

2. The outcome of criminal proceedings shall not affect disciplinary proceedings, except for the application of dismissal, under Article 12, paragraphs 2, 3, 4, 5 and 6 and for the cases in which the application of precautionary measures is concluded pursuant to Article 22, paragraph 5.

3. Evidence collected in criminal proceedings may be used in disciplinary proceedings, also to initiate a disciplinary action.

4. If the fact with which the employee is charged in disciplinary proceedings is reported to the Judicial Authority, or if the latter prosecutes the same fact *ex officio*, disciplinary proceedings shall in any case be initiated. If already initiated, disciplinary proceedings shall continue until their conclusion, unless it is essential to obtain from criminal proceedings useful evidence for disciplinary proceedings. In the latter case, disciplinary proceedings shall resume from the stage at which they had been suspended, if the final criminal judgement was rendered.

5. In applying the provisions of this Law on disciplinary effects of some criminal convictions, the final judgement of conviction shall be taken into account, without the possibility of enforcing any grounds for suspension, deferment or commutation of the punishment, or the extinction of the offence or punishment on any grounds whatsoever, or any application of alternative measures to imprisonment, or rehabilitation, or any other benefit, including the benefit of not mentioning the conviction in the criminal records.

### **Art. 4**

#### *(Limitation period related to the violation and extinction of the effects of the disciplinary measure)*

1. Disciplinary action shall be time-barred in two years if it involves a warning or censure, and in five years if it involves suspension from service or dismissal. The provisions of the Criminal Code shall apply as regards the time in which the violation shall be regarded as having been committed, the running of the time-limit, the application of the limitation period and the cases and effects of suspension of the limitation period.

2. Where it is essential to obtain evidence from criminal proceedings that is useful for disciplinary proceedings, the limitation period shall remain suspended throughout criminal proceedings being held in respect of the same facts.

3. The effects for disciplinary and career progression purposes resulting from the disciplinary measure shall extinguish:

- a) for censure: two years after the enforcement of the measure;
- b) for suspension from service: five years after the enforcement of the measure.

### **Art.5**

#### *(Disciplinary sanctions)*

1. Public employees, whatever their type of employment relationship with the Administration, shall be subject to the following sanctions:

- a) warning;

- b) censure;
- c) suspension from service;
- d) dismissal.

2. Without prejudice to paragraph 4, the initiation of a disciplinary action and the related investigation shall be a responsibility of the Director of the Office or Service. The sanctions referred to in paragraph 1, letters a) and b) shall be imposed by the Director of the Office or Service, whereas the sanctions referred to in paragraph 1, letters c) and d) shall be imposed by the Disciplinary Commission.

3. The application of disciplinary sanctions and of precautionary suspension shall be recorded in the employee's personnel file. The application of disciplinary sanctions shall produce the effects referred to in Article 66, paragraph 7 of Law no. 188/2011 and subsequent amendments if, as part of the proceedings, the employee has been heard also with regard to the imposition of such accessory sanctions.

4. If a disciplinary action is initiated pursuant to Article 12, paragraphs 5 and 6 or on the basis of any communications from the Judicial Authority pursuant to Article 26, the Director of Human Resources and Organisation (RUO) shall be responsible for the investigation. Moreover, the Director of Human Resources and Organisation shall adopt a decision without obtaining any opinion, if he/she deems that a warning or censure should be imposed; if he/she intends to initiate a disciplinary action for the imposition of suspension from service or dismissal, he/she shall refer the decision to the Disciplinary Commission in accordance with the provisions of Title III.

5. In the cases referred to in Article 35, paragraph 8 of Law no. 188/2011, the Director of Planning and Control (PC) shall continue to be competent for the initiation of disciplinary action and the imposition of sanctions.

#### **Art.6** *(Warning)*

1. Warning shall consist of a written and reasoned reprimand, to be recorded in the employee's personal file, after obtaining any pleadings and counter-arguments from the employee.

2. The Director of the Office or Service shall, within fifteen working days from receipt of any pleadings and counter-arguments referred to in paragraph 1, issue a warning to the employee who has committed a minor violation of the duties incumbent on him/her pursuant to legislative or regulatory provisions or provisions of a lower rank, to the collective or individual contract, to acts and provisions of the OU or administrative unit to which he/she belongs, as well as to Law no. 141 of 5 September 2014 "Code of Conduct for Public Officials" or, for members of the Police Corps, to Delegated Decree no. 59 of 29 April 2015 "Code of Conduct for members of the Police Corps", hereinafter "Codes of Conduct".

3. Failure to comply with the time-limit provided for in paragraph 2 for the imposition of a warning shall entail the annulment of the disciplinary action.

#### **Art.7** *(Censure)*

1. Censure shall consist of a solemn written and reasoned reproach to the employee, to be noted in the employee's personal file.

2. The Director of the Office or Service shall impose the censure after obtaining the binding positive opinion of the Director of Human Resources and Organisation and following the proceedings referred to in Title III below.

### **Art.8**

#### *(Violations subject to censure)*

1. Employees shall incur a censure for the following violations:
  - a) negligent conduct while performing their duties;
  - b) non-compliance with competences;
  - c) improper behaviour towards superiors, colleagues and other employees;
  - d) discourteous behaviour towards the public;
  - e) conduct, either on or off duty, not appropriate to the decorum of the functions performed;
  - f) repeated failure to observe office hours;
  - g) unjustified absence of up to one day;
  - h) unauthorised departure from the workplace, except in cases of force majeure;
  - i) any other minor violations of professional duties and of the Codes of Conduct.

### **Art.9**

#### *(Suspension from service)*

1. Suspension from service shall entail temporary termination of duties and, without prejudice to paragraph 3, suspension of the mutual obligations of the public employer and the employee, removal from service and loss of the entire remuneration for a period not exceeding one month.
2. The period of suspension from service shall not be counted for pension and seniority purposes.
3. However, during the period of suspension from service, the employee shall continue to be subject to the incompatibilities and the obligation to behave, off duty, in a manner commensurate with the decorum of the functions envisaged in connection with the employment relationship.

### **Art.10**

#### *(Violations subject to suspension from service)*

1. Suspension from service shall be imposed for the following violations:
  - a) greater seriousness of the violations for which censure is imposed;
  - b) imposition of censure in the previous two years;
  - c) serious acts of insubordination;
  - d) unjustified refusal to carry out a service order;
  - e) unjustified refusal of transfer or reassignment ordered by the Administration for justified service requirements;
  - f) acts contrary to the duty of loyalty;
  - g) use of the employment for one's own or others' personal purposes;
  - h) interruption or disruption of service;
  - i) misuse of sums administered or held on deposit or of things held in connection with official duties;
  - l) tolerance of abuses committed by subordinate employees;
  - m) submission of a false report;
  - n) performance of activities incompatible with public employment;
  - o) other serious violations of professional duties and of the Codes of Conduct.

**Art.11**  
*(Dismissal)*

1. Dismissal shall entail the immediate and definitive termination of the employment relationship.
2. The employee concerned shall leave the office and shall not be re-employed by the State.
3. He/she shall retain any rights to retirement and severance pay, without prejudice to the right of the State to pursue a claim against him/her for compensation for damage suffered as a result of the violations committed.

**Art.12**  
*(Violations subject to dismissal)*

1. The employee shall incur dismissal for the following violations:
  - a) greater seriousness of the violations for which suspension from service is imposed;
  - b) imposition of two suspensions from service in the previous five years;
  - c) performance of activities incompatible with public employment, when the act may be considered habitual by its nature and frequency, or the violation is, for other reasons, particularly serious;
  - d) false attestation of presence on duty, including by altering the systems establishing the employee's presence or by other fraudulent means, or justification of absence from duty by means of a medical certificate that is false, altered or falsely certifying a state of illness. Any fraudulent method used, including by resorting to third parties, to make an employee appear to be on duty or to mislead the Administration as to whether the employee has respected his/her working hours shall constitute a false attestation of presence on duty. Anyone who has facilitated the fraudulent conduct by his/her action or omission shall also be liable for the violation;
  - e) inadequate performance, due to a repeated violation of the obligations concerning the employment, laid down by legislative or regulatory provisions or provisions of a lower rank, the collective or individual contract, acts and provisions of the OU or administrative unit to which the employee belongs or by the Code of Conduct. The terms and procedures under which inadequate performance is a prerequisite for dismissal shall be defined after consultation with the Trade Unions. In any case, in order for dismissal to be applied, the inadequate performance shall continue for at least two uninterrupted years of service.
2. In addition, an employee shall be dismissed if he/she:
  - a) is subject to disqualification from public offices of not less than third degree as a result of a final conviction;
  - b) is subject to a final sentence, for the commission of a criminal offence, of not less than one year imprisonment;
  - c) is finally acquitted following extinction of the offence, when it is nevertheless established in the judgement that he/she committed a criminal offence punishable by imprisonment of not less than third degree.
3. If the punishments provided for in paragraph 2, letters a) and b) have been imposed by a foreign Judge, the employee shall be dismissed only if the act giving rise to the conviction is provided for by San Marino law respectively:
  - a) as a criminal offence punishable by disqualification from public offices of not less than third degree, alone or jointly, or, alternatively, by another kind of punishment;
  - b) as a criminal offence punishable by a sentence that entails restriction of personal liberty or disqualification from public offices of not less than a maximum of one year, either alone or jointly, or, alternatively, by another kind of punishment.
4. If the judgement referred to in paragraph 2, letter c) has been passed by a foreign Judge, the employee shall be dismissed only if the act giving rise to the liability of the employee, who is not punishable under criminal law due to the extinction of the offence, is provided for by San Marino law as a criminal offence punishable by imprisonment of not less than third degree.

5. Dismissal shall be directly imposed by the Director of Human Resources and Organisation without initiating the proceedings under Title III and without the need to hear the employee in the event of a final conviction of the employee, the execution of which results in the inability to work for a period of more than two years.

6. In the cases referred to in paragraph 5, the Director of Human Resources and Organisation shall dismiss the employee within a maximum of fifteen days from the service of the final measure of the judgement.

## **TITLE II DISCIPLINARY COMMISSION**

### **Art.13**

*(Composition and record keeping)*

1. The Disciplinary Commission for State employees shall be appointed, with regard to both full and alternate members, by the Great and General Council and shall be composed:

- a) of one member appointed by each legally recognised Trade Union;
- b) of a number of members representing the Administration equal to that of the members referred to in letter a) above, including the Director of Civil Service, who shall be a member by law and shall preside over the Commission.

2. The members representing the Administration other than the President shall be appointed by the Congress of State from among the Directors of Organisational Units or Structures of the Overall Public Sector with more than three years' seniority as a Director.

3. An alternate member shall be appointed for each of the full members; alternate members shall take over in the event that full members have an impediment or a conflict of interest, as well as if full members have initiated a disciplinary action. The alternate of the Director of Civil Service shall be appointed by the Great and General Council by designation of the Congress of State from among the Directors acting as Head of Personnel. The alternates of the members referred to in paragraph 1, letter b) and paragraph 2 shall be appointed by the Congress of State from among Directors of the Overall Public Sector with the same seniority requirements as the full members.

4. The term of office of the full and alternate members shall be three years and shall be renewable for a maximum period of nine consecutive years.

5. The rotation of both full members and alternate members shall take place in such a manner and timing as to avoid the complete replacement of all members of the Commission at the same time; this shall be aimed at pursuing a reasonable level of continuity and consistency in the Commission's activities.

6. Members of the Great and General Council or of the Congress of State, blood relatives or relatives by affinity up to the third degree, spouses or registered partners under Law no. 147 of 20 November 2018 and subsequent amendments, or cohabiting partners shall not be members of the Disciplinary Commission.

7. The Directorate General of Civil Service shall be responsible for keeping the register of disciplinary proceedings and the documents sent and drafted by the Disciplinary Commission.

### **Art. 14**

*(Abstention and objection)*

1. Any member of the Disciplinary Commission and the Director of Human Resources and Organisation shall be obliged to abstain if they are blood relatives or relatives by affinity up to the third degree, spouses or registered partners under Law no. 147 of 20 November 2018 and subsequent amendments, or cohabiting partners of the employee subject to disciplinary action, as well as if they have an economic or employment relationship with him/her, since this may compromise the impartiality of the decisions taken.

2. Any member of the Commission may also abstain when his/her impartiality and freedom of judgement seem to be undermined by the existence of reasons of opportunity.
3. In the cases referred to in paragraph 1, if a member of the Commission does not abstain, the employee may object to him/her. In the case referred to in paragraph 2, the employee's objection shall be reasoned.
4. The application for an objection shall be made in writing to the Directorate General of Civil Service by means of the employee's pleadings and counter-arguments referred to in Article 17, paragraph 1 and within the peremptory time-limit laid down therein. The Committee referred to in Article 41 of Delegated Decree no. 106 of 2 August 2012 and subsequent amendments shall adopt a final and prompt decision on the application.
5. If the application for objection is admitted, the member objected to shall be replaced by the previously appointed alternate member.

#### **Art. 15**

*(Functions and structural and functional quorum)*

1. The Disciplinary Commission shall decide on disciplinary actions initiated by the Director of the Office or Service or, in the cases referred to in Article 5, paragraph 4, by the Director of Human Resources and Organisation for suspension from service and dismissal; in particular, the Disciplinary Commission shall decide on the employee's acquittal or the application of the sanction, and in the latter case, it shall establish the relevant degree or extent. In such cases, the Commission shall act according to the provisions on disciplinary proceedings contained in Title III of this Law.
2. If the Disciplinary Commission considers that the violation committed constitutes an offence punishable by less severe sanctions to be imposed by another disciplinary body, it shall refer the matter to the competent Director.
3. The meetings of the Disciplinary Commission shall be valid if at least two thirds of its members are present. The presence of the President or his/her alternate shall be a sine qua non condition for the validity of the meeting.
4. Decisions shall be adopted by a majority of those voting. In the event of a tie, the President shall have the casting vote.
5. Abstentions shall not be counted in the number of voters.

### **TITLE III**

#### **PROCEEDINGS FOR THE APPLICATION OF SANCTIONS MORE SERIOUS THAN A WARNING AND APPEALS AGAINST DISCIPLINARY MEASURES**

#### **Art. 16**

*(Notification of the charges)*

1. The proceedings for the application of a disciplinary measure more serious than a warning shall start with the written act by which the Director of the Office or Service charges the employee with the disciplinary violations for which he/she is held responsible.
2. By this act, to be taken within sixty days of the commission of the fact or of its discovery, the Director of the Office or Service shall clearly indicate to the employee:
  - a) the facts and circumstances alleged against him/her;
  - b) the rules allegedly violated;
  - c) the applicable sanction and, in case of suspension from service, the extent of the sanction;
  - d) any accessory sanctions referred to in Article 66, paragraph 7 of Law no. 188/2011 and subsequent amendments, which are intended to be imposed;
  - e) any other relevant considerations in fact and in law;



- f) the intention to promote the application, by the Director of Human Resources and Organisation, of any precautionary, urgent or optional measures, specifying the facts, the circumstances, the serious reasons of expediency and the serious prejudice that the expiry of the ordinary time-limits of disciplinary action could have for the Administration.
3. The Director of the Office or Service that intends to promote the application of an optional or urgent precautionary measure shall promptly forward to the Director of Human Resources and Organisation a reasoned request specifying the elements referred to in paragraph 2, letter f), together with the notification of the charges.

**Art. 17**

*(Disciplinary proceedings for sanctions more serious than a warning)*

1. The employee may submit written pleadings and counter-arguments and shall be entitled to examine the documents relating to the proceedings and to take copies of the documents on which the charges are based, subject to the following peremptory time-limits:
- a) in case of censure, within fifteen days following the notification of the charges;
  - b) in case of suspension from service or of dismissal, within thirty days following the notification of the charges.
2. After the aforementioned time-limit of thirty or fifteen days has elapsed, the Director of the Office or Service shall carry out within the next ten days, on his/her own initiative or at the employee's request, the investigations he/she deems necessary, including the summoning of the employee concerned and of any other employees whose hearing is deemed relevant to guarantee the right of defence.
3. Within twenty days after the expiry of the time-limit for the submission of the employee's pleadings and counter-arguments, the Director of the Office or Service shall adopt the following decisions:
- a) where he/she does not consider the justifications put forward by the employee to be valid, or in the absence of any pleadings and counter-arguments from the employee, and therefore considers it necessary to continue the disciplinary action, he/she shall propose a sanction to be transmitted, together with all the documents of the proceedings:
    - 1) in case of charge entailing the application of censure: to the Director of Human Resources and Organisation, who shall be required to provide a binding opinion within twenty days of receipt of the proposed sanction. For the purposes of providing an opinion, the Director of Human Resources and Organisation may hear the employee concerned, as well as any other employees whose hearing is deemed relevant in order to guarantee the right of defence;
    - 2) in case of charge entailing the application of suspension from service or dismissal: to the Disciplinary Commission, which shall be required to decide on the imposition of the sanction or on the termination of the proceedings within forty days of receipt of the proposal. To this end, the President of the Disciplinary Commission shall, within ten days of the request, fix a date for the meeting of the Commission.
  - b) If the Director of the Office or Service considers the justifications put forward by the employee to be valid and therefore accepts the reasons provided in his/her defence, he/she shall order the proceedings to be terminated, subject to resumption of disciplinary action should new elements or reasons emerge against the employee concerned or against other employees.
4. The Director of the Office or Service shall notify the employee of his/her conclusions, whether they relate to a proposal for a sanction to the bodies referred to in paragraph 3, letter a), numbers 1) and 2) or to a decision to terminate the proceedings.
5. Following the acquisition of the above-mentioned binding opinion of the Director of Human Resources and Organisation, the Director of the Office or Service shall apply the disciplinary sanction of censure within the following five days.

6. The employee may be assisted and represented by a lawyer or by a representative of the trade union to which he/she belongs or whom he/she mandates both in the preparation of his/her defence and in the hearing before the disciplinary bodies.

7. Any employee or Director of the Overall Public Sector who, being aware for official or service reasons of information relevant to ongoing disciplinary proceedings, refuses, without a justified reason, to cooperate as requested by the disciplinary body concerned or makes false or reticent statements, shall be subject to the disciplinary sanction of suspension from service.

8. If the employee is assigned, at any title, from an OU of the Public Administration to an Autonomous State Corporation or Public Entity or vice versa, disciplinary proceedings shall be initiated or, if pending, concluded, and the sanction shall be applied, at the entity of origin.

9. Termination of the employment relationship shall extinguish disciplinary proceedings unless the violation committed is punishable by dismissal or in any case precautionary suspension from service has been ordered. In this case, the final decisions are adopted for the purposes of the legal and economic effects not precluded by the termination of the employment relationship.

10. Violation of the time-limits and of the provisions on disciplinary proceedings referred to in Article 16 and in this Article, without prejudice to the possible liability of the employee to whom it is charged:

- a) in case of violation punishable by terms of censure: shall result in termination of disciplinary action;
- b) in case of violation punishable by terms of suspension from service or dismissal: shall not result in termination of disciplinary action nor in invalidity of the acts and of the sanction imposed, provided that the employee's right of defence is not irreparably compromised and that the manner in which the disciplinary action is exercised, also by reason of the nature of the investigations carried out in the specific case, is in any case compatible with the principle of timeliness.

### **Art.18**

*(Elements to be assessed in order to provide the binding opinion and to adopt the decision in relation to disciplinary proceedings)*

1. The Director of Human Resources and Organisation, in issuing the binding opinion, and the Disciplinary Commission, in adopting the decision as a result of the proceedings initiated for the imposition of suspension from service and dismissal, shall take into account:

- a) the reasons provided by the Director of the Office or Service in the notification of the charges;
- b) the employee's pleadings and counter-arguments;
- c) any further considerations made by the Director on the arguments put forward in the defence as expressed in the decisions referred to in Article 17, paragraph 3, letter a);
- d) the intentional nature of the conduct, the relevance of the violation of rules or provisions;
- e) the degree of disruption or danger caused by the proven negligence, imprudence or incompetence, taking into account also the foreseeability of the event;
- f) the possible existence of aggravating or mitigating circumstances;
- g) the responsibilities deriving from the position held by the employee;
- h) the complicity of several employees in agreement with each other;
- i) the employee's overall conduct, with particular regard to his/her disciplinary history;
- l) the behaviour towards users;
- m) the results of any cross-examination referred to in paragraph 2 and in Article 30.

2. The Disciplinary Commission may, on its own initiative or at the employee's request, hear the employee concerned and any other employees whose hearing is deemed relevant in order to guarantee the right of defence.

### **Art.19**

#### *(Enforceability of the disciplinary measure and judicial appeal)*

1. The disciplinary measure imposing the sanctions referred to in Article 5, paragraph 1 shall be immediately enforceable.
2. An appeal may be lodged against the disciplinary measure referred to in paragraph 1 pursuant to Title II of Law no. 68 of 28 June 1989 and subsequent amendments in the context of the administrative jurisdiction over public employment acts. This provision shall also apply to Directors with an employment contract governed by private law.
3. Administrative judicial appeals against disciplinary measures shall be exempt from court fees at all stages of the proceedings.

### **TITLE IV**

#### **PRECAUTIONARY MEASURES**

### **Art. 20**

#### *(Precautionary suspension and reassignment)*

1. The Director of Human Resources and Organisation may apply the following precautionary measures to an employee charged with a disciplinary violation entailing suspension from service or dismissal:
  - a) precautionary reassignment;
  - b) precautionary suspension from service.
2. In addition, precautionary suspension from service may be applied to an employee in relation to whom the Director of Human Resources and Organisation has been notified by the Judicial Authority that the employee has been formally charged with a criminal offence punishable by terms of disqualification from public offices of not less than third degree or a sentence that entails restriction of personal liberty of not less than a maximum of one year, alone or jointly, or, alternatively, by another kind of punishment.
3. The application of precautionary suspension from service shall be ordered only when, taking into account the manner and seriousness of the conduct, the danger of its repetition and the extent of the material or non-material damage caused to the Administration, the less severe precautionary measure of temporary reassignment is, as things stand, likely to be ineffective.
4. Precautionary suspension from service shall be ordered:
  - a) in the case of paragraph 3: for the entire duration of the disciplinary proceedings, including the appeal phase;
  - b) in the case of paragraph 2: for the entire duration of the criminal proceedings.
5. However, during the period of precautionary suspension from service, the employee shall continue to be subject to the incompatibilities and the obligations to behave, off duty, in a manner commensurate with the decorum of the functions envisaged in connection with the employment relationship.
6. In the light of the events and outcome of both the criminal proceedings and the disciplinary proceedings, the Director of Human Resources and Organisation may at any time order that the precautionary measure be applied until the end, and depending on the outcome of the preliminary investigations or until the end, and depending on the outcome of the first-instance criminal proceedings or the disciplinary proceedings, or that the precautionary suspension measure be commuted to the less serious measure of reassignment.
7. An employee suspended on a precautionary basis shall be paid, as from the thirty-first day of suspension, a maintenance allowance equal to half the basic remuneration of his/her employment level/qualification, as well as the full amount of family allowances.

### **Art.21**

*(Ordinary procedure for the application of precautionary measures)*

1. Upon receipt of the request for the application of a precautionary measure by the Director of the Office or Service pursuant to Article 16, paragraph 3, the Director of Human Resources and Organisation shall assign the employee concerned a peremptory time-limit of ten current days to submit written pleadings and counter-arguments.
2. Once the time-limit referred to in paragraph 1 has expired, the Director of Human Resources and Organisation shall decide on the request within the next ten current days and after hearing the Director of Civil Service and the Director of Planning and Control.
3. If the request for precautionary measure is admitted, the Director of Human Resources and Organisation shall order the temporary reassignment or suspension from service of the employee concerned with immediate effect, notifying the competent office in charge of administrative and operational personnel management thereof.

### **Art.22**

*(Emergency procedure for the application of precautionary measures)*

1. When the circumstances and conditions are such as to suggest that the expiry of the ordinary time-limits referred to in Article 21 may cause serious and immediate prejudice to the Administration, the Director of Human Resources and Organisation, having received the request for application of the emergency precautionary measure by the Director of the Office or Service pursuant to Article 16, paragraph 3, shall order such measure with immediate effect, after hearing the Director of Civil Service and the Director of Planning and Control and without hearing the employee concerned.
2. The decision shall be promptly communicated to the competent office in charge of administrative and operational personnel management.
3. In the fifteen days following the imposition of the precautionary measure, the Director of Human Resources and Organisation shall carry out the necessary investigations, in collaboration both with the offices and bodies of San Marino Administration and with any foreign administrative authorities concerned. He/she may request the assistance of the Judicial Authority and the Police Corps.
4. Within the aforementioned time-limit of fifteen days, the Director of Human Resources and Organisation shall also hear the employee concerned, assigning him/her a period of ten current days to submit written pleadings and counter-arguments.
5. In the light of any new elements that have emerged and of the defence of the employee concerned, the Director of Human Resources and Organisation shall decide, after hearing the Director of Civil Service and the Director of Planning and Control, whether to revoke the emergency precautionary measure or, if necessary, to commute it to the less severe one or to confirm it for the duration of the criminal or disciplinary proceedings, without prejudice to Article 20, paragraph 6.

### **Art.23**

*(Calculation of precautionary suspension and reinstatement in service with reimbursement of remuneration)*

1. The precautionary suspension suffered shall be deemed to be a part already served of the sanction of suspension from service that may have been imposed in the disciplinary proceedings.
2. If disciplinary proceedings end with the termination of the case or with the imposition of a sanction less severe than suspension from service, the employee concerned shall be entitled to the reimbursement of remuneration not received, plus the relevant legal interest and adjustment for monetary depreciation, for the entire period of suspension from service ordered as a precautionary measure.

**Art.24**  
*(Employee's obligation)*

1. A public employee who is formally charged by a Judge's act, in the Republic of San Marino or abroad, with an offence that may give rise to the application of a precautionary measure, even if only provisionally, shall notify the Director of Human Resources and Organisation thereof within ten days of the notification received, except in proven cases of force majeure.
2. Failure to comply with this obligation shall constitute a conduct contrary to official duties and shall be punishable by suspension from service.

**Art.25**  
*(Appeals against precautionary measures)*

1. An appeal against the precautionary measure applied by the Director of Human Resources and Organisation may be lodged with the Administrative Judge of Appeal within thirty days after notification.
2. An appeal shall not suspend the execution of the measure of the Director of Human Resources and Organisation, unless the Judge seized decides otherwise only on serious grounds of legitimacy.
3. The administrative judicial appeal against the precautionary measure shall be exempt from court fees.

**TITLE V**  
**TRANSMISSION AND REQUEST FOR DOCUMENTS**

**Art.26**  
*(Notification obligation by the Judicial Authority)*

1. At every stage and activity of the criminal proceedings, the Judge shall be required to transmit to the Director of Human Resources and Organisation a copy of all measures - adopted by the Judge or by a foreign Judge and acquired following an incoming or outgoing rogatory letter - concerning a public employee subject to criminal investigations in the Republic of San Marino or abroad and containing a formal, albeit provisional, charge against him/her of an offence that may give rise to a precautionary measure.
2. The Judge shall also transmit to the Director of Human Resources and Organisation all measures modifying or defining the charge, ordering the termination of the proceedings or the acquittal of the defendant during the investigation stage, containing a judgement of acquittal or conviction, even if not final, or a declaration of conclusion of the proceedings on the merits.

**Art.27**  
*(Request by the Director of Human Resources and Organisation)*

1. For the correct application of this Law, the Director of Human Resources and Organisation may request from San Marino Judicial Authority a copy of all measures - adopted by the Judicial Authority or acquired by the latter following an incoming or outgoing rogatory letter - concerning a public employee subject to criminal investigations in San Marino or abroad and containing a formal charge against him/her of an offence, or an amendment to a charge, or a judgement, even if not final, of acquittal or conviction.
2. The Judge before whom the criminal proceedings or case are pending shall transmit the requested documents.

**Art.28**

*(Temporary secrecy exception)*

1. By way of derogation from Articles 26 and 27, the Investigating Judge, if he/she considers it indispensable for the successful outcome of the investigations and in accordance with the rules of criminal procedure in force, may declare in the documents of the proceedings, by reasoned decree, the temporary secrecy of the investigations and may postpone the transmission of the measures in question.
2. Once the secrecy regime is terminated, the Judge shall transmit to the Director of Human Resources and Organisation, together with the requested documents, both the decree declaring the secrecy regime and the decree ordering its termination, together with the reasons therefor.

**Art.29**

*(Formal indictment)*

1. For the purposes of this Law, a “formal indictment” shall be considered as the measure of the Judge - in the form of a judgement, order, decree, or included in a verbatim record relating to the performance of judicial activity - by which the Judge charges a person under judicial investigation of an offence established with regard to facts and legal qualification, with the consequent attribution of criminal liability, albeit provisionally and at the current stage of the proceedings.

**TITLE VI  
FINAL PROVISIONS**

**Art.30**

*(Participation of the person concerned)*

1. Any employee concerned by the proceedings for the application of a disciplinary sanction higher than a warning and of a precautionary measure shall have the right to put forward his/her arguments to the competent disciplinary body and may be assisted and represented by a lawyer or by a representative of the trade union to which he/she belongs or whom he/she mandates both in the preparation of his/her defence and in the hearing before the above-mentioned Directors.
2. Both for the purpose of providing the binding opinion for the application of censure and for the purpose of applying the precautionary measure, the Director of Human Resources and Organisation shall hear the employee who so requests in the presence of the Director of Civil Service and of the Director of Planning and Control.
3. Any impediment of the employee concerned or of his/her lawyer or of the trade union representative identified shall not delay the completion of the acts of the procedure relating to the application of a precautionary measure.

**Art.31**

*(Review)*

1. The Director of the Office or Service, the Director of Human Resources and Organisation and the Disciplinary Commission shall decide, within their respective competences, both on the imposition of disciplinary sanctions and on the application of precautionary measures, always at the current stage of the proceedings, reserving the right to review their decisions in the light of the events and outcome of both the criminal and the disciplinary proceedings.

### **Art.32**

*(Service of documents)*

1. The documents and measures of disciplinary bodies shall be notified to the competent Director, if not adopted by him/her, to the employee and/or his/her lawyer or to the trade union representative identified, by registered letter with acknowledgement of receipt or by electronic certified delivery service.
2. In case of proven reasons, the documents and measures referred to in paragraph 1 shall be notified by means of a judicial officer.

### **Art.33**

*(Replacement of the Director of Human Resources and Organisation and of the Director General of the SSI)*

1. The Director of Human Resources and Organisation and the Director General of the SSI may mutually replace each other by means of a delegation for the adoption of acts falling within their competence pursuant to this Law, in the event of their brief absence or impediment.

## **TITLE VII**

### **TRANSITIONAL PROVISIONS AND REPEAL**

### **Art.34**

*(Transitional and coordination provisions)*

1. The substantive legislation more favourable to the employee shall apply to disciplinary proceedings that are pending at the time of the entry into force of this Law, without prejudice to the procedures in force on the date on which disciplinary proceedings are initiated.
2. The provisions of this Law shall also apply to the employees of Poste San Marino S.p.A. with qualifications and job specifications falling within public employment.
3. In line with the provisions of Article 23, paragraph 3 of Law no. 141/2014, the report referred to in Article 7 of said Law shall be a sine qua non condition for the initiation of disciplinary action by the competent Director.
4. For the purposes of applying the provision relating to termination of public employment relationship referred to in Article 80, paragraph 1, letter b) of Law no. 41 of 22 December 1972, the application of a personal custodial coercive precautionary measure or of a precautionary measure entailing a prohibition shall be deemed a "justified reason". During the period of application of the criminal precautionary measure, the employee shall not receive any remuneration, fee or allowance. In any case, if the employee is not employed or re-employed within two years, he/she shall be removed from employment.
5. Article 66, paragraph 7 of Law no. 188/2011 shall be replaced as follows:  
"7. The application of disciplinary sanctions higher than a warning may constitute:
  - a) in the case of censure: an impediment to career advancement for two years from the date on which the sanction becomes enforceable;
  - b) in the case of suspension from service: an impediment to career advancement for five years from the date on which the sanction becomes enforceable;
  - c) in the case of two censures or of suspension from service: an impediment to any subsequent recruitment in respect of an employee employed on a fixed-term basis. The above-mentioned disqualification shall last for a period of two years in case of two censures, or for a period of five years in case of suspension from service."

**Art.35**

*(Repeal and entry into force)*

1. Law no. 106 of 31 July 2009 shall be repealed, without any revival of the provisions repealed therein.
2. All provisions that conflict or are otherwise incompatible with the provisions of this Law shall be repealed.
3. This Law shall enter into force on the fifteenth day following that of its legal publication.

*Done at Our Residence, on 21 October 2022/1722 since the Foundation of the Republic.*

THE CAPTAINS REGENT

*Maria Luisa Berti – Manuel Ciavatta*

THE MINISTER  
OF INTERNAL AFFAIRS

*Elena Tonnini*