

Law n. 139 of 26th November 1997

REPUBLIC OF SAN MARINO

**SUPPLEMENTS TO THE PROVISIONS OF THE CRIMINAL CODE AND OF THE CODE
OF CRIMINAL PROCEDURE FOR CRIMES RELATED TO NARCOTIC DRUGS,
ALCOHOLIC BEVERAGES, HARMFUL OR DANGEROUS SUBSTANCES,
PSYCHOTROPIC SUBSTANCES**

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

promulgate and order the publication of the following Law, passed by the Great and General Council during its meeting of 26th November 1997.

Art. 1

Under the first and second paragraph of article 244 of the Criminal Code, second-degree imprisonment shall be imposed on anyone who, unauthorised, produces in any manner narcotic drugs, introduces them in the territory of the Republic, holds them for trading, sells or supplies them to other people for money or free of charge.

The same punishment shall apply to anyone who, unauthorised, holds narcotic drugs, even if not for trading purposes, and to anyone abusing such drugs. Personal use shall not be punished if prescribed for health reasons or recognised as effective by the ISS (Social Security Institute).

Art. 2

Besides those indicated in the preceding article, drug-related offences shall include those criminalized under the third, fourth and fifth paragraphs of article 244 and under articles 165, 177, 245, 250 and 281 of the Criminal Code.

Art. 3

When the offence proves to be particularly serious on account of quality and quantity of narcotic drugs or psychotropic substances, or because of the exclusive or prevailing profit-making purpose, or because of the young age of the person, not over 21, to whom such substances have been administered, sold or supplied at any title, punishment shall be increased by one to three degrees, including third-degree disqualification from public offices and political rights.

The person convicted for the mischief of trade in narcotic or psychotropic substances, with the aggravating circumstances under the preceding paragraph, shall be considered in any case dangerous under article 13 of the Criminal Code and, if a foreigner, expelled from the territory of the Republic. Expulsion shall be applied after serving all or part of the sentence in jail. The fact that the crime or punishment is extinguished shall not prevent the application of such measure. Expulsion shall be revoked in case of rehabilitation.

Art. 4

Punishment may be reduced by one degree where offences of illicit production, import or possession of narcotic or psychotropic substances are mitigated on account of quality and quantity of such substances and when the offender declares that such substances were for personal use.

A similarly reduced punishment may apply to the offence of personal use of narcotic substances.

Art. 5

In the case provided for by the preceding article, the judge may order – at any stage of the proceedings and more specifically in applying provisional release, release on parole, conditional release, half-freedom, house arrest, social aftercare or any other measure provided for in the Criminal Code or relevant implementing or supplementing rules – that the investigated person, the defendant or convict be submitted to probation or surveillance by law enforcement authorities with the assistance of educators or social workers.

The judge shall prescribe the terms of the measures and impose special obligations. Therefore, he may order medical examinations aimed at establishing the presence in the body of alcoholic, narcotic or psychotropic substances, as well as therapeutic treatments and, if appropriate, hospitalisation or commitment to a facility. The judge may also order the application of other measures, among which those provided for by article 11 of Law n. 86 of 11 December 1974 (text in force). He may order the review, temporary suspension or limitation of the driving licence, as well as make its validity conditional on compliance with particular obligations and requirements. He may prohibit, limit or restrict the use of passport and of any other authorisation or licence issued by public offices. He may order the defendant to work, even without a salary, within social facilities and services, or volunteer assistance organisations.

The judge may forbid foreigners not residing or domiciled in the Republic to stay in or enter the country for the whole duration of the judgement or of the measure. He may make the stay or work permit subject to compliance with special obligations, requirements or conditions. In place of surveillance and probation he may order the Gendarmerie to directly request the competent administrative authorities of the place of residence or domicile of the defendant or convict to investigate and report on his personality, behaviour, social life and professional activity.

Art. 6

The period of prescription shall not run until full execution of the measures, controls and treatments referred to in the preceding article.

Art. 7

If the measures under article 5 prove to be successful, the judge may decide that the period spent in a health care or other appropriate facility be considered as part of the punishment already served.

Moreover, the judge may grant pardon, even if age requirements and other requirements or conditions established by the Criminal Code are not met.

Pardon granted under the preceding paragraphs shall extinguish the offence if granted prior to conviction. If granted subsequently, pardon shall have the effect of rehabilitation in conformity with article 117 of the Criminal Code.

Art. 8

Measures and special treatment provided for by articles 5, 6 and 7 of this Law may also apply to any person investigated, accused or convicted for the offence of transfer to others of narcotic or psychotropic substances, when such offences are not particularly serious on account of quality and quantity of such substances, lack of profit and any other benefit for the offender and special relations between the offender and the recipient.

However, in this case, probation or surveillance shall have a duration of at least four years.

Art. 9

Article 165 of the Criminal Code shall be superseded by the following:

“Art. 165 – Administration of harmful or dangerous substances to minors

If the fact does not constitute a more serious offence, anyone who, being in charge of a public commercial concern, administers, makes or lets other people administer, or in any case makes available to minors under sixteen medicines, drugs, alcoholic beverages, spirits or other substances which, on account of their quality, quantity or use not in line with prescriptions, are dangerous or harmful to health, shall be punished with a fine in lira or second-degree arrest. Second-degree disqualification from trade shall also apply.”

Article 280 of the Criminal Code shall be superseded by the following:

“Art. 280 – Production or illegal circulation of alcoholic beverages, illicit administration

- 1) Anyone who, unlicensed or not complying with the relevant requirements, makes, produces, introduces in the territory of the Republic, circulates or holds , for the purpose of circulating, alcohol, liquors, alcoholic beverages or spirits;
- 2) anyone who, being in charge of a public commercial concern, administers, makes or lets others administer alcoholic beverages outside business hours;
- 3) anyone who administers alcoholic beverages to a person clearly drunk,

shall be punished by terms of a fine in lira or second-degree disqualification from trade and any licensed business.

Art. 10

Drunkenness or psychic alteration due to the use of alcoholic beverages or narcotic and psychotropic substances shall be inferred, for the purposes of this Law, from objective elements, such as behaviour, or through specific examinations, such as blood, urine and exhaled air tests. Any other relevant provisions contained in laws, regulations and decrees on road traffic shall not be affected.

Chronic intoxication, addiction, habitual abuse of alcohol and use of narcotic and psychotropic substances which alter the psychophysical state of a person shall be inferred from clinical examinations.

With reference to articles 9, 10, and 13 of the Criminal Code and article 1 of Law n. 86 of 11 December 1974, biopsychic examinations need not be conducted when other equivalent means of medical and health assessments have already been used. The judge may request a biopsychic examination whenever the habitual or occasional use of alcoholic or narcotic substances has influenced directly or indirectly the offender's or the victim's behaviour.

Art. 11

The judge shall always provide a reasoned justification when using the discretionary powers granted by this Law. He shall give account of the opinions, reports and interventions of advocates, educators, consultants and justice collaborators. With respect to the measures under this Law the ordinary procedure shall apply, according to the stage of the proceedings. Failing this, executory procedure shall apply.

Measures and obligations imposed by the judge in conformity with this Law shall not exclude the application of similar measures set forth by provisions on the issue, review, suspension and limitation of driving licenses and of hunting licences, passports and any other authorisation or licence issued by public offices. In the same way, the application of these latter measures shall not exclude the adoption of those contained in this Law, although the judge shall take them in due account.

Where adequate elements support the presence of things relevant to an offence covered by this Law, when urgent and in the respect for the right to defence, if and insofar

as possible, the law enforcement may perform directly, immediately and if necessary coercively, the search of individuals, houses or vehicles.

Art. 12

The following shall be considered as narcotic drugs:

CNS stimulants

Cocaine; amphetamines; dextroamphetamines; methylphenidate; phenmetrazine; phenylpropanolamine; STP; MDMA; bromo-DMA; diethylpropion; most of amphetamine-like appetite suppressants.

Opiates

Heroin; morphine; codeine; meperidine; methadone; hydromorphone; opium; pentazocine; propoxyphene; fentanyl; sufentanyl.

CNS depressants

Barbiturates; benzodiazepines; glutethimide; meprobamate; methaqualone; ethchlorvynol; chloral hydrate; methyprylon; paraldehyde.

Hallucinogens

LSD; psilocybin; mescaline; PCP:

Cannabis group

Marijuana; hashish; THC; hashish oil; sinsemilla.

Anticholinergics

Atropine; belladonna; hyoscyamus; scopolamine; trihexyphenidyl; benztropine mesylate; procyclidine; propanteline bromide; stramonium seeds.

These lists may be updated by means of a Regency Decree.

Art. 13

Law n. 7 of 23 February 1956 is repealed. Law n. 32 of 7 March 1988 is repealed.
Any provision contrary to this Law is repealed.

Art 14

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

Its provisions shall have retroactive effect when more favourable to the offender, unless an irrevocable judgement has been pronounced. In this connection, all provisions contained in article 3 of the Criminal Code shall apply.

Done at San Marino, on 27th November 1997/1697 since the Foundation of the Republic

THE CAPTAINS REGENT

Luigi Mazza - Marino Zanotti

**THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS**

Antonio L. Volpinari