



# 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 27 March 2014:*

### **LAW NO. 41 of 31 March 2014**

#### **EXTRADITION PROVISIONS**

##### **CHAPTER I GENERAL PROVISIONS**

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

*(Prevalence of international conventions)*

1. Extradition shall be governed by the provisions of the international conventions in force for the Republic.
2. In the absence of these provisions, the provisions of this Law shall apply.

##### **CHAPTER II EXTRADITION TO FOREIGN COUNTRIES**

###### **Art. 2**

*(Extradition and powers of the Minister of Justice)*

1. The surrender to a foreign State of any person for the execution of a foreign sentence of imprisonment, a preventive measure restricting personal freedom, as well as any other order imposing a preventive measure restricting personal freedom can occur only by means of extradition.
2. If the extradition of a person is requested by more than one State, the Minister of Justice shall adopt his decision taking into account all relevant circumstances and in particular the seriousness of the crimes and the place where these were committed, the dates of receipt of requests, the nationality of the person sought, as well as the possibility of re-extradition to another State.

**Art. 3**  
*(Double criminality)*

1. Extradition shall be granted only in respect of conducts which constitute an offence under San Marino laws and the laws of the requesting State.

**Art. 4**  
*(Limits to extradition)*

1. Extradition cannot be granted in case of an offence of a political nature or an offence connected with a political offence, or when there are substantial grounds to believe that the accused or convicted person shall be prosecuted or discriminated against on account of his/her race, religion, gender, nationality, language, political opinions, personal or social status, or would be subjected to cruel, inhuman or degrading treatment or punishment, or acts representing a violation of a fundamental right of the individual.

2. Any offence detrimental to a political interest of the State or a political right of a citizen shall be considered as a political offence. For the purposes of extradition, also a common offence committed mainly for political reasons shall be regarded as a political offence.

3. In no case shall terrorist offences or offences committed for the purpose of terrorism or subversion of the constitutional order shall be regarded as political offences. This shall also apply to the offences which, under the terms of the international conventions adhered to by the Republic of San Marino, cannot prevent extradition.

4. If the conducts for which extradition is requested carries the death penalty, extradition shall be granted exclusively if it is guaranteed that such penalty will not be imposed or carried out.

5. Except in relation to the offences referred to in paragraph 3, extradition of a San Marino national shall not be granted.

6. If extradition is refused, San Marino judicial authority shall, at the request of the applicant State, start criminal proceedings for the same facts for which extradition has been refused and shall inform the requesting State of the start of the proceedings. A request of a foreign State shall not be necessary in relation to the offences in paragraph 3 above.

**Art. 5**  
*(Rule of speciality)*

1. The Minister of Justice may grant extradition provided that the person to be extradited shall not be subjected to any restriction of personal freedom for the execution of a sentence or preventive measure, any other measure restricting personal freedom, or re-extradited to another State for an offence committed before the surrender other than that for which extradition was granted.

2. The provisions of paragraph 1 shall not apply when the extradited person, having had an opportunity to voluntarily leave the territory of the State to which he has been surrendered, has not done so within thirty days of his final discharge or if he has voluntarily returned to that territory after leaving it.

**Art. 6**  
*(Documents supporting the application)*

1. Extradition shall only be granted on the basis of a relevant application submitted by the competent authority of the requesting State.

2. The application shall be accompanied by the following:

a) a copy of the sentence of imprisonment or providing for a preventive measure restricting personal freedom or any other order imposing a preventive measure restricting personal freedom;

b) a report of the facts ascribed to the person for which extradition has been requested, including an indication of the time and place of their commission, as well as their legal characterisation;

c) the text of the applicable law provisions;

d) identification data, together with any other information that may help to establish the identity and nationality of the person whose extradition is requested.

**Art. 7**  
*(Legal safeguards)*

1. Extradition cannot be granted in the absence of a favourable decision by the Judge of Appeal, to whom the request shall be transmitted by the Minister of Justice within fifteen days after its receipt. In case of appeal against the judgement rendered by the Judge of Appeal, except when an appeal is declared inadmissible, extradition shall not be granted in the absence of a relevant favourable decision by the Highest Judge of Appeal in criminal matters.
2. If the person sought, in the presence of his counsel, consents to be extradited, the decision of the Judge of Appeal shall be limited to the validation of the consent.
3. The favourable decision of the Judge of Appeal and the consent of the interested person shall not make mandatory for the Minister of Justice to grant extradition.
4. The Judge of Appeal shall summon the interested person for identification purposes and for recording his/her consent, where applicable. If the person concerned has not designated any counsel, he/she shall be assisted by a public defender. The writ of summons shall be notified at least ten days before the hearing, under pain of nullity, to the Procuratore del Fisco (prosecuting magistrate), the counsel or, in the absence of the latter, the public defender and to the representative of the requesting State, if appointed.
5. The Judge of Appeal may request to the foreign authorities, through the Minister of Justice, the documents and information deemed necessary.
6. The Judge of Appeal, having collected all information and ordered the inspections deemed necessary, shall adopt a decision on the admissibility of the request and the eligibility for extradition.
7. The decision on extradition shall be adopted by the Judge of Appeal within three months after the date of receipt of the extradition request or the date of receipt of the documents and information referred to in paragraph 5.
8. In case of a decision favourable to extradition, the Judge of Appeal, at the request of the Minister of Justice, shall order provisional detention of the person sought and the seizure of the *corpus delicti* and of relevant items. The Judge of Appeal shall also decide which of the property seized can be surrendered to the requesting State.
9. In case of a decision contrary to extradition, the Judge of Appeal shall revoke any preventive measure and order the restitution of the property seized. A decision contrary to extradition shall preclude a subsequent favourable decision following another possible request for the same facts by the same State, unless such request is based on new elements.
10. Where the requesting State intends to prosecute a surrendered person for an offence committed prior to extradition other than that for which the extradition was granted, it shall submit a new extradition request. Such request shall be accompanied by the statements that the interested person has made before the judge of the requesting State in relation to the request for extension of extradition. In this case, the Judge of Appeal shall proceed *in absentia* of the interested person. There shall not be a trial before the Judge of Appeal in case the extradited person, through the statements mentioned above, has accepted the extension of extradition. Such procedure shall apply also when the State, to which the person has been surrendered, requests the consent to re-extradition of the same person to a different State.

**Art. 8**  
*(Proceedings for the same offences)*

1. The Judge of Appeal shall refuse to extradite the person sought if a criminal proceeding has been instituted against him/her or a final judgement has been rendered in the requested State in respect of the offence or offences for which extradition is requested.

**Art. 9**  
*(Appeal against an extradition decision)*

1. Against the decision of the Judge of Appeal, an appeal, also on the merits of the extradition procedure, can be lodged with the Highest Judge of Appeal in criminal matters by the interested person, his/her counsel, the Procuratore del Fisco and the representative of the requesting State within thirty days after the receipt of the relevant communication.

#### **Art. 10**

##### *(Intervention by the requesting State)*

1. The requesting State may request to intervene in the proceedings before the Judge of Appeal and Highest Judge of Appeal by appointing a lawyer authorised to practise before the court of the Republic as its representative. The intervention by the requesting State shall be admitted by the Judge of Appeal subject to the condition of reciprocity.

#### **Art. 11**

##### *(Extradition decision. Surrender)*

1. The Minister of Justice shall decide with regard to extradition within forty-five days after the receipt of the record establishing the consent to extradition, the communication of the expiry of the deadline to appeal against the decision taken by the Judge of Appeal or the lodging of the decision of the Highest Judge of Appeal with the Court Registry.

2. If no decision is taken by the Minister of Justice within the time-limit set above, the person sought, if detained, shall be discharged. The sought person shall also be discharged when extradition is refused.

3. The Minister of Justice shall promptly inform the requesting State of his/her decision with regard to the extradition request and, if this is agreed to, of the place of surrender and date from which surrender is possible. Precise information about any restriction of personal freedom imposed on the sought person for the purpose of extradition shall also be communicated.

4. The surrender shall take place within fifteen days of the date established under paragraph 3 and, upon a reasoned request by the applicant State, such time-limit can be extended by a further twenty days.

5. If the person sought has not been taken over by the requesting State on the appointed date, the extradition decision shall become ineffective and, in this case, the interested person shall be discharged.

#### **Art. 12**

##### *(Suspension of surrender. Temporary surrender. Enforcement abroad)*

1. The extradition procedure shall be suspended if the person sought must be tried on the territory of the State or he/she must serve there a sentence for offences committed before or after the offence for which extradition has been granted. However, the Minister of Justice, having heard the judicial authority competent for the enforcement of the sentence or of the proceedings pending in the Republic, may order the temporary surrender of the person sought to the requesting State where he/she is accused, by arranging the relevant terms and modalities. In addition, the Minister of Justice may agree that the sentence be served in the requesting State.

#### **Art. 13**

##### *(Coercive measures and seizure)*

1. At any time, upon request of the Minister of Justice, the person for which extradition has been requested can be subjected to measures restricting personal freedom. Similarly, upon request of the Minister of Justice, the seizure of the *corpus delicti* and of the relevant items related to the offence for which extradition has been requested may be ordered at any time. The Minister of Justice shall make such requests, where necessary, upon indication or request of the foreign State.

2. Such measures shall be ordered by the Judge of Appeal.

3. In case of urgency, upon request of the foreign State and of the Minister of Justice, the Judge of Appeal may order a temporary measure restricting personal freedom, even before the extradition request has been received. The application for a provisional arrest shall state that a judgement imposing a custodial sentence has been passed or a measure restricting personal freedom adopted. The application shall also indicate the offence for which extradition will be requested, the time and place of its commission, as well as the identification data of the person sought.

4. The Minister of Justice shall promptly inform the foreign State of the temporary enforcement of the coercive measure and of any seizure. The preventive measures shall be revoked if the Minister of Justice has not received the extradition request and the documents set forth in article 6 within forty days after the receipt of the communication above.

5. The decision of revocation shall not affect the adoption of new preventive measures or extradition in case the request is received at a later time.
6. The provisions of the code of criminal procedure on coercive measures shall apply, in so far as relevant. In the enforcement of measures restricting personal freedom, due consideration shall be given in particular to the need to prevent that the person to be extradited avoids the possible surrender.
7. During the interview following the adoption of the measure, the Judge shall: in the absence of a counsel, appoint a public defender who will be present at the performance of the judicial act; identify the person; obtain the possible consent of the interested person to be extradited and include it in the records.
8. In no case coercive measures and seizure can be ordered, if there are reasonable grounds to believe that the conditions for a decision in favour of extradition do not exist.
9. The coercive measures shall be revoked if the Judge of Appeal has not delivered any decision favourable to extradition within eight months after their enforcement, or, in case the decision has been appealed against before the Highest Judge of Appeal in criminal matters, if the relevant proceedings have not been concluded after one year since their commencement. At the request of the Procuratore del Fisco, such time-limits may be extended only once, for a period not exceeding three months, in case of particularly complex investigations.

#### **Art. 14**

##### *(Revocation and replacement of measures)*

1. The revocation and replacement of the measures provided for in the preceding articles shall be ordered by the Judge of Appeal or the Highest Judge of Appeal, depending on the stage of the proceedings.
2. The revocation shall always be ordered when requested by the Minister of Justice.

#### **Art. 15**

##### *(Appeal against decisions imposing preventive measures)*

1. The preventive measures involving people and property imposed under the articles above can only be appealed against by the Procuratore del Fisco, the person sought or his/her counsel before the Highest Judge of Appeal in case of violation of the law.

### **CHAPTER III EXTRADITION FROM ABROAD**

#### **Art. 16**

##### *(Extradition request)*

1. The Minister of Justice shall be competent to request to a foreign State the extradition of an accused or convicted person against whom the execution of a detention order, of a preventive nature or following a final judgement, is pending, as well as the seizure of the *corpus delicti* and of the relevant items. To this end, the executing judicial authority, also with a view to enforcing the judgement or the decision by means of which a preventive measure restricting personal freedom has been imposed, shall submit the relevant request to the Minister of Justice by transmitting all necessary documents and records.
2. Following the necessary verifications and appropriate investigations with the competent authorities, the Minister of Justice may decide not to submit the extradition request or to postpone its submission by giving notice thereof to the requesting judicial authority.

3. The Minister of Justice shall have the competence to decide on the acceptance of the possible conditions posed by the foreign State to grant extradition, provided that these are not contrary to the fundamental principles of San Marino legal system. The judicial authority shall be bound by the conditions accepted.

4. With a view to extradition, the Minister of Justice may order the conduct of investigations on the accused or the convicted person abroad and request his/her provisional arrest.

**Art. 17**

*(Rule of speciality)*

1. The extradited person shall not be subjected to any restriction of personal freedom for the execution of a sentence or to any other restriction of personal freedom for an offence committed before the surrender other than that for which the extradition has been granted, unless the foreign State has expressly given its consent or the extradited person, having had the opportunity to leave the territory of the State, has not done so within thirty days of his final discharge, or has voluntarily returned to that territory after leaving it.

**Art. 18**

*(Preventive detention abroad)*

1. The preventive detention abroad following an extradition request submitted by the State shall be taken into account when calculating maximum period of preventive detention allowed and of the sentence to serve following the final judgement.

**CHAPTER IV FINAL PROVISIONS**

**Art. 19**

*(Repeal)*

1. Art. 8 of the Criminal Code shall be repealed.

**Art. 20**

*(Entry into force)*

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

*Done at Our Residence, on 31 March 2014/1713 since the Foundation of the Republic*

THE CAPTAINS REGENT

*Gian Carlo Capicchioni - Anna Maria Muccioli*

THE MINISTER OF  
INTERNAL AFFAIRS  
*Gian Carlo Venturini*