



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 of 2005 and to Article 6 of Qualified Law no. 186 of 2005;

Promulgate and make public the following Ordinary Law approved by the Great and General Council in its sitting of 10 June 2008.

LAW NO. 93 OF 17 JUNE 2008

RULES ON CRIMINAL PROCEDURE AND ON CONFIDENTIALITY OF INVESTIGATIONS IN CRIMINAL PROCEEDINGS

Art. 1 *(Objectives)*

1. Pending the reform of the Code of Criminal Procedure, the objective of this Law is to start making the existing procedural rules compliant with constitutional principles in this field and in particular with the principles establishing that all shall be entitled to defend themselves at any stage of the judicial proceedings, all judgements shall be pronounced by independent courts within a reasonable time and shall not be subject to undue financial burden and such judgements shall be made public, in conformity with Article 15, second and third paragraph, of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order and with Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

Art. 2 *(Register of notitiae criminis)*

1. Notitiae criminis received by the Investigating Judge shall be immediately entered by the same Investigating Judge into an ad hoc Register kept by the Registrar.
2. In case the notitia criminis arrives when the Court's offices are closed, the relevant registration shall be made immediately when the offices reopen, by mentioning the reasons for the delay.
3. The notitiae criminis shall be registered according to the chronological order in which they are received by the Investigating Judge and shall bear the date and time of their registration, together with the signatures of both the Investigating Judge and the Registrar.

4. Registrations shall briefly indicate all elements of the *notitia criminis* that are known at the time of registration, including the factual situation and the circumstances of time and place in which the offence seems to have been committed, the name of the suspect, injured party, plaintiff and complainant, as well as a provisional legal classification of the fact.

5. The elements of the *notitia criminis* subsequently received shall be included in a footnote added to the initial registration according to the procedures and terms referred to in the preceding paragraphs.

6. Registrations shall also indicate the progressive number of the file containing the *notitia criminis*, the elements on which it is based and any other relevant information or document, even if subsequently received.

Art. 3

(Right of defence)

1. Except for the cases envisaged in Article 5 hereunder, the Investigating Judge shall conduct all investigating activities, in general, and in particular those relating to the collection and drawing up of evidence, in full respect for the defendant's right of defence, the prerogatives of the *Procuratore del Fisco* (Prosecuting Magistrate) and the rights of private parties protected by criminal law.

2. The defendant, assisted by a counsel, and the *Procuratore del Fisco* are fully entitled to explain their arguments and produce their submissions, besides having the right to examine and take copies of all documents contained in the file, including the registration of the *notitia criminis*. The Investigating Judge shall ensure their participation, or that of their representatives, in preliminary investigations.

3. Except for the documents before the Court containing data and information covered by bank secrecy under Article 36 of Law no. 165 of 17 November 2005, the injured party, having been duly summoned, has the right to receive, upon his/her request, copy of the documents before the Court and to produce submissions, petitions or documents at any stage of the proceedings. The injured party may request the Investigating Judge substantiating the decision on the petition to attend searches and examinations, including during preliminary investigations, also through the counsel or expert. The Investigating Judge shall refuse to grant the authorisation in case the request made by the injured party, having been duly summoned, seriously prejudices the defendant's right of defence, or is in contrast with fundamental confidentiality needs concerning the investigations conducted, with bank secrecy or with what envisaged in Article 5 hereunder.

4. The injured party shall be obliged to participate in the interviews with the defendant ordered by the Investigating Judge.

5. This Article is without prejudice to the powers of the Judicial Police, which is entrusted with the task of collecting on its own initiative, in respect for guarantees laid down in law, any element which might be useful for investigations, unless otherwise specifically indicated by the Judge, to whom the *notitia criminis* and any other element useful for ongoing investigations shall be in any case transmitted at the earliest convenience.

Art. 4

(Judicial communication)

1. Within the mandatory time-limit of 30 days following the date of registration of the *notitia criminis* or subsequent integrations thereof, except for the cases referred to in Article 5 hereunder, the Investigating Judge shall personally inform the defendant and the *Procuratore del Fisco* of the factual and legal circumstances concerning the relevant offence, as registered in the Register of *notitiae criminis* referred to in Article 2 above, unless the file has been closed because manifestly unfounded or for other reasons.

2. The communication shall be made at the Single Court in the presence of the defendant, who may be assisted by one of his/her counsels. The defendant shall sign the ad hoc verbatim record attesting that the communication has been made.

3. If the Judge fails to convene the defendant within 30 days or he/she fails to appear or to sign the verbatim record referred to in the preceding paragraph, the Judge shall transmit to the defendant and the *Procuratore del Fisco*, within the mandatory time-limit of the following 30 days, by registered letter sealed in such a way as to guarantee its confidentiality, an ad hoc communication briefly but clearly indicating the factual and legal circumstances concerning the relevant offence, as registered in the Register of notitiae criminis referred to in Article 2 above, unless the file has been closed.

4. In case the residence or another postal address of the addressee is unknown, the communication shall be notified to the lawyer appointed by the Court, who shall do everything possible to transmit it to the addressee, if necessary also in consultation with the Judicial Police.

5. In the absence of the verbatim record referred to in paragraph 2 above, the judicial communication shall be transmitted under penalty of absolute nullity of any other subsequent acts, in conformity with what envisaged in Article 229 of the Code of Criminal Procedure.

Art. 5

(Preliminary investigations carried out under temporary secrecy or under urgency)

1. Whenever particular exceptional reasons exist to believe that all investigating activities may be successfully carried out only under secrecy, the Investigating Judge, by way of derogation of the preceding Articles 3 and 4, shall declare the status of temporary secrecy of investigations through a reasoned decree.

2. The Investigating Judge shall take similar action in case only some investigations must be carried out under temporary secrecy or if the need for secrecy is subsequently established.

3. The status of temporary secrecy of preliminary investigations, which shall consequently apply also to the Judicial Police with regard to delegated activities, shall last no longer than the time strictly necessary to successfully carry out the activities. However, it shall not exceed a maximum period of six months following registration of the notitia criminis, which can be extended only once for a maximum of a further three months in case of serious reasons.

4. In case of secrecy of investigations, the term related to judicial communications shall start to run again from the end of the temporary secrecy status.

5. In case of secrecy of some activities, the Judge shall, through the Registrar, include them and the relevant secrecy measure into a separate reserved file until their conclusion, without prejudice to the term concerning the transmission of the judicial communication and, for all other activities, to the exercise of the rights under Article 3 above.

6. In case of activities aimed at obtaining evidence under urgency and not covered by secrecy, to which the requirement to notify the parties applies, the Investigating Judge shall also notify, at the same time, the judicial communication to the defendant and the *Procuratore del Fisco*, if this has not been done yet. If the addressee cannot be contacted or in case of parties, whose residence or other postal address is unknown, the communication and the documents concerning the obtaining of evidence under urgency shall be notified to the lawyer appointed by the Court, who shall do everything possible to transmit them to the addressee, if necessary also in consultation with the Judicial Police.

Art. 6

(Promptness of criminal proceedings)

1. In respect for the principle of promptness of proceedings under Article 15, third paragraph of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional

Order, the Investigating Judge shall rapidly conclude preliminary investigations, commit the case for trial and issue the Decree fixing the date of the hearing, or close the case in conformity with Article 135 of the Code of Criminal Procedure, as soon as possible.

2. In any case, the Investigating Judge shall commit the case for trial and then issue the Decree fixing the date of the hearing, or close the case, within the mandatory time-limit of one third the limitation period of the most serious offence. The latter time-limit shall be calculated without taking into account neither any increase or decrease due to any circumstances, nor the causes for suspension or interruption of the limitation period, except for the suspension provided for in Article 56 of the Criminal Code, for the time necessary to carry out the examinations ordered by the Judge under Article 3 of the rules implementing the Criminal Code and, moreover, for the period strictly necessary to execute international rogatory letters.

3. If the above-mentioned terms are not respected, the case shall anyhow be committed for trial, regardless of the Investigating Judge's decision.

4. The file shall therefore be transmitted by the Registrar to the Head Magistrate, who, having verified the status of the proceedings, heard the private parties and received the assent of the *Procuratore del Fisco*, shall dispose of the case and order its closure. However, in case he/she deems that the term could not be respected due to force majeure or accidental occurrence, the Head Magistrate shall have the power to extend the term for a maximum period of 30 days. No further or different extensions shall be granted. In particular, in this specific case, the Judicial Council in plenary session shall not be in a position to grant any extension.

5. Finally, the Head Magistrate shall immediately inform the Parliamentary Commission for Justice and the ordinary Judicial Council of the delay established and of all consequent measures adopted.

6. The delay may give rise to civil liability of the magistrate when the additional conditions referred to in Article 9 of Constitutional Law no. 144 of 30 October 2003 apply.

Art. 7

(Amendments to the Code of Criminal Procedure)

1. The following paragraphs shall be added to Article 135 of the Code of Criminal Procedure:

“The Decree ordering the closure of the file shall be immediately notified to the *Procuratore del Fisco*, the defendant, the injured party, the plaintiff and the complainant and be reported to the Head Magistrate.

Within 30 days following the notification, the defendant and the injured party may appeal against the above-mentioned order to a Judge of Criminal Appeals other than that competent to decide upon the substance of the case according to the natural criteria of assignment of judicial tasks. Said Judge of Criminal Appeals shall make a decision on the appeal by reasoned order within 30 days.

The reasoned order of the Judge of Criminal Appeals allowing the appeal shall also establish the reopening of investigations and shall mandate the Head Magistrate to assign the case to another Investigating Judge.”

2. Paragraph 4 of Article 181 of the Code of Criminal Procedure shall be replaced by the following:

“The reasons given in the judgement shall be adequate, clear and understandable and shall be in any case deposited with the Registry within 60 days following its publication.

The delay in the deposit may give rise to civil liability of the magistrate when the additional conditions set forth in Article 9 of Constitutional Law no. 144 of 30 October 2003 apply and it shall in any case be reported by the Registrar to the Head Magistrate who, following investigations into the case, shall notify the private parties and the *Procuratore del Fisco* thereof.

The Head Magistrate shall also immediately inform the ordinary Judicial Council and the Parliamentary Commission for Justice of the cases mentioned in the preceding paragraph.

The reasons given in the judgements, which have been published at least 30 days following the entry into force of this Law, shall be deposited within 90 days starting from the date on which this Law enters into force, on penalty of the sanctions envisaged in the above-mentioned Article 9 of Constitutional Law no. 144 of 30 October 2003.”.

Art. 8

(Publication of documents before the Court)

1. Until the case is committed for trial, and also following committal for trial for the cases involving minors, the crimes envisaged in Articles 171, 172, 173, 174, 175, 176, 177, 177 bis, 177 ter and 177 quarter of the Criminal Code and data and information covered by bank secrecy under Article 36 of Law no. 165 of 17 November 2005, the magistrates, registrars and any other employee of the Court shall be obliged not to disseminate or publish in any way the documents before the Court, the documents obtained and their content, and they shall continue to be bound by official secrecy under Article 29, letter b) of Law no. 41 of 22 December 1972 and Article 377 of the Criminal Code, while lawyers and experts, both appointed by the Court and of one's own choosing, as well as their employees and collaborators, shall continue to be bound by professional secrecy under Article 192 of the Criminal Code. Anyone violating the above-mentioned provisions shall be punished according to Article 192 of the Criminal Code, unless the fact constitutes a more serious crime.

2. The files concerning both cases committed for trial and closed cases, except for cases involving minors and cases concerning the crimes envisaged in Articles 171, 172, 173, 174, 175, 176, 177, 177 bis, 177 ter and 177 quarter of the Criminal Code, and except for data and information covered by bank secrecy under Article 36 of Law no. 165 of 17 November 2005, may be provided to the parties to the proceedings and their counsels, to Their Excellencies the Captains Regent and to the Parliamentary Commission for Justice upon request of at least one third (1/3) of the members of said Commission. The Judge may provide the above-mentioned files also to parties with a legitimate interest by means of a reasoned measure, which can also entail some limitations to the use of the copy.

3. Judgements and decisions to close the cases, except for cases involving minors and the crimes envisaged in Articles 171, 172, 173, 174, 175, 176, 177, 177 bis, 177 ter and 177 quarter of the Criminal Code, shall be public, except for the parts containing data and information covered by bank secrecy under Article 36 of Law no. 165 of 17 November 2005. Anyone may consult them and take copies thereof.

4. Judgements relative to cases involving minors and cases concerning the crimes envisaged in Articles 171, 172, 173, 174, 175, 176, 177, 177 bis, 177 ter and 177 quarter of the Criminal Code shall be made available only for consultation purposes and by indicating only the initials of the names and surnames of the persons involved at any title in the proceedings.

5. The content of the documents before the Court, as well as of the judgements and decisions to close the cases, or of documents collected during criminal proceedings, with reference only to the parts subject to special secrecy requirements under the legal order, shall in any case continue to be subject to such requirements. Anyone disseminating or inadequately using their content shall be punished according to Articles 191 and 192 of the Criminal Code, unless the fact constitutes a more serious crime.

Art. 9

(Prohibition of publication)

1. The following article shall be added to the Criminal Code:

“Art. 192 bis
(Publication of secret documents concerning criminal proceedings)

The publication, even in part or in summary, in any manner whatsoever, of the documents subject to confidentiality of investigations, or to special secrecy requirements, as well as of preliminary investigation documents relative to in camera hearings and content thereof, shall be prohibited.

The publication of personal details and images of minors, involved at any title in criminal proceedings, shall be prohibited until they become of age. The publication of elements leading in any case to the identification of said minors shall also be prohibited.

The publication of the image of a person deprived of his/her liberty, while being subject to the use of physical coercion, shall be prohibited, unless the person agrees thereto.

Anyone violating the provisions set forth in the preceding paragraphs shall be punished with a fine equal to 12,000 euro.

In case of repeated infringement, or if the violation referred to in the first paragraph above is perpetrated during the electoral campaign to the detriment of one of the candidates of the various lists presented, second degree disqualification from profession shall also be applied in addition to the fine envisaged in the preceding paragraph.”.

Art. 10
(Transitory and final provisions)

1. This Law shall apply to all criminal proceedings for which the *notitia criminis* has been received by the Investigating Judge after its entry into force.
2. This Law shall not apply to pending proceedings as of the date of its entry into force if they are committed for trial and closed within the following nine months.

Art. 11
(Repealing)

1. Any rule and provision in conflict with this Law shall be repealed.

Art. 12
(Entry into force)

1. This Law shall enter into force on 1 September 2008.

Done at Our Residence, on 17 June 2008/1707 since the Foundation of the Republic

THE CAPTAINS REGENT
Rosa Zafferani - Federico Pedini Amati

THE MINISTER OF THE INTERIOR
Valeria Ciavatta