



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 25 February 2022:

LAW no. 24 of 2 March 2022

PROVISIONS TO IMPLEMENT THE GUARANTEES AND ENSURE THE EFFICIENCY OF CRIMINAL PROCEEDINGS

CHAPTER I

AMENDMENTS TO THE SYSTEM OF PERSONAL AND PROPERTY PRECAUTIONARY MEASURES AND PROBATORY SEIZURE

Art. 1

(Personal precautionary measures)

1. Articles 53 to 58 of Chapter VIII of the Code of Criminal Procedure shall be replaced by the following Articles 53, 53-*bis*, 53-*ter*, 53-*quater*, 53-*quinquies*, 53-*sexies*, 54, 55, 56, 57, 58, 58-*bis*, 58-*ter*, 58-*quater*, 58-*quinquies*, 58-*sexies*, 58-*septies*, 58-*octies* and 58-*nonies*:

“Art. 53

(Personal precautionary measures)

1. By means of a reasoned decree, the Investigating Judge may legitimately order limitations on the personal liberty of the defendant only in the cases and in the manner provided for in this Chapter.

2. No one may be subjected to personal precautionary measures unless the need for precautionary measures is established and if there is no serious evidence of guilt in the documents of the proceedings that, as things stand, would cause the defendant to be deemed responsible for the acts being prosecuted.

3. Personal precautionary measures shall be coercive measures, either custodial or imposing an obligation, or disqualification measures.

4. Custodial coercive personal precautionary measures shall include, in order of severity: precautionary detention in prison, precautionary detention in a place of care and house arrest.

5. Coercive personal precautionary measures imposing an obligation shall include prohibition of expatriation, obligation to report to the judicial police or surveillance obligation, removal from the family home or from a domicile, prohibition to approach the offended party and places frequented by him/her, prohibition and obligation to stay in the Republic.

6. Disqualification personal precautionary measures shall include suspension from exercising parental responsibility, suspension from acting as guardian and curator, suspension from exercising a public office or service, temporary prohibition of exercising specific professional or business activities or of exercising administrative and representative functions for natural and legal persons and entities, and prohibition of negotiating with the public administration.

7. No personal precautionary measure shall be applied if, at the time of its adoption, it appears that the fact being prosecuted was committed in the presence of grounds for justification or non-punishability or if there are grounds for the extinction of the crime or punishment.

Art. 53-bis
(Precautionary needs)

1. The Investigating Judge shall establish that precautionary measures are needed:

- a) when there is a concrete and current danger of tampering for the acquisition and authenticity of evidence, on the basis of specific and compelling investigation needs, due to expressly indicated factual circumstances;
- b) when the defendant has absconded or there is a concrete and current danger that he/she will abscond, similarly to conducts indicating a willingness to expatriate or to disappear;
- c) owing to the specific modalities and circumstances of the fact and to the personality of the defendant, as inferred from his/her concrete behaviours or acts, personal status or criminal record, there is a concrete and current danger that he/she may commit serious crimes involving the use of weapons or other means of violence against persons, or may repeat a crime of the same kind as that being prosecuted.

2. The Investigating Judge shall assess the specific appropriateness of each precautionary measure in relation to the nature of the precautionary needs to be met, by adopting the least severe one, which is in concrete terms sufficient to meet such needs.

3. The Investigating Judge shall establish the measure to be applied based on progression. The precautionary measure shall in any case be proportionate - at this stage - to the seriousness of the fact and to the punishment or security measure to be applied, also taking into account any suspended sentence.

4. Precautionary detention in prison may exceptionally be ordered if:

- a) the crime being prosecuted is punishable by not less than third-degree imprisonment and there is a danger of evidence tampering, concealment of the crime, avoidance of punishment and/or repetition of conducts of the same kind as the crime being prosecuted, provided that any other personal precautionary measure is inadequate;
- b) the crime being prosecuted is punishable by second-degree imprisonment, the defendant has been declared a habitual or professional offender or a criminal by tendency, or the crime being prosecuted involves modalities entailing the declaration referred to in Article 16 of the Criminal Code, or the specific aggravating circumstances referred to in Article 90 of the Criminal Code, and in any case there is a danger of evidence tampering or concealment of the crime, or avoidance of punishment and/or repetition of conducts of the same kind as the crime being prosecuted, provided that any other personal precautionary measure is inadequate.

5. The Investigating Judge, except in the case of exceptionally serious circumstances, shall not order precautionary detention in prison against defendants who have reached the age of 70. If the person subjected to detention in prison is the mother of a child under three years of age who lives with her, or if she is pregnant, or if such person is the father of a child whose mother has died or she is absolutely unable to care for the child, or if incompatibility with his/her health condition is effectively established, precautionary detention in prison shall be replaced by one of the other coercive measures.

6. When ordering house arrest, also replacing precautionary detention in prison, the Investigating Judge may order controls by electronic or other technical means, once he/she has verified that such means are available to the judicial police.

Where house arrest replaces detention in prison, the defendant's refusal to consent to the above mentioned controls shall constitute grounds for reinstating detention in prison.

7. The defendant shall have the right to be released when the grounds for the adoption of the arrest warrant have ceased to exist.

8. The defendant shall have the right to meet his/her counsel within forty-eight hours of the enforcement of the custodial measure. With regard only to crimes punishable with imprisonment of no less than third degree, if the Investigating Judge deems that the meeting may be detrimental to the meeting of precautionary needs referred to in letter a) of paragraph 1 of this Article, he/she may defer the meeting by means of the decree ordering the custodial measure, providing specific grounds therefor.

Article 53-ter
(Duration)

1. The duration of coercive measures shall not exceed the maximum time-limits indicated by law.

2. Coercive measures shall not last longer than: one month, if the crime being prosecuted is punished by first-degree imprisonment; three months, if the crime being prosecuted is punished by second or third-degree imprisonment; six months, if the crime being prosecuted is punished by fourth or fifth-degree imprisonment. In all other cases, coercive measures shall not last longer than one year.

3. The time limits referred to in the preceding paragraph may, upon their expiry, be extended only once for the same length of time, if the precautionary needs that led to the adoption of the initial measure still exist. The extension shall be ordered by the Investigating Judge by means of a reasoned decree, which shall be subject to the review procedure referred to in Article 53-*quinquies* and to any appeal referred to in Article 56.

4. The disqualification measure entailing the prohibition of exercising specific professional or business activities, or of exercising administrative and representative functions of natural and legal persons and entities, shall be ordered for a maximum duration of two months, which may be extended for a further two months by reasoned decree of the Investigating Judge stating that precautionary needs still exist. The extension decree shall be subject to the review procedure referred to in Article 53-*quinquies* and to any appeal referred to in Article 56.

5. In any case, upon expiry of all time-limits referred to in the preceding paragraphs, the detention and disqualification measures shall cease to have effect.

Art. 53-quater
(Violation of the measures)

1. In case of violation of a personal precautionary measure by the defendant, the Investigating Judge may order its replacement or combination with a more severe measure, taking into account the circumstances of the violation. In case of violation of a disqualification measure, the Judge may order the replacement or combination also with a coercive measure.

Article 53-quinquies
(Review)

1. The Investigating Judge shall decide on the application, extension and revocation of personal precautionary measures, as well as on amendments to their enforcement modalities.

2. In the reasoned decree, the Investigating Judge shall, under penalty of nullity, indicate the crime being prosecuted, the facts and circumstances effectively constituting serious evidence of guilt and the specific precautionary needs, as well as the reasons why less severe measures would be inappropriate.

3. If, upon filing of the decree by the Investigating Judge ordering the application of a personal precautionary measure with the Court Registry, the investigation documents are wholly or partially subject to the regime referred to in Article 5 of Law no. 93 of 17 June 2008 and subsequent amendments, the Investigating Judge shall, at the same time, file the list of the documents used for the adoption of the measure, under penalty of ineffectiveness of the latter.
4. The Registrar shall immediately prepare the file for the review, which shall include a copy of the decree ordering the application of the personal precautionary measure and the list of the documents filed at the same time, as well as a copy of all deeds and documents indicated by the Investigating Judge in the same list, and shall transmit the file to a Law Commissioner other than the Investigating Judge, selected in accordance with the criteria established by the provisions for the organisation of judicial work. The above mentioned Law Commissioner shall, in his capacity as Judge in charge of the review, confirm, amend or revoke the measure.
5. After enforcing the measure, the judicial police delegated thereto shall file a copy of the enforcement report with the Court Registry for the Judge in charge of the review.
6. Within ninety-six hours of filing the copy of the enforcement report, the Judge in charge of the review, after notifying the parties concerned, shall hold a specific investigation hearing, which the defendant may attend, also through his/her counsel, and which shall be attended by the Procuratore del Fisco (Prosecuting Magistrate).
7. Until the review hearing, the Procuratore del Fisco and the defendant's counsel may consult the documents in the review file, without prejudice to the confidentiality of such documents vis-à-vis the other parties in the proceedings. The Procuratore del Fisco and the defendant's counsel, upon receipt of the notice of the review hearing, shall be entitled to submit pleadings to the Judge in charge of the review.
8. After hearing the Procuratore del Fisco and, where appropriate, the defendant's counsel, the Judge in charge of the review shall, no later than forty-eight hours after completion of the hearing, issue a reasoned order to confirm, revoke or replace the measure with a less severe one, assessing the legitimacy of the measure in fact and in law on the basis of the documents in the review file.
9. If the Judge in charge of the review revokes the precautionary measure, the competent Investigating Judge shall immediately adopt the relevant measures concerning the release of the defendant or, in any case, the termination of the effects of the measure.
10. The Judge in charge of the review shall instruct that the order confirming, amending or revoking the precautionary measure be immediately communicated to the Investigating Judge and notified to the Procuratore del Fisco and to the defendant's counsel. In the event of amendment or revocation of the measure, the review file shall remain deposited with the Court Registry, but shall not be disclosed to the parties until this is authorised by the Investigating Judge.
11. If the review order confirms the measure, the documents in the review file shall be deposited with the Court Registry and shall be available to the defendant's counsels who participated in the review hearing and to the Procuratore del Fisco, without prejudice to the further effects of the regime provided for in Article 5 of Law no. 93/2008 and subsequent amendments vis-à-vis the other parties in the proceedings.
12. If, during the review proceedings and until the filing of the relevant order, the Investigating Judge revokes the initial measure, the review proceedings shall be extinguished. If the measure is amended or replaced during the review, the time-limits referred to in paragraph 6 shall be renewed starting from the filing of the new enforcement report, and the review judgement shall refer to the measure as replaced or amended.
13. If multiple personal precautionary measures are adopted in the same proceedings, the Judge in charge of the review of the first measure enforced, selected according to the criteria referred to in paragraph 4, shall be responsible for any subsequent review procedures.
14. An appeal against the review order may be lodged with the Judge of Appeal in criminal matters pursuant to Article 56 below. The defendant and the counsel may directly lodge an appeal against the decree of the Investigating Judge ordering a personal precautionary measure. The direct lodging of the appeal shall extinguish the review procedure.

Art. 54
(Revocation or amendment)

1. During the investigation, the defendant and the Procuratore del Fisco may submit a request to revoke or replace the personal precautionary measure with another less severe one when new facts or circumstances emerge, which suggest that the precautionary needs no longer exist or are lessened.
2. The Investigating Judge shall notify the Procuratore del Fisco of the request made by the defendant for the revocation or amendment of the measure. The Procuratore del Fisco shall have the right to file pleadings within the next ninety-six hours. The Investigating Judge adopting the measure shall decide on the request within ten days, either rejecting it or accepting it, also partially.
3. The decree of the Investigating Judge may be challenged by the defendant and the Procuratore del Fisco pursuant to Article 56 below.
4. In any case, the Investigating Judge shall proceed ex officio to the immediate revocation or replacement of the measure with a less severe one if the conditions referred to in paragraph 1 are met.

Art. 55
(Subpoena)

1. A subpoena may be issued against defendants not subject to personal coercive measures.
2. In all cases in which a subpoena is issued, the defendant shall be obliged to appear every time he/she is summoned.

Art. 56
(Appeals)

1. Decrees ordering personal precautionary measures may be challenged by the defendant and the Procuratore del Fisco before the Judge of Appeal in criminal matters within ten days of their notification or enforcement. This time-limit may be extended by an additional ten days upon the defendant's express and timely request.
2. Orders issued by the Judge of Appeal may be challenged by the defendant's counsel and the Procuratore del Fisco on grounds of legitimacy before the Highest Judge of Appeal in criminal matters within thirty days of notification of the order.

Art. 57
(Release on bail)

1. The Law Commissioner may make the benefit of release on bail subject to the secured deposit of a sum of money as bail. The amount shall be established by the Law Commissioner taking into account the nature and extent of the crime and the economic condition of the defendant.
2. The defendant may request and obtain that, in lieu of the deposit, the bail and the sum presumably necessary to cover the costs of the proceedings be secured by a guarantor. In this case, the guarantor shall undertake this obligation by signing the relevant report before the Law Commissioner.
3. The defendant released on bail shall be required to have an address for service in the territory of the Republic of San Marino.
4. The Law Commissioner may also order that the released person be subject, for the entire duration of the proceedings or until the arrest warrant is revoked, to police surveillance or to the control system provided for in Article 64 of the Criminal Code.
5. In case of violation of the obligations imposed, as well as in case of unsuccessful completion of the probationary period, the Law Commissioner shall revoke release and order the defendant to be arrested again.

Art. 58

(Right of defence of defendants released on bail)

1. A defendant who is granted the benefit referred to in Article 57, paragraph 1 shall be released and exercise his/her right of defence, provided, however, that he/she appears whenever summoned by judicial authorities, and that, if he/she fails to appear when formally summoned, he/she shall lose the sum provided as bail.

Art. 58-bis

(Property precautionary measures)

1. Property precautionary measures shall include preservation order, advance registration of the general lien referred to in Article 144 of the Criminal Code in the registers kept with the Registry and Record Keeping Office, precautionary seizure and seizure for the purpose of confiscation.

Article 58-ter

(Conditions)

1. The preservation order and the advance registration of the general lien shall be aimed at securing the payment of the pecuniary sanction by the defendant and the fulfilment of private-law and public-law obligations arising from the crime referred to in Article 140 of the Criminal Code.

2. The measures referred to in the preceding paragraph may be ordered when the following conditions are met:

- *fumus commissi delicti*, i.e. existence of well-founded evidence of guilt;
- *periculum in mora*, i.e. concrete and current danger that the debtor may dissipate his/her assets during the proceedings.

3. The measure shall be proportionate to the amount of the pecuniary sanction applicable to the specific case and/or to the presumed value of the obligations with respect to which the guarantee is requested.

4. Assets which, under the civil-law provisions in force, are unattachable, shall not be subject to the preservation order.

5. If the defendant or the third party civilly liable offers an adequate security, the Judge shall immediately instruct that the preservation order be revoked and/or the advance registration of the lien be cancelled.

Art. 58-quater

(Preservation order and advance registration of the lien)

1. The party bringing the civil action may request the adoption of the preservation order or the advance registration of the general lien against the defendant or the third party civilly liable at any stage and instance of the proceedings, to secure that the obligations resulting from the crime referred to in Article 140, numbers 2 and 3 of the Criminal Code are met.

2. The Procuratore del Fisco may request the adoption of the preservation order or the advance registration of the general lien against the defendant at any stage and instance of the proceedings, as security for the payment of the pecuniary sanction, the costs of the proceedings and any other sum due to the State Treasury.

3. The competent Judge shall issue a reasoned order within 30 days of filing the request. Under penalty of nullity, the order shall indicate the crime being prosecuted, the facts and circumstances at the basis of the *fumus commissi delicti* and *periculum in mora*, as well as the measure imposed and the relevant amount.

Article 58-*quinquies*
(*Preventive seizure*)

1. The Judge shall order the preventive seizure of things relevant to the crime when the requirement of *fumus commissi delicti* is met and there is a concrete and current danger that the free availability of the assets may aggravate or extend the consequences of the crime, or facilitate the perpetration of other crimes.
2. The competent Judge shall issue a reasoned order either *ex officio* or within thirty days of the filing of the request by the injured person, the party bringing the civil action or the Procuratore del Fisco. Under penalty of nullity, the order shall indicate the crime being prosecuted, the facts and circumstances at the basis of the *fumus commissi delicti* and *periculum in mora*, as well as the full description of the assets subject to seizure. When ordering the measure, the Judge shall follow the principles of proportionality, adequacy and progression.
3. Members of the police forces may order preventive seizure when, for reasons of urgency and necessity, it is not possible to wait for the order of the judicial authority. The report of the operations carried out shall be sent within forty-eight hours to the Investigating Judge, who, if the conditions are met, shall validate it within the following ninety-six hours, under penalty of forfeiture of the measure.

Art. 58-*sexies*
(*Preventive seizure for the purpose of confiscation and confiscation in case of extinction of the crime*)

1. At each stage of the proceedings, the Judge shall identify the things to be confiscated pursuant to Article 147, paragraphs 1 and 2, those whose confiscation shall be ordered in the cases referred to in Article 147, paragraphs 8 and 9, and, in proceedings for the crimes referred to in Article 147, paragraph 10 of the Criminal Code, the money and other assets whose legitimate origin is not justified by the suspect or defendant. If the Judge considers that the free availability of such assets to the holders may jeopardise confiscation, he/she shall order their seizure by means of a reasoned decree.
2. If, during the investigations, the seizure of assets pursuant to the preceding paragraph is ordered, the Investigating Judge, in case of dismissal due to extinction of the crime, shall order that the seizure be maintained by means of a reasoned decree on the existence of the crime and the legal qualification of the seized assets intended for confiscation pursuant to Article 147 of the Criminal Code. The adversarial proceedings with the party subject to the seizure and any third parties in good faith shall continue for the sole purpose of verifying whether the conditions set forth in Article 147 of the Criminal Code, excluding those arising from the extinction of the crime, are met. If the Investigating Judge establishes that the conditions set forth in Article 147 of the Criminal Code are met, he/she shall order the confiscation of the assets by means of a judgement.
3. With the judgement of acquittal due to the extinction of the crime vis-à-vis the defendant subject to the seizure of assets referred to in paragraph 1, the Judge, after establishing the existence of the crime and the legal qualification of the assets seized and intended for confiscation pursuant to Article 147 of the Criminal Code, shall order the confiscation of the assets.
4. The Judge shall proceed according to paragraphs 2 or 3, depending on the stage of the proceedings, also with respect to the money and assets subject to seizure under paragraph 1 and intended for confiscation under Article 147, paragraph 10 of the Criminal Code, if, by means of the decision to dismiss the case or the judgement of acquittal due to the extinction of the crime, the crime and the liability of the holder are nevertheless deemed to exist and the value of the seized assets is disproportionate to the amount of legitimately earned income, declared economic activities or habitual standard of living.
5. In case of extinction of the crime, if the Judge does not order the continuation of the proceedings pursuant to paragraph 2 or does not proceed to confiscation at the same time as the acquittal pursuant to paragraph 3, the seizure shall cease to be effective and the Judge shall order the assets to be returned to the entitled parties.

6. In case of death of the interested party, the proceedings for the enforcement of the confiscation order shall continue against the heirs or legatees.

7. In case of seizure ordered pursuant to paragraph 1 and for the purposes referred to in Article 147, paragraph 2 of the Criminal Code, the Judge shall order the confiscation of the assets by means of the decision to dismiss the case or of the judgement, including non-final.

8. Ordinary remedies and the remedy provided for in Article 199-*bis* shall be admitted against the decree ordering the confiscation of the assets in case of extinction of the crime.

Art. 58-septies
(Review)

1. In the event that property precautionary measures are adopted by the Investigating Judge, the review procedure provided for in Article 53-*quinquies* shall be applied.

Art. 58-octies
(Release from seizure and cancellation of advance registration)

1. The defendant, the person civilly liable, the third party subject to the measure and the Procuratore del Fisco may submit a request for release from seizure, even limited to certain assets, or for cancellation of advance registration of the general lien in case of emergence of new facts or circumstances suggesting that one of the requirements for the adoption of the measure is no longer met or that the precautionary needs are lessened.

2. The Judge shall notify the request by the defendant, the person civilly liable or the third party subject to the measure to the Procuratore del Fisco, who shall have the right to file pleadings within the next ten days.

3. The Judge who adopted the measure shall decide on the request within thirty days, either rejecting it or accepting it in whole or in part.

4. The decision of the Judge may be challenged by the defendant or the Procuratore del Fisco pursuant to Article 58-*nonies*.

Art. 58-nonies
(Appeals)

1. Orders providing for property precautionary measures may be directly challenged by the defendant, the person civilly liable, the third party subject to the measure and the Procuratore del Fisco before the Judge of Appeal in criminal matters within thirty days of their notification or enforcement. The direct lodging of the appeal shall make the review procedure inadmissible.

2. Orders issued by the Judge of Appeal may be challenged, on grounds of illegitimacy, before the Highest Judge of Appeal in criminal matters by the parties and the third party subject to the measure, within thirty days of notification thereof.”.

Art. 2
(Property precautionary measures)

1. Articles 58-*bis* to 67 of Chapter IX of the Code of Criminal Procedure shall be replaced by the following Articles 58-*decies*, 58-*undecies*, 58-*duodecies*, 58-*terdecies*, 59, 60, 61, 62, 63, 64, 65, 66, 67:

“Article 58-*decies*
(Probatory seizure)

1. By means of a reasoned decree, the Judge shall order the seizure of the *corpus delicti* and of relevant things that are necessary for the establishment of the facts.

2. *Corpus delicti* shall include the things against or through which the crime was committed or the things being the price, product or profit thereof.

3. The Judge or the judicial police personnel delegated by the judicial authority may examine and acquire copies of deeds, documents, correspondence, data and information held by financial institutions and contained in software. They may also seize deeds, documents and correspondence, as well as securities, values, deposits and any other thing, even if contained in safety boxes, when they have reasonable grounds to believe that such things are relevant to the crime, although they do not belong to the defendant or they are not registered in his/her name.

4. The decree ordering the acquisition of copies of the documents held by financial institutions shall be notified to the Procuratore del Fisco and the financial party at which documents are examined or from which they are acquired.

Art. 58-undecies
(Release from seizure)

1. The Judge shall promptly order the release from seizure of the assets and their return to the entitled parties, as soon as the lien on them is no longer necessary for investigative purposes, provided that they are not subject to confiscation pursuant to Article 147 of the Criminal Code. In this case, the decree ordering or validating the probatory seizure shall specify that the lien on the assets also constitutes a precautionary seizure pursuant to Article 58-sexies.

Art. 58-duodecies
(Seizure ordered by the police forces)

1. When, for reasons of urgency and necessity, it is not possible to wait for the order of the judicial authority, the members of the police forces shall seize on their own initiative the *corpus delicti* and any things related to the crime.

2. The report of the operations carried out shall be sent within forty-eight hours to the Investigating Judge, who, if the conditions are met, shall validate it within the following ninety-six hours, under penalty of forfeiture of the measure.

Art. 58-terdecies
(Appeals)

1. Decrees ordering probatory seizure may be challenged before the Judge of Appeal in criminal matters by the defendant, the third party owner of the seized assets and the Procuratore del Fisco within thirty days of their notification or enforcement.

2. Orders issued by the Judge of Appeal may be challenged by the defendant, the third party owner of the seized assets and the Procuratore del Fisco on grounds of illegitimacy before the Highest Judge of Appeal in criminal matters, within thirty days of their notification.

Art. 59
(Seizure upon arrest)

1. When a defendant is arrested, the weapons and any object deemed to have been used or intended to be used to commit the crime shall be seized, as well as any object that may be a consequence of the crime, relate to it, or be influential in any way to uncover the truth.

Art. 60

(Modalities of seizure in case of arrest)

1. The person executing the arrest shall be particularly careful that none of such objects be concealed, or transferred to others, or altered in their essence.

Art. 61

(Prohibition of entry)

1. If the arrest takes place in a house or other enclosed place, the person executing the arrest shall not allow any person to enter or leave the place before the operation has been completed.

Art. 62

(Report)

1. The head of the law enforcement agency executing the arrest shall immediately draw up a report, in which he/she shall accurately describe the quality, quantity, and condition of the objects found, as well as the place, time, and persons with whom they were found. He/she shall show such objects to two witnesses, if they can be found without too much difficulty and, in the absence of them or one of them, to the members of the law enforcement agency, so that they may thereafter recognise them.

Art. 63

(Transmission of the report)

1. The report shall be transmitted without delay to the Court, and the Registrar shall include the original copy thereof in the annexes of the case file.

Art. 64

(Transportable objects)

1. If the objects found can be transported, they shall be delivered to the Registrar, who shall check them against the report. The Registrar shall note the receipt of the objects in the case file and shall describe them.

Art. 65

(Non-transportable objects)

1. If the objects cannot be transported, the head of the law enforcement agency shall request that the place where they are located be closed, and that wooden rods be placed thereto. He/she shall request them to be secured with overlapping paper strips and a wax seal, and shall carry with him/her the key, which shall be delivered by him/her to the Registrar together with the report.

Art. 66

(Custody of non-transportable objects)

1. If the place cannot be closed, he/she shall ask one or two Guards to supervise the place until the Investigating Official, after entering the place and drawing up a description of the objects to be placed in the case file, appoints a suitable custodian, who shall undertake to keep the objects intact for all judicial purposes.

Art. 67
(Transportable objects)

1. The Investigating Official shall then make appropriate arrangements so that the objects do not perish, if keeping them would benefit justice, or so that they are returned, if it is no longer necessary to keep them."

Art. 3
(Repeal of Article 145 of the Criminal Code)

1. Art. 145 of the Criminal Code shall be repealed.

CHAPTER II
PARTICULARLY NON-SERIOUS FACTS

Art. 4
(Particularly non-serious facts)

1. After Article 69 of the Criminal Code, the following Article 69-*bis* shall be added:

"Art. 69-bis
(Particularly non-serious facts)

1. The Investigating Judge shall order the dismissal of the case when, in crimes envisaging, without taking into account the circumstances, a punishment not exceeding a maximum of second-degree imprisonment, or a pecuniary sanction, alone or jointly with the aforesaid punishment, the fact is considered particularly non-serious due to the modalities of the conduct and the minor damage or danger, and the crime does not involve multiple, habitual and repeated behaviours.
2. The fact shall not be considered particularly non-serious when the perpetrator acted for abject or futile motives or with cruelty, used torture or took advantage of the victim's condition of reduced self-defence, also with reference to the victim's age, or when the conduct caused or resulted in the death or very serious injury of a person as an unintended consequence.
3. The crime shall not be punishable if the Judge considers the fact to be particularly non-serious.
4. The preceding provisions shall also apply where the law envisages particularly non-serious damage or danger as a mitigating circumstance."

CHAPTER III
AMENDMENTS TO THE PROVISIONS ON APPEAL

Art. 5
(Appeal)

1. Article 193 of the Code of Criminal Procedure shall be replaced by the following:

"Art. 193
(Grounds for appeal)

1. The grounds for appeal, with specific indication of the points of the judgement to which the complaint refers, shall be submitted to the Registrar of the Court by the Procuratore del Fisco and the counsels of the parties and signed by them, unless they have been submitted by the defendant or his/her special attorney, together with the declaration of appeal, within the preemptory time-limit of sixty days from the date on which the notice of the filing of the judgement has been served."

Art. 6
(Appeal proceedings)

1. Article 197 of the Code of Criminal Procedure shall be replaced by the following:

“Art. 197
(Proceedings)”

1. In the appeal proceedings the parties shall submit their defence and submissions in the order and within the time-limits established in Articles 157 and 158, with the sanctions provided for in Article 159 in case of non-compliance, starting from the date of submission or filing of the statement of grounds.
2. The Judge of Appeal may order the Investigating Judge to adopt again the investigation measures declared null and to adopt new investigation measures.
3. The Judge of Appeal may order that the trial proceedings be held again, by taking evidence already taken or new evidence, only if he/she considers it absolutely necessary in order to adopt a decision. If the evidence has been discovered after the first instance judgement, the Judge shall order it to be taken if it is not manifestly superfluous or irrelevant or prohibited by law. He/she shall also order that the trial proceedings be held again in the case of an appeal by the Procuratore del Fisco against a judgement of acquittal on grounds relating to the assessment of what declared by witnesses, if this is relevant and decisive.”

Art. 7
(Appeal judgement)

1. Article 198 of the Code of Criminal Procedure shall be replaced by the following:

“Art. 198
(Appeal judgement)”

1. Once the procedures provided for in Article 197, paragraph 1 have been carried out, the case file shall be transmitted by the Law Commissioner to the Judge of Appeal. The latter shall issue the writ of summons to appear at a public hearing for the discussion of the proceedings, which shall be notified by the Registrar to the Procuratore del Fisco and the private parties, even if not applicants, as well as to their defence counsels, at least thirty days before the date established.
2. After verifying that the parties are regularly present, the defence counsel of the party bringing the civil action, the Procuratore del Fisco, the defence counsel of the defendant and, if he/she so requests, the defendant shall take the floor in this order.
3. At the end of the discussion, the Judge of Appeal (a) shall pass a judgement annulling, confirming or modifying the judgement appealed against or, if he/she establishes the existence of one of the causes for nullity indicated in Article 229, from which the nullity of the decree ordering the proceedings or of the judgement of first instance has resulted, he/she shall remit the acts to the Judge who was competent at the time of the nullity, or (b) shall decide to file the judgement, including the operative part and the grounds, within three months; in the latter case, the judgement shall be published by the Law Commissioner after the notice of such publication is served to the parties indicated in paragraph 1.
4. The judgement of the Judge of Appeal shall become immediately enforceable upon reading of the operative part, or upon publication of the judgement as provided for in letter (b) of paragraph 3.

5. In case of application of Article 197, paragraph 2, the parties shall submit again their defence and submissions in accordance with Article 197, paragraph 1; the following hearing shall be fixed and shall take place in accordance with the preceding paragraphs.”.

CHAPTER IV
AMENDMENTS TO THE THIRD INSTANCE JUDGMENT

Art. 8

(Access to third instance judgement)

1. After Article 199 of the Code of Criminal Procedure, the following Article 199-*bis* shall be added:

“Art. 199-*bis*

(Third instance appeal)

1. If the second instance judgement has amended the first instance acquittal judgement or has imposed a more severe punishment on the defendant in terms of type and quantity, the Highest Judge of Appeal, if he/she does not declare the defendant's appeal inadmissible or does not reject it, shall annul the judgement appealed against and refer the case to the Judge of Appeal for a new judgement, or, if he/she considers such referral superfluous and no further factual assessments are necessary, shall annul the judgement appealed against without any referral and shall decide that the first instance judgement has become final.

2. If one or more specific grounds for appeal have not been considered in the appeal proceedings, the Highest Judge of Appeal shall assess the omitted grounds and shall rule on the case, confirming the judgement appealed against or adopting the necessary measures to amend it.

3. If the principle of cross-examination is violated in the appeal proceedings, the Highest Judge of Appeal, if he/she finds that the appeal is well-founded, shall annul the judgement appealed against and shall refer the case to the Judge of Appeal for a new judgement.

4. If in the second instance judgement a confiscation was ordered in the absence of a conviction, the Highest Judge of Appeal, if he/she considers the appeal well founded, may annul the confiscation in whole or in part.

5. The appeal shall be filed with the Criminal Registry by the interested party and the Procuratore del Fisco within the peremptory time-limit of 60 days from the notification of the appeal judgement.

6. The filing of the appeal shall suspend the enforcement of the appeal judgement and the running of the limitation period of the crime until the Highest Judge of Appeal passes the judgement.

7. The Registry shall notify the appeal to the parties and the Procuratore del Fisco and shall subsequently transmit the case file to the Highest Judge of Appeal.

8. The Highest Judge of Appeal shall grant the parties and the Procuratore del Fisco a time-limit of 30 days to file any pleadings and arguments. The hearing shall be held within 30 days of the expiry of said time-limit.

9. The decision shall be filed within three months after the hearing and shall be notified by the Registry to the parties and the Procuratore del Fisco.”.

CHAPTER V PLEA
BARGAINING

Art. 9

(Plea bargaining)

1. After Article 136 of the Code of Criminal Procedure, the following Article 136-*bis* shall be added:

“Art. 136-*bis*
(*Plea bargaining*)

1. After the notification of the filing of the documents of the proceedings pursuant to Article 136, the defendant may, either personally or through a special attorney, request the application, according to the type and the extent indicated in the request, of a sentence of imprisonment and a pecuniary sanction, if provided for jointly, reduced by up to one third, when the sentence of imprisonment, taking into account the circumstances and reduced on account of plea bargaining, does not exceed six years.
2. The request shall be submitted in person by the interested party or through a special attorney, by means of a signed deed filed with the Registry.
3. In proceedings for the crimes provided for in Articles 371, 372, 373, 374 and 374-*ter* of the Criminal Code, or in any case for crimes committed to the detriment of the assets of the State, of public entities, of entities participated by the State and of authorised parties exercising reserved activities pursuant to Annex 1 to Law no. 165 of 17 November 2005, the admissibility of the request shall be subject to full refund of the price or profit of the crime.
4. The filing of the request shall suspend the proceedings against the defendant until the decree containing the decision on the request is issued. The Investigating Judge shall immediately transmit the request to the Procuratore del Fisco, who shall express his/her opinion within five days. The negative opinion of the Procuratore del Fisco shall be binding and shall establish the inadmissibility of the request by the Investigating Judge.
5. After obtaining the favourable opinion of the Procuratore del Fisco, the Investigating Judge shall immediately transmit the documents to the Deciding Judge.
6. If a favourable opinion has been obtained from the Procuratore del Fisco and there is no need to pronounce a judgement of acquittal, since there is no case to answer or the fact does not constitute a crime, the defendant did not commit the crime or the conditions for the crime to be proceeded against are not met, the Judge shall, on the basis of the documents and without any procedural formalities, if he/she considers the legal qualification of the fact, the application and the comparison of the circumstances put forward by the applicant to be correct, as well as the punishment indicated to be appropriate, order its application by means of a judgement. If a party brings a civil action, the Judge shall not decide on the relevant request. The defendant shall, however, be ordered to pay the costs incurred by the party bringing the civil action, unless there are justified reasons for total or partial compensation. The passing of the judgement on the application of the punishment against a defendant shall not constitute grounds for incompatibility in the proceedings against co-defendants.
7. When making the request, the party may make its effectiveness conditional on the granting of a suspended sentence. In this case, if the Judge considers that the suspended sentence cannot be granted, he/she shall reject the request.
8. When the punishment imposed does not exceed two years' imprisonment, alone or in combination with a pecuniary sanction, the judgement on the application of the punishment shall not entail the payment of the costs of the proceedings, nor the application of ancillary punishments and security measures, with the exception of confiscation in the cases provided for by Article 147 of the Criminal Code.
9. Unless otherwise provided for by law, the judgement on the application of the punishment shall be equivalent to a conviction, but shall have no effect in civil or administrative proceedings.
10. The crime shall be extinguished, where a sentence of imprisonment not exceeding two years, alone or combined with a pecuniary sanction, has been imposed, if within five years, when the judgement concerns a crime, or two years, when the judgement concerns an infraction, the defendant does not commit a crime or an infraction of the same nature. In this case, all criminal effects shall be extinguished, and if a pecuniary sanction or an alternative sanction has been imposed, the application shall not in any case hinder the granting of a subsequent suspended sentence.

11. In case of a negative opinion from the Procuratore del Fisco and of inadmissibility of the request by the Investigating Judge, the defendant, before the first instance hearing is declared open, may submit a new request and the Judge, after hearing the Procuratore del Fisco, if he/she deems it well founded, shall immediately pass a judgement on the application of the punishment.
12. The defendant may appeal against the judgement on the application of the punishment only on grounds relating to the expression of his/her will, the lack of correlation between the request and the judgement, the erroneous legal qualification of the fact and the illegality of the punishment or security measure.
13. Any opinion of the Procuratore del Fisco shall be reasoned.”.

CHAPTER VI
AMENDMENTS TO LAW NO. 93 OF 17 JUNE 2008

Art. 10
(Amendment to Article 2 of Law no. 93 of 17 June 2008)

1. The following paragraph 6-*bis* shall be added to Article 2 of Law no. 93 of 17 June 2008:

“6-*bis*. Anyone may apply to the Registrar, also through his/her defence counsel, for the issuance of a certificate showing that a *notitia criminis* has been registered against him/her, except in cases where preliminary investigations are carried out under temporary secrecy regime.”.

Art. 11
(Replacement of Article 3 of Law no. 93 of 17 June 2008)

1. Article 3 of Law no. 93 of 17 June 2008 shall be replaced by the following:

“Art. 3
(Right of defence)

1. With the exception of the cases provided for in Article 5 below, the Investigating Judge shall carry out preliminary investigations fully respecting the defendant's right of defence, the prerogatives of the Procuratore del Fisco and the rights of private parties protected by law in criminal proceedings.
2. The defendant and the Procuratore del Fisco shall be fully entitled to put forward defence, pleadings and arguments, as well as to examine and take copies of all documents in the file, including the registration of the *notitia criminis*. The Investigating Judge shall ensure that they may attend or be represented during preliminary investigations by giving them timely notice.
3. With the exception of procedural documents containing data and information covered by banking secrecy pursuant to Article 36 of Law no. 165 of 17 November 2005, the injured parties, duly appearing in the proceedings, shall be entitled to receive, upon their request, copies of procedural documents and to submit, at any stage of the proceedings, pleadings, requests or documents. Injured parties may request the Investigating Judge, who shall give reasons for the decision on the request, to be present during access to documents, search and expert opinions, possibly only through their defence counsel or expert, also during preliminary investigations. The Investigating Judge shall refuse authorisation in the event that the request made by the injured parties, duly appearing in the proceedings, is seriously prejudicial to the defendant's rights of defence, or is contrary to the fundamental requirements of confidentiality of investigations, or to banking secrecy, or to the regime provided for in Article 5 below.
4. The injured parties shall be obliged to participate in cross-examinations with the defendant arranged by the Investigating Judge.
5. The powers of the Judicial Police, whose task is to seek on its own initiative, in compliance with the guarantees provided for by law, the elements useful to the investigations, shall remain unaffected, unless otherwise and specifically instructed by the Judge. However, the *notitia criminis*

and any element useful to the ongoing investigations shall be reported to the Judge as soon as possible.

6. The investigation measures adopted by the Investigating Judge shall be null and void if he/she has not allowed the defendant, the injured parties duly appearing in the proceedings and the Procuratore del Fisco to be present during preliminary investigations, with the exception of the acquisition of documents and without prejudice to Article 5. The nullity shall concern the measure adopted in violation of this provision and all subsequent measures that depend on it, and shall also make the evidence taken pursuant to such measures unusable. The nullity shall be raised by the defendant or the Procuratore del Fisco or the injured parties duly appearing in the proceedings, or may be established *ex officio* by the Judge no later than the opening of the pre-trial hearing. The nullity shall be removed if the parties concerned have expressly waived their objection. Once the nullity is established, the Investigating Judge shall be obliged to adopt again, as soon as possible, the null measure and the subsequent measures to which the nullity extends, by ensuring that they are adopted in compliance with the rules protecting the rights of defence.”.

Art. 12

(Replacement of Article 4 of Law no. 93 of 17 June 2008)

1. Article 4 of Law no. 93 of 17 June 2008 shall be replaced by the following:

“Art. 4

(Judicial notice)

1. Within the peremptory time-limit of ninety days from the registration by name of the *notitia criminis* or from subsequent additions thereto, except for the cases referred to in Article 5 below, the defendant and the Procuratore del Fisco shall receive the decree of the Investigating Judge indicating the factual and legal elements of the crime being prosecuted, as entered in the register of *notitia criminis* referred to in Article 2 above, unless the file has been dismissed.

2. The judicial notice shall be transmitted to the defendant by registered letter, in such a way as to ensure confidentiality, or by some other means ensuring confidentiality and proof of receipt. The decree shall be deemed validly delivered to the addressee by virtue of the acknowledgement of receipt of the registered letter. If the decree is transmitted by other legally valid means, delivery shall be evidenced by the corresponding certificate of receipt.

3. In the case of a defendant residing abroad, the Judge may order that the judicial notice, in addition to being transmitted in the manner provided for in paragraph 2, also be served on the addressee, requesting international judicial assistance for this purpose. In this case, the judicial notice served on the defendant shall be deemed to have been validly delivered even if the transmission by registered mail was unsuccessful.

4. For the purposes of this Article, the precautionary measure that fully indicates to the defendant the factual and legal elements of the crime being prosecuted, if transmitted within the time-limits laid down in paragraphs 1 and 8, shall have the same effect as a judicial notice.

5. If at the time of the registration by name of the *notitia criminis* the defendant's current residence or other place where the notice can be sent is not indicated in the records, the investigating Judge shall promptly instruct the judicial police to verify the defendant's current residence and, at the same time, shall request that the judicial notice be served on the public defence counsel.

6. The defendant shall be deemed to be untraceable when any search for information about his/her current residence or domicile carried out by means of the following was unsuccessful:

- a) request to the local police forces;
- b) international rogatory letters addressed to the judicial authorities of the country of the defendant's last known residence and of the country of which he/she is a national, if such personal data can be inferred from the documents of the proceedings;

c) direct request to the vital statistics office of the municipality of the defendant's last known residence, if resident in Italy.

7. The declaration of untraceability shall suspend the investigation measures against the defendant. The Investigating Judge shall declare the suspension of the investigation measures against the untraceable defendant by means of a decree notified to the Procuratore del Fisco and to the injured parties, duly appearing in the proceedings, as well as to the public defence counsel. The time-limit referred to in Article 6, paragraph 2 below shall remain suspended until the defendant's current residence or domicile is discovered.

8. In case any elements capable of identifying the defendant's domicile, residence or, in any case, the place where the communication referred to in paragraph 1 can be validly made are subsequently established, the declaration of untraceability shall be deemed revoked and the Investigating Judge shall transmit the judicial notice to the defendant in the manner referred to in paragraphs 2 and 3 above within thirty days from the lodging of the documents containing the hitherto unknown personal data.

9. Once ninety days have elapsed from the registration of the *notitia criminis*, unless the file is classified, the Investigating Judge shall not, in the absence of acknowledgement of receipt of the judicial notice, and even when the non-receipt is attested by a held mail notification, adopt investigation measures aimed at collecting and taking evidence, except for the acquisition of documents, for the obtaining of which the defendant's cross-examination is not required, pursuant to Article 3, paragraph 2.

10. The transmission of the judicial notice, within the time-limits set forth in paragraphs 1 and 8 and in compliance with the form and manner referred to in the preceding paragraphs, shall be a mandatory measure, on penalty of nullity of the subsequent measures. This nullity shall be raised by the Procuratore del Fisco and the private parties duly appearing in the proceedings, or may be raised *ex officio* by the Judge no later than the opening of the preliminary hearing. It shall be removed if the defendant has expressly waived his/her objection or has voluntarily joined the proceedings. Any evidence taken after the expiry of the time-limits referred to in paragraphs 1 and 8, and before the defendant has received the notice, shall be unusable for the purpose of the relevant proceedings. It shall be possible to collect documentary evidence and evidence whose nature, or effective circumstances, make it likely that the deferral of the measures to be adopted will result in the future impossibility or ineffectiveness of preliminary investigation activities.

11. Once the nullity referred to in the preceding paragraph has been established, the Investigating Judge shall be obliged to promptly send the judicial notice in a manner consistent with this Law, as soon as possible and in any case not later than ninety days from the registration of the *notitia criminis*, if this time-limit has not yet expired, and shall adopt again the annulled measures.”.

Art. 13

(Replacement of paragraph 3 of Article 5 of Law no. 93 of 17 June 2008)

1. Paragraph 3 of Article 5 of Law no. 93 of 17 June 2008 shall be replaced by the following:

“3. The temporary secrecy regime of preliminary investigation activities or of investigation measures, which shall also be valid for the Judicial Police in the performance of delegated activities, shall only last for the time strictly necessary to perform the relevant activities. However, it shall not exceed a maximum period of two thirds of the time-limit set for the conclusion of the preliminary investigation activities as referred to in Article 6 below. Immediately after the expiry of this time-limit, the Criminal Registrar shall make the case file available to the parties, who may take a copy thereof, without the need for any declassification or authorisation measures by the Investigating Judge.”.

Art. 14

(Replacement of paragraph 5 of Article 5 of Law no. 93 of 17 June 2008)

1. Paragraph 5 of Article 5 of Law no. 93 of 17 June 2008 shall be replaced by the following:
“5. If the Investigating Judge requests judicial assistance from a foreign Authority under the secrecy regime, such assistance shall not exceed - notwithstanding the time-limit set forth in paragraph 3 - thirty days from its execution, limited to the request and to the documents transmitted to execute it.”.

Art. 15

(Replacement of Article 6 of Law no. 93 of 17 June 2008)

1. Article 6 of Law no. 93 of 17 June 2008 shall be replaced by the following:

“Art. 6

(Expedition of criminal proceedings)

1. The Investigating Judge, in compliance with the principle of the expedition of proceedings, shall quickly complete the preliminary investigation and make the case file public, as soon as possible, with the decree to schedule the hearing or with the decree to dismiss the case.
2. In any case, the Investigating Judge shall make the case file public with the decree to schedule the hearing or with the decree to dismiss the case, within the peremptory time-limit of a) eighteen months, for crimes punished with a daily fine, a fine, arrest, disqualification, first and second degree imprisonment, alone or combined with each other; b) twenty-four months for crimes punished with third and fourth degree imprisonment, alone or combined with another punishment c) thirty months for crimes punished with fifth and sixth degree imprisonment, alone or combined with another punishment; d) thirty-six months for crimes punished with imprisonment higher than sixth degree, alone or combined with another punishment. No account shall be taken of increases or decreases resulting from any circumstances.
3. In the event that the case file is registered for more than one crime, reference shall be made to the one punished with the most severe punishment.
4. If, during the investigation, any conducts constituting further crimes emerges, which could not be deduced from the act leading to the opening of the case file, or if other persons that can be charged with the crimes already prosecuted emerge, the limitation period of the proceedings shall be interrupted and shall start running again from the date on which the evidence justifying the updating of the case file is submitted. If a more severe punishment is envisaged for the crime discovered during the investigation than for the crimes already registered in the case file, the limitation period of the proceedings provided for the more severely punished crime shall apply to the entire case file.
5. The time-limit for the investigation shall run from the day of the registration of the *notitia criminis* in the register referred to in Article 2, paragraph 1, indicating the kind of crime. If the *notitia criminis* does not contain the complete identification of the suspect, the time-limit shall be interrupted and shall start running again from the day on which the Investigating Judge enters the name of the defendant in the register. The case file registered on unknown persons, in which the investigation activity carried out has not led to identifying the person liable for the crime shall be time-barred upon expiry of the time-limit referred to in paragraph 2 above, without prejudice to the possibility of reopening the investigation if new evidence emerges.
6. The time-limit for the investigation, excluding the judicial holiday period, shall be suspended a) in the period of time necessary to deliver the criminal or administrative judgement on an issue preliminary to the establishment of the prosecuted crime; b) in the period of time between the day on which the decree by which the Investigating Judge requests the verification of the constitutionality of a measure or legislative provision is transmitted to the Guarantor’s Panel and the day on which the documents are returned to him/her; c) from the day on which the request for abstention or objection is filed to the day on which the requesting party is notified of the

decision; d) in case of an appeal against the decision to dismiss the case and the consequent order of the Judge of Appeal reopening the preliminary investigation, in the period of time between the date of filing of the decision to dismiss the case and the date on which the reopened proceedings are assigned to the new Investigating Judge; e) in the period of time from the date on which the judicial notice is transmitted until the acknowledgement of receipt is placed on records; f) in the period of time from the defendant's declaration of untraceability until the discovery of his/her current residence or domicile; g) in the periods of time defined by Law no. 86/1974, necessary for drawing up the expert opinions and for the execution of international letters rogatory, without prejudice to cases where the investigation tasks are clearly superfluous, either from the beginning or subsequently, as established during the proceedings. In the latter case, the cause for suspension shall cease to exist, and therefore the limitation period of the proceedings shall start to run again, from the moment when the Investigating Judge establishes that the investigation measure ordered has become irrelevant, in the light of the additional acts and evidence obtained during the proceedings.

7. The investigation measures adopted after the expiry of the time-limit shall not be used during the proceedings as evidence against the defendant.

8. Before the expiry of the time-limit for the preliminary investigation, the Investigating Judge may request its extension to the Head Magistrate by virtue of the particular complexity of the investigation or of the objective impossibility of completing it within the time-limit provided for by law. If the Head Magistrate does not accept the request for extension and if the time-limit has already expired at the time of the request, he/she shall return the documents to the Investigating Judge so that he/she can issue the decision to dismiss the case or the decree to schedule the hearing. In the event that the Head Magistrate accepts the request for extension, he/she shall set a time-limit for the Investigating Judge to complete the investigation, not exceeding four months.

9. The decree adopted by the Head Magistrate pursuant to the preceding paragraph shall not be challenged.

10. If the time-limit for the preliminary investigation has expired and the Investigating Judge has not requested its extension, nor issued the decision to dismiss the case or the decree to schedule the hearing, the Head Magistrate, also upon request of a party, shall assign the case-file to another Investigating Judge so that he/she urgently dismisses the case or schedules the hearing.

11. The Head Magistrate shall immediately inform the Judicial Council of the established delay and the measures adopted.

12. In addition to disciplinary liability, non-compliance with the time-limits for the investigation may also give rise to civil liability of the magistrate when the additional conditions provided for in Constitutional Law no. 1 of 7 December 2021 are met. Serious delay in the registration by name of the *notitia criminis*, attributing a manifestly erroneous legal qualification to the fact and initiating or continuing a manifestly superfluous letter rogatory procedure may also give rise to disciplinary liability, when such acts are carried out for the sole purpose of postponing the expiry of the time-limit for the investigation.”.

Art. 16

(Prohibition of using evidence other than that legitimately obtained)

1. After Article 179 of the Code of Criminal Procedure, the following Article 179-*bis* shall be added:

“Art. 179-*bis*
(*Evidence*)

1. For the purposes of the decision, the Judge shall not use evidence other than that legitimately obtained in the proceedings.”.

CHAPTER VII

AMENDMENTS TO ARTICLE 135 OF THE CODE OF CRIMINAL PROCEDURE

Art. 17

(Replacement of Article 135 of the Code of Criminal Procedure)

1. Article 135 of the Code of Criminal Procedure shall be replaced by the following:

“Art. 135
(Dismissal)”

1. After the examination of all witnesses against and on behalf of the defendant and after having examined all elements that could help uncover the truth on the subject of the proceedings, the Investigating Judge shall order the dismissal of the case, if he/she finds that the evidence obtained during the investigation does not provide legal grounds for establishing the defendant's guilt in the case in question. The decree ordering the dismissal of the case shall promptly be notified to the Procuratore del Fisco, the defendant, the injured party, the party bringing the civil action, the plaintiff and the complainant, and shall be communicated to the Head Magistrate.
2. An appeal against the decree may be lodged, within thirty days of its notification, by the persons notified pursuant to paragraph 1, with the Judge of Appeal in criminal matters other than the one competent to decide on the merits according to the criteria for the assignment of judicial work. He/she shall decide within thirty days by means of a reasoned order.
3. The decree of the Judge of Appeal admitting the appeal shall order the reopening of the investigation and require the Head Magistrate to assign the case file to another Investigating Judge. The remaining time to complete the preliminary investigation may be extended by the Head Magistrate, after assessing the preliminary investigation activities carried out and those to be carried out, for a period of time not exceeding that established by Article 6, paragraph 8 of Law no. 93 of 17 June 2008 and subsequent amendments.
4. After having dismissed the *notitia criminis* and having heard the Procuratore del Fisco, the Investigating Judge shall order the reopening of the investigation when new sources of evidence arise or are discovered, which, alone or together with those already acquired, may determine the indictment of the defendant.”.

CHAPTER VIII

AMENDMENTS TO THE CRIMINAL CONVICTION ORDER

Art. 18

(Replacement of Article 2 of Law no. 42 of 31 March 2014)

1. Article 2 of Law no. 42 of 31 March 2014 shall be replaced by the following:

“Art. 2
(Criminal conviction order)”

1. The Law Commissioner may issue a criminal conviction order and charge the costs of the proceedings to the defendant when, after the examination of the documents and the investigations carried out, he/she deems it necessary to apply:
 - a) a fine, daily fine, judiciary rebuke and disqualification, or one or the other of these punishments, even if envisaged as an alternative to imprisonment or arrest;
 - b) arrest or first-degree imprisonment, alone or in combination with the punishments referred to in letter a), if the requirements for the granting of a suspended sentence are met;
 - c) arrest and imprisonment for a term not exceeding three months, alone or in combination with the punishments referred to in letter a).
2. In the case referred to in letter c) of the preceding paragraph, the Investigating Judge shall convert the sentence of imprisonment by calculating an amount of seventy-five euros for each day of imprisonment. The Enforcement Judge, taking into account the economic conditions of the convicted person, may grant that the fine be paid in instalments within five years.

3. A criminal conviction order shall not be issued for the crimes referred to in Articles 155 and 164 of the Criminal Code or when it is necessary to apply a personal security measure.

4. With the criminal conviction order, the Investigating Judge may also apply administrative pecuniary sanctions if, during the investigation, he/she has established the connection between the crimes prosecuted and one or more administrative violations.

5. If a party brings a civil action, the Judge shall not decide on the relevant request. However, the defendant shall be ordered to pay the costs incurred by the party bringing the civil action, unless there are justified grounds for total or partial compensation.”.

Art. 19

(Replacement of Article 3 of Law no. 42 of 31 March 2014)

1. Article 3 of Law no. 42 of 31 March 2014 shall be replaced by the following:

“Art. 3

(Form and content of the order)

1. The criminal conviction order shall bear the same header as the judgements and shall contain:

- a) an indication of the authority that issued it;
- b) the defendant's personal details or other personal information identifying him/her;
- c) the charge;
- d) the concise statement of the factual and legal grounds on which the decision is based;
- e) the conviction with an indication of the articles applied;
- f) in the case referred to in Article 2, paragraph 1, letter c), the number of imprisonment days applied to the crime, the daily amount for each day of imprisonment and the total amount of the pecuniary sanction imposed in lieu of imprisonment;
- g) any decision on the suspended sentence and the granting of further benefits;
- h) the decision on the costs of the proceedings incurred by the party bringing the civil action, if any;
- i) the date and the signature of the Judge and the Registrar.

2. With the conviction decree, the Judge shall order the confiscation in the cases provided for in Article 147 of the Criminal Code, or the return of the things that have been seized, and shall grant the suspended sentence and the benefit of not mentioning the conviction.

3. The crime shall be extinguished if, within five years, the defendant does not commit any criminal offence, felony or infraction of the same nature. In this case, all criminal effects shall be extinguished and the conviction order shall not prevent the granting of a subsequent suspended sentence.”.

Art. 20

(Replacement of Article 4 of Law no. 42 of 31 March 2014)

1. Article 4 of Law no. 42 of 31 March 2014 shall be replaced by the following:

“Art. 4

(Objection)

1. The decree shall be notified to the defendant and the party bringing the civil action, either personally or at their respective addresses for service, as well as to the Procuratore del Fisco with a formal notice stating that, if no appeal is lodged within thirty days of the notice, the decree shall become enforceable.

2. The appeal shall be lodged with the Law Commissioner who issued the decree.”.

Art. 21

(Replacement of paragraph 1 of Article 94 of the Criminal Code)

1. The first paragraph of Article 94 of the Criminal Code shall be replaced by the following:

“1. The convicted person who, due to verified insolvency, has not paid the fine in whole or in part, shall serve the sentence of imprisonment at the rate of one day for each part of the fine equal to seventy-five euros. The total number of imprisonment days thus calculated shall not exceed the maximum limit established by law for first-degree imprisonment.”.

CHAPTER IX

AMENDMENTS TO THE PROVISIONS ON TESTIMONY

Art. 22

(Replacement of Article 96 of the Code of Criminal Procedure)

1. Article 96 of the Code of Criminal Procedure shall be replaced by the following:

“Art. 96

(Persons excluded from witness examination)

1. Ascending and descending relatives, the spouse and the cohabiting partner of the defendant shall not be examined, except in case of parricide or murder of descending relatives or spouses.
2. Nevertheless, if the defendant considers it necessary to take the statements of one of the above-mentioned persons, he/she shall submit a reasoned request to the Judge, indicating the specific facts in relation to which the taking of statements is requested. The Judge shall hear the person concerned if, by means of an order, he/she deems it relevant. In this case, after being informed of the right to remain silent, the witness may make statements upon request of the defendant and to give clarifications to the parties or the Judge, with the commitment referred to in Article 97.”.

Art. 23

(Assistance during the testimony)

1. After Article 97 of the Code of Criminal Procedure, the following Article 97 *bis* shall be added:

“Art. 97-*bis* (Assistance
during testimony)

1. A defendant in connected proceedings or accused of a connected crime may be heard as a witness, *ex officio* or upon request of a party, when a final judgement of acquittal, conviction or imposing a punishment upon request has been issued against him/her. In this case, the witness shall be assisted by a counsel. In the absence of a trusted counsel, a public defence counsel shall be appointed.
2. A witness assisted pursuant to paragraph 1 who pledges to tell the truth shall not be obliged to testify on the facts for which he/she has been judged, nor to testify on facts concerning his/her liability for the crime for which he/she is being or has been prosecuted.
3. During preliminary hearings, *ex officio* or upon request of a party, persons prosecuted or accused in connected proceedings or of a connected crime may be heard if the final judgements referred to in paragraph 1 have not yet been passed against them.

In this case, before the beginning of the examination and after the declaration of the personal details, the Judge shall inform the person concerned of his/her right not to answer and to be assisted by a counsel. In the absence of a trusted counsel, a public defence counsel shall be appointed.

4. The Judge shall decide on the admission of the assisted witness by means of a reasoned order.

5. For the purposes of paragraphs 1 and 3, the following shall be deemed to be connected: a) several proceedings registered for the same crime, if the crime prosecuted has been committed by several persons concurrently or in cooperation with each other, or if several persons, with independent conducts, have caused the event to occur; b) if the conditions of Article 27 are met, proceedings concerning several crimes committed with the same action or omission or with several actions or omissions with the same criminal intention; c) several proceedings concerning several crimes, when one has been committed to commit or conceal the others.

6. For the purposes of paragraphs 1 and 3, the following shall be deemed to be connected: a) crimes committed on the same occasion of others, or in order to obtain or ensure to the perpetrator or to others the relevant profit, price, product or impunity; b) crimes committed by several persons to the mutual detriment of each other; c) crimes in respect of which the evidence of one crime, even limited to the circumstances, affects the evidence of another crime or another circumstance of the other crime.

7. The statements of the assisted witness shall be assessed by the Judge together with the other evidence confirming the reliability thereof.

8. The statements of an assisted witness collected in violation of the foregoing provisions shall be unusable in the proceedings. In any case, the statements referred to in paragraphs 1 and 3 shall not be used in any proceedings against the person who made them.”.

Art. 24
(Subpoena)

1. After Article 98 of the Code of Criminal Procedure, the following Article 98-*bis* shall be added:

“Art. 98-*bis*
(Subpoena)

1. If the witness, who has been regularly summoned, does not appear at the examination fixed by the Judge without a legitimate impediment, the Judge may order the judicial police to track down the person concerned and bring him/her to the place, on the day and at the time fixed for the examination in the presence of the Judge. In this case, the witness shall not be detained beyond the time strictly necessary for the examination.”.

Art. 25
(Assistance by the counsel)

1. After Article 98-*bis* of the Code of Criminal Procedure, the following Article 98-*ter* shall be

added: “Art. 98-*ter*
(Assistance by the counsel)

1. Witnesses summoned before the Investigating Judge or by proxy before the judicial police, who are called to answer about circumstances not only known and/or witnessed but in which they have participated, may request to give their testimony with the assistance of a qualified counsel.

2. If the trusted counsel is not immediately available, the Judge shall ensure the presence of the public defence counsel, without prejudice to the witness's duty to answer the questions.”.

Art. 26

(Amendments to Article 201 of the Code of Criminal Procedure)

1. Article 201 of the Code of Criminal Procedure shall be replaced by the following:

**“Art. 201
(Revision)**

1. The application for revision shall be submitted in writing and shall indicate the details of the impugned measure and the relevant reasons, with specific indication of the evidence and reasons on which the application is based.

2. Upon submission of the application for revision, or subsequently, the parties entitled thereto may appoint a counsel of their own choosing.

3. The application shall be filed with the Court Registry, together with any supporting documents, within one year from the discovery of the new evidence or facts referred to in the first paragraph of Article 200, letters a) and b), from the date on which the decision referred to in the first paragraph of Article 200, letter c) has become final, or from the date on which the judgement of the European Court of Human Rights has become final under the circumstances referred to in the first paragraph of Article 200, letter d).

4. The Judge for Extraordinary Remedies shall be responsible for deciding on the application for revision.

5. The Judge shall declare the application for revision inadmissible by means of a decree if it is submitted in a case other than those provided for by law, by a person not entitled thereto or in case of non-compliance with the prescribed forms, time-limits and requirements. If the application is found to be inadmissible, the Judge may suspend the enforcement of the punishment or of the security measure by means of a reasoned decree and may apply, if necessary, a precautionary measure.

6. If the application for revision is admitted, the Judge shall revoke the impugned measure and shall adopt the related measures.

7. If the application is rejected or declared inadmissible, the Judge shall order the applicant to pay the costs of the proceedings. In case of suspension of the punishment or of the security measure, the Judge shall order that its enforcement be resumed.”.

Art. 27

(Amendment to Article 204-bis of the Code of Criminal Procedure)

1. Point 3) of paragraph 1 of Article 204-bis of the Code of Criminal Procedure shall be amended as follows:

“3) to revoke the judgement of conviction or the judgement imposing a punishment upon request or the criminal conviction order, declaring that the fact is not envisaged by law as a crime, and to adopt the related measures in the event of repeal or declaration of constitutional illegitimacy of the relevant rule and to reduce the punishment when the new law provides for a milder punishment than the one imposed.”.

Art. 28

(Revision. Transitional provision)

1. Applications filed before the Judge for Extraordinary Remedies before 31 January 2022 for the establishment of a violation of the rights recognised to the defendant by the Convention for the Protection of Human Rights and Fundamental Freedoms or by the Additional Protocols, shall be

deemed to be an effective remedy before the national authority of San Marino and the time-limit for lodging an appeal to the European Court of Human Rights shall run from the entry into force of this Law.

Art. 29

(Criminal Proceedings Observatory)

1. The Criminal Proceedings Observatory shall be established for the purpose of monitoring the application of criminal proceedings, with particular reference to the efficiency of proceedings and the guarantees of the right of defence. The Observatory shall draw up an annual report, to be transmitted to the Minister of Justice, which shall also contain any proposals for legislative amendments.

2. The Observatory shall be composed of a representative of the Ministry of Justice, two full professors of criminal procedure appointed every two years by the Minister of Justice, the Head Magistrate and two Judges in criminal matters of the Court, the latter appointed every two years by the Judicial Council, and two lawyers delegated by the President of the Association of Lawyers and Notaries.

Art. 30

(Consolidated text)

1. The Congress of State shall be committed to drafting, through the competent offices, a consolidated text for the identification and coordination of provisions on criminal proceedings.

Art. 31

(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 2 March 2022/1721 since the Foundation of the Republic.

THE CAPTAINS REGENT
Francesco Mussoni - Giacomo Simoncini

THE MINISTER OF
INTERNAL AFFAIRS
Elena Tonnini