



# REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 62 of 20 March 2024

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

*Having regard to Article 1, paragraph 19 of Law no. 194 of 22 December 2023;*

*Having regard to Congress of State Decision no. 99 adopted in its sitting of 29 February 2024;*

*Having regard to Art. 5, paragraph 3, of Constitutional Law no. 185/2005 and to Articles 8 and 10, paragraph 2, of Qualified Law no. 186/2005;*

*Promulgate and order the publication of the following Delegated Decree:*

## **AMENDMENTS TO LAW NO. 97 OF 20 JUNE 2008 "PREVENTION AND ELIMINATION OF VIOLENCE AGAINST WOMEN AND GENDER VIOLENCE" AND SUBSEQUENT AMENDMENTS AND TO THE CRIMINAL CODE**

### **Art. 1**

*(Amendments to Article 2 of Law no. 97 of 20 June 2008 and subsequent amendments)*

1. Article 2 of Law no. 97 of 20 June 2008 and subsequent amendments shall be replaced by the following:

### **"Art. 2**

*(Definition of violence against women, gender violence and domestic violence)*

1. Violence against a person shall mean any act of sex or gender-based violence that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to the victim, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or in private life.
2. The term gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.
3. Domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners considered equivalent to spouses, whether or not the perpetrator shares or has shared the same residence with the victim.
4. The term woman shall also include girls under the age of 18.
5. Psychological violence shall include any intentional behaviour that seriously harms the psychological integrity of another person, carried out through various means and methods such as

isolation, control, coercion, intimidation, denigration and humiliation, including in respect of persons close to the victim.”

**Art. 2**

*(Amendment to Article 19 of Law no. 97/2008)*

1. Article 19 of Law n.97/2008 shall be replaced by the following:

“Art. 19

*(Reporting obligation)*

1. Social Services, Police Forces and health professionals, both public or private, as well as teachers of all school levels shall report to the competent bodies any act of violence against women, children or gender violence of which they may have knowledge because of their activities or professions.
2. The purpose of reporting is to make the facts referred to in paragraph 1 known to the bodies responsible for taking measures to protect the victim, where necessary.
3. Reporting shall not constitute a breach of professional secrecy.
4. An administrative fine of EUR 500.00 (five hundred/00) shall be imposed on anyone who breach the reporting obligations.”

**Art. 3**

*(Introduction of Article 19-bis in Law no. 97/2008 and subsequent amendments)*

1. After Article 19 of Law No. 97/2008, the following Article 19-bis shall be introduced:

“Art. 19-bis

*(Bodies competent to receive reports)*

1. If the acts of violence referred to in Article 19 constitute offences that can be prosecuted *ex officio* or in case of offences that can be prosecuted on formal complaint filed by the victim, the report shall be made to the Law Commissioner acting as Investigating Judge, who shall put in place protective measures and programs, if necessary. If the victim of violence is a minor, the Investigating Judge shall promptly report the *notitia crimini* to the Guardianship Judge for any necessary action falling within his/her competence.
2. Except for the cases referred to in paragraph 1, i.e. when the acts of violence do not constitute an offence that can be prosecuted *ex officio* or in the absence of a formal complaint in case of offences that can be prosecuted on complaint filed by the victim, the competent authority to receive the report shall be the Mental Health Unit, which shall summon the victim and, if requested by the latter, it shall adopt the protection measures and programmes provided for in the protocols in force, after appropriate investigations.
3. In the cases referred to in paragraph 2, if acts of violence are perpetrated against a minor or are committed by a minor, the competent authority to receive the report shall be the Minors’ Protection Unit, which shall act in accordance with the provisions of the protocols in force.”

**Art. 4**

*(Amendment to Article 20 of Law no. 97/2008)*

- Article 20 of Law n.97/2008 shall be replaced by the following:

“Art. 20  
(Right to participate in criminal proceedings)

1. In proceedings of violence against women, minors or gender-based violence, the Authority for Equal Opportunities shall be entitled to participate and to join the proceedings as a civil party.
2. To this end, the Investigating Judge shall immediately notify the Authority for Equal Opportunity of the ongoing criminal proceedings.
3. Within criminal proceedings for violence against women, minors or gender-based violence, the victim may freely have access to the case file at any stage and instance of the proceedings, irrespective of whether or not he/she has joined the proceedings as a civil party, upon a reasoned request for access by means of a public prosecutor.”.

**Art. 5**  
(Introduction of Article 21-bis in Law no. 97/2008 and subsequent amendments)

1. After Article 21 of Law n.97/2008 the following Article 21-bis shall be introduced:

“Art. 21-bis  
(Verbal reprimand)

1. Verbal reprimands shall be a preventive administrative measure adopted by the Commander of the Gendarmerie, or his delegate, against the perpetrator of acts occurred through beatings, injuries, threats, persecution and sexual harassment in order to prevent such acts from being repeated.
2. The person in whose favour the verbal reprimand is taken may make a request to the Commander of the Gendarmerie if the perpetrator of the acts is clearly identifiable. The request may be made if a complaint has not already been filed with the Law Commissioner, the Investigating Judge, and if no acts have been committed, that can be prosecuted ex officio.
3. The request referred to in paragraph 2 shall contain the details of the facts, any documentation and a description of any person involved. Anonymous reporting shall not be permitted and the confidentiality of the reporting person shall be guaranteed.
4. The Commander of the Gendarmerie, or his delegate, after verifying the documentation submitted and after hearing, the perpetrator of the acts and the persons informed of the facts, shall assess the seriousness of the conduct and decide on the adoption of the measure referred to in paragraph 1.
5. If the request referred to in paragraph 2 is granted, the Commander of the Gendarmerie, or his delegate, after summoning the perpetrator of the acts, shall reprimand him/her and exhort to behave in accordance with the law and shall inform him/her of the rehabilitation centres and services available in the territory. The Commander of the Gendarmerie or his delegate shall draw up minutes, a copy of which shall be sent to the requesting person and to the person to whom the reprimand was given.
6. The Commander of the Gendarmerie, or his delegate, shall consider whether to adopt measures concerning arms and ammunition.
7. If the person requesting the measure of verbal reprimand considers that a criminal offense has occurred, he/she may file a complaint before the Court of the Republic of San Marino, addressed to the Law Commissioner in his capacity as Investigating Judge, or to the Police Forces, which shall immediately notify the judicial authority within 72 hours of receipt.
8. If the person requesting the verbal reprimand files a complaint to the Court, he/she shall, at the same time, notify the Commander of the Gendarmerie thereof. In that case, the proceedings before the Commander of the Gendarmerie shall be closed.
9. The complaint referred to in paragraph 7 shall contain a detailed description of the facts, of the persons involved in whatever capacity, and shall be accompanied by any means of evidence proving what has been declared.
10. Punishments for the offences referred to in paragraph 1 shall be increased by one degree if a

person who has already been prosecuted under this Article has committed the offence. The act shall be prosecuted ex officio if a person who has already been reprimanded has committed it.

11. If the threat is repeated, such conduct shall be punished by fine or reprimand.”.

## **Art. 6**

*(Amendments to Article 22 of Law no. 92/2008)*

1. Article 22 of Law n.97/2008 shall be replaced by the following:

### **“Art. 22**

*(Special protective measures in criminal proceedings)*

1. When judging an offence against personal safety, personal freedom or family maltreatment by a co-habiting person, the Investigating Judge may order, upon the victim’s request, the suspect or the defendant to vacate the family house and not to return or enter it without his/her authorisation, and, if necessary, establish visitation rules.

2. In cases where the safety of the victim or of his/her close relatives is at stake and needs to be protected, the Investigating Judge may, upon the victim’s request, order the suspect or defendant to stay away from certain places usually frequented by the victim, in particular the working place, the original home or that of close relatives, unless attendance is necessary for work purposes. In the latter case, the Judge shall establish the relevant modalities and may impose limitations. In any case, the prohibition to approach places habitually frequented by the offended person shall be at a distance no less than 500 metres, except for proven reasons specified by the Investigating Judge.

3. The Judge, upon receipt of the request, shall gather all appropriate information and issue a reasoned order, after hearing the defendant and, where appropriate, the applicant, except in cases of urgency.

4. The Investigating Judge, at the request of the victim, and in compliance with adversarial proceedings, may also order that a cheque is regularly paid off to cohabiting persons who have no adequate financial means as a result of the precautionary measure adopted. The Judge shall determine the amount of the cheque, taking into account the circumstances and the income of the obligor and shall establish the terms and conditions of payment. The Judge may order, if necessary, that the cheque be paid directly to the payee by the employer of the obligor, deducting it from his/her salary. The payment order shall be expressly enforceable.

5. The measures referred to in paragraphs 2 and 4 may also be taken subsequent to the measure referred to in paragraph 1, provided that the latter has not been revoked or has not become null and void. Such measures, even if adopted at a later stage, shall become null and void if the measure referred to in paragraph 1 is revoked or becomes null and void. If the measure set forth in paragraph 4 is in favour of the spouse or the children, it shall also become null and void in cases where the Civil Judge adopts a subsequent measure in a legal separation or if another measure concerning the economic and property relationships between spouses or the financial support of children has been taken by a Civil Judge.

6. The measure referred to in paragraph 4 may be modified if the conditions of the obligor or of the payee change, and it shall be revoked if cohabitation resumes.”.

## **Art.7**

*(Amendment to Article 23 of Law no. 97/2008)*

1. Article 23 of Law n.97/2008 shall be replaced by the following:

### **“Art. 23**

*(Psychological support for victims of violence in criminal proceedings and other protection measures in criminal investigation)*

1. When criminal offences against personal safety, freedom or mal-treatment of a person are proceeded against, experts shall ensure psychological support to the victim when the victim is examined as a witness or during the confrontation with the defendant or other witnesses.
2. When a judicial or medical and legal examination has to be conducted during the proceedings for one of the offences referred to in paragraph 1, the expert shall be preferably chosen among professionals of the same sex of the victim.
3. The examination of the victim in court shall take place to avoid having to repeat it. To this end, the Investigating Judge shall take all appropriate measures, including video recording the hearing.
4. The Investigating Judge shall, in any case, gather information from the offended party or from the person who has reported the facts of violence within no more than forty-eight hours or, in any event, no more than two working days, unless extended for proven reasons. Investigations should take place as soon as possible.
5. If the offended person is a minor, the Investigating Judge shall examine the victim of the offence, in confrontation with the defendant or witnesses, using a two-way mirror and an intercom system or using other suitable equipment that guarantees confidentiality. The hearing shall be video-recorded. The minor shall always be assisted by a child psychologist auxiliary to the Judge."

### **Art. 8**

*(Amendment to Article 32 of Law no. 97/2008)*

1. Article 32 of Law n.97/2008 shall be replaced by the following:

"Art. 32  
*(Police intervention)*

1. If a police intervention is required for acts of violence covered by this law, Police forces shall take immediate action.
2. Police forces may enter, even forcibly, the victim's home or other places or private property where the victim or the perpetrator are located. They shall put an end to the offending behaviour, make the victim aware of his/her rights, including the right to request protection orders.
3. In the event of a real danger for the victim's safety, the Police forces shall act to ensure the victim's safety, through the competent Social Services, which shall intervene in accordance with the protocols in force, also for the purpose of temporary placement in a shelter.
4. If the persons involved are minors, Police forces shall contact the Minors' Protection Service. In all cases in which the Service, on its own initiative or outside the scope of this Article, ascertains that both parents of the minor are, even temporarily, unable or unsuitable to exercise parental authority and that there is an immediate need to protect the child, it shall arrange to place the child in a shelter in accordance with the protocols in force, and shall notify it to the Guardianship Judge, for the measures under his jurisdiction, within the next twenty-four hours.
5. To ensure the regular performance of the intervention activities referred to in paragraphs 3 and 4, the SSI Executive Committee shall guarantee, through the Social Services and the Minors' Protection Service, the fulfilment of their duties, i.e. guaranteeing 24-hour on-call shifts.
6. In any event, the Police forces shall report the act of violence in accordance with Article 19-bis.
7. Police forces shall seize in any case the weapons present in the perpetrator's home and communicate it to the Law Commissioner, the Investigating Judge and the Command of the Gendarmerie, to initiate the procedure of suspension or withdrawal of the firearms certificate or hunting license.
8. Police forces shall immediately intervene even following a report that a perpetrator of violence is or is about to drive a vehicle under the effect of narcotic or alcoholic substances or in a state of psychophysical alteration, by taking the necessary preventive and precautionary measures.
9. If the request for intervention concerns acts of persecution as defined by law, Police forces, even regardless of the complaint by the offended party, shall remove the offender and report as

provided for in this law.

10. Minutes shall be drawn up for all interventions, which shall be sent to the Command of the Gendarmerie, to the Gender and Child Abuse Office, to the Mental Health Unit and to the Minors' Protection Unit, should minors be involved. The data collected shall be transmitted to the Authority for Equal Opportunities .”

**Art. 9**

*(Introduction of Article 32-bis in Law no. 97/2008 and subsequent amendments)*

1. After Article 32, of Law no. 97/2008 and subsequent amendments the following Article 32-bis shall be added:

*“Art. 32-bis  
(Placement in foster families)*

1. To find suitable accommodation for minors who are victims of violence or who are temporarily deprived of a suitable family environment to guarantee their upbringing, a Register of persons available to take in such minors shall be established at the Minors' Protection Unit.
2. To be entered in the Register referred to in paragraph 1, persons shall meet the requirements referred to in Article 5 of Law No 79 of 30 April 2021.
3. Persons wishing to apply for entering the Register referred to in paragraph 1 shall submit an application to the Minors' Protection Unit together with the documentation proving that they meet the requirements referred to in paragraph 2. The Minors' Protection Unit, having assessed the suitability of the person, shall enter him/her in the Register.
4. Persons taking in a child in foster care shall receive a contribution from the Social Security Institute, by resolution of SSI Executive Committee, on the basis of specific tables containing objective criteria adopted by the SSI Executive Committee.”.

**Art. 10**

*(Amendments to Article 171 of the Criminal Code)*

Article 171 of the Criminal Code shall be replaced by the following:

“Art. 171  
(Sexual violence)

1. Anyone who, by using violence, threat, deception, hypnotic suggestion or while being awake or by other means, forces or induces a person to perform or undergo sexual acts, shall be punished by third degree imprisonment.
2. In less serious cases, the punishment shall be reduced from one to two degrees.
3. If the offence is committed by the ascendant, adopter, guardian, educator, teacher, health professional or the person having custody of a child for reasons of supervision, education or care, fourth degree disqualification from parental authority, guardianship, profession or art shall be jointly applied.”.

**Art. 11**  
(Amendment to Article 171-bis of the Criminal Code)

1. After Article 171 of the Criminal Code and subsequent amendments, the following *Article 171-bis* shall be introduced:

“Art. 171-bis  
(Sexual harassment)

1. Unless the fact constitutes a more serious offense, anyone who, by means of acts or conduct of a sexual nature, including through social media, seriously violates the freedom and dignity of the person who suffers them shall be punished, on complaint of the victim, by first-degree imprisonment or a fine or reprimand.
2. If the act is committed against an incapacitated person by reason of age or infirmity, it shall be prosecuted *ex officio*.”.

**Art. 12**  
(Amendment to Article 172 of the Criminal Code and subsequent amendments)

1. Article 172 of Law of the Criminal Code and subsequent amendments shall be replaced as follows:

“Art. 172  
(Aggravating circumstances)

1. Anyone who commits sexual intercourse under the circumstances laid down in Article 171 shall be punished by imprisonment increased by one degree.
2. The punishment shall be increased by one degree if the fact referred to in paragraph 1 is committed by the spouse or co-habiting partner or by the person having or having had an emotional relationship with the victim.
3. In some cases, the punishment shall be increased by one degree if the fact is committed to the detriment of a disabled person.
4. The punishment shall be increased by one degree if the offence is committed to the detriment of a minor.”.

**Art. 13**  
(Introduction of Article 177-bis of the Criminal Code)

1. After Article 177<sup>quater</sup> of the Criminal Code, the following Article 177<sup>quinquies</sup> shall be added:

“Art. 177-quinquies  
(Solicitation of children)

1. Anyone who, for the purpose of committing the offences referred to in Articles 171, 171bis,

172bis, 173, 177, 177bis, 177ter and 177quater, solicits a child shall be punished, by second degree imprisonment, if the fact does not constitute a more serious offence.

2. Solicitation of children shall mean any act aimed at gaining the trust of a minor through artifice, flattery or threats, including through the use of the Internet or other networks or means of communication."

#### **Art. 14**

*(Amendment to Article 181-bis of the Criminal Code)*

1. Article 181bis of the Criminal Code shall be replaced by the following:

*"Art. 181-bis  
(Persecutory acts)*

1. Anyone who repeatedly harasses or threatens a person to such an extent as to upset his/her usual living conditions or to submit him/her in a state of subjection or substantial physical or psychological distress or reasonable fear for his/her own safety and for the safety of the people close to him/her through stable emotional relationships shall be punished by terms of first degree imprisonment and a fine.

2. If the harassment and threats referred to in paragraph 1 occur in the workplace in the form of ongoing and repeated aggressive and unfair conducts held by the employer or colleagues with the intent to discredit, humiliate, or isolate an employee in order to force him/her to resign after causing him/her severe psycho-physical distress, the punishment shall be raised by one degree.

3. The Court shall proceed upon complaint filed by the offended party.

4. The Court shall proceed ex officio and imprisonment shall be raised by one degree if the fact is accompanied by the use of a weapon, violence or a particularly serious threat.

5. The Court shall also proceed ex officio if the fact is committed jointly with an offence that can be prosecuted ex officio."

#### **Art. 15**

*(Amendment to Article 6 of Delegated Decree no. 60 of 31 May 2012)*

1. Article 6 of Delegated Decree no. 60 of 31 May 2012 shall be replaced as follows:

*"Art. 6  
(Technical Panel)*

1. An Institutional and Technical Panel shall be established for coordinating and implementing the objectives defined in this delegated decree and shall consist of:

a) a member from the Authority for Equal Opportunities

b) a member from the Gendarmerie Corps;

c) a member from the Civil Police Corps;

d) a member from the Fortress Guard Corps;

e) a member from the SSI Directorate-General;

f) a member from the Association of Lawyers;

g) a member from the Association of Psychologists;

h) the Director of the Department of Education or his/her delegate;

i) the Director-General of the University of the Republic of San Marino or his/her delegate;

l) a representative of the Court of the Republic of San Marino."

#### **Art. 16**

*(Operating Protocols)*

1. The Court of the Republic of San Marino, the Police Forces, the Authority for Equal Opportunities,

the Mental Health Unit and the Minors' Protection Unit shall draw up, within three months from the adoption of this delegated decree, specific protocols containing procedures for protecting and taking care of victims of violence.

*Done at Our Residence, on 20 March 2024/1723 since the Foundation of the Republic.*

THE CAPTAINS REGENT  
*Filippo Tamagnini - Gaetano Troina*

THE MINISTER OF INTERNAL AFFAIRS  
*Gian Nicola Berti*