

DECREE OF THE PRESIDENT OF THE REPUBLIC NO. 309 OF 9 OCTOBER 1990.

Consolidated text of laws governing drugs and psychotropic substances, the prevention, treatment and rehabilitation of drug addiction

ARTICLE N.73

The illicit production, traffic and possession of narcotic and psychotropic substances.

1. Whoever, without the authorization referred to in art. 17, cultivates, produces, manufactures, extracts, refines, sells, offers for sale or places on sale, assigns or receives in any manner whatsoever, distributes, markets, acquires, transports, exports, imports, procures for others, sends, passes, or ships in transit, delivers for any purpose or in any way unlawfully possesses the narcotic and psychotropic substances set forth in Tables I and III pursuant to art. 14, in cases not covered by the provisions of art. 75, shall be liable to imprisonment for between 8 and 20 years, and fine of between €25,822 and €258,228.

2. Whoever, while being in possession of the permit referred to in art. 17, unlawfully assigns, places on sale or enables others to market the substances or preparations set forth in Tables I and III pursuant to art. 14 shall be liable to imprisonment for between 6 and 22 years and a fine of between €26,000 a €300,000.

3. The same penalties shall apply to any person who cultivates, produces, or manufactures narcotic and psychotropic substances other than those set forth in the decree of authorization.

4. If any of the actions provided by paragraphs (1), (2) and (3) relate to the narcotic and psychotropic substances set forth in Tables II and IV pursuant to art. 14, imprisonment between 2 and 6 years and a fine between €5,164 and €77,468 apply.

5. Unless the fact constitutes a more serious offence, whoever commits a fact pursuant to this article which, in terms of the means, modalities or circumstances of the action, or the quality or quantity of the substances, is a crime of minor nature, shall be liable to imprisonment from 6 months to 4 years, and fine from €1,032 to €10,329.

5-bis. In the provision as in paragraph 5, limited to the offences as indicated in the present article committed by an addict or by a person using narcotic or psychotropic substances, the judge, with a verdict of conviction or application of punishment upon request of the parties pursuant to art. 444 of the Code of Criminal Procedure, upon request by the accused and after hearing the prosecutor, in case the benefit of the suspended sentence cannot be granted, he can order, instead of custodial sentences or financial penalties, the community service as in art. 54 of legislative decree of 28 August 2000, n. 274, according to the modalities set therein. With such sentence, the judge charges the local Parole Office with monitoring the effective activity of community service. The office reports periodically to the judge. By derogation from the provisions of the abovementioned art. 54 of legislative decree n. 274 of 2000, the period for the community service to be carried out is the same to the period of the issued custodial sentence. The community service can also be carried out in the authorized private facilities pursuant to art. 116, with their prior consent. In case of violation

of the obligations connected with the implementation of community service, by derogation from the provisions of the abovementioned art. 54 of legislative decree n. 274 of 2000, upon request of the prosecutor or the office, the judge who proceeded, or the one for the implementation, with the formalities as in art. 666 of the Code of Criminal Procedure, having considered the scope of the motives and the circumstances of the violation, orders the revocation of the sentence with consequent restoration of the substituted sentence. Against such provision of revocation, an appeal to the Supreme Court, which does not have suspension effect, is admitted. The community service can substitute the sentence for a maximum of two times.

5-ter. The provision as in paragraph 5-bis is applicable also in the hypothesis of an offence different from those set forth in paragraph 5, committed, only once, by an addict or by a usual consumer of narcotic or psychotropic substances and in relation to their own condition of addiction or of usual consumer, for whom the judge passes a sentence not exceeding one year of imprisonment, unless it is an offence as envisaged in art. 407, paragraph 2, letter a), of the Code of Criminal Procedure or a crime against a person.

6. If three or more persons act in concert to commit the offence, the penalty is increased.

7. The penalties provided by subsections/paragraphs (1) to (6) shall be reduced by between one half and two thirds in respect of persons who take action to prevent the criminal offence from creating further damage, by actively helping the police or the judiciary in coming into possession of resources stemming from the commission of the criminal offences.

ARTICLE N.75

Acts conducive to administrative sanctions

1. Whoever, for personal use, unlawfully imports, exports, buys, receives or in any way possesses narcotic and psychotropic substances shall be liable to, for a period from 2 months to up to 1 year, if the narcotic and psychotropic substances are those set forth in Tables I and III pursuant to art. 14, and for a period from 1 months to up to 3 months if the substances are the narcotic and psychotropic substances set forth in Tables II and IV pursuant to the same article, one or more following administrative sanctions:

a) suspension of driving licence, of the certificate of professional qualification for the driving of motor vehicles and of the certificate of competence for the driving of motorcycles or prohibition to obtain them for a period up to 3 years;

b) suspension of arms licence or prohibition to obtain it;

c) suspension of passport and any other equivalent document or prohibition to obtain them;

d) and in the case of a foreign national, the loss of the residence permit for tourism or prohibition to obtain it.

1-bis. In order to ascertain the destination for personal use only of the narcotic or psychotropic substance or pharmaceutical as in paragraph 1, the following circumstances are taken into account:

a) that the quantity of the narcotic or psychotropic substance does not exceed the maximum limits established by decree of the Ministry of Health, in concert with the Ministry of Justice, after hearing the Presidency of the Council of Ministers – Department for antidrug policies, as well as the modality of presentation of narcotic or psychotropic substances, having regard to the total gross weight or to the fractioned packaging or to other circumstances of the action, showing that the substances are intended for personal use only;

b) that the pharmaceuticals containing the narcotic or psychotropic substances listed in the table for pharmaceuticals, sections A, B, C and D, do not exceed the prescribed quantity.

2. The person concerned, furthermore, being the requirements fulfilled, is invited to follow the therapeutic and social rehabilitation programme pursuant to art. 122 or another teaching or informative programme which is tailored to the personal, specific needs, and instituted by the public service for the drug addictions, competent for the territory pursuant to paragraph 13, or by a private facility authorized pursuant to art. 116.

ARTICLE N. 89

Restrictive measures imposed on drug addicts or alcoholics undergoing therapeutic programmes.

1. When the conditions for pre-trial detention are met, in case precautionary measures of exceptional relevance do not subsist, the judge orders house arrests when the offender is a drug addict or alcoholic who is currently undergoing a programme of rehabilitation treatment in a public facility for the assistance of drug addicts, or in an authorized private facility pursuant to art. 116, and when the interruption of the programme might jeopardize the rehabilitation of the offender. When proceeding for the crimes set forth in arts. 628, third paragraph, or 629, second paragraph, of the Criminal Code or in case particular precautionary measures subsist, the measure is subject to the continuation of the treatment programme in a residential facility. The judge, in the same ruling or with a subsequent one, lays down the controls required in order to ascertain that the drug addict or alcoholic is pursuing the rehabilitation and treatment programme and indicates the times and days in which the person concerned can absent himself for the implementation of the programme.

2. If an addict or an alcoholic, who is in pre-trial detention, is willing to initiate a rehabilitation programme in a public facility for the assistance of drug addicts, or in an authorized private facility pursuant to art. 116, the pre-trial detention is substituted with the house arrests in case precautionary measures of exceptional relevance do not subsist.

3. The judge orders pre-trial detention in prison or its reactivation when he ascertains that the person interrupted the implementation of the programme, or he carries out a behavior which is inconsistent with its correct implementation, or when the judge ascertains that the person has not collaborated to the definition of the programme or refused its implementation.

5-bis. The responsible for the facility in which the therapeutic and social rehabilitation programme is carried out must report to the judicial authority any violation committed by the person undertaking the programme. When such violations integrate an offence, and in the case of failure to report, the judicial authority communicates it to the competent authorities for the suspension or revocation of the authorization pursuant to art. 116 and of the accreditation pursuant to art.117,

without prejudice for the adoption of appropriate measures for safeguarding the people undergoing treatment in the facility.

ARTICLE N. 90

Suspension of the enforcement of the detention order

1. In respect of the person who has to expiate a detention order for criminal offences committed in relation to his condition as a drug addict, the Court (Tribunale di Sorveglianza) may suspend the enforcement of the sentence for 5 years whenever, at the outcome of the acquisition of the final relation pursuant to art. 123, ascertains that the person has undertaken or is undertaking a therapeutic and social rehabilitation programme instituted by a public health facility or by an authorized private facility pursuant to art. 116. The Court, whenever the person concerned is subject to adverse economic conditions, can also suspend the execution of the financial penalty that has not yet been collected. The suspension can be granted only when a detention order must be expiated, also residual and in conjunction with a financial penalty, not exceeding six years or four years if related to a title enforceable including crimes pursuant to art. 4-bis of law n. 354 of 26 July 1975, and subsequent amendments.

2. The suspension of the sentence may not be granted and the order suspending the sentence is inadmissible if, within the period running from the starting date of the programme and the ruling of the suspension, the offender has committed another voluntary criminal offence for which a statutory prison term is provided.

3. The suspension of the enforcement of the sentence renders inapplicable any security measures, accessories penalties and the other penal effects of the sentence, except confiscation. The suspension does not cover any civil liabilities originating from the criminal act.

4. The suspension of the enforcement of the sentence may not be granted more than once.

ARTICLE N. 93

Spent conviction. Revocation of suspension

1. If the convicted offender does not commit, during the five years following, another voluntary criminal offence for which a statutory prison term is provided, the sentence and any other penal effect thereof is deemed spent.

2. The suspension of the sentence shall be revoked *de jure* if the convicted offender, within the deadline referred to in paragraph 1, commits another willful criminal offence for which a prison term is provided. The Court which granted the suspension is competent for the statements pursuant to the present paragraph and to paragraph 1.

2-bis. The 5-year deadline as indicated in paragraph 1 starts from the date in which the application is lodged, following the suspension order adopted by the prosecutor pursuant to art. 656 of the Code of Criminal Procedure or the application pursuant to art.91, paragraph 4. However, taking into account the duration of the limitations and prescriptions that the person concerned has

spontaneously accepted and his behavior, the Court can determine a different and more favorable starting date.

ARTICLE N.94

Probation in particular cases

1. If a prison sentence is to be imposed upon a drug addict or an alcoholic who is currently undergoing a rehabilitation programme, or intends to take one, the offender may ask at any time to be admitted to probation and entrusted to the social services in order to continue or to undertake the therapeutic activities according to a programme agreed by him with the local health board (USL), or one of the private agencies authorized pursuant art. 116. The probation in particular cases can be granted only when a detention sentence must be served, even residual and in conjunction with a fine, not exceeding 6 years or 4 years if related to a title enforceable including an offence as in art. 4-bis of law of 26 July 1975, n. 354, and subsequent amendments.

2. If the imprisonment order has been enforced, the application is presented to the Judge (Magistrato di Sorveglianza) who, given the request admissible, if there are concrete indications regarding the existence of prerequisites for accepting the application and the serious prejudice related to the perpetuation of the state of imprisonment, in case there are no elements proving the danger of flight, can order the provisional application of the alternative measure.

4 The Court accepts the application if it is deemed that the rehabilitation programme, including through the other provisions as in art. 47, paragraph 5, of law of 26 July 1975, n. 354, contributes to the rehabilitation of the convicted person and it ensures the prevention of the risk that the convicted may commit other offences. If the Court decides to admit the person to probation, the order shall include the manner in which the programme shall be conducted. It shall also lay down the instructions and procedures for supervision in order to ascertain that the drug addict or alcoholic starts immediately or continues to attend the rehabilitation programme. The enforcement of the sentence is considered to have started on the date of the first admission to Social Services of the concerned person. However, if, at the moment of the decision, the therapeutic programme is already positively underway, the Court, having considered the duration of the limitations that the person concerned has spontaneously accepted and his behavior, can determine a different and more favorable starting date.

6-bis. If, during the probation pursuant to the present article the person concerned has positively completed the therapeutic part of the programme, the Judge, after having re-determined the prescriptions, can order its continuation for the purpose of social reintegration, even in case the residual penalty exceeds the one for the probation in ordinary cases, as set forth in art. 47 of law of 26 July 1975, n. 354.

6-ter. The person in charge with the facility in which the therapeutic and social rehabilitation programme takes place must report to the judicial authority any violation committed by the person undertaking the programme. When such violations integrate an offence, and in case of failure to report, the judicial authority communicates it to the competent authorities for the suspension or revocation of the authorization pursuant to art. 116 and of the accreditation pursuant to art.117,

without prejudice for the adoption of appropriate measures for safeguarding the people undergoing treatment in the facility.

ARTICLE N. 95

Enforcement of imprisonment order on a drug addict

1. The prison term imposed on a person convicted of criminal offences committed in relation to his status as a drug addict shall be served in an appropriate institution for the prisoner to be able to undergo therapeutic and social rehabilitation programmes.
2. By decree of the Minister of Justice, appropriate prisons shall be acquired, and these shall be set aside for drug addicts who have been convicted, even if subject to appeal.