



REPUBLIC OF SAN MARINO

Courtesy translation

DECREE-LAW No. 83 of 15 July 2013

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

Having regard to the conditions of need and urgency referred to in Article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and Article 12 of Qualified Law no. 184 of 15 December 2005 and more precisely;

- *the need to adjust the legislation in force on international cooperation and legal assistance in order to enhance safety and develop cooperation among States in countering terrorism and to discipline new offences;*
- *the urgency to promptly meet the need above for a rapid adjustment to the most recent international standards;*

*Having regard to Congress of State Decision no. 24, adopted during its sitting of 9 July 2013;
Promulgate and order the publication of the following Decree-Law:*

URGENT MEASURES OF ALIGNMENT TO THE GLOBAL COUNTER-TERRORISM STRATEGY

TITLE I GENERAL PROVISIONS

Art. 1

(Scope of application)

1. This Decree-Law contains urgent measures aimed at preventing, hindering and punishing behaviours considered manifestations of international terrorism.
2. The serious offences under this Decree-Law, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or individuals, shall under no circumstances be justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Art. 2

(San Marino jurisdiction)

1. Without prejudice to articles 5 and 6, paragraph 3, of the Criminal Code, San Marino legislation shall apply to:
 - a) any national committing abroad the offences under this Decree-Law;
 - b) any foreigner committing abroad the offences under this Decree-Law, when he is present in the territory of the State and has not been extradited;
 - c) any foreigner committing abroad an offence under article 5 to the detriment of an internationally protected person referred to in article 4, paragraph 1, who enjoys his status as such by virtue of functions which he exercises on behalf of the Republic of San Marino.

**CHAPTER I
REPRESSION OF HOSTAGE-TAKING**

Art. 3

(Hostage-taking)

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hostage) in order to compel a third party, namely a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage shall be punished with sixth degree imprisonment.

**CHAPTER II
PREVENTION AND SUPPRESSION OF CRIMES AGAINST INTERNATIONALLY
PROTECTED PERSONS**

Art. 4

(Definitions)

1. “Internationally protected person” means:
 - a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned; a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;
 - b) a representative or official of a State or an official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

Art. 5

(Crimes against internationally protected persons)

1. The punishments provided for in the Criminal Code for the crimes of murder, personal injury, battery, kidnapping, private violence, threat, burglary, extortion to the detriment of an internationally protected person, as defined in article 4, paragraph 1, shall be increased by one degree when such crimes are determined, also indirectly, by the functions performed by the offended person.
2. The punishments provided for the violation of domicile and damage to property committed, failed and attempted against official premises and private accommodation belonging to the persons described in the preceding paragraph or against means of transport used by such persons shall be increased up to two degrees when such crimes are determined, also indirectly, by the functions performed by the offended person.

CHAPTER III

PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES AND SUPPRESSION OF ACTS OF NUCLEAR TERRORISM

Art. 6

(Definitions)

1. For the purposes of this Decree-Law:
 - a) "radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;
 - b) "nuclear material" means plutonium except that with isotopic concentration exceeding 80 % in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;
 - c) "uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
 - d) "nuclear facility" means:
 - 1) any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;
 - 2) any plant or conveyance being used for the production, storage, processing or transport of radioactive material;
 - e) "radiological or nuclear explosive device" means:
 - 1) any nuclear explosive device; or
 - 2) any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment;
 - f) "nuclear facility" means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or

interference with such facility could lead to the release of significant amounts of radiation or radioactive material;

- g) "competent authority" means the body responsible for the definition of the plan of physical protection of nuclear material during usage, storage and transport according to the levels of physical protection set forth in the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities, done at Vienna on 26 October 1979 and subsequent amendments. Until the establishment of nuclear plants or facilities in San Marino the competent authority shall be the Prevention Department;
- h) "active physical protection" means the activity of the Military Forces to prevent or counter illicit diversion of nuclear material or sabotage or attack on nuclear facilities.

Art. 7

(Attacks on nuclear facilities)

1. Any person committing an act directed against a nuclear facility or nuclear plant, places or means used for the production, storage or transport of nuclear material which could endanger the health and safety of the public shall be punished with seventh degree imprisonment.
2. If the acts mentioned in the preceding paragraph cause the death of one or more people, eight degree imprisonment and fourth degree disqualification shall be applied.

Art. 8

(Acts of nuclear terrorism)

1. Any person who, with the intent to cause death or serious bodily injury or to cause substantial damage to property or to the environment, possesses or makes available to others radioactive material or makes or is otherwise in possession of a radiological or nuclear device shall be punished with sixth degree imprisonment.
2. Any person who, with the intent to cause death or serious bodily injury or to cause substantial damage to property or to the environment, or to compel a natural or juridical person, an international organisation or a State to do or refrain from doing an act, uses in any way radioactive material or a nuclear device or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material shall be punished with seventh degree imprisonment.

Art. 9

(Unlawful possession and use of nuclear material)

1. Any person who, without the authorisation of the competent authority, commits an act constituting embezzlement, purchase, receipt, possession, transfer, use, transport, import, export, transformation, alienation or dispersal of nuclear material which is likely to cause death or serious injury to one or more persons or substantial damage to property or environment shall be punished with sixth degree imprisonment.
2. In the event that the acts mentioned in the preceding paragraph cause the death of one or more people, eighth degree imprisonment and fourth degree disqualification shall be applied.

Art. 10

(Appropriation of radioactive material through robbery, extortion, theft and misappropriation)

1. The punishments set forth in the Criminal Code for robbery, extortion, theft and misappropriation shall be increased by one degree when the offences concern nuclear material.

Art. 11

(Nuclear threat)

1. Any person threatening to use nuclear material to cause death or serious injury to one or more persons or substantial damage to property or to the environment shall be punished with fourth degree imprisonment.
2. Any person threatening to commit an offence described in articles 7, 8, 9 and 10 in order to compel a natural or juridical person, international organisation or State to do or to refrain from doing any act shall be punished by terms of fifth degree imprisonment.
3. Any person committing an act constituting, on factual circumstances, a demand for a nuclear device or facility by threat or use of force, shall be punished with fifth degree imprisonment.

Art. 12

(Other radioactive material, chemical or bacteriological incapacitants or material)

1. The punishments referred to in articles 7, 8, 9, 10 and 11 shall also apply when the conduct concerns radioactive material different from nuclear material, chemical or bacteriological incapacitants or material.

Art. 13

(Seizure and custody of nuclear material, devices and facilities)

1. Upon seizing of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in this Title, the judicial authority shall immediately inform the competent authority thereof. The latter shall take, if required, urgent safety measures also resorting, if necessary, to authorised facilities outside the territory.
2. The material seized under paragraph 1 shall be placed under the judicial custody of a suitable subject indicated by the competent authority. In all cases, nuclear material shall be held in accordance with the International Atomic Energy Agency safeguards, having regard to physical protection recommendations and health and safety standards published by the Agency above.
3. The judicial authority shall also inform the Secretariat of State (Ministry) of Foreign Affairs of the enforcement of the seizure order. The latter shall transmit such information without delay to the Director General of the International Atomic Energy Agency for appropriate communication to the States concerned.
4. Material referred to in paragraph 1 shall always be confiscated. Upon delivery of the final judgement of confiscation, the Secretariat of State for Foreign Affairs shall dispose of such material. In the event that, by virtue of the Convention, such material must be returned to a State party, the Secretariat of State for Foreign Affairs shall act accordingly, also concluding, if necessary, specific agreements.

TITLE II
PROVISIONS ON INTERNATIONAL COOPERATION, COMMUNICATION, LEGAL ASSISTANCE AND EXTRADITION

Art. 14
(International cooperation measures)

1. The Republic of San Marino shall cooperate in the prevention of the offences under this Decree-Law:
 - a) by taking all practicable measures to prevent or counter preparations in its territory for the commission within or outside its territory of the offences set forth in this Decree-Law, including measures to prohibit illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;
 - b) by exchanging information upon request and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in this Decree-Law and also in order to institute criminal proceedings against persons alleged to have committed those crimes.
2. Provisions in letter b) of paragraph 1 shall not apply when exchange of information would jeopardize the security of the State concerned or the physical protection of nuclear material.
3. The Republic of San Marino shall protect the confidentiality of any information which it receives in confidence from another State by virtue of the provisions of Title III of this Decree-Law. To this end, the Prevention Department, through the Secretariat of State for Foreign Affairs, shall be designated as liaison point responsible for sending and receiving the information

Art. 15
(Communication to interested Organisations and States)

1. The judicial authority shall inform the Secretariat of State for Foreign Affairs without delay of:
 - a) the enforcement of an order for pre-trial detention or home arrest of the persons alleged to have committed the offences under this Decree-Law;
 - b) any criminal prosecution for the offences under this Decree-Law;
2. The Secretariat of State for Foreign Affairs shall notify without delay the measures and information in the paragraph above directly or through the Secretary-General of the United Nations to:
 - a) the State where the offence was committed;
 - b) the State against which compulsion has been directed or attempted;
 - c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
 - d) the State of which the hostage is a national or in the territory of which he has his habitual residence;
 - e) the State or the States of which the person enjoying international protection is a national or on behalf of which he exercised his functions;
 - f) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence or abode;

g) the international intergovernmental organization against which compulsion has been directed or attempted or the intergovernmental organisation of which the person enjoying international protection is an official, an official representative or an agent;

h) all other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

a) to communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to establish such contact, or, if that person is a stateless person, the State in the territory of which that person habitually resides;

b) to be visited by a representative of that State;

c) to be informed of his rights.

4. The judicial authority shall inform without delay the Secretariat of State for Foreign Affairs of the final outcome of the proceedings or of the deposit of the order that no further action be taken, by enclosing copy of the relevant decision, with regard to the crimes under this Decree-Law. The Secretariat of State shall inform the UN Secretary General thereof.

Art. 16

(Legal assistance)

1. Without prejudice to the provisions contained in legal assistance agreements, the Republic of San Marino shall afford the greatest measure of assistance in connection with the acts covered by this decree-law, including the supply of evidence at its disposal necessary for the criminal proceedings started by the foreign judicial Authority.

Art. 17

(Extradition provisions)

1. With regard to the offences provided for in this Decree-Law, in the absence of specific international treaties, the extradition of the person present in the territory of the Republic shall be governed by article 8, paragraph 2 (1) and (2) of the Criminal Code.

2. For the purpose of extradition, the facts under this Decree-Law shall in no case be regarded as a political offence.

3. If, for any reason, the person who is in the territory of San Marino is not extradited, San Marino judicial authority shall start proceedings for the same facts for which extradition has been refused, irrespective of the fact that prosecution has been requested by the foreign State.

Art. 18

(Transfer of a person abroad)

1. In the absence of specific international treaties, where a foreign judicial Authority requests - for the purposes of carrying out procedural acts related to crimes referred to in this Decree-Law - the presence of a person under preventive detention or serving imprisonment as ordered by the San Marino judicial Authority, the judge may authorize the transfer of said person provided that:

a) the person to be transferred freely gives his or her informed consent;

b) the requesting State adopts the measures deemed most appropriate by the San Marino judicial Authority for the purposes of the transfer;

c) the State to which the person is transferred commits itself to keeping the person transferred in custody, unless otherwise requested or authorized by the San Marino judicial Authority;

- d) the State to which the person is transferred commits itself to returning, without delay, the person as agreed beforehand or decided by the requesting Authority and the San Marino Authority;
 - e) the State to which the person is transferred commits itself not to requiring to initiate extradition proceedings for the return of the person transferred;
 - f) the State to which the person is transferred neither prosecutes, nor subjects that person to imprisonment or to any other restriction of his/her personal liberty in respect of convictions anterior to his/her transfer, unless otherwise authorized by the San Marino judicial Authority;
 - g) the State to which the person is transferred does not envisage the death penalty in its legal system.
2. The San Marino judicial Authority shall take into due account the time spent in the custody of the State to which the person was transferred to determine the punishment to be served in the Republic of San Marino by said person.

Done at Our Residence, this 15 July 2013/1712 since the Foundation of the Republic

Antonella Mularoni - Denis Amici
CAPTAINS REGENT

Gian Carlo Venturini
SECRETARY OF STATE
FOR INTERNAL AFFAIRS