



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 2 May 2016:

LAW NO. 57 OF 6 MAY 2016

**RULES ADJUSTING SAN MARINO LEGAL SYSTEM TO THE PROVISIONS OF THE
COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING
VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL
CONVENTION)**

Art.1

(Declarations of principle)

In compliance with the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, opened for signature in Istanbul on 11 May 2011, the Republic of San Marino undertakes:

1. to conform the activities of its social and health care, support, protection and prevention services to the general principles established by the Convention;
2. to effectively implement policies of equality between women and men and the empowerment of women;
3. to adopt a gender perspective in the design of the measures implementing the Convention and in the evaluation of their impact.

Art.2

(Additional definitions)

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

“Art.2

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

Violence against a person shall mean any act of sex or gender-based violence that results, 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 occurring in public or in private life.

The term “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.

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.

The term woman shall also include girls under the age of 18.”.

Art.3

(Extension of the protection and assistance measures to victims)

The protection and assistance measures provided for in Law no. 97 of 20 June 2008 shall be understood as extended to all victims of all forms of violence covered by the scope of the Convention.

Art.4

(Assistance and recovery of victims)

Under Article 4 of Law no. 97/2008, legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment shall be ensured, when necessary, to victims in order to meet their specific assistance and recovery needs.

In order to integrate the tasks provided for in Article 1 of Delegated Decree no. 60 of 31 May 2012, the Authority for Equal Opportunities shall be responsible for the organisation and coordination of guaranteed assistance measures, including through the signing of specific memoranda with:

- the Association of Lawyers and Notaries for the provision of support and advice services (including out-of-court) and of information on access to the channels to be used for individual and collective complaints;
- the competent structures of the Social Security Institute for the provision of psychological support services;
- the offices entrusted with the provision of services and assistance for access to education, training and employment;
- adequate reception facilities for the provision of suitable accommodation in situations of emergency.

Legal advice and support services shall be provided by the experts on the list drawn up by the Association of Lawyers and Notaries, in accordance with paragraph 2 of Article 17 of Law no. 97 of 20 June 2008.

Art.5

(Fund for financial assistance to victims of violence)

Among the items of expenditure attributable to the Department of Institutional Affairs and Justice, a Fund shall be established in the State budget and be allocated to the Authority for Equal Opportunities for financial assistance to victims.

The Authority for Equal Opportunities shall be responsible for the identification of the need

to provide adequate financial assistance to victims, based on the availability of the Fund and in relation to the specificities of the case.

The Fund may be accessed by the victims of the acts of violence referred to in the Convention, committed or attempted in the territory of the Republic, whether they are San Marino citizens, residents or stay in the territory of the Republic and who are facing economic hardship (even temporarily).

After establishing the need referred to in paragraph 2 of this Article, the Authority for Equal Opportunities shall timely grant an amount from the Fund through the Department of Institutional Affairs and Justice.

Art.6

(Measures for the protection and support of children witnessing violence)

The measures provided for in Article 4, letters b), c), d), e) and f) of Law no. 97 of 20 June 2008, as well as the measures for the protection and support referred to in this Law shall be construed as applying to children witnessing all forms of violence covered by the scope of the Convention.

Art.7

(Confidentiality of the identity of complainants or reporting persons)

The Judicial and Police Authorities shall adopt, through a Congress of State Regulation, appropriate measures to ensure the confidentiality of the identity of the person who has filed a report or complaint concerning any act of violence covered by the scope of the Convention.

Art.8

(Compensation for failure to adopt appropriate preventive and protective measures)

The victims of the acts of violence covered by the Convention shall be given the right to bring action before the competent Judicial Authorities to obtain compensation for any damages resulting from the State Authorities' failure to take, for wilful misconduct or gross negligence, preventive or protective measures within the scope of their powers, in relation to the offences referred to in the Convention.

Art.9

(Forced marriage)

After Article 176 of the Criminal Code, the following Article shall be added:

"Article 176 bis
(Forced marriage)

Anyone forcing a person to enter into a marriage shall be punished with third-degree imprisonment. Anyone intentionally luring a person to the territory of a State other than the one she or he resides in with the purpose of forcing this person to enter into a marriage shall be punished with second-degree imprisonment."

Art.10

(Female genital mutilation)

After Article 156 of the Criminal Code, the following Article shall be added:

"Article 156 bis
(Female genital mutilation)

Anyone excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris, or coercing a woman to undergo any of such acts, shall be punished with third-degree imprisonment and disqualification.

Apart from cases of participation in the commission of the offence, anyone inciting a person to undergo the acts referred to in the preceding paragraph, shall be punished with second-degree imprisonment."

Art.11
(Forced sterilisation)

After Article 154 of the Criminal Code, the following Article shall be added:

"Article 154 bis
(Forced sterilisation)

Anyone performing surgery which has the purpose or effect of permanently terminating a person's capacity to naturally reproduce without his/her prior and informed consent or understanding of the procedure, shall be punished with third-degree imprisonment.

Fourth-degree imprisonment and fourth-degree disqualification shall apply, if the offender exercises a health profession."

Art.12
(Ill-treatment of family members and cohabitants, domestic violence)

Article 235 of the Criminal Code shall be replaced by the following:

"Art.235
(Ill-treatment of family members and cohabitants, domestic violence)

Anyone ill-treating a family member or in any case a cohabitant, or a person to whom he/she was or is linked by an emotional relationship, though not involving any cohabitation, shall be punished with second-degree imprisonment.

Fourth-degree imprisonment shall be applied if the offence provokes one of the aggravating events referred to in Article 156 and fifth-degree imprisonment shall apply in case of the victim's death."

Art.13
(Discrimination, hatred or violence on the grounds of race, ethnicity, nationality,
religion or sexual orientation and gender)

Article 179 bis of the Criminal Code shall be replaced by the following:

"Article 179 bis
(Discrimination, hatred or violence on the grounds of race, ethnicity, nationality,
religion or sexual orientation and gender identity)

Anyone disseminating by any means ideas based on racial or ethnic superiority or hatred, or encouraging someone to commit, or committing discriminatory acts on the grounds of race, ethnicity, nationality, religion or sexual orientation and gender identity, or encouraging someone to commit, or committing violence or acts instigating to violence on the grounds of race, ethnicity, nationality, religion or sexual orientation and gender identity, shall be punished with second degree imprisonment.

The offences aggravated by discrimination on the grounds of race, ethnicity, nationality, religion or sexual orientation and gender, as referred to in Article 90, paragraph 1, point 1, shall be prosecuted ex officio in any case."

Art.14

(Unacceptable justifications for offences)

Culture, custom, religion, tradition or honour shall not be regarded as justification or mitigation of punishment for the offences covered by the scope of the Convention.

Art.15

(Criteria of jurisdiction)

A San Marino citizen or resident who commits outside the State territory the offences covered by the Convention shall be subject to San Marino jurisdiction.

A person who commits outside the State territory the offences covered by the Convention against a San Marino citizen or resident shall be subject to San Marino jurisdiction.

The provisions referred to in Articles 154 bis, 156 bis and 176 bis as introduced by this Law, and the provisions referred to in Articles 153, paragraph 3, no. 1), 171, 172, 172 bis of the Criminal Code, shall also apply in cases where the facts are not criminalised in the State where they were committed, or even where the acts are criminalised in the State in which they were committed, but criminal prosecution can only be initiated following the reporting by the victim or action brought by the State of the place where the offence was committed.

Action shall not be taken pursuant to paragraphs 1 and 2, if any of the conditions provided for in Article 7 of the Criminal Code applies.

Art.16

(Aggravating circumstances)

The following circumstances shall be taken into consideration as further aggravating circumstances in relation to the offences covered by the provisions referred to in Articles 154 bis, 156 bis, 176 bis and 235 as introduced or amended by this Law, as well as by the provisions referred to in Articles 171 and 172 bis of the Criminal Code, when:

- a) the offence was committed against or in the presence of a child;
- b) the offence was committed against a person suffering from mental disorders or intellectual disabilities or a pregnant person;
- c) the offence was committed with the use or threat of a weapon;
- d) the offence, or any other related offence, was committed repeatedly during a certain period of time.

Abuse of family relationships, which constitutes an aggravating circumstance provided for in Article 90, point 2) of the Criminal Code, shall also include the abuse committed by the former spouse or partner.

In the presence of the above-mentioned aggravating circumstances the judge may increase the punishment by one degree.

Art.17

(Prosecution ex officio and withdrawal of complaint)

Article 178 of the Criminal Code shall be replaced by the following:

“Art.178

(Prosecution ex officio and withdrawal of complaint)

Prosecution for the offences covered by Articles 175 and 177 shall only be initiated following a complaint by the victim.

For the offences referred to in the preceding paragraph, a complaint can no longer be withdrawn after expiry of the period referred to in paragraph 3 of Article 7 of the Code of Criminal Procedure.

For the offences covered by the provisions of Articles 153, paragraph 3, no. 1), 154 bis, 156 bis, 171, 172, 172 bis, 176, 176 bis, the withdrawal of the complaint by the victim shall not extinguish the offence and shall have no effect on any criminal proceedings initiated.

In the event that the victim is a child, the statute of limitations, as well as the deadline for filing the complaint shall begin to run after reaching the age of majority.

The case shall be prosecuted ex officio if the offence is committed by the ascendant, guardian or adopter or by the person having the care or custody of the victim.

The case shall also be prosecuted ex officio if the fact is committed in conjunction with an offence which is prosecutable ex officio, or in case of repeated recidivism.".

Art.18

(Residence status of victims of forced marriage)

Upon request of the person concerned and after verifying the requirements to obtain a residence permit, the Permanent Parliamentary Commission for Foreign Affairs, Emigration and Immigration shall grant a residence permit to the victims of the offence under Article 176 bis of the Criminal Code who, brought into another State for the purpose of forced marriage, have lost their residence status following the occurrence of the condition referred to in Article 17, paragraph 5, letter a) of Law no. 118 of 28 June 2010 and subsequent amendments.

Art.19

(Tax exemption for acts performed in the interest of the victim)

The tax exemption granted under Article 17, paragraph 7 of Law no. 97/2008 shall be construed as being extended to all acts performed in the interest of the victim of violence in the context of civil, criminal and administrative proceedings.

Art.20

(Activities of the Authority for Equal Opportunities)

In order to ensure the effectiveness and efficiency of the provisions of Law no. 97 of 20 June 2008, of Delegated Decree no. 60 of 31 May 2012 and of this Law and to recognise the full operational autonomy of the Authority for Equal Opportunities, a special delegated decree providing for the interventions needed for this purpose shall be issued within ninety days of the entry into force of this Law.

Art.21

(Transitional provisions)

In order to allow the competent services and structures to design and implement, within the necessary time, the measures for the prevention, protection, punishment and assistance guaranteed by this Law to the victims of the offences of violence referred to herein, the right governed by Article 8 above shall be understood as being granted starting from the sixth month following the entry into force of this Law.

Art.22

(Entry into force)

This Law shall enter into force on the fifth day following that of its legal publication.

Done at Our Residence, on 6 May 2016/1715 since the Foundation of the Republic

THE CAPTAINS REGENT

Gian Nicola Berti - Massimo Andrea Ugolini

THE MINISTER OF
INTERNAL AFFAIRS
Gian Carlo Venturini