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THE PORTUGUESE PENAL CODE

GENERAL PART (ARTICES 1-130)

TRADUÇÃO PARA INGLÊS DA PARTE GERAL DO CÓDIGO PENAL PORTUGUÊS

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verbojuridico ®

OUTUBRO DE 2006

Título: THE PORTUGUESE PENAL CODE (General Part)

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Data de Publicação: Outubro de 2006.

Classificação Direito Penal

Edição: Verbo Jurídico ® - www.verbojuridico.pt | .eu | .net | .org | .com.

THE PORTUGUESE PENAL CODE

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Unofficial translation

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BOOK I
GENERAL PART

TITLE I
THE CRIMINAL LAW

SINGLE CHAPTER
GENERAL PRINCIPLES

Article 1
Principle of legality

1- An act may only be criminally punished if it was determined punishable by law before the act was committed.

2- Security measures may only be applied to cases of perilousness, if its conditions are determined by law previous to its fulfilment.

3- An appeal to analogy is not permitted to qualify an act as criminal, to define a case of perilousness, or to determine a penalty or a corresponding security measure.

Article 2
Temporal applicability

1- Penalties and security measures are determined by the law in force at the time of the commission of the act or the fulfilment of the conditions which they depend on.

2- A punishable act in accordance with the law in force at the moment of its completion ceases being punishable if a new law eliminates it from the number of infractions; in this case, if there has been condemnation, even if it has become a definitive sentence, the execution ceases and all its penal effects.

3- If a law is valid for a determined period of time, an act committed during this period continues to be punishable.

4- If the laws in force at the time of the commission of the punishable act are different from those established in posterior laws, the regime more favourable to the agent is always applicable, except when the agent has already been condemned by a definitive sentence.

Article 3
Time of the act

An act is considered as committed at the time the perpetrator acted or, in case of omission, should have acted, regardless of the time when the typical result occurs.

Article 4
Territorial applicability. General Principle.

Except when it is contrary to international treaties or conventions, Portuguese penal law is applicable to acts committed:

a) In Portuguese territory, regardless of the nationality of the agent; or

b) On board of Portuguese ships or aircrafts.

Article 5
Acts occurred abroad

1- Except when it is contrary to international treaties or conventions, Portuguese penal law is still applicable to acts committed abroad:

a) When regarded as a crime under the articles 221, 262 to 271, 300, 301, 308 to 321, 325 to 345;

b) When regarded as a crime under the articles 159, 160, 169, 172, 173, 176, 236 to 238, number 1 under the article 239, and the article 242, provided that the agent is found in Portugal and cannot by extradited;

c) By Portuguese, or by foreigners against Portuguese, whenever:

I) The agents are found in Portugal;

II) When they are also punishable by the law of the place in which they have been perpetrated, except when in that territory punitive power is not exerted; and

III) When they are considered a crime admitting extradition and this cannot be conceded;

or

d) Against Portuguese, by Portuguese usually living in Portugal at the time of its perpetration, if they are found here;

e) By foreigners, when found in Portugal, whose extradition has been requested, when considered as crimes admitting extradition and this cannot be conceded.

2- Portuguese penal law is as well applicable to acts committed abroad, which the Portuguese State has bound itself to try, by international treaty or convention.

Article 6
Restrictions on application of Portuguese law

1- The application of Portuguese law to acts perpetrated abroad only occurs when the agent has not been tried in the country where the act has been committed, or when he has evaded the fulfilment of the sentence, totally or partially.

2- Though Portuguese law may be applied in terms of the previous number, the act shall be tried according to the law of the country where the act has been perpetrated whenever this is more favourable to the agent. The applicable punishment is converted to that which corresponds to the Portuguese system or, if there is no direct correspondence, to that which the Portuguese law foresees for the act.

3- The regime of the previous number is not applicable to the crimes prescribed in a) number 1, under the article 5.

Article 7
Place of the commission of act

1- An act is considered as committed, as well in the place where, totally or partially, under whatever form of complicity, the agent has acted, or, in case of omission, should have acted, as in the place where the typical result, or the result not included in the type of the crime, has been produced.

2- In case of attempt, the act is equally considered as having been perpetrated in the place where, according to the representation of the agent, the result should have been produced.

Article 8
Subsidiary application of the penal code

The dispositions of this diploma are applicable to acts punishable by military penal law, as well as the mercantile marine law, and by the remnant legislation of special character, except when contrary legislation exists.

Article 9
Special dispositions for juvenile offenders

Rules fixed in special legislation are applicable to offenders over 16 and under 21.

TITLE II
THE ACT

CHAPTER I
BASES OF PUNISHABILITY

Article 10
Commission by action and by omission

1. When a legal type of crime includes a certain result, the fact comprises not only the action proper to produce it, as the omission of the action proper to avoid it, except if the intention of the law is different.

2. The commission of a result by omission is only punishable when the omissive person is under a legal duty that personally obliges him to avoid that result.

3. In the case prescribed in the previous number, punishment can be especially mitigated.

Article 11
Individual nature of criminal responsibility

Unless otherwise stated, only individuals are liable to criminal responsibility.

Article 12
Acting on behalf of another

1- Whoever acts voluntarily as head of an organ of a corporation, society or mere de facto association, or in legal or voluntary representation of another, is punishable, even when the respective crime type requires:

a) Certain personal elements and these are only present in the person of the represented; or

b) That the agent executes the act in its own interest and the representative acts in the interest of the represented.

2- The ineffectiveness of the act that serves as foundation to the representation does not prevent the application of what is determined in the previous number.

Article 13
Intent and Negligence

Only acts committed with intent are punishable or, in the cases especially prescribed in the law, with negligence.

Article 14
Intent

1- Whoever, representing an act that constitutes a type of crime, carries it on, with the purpose of accomplishing it, acts with intent.

2- A person still acts with intent when he represents the accomplishment of an act that constitutes a type of crime as a necessary consequence of his conduct.

3- When the accomplishment of an act that constitutes a type of crime is represented as a possible consequence of the conduct, there is intent if the agent acts accepting that accomplishment.

Article 15
Negligence

A person acts with negligence when he does not behave with the care to which, according to circumstances, is obliged and is capable of, and:

a) Represents as possible the accomplishment of an act that constitutes a type of crime, but acts without accepting that accomplishment; or

b) Does not even represent the possibility of the accomplishment of that act.

Article 16
Mistake about circumstances of the act

1- The Mistake about fact or law elements of a type of crime or about prohibitions the knowledge of which is reasonably indispensable for the agent to become aware of the act unlawfulness excludes intent.

2- The rule established in the previous number applies to the mistake about a state of things that, if existing, would have excluded the unlawfulness of the fact or the agent's fault.

3- Punishability is safeguarded in negligence general terms.

Article 17
Mistake about unlawfulness

1- A person acts without fault when he acts unaware of the unlawfulness of the act, if his mistake is not censurable.

2- If his mistake is censurable, the agent is punished with the sentence applicable to the respective intentional crime, which can be especially mitigated.

Article 18
Aggravation of penalty for the result

When the penalty applicable to an act is aggravated according to the production of a result, the aggravation is always conditioned by the possibility of attributing that result to the agent at least by negligence.

Article 19
Imputability by reason of age

Minors under 16 are not imputable.

Article 20º
No imputability by reason of a disease of the mind

1- A person is not imputable if, due to a disease of the mind, he is incapable, at the time of committing the act, to appreciate its unlawfulness or to conform his conduct in accordance with that appreciation.

2- A person may be declared not imputable if, due to a serious disease of the mind, not accidental and whose effects he cannot control, without being thereby censurable, has, at the time of committing the act, the capacity to appreciate its unlawfulness or to conform his conduct in accordance with that appreciation, sensibly diminished.

3- The agent's proved incapacity to be influenced by punishment may constitute a sign of the situation defined in the previous number.

4- Imputability is not excluded when the disease of the mind has been caused by the agent himself with the intention to commit the act.

CHAPTER II
FORMS OF CRIME

Article 21
Preparatory acts

Preparatory acts are not punishable, except when contrary legislation exists.

Article 22
Attempt

1. Attempt exists when the agent performs acts for the execution of a crime he has decided to perpetrate, which he failed to consummate.

2. Execution acts are:

a) Those that fulfil a constituent element of a type of crime;

b) Those that are proper to produce a typical result; or

c) Those that, according to common experience and excepting unexpected circumstances, are of a nature as being expected to be followed by acts of the types named in the previous paragraphs.

Article 23
Punishability of attempt

1. Except when there is contrary legislation, attempt is only punishable when the respective consummated crime corresponds to a penalty over three years of imprisonment.

2. Attempt is punishable with the penalty applied (applicable) to the consummated crime, specially mitigated.

3. Attempt is not punishable when the means used by the agent is obviously improper, or when the object essential to the commitment of the crime is not existent.

Article 24
Desistance

1. Attempt ceases to be punishable if the agent voluntarily desists from proceeding in the execution of the crime, or prevents its consummation, or, notwithstanding its consummation, prevents the verification of the result not included in the type of crime.

2. When the consummation or the verification of the result are prevented by an act independent of the desistant’s behaviour, the attempt is not punishable if he has made serious efforts to prevent the one and the other.

Article 25
Desistance in case of abetting

If various agents abet in the act, the attempt of he who voluntarily prevents the consummation or the verification of the act result is not punishable, nor the one who makes serious efforts to prevent the one and the other, even when the other participants proceed with the execution of the crime or consummate it.

Article 26
Authorship

He who performs the act, by himself or by someone as an intermediary, or who directly participates in its execution, in agreement or together with other person, or other persons, or who intentionally determines other person to carry out the act, is punishable as principal, if there has been execution or the beginning of execution.

Article 27
Complicity

1. He who, intentionally or in whatever form, materially or morally helps other person to perform an intentional act, is punishable as accomplice.

2. The penalty applicable to the accomplice is the one which is fixed for the principal, specially mitigated.

Article 28
Illicitude in participation

1. If illicitude or the degree of illicitude of the act depends on certain qualities or special relations of the agent, to make the respective penalty applicable to all participants it is enough that these qualities or relations occur in any of them, except if the incriminatory rule is different.

2. Whenever owing to the rule provided for in the previous number it results in a more severe penalty for some of the comparticipants, this may be substituted, in consideration of the circumstances of the case, for the one that would occur if that rule did not intervene.

Article 29
Guilt in participation

Each participant is punished according to his guilt, regardless of the punishment or degree of guilt concerning the other participants.

Article 30
Concurrence of crimes and continuous crime

1. The number of crimes is determined by the number of types of crime really committed, or by the number of times that the some type of crime is fulfilled by the agent’s conduct.

2. The multiple accomplishment of the same type of crime or of several types of crime that fundamentally protect the same juridical asset constitutes only one continuous crime, when performed in an essentially homogeneous way and under the solicitation of a same external situation that considerably diminishes the agent’s culpability.

CHAPTER III
CAUSES FOR EXCLUSION OF UNLAWFULNESS AND OF GUILT

Article 31
Exclusion of unlawfulness

1- The act is not criminally punishable when its unlawfulness is excluded by the legal system considered as a whole.

2- Namely, the act is not unlawful when committed:

a) In legitimate defence;

b) In the exercise of a right;

c) In fulfilment of a duty imposed by law or by an authority legitimate order;

d) With the consent of the holder of the harmed legal interest.

Article 32
Legitimate defence

An act constitutes legitimate defence when committed as the necessary means to repel a present and unlawful aggression on legally protected interests of the agent or of a third person.

Article 33
Excess of legitimate defence

1- If there is excess of the means employed in legitimate defence, the act is unlawful but punishment may be especially mitigated.

2- The agent is not punished if the excess results from non-censurable disturbance, fear or shock.

Article 34
Necessity right

An act is not unlawful when committed as an appropriate means to avert a present danger that threatens legally protected interests of the agent or of a third person, if the following requisites are verified:

a) The danger situation must not have been voluntarily created by the agent, save in case of protecting the third person’s interest;

b) There is a sensible superiority of the interest to be safeguarded relatively to the sacrificed interest; and

c) It is reasonable to impose on the victim the sacrifice of his interest, considering the nature or value of the threatened interest.

Article 35
Exculpatory necessity state

1- Whoever commits an unlawful act appropriate to avert a present danger, not differently removable, that threatens life, physical integrity, honour or freedom of the agent or of a third person, Acts without guilt when it is not reasonable to demand, according to the circumstances of the case, a different behaviour.

2- If the danger threatens legal interests other than those referred to in the previous number, and if the rest of the preconditions there mentioned are verified, punishment may be especially mitigated or, exceptionally, the agent exempted of punishment.

Article 36
Conflict of duties

1- An act committed by a person who, in case of conflict on the accomplishment of legal duties or legitimate orders from the authority, fulfils the duty or order of equal or superior value to the sacrificed duty or order is not unlawful.

2- The duty of hierarchical obedience stops when it leads to the commitment of a crime.

Article 37
Exculpatory undue obedience

A public servant who fulfils an order not knowing that it leads to the commitment of a crime, acts without guilt if it was not evident within the frame of circumstances represented by him.

Article 38
Consent

1- Besides the cases especially prescribed in the law, consent excludes the act unlawfulness when it refers to freely disposable legal interests and the act does not offend social mores.

2- Consent may be expressed by all means revealing a free, honest and enlightened will of the holder of the protected legal interest, and it can be freely withdrawn until the execution of the act.

3- Consent is effective only if it has been given by someone who is over 14 years old and has the necessary discernment to judge its meaning and range, at the moment it is given.

4- If the consent is not known to the agent, he shall be punished with the penalty applicable to attempt.

Article 39
Presumed consent

1- Presumed consent is dealt with as effective consent.

2- There is presumed consent when the situation, where the agent is acting on, reasonably permits to suppose that the holder of the legally protected interest would have effectively given consent to the act, if he had known the circumstances in which it is committed.

TITLE III
JURIDICAL CONSEQUENCES OF THE ACT

CHAPTER I
PRELIMINARY PROVISION

Article 40
The aims of penalties and security measures

1- The application of penalties and security measures aims at the protection of juridical assets and the agent's reintegration in society.

2- The penalty should in no case exceed the extent of the guilt.

3- The security measure can only be applied if it is proportional to gravity of the act and the perilousness of the agent.

CHAPTER II
PENALTIES

SECTION I
IMPRISONMENT AND FINE

Article 41
Duration of imprisonment penalty

1- Imprisonment penalty usually has the minimum duration of one month and the maximum duration of 20 years.

2- The maximum limit of imprisonment penalty is 25 years in the cases prescribed by law.

3- The maximum limit referred to in the previous number in no case should be exceeded.

Article 42
Duration of confinement

The duration counting for the sentence of confinement is done according to the criterion established by penal law procedure and, in case of omission, by civil law.

Article 43
Execution of imprisonment sentence

1- The execution of imprisonment sentence, which serves the defence of society and prevents the perpetration of crimes, should be guided to enable the social reintegration of the prisoner, and to prepare him to lead his life in a socially responsible way, without committing crimes.

2- The execution of imprisonment sentence is rules in its proper legislation, in which the duties and the rights of the prisoners are fixed.

Article 44
Substitution of short penalty imprisonment

1- An imprisonment sentence applied to a period not exceeding 6 months is substituted for a fine penalty or for another non-custodial applicable penalty, except if the execution of imprisonment is

required by the necessity of preventing further crimes. The rule prescribed in number 3 under the article 47 is correspondingly applicable.

2- If the fine is not paid, the convict is sent to prison with the penalty applied in the sentence. That which is prescribed in number 3 under the article 49 is correspondingly applicable.

Article 45
Free days imprisonment

1- Imprisonment penalty for a period not exceeding 3 months, which must not be substituted for a fine or other non-custodial penalty, shall be fulfilled on free days whenever the tribunal concludes that, in the referred case, this form of fulfilment is proper and sufficient for punishment goals.

2- The imprisonment on free days consists in deprivation of liberty during correspondent periods of weekends, which should not exceed 18 periods.

3- Each period has the minimum duration of 36 hours and the maximum of 48 hours, equalizing 5 days of continuous imprisonment.

4- The holidays previous to, or immediately following a weekend may be used to execute the imprisonment on free days, regardless of the maximum duration established for each period.

Article 46
Regime of semi-detention

1- The imprisonment penalty of a period not exceeding 3 months, which is not substituted for a fine or other non-custodial penalty nor carried out on free days, may be executed in a regime of semi-detention, if the convict agrees.

2- The regime of semi-detention consists in a deprivation of liberty that allows the convict to proceed his normal professional activity, his professional formation or his studies, with permission to stay out strictly limited to the fulfilment of his duties.

Article 47
Fine penalty

1- A fine penalty is fixed with reference to days, in accordance with the criterion established in number 1 under the article 71, and generally has a minimum limit of 10 days and a maximum of 360 days

2- Each day corresponds to a fine from €1 to €498.80, which the tribunal fixes in regard to the economic and financial conditions of the convict and his personal duties.

3- Whenever it is justifiable by the economic and financial conditions of the convict, the tribunal may authorize the payment of fine within a term not exceeding 1 year, or allow the payment by means of instalments, the last of which not exceeding 2 years subsequent to the date of the definite sentence of conviction.

4- Within the limits referred to in the previous number and when posterior motives justify it, the period of payment initially established may be altered.

Article 48
Substitution of fine for work

1- When requested by the convict, the tribunal may order a fixed fine to be totally or partially substituted for work in establishments, factories or State works and other corporation, legal person,

or private institutions of social solidarity, when the tribunal concludes that this form of fulfilment executes the aims of punishment properly and sufficiently.

2- The provisions in number 3 and 4 under the article 58, and in number 1 under the article 59, are correspondingly applicable.

Article 49
Conversion of unpaid fine for subsidiary imprisonment

1- If the fine, which has not been substituted for work, failed to be paid, voluntarily or coercively, subsidiary imprisonment is imposed on the convict for a corresponding time reduced to 2/3rd, even if the crime is not punishable by imprisonment, and the minimum limit of days concerning number 1 under the article 41 is not applied.

2- The convict may all the time avoid the subsidiary imprisonment execution of imprisonment if he, totally or partially, pays the fine of which he has been convicted.

3- If the convict proves that the reason for not paying the fine is not imputable to him, the execution of the subsidiary imprisonment may be suspended for 1 to 3 years, as long as the suspension is dependent on the fulfilment of duties or rules of behaviour of non-economic or financial nature. If the duties or rules of conduct are not fulfilled, subsidiary imprisonment shall be executed; if they are, the penalty is declared to be extinct.

4- The rules in number 1 and 2 are correspondingly applicable to the case in which the convict guiltily fails to fulfil the working days, for which, by his own request, the fine was substituted. If the failure of fulfilment is not imputable to him, that which is prescribed in the previous number is correspondingly applicable.

SECTION II
SUSPENSION OF THE EXECUTION OF IMPRISONMENT

Article 50
Prerequisites and duration

1- The court suspends the execution of an imprisonment sentence of no more than 3 years, if, taking into consideration the agent’s personality, the conditions of his living, his conduct previous to and after the crime, and the crime circumstances, it concludes that the mere censure of the act and the threat of imprisonment will achieve the aims of punishment.

2- If the court considers it convenient and appropriate to the achievement of the aims of punishment, it subordinates the suspension of the sentence of imprisonment, in the terms of the following articles, to the fulfilment of duties or to the observance of rules of conduct, or determines that the suspension will be accompanied by probation regime.

3- The duties, rules of conduct and the probation regime may be cumulatively imposed.

4- The condemnatory decision always specifies the reasons for suspension and its conditions.

5- The period for the suspension is fixed between 1 and 5 years counting from the time the sentence had become definitive.

Article 51
Duties

1- The suspension of the execution of the imprisonment sentence may be subjected to the fulfilment of duties imposed upon the convict with the purpose of repairing the damages of the crime, namely:

a) To pay in a certain time-limit the compensation owed to the victim, in whole or in the part that the court considers possible, or to assure its payment by means of a suitable guarantee;

b) To give the victim an appropriate moral satisfaction;

c) To give a sum of money or to make payment equivalent in kind to public or private institutions of social solidarity.

2- The duties imposed must in no case represent obligations to the convict, the fulfilment of which is not reasonable to demand.

3- The duties imposed may be modified until the end of the period of suspension, whenever relevant supervening circumstances occur or of which the court only later has knowledge.

Article 52
Rules of conduct

1- During the time of the suspension, the court may impose upon the convict the fulfilment of rules of conduct designed to ease his reintegration in society, namely:

a) not exerting certain professions;

b) not frequenting certain environments or places;

c) not living in certain places or regions;

d) not accompanying, putting up or receiving certain persons;

e) not frequenting certain associations or not participating in certain meetings;

f) not having in his possession objects capable of facilitating the commitment of crimes;

g) to appear periodically before the court, the social reinsertion expert or non-police entities.

2- Once obtained the previous consent of the convicted, the court may also determine his subjection to medical treatment or to a cure in an appropriated institution.

3- The prescriptions in numbers 2 and 3 of the previous article are correspondingly applicable.

Article 53
Suspension with probation

1- The court may determine the suspension to be accompanied by probation, if it is considered convenient and proper to facilitate the reintegration of the convict in society.

2- Probation is based upon an individual social re-adaptation plan, carried on with the support and checking by the social reintegration services, during the period of suspension.

3- Probation is, as a rule, to be applied when the imprisonment sentence has been suspended, if the penalty is superior to 1 year, and the convict is under 25 years of age at the time of the crime.

Article 54
Individual social re-adaptation plan

1- The individual social re-adaptation plan is communicated to the convict and should obtain, whenever possible, the convict's agreement.

2- The court may impose the duties and rules of conduct referred to in articles 51 and 52 and also other obligations that have some interest to the re-adaptation plan and to the sentiment of social responsibility of the convict, namely:

a) To obey the summons of the magistrate in charge of the execution and of the social reinsertion expert;

b) To receive the visits of the social reinsertion expert and communicate or grant information and documents of his means of subsistence at his disposal;

c) To inform the social reinsertion expert about residence and employment changes, as well as on any travel of more than 8 days and the predictable date of return;

d) To obtain previous authorization from the magistrate in charge of the execution for journeys abroad.

Article 55
Failure to fulfil the suspension conditions

If, during the period of suspension, the convict guiltily stops the fulfilling of any of the imposed duties or rules of conduct, or does not fit the re-adaptation plan, the court may:

a) Give a solemn warning;

b) Demand guarantees to the fulfilment of the obligations that condition the suspension;

c) Impose new duties or rules of conduct, or add increased demands to the re-adaptation plan;

d) Extend the period of suspension up to half the initial fixed term, but for no less than 1 year and not exceeding the maximum suspension term prescribed in number 5 of article 50.

Article 56
Revocation of suspension

1- The suspension of execution of the imprisonment sentence shall be revoked whenever during its term, the convict:

a) Grossly or repeatedly infringes the imposed duties or rules of conduct or the individual social re-adaptation plan; or

b) Commits a crime for which he is posteriously sentenced, and shows that the aims that were at the basis of the suspension were not able, thereby, to be achieved.

2- The revocation implies the enforcement of the imprisonment penalty fixed in the judgement, without being possible for the convict to demand the restitution of any instalments he had paid.

Article 57
Sentence extinction

1- The sentence is declared extinct if, at the end of the suspension period, there are no motives that may lead to its revocation.

2- If, at the end of the suspension period, there is a process pending because of a crime that may determine its revocation or a proceeding for breach of fulfilling duties, rules of conduct or individual social re-adaptation plan, the sentence is only declared extinct when the process or proceeding have ended without the revocation or prorogation of the suspension period being ordered.

SECTION III
WORK FOR THE COMMUNITY AND ADMONITION

Article 58
Work for the community

1- If an imprisonment sentence not exceeding one year is to be imposed upon the agent, the court will substitute it for work for the community whenever it concludes thereby that the aims of punishment will be achieved in a proper and sufficient form.

2- Work for the community consists in the performance of unpaid services to the State, to other public law corporations or to private entities the aims of which the court considers of interest to the community.

3- The work is fixed between 36 and 380 hours, and it can be done on working days, on Saturdays, Sundays and holidays.

4 – The duration of the working periods shall not disturb the usual day's work, nor exceed, per day, that which is allowed according to the applicable overtime regime.

5 – The penalty of work for the community may only be imposed with the consent of the convict.

Article 59
Temporary suspension, revocation, extinguishment and substitution

1- Work for the community may be temporarily suspended by serious reasons of medical, familiar, professional, social or other order, but the period of execution of the sentence may not exceed 18 months.

2- The court revokes the penalty of work for the community and orders the enforcement of imprisonment penalty fixed in sentence if the agent, after the conviction:

a) intentionally puts himself in a condition that prevents him from working;

b) Refuses to work without just cause, or grossly infringes the duties resulting from the penalty to which he was sentenced; or

c) Commits a crime for which he is sentenced, and shows that the aims of the community work sentence were not able, thereby, to be achieved.

3 – The prescriptions in article 57 are correspondingly applicable.

4 – If, in cases stated in number 2, the convict has to be subjected to imprisonment, but had already executed work for the community, the prison penalty he is to fulfil shall be equitably deducted by the court.

5 – If the work for the community is considered satisfactory, the court may declare extinct the sentence of not less than seventy-two hours, as soon as two-thirds of the sentence is accomplished.

6 – If the agent is not able to execute the work to which he has been sentenced by a motive that is not attributable to him, the court, according to what shows to be more suitable for the fulfilment of the punishment aims:

a) Substitutes the imprisonment penalty fixed in the sentence for a fine up to 120 days, the prescription in number 2 of article 44º being correspondingly applicable the stated; or

b) Suspends the imprisonment penalty fixed in judgment, for a period between 1 and 3 years, subjecting it, in the terms of articles 51 and 52, to the accomplishment of the appropriate duties or rules of conduct.

Article 60
Admonition

1- If the agent ought to be sentenced to a fine of a measure not superior to 120 days, the court may limit itself to pronounce an admonition.

2- Admonition only takes place if the damage has been repaired and the court concludes that, doing so, the aims of punishment will be accomplished in an appropriate and sufficient way

3- As a rule, admonition will not be used if the agent, during the 3 years prior to the act, has been sentenced to whatever penalty, including admonition.

4- Admonition consists of a solemn oral censure made in session by the court to the agent.

SECTION IV
CONDITIONAL LIBERTY

Article 61
Prepositions and Duration

1- The application of conditional liberty always depends on the convict's consent.

2- The court sets the convict at conditional liberty when half of the penalty is fulfilled in a minimum of six months if:

a) Considering the circumstances of the case, the agent's previous life, his personality and its evolution during the time of imprisonment, it is reasonable to expect that the convict, when at liberty, will live his life in a responsible social way, without committing crimes; and

b) The liberation is manifestly compatible with the defence of social order and social peace.

3- The court sets the convict at conditional liberty when two thirds of the penalty, and a minimum of six months, has been fulfilled, if the requisites mentioned in a) of the previous number are satisfied.

4- When the prison sentence is superior to 5 years for the practice of a crime against persons or a crime of common peril, the conditional liberty only occurs when two thirds of the penalty have been fulfilled and if the requisites mentioned in a) and b) of number 2 are verified.

5- Without prejudice of that which is ascribed in the previous number, the convict sentenced to a penalty superior to 6 years is set at conditional liberty as soon as he has fulfilled five sixths of the penalty.

6- In whatever modality, the conditional liberty has a duration equal to the time of prison which is still to be fulfilled, but never superior to 5 years.

Article 62
Conditional liberty in case of successive execution of various penalties

1- If there is execution of various prison penalties, the execution of the penalty to be fulfilled first shall be interrupted:

a) When half of the penalty has been fulfilled, in case of number 2 of the previous article;

b) When two thirds of the penalty have been fulfilled in the cases of number 3 and 4 of the previous article.

2- In the cases prescribed in the previous number the court decides about the conditional liberty at the moment when it can do it simultaneously in relation to the totality of the penalties.

3- If the sum of penalties to be fulfilled successively exceeds six years of imprisonment, the court sets the convict at conditional liberty, as soon as he has fulfilled five sixths of the sum of penalties, if he has not previously been benefited by it.

4- The dispositions in the previous numbers are not applicable to cases in which the execution of the penalty results from revocation of conditional liberty.

Article 63
Regime

The dispositions of the article 52, in number 1 and 2 of the article 53, of the article 54, in a) b) and c) of the article 55, are correspondingly applicable to the conditional liberty.

Article 64
Revocation and extinction of conditional liberty

1- The dispositions in number 1 of the article 56 and of the article 57 respectively are correspondingly applicable to revocation and extinction of conditional liberty.

2- The revocation of the conditional liberty determines the execution of the prison penalty not yet fulfilled.

3- In relation to the prison penalty which is to be fulfilled, the concession of a new conditional liberty in terms of the article 61 may occur.

CHAPTER III
ACESSORY PENALTIES AND PENALTIES EFFECTS

Article 65
General Principles

1. No penalty results necessarily in the loss of civil, professional, or political rights.

2. The law may find a way to make certain crimes correspond to the prohibition from exerting some rights or professions.

Article 66
Prohibition to exert the function

1. The office-holder of a public service, a public servant, or an Administration agent in active service for which he was elected or appointed, who commits a crime sentenced for a period of

imprisonment superior to 3 years, is also prohibited to exert those functions for 2 to 5 years when the fact:

a) Is practiced in flagrant and serious abuse of the function, or in obvious and serious violation of the duties inherent to it;

b) Shows indignity in exerting the function; or

c) Implies loss of confidence necessary to exert the function.

2. The disposition of the previous number is correspondingly applicable to professions or activities, the exertion of which depends on the public title or on the authorization or the homologation of public authority.

3. The term during which the agent is deprived of liberty by force of legal proceedings, penalty, or measures of insurance does not count for the duration of prohibition.

4. The disposition of number l and 2 ceases when by the same fact, the application of measures of insurance and interdiction of activity occurs in terms of the article 100.

5. Whenever the office-holder of a public service, a public officer, or the Administration agent is convicted for practicing crime the court communicates the conviction to the authority which he depends on.

Article 67
Suspension of function

1. The accused who is definitely sentenced to prison and has not been disciplinarily dismissed from the civil service he exerts, shall be punished with suspension of function as long as the fulfilment of penalty lasts.

2. The effects which, according to the respective legislation, follow the disciplinary sanction of suspension from exerting the function, are bound to the suspension prescribed in the previous number.

3. The dispositions of the previous numbers are correspondingly applicable to the professions and activities, the exertion of which depends on the office-holder of a public service, or on the authorization or homologation of public authority.

Article 68
Effects of prohibition and suspension to exert the function

l. Except when it is contrary to the law, the prohibition and the suspension to exert public service determines the loss of rights and franchises assigned to the office-holder, functionary or agent for the corresponding time.

2. The prohibition to exert public service does not prevent the office-holder, the functionary or the agent from being appointed for an office or for a function that may be exerted without the conditions of dignity and confidence required by the service from which he was dismissed.

3. The dispositions of the previous number are correspondingly applicable to professions or activities, the exertion of which depends on the public title-holder or the authorization or homologation of public authority.

Article 69
Prohibition to drive motor vehicles

l. A person is condemned to prohibition from driving motor vehicles for a period between three months and three years if he punished:

a) For a crime prescribed in the articles 291 or 292;

b) For a crime committed with the use of a vehicle, the execution of which has been turned relevantly easy by using it; or

c) For a crime of disobedience when he refuses to submit to the legal tests to detect arriving the vehicle under the effect of alcohol, drugs, psychotropic substances or products with similar effects.

2. The prohibition is brought into effect from the moment of the definite sentence of the court and it may include driving motor vehicles of any category.

3. Within a term of Io days counting from the definite sentence the convict shall hand over the driving licence to the court office, or to any police quarter which, which will send I t to the former, if it has not yet been apprehended in the process.

4. The court office communicates the driving prohibition to the General Driving Department within a term of 20 days counting from the moment of the definite sentence, as well as informs the Public Prosecutor about the non-fulfilment situations of the dispositions of the previous number.

CHAPTER IV
CHOICE AND DETERMINATION OF PENALTIES

SECTION I
GENERAL RULES

Article 70
Criterion for the choice of penalty

If depriving liberty and non-depriving liberty penalty are alternatively applicable to the crime, the court prefers the second whenever the execution of the latter is adequate and sufficient for the purpose of punishment.

Article 71
Determination of the penalty measure

1- The determination of the penalty measure is done according to the agent's guilt and prevention needs, within the law's defined limits.

2- On determining the concrete penalty, the court considers all circumstances that, not being elements of the type of crime, are in favour of the agent or against him, taking into consideration, namely:

a) The degree of unlawfulness of the act, its form of execution and the seriousness of its consequences, as well as the degree of violation of the duties imposed on the agent;

b) The strength of the intent or of the negligence;

c) The feelings manifested on the perpetration of the crime and the aims or motives that determined it;

d) The agent's personal situation and his economic condition;

e) The conduct prior to the act and after it, especially when the latter is aimed at repairing the consequences of the crime;

f) The lack of preparation to maintain a lawful conduct, manifested in the act, when that lack of preparation must be censured by the imposition of a penalty;

3- The reasons for the measure of the penalty are expressly mentioned in the sentence.

Article 72
Special mitigation of penalty

1- The court specially mitigates the penalty, apart from the cases expressly prescribed in the law, whenever there are circumstances previous or posterior to the crime, or contemporary to it, that diminishes the unlawfulness of the act, the guilt of the agent or the necessity of the penalty, in an accentuated manner.

2- For the purpose of the prescribed in the above number, the following circumstances will be considered, among others:

a) that the agent had acted under the influence of a serious threat, under the influence of someone he depends on, or to whom he owes obedience;

b) that the agent's conduct had been determined by honourable motive, by strong solicitation or temptation from the victim himself, or unjust provocation or undeserved offence;

c) that there had been demonstrative acts of the agent's sincere repentance, namely reparation of the damages up to where it had been possible for him;

d) that a long time had elapsed over the perpetration of the crime, the agent maintaining good conduct.

3- It may be taken into account only once the circumstance that, on its own or jointly with other circumstances, gives room simultaneously to a mitigation especially prescribed in the law and to the one prescribed under this article.

Article 73
Special mitigation terms

1- Whenever the special mitigation of the penalty takes place, the following occurs relatively to the limits of the applicable penalty:

a) The maximum limit of the imprisonment penalty is reduced by one third;

b) The minimum limit of the imprisonment penalty is reduced to one fifth if it is equal or superior to 3 years, and to the legal minimum if it is inferior;

c) The maximum limit of the fine penalty is reduced by one third and the minimum limit to the legal minimum;

d) If the maximum limit of the imprisonment penalty is not superior to 3 years, it may be replaced by a fine, inside the general limits.

2- The specially mitigated penalty that has been concretely fixed is susceptible of replacement in general terms, including suspension.

Article 74
Dispensation of penalty

1- When the crime is punishable with imprisonment not superior to 6 months, or only with a fine not superior to 120 days, the court may declare the defendant guilty without applying penalty if:

a) The unlawfulness of the act and the guilt of the agent are minute;

b) The damages have been repaired;

c) Reasons of prevention do not oppose to the dispensation of penalty.

2- If the judge has reasons to believe that the damage reparation is about to happen, he may adjourn the decision for a reconsideration of the case within 1 year, on a day which will be immediately fixed.

3- When another rule allows the dispensation of penalty on a facultative nature, this will only take place if the case fulfils the pre-requisites stated in the sub-headings of number one above.

SECTION II
RECIDIVISM

Article 75
Prerequisites

1- Whoever commits a crime of intent by himself or under any form of participation which should be punished with effective imprisonment superior to 6 months, and who after having been sentenced to an effective imprisonment penalty by a definitive decision, is punished as recidivist, if, according to the circumstances of the case, the agent should be blamed for the fact that the previous sentence or sentences didn’t serve as a sufficient warning against crime.

2- The previous crime for which the agent has been sentenced does not count for recidivism if, between its perpetration and that of the next crime, more than 5 years have elapsed; the time during which the agent has been subjected to a custodial procedure measure, penalty or security measure is not counted for that time-limit.

3- Sentences passed by foreign courts count for recidivism as stated in the above numbers, provided that the act constitutes a crime under Portuguese law.

4- Penalty prescription, amnesty, generic pardon and indult do not hinder the verification of recidivism.

Article 76
Effects

1- In case of recidivism, the minimum limit of the applicable penalty is increased by one third and the maximum limit remains unchanged. The Aggravation shall not exceed the measure of the most severe penalty applied in the previous sentences.

2- The rules concerning the relatively indeterminate sentence, when applicable, prevail over the rules for punishing recidivism.

SECTION III
PUNISHMENT OF CONCURRENT CRIMES AND OF CONTINUOUS CRIME

Article 77
Concurrence punishment rules

1- When someone has perpetrated several crimes before the sentence for any of them has become definite, he will be sentenced to a single penalty. For determination of the penalty, the acts and the personality of the agent will be jointly considered.

2- The applicable penalty has the sum of the penalties concretely applied to the various crimes as maximum limit, without exceeding 25 years in case of imprisonment and 900 days in case of fine; and as minimum limit the higher of the penalties concretely applied to the various crimes.

3- If the penalties applied to the concurrent crimes are some of imprisonment and some of fine, their different nature will be kept in the single penalty resulting from the application of the criteria settled in previous numbers.

4- Accessory penalties and security measures are always applied to the agent, even if prescribed by only one of the applicable rules.

Article 78
Supervenient knowledge of the concurrence

1- If, after a definite judgment, but before the respective penalty is fulfiled, ceased by prescription or extinct, it is known that the agent had perpetrated, before that judgment, another or other crimes, the rules of the previous article are applicable.

2- The stated in the above number is also applicable in case all the crimes had been separately object of definite judgments.

3- Accessory penalties and security measures applied by the previous judgment are kept, except when it is shown unnecessary in face of the new decision; if they are applicable only to the crime that is to be appreciated, they will only be decreed if they are still necessary in face of the previous decision.

Article 79
Punishment of continuous crime

Continuous crime is punishable with the penalty applicable to the most serious conduct that integrates the continuation.

SECTION IV
DISCOUNT

Article 80
Procedural measures

1- Detention, preventive imprisonment and obligation to stay at home, suffered by the defendant in the process in which he is to be sentenced, are discounted in full in the enforcement of the imprisonment penalty imposed on him.

2- If the penalty applied is a fine, the detention, preventive imprisonment and obligation to stay at home are discounted at the rate of 1 day of deprivation of freedom for, at least, one day fine.

Article 81
Prior penalty

l. If the penalty imposed by decision of definite sentence is posteriously substituted for another, in this penalty the time of imprisonment that the agent has fulfilled previously must be deducted.

2.1f the prior and the posterior penalties are of different nature, a deduction which seems equitable shall be made in the new penalty.

Article 82
Processual measure or penalty fulfilled in a foreign country

In terms of the previous articles, any processual measure or penalty that the agent has fulfilled abroad for the same fact, or facts, shall be deducted.

CHAPTER V
RELATIVELY UNDETERMINED PENALTY

SECTION I
DELINQUENTS BY TENDENCY

Article 83
Prerequisistes and effects

1. He who commits a intentional crime to which effective imprisonment of more than 2 years should be applied, and has previously committed 2 or more intentional crimes to each of them an effective imprisonment of more than 2 years has also been applied, or is applicable, shall be punished with a relatively undetermined penalty, whenever the joined valuation of the practised facts, or the agent's personality, shows a continual tendency towards crime which persists at moment of condemnation.

2. The relatively undetermined penalty has a minimum duration of two thirds of the imprisonment penalty effectively applicable to the committed crime, and a maximum corresponding to this penalty, with 6 years added to it, not exceeding a total of 25 years.

3. Any other previous crime is not to be taken into consideration in reference to number 1, when between its practice and that of the next crime more than 5 years have elapsed; the period during which the agent has fulfilled legal procedure, prison penalty, or measures of security deprival of liberty, are not computed for this term.

4. In terms of the previous numbers, the facts judged abroad which have led to effective prison for more than two years, are taken into account, provided that the prison penalty for more than 2 years is applicable to them in Portuguese law.

Article 84
Other cases for applying the penalty

1. He who commits intentional crime to which effective prison is applied and has previously committed four or more intentional crimes, to each of which effective prison has been, or is applied, shall be punished to a relatively undetermined penalty, whenever the remaining presuppositions fixed in number 1 of the previous article occur.

2. The relatively undetermined penalty has a minimum duration corresponding to two thirds of the prison penalty effectively applied to the commission of the crime, and a maximum corresponding to this penalty, with four years added to it, not exceeding the total of 25 years.

3. The dispositions of number 3 of the same article are correspondingly applicable.

4. In terms of the previous numbers, the facts judged abroad which have led to effective prison are taken into consideration, provided that the prison penalty is in accordance with the Portuguese law.

Article 85
Restrictions

1. If the crimes are committed before the agent has completed 25 years of age, the dispositions of the articles 83 and 84 are only applicable if he has fulfilled a minimum of 1 year of imprisonment.

2. In case of the previous number, the maximum limit of the relatively undetermined penalty corresponds to an addition of four or two years to the imprisonment for an effectively committed crime, in accordance with the prescriptions of number 3 of the article 83, or the article 84.

3. The time limit referred to in number 3 of the article 83 is 3 years, according to the prescriptions of this article.

SECTION II
ALCOHOLIC AND SIMILAR

Article 86
Presuppositions and effects

1. If a drunkard or a person inclined to consume alcoholic drinks immoderately commits a crime to which an effective prison penalty is appliable, and has previously committed a crime to which effective prison penalty has also been applied, he shall be punished for a relatively undetermined penalty whenever the crime has been committed in alcoholic condition, or is related to alcoholism or to the agent’s tendency.

2. The relatively undetermined penalty has a minimum corresponding to two-thirds of the imprisonment penalty effectively applied to the committed crime and a maximum corresponding to this penalty, to which 2 years are added in the first condemnation, and 4 years in the remaining, not exceeding the total of 25 years.

Article 87
Object of penalty

The execution of the penalty prescribed in the previous article is conductive to the elimination of the agent’s alcoholism or fight his tendency towards consuming too much alcoholic drinks.

Article 88
Immoderate consume of drugs

The prescriptions in the articles 86 and 87 are correspondingly applicable to drug addict agents.

SECTION III
COMMON PROVISIONS

Article 89
Readaptation plan

1. In case of the execution of the relatively undetermined penalty, an individual plan for the delinquent's readaptaion based upon the knowledge about him, whenever possible, with his agreement, shall be elaborated.

2. In the course of the fulfilment of the penalty, necessary modifications are demanded for the delinquent's improvement and other circumstances.

3. The plan and its modifications are communicated to the delinquent.

Article 90
Conditional release and liberty on probation

1. Until two months before reaching the minimum limit of the relatively undetermined penalty, the prison administration sends the court its grounded opinion about the concession of conditional release, correspondingly applying the prescriptions of numbers 1 and 3 of the article 61, the article 63, and the numbers 1 and 2 of the article 64.

2. The conditional release has a duration equal to the time wanting to reach the maximum limit of the penalty, but shall never be superior to five years.

3. If the conditional release referred to in the previous numbers is not granted, or is revocated, the prescriptions in number 1 and 2 of the article 92, as well as in number 1 and 2 of the article 93, and the articles 94 and 95 are correspondingly applied, from the moment when the penalty of the committed crime is fulfilled.

CHAPTER VI– SECURITY MEASURES

SECTION I – INTERNMENT OF UNIMPUTABLES

Article 91
Presuppositions and minimum duration

1. Whoever perpetrates a typically illicit fact and s considered unimputable, is sent by the court to internment in an establishment for cure, treatment or security in terms of the article 20, whenever there is a ground for fear that he may perpetrate other facts of the same kind, on account of psychical anomaly and the gravity of the fact.

2. When the fact perpetrated by the unimputbale agent corresponds to a crime against persons or a crime of common perilousness punishable with imprisonment penalty superior the internment has the minimum duration of three years, except when the liberation shows to be compatible with the defence of juridical order or social peace.

Article 92
Cessation and prorogation of internment

1. Without prejudice of the prescription of number 2 expressed in the previous article, the internment ends up when the court comes to the conclusion that the criminal perilousness which brought it about has ceased.

2. The internment must not exceed the maximum limit of the penalty corresponding to the type of crime committed by the unimputable agent.

3. If the fact perpetrated by the unimputable agent corresponds to a crime punishable with a penalty superior to 8 years, and the danger of new facts of the same type is of much gravity as to turn the liberation unjustifiable, the internment may be prorogued for successive periods of 2 years, until the situation prescribed in number 1 is verified.

Article 93
Revision of the internee situation

1. If the existence of justifiable cause for the cessation of internment is invoked, the court appreciates the case in time.

2. The appreciation is compulsory regardless of the appeal to the court, when two years have elapsed from the outset of internment or from the decision that has maintained it.

3. The minimum term of internment fixed in number 2 of the article 91 is safeguarded in any case.

Article 94
Liberty on probation

1. If the revision referred to in the previous article shows there are reasons to expect that the object of this proceeding may be achieved in an outdoor measure, the court sets the interned agent at liberty on probation.

2. The period of liberty on probation is fixed between the minimum of two years and the maximum of five; however, it must not be superior to the time still wanting to reach the maximum of internment.

3. The prescriptions in number three and four of the article 98 are correspondingly applicable.

4. If there is no motive for the revocation of liberty bon probation, the measure of internment is declared extinct when the period of internment ends. If, when the period of liberty on probation is brought to an end, the legal proceedings are still running their course, or if some incident occurs that may cause its revocation, the measure is declared extinct when the legal proceedings or the incident cease and there is no reason for revocation.

Article 95
Revocation of liberty on probation

1. Liberty on probation is revoked when:

a) The agent’s conduct shows that internment is indispensable; or

b) The agent is sentenced with a penalty deprival of liberty and the presuppositions of the execution suspension in terms of number 1 of the article 50 do not occur.

2. The revocation determines the reinternment, the prescription of the article 92 being correspondingly applicable.

Article 96
Re-examination of the measure of internment

1. The execution of the measure of internment cannot begin when 2 years or more after the decision that has decreed it have elapsed without examining the presumptions on which it was based.

2. The court may confirm, suspend or revoke the measure it has decreed.

Article 97
Unimputable foreigners

Without prejudice of the prescription fixed in international treaty or convention, the measure of internment of unimputable foreigner may be substituted for the expulsion from national territory, in terms of the rules of special legislation.

SECTION II
SUSPENSION OF THE EXECUTION OF THE INTERNMENT

Article 98
Presuppositions and regime

1. The court that orders the internment determines its suspension instead of that, if it seems reasonable to expect that its goal will be achieved by means of suspension.

2. In the case prescribed in number 2 of the article 91 the suspension can only take place when the conditions enunciated therein are verified.

3. The decision of suspension imposes on the agent rules of conduct in terms corresponding to those mentioned in the article 52 (necessary to prevent the perilousness) as well as the duty to submit himself to treatments and proper ambulatory regimes, examinations and observations in places which are pointed out to him.

4. The agent whose internment is suspended is placed under surveillance of the social reinstatement service. The prescriptions of the articles 53 and 54 are correspondingly applicable.

5. The suspension of the execution of internment cannot be decreed if the agent is simultaneously convicted with a custodial sentence and the presuppositions for its suspension are not verified.

6. It is correspondingly applicable to:

a) The suspension of internment that which is prescribed in the article 92 and the number 1 and 2 of the article 93.

b) The revocation of the suspension of internment that which is prescribed in the article 95.

SECTION III
EXECUTION OF CUSTODIAL INTERNMENT MEASURE AND OF IMPRISONMENT

Article 99
Regime

1. The measure of internment is executed before the prison penalty to which the agent has been convicted and therein discounted.

2. As soon as the measure of internment must cease the court sets the agent at conditional liberty if the time corresponding to half of the penalty is fulfilled end the liberation shows to be compatible with the defence of juridical order and social peace.

3. If the measure of internment must cease, but the time corresponding to half the penalty has not yet elapsed, at the agent's request the court may substitute the time of prison still wanting to fulfil half of the penalty for work instalments on behalf of the community, until the maximum of 1 year, in terms of article 58, if that shows to be compatible with the defence of juridical order and social peace. When work is done, the delinquent is set at conditional liberty.

4. If the measure of internment must cease, but the delinquent has not been set at conditional liberty in terms of the previous numbers, he shall b e as soon as the time corresponding to two thirds of the penalty is fulfilled. At the convict's request, the time of prison still wanting to reach two thirds of the penalty may be substituted, until the maximum of 1 year, for work in favour of the community, in terms of article 58.

5. The dispositions of number 1 and 5 of article 61 are correspondingly applicable.

6. If the fulfilment of work on behalf of the community or the conditional liberty is revoked in terms of number 2 of the article 59 or the article 64, the court will decide if the agent should fulfil the rest of the penalty or continue the internment for the same time.

SECTION IV
NONCUSTODIAL SECURITY MEASURES

Article 100
Interdiction of activities

1. Whoever is convicted for a crime committed with serious offence to his profession, commercial or industrial, or with full violation of inherent duties, or is acquitted of it only for lack of imputability, shall be interdicted to exert the respective activity when, in regard to the fact perpetrated and the personality of the agent, there is reasonable fear that he might perpetrate other facts of the same kind.

2. The period of the interdiction is fixed between 1 and 5 years, but may be prorogued for another period of three years if, when the term fixed in the sentence comes to an end, the court considers that it was not sufficient to remove the perilousness that justified the measure.

3. The period of interdiction is counted from the definite sentence of the decision, without prejudice of being imputed on it the duration of any interdiction decreed by the same fact as a temporary measure.

4. The course of the period of interdiction is suspended during the time in which the agent is deprived of liberty by force of the measure of procession coercion, penalty or measure of security. If the suspension lasts for 2 years or more, the court re-examines the situation that justified the application of the measure, confirming, or revoking it.

Article 101
Cassation of license and interdiction from driving motor vehicle

1. In case of being condemned for a crime when driving a motor vehicle, or in relation to it, or a rough violation of the duties concerning the driver; or in case of acquittal only for non imputability, the court decrees the cassation of driving licence, when, in face of the executed fact and of the personality of the agent,

a. there is grounded concern that he may come to perform other facts of the same kind, or,

b. that he should be considered inapt to drive a motor vehicle.

2. Among others is susceptible of showing inaptitude in relation to paragraph b) of the prior number the fulfilment due to facts that comprehend the crimes of:

a) Omission to help, in terms of the article 200, if it is probable to result therof serious damage to the life, the body, or the health of any person;

b) Dangerous driving of highway vehicle in terms of the article 291;

c) Driving the vehicle under the influence of alcohol, in terms of the article 292

d) Typical illicit fact committed under the state of drunkenness in terms of the article 295, if the fact is one of those referred in the previous list.

e) When decreeing the cassation of a driving licence the court determines that a new license for driving motor vehicles of any type, or of a determinate type, cannot be

granted to the agent. It is correspondingly applicable to the prescriptions of number 3,4 or 69.

f) If the agent referred to in number l and 2 does not possess a driving license, the court decrees interdiction for its concession in terms of the previous number, the sentence being communicated to the appropriate entity.

g) If the agent has been decreed, an interdiction from licence driving during the five years prior to the commitment of the fact, the minimum time for interdiction is two years.

h) The prescription of number 2, 3 and 4 of the article 100 is correspondingly appliable.

i) When cassassion of license is decreed, the concession of a new title, when possible, always depends on a special examination

Article 102
Rules of conduct

1. In case of non-existence of relapse as is prescribed in the article 75, or if its absence is due only to non-imputability, the court can impose upon the agent to fulfil the rules of conduct fixed in the paragraph b) to g) of number l of the article 52, when they show to be suitable to prevent other illicit facts of the same kind.

2. It is correspondingly applicable to the prescriptions in the articles 51, numbers 2 and 3; 100, numbers 2, 3; and 10 number l and 2.

Article 103
Extinction measures

1. If, when the minimum terms for the measures prescribed in the articles 100 and 102 has elapsed, through a petition from the interdicted can be verified that the designs for the application of those measures no longer subsists, the court declares the measures to be extinct.

2. In case of rejection, a new petition cannot be presented before one year has elapsed.

CHAPTER VII
INTERNMENT OF UNIMPUTABLES BEARING A PSYCHIC ANOMALY

Article 104
Prior psychic anomaly

1. When the agent is not declared non-imputable and is sent to prison but he shows that, in virtue of the psychic anomaly he was suffering at the time of the crime, the regime of those common establishment may be harmful to him, or that he might seriously upset that regime, the court ordains his internment in an establishment allotted to non-imputable for the time corresponding to the duration of the punishment.

2. The internment foreseen in the previous number does not prevent the concession of conditional liberty in terms of the article 61, nor placing the delinquent in a common establishment during the time of deprivation of liberty he still had to fulfil, as soon as the decisive motive of internment ceases.

Article 105
Posterior psychic anomaly

1. If a psychic anomaly with the effects prescribed in number l of the article 91, or in the article 104 comes upon survives the agent after committing the crime, the court orders his internment in an establishment allotted to non-imputables for the time corresponding to the duration of the punishment.

2. To the internment referred in the previous number resulting from psychic anomaly with effects prescribed in the article 104, the regime prescribed in number 2 of that article is applied.

3. The internment referred in number l, resulting from psychic anomaly with the effects of number l of the article 91, is deducted from the penalty. The prescription in numbers 2, 3, 4 and 5 in the article 99 is correspondingly applicable

Article 106
Posterior psychic anomaly without perilousness

1- If the psychic anomaly that carne upon the agent after he had committed the crime does not make him criminally perilous, in terms that, if the agent were non-imputable, it would determine his effective internment, the fulfilment of the prison penalty for which he had been condemned is suspended until the state that was the basis for the suspension ceases.

2- The prescription in number 3 and 4 of the article 98 is correspondingly applicable.

3- The duration of suspension is deducted from the time of penalty that he still has to fulfil, the prescription of number 2, 3, 4 and 5 of the article 99 being correspondingly applicable.

4- The duration of penalty in which the agent was condemned in no case can be surpassed.

Article 107
Revision of the situation

The prescription of number l and 2 of the article 93 is correspondingly applicable to the measures prescribed in the articles 104,105 and 106.

Article 108
Simulation of psychic anomaly

The alterations in the normal regime of fulfilling the penalty grounded on the prior rules of this chapter become null as soon as the psychic anomaly of the agent is shown to be simulated.

CHAPTER VIII
LOSS OF INSTRUMENTS, PRODUCTS AND ADVANTAGES

Article 109
Loss of instruments and products

1- Those objects that have been used or destined to be used to perpetrate a typical illicit fact, or that have been produced by it, when, for its nature or the circumstances of the case, may turn to be perilous for the safety of the people, the morals and order of the public, or may be a serious risk of being used to commit new typical illicit facts, are declared lost in favour of the state.

2- The prescription of the prior number is maintained even if no determined person may be punished for the fact.

3- If the law does not fix a special destiny to the lost objects in terms of the prior numbers, the judge may ordain their total or partial destruction, or put them out of trade.

Article 110
Objects belonging to a third party

1- Without prejudice of the prescriptions in the following numbers, the loss does not occur if at the date of the fact, the objects do not belong to any of the agents or beneficiary, or do not belong to them at the moment when the loss was decreed.

2- Although the objects belong to a third-party, the loss is decreed when their owners have concurred in a blameful way in their use or production, or have taken advantage of the fact; or if the objects have been acquired after the fulfilment of the act, the acquires knowing their origin.

3- If the objects consist of inscriptions, representations or registrations written on paper, on other stuff or any other audio-visual form of the expression belonging to a third-party in good faith, the loss does not occur, the restitution shall be made after having been scraped out the inscriptions, representations, or registrations that integrate the typical illicit fact. If that is not possible, the court orders their destruction, and will indemnify the injured owners, in accordance with the civil law.

Article 111
Loss of advantages

1. Every reward given or promised to agents of a typical illicit fact, to them or others, is lost in favour of the State.

2. The things or advantages that have been directly acquired by agents, for themselves or for others, through typical illicit fact and represent a patrimonial advantage of any kind, are also lost in favour of the State, without prejudice to the rights of the offended or to another person of good faith.

3. The proviso of the previous numbers is applicable to the things or the rights obtained through transaction or exchange with the things or the rights directly obtained by means of typical illicit fact.

4. If the reward, the rights, the things or the advantages referred in the previous numbers cannot be appropriated in goods, the loss is substituted for payment to the State with the same value.

Article 112
Deferred payment, or payment by instalments and attenuation

1. When the application of the previous article happens to be the payment of a monetary sum, the proviso of number 3 and 4 of the article 47 is correspondingly applicable.

2. If, taking into consideration the economic situation of the person in question, the application of number 4 of the previous article seems to be unfair or too severe, the court may equitably attenuate the value of that rule.

TITLE IV
COMPLAINT AND PRIVATE ACCUSATION

Article 113
Persons entitled to right to complaint

1. When the criminal process depends on complaint, the offended has legitimacy to make it, except when it is contrary to the law, and he is as such entitled to the interests that the law endeavours to protect through incrimination.

2. If the offended dies without having made complaint, or without having renounced to do so, the right to complaint belongs successively to the persons indicated as follows, except if any of them has participated in the crime:

a) the surviving consort who is not judicially separated in relation to community of assets, the descendants, the adopted persons and adoptive parents.

b) brothers and their descendants and the person who was living with the offended in the same conditions as consorts.

3. If the offended is under 16 and has no discernment to understand the significance of the exertion of the right of complaint, this belongs to the legal representative, and, if non-existant, to the persons indicated in the previous number, in the same order therein referred, except if any of them has participated in the crime.

4. Any person belonging to one of the classers referred to in the numbers 2 and 3 can make complaint independently of the remainders.

5. When the right of complaint cannot be exerted because the only person entitled to make it would be the agent of the crime, the Public Prosecutor may begin legal proceedings if special reasons of public interest demand it.

6. When the criminal proceedings depend on the complaint, in cases prescribed by law, the Public Prosecutor may initiate legal proceedings when the interest of the victim demands it.

Article 114
The extension of the effects of complaint

The presentment of complaint against one of the participants in the crime turns the criminal proceedings extensive to the remaining participants.

Article 115
Extinction of the right of complaint

1. The right of complaint is extinguished in 6 months term counting from the date when the person entitled thereto has had knowledge of the fact and its agents, from the date of the offended's death, or from the date in which he has become incapable.

2. The non-exertion timely of the right of complaint in relation to one of the participants of the crime is benefited by the remainders, in cases when the latter cannot as well be persecuted without complaint.

3. If there are various persons entitled to the right of complaint, the term is automatically counted for each one of them.

Article 116
Renouncement and desistance from complaint

1. The right of complaint cannot be exerted if the person entitled to it has expressly renounced or has executed facts from which the renouncement can necessarily be deduced.

2. The complainant can desist from the complaint provided that there is no opposition from the accused until the publication of the sentence in the first jurisdiction. The desistance prevents the complaint from being renewed.

3. The desistance from complaint in regard to one of the participants in the crime is extensive to the remainders, excepting when there is opposition from the latter, in cases when these cannot as well be persecuted without complaint.

Article 117
Private accusation

The prescriptions in the articles under this title is correspondingly applicable in cases when the criminal proceedings depend on private accusation.

TITLE V
EXTINCTION OF CRIMINAL RESPONSIBILITY

CHAPTER I
PRESCRIPTION OF CRIMINAL PROCEDURE

Article 118
Terms of prescription

1. The criminal proceedings extinguishes through the effect of prescription as soon as from the exertion of the crime has elapsed the following terms:

a) 15 years, concerning crime punishable with prison penalty for a maximum limit superior to 10 years.

b) 10 years, when it concerns crimes punishable with prison penalties with a maximum term equal or superior to 5 years, but not exceeding 10 years.

c) 5 years, when it concerns crimes punishable with prison penalties with a maximum term equal or superior to one year, but inferior to 5 years.

2. For the purpose prescribed in the previous number, to determine the maximum term applicable to each crime, the elements concerning the type of crime are taken into consideration, but not the aggravating or attenuating circumstances.

3. When the law alternatively establishes for any crime the penalty of prison or fine, only the first is taken into consideration for the purpose of this article.

Article 119
The beginning of term

1. The term of prescription of the criminal proceedings runs from the day when the act has been consummated.

2. The term of prescription only occurs:

a) In permanent crimes, from the day the consummation ceases;

b) In continued crimes and habitual crimes, from the day when the last act was practised;

c) In crimes that has not been consummated, from the day of the last act of execution.

3. As concerns this article, in case of complicity the fact of the author is always taken into account.

4. When the verification of the result not comprehended in the type of crime is relevant, the term of prescription only runs from the day that result is verified.

Article 120
Suspension of prescription

1. The prescription of criminal proceedings is suspended beyond the cases specially prescribed in law during the time when:

a) The criminal proceedings cannot legally begin or continue for lack of legal authorization, or the verdict to be pronounced by a non-penal court, or else because of the devolution of a question prejudicial to a non-penal judgment;

b) the criminal proceedings are dependent o the moment of notification of the instruction judge decision that pronounces the offender, or from the petition to apply the sanction in brief summary proceedings;

c) The declaration of contumacy is in force;

d) The offender being tried during his absence, the sentence cannot be applied; or

e) The delinquent is suffering penance abroad, or measure of security deprival of freedom.

2. In the case prescribed in b) of the previous number the suspension cannot exceed 3 years.

3. The prescription runs again from the day when the cause of suspension ceases.

Article 121
Interruption of prescription

1. The prescription of criminal procedure is interrupted:

a) With the establishment of the offender;

b) With the notification of the accusation or, if that has not been deduced, with the notification of the instructional decision pronouncing the offender, or with the notification of the petition to apply the sanction in summary process;

c) With the declaration of contumacy;

d) With the notification of the dispatch indicating the day for the audience in the absence of the offender;

2. After every interruption a new term of prescription begins.

3. The prescription of criminal procedure always occurs when, from its beginning and exempting the time of suspension, the normal prescription term plus half of its time has elapsed,. When, by force of special disposition, the maximum limit of prescription corresponds to 2 years, the maximum limit of prescription corresponds to twice the term.

CHAPTER II
PRESCRIPTION OF PENALTIES AND SECURITY MEASURES

Article 122
Terms of penalty prescription

1. The penalties prescribe in the following terms:

a) 20 years, if they are superior to 10 years of prison;

b) 15 ears, if they are equal or superior to 5 years of prison;

c) 10 years, if they are equal or superior to 2 years of prison;

d) 4 years, in the remaining cases.

2. The prescription term begins on the day of the definite decision of the penalty.

Article 123
Effects of the principal penalty prescription

The prescription of the principal penalty includes the prescription of the accessory penalty that has not been executed as well as the effects of the penalty that has not been yet verified.

Article 124
Terms for prescription of security measures

1. Security measures prescribe in a term of 15 or 10 years, depending on their being custodial security measures or non-deprival of liberty measures.

2. The security measure for disqualification of driving licence prescribes in a term of 5 years.

Article 125
Suspension of prescription

1. The prescription of penalty and measure of security is suspended beyond the cases especially prescribed by law, during the time in which:

a) By force of the law, the execution cannot begin or continue to take place;

b) The declaration of contumacy is in force;

c) The convict is serving other prison penalty or measure of security deprival of liberty; or

d) The delay of paying the fine persists.

2. The prescription occurs again from the day when the cause for suspension ceases.

Article 126
Interruption of prescription

1. The prescription of penalty and security measure is interrupted:

a) With its execution; or

b) With the declaration of contumacy.

2. After each interruption a new term of prescription elapses.

3. The prescription of penalty and security measure always occurs when, from its beginning and exempting the time of suspension, the normal prescription term plus half its time has elapsed.

CHAPTER III
OTHER CAUSES OF EXTINCTION

Article 127
Death, amnesty, general pardon and indult

Criminal responsibility is also extinguished by death, by amnesty, by general pardon and by indult.

Article 128
Effects

1. The death of the offender extinguishes the criminal procedure as well as the penalty or the security measure.

2. The amnesty extinguishes the criminal procedure and, in case there has been condemnation, it stops execution of the penalty and its effects, as well as the measure of security.

3. The general pardon extinguishes the penalty, wholly or partially.

4. The indult extinguishes the penalty, wholly or partially, or substitutes it for a more favourable one prescribed in law.

TITLE VI
COMPENSATION FOR DAMAGES RESULTING FROM CRIME

Article 129
Civil responsibility resulting from crime

The compensation for damages resulting from crime is ruled by civil law.

Article 130
Compensation for the injured complainant

1. Special legislation fixes the conditions in which the State can ensure compensation in consequence of criminally typified facts, whenever they cannot be done by the agent.

2. In cases not covered by the legislation referred to in the previous number, the court may grant the complainant, on his request and to the limit of the damage he has suffered, the objects declared to have been lost, the product or the price of their sale, or the value corresponding to the advantages resulting from the crime, paid to the State, or transferred in its favour by force of the articles 109 and 110.

3. Leaving out the cases prescribed in the legislation referred to in number one, if the damage caused by the crime is so serious as to have left the complainant without a means of living, and it is to believe that the agent will not make amends to compensate him, the court will grant the complainant, on his request, the amount of the fine, wholly or partially, to the limit of the damage.

4. The State becomes subrogate regarding the rights of the injured for the compensation to the amount it has fulfilled.

(End of the general part)