This file corresponds to the legislation approving the Portuguese penal code.

1. The increasingly universal trend towards the affirmation of human rights as a fundamental principle of modern societies, as well as the strengthening of the ethical dimension of the state, give justice the status of the first guarantor of the consolidation of the fundamental values

recognised by the community, with special emphasis on the dignity of the human person. Aware that the state must build mechanisms that guarantee the freedom of citizens, the government's programme for justice, in the chapter on combating crime, chose as fundamental objectives the safety of citizens, the prevention and repression of crime and the rehabilitation of offenders as a form of social defence. A modern and integrated penal system is not limited to penal legislation. First and foremost, it is important to highlight the importance of crime prevention in its multiple aspects: the operationality and coordination of the security forces and, above all, the elimination of factors of marginalisation by promoting the improvement of the economic, social and cultural conditions of the population and the creation of mechanisms for the integration of minorities. At the same time, the fight against crime cannot fail to be based on a rapid and effective investigation and a timely response from the courts. In fact, more than the criminal framework abstractly defined in the law, it is the implementation of the sanction that reflects the extent of the violation of the values

presupposed by the law, thus functioning as a reference for the community. Finally, the execution of the sentence will reveal the resocializing capacity of the system with a view to preventing the commission of new crimes.

2. Although it is not the only instrument for fighting crime, the criminal code must constitute the repository of the fundamental values

of the community. Criminal frameworks are, after all, nothing more than the translation of this hierarchy of values, which is where the very legitimacy of criminal law lies. The 1982 criminal code remains valid in its essence. The experience of its application over more than a decade has demonstrated, however, the need for several changes in order not only to better adjust it to the changing reality of the criminal phenomenon but also to its own initial objectives, safeguarding the entire philosophy that presided over its elaboration and which allows it to be affirmed as a code with democratic roots inserted within the parameters of a state of law. Among the various purposes that justify the revision, the need to correct the imbalance between the penalties provided for crimes against people and crimes against property stands out, proposing a substantial increase for the former. It is also important to reorganize the overall system of penalties for petty and medium-sized crimes in order to allow, on the one hand, an adequate use of alternative measures to short prison sentences, whose criminogenic effects are peacefully recognized, and, on the other, to concentrate efforts on combating serious crime.

3. In general terms, the matter relating to the construction of the concept of crime (Articles 1 to 39), duly consolidated in doctrine and case law, was left untouched, although significant changes were introduced in the area of

criminal sanctions. In this regard, where the essence of the criminal policy project is revealed, the code is part of the international reform movement that gained particular momentum in the 1970s and is peacefully accepted in countries that share the same political-criminal heritage, such as ours. Thus, following recommendations from the Council of Europe to this effect, priority is given to the application of alternative penalties to short prison sentences, with particular emphasis on community service and fines. Far from breaking with our tradition, the changes now introduced aim to boost the use of the vast array of alternative measures established by the European Union.measures, making already established mechanisms more effective and eliminating some intrinsic limitations, in order to overcome the resistance that has been encountered within the scope of their application. The prison sentence - a criminal reaction par excellence - should only be implemented when all other measures prove to be inadequate, given the needs for reprobation and prevention. Contrary to what happens in other European countries, the code does not, as a rule, establish legal types of crime sanctioned solely with a fine. In fact, this usually appears as an alternative to a prison sentence. On the other hand, no legislation absolutely imposes the application of one or another measure: the selection of a measure - detentive or not - that best suits the particularities of the specific case is always relegated to the implementing role of jurisprudence. in accordance with ob... It is worth highlighting, in this regard, the innovation contained in article 40 when establishing that the purpose to be pursued with penalties and security measures is "the protection of legal assets and the reintegration of the agent into society ». Without intending to invade a domain that belongs to the doctrine - the dogmatic question of the end of sentences -, the legislator does not dispense with offering the courts safe and objective criteria for individualizing the sentence, whether in the choice or in the dosimetry, always on the unrenounceable assumption, of constitutional matrix, that in no case can the penalty exceed guilt. In the same vein, article 43

emphasizes that the execution of the prison sentence, serving the defense of society and preventing the commission of crimes, must be oriented towards the social reintegration of the prisoner, preparing him to lead his life in a socially responsible way, without committing crimes. Judicial magistrates and public prosecutors will, therefore, have a decisive role in implementing the philosophy that animates the code, since it is at the moment the sentence is implemented that the desiderata of general and special prevention and reintegration gain full meaning.

4. As the prison sentence should be reserved for situations of greater gravity and that cause more social alarm, namely violent and/or organized crime, as well as the marked inclination towards committing crimes revealed by certain agents, it is necessary to confer measures alternatives to the effectiveness that they have lacked. Not infrequently, the suspension of the execution of the sentence has been assumed to be the true alternative penalty, to the detriment of other measures, namely the fine, generating the idea of

an "almost acquittal", or of impunity for the first-time offender, bringing discredit to criminal justice. It is therefore necessary to restore the effectiveness of the fine to the penalty it deserves. The dignity of the fine as a punitive and dissuasive measure undergoes a significant increase, both in the duration in days - from 300 days to 360, being increased to 900 in the case of a competition - and in the maximum daily amount, which rises from 10000$00 to 100000$00. The abandonment of the undesirable cumulative prescription of prison sentences and fines in the special part, for an alternative solution, led to a worsening of the general maximum limit set for the fine sentence from 360 to 600 days, corresponding to imprisonment for up to 5 years, from in order to respond to small and medium property crime. Finally, and without prejudice to the convicted person being able to request the substitution of the fine for working days in case of non-culpable impossibility of payment, the execution of the fine sentence can no longer be subject to suspension, thus reinforcing its credibility and effectiveness . The elasticity now given to the fine penalty allows it to be configured as a true alternative to cases in which the prison sentence appears disproportionate, namely due to the side effects it can trigger, however, entailing a sacrifice even for the most economically advantaged, with sufficiently deterrent.

5. Still in terms of alternative measuress, it is important to highlight significant changes in the institutes of the probation system and work in favor of the community. The probation regime, mischaracterized as an autonomous substitution sentence, is now configured as a modality of suspension of the execution of the sentence alongside pure and simple suspension and suspension with duties or rules of conduct, accentuating the resocializing and responsible aspect of the suspension of the sentence. execution of the prison sentence. In the same vein, the prerequisites for providing work in favor of the community were expanded, increasing the maximum prison sentence that can be replaced to 1 year, highlighting the potentialities of the individual readaptation plan. In the chapter relating to additional penalties and the effects of penalties, it is worth noting the innovation of the enshrinement expressed in the text of the criminal code of the driving ban. On the other hand, and now within the scope of non-custodial security measures, both the revocation of a motor vehicle driving license and the ban on the granting of a license are now autonomously regulated.

6. Another area particularly in need of intervention, due to constitutional imperatives of legality and proportionality, is security measures. From a perspective of maximizing the protection of citizens' freedom and security, a more rigorous definition of the assumptions for applying the measures was carried out and the establishment of limits that tend to be insurmountable.

7. The special part was also subject to important modifications, starting from a systematic level. Thus, it is worth noting the move of sexual crimes from the chapter relating to crimes against values

and interests of life in society to the heading of crimes against persons, where they constitute an autonomous chapter, under the heading “crimes against freedom and sexual self-determination », abandoning the moralistic conception (“general feelings of morality”), in favor of sexual freedom and self-determination, eminently personal goods. Also in the field of crimes against physical integrity, a more coherent system was chosen, with a considerable simplification: applying criteria of aggravation and privilege on the basis of the existence of a crime of simple physical integrity. It is also worth mentioning the consecration of a type of offense to physical integrity qualified by circumstances that reveal special blameworthiness or perversity on the part of the agent, such as what happens in homicide. Likewise, the rules relating to the crime of theft, and, reflexively, most of the precepts relating to property crime, were subject to significant modifications. The most important change lies in the abandonment of the current model of resorting to indeterminate concepts or general value clauses as criteria for aggravation or privilege, in order to obviate the difficulties that have been revealed by jurisprudence and which the legislator cannot remain unaware of. . Accordingly, and without however returning to the old model of pre-fixed asset value levels, we opted for a quantified definition of concepts such as high, considerably high and low value, as grounds for qualification or privilege. In this way, the aim is to promote greater security and fairness in decisions. Another chapter subject to important changes is that of crimes against the state. The decriminalization of some offenses against state security and public authority lies in the consideration that in a stabilized democratic state of law, criminal protection must be restricted to attacks that involve undue recourse to violence or similar forms of action. It was decided to leave out of the criminal code the punishment of many conducts

whose criminal dignity is now peaceful and consensual, but which legislative technical reasons suggest that they constitute the object of extravagant legislation. This is what happens, in addition to the conduct that must ber attributed to legal persons as such, in matters such as computer crime, money laundering or attacks against genetic integrity and identity. Finally, it is worth noting a significant, albeit limited, set of neocriminalization proposals, resulting either from the revelation of new criminal legal assets or new forms of aggression or danger, or from international commitments undertaken or about to be undertaken by Portugal. As examples of neocriminalization we highlight: suicide propaganda (article 139), disturbance of peace and quiet (article 190, no. 2), computer fraud (article 221), card abuse of guarantee or credit (article 225), torture and other cruel, degrading or inhuman treatment (articles 243 and 244), telephone tapping instruments (article 276), damage to nature (article 278), pollution (article 279).

8. It is, however, in terms of criminal frameworks that the most relevant changes are registered, in the sense of strengthening the protection of personal legal assets in comparison with patrimonial assets. As there was no justification for a relaxation of the punishment for the latter, it was decided to make a clear aggravation of the punishment for the former. Thus, the maximum penalty for qualified homicide increases from 20 to 25 years and serious physical integrity offenses are now punished with a prison sentence of 2 to 10 years, which can be substantially aggravated when the crime was committed in circumstances likely to reveal special blameworthiness or perversity on the part of the agent. In view of the high road accident rate, it was considered appropriate to increase the penalty for negligent homicide, the maximum of which can reach 5 years, in the case of gross negligence. There was also an expansion in the protection of fundamental legal assets such as life and physical integrity in the context of the crime of damage. The penalty for the crime of damage with violence can be up to 16 years. Crimes against sexual freedom and self-determination received particular attention, especially when committed against minors. Accordingly, the sexual crime committed against a minor is subject to a double aggravation: on the one hand, it results from a general increase in the criminal framework for crimes of rape and sexual coercion, whether at the minimum or maximum limit; and, on the other, the aggravation established for cases in which such crimes are committed against children under 14 years of age. As a result, crimes committed against children under the age of 14 are always punished more severely than crimes committed against adults, taking into account the special vulnerability of the victim. Another note that emphasizes the protection of minors is the possibility for the public prosecutor, whenever special reasons of public interest justify it, to be able to initiate criminal proceedings when the victim is under 12 years of age. Still with a view to strengthening the protection of personal legal assets, the conditions for granting parole were changed. In fact, in cases of conviction of a sentence of more than 5 years, for crimes against people or crimes of common danger, parole may only be granted after two-thirds of the sentence has been served. The seriousness of the crimes and the social alarm they cause justify greater rigor in the execution of prison sentences. Finally, among the revoked legislation, paragraph 1 of article 28 of decree-law no. 85-c/75, of February 26, stands out. In the use of the legislative authorization granted by article 1 of law no. 35/94, of 15 September, rectified by declaration of rectification no. 17/94, of 13 December, and in accordance with paragraph b) of No. 1 of article 201 of the constitution, the government decrees the following:

Article 1

the penal code, approved by decree-law no. 400/82, of September 23, is revised and published as an annex.

Article 2

1 - Separate legal provisions that provide for or punish acts incriminated by the criminal code are revoked.

2 - They are revokedthe following provisions:

a) paragraph 1 of article 28 of decree-law no. 85-c/75, of February 26;

b) article 190 of decree-law no. 314/78, of October 27;

c) decree-law no. 65/84, of February 24;

d) decree-law no. 101-a/88, of March 26;

e) articles 2, 4, no. 2, paragraph a), and 5, no. 1, of decree-law no. 124/90, of 14 April.

3 - Legal provisions that in separate criminal legislation prohibit or restrict the replacement of a prison sentence with a fine or the suspension of a prison sentence are also revoked.

Article 3

References made to the norms of the penal code, approved by decree-law no. 400/82, of September 23, are considered to have been made to the corresponding provisions of the penal code, the text of which is published in the annex.

Article 4

For the purposes of the provisions of the penal code, any instrument, even if of defined application, that is used as a means of aggression or that can be used for such a purpose is considered a weapon.

Article 5

Subsidiary imprisonment will never be imposed in addition to fines in the amount provided for in separate legislation.

Article 6

1 - As long as rules that provide for cumulative prison sentences and fines are in force, whenever the prison sentence is replaced by a fine, a single penalty equivalent to the sum of the fine directly imposed and that resulting from the replacement of prison

will be imposed.

2 - The regime provided for in article 49 of the penal code is applicable to the single fine resulting from the provisions of the previous paragraph, whenever it concerns time fines.

Article 7

As long as rules that provide for cumulative prison sentences and fines are in force, the suspension of the execution of the prison sentence ordered by the court does not include the fine.

Article 8

If a penalty of a lump sum fine or imprisonment and a lump sum fine is imposed and the discount referred to in article 80 of the penal code must be applied to the fine penalty, the discount that appears equitable will be made.

Article 9

For crimes provided for in separate legislation and punishable by a prison sentence of no more than 6 months and a fine, the regime relating to exemption from punishment is applicable, if the other conditions required by article 74 of the penal code are met.

Article 10

In cases initiated before December 31, 1987, the statute of limitations for criminal proceedings is suspended for as long as the criminal proceedings are pending, as of notification of the order of indictment or equivalent, except in the case of absentee proceedings.

Article 11

In cases initiated before December 31, 1987, the statute of limitations for criminal proceedings is interrupted:

a) with notification for the first statements for appearance or interrogation of the agent, as defendant, in the preparatory instruction;

b) with prison;

c) with notification of the pronouncement order or equivalent;

d) with the appointment of the day for the trial in the absentee process.

Article 12

The provisions of paragraph 4 of article 61 only apply to penalties for crimes committed after the entry into force of the penal code.

Article 13

the revised penal code and this decree-law come into force on October 1, 1995.