

This file corresponds to book 1, title 2 (of the fact) of the Portuguese penal code.

Chapter I - Assumptions of punishment

Article 10 - Commission by action and omission

1 - When a legal type of crime comprises a certain result, the fact covers not only the appropriate action to produce it but also the omission of the appropriate action to avoid it, unless otherwise is the intention of the law.

2 - The commission of a result by omission is only punishable when the omitted party has a legal duty that personally obliges him to avoid that result.

3 - In the case provided for in the previous paragraph, the penalty may be particularly reduced.

Article 11 - Liability of natural and legal persons

1 - Except as provided in the following paragraph and in cases specifically provided for by law, only natural persons are susceptible to criminal liability.

2 - Legal persons and similar entities, with the exception of the state, legal persons exercising the prerogatives of public power and organizations governed by public international law, are responsible for the crimes provided for in articles 144-b, 150, 152.^o-a, 152.^o-b, 156.^o, 159.^o and 160.^o, in articles 163.^o to 166.^o being the victim a minor, and in articles 168.^o, 169.^o, 171.^o to 177th, 203rd to 206th, 209th to 223rd, 225th, 226th, 231st, 232nd, 240th, 256th, 258th, 262nd to 283rd, 285th, 299th, 335th, 348th, 353rd, 359th, 363rd, 367th, 368th-a and 372nd to 377.^o, when committed:

a) In their name or on their behalf and in their direct or indirect interest in people who occupy a leadership position within them; or

b) By anyone acting in their name or on their behalf and in their direct or indirect interest, under the authority of the people referred to in the previous paragraph, due to a violation of the duties of surveillance or control incumbent upon them.

3 - (Revoked).

4 - It is understood that the bodies and representatives of the legal person and whoever has the authority to exercise control over its activity occupy a leadership position, including the non-executive members of the management body and the members of the supervisory body.

5 - For the purposes of criminal liability, entities equivalent to legal persons are considered to be civil societies and de facto associations.

6 - The liability of legal persons and similar entities is excluded when the agent has acted against express orders or instructions from those entitled to do so.

7 - The liability of legal persons and similar entities does not exclude the individual liability of their agents nor does it depend on their liability.

8 - The division and merger do not determine the extinction of the criminal liability of the legal person or similar entity, responsible for the commission of the crime:

a) The legal person or similar entity into which the merger took place; It is

b) Legal persons or similar entities that resulted from the split.

9 - Without prejudice to the right of return, people occupying a leadership position are subsidiarily responsible for paying the fines and compensation in which the legal person or similar entity is convicted, in relation to the crimes:

a) Carried out during the period of exercise of his position, without his express opposition;

b) Previously committed, when it was due to their fault that the assets of the legal person or similar entity became insufficient for the respective payment; or

c) Previously committed, when the final decision to apply them was notified during the period of exercise of their position and the lack of payment is attributable to them.

10 - As there are several people responsible under the terms of the previous paragraph, they are jointly and severally responsible.

11 - If fines or compensation are applied to an entity without legal personality, the common assets are liable for them and, in the absence or insufficiency, jointly, the assets of each of the associates.

Article 12 - Acting on behalf of others

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

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

b) That the agent performs the act in his own interest and the representative acts in the interest of the represented person.

2 - The ineffectiveness of the act that serves as the basis for the representation does not prevent the application of the provisions of the previous paragraph.

Article 13 - Intention and negligence

Only acts committed with intent or, in cases specifically provided for by law, with negligence, are punishable.

Article 14 - Fraud

1 - Anyone acting with intent, representing a fact that fulfills a type of crime, acts with the intention of carrying it out.

2 - Anyone who represents the carrying out of an act that qualifies as a type of crime as a necessary consequence of their conduct also acts with intent.

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

Article 15 - Negligence

Anyone who acts negligently, by not exercising the care to which, according to the circumstances, they are obliged and of which they are capable:

a) Represent as possible the accomplishment of an act that fulfills a type of crime but act without conforming to that accomplishment; or

b) Does not even represent the possibility of carrying out the fact.

Article 16 - Error regarding the circumstances of the fact

1 - An error regarding factual or legal elements of a type of crime, or regarding prohibitions whose knowledge is reasonably indispensable for the offender to be aware of the illegality of the act, excludes intent.

2 - The provisions in the previous paragraph cover the error about a state of affairs that, if it existed, would exclude the illegality of the act or the guilt of the agent.

3 - The punishability of negligence is subject to general terms.

Article 17 - Error regarding illegality

1 - Anyone who acts without awareness of the illegality of the act acts without guilt, if the error is not blameworthy.

2 - If the error is reprehensible, the agent is punished with the penalty applicable to the respective intentional crime, which can be specially mitigated.

Article 18 - Aggravation of the penalty due to the result

When the penalty applicable to a fact is aggravated depending on the production of a result, the aggravation is always conditioned by the possibility of attributing that result to the agent, at least as a result of negligence.

Article 19 - Non-imputability due to age

Minors under 16 years of age are not responsible.

Article 20 - Non-imputability due to psychological anomaly

1 - Anyone who, due to a mental anomaly, is incapable, at the time of committing the act, is incapable of assessing the illegality of the act or of determining themselves in accordance with that assessment.

2 - Anyone who, as a result of a serious, non-accidental mental anomaly and whose effects cannot be controlled, without being able to be blamed for this, may be declared unaccountable, having, at the time of committing the act, the capacity to assess the be determined in accordance with this significantly reduced assessment.

3 - The proven inability of the agent to be influenced by the penalties may constitute an indicator of the situation foreseen in the previous paragraph.

4 - Imputability is not excluded when the psychic anomaly was caused by the agent with the intention of carrying out the act.

Chapter II - Forms of crime

Article 21 - Preparatory acts

Preparatory acts are not punishable, unless otherwise provided.

Article 22 - Attempt

1 - There is an attempt when the agent carries out acts of execution of a crime he decided to commit, without it being consummated.

2 - The following are implementing acts:

a) Those that fulfill a constitutive element of a type of crime;

b) Those who are suitable for producing the typical result; or

c) Those which, according to common experience and except in unforeseeable circumstances, are of such a nature as to lead to the expectation that acts of the types indicated in the previous paragraphs will follow them.

Article 23.⁹ - Punishment of the attempt

1 - Unless otherwise specified, the attempt is only punishable if the respective completed crime corresponds to a sentence of more than 3 years in prison.

2 - The attempt is punishable by the penalty applicable to the completed crime, especially mitigated.

3 - The attempt is not punishable when the ineptitude of the means used by the agent or the non-existence of the essential object for the consummation of the crime are manifest.

Article 24 - Withdrawal

1 - The attempt ceases to be punishable when the agent voluntarily gives up continuing to execute the crime, or prevents the consummation, or, despite the consummation, prevents the verification of the result not included in the type of crime.

2 - When the consummation or verification of the result is prevented by a fact independent of the conduct of the withdrawal, the attempt is not punishable if the latter makes a serious effort to avoid one or the other.

Article 25 - Withdrawal in case of reimbursement

If several agents participate in the act, the attempt of the one who voluntarily prevents the consummation or verification of the result is not punishable, nor is it punishable for the one who makes a serious effort to prevent one or the other, even if the other participants continue in the execution of the crime or complete it. .

Article 26 - Authorship

Anyone who executes the act, by themselves or through another, or takes a direct part in its execution, by agreement or together with another or others, and also whoever, intentionally, determines another person to carry out the act, is punishable as an author, as long as that there is execution or beginning of execution.

Article 27 - Complicity

1 - Anyone who, intentionally and in any way, provides material or moral assistance to someone else's commission of an intentional act is punishable as an accomplice.

2 - The penalty set for the perpetrator, especially attenuated, is applicable to the accomplice.

Article 28 - Illegal contribution

1 - If the illegality or degree of illegality of the act depends on certain qualities or special relationships of the agent, it is enough, to make the respective penalty applicable to all participants, that these qualities or relationships occur in any of them, unless another is the intention of the incriminating norm.

2 - Whenever, as a result of the rule set out in the previous paragraph, one of the participants results in the application of a more serious penalty, this may, considering the circumstances of the case, be replaced by the one that would have taken place if such a rule had not intervened.

Article 29 - Guilt in the reimbursement

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

Article 30 - Concurrent crimes and continued crime

1 - The number of crimes is determined by the number of types of crime actually committed, or by the number of times the same type of crime is fulfilled by the conduct of the agent.

2 - The multiple commission of the same type of crime or several types of crime that fundamentally protect the same legal interest, carried out in an essentially homogeneous manner, constitutes a single continuous crime.genus and in the context of requesting the same external situation that considerably reduces the agent's guilt.

3 - The provisions of the previous paragraph do not cover crimes committed against eminently personal property.

Chapter III - Causes that exclude illegality and guilt

Article 31 - Exclusion of illegality

1 - The act is not punishable when its illegality is excluded by the legal system considered in its entirety.

2 - In particular, the following act is not illegal:

- a) In self-defense;
- b) In the exercise of a right;
- c) In the fulfillment of a duty imposed by law or by legitimate order of the authority; or
- d) With the consent of the holder of the injured legal interest.

Article 32 - Self-defense

Self-defense is the act carried out as a necessary means to repel current and unlawful aggression against the legally protected interests of the agent or third party.

Article 33 - Excess of self-defense

1 - If there is an excess of the means used in self-defense, the act is unlawful but the penalty can be especially mitigated.

2 - The agent is not punished if the excess results from disturbance, fear or fright, which are not objectionable.

Article 34 - Right of necessity

It is not illegal to act as an appropriate means to ward off a current danger that threatens the legally protected interests of the agent or third party, when the following requirements are met:

- a) The dangerous situation has not been voluntarily created by the agent, except in the case of protecting the interest of a

third party;

b) There is a significant superiority of the interest to be safeguarded in relation to the interest sacrificed; It is

c) It is reasonable to require the injured party to sacrifice his interest in consideration of the nature or value of the threatened interest.

Article 35 - State of excusing necessity

1 - Anyone who commits an unlawful act appropriate to ward off a current danger, and not otherwise removable, that threatens the life, physical integrity, honor or freedom of the agent or a third party, when it is unreasonable to demand it, acts without guilt. depending on the circumstances of the case, different behavior.

2 - If the danger threatens legal interests other than those referred to in the previous paragraph, and the remaining assumptions mentioned therein are met, the penalty may be specially mitigated or, exceptionally, the offender may be exempted from the penalty.

Article 36 - Conflict of duties

1 - It is not illegal for anyone, in the event of a conflict in the fulfillment of legal duties or legitimate orders from the authority, to satisfy a duty or order of value equal to or greater than the duty or order they sacrifice.

2 - The duty of hierarchical obedience ceases when it leads to the commission of a crime.

Article 37 - Excusing undue obedience

An employee who complies with an order without knowing that it leads to the commission of a crime acts without guilt, and this is not evident in the context of the circumstances represented by him.

Article 38 - consent

1 - In addition to the cases specifically provided for by law, consent excludes the illegality of the fact when it refers to interests

freely available legal provisions and the fact does not offend good customs.

2 - Consent may be expressed by any means that reflects a serious, free and informed will of the holder of the legally protected interest, and can be freely revoked until the execution of the act.

3 - Consent is only effective if it is given by someone over 16 years of age and has the necessary discernment to evaluate its meaning and scope at the time it is provided.

4 - If the consent is not known to the agent, the agent is punishable by the penalty applicable to the attempt.

Article 39 - presumed consent1 - Effective consent is equated with presumed consent.

2 - There is presumed consent when the situation in which the agent acts reasonably allows the assumption that the holder of the legally protected interest would have effectively consented to the act, if he had known the circumstances in which it was carried out.