

Legislative Decree n. ° 9/95

Of 27 October

In as much as it is convenient to endow the country with adequate, merely social legislation that translates the urgent need to avail the country of an alternative, non-criminal sanctioning ordination, in theory as well as in the practical application of the law;

Considering that the legislative and the executive organs themselves have often felt the need for such an ordination, the lack of which often denies the said organs the ability to recur to a large gamut of differentiated sanctions, adjusted to the nature and the gravity of illicit acts that need to be prevented or repressed;

Article 4

(Application in Space)

The present law applies to the infractions committed:

- a) in the national territory, independently of the perpetrator's nationality;
- b) aboard national ships or aircrafts, except in the cases of treaties or conventions to the contrary.

Article 5

(Moment the Infraction is Committed)

The infraction is considered committed at the moment in which the perpetrator acted or, in case of omission, would have acted, independently of the moment in which the typical result was produced.

Article 6

(Place Where the Infraction is Committed)

The infraction is considered committed at the place where, totally or partially, under any form of co-participation, the perpetrator acted on or, in the case of omission, would have acted, and/or the typical result was produced.

CHAPTER II

Contra-ordination

Article 7

(Commission by Action and by Omission)

1. When a certain result is predicted in a legal type for which a fine is applicable, the infraction includes both the adequate action to produce the predicted result and the omission of the action necessary to avoid it, except if the intention of the law is otherwise.
2. An infraction committed by omission is punishable only when the perpetrator bears a legal duty that personally obligates him/her to prevent the result thereof.
3. In the case of the previous number, considering the concrete circumstances of the case, the fine can be freely attenuated.

Article 8

Article 18

(Authorship)

Whosoever executes the infraction himself or

Article 23

(Conflicting Contra-ordinations)

If the same act violates several laws punishable for contra-ordination, or the same law is repeatedly violated, the law that attributes the highest fine shall be applied. Accessory sanctions foreseen in another law can also be applied.

Article 24

(Conflicting Infractions)

If the same act constitutes simultaneously a crime and contra-ordination, the perpetrator shall be punished for a crime, without prejudice to the application of accessory sanctions foreseen for the contra-ordination.

CHAPTER III

Fine and Accessory Sanctions

Article 25

(Amount of the Fine)

1. The minimum amount of the fine applicable to singular persons shall be ecv 3,000\$00 and the maximum ecv 300.000\$00, unless otherwise indicated by law.
2. Regarding the maximum fine, if the law does not distinguish fraud from negligent behavior, the latter can be sanctioned with only up to half the maximum amount of the attributable fine.
3. If the law does not specify the contrary, the fines applied to the collective or matched persons may be raised up to the maximum amounts of:
 - a) ecv 4.000.000\$00 for each fraud
 - b) ecv 2.000.000\$00 for each case of negligence

Article 26

(Determining the Amount of the Fine)

1. The gravity of the infraction, the degree of guilt and the economic situation of the perpetrator shall determine the amount of the fine.
2. Whenever possible, and without prejudice to the maximum limits fixed in the preceding article, the fine levied should exceed the economic benefit the perpetrator drew from the contra-ordination infraction.

Article 29

(Effects of the Apprehension)

1. The judicial decision to apprehend will determine whether the goods apprehended should be transferred to the State or to the public entity determined by law.
2. The juridical alienation of the affected objects subsequent to the judicial decision to apprehend shall be void.

Article 30

(Apprehension Independently of Fine)

1. If for any reason there can be no proceedings instituted nor fines levied against a person, the apprehension of objects belonging to the same can be ordered as long as the presumptions regarding the total or partial apprehension are verified.
2. The provisions of the previous number shall also apply when the competent authority ordering the proceeding desists from it or the judge orders the process retired.

Article 31

(Indemnity)

1. When the apprehension referred to in subparagraph b) of number 1, article 28 falls on objects belonging to a third party, the latter shall be entitled to indemnity according to the civil law norms, except if he acquired said objects in bad faith.
2. The State or the public entity to which the apprehended object was transferred shall be obligated to pay the required indemnity.

CHAPTER IV

Proscription

Article 32

(Proscription of Proceedings)

Save legal disposition to the contrary, the proceedings for contra-ordination extinguish by reason of proscription as soon as the following periods have elapsed over the practice of the contra-ordination infraction:

- a) Two years, when a fine greater than ecv 100,000\$00 is applicable to a contra-ordination infraction;
- b) One year in the remaining cases.

Article 33

(Interruption of Proscription)

1. Proscription of the proceedings for contra-ordination are interrupted with:
 - a) Communication or any other form of notification to the accused of the dispatches, decisions or measures taken against him/her;
 - b) Realization of any diligences of proof specifically, exams and searches, or with the solicitation for help from police authorities or any other administrative authority;
 - c) With any declaration whatsoever that the accused may have proffered in the exercise of his right to be heard.
2. In the case of conflicting infractions, the interruption of the proscription of criminal proceedings will determine the interruption of proscription of the contra-ordination proceedings.

Article 34

(Proscription of the Fine)

1. The fines are proscribed in the following periods:
 - a) 4 years, in the case of a fine greater than ecv 100.000\$00;
 - b) 3 years in the remaining cases.
2. The period begins from the date of the decision to condemn.

Article 36

(Proscription of Accessory Sanctions)

The provisions of the previous articles regarding proscription of the fines shall apply to accessory sanctions;

CHAPTER V

Subsidiary Law

Article 37

(Of the Subsidiary Law)

With regard to the creation of the substantive contra-ordination regime, penal legislation norms shall apply, subsidiarily, as long as they do not countermand the present diploma.

PARTE II

Of the Contra-ordination Process

CHAPTER I

General Dispositions

Article 38

(Principle of Legality)

The contra-ordination process shall respect the principle of legality.

Article 39

(Methods of Enforcement)

1. In the contra-ordination processes, preventive arrest, interference in correspondence or telecommunications, or the utilization of proofs that imply the violation of professional secrets, are not permitted;
2. Proofs that collide with a reserve of the private life, corporal exams and the proof of blood shall be admitted only by consent of the duly authorized.

Article 40

(Witnesses)

Witnesses shall not be sworn.

Article 41

(Examination of Transcripts and the Apprehended Objects)

1. If the process is assigned to the competent authorities to institute a criminal process, the normally competent administrative authorities can examine both the transcripts and the apprehended objects.
2. The transcript and the apprehended objects shall be examined in the service where they may be found, except if pondered reasons justify sending them to the administrative authorities.

Article 42

(Communication of Decisions)

1. All the decisions, dispatches and other measures proffered and taken by the administrative authorities in contra-ordination processes shall be communicated to the persons to whom they are directed;

2. When the decisions, dispatches and impugnable measures are subject to a

Article 48

(Competencies of the Public Ministry and the Criminal Entities)

1. When there is conflict between crime and contra-ordination, the contra-ordination process shall be handled by the authority responsible for instructing criminal processes.
2. When the same person has to answer for a crime and for a criminal process for the same infraction, and reasons of economy on proceedings or relative to proofs so justify, the entity responsible for instituting the criminal process may also handle the contra-ordination process, as long as a fine has not yet been applied.
3. In the cases foreseen in the preceding numbers, when the Public Ministry dismisses the criminal process, but determines that contra-ordination responsibility still exists, it will turn the process over to the competent administrative authority.
4. The decision of the Public Ministry regarding whether or not an act must be processed as a crime, commits the administrative authorities.

Article 49

(Competence of the Courts)

In the cases referred in n. ° 1 and 2 of the preceding article, the judge competent to try the crime shall determine the corresponding fine.

Article 50

(Competence in the Matter of Reason)

1. In the matter of reason, the competence to oversee and sanction contra-ordination shall belong to the authorities so indicated by law.
2. In the cases omitted in the law the responsible member of the Government shall designate the services with competence to oversee the interests contra-ordination seeks to defend or promote;
3. The heads of the services referred to in the preceding number may delegate their competence on the heads of the lower hierarchy, except when the contrary is expressly determined.

Article 51

(Area of Jurisdiction)

1. The area of jurisdiction is that of the administrative authority in which:
 - a) The infraction is committed or discovered;
 - b) The accused has his residence at the start of or during any phase of the process.

2. If the infraction is committed aboard a national ship or aircraft, outside the area of jurisdiction of this diploma, the area of jurisdiction is that of national authority where the port or airport of first call is located.

Article 52

(Jurisdiction by Connection)

1. In case of conflicting contra-ordination infractions jurisdiction falls to the authority with competence to process either infraction, according to the previous dispositions.
2. The provisions of the preceding number apply, equally, when the same infraction renders several persons liable to be fined.

Article 53

(Conflict of Jurisdiction)

1. If conflicting jurisdiction results from the preceding dispositions the conflict shall be resolved in favor of the authority in whose jurisdiction, by order of priorities, the accused:
 - a) is first heard or in the case of co-participation, one of the accused is heard for the for the contra-ordination process;
 - b) has first requested to be heard by the police authorities;
 - c) has first received from the police authority the transcripts containing the accused's hearings
2. For reasons of economy, celerity or process efficacy, the competent authorities can agree to attribute jurisdiction to several authorities different from that which would result if the disposition of the preceding number were applied.

CHAPTER III

Inscription Phase

Article 54

(Process Initiative)

The contra-ordination process shall be officiously initiated as long as the competent administrative authorities have knowledge of the contra-ordination constitutive act or by means of the participation of the police or fiscal authorities and yet by means of denunciation by particulars.

Article 58

Article 64

(Voluntary Payment)

Voluntary payment of the fine is permissible at any time during the process, but always before the decision. In this case, the fine shall be liquidated by the minimum without prejudice for the costs due.

Article 65

(Warning Process)

1. In the case of light contra-ordination infraction, the competent administrative authorities can decide for a mere warning, accompanied by the demand to pay a pecuniary sum not superior to ecv 5.000\$00
2. This process can be resolved only when the accused conforms to the decision after he is informed of the right to refuse, and is willing to pay the respective pecuniary sum immediately or within a maximum of five days.
3. In the cases referred in n. ° 1 and 2, the case can not be heard and sanctioned again as contra-ordination.

CHAPTER V

(Recourse Phase)

Article 66

(Form and Deadline)

1. The administrative authority's decision to apply a fine, with or without accessory sanction, can be judicially impugned.
2. Judicial impugnation can be interposed by the accused or by the accused's defender with sufficient powers and it has suspensive effect.
3. The recourse shall be formulated in a request addressed to the judge of the court of jurisdiction and presented, within eight days, to the office of the administrative authority that applied the fine.
4. The deadline referred to in the preceding number begins to count when the accused is informed of the decision to apply the fine;
5. The judicial impugnation request must contain the summary de facto and de jure allegations, the respective conclusions as well as an indication or annexation of all the means of proof available that, consubstantiatedly, was not possible for him to present at an administrative instance.

Article 67

(Competent Court)

Except when the law determines the contrary, the court of the district with criminal jurisdiction in the territorial area where the fine shall been applied is competent to hear the recourse.

Article 68

(Remitting of the Transcripts to the Court)

1. When the recourse is received, the administrative authority shall remit the transcripts to the competent court, within 48 hours.
2. Until the transcripts are remitted to the competent court to inform the latter of the recourse, the administrative authority can revoke the decision to apply the fine or simply revoke the decision to apply accessory sanction.

Article 69

(Rejection of the Recourse)

The judge shall reject, the recourse interposed outside the established deadline or without observing the requisites as to form, by means of a fundamented dispatch.

Article 70

(Forwarding the Transcripts to the Public Ministry)

1. If the recourse is admitted, the Judge shall order the transcript remitted to the Public Ministry to carry out the diligences requested by the accused, under the terms of number 5 of article 66, or should there be none, for a simple opinion.
2. The diligences referred to in the preceding number shall be carried out in the maximum of three days.

Article 71

(Opinion of the Public Ministry)

When the process is received or the diligences referred to in preceding articles are concluded, the Public Ministry shall elaborate its opinion in a maximum of five days and shall order the transcript remitted to the Judge.

Article 72

(Distance From the Recourse)

The requestor may desist from the recourse up until the final decision.

Article 73

(Ambit of the Proof)

It is up to the Judge to determine the ambit of the proof to be produced. He shall refuse to accept the means of proof that he deems unnecessary in forming his opinion.

Article 74

(Decision of the Recourse)

1. The Judge shall proffer his decision within 8 days.
2. The decision may order the filing of the process, absolution of the accused, maintenance or alteration of a decision proffered in the administrative authority;
3. The judge should summarily fundament his decision, both in what concerns the facts and in the application of the law and the circumstances that determine the measure of the sanction.

CHAPTER VI

Contra-ordination Process and Criminal Process

Article 75

(Conversion Into Criminal Process)

1. The court is not bound to hear a contra-ordination case and can, officiously or at the request of the Public Ministry, convert the process into a criminal process.
2. The conversion of the process shall determine the interruption of the instance and the remittance of the transcripts to the Public Ministry, for the purpose of instituting the body of evidence, taking advantage of existing proofs whenever possible.
3. The decision to convert the process must be communicated to the administrative authority that would be competent to institute the contra-ordination process.

Article 76

(Knowledge of Contra-ordination in the Criminal Process)

1. The court can hear a criminal infraction as contra-ordination.
2. In the case referred to in the preceding number the judge shall try the contra-ordination by applying the provisions of this diploma.

Article 77

(Criminal and Contra-ordination Processes)

1. If the same process applies to crimes and contra-ordinations, and if there are infractions that may be considered only as contra-ordinations, the provisions of articles 38 to 41 and 61 of this diploma shall be applied to them.
2. When, in the cases foreseen in the preceding number, recourse is interposed simultaneously in relation to the contra-ordination and the crime, the recourses shall be considered simultaneously.
3. The recourse shall be considered under the terms of the Penal Code but the provisions of articles 66 to 74 of this diploma shall not apply.

CHAPTER VII

Case Tried and Revision

Article 78

(Reach of the Judged Case)

1. The transit to final judgement of the decision of the administrative authority or of the judicial decision regarding the act judged as contra-ordination or as crime precludes the possibility of new knowledge of such act as contra-ordination.
2. The transit of the judicial decision to final judgement regarding the act judged as contra-ordination precludes equally its being known anew as crime.

Article 79

(Admissibility of the Revision)

1. The revision of the emitted decision in the matter of contra-ordination and transited to final judgement shall obey the provisions of article 673 and following of the Penal Process Code, whenever the contrary does not result from the present diploma.
2. The revision of the process in favor of the accused on the basis of new facts or in new means of proof shall not be admissible when:
 - a) The accused was sentenced to a fine equal or inferior to ecv 50.000\$00 or, having had the need to apply an accessory sanction, the latter is of a patrimonial nature and not in excess of that limit;
 - b) Two years have passed since the transit to final judgement of the decision under revision.
3. The revision against the accused shall be admissible only when it aims at his condemnation for a crime committed.

Article 80

(Regime of the Revision Process)

1. The revision of the administrative authority's decision is of the competence of the court in the district competent to know about judicial impugnation.
2. Revision of the court's decision is of the competence of the Supreme Court of Justice.

Article 81

(Expiration of the Decision to Apply a Fine as a Result of the Decision Issued in a Criminal Process)

1. The administrative authority's decision that applied a fine expires when the accused is sentenced in a criminal process for the same act.
2. The final decision emitted in a criminal process shall have the same effect if it did not result in condemnation but it is incompatible with the application of a fine.
3. The pecuniary amounts that may have been paid as fine and costs shall, by order of priority, be taken on account of the fine, the effect of the penalties that imply a payment in cash and the process costs.
4. The decision and other dispatches emitted in a criminal process and reinforced in numbers 1 and 2 of this article shall include express reference to the effects foreseen in its numbers 1, 2 and 3.

CHAPTER VIII

Execution

Article 82

(Voluntary Payment of the Amounts Fixed in the Decision)

1. Every decision that has transited to judgement for at least two weeks, is executable.
2. Voluntary payment of the fine and process costs, when these are due, shall be effected by the deadline referred to in the previous number, against a receipt, whose duplicate shall be delivered to the administrative authority or the court that emitted the decision.
3. Whenever the economic situation of the accused justifies it and at the latter's request, the administrative authority or the court can authorize that the payment of the fine and the costs be effected within a time span not greater than a year or in installments not exceeding twenty-four months, without prejudice of the provisions of the following number.

4. The administrative authority or the court may also condition the payment of the fine in the time and conditions set forth in the previous number for the immediate liquidation of the costs.
5. By order of priority, the payment of fines authorized under the terms of number 3 of this article shall be taken on account for the fine and, finally, of the costs.
6. In the case of payments by installment, default in the payment of one of them implies that the remainder shall fall due and their immediate payment demanded.
7. Within the limits of the number 3 of this article, when supervening motives s -1.1Fa5W-7.31.63

3. Officiously or by request of the Public

Article 88

(Ambit of the Costs)

1. The costs include the justice tax, the fiscal stamp tax and the charges.
2. For the purpose of the present diploma the following are considered charges:
 - a) The reimbursements to the coffer of the administrative authority or court, for expenses with paper, postal fees, administrative work and other expenses effected;
 - b) Payments due to the services or any entities for the cost of certificates, except those extracted officiously by the administrative authority or by the court, documents, opinions, plants, other elements of information or proof and services that the administrative authority or the court may have requisitioned;
 - c) Redistribution, transportation cost or indemnity to the persons who accidentally intervened in the process or who collaborated with the administrative authority or the court, specifically the witnesses and the experts;
 - d) The cost of publication of announcements, telephone and telegraph and postal communication and of transportation of apprehended goods;
 - e) The expenses the accused may have spent with the process, in the event a fine is not applied;
 - f) The routes due by the diligences realized in the territorial area under jurisdiction of the administrative authority or the court;
 - g) Other expenses related with process.

Article 89

(Exemption)

The State, the administrative authorities and the Public Ministry are exempt from costs.

Article 90

(Justice Tax and Initial Preparation)

1. The process of contra-ordinations that runs before the administrative authorities is not subject to the payment of justice tax and for initial preparation;
2. Likewise, justice tax is not due in judicial impugnation of any decision by the administrative authorities;
3. However, payment of justice tax is due in all the processes in which there were judicial decisions against the accused;

4. The justice tax shall not be less than ecv 1.000\$00 and not greater than ecv 50.000\$00. The amount shall be fixed by reason of the economic situation of the infringer, the complexity of the process and the nature of infraction.

Article 91

(Impugnation of The Costs)

1. The decisions of the administrative authorities regarding the costs incurred in contra-ordination processes are impugnable, under the terms established in the Judicial Costs Code.
2. Of the decisions of the administrative authorities emitted over reclamation on the matter of costs there can be recourse to the court of the district with jurisdiction in criminal matters in the circumscription of the referred authorities, which decides in the last instance.
3. In the process of judicial impugnation, of the decision of the court emitted over complaint in the matter of costs there will recourse to the Supreme Court of Justice, in general terms.

Viewed and approved in Council of Ministers

*Carlos Veiga -Úlpio Napoleão Fernandes-Teófilo
Figueiredo Silva-Pedro Freire de Andrade.*

Promulgated on 25 Outubro 1995

Let it be published