

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;

Taking into account that no State that promotes social justice can attain its stated objectives without the social ordination tools and corresponding penal sanctions to deal with illicit acts, just because such acts do not constitute criminal violations and therefore, to that end, develops a strong intervention capability by the Administration especially in the areas of economy, health, housing, culture and environment;

Considering, further, that it is necessary to liberate the penal legislation from the uncontrollable and inflationary number of infractions, in order to secure the efficacy of the normative commands of the Administration, when disobedience to such commands does not bear the moral resonance characteristic of the penal law, as is the case, in fact, in several comparable experiences;

Then, in compliance with the Government's Program;

Under the cover of the Legislative authority conceded by Law n. ° 131/IV/95, of 27 June.

In the use of the faculties conferred by subparagraph b) n. ° 2 of article 216 of the Constitution, the Government decrees the following

PARTE I

Of Contra-ordination and Fines in General

CHAPTER I

General Dispositions

Article 1

(Contra-ordination)

1. Every illicit and censurable act that qualifies as a legal type penalized with a fine constitutes a contra-ordination.
2. The law shall determine the cases in which a contra-ordination can be imputed independently of the character of the censurable infraction.

Article 2

(Principle of Legality)

Only the infraction described and declared punishable by a fine, by a law in effect prior to the moment that the act is committed, shall be considered a contra-ordination.

Article 3

(Application in Time)

1. The law establishes the applicable fine in effect at the moment the infraction is committed or by the fulfillment of the presumption upon which it is based.
2. If the law in effect at the time the infraction is committed is subsequently modified, the version of the law more favorable to the accused shall be applied, except when the decision of the administrative authority or the court has already been issued.
3. The disposition of the final part of the previous number shall not apply if the subsequent law more favorable to the accused results in the elimination of the infractions punishable with a fine.
4. The dispositions of number 2 of this article do not apply to the temporary laws except when said laws determine to the contrary.
5. The regimen foreseen in the previous numbers applies, with the necessary adaptations, to the effects of contra-ordinations.

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

(Responsibilities of Collective or Equivalent Persons)

1. Fines can be levied to singular and to collective persons as well as to associations and other organizations without juridical personality.
2. The collective persons or equivalent shall be responsible for the contra-ordinations practiced by their organs in the exercise of their functions.

Article 9

(Fraud and Negligence)

Only fraudulent infractions or, in the cases especially foreseen in the law, infractions resulting from negligence, are punishable.

Article 10

(Errors Regarding the Circumstances of the Infraction)

Fraud is excluded from the error regarding the descriptive or normative elements of the legal type, or regarding the state of things that, if they existed, would eliminate the illicit status of the infraction.

Article 11

(Error Regarding Illicitness)

1. Whosoever acts without foreknowledge of the illicitness of the act, if the act is not deemed attributable to him/her, is not culpable.
2. If the error is attributable to him/her, the fine may be freely attenuated.
3. The regimen foreseen in number 1 is applicable in case of error regarding a state of things that, if they existed would remove culpability from the perpetrator.

Article 12

(Non Imputability by Reason of Age)

For the purpose of the present diploma, those with less than 16 years of age are not imputable.

Article 13

(Non Imputability by Reason of Psychic Anomaly)

1. Whosoever, by force of a psychic anomaly, is incapable of determining the illicitness or to determine himself/herself in agreement with that evaluation, at the moment an infraction is committed, is not imputable.

2. Whosoever, by force of a grave non accidental psychic anomaly whose effects he/she does not control, who is not susceptible of censure for the infraction, and whose capacity to determine the illicitness of the act committed or to determine himself/herself in agreement with this evaluation, is sensibly diminished, can be declared not imputable;
3. Imputability is not excluded when the psychic anomaly is provoked by the perpetrator with intent to commit the infraction.

Article 14

(Preparatory Acts)

Preparatory acts are not punishable, unless the law states the contrary.

Article 15

(Attempt)

1. An attempt exists when the perpetrator decides to execute a contra-ordination infraction but does not consummate the same.
2. The following constitute acts of execution :
 - a) Those that fulfill an element that constitutes a contra-ordination legal type;
 - b) Those that are apt to produce a typical result;
 - c) Those that raise the expectation that, based on experience, and save for unforeseen circumstances, infractions of the type indicated in the preceding subparagraph are to be committed.

Article 16

(Punishing the Attempt)

1. The attempt is punishable only when the law so determines specifically.
2. In the event that an attempt is punishable the fine shall be freely attenuated except when the law determines the contrary.

Article 17

(Desistence From an Attempt)

1. An attempt is not punishable when the perpetrator of the contra-ordination infraction voluntarily desists from or prevents consummation of the same or, in spite of the consummation, prevents attainment of the result not included in the contra-ordination legal type.
2. When acts independent of the conduct of the desistent prevent consummation or attainment of the result, the attempt is not punishable if the desistent strives to prevent another infraction.

Article 18

(Authorship)

Whosoever executes the infraction himself or through others, or participates directly in its execution, by agreement with another or with others, and fraudulently entices another to commit the act, is the author thereof as long as execution of the infraction is initiated.

Article 19

(Complicity)

1. Whosoever, fraudulently provides material or moral help for others to commit a fraudulent act, is an accomplice.
2. In the event of complicity, the fine is freely attenuated.

Article 20

(Co-participation)

1. Unless the intention of the norm is another, if several perpetrators co-participate in an infraction, any one of them can be made responsible for contra-ordination even if the illicitness or the degree of illicitness of the infraction depends on certain qualities or special relationships of the perpetrators and these exist only in one of the co-participants.
2. If the law determines that a contra-ordination infraction must be considered a crime due to certain qualities or special relations of the perpetrator, criminal laws shall be applied only to the co-participants or to the co-participants who detain these qualities or special relations

Article 21

(Desistence in the Case of Co-participation)

In the event of co-participation, the participant who voluntarily impeded consummation or the verification of the result is not punishable. Likewise, the participant who seriously strives to prevent one or the other, even if the other co-participants proceed with the execution of the contra-ordination infraction, or consummate it.

Article 22

(Guilt in Co-participation)

Each co-participant is punished according to his/her guilt, independently of the punishment or the degree of guilt of the other co-participants.

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 27

(Accessory Sanctions)

1. The law can, Simultaneously with the fine, the law can specify the following accessory sanctions:
 - a) Apprehension of objects;
 - b) Denial of the right of subsidy or benefit attributed by entities or public services.
 - c) Denial of the right to participate in fairs, markets, sports competitions, or entry into installations or reserved access areas;
 - d) Denial of the right to participate in public auctions and contests promoted by public entities, of public works, supply of goods and services or services concession, licenses and charters;
 - e) Closing of establishments or cancellations of licenses or charters.
2. The sanctions referred to in subparagraph b) and following, of the previous number, shall have a maximum duration of two years, beginning on the date of the definitive condemnation decision, if the law does not determine the contrary.
3. The law can also determine the cases in which it must make public the infractions punished for contra-ordination.

Article 28

(Principle of Subsidiary Apprehension)

1. Apprehension is permitted only when:
 - a) At the time of the decision the objects belong to the perpetrator;
 - b) The object of the apprehension represents a danger to the community or favors the commitment of a crime or a contra-ordination infraction;
 - c) When the object of the apprehension has been alienated or onerated to third parties and the latter knows, or should reasonably know, the determinant circumstances of the possibility of the apprehension;
2. There is no reason for the apprehension when it is manifestly disproportionate to the gravity of the infraction and the degree of guilt of the perpetrator or the third party, except in the cases foreseen in subparagraph b) of the previous number.
3. The apprehension shall be suspended whenever its purpose can be attained through less grievous measures for the persons affected.
4. When possible, the apprehension shall be limited to part of the objects.

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 deadline, the communication shall assume the form of a notification containing the necessary clarifications regarding the admissibility, deadline, and form of impugnation, under the penalty of annulment.

Article 43

(Notifications)

1. The notifications shall be addressed to the accused or to the legal representative thereof, when the latter exists, as well as to the chosen defender in whose power of attorney is included in the transcripts or to the appointed defender.
2. If several persons have to be notified, the deadline for the impugnation begins only after the last person is notified.

Article 44

(Rights and Duties of the Administrative Authorities)

When applying a fine, the competent administrative authorities have the same rights and are subject to the same duties as the competent criminal authorities, as long as neither contradicts the present diploma.

Article 45

(Subsidiary Rights)

The provisions of the Penal Code, with the necessary adaptations, apply to the contra-ordination processes,

CHAPTER II

Action and Competence

Article 46

(Legality of the Action)

To every contra-ordination corresponds an action that will be exercised under the terms and disposition of Part II of this diploma and other applicable legislation.

Article 47

(Competence of the Administrative Authorities)

Except for the particularities of the present diploma, processing of the contra-ordinations and the application of the respective fines are the responsibilities of the competent administrative authorities.

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 55

(Fiscalization)

1. The police and fiscal authorities should acknowledge all the events and circumstances susceptible of implicating responsibility for contra-ordination and take the necessary measures to prevent the disappearance of proofs.
2. When this diploma does not determine the contrary, police authorities have rights and duties equivalent to those they have in criminal matters.
3. The political authorities and fiscal agencies shall immediately remit to the administrative authorities the collected proofs of participation.

Article 56

(Instruction)

1. The administrative authority shall proceed to the investigations of contra-ordination constitutive facts and the circumstances that preceded, accompanied or followed its practice.
2. The instruction shall be concluded within a maximum of 30 days, prorogable for a like period, under the penalty of expiration of the proceedings
3. Prorogation of the instruction time is permissible only in the cases of proven process complexity.
4. The administrative authority can confer the instruction, in whole or in part, upon police authorities, as well as solicit the help of other public authorities or services.
5. Without prejudice to the provisions of the final part of the following number, the instruction can be dispensed with in a fundamented dispatch, when all the indicators relative to the constitutive elements of the contra-ordination are already proven on the basis of documents or are indicated in a news transcript that can make faith in judgement, on the terms established in the Penal Code.
6. In the case foreseen in the preceding number, the accused shall be heard regarding his own documents; he can also join or request any means of proof destined to dissipate the indications of counter-ordination.

Article 57

(Remitting the Process to the Public Ministry)

1. The competent administrative authority shall submit the process to the Public Ministry any time he considers that the infraction constitutes a crime.
2. If the Public Ministry determines that there is no criminal responsibility, he shall return the process to the authority that forwarded it.

Article 58

(Instruction by Competent Authorities for Criminal Instruction)

1. When the process is criminally instructed by the competent authorities, the administrative authorities are obliged to give them all the collaboration, availing themselves, in general, of the same rights and duties police authorities have in criminal processes.
2. When, in the cases foreseen in the preceding article, the Public Ministry deduces accusation for crime, he shall, likewise, make it with relation to the contra-ordination.
3. When the Public Ministry emits an accusation for contra-ordination as well, he shall communicate it to the administrative authorities, providing them with a copy of the accusation.

Article 59

(Duties of the Witnesses and Experts)

1. The witnesses and experts are obliged to obey the administrative authorities when they are solicited to appear and pronounce themselves in matters related to processes.
2. In the event of an unjustified refusal, the administrative authorities can apply pecuniary sanctions up to ecv 10.000\$00 and demand reparations from damages caused by their refusal.

Article 60

(Identification by the Administrative Authorities, Police and Fiscal Agent)

1. The competent administrative authorities, the police authorities and the fiscal agents can demand from a contra-ordination perpetrator the respective identification.
2. If the latter's identification is not immediately possible, in case of flagrant offense, the police authorities can deter the presumed perpetrator for the time necessary for his identification. This detention period cannot, under any circumstance, exceed 12 hours.

Article 61

(Mandatory Hearing of the Accused)

1. It is mandatory to hear the accused during the instruction of the process.
2. The accused can present and request any means of prove during the instruction phase.

Article 62

(Defender)

1. The accused in a contra-ordination infraction has the right to be represented and accompanied by an attorney of his choice during any phase of the process.
2. The administrative authorities shall appoint a public defender for the accused whenever any deficiency of the latter or the gravity of the infraction and of the sanction justifies it.

CHAPTER IV

Decision Phase

Article 63

(Decision)

1. The instruction concluded, if contra-ordination is not proven, the administrative authority shall retire the process.
2. If counter-ordination is proven the administrative authority shall impose with due proof, the fine and or the accessory sanctions that the case warrants.
3. The decision to apply the fine shall include:
 - a. The identification of the accused and of the eventual participants;
 - b. The concrete and precise description of the constitutive facts of the contra-ordination imputed to the accused and of the proofs obtained, as well as the indication of the punishing norms;
 - c. The fine and the accessory sanctions;
4. The following information must also be present in the decision: that
 - a) the accusation transited into judgement becomes executable if it not judicially impugned under the terms of this diploma.
 - b) in the case of judicial impugnation, the court may decide by an audience or, should the accused and the Public Ministry not oppose, by means of a simple dispatch;
 - c) the *reformatio in pejus* prohibition is not in effect.
5. Additionally, the decision shall contain:
 - a) The order of voluntary payment of the fine in the maximum time of two weeks after the case is judged;
 - b) The indication that, in the event of the impossibility of timely payment, the fact must be communicated in writing, to the authority that applied the fine.

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.
3. The decision referred to in the preceding number must be communicated to the administrative authority that would be competent to institute the contra-ordination process.

Article 77

(Criminal and Contra-ordination Processes)

1. If the same process applies to crimes and contra-ordinations, and if there 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 so justify, the due dates and the payment plans initially established may be altered, at the fundamented request of the accused.

Article 83

(Execution)

1. Non voluntary payment of the fine and the costs, in conformity with the provisions of the previous article, shall give way to the execution, which promoted by the Public Ministry before the competent court foreseen in article 67.
2. The execution shall be based on the decision that applied the fine, which constituted executive title.
3. When the execution is based on a decision of the administrative authority, the latter shall forward to the Public Ministry in the competent tribunal an authenticated copy of this decision, for the purpose of its promotion.
4. The execution encompasses all the pecuniary amounts contained in the decision to be executed.

Article 84

(Tramitation)

1. The execution shall obey the terms of the execution by costs. With the necessary adaptations the provisions of article 640 of the Penal Code shall be applied.
2. For the purpose of the execution the initial petition shall be dispensed with. The simple promotion of the Public Ministry shall suffice and it shall always be accompanied by the executive title.

Article 85

(Suspension and Extinction of the Execution)

1. After the transit in judgement of the decision of the administrative authority that applied the fine, if the same act was condemned in a criminal process, execution shall be suspended.
2. Execution shall be extinguished with the death of the accused.

3. Officially or by request of the Public Ministry or the accused, the execution court shall expressly pronounce on all the questions referred to in article 81, when they were not known in the criminal process, in accordance with article 4 of that article.

Article 86

(Incidents)

The court that promotes the execution shall be competent to decide on all the incidents and questions raised in the wake of the execution, namely:

- a) The admissibility of the execution
- b) The decisions taken by the administrative authority in matters of facility of payment;
- c) The suspension and extinction of the execution.

CHAPTER IX

Costs

Article 87

(General Principles)

1. In a contra-ordination process the costs shall be regulated, with the necessary adaptations, under the provisions of articles 159, 197, 205 to 229 of the Judicial Costs Code and by the provisions of the decree n. ° 53-A/85, of 20 September, without prejudice of the application of contrary legal disposition.
2. The decision proffered by the administrative authority on the matter of contra-ordinations should fix the amount of the costs and determine who must support them.
3. Without prejudice of the provisions of the following number, the costs shall be supported by the accused in case a fine is applied by the administrative authority or by the court and, further, in the cases of desistence or rejection of judicial impugnation.
4. In case a fine is not applied, the administrative authority shall reimburse the accused, by its coffers, the proven expenses that he had with the process, namely the honoraries to his defender.

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.*

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Let it be published

The President of the Republic, in exercise, *Amilcar Fernandes Spencer Lopes*

Referended on 25 October 1995

The Prime Minister, *Carlos Veiga*