

Legislative Decree n.º 12/97

Of 9 June

The repressive characteristics of the customs legislation are sociologically and self motivated.

Traditional public opinion is less shocked by fiscal fraud than by common offenses, resulting in a tendency for less collaboration between the common citizen and customs officials.

On the other hand, customs frauds tend to be fleeting and therefore, difficult to discover. In many cases fraud perpetrators use intermediaries that reside outside the country, not infrequently organized as true fraud enterprise.

Hence the need for sufficiently dissuasive sanctions and to endow the customs services with necessary powers of intervention to enable them to efficaciously combat fiscal fraud and evasion.

Thus

Under the cover of the legislative authorization conceded by number 5 of article 1 of the Law n.º 4/V/96, of 2 July.

Using the faculties conferred by subparagraph b) of article 216 of the Constitution, the Government decrees the following:

Articles 32, 34, 38, 39 to 45, 48, 51 to 56, 70 and 71, Customs and Fiscal Infractions Law, approved by the Legislative Decree n.º 5/95, of 27 June, is hereby altered as follows:

Article 32

(Contraband)

Whosoever, by any means, causes any merchandise to enter or leave the country without going through the customs, shall be punished with imprisonment from 3 months to two years or with a fine from ecv 50.000\$00 to 20.000.000\$00.

Article 34

(Qualified Contraband)

The crimes foreseen in articles 32 and 33 shall be punished with imprisonment from six months to three years or with fine from ecv 100.000\$00 to 24.000.000\$00, whenever they are committed:

- a) at night or in an isolated place, with the use of firearms or utilizing violence, or yet, by two or more persons;

- b) as a result of corruption by any Government employee or agent;
- c) by the alteration or falsification of the dispatch slip or any fiscal documentation presented to the customs;
- d) by a Customs agent or employee, a fiscal official or an official from any institution with jurisdiction over customs fiscal police, an official dispatcher or any person duly capacitated to effect customs dispatch;
- e) having as objective prohibited or conditioned import or export merchandise valued at ecv 1.000.000\$00 or more;
- f) with merchandises that consist, in whole or in part by objects of great historic, cultural or artistic value.

Article 38

(Fraud in the Transport of Suspensive Merchandise)

Whosoever, in the process of transporting suspensive merchandise subtracts or substitutes them, or, for the same purposes, alters, renders inefficacious or damages the seals, security means or customs identification, or yet, does not follow the preestablished itinerary, to evade fiscalization, shall be punished by imprisonment of three to eighteen months or a fine of ecv 50.000\$00 to 8.000.000\$00.

Article 39

(Fraud to the Customs Fiscal Guarantees)

1. Punishment by imprisonment of three to eighteen months or fine from ecv 50.000\$00 to 8.000.000\$00 shall be applied if:
 - a) The owner, depository or driver of merchandise apprehended under the provisions of the present diploma, damages, destroys or renders said merchandise unusable, during or subsequent to the apprehension;
 - b) The owner or a co-participant in criminal or contra-ordination processes, foreseen in the present diploma, destroys, damages, alienates or onerates the merchandise considered apprehended as guarantee for payment of pecuniary sanction or tributary fees, even if a co-participant or responsible person is the perpetrator.
2.

Article 41

(Refusal to Present Merchandises)

Whosoever, having been appointed depository of merchandises apprehended under the terms of the present diploma, does not present them in the timeframe specified, shall be punished with imprisonment of one to six months or a fine from ecv 25.000\$00 to 3.000.000\$00.

Article 42

(Breaking Markings or Stamps)

Whosoever opens, brakes or renders unusable, totally or partially, markings and other signs legally prescribed, affixed by competent employees to identify, secure or maintain inviolable, merchandize subject to fiscalization, or to certify that the same is object of embargo, apprehension or other cautionary providence, shall be punished with three to two years imprisonment or fine from ecv 50.000\$00 to 8.000.000\$00.

Article 43

(Receiving Stolen Goods)

1. Whosoever dissimulates, receives as a pledge, acquires under any title, detains, conserves, transmits or contributes to transmit or in any form secures for self or for a third party, the possession of merchandise that is the object of customs fiscal infraction(s) with the intention of obtaining for self or for a third party, some patrimonial advantage, shall be punished with imprisonment of from two to three years or a fine from ecv 50.000\$00 to 20.000.000\$00.
2. If the agent makes receiving stolen goods a way of life, or practices it habitually, the penalty shall be three months to six year imprisonment or a fine of ecv 100.000\$00 to 24.000.000\$00.
3. If the agent surrenders the merchandise object of the infraction to the competent authorities before trial and indicates, with truth, the person from whom the merchandise was received, the agent may be exempt from the penalty or the penalty may be freely attenuated, providing none of the circumstances referred in n.º 2 are not proven or that the agent has not already been condemned for the crime of receiving stolen goods, as determined by the present diploma.

Article 44

(Privileged Reception of Stolen Goods)

If the merchandise received as stolen good is worth less than ecv 30.000\$00, the agent shall be punished with a fine from ecv 25.000\$00 to 250.000\$00.

Article 45

(Criminal Association)

1. Whosoever promotes, creates, leads, or integrates groups, organizations or associations whose principal or accessory activity is the practice of customs fiscal infractions foreseen in the present diploma, as well as supports, supplies weapons, munitions, crime instruments guards or meeting places, or any support that recruits new elements, shall be punished with imprisonment from eight to twelve years.
2.
3.

Article 48

(Equivalence Between Penalties)

1.
 - a)
 - b) Prison terms not greater than three years correspond to correctional imprisonment penalties.

Article 51

(Straying)

1. Every act whose purpose is to avoid in whole or in part the payment of customs taxes, that does not constitute contraband under the terms of this diploma, or that causes merchandise to go through or to be removed from the customs without being submitted to the competent dispatch formalities or by false indications shall be punished with a fine of ecv 50.000\$00 to 5.000.000\$00.
2.

Article 52

(Qualification and Awarding of Privilege)

1. If straying merchandise is a conditioned import or export, the fine shall be ecv 100.000\$00 to 6.000.000\$00.
2.

Article 53

(Objection to Verification and Examination)

Whosoever refuses to deliver or present written accounting, declarations and documents, or refuses to present merchandise to inspection and investigation officials for infractions foreseen in the present diploma, or impedes or make difficulty any verification or exam ordered for merchandise by a competent customs official, when such acts do not constitute customs fiscal crime or straying, shall be subject to a fine of ecv 50.000\$00 to 1.000.000\$00.

Article 54

(Irregular Circulation of Merchandise)

1. If the merchandise is not of foreign origin, in the light of the applicable legal or conventional dispositions, the infraction foreseen in subparagraph a) of n.º 1 of article 33 shall be punished with a fine from ecv 25.000\$00 to 1.000.000\$00.
2.

Article 55

(Negligent Acquisition)

Whosoever acquires or receives, at any title, anything that by its quality or the condition of who offers it, or by the proposed price, leads to the reasonable suspicion that it is a merchandise subject to customs fiscal crime or straying, without ascertaining as to its legitimate origin, shall be punished with a fine of from ecv 25.000\$00 to 1.000.000\$00, whenever a greater sanction is not applicable.

Article 56

(Other Contra-ordinations)

1.
2. Whosoever practices the acts referred in the previous number shall be punished with a fine from ecv 1.000\$00 to 250.000\$00. If the infractions are punishable with a higher fine the latter shall be applied.
3.

Article 70

(Fiscalization and Preventive Measures)

1.
2.
3.
4.
5. Because of the special nature of their function, the officials and agents mentioned in number one of the present article are considered to be in permanent duty. For that reason they enjoy yet the following prerogatives:
 - a) Free entry to the seaport warehouses, hangars and airports, ships, airplanes and any other vehicles, as well as in any other enclosure subject to customs fiscalization, duly accompanied in the zones legally considered to security zones;
 - b) Authorization to use and carry arms, independently of license.
 - c) Authority to arrest in flagrant *delitum* both the individuals who insult them in the exercise of their functions such as the delinquents that must be legally captured for acts punishable by the fiscal laws, and present them immediately to the customs' director or to a higher-up, who will turn the arrested delinquent over to the judicial authorities;
6. The dispositions of subparagraphs b) and c) of the previous number are extensive to technical personnel who execute sourarias(?)

7. The officials and agents referred to in number one of the present article have the right to stop any fiscal infraction suspect inside the fiscal zones and to examine said suspects, merchandise and means of transportation that accompany them.

Article 71

(Cautionary Measures Regarding the Means of Proof)

1.
2.
3. If there is any resistance on the part of the owner of the establishment, warehouse or enclosure that is not his home, or means of transportation, or when the latter abandons them or does not return to them because he has foreknowledge of the operation under way, a break-in shall take place in the presence of witnesses; in the absence of the owner a depository shall be appointed to take care of the patrimony and to assist in the search, remaining afterwards in possession of what is not apprehended to return it to its lawful owner when said owner returns. This shall be mentioned in the search and break-in result transcripts, signed by the depository and witnesses.
4. Likewise, a breakdown of the doors, closets, drawers, boxes or other furniture when there is a refusal to open them or it is alleged that the keys are not available, in order to facilitate the examination by fiscal officials.
5. If the customs official or fiscal agent who presides over the search suspects of a hiding place, the official or agent will proceed so as to locate the hiding place and effect the search.

Article 2

The present diploma takes effect immediately

Seen and approved in the Council of Ministers

Carlos Veiga - António Gualberto do Rosário - Simão Monteiro

Promulgated 30 May 1997.

Let it be published.

The President of the Republic, ANTÓNIO MANUEL MASCARENHAS MONTEIRO

Referended on 30 May 1997

The Prime Minister, *Carlos Veiga*