



VIII CONSTITUTIONAL GOVERNMENT

DRAFT LAW NO. /2022

of

General Legal Regime of Administrative Offences

The needs to provide the national legal system with a general regime of administrative offences that establishes a common guiding framework for all the so-called *mera ordinaire* offences has long been noted by several sectors of the Public Administration.

In recent years, the development of the Public Administration and the growth experienced by the private sector has also led to a greater complexity of public and private legal relations and to the growth in the practice of offences that, although not criminal in nature, correspond to offences typified in several legislation in force as an administrative offence.

However, the lack of a general regime for administrative offences has prevented, in many cases, the effective application of the rules materially in force that establish administrative offences and the respective sanctions, leading to the existence of differentiated regimes that do not favour legal certainty and security.

The approval of a general legal regime for administrative offences will thus standardise the principles, rules and procedure applicable to all administrative offences set out in special legislation, guaranteeing uniform protection of the rights of individuals vis-à-vis the Administration and promoting legal certainty and security.

Thus,

The Government presents to the National Parliament, under the terms of paragraph c) of no. 1 of article 97 and paragraph b) of no. 2 of article 115 of the Constitution of the Republic, the following proposed law:

CHAPTER I SUBSTANTIVE REGIME

Article 1 Object and scope

The present Law establishes the general legal regime applicable to all offences committed in Timor-Leste or on-board Timorese aircraft or ships, except in the case of international conventions or express legal provision to the contrary.

Article 2

Concept

An administrative offence is any illicit and reprehensible action or omission, whether malicious or negligent, for which a fine, with or without accessory sanctions, is imposed by law prior to the moment it was committed.

Article 3

Application in time

1. Punishment for an administrative offence shall be determined by the law in force at the moment the fact was committed or the assumptions on which it depends were fulfilled.
2. If the law in force at the time the fact was committed is subsequently changed, the law more favourable to the offender shall apply, unless the offender has already been punished by a final decision or if the law is of temporary validity.

Article 4

Time and Place of Performance of the Act

1. The fact is considered to have been committed at the moment in which the agent acted or, in the case of omission, should have acted, regardless of the moment in which the typical result was produced.
2. The fact is deemed to have been committed at the place where the agent acted or, in case of omission, should have acted, wholly or partially and under any form of participation, as well as at the place where the typical result was produced.

Article 5

Commitment by omission

The commission of an administrative offence by omission shall only be punishable where the offender has a legal duty to prevent the result.

Article 6

Negligence

Negligence in an administrative infraction shall only be punishable in cases specifically provided for by law.

Article 7

Errors

1. A misdemeanour committed with an error regarding the elements of the type, the prohibition or a state of affairs which, if it existed, would rule out the illegality of the act or the culpability of the offender, shall not be punishable.
2. An administrative offence committed with an irreconcilable error with regard to the illegality of the fact shall also not be punishable.

Article 8

Liability of legal persons and similar

Corporate bodies and associations without legal personality are jointly and severally liable for administrative offences committed by their bodies or respective holders, by employees on their behalf and by their agents or commissioners in the exercise of their functions, mandate or commission.

Article 9

Inimputability

For the purposes of this law, the following persons shall not be held liable:

- a) those under the age of 16 years;
- b) Those who, due to psychic anomaly, are incapable, at the moment of the action or omission, of evaluating the illegality of the fact or of determining themselves in accordance with such evaluation;
- c) Those who, due to a serious psychic anomaly that is not accidental and was not caused by the offender himself/herself with the intention of committing the administrative offence, have, at the moment of the commission of the administrative offence, a significantly diminished capacity to assess the illegality of the act or to make up his own mind according to that assessment.

Article 10

Preparatory acts

Preparatory acts for an administrative offence shall not be punishable.

Article 11

Attempt

1. An attempt to commit an administrative infraction shall only be punishable in cases expressly provided for by law.
2. An attempt is made when the agent performs acts to execute the administrative infraction he has decided to commit, without the latter being consummated.
3. Acts of commission are:

- a) Those which fulfill a constituent element of the type of administrative offence;
 - b) Those which are capable of producing the typical result of the administrative offence;
 - c) Those which, according to common experience and save for unforeseeable circumstances, are such that they may be expected to be followed by acts of the kind indicated in the preceding subparagraphs.
- 4. An attempt shall not be punishable when the perpetrator gives up on executing the administrative offence or prevents the consummation or the achievement of the result comprised in the type of administrative offence.
 - 5. Where the consummation or the achievement of the result is prevented by an act independent of the agent's conduct, the attempt shall not be punishable if the agent has made serious efforts to avoid one or the other.

Article 12

Tender

- 1. If the same fact violates several rules of laws or regulations for which an administrative infraction is to be punished, the rule that imposes the highest fine shall apply, and the accessory sanctions provided for in the other rules may be applied.
- 2. If the same fact violates the same law or regulation several times, the maximum and minimum limits of the fine shall be increased by half of its maximum value.
- 3. If the same fact constitutes both a crime and a misdemeanour, the agent shall be punished for the crime, without prejudice to the application of accessory sanctions provided for the misdemeanour.
- 4. The decision imposing a fine shall expire when the agent is convicted in criminal proceedings as an author or participant in a crime for the same fact or when, in such proceedings, another final decision incompatible with the imposition of a fine has been issued.
- 5. The provisions of the preceding paragraph are without prejudice to the accessory sanctions applied to the administrative offence.

Article 13

Co-payment

- 1. If several agents participate in the fact, any of them shall be held liable for an administrative infraction, even if the illegality or the degree of illegality of the fact depends on certain qualities or special relations of the agent and these are only applicable to one of the participants.

2. Each co-participant shall be punished according to his or her own fault, irrespective of the punishment or degree of fault of the others.
3. The fine fixed for the perpetrator, especially attenuated, is applicable to the accomplice.

Article 14

Subsidiary law

The rules of the criminal law that do not contradict the substantive regime of administrative offences shall apply subsidiarily.

CHAPTER II

SANCTIONS

Article 15

Fine

1. Unless expressly provided otherwise by law, the administrative offence is punishable by a fine ranging from USD \$50 (fifty US dollars) to USD \$5,000 (five thousand US dollars) for natural persons, and from USD \$500 (five hundred US dollars) to USD \$50,000 (fifty thousand US dollars) for legal entities and equivalent entities.
2. Negligence shall be punishable by a fine not exceeding half of the maximum limits provided for in the preceding paragraph.
3. The minimum and maximum limits of the fines provided for in the preceding paragraphs shall be doubled in case of recidivism.
4. The determination of the specific amount of the fine shall take into account the nature of the infraction, the damage or risk derived therefrom, the degree of illicitness and culpability, the record and economic capacity of the offender.
5. The fine may be freely attenuated:
 - a) In practice by omission;
 - b) In case of reprehensible error on the illicit nature of the fact;
 - c) In case of an attempt.
 - d) The fine is not convertible into a prison sentence.

Article 16

Ancillary Penalties

1. One or more of the following ancillary sanctions shall apply in addition to the fine:
 - a) Seizure of goods or assets directly or indirectly obtained or acquired by way of the administrative offence;

- b) b) Suspension for up to three years of the right to the benefits provided by law or the right to a subsidy or other benefit granted by any public entity or service;
 - c) Suspension for up to three years of the right to participate in fairs and markets or to enter public places or areas with reserved access in connection with the administrative offence;
 - d) Suspension for up to three years of the right to participate in public procurement;
 - e) Suspension or cancellation of a license to carry out a business activity and temporary or permanent closure of an establishment;
 - f) publication of the administrative offence punishment.
2. The provisions set down in paragraph 4 of the previous Article shall apply, with the necessary adaptations, to ancillary sanctions.

Article 17

Seizure

1. The apprehension of goods, as referred to in subparagraph a) of paragraph 1 of the previous Article, shall always be subsidiary, and shall only be permitted when:
 - a) The goods represent a danger to the community or favour the commission of a crime or administrative offence;
 - b) They belong to the offender or have been disposed of or encumbered to a third party who knew or reasonably should have known of the circumstances determining their apprehension.
2. Unless in the case of property representing danger to the community, there shall be no cause for apprehension if the measure is manifestly disproportionate to the gravity of the illicit act and the culpability of the agent or the third party.
3. Seizure shall not be determined or executed where its purposes can be duly achieved through measures that are less burdensome for the exporting companies affected.
4. Where possible, seizure shall be limited to part of the property of the agent or third party.
5. Total or partial seizure of assets may be ordered when no proceedings or fines can be imposed for the administrative offence, provided that the respective prerequisites have been met.
6. The transit in res judicata of the seizure decision determines the transfer of ownership of the seized goods or assets to the State.

7. Where the apprehension based on paragraph 1(a) falls upon objects belonging to a third party, the third party shall have the right to compensation from the State, in accordance with the civil law, unless the third party acquired the objects in bad faith.

CHAPTER III PROCEDURE

Article 18

General provisions of the administrative offence procedure

1. The administrative infraction procedure shall obey the legality principle.
2. The administrative infraction proceeding shall be initiated ex officio, as soon as the administrative authority competent to initiate it becomes aware of the fact constituting it, directly, through the participation of the police or supervisory authorities or by private complaint.
3. The police and surveillance authorities, through their respective employees, shall reduce to report or participate all facts and circumstances that may imply responsibility for an administrative infraction of which they become aware and shall provide the necessary precautionary measures to prevent the disappearance or tampering of evidence, immediately forwarding to the competent administrative authority the report, the participation and the evidence gathered.
4. In the administrative infraction procedure:
 - a) Preventive custody, intrusion into the correspondence or communications of the accused or a third party, or the use of evidence involving the violation of professional secrecy shall not be permitted;
 - b) Evidence that impinges on the privacy of the accused, body examination and blood evidence is admissible with the express consent of the lawful party;
 - c) witnesses shall not be sworn;
 - d) Witnesses and experts requested by the competent authorities to appear and make statements about the object of the proceedings are obliged to do so, under penalty of a fine of up to USD \$50;
 - e) All decisions and dispatches issued and all other measures taken by the administrative authority shall be justified in fact and in law, in an express and accessible manner, and notified to the defendant to whom they refer in the manner prescribed by law;
 - f) All decisions, dispatches and measures that admit impugnation subject to a time limit, shall be notified to the defendant with the necessary clarifications regarding the admissibility, time limit and form of the impugnation, as well as regarding the competent entity to whom the impugnation should be addressed, under penalty of nullity;
 - g) Notifications shall be addressed to the defendant or his legal representative, as well as to the defender chosen and whose power of attorney is included in the records or to the appointed defender;

- h) If a notification has to be served to several defendants, the time limit for challenging shall only start to run after the last defendant has been served;
- i) In the process of imposing a fine the competent administrative authority shall enjoy the same rights and be subject to the same duties as the entities competent for criminal investigation;
- j) The defendant has the right to be accompanied and represented in the proceedings by a lawyer of his or her free choice at any stage of the procedure;
- k) The competent administrative authority for the procedure shall request the appointment of a defense counsel of its own motion to the accused, from among people with legal training, when the accused does not wish to hire a lawyer or alleges he/she is unable to do so;
- l) It is mandatory, under the penalty of nullity, the hearing of the accused during the instruction of the procedure and before the final decision.

Article 19 Competence

1. The processing of administrative offences and the application of fines and accessory sanctions shall be incumbent upon the administrative authorities, except as otherwise specifically provided for in this law.
2. The administrative authority competent to initiate proceedings for administrative offences and apply the respective sanctions shall be that established by the law that provides for and sanctions such offences.
3. Where the law is silent, the services designated by the Government member responsible for the protection of the interests the administrative offence is intended to defend or promote shall have competence.
4. The administrative authority of the administrative district within whose territory is territorially competent:
 - a. The infraction has been consummated or, if it has not been consummated, the last act of execution has been performed;
 - b. The defendant has his or her residence at the time of the commencement or during any phase of the proceedings.
5. If the offence is committed on board a Timorese aircraft or ship, outside the national territory, the administrative authority in whose circumscription is located the Timorese airport or port that is first called after the offence is committed shall have territorial competence.
6. The competence to investigate the administrative infraction procedure and apply the corresponding sanctions may be delegated under the terms of the law.
7. In case of concurrent administrative offences, the authority in charge of processing any of them under the terms of the previous subsections shall have competence.

8. The provisions of the previous subsection shall also apply to cases where the same fact renders several persons liable to be subjected to a fine.
9. When a crime and a misdemeanour are concurrent, the competent authority for the criminal investigation shall have competence to investigate the misdemeanour procedure and the competent judge for the trial of the crime has competence to apply the corresponding sanctions.
10. When, for the same fact, one defendant must answer for a crime and another for a misdemeanour, and reasons of procedural economy or regarding evidence so justify, the competent authority for the criminal investigation may take over the misdemeanour proceeding, as long as the appropriate sanction has not yet been applied.
11. In the cases referred to in paragraphs 9 and 10 above, the normally competent administrative authorities may examine the records and the objects seized in the department where they are located, unless there are serious reasons for sending them to those authorities.

Article 20 **Conflict of Competences**

1. If the provisions of the previous article result in the cumulative competence of several administrative authorities, the conflict shall be resolved in favour of the one that, in order of priority, has first:
 - a) heard the defendant for the commission of the administrative offence;
 - b) Requested its hearing by the police authorities
 - c) Received from the police authorities the records of the hearing of the accused.
2. The competent authorities may, for reasons of procedural economy, celerity or efficiency, agree to attribute competence to an authority other than that which would result from the provisions of the previous number.

Article 21 **Instruction**

1. The investigation of the administrative infraction procedure consists in the investigation and proof of the facts constituting the infraction and of its perpetrator and co-participants, as well as of the circumstances that preceded or accompanied or followed its commission.
2. Under the penalty of forfeiture of the procedure, the investigation must be concluded within a maximum of thirty working days from the date the competent authority learns of the infraction, extendable for an equal period only in cases of justified procedural complexity.

3. The competent administrative authority may entrust the investigation, in whole or in part, to the police authorities and request the assistance of other public authorities or services.
4. Without prejudice to the duty to hear the accused person and to his or her right to gather or request evidence to refute the accusation made against him or her, the instruction may be dispensed with, by means of a grounded order, when all signs relating to the elements constituting the administrative offence have been proved by documents or are contained in a report that is authentic in court under the terms of the criminal procedural legislation.

Article 22

Investigation by the criminal investigation authorities

1. Where instruction is the responsibility of the criminal investigation authorities, the administrative authorities shall provide them with full collaboration.
2. In the cases provided for in this article, if the Public Prosecutor's Office indicts for a crime, it must do so simultaneously in relation to the administrative offence and send a copy to the competent administrative authority.

Article 23

Hearing prior to the decision

1. Once the preliminary inquiry is concluded and prior to issuing the decision, the competent administrative authority shall hear the accused person about its meaning.
2. Hearing the accused person suspends the counting of the time limits of the Administration in the procedure.
3. It is up to the administrative authority to decide, in each case, whether the hearing is written or oral.
4. Where the competent administrative authority opts for a written hearing, it shall notify the defendant to say what he or she wants to say, within a period of no less than five working days, providing him or her with the necessary elements regarding the decision he or she intends to take.
5. When the competent administrative authority opts for an oral hearing, it shall order the summoning of the defendant, with at least five working days prior notice.
6. The non-appearance of the accused duly summoned person does not constitute reason for postponing the hearing, unless there is a justification that can be justified until the time set for the hearing to take place.
7. Minutes shall be drawn up for the oral hearing, containing an extract of the allegations made by the accused person, mentioning the documents and any writings

he or she may produce, and the signature of the accused person or his or her representative.

Section 24

Voluntary payment of the minimum

Voluntary payment of the fine, settled at the minimum legally established, is admissible at any time during the proceedings, prior to notification of the decision and without prejudice to the costs due.

Article 25

Decision

1. Once the provisions of Article 23 have been complied with:
 - a) If the administrative offence is not proved, the competent administrative authority shall order the archiving of the procedure;
 - b) If the administrative offence is proven, the competent administrative authority shall impose, in a duly grounded decision, the fine and the accessory sanctions applicable to the case.
2. The decision that imposes a fine or ancillary sanction shall contain:
 - a) The identification of the defendant and of any co-participants;
 - b) The concrete and precise description of the facts constituting the administrative offence with which the defendant is charged and the evidence obtained;
 - c) Indication of the legal or regulatory norms on the basis of which the fine is applied
 - d) The fine and the accessory sanctions applied;
 - e) The information that the conviction is final and conclusive if it is not contested in court, indicating the time limit and the court to which the appeal should be lodged;
 - f) The information that the prohibition of reformatio in pejus is not in force;
 - g) The order for voluntary payment of the fine within thirty days after the res judicata.
3. The decision that orders the closure of the proceedings shall be communicated to the line manager, with all relevant elements and documents, for control purposes.

Article 26

Mere warning

1. In case of a minor infraction, the competent administrative authority may decide for a mere warning, accompanied by the requirement of payment of a fine of no more than USD \$50 (fifty US dollars), within five days.
2. The decision referred to in this Article may only occur if, after being heard pursuant to Article 38 and informed of the right to refuse it, the offender complies with it.

Article 27
Subsidiary law

The provisions of the criminal procedure legislation, with the necessary adaptations, shall apply subsidiarily to the administrative infraction procedure.

CHAPTER IV
JUDICIAL IMPUGNATION

Article 28
Principle

The decision by the administrative authority imposing a fine, with or without an accessory sanction, may be judicially challenged through an appeal to the competent court of first instance within fifteen days of its valid notification to the offender.

Article 29
Interposition

1. The appeal is filed by means of a request addressed to the competent judge and presented before the appealed administrative authority.
2. The appeal request shall contain the appellant's allegations of fact and law and the respective conclusions, as well as the indication of all the means of proof that he was unable to present during the procedure.
3. The filing of the appeal shall only have a devolutive effect when the fine imposed does not exceed one third of the maximum limits established by this law and no accessory sanctions have been applied, unless the appellant provides adequate bond or, having proved that he/she is unable to provide such bond, proves that the enforcement of the decision would cause him/her serious injury.
4. The appeal shall be sent by the administrative authority appealed against to the court to which the request is addressed within fifteen days after its presentation, together with the allegations it intends to make.
5. Until the remittance of the appeal to the competent court the appealed administrative authority may revoke or modify the appealed decision, in which case the remittance only occurs if, notified of the revocation or modification, the appellant insists in sending the appeal to the court.

Article 30
Processing in court

1. The appeal can only be preliminarily rejected by the judge and on the grounds of having been filed out of time.

2. The appeal shall be processed and judged as an ordinary common appeal, with the necessary adaptations.
3. The judge's decision shall be issued within fifteen days counting from the receipt of the case by the court registry.
4. The decision of the judge may be appealed to higher courts, under the terms of the laws of criminal procedure.

CHAPTER V PAYMENT

Article 31 Voluntary payment of the fine

1. Voluntary payment of the fine shall be made under the terms established by law for State revenues.
2. Whenever justified by the economic circumstances of the offender and at his or her request, payment of the fine in instalments may be authorised under the terms established by law for payment of taxes to the State.
3. Where justified by supervening reasons, the established time limits and schedule for payment in instalments may be altered at the reasoned request of the offender.
4. Non-payment of one instalment shall imply immediate maturity of all the others and their immediate enforceability.

Article 32 Execution

1. The voluntary non-payment of the fine shall give rise to enforcement promoted by the Public Prosecution Service before the competent court under the terms of Article 28, based on the decision that imposed the fine, which has become res judicata.
2. The enforcement comprises the fine, with default interest as from the day following the deadline for voluntary payment and the costs due.
3. Where a decision has been issued by the competent administrative authority, the latter shall forward a certified copy thereof to the Public Prosecution Service to serve as enforcement order.
4. The enforcement shall follow the terms of enforcement by costs, with the necessary adaptations.

5. Enforcement shall be suspended where, after the decision by the competent administrative authority has become final and unappealable, an indictment has been filed in a criminal proceeding for the same facts.
6. The court competent for enforcement shall decide on all incidents and issues raised during enforcement, namely its admissibility, decisions on payment facilities, suspension and termination of enforcement.

CHAPTER VI PRESCRIPTION

Article 33 Limitation of Proceedings

1. The administrative infraction proceeding shall be extinguished by statute of limitation as soon as the following periods of time have elapsed since the commission of the infraction:
 - a. Two years, in the case of administrative offences punishable by a fine exceeding USD \$5,000 (five thousand US dollars);
 - b. One year, in the remaining cases.
2. The statute of limitations for administrative offence proceedings shall be interrupted:
 - a) With the communication to the defendant of the orders, decisions or measures rendered or taken against him/her;
 - b) With the performance of any acts of proof;
 - c) With the request for assistance to the police authorities or any administrative authority;
 - d) With the fulfilment of the duty to hear the accused person.
3. In cases of concurrent criminal and administrative infraction the interruption of the statute of limitations for the criminal procedure determines the interruption of the administrative infraction procedure.

Article 34 Limitation period for fines

1. Fines are statute-barred for the following periods of time, counting from the final and unappealable decision:
 - a) Four years, in cases of fines exceeding USD \$5,000 (five thousand US dollars);
 - b) Two years, in the remaining cases.
2. The statute of limitations for a fine shall be suspended during the time in which:
 - a) by force of law, enforcement cannot commence or cannot continue to take place;
 - b) enforcement has been interrupted;
 - c) payment facilities have been granted.

Article 35
Limitation period for ancillary sanctions

The statute of limitations for ancillary sanctions is applicable to the regime of statute of limitations for fines.

CHAPTER VII
FINAL PROVISIONS

Article 36
Derogation

1. The mandatory provisions of this Law may not be derogated from by special provisions regulating sectorial administrative offences, and shall prevail over the latter.
2. The mandatory provisions of this Law derogate from all previous legal or regulatory provisions that contradict them.
3. However, previous norms punishing transgressions and misdemeanours shall remain in force in all matters that do not contradict the provisions of this statute.

Article 37
Evaluation

1. The impact of the present law shall be mandatorily evaluated by a qualified independent entity hired by the Government after a public tender, at the end of the first year of its application.
2. A report on the evaluation shall be prepared for consideration by the National Parliament.

Article 38
Entry into Force

This Law shall enter into force within one hundred and twenty days from its publication.

Approved by the Council of Ministers on the 20th of 2022.

The Prime Minister,

Taur Matan Ruak

The Minister of Justice,

Tiago Amaral Sarmento

Promulgated on ____ of _____ of ____

To be published.

The President of the Republic,

Dr. José Ramos Horta

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