

DIÁRIO DA REPÚBLICA [OFFICIAL GAZETTE]

[...]

Assembly of the Republic

[...]

**Law No. 31/2004
of 22 July**

Adapts Portuguese criminal legislation to the Statute of the International Criminal Court, defining types of conduct that constitute breaches of international humanitarian law. – Seventeenth amendment of the Criminal Code.

Pursuant to article 161 (c) of the Constitution, the Assembly of the Republic decrees the following, which shall have the status of a general law of the Republic:

CHAPTER I

General provisions

Article 1

Object

The criminal law pertaining to violations of international humanitarian law, annexed hereto, is hereby adopted.

Article 2

Amendments to the Criminal Code

1. Article 5 of the Criminal Code is hereby amended to read as follows:

“Article 5

[...]

1.
 - (a)
 - (b) When they constitute the crimes defined in articles 159, 160, 169, 172, 173, 176 and 237, where the official is in Portugal and cannot be extradited;

- (c)
- (d)
- (e)

2.....”

2. Article 246 of the Criminal Code is hereby amended to read as follows:

“Article 246

[...]

Anyone convicted of a crime defined in articles 237, 240 and 243 to 245 and of crimes defined by law may, depending on the gravity of the act and its implications for the civil status of the official, be barred from electing the President of the Republic, members of the European Parliament, and members of the legislative assembly or of a local authority, from being elected to such offices, and from serving on a jury for a period of between 2 and 10 years.”

Article 3

Abrogation of articles of the Criminal Code

Articles 236, 238, 239, 241 and 242 of the Criminal Code are hereby revoked.

Article 4

Amendments to Part III of Book II of the Criminal Code

- 1. The title of Part III of Book II of the Criminal Code shall be amended to read “Crimes against peace, cultural identity and the integrity of the human person”
- 2. The title of Chapter II of Part III of Book II of the Criminal Code shall be amended to read “Crimes against cultural identity and the integrity of the human person”.

Article 5

Entry into force

- 1. This law shall enter into force 30 days after its publication.
- 2. The provision of article 3 of the law annexed hereto shall enter into force on 14 September 2004.

Adopted on 27 May 2004.

The President of the Assembly of the Republic, *João Bosco Mota Amaral*.

Promulgated on 8 July 2004.

Let it be published.

The President of the Republic, JORGE SAMPAIO.

Approved on 9 July 2004.

The Prime Minister, *José Manuel Durão Barroso*.

ANNEX

Criminal law pertaining to violations of international humanitarian law

CHAPTER i

General provisions

Article 1

Object

The present law defines crimes that constitute a violation of international humanitarian law and related offences.

Article 2

Definitions

For the purposes of the present law:

- (a) An international armed conflict means a conflict which:
 - (i) Occurs between States, even without a formal declaration of war and even if the state of war is not recognised by one of them;
 - (ii) Relates to a situation of total or partial occupation of the territory of a State, even if this occupation meets with no armed resistance;

- (iii) Arises from a situation in which peoples are fighting against colonial domination, alien occupation and segregationist regimes in the exercise of the right of peoples to self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States;
- (b) An armed conflict of a non-international character means: a conflict that takes place on the territory of a State, which is sustained, and which occurs between governmental authorities and organized armed groups or among such groups, except for situations of internal disturbances and tensions, such as isolated and sporadic acts of violence or other acts of a similar nature;
- (c) The Geneva Conventions:
 - (i) The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (Convention I), adopted for ratification by Decree-Law No. 42 991 of 26 May 1960;
 - (ii) The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (Convention II), adopted for ratification by Decree-Law No. 42 991 of 26 May 1960;
 - (iii) The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (Convention III), adopted for ratification by Decree-Law No. 42 991 of 26 May 1960;
 - (iv) The Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Convention IV), adopted for ratification by Decree-Law No. 42 991 of 26 May 1960;
- (d) Protocol I, or Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977, ratified by Decree of the President of the Republic No. 10/92 of 1 April;
- (e) Protocol II, or Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977, ratified by Decree of the President of the Republic No. 10/92 of 1 April;
- (f) Protected persons:

(i) In international armed conflicts, protected persons for the purposes of the 1949 Geneva Conventions and of Additional Protocol I, i.e. wounded, sick or shipwrecked persons, medical or religious personnel, and the civilian population;

(ii) In a non-international armed conflict, wounded, sick or shipwrecked persons as well as persons not taking a direct part in hostilities who have fallen into the power of the enemy;

(iii) In an international armed conflict and a non-international armed conflict, members of the armed forces and enemy combatants who have laid down their arms or have no other means of defence;

(g) Children: all human beings under 18 years of age, in accordance with the Convention on the Rights of the Child of 20 November 1989, ratified by Decree of the President of the Republic No. 49/90 of 12 September.

Article 3

Conflict of laws

The provisions of this law shall be without prejudice to the application of the Code of Military Justice where the crimes have a bearing on military interests related to the defence of the Portuguese State and other matters in respect of which the Constitution entrusts responsibility to the Portuguese Armed Forces.

Article 4

Subsidiary legislation

The provisions of the Criminal Code shall be applicable on a subsidiary basis to the crimes referred to in this law.

Article 5

Territorial application: acts committed outside Portuguese territory

1. The provisions of this law shall also be applicable to acts committed outside the national territory in cases where the perpetrator is present in Portugal and cannot be extradited or where it has been decided not to surrender the perpetrator to the International Criminal Court.

2. The provision of article 6 (2) of the Criminal Code shall not be applicable.

Article 6

Responsibilities of military commanders and other superiors

1. Without prejudice to the provisions of the Code of Military Justice, any military commander or person acting as such a commander who knows or should know that the forces under his or her effective command and control, or effective responsibility and control, are committing or about to commit any of the crimes defined in this law and fails to take all necessary and reasonable measures to prevent or repress their commission or to submit the matter to the competent authorities, shall be liable to the penalty provided for the crime or crimes that were effectively committed.
2. The provisions of the previous paragraph shall be applicable, *mutatis mutandis*, to a superior in respect of the control exercised over subordinates who are under his or her effective authority and control.

Article 7

Non-applicability of statute of limitations

Criminal proceedings and the penalties imposed in respect of the crimes of genocide, crimes against humanity and war crimes shall not be subject to any statute of limitations.

CHAPTER II

Crimes

SECTION I

Crime of genocide and crimes against humanity

Article 8

Crime of genocide

1. Anyone who commits any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:
 - (a) Killing members of the group;
 - (b) Causing serious bodily harm to members of the group;
 - (c) Inflicting on the group conditions of life or cruel, degrading or inhuman treatment likely to bring about its physical destruction in whole or in part;
 - (d) Forcibly transferring children of the group to another group;
 - (e) Imposing measures intended to prevent procreation or births within the group;

shall be punished with a term of imprisonment of 12 to 25 years.

2. Anyone who, publicly and directly, incites others to commit genocide shall be punished with a term of imprisonment of 2 to 8 years.
3. Consent with a view to the commission of genocide shall be punished with a term of imprisonment of 1 to 5 years.

Article 9

Crimes against humanity

Anyone who commits any of the following acts as part of a widespread or systematic attack directed against any civilian population:

- (a) Murder;
- (b) Extermination, which means the infliction on the whole or part of a population of harsh conditions of life, such as deprivation of access to food or medicine, calculated to bring about the death of one or more persons;
- (c) Slavery, as defined in article 159 of the Criminal Code;
- (d) Deportation or forcible transfer of a population, which means the unlawful displacement of one or more persons to another State or locally by expulsion or any other coercive act;
- (e) Imprisonment or other severe deprivation of a person's physical liberty in violation of the norms or principles of international law;
- (f) Torture, which means the infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the perpetrator;
- (g) Using force, the threat of force or another form of coercion, or taking advantage of a coercive environment or the victim's lack of decision-making capacity:
 - (i) To cause the penetration, however slight, of any part of the body of the victim or of the perpetrator with any part of the body of the perpetrator, the victim, a third party or any object;
 - (ii) To coerce a person, reduced to the state or condition of slavery, to engage in sexual acts;
 - (iii) To coerce a person to engage in prostitution;
 - (iv) Forcibly to make a woman pregnant, with the intent of affecting the ethnic composition of a population;
 - (v) To deprive a person of biological reproductive capacity;
 - (vi) To inflict some other form of sexual violence of comparable gravity;

- (h) Persecution, which means deprivation of a group or collectivity of fundamental rights, contrary to international law, such group or collectivity being identifiable on political, racial, national, ethnic, cultural, religious, gender or other grounds that are generally recognised as impermissible under international law;
- (i) Enforced disappearance of persons, which means arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time;
- (j) Apartheid, which means any inhumane act committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (l) Inhumane acts of a similar character intentionally causing great suffering or serious injury or affecting mental or physical health;

shall be punished with a term of imprisonment of 12 to 25 years.

SECTION II

War crimes

Article 10

War crimes against persons

1. Anyone who, in the context of an international armed conflict or a non-international armed conflict, commits any of the following acts against a person protected by international humanitarian law:

- (a) Murder;
- (b) Torture or cruel, degrading or inhuman treatment, including biological experiments;
- (c) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (d) Acts that cause great suffering or serious injury to body or health;
- (e) Killing or wounding a combatant who has laid down his or her arms or who, no longer having any means of defence, has surrendered unconditionally or has been placed *hors de combat* by any cause;
- (f) Taking of hostages;

- (g) Acts described in subparagraph (g) of the preceding article that constitute a serious violation of the Geneva Conventions;
- (h) Conscripting or enlisting children into a State's armed forces or military or paramilitary forces, or into armed groups other than a State's armed forces or military or paramilitary forces, or using them to participate in hostilities;
- (i) Deportation or transfer, or unlawful confinement;
- (j) Conviction and execution of sentence without a previous fair and impartial trial;
- (l) Outrages upon personal dignity, in particular humiliating and degrading treatment;

shall be punished with a term of imprisonment of 10 to 25 years.

2. Anyone who, in the context of an international armed conflict:

- (a) Transfers, directly or indirectly, as the occupying power, part of its own civilian population into the territory it occupies, or transfers all or part of the population of the occupied territory within or outside this territory;
- (b) Compels prisoner of war or other protected person to serve in the forces of a hostile power;
- (c) After the cessation of hostilities, delays the repatriation of prisoners of war without justification;

shall be punished with a term of imprisonment of 10 to 25 years.

Article 11

War crimes involving the employment of prohibited methods of warfare

Anyone who, in the context of an international armed conflict or a non-international armed conflict:

- (a) Attacks the civilian population as such or individual civilians not taking direct part in hostilities;
- (b) Attacks civilian objects, that is, objects which are not military objectives;
- (c) Attacks, by whatever means, population centres, dwellings or buildings that are undefended and that are not military objectives;
- (d) Launches an indiscriminate attack against the civilian population or civilian property in the knowledge that such attack will cause loss of human life, injury to civilians or excessive damage to civilian objects;
- (e) Uses the presence of civilians or other protected persons to prevent specific locations, areas or military forces from being targeted by military operations;
- (f) Intentionally uses starvation of the civilian population as a method of warfare by depriving them of objects indispensable to their survival,

- including impeding relief supplies as provided for under the Geneva Conventions;
- (g) Declares or threatens, as a person with official status, that no quarter will be given;
 - (h) Treacherously kills or wounds enemy combatants;
 - (i) Launches an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
 - (j) Commits perfidy, which means the act of killing, injuring or capturing by inviting, with intent to betray, the confidence of an adversary that he or she is entitled to, or is obliged to accord, protection under rules of international humanitarian law;

shall be punished with a term of imprisonment of 10 to 25 years.

Article 12

War crimes involving the employment of prohibited means of warfare

1. Anyone who, in the context of an international armed conflict or a non-international armed conflict, employs weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, shall be punished with a term of imprisonment of 10 to 25 years.
2. The preceding paragraph relates, in particular, to the employment of:
 - (a) Poison or poisoned weapons;
 - (b) Asphyxiating, toxic or similar gases or any analogous liquid, material or device;
 - (c) Bullets that expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
 - (d) Anti-personnel mines in violation of the provisions of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, ratified by Decree of the President of the Republic No. 64/99 of 28 January;
 - (e) Chemical weapons in violation of the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, ratified by Decree of the President of the Republic No. 25-C/96 of 23 July;
 - (f) Weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays, in violation of the provisions of Protocol I Additional to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to

be Excessively Injurious or to Have Indiscriminate Effects, concerning non-detectable fragments, ratified by Decree of the President of the Republic No. 1/97 of 13 January;

- (g) Incendiary weapons, in violation of the provisions of Protocol III Additional to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, concerning prohibitions or restrictions on the use of incendiary weapons, ratified by Decree of the President of the Republic No. 1/97 of 13 January;
- (h) Laser weapons that cause blindness, in violation of the provisions of Protocol IV Additional to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, concerning blinding laser weapons, ratified by Decree of the President of the Republic No. 38/2001 of 13 July.

Article 13

War crimes against objects protected by distinctive insignia or emblems

Anyone who, in the context of an international armed conflict or a non-international armed conflict, attacks:

- (a) Personnel, installations, material, units or vehicles involved in a peacekeeping or humanitarian assistance mission in accordance with the Charter of the United Nations, where the latter are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (b) Buildings, installations, material, units or vehicles, duly marked with the distinctive emblems of the Geneva Conventions, or personnel authorised to use such emblems;

shall be punished with a term of imprisonment of 10 to 20 years.

Article 14

Improper use of distinctive insignia or emblems

1. Anyone who, in the context of an international armed conflict or a non-international armed conflict, improperly uses, with perfidious intent, a flag of truce, a national flag, the military insignia or uniform of the enemy or of the United Nations, or the distinctive emblems of the Geneva Conventions, thereby causing death or serious injury, shall be punished with a term of imprisonment of 10 to 25 years.

2. Anyone who, in the context of an international armed conflict or a non-international armed conflict, commits the acts described in the preceding paragraph, but without perfidious intent, shall be punished with a term of imprisonment of 1 to 5 years.

Article 15

War crimes against property

1. Anyone who, in the context of an international armed conflict or a non-international armed conflict:

- (a) Appropriates, destroys or damages property on a large scale or of great value, in a manner not justified by military necessity or carried out unlawfully or wantonly;
- (b) Attacks destroys or damages buildings used for religious worship, education, the arts, science or charitable purposes, cultural or historical monuments, archaeological sites, hospitals and places where the sick and wounded are collected, provided they are not being used for military purposes;
- (c) Pillages a town or place, even when taken by assault;

shall be punished with a term of imprisonment of 5 to 15 years.

Article 16

War crimes against other rights

1. Anyone who, in the context of an international armed conflict or a non-international armed conflict, declares abolished, suspended or inadmissible in a court of law any rights and procedures of the nationals of the hostile party shall be punished with a term of imprisonment of 5 to 15 years.

SECTION III

Other crimes

Article 17

Incitement to war

Anyone who, publicly and repeatedly, incites hatred of a people with intent to unleash a war shall be punished with a term of imprisonment of 1 to 5 years.

Article 18

Recruitment of mercenaries

1. Anyone who recruits or attempts to recruit mercenaries:
 - (a) For military service on behalf of a foreign State;
 - (b) For any national or foreign armed organisation that plans to use violent means to overthrow the lawful government of another State or to undermine the independence, territorial integrity or the normal functioning of the institutions of that State;

shall be punished with a term of imprisonment of 1 to 5 years.

2. A mercenary is any person who is considered as such by virtue of international law.