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LITIGATION
& ARBITRATION

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New package of Criminal Legislation 2013

In 23th March 2013, Law nr 19/2013 (which amended the Portuguese Penal Code), Law nr 20/2013 (which amended the Portuguese Criminal Procedural Code) and Law nr 21/2013 (which amended the Portuguese Enforcement Penalties Code) entered into force making various changes to the aforementioned laws.

Below you may find some of the most relevant amendments introduced by such legislation.

Portuguese Penal Code:

- > The crime of theft by way of which the **operation of communications services or the supply of water, electricity, energy, heat, oil or gas** (e.g. theft of copper cables) are affected shall be punished with a more severe penalty and has become a public offence.
- > The new law intends to discourage the prosecution of "minor crimes". With such scope, **shoplifting cases** ([theft](#) of low valued-goods from a [retail](#) establishment) now depend on the constitution of the offended as assistant in the criminal procedure and also on private accusation, provided that the goods are immediately returned. However, if the crime is committed by groups (more than two people) this lower punishment will not apply.
- > The **limitation period** has also suffered relevant changes. For instance, after a condemnatory decision is issued, the limitation period shall be suspended during the appeal phase for 5 years (or 10 years, in case of exceptionally complex proceedings). In case of appeal to the Constitutional Court, the period of suspension may be extended to 10 years (or 20 years, in case of exceptionally complex proceedings).
- > **Prohibition of driving motor vehicles sanction** shall be applied to homicide or physical integrity offense when committed whilst driving a vehicle in violation of road traffic rules.
- > Wider protection to the victims of **domestic violence crime**: incrimination extended to the conducts against the person with whom the agent is or has been in a loving relationship.

New rules of Portuguese Penal Code shall only apply to facts committed after the date of its entry into force, except when otherwise results from the rule concerning the application of more favourable criminal law.

New rules of Portuguese Criminal Procedure Code shall be, in general, immediately applicable to pending proceedings, except when they may constitute a sensitive and avoidable damage to the procedural position of the defendant, namely a limitation to defence rights or an incoherence amongst further procedural acts.

New rules regarding the reading, during the trial, of the declarations made by the defendant in a previous phase of the proceedings, shall not apply to pending proceedings provided that the defendant had already been heard on the date of entry into force of these new rules.

Main amendments to **Portuguese Criminal Procedure Code**:

- > The defendant is now only required to answer truthfully about his identity and no longer regarding his criminal background
- > The judge may apply a more severe **preventive measure** than the one suggested by the Public Prosecutor in cases of risk of escape or risk of continuity of criminal activity or disturbance of public order
- > The defendant shall be informed, during his first inquiry before the Judge or the Public Prosecutor, that **his declarations may be used in further stages of the proceedings**, even if he is not present during the trial or decides to remain silent
- > The declarations made by the defendant before a Judge or Public Prosecutor during the investigation phase, when accompanied by a lawyer and made after the warning referred to in the previous point, may be read during the trial, even if the defendant does not request such reading and even if the defendant decides to remain silent
- > During the trial phase, **the judge shall be more restrictive in accepting evidence that could have been presented in a previous phase of the proceedings**
- > Relevant amendments were made to the **summary proceedings** – wider and faster proceedings but less protective of the defendants
 - > Every type of crime may be judged through summary proceedings (by a single judge), **regardless of the maximum penalty applicable**, provided that the defendants have been arrested in *flagrante delicto*, except in cases of highly organized crime, crimes against cultural or personal identity or personal integrity, crimes against State security and for Violations of International Humanitarian Law
 - > The defendant may request 15 days to prepare his defense and may indicate 7 witnesses to prove the facts invoked therein
 - > The trial shall begin within 48 hours or, in maximum, within 20 days after the arrest when the defendant has requested time to prepare his defense or the Public Prosecutor considers that there are essential demarches to be made to discover the truth
- > **The following decisions are no longer appealable:**
 - > acquittal decisions issued by the high court in the context of an appeal, even when revoking a first instance decision, except in cases where, in first instance, the defendant had been condemned to imprisonment for more than 5 years
 - > condemnation decisions issued by the high court that apply non-imprisonment penalties or imprisonment for less than 5 years, even in case of a contrary first instance decision
- > A unique **30 day-deadline to appeal** from any decision
- > **Avoidance of useless acts:** party against whom an appeal is submitted shall only be notified to reply to such appeal after a (preliminary) court decision accepting the said appeal

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