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CRIMINAL CODE

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ORGANIC ACT 10/1995, DATED 23RD NOVEMBER, ON THE CRIMINAL CODE

**JUAN CARLOS I
KING OF SPAIN**

To all those who may see and understand the presents:

Be it known: That the *Cortes* have approved and I have given My Royal Assent to the following Organic Act:

RECITAL OF MOTIVES

If the legal order has been defined as a set of rules that regulate the use of force, one may easily understand the importance of the Criminal Code in any civilised society. The Criminal Code defines criminal and misdemeanours that constitute the cases for application of the supreme action that may be taken by the coercive power of the State, that is, criminal sentencing. Thus, the Criminal Code holds a key place in the Law as a whole, to the extent that, not without reason, it has been considered a sort of «Negative Constitution». The Criminal Code must protect the basic values and principles of our social coexistence. When those values and principles change, it must also change. However, in our country, in spite of profound changes in the social, economic and political orders, the current text dates, as far as its basic core is concerned, from the last century. The need for it to be reformed is thus undeniable.

Based on the different attempts at reform carried out since the establishment of democracy, the Government has prepared a bill submitted for discussion and approval by the both Chambers. Thus, it must explain, even though briefly, the criteria on which it is based, even though these may easily be deduced from reading its text.

The axis of those criteria has been, as is logical, that of positive adaptation of the new Criminal Code to the constitutional values. The changes this bill introduces in that direction are innumerable, although it is worthwhile pointing out some of these.

Firstly, a full reform of the present penalties system, in order for it to achieve the aims of re-socialisation assigned to it by the Constitution. The system proposed partially simplifies regulation of custodial sentences, while extending the possibilities of these being replaced by others that affect less basic legal assets and, on the other, introduces changes in monetary penalties, adopting a day-fine system and adding community service work.

Secondly, the existing antinomy between the principle of minimum intervention and the growing needs for protection in an increasingly more complex society have been dealt with, with a cautious approach to new kinds of criminal offence, although, in turn, eliminating criminal offences that have become obsolete. In the first sense, it is worth pointing out the introduction of criminal offences against the social and economic order, or the new provisions on criminal offences concerning organisation of the territory and natural resources; secondly, the disappearance of the complex figures of robbery with violence and personal threat that, having arisen in the context of combating highway robbery, should disappear, leaving the way to apply the general rules.

Thirdly, special emphasis has been placed on protecting fundamental rights and an attempt has been made to design the punitive instrument with special care wherever the exercise of any of these is at stake: for example, on one hand, specific protection of moral integrity, and on the other, the new regulation of criminal offences against honour. On specifically protecting moral integrity, citizens are granted greater protection against torture, and by defining criminal offences against honour in the manner proposed, freedom of expression is granted the full relevance it may and must be recognised under a democratic regime.

Fourthly, and in keeping with the objective of protecting and respecting fundamental rights, the regime of privilege enjoyed up to present by unlawful interference by civil servants in the rights and liberties of the citizens has been eliminated. Thus, it is proposed that arrests, entering and searching dwellings carried out by authorities or officers outside the cases allowed by the Law be treated as aggravating forms of the relevant common criminal offences, and not as they have been up to present, that is, as special criminal offences that, incomprehensibly and unjustifiably, had been mitigated.

Fifthly, an attempt has been made to advance on the path of real and effective equality, attempting to fulfil the task in that sense that is imposed upon the public powers by the Constitution. Certainly, the Criminal Code is not the most important instrument to carry out such task. However, it may contribute to it by eliminating regulations that are an obstacle to its realisation, or by introducing protective measures to deal with discriminatory situations. In addition to the regulations that grant specific protection against activities that tend toward discrimination, here one must mention the new regulation of criminal offences against sexual freedom. This is aimed at adapting the criminal offences classified to the legal asset protected, which is no longer, as it was historically, a woman's honour, but rather the sexual freedom of all. Protection of a woman's honour hid an intolerable discriminatory situation, which the new laws aim to totally eliminate. The novelty of the punitive techniques used may be surprising, but, in this case, moving away from tradition appears to be the correct thing to do.

Leaving the scope of principles and considering that of preparation techniques, this bill differs from the previous ones in its claim to be universal. The idea formally was that the Criminal Code had to include a complete regulation of the punitive power of the State. The starting point of this idea was already wrong, considering the importance of

the powers of penalisation of the Administration in our country; what is more it was both unnecessary and unsettling.

It was unnecessary because the 19th Century option in favour of the Criminal Code and against special laws was based on the undeniable fact that the legislator, in preparing a Code, was constrained, due to external reasons of a social nature, to respect the constitutional principles, something that did not happen, or that happened to a lesser extent, in the case of a special laws. Within the framework of a flexible constitutionalism, this was an especially important argument as the basis to claim an absolutely universal nature of the Code. Nowadays, however, both the Criminal Code as well as the special laws are hierarchically subordinate to the Constitution and submitted thereto, not only due to that hierarchy, but also due to the existence of a jurisdictional control over the constitutionality thereof.

Thus, special laws need not give rise to the caution they historically invoked.

Unsettling because, although it is undeniable that a Code would not deserve that name if it did not contain the majority of the criminal provisions and, of course, the basic principles on which all such provisions are to be based, the fact is that there are matters that it would be difficult to include therein. Now, while a claim to universality is inherent to the idea of a Code, stability and permanence are also goals that befit it, and there are scopes in which, due to the special situation of the rest of the legal order, or the very nature of things, such stability and permanence are impossible. Such is, for example, the case of criminal offences related to exchange controls. In these, the constant changes in the financial conditions and in the legislative context surrounding such criminal offences, makes it advisable, whether one wishes or not, to place the criminal provisions within that setting and to leave them out of the Code. In addition, this is our tradition and there is no lack, in the countries around us, of examples characterised by a similar way of acting.

Thus, in that and other similar cases, it has been decided to refer the criminal regulation of the respective matters to the relevant special laws in their field. The same technique has been applied to the provisions on decriminalisation of abortion. In this case, along with similar reasons to those stated above, one might argue that these are not incriminating laws, but rather laws that regulate cases of non-incrimination. The Constitutional Court of Law has demanded that, in configuring those cases, guarantees be provided that do not seem those of a Criminal Code, but rather those of another kind of regulation.

While preparing the Bill, the parliamentary discussions of 1992, the report by the General Council of the Judiciary, the state of the case law and scientific opinion have been kept very much in mind. It has been carried out based on the deep-rooted idea that the Criminal Code should belong to all and that, thus, all opinions must be heard and the solutions that appear most reasonable adopted, that is, those that everybody should be able to accept.

There is no pretence that this is a perfect work, but rather, simply a useful piece of work. The Government does not have the last word here, but rather only the first. Thus, via this Bill it only expresses its opinion, inviting all political forces and all citizens to

collaborate in the task of perfecting it. Only if we all wish to have a better Criminal Code and contribute to achieve this, may an objective whose importance for coexistence and peaceful enjoyment of the rights and liberties the Constitution proclaims, one it is difficult to exaggerate, be attained.

PRELIMINARY TITLE

On penal guarantees and on the application of the Criminal Law

Article 1

1. No deed or omission that is not defined as a criminal offence by Law prior to it being committed shall be punishable.
2. Security measures may only be applied if the cases previously established by the Law concur.

Article 2

1. No criminal offence shall be punishable by a punishment that is not foreseen by Law prior to it being committed. Likewise, the Laws establishing security measures shall not have retroactive effect.
2. Notwithstanding this, criminal laws that favour the person found guilty shall have retroactive effect, even though final judgement may have been handed down and the convict is serving a prison sentence at the time of them coming into force. If doubt arises in determining the most favourable law, the prisoner shall be heard. However, criminal offences committed while a temporary Law is in force shall be judged pursuant thereto, except for express provisions to the contrary.

Article 3

1. No punishment or security measure may be enforced except by virtue of a final judgement handed down by the competent Judge or Court of Law, pursuant to the procedural laws.
2. Nor may any punishment or security measure be enforced in any way other than that prescribed by the Law and the implementing regulations or with other circumstances or particulars than those stated in its text. Enforcement of a sentence or security measure shall be carried out under control by the competent Judges and Courts of Law.

Article 4

1. Criminal Law shall not apply to cases other than those specifically included therein.
2. Should a Judge or Court of Law, in exercise of the jurisdiction thereof, have knowledge of any deed or omission that, without being punishable by law, may be deemed worthy of repression, the Judge or Court shall abstain from all pronouncements thereon and shall submit the reasons why the matter should be subject to criminal penalisation to the Government.
3. The Judge or Court of Law shall likewise resort to the Government, stating whatever deemed appropriate concerning repeal or amendment of the provision, or requesting the exercise of the royal prerogative of mercy, without prejudice to the immediate serving of the sentence, when the rigorous application of the provisions of the Law requires punishment of a deed or omission that, in the opinion of the Judge or Court of Law, should not be the case, or if the punishment is notably excessive, in view of the harm caused by the criminal offence and the personal circumstances of the person found guilty.

4. Should there be a petition for the royal pardon and the Judge or Court of Law has noted in a duly grounded resolution that fulfilment of the sentence might have caused a right to a process without undue delay to have been infringed, the serving thereof shall be suspended until the petition filed is resolved.

The Judge or Court of Law may also suspend serving of the sentence until resolution of the petition for the royal pardon when, if the sentence were to be executed, the royal pardon would be ineffective even if granted.

Article 5

No punishment whatsoever shall be imposed in the absence of either mens rea or negligence.

Article 6

1. Security measures shall be based on the criminal risk of the subject on whom they are imposed involves, exteriorised by committing a deed defined as a criminal offence.

2. Security measures may not be more onerous, nor last longer than the punishment abstractly applicable to the deed committed, nor exceed the limit necessary to prevent the offender being dangerous.

Article 7

In order to determine the Criminal Law applicable thereto, criminal offences shall be deemed to have been committed at the moment when the subject perpetrates the deed, or omits the deed he was obliged to carry out.

Article 8

Acts liable to be defined pursuant to two or more provisions of this Code and not included in Articles 73 to 77 shall be punishable by observing the following rules:

1. A special provision shall have preferential application rather than a general one;
2. A subsidiary provision shall be applied only if the offender one is not, whether such a subsidiary nature is specifically declared or when it may tacitly be deduced.
3. The most ample or complex penal provision shall absorb those that punish criminal offences committed therein.
4. Failing the preceding criteria, the most serious criminal provision shall exclude those punishing the deed with a minor punishment.

Article 9

The provisions of this Title shall be applied to the criminal offences that are punishable by special laws. The remaining provisions of this Code shall be applied to supplement everything not specifically foreseen therein.

BOOK I
**GENERAL PROVISIONS ON CRIMINAL OFFENCES, THE PERSONS
RESPONSIBLE, THE PENALTIES, SECURITY MEASURES AND
OTHER CONSEQUENCES OF CRIMINAL VIOLATIONS**

TITLE I
On criminal violations

CHAPTER I
On criminal offences

Article 10

Criminal offences are intentional or negligent deeds or omissions punishable by Law.

Article 11

Criminal offences that consist of production of a result shall only be construed to be committed by omission when not avoiding the result thereof, by infringing a special legal duty of the offender, is equivalent, pursuant to the sense of the wording of the Law, to its causation. To such end, a deed shall be equivalent to an omission:

- a) If there is a specific legal or contractual obligation to act;
- b) If the party omitting has created an occasion of for risk to the right protected by law, by means of a preceding deed or omission.

Article 12

Negligent deeds or omissions shall only be punished if specifically provided by the Law.

Article 13

1. Serious criminal offences are criminal offences that the Law punishes with serious penalties.

2. Less serious criminal offences are criminal offences that the Law punishes with less serious penalties.

3. Petty criminal offences are those the Law punishes with minor penalties.

4. When the punishment, due to its scope, may be included simultaneously among those mentioned in the first two Sections of this Article, the criminal offence shall be deemed as a serious criminal offence in all cases. When the punishment, due to its scope, may be deemed as petty and as less serious, the criminal offence shall be deemed as a petty criminal offence in all cases.



Article 14

1. An essential error related to the deed constituting the criminal offence shall preclude criminal accountability. If the error, considering the circumstances of the case and the personal ones of the offender, could have been overcome, the criminal offence shall be punishable, in that event, due to negligence.
2. Error as to a fact that classifies the criminal offence, or regarding an aggravating circumstance, shall prevent its appreciation.
3. An essential error concerning the unlawfulness of the fact constituting the criminal offences precludes criminal accountability. Should it have been possible to overcome the error, the punishment lower by one or two degrees shall be applied.

Article 15

Both a consummated criminal offence and an attempted criminal offence are punishable.

Article 16

1. An attempted criminal offence takes place when a person begins to perpetrate a criminal offence by direct deed, perpetrating all or part of the deeds that objectively should produce the intended result, and notwithstanding this, such is not attained due to causes beyond the control of the offender.
2. Whoever voluntarily avoids the criminal offence being consummated, either by going no further with its commission when already commenced, or by preventing the result from taking place, shall be exempt from criminal accountability, without prejudice to the accountability he may have incurred for the deeds perpetrated, should these already have constituted another criminal offence.
3. When various persons intervene in a deed, the one or those who desist from execution thereof once already commenced, and who prevent or attempt to prevent consummation, in a serious, firm and determined manner, shall be exempt from criminal accountability, without prejudice to accountability they may have incurred for the deeds perpetrated, should these already have constituted another criminal offence.

Article 17

1. A conspiracy exists when one or more persons collude to commit a criminal offence and decide to carry it out.
2. A proposition exists when he who has resolved to commit a criminal offence invites another or other persons to commit it.
3. Conspiracy and solicitation to perpetrate a criminal offence shall only be punishable in the cases specifically foreseen in the Law.

Article 18

1. Provocation exists when a direct incitation is present by means of the printing press, radio broadcasting or any other means with a similar effectiveness, affording publicity, or when persons have gathered, inciting the perpetration of a criminal offence.

Conniving at a criminal deed by expressing approval thereof, for the purposes of this Code, is presentation, before an assembly of persons, or by any means of diffusion, of ideas or doctrines that defend the criminal offence or praise the offender. Connivance at a criminal deed by expressing approval thereof shall only be criminal as a form of provocation and if, due to its nature and circumstances, it constitutes a direct incitement to commit a criminal offence.

2. Provocation shall be punished exclusively in cases in which the Law foresees this.

If the provocation has been followed by perpetration of the criminal offence, it shall be punished as induction.

CHAPTER II

On the causes of exclusion from criminal accountability

Article 19

Those under the age of eighteen years shall not be criminally liable pursuant to this Code. When a minor under that age commits a criminal offence, he shall be held liable pursuant to the terms set forth in the law regulating the criminal accountability of minors.

Article 20

The following persons shall not be criminally liable:

1. Those who, at the time of committing a criminal offence, due to any mental anomaly or alteration, cannot comprehend the unlawful nature of the deed, or to act in line with that comprehension.

A transitory mental disorder shall not cause exoneration from the punishment when provoked by the subject in order to commit the criminal offence, or when he would or should have foreseen that it would be committed.

2. Whoever, at the time of committing a criminal offence, is in a state of absolute intoxication due to consumption of alcoholic beverages, toxic and narcotic drugs, psychotropic substances or others that cause similar effects, as long as such state have not been sought for the purpose of committing it, or when he would or should have foreseen that it would be committed, or when under the influence of a withdrawal syndrome, due to his dependence on such substances, that prevents him from comprehending the unlawfulness of the deed, or acting in keeping with such comprehension.

3. Whoever, due to suffering alterations in perception from the time of birth, or from childhood, has a seriously altered his awareness of reality.

4. Whoever is acting in defence of his person or his own rights or those of others, as long as the following requisites are fulfilled:

One. Unlawful aggression. In the case of defence of goods, unlawful aggression shall be deemed as an attack on these that constitutes a criminal offence and that places them in serious danger of deterioration or imminent loss. In the case of defence of the



dwelling or its annexes, trespassing the former or latter shall be deemed unlawful aggression.

Two. Rational need for the means employed to prevent or repel it.

Three. Lack of sufficient provocation on the part of the defending person.

5. Whoever, in a state of necessity, in order to avoid damage to himself or others, causes damage to another's legally protected interest or fails to perpetrate a duty, as long as the following requisites concur:

One. The damage caused is not greater than the damage sought to be prevented;

Two. That the situation of necessity has not been intentionally provoked by the subject;

Three. That the person in need is not bound, due to his office or occupation, the obligation to sacrifice himself.

6. Whoever acts driven by insurmountable fear.

7. Any person who acts in carrying out of a duty or in the lawful exercise of a right, authority or office.

In the cases of the first three Sections, the security measures foreseen in this Code shall be applied.

CHAPTER III

On the circumstances that mitigate criminal accountability

Article 21

The following are mitigating circumstances:

1. The causes stated in the preceding Chapter, when not all the necessary requisites to exclude accountability in the respective cases concur.

2. The convict acting due to his serious addiction to the substances mentioned in Section 2 of the preceding Article.

3. The convict acting due to causes or stimuli so overpowering that they produced fury, obstinacy or another similar state of mind.

4. The convict having proceeded to confess his criminal offence to the authorities before having knowledge of the judicial proceedings brought against him.

5. The convict having compensated the victim for the damages caused or having lessened the effects thereof, at some phase of the procedure and prior to the trial taking place.

6. Extraordinary or undue drawing out of the formalities of the proceedings, as long as this is not due to the convict, such prolongation being disproportionate to the complexity of the cause.

7. Any other circumstance of a similar importance to the aforesaid.



CHAPTER IV

On the circumstances that aggravate criminal accountability

Article 22

The following are aggravating circumstances:

1. Perpetrating the deed with premeditation.

There is premeditation when the convict commits any of the criminal offences against persons using means or ways to do so that tend directly or specially to assure them, without risk to his person that might arise from defence by the victim.

2. Perpetrating the deed using a disguise, abuse of superiority, or taking advantage of the circumstances of the place, time or aid from other persons that weaken the defence of the victim or facilitate impunity of the convict.

3. Perpetrating the deed for a price, reward or promise.

4. Committing the criminal offence for racist or anti-Semitic reasons, or another kind of discrimination related to ideology, religion or belief of the victim, ethnicity, race or nation to which he belongs, his gender, sexual orientation or identity, reasons related to gender, illness suffered or disability.

5. To deliberately and inhumanely increase victim's suffering, causing unnecessary suffering while committing the criminal offence.

6. Acting with abuse of confidence.

7. When the convict avails himself of his public status.

8. Recidivism.

There is recidivism when, on committing the criminal offence, the convict has been sentenced by final judgement for a criminal offence under the same category in this Code, as long as it is of the same nature.

For the purposes of this Section, a cancelled criminal record or one that should be cancelled shall not be counted nor those referring to petty offences.

Final judgments of judges or courts of law handed down in other European Union countries shall produce the effects of recidivism unless the criminal record has been cancelled or could be cancelled pursuant to Spanish Law.

CHAPTER V

On the mixed circumstance of kinship

Article 23

A circumstance that may mitigate or aggravate accountability, according to the nature, motives and effects of the criminal offence, is when the victim is or has been the spouse or person with whom the convict has had a stable emotional relationship, or being an ascendant, descendant or biological or adoptive sibling of the offender or spouse or cohabitating partner thereof.



CHAPTER VI General provisions

Article 24

1. For criminal purposes, status of authority shall be deemed to be held by persons who, alone, or as a member of any corporation, board or collegiate body, have a commanding post or exercise jurisdiction pertaining thereto. In all cases, members of the Congress of Deputies, of the Senate, of the Legislative Assemblies of the Autonomous Communities and the European Parliament shall be deemed authorities. The officers of the Public Prosecutor's Office shall also be deemed authorities.

2. Civil servant status shall also be deemed to be held by all those who, by immediate provision of the Law, or by election or appointment by an authority with relevant powers, participate in the exercise of public duties.

Article 25

For the purposes of this Code, a disability is construed as being a situation in which an individual with physical, mental, intellectual or sensorial deficiencies of a permanent nature finds himself that, on interacting with several barriers, may limit or impede his full and active participation in society, on equal terms with the rest.

Likewise, for the purposes of this Code, a disabled person in need of special protection shall be construed as a disabled person who, whether or not his capacity to act has been modified judicially, requires assistance or support in order to exercise his legal capacity and to adopt decisions with reference to his person, rights or interests due to intellectual or mental deficiencies of a permanent nature.

Article 26

For the purposes of this Code, a document shall be deemed any material medium that expresses or includes data, facts or narrations that are effective as evidence, or of any other kind of legal importance.

TITLE II

On persons criminally responsible for criminal offences

Article 27

Those criminally responsible for criminal offences are the offenders and their accessories.

Article 28

Offenders are those who perpetrate the deed themselves, alone, jointly, or by means of another used to aid and abet.

The following shall also be deemed offenders:

- a) Whoever directly induces another or others to commit a criminal offence;
- b) Whoever co-operates in the commission thereof by a deed without which a criminal offence could not have been committed.

Article 29

Accessories are those who, not being included in the preceding Article, co-operate in the perpetration of the criminal offence with prior or simultaneous deeds.

Article 30

1. In criminal offences that are committed using media or supports of mechanical diffusion, neither the accessories, nor those who have personally or actually favoured these shall be held criminally liable.

2. The offenders to which Article 28 refers shall be held liable in a progressive, excluding and subsidiary manner, in the following order:

1. Those who materially drafted the text or produced the sign concerned, and those who induced others to perpetrate the deed;
2. The directors of the publication or programme in which it is disseminated;

3. The directors of the printing, broadcasting or distribution company;

4. The directors of the recording, playing or printing company;

5. When, for any reason other than extinction of criminal accountability, or for declaration of contempt of court or not residing in Spain, any of the persons included in any of the Sub-Paragraphs of the preceding Section may be prosecuted, proceedings shall be taken against those mentioned in the Sub-Section immediately following.

Article 31

Whoever acts as *de facto* or *de jure* administrator of a legal person, or on behalf or in legal or voluntary representation of another, shall be held personally liable, even though he does not fulfil the conditions, qualities or relationship that the relevant definition of criminal offence requires to be an active subject thereof, if such circumstances concur in the entity or person in whose name or on behalf of whom he so acts.

**Article 31 bis**

1. In the cases foreseen in this Code, legal persons shall be held criminally liable for:
 - a) The criminal offences committed in their name or on their behalf, and to their direct or indirect benefit, by its legal representatives or those that acting either individually or as members of a body of the legal person authorised to take decisions in the name of the legal person or that possess organisation and control powers over such legal person.
 - b) Legal persons shall be criminally liable for the criminal offences committed when carrying out their corporate activities and on their account and to their direct or indirect benefit, by those who, being subject to the authority of the natural persons mentioned in the preceding Paragraph, were able to perpetrate the deeds because the duties of supervision, surveillance and control of their activities were gravely breached by the natural persons mentioned in the preceding Paragraph, in view of the specific circumstances of the case.
2. If the criminal offence were perpetrated by the persons indicated in Paragraph a) of the previous Section, the legal person shall be exempt from liability if the following conditions are fulfilled:
 1. The management body has adopted and effectively implemented, before the perpetration of the criminal offence, organisational and management models that include measures of surveillance and control appropriate to prevent criminal offences of that same nature or to significantly reduce the risk of perpetration thereof.
 2. The supervision of the functioning of and of compliance with the prevention model implemented has been entrusted to a body of the legal person with self-governing powers of initiative and control or has been entrusted legally with the function of supervising the effectiveness of the legal person's internal controls.
 3. The individual offenders have perpetrated the criminal offence fraudulently eluding the organisational and prevention models; and
 - 4.- An omission or insufficient exercise of the function of supervision, surveillance and control on the part of the body to which the second condition refers has not occurred.

In those cases, in which only partial evidence of compliance with the preceding circumstances is available, this shall be considered to reduce the penalty.

 3. In the case of a legal person of small size, the functions of supervision to which the second condition of Section 2 refers may be taken on directly by the management body. For these purposes, legal persons of small size shall be deemed those that, pursuant to the applicable legislation, are authorised to submit an abbreviated profit and loss statement.
 4. If the criminal offence were perpetrated by the persons indicated in Sub-Paragraph b) of Section 1, the legal person shall be exempt from liability if, before the perpetration of the criminal offence, it has adopted and effectively implemented

an organisational and management model adequate to prevent criminal offences of the nature of the one perpetrated or to reduce in a significant way the risk of the perpetration thereof.

In these cases, the attenuation foreseen in the second Paragraph of Section of this Article shall also be applicable.

5. The organisational and management model to which the First condition of Section 2 and the previous Section refer shall comply with the following requirements:

- 1.st Identifying the spheres of activities where the criminal offences to be prevented may be perpetrated;
- 2.nd Establishing the protocols or procedures detailing the procedure for determining the will of the legal person, the adoption of decisions and the implementation thereof in relation to such protocols or procedures;
- 3.rd Possessing management models for financial assets adequate to prevent the perpetration of the criminal offences that are to be prevented;
- 4.th Imposing the obligation of notifying of possible risks and cases of non-compliance to the body entrusted with the surveillance of the functioning of and compliance with the prevention model;
- 5.th Establishing a disciplinary regime to adequately punish not complying with the measures established in the model;
- 6.th Carrying out a periodic audits of the model and, eventually, the amendment thereof whenever material violations of its provisions occur or when changes in the organisation, control structure or the activity carried occur making this necessary.

Article 31 *ter*

1. The criminal liability of legal persons shall be applicable whenever there is record of a criminal offence being committed by a person who holds office or carries out the duties referred to in the preceding Article, even if the specific natural person responsible has not been individually identified, or it has not been possible to prosecute that person. When fines are handed down to both as a consequence of these deeds, the Judges or Courts of Law shall modulate the respective amounts, so the resulting sum is not disproportionate in relation to the seriousness of such deeds.

2. Concurrence, in the persons who have materially perpetrated the deeds or those who have made these possible due to not having exercised due control, of circumstances that affect the culpability of the accused or aggravate his responsibility, or the fact that those persons have died or have escaped the action of justice, shall not exclude or modify the criminal liability of legal persons, without prejudice to what is set forth in the following Article.

Article 31 *quarter*

Circumstances that mitigate criminal liability of a legal person may only be deemed to concur when, after the criminal offence is perpetrated, the legal persons carries out the following activities through its legal representatives:



- a) Having proceeded, prior to having knowledge of judicial proceedings being brought against it, to confess the criminal offences to the authorities;
- b) Having collaborated in the investigation of the deeds, providing evidence, at any moment of the proceedings, that is new and decisive to clarify the criminal liabilities arising from the deeds;
- c) Having proceeded at any time during the proceedings, and prior to the trial itself, to repair or decrease the damage caused by the criminal offence;
- d) Having established, prior to the trial itself, measures that are effective to prevent and discover criminal offences that might be committed in the future using the means or under the coverage of the legal person.

Article 31 *quinquies*

1. The provisions related to criminal liability of legal persons shall not be applicable to the State, to the territorial and institutional Public Administrations, to the Regulatory Bodies, to Public Agencies and Corporate Entities, to international organisations under Public Law, or to others that exercise public powers of sovereignty or administration.

2. In the case of State Mercantile Companies that implement public policies or provide services of general economic interest, only the penalties foreseen in Sub-Paragraphs a) and g) of Section 7 of Article 33 may be imposed. This limitation shall not be applicable when the Judge or Court considers that the legal form was established by the promoters, founders, managers or representatives thereof with the aim of eluding a possible criminal liability.



TITLE III

On punishments

CHAPTER I

On punishments, types and effects thereof

SUBCHAPTER 1. On punishments and types thereof

Article 32

Penalties that may be imposed pursuant to this Code, either under main or accessory terms, include deprivation of freedom, of other rights and fines.

Article 33

1. Punishments shall be classified as serious, less serious and minor pursuant to the nature and duration thereof.

2. Severe penalties include:

- a) Permanent, revisable imprisonment,
- b) Imprisonment exceeding five years;
- c) Absolute barring;
- d) Special barring for a term exceeding five years;
- e) Suspension from public employment and office for a term exceeding five years;
- f) Deprivation of the right to drive motor vehicles and mopeds for a term exceeding eight years;
- g) Deprivation of the right to possess and carry weapons for a term exceeding eight years;
- h) Deprivation of the right to reside in specific places or to visit them, for a term exceeding five years;
- i) Prohibition to approach the victim or his relatives or other persons determined by the Judge or Court of Law, for a term exceeding five years;
- j) Prohibition to communicate with the victim or his relatives or other persons determined by the Judge or Court of Law, for a term exceeding five years;
- h) Deprivation of parental rights.

3. Less serious penalties include:

- a) Imprisonment from three months to five years;
- b) Special barring up to five years;
- c) Suspension from public employment and office up to five years;
- d) Deprivation of the right to drive motor vehicles and mopeds from a year and a day to eight years;
- e) Deprivation of right to possess and carry weapons from a year and a day to eight years;



- f) Special barring from the exercise of a profession, job or a trade related to animal or to possess animals from one year and one day to five years;
- g) Deprivation of right to reside in specific places or to visit them, for a term of six months to five years;
- h) Prohibition to approach the victim or those of his relatives or other persons determined by the Judge or Court of Law, for a term of six months to five years;
- i) Prohibition to communicate with the victim or with those of his relatives or other persons determined by the Judge or Court of Law, for a term of six months to five years;
- j) Fine of more than three months;
- k) The proportional fine, whatever its amount, except as provided in Section 7 of this Article.
- l) Community service, from thirty-one days to one year.

4. Minor penalties include:

- a) Deprivation of the right to drive motor vehicles and mopeds from three months to a year;
- b) Deprivation of right to possess and carry weapons from three months to a year;
- c) Deprivation of right to reside in specific places or to visit them, for a term under six months;
- d) Prohibition to approach the victim or his relatives or other persons determined the Judge or Court of Law, for a term of one month to less than six months;
- e) Prohibition to communicate with the victim or with his relatives or other persons determined by the Judge or Court of Law, for a term of one month to less than six months;
- f) A fine of up to three months;
- g) Permanent traceability from one day to three months;
- h) Community service, from one to thirty days.

5. Personal subsidiary liability for failure to pay the fine shall have a more or less serious nature, according to the punishment it substitutes.

6. Accessory penalties shall have the respective duration of the main punishment, except if specifically provided otherwise in other provisions of this Code.

7. Penalties applicable to legal persons, that are all deemed serious, are as follows:

- a) Fine by quotas or proportional;
- b) Dissolution of the legal person. The dissolution shall cause definitive loss of its legal personality, as well as of its capacity to act in any way in legal transactions, or to carry out any kind of activity, even if lawful.
- c) Suspension of its activities for a term that may exceed five years;
- d) Closure of its premises and establishments for a term that may not exceed five years;

- e) Prohibition to carry out the activities through which it has committed, favoured or concealed the criminal offence in the future. Such prohibition may be temporary or definitive. If temporary, the term may not exceed fifteen years;
- f) Barring from obtaining public subsidies and aid, to enter into contracts with the public sector and to enjoy tax or Social Security benefits and incentives, for a term that may not exceed fifteen years;
- g) Judicial intervention to safeguard the rights of the workers or creditors for the time deemed necessary, which may not exceed five years.

The intervention may affect the whole of the organisation or be limited to some of its premises, sections or business units. The Judge or Court of Law shall determine exactly the content of the intervention and shall determine who shall take charge of the intervention and within which regularity monitoring reports must be submitted to the judicial body, in the sentence, or subsequently by ruling. The intervention may be amended or suspended at any times, following a report by the receiver and the Public Prosecutor. The receiver shall be entitled to access all the installations and premises of the company or legal person and to receive as much information as he may deem necessary to exercise his duties. The implementing regulations shall determine the aspects related to the exercise of the duties of the receiver, as well as his remuneration or necessary qualifications.

Temporary closure of premises or establishments, suspension of corporate activities and judicial intervention may also be agreed by the Investigating Judge as a precautionary measure during investigation of the case.

Article 34

The following shall not be deemed penalties:

1. Preventive detention and custody and other precautionary measures of a penal nature;
2. Fines and other correctives imposed on subordinates or those administered in use of governmental or disciplinary attributions;
3. Deprivation of rights and reparatory penalties established in the civil or administrative laws.

SUBCHAPTER 2. ON PUNISHMENTS DEPRIVING OF FREEDOM

Article 35

Sentences depriving of freedom shall be deemed to include permanent, revisable imprisonment, imprisonment, permanent traceability and personal, subsidiary accountability for failure to pay fines. The serving thereof, as well as the prison benefits entailing the shortening of the sentence, shall comply with the provisions of the laws and of this Code.

Article 36

1. The penalty of permanent, revisable imprisonment shall be revised pursuant to the provisions of Article 92.



The classification of the convict in the pre-release prison treatment must be authorised by the Court in view of an individualised and favourable assessment as to his social reintegration, having heard the Public Prosecutor and the Prison Service, and may not be granted:

- a) Until twenty years of effective imprisonment have been served, if the convict has been found guilty of one of the criminal offences defined in Chapter VII of Title XXII of Book II of this Code;
- b) Until fifteen years of effective imprisonment have been served, in the remaining cases.

In these cases, the convict may not enjoy exit permits until a minimum of twelve years' imprisonment, in the case foreseen in Sub-Paragraph a), and eight years' imprisonment, in the case foreseen in Sub-Paragraph b).

2. Imprisonment shall have a minimum duration of three months and a maximum of twenty years, apart from the exceptional terms provided in other provisions of this Code.

When the term of the prison sentence handed down exceeds five years, the Judge or Court of Law may order that classification of the prisoner in pre-release prison treatment not to take place until half of the sentence handed down has been served.

In any event, when the term of the prison sentence handed down exceeds five years and it is for a criminal offence of those listed below, classification of the convict in pre-release prison treatment may not take place until half the sentence has been served:

- a) A criminal offence related to terrorist organisations and groups and criminal offences of terrorism under Chapter VII of Title XXII of Book II of this Code;
- b) A criminal offence committed within a criminal organisation or group;
- c) A criminal offence under Article 183;
- d) A criminal offence under Chapter V of Title VIII of Book II of this Code, when the victim is under thirteen years old.

The Parole Board Judge, following an individual assessment that favours social reintegration, and evaluating the personal circumstances of the convict and evolution of the re-education treatment, as appropriate, may issue a reasoned ruling, having heard the Public Prosecutor, the Directorate-General for Prisons and the other parties, to apply the general regime of serving sentences, except in the cases set forth in the preceding Paragraph.

3. In any event, the Court of Law or the Parole Board Judge, as appropriate, may resolve, having heard the Public Prosecutor, the Directorate-General for Prisons and the other parties, progression to pre-release prison treatment for humanitarian and human dignity reasons in the case of convicts who are gravely ill with incurable illnesses and in the case of convicts in their seventies taking into account in particular the scarce dangerousness thereof.

Article 37

1. Permanent traceability shall last up to six months. Its serving binds the convict to remain under house arrest, or at a specific place set by the Judge in the sentence, or subsequently in a reasoned ruling.

However, in cases in which permanent traceability is foreseen as the main punishment, due to repetition of the criminal offence committed, and whenever specifically provided by the applicable specific provision, the Judge may order in the sentence that the punishment of permanent traceability be served on Saturdays, Sundays and holidays, at the prison nearest to the convict's dwelling.

2. On application by the convict, and if the circumstances make this advisable, having heard the Public Prosecutor, the Judge or Court of Law sentencing may resolve that the sentence be served on Saturdays and Sundays, or non-continuously.

3. Should the convict fail to serve the sentence; the Judge or Court of Law sentencing shall draw up an attestation to proceed against him pursuant to the terms set forth in Article 468.

4. In order to guarantee effective serving, the Judge or Court of Law may order use of mechanical or electronic resources to allow the convict to be located.

Article 38

1. The duration of sentences shall begin to be counted from the day on which the sentence finding guilty is final, if the convict is already in prison.

2. When the convict is not in prison, the duration of the sentence shall begin to be counted from him being admitted to the appropriate establishment where it is to be served.

SUBCHAPTER 3. On penalties of deprivation of rights**Article 39**

The following are penalties of deprivation of rights:

- a) Absolute barring;
- b) Those of special barring from public employment and office, profession, trade, industry or commerce, or other activities determined in this Code, or of parental rights, those of fostership, guardianship or care, right to passive suffrage or any other right;
- c) Suspension from public employment and office;
- d) Deprivation of right to drive motor vehicles and mopeds;
- e) Deprivation of right to possess and carry weapons;
- f) Deprivation of right to reside in specific places or to visit them;
- g) Prohibition to approach the victim or of his relatives or other persons determined by the Judge or Court of Law;
- h) Prohibition to communicate with the victim or his relatives or other persons determined by the Judge or Court of Law.



- i) Community service;
- j) Deprivation of parental rights

Article 40

1. The punishment of absolute barring shall have a term of six to twenty years; those of special barring, from three months to twenty years, and that of suspension from public employment and office, from three months to six years.

2. The punishment of deprivation of the right to drive motor vehicles and mopeds, and that of deprivation of the right to own and carry weapons, shall have a term from three months to ten years.

3. The punishment of deprivation of the right to reside in specific places or to visit them shall have a term of up to ten years. Prohibition to approach the victim or his relatives or other persons, or to communicate with them, shall have a term from one month to ten years.

4. The punishment of community service shall have a term of one day to a year.

5. The term of each one of these penalties shall be that foreseen in the preceding Sections, apart from where exceptionally provided by other provisions of this Code.

Article 41

The punishment of absolute barring leads to definitive deprivation of all honours, public employment and posts the convict has, including those to which he has been elected. It also causes incapacity to obtain these or any other honours, posts or public employment, and to be elected to public office, during the term of the sentence.

Article 42

The punishment of special barring from public employment and office causes definitive deprivation of the employment or office it befalls, even if elected thereto, and of the honours related thereto.

It also causes incapacity to obtain the same or others of the same kind during the term of the sentence. The sentence must specify the employment, posts and honours the barring affects.

Article 43

Suspension from public employment and office shall cause the convict to be deprived of exercise thereof during the whole term of the sentence.

Article 44

Special barring from the right of passive suffrage deprives the convict, during the term of the sentence, of the right to be elected to public office.

Article 45

Special barring from a profession, trade, industry or commerce, or any other right, that must be duly reasoned and specified in the sentence, deprives the convict of the right to exercise these during the term of the sentence.

Article 46

Special barring from exercise of parental rights, guardianship, care, safekeeping or fostership, deprives the convict the rights inherent to the former, and brings about extinction of the others, as well as incapacity to obtain appointment to such offices during the term of the sentence. The punishment of deprivation of parental rights implies the loss of entitlement thereof, while the rights the offspring has with regard to the convict shall subsist. The Judge or Court of Law may order these penalties regarding all or some of the minors or persons requiring special protection under the charge of the convict, in view of the circumstances of the case.

For the purposes of this Article, parental rights include those regulated by the Civil Code, even if prorogued, as well as similar institutions foreseen in the civil legislation of the Autonomous Communities.

Article 47

Handing down a punishment of deprivation of the right to drive motor vehicles and mopeds shall bar the convict from exercising both rights for the term set in the judgement. Handing down a punishment of deprivation of the right to own and carry weapons shall bar the convict from exercising that right for the term set in the judgement.

When the punishment imposed is for a term exceeding two years, it shall involve loss of the currency of the permit or licence that enables the person to drive, or to hold and carry, respectively.

Article 48

1. Deprivation of right to reside in specific places or to visit them shall prevent the convict from residing in or going to the place where he has committed the criminal offence, or that where the victim or his family lives, if different. In the event an intellectual disability or a disability originating from a mental disorder has been declared, each specific case shall be analysed in order to decide bearing in mind the legal rights to be protected and the overriding interest of the disabled person who, in the event, must have available the resources of support and of accompaniment necessary to comply with the decision.

2. Prohibition to approach the victim, or his relatives or other persons determined by the Judge or Court of Law, shall prevent the convict from approaching them, wherever they may be, as well as approaching their dwelling, their places of work, and any other place regularly visited by them, with suspension of visitation, communication and overnight stay rights with regard to offspring that, if appropriate, might have been recognised by a civil judgement, until total fulfilment of the sentence concerned.

3. Prohibition to communicate with the victim, or with his relatives or other persons determined by the Judge or Court of Law, shall prevent the convict from establishing contact with them by any means of communication computer, telematic, written, verbal or visual means.

4. The Judge or Court of Law may resolve that control of these measures be exercised through the electronic means so permitting.



Article 49

Community service, which may not be imposed without the consent of the convict, shall oblige him to provide his non-remunerated co-operation in specific activities of public utility, that may consist, in relation to criminal offences of a similar nature to that committed by the convict, of tasks to repair the damage caused, or support or assistance for victims, as well as participation by the convict in workshops or training or re-education programmes on labour, cultural, traffic education, sexual and other similar matters. The daily duration may not exceed eight hours and its conditions shall be as follows:

1. Its serving shall be conducted under control by the Parole Board Judge, who shall require reports to be prepared for that purpose, on carrying out of work for the Administration, public entity or association of general interest for which the services are provided.
2. It shall not be against the dignity of the convict.
3. The social services tasks shall be provided by the Administration, which may enter into the appropriate arrangements for such purposes.
4. It shall enjoy the protection convicts are afforded by the prison laws on Social Security matters.
5. It shall not be subject to attainment of economic interests.
6. Once the prison social services have carried out the necessary verifications, they shall notify the Prison Parole Board Judge of the relevant incidents in serving of the punishment and, in all cases, if the convict:
 - a) Is absent from the work for at least two working days, as long as it involves voluntary refusal by him to serve the sentence;
 - b) In spite of demands by the person in charge of the work centre, his performance is considerably lower than the required minimum;
 - c) Were to repeatedly and manifestly oppose or fail to abide by the instructions he is given by the manager of the occupation, related to the carrying out thereof;
 - d) For any other reason, his conduct were to cause the work manager to refuse to keep him at the centre any longer.

Once the report is appraised, the Prison Parole Board Judge may order its conclusions to be enforced by the centre itself, to send the convict to conclude serving thereof at another centre, or to deem that the convict has failed to serve the sentence.

In the event of breach thereof, an attestation shall be issued to proceed against him, pursuant to Article 468.

7. Should the convict be missing from work for a justified reason, he shall not be deemed to have abandoned the activity. However, the work missed shall not be included in the calculation of serving the sentence; such calculation shall include the days or working time effectively worked from the total to which he has been sentenced.

SUBCHAPTER 4. ON PUNISHMENT BY FINE

Article 50

1. Punishment by fine shall consist in sentencing the convict to pay a pecuniary punishment.
2. Punishment by fine shall be imposed, except if the Law states otherwise, by the day-fine system.
3. The minimum length shall be ten days and the maximum two years. Fine penalties against legal persons shall have a maximum length of five years.
4. The daily quota shall be a minimum of two and a maximum of four hundred euros, except in the case of fines imposed on legal persons, in which the daily quota shall have a minimum of 30 and a maximum of 5,000 euros. For the purposes of calculation, when the term is set by months or years, it shall be construed that months are of thirty days and years of three hundred and sixty days.
5. Judges or Courts of Law shall duly determine the extent of the punishment within the limits established for each criminal offence and pursuant to the rules of Chapter II of this Title. They shall also set the amount of these quotas in the judgement, for which they shall only take into account the financial situation of the convict, deducting, revenue, family obligations and charges and his other personal circumstances from his assets.
6. When justified, the Court of Law may authorise payment of the fine within a term that does not exceed two years from the final judgement, either as a lump sum, or in the instalments.

In such case, failure to pay two such instalments shall give rise to maturity of the remaining sums.

Article 51

If the financial status of the convict were to change after sentencing, the Judge or Court of Law, exceptionally, and after duly investigating the situation, may amend both the amount of the instalments, as well as the terms for payment thereof.

Article 52

1. Notwithstanding the terms set forth in the preceding Articles and when the Code so determines, the fine shall be established in proportion to the damage caused, the value of the object of the criminal offence, or the profit obtained from it.
2. In such cases, the Judges and Courts of Law shall establish the fine within the limits set for each criminal offence, considering not only the mitigating and aggravating circumstances of the fact to determine the amount in each case, but mainly the financial situation of the offender.
3. Should the financial situation of the convict worsen after sentencing, the Judge or Court of Law, exceptionally and after due investigation of the situation, may reduce the amount of the fine within the limits set by the law for the criminal offence concerned, or authorise its payment subject to the terms to be determined.



4. In cases in which this Code foresees punishment by fine for legal persons in proportion to the profit obtained or facilitated, to the damage caused, to the value of the object, or to the sum obtained unduly or by fraud, if it is not possible to calculate such on the basis of those items, the Judge or Court of Law shall justify the impossibility to proceed to that calculation and the fines foreseen shall be replaced by the following ones:

- a) Fine of two to five years, if the criminal offence committed by a natural person has a prison sentence established in more than five years;
- b) Fine of one to three years, if the criminal offence committed by a natural person has a prison sentence established in more than two years, not included in the preceding Section;
- c) Fine of six months to two years, in the rest of cases.

Article 53

1. Should the convict not pay the fine set, voluntarily or by enforcement, he shall be subject to a subsidiary personal liability of one day of custodial sentence for every two daily quotas not paid that, if a petty criminal offence is involved, may be fulfilled by means of permanent traceability. In such case, the limitation on duration established in Article 37.1 of this Code shall not apply.

The Judge or Court of Law may also, with the convict's prior approval, order that the subsidiary accountability be served through community service. In such case, each day of custodial sentence shall be equivalent to one day of work.

2. In cases of proportional fines, Judges and Courts of Law shall establish the appropriate personal subsidiary liability at their own discretion, which may not exceed one year in duration, in any case. The Judge or Court of Law may also order community service to be done, when previously agreed with the convict.

3. Such subsidiary liability shall not be imposed on convicts imprisoned for more than five years.

4. Settlement of the subsidiary liability extinguishes the obligation to pay the fine, even though the convict's financial situation were to improve.

5. The fine imposed on a legal person may be paid by instalments over a period of up to five years, when its amount is proven to endanger the survival thereof, or maintenance of the jobs existing thereat, or when this is advisable in the general interest.

Should the legal person convicted not pay the fine imposed within the term set, voluntarily or by enforcement, the Court of Law may order it to be intervened until it is fully paid.

SUBCHAPTER 5. On accessory penalties

Article 54

Penalties of barring are accessory in cases in which such punishment is not especially imposed but the Law declares that other penalties involve the former.

Article 55

The punishment of imprisonment equal to or exceeding ten years shall bear with it absolute barring during the term of the sentence, except if that is already foreseen as a main punishment in the case concerned. The Judge may also order special barring from exercise of parental rights, guardianship, care, safekeeping or fostership, or la deprivation of parental rights, when these rights have a direct relation to the criminal offence committed. Such relationship must specifically be determined in the judgement.

Article 56

1. In prison sentences under ten years, the Judges or Courts of Law shall impose any one or number of the following, in view of the severity of the criminal offence:

1. Suspension from public employment and office;
2. Special barring from the right of passive suffrage during the term of the sentence;
3. Special barring from public employment and office, profession, trade, industry, commerce, exercise of parental rights, guardianship, care, safekeeping or fostership or any other right, deprivation of parental rights, if these rights were directly related to the criminal offence committed, such relationship being specifically determined in the judgement, without prejudice to application of the provisions contained in Article 579 of this Code.

2. What is set forth in this Article shall be construed to be without prejudice to application of the terms set forth in other provisions of this Code, with regard to imposing these penalties.

Article 57

1. In criminal offences of manslaughter, abortion, bodily harm, against liberty, of torture and against moral integrity, trafficking with human beings, sexual freedom and indemnity, privacy, the right to personal dignity and the inviolability of the dwelling, honour, the heritage and the social-economic order, in view of the severity of the facts or the danger posed by the convict, the Judge or Court of Law may impose in their judgements one or several of the prohibitions foreseen in Article 48, for a time that shall not exceed ten years, if the criminal offence is serious, or of five if less serious.

Notwithstanding the foregoing, should the convict be sentenced to imprisonment and the Judge or Court of Law imposes one or several of those prohibitions, this shall be done for a time exceeding the imprisonment imposed in the sentence of between one and ten years if the criminal offence is serious, and between one and five years, if less serious. In such case, the punishment of imprisonment and the aforesaid prohibitions must be served necessarily simultaneously by the convict.

2. In cases of the criminal offences mentioned in the First Paragraph of Section 1 of this Article, committed against a former spouse, or against a person who has been bound to the convict by a similar emotional relationship, even without cohabitation, or against the descendents, ascendants or biological, adopted or fostered siblings of that person or of the spouse or cohabitating partner, or against minors or a disabled person



requiring special protection cohabitating with them, or subject to the parental rights, guardianship, care, fostership or *de facto* safekeeping of the spouse or cohabitating partner, or against a person protected by any other relationship arising within the core family cohabitation, as well as against persons who, due to their special vulnerability, are subject to their custody or safekeeping at public or private centres, the punishment foreseen in Section 2 of Article 48 shall be imposed in all cases for a time that shall not exceed ten years if the criminal offence is serious, or five if less serious, without prejudice to the terms set forth in Section Two of the preceding Section.

3. The prohibitions established in Article 48 may also be imposed for a period of time that shall not exceed six months in case of perpetration of the criminal offences mentioned in the First Paragraph of Section 1 of this Article if classified as petty criminal offences.

SUBCHAPTER 6. Common provisions

Article 58

1. The term of pre-trial custody shall be fully credited by the Judge or Court of Law sentencing to serving the punishment or penalties imposed in the case concerning that for which such custody was ordered, except when it has coincided with a custodial sentence imposed on the convict in another case, which has been settled, or is due to be settled thereon. In no event may the same period of pre-trial custody be credited to more than one case.

2. Crediting pre-trial custody in a case other than the one for which it was decreed shall be ordered at the Court's own motion or at the request of the convict and following verification that it has not been credited to any other case, carried out by the Prison Parole Board Judge of the jurisdiction to which the prison where the convict is located is assigned, after hearing the Public Prosecutor.

3. Crediting pre-trial custody served in another case shall only be appropriate when that preventive measure is subsequent to the criminal deeds that caused the punishment intended to be settled.

4. The preceding rules shall also be applied regarding deprivation of rights ordered on a preventive basis.

Article 59

When the preventive measures suffered and the punishment imposed are different in nature, the Judge or Court of Law shall deem the punishment imposed to have been served in the part deemed to have been compensated.

Article 60

1. When, after having pronounced the final judgement, a convict is found to suffer a lasting situation of serious mental disorder that prevents him from being aware of the sense of the punishment, the Prison Parole Board Judge shall suspend serving of the custodial sentence imposed on him, guaranteeing that he receives the necessary medical care, for which he may order that a security measure of custodial sentence be imposed of those foreseen in this Code, that may not be, in any case, more onerous

than the punishment substituted. If a punishment of a different nature, the Prison Parole Board Judge shall appraise whether the situation of the convict allows him to be aware of the sense of the punishment and, if appropriate, shall suspend serving thereof, imposing the security measures he may deem necessary.

The Parole Board Judge shall notify the Public Prosecutor, sufficiently in advance, of the upcoming extinction of the punishment or security measure imposed, for the purposes foreseen by Additional Provision One of this Code.

2. Once the convict regains his mental health, he shall serve the sentence, if the punishment has not prescribed, without prejudice to the Judge or Court of Law being able to deem the sentence extinguished, or to reduce its term, for reasons of equity, to the extent that serving the punishment may be unnecessary or counter-productive.

CHAPTER II

On application of penalties

SUBCHAPTER 1. General rules on application of penalties

Article 61

When the Law establishes a punishment, it shall be construed that it is imposed on the offenders of the consummated criminal offence.

Article 62

Offenders of an attempted criminal offence shall have a punishment imposed that is lower by one or two degrees to that set by Law for the consummated criminal offence, to the extent deemed appropriate, in view of the danger inherent to the attempt and to the degree of execution achieved.

Article 63

Accomplices of a consummated or attempted criminal offence shall be sentenced to a lower degree of punishment to that set by Law for the offenders of the same criminal offence.

Article 64

The above rules shall not be applicable in cases in which attempt and complicity are especially punishable by Law.

Article 65

1. Aggravating or mitigating circumstances consisting of any cause of a personal nature shall only aggravate or mitigate the accountability of those fulfilling those circumstances.

2. Those that involve the material execution of the deed, or the means used to perpetrate it, shall only be of use to aggravate or mitigate the accountability of those who have had knowledge of thereof at the moment of the deed, or of their co-operation in the criminal offence.

3. When the inducer or the necessary co-operator do not fulfil the conditions, qualities or personal relations that are the basis for the convict being guilty, the Judges or Courts



of Law may impose a lower degree of punishment to that stated by Law for the criminal offence concerned.

Article 66

1. In application of the punishment, in the case of malicious criminal offences, the Judges or Courts of Law shall abide by the following rules, according to whether or not there are mitigating or aggravating circumstances:

1. When only one mitigating circumstance concurs, the lower half of the punishment the Law sets for the criminal offence shall be applied.
2. When two or more mitigating circumstances concur, or one or several highly qualified ones, and there are no aggravating ones whatsoever, they shall apply the punishment that is lower by one or two degrees to that established by Law, in view of the number and entity of those mitigating circumstances.
3. When only one or two aggravating circumstances concur, they shall apply the punishment from the top half of that set by Law for the criminal offence.
4. When there are more than two aggravating circumstances and no mitigating ones whatsoever, the higher degree of punishment to that established by Law, in its lower half, may be imposed.
5. When the aggravating circumstance of recidivism concurs, with the qualification that the offender was a convicted offender by final judgement at the time, of at least three criminal offences under the same title of this Code, as long as of the same nature, the higher degree of punishment to that foreseen by Law for the criminal offence concerned may be applied, taking preceding convictions into account, as well as the severity of the new criminal offence committed. For the purposes of this rule, criminal records that are cancelled, or that should be, shall not be taken into account.
6. When there are no mitigating or aggravating circumstances, the punishment established by Law for the criminal offence committed shall be applied, to the extent deemed appropriate, in view of the personal circumstances of the criminal and to the greater or lesser severity of the fact.
7. When mitigating and aggravating circumstances concur, these shall be valued and compensated rationally to individualise the punishment. In the event of a qualified ground of attenuation persisting, the lower degree of punishment shall be applied. If a qualified ground of aggravation is maintained, the upper half of the punishment shall be applied.
8. When Judges or Courts of Law apply a punishment that is more than one degree lower, they may do so to its full extent.

2. In petty criminal offences and those arising from negligence, the Judges or Courts of Law shall apply the penalties at their prudent discretion, without being subject to the rules set forth in the preceding Section.

Article 66 bis

In application of the penalties imposed on legal persons, the terms set forth in rules 1. to 4 and 6 to 8 of the First Section of Article 66 shall apply, as well as the following:

1. In the cases that are established by the provisions of Book II, to decide on imposition and the extent of the penalties foreseen under Sub-Paragraphs b) to g) of Section 7 of Article 33, the following must be taken into account:

- a) Their need to prevent continuity of the criminal activity or its effects;
- b) Their economic and social consequences, and especially the effects on workers;
- c) The post in the structure of the legal person held by the natural person or body that failed in its duty to control.

2. When the penalties foreseen under Sub-Paragraphs c) to g) of Section 7 of Article 33 are imposed with a limited duration, the latter may not exceed the maximum term of a sentence of imprisonment foreseen in the event of the criminal offence being committed by a natural person.

In order to impose the penalties foreseen in Sub-Paragraphs c) to g) for a term exceeding two years it shall be necessary for any of the following two circumstances to concur:

- a) For the legal person to be a repeat offender;
- b) For the legal person to be used instrumentally to commit criminal offences. The latter case shall be deemed to arise whenever the lawful activity of the legal person is less important than its unlawful activity.

Should the liability of the legal person, in the cases foreseen in Sub-Paragraph b) of Section 1 of Article 31 bis, derive from a non-compliance of the duties of supervision, surveillance and control non-serious in nature, such penalties shall in all cases have a maximum duration of two years.

For permanent imposition of the penalties foreseen in Sub-Paragraphs b) and e), and to hand down a term exceeding five years of those foreseen in Sub-Paragraphs e) and f) of Section 7 of Article 33, it shall be necessary for any of the following two circumstances to concur:

- a) For it to be a case of fact foreseen under rule 5 of Section 1 of Article 66;
- b) For the legal person to be used instrumentally to commit criminal offences. The latter case shall be deemed to arise whenever the lawful activity of the legal person is less important than its unlawful activity.

Article 67

The rules of the preceding Article shall not be applied to the aggravating or mitigating circumstances that the Law has taken into account in describing or penalising a criminal offence, or those that are thus inherent to the criminal offence, without concurrence whereof it could not have been committed.

Article 68

In the cases foreseen in circumstance one of Article 21, the Judges or Courts of Law shall impose a lower punishment in one or two degrees to that stated in the Law, considering the number and entity of the requisites absent or concurring, and the



personal circumstances of the offender, without prejudice to application of Article 66 of this Code.

Article 69

Those over eighteen and under twenty-one years of age who commit a criminal offence may have the provisions of the Law regulating the criminal accountability of minors applied to them in the cases and with the requisites set forth therein.

Article 70

1. The higher and lower degree of punishment to that foreseen by Law for any criminal offence shall have the extent resulting from application of the following rules:

1. The higher degree of punishment shall be formed based on the maximum figure set by the Law for the criminal offence concerned and increasing that by half its amount, the resulting sum being its maximum limit. The minimum limit to the upper degree of punishment shall be the maximum punishment set by Law for the criminal offence concerned, increased by one day, or by a day-fine, in view of the nature of the punishment to be imposed.

2. The lower degree of punishment shall be formed on the basis of the minimum figure set for the criminal offence concerned and deducting that half from its amount, the result of that deduction being its minimum limit. The maximum limit of the lower degree of punishment shall be the minimum of the punishment set by Law for the criminal offence concerned, reduced by a day, or by a day-fine, in view of the nature of the punishment to be imposed.

2. For the purposes of determining the upper or lower half of the punishment or of specifying the upper or lower degree of punishment, the day or day-fine are deemed indivisible and shall act as upward or downward units of penalisation, according to the cases concerned.

3. When, in application of rule 1 of Section 1 of this Article, the higher degree punishment exceeds the maximum limits set for each punishment in this Code, they shall be deemed those immediately above, to wit:

1. If the punishment determined is that of imprisonment, the same punishment, with the condition that its maximum term shall be thirty years.

2. If absolute or special barring, the same punishment, with the condition that its maximum duration shall be thirty years.

3. If suspension from public employment and office, the same punishment, with the condition that its maximum duration shall be eight years.

4. If deprivation of the right to drive motor vehicles and mopeds, the same punishment, with the condition that its maximum duration shall be fifteen years.

5. If deprivation of the right to own and carry weapons, the same punishment, with the condition that its maximum duration shall be twenty years.

6. If deprivation of the right to reside in specific places or to visit them, the same punishment, with the condition that its maximum duration shall be twenty years.



7. If prohibition to approach the victim or his relatives or other persons determined by the Judge or Court of Law, the same punishment, with the condition that its maximum duration shall be twenty years.

8. If prohibition to communicate with the victim or with his relatives or other persons determined by the Judge or Court of Law, the same punishment, with the condition that its maximum duration shall be twenty years.

9. If a fine, the same punishment, with the condition that its maximum duration shall be thirty months.

4. The lower degree penalty to that of permanent imprisonment is that of imprisonment from twenty to thirty years.

Article 71

1. When determining the punishment that is lower by one degree, the Judges or Courts of Law shall not be limited by the minimum amounts stated in the Law for each class of punishment, but rather they may reduce them in the manner arising from application of the relevant rule.

2. However, when, due to application of the above rules, it is appropriate to hand down a sentence of imprisonment under three months, this shall be substituted in all cases with a fine, community work or permanent traceability, even though the law does not provide for these penalties for the criminal offence in question, substituting each day of imprisonment with two fine quotas or with a day of work or with a day of permanent traceability.

Article 72

In application of the punishment, the Judges or Courts of Law, pursuant to the rules this Chapter contains, shall reason the specific degree and extent of that handed down in their judgement.

SUBCHAPTER 2. Special rules for application of penalties

Article 73

Whoever is responsible for two or more criminal offences shall have all the relevant penalties imposed on him for the diverse criminal offences for their simultaneous fulfilment, if possible, due to the nature and effects thereof.

Article 74

1. Notwithstanding what is set forth in the preceding Article, whoever perpetrates multiple deeds or omissions, in the execution of a preconceived plan or taking advantage of an identical occasion, that offend one or several subjects and infringe the same criminal provision or provisions that are equal to or of a similar nature, shall be punished as the offender of a continued criminal offence with the punishment stated for the most serious criminal offence, that shall be imposed in its upper half, it being possible to reach the lower half of the higher degree of punishment.

2. In the case of criminal offences against property, the punishment shall be imposed taking into account the full damage caused. In these criminal offences, the Judge or



Court of Law shall justify imposition of the punishment raised by one or two degrees, to the extent deemed convenient, if the fact were to be evidently serious and were to have damaged persons at large.

3. What is set forth in the previous Sections does not include criminal offences against eminently personal property, except those constituting criminal offences against honour and sexual freedom and indemnity that affect the same victim. In these cases, the nature of the fact and the provision infringed shall be deemed to apply criminal continuity or not.

Article 75

When some or all of the penalties for the diverse criminal offences cannot be served simultaneously by a convict, the order of the respective severity thereof shall be followed for their successive fulfilment, whenever possible.

Article 76

1. Notwithstanding what is set forth in the preceding Article, the maximum effective sentence to be served by a convict may not exceed triple the time imposed for the most serious of the penalties incurred, declaring the others to be extinguished from when those already imposed cover that maximum, which may not exceed twenty years. Exceptionally, such maximum limit shall be:

- a) Of twenty- five- years, when a convict has been found guilty of two or more criminal offences and one of them is punished with Law with a prison sentence of up to twenty years;
- b) Of thirty years, when a convict has been found guilty of two or more criminal offences and one of them is punishable by Law with a prison sentence exceeding twenty years;
- c) Of forty years, when a convict has been found guilty of two or more criminal offences and at least two of them are punishable by Law with a prison sentence exceeding twenty years;
- d) Of forty years, when a convict has been found guilty of two or more criminal offences related to terrorist organisations and groups and criminal offences of terrorism under Section two of Chapter VII of Title XXII of Book II of this Code and any of them is punishable by Law with a prison sentence exceeding twenty years;
- e) When the convict has been found guilty of two or more criminal offences and at least one of them is punished pursuant to the law with permanent, revisable imprisonment, the provisions of Articles 92 and 78 bis shall apply.

2. The limitation shall be applied, even though the penalties have been imposed in different proceedings, if such penalties have been imposed for deeds committed before those that were brought to trial that, had they been accumulated, they would have been tried first.

Article 77

1. What is set forth in the preceding two Articles is not applicable in the event of a sole deed constituting two or more criminal offences, or when one of them is the necessary means to commit the other.

2. In the first case, the upper half of the penalty foreseen for the most serious criminal offence shall be applied, without the aggregate punishment exceeding that would be applicable if the criminal offences were punished separately. If the penalty so calculated does exceed such limit, the offences shall be punished separately.

3. In the second case, a higher penalty shall be imposed to that which would have been appropriate, in the specific case, for the more serious offence, and which may not exceed the aggregate of the specific penalties that would have been imposed separately for each one of them. Within these limits, the Judge or Court of Law shall individualise the penalty pursuant to the criteria expressed in Article 66. In any case, the penalty imposed may not exceed the limit of duration foreseen in the preceding Article.

Article 78

1. If, due to the limitations established in Section 1 of Article 76, the punishment to be served were to be lower than half the aggregate sum of those imposed, the Judge or Court of Law sentencing may order that prison privileges, term-release permits, pre-release classification and calculation of the time to be served prior to probation shall refer to the total penalties imposed in the sentences.

2. In these cases, the Parole Board Judge, following individual assessment in favour of social reinsertion and evaluating the personal circumstances of the convict and evolution of the re-education treatment as appropriate, may hand down a reasoned resolution, having heard the Public Prosecutor, the Directorate-General for Prisons and the other parties, on application of the general regime of serving sentences.

In the case of criminal offences related to terrorist organisations and groups and criminal offences of terrorism under Chapter VII of Title XXII of Book II of this Code, or committed within criminal organisations, and according to the aggregate sum of penalties imposed, the preceding possibility shall only be applicable:

- a) To pre-release, when a fifth of the maximum limit of serving of the sentence is left to be served;
- b) To probation, when an eighth of the maximum limit of serving of the sentence is left to be served.

Article 78 bis

1. When the convict has been convicted of two or more criminal offences and at least one is punished, pursuant to the law, with the penalty of permanent, revisable imprisonment, progression to pre-release prison treatment shall require having served:

- a) a minimum of eighteen years' imprisonment, if convicted of several criminal offences, one of them punished with permanent, revisable imprisonment and the rest with penalties that sum up to a total exceeding five years;
- b) a minimum of twenty years' imprisonment, if convicted of several criminal offences, one of them punished with permanent, revisable imprisonment and the rest with penalties that sum up to a total exceeding fifteen years;



c) a minimum of twenty-two years' imprisonment, if convicted of several criminal offences, two or more of them punished with permanent, revisable imprisonment or one of them punished with permanent, revisable imprisonment and the rest with penalties that sum up to a total of twenty-five or more years.

2. In these cases, suspending the serving of the rest of the sentence shall require that the convict has served:

a) a minimum of twenty-five years' imprisonment, in the cases referred to in Sub-Paragraphs a) and b) of the preceding Section;

b) a minimum of thirty years' imprisonment, in the cases referred to in Sub-Paragraph c) of the preceding Section.

3. In the case of criminal offences related to terrorist organisations and groups and criminal offences of terrorism under Chapter VII of Title XXII of Book II of this Code, or committed within criminal organisations, the minimum requirements of sentence served to be eligible for pre-release prison treatment shall be twenty-four years' imprisonment, in the cases referred to in Sub-Paragraphs a) and b) of Section 1, and of thirty-two years' imprisonment, in the cases referred to in Sub-Paragraph c) of Section 1.

In these cases, the convict must have served at least twenty-eight years' imprisonment in order to obtain suspension of serving the remaining sentence, in the cases referred to in Sub-Paragraphs a) and b) of Section 1, and thirty-five years' imprisonment, in the cases referred to in Sub-Paragraph c) of Section 1.

Article 79

Whenever the Judges or Courts of Law impose a sentence involving ancillary penalties, they shall also specifically condemn the convict to the latter.

CHAPTER III

On substitute forms of serving of sentences depriving of freedom and on probation

SUBCHAPTER 1. On suspension of serving of sentences of imprisonment

Article 80

1. Judges or Courts of Law may suspend serving of custodial sentences not exceeding two years, by reasoned resolution, when it is reasonable to believe that the serving of the sentence is not necessary to avoid the future perpetration by the convict of new criminal offences.

To adopt this decision, the Judge or Court of Law shall consider the circumstances of the criminal offence perpetrated, the personal circumstances of the convict, his record, his personal behaviour after the deed, in particular the effort made to repair the damage done, his family and special circumstances and the effects to be expected from the suspension of the serving itself and of complying with the measures handed down.

2. In order to grant suspension of the serving of the sentence the following conditions must be met:

1.st That the convict be a first-time offender. To this end, previous convictions of criminal offences perpetrated due to negligence or for petty criminal offences shall not be considered nor a criminal record that has been cancelled or should be, pursuant to Article 136. Nor shall a criminal record referring to criminal offences that, due to the nature or circumstances thereof, are irrelevant to determine the probability of perpetrating future criminal offences be taken into account.

2.nd That the aggregate of the sentences imposed does not exceed two years, without including in the calculation the penalty deriving from non-payment of the fine.

3.rd That the civil liabilities originated have been honoured and the confiscation ordered in the sentence has been made effective pursuant to Article 127.

This requisite shall be deemed as fulfilled if the convict undertakes to cover the civil liabilities in line with his economic capacity and to facilitate the confiscation ordered, it being reasonable to presume that the confiscation shall be carried out with a prudential term to be determined by the Judge or Court of Law. The Judge or Court of Law, bearing in mind the scope of the civil liability and the social impact of the criminal offence, may demand the guarantees deemed convenient to ensure the fulfilment thereof.

3. Exceptionally, even though the first and second condition of the previous Section are not fulfilled, and provided the convict is not a habitual offender, the suspension of prison sentences that individually do not exceed two years may be granted when the personal circumstances of the convict, the nature of the deed, his behaviour and, in particular, his efforts to repair the damage caused so advise.

In these cases, the suspension shall always be conditioned to the effective reparation or compensation of the damage caused in line with his physical or economic possibilities or to compliance with the agreement to which the first measure of Article 84 refers. Likewise, one of the measures to which numbers two and three of the same legal provision refers shall be imposed, with a duration that may not be less than that resulting from applying the conversion criteria established therein on one fifth of the penalty imposed.

4. A Judge or Court of Law may grant the suspension of any penalty imposed without subjection to any requirement whatsoever if the convict suffers from a very serious illness with incurable ailments, unless, when the criminal offence was committed the suspension of the serving of another sentence had already been granted for the same reason.

5. Even though the first and second condition of the previous Section are not fulfilled, the Judge or Court of Law may resolve the suspension of the serving of custodial sentences not exceeding five years of a convict who has committed the criminal offence due to his dependence on the substances indicated under number two of Article 20, provided a public centre or service or a duly accredited or recognised private centre or service attests that the convict is no longer addicted or is undergoing a treatment with such an aim at the time of deciding on the suspension.



The Judge or Court of Law may order the necessary verifications to confirm compliance with the above requirements.

In the event that the convict is undergoing treatment for addiction, the suspension of the serving of the sentence may also be conditioned to not abandoning the treatment until the conclusion thereof. Setbacks in the treatment shall not be construed as abandonment thereof if they do not evidence an irrevocable abandonment of the addiction treatment.

6. In the event of criminal offences that may only be prosecuted prior report or complaint of the victim, the Judge or Court of Law shall hear the victim and, in the event, his representative, before granting the benefit of suspension of the serving of the sentence.

Article 81

The period of suspension shall be from two to five years in the case of custodial sentences not exceeding two years, and from three months to one year for less severe penalties, and shall be established by the Judge or Court of Law, bearing in mind the criteria mentioned in the Second Paragraph of Section 1 of Article 80.

If the suspension is granted pursuant to the provisions of Section 5 of the previous Article, the period of suspension shall be between three and five years.

Article 82

The Judge or Court of Law shall decide in the judgement as to the suspension of the serving of the sentence if possible. In the remaining cases, having declared the judgement final, the Judge or Court of Law shall most urgently declare whether or not suspension of the serving of a sentence is granted.

2. The period of suspension shall be counted as from the date of the resolution granting it. If the suspension is resolved in the judgment, the period of suspension shall be counted as from the date it became final.

A period in which the convict has absconded shall not be counted towards the suspension period.

Article 83

1. The Judge or Court of Law may condition suspension of the sentence to the following prohibitions and duties when this is necessary in order to avoid the danger of perpetrating new criminal offences, although disproportionate or excessive duties and obligations may not be imposed:

1. Prohibition to approach the victim, or his relatives or other persons determined by the Judge or Court of Law, or the domiciles or workplaces thereof or other places habitually frequented by them or of communicating with them by any means. The imposition of this prohibition shall always be notified to those persons affected thereby.
2. Prohibition of establishing contact with certain individuals or members of a certain group, when there is prima facie evidence that may lead to the reasonable conclusion that such individuals may provide the occasion to perpetrate new criminal offences or incite him to do so;

3. Obligation to keep an abode in a specific place prohibiting him from abandoning it or of temporarily leaving it without the authorisation of the Judge or Court of Law;
4. Prohibition to reside in a specific place or to go there, when his presence there may provide the occasion or reason to commit new criminal offences.
5. Personal appearance before the Court of Law or Tribunal, police stations or the service of the Administration set appoint to report on and justify his activities, with the regularity that shall be ordered;
6. Participation in training, labour, cultural, traffic education, sexual and environmental defence training programmes, those on protection of animals of equal treatment and non-discrimination, and other similar ones;
7. Participation in addiction treatment programmes
8. Prohibition of driving motor vehicles that devoid of technological devices conditioning the ignition or functioning of the prior verification of the driver's physical condition, if convicted for a criminal offence against road safety and the measure is necessary to prevent the possible perpetration of new criminal offences.
9. Fulfilment of the other duties the Judge or Court of Law may deem convenient for social reinstatement of the convict, with his approval, as long as these are not contrary to his personal dignity.

2. In the case of criminal offences committed against a woman by her current or former husband or person related to her by a similar relationship of affection, even without cohabitation, the prohibitions and duties foreseen in rules 1, 4 and 6 of the previous Section shall be imposed.

3. The imposition of any of the prohibitions or duties foreseen in the first, second, third or fourth rule of Section 1 of this Article shall be notified to the State Security Forces and Corps that shall supervise compliance therewith. Any possible breach or circumstance relevant to evaluate the convict's dangerousness and the possibility of him perpetrating new criminal offences shall be immediately notified to the Public Prosecutor and to the implementing Judge or Court of Law.

4. Verification of compliance with the duties imposed under the sixth, seventh and eighth rule of Section 1 of this Article shall be entrusted to the penalties serving and alternative measure services of the Prisons Administration. These services shall inform the implementing Judge or Court of Law as to compliance at least on a quarterly basis, in the case of the sixth and eighth rule, and half-yearly in the case of the seventh rule and, in all cases, upon the conclusion thereof.

Likewise, they shall inform at once of any possible breach or circumstance relevant to evaluate the convict's dangerousness and the possibility of him perpetrating new criminal offences, as well of any non-compliance of the obligation imposed or of the effective compliance therewith.



Article 84

1. The Judge or Court of Law may also condition suspension of the serving of the sentence to one or more of the following duties or measures:

- 1.st Fulfilment of the agreement reached by the parties through mediation;
- 2.nd Payment of a fine, whose amount shall be determined by the Judge or Court of Law bearing in mind the circumstances of the case but that may not exceed the one resulting from calculating two fine quotas for each day in prison, with a maximum limit of two thirds of the duration thereof;
- 3.rd The carrying out of community work, especially when this is appropriate as a form of symbolic reparation in view of the circumstances of the deed and of the perpetrator. The duration of such work shall be decided by the Judge or Court of Law in view of the circumstances of the case, but it may not exceed the amount resulting from calculating a day of work for each day of imprisonment, with a maximum limit of two thirds of the duration thereof.

2. In the case of criminal offences committed against a woman by her current or former husband or person related to her by a similar relationship of affection, even without cohabitation, or against her descendants, ascendants or siblings by blood, adoption or law or of her spouse or cohabitating partner or against minors or disabled persons in need of special protection living with him or subjected to the authority, guardianship, protection, foster care or de facto custody of the spouse or cohabitating partner, payment of the fine to which the second measure of the preceding Section refers can only be imposed when it is evidenced that between them economic relations deriving from the wedlock, cohabitation, filiation or the existence of the common descendants are not present.

Article 85

During the time the penalty is suspended and in view of a supervening change of the circumstances taken into account, the Judge or Court of Law may modify the decision adopted previously pursuant to Article 83 and 84 and decide to lift all or some of the prohibitions, duties or obligations ordered, or amend them or substitute them with other, less onerous ones.

Article 86

1. The Judge or Court of Law shall revoke the suspension and shall order the serving of the sentence if the convict:

- a) Is convicted of a criminal offence perpetrated during the period of suspension and this evidences that the expectation on which the suspension decision was based cannot be maintained;
- b) Breaches in a material or repeated way the prohibitions and duties imposed pursuant to Article 83 or were to abscond from the control of the penalties and alternative measures management services of the Prison Administration;
- c) Breaches in a material or repeated way the prohibitions and duties imposed pursuant to Article 84;

d) Provides inexact or insufficient information as to the whereabouts of the properties or objects whose seizure has been ordered; does not comply with the undertaking to pay the civil liabilities to which he was sentenced, unless he lacks the economic capacity to do so; or provides inexact or insufficient information as to his assets, breaching the obligation imposed by Article 589 of the Civil Procedure Act.

2. If the breaches of the prohibition, duties or conditions are not material or repeated, the Judge or Court of Law may:

- a) Impose on the convict new prohibitions, duties or conditions or amend those already imposed;
- b) Extend the term of suspension, without such term exceeding half of the duration of the one initially established.

3 In the event the suspension is revoked, the disbursement made by the convict to repair the damage caused pursuant to Section 1 of Article 84 shall not be refunded. Nevertheless, the Judge or Court of Law shall discount from the penalty the payment made and the work carried out or fulfilled pursuant to the second and third measures.

4. In all the preceding cases, the Judge or Court of Law shall decide after hearing the Public Prosecutor and the other parties. Nevertheless, suspension of the serving of the sentence may be revoked forthwith and the immediate imprisonment of the convict be ordered when this is absolutely necessary to avoid the risks of perpetration of more criminal offences or of absconding or to ensure the victim's protection.

The Judge or Court of Law may order the carrying out of the verification proceedings deemed necessary and order the holding of a hearing when this is considered necessary to decide.

Article 87

1. Once the term of suspension set has elapsed without the subject having committed a criminal offence evidencing the expectation on which the suspension decision was based cannot be maintained and having abided sufficiently by the appropriate rules of conduct set by the Judge or Court of Law, the remission of the sentence shall be decreed.

2. Nevertheless, in order to decree remission of the sentence suspended pursuant to Section 5 of Article 80, evidence must be provided that the convict is no longer an addict or that he continues treatment. Otherwise, the Judge or Court of Law shall order the serving thereof, unless, in view of the relevant reports, continuation of the treatment is deemed necessary, in which case an extension of the suspension period may be granted giving the reasons, for a period not exceeding two years.



SUBCHAPTER 2. On substitution of punishments depriving of freedom

Article 88

(Repealed)

Article 89

1. Prison sentences exceeding one year handed down to an alien shall be substituted by his deportation from Spanish territory. Exceptionally, if it is deemed necessary in order to defend the legal order and to restore trust in the validity of the law infringed by the criminal offence, the Judge or Court of Law may order the serving of part of the sentence, which may not exceed two thirds of its term, and the substitution of the rest by the deportation of the convict from Spanish territory. In all cases, the rest of the sentence shall be substituted by the deportation of the convict from Spanish territory when said individual has attained pre-release prison treatment or has been granted probation.

2. When a prison sentence exceeding five years has been imposed, or several sentences exceeding this term, the Judge or Court of Law shall order the serving of all or part of the sentence, insofar as necessary to defend the legal order and to restore trust in the validity of the law infringed by the criminal offence. In such cases, the serving of the rest of the sentence shall be substituted by the deportation of the convict from Spanish territory, when said individual is serving the part of the sentence specified, has attained the pre-release prison-treatment or has been granted probation.

3. Wherever possible, the Judge or Court of Law shall resolve in the sentence whether to substitute the serving of the sentence. In all other cases, once the judgement has been declared final, a decision shall be made as a matter of urgency, after hearing the Public Prosecutor and other parties, regarding the substitution of the sentence.

4. The substitution shall not be carried out when, in view of the circumstances of the criminal offence and the personal circumstances of the perpetrator, particularly his roots in Spain, deportation is deemed as disproportionate.

Deportation of a citizen of the European Union shall only be carried out when said individual represents a serious threat to public order or public security, taking into account the nature, circumstances and seriousness of the criminal offence committed, his record and personal circumstances.

If said citizen has resided in Spain for the past ten years deportation shall be ordered when, in addition:

- a) He has been convicted for one or more criminal offences against life, liberty, physical integrity and sexual freedom and indemnity punished with a maximum prison sentence of over five years and there are grounds to believe that there is a serious risk that he may commit criminal offences of the same nature;
- b) He has been convicted for one or more criminal offences of terrorism or other criminal offences committed within a criminal group or organisation.

In such cases, the provisions established in Section 2 of this Article shall be applied in all events.

5. The alien may not return to Spain within the term of five to ten years, as from the date of deportation, pursuant to the term of the sentence substituted and the personal circumstances of the convict.

6. Deportation shall halt all administrative proceedings being processed for a permit to reside or work in Spain.

7. Should the deported alien return to Spain before the term established by the court, he shall serve the sentences substituted, unless, exceptionally, the Judge or Court of Law reduces the term when the serving thereof is not deemed necessary to defend the legal order and to restore trust in the validity of the law infringed by the criminal offence, taking into account the time that has elapsed since the deportation and the circumstances in which the infringement has taken place.

However, if caught at the border, he shall be directly expelled by the governmental authority and the term of prohibition to enter the country shall then begin to be counted again in full as from that moment.

8. When, on ordering deportation in any of the manners foreseen in this Article, the alien is not found or is not effectively in custody serving the sentence handed down, the Judge or Court of Law may order him to be interned in an alien internment centre to effectively assure deportation, under the terms and with the limits and guarantees foreseen in the Law for governmental deportation.

In all cases, if deportation cannot take place once this is ordered to substitute imprisonment, serving of the sentence originally handed down shall be carried out, or the period of sentence pending, or application, when appropriate, of suspension of its serving.

9. Sentences imposed for the criminal offences referred to in Articles 177 bis, 312, 313 and 318 bis shall not be substituted.

SUBCHAPTER 3. On probation

Article 90

1. The Parole Board Judge shall order the suspension of the rest of the prison sentence and shall grant probation to convicts who fulfil the following circumstances:

- a) Who have attained pre-release prison treatment;
- b) Who have served three quarters of the sentence handed down;
- c) Who have a record of good conduct.

In order to determine the suspension of the rest of the sentence and to grant probation, the Parole Board Judge shall take into account the personality of the convict, his record, the circumstances of the criminal offence committed, the significance of the legally-protected rights that may be affected by a repeat offence, his behaviour while serving the sentence, his family and social circumstances and the expected consequences of the actual suspension on the serving and fulfilment of the measures imposed.



The suspension shall not be granted if the convict has not paid the civil liability arising from the criminal offence, in the cases and pursuant to the criteria established under Sections 5 and 6 of Article 72 of the General Prison Organic Act 1/1979, of 26th September.

2. The suspension of the rest of the sentence and probation may also be granted to convicts who fulfil the following circumstances:

- a) Who have served two thirds of their sentence;
- b) Who have carried out working, cultural or occupational activities during their sentence, whether continuously, or in a manner resulting in a significant and positive modification in those personal circumstances related to their former criminal activity;
- c) Who demonstrate having fulfilled the circumstances stipulated in the preceding Section, except that of having served three quarters of their sentence.

At the proposal of the Directorate-General for Prisons and after hearing the Public Prosecutor and the other parties, having fulfilled the circumstances of Sub-Paragraphs a) and c) of the preceding Section, the Parole Board Judge may grant probation earlier, once half the sentence has been served, in relation to the term foreseen in the preceding Section, up to a maximum of ninety days for each year elapsed of effective serving of the sentence. Such measure shall require the convict to have continuously performed the activities indicated under Sub-Paragraph b) of this Section and to evidence, in addition, effective and fruitful participation in programmes to compensate victims, or treatment or detoxification programmes, as appropriate.

3. Exceptionally, the Parole Board Judge may order the suspension of the rest of the sentence and grant probation to convicts who fulfil the following circumstances:

- a) Who are serving their first prison sentence and that said sentence does not exceed three years;
- b) Who have served half of their sentence;
- c) Who demonstrate having fulfilled the circumstances stipulated in Section 1, except that of having served three quarters of their sentence, as well as that stipulated under Sub-Paragraph b) in the preceding Section.

This shall not apply to convicts who have committed a criminal offence against sexual freedom and indemnity.

4. The Parole Board Judge may refuse suspension of the rest of the sentence when the convict has given inaccurate or insufficient information regarding the whereabouts of the assets or objects subject to confiscation; does not fulfil his obligation to pay the civil liabilities of which he has been convicted, in accordance with his capacity; or provides inaccurate or insufficient information regarding his assets, violating the obligation imposed in Article 589 of the Civil Procedure Act.

The suspension of the rest of the sentence imposed may also be refused in the case of any of the criminal offences stipulated in Title XIX of Book II of this Code, when the convict has avoided fulfilling his pecuniary liabilities or compensating the economic damage caused to the Public Administration for which he has been convicted.

5. In the event of suspending the rest of the sentence and granting probation, the rules stipulated in Articles 83, 86 and 87 shall be applied.

In view of the possible modification of the circumstances taken into consideration, the Parole Board Judge may amend the decision adopted previously pursuant to Article 83, and impose new prohibitions, obligations or measures, modify those that have already been established or lift them.

Likewise, the Parole Board Judge shall revoke the suspension of the rest of the sentence and the probation granted in the event of a change of the circumstances leading to the suspension that makes it impossible to maintain the assessment of lack of risk on which the decision adopted was based.

The suspension period of the rest of the sentence shall be from two to five years. In any event, the suspension period and probation may not be less than the term of the part of the sentence still to be served. The suspension period and probation shall be counted from the date that the convict is released.

6. The revocation of the suspension of the rest of the sentence and probation shall result in the enforcement of the part of the sentence still to be served. The time spent on probation shall not be counted as part of the time spent serving the sentence.

7. The Parole Board Judge may, on his own motion, resolve the suspension of the rest of the sentence and grant probation at the behest of the convict. In the event that the request is rejected, the Judge or Court of Law may establish a term of six months, which may be extended to one year with due justification, until the request can once again be submitted.

8. In the case of persons found guilty of criminal offences related to criminal organisations or any of the criminal offences regulated under Chapter VII of Title XXII of Book II of this Code, in order to suspend the rest of the sentence imposed and grant probation the convict must show unequivocal signs of having abandoned the ends and means of the terrorist activity and of having also actively collaborated with the authorities, either to prevent other criminal offences being committed by the organisation or terrorist group, or to mitigate the effects of his criminal offence, or to identify, capture and prosecute those responsible for terrorist criminal offences, to secure evidence, or to prevent the activities or development of the organisations or associations to which he has belonged or with which he has collaborated, which may be accredited by a specific declaration of disavowal of their criminal activities and abandoning violence, and specifically apologising to the victims of his criminal offence, as well as by means of technical reports that accredit that the convict has really cut off ties with the terrorist organisation and the environment and activities of unlawful associations and groups that surround these, and that he has collaborated with the authorities.

Sections 2 and 3 shall not be applied to individuals convicted of committing any of the criminal offences regulated under Chapter VII of Title XXII of Book II of this Code or for criminal offences committed within criminal organisations.



Article 91

1. Notwithstanding what is set forth in the previous Article, convicts who have reached the age of seventy years, or those who reach that age while serving their sentence, and who fulfil the requirements stipulated in the previous Article, except that of having served three quarters or, when appropriate, half of their sentence, may obtain the suspension of the rest of the sentence and be granted probation.

The same criterion shall be applied when, in view of medical reports, which are deemed necessary by the Parole Board Judge, a convict is seriously ill with an incurable ailment.

2. Should the Prison Administration be aware that the convict fulfils any of the cases foreseen in the preceding Paragraphs, it shall bring probation proceedings before the Prison Parole Board Judge with the required urgency and, when resolving thereon, the latter shall evaluate, along with the personal circumstances, the difficulty to offend and the scant danger the convict entails.

3. Should hazard to the life of the convict be patent, due to illness or old age, evidenced by the opinion of a Forensic Doctor and of the medical services of the prison, the Judge or Court of Law may, without evidencing the fulfilment of any other requirement and having assessed the convict's obvious lack of risk, authorise the suspension of the rest of the sentence and grant probation with no further formality than requiring the prison to report on the final prognosis in order to be able to carry out the assessment referred to in the preceding Section.

In this case, the convict shall be required to provide the medical services of the prison, the Forensic Doctor, or any other individual determined by the Judge or Court of Law with the information necessary to assess the evolution of his illness.

Non-compliance with this obligation may result in the revocation of the suspension and of the probation.

4. The provisions set forth in Sections, 4, 5 and 6 of the preceding Article apply to the case regulated in this Article.

Article 92

1. The Court of Law shall order the suspension of permanent, revisable imprisonment with the possibility of parole when the following circumstances are fulfilled:

- a) That the convict has served twenty-five years of his sentence, notwithstanding the provisions of Article 78 bis for the cases regulated therein;
- b) That he has attained pre-release prison treatment;
- c) That the Court of Law, taking into account the personality of the convict, his record, the circumstances of the criminal offence committed, the significance of the legally-protected rights that may be affected by a repeat offence, his behaviour while serving the sentence, his family and social circumstances and the expected consequences of the actual suspension on the enforcement and fulfilment of the measures imposed, can establish the existence of a favourable assessment of social integration, upon evaluating the progress reports submitted by the prison and by those specialists determined by the Court of Law itself.

In the event that the convict has been sentenced for several criminal offences, the examination of the circumstances referred to under Sub-Paragraph c) shall be carried out by collectively assessing all of the criminal offences committed.

The Court of Law shall resolve the suspension of the penalty of permanent-revisable imprisonment with the possibility of parole after adversarial trial proceedings in which the Public Prosecutor and convict shall appear, assisted by his solicitor.

2. In the case of criminal offences related to organisations and terrorist groups and criminal offences of terrorism regulated under Chapter VII of Title XXII of Book II of this Code, it shall also be necessary for the convict to show unequivocal signs of having abandoned the ends and means of the terrorist activity and of having actively collaborated with the authorities, either to prevent other criminal offences being committed by the organisation or terrorist group, or to mitigate the effects of his criminal offence, or to identify, capture and prosecute those responsible for terrorist criminal offences, to obtain evidence, or to prevent the activities or development of the organisations or associations to which he has belonged or with which he has collaborated, which may be accredited by a specific declaration of disavowal of their criminal activities and abandoning violence, and specifically apologising to the victims of his criminal offence, as well as by means of technical reports that accredit that the convict has really cut off ties with the terrorist organisation and the environment and activities of unlawful associations and groups that surround these, and that he has collaborated with the authorities.

3. The suspension of the sentence shall have a duration of between five to ten years. The suspension period and probation shall be counted from the date that the convict is released. The rules stipulated in Paragraph 2 of Section 1 of Article 80 and in Articles 83, 86, 87 and 91 shall apply.

In view of the possible modification of the circumstances taken into consideration, the Judge or Court of Law may amend the decision adopted previously pursuant to Article 83, and impose new prohibitions, obligations or measures, modify those that have already been established or lift them.

Likewise, the Parole Board Judge shall revoke the suspension of the rest of the sentence and the probation granted in the event of a change of the circumstances leading to the suspension that makes it impossible to maintain the assessment of lack of risk on which the decision adopted was based.

4. Having served the part of the sentence referred to in Sub-Paragraph a) of Section 1 of this Article or, where applicable, in Article 78 bis, the Court of Law must verify, at least every two years, fulfilment of the rest of the probation conditions. The Court of Law shall also resolve probation requests by the convict, but it may establish a term of up to one year during which, once a request has been refused, no further requests shall be processed.

Article 93

(Repealed)



SUBCHAPTER 4. Common provisions

Article 94

For the purposes foreseen in Section 2 of this Chapter, habitual offenders are deemed to be those who have committed three or more criminal offences under a same heading within a term not exceeding five years and who have been convicted thereof.

In order to carry out such calculation, on one hand, the moment of possible suspension or substitution of the sentence pursuant to Article 88 shall be considered and, on the other hand, the date on which the criminal offences taken as the basis to appraise the habitual nature thereof were committed.

Article 94 bis

To the effects outlined in this Chapter, final judgments issued by Judges or Courts of Law in other States of the European Union shall have the same effect as those handed down by Spanish Judges or Courts of Law unless such criminal offences have been cancelled, or could be cancelled, according to Spanish law.

TITLE IV
On security measures

CHAPTER I
On security measures in general

Article 95

1. Security measures shall be applied by the Judge or Court of Law, following the reports deemed convenient, on persons in the cases foreseen in the following Chapter of this Code, provided the following circumstances concur:

1. That the subject has committed a deed considered a criminal offence;
2. That the deed and personal circumstances of the subject may lead to believe that further criminal offences may probably be committed in future.
3. When the punishment that may have been handed down for the criminal offence committed is not one of imprisonment, the Judge or Court of Law sentencing may only order one or some of the measures foreseen in Article 96.3.

Article 96

1. The security measures that may be imposed under this Code may involve or not deprivation of freedom.

2. The following are measures involving deprivation of freedom:

1. Internment in a psychiatric institution;
2. Internment in a detoxification centre;
3. Internment in a special education centre;

3. The following are measures not involving deprivation of freedom:

1. Barring from a profession;
2. Deportation of aliens not legally resident in Spain;
3. Probation;
4. Family custody. The person subject to this measure shall be subject to care and surveillance by a relative so appointed, who accepts custody, who shall implement this in liaison with the Prison Parole Board Judge and without detriment to the schooling or working activities of the individual under custody;
5. Deprivation of right to drive motor vehicles and mopeds;
6. Deprivation of right to own and carry weapons.

Article 97

During serving of the sentence, the Judge or Court of Law sentencing shall adopt any of the following decisions by the procedure established in the following Article:

- a) Maintaining implementation of the security measure imposed.
- b) Decreeing cessation of any security measure imposed when the subject ceases to involve a criminal risk.

c) Substitution of a security measure with another deemed more adequate, among those foreseen in the case concerned. Should substitution be ordered and the subject evolves negatively, the substitution shall be left without effect and the measure substituted reapplied.

d) Suspending serving of the measure in view of the result already obtained from its implementation, for a term not exceeding that remaining, up to the maximum stated in the sentence that handed it down. The suspension shall be on condition that the subject does not offend during the period set, and it may be left without effect if any of the circumstances foreseen in Article 95 of this Code were evidenced again.

Article 98

1. For the purposes of the preceding Article, in the case of a security measure of deprivation of freedom, or a measure of probation that must be executed after a sentence of imprisonment is served, the Prison Parole Board Judge shall be bound to submit a proposal for maintenance, substitution or suspension thereof, at least annually. In order to draw up that proposal, the Prison Parole Board Judge must evaluate the reports issued by the experts and professionals who care for the person subject to the security measure, or by the competent Public Administrations and, when appropriate, the result of the other actions ordered to such end.

2. In the case of any other measure that does not deprive of freedom, the Judge or Court of Law sentencing shall apply directly to the Administrations, experts and professionals referred to in the preceding Section, for the appropriate reports concerning the situation and progress of the convict, his degree of reinstatement and possibility of reoffending or of recidivism.

3. In all cases, the Judge or Court of Law sentencing shall issue a reasoned resolution concerning the proposal or reports respectively referred to in the preceding two Sections, having heard the person subject to the measure, as well as the Public Prosecutor and the other parties. A hearing shall also be granted to the victims of the criminal offence who were not present when this was requested at commencement, or at any moment of the serving of the sentence, provided it is possible to locate them.

Article 99

In the event of both punishments and security measures depriving of freedom concurring, the Judge or Court of Law shall order fulfilment of the measure, which shall be credited in the sentence handed down. Once the security measure is raised, the Judge or Court of Law may, should serving of the sentence endanger the effects achieved thereby, suspend fulfilment of the rest of the punishment for a term not exceeding its duration, or apply any of the measures foreseen in Article 96.3.

Article 100

1. Breach of a security measure of deprivation of freedom shall lead to the Judge or Court of Law to order the subject to be returned to the same institution from which he has escaped, or another that is appropriate to his status.

2. In the case of other measures, the Judge or Court of Law may resolve substitution of that breached with that of internment, if it is foreseen in the case concerned, and if that breach were to prove the need for such.

3. In both cases, the Judge or Court of Law shall record an attestation of the breach. To these ends, refusal by the subject to submit to medical treatment or to continue medical treatment initially consented shall not be deemed a breach. However, the Judge or Court of Law may order substitution of the initial treatment or that subsequently rejected by another measure from among those applicable to the case concerned.

CHAPTER II

On application of security measures

SUBCHAPTER 1. On measures depriving of freedom

Article 101

1. Subjects declared exempt of criminal accountability pursuant to Section 1 of Article 20, may have the measure of internment for medical treatment or special education applied to them, if necessary, at an adequate institution for the type of anomaly or mental alteration appraised, or any other of the measures foreseen in Section 3 of Article 96. The internment may not exceed the time a sentence of imprisonment would have lasted, if the subject had been declared accountable, and to that end the Judge or Court of Law shall set that maximum limit in the sentence.

2. Whoever is subject to such measure may not leave the institution without authorisation from the Judge or Court of Law sentencing, pursuant to what is set forth in Article 97 of this Code.

Article 102

1. When necessary, those exempt of criminal accountability pursuant to Section 2 of Article 20 shall be subject to internment measures at a public or private detoxification centre that is duly accredited or endorsed, or any other of the measures foreseen in Section 3 of Article 96. The internment may not exceed the time a sentence of imprisonment would have lasted, had the subject been declared accountable, and the Judge or Court of Law shall set that maximum limit in the sentence on that basis.

2. The person subject to that measure may not leave the institution without authorisation from the Judge or Court of Law sentencing, pursuant to the terms foreseen in Article 97 of this Code.

Article 103

1. If necessary, those who are declared exempt from accountability, pursuant to Section 3 of Article 20, may have the measure of internment in a special education centre or any other of the measures foreseen in Section three of Article 96 applied to them. The internment may not exceed the time a sentence of imprisonment would have lasted, had the subject been declared accountable and the Judge or Court of Law shall set that maximum limit in the sentence on that basis.



2. The person subject to that measure may not leave the institution without authorisation from the Judge or Court of Law sentencing, pursuant to the terms foreseen in Article 97 of this Code.

3. In that case, the proposal referred to in Article 98 of this Code must be made at the end of each course or educational stage.

Article 104

1. In cases of incomplete exempting circumstances in relation to Section 1, 2 and 3 of Article 20, in addition to the relevant punishment, the Judge or Court of Law may impose the measures foreseen in Articles 101, 102 and 103. However, the measure of internment shall only be applicable when the punishment imposed is imprisonment and its term may not exceed that of the punishment foreseen for that criminal offence in the Code. The terms set forth in Article 99 shall be observed for the implementation thereof.

2. When an internment measure of those foreseen in the preceding Section or in Articles 101, 102 and 103 is applied, the Judge or Court of Law sentencing shall notify the Public Prosecutor, sufficiently in advance, when its completion is near, for the purposes foreseen under Additional Provision One of this Code.

SUBCHAPTER 2. On measures that do not deprive of freedom

Article 105

In the cases foreseen in Articles 101 to 104, when a measure depriving of freedom is imposed, or during its serving, the Judge or Court of Law may reasonably impose one or several of the measures listed below and must also impose one or several of those measures in the other cases specifically foreseen in this Code.

1. For a term not exceeding five years:

- a) Probation;
- b) Family custody. The person subject to this measure shall remain under the care and surveillance of a relative appointed and who agrees to the custody, who shall carry it out in liaison with the Parole Board Judge and without detracting from the schooling or work activities of the person under custody.

2. For a term of up to ten years:

- a) Probation, when specifically provided by this Code;
- b) Deprivation of right to own and carry weapons;
- c) Deprivation of right to drive motor vehicles and mopeds.

In order to decree the obligation to observe any or a number of the measures foreseen in this Article, as well as to specify that obligation when the imposition thereof is a legal obligation, the Judge or Court of Law sentencing must evaluate the reports issued by the experts and professionals in charge of caring for the person subject to the security measure.

The Prison Parole Board Judge or the services of the relevant Administration shall inform the Judge or Court of Law sentencing.

In the cases foreseen in this Article, the Judge or Court of Law sentencing shall order the competent social assistance services to provide the necessary aid or attention to which the person subject to the security measures that do not deprive of freedom is entitled to.

Article 106

1. Probation shall consist of the convict being subject to court control and having to fulfil any one or number of the following measures:

- a) The obligation to always be traceable by means of electronic devices to allow him to be traced at all times;
- b) The obligation to regularly appear at the place set by the Judge or Court of Law;
- c) That of immediately reporting, within the maximum term and by the means stated by the Judge or Court of Law for that purpose, each change of residence or place or post at work;
- d) Prohibition to leave the place of residence or a specific area without leave from the Judge or Court of Law;
- e) Prohibition to approach the victim, or his relatives or other persons determined by the Judge or Court of Law;
- f) Prohibition to communicate with the victim, or with his relatives or other persons determined by the Judge or Court of Law;
- g) Prohibition to visit specific areas, places or establishments;
- h) Prohibition to reside in specific places;
- i) Prohibition to carry out certain activities that may provide or afford him the chance to commit criminal offences of a similar kind;
- j) The obligation to participate in labour, cultural, sexual education or other similar training programmes;
- k) The obligation to follow external medical treatment, or to submit to periodic medical inspection.

2. Without prejudice to what is set forth in Article 105, the Judge or Court of Law shall impose the probation measure in the sentence for the serving thereof after the punishment of imprisonment handed down has been served, as long as this is specifically provided so in this Code.

In these cases, at least two months before completion of a sentence of imprisonment, so the probation measure may commence at that very moment, the Prison Parole Board Judge, shall submit the appropriate proposal to the Judge or Court of Law sentencing using the procedure foreseen in Article 98. The latter, pursuant to such procedure, shall set the content of the measure, without prejudice to the terms established in Article 97, setting the obligations or prohibitions that must be observed by the convict, as listed in Section 1 of this Article.



Should he be subject to several custodial sentences to be served consecutively, what is set forth in the preceding Section shall be construed to refer to the moment when he has served all of these.

Likewise, convicts upon whom other specific probation measures have been imposed that may not be executed simultaneously due to the content of the obligations or prohibitions established, shall serve them consecutively, without prejudice to the Judge or Court of Law being able to exercise the powers attributed thereto in the following Section.

3. By the same procedure of Article 98, the Judge or Court of Law may:

- a) Amend the obligations and prohibitions imposed thereafter;
- b) Reduce the term of probation or even end it, considering, due to the positive assessment of reinstatement, that continuity of the obligations or prohibitions imposed would be unnecessary or counter-productive;
- c) To leave the measure without effect when the circumstance described in the preceding Sub-Section concurs at the moment of specifying the measures regulated under Section 2 of this Article.

4. In the event of breach of one or several obligations, considering the circumstances concurring and using the same procedure indicated in the preceding Sections, the Judge or Court of Law may amend the obligations or prohibitions imposed. Should the breach be repeated or serious, evidencing refusal to submit to the obligations or prohibitions imposed, the Judge shall also issue an attestation to proceed in view of an apparent criminal offence pursuant to Article 468 of this Code.

Article 107

The Judge or Court of Law may issue a reasoned resolution, ordering the measure of barring from a specific right, profession, trade, industry or commerce, post or employment, for a term from one to five years, when the subject has committed a criminal offence by abuse of that office, or in relation thereto, and when an evaluation of the circumstances concurring may lead to the conclusion of the danger of him committing the same criminal offence or other similar ones again, as long as it is not possible to impose the relevant punishment due to him being included in any of the situations foreseen in Sections 1, 2 and 3 of Article 20.

Article 108

1. Should the subject be an alien not legally resident in Spain, the Judge or Court of Law shall hand down a sentence, after hearing him, of deportation in substitution of the security measures applicable to him, except if the Judge or Court of Law, after hearing the Public Prosecutor, exceptionally and giving the reasons, were to consider the nature of the criminal offence to justify this being served in Spain.

Deportation decreed thus shall halt all administrative proceedings to process a permit to reside or work in Spain.



In the event that, after ordering deportation to substitute the security measure, it should not be possible to implement it, the security measure originally imposed shall be carried out.

2. The alien may not return to Spain for a term of ten years from the date of his deportation.

3. Aliens who attempt to breach a court order of deportation and prohibition to enter Spain mentioned in the preceding Sections shall be returned by the governmental authority and the term of prohibition to enter the country shall then begin to be counted in full again from that moment.



TITLE V

On civil liability arising from the criminal offences and court costs

CHAPTER I

On civil liability and its scope

Article 109

1. Perpetration of a deed defined as a criminal offence by Law shall entail, pursuant to the provisions contained in the laws, to repair the damages and losses caused thereby.

2. In all cases, the party damaged may opt to sue for civil liability before the Civil Jurisdiction.

Article 110

The liability established in the preceding Article includes:

1. Restitution;
2. Repairing the damage;
3. Compensation of material and moral damage.

Article 111

1. Whenever possible, the same asset shall be returned, paying for the deterioration and damage determined by the Judge or Court of Law. Restitution shall take place, even though the asset is in the possession of a third party who has acquired it legally and in good faith, notwithstanding his right to take further action against the relevant party and, when appropriate, entitlement to be compensated by the party civilly liable for the criminal offence.

2. This provision is not applicable when the third party has acquired the asset in the manner and with the requisites established by the laws to make them irretrievable.

Article 112

Reparation of the damage may consist of obligations to give, to do or to abstain from doing that the Judge or Court of Law shall establish in view of the nature thereof and the personal conditions and assets of the offender, determining whether they are to be carried out personally by him or carried out at his expense.

Article 113

Compensation of material and moral damages shall include not only those caused to the victim, but also those caused to relatives thereof or third parties.

Article 114

Should the victim have contributed to causing the damage or loss suffered with his conduct, the Judges or Courts of Law may mitigate the amount of reparation or compensation.

Article 115

When declaring the existence of civil liability, Judges and Courts of Law shall provide a reasoned opinion in their resolutions concerning the bases on which they base the amount for damages and compensation, being able to set these in the resolution itself, or at the moment of the enforcement thereof.

CHAPTER II

On persons liable under Civil Law

Article 116

1. All persons held criminally liable for a criminal offence shall also be held liable under Civil Law if the deed gives rise to damages or losses. If two or more persons are responsible for a criminal offence, the Judges or Courts of Law shall set the proportion for which each one must be held liable.

2. Offenders and accomplices, each within their own respective category, shall be held jointly and severally liable for their proportions and, under subsidiary terms, for those of the other parties responsible. The subsidiary accountability shall first be enforced against the assets of the offenders, and then those of the accomplices.

In cases where the joint and several is enforced or subsidiary liability is, whoever paid the shares due from each one on behalf of the others shall be entitled to bring an action for recovery from the latter.

3. The criminal accountability of a legal person shall involve its civil liability pursuant to the provisions contained in Article 110 of this Code, jointly and severally with the natural persons who are found guilty of the same deeds.

Article 117

Insurers that have underwritten the risk of monetary liabilities arising from use or exploitation of any asset, company, industry or activity when, as a consequence of a fact foreseen in this Code, an event takes place covered by the risk insured, shall have direct civil liability up to the limit of the legally established or contractually agreed compensation, without prejudice to the right bring an action for recovery against who such may be appropriate.

Article 118

1. The exemption from criminal accountability declared under Sections 1, 2, 3, 5 and 6 of Article 20, does not include exemption of civil liability, which shall be made effective pursuant to the following rules:

1. In cases included in Sections 1 and 3, those who, *de facto* or *de jure*, are in charge of, or have custody of persons declared exempt of criminal accountability, shall be held liable for the deeds they perpetrate, whenever they have acted culpably or negligently, and without prejudice to the direct civil liability of those who may be charged. The Judges or Courts of Law shall equitably assess the extent to which each of these subjects must respond with their assets.



2. Those who are drunk and under the influence of narcotics shall also be held liable in cases included in Section 2.

3. In cases included in Section 5, direct civil liability shall apply to the persons in whose favour the harm has been prevented, in proportion to the damage they have been prevented, if this may be calculated or, otherwise, that the Judge or Court of Law shall establish pursuant to the prudent criteria thereof.

When it is not possible for the Judge or Court of Law to assign equitable proportions for which the party concerned shall be held liable, or when the liability affects the Public Administrations, or the majority of a village or town and, in all cases, as long as the damage has been caused with the assent of the authority or its agents, compensation shall be ordered, as appropriate, in the manner established by the special laws and regulations.

4. In cases included in Section 6, mainly those who have caused the fear shall be liable, and failing these, those who have committed the deed.

2. In cases included in Article 14, those held civilly liable shall be the offenders of the deed.

Article 119

In all the cases of the preceding Article, the Judge or Court of Law on handing down a sentence of not guilty due to any of the causes of exemption mentioned concurring shall proceed to setting the civil liabilities, except for specific reservation of the actions to claim them in the relevant channel.

Article 120

The following persons shall also be held civilly liable, failing those held criminally liable:

1. The parents or guardians, for the damages and losses caused by the criminal offences committed by those over eighteen years of age subject to the parental rights or guardianship and who cohabit with them, provided there is culpability or negligence on their part;

2. Natural or legal persons owning publishing houses, newspapers, magazines, radio stations or television channels, or any other means of written, spoken or visual diffusion, for criminal offences committed using the media they own, notwithstanding what is set forth in Article 212;

3. Natural or legal persons, in cases of criminal offences committed in the establishments they own, when those that manage or administer them, or their assistants or employees have breached the police by-laws or provisions by the authority related to the punishable criminal offence committed, so that such an offence would not have happened had the infringement not taken place;

4. Natural or legal persons dedicated to any kind of industry or commerce, for criminal offences their employees or assistants, representatives or managers may have committed in the carrying out of their obligations or services;

5. Natural or legal persons owning vehicles liable to create risks to third parties, for the criminal offences committed in use of these by their assistants, representatives or authorised persons.

Article 121

The State, Autonomous Communities, provinces, islands, municipalities and other public entities, as appropriate, shall be subject to subsidiary liability for damage caused by those criminally liable for malicious or negligent criminal offences, when these are authorities, agents and employees of those bodies, or civil servants carrying out their duties or functions of office, as long as the damage is caused directly by operation of the public services they are entrusted with, without prejudice to patrimonial liability arising from normal or abnormal operation of those services, which may be demanded pursuant to the rules of administrative procedure and without double compensation arising in any case.

If civil liability is claimed in criminal proceedings against an authority, agents and employees thereof, or civil servants, the claim must be filed simultaneously against the public administration or entity presumably subject to subsidiary civil liability.

Article 122

Those who have participated for gain in the effects of a criminal offence shall be bound to restore the item or to compensate the damage up to the amount of his share therein.

CHAPTER III**On the costs****Article 123**

Court costs are deemed to be imposed by Law upon those criminally liable for all criminal offences.

Article 124

Costs shall include the fees and compensations arising from the judicial actions and they shall always include the fees of the private prosecution for criminal offences that may only be prosecuted by the party concerned.

CHAPTER IV**On fulfilment of civil liability and other monetary liabilities****Article 125**

When the assets of the party held liable under Civil Law are not sufficient to pay all the monetary liabilities at once, the Judge or Court of Law, after hearing the party damaged, may split up the payment thereof, setting the amounts and terms of the instalments, according his prudent criterion, the needs of the victim and the financial capacity of the party responsible,

Article 126

1. Payments made by the convict or party with subsidiary civil liability shall be applied in the following order:

1. To repairing the damage caused and to compensating the losses;
2. To compensating the State for the amounts expended on the case;



3. To the costs of the specific or private prosecutor when payment thereof is imposed in the sentence;
 4. To the other costs, even those of defence of the accused, without preference among the interested parties;
 5. To the fine.
2. When the criminal offence was one of those that may only be prosecuted at the instance of the party concerned, the costs of the private prosecutor shall be paid, with preference to compensation to the State. The same preference shall be given to payment of the procedural costs caused to the victim in the cases referred to in Article 14 of the Act on the Status of Victims of a Criminal offence.

TITLE VI

On ancillary consequences

Article 127

1. All penalties imposed for a malicious criminal offence shall lead to loss of the assets obtained therefrom and of the goods, means or instruments with which they were prepared or executed, as well as the gains obtained from the criminal offence, whatever the transformations these may have undergone.

2. In cases in which the Law foresees imposing a sentence of imprisonment exceeding one year for committing an imprudent criminal offence, the Judge or Court of Law may order the loss of the assets obtained thereby and of the assets, means or instruments with which this has been prepared or executed, as well as the gains from the criminal offence, whatever transformations they may have undergone.

3. If, for any circumstance, it were not possible to confiscate the assets stated in the preceding Sections of this Article, other assets corresponding to the equivalent value thereof, and to the gains that may have been obtained, shall be confiscated. The same shall apply in the case of confiscating certain goods, assets or gains, when their value is lower than at the time of acquisition.

Article 127 *bis*

1. The Judge or Court of Law shall also order the confiscation of the goods, assets and gains pertaining to a person convicted of any of the following criminal offences when it is determined, based on well-founded objective evidence, that the goods or assets were obtained from a criminal activity, and their legal origin cannot be accredited:

- a) Criminal offences involving trafficking in human beings;
- b) Criminal offences related to prostitution and the sexual exploitation and corruption of minors and criminal offences of sexual abuse and aggression against minors under the age of sixteen;
- c) Computer-related criminal offences set forth in Sections 2 and 3 of Article 197 and Article 264;
- d) Criminal offences against property and against the socio-economic order of a reiterated nature and in case of recidivism;
- e) Criminal offences related to punishable insolvency;
- f) Criminal offences against intellectual or industrial property;
- g) Criminal offences of corruption in business;
- h) Criminal offences of receiving stolen goods set forth in Section 2 of Article 298;
- i) Criminal offences of money laundering;
- j) Criminal offences against the Inland Revenue and the Social Security;
- k) Criminal offences against workers' rights set forth in Articles 311 to 313;
- l) Criminal offences against the rights of foreign citizens;
- m) Criminal offences against public health set forth in Articles 368 to 373;
- n) Criminal offences of counterfeiting of currency;



- o) Criminal offences of bribery;
- p) Criminal offences of misappropriation;
- q) Criminal offences of terrorism;
- r) Criminal offences committed within a criminal organisation or group.

2. To the effects outlined in Section 1 of this Article, the following aspects shall be evaluated in particular, among others:

- 1. The disproportion between the goods and assets in question and the lawful income of the convicted individual.
- 2. The concealment of the ownership or any power of disposal over the goods or effects via the use of natural or legal persons or bodies without legal personality, or tax havens or territories with no taxation that hide or hinder the identification of the true ownership of the assets.
- 3. The transfer of the goods or assets via transactions that hinder or prevent ascertaining their location or destination and that have no valid legal or economic justification.

3. In these cases, the provisions set forth in Section 3 of the preceding Article shall also apply.

4. If the individual is subsequently convicted of criminal offences similar to those committed previously, the Judge or Court of Law shall assess the extent of the previous confiscation upon resolving the confiscation ordered in the new proceedings.

5. The confiscation referred to in this Article shall not be ordered when the criminal activities from which the goods or assets were obtained have prescribed or have already been subject to criminal proceedings, resulting in an acquittal or a ruling for acquittal with the status of *res judicata*.

Article 127 *ter*

1. The Judge or Court of Law may order the confiscation outlined in the preceding Articles even if no sentence has been handed down, when the unlawful financial position has been demonstrated in adversarial proceedings and in any of the following cases:

- a) That the subject is deceased or suffers from a chronic illness impeding his trial and that there is a risk that the criminal offences may prescribe;
- b) He is in a situation of default, preventing a trial within a reasonable period of time; or
- c) No sentence is handed down as the individual is exempt from criminal responsibility or said responsibility has been finalised.

2. The confiscation referred to in this Article may only be adopted against individuals who have been formally accused or against defendants for whom there is circumstantial evidence of criminality when the situations outlined in the preceding Section have prevented criminal proceedings from continuing.

Article 127 quater

1. Judges and Courts of Law may also order the confiscation of the goods, assets and gains referred to in the preceding Articles that have been transferred to third parties, or others of an equal value, in the following cases:

- a) In the case of assets and gains, when they were acquired with full knowledge that they were obtained from a criminal activity or when a diligent individual would have had reasons to suspect their unlawful origin, given the circumstances of the case;
- b) In the case of other goods, when they were acquired with full knowledge that such an acquisition would hinder their confiscation or when a diligent individual would have had reasons to suspect that such an acquisition would hinder their confiscation, given the circumstances of the case.

2. It shall be assumed, unless evidence to the contrary is produced, that the third party knew or had reasons to suspect that the goods in question were obtained from a criminal activity or that they were transferred to avoid confiscation, when the goods or assets were transferred for free or for a price below real market value.

Article 127 quinquies

1. Judges and Courts of Law may also order the confiscation of goods, assets and gains obtained from the convict's prior criminal activity, when the following circumstances are fulfilled, cumulatively:

- a) That the convict is or has been convicted for any of the criminal offences referred to in Article 127 bis.1 of the Criminal Code;
- b) That the criminal offence was committed in the context of a continuous, prior criminal activity;
- c) That there is well-founded prima facie evidence that a significant part of the convict's assets was obtained through prior criminal activity.

Significant prima facie evidence includes:

1. A disproportion between the goods and assets in question and the lawful income of the convicted individual;
2. The concealment of the ownership or any power of disposal over the goods or effects via the use of natural or legal persons or bodies without legal personality, or tax havens or territories with no taxation that hide or hinder the identification of the true ownership of the assets;
3. The transfer of the goods or assets via transactions that hinder or prevent ascertaining their location or destination and that have no valid legal or economic justification.

The provisions of the preceding Paragraph shall only apply when there is well-founded prima facie evidence that the subject has obtained gains over € 6,000 from his criminal activity.

2. To the effects outlined in the preceding Section, it shall be deemed that the criminal offence has been committed in the context of a continuous criminal activity when:



a) The subject is convicted or has been convicted in the same proceedings for three or more criminal offences from which he has obtained direct or indirect economic gain, or for a reiterated criminal activity including, at least, three criminal offences from which he obtained direct or indirect economic gain, or; b) When, during the six-year period prior to the commencement of the proceedings in which he was convicted for any of the criminal offences outlined in Article 127 bis of the Penal Code, he had been convicted for two or more criminal offences from which he obtained economic gain, or for a reiterated criminal activity including, at least, two criminal offences from which he obtained economic gain.

Article 127 sexies

To the effects outlined in the preceding Article, the following presumptions shall apply:

1. It shall be presumed that all of the goods acquired by the convict within the six years prior to the date of opening of criminal proceedings were obtained from his criminal activity.

To this effect, it shall be understood that the goods were acquired on the earliest date on which it can be demonstrated that they were in the possession of the subject.

2. It shall be presumed that all of the costs incurred by the convict during the period of time outlined in the first Paragraph of the preceding Sub-Paragraph, were paid with funds obtained from his criminal activity.

3. It shall be presumed that all of the goods outlined in Sub-Paragraph 1 were free of encumbrances when acquired.

The Judge or Court of Law may decide that the preceding presumptions are not to be applied in relation to certain goods, assets or gains when, given the specific circumstances of the case, they prove to be incorrect or disproportionate.

Article 127 septies

If it were not possible to proceed with the confiscation, in whole or in part, due to the nature or status of the goods, assets or gains in question, or for any other reason, the Judge or Court of Law may, via a ruling, order the confiscation of other goods, even those of lawful origin, owned by the individuals criminally liable for the criminal offence, with a value equal to that of the part of the confiscation initially decreed and not carried out.

The same shall apply in the case of confiscating certain goods, assets or gains, when their value is lower than at the time of acquisition.

Article 127 octies

1. In order to guarantee the effectiveness of the confiscation, the goods, means, instruments and gains may be apprehended or seized and placed in storage by the judicial authority from the outset of the proceedings.

2. Pursuant to provisions contained in the Criminal Procedure Act, the Judge or Court of Law may decree the advance disposal or provisional use of the goods and assets seized.

3. The goods, instruments and gains confiscated via a final ruling, except those allocated to pay compensation to the victims, shall be assigned to the State, and shall be used as provided for by law or regulation.

Article 128

When those assets and instruments are of lawful trade and their value is not proportional to the nature or severity of the criminal offence, or when the civil liabilities have been fully settled, the Judge or Court of Law may decide not to order the confiscation, or may order only a partial one.

Article 129

1. In the case of criminal offences committed within, in collaboration with, or through or by means of companies, organisations, groups or any other kind of entities or groups of persons that, due to not having legal personality, are not included in Article 31 bis, the Judge or Court of Law may hand down a reasoned resolution ordering on those companies, organisations, groups, entities or groups one or several ancillary consequences of the relevant punishment imposed on the offender, with the content foreseen in Sub-Paragraphs c) to g) of Section 7 of Article 33. Definitive prohibition to carry out any activity, even if lawful, can also be decreed.

2. The ancillary consequences referred to in the preceding Section may only be applied to firms, organisations, groups or entities or associations mentioned therein when this Code specifically foresees this, or in the case of any of the criminal offences for which it allows the criminal accountability of legal persons to be demanded.

3. Temporary closure of premises or establishments, suspension of the corporate activities and judicial intervention might also be ordered by the Investigating Judge as a provisional measure during the investigation proceedings for the purposes established in this Article and within the limits stated in Article 33.7.

Article 129 bis

In the case of individuals convicted of having perpetrated a serious criminal offence against life, people's integrity, liberty, sexual freedom or indemnity, or of terrorism, or any other serious criminal offence that entails a serious risk to the life, health or physical integrity of individuals when, based on the circumstances of the criminal offence, background, the evaluation of his personality or any other available information, it can be deduced that there is a significant risk of repeat offending, the Judge or Court of Law may order that biological samples be taken and analysed in order to obtain DNA identifiers and to record said DNA in the police database. Only the necessary analyses may be conducted in order to obtain the DNA identifiers providing, exclusively, genetic information identifying the person and his gender.

If the individual in question opposes the collection of the samples, compulsory enforcement may be imposed via the minimum coercive measures necessary for enforcement, which in all cases must be proportionate to the circumstances of the case and respectful of his dignity.



TITLE VII

On expiration of criminal accountability and its effects

CHAPTER I

On the causes that extinguish criminal accountability

Article 130

1. Criminal liability is extinguished:

1. Upon the convict's death
2. When the sentence is fully served
3. By definitive remission of the sentence, as set forth in Sections 1 and 2 of Article 87
4. By the granting of the royal pardon

5. When forgiven by the victim, in the case of minor criminal offences which may be prosecuted at the request of the victim or when envisaged by law. Such forgiveness must be granted specifically before the sentence is handed down, to which end the Judge or Court of Law sentencing must hear the victim of the criminal offence before handing it down. Criminal offences against minors or persons with disabilities requiring special protection, Judges or Courts of Law, having heard the Public Prosecutor, may reject the effectiveness of the forgiveness granted by their representatives, ordering proceedings to continue, with intervention by the Public Prosecutor, or the serving of the sentence.

In order to reject the forgiveness to which the preceding Paragraph refers, the Judge or Court of Law must hear the representative of the minor or person with disabilities requiring special protection again.

6. By prescription of the criminal offence.
7. By prescription of the sentence or the security measure.

2. Transformation, merger, absorption or split of a legal person does not extinguish its criminal accountability, which shall be transferred to the firm or firms into which it is transformed, is merged or absorbed, and it shall extend to the firm or firms arising from the split. The Judge or Court of Law may order the punishment to be transferred to the legal person in view of the proportion that the legal person originally liable for the criminal offence has therein.

Criminal accountability is not extinguished by concealed or merely apparent dissolution of the legal person. It shall be deemed, in all cases, that there is concealed or merely apparent dissolution of the legal person when its economic activity continues and it maintains a substantial identity of clients, providers and employees, or the most important part thereof.

Article 131**1.** Criminal offences prescribe:

After twenty years, when the maximum punishment set for the criminal offence is a prison sentence of fifteen or more years.

After fifteen, when the maximum punishment set by Law is barring for more than ten years, or a prison sentence of more than ten and less than fifteen years.

After ten, when the maximum punishment set by Law is a prison sentence or barring for more than five years and does not exceed ten.

After five, all other criminal offences, except minor criminal offences and those of slander and defamation, which shall prescribe in one year.

2. When the punishment stated in the Law is a compound one, that requiring the longest time to prescribe shall be considered to apply the rules considered in this Article.

3. Crimes against humanity and of genocide and crimes against protected persons and assets in the case of armed conflict, except those punished under Article 614, shall never prescribe.

Nor shall criminal offences of terrorism prescribe, if they have caused the death of a person.

4. In cases of concurrent or related criminal offences, the term for prescription shall be that of the most serious criminal offence.

Article 132

1. The terms foreseen in the preceding Article shall be calculated from the day on which the punishable criminal offence was committed. In cases of continued criminal offence, permanent criminal offence, as well as criminal offences requiring assiduity, those terms shall be calculated, respectively, from the day on which the last infraction took place, from when the unlawful situation or the conduct ceased.

In attempted murder and criminal offences of non-consensual abortion, injury, trafficking in human beings, against liberty, of tortures and against moral integrity, sexual freedom and indemnity, privacy, the right to personal dignity and the inviolability of the dwelling, when the victim is a minor, the terms shall be calculated from the day on which he has come of age, and if he were to die before coming of age, as of the date of his death.

2. Prescription shall be interrupted, leaving the time elapsed without effect, when proceedings are brought against the person deemed to be responsible for the criminal offence, and shall begin to elapse again from the proceedings halting or ending without sentencing, pursuant to the following rules:

1. Proceedings shall be deemed as being conducted against a specific person from the moment when, at the suit's inception, or thereafter, a reasoned judicial resolution is handed down attributing him the presumed participation in a deed that might constitute a criminal offence.



2. Notwithstanding the foregoing, filing a suit or the accusation brought before a judicial body, in which a specific person is charged with presumed participation in a deed that might constitute a criminal offence, shall suspend calculation of the prescription for a maximum term of six months, to be counted from the very date the suit is filed or the accusation brought.

If any of the court resolutions mentioned in the preceding Paragraph are issued against the accused or defendant within that term, or against any other person involved in the deeds, the interruption of prescription shall be deemed to have taken place retroactively, for all purposes, on the date of the suit or accusation was filed.

On the contrary, calculation of the term of prescription shall continue from the date of the suit or accusation being filed if, within the term of six months, a final court order of non-admission of the suit or accusation is handed down or the Court decides not to proceed against the person criminally sued or accused. Continuation of the calculation shall also take place if the Investigating Judge does not adopt any of the resolutions foreseen in this Article within those terms.

3. For the purposes of this Article, the person against whom the proceedings are filed must be sufficiently determined in the court order, either by direct identification or by data that allow subsequent specification of that identification within the organisation or group of persons charged with the deed.

Article 133

1. Penalties imposed by final judgement prescribe:

In thirty years, those of imprisonment for more than twenty years.

In twenty- five years, those of imprisonment of fifteen years or more, without exceeding twenty.

In twenty, those of barring for more than ten years and those of imprisonment for more than ten and less than fifteen.

In fifteen, those of barring for more than six years and that do not exceed ten, and those of imprisonment for more than five years and that do not exceed ten.

After ten, the remaining serious penalties.

After five, less serious penalties.

After one year, minor penalties.

2. Penalties imposed for criminal offences against humanity and of genocide and for criminal offences against protected persons and assets in the event of armed conflict, except those punished under Article 614, shall never prescribe.

Nor shall penalties for criminal offences of terrorism prescribe, if the latter have caused the death of a person.



Article 134

1. The time until prescription of the punishment shall be calculated from the date of the final judgement, or from breach of the sentence, if it had begun to be served.
2. The term of prescription of the sentence shall be suspended:
 - a) During the suspension period of the serving of the sentence;
 - b) While serving other sentences, when the provisions of Article 75 are applicable.

Article 135

1. Security measures shall prescribe in ten years, if depriving of freedom for a term exceeding three years, and in five years if depriving of freedom for a term equal to or less than three years, or if they have another content.
2. The time for prescription shall be calculated from the day on which the resolution imposing the measure became final or, when consecutively served, from when it should have begun to be served.
3. Should fulfilment of a security measure be later than that of a punishment, the term shall be calculated from extinction of the latter.

CHAPTER II

On cancellation of criminal records

Article 136

1. Convicts whose criminal liability has been extinguished shall be entitled to obtain cancellation of their criminal record by the Ministry of Justice, on its own motion or at the request of the party, when the following terms have elapsed and the individual does not re-offend:
 - a) Six months for light sentences;
 - b) Two years for sentences that do not exceed twelve months and those handed down for reckless criminal offences;
 - c) Three years for all other less severe sentences of less than three years;
 - d) Five years for all other less severe sentences equal to or greater than three years;
 - e) Ten years for severe sentences.
2. The terms outlined in the preceding Section shall be counted from the day following that on which the punishment was extinguished, although if this were to happen without conditional remission, the term, after having obtained final remission, shall be calculated by backdating to the day following that on which the punishment should have been completed, should such benefit not have been made use of. In such case, the initial date taken for calculation of the term of the sentence shall be the day following the suspension being granted.
3. Sentences handed down to legal persons and the ancillary consequences outlined in Article 129 shall be cancelled within the corresponding term, pursuant to the



regulation set forth in Section 1 of this Article, unless dissolution or the definitive prohibition of activities have been ordered. In such cases, records shall be cancelled after fifty years, starting from the day following the sentence being declared final.

4. Entries of criminal records at the different Sections of the Central Criminal Records Bureau shall not be public. While they are in force, certifications shall only be issued with the limitations and guarantees foreseen in the specific rules thereof and in the cases established by Law. In all cases, those requested by Judges or Courts of Law shall be issued, whether or not they refer to cancelled entries, specifically stating the latter circumstance when it concurs.

5. In cases in which, in spite of fulfilling the requisites established in this Article for cancellation, this has not been carried out, the Judge or Court of Law, having verified these circumstances, shall not take those records into account.

Article 137

Annotations of the security measures imposed pursuant to the terms provided in this Code or in other criminal laws shall be cancelled once the respective measure has been fulfilled or has expired; meanwhile, they shall only be recorded in the certifications the Bureau issues for use by the Judges or Courts of Law, or the administrative authorities, and in the cases established by Law.

BOOK II
CRIMINAL OFFENCES AND PENALTIES THEREOF

TITLE I
On manslaughter and its forms

Article 138

1. Whoever kills another shall be convicted of manslaughter, punishable with a prison sentence of ten to fifteen years.
2. The deeds shall be punished with sanctions of the higher degree in the following cases:
 - a) When any of the circumstances outlined in Section 1 of Article 140 concur when they were committed, or;
 - b) When the deeds also constitute a criminal offence of assault set forth in Article 550.

Article 139

1. Whoever kills another when any of the following circumstances concur shall be convicted of murder and punished with a prison sentence of fifteen to twenty-five years:
 1. With premeditation;
 2. For a price, reward or promise;
 3. With wanton cruelty, deliberately and inhumanely increasing the victim's suffering;
 4. To facilitate the perpetration of another criminal offence or to prevent discovery.

2. When more than one of the circumstances foreseen in the preceding Article concur in a murder, the punishment shall be imposed in the upper half of the sentencing range.

Article 140

1. Murder shall be punished with permanent, revisable imprisonment when any of the following circumstances concurs:
 1. The victim is under sixteen years of age, or is an especially vulnerable individual due to his age, illness or disability;



2. The deed takes place following a criminal offence against sexual freedom committed by the perpetrator against the victim;
3. The deed is committed by an individual belonging to a criminal group or organisation.

2. Those accused of murder, who have been convicted for the death of more than two people shall be punished with permanent, revisable imprisonment. In this case, the provisions outlined under Sub-Paragraph b) of Section 1 of Article 78 bis and under Sub-Paragraph b) of Section 2 of the same Article shall be applied.

Article 140 bis

A probation measure may also be handed down to individuals convicted of committing one or more of the criminal offences outlined in this Title.

Article 141

Provocation, conspiracy and solicitation to commit the criminal offences foreseen in the preceding three Articles shall be punished with the penalty lower by one or two degrees to that stated as appropriate in the preceding Articles.

Article 142

1. Whoever causes the death of another due to gross negligence shall be convicted of manslaughter and punished with a prison sentence of one to four years.

When the manslaughter is committed using a motor vehicle or a moped, the punishment shall also include deprivation of the right to drive motor vehicles and mopeds from one to six years.

When the manslaughter is committed using a firearm, the punishment shall also include deprivation of the right to own and carry weapons from one to six years.

When the manslaughter is committed due to professional negligence, the punishment of special barring from exercising the profession, trade or post shall also be imposed, for a period of three to six years.

2. Whoever causes the death of another due to less serious negligence shall be punished with a fine of three to eighteen months.

When the manslaughter is committed using a motor vehicle or a moped, the punishment may also include deprivation of the right to drive motor vehicles and mopeds from three to eighteen months.

When the manslaughter is committed using a firearm, the punishment may also include deprivation of the right to own and carry weapons from three to eighteen months.

An individual may only be prosecuted for the criminal offences provided for in this Section if the injured party or his legal representative files a formal complaint.

Article 143

1. Whoever induces another to suicide shall be punished with a sentence of imprisonment from four to eight years.



2. A sentence of imprisonment of two to five years shall be imposed upon whoever co-operates in the necessary deeds for a person to commit suicide.
3. Punishment shall involve a sentence of imprisonment from six to ten years if such co-operation were to reach the point of death ensuing.
4. Whoever causes or actively co-operates in the necessary, direct acts causing the death of another, at the specific, serious, unequivocal request of that person, in the event of the victim suffering a serious disease that would unavoidably lead to death, or that causes permanent suffering that is hard to bear, shall be punished with a punishment lower by one or two degrees to those described in Sections 2 and 3 of this Article.



TITLE II

On abortion

Article 144

Whoever perpetrates an abortion on a woman without her consent shall be punished with a sentence of imprisonment from four to eight years and special barring from practising any health profession or from providing services of any kind at public or private gynaecological clinics, institutions or surgeries, for a term of three to ten years.

The same penalties shall be applied to whoever perpetrates an abortion having obtained the consent by the woman through violence, intimidation or deceit.

Article 145

1. Whoever perpetrates an abortion on a woman, with her consent, outside the cases allowed by Law shall be punished with a sentence of imprisonment from one to three years and special barring from practising any health profession and from providing services of any kind at public or private gynaecological clinics, institutions or surgeries, for a term of one to six years. The Judge may hand down the sentence in its higher half when the deeds described in this Section are perpetrated outside an authorised public or private centre or institution.

2. The woman who causes herself an abortion or allows another person to cause it, outside the cases allowed by Law, shall be punished with a fine from six to twenty- four months.

3. In all cases, the Judge or Court of Law shall impose the penalties respectively foreseen in this Article in the upper half when perpetrated after the twenty- second week of gestation.

Article 145 *bis*

1. Punishment with a fine from six to twelve months and special barring from providing services of any kind at public or private gynaecological clinics, institutions or surgeries shall be applied, for a term of six months to two years, to whoever, within the cases admitted by the Law, perpetrates an abortion:

- a) Without having verified that the woman has received prior information on the rights, public subsidies and aid to support maternity;
- b) Without the waiting period established in the legislation having elapsed;
- c) Without having obtained the required prior reports;
- d) Outside an authorised public or private centre or institution. In this case, the judge may impose the punishment in its upper half.

2. In all cases, the Judge or Court of Law shall impose the penalties foreseen in this Article in the upper half, when the abortion is perpetrated as of the twenty- second week of gestation.

3. The pregnant woman shall not be penalised under this provision.



Article 146

Whoever causes an abortion due to gross negligence shall be punished with a sentence of imprisonment of three to five months, or a fine from six to ten months.

When an abortion is perpetrated due to professional negligence, the punishment of special barring from practising the profession trade or holding office shall also be imposed for a term from one to three years.

The pregnant woman shall not be penalised under this provision.



TITLE III

On bodily harm

Article 147

1. Whoever, by any means or procedure, causes another an injury that detracts from his bodily integrity or his physical or mental health, shall be convicted of the criminal offence of grievous bodily harm, with a prison sentence from three months to three years, or a fine of six to twelve months, whenever the injury objectively requires medical or surgical treatment for healing purposes, in addition to qualified first aid.

simple qualified surveillance or monitoring of the course of the injury shall not be deemed medical treatment.

2. Whoever, by any means or procedure, causes another an injury not included in the preceding Section, shall be punished with a fine of one to three months.

3. Whoever hits or causes minor bodily harm to another without causing injury, shall be punished with a fine of one to two months.

4. The criminal offences described in the two preceding Sections may only be prosecuted if the injured party or his legal representative files a formal complaint.

Article 148

The bodily harm foreseen in Section 1 of the preceding Article may be punished with a sentence of imprisonment of two to five years, in view of the result caused or the risk produced:

1. If weapons, instruments, objects, means, methods or ways that are specifically dangerous to life or health, both physical and mental, of the injured party, were used;
2. If perpetrated with wanton cruelty and premeditation;
3. If the victim is under twelve years old or is a person requiring special protection;
4. If the victim is or has been the wife, or woman bound to the offender by a similar emotional relation, even when not cohabitating;
5. If the victim is an especially vulnerable person who lives with the offender.

Article 149

1. Whoever causes to another person, by any means or procedure, to forfeit or lose the use of a major organ or limb, or a sense, or sexual impotence, sterility, serious deformity or to suffer a serious physical or mental illness, shall be punished with a sentence of imprisonment from six to twelve years.

2. Whoever causes to another person a genital mutilation in any form shall be punished with a sentence of imprisonment from six to twelve years. Should the victim be a minor or person requiring special protection, the punishment of special barring from exercise of parental rights, guardianship, care, safekeeping or fostership shall be applicable for a term from four to ten years, should the Judge deem it appropriate in the interest of the minor or of the person requiring special protection.

Article 150

Whoever causes another person to forfeit or lose the use of a non-major or limb, or a deformity, shall be punished with a sentence of imprisonment from three to six years.

Article 151

Provocation, conspiracy and the solicitation to commit the criminal offences foreseen in the preceding Articles of this Title shall be punished with a penalty one or two degrees below that set for the relevant criminal offence.

Article 152

1. Whoever causes a bodily harm foreseen in the preceding Articles due to gross negligence shall be punished, taking into account the risk caused and the outcome:

1. With a prison sentence of three to six months or a fine of six to eighteen months, in the case of the bodily harm described in Section 1 of Article 147;
2. With a prison sentence of one to three years, in the case of the bodily harm described in Article 149;
3. With a prison sentence of six months to two years, in the case of the bodily harm in Article 150.

If the deeds are committed using a motor vehicle or a moped, the punishment shall also include deprivation of the right to drive motor vehicles and mopeds from one to four years.

If the bodily harm is committed using a firearm, the punishment shall also include deprivation of the right to own and carry weapons from one to four years.

If the bodily harm is committed due to professional negligence, the punishment of special barring from exercising the profession, trade or post shall also be imposed, for a period of six months to four years.

2. Whoever causes the bodily harm outlined in Articles 149 and 150 due to less serious negligence shall be punished with a fine of three to twelve months.

If the deeds are committed using a motor vehicle or a moped, the punishment may also include deprivation of the right to drive motor vehicles and mopeds from three months to one year.

If the bodily harm is committed using a firearm, the punishment may also include deprivation of the right to own and carry weapons from three months to one year.

An individual may only be prosecuted for the criminal offences provided for in this Section if the injured party or his legal representative files a formal complaint.

Article 153

1. Whoever, by any means or procedure, causes another mental damage or an injury less serious than those outlined in Section 2 of Article 147, or who hits or abuses another by action, without causing such person an injury, if the victim is or has been his wife, or a woman with whom he has been bound by a similar emotional relation, even if not cohabitating, or an especially vulnerable person who lives with the offender, the



offender shall be punished with a prison sentence of six months to one year, or community service from thirty-one to eighty days and, in all cases, deprivation of the right to own and carry weapons from one year and a day to three years, as well as, if the Judge or Court of Law deems it appropriate in the interest of the minor or person with disabilities requiring special protection, barring from the exercise of parental rights, guardianship, care, safekeeping or fostership for up to five years.

2. If the victim of the criminal offence foreseen in the preceding Section were any of the persons referred to in Article 173.2, except the persons considered in the preceding Section of this Article, the offender shall be punished with a sentence of imprisonment from three months to a year or community service of thirty- one to eighty days and, in all cases, deprivation of the right to own and carry weapons from a year and a day to three years, as well as, if the Judge or Court of Law deems it adequate in the interest of the minor or person requiring special protection, barring from the exercise of parental rights, guardianship, care, safekeeping or fostership from six months to three years.

3. The penalties foreseen in Sections 1 and 2 shall be imposed in the upper half if the criminal offence is perpetrated in the presence of minors, or using weapons, or if it takes place in the common dwelling or in the dwelling of the victim, or if perpetrated in breach of a penalty of those set forth in Article 48 of this Code, or a precautionary or security measure of the same nature.

4. Notwithstanding the terms foreseen in the preceding Sections, the Judge or Court of Law, giving the reasons in the judgement, in view of the offender's personal circumstances and those arising in perpetrating the deed, may impose the lower degree punishment.

Article 154

Those who brawl, attacking each other in a disorderly manner and using means or instruments that endanger the life or integrity of persons, shall be punished for their participation in the brawl with a sentence of imprisonment from three months to a year or fine from six to twenty- four months.

Article 155

In criminal offences involving bodily harm, if valid, free, spontaneous consent is involved expressed by the victim, a punishment lower by one or two degrees shall be imposed.

Consent granted by a minor or person requiring special protection shall not be valid.

Article 156

Notwithstanding what is set forth in the preceding Article, valid, free, conscious and specifically expressed consent shall exempt from criminal accountability in cases of organ transplant carried out pursuant to the terms of the Law, sterilisations and transsexual surgery carried out by a surgeon, except if the consent obtained is flawed, or obtained by price or reward, or if the person consenting is a minor or is devoid of capacity to give such consent, in which case that provided by him or his legal representatives shall not be valid.

Sterilisation ordered by a Judicial Body in the case of individuals who, on a permanent basis, can in no way provide the consent outlined in the preceding Paragraph shall not be punishable, only in the event of exceptional cases, entailing a serious conflict of legally-protected rights, in order to safeguard the higher interest of the individual in question, all pursuant to civil legislation.

Article 156 bis

1. Those who promote, favour, facilitate or publicise the unlawful obtaining or trafficking in human organs or the transplantation thereof shall be punished with a sentence of imprisonment from six to twelve years in the case of a main organ, and of prison from three to six years if not a main organ.

2. Should the receiver of the organ consent to the carrying out of the transplant whilst being aware of its unlawful origin, he shall be punished with the same penalties as in the preceding Section, that may be lowered by one or two degrees in view of the circumstances of case and of the offender.

3. If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Article, it shall be sentenced to pay a fine of three to five times the profit obtained.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties described in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 156 ter

A probation measure may also be handed down to individuals convicted of committing one or more of the criminal offences outlined in this Title, if the victim is any of the individuals referred to in Section 2 of Article 173.



TITLE IV

On bodily harm to the foetus

Article 157

Whoever, by any means or procedure, were to cause a foetus an injury or disease that seriously damages the normal development thereof or causes such foetus a serious physical or mental handicap, shall be punished with a prison sentence of one to four years and special barring from practising any health profession, or providing services of all kinds at public or private gynaecological clinics, institutions or surgeries, for a term of two to eight years.

Article 158

Whoever, due to gross negligence, were to commit the deeds described in the preceding Article, shall be punished with a sentence of imprisonment of three to five months or a fine from six to ten months.

If the deeds described in the preceding Article are committed by professional negligence, the punishment of special barring from practice of the profession, trade or office for a term of six months to two years shall also be imposed.

The pregnant woman shall not be penalised under this provision.



TITLE V

Criminal offences related to genetic engineering

Article 159

1. Those who manipulate the human genes so as to alter the genome for purposes other than eliminating or decreasing serious flaws or diseases, shall be punished with a sentence of imprisonment from two to six years and special barring from public employment and office, profession or trade for seven to ten years.
2. Should alteration of the genome be perpetrated due to gross negligence, the punishment shall be a fine from six to fifteen months and special barring from public employment and office, profession or trade from one to three years.

Article 160

1. The use of genetic engineering to produce biological weapons or those intended to exterminate human beings shall be punished with a sentence of imprisonment of three to seven years and special barring from public employment and office, profession or trade for a term of seven to ten years.
2. Those who fertilise human ovules for any purpose other than human procreation shall be punished with a sentence of imprisonment from one to five years and special barring from public employment and office, profession or trade from six to ten years.
3. The same penalty shall apply to punish creation of identical human beings by cloning or other procedures aimed at racial selection.

Article 161

1. Whoever carries out assisted reproduction techniques on a woman without her consent shall be punished with a sentence of imprisonment from two to six years and special barring from public employment and office, profession or trade for a term of one to four years.
2. Prosecution of this criminal offence shall require it to be denounced by the victim or her legal representative. Should she be a minor, person requiring special protection, or a disabled person, the Public Prosecutor may also denounce the criminal offence.

Article 162

In the criminal offences defined in this Title, the judicial authority may impose any one or number of the consequences foreseen in Article 129 of this Code if the offender belongs to a company, organisation or association which engages in these activities, even though only transitionally.



TITLE VI Criminal offences against freedom

CHAPTER I On unlawful detention and kidnapping

Article 163

1. A private individual who locks up or detains another person, depriving him of his liberty, shall be punished with a sentence of imprisonment from four to six years.
2. Should the offender release the person locked up or detained within the first three days of detention, without having achieved his intended objective, he shall have the lower degree punishment imposed.
3. A sentence of imprisonment from five to eight years shall be handed down if the victim is locked up or detained for more than fifteen days.
4. A private individual who, outside the cases allowed by the laws, arrests a person to immediately hand him over to the authorities, shall be punished with the penalty of a fine from three to six months.

Article 164

Kidnapping a person when setting a condition for release shall be punished with a sentence of imprisonment from six to ten years. If the circumstance of Article 163.3 has concurred with the kidnap, the higher degree punishment shall be imposed, and the lower degree one if the conditions of Article 163.2 are fulfilled.

Article 165

The penalties of the preceding Articles shall be imposed in the upper half, in the respective cases, if an unlawful detention or kidnapping has been carried out simulating being an authority or public officer, or if the victim is a minor, an individual requiring special protection, or a civil servant exercising his duties.

Article 166

1. A convict for unlawful detention or kidnapping who does not justify the whereabouts of the person detained shall be punished with a prison sentence of ten to fifteen years, in the case of unlawful detention, and fifteen to twenty years in the case of kidnapping.
2. The deeds shall be punished with a prison sentence of fifteen to twenty years, in the case of unlawful detention, and twenty to twenty-five years in the case of kidnapping, if any of the following circumstances concurs:
 - a) If the victim is a minor or a person with a disability requiring special protection;
 - b) If the perpetrator carried out the unlawful detention or kidnapping with the intention of impinging the sexual freedom or indemnity of the victim, or subsequently acted to that end.

Article 167

1. An authority or civil servant who, outside the cases allowed by Law, and without there being a reason due to a criminal offence, were to commit any of the deeds described in this Chapter, shall be punished with the penalties respectively foreseen therein, in the upper half, and up to the highest degree.

2. The following cases shall be punished with the same penalties:

- a) The civil servant or authority who, whether or not there is a reason due to a criminal offence, orders, exercises or prolongs the deprivation of freedom of an individual and who does not acknowledge said deprivation of freedom or, in any other manner, conceals the situation or whereabouts of said individual, depriving him of his constitutional or legal rights;
- b) The individual who carries out the deeds with the authorisation, support or acquiescence of the State or its authorities.

3. In all of the cases in which the deeds outlined in this Article are committed by an authority or civil servant, he shall also be punished with absolute barring for a period of eight to twelve years.

Article 168

Provocation, conspiracy and solicitation to commit the criminal offences foreseen in this Chapter shall be punished with the penalty lower by one or two degrees to that set for the criminal offence concerned.

CHAPTER II **On intimidation**

Article 169

Whoever threatens another with causing him, his family or other persons with whom he is intimately related harm consisting of criminal offences of manslaughter, bodily harm, abortion, against liberty, torture and against moral integrity, sexual freedom, privacy, honour, property and the social-economic order, shall be punished:

1. With a sentence of imprisonment from one to five years, if he has made the threat demanding a sum or imposing any other condition, even though not unlawful, and the offender has achieved what he intended. If not achieved, a sentence of imprisonment of six months to three years shall be handed down.

The penalties stated in the preceding Section shall be imposed in the upper half if the intimidation is made in writing, by telephone or by any means of communication or reproduction, or on behalf of real or supposed entities or groups.

2. With a sentence of imprisonment of six months to two years, if the intimidation has not been conditional.

Article 170

1. Should the intimidation be of a harm which constitutes a criminal offence is intended to cause fear among the inhabitants of a location, ethnic, cultural or religious group, or



a social or professional group, or any other group of persons, and if serious enough for such harm to be inflicted, the respective higher degree of penalties than those foreseen in the preceding Article shall be imposed.

2. A sentence of imprisonment from six months to two years shall be applied to those who, for the same purpose and severity, publicly call for violent deeds to be committed by armed gangs, organisations or terrorist groups.

Article 171

1. Threats of harm that does not constitute a criminal offence shall be punished with a prison sentence from three months to a year or fine from six to twenty- four months, in view of the severity and circumstances of the facts, if the intimidation is conditional and the condition does not consist in a conduct that is due. Should the offender have achieved his purpose, the upper half of the punishment shall be applied.

2. Should any person demand any other sum or compensation under the threat of disclosing or broadcasting facts concerning his private life or family relations that are not publicly known and that may affect his reputation, credit or interest, he shall be punished with a sentence of imprisonment from two to four years, if he has obtained delivery of all or part of what has been demanded, and from four months to two years, should this not be achieved.

3. Should the deed described in the preceding Section consist of a threat to reveal or report that a criminal offence has been committed, the Public Prosecutor may, in order to facilitate punishment of the intimidation, abstain from accusing the person threatened with disclosure of the latter criminal offence, except if punishable with a prison sentence exceeding two years. In the latter case, the Judge or Court of Law may lower the punishment by one or two degrees.

4. Whoever lightly intimidates his wife or former wife, or woman with whom he has been bound by a similar emotional relation even without cohabitation, shall be punished with a sentence of imprisonment of six months to one year or community service from thirty- one to eighty days and, in all cases, deprivation of the right to own and carry weapons from a year and a day to three years, as well as, if the Judge or Court of Law sees it fit in the interest of the minor or person requiring special protection, special barring from exercise of parental rights, guardianship, care, safekeeping or fostership for up to five years.

The same punishment shall be imposed on whoever lightly intimidates an especially vulnerable person who lives with the offender.

5. Whoever lightly intimidates any of the persons referred to in Article 173.2 with weapons or other dangerous instruments, except those stated in the preceding Section of this Article, shall be punished with a sentence of imprisonment from three months to a year or community service of thirty- one to eighty days and, in all cases, deprivation of the right to own and carry weapons from one to three years, as well as, if the Judge or Court of Law sees it fit in the interest of the minor or person requiring special protection, special barring from exercise of parental rights, guardianship, care, safekeeping or fostership for a term of six months to three years.

The penalties foreseen in Sections 4 and 5, in the upper half, shall be applied if the criminal offence is committed in the presence of minors, or if it takes place in the common dwelling or in the dwelling of the victim, or is perpetrated in breach of a punishment of those set forth in Article 48 of this Code or a precautionary or security measure of the same kind.

6. Notwithstanding what is set forth in Sections 4 and 5, the Judge or Court of Law, may, giving the reasons in the judgement, in view of the offender's personal circumstances and those arising in the perpetration of the deed, handing down a punishment one degree lower.

7. Outside the cases above, whoever mildly threatens another shall be punished with a fine of one to three months. An individual may only be prosecuted if the injured party or his legal representative files a formal complaint.

If the offended person is one of those referred to in Section 2 of Article 173, the punishment shall be permanent traceability for five to ten days, at a different address away from the victim in all cases, or community service of five to thirty days, or a fine of one to four months. The latter shall only be imposed where the circumstances outlined in Section 2 of Article 84 concur. In such cases, the formal complaint referred to in the preceding Paragraph shall not be required.

CHAPTER III

On coercion

Article 172

1. Whoever, without being lawfully authorised, were to use violence to prevent another from doing something the law does not prohibit, or who forces him to do something he does not want to do, whether just or unjust, shall be punished with a sentence of imprisonment of six months to three years or with a fine of twelve to twenty- four months, in view of the severity of the coercion or the means used.

If the object of the coercion exercised is to prevent someone from exercising a fundamental right, the penalties shall be imposed in the upper half, except if a higher punishment is set for the criminal offence under another provision of this Code.

The penalties shall also be imposed in the upper half if the coercion perpetrated is intended to prevent someone from lawfully enjoying his dwelling.

2. Whoever lightly coerces his wife or former wife or woman to whom he is or has been bound by a similar emotional relation, even without cohabitation, shall be punished with a sentence of imprisonment of six months to one year or of community service of thirty- one to eighty days and, in all cases, deprivation of the right to own and carry weapons from a year and a day to three years, as well as, if the Judge or Court of Law sees it fit in the interest of the minor or person requiring special protection, special barring from exercise of parental rights, guardianship, care, safekeeping or fostership up to five years.

The same punishment shall be imposed on whoever slightly coerces an especially vulnerable person who lives with the offender.



The punishment shall be imposed in the upper half if the criminal offence is committed in the presence of minors, or if it takes place in the common dwelling or in the dwelling of the victim, or is perpetrated in breach of a punishment of those set forth in Article 48 of this Code or a precautionary or security measure of the same kind.

Notwithstanding what is set forth in the preceding Sections, the Judge or Court of Law may, giving the reasons in the judgement, in view of the offender's personal circumstances and those arising in perpetrating the deed, hand down a punishment one degree lower.

3. Outside the cases above, whoever mildly coerces another shall be punished with a fine of one to three months. An individual may only be prosecuted if the injured party or his legal representative files a formal complaint.

Where the offended person is one of those referred to in Section 2 of Article 173, the punishment shall be permanent traceability for five to ten days, at a different address away from the victim in all cases, or community service of five to thirty days, or a fine of one to four months. The latter shall only be imposed where the circumstances outlined in Section 2 of Article 84 concur. In such cases, the formal complaint referred to in the preceding Paragraph shall not be required.

Article 172 bis

1. Whoever, with serious intimidation or violence, forces another person into wedlock shall be punished with a prison sentence of six months to three years and six months or with a fine of twelve to twenty-four months, depending on the severity of the coercion or on the means employed.

2. The same punishment shall be imposed on any individual who, in order to commit the deeds outlined in the preceding Section, uses violence, serious intimidation or deceit to force another person to leave Spanish territory or not to return thereto.

3. The punishment shall be imposed in the upper half of the sentencing range if the victim is a minor.

Article 172 ter

1. Whoever harasses a person by insistently and repeatedly engaging in any of the following behaviours, without being legitimately authorised, and, in this manner, severely alters his daily life, shall be punished with a prison sentence of three months to two years or a fine of six to twenty-four months:

1. Monitoring, pursuing or seeking his physical proximity;
2. Establishing or trying to establish contact with him through any method of communication, or through third parties;
3. Through the inappropriate use of his personal data to purchase products or merchandise, or to sign up to services, or having third parties contact him;
4. Infringing upon his freedom or his property, or upon the freedom or property of another person who is close to him.

In the case of an especially vulnerable individual due to his age, illness or situation, a prison sentence of six months to two years shall be imposed.



2. If the offended person is one of those referred to in Section 2 of Article 173, a prison sentence of one to two years shall be imposed, or community service from sixty to one hundred and twenty days. In this case, the formal complaint referred to in Section 4 of this Article shall not be required.

3. The punishments outlined in this Article shall be imposed without prejudice to those that could correspond to the criminal offences to which the acts of physical or psychological violence could have given rise to.

4. An individual may only be prosecuted for the deeds described in this Article if the injured party or his legal representative files a formal complaint.



TITLE VII

On torture and other criminal offences against moral integrity

Article 173

1. Whoever inflicts a degrading treatment on another person, seriously damaging his moral integrity, shall be punished with a sentence of imprisonment of six months to two years.

The same punishment shall be imposed on those who, within the setting of any labour relation or the civil service, availing themselves of their superior status, repeatedly perpetrate hostile or humiliating deeds against another that, while not reaching the status of degrading treatment, amount to serious harassment of the victim.

The same punishment shall also be imposed on those who repeatedly perpetrate hostile or humiliating deeds that, while not reaching the statement of degrading treatment, are aimed at preventing lawful enjoyment of a dwelling.

2. Whoever habitually uses physical or mental violence against the person who is or has been his spouse or the person who is or has been bound to him by a similar emotional relation, even without cohabitation, or against descendants, ascendants or biological, adopted or fostered siblings, against that person or the spouse or cohabitating partner, or against minors or persons with disabilities requiring special protection who live with him or who are subject to the parental rights, guardianship, care, fostership or safekeeping of the spouse or cohabitating partner, or against a person protected by any other relation by which that person is a member of the core family unit, as well as against persons who, due to their special vulnerability are subject to custody or safekeeping in public or private centres, shall be punished with a prison sentence of six months to three years, deprivation of the right to own and carry weapons from three to five years and, if appropriate, when the Judge or Court of Law sees it fit in the interest of the minor or person with disabilities requiring special protection, special barring from the exercise of parental rights, guardianship, care, safekeeping or fostership for a term from one to five years, without prejudice to the penalties that could correspond to the criminal offences to which the acts of physical or psychological violence could have given rise.

The penalties shall be imposed in the upper half if one or more of the deeds of violence are committed in the presence of minors, or using weapons, or take place in the common dwelling or in the dwelling of the victim, or are perpetrated in breach of any of the penalties foreseen in Article 48, or of a precautionary or security measure or prohibition of the same kind.

In the cases referred to in this Section, a probation measure may also be imposed.

3. In order to appraise the habitual nature referred to in the preceding Section, the number of proven deeds of violence shall be considered, as well as the nearness of these in time, regardless of whether that violence has been perpetrated against the same or different victims described in this Article, and whether the violent deeds have or have not been judged in previous proceedings.

4. Whoever mildly insults or harasses another, where the offended person is one of those referred to in Paragraph 2 of Article 173, shall be punished with permanent traceability for five to ten days, at a different address away from the victim in all cases, or community service of five to thirty days, or a fine of one to four months. The latter shall only be imposed where the circumstances outlined in Paragraph 2 of Article 84 concur.

An individual may only be prosecuted for insults if the injured party or his legal representative files a formal complaint.

Article 174

1. Torture is committed by the public authority or officer who, abusing his office, and in order to obtain a confession or information from any person, or to punish him for any deed he may have committed, or is suspected to have committed, or for any reason based on any kind of discrimination, subjects that person to conditions or procedures that, due to the nature, duration or other circumstances thereof, cause him physical or mental suffering, suppression or decrease in his powers of cognizance, discernment or decision, or that in any other way attack his moral integrity. Those found guilty of torture shall be punished with a sentence of imprisonment from two to six years if the criminal offence is serious, and of imprisonment from one to three years if it is not. In addition to the penalties stated, in all cases, the punishment of absolute barring shall be imposed, from eight to twelve years.

2. The same penalties shall be incurred, respectively, by the authority or officer of prison institutions or correctional or protection centres for minors who may commit the deeds referred to in the preceding Section in relation to the detainees, interns or prisoners.

Article 175

An authority or public officer who, abusing his office and outside the cases considered in the preceding Article, attacks the moral integrity of a person, shall be punished with a sentence of imprisonment of two to four years if the attack is serious and of six months to two years' imprisonment if it is not. In all cases, in addition to the penalties stated, the offender shall be subject to that of special barring from public employment and office for two to four years.

Article 176

The penalties, as respectively established in the preceding Articles, shall be imposed on the authority or officer who, in breach of the duties of his office, were to allow other persons to perpetrate the deeds foreseen therein.

Article 177

If the criminal offences described in the preceding Sections, in addition to attacking moral integrity, were to cause injury or damage to life, physical integrity, health, sexual freedom or the assets of the victim or a third party, such deeds shall be punished separately with the relevant penalties for the criminal offences committed, except, when they are already specifically punished by Law.



TITLE VII BIS

On trafficking in human beings

Article 177 bis

1. Whoever, using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of a national or alien victim, or through the delivery or receipt of payments or earnings to obtain the consent of the person with the control over the victim, were to induce, transport, transfer, house or receive such a victim, including the exchange or transfer of control over such individuals, for any of the purposes described below, within Spain, from Spain, in transit or with destination therein, shall be convicted of human trafficking and punished with a prison sentence of five to eight years:

- a) Imposing on the victim forced work or services, slavery or practices similar to slavery or servitude or begging;
- b) Sexual exploitation, including pornography;
- c) Exploitation to carry out criminal activities;
- d) Extraction of their bodily organs;
- e) Solemnisation of forced marriages.

There is a situation of need or vulnerability when the individual in question does not have another real or acceptable alternative, other than submitting to the abuse.

2. Even when not resorting to any of the means listed in the preceding Section, the deeds stated in the preceding Section shall be deemed human trafficking if perpetrated with minors for the purposes of exploitation.

3. The consent of a victim of human trafficking shall be irrelevant when any of the means stated in Section one of this Article has been resorted to.

4. The higher degree punishment than that foreseen in Section 1 of this Article shall be applied if:

- a) The life or physical or mental integrity of the individuals subject to the criminal offence is endangered;
- b) The victim is especially vulnerable due to illness, pregnancy, disability or personal situation, or is a minor.

Should more than one circumstance concur, the punishment shall be imposed in its upper half.

5. A punishment higher in one degree than that foreseen in Section 1 of this Article shall be imposed, and absolute barring from six to twelve years for those who perpetrate such deeds availing themselves of their status as an authority due to being agent or public officer thereof. If any of the circumstances also foreseen in Section 4 of this Article should also concur, the penalties shall be imposed in the upper half.

6. A punishment higher in one degree than foreseen in Section 1 of this Article shall be imposed and special barring from profession, trade, industry or commerce for the time

of the sentence, if the offender belongs to an organisation or association of more than two persons, even if transitory in nature, which carries out such activities. Should any of the circumstances foreseen in Section 4 of this Article concur, the penalties imposed shall be in the upper half. If the circumstance foreseen in Section 5 of this Article concurs, the penalties imposed shall be those stated the upper half thereof.

In the case of the managers, directors or persons in charge of such organisations or associations, the upper half of the punishment shall be applied, which may be raised to the one immediately above it in degree.

In all cases, the punishment shall be raised to the one immediately above in degree if any of the circumstances foreseen in Section 4 or the circumstance foreseen in Section 5 of this Article concurs.

7. If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences described in the Article, the punishment imposed thereon shall be a fine from three to five times the profit obtained. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

8. Provocation, conspiracy and solicitation to commit the criminal offence of trafficking in human beings shall be punished with the penalty lower by one or two degrees to that of the relevant criminal offence.

9. In all cases, the penalties foreseen in this Article shall be imposed without prejudice to the relevant one, as appropriate, for the criminal offence of Article 318 bis of this Code and other criminal offences effectively committed, including those related to the relevant exploitation.

10. Sentences by foreign Judges or Courts of Law for criminal offences of the same kind as those foreseen in this Article shall have the effect of recidivism, except if the criminal record has been cancelled or may be, pursuant to Spanish Law.

11. Without prejudice to application of the general rules of this Code, the victims of trafficking in human beings shall be exempt of punishment for the criminal offences that might have been committed while suffering exploitation, as long as participation therein has been a direct consequence of the situation of violence, intimidation, deceit or abuse to which they may have been subjected to and provided there is an adequate proportionality between that situation and the criminal deed perpetrated.



TITLE VIII

Criminal offences against sexual freedom and indemnity

CHAPTER I

On sexual assault

Article 178

Whoever offends against the sexual freedom of another person, using violence or intimidation, shall be punished for sexual assault with a sentence of imprisonment from one to five years.

Article 179

If the sexual assault consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the offender shall be convicted of rape with a sentence of imprisonment from six to twelve years.

Article 180

1. The preceding conduct shall be punished with prison sentences of five to ten years for assaults pursuant to Article 178, and from twelve to fifteen years for those of Article 179, if any of the following circumstances concurs:

1. If the violence or intimidation made are of a particularly degrading or humiliating nature;
2. If the deeds are committed by joint action of two or more persons;
3. If the victim is especially vulnerable due to age, illness, handicap or circumstances, except for what is set forth in Article 183;
4. If, in order to execute the criminal offence, the offender has availed himself of a superiority or relationship, due to being an ascendant, descendent or brother or sister, biological or adopted or in-law of the victim;
5. If the doer uses weapons or other equally dangerous means which may cause death or the bodily harm foreseen in Articles 149 and 150 of this Code, without prejudice to the relevant punishment for the death or bodily harm caused.

2. Should two or more of the above circumstances concur, the penalties foreseen in this Article shall be imposed in the upper half.

CHAPTER II

On sexual abuse

Article 181

1. Whoever, without violence or intimidation and without there being consent, perpetrates deeds against the sexual freedom or indemnity of another person, shall be convicted of sexual abuse, with a sentence of imprisonment from one to three years or a fine of eighteen to twenty- four months.

2. For the purposes of the preceding Section, non-consensual sexual abuse is deemed to be that perpetrated on persons who are unconscious, or whose mental disorder is

taken advantage of, as well as those committed by overcoming the will of the victim using narcotics, drugs or any other natural or chemical substance that is appropriate for such purpose.

3. The same punishment shall be imposed if consent is obtained by the offender availing himself of a situation of manifest superiority that deprives the victim of liberty.

4. In all the preceding cases, if the sexual abuse consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the offender shall be punished with a sentence of imprisonment from four to ten years.

5. The penalties stated in this Article shall be imposed in the upper half if the circumstance of 3a. or that of 4a. of those foreseen in Section 1 of Article 180 of this Code concur.

Article 182

1. Whoever, by deceit or by abusing a recognised position of trust, authority or influence over the victim, engages in acts of a sexual nature with a person over the age of sixteen and under the age of eighteen shall be punished with a prison sentence of one to three years.

2. If the deeds consist of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the punishment shall be prison from two to six years. The punishment shall be imposed in its the upper half if circumstances 3 or 4 of those foreseen in Article 180.1 of this Code concur.

CHAPTER II BIS

On sexual abuse and assault on children under the age of sixteen years

Article 183

1. Whoever engages in acts of a sexual nature with a child under the age of sixteen years shall be convicted of sexual abuse of a child, punished with a prison sentence of two to six years.

2. If the acts take place by means of violence or intimidation, the offender shall be convicted of the criminal offence of sexual assault of a child, punished with a prison sentence of five to ten years. The same penalties shall be imposed when, by means of violence or intimidation, the offender forces a child under the age of sixteen years to participate in acts of a sexual nature with a third person or to carry them out on themselves.

3. If the assault consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the offender shall be punished with a prison sentence of eight to twelve years, in the case of Section 1, and with the punishment of twelve to fifteen years, in the case of Section 2.

4. The conducts foreseen in the preceding three Sections shall be punished with the relevant prison sentence in its upper half if any of the following circumstances concurs:



- a) If the scarce intellectual or physical development of the victim, or the fact of having a mental illness, has caused a situation of total defencelessness and, in all cases, when under four years old;
- b) If the deeds are committed by the joint action of two or more persons;
- c) If the violence or intimidation made are of a particularly degrading or humiliating nature;
- d) If, in order to execute the criminal offence, the offender has availed himself of a superiority or relationship, due to being an ascendant, or brother, biological, adopted or in-law of the victim;
- e) If the offender has endangered the life or health of the minor; intentionally or due to gross negligence;
- f) If the criminal offence has been committed within a criminal organisation or group dedicated to the perpetration of these activities.

5. In all the cases foreseen in this Article, if the offender has availed himself of his condition as an authority, agent or public officer thereof, the punishment of absolute barring from six to twelve years shall also be applied.

Article 183 bis

Whoever, for sexual purposes, forces a child under sixteen years to participate in conduct of a sexual nature, or forces him to witness acts of a sexual nature, even if the offender does not participate in said acts, shall be punished with a prison sentence of six months to two years.

If he forces the child to witness sexual abuse, even if the offender does not participate in said abuse, he shall be punished with a prison sentence of one to three years.

Article 183 ter

1. Whoever uses the Internet, telephone or any other information and communication technology to contact a person under the age of sixteen years and proposes to meet that person in order to commit any of the criminal offences described in Articles 183 and 189, as long as such a solicitation is accompanied by material deeds aimed at such an approaching, shall be punished with a prison sentence of one to three years or a fine of twelve to twenty-four months, without prejudice to the relevant penalties for the criminal offences actually committed. The penalties shall be imposed in the upper half when the approach is obtained by coercion, intimidation or deceit.

2. Whoever uses the Internet, telephone or any other information and communication technology to contact a person under the age of sixteen years and carries out acts aimed at luring that person into sending him pornographic material or showing him pornographic images in which a minor is displayed or appears, shall be punished with a prison sentence of six months to two years.

Article 183 quater

The free consent of a person under sixteen years shall exclude criminal liability for the criminal offences outlined in this Chapter, if the perpetrator is close in age and degree of development or maturity to the minor.

CHAPTER III

On sexual harassment

Article 184

1. Whoever solicits favours of a sexual nature, for himself or for a third party, within the setting of a continuous or usual work relation, teaching or service provision relation, and by such conduct causes the victim a situation that is objective and seriously intimidating, hostile or humiliating, shall be convicted of sexual harassment and punished with a sentence of imprisonment of three to five months or a fine from six to ten months.

2. Should the party guilty of sexual harassment have committed the deed availing himself of a situation of labour, teaching or hierarchical superiority, or specifically or tacitly warning of harm to the victim in relation to the lawful expectations that person may have within the setting of that relation, the punishment shall be five to seven months' imprisonment or a fine of ten to fourteen months.

3. If the victim is especially vulnerable, due to age, illness or the circumstances, the punishment shall be five to seven months' imprisonment or a fine of ten to fourteen months in the cases foreseen in Section 1, and of imprisonment for six months to one year in the cases foreseen in Section 2 of this Article.

CHAPTER IV

On criminal offences of exhibitionism and sexual provocation

Article 185

Whoever perpetrates or has another perpetrate deeds of obscene exhibitionism before minors or persons requiring special protection, shall be punished with a sentence of imprisonment of six months to one year or fine from twelve to twenty-four months.

Article 186

Whoever, by any direct means, were to sell, distribute or exhibit pornographic material among minors or persons requiring special protection, shall be punished with a sentence of imprisonment of six months to one year or a fine from twelve to twenty-four months.

CHAPTER V

On criminal offences related to prostitution and sexual exploitation and corruption of minors

Article 187

1. Whoever, using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of the victim, forces a person of legal age to practice prostitution, or to continue doing so, shall be punished with a prison sentence of two to five years and a fine of twelve to twenty-four months.

Whoever profits from exploiting the prostitution of another person, even with the consent of that person, shall be punished with a prison sentence of two to four years



and a fine of twelve to twenty-four months. In any event, it shall be deemed that there is exploitation if any of the following circumstances concurs:

- a) The victim is in a situation of personal or economic vulnerability;
- b) The exercise entails oppressive, disproportionate or abusive conditions.

2. The penalties shall be imposed as foreseen in the preceding Sections, in the upper half, in the respective cases, if any of the following circumstances concurs:

- a) If the offender has availed himself of his status as an authority, agent or public officer thereof. In that case, the punishment of absolute barring from six to twelve years shall also be applied;
- b) If the offender belongs to a criminal organisation or group with the purpose of perpetrating those activities;
- c) If the offender has endangered the life or health of the victim, intentionally or due to gross negligence.

3. The penalties stated shall be imposed in the respective cases, without prejudice to the relevant ones for the sexual assaults or abuses committed against the person prostituted.

Article 188

1. Whoever induces, promotes, favours or facilitates the prostitution of a minor or a person with disabilities requiring special protection, or profits from such activities, or exploits a minor or a person with disabilities in any other way for this purpose, shall be punished with a prison sentence of two to five years and a fine of twelve to twenty-four months.

If the victim is under eighteen years, a prison sentence of four to eight years and a fine of twelve to twenty-four months shall be imposed.

2. If the deeds described in the preceding Sections were committed with violence or intimidation, in addition to the fine established, a prison sentence of five to ten years shall be imposed if the victim is under sixteen years, and a prison sentence of four to six years in all other cases.

3. The penalties shall be imposed as foreseen in the preceding Sections, in the upper half, in the respective cases, if any of the following circumstances concurs:

- a) If the victim is especially vulnerable, due to his age, illness, disability or situation.
- b) If, in order to execute the criminal offence, the offender has availed himself of a superiority or relationship, due to being an ascendant, descendant or brother, biological, adopted or in-law of the victim;
- c) If, in order to execute the criminal offence, the offender has availed himself of his status as an authority, agent or public officer thereof. In this case, a penalty of absolute barring for a period of six to twelve years shall also be imposed;
- d) If the offender has endangered the life or health of the victim, intentionally or due to gross negligence;

- e) If the deeds are committed by the joint action of two or more persons;
- f) If the culprit is a member of an organisation or association, even on a temporary basis, dedicated to carrying out such activities.

4. Whoever requests, accepts or obtains, in exchange for a payment or promise, a sexual relationship with a minor or with a person with disabilities requiring special protection, shall be punished with a prison sentence of one to four years. If the minor has not reached the age of sixteen years, the punishment shall be imprisonment from two to six years.

5. The penalties stated shall be imposed in the respective cases, without prejudice to the relevant ones for criminal offences against sexual freedom or indemnity committed against the minor and person with disabilities requiring special protection.

Article 189

1. A prison sentence of one to five years shall be handed down to:

- a) Whoever recruits or uses minors or persons with disabilities requiring special protection for exhibitionistic or pornographic purposes or shows, both public or private, or to prepare any kind of pornographic material, whatever the medium, or who finances or profits from any of these activities;
- b) Whoever produces, sells, distributes, displays, offers or facilitates the production, sale, diffusion or display by any medium of child pornography, or material for the preparation for which minors or persons with disabilities requiring special protection have been used, or possesses such material for such purposes, even though the material is of foreign or unknown origin.

For the purposes of this Title, child pornography, or that for the preparation whereof minors or persons with disabilities requiring special protection have been used, shall be considered as:

- a) All material that visually displays a minor or a person with disabilities requiring special protection participating in a sexually explicit conduct, whether real or simulated;
- b) Any display of the sexual organs of a minor or a person with disabilities requiring special protection for predominantly sexual purposes;
- c) All material that visually displays a person who appears to be a minor participating in sexually explicit conduct, whether real or simulated, or any display of the sexual organs of a person who appears to be a minor, for predominantly sexual purposes, unless the person who appears to be a minor is actually eighteen years or older at the time of taking the images;
- d) Realistic images of a minor participating in sexually explicit conduct or realistic images of the sexual organs of a minor, for predominantly sexual purposes.

2. Whoever perpetrates the deeds foreseen in Section 1 of this Article shall be punished with a prison sentence of five to nine years if any of the following circumstances concurs:

- a) If using children under the age of sixteen years;



- b) If the deeds are particularly degrading or humiliating in nature;
- c) If the pornographic material displays minors or persons with disabilities requiring special protection who are victims of physical or sexual violence;
- d) If the offender has endangered the life or health of the victim, intentionally or due to gross negligence;
- e) If the deeds are especially serious in view of the financial value of the pornographic material;
- f) If the culprit is a member of an organisation or association, even on a temporary basis, dedicated to carrying out such activities;
- g) If the offender is an ascendant, tutor, carer, minder, teacher or any other person in charge, *de facto*, even on a provisional basis, or *de jure*, of the minor or person with disabilities requiring special protection, or any other member of the family who lives with him and who has abused his recognised position of trust or authority;
- h) If the aggravating circumstance of recidivism concurs.

3. If the deeds outlined in Sub-Paragraph a) of the first Paragraph of Section 1 were committed with violence or intimidation, the higher degree punishment than those foreseen in the preceding Sections shall be imposed.

4. Whoever knowingly attends exhibitionistic or pornographic shows involving minors or persons with disabilities requiring special protection shall be punished with a prison sentence of six months to two years.

5. Whoever possesses or acquires child pornography for his own use, or material for the preparation whereof minors or persons with disabilities requiring special protection have been used, shall be punished with a prison sentence of three months to a year or with a fine of six months to two years.

The same sanction shall be imposed on individuals who knowingly access child pornography, or material for the preparation whereof minors or persons with disabilities requiring special protection have been used.

6. Whoever has a minor or person with disabilities requiring special protection under his care, guardianship, protection or fostership and who, being aware of his state of prostitution or corruption, does not do everything possible to prevent such situation continuing, or does not resort to the competent authority for such a purpose, if lacking the resources to safe keep the minor or person with disabilities requiring special protection, shall be punished with a prison sentence of three to six months or a fine of six to twelve months.

7. The Public Prosecutor shall promote the pertinent actions in order to deprive whoever commits any conduct described in the preceding Section of his parental rights, guardianship, safekeeping or family fostership, as appropriate.

8. Judges and Courts of Law shall order the adoption of the measures necessary to withdraw the websites or web applications that contain or distribute child pornography or those for the preparation whereof persons with disabilities requiring special

protection have been used or, where appropriate, to block access to such websites or applications to Internet users who are within Spanish territory.

Such measures may be decreed on a precautionary basis at the request of the Public Prosecutor.

Article 189 bis

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences included in this Chapter, it shall have the following penalties imposed thereon:

- a) Fine from three to five times the profit obtained, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- b) Fine of two to four times the profit obtained, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding two years not included in the preceding Section;
- c) Fine of two to three times the profit obtained, in the rest of the cases. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 190

Sentencing by a foreign Judge or Court of Law, for criminal offences included in this Chapter, shall be equivalent to sentences by Spanish Judges or Courts of Law for the purposes of applying the aggravating circumstance of recidivism.

CHAPTER VI

Provisions common to the preceding Chapters

Article 191

1. Prosecution of criminal offences of sexual assault, harassment or abuse, shall require this to be reported by the victim, his legal representative or a suit to be filed by the Public Prosecutor, who shall act in line with the lawful interests concerned. If the victim is a minor, incapacitated or disabled person, the report by the Public Prosecutor shall suffice.

2. In these criminal offences, forgiveness by the victim or legal representative does not extinguish the criminal action or the criminal liability.

Article 192

1. Those sentenced to imprisonment for one or more criminal offences included in this Title shall also be subject to a probation measure to be carried out after the prison sentence is served. The duration of such measure shall be five to ten years, if any of the criminal offences is serious, and from one to five years, if one or more less serious criminal offences are involved. In the latter case, in the case of a single criminal offence committed by a first time offender, the Court of Law may order or not the probation measure in view of the lesser dangerousness of the convict.



2. The ascendants, tutors, carers, minders, teachers or any other person in charge *de facto* or *de jure* of the minor or person requiring special protection, who acted as offenders or accomplices of commit the criminal offences included in this Title, shall be punished with the relevant punishment, in its upper half.

This rule shall not be applied when the circumstance it contains is specifically included in the definition of the criminal offence concerned.

3. The Judge or Court of Law may also hand down a reasoned punishment of deprivation of parental rights or special barring from the exercise of parental rights, guardianship, care, safekeeping or fostering, for the term of six months to six years, and barring from holding public employment and office or practice of the profession or trade, for the term of six months to six years. Those convicted of any of the criminal offences outlined in Chapters II bis or V shall also be punished, in all events, and without prejudice to the penalties that could correspond pursuant to the preceding Articles, with special barring from the practice of any profession or trade, paid or otherwise, when it entails regular and direct contact with minors for a period of time greater by between three and five years than the prison term duly imposed in the sentence, or for a term of two to ten years in the event that a prison sentence has not been handed down, proportionally in view of the seriousness of the criminal offence, the number of criminal offences committed and the circumstances of the convict.

Article 193

Judgements convicting of criminal offences against sexual freedom, in addition to the relevant pronouncements on civil liability, shall duly make the appropriate pronouncements concerning filiation and establishment of maintenance allowances.

Article 194

In the cases defined in Chapters IV and V of this Title, if establishments or premises are used, whether or not they are open to the public, to perpetrate the deeds, a sentence of conviction may order the temporary or definitive closure thereof. Temporary closure, which may not exceed five years, may also be adopted precautionary.



TITLE IX

On failure in the duty to assist

Article 195

1. Whoever does not assist a person who is unprotected or in serious, manifest danger, when able to do so without risk to himself or third parties, shall be punished with the penalty of a fine of three to twelve months.

2. The same penalties shall be incurred by whoever, being unable to provide assistance, does not urgently call for outside help.

3. If the party concerned is the victim of a fortuitous accident caused by whom omits the assistance, the punishment shall be six months to eighteen months' imprisonment, and if the accident was due to negligence, six months to four years' imprisonment.

Article 196

A medical practitioner who, while under obligation to do so, were to refuse health assistance or abandon the provision of health services, if refusal or abandonment were to cause serious risk to personal health, shall be punished with the penalties of the preceding Article, in the upper half and with that of special barring from public employment and office, profession or trade, for a term of six months to three years.



TITLE X

Criminal offences against privacy, the right to personal dignity and the inviolability of the dwelling

CHAPTER I

On discovery and revelation of secrets

Article 197

1. Whoever, in order to discover the secrets or to breach the privacy of another, without his consent, seizes his papers, letters, electronic mail messages or any other documents or personal belongings, or intercepts his telecommunications or uses technical devices for listening, transmitting, recording or to play sound or image, or any other communication signal, shall be punished with a prison sentence of one to four years and a fine of twelve to twenty-four months.

2. The same penalties shall be imposed upon whoever, without being authorised, seizes, uses or amends, to the detriment of a third party, reserved data of a personal or family nature of another that are recorded in computer, electronic or telematic files or media, or in any other kind of file or public or private record. The same penalties shall be imposed on whoever, without being authorised, accesses these by any means, and whoever alters or uses them to the detriment of the data subject or a third party.

3. A prison sentence of two to five years shall be imposed if the data or facts discovered, or the images captured to which the preceding Sub-Paragraphs refer, are broadcast, disclosed or ceded to third parties.

Whoever, being aware of the unlawful origin thereof and without having taken part in their discovery, perpetrates the conduct described in the preceding Paragraph shall be punished with a prison sentence of one to three years and a fine of twelve to twenty-four months.

4. The deeds described in Sections 1 and 2 of this Article shall be punished with a prison sentence of three to five years if:

- a) They are perpetrated by controllers or persons responsible for the files, computer, electronic or telematic media, archives or records, or;
- b) They are carried out via the non-authorised use of the victim's personal data.

If the reserved data are disclosed, communicated or revealed to third parties, penalties in the upper half of the sentencing range shall be imposed.

5. Likewise, if the deeds described in the preceding Sections concern personal data that reveal the ideology, religion, belief, health, racial origin or sexual preference, or if the victim is a minor or person with disabilities requiring special protection, penalties in the upper half of the sentencing range shall be imposed.

6. If the deeds are perpetrated for profit-making purposes, the penalties shall be imposed as foreseen in Sections 1 to 4 respectively of this Article in the upper half. If they also affect the data mentioned in the preceding Section, the punishment to be imposed shall be a prison sentence of four to seven years.

7. Whoever, without the authorisation of the affected party, discloses, communicates or reveals images or audiovisual recordings to third parties, obtained with the affected party's consent in a private residence or at any other location out of the sight of third parties, if said disclosure seriously damages the personal privacy of the individual, shall be punished with a prison sentence of three months to one year or a fine of six to twelve months.

The penalty shall be imposed in the upper half of the sentencing range if the deeds were committed by the spouse or the person who is or has been bound to him by a similar emotional relation, even without cohabitation, the victim were a minor or a person with disabilities requiring special protection, or the deeds were committed for profit.

Article 197 *bis*

1. Whoever, by any means or procedure and in breach of the security measures established to prevent it, and without being duly authorised, accesses or provides another with access to a computer system or part thereof, or who remains within it against the will of whoever has the lawful right to exclude him, shall be punished with a prison sentence of six months to two years.

2. Whoever, by using technical devices or tools, and without being duly authorised, intercepts non-public computer-based data transfer to, from or within an information system, including the electromagnetic emissions thereof, shall be punished with a prison sentence of three months to two years or a fine of three to twelve months.

Article 197 *ter*

Whoever, without being duly authorised, produces, acquires for use, imports or, in any way, with the intention of facilitating the perpetration of any of the criminal offences outlined in Sections 1 and 2 of Article 197 or Article 197 *bis*, provides third parties with:

- a) A computer programme, designed or adapted primarily for the purpose of committing such criminal offences, or;
- b) A computer password, an access code or similar data enabling access to all or part of an information system, shall be punished with a prison sentence of six months to two years or a fine of three to eighteen months.

Article 197 *quater*

Should the deeds described in this Chapter be committed within a criminal organisation or group, the higher degree penalties shall be applied respectively.

Article 197 *quinquies*

If, pursuant to the terms established in Article 31 *bis*, a legal person is responsible for the criminal offences included in Articles 197, 197 *bis* and 197 *ter*, the punishment of a fine from six months to two years shall be imposed thereon. Pursuant to the rules established in Article 66 *bis*, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

**Article 198**

An authority or public officer who, outside the cases permitted by Law, without there being a legal cause due to a criminal offence having been committed, and availing himself of his office, acts in any of the manners described in the preceding Article, shall be punished with the penalties respectively foreseen therein, in the upper half and also with that of absolute barring for a term from six to twelve years.

Article 199

1. Whoever discloses secrets of others that he obtains knowledge whereof through his trade or labour relations, shall be punished with a sentence of imprisonment from one to three years and a fine from six to twelve months.

2. Professionals who, in breach of their obligation of secrecy or reserve, reveal secrets of another person, shall be punished with a sentence of imprisonment of one to four years, a fine of twelve to twenty- four months and special barring from that profession for a term from two to six years.

Article 200

The terms set forth this Chapter shall be applicable to whoever, discloses, reveals or communicates reserved data of legal persons without the consent of their representatives, except for what is set forth in other provisions of this Code.

Article 201

1. Prosecution of criminal offences foreseen in this Chapter requires a report by the victim or his legal representative. If the former is a minor, incapacitated or disabled person, it may also be reported by the Public Prosecutor.

2. The report required in the preceding Section shall not be necessary to prosecute the deeds described in Article 198 of this Code nor if the criminal offence committed affects general interests or persons at large.

3. Forgiveness by the victim or his legal representative, as appropriate, extinguishes the penal action without prejudice to what is set forth in Paragraph Two of Sub-Section 5 of Section 1 of Article 130.

CHAPTER II**On trespassing a dwelling, the registered address of legal persons and establishments open to the public****Article 202**

1. The individual who, without being resident therein, enters the dwelling of another, or were to remain therein against the will of its dweller, shall be punished with a sentence of imprisonment of six months to two years.

2. Should the deed be perpetrated with violence or intimidation, the punishment shall be imprisonment from one to four years and a fine from six to twelve months.



Article 203

1. Whoever enters the domicile of a public or private legal person, professional firm or office, a trading establishment or premises open the public after opening hours against the will of its owner shall be punished with imprisonment of six months to one year and a fine from six to ten months.

2. Whoever remains in the domicile of a public or private legal person, professional firm or office, in a trading establishment or premises open to the public against the will of its owner, outside normal working hours, shall be punished with a fine of one to three months.

3. Whoever, by means of violence or intimidation, enters or remains in the domicile of a public or private legal person, professional firm or office, in a trading establishment or premises open to the public against the will of its owner, shall punished with a sentence of imprisonment of six months to three years.

Article 204

An authority or public officer who, outside the cases permitted by Law and without there being a legal cause due to a criminal offence being committed, were to commit any of the deeds described in the preceding two Articles, shall be punished with the penalty foreseen respectively therein, in the upper half, and to absolute barring from six to twelve years.



TITLE XI

Criminal offences against honour

CHAPTER I

On slander

Article 205

Slander involves accusing another person of a criminal offence while knowing it is false or recklessly disregarding the truth.

Article 206

Slander shall be punished with imprisonment of six months to two years or a fine of twelve to twenty- four months, if propagated with publicity and, in other cases, by a fine from six to twelve months.

Article 207

Whoever is accused of the criminal offence of slander shall be exempt from all punishment by proving the criminal deed whereof he has accused the other person.

CHAPTER II

On defamation

Article 208

Defamation is the deed or expression that harms the dignity of another person, detracting from his reputation or attacking his self-esteem.

Only defamation that, due to its nature, effects and circumstances, is considered serious by the public at large, shall be deemed to constitute a criminal offence, without prejudice to what is set forth in Section 4 of Article 173.

Article 209

Severe defamation perpetrated with publicity shall be punished with the penalty of a fine from six to fourteen months and, otherwise, with that of three to seven months.

Article 210

Whoever is accused of defamation shall be exempt of all liability by proving the truth of the statements if these are against civil servants concerning deeds in exercise of their duties of office or referring to the commission of administrative offences.

CHAPTER III

General provisions

Article 211

Slander and defamation shall be deemed to have been perpetrated with publicity if propagated by means of the printing press, by radio broadcasting or any other similarly effective means.



Article 212

In the cases referred to in the preceding Article, the natural or legal person owning the media through which the slander or defamation was propagated shall be subject to joint and several civil liability as a consequence thereof.

Article 213

Should slander or defamation be committed for a price, reward or promise, in addition to the penalties stated for the criminal offences concerned, the Courts of Law shall impose that of special barring foreseen in Articles 42 or 45 of this Code, for a term of six months to two years.

Article 214

If whoever is accused of slander or defamation recognises the falsity or lack of truth of the accusations and withdraws them, the Judge or Court of Law shall impose the punishment immediately lower by degree and may abstain from imposing the punishment of barring established in the preceding Article.

The Judge or Court of Law before whom the registration takes place shall order an attestation of retraction to be delivered to the victim and, should the latter so request it, order its publication in the same media as used to commit the slander or defamation, with an identical or similar space to that in which its diffusion took place, and within the term set by the Judge or Court of Law sentencing.

Article 215

1. Nobody shall be convicted of slander or defamation other than by means of a suit filed by the person offended by the criminal offence or his legal representative. Prosecution shall be effected on the Court's own motion if the criminal offence is against a civil servant, authority or agent thereof, over events related to exercise of his duties of office.

2. Nobody may bring action for slander or defamation arising during a trial, without prior leave from the Judge or Court of Law in which the proceedings are heard or have been heard.

3. Forgiveness of the victim or his legal representative, as appropriate, extinguishes the penal action without prejudice to what is set forth in Paragraph Two of Sub-Section 5 of Section 1 of Article 130 of this Code.

Article 216

In criminal offences of slander or defamation, it is deemed that repairing the damage also includes publication or diffusion of the conviction, at the expense of the party convicted of those criminal offences, within the time and in the manner the Judge or Court of Law deems most appropriate for the purpose, having heard both parties.



TITLE XII

Criminal offences against relatives

CHAPTER I

On unlawful weddings

Article 217

Whoever contracts a second or subsequent marriage while knowing that the previous matrimony legally subsists, shall be punished with a sentence of imprisonment of six months to one year.

Article 218

1. Whoever, in order to harm the other spouse, solemnises an invalid matrimony, shall be punished with a sentence of imprisonment of six months to two years.
2. The person responsible shall be exempt of the punishment if the marriage is subsequently convalidated.

Article 219

1. Whoever authorises a marriage in which any known cause of nullity or one which is on record in the file, shall be punished with a sentence of imprisonment of six months to two years and special barring from public employment and office from two to six years.
2. Should the cause of nullity be dispensable, the punishment shall be suspension from public employment and office of six months to two years.

CHAPTER II

On pretended birth of a child and on alteration of the paternity, status or condition of the child

Article 220

1. A pretended birth shall be punished with imprisonment of six months to two years.
2. That same punishment shall be imposed on whoever conceals or delivers a child to third parties to alter or change the parentage thereof.
3. Swapping one child for another shall be punished with imprisonment from one to five years.
4. Ascendants, by nature or adoption, who commit the deeds described in the preceding three Sections may be punished, in addition to the punishment of special barring from exercise of parental rights they may have in relation to the child or descendent supposed, concealed, delivered or substituted, and, if appropriate, to the rest of their offspring or descendents, for a term from four to ten years.
5. Swapping one child for another arising at hospitals or social health centres due to gross negligence by those responsible for their identification and custody shall be punished with a sentence of imprisonment of six months to one year.

Article 221

1. Those who, for a financial consideration, deliver a child, descendent or any minor to another person, even though there is no bond of affiliation or consanguinity, eluding the legal procedures for safekeeping, fostership or adoption, in order to establish a similar relation to that of filiation, shall be punished with imprisonment from one to five years and to special barring from exercise of parental rights, guardianship, care or safekeeping for a term from four to ten years.

2. The same punishment shall apply to punish the person receiving that child and the intermediary, even though the delivery may have taken place in a foreign country.

3. Should the deeds be committed using crèches, schools or other premises or establishments where children are cared for, those found guilty shall have the punishment of special barring from practice of those activities imposed for a term from two to six years, and temporary or definitive closure of the establishments may be ordered. The term of temporary closure may not exceed five years.

Article 222

An educational or medical practitioner, authority or public officer who, while carrying out the duties of his profession or office, deeds as described the preceding two Articles, shall incur the punishment stated therein and also that of special barring from public employment and office, profession or trade, from two to six years.

For the purposes of this Article, the term medical practitioner includes doctors, midwives, nursing staff and any other person who carries out health or social-health activities.

CHAPTER III**On criminal offences against family rights and duties****SUBCHAPTER 1. On breach of the duties of custody and of inducing minors to abandon their home****Article 223**

Whoever, being entrusted with the custody of a minor or a person requiring special protection, who does not return him to his parents or carers without due reason, if called to do so by them, shall be punished with a sentence of imprisonment of six months to two years, without prejudice to the facts constituting another more serious criminal offence.

Article 224

Whoever leads a minor or a person requiring special protection to abandon the family dwelling, or place where he resides with the approval of his parents, tutors or minders shall be punished with a sentence of imprisonment of six months to two years.

The same punishment shall be incurred by a parent who induces his minor child to breach the custody regime established by a judicial or administrative authority.



Article 225

If the person responsible for the criminal offences foreseen in the preceding two Articles returns the minor or person requiring special protection to his domicile or residence, or leaves him in a known safe place, without him having been subjected to humiliation, cruelty or any criminal deed whatsoever, nor having endangered his life, health, physical integrity or sexual freedom, the deed shall be punished with a sentence of imprisonment from three months to a year, or fine from six to twenty- four months, as long as the parents, tutors or minders have been notified of the place where the minor or person requiring special protection is staying, or the absence has not exceeded 24 hours.

SUBCHAPTER 2. On abduction of children

Article 225 bis

- 1.** A parent who, without a justified cause, abducts his child who is a minor, shall be punished with a sentence of imprisonment of two to four years and special barring from exercise of parental rights for a term from four to ten years.
- 2.** For the purposes of this Article, abduction is deemed to be:
 - 1.** Transporting a child from his place of residence without consent by the custodial parent or the persons or institutions to whom his safekeeping or custody is entrusted;
 - 2.** Detention of the minor in serious breach of the duty established by a judicial or administrative order.
- 3.** If the minor is transported out of Spain or any condition is demanded for his return, the punishment stated in Section 1 shall be imposed in its upper half.
- 4.** If the abductor has notified the other parent, or person legally charged with his care, of the place where he is staying, within twenty- four hours of the abduction, with the commitment to immediately return the child that is effectively carried out, or when the absence does not exceed the term of twenty- four hours, he shall be exempt of punishment.

Should the child be returned, without the notification stated in the preceding Section, within fifteen days following the abduction, a sentence of imprisonment of six months to two years shall be imposed.

These terms shall be calculated from the date of the abduction being reported.

- 5.** The penalties stated in this Article shall also be imposed on the ascendants of the minor and the relatives of the parent up to the second degree of consanguinity or affinity who act as described above.

**SUBCHAPTER 3. On abandoning the family, minors or persons
with disabilities requiring special protection**

Article 226

1. Whoever fails to fulfil the legal duties of assistance inherent to parental rights, guardianship, safekeeping or fostership, or to provide the legally established necessary assistance for sustenance of his descendents, ascendants or spouse, who are in need, shall be punished with a sentence of imprisonment from three to six months, or a fine from six to twelve months.

2. The Judge or Court of Law may punish the convict giving the reasons with special barring from exercising parental rights, guardianship, safekeeping or fostership for a term from four to ten years.

Article 227

1. Whoever ceases to pay any kind of financial aid to his spouse or children, established by a judicially approved composition or court order in cases of legal separation, divorce, declaration of nullity of marriage, filiation proceedings, or maintenance allowance proceedings in favour of his children, shall be punished with a sentence of imprisonment from three months to a year or fine from six to twenty- four months.

2. The same punishment shall be applied to punish whoever ceases to pay any other financial aid established jointly or by itself in the cases foreseen in the preceding Section.

3. Reparation of the damage arising from the criminal offence shall always include payment of the sums owed.

Article 228

The criminal offences foreseen in the preceding two Articles, shall only be pursued if reported by the person offended or his legal representative. If the former is a minor, person requiring special protection or disabled person, it may also be reported by the Public Prosecutor.

Article 229

1. Abandoning a minor or a person requiring special protection by the person entrusted with his safekeeping shall be punished with a sentence of imprisonment from one to two years.

2. Should the abandonment be perpetrated by his parents, tutors or legal minders, a sentence of imprisonment from eighteen months to three years shall be imposed.

3. A sentence of imprisonment shall be imposed of two to four years when, due to the circumstances of the abandonment the life, health, physical integrity or sexual freedom of the minor or person requiring special protection has been specifically endangered, without prejudice to punishment of the deed as appropriate, if it were to constitute a more serious criminal offence.



Article 230

Temporary abandonment of a minor or person requiring special protection shall be punished, in the respective cases, with the penalties one degree lower than those foreseen in the preceding Article.

Article 231

1. Whoever, while in charge of the upbringing or education of a minor or person requiring special protection, delivers him to a third party or a public establishment without the approval of the person who has entrusted him such person, or an authority, in absence thereof, shall be punished with the penalty of a fine from six to twelve months.

2. If, by virtue of such delivery, the life, health, physical integrity or sexual freedom of the minor or person requiring special protection has been endangered, a sentence of imprisonment of six months to two years shall be imposed.

Article 232

1. Those who use or lend minors or persons requiring special protections to beg, even if this is concealed, shall be punished with a sentence of imprisonment of six months to one year.

2. If trafficking of minors or persons requiring special protection takes place for the purposes of the preceding Section, using violence or intimidation against them, or providing them substances that are harmful to their health, a sentence of imprisonment of one to four years shall be imposed.

Article 233

1. Should this be deemed appropriate in view of the circumstances of the minor, the Judge or Court of Law may sentence those responsible the criminal offences foreseen in Articles 229 to 232 to the punishment of special barring from exercise of parental rights or rights of safekeeping, guardianship, care or fostership for a term from four to ten years.

2. Should the offender have been entrusted with safekeeping of the minor due to his condition as a civil servant, he shall also be subject to the punishment of special barring from public employment and office for a term from two to six years.

3. In all cases, the Public Prosecutor shall call on the competent authority to take the appropriate measures for due custody and protection of the minor.



TITLE XIII

Criminal offences against property and against social-economic order

CHAPTER I

On larceny

Article 234

1. Whoever, for profit, were to take moveable property pertaining to others without the permission of the owner thereof, shall be convicted of larceny, with a prison sentence of six to eighteen months if the value of what was stolen exceeds 400 euros.
2. A fine of one to three months shall be imposed if the amount of what was stolen does not exceed 400 euros, unless any of the circumstances outlined in Article 235 concur.
3. The penalties established in the preceding Sections shall be imposed in the upper half of the sentencing range when the alarm or safety devices installed on the stolen items are neutralised, removed or disabled.

Article 235

1. Larceny shall be punished with a prison sentence of one to three years:
 1. If items of artistic, historic, cultural or scientific value are stolen;
 2. If the items concerned are a primary necessity, whenever the theft thereof causes a shortage of supply;
 3. In the case of pipes, cables, equipment or components of electrical infrastructures, oil, gas or telecommunications services, or other items intended for the operation of services of general interest, resulting in serious disruption;
 4. In the case of agricultural and livestock products, or the instruments or tools used to obtain them, if the criminal offence is committed on agricultural or livestock holdings and it causes serious damage thereto;
 5. If especially serious, in view of the value of the items stolen, or if particularly major damage is caused;
 6. If the larceny causes the victim or his family serious financial distress, or perpetrated taking advantage of his personal circumstances or situation of hardship, or taking advantage of an accident or the existence of a general risk or danger to the community that has weakened the defence of the victim or facilitated the perpetration of the criminal offence going without punishment;
 7. When, upon committing the criminal offence, the culprit is subject to an enforceable sentence for at least three criminal offences included in this Title, provided that they are of the same nature. Previous criminal offences that have been cancelled or should have been cancelled shall not be taken into account.
 8. If using children under sixteen years of age to commit the criminal offence;
 9. If the culprit or culprits participate in the deeds as members of a criminal organisation or group dedicated to committing the criminal offences outlined in this Title, provided that they are of the same nature.



2. The penalty outlined in the preceding Section shall be imposed in the upper half of the sentencing range if two or more of the circumstances foreseen therein concur.

Article 236

1. Whoever, being the owner of an item of moveable property or acting with the owner's consent, takes it from whoever lawfully has it in his possession, to the latter's detriment or that of a third party, shall be punished with a fine of three to twelve months.
2. If the amount of the item stolen does not exceed 400 euros, a fine of one to three months shall be imposed.

CHAPTER II

On robbery and burglary

Article 237

Those who seize moveable assets pertaining to others for profit, using forcible means to access the place where these are located, or violence or intimidation on persons, whether to commit the criminal offence or to secure escape, or against those who appear to aid the victim or those who pursue him, shall be convicted of robbery.

Article 238

Those perpetrating these deeds shall be convicted of burglary if any of the following circumstances concurs:

1. Climbing;
2. Breaking walls, ceilings or floors, forcing doors or windows;
3. Breaking open cabinets, trunks or other kinds of furniture or closed or sealed objects, or forcing their locks, or discovering their codes to steal the content, whether at the place of the burglary or outside it;
4. Use of forged keys;
5. Deactivating alarm or security systems.

Article 239

The following shall be deemed forged keys:

1. Lock picks or other similar instruments;
2. The lawful keys lost by the owner or obtained by a method that amounts to a criminal offence;
3. Any others that are not those used by the owner to open the lock the convict has forced.

For the purposes of this Article, magnetic or punched cards, remote controls or instruments to open remotely, and any other technological instrument with a similar effectiveness shall be deemed keys.

Article 240

1. Whoever is found guilty of robbery with use of force shall be punished with a prison sentence of one to three years.
2. A prison sentence of two to five years shall be imposed if any of the circumstances foreseen in Article 235 concurs.

Article 241

1. If the robbery is committed in an inhabited house, a building or premises open to the public or in any of the annexes thereof, a prison sentence of two to five years shall be imposed.

If the deeds were committed in premises open to the public or in any of the annexes thereof, outside of normal business hours, a prison sentence of one to five years shall be imposed.

2. An inhabited house is deemed to be any accommodation that is the dwelling place of one or more persons, even though they may circumstantially be absent from it when the robbery took place.

3. The annexes of an inhabited house or a building or premises open to the public are deemed to include courtyards, garages and other spaces or locations thereof that are fenced in and adjoining the building and internally linked to form a physical unit therewith.

4. If the deeds outlined in the preceding Sections are particularly serious, in view of the manner in which the criminal offence was committed or the damages caused and, in all events, when any of the circumstances outlined in Article 235 concur, a prison sentence of two to six years shall be imposed.

Article 242

1. Whoever is found guilty of robbery with violence or intimidation against persons shall be punished with a sentence of imprisonment from two to five years, without prejudice to the relevant punishment for the deeds of physical violence he may have perpetrated.

2. If the robbery is committed in an inhabited house a building or premises open to the public or in any of the annexes thereof, a prison sentence of three years and six months to five years shall be imposed.

3. The penalties stated in the preceding Sections shall be imposed in the upper half if the criminal uses weapons or equally dangerous means, either to commit the criminal offence or to protect flight therefrom, and if he attacks those who come to aid the victim or those who pursue him.

4. A lower degree punishment than that foreseen in the preceding Sections may be handed down in cases of lesser violence or intimidation, and also appraising the remaining circumstances of the deed.



CHAPTER III

On extortion

Article 243

Whoever, for profit, forces another, by means of violence or intimidation, to carry out or omit an act or legal transaction to the detriment of his own wealth or that of a third party, shall be punished with a sentence of imprisonment from one to five years, without prejudice to the penalties that might be imposed for the deeds of physical violence perpetrated.

CHAPTER IV

On robbery and theft to use vehicles

Article 244

1. Whoever steals a motor vehicle or moped pertaining to another without due authorisation by its owner, without intending to keep it, shall be punished with the penalty of community service from thirty-one to ninety days, or a fine of two to twelve months if he returns it, directly or indirectly, within a term not exceeding forty-eight hours, without, in any case, the punishment imposed being equal to or exceeding that which would be applied if he had definitely appropriated the vehicle.

2. Should the deed be perpetrated by forced entry, the punishment shall be applied in its upper half.

3. Should the vehicle not be returned within the term stated, it shall be punished as larceny or robbery as appropriate.

4. If the deed is committed by means of violence or intimidation of persons, in all cases, the penalties of Article 242 shall be imposed.

CHAPTER V

On usurpation

Article 245

1. Whoever, by means of violence or intimidation of persons, occupies real property or usurps a right *in rem* over real property pertaining to another, in addition to the penalties incurred for the violence committed, shall have a sentence of imprisonment from one to two years imposed; that shall be set taking into account the utility obtained and the damage caused.

2. Whoever occupies a property, dwelling or building pertaining to another that are not a dwelling, without due authorisation, or who remains there against the will of the owner thereof, shall be punished with the penalty of a fine from three to six months.

Article 246

1. Whoever alters the boundaries or borders of towns or estates or any kind of signals or markers intended to set the limits of properties or the borders with adjoining estates,

both public as well as privately owned, shall be punished with a fine of three to eighteen months.

2. If the reported utility does not exceed 400 euros, a fine of one to three months shall be imposed.

Article 247

1. Whoever, without being authorised, diverts water for public or private use from its course, or from its natural or artificial reservoir, shall be punished with a fine of three to six months.

2. If the reported utility does not exceed 400 euros, a fine of one to three months shall be imposed.

CHAPTER VI

On fraud

SUBCHAPTER 1. On swindling

Article 248

1. Those who use sufficient deceit, for profit, to cause lead another into error so as to have him carry out a deed of disposal in his own detriment or that of another, commit swindling.

2. The following shall also be deemed guilty of swindling:

- a) Those who, for profit and making use of any computer manipulation or similar scheme, manage to perpetrate an unauthorised transfer of any patrimonial assets to the detriment of another;
- b) Those who manufacture, upload, possess or provide computer programs specifically intended to commit the swindles foreseen in this Article;
- c) Those who, using credit or debit cards, or travellers' cheques, or the data any of these bear, perpetrate operations of any kind to the detriment of the owner thereof or a third party.

Article 249

Those convicted of swindling shall be punished with a prison sentence of six months to three years. The amount swindled, the financial damage caused to the victim, the relations between him and the swindler, the means used by the latter and any other circumstances pertinent to evaluate the seriousness of the criminal offence shall be taken into account when setting the punishment.

If the amount defrauded does not exceed 400 euros, a fine of one to three months shall be imposed.

Article 250

1. The criminal offence of swindling shall be punished with a prison sentence of one to six years and a fine of six to twelve months, if:



1. It affects belongings of primary necessity, dwellings or other assets of recognised social utility;
2. If perpetrated by forging the signature of another, or by stealing, concealing or fully or partially destroying any process, file, archive or public or official document of any kind;
3. It affects assets forming part of the artistic, historic, cultural or scientific heritage;
4. It is especially serious, in view of the magnitude of the damage and the financial situation in which it leaves the victim or his family;
5. The amount of what is swindled exceeds 50,000 euros, or affects a large number of people;
6. If perpetrated abusing the personal relations that exist between the victim and swindler, or if the latter takes advantage of his corporate or professional credibility;
7. If procedural fraud is committed. This is incurred by those who manipulate the evidence on which they intend to base allegations or use any other similar procedural fraud in judicial proceedings of any kind, causing the Judge or Court of Law to mistakenly be led to hand down a resolution that damages the financial interests of the other party or a third party.
8. When committing the criminal offence, the culprit is subject to an enforceable sentence for at least three crimes included in this Chapter. Previous criminal offences that have been cancelled or should have been cancelled shall not be taken into account.

2. Should circumstances 4, 5, 6 or 7 concur with circumstance 1 of the preceding Section, a prison sentence of four to eight years and a fine of twelve to twenty-four months shall be imposed. The same penalty shall be imposed where the value of the fraud exceeds 250,000 euros.

Article 251

A sentence of imprisonment of one to four years shall be handed down to punish:

1. Whoever, falsely attributing powers of disposal he does not have over a real or personal property, either due to never having had such powers or due to already having exercised them, proceeds to dispose of, encumber or let such property to another, to the detriment of the latter or a third party;
2. Whoever disposes of a real or personal property, concealing the existence of any charge thereon, or who, having disposed of it as a property free of encumbrances, were to encumber or dispose of it again, prior to definitively conveying it to the acquirer, to the detriment thereof, or of a third party;
3. Whoever were to execute a simulated contract to the detriment of another.

Article 251 bis

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences included in this Subchapter, it shall have the following penalties imposed thereon:

- a) Fine of three to five times the sum swindled, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- b) Fine of two to four times the sum swindled, in the rest of the cases. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties mentioned in Sub-Paragraphs b) to g) of Section 7 of Article 33.

SUBCHAPTER 2. On malfeasance

Article 252

1. Those who have powers to administer the assets of another under the law, granted by authority or assumed via a legal transaction, and infringe them by exceeding the limits of these powers and thus cause detriment to the assets administered, shall be punished with the penalties provided in Article 249 or in Article 250, where applicable.
2. If the value of the losses does not exceed 400 euros, a fine of one to three months shall be imposed.

SUBCHAPTER 2 bis. On misappropriation

Article 253

1. Those who, to the detriment of another, appropriate, for themselves or for a third party, moneys, belongings, valuables or any other moveable property they have received in deposit, for administration or for safekeeping, or by any other title that produces the obligation to deliver or return them, or who deny having received them, shall be punished with the penalties of Article 249 or 250, as appropriate, unless they are already punished with a more severe penalty in another provision of this Code.
2. If the amount appropriated does not exceed 400 euros, a fine of one to three months shall be imposed.

Article 254

1. Whoever, apart from the cases outlined in the preceding Article, appropriates moveable property belonging to another, shall be punished with a fine of three to six months. Where this entails an item of artistic, historical, cultural or scientific value, a prison sentence of six months to two years shall be imposed.
2. If the amount appropriated does not exceed 400 euros, a fine of one to two months shall be imposed.

SUBCHAPTER 3. On electricity theft and the like

Article 255

1. Whoever commits fraud using electricity, gas, water, telecommunications signals or any other element, energy or fluid pertaining to another, by any of the means described below, shall be punished a fine of three to twelve months:
 1. Using mechanisms installed to perpetrate the fraud;
 2. Maliciously altering the signs or meter appliances;



3. Using any other clandestine means.
2. If the amount defrauded does not exceed 400 euros, a fine of one to three months shall be imposed.

Article 256

1. Whoever makes use of any telecommunications terminal equipment, without the consent of its owner, causing him economic losses, shall be punished with a fine of three to twelve months.
2. If the value of the losses does not exceed 400 euros, a fine of one to three months shall be imposed.

CHAPTER VII

On frustration of foreclosure

Article 257

1. A prison sentence of one to four years and a fine of twelve to twenty-four months shall be imposed on:
 1. Whoever hides his assets to the detriment of his creditors;
 2. Whoever, to the same end, carries out any deed of disposal of assets or generation of obligations that draws out, hinders or prevents the effectiveness of a seizure or foreclosure or collection proceedings, either in or out of court, or administrative ones, commenced, or that may predictably be commenced.
2. The same penalty shall be imposed on whoever carries out acts of disposal, contracts obligations that diminish his assets or via any means hides assets over which foreclosure may be effected, with the aim of avoiding payment of civil liabilities arising from a crime which he may have committed or for which he should be held accountable.
3. The terms set forth in this Article shall be applicable whatever the nature or origin of the obligation or debt, the settlement or payment whereof he intends to avoid, including the financial rights of the workers, and regardless of whether the creditor is a natural person or any legal person, public or private.

Notwithstanding the foregoing, in the event that the debt or obligation in question falls under public law and the creditor is a public legal entity, or it concerns financial obligations arising from the commission of a crime against the Inland Revenue or Social Security, the penalty to be imposed shall be a prison sentence of one and six years and a fine of twelve to twenty-four months.

4. The penalties foreseen in this Article shall be imposed in the upper half in the cases foreseen in Sub-Sections 5 or 6 of Section 1 of Article 250.
5. This criminal offence shall be pursued even if bankruptcy proceedings are commenced after it is committed.

Article 258

1. Whoever, in judicial or administrative execution proceedings, were to submit an incomplete or mendacious list of assets or property, thus delaying, hindering or

preventing payment to the creditor, shall be punished with a prison sentence of three months to one year or a fine of six to eighteen months.

The list of assets or property shall be considered incomplete when the debtor uses or benefits from goods owned by third parties and does not provide sufficient justification of the right to benefit from such use and of the conditions to which it is subject.

2. The same penalty shall be imposed if the debtor, when required to do so, fails to provide the list of assets or property outlined in the preceding Section.

3. The criminal offences outlined in this Article shall not be prosecuted if the perpetrator, before discovery by the authority or civil servant of the incomplete or mendacious nature of the declaration submitted, appears before them and presents an accurate and complete list of assets or property.

Article 258 bis

Whoever uses assets seized by a public authority that have been placed in storage without being authorised to do so, shall be punished with a prison sentence of three to six months or a fine of six to twenty-four months, unless they are already punished with a more severe penalty in another provision of this Code.

Article 258 ter

If, pursuant to the provisions of Article 31 bis, a legal person is responsible for the criminal offences outlined in this Chapter, the following penalties shall be imposed:

- a) A fine of two to five years, if the criminal offence committed by the individual envisages a prison sentence exceeding five years;
- b) A fine of one to three years, if the criminal offence committed by the individual envisages a prison sentence exceeding two years not included in the preceding Sub-Paragraph;
- c) A fine of six months to two years in all other cases.

Pursuant to the regulations outlined in Article 66 bis, Judges and Courts of Law may also impose the penalties outlined in Sub-Paragraphs b) to g) of Section 7 of Article 33.

CHAPTER VII BIS
On punishable insolvency

Article 259

1. Whoever, in a situation of actual or imminent insolvency, engages in any of the following conducts, shall be punished with a prison sentence of one to four years and a fine of eight to twenty-four months:

- 1. Hides, damages or destroys assets or items that are included, or have been included, in the bankrupt estate at the time of opening.
- 2. Carries out acts of disposal by handing over or transferring money or other assets, or through the assumption of debts, that are not proportionate to the financial position of the debtor, or to his income, and that cannot be justified from an economic or business perspective.



3. Carries out sales transactions or provides services for a price lower than the cost of purchase or production, and that cannot be justified from an economic perspective based on the circumstances of the case.
 4. Simulates credits from third parties or acknowledges fictitious credits.
 5. Participates in speculative ventures, which cannot be justified from an economic perspective and which, based on the circumstances of the case and in view of the economic activity undertaken, contradict the duty of diligence in the management of economic affairs.
 6. Breaches his legal duty to maintain accounting records, and engages in double bookkeeping, or commits irregularities in his accounting that are significant to understanding his financial position and assets. The destruction or modification of accounting books shall also be punished, when this significantly hinders or prevents understanding his financial position and assets.
 7. Hides, damages or destroys any documentation that the business is obliged to maintain before the term established for this legal duty has elapsed, when this significantly hinders or prevents examination or assessment of the actual economic situation of the debtor.
 8. Draws up the annual accounts or the accounting books in a manner opposed to the applicable regulations on commercial accounting, when this significantly hinders or prevents examination or assessment of the actual economic situation of the debtor, or breaches his duty to prepare the balance sheet or inventory within the established term.
 9. Engages in, or fails to engage in, any other conduct that constitutes a serious infringement of the duty of diligence in the management of economic affairs and which results in a decrease in the assets of the debtor or which conceals the actual economic situation of the debtor or his business activity.
2. The same penalty shall be imposed on those who cause their situation of insolvency, through any of the conducts outlined in the preceding Section.
 3. If the deeds are committed due to negligence, a prison sentence of six months to two years or a fine of twelve to twenty-four months shall be imposed.
 4. This criminal offence shall only be persecuted when the debtor no longer regularly complies with applicable obligations or has been declared bankrupt.
 5. This criminal offence and the specific offences related to it, committed by the debtor or an individual acting on his behalf, may be persecuted without the need to wait for the conclusion of the insolvency proceedings and notwithstanding the continuation thereof. The amount of the civil liability deriving from these criminal offences shall be incorporated, where appropriate, into the debtor's estate.
 6. On no account shall the classification of the insolvency in the proceedings be binding on criminal jurisdiction.

Article 259 bis

The deeds outlined in the preceding Article shall be punished with a prison sentence of two to six years and a fine of eight to twenty-four months if any of the following circumstances concurs:

1. If they lead to or may lead to losses involving for large number of people or may put them in a serious economic situation.
2. If they result in economic losses exceeding 600,000 euros for the creditors.
3. If at least half of the amount of the bankruptcy credits are held by the Tax Authority, whether on a State, autonomous, local or provincial level and the Social Security.

Article 260

1. Whoever, in a situation of actual or imminent insolvency, favours any of the creditors by carrying out a deed of disposal of assets or of generation of obligations to pay for an unenforceable credit or to provide a guarantee that they are not entitled to, if the transaction cannot be justified from an economic or business perspective, shall be punished with a prison sentence of six months to three years or a fine of eight to twenty-four months.

2. The debtor who, once the application for insolvency has been admitted to proceedings, without being authorised to do so either by the court or the receivers, and outside the cases allowed by the law, carries out any deed of disposal of assets or of generation of obligations, aimed at paying one or several creditors, either privileged or otherwise, to the detriment of the rest, shall be punished with a prison sentence of one to four years and a fine of twelve to twenty-four months.

Article 261

Whoever were to knowingly present false data concerning his accounting status during insolvency proceedings, in order to unduly obtain a declaration thereof, shall be punished with a sentence of imprisonment from one to two years and a fine from six to twelve months.

Article 261 bis

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences included in this Chapter, it shall have the following penalties imposed thereon:

- a) Fine from two to five years, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- b) Fine from one to three years, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding two years not included in the preceding Section;
- c) Fine of six months to two years, in the rest of the cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.



CHAPTER VIII

On alteration of prices in public tenders and auctions

Article 262

1. Those who request handouts or promises in order not to take part in a public tender or auction; those who attempt to drive bidders away from it by means of intimidation, handouts, promises or any other contrivance; those who make arrangements among themselves in order to alter the final bid, or those who fraudulently default or abandon the auction after obtaining the award, shall be punished with a sentence of imprisonment from one to three years and a fine from twelve to twenty- four months, as well as special barring from bidding in judicial auctions from three to five years. In the case of a tender or auction called by the public administrations or entities, the agent and the person or company represented by him shall also have the punishment imposed of special barring that shall, in all cases, involve barring from the right to contract with the Public Administrations for a term of three to five years.

2. The Judge or Court of Law may hand down any or several of the penalties foreseen in Article 129 if the offender were to belong to any company, organisation or association, even if transitory in nature, with the purpose of perpetrating those activities.

CHAPTER IX

On damages

Article 263

1. Whoever were to cause damage to the property of another not included in other Titles of this Code, shall be punished with a fine of six to twenty-four months, in view of the financial status of the victim and the amount of the damage.

If the value of the damage caused does not exceed 400 euros, a fine of one to three months shall be imposed.

2. Whoever causes the damage stated in the preceding Section shall be punished with a sentence of imprisonment from one to three years and a fine of twelve to twenty- four months, if any of the following cases were to concur:

1. If perpetrated to prevent free exercise of authority or as a consequence of actions committed while carrying out the duties of office, or if the criminal offence were to be committed against civil servants, or against individuals who, as witnesses, or in any other capacity, have contributed or may contribute to the implementation or application of the laws or general provisions;
2. If caused by any means, infection or contagion against cattle;
3. If using poisonous or corrosive substances;
4. If affecting assets that are publicly or commonly owned or used;
5. If these ruin the party damaged or seriously affect his financial status.
6. If they cause particularly serious damage or damage affecting general interests.

Article 264

1. Whoever, by any means, without authorisation and in a serious way, were to erase, damage, deteriorate, alter, suppress, or make data, computer programs or electronic documents pertaining to others inaccessible, if the result produced is serious, shall be punished with a prison sentence of six months to three years.

2. A prison sentence of two to five years and a fine of one to ten times the amount of damage caused shall be imposed, when any of the following circumstances concurs in the conduct described:

1. If committed within the setting of a criminal organisation;
2. If they cause particularly serious damage or damage that affects a large number of computer systems.
3. If the deed causes severe detriment to the operation of essential public services or the provision of goods of primary necessity;
4. If the deeds have affected the computer system of a critical infrastructure or have created a situation of serious danger for the security of the State, of the European Union or of a Member State of the European Union. To this effect, critical infrastructure shall be construed as an element, system or part thereof that is essential for the maintenance of the vital functions of society, health, security, protection and economic and social welfare of the population, the disruption or destruction whereof would have a significant impact as a result of the failure to maintain such functions;
5. The criminal offence has been committed by using any of the means outlined in Article 264 ter.

If the deeds have produced extremely serious effects the higher degree penalty shall be imposed.

3. The penalties imposed shall be higher by one degree to those respectively stated in the previous Sections when the deeds are committed through the unauthorised use of the personal data of another person to provide access to the computer system or to secure the trust of a third party.

Article 264 bis

1. Whoever, without authorisation and in a serious way, hinders or interrupts the operation of a computer system pertaining to another in any of the following manners shall be punished with a prison sentence of six months to three years:

- a) By engaging in any of the conducts outlined in the preceding Article;
- b) By introducing or transferring data, or;
- c) By destroying, damaging, disabling, eliminating or substituting a computer or telematic system or of electronic data storage.

If the deeds were to significantly hinder the normal activity of a company, business or Public Administration, the penalty shall be imposed in its upper half and up to the highest degree.



2. If any of the circumstances outlined in Section 2 of the preceding Article concurs in the case of the deeds foreseen in the previous Section, a prison sentence of three to eight years and a fine of three to ten times the amount of the damage caused shall be imposed.

3. The penalties imposed shall be higher by one degree to those respectively stated in the previous Sections when the deeds are committed through the unauthorised use of the personal details of another person to provide access to the computer system or to secure the trust of a third party.

Article 264 ter

Whoever, without being duly authorised, produces, acquires for use, imports or, in any way, with the intention of facilitating the perpetration of any of the criminal offences outlined in the two preceding Articles, provides third parties with:

- a) A computer program, designed or adapted primarily for the purpose of committing any of the criminal offences outlined in the two preceding Articles, or;
- b) A computer password, an access code or similar data enabling access to all or part of an information system, shall be punished with a prison sentence of six months to two years or a fine of three to eighteen months.

Article 264 quater

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences included in the three preceding Articles, it shall have the following penalties imposed thereon:

- a) Fine of two to five years or five to twelve times the damage caused, in the case of criminal offences punished with a prison sentence exceeding three years;
- b) Fine of one to three years or three to eight times the damage caused, if the amount is higher, in all other cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 265

Whoever destroys, seriously damages, or puts out of service, even if temporarily, military works, establishments or installations, warships, military aircraft, means of military transport or transmission, war materiel, provisions or other means or resources assigned to the service of the Armed Forces or the Police and Security Forces, shall be punished with a prison sentence of two to four years if the damage caused exceeds one thousand euros.

Article 266

1. Whoever commits the damage described in Section 1 of Article 263 by means of fire, or causing explosions or using any other means of a similar destructive power, or damage resulting in a significant risk of explosion or in other particularly serious damage or which endangers the life or integrity of individuals, shall be punished with a prison sentence of one to three years.

2. Whoever commits the damage described in Section 2 of Article 263, in any of the circumstances mentioned in the preceding Section, shall be punished with a prison sentence of three to five years and a fine of twelve to twenty-four months.

3. Whoever commits the damage described in Articles 265, 323 and 560, in any of the circumstances mentioned in Section 1 of this Article, shall be punished with a sentence of imprisonment from four to eight years.

4. In any of the cases foreseen in the preceding Sections, if the damage is committed with the provocation of explosions or the use of other means of a similar explosive power and also endanger the life or integrity of persons, the punishment shall be imposed in its upper half.

What is set forth in Article 351 shall apply to the case of fire.

Article 267

Damage caused due to gross negligence, in an amount exceeding 80,000 euros, shall be punished with the penalty of a fine from three to nine months, in view of the extent thereof.

The criminal offences to which this Article refers shall only be pursuable when reported by the person offended or his legal representative. The Public Prosecutor may also report them when the victim is a minor, person requiring special protection or disabled person.

In these cases, forgiveness by the victim or his legal representative, as appropriate, extinguishes the penal action without prejudice to what is set forth in Paragraph Two of Sub-Section 5 of Section 1 of Article 130 of this Code.

CHAPTER X

Provisions common to the preceding Chapters

Article 268

1. Spouses who are not separated legally or de facto, or who are subject to judicial proceedings for separation, divorce or nullity of their marriage, and the ascendants, descendants and biological or adoptive siblings, as well as those of first degree affinity, if cohabiting, shall be exempt of criminal accountability and only subject to civil liability for criminal offences against property they were to cause each other, as long as neither violence nor intimidation is involved, nor the abuse of the vulnerability of the victim, whether due to his age or disability.

2. This provision is not applicable to third parties who participate in the criminal offence.

Article 269

Provocation, conspiracy and solicitation to commit the criminal offences of robbery, burglary, extortion, swindling or misappropriation, shall be punished with the penalty lower by one or two degrees to that of the relevant criminal offence.



CHAPTER XI

On criminal offences against intellectual and industrial property, the market and consumers

SUBCHAPTER 1. On criminal offences related to intellectual property

Article 270

1. Whoever, in order to obtain direct or indirect economic gain and to the detriment of a third party, reproduces, plagiarises, distributes, publicly discloses or in any other manner financially exploits all or part of a literary, artistic or scientific work or performance, or transforms, interprets or performs it in any kind of medium, or broadcasts it by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, shall be punished with a prison sentence of six months to four years and a fine of twelve to twenty-four months.

2. The same punishment shall be incurred by those who, while providing media services, in order to obtain direct or indirect economic gain and to the detriment of a third party, actively and in a non-neutral manner, not limited to merely technical processing, provide access or enable the identification on the Internet of works or performances subject to intellectual property without authorisation of the holders of the corresponding rights or their assignees, in particular by providing ordered and classified lists of links to the aforementioned works and content, even in the event that said links were originally provided by the service recipients.

3. In these cases, the Judge or Court of Law shall order the withdrawal of the works or performances the object of the criminal offence. When, through an Internet access portal or media service, the content subject to intellectual property outlined in the preceding Sections is distributed exclusively or predominantly, the interruption of such distribution shall be ordered and the Judge may adopt any precautionary measure established for the purpose of protecting intellectual property rights.

Exceptionally, when such conduct is reiterated and when it is considered as a proportionate, efficient and effective measure, the corresponding access may be blocked.

4. In the cases outlined in Section 1, the itinerant or merely occasional distribution or commercialisation shall be punished with a prison sentence of six months to two years.

However, in view of the circumstances of the offender and the small amount of financial profit obtained or that could have been obtained, as long as none of the circumstances of Article 271 concurs, the Judge may hand down a fine of one to six months, or community service of thirty-one to sixty days.

5. The penalties foreseen in the preceding Sections, in the respective cases, shall be imposed on those who:

- a) Intentionally export or store copies of the works, productions or performances outlined in the first two Sections of this Article, including digital copies thereof, without due authorisation, with the intention of reproducing, distributing or publically disclosing them;
- b) Intentionally import these products without said authorisation, with the intention of reproducing, distributing or publically disclosing them, regardless of whether these have a lawful or unlawful origin in their country of origin. However, importing those products from a State pertaining to the European Union shall not be punishable when these have been acquired directly from the holder of the rights in that State, or with his consent;
- c) Promote or facilitate the conducts outlined in Sections 1 and 2 of this Article by eliminating or modifying, without authorisation by the holders of the intellectual property rights or their assignees, the effective technological measures put in place in order to prevent or restrict such conduct;
- d) In order to obtain direct or indirect economic gain, with the purpose of providing third parties with access to a copy of a literary, artistic or scientific work, or to transform, interpret or perform it in any kind of medium, or broadcast by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees, evade or facilitate evasion of the effective technological measures in place to prevent this from happening.

6. Whoever manufactures, imports, puts into circulation or possesses for commercial purposes any means specifically designed, produced, adapted or intended to facilitate unauthorised suppression or neutralisation of any technical device that has been used to protect computer programs or any of the other works, interpretations or performances under the terms foreseen in the first two Sections of this Article, shall be punished with a prison sentence of six months to three years.

Article 271

A prison sentence of two to six years, a fine of eighteen to thirty-six months and special barring from practice of the profession related with the criminal offence committed, for a term of two to five years shall be imposed if any of the following circumstances concurs upon committing the criminal offence foreseen in the preceding Article:

- a) If the profit obtained, or that could have been obtained, is of special economic importance;
- b) If the deeds are especially serious, in view of the value of the objects produced unlawfully, the number of works, or of their transformation, performance or interpretation, unlawfully reproduced, distributed, publicly disclosed or made available, or the special importance of the damage caused;
- c) If the offender belongs to an organisation or association, even if transitory in nature, whose purpose is to perpetrate activities that infringe intellectual property rights;
- d) If persons under eighteen years of age are used to commit those criminal offences.

**Article 272**

1. The extent of civil liability arising from the criminal offences defined in the preceding two Articles shall be governed by the provisions of the Intellectual Property Act on cessation of the unlawful activity and reparation of damages and losses.
2. In the event of conviction, the Judge or Court of Law may decree publication thereof in an official newspaper, at the expense of the offender.

SUBCHAPTER 2. On criminal offences against industrial property**Article 273**

1. Whoever, for industrial or commercial purposes, without the consent of the holder of a patent or utility model and being aware of registration thereof, manufactures, imports, possesses, uses, offers or markets objects protected by those rights, shall be punished with a sentence of imprisonment of six months to two years and a fine from twelve to twenty- four months.
2. The same penalties shall be imposed upon whoever, likewise and for the purposes stated, uses or offers the use of a patented procedure, or possesses, offers, markets or uses a product directly obtained by the patented procedure.
3. Whoever perpetrates any of the deeds described in Section 1 of this Article when equal circumstances concur with regard to objects protected in favour of a third party by an industrial, artistic or topographic model or design of a semiconductor product, shall be punished with the same penalties.

Article 274

1. Whoever, for industrial or commercial purposes, without the consent by the holder of a registered industrial property right pursuant to the trademarks legislation and being aware of registration thereof:
 - a) Manufactures, produces or imports products with a distinctive sign that is identical or may be mistaken for the former, or;
 - b) Offers, distributes or commercialises products with a distinctive sign that is identical or may be mistaken for the former, or stores them for this purpose, in the case of the same or similar products, services or activities for which the industrial property right is registered, shall be punished with a prison sentence of one to four years and a fine of twelve to twenty-four months.
2. Whoever, for industrial or commercial purposes, without the consent by the holder of a registered industrial property right pursuant to the trademarks legislation and being aware of registration thereof, offers, distributes or commercialises, or provides services or carries out activities, of products with a distinctive sign that is identical or may be mistaken for the former, in the case of the same or similar products, services or activities for which the industrial property right is registered, shall be punished with a prison sentence of six months to three years.

The same punishment shall be imposed on those who reproduce or imitate a distinctive sign that is identical or may be mistaken for the former in order to engage in the conduct outlined in this Article.

3.The itinerant or occasional sale of the products outlined in the preceding Sections shall be punished with a prison sentence of six months to two years.

However, in view of the circumstances of the offender and the small amount of financial profit obtained or that could have been obtained, as long as none of the circumstances of Article 276 concur, the Judge may hand down a fine of one to six months, or community service of thirty-one to sixty days.

4. Whoever, for agricultural or commercial purposes, without the consent of the plant variety licence holder and being aware of its registration, produces or reproduces, conditions with a view to production or reproduction, offers on sale, sells or otherwise commercialises in another manner, exports, imports or possesses, for any of the purposes mentioned, plant material for reproduction or propagation of a protected plant variety pursuant to national laws or those of the European Union on protection of new plant varieties, shall be punished with a prison sentence of one to three years.

Whoever perpetrates any of the deeds described in the preceding Paragraph using plant material for reproduction or propagation that does not belong to the variety stated, under the denomination of a protected plant variety, shall be punished with the same penalty.

Article 275

The same penalties foreseen in the preceding Article shall be imposed on whoever intentionally and without being authorised to do so, uses a denomination of origin or a geographic indication representing a legally protected specific quality used to distinguish the products obtained thereby, being aware of such protection, to trade therewith.

Article 276

A prison sentence of two to six years, a fine of eighteen to thirty-six months and special barring from practice of the profession related with the criminal offence committed, for a term of two to five years, shall be imposed when any of the following circumstances concurs:

- a) If the profit obtained, or that could have been obtained, is of special economic importance;
- b) If the deeds are especially serious, in view of the value of the objects produced unlawfully, distributed, commercialised or offered, or the special importance of the damage caused;
- c) If the offender belongs to an organisation or association, even if transitory in nature, whose purpose is to perpetrate activities that infringe intellectual property rights;
- d) If persons under eighteen years of age are used to commit those criminal offences.

Article 277

Punishment by imprisonment of six months to two years and a fine from six to twenty-four months shall be imposed on whoever intentionally discloses the invention subject



to a secret patent application, in breach of what is set forth in the patent legislation, whenever this is to the detriment of national defence.

SUBCHAPTER 3. On criminal offences related to the market and consumers

Article 278

1. Whoever obtains data, written or electronic documents, computer media or other objects related thereto in order to discover a company secret, or who uses any of the means or instruments described in Section 1 of Article 197, shall be punished with a sentence of imprisonment of two to four years and a fine of twelve to twenty- four months.

2. A sentence of imprisonment of three to five years and a fine of twelve to twenty- four months shall be imposed if the secrets discovered are disclosed, revealed or communicated to third parties.

3. The terms set forth in this Article shall be construed to be without prejudice to the penalties that might be relevant for appropriating or destroying the computer media.

Article 279

Diffusion, disclosure or communication of a company secret perpetrated by whoever has the legal or contractual obligation of confidentiality, shall be punished with a sentence of imprisonment of two to four years and a fine of twelve to twenty- four months.

Should the secret be used to his own advantage, the penalties shall be imposed in the lower half thereof.

Article 280

Whoever, with knowledge of their unlawful origin, and without having taken part in their discovery, perpetrates any of the deeds described in the preceding two Articles shall be punished with a sentence of imprisonment from one to three years and a fine of twelve to twenty- four months.

Article 281

1. Whoever removes raw materials or products of basic need from the market in order to interrupt supplies to a sector thereof, to force an alteration in prices, or to seriously affect consumers, shall be punished with a sentence of imprisonment from one to five years and a fine of twelve to twenty- four months.

2. A punishment higher in one degree shall be imposed if the deed is carried out in situations of serious or catastrophic need.

Article 282

Manufacturers or traders who make false claims or declare untrue features in their offers or publicly of products or services, so as to cause serious, manifest harm to consumers, without prejudice to the relevant punishment for having committed other criminal offences, shall be punished with a sentence of imprisonment of six months to one year or fine from twelve to twenty- four months

Article 282 bis

Those who, as *de facto* or *de jure* managers of a company that issues securities listed on the stock markets, falsify the economic-financial information contained in the prospectuses used to issue any financial instruments or information that the company must publish and make known pursuant to the stock market legislation, concerning its resources, activities and present and future business, in order to attract investors or depositors, to place any kind of financial asset, or to obtain financing by any means, shall be punished with a sentence of imprisonment of one to four years, without prejudice to what is set forth in Article 308 of this Code.

Should the investment, deposit, placement of the asset or financing be eventually obtained, causing damage to the investor, depositor, acquirer of the financial assets or creditor, the punishment shall be imposed in its upper half. Should the damage caused be notoriously serious, the punishment to be imposed shall be one to six years' imprisonment and a fine from six to twelve months.

Article 283

Prison sentences of six months to one year and fines from six to eighteen months shall be imposed on those who, to the detriment of the consumer, bill higher amounts for products or services whose cost or price is measured by automatic appliances, by altering or manipulating these.

Article 284

A sentence of imprisonment shall be imposed of six months to two years or a fine of twelve to twenty- four months upon those who:

1. Using violence, intimidation or deceit, were to attempt to alter the prices that would arise from free competition of products, merchandise, securities or financial instruments, services or any other moveable assets or real estate that is subject to contract, without prejudice to the punishment that may be imposed on them for other criminal offences committed;
2. Disseminate news or rumours, themselves or through the media, on persons or companies, in which they knowingly provide fully or partially false economic data in order to alter or preserve the listed price of a financial security or instrument, obtaining financial profit for themselves or others exceeding 300,000 euros, or causing an identical amount of damage.
3. Using privileged information for insider dealing, carry out transactions or give operating orders liable to provide deceitful signs concerning the offer, demand or price of financial securities or instruments, or using that same information, themselves or in collusion with others, assure themselves a dominant position on the market for such securities or instruments, in order to set their prices at abnormal or artificial levels.

In all cases, the punishment shall be imposed of barring from one to two years to trade on the financial market as a principal, agent or broker or analyst.



Article 285

1. Whoever, directly or through an intermediary, uses any relevant information for the price of any kind of securities or instruments traded on any organised, official or recognised market, to which he has had reserved access due to exercising his professional or corporate activity, or who supplies this obtaining financial profit for himself or a third party exceeding 600,000 euros, or causing damage of an equal amount, shall be punished with a sentence of imprisonment of one to four years, a fine of one to three times the profit obtained or favoured, and special barring from practice of the profession or activity from two to five years.

2. A sentence of imprisonment from four to six years, a fine of one to three times the profit obtained or favoured and special barring from practice of the profession or activity from two to five years shall be handed down when, in the conduct described in the preceding Section, any of the following circumstances concurs:

1. That the subjects habitually perpetrate such abusive practices;
2. That the profit obtained be notoriously large;
3. That serious damage to general interests was caused.

Article 286

1. Punishment by imprisonment of six months to two years and a fine from six to twenty- four months shall be handed down to whoever, without the consent of the service provider and for commercial purposes, provides intelligible access to a radio or television broadcasting sound or image service, to interactive services provided remotely by electronic means, or who provides conditional access to these, considered as an independent service, by means of:

1. Manufacturing, importation, distribution, making available by electronic means, sale, rental, or possession of any computer equipment or program that is unauthorised in another member State of the European Union, designed or adapted to make such access possible;
2. Installation, maintenance or replacement of the equipment or computer programs mentioned in Section 1.

2. An identical punishment shall be applied to whoever, for profit, were to alter or duplicate the identifying number of telecommunications equipment or sell equipment that has undergone fraudulent manipulation.

3. Whoever, for non-profit purposes, provides third parties the access described in Section 1, or through public communication, whether for commercial purposes or not, provides information to multiple persons on the way to obtain unauthorised access to a service or use of a device or program, of those stated in that same Section 1, inciting them to attain this, shall have the punishment of the fine foreseen therein imposed.

4. Whoever uses equipment or programs that allow unauthorised access to conditional access services or telecommunications equipment shall have the punishment foreseen in Article 255 of this Code imposed, regardless of the amount obtained by such fraud.

SUBCHAPTER 4. Criminal offences of corruption in business

Article 286 bis

1. The executive, director, employee or collaborator of a trading company or any other firm who, personally or through an intermediary, receives, requests or accepts an unfair benefit or advantage of any nature, for him or for a third party, as consideration for unduly favouring another in the acquisition or sale of goods or in the hiring of professional services, or in business relations, shall be punished with a prison sentence of six months to four years, special barring from practice of industry or commerce for a term of one to six years and a fine of up to three times the value of the profit or advantage obtained.

2. The same penalties shall be imposed on those who, personally or through an intermediary, promise, offer or grant executives, directors, employees or collaborators of a trading company or any other firm an unfair benefit or advantage of any nature, for themselves or for third parties, in order for them to unduly favour him or a third party against others in the acquisition or sale of goods, hiring of services, or in business relations.

3. The Judges and Courts of Law may impose a lower degree of punishment and reduce the fine, in their prudent judgment, in view of the amount of profit obtained or value of the advantage and the importance of the duties of the offender.

4. The terms set forth this Article shall be applicable, in the respective cases, to executives, directors, employees or collaborators of a sporting company, whatever its legal status, as well as sportspersons, referees or judges, regarding conduct aimed at deliberately and fraudulently predetermining or altering the result of a match, game or competition of particular economic or sporting importance.

To this effect, a sport competition of particular economic importance shall be construed as that in which the majority of participants receive any type of remuneration, compensation or payment for their participation in the activity. A sport competition of particular sporting importance shall be construed as that which appears in the annual sports calendar approved by the corresponding sports federation as an official competition of the highest category in the modality, speciality or discipline in question.

5. For the purposes of this Article the provisions of Article 297 shall apply.

Article 286 ter

1. Those who, by offering, promising or granting any undue pecuniary or other kind of benefit or advantage, corrupt or attempt to corrupt, personally or through an intermediary, an authority or civil servant, for their own benefit or that of a third party, or who attend to requests in that regard, in order for them to act or abstain from acting in relation to the exercising of public functions to obtain or conserve a contract, business or another competitive advantage in the course of international economic activities, shall be punished with a prison sentence of three to six years and a fine of twelve to twenty-four months, unless the profit obtained exceeds the resulting sum, in which case the fine shall be up to three times the amount of such profit, unless otherwise punished with a more severe penalty in another provision of this Code.



In addition to the outlined penalties, the offender shall also be punished with a ban from being hired in the public sector, the loss of the possibility of obtaining public subsidies or aid, the forfeit of the right to tax or Social Security benefits and incentives and a ban on participating in commercial transactions of public significance for a period of seven to twelve years.

2. For the purposes of this Article, civil servant refers to the individuals outlined in Articles 24 and 427.

Article 286 *quater*

If the deeds outlined in the Articles of this Section were of particular gravity, the penalty shall be imposed in its upper half and up to the highest degree.

In any event, the deeds shall be considered of particular gravity if:

- a) The benefit or advantage has a particularly high value;
- b) The action of the perpetrator is not merely occasional;
- c) The deeds are committed within a criminal organisation or group, or;
- d) The business in question involves humanitarian goods or services or those pertaining to primary necessity.

In the case of Section 4 of Article 286 bis, the deeds shall also be considered of particular gravity if:

- a) They aim to influence games of gambling or betting;
- b) They are committed during an official sports competition at a State level which is qualified as professional or during an international sports competition.

SUBCHAPTER 5: Provisions common to all the preceding subchapters

Article 287

1. Prosecution of the criminal offences foreseen in Section 3 of this Chapter, except those foreseen in Articles 284 and 285, must necessarily be reported by the victim or by his legal representatives. When the victim is a minor, person requiring special protection or disabled person, they may also be reported by the Public Prosecutor.

2. The report required in the preceding Section shall not be necessary when commission of the criminal offence affects general interests or multiple persons.

Article 288

In the cases foreseen in the preceding Articles, publication of the judgment in the official journals shall be provided and, if requested by the offended, the Judge or Court of Law may order full or partial reproduction thereof in any other informative medium, at the expense of the convict.

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Chapter, it shall have the following penalties imposed thereon:



1. In the case of the criminal offences foreseen in Articles 270, 271, 273, 274, 275, 276, 283, 285 and 286:

- a) Fine of two to four times the profit obtained, or that could have been obtained, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years;
- b) Fine of two to three times the profit obtained or favoured, or that could have been obtained, in the rest of the cases.

In the case of the criminal offences foreseen in Articles 277, 278, 279, 280, 281, 282, 282 bis, 284 and 286 bis to 286 quinquies:

- a) Fine of two to five years, or three to five times the profit obtained, or that could have been obtained if this amount is higher, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years;
- b) Fine of six months to two years, or one to two times the profit obtained, or that could have been obtained if this amount is higher, in the rest of the cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

CHAPTER XII

On making an asset unavailable for its social or cultural use

Article 289

Whoever, by any means, destroys, puts out of service or damages an asset belong to himself assigned to social or cultural use, or in any way makes it unavailable for fulfilment of the legal duties imposed thereon in the interest of the community, shall be punished with a sentence of imprisonment of three to five months or a fine from six to ten months.

CHAPTER XIII

On corporate criminal offences

Article 290

The *de facto* or *de jure* directors of a company incorporated or under formation, who falsify the annual accounts or other documents that should record the legal or financial status of the company, in such a way to cause financial damage thereto or to any of its shareholders or partners, or to a third party, shall be punished with a sentence of imprisonment from one to three years and a fine from six to twelve months.

If financial damage were actually caused, the penalties shall be imposed in the upper half.

Article 291

Those who, availing themselves of their majority at the General Meeting of Shareholders or on the governing body of any company incorporated or under formation, impose abusive resolutions, for own profit or that of others, to the detriment of the other



shareholders or partners, and without this providing profit thereto, shall be punished with a sentence of imprisonment of six months to three years or a fine of one to three times the profit obtained.

Article 292

The same punishment as in the preceding Article shall be imposed on those who impose or take advantage of, for themselves or for a third party, to the detriment of the company or some of its shareholders or partners, a damaging resolution passed by a fictitious majority, obtained by use of blank signed orders, by undue attribution of the voting rights of whoever legally lacks them, by unlawfully refusing voting rights to whoever are legally recognised as having them, or by any other similar means or procedure, and without prejudice to punishment of the deed as appropriate should it constitute another criminal offence.

Article 293

De facto or *de jure* directors of any company incorporated or under formation who, without a legal reason, refuse or prevent a shareholder or partner from exercising his rights of information, participation in the management or control of the corporate activity, or pre-emptive subscription of shares recognised by the laws, shall be punished with the penalty of a fine from six to twelve months.

Article 294

Those who, as *de facto* or *de jure* directors of any company incorporated or under formation, subject to or that acts on markets subject to administrative supervision, deny or prevent action by the inspection or supervisory persons or bodies, shall be punished with a sentence of imprisonment of six months to three years or a fine of twelve to twenty- four months.

In addition to the penalties foreseen in the preceding Section, the judicial authority may decree some of the measures foreseen in Article 129 of this Code.

Article 295

(Repealed)

Article 296

1. The deeds described in this Chapter may only be prosecuted when reported by the person offended or his legal representative. When the former is a minor, person requiring special protection or disabled person, it may also be reported by the Public Prosecutor.
2. The report required in the preceding Section shall not be necessary when commission of the criminal offence affects general interests or multiple persons.

Article 297

For the purposes of this Chapter, all co-operatives, savings banks, mutual societies, financial or lending institutions, foundations, trading companies or any other corporation of a similar nature, with a permanent participation in the market to fulfil its ends, shall be construed to be a company.



CHAPTER XIV

On receiving stolen goods and money laundering

Article 298

1. Whoever, for profit and being aware that a criminal offence against property or the social-economic order is being committed, in which he has not intervened either as an offender or accomplice, aids those responsible to take advantage of the proceeds thereof, or receives, acquires or conceals those proceeds, shall be punished with a prison sentence of six months to two years.

A prison sentence of one to three years shall be imposed in the following cases:

- a) In the case of items of artistic, historical, cultural or scientific value.
- b) In the case of basic necessities, pipes, cables, equipment or components of electrical infrastructures or telecommunications services or other items intended for the operation of services of general interest, agricultural and livestock products or the instruments or tools used to obtain them.
- c) If the events are particularly serious, in view of the value of the effects received or the damages that may have foreseeably been caused by the theft.

2. That punishment shall be imposed in its upper half on whoever receives, acquires or conceals the proceeds of the criminal offence to traffic therewith. Should the trade be carried out using a commercial or industrial establishment or premises, a fine of twelve to twenty-four months shall also be imposed. In these cases, the Judges or Courts of Law, in view of the severity of the deed and the personal circumstances of the offender, may also sentence him to the punishment of special barring from exercise of his profession or industry, for a term of two to five years, and order the measure of temporary or definitive closing of the establishment or premises. If the closing is temporary, its duration may not exceed five years.

3. Under no circumstances whatsoever may a sentence of imprisonment be handed down that exceeds that set for the criminal offence concealed. Should this be punished with a punishment of another nature, the sentence of imprisonment shall be substituted by that of a fine from twelve to twenty-four months, except if the criminal offence concealed is assigned a punishment equal to or lower than this. In such an event, the offender shall have the punishment for the criminal offence in its lower half imposed.

Article 299

(Repealed)

Article 300

The provisions of this Chapter shall be applied even when the offender or the accomplice of the deed from which the proceeds originate is not responsible or is personally exempt from punishment.

Article 301

1. Whoever acquires, possesses, uses, converts, or conveys assets, knowing they originate from a criminal activity, committed by himself or by any third party, or who



perpetrates any other deed to hide or conceal their unlawful origin, or to aid the person who participated in the criminal offence or criminal offences to avoid the legal consequences of his deeds, shall be punished with a sentence of imprisonment of six months to six years and a fine from one to three times the value of the goods. In these cases, the Judges or Courts of Law, in view of the severity of the deed and the personal circumstances of the offender, may also sentence him to the punishment of special barring from exercise of his profession or industry for a term from one to three years, and order the measure of temporary or definitive closing of the establishment or premises. If the closing is temporary, its duration may not exceed five years.

The punishment shall be imposed in its upper half when the assets have their origin in any of the criminal offences related to trafficking toxic drugs, narcotics or psychotropic substances described in Articles 368 to 372 of this Code. In these cases, the provisions set forth in Article 374 of this Code shall be applied.

The punishment shall also be imposed in its upper half when the assets originate from any of the criminal offences included in Chapters V, VI, VII, VIII, IX and X of Title XIX or in any of the criminal offences of Chapter I of Title XVI.

2. The same penalties shall be used to punish, as appropriate, hiding or concealment of the true nature, origin, location, destination, movement or rights to the assets, or their ownership, knowing that they originate from any of the criminal offences described in the preceding Section or a deed of participation therein.

3. Should the deeds be perpetrated due to gross negligence, the punishment shall be imprisonment from six months to two years and a fine of one to three times thereof.

4. The offender shall also be punished even though the criminal offence from which the assets, or the deeds punishable pursuant to the preceding Sections may have been committed, full or partially, abroad.

5. Should the offender have obtained gains, these shall be confiscated pursuant to the rules of Article 127 of this Code.

Article 302

1. In the cases foreseen in the preceding Article the custodial sentences shall be imposed in the upper half on those pertaining to an organisation dedicated to the purposes stated therein, and the higher degree punishment on the bosses, managers or persons in charge of those organisations.

2. In such cases, when pursuant to the terms established in Article 31 bis, a legal person is responsible, it shall have the following penalties imposed thereon:

- a) Fine from two to five years, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- b) Fine of six months to two years, in the rest of the cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.



Article 303

Should the deeds foreseen in the preceding Articles be perpetrated by an entrepreneur, intermediary in the financial sector, a medical practitioner, civil servant, social worker, teacher or educator, when carrying out the duties of his office, profession or trade, in addition to the relevant punishment, he shall also be sentenced to special barring from public employment and office, profession or trade, industry or commerce, for three to ten years. The punishment of absolute barring shall be imposed from ten to twenty years when such deeds are carried out by an authority or agent thereof.

To that end, medical practitioners are construed to be doctors, psychologists, persons who hold higher education health and veterinary qualifications, pharmacists and their employees.

Article 304

Provocation, conspiracy and solicitation to commit the criminal offences foreseen in Articles 301 to 303 shall be punished, respectively, with the punishment lower by one or two degrees.



TITLE XIII BIS

On criminal offences of unlawful financing of political parties

Article 304 *bis*

1. Whoever receives donations or contributions aimed at a political party, federation, coalition or group of electors in violation of Article 5.1 of Organic Act 8/2007, of 4th July, on the financing of political parties, shall be punished with a fine of three to five times the value.
2. The preceding deeds shall be punished with a prison sentence of six months to four years and a fine of three to five times the value or excess:
 - a) In the case of the donations outlined in Article 5.1, Sub-Paragraphs a) or c) of Organic Act 8/2007, of 4th July, on the financing of political parties, for an amount exceeding 500,000 euros, or when they exceed this amount by the limit established in Sub-Paragraph b) of the aforementioned provision, when this has been infringed;
 - b) in the case of the donations outlined in Article 7.2 of Organic Act 8/2007, of 4th July, on financing political parties, exceeding the amount of 100,000 euros.
3. If the deeds outlined in the preceding Section were of particular gravity, the penalty shall be imposed in its upper half and up to the highest degree.
4. The same penalties shall be imposed, in their respective cases, on those who give donations or contributions aimed at a political party, federation, coalition or group of electors, personally or through an intermediary, in any of the cases outlined in the preceding Sub-Paragraphs.
5. The same penalties shall be imposed if, pursuant to Article 31 *bis* of this Code, a legal person is responsible for the deeds. Pursuant to the rules established in Article 66 *bis*, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 304 *ter*

1. Whoever participates in structures or organisations, of any type, whose purpose is to finance political parties, federations, coalitions or groups of electors, in breach of what is established by the law, shall be punished with a prison sentence of one to five years.
2. The punishment shall be imposed in its upper half in the case of the individuals running such structures or organisations.
3. If the deeds outlined in the preceding Sections were of particular gravity, the penalty shall be imposed in its upper half and up to the highest degree.

TITLE XIV

On criminal offences against the Exchequer and the Social Security

Article 305

1. Whoever, by deed or omission, defrauds the central Exchequer, that of the Autonomous Communities, special provinces or local authorities, by avoiding payment of taxes, of sums withheld or those that should be withheld or deposits on account of remunerations in species or unduly obtaining reimbursements or taking advantage of tax rebates, as long as the sum of the quota defrauded, the amount not deposited of withholdings or deposits to account or reimbursements or tax benefit unduly obtained or taken advantage of exceeds one hundred and twenty thousand euros, shall be punished with a sentence of imprisonment from one to five years and a fine from one to six times the amount involved, unless the person involved has regularised his tax position pursuant to Section of this Article.

The mere submission of the tax returns or self-settlements does not exclude the fraud, if this is evidenced by other facts.

In addition to the penalties stated, the offender shall be sentenced to loss of the possibility to obtain public subsidies or aid and entitlement to tax or Social Security benefits or incentives for a period from three to six years.

2. In order to determine the sum mentioned in the preceding Section:

- a) In the case of taxes, withholdings, deposits on account or reimbursements, either periodical or by periodical return, the amount swindled in each tax period or return period shall be applied and, if this is less than twelve months, the amount swindled shall refer to the calendar year. The aforesaid notwithstanding, if the fraud is effected within a criminal organisation or group or by individuals or entities that act under the appearance of a real economic activity without carrying it out in a real way, the criminal offence may be persecuted as from the very moment the sum reaches the figure stated in Section 1.
- b) In other cases, the sum shall be construed to refer to each one of the different taxable items subject to assessment.

3. The same penalties shall be imposed when the conduct described in Section 1 of this Article is committed against the Exchequer of the European Community, as long as the sum defrauded exceeds fifty thousand euros in a calendar year. The aforesaid notwithstanding, if the fraud is effected within a criminal organisation or group or by individuals or entities that act under the appearance of a real economic activity without carrying it out in a real way, the criminal offence may be persecuted as from the very moment the sum reaches the figure stated in this Section.

If the sum defrauded does not exceed fifty thousand euros but does exceed four thousand a penalty of three months to one year's imprisonment shall be imposed or a fine which may be equivalent to that sum as a minimum and treble that sum as a maximum, as well as the loss of the possibility to obtain public subsidies or aid and entitlement to tax or Social Security benefits or incentives for a period from six months to two years.



4. The tax situation shall be deemed as regularised if the tax payer has effected a complete recognition and payment of the tax debt before the Tax Administration has notified him of the commencement of verification or investigation actions leading to the determination of the tax debts which are the object of the regularisation or, if such actions have not occurred, before the Public Prosecutor, the State Attorney or the procedural representative of the Autonomous, special area or local administration concerned file a suit or arraignment against him, or before the Public Prosecutor or the Investigating Judge carry out actions that allow him to have formal knowledge of initiation of proceedings.

Likewise, the effects of the regularisation foreseen in the preceding Section shall be applicable when tax debts are satisfied once the right of the Administration to the determination thereof in the administrative channel has prescribed.

The regularisation by the taxpayer of his tax situation shall impede proceeding against him for the possible accounting irregularities or other instrumental misrepresentations that, exclusively in relation to the tax debt subject to regularisation, he may have committed prior to the regularisation of his tax situation.

5. Whenever the Tax Administration deems that there is prima facie evidence that a criminal offence against the Exchequer has been committed, it may calculate separately, on the one hand the items and sums not linked to the possible criminal offence against the Exchequer and, on the other hand, those that are so.

The calculation mentioned in the first place shall follow the ordinary procedure and shall be subject to the appeals system of any tax calculation whilst the calculation referring to the items and sums linked to the possible criminal offence against the Exchequer shall follow the procedure established for such purposes in the tax rules, without prejudice to its subjection to what is decided in the criminal proceedings.

The existence of criminal proceedings for a criminal offence against the Exchequer shall not paralyse the action to secure payment of the tax debt. The Tax Administration may commence the actions directed at securing payment of a tax debt, unless the Judge, at his own motion or at the request of a party, resolves the suspension of the actions directed at securing payment thereof, provided a bond be constituted. If such a bond cannot be provided, in all or in part, the Judge may decide on the suspension with total or partial dispensation from constituting a bond if he considers that the execution could entail irreparable damage or a damage that would be most difficult to repair.

6. The Judges and Courts of Law may impose on the taxpayer or the offender a lesser penalty, in one or two degrees, provided that, before two months have elapsed from the judicial summons as an accused he were to pay his tax debt and were to recognise judicially the facts. This shall be also applicable to the other participants in the criminal offence other than the taxpayer and the offender if they have actively collaborated in securing decisive evidence to identity or in apprehending the other persons responsible or in clarifying the criminal facts or to ascertain the assets of the taxpayer or offender.

7. In proceedings for a criminal offence under this Article, for enforcement of the punishment of fine and of the civil liability, that shall include the amount of the tax debt that the Tax Authorities have not been able to settle due to the statute of limitations or

to any other legal cause under the terms set forth in the General Tax Act, including delay interest thereon, the Judges and Courts of Law shall seek assistance from the Tax Authorities that shall demand such moneys by the compulsory administrative collection procedure pursuant to the terms established in such Act.

Article 305 bis

1. A criminal offence against the Exchequer shall be punished with imprisonment from two to six years and a fine twice to six times the tax amount swindled if the fraud has been committed with any of the following circumstances concurring:

- a) That the tax amount swindled exceeds six hundred thousand euros;
- b) That the fraud has been committed within a criminal organisation or group;
- c) That the use of natural or legal persons or entities without legal personality in between or of trust operations or instruments or of a tax haven or jurisdictions with no tax burden make it difficult or impossible to determine the identity of the taxpayer or the offender, or the amount swindled or the assets of the taxpayer or of the offender.

2. In the cases covered by this Article, all the remaining provisions contained in Article 305 shall be applicable.

In these cases, apart from the penalties indicated, the person responsible shall be deprived of the right to obtain public subsidies or aid and of the right of enjoying tax or Social Security benefits during a period from four to eight years.

Article 306

Whoever, by deed or omission defrauds the general budget of the European Union or others administered by it, in an amount exceeding fifty thousand euros, avoiding, outside the cases foreseen in Section 3 of Article 305, payment of the sums that must be deposited, or putting the funds obtained to a different use to that intended or obtaining funds falsifying the conditions required to obtain them or concealing those which would have impeded obtaining them, shall be punished with a sentence of imprisonment from one to five years and a fine from one to six times the amount involved and the loss of the possibility of obtaining public subsidies or aid or of the right to enjoy tax or Social Security incentives or benefits during a period from three to five years.

If the sum defrauded or unduly applied does not exceed fifty thousand euros but does exceed four thousand euros a penalty of three months to one year's imprisonment shall be imposed or a fine which may be equivalent to that sum as a minimum and treble that sum as a maximum, as well as with the loss of the possibility to obtain public subsidies or aid and entitlement to tax or Social Security benefits or incentives for a period from six months to two years.

Article 307

1. Whoever, by deed or omission, defrauds the Social Security Treasury, avoiding payment of its quotas and joint collection items, unduly obtaining reimbursement thereof or unduly taking advantage of deductions for any item, as long as the sum of the quotas defrauded or of the undue reimbursements or deductions exceeds fifty



thousand euros shall be punished with a sentence of imprisonment from one to five years and a fine from one to six times the amount involved, unless he has regularised his situation with the Social Security, pursuant to the provision of Section 3 of this Article.

The mere submission of the Social Security payments forms does not exclude the fraud, if this is evidenced by other facts.

In addition to the penalties stated, the offender shall be sentenced to loss of the possibility to obtain public subsidies or aid and entitlement to tax or Social Security benefits or incentives for a period from three to six years.

2. In order to determine the sum mentioned in the preceding Section the total amount swindled in four calendar years shall be taken into account.

3. The Social Security situation shall be deemed as regularised if the person obliged has effected a complete recognition and payment of the Social Security debt before he is notified of the commencement of investigation actions leading to the determination of the aforesaid debts or, if such actions have not occurred, before the Public Prosecutor or the Attorney of the Social Security file a suit or arraignment against him, or before the Public Prosecutor or the Investigating Judge carry out actions that allow him to have formal knowledge of initiation of proceedings.

Likewise, the effects of the regularisation foreseen in the preceding Section shall be applicable to Social Security tax debts that are satisfied once the right of the Administration to the determination thereof in the administrative channel has prescribed.

The regularisation by the offender of his situation shall impede proceeding against him for the possible accounting irregularities or other instrumental misrepresentations that, exclusively in relation to the debt subject to regularisation, he may have committed prior to the regularisation of his situation.

4. The existence of criminal proceedings for a criminal offence against the Social Security shall not paralyse the administrative action to calculate and secure payment of the debt incurred with the Social Security, unless the Judge, at his own motion or at the request of a party, resolves the suspension thereof, provided a bond be constituted. If such a bond cannot be provided, in all or in part, the Judge may decide on the suspension with total or partial dispensation from constituting a bond, if he considers that the execution could entail irreparable damage or a damage that would be most difficult to repair. The administrative calculation shall comply in the final instance with what is decided in the criminal proceedings.

5. The Judges and Courts of Law may impose on the Social Security debtor or the offender a lesser penalty, in one or two degrees, provided that, before two months have elapsed from the judicial summons as an accused he were to pay his Social Security debt and were to recognise judicially the facts. This shall be also applicable to the other participants in the criminal offence other than the Social Security debtor and the offender if they have actively collaborated in securing decisive evidence to identify or

apprehending the other persons responsible or in clarifying the criminal facts or to ascertain the assets of the Social Security debtor or offender.

6. In proceedings for a criminal offence under this Article, for enforcement of the punishment of fine and of the civil liability, that shall include the amount of the Social Security debt that the Administration has not been able to settle due to the statute of limitations or to any other legal cause, including delay interest thereon, the Judges and Courts of Law shall seek assistance from the Social Security Administration that shall demand such payment by the compulsory administrative collection procedure.

Article 307 *bis*

1. A criminal offence against the Social Security shall be punished with imprisonment from two to six years and a fine twice to six times the tax amount swindled if the fraud has been committed with any of the following circumstances concurring:

- a) That the aggregate of the quotas defrauded exceeds one hundred and twenty thousand euros;
- b) That the fraud has been committed within a criminal organisation or group;
- c) That the use of natural or legal persons or entities without legal personality in between or of trust operations or instruments or of tax havens or jurisdictions with no tax burden make it difficult or impossible to determine the identity of the person obliged before the Social Security or the offender, or the amount swindled or the assets of the person obliged before the Social Security or the offender.

2. To the cases covered by this Article, all the remaining provisions contained in Article 307 shall be applicable.

3. In these cases, apart from the penalties indicated, the person responsible shall be deprived of the right to obtain public subsidies or aid and of the right of enjoying tax or Social Security benefits during a period from four to eight years.

Article 307 *ter*

1. Whoever were to obtain, for himself or for others, the enjoyment of Social Security benefits, the undue extension thereof or facilitates others the securing thereof, by means of an error induced by simulating or misrepresenting the fact or by deliberately hiding the facts whereof he had a duty to inform, thereby causing damage to the Public Administration, shall be punished with a sentence of imprisonment from six months to three years.

If the facts of the case, in view of the sum defrauded or of the methods used or of the personal circumstances of the offender, are not especially serious the penalty shall be a fine equivalent to the sum defrauded, as a minimum, and up to six times that sum as a maximum.

In addition to the penalties stated, the offender shall be sentenced to loss of the possibility to obtain subsidies and of the entitlement to tax or Social Security benefits or incentives for a period from three to six years.

2. If the value of the benefits exceeds fifty thousand euros or any of the circumstances to which the Sub-Paragraphs b) or c) of Article 907 *bis* refers concurs, a sentence of



imprisonment from two to three years and a fine equivalent to the sum defrauded, as a minimum, and up to six times that sum, as a maximum shall be imposed.

In these cases, in addition to the penalties stated, the offender shall be sentenced to loss of the possibility to obtain subsidies and of the entitlement to tax or Social Security benefits or incentives for a period from four to eight years.

3. The offender shall be exempt from criminal liability in relation to the conducts described in the preceding Sections if he refunds a sum equivalent to the value of the benefit received increased by an annual interest equivalent to the legal rate of interest increased by two percentage points, from the time he received it, before he is notified of the commencement of inspection and control actions in relation thereto or, if such actions have not occurred, before the Public Prosecutor or State Attorney or the Attorney of the Social Security or the representative of the relevant Autonomous or Local Administration file a suit or arraignment against him, or before the Public Prosecutor or the Investigating Judge carry out actions that allow him to have formal knowledge of initiation of proceedings.

The exemption from criminal liability set out in the preceding Paragraph shall also cover the same offender for the possible instrumental misrepresentations that, exclusively in relation to the benefits defrauded subject to reimbursement, he may have committed prior to the regularisation of his situation.

4. The existence of criminal proceedings pursuant to Sections 1 and 2 of this Article shall not impede the relevant Public Administration demanding by the administrative action the reimbursement of the benefits unduly obtained. The sum to be reimbursed shall be deemed set by the Administration on a provisional basis and shall be adjusted later in line with the final outcome of the criminal proceeding.

Neither shall the criminal proceedings paralyse the action to secure payment by the relevant Public Administration, unless the Judge, at his own motion or at the request of a party, resolves the suspension thereof, provided a bond be constituted. If such a bond cannot be provided, in all or in part, the Judge may decide on the suspension with total or partial dispensation from constituting a bond, if he considers that the execution could entail irreparable damage or a damage that would be most difficult to repair.

5. In proceedings for a criminal offence under this Article, for enforcement of the punishment of fine and of the civil liability, that shall include the amount of the tax debt that the Tax the Judges and Courts of Law shall seek assistance from the Public Administration that shall demand such moneys by the compulsory administrative collection procedure.

6. Section 5 of Article 307 of the Criminal Code shall be applicable in the cases regulated by this Article.

Article 308

1. Whoever obtains subsidies or aid from the Public Administrations amounting to more than one hundred and twenty thousand euros by misrepresenting the conditions required for these to be granted, or concealing those that would have prevented such granting, shall be punished with a sentence of imprisonment from one to five years and

a fine from one to six times their amount, unless the reimbursement to which Section 5 of this Article is carried out.

2. The same penalties shall be imposed on whoever, whilst carrying out an activity totally or partially subsidised with funds from the Public Administrations were to use them for an amount exceeding one hundred and twenty thousand euros for purposes other than those for which the subsidy was granted, unless the reimbursement to which Section 5 of this Article is carried out.

3. In addition to the penalties stated, the offender shall be sentenced to loss of the possibility to obtain public subsidies or aid and of the entitlement to tax or Social Security benefits or incentives for a period from three to six years.

4. In order to determine the sum defrauded, the calendar year shall apply, and they must be subsidies obtained to carry out the same private activity eligible to subsidy, even though obtained from different public Administrations or entities.

5. The reimbursement foreseen in Sections 1 and 2 of this Article shall be deemed as effected if the beneficiary refunds the subsidy or aid unduly received or used, plus interest at the late payment interest rate applicable to subsidies, from the time he received the subsidy or aid, before he is notified of the commencement of inspection and control actions in relation thereto or, if such actions have not occurred, before the Public Prosecutor or State Attorney or the Attorney of the Social Security or the representative of the relevant Autonomous or Local Administration file a suit or arraignment against him, or before the Public Prosecutor or the Investigating Judge carry out actions that allow him to have formal knowledge of initiation of proceedings. The reimbursement shall prevent the same offender from being prosecuted over possible instrumental misrepresentations, exclusively in relation to the debt subject to regularisation, which he may have committed prior to regularising his situation.

6. The existence of criminal proceedings pursuant to Sections 1 and 2 of this Article shall not impede the relevant Public Administration from demanding using the administrative action the reimbursement of the subsidies or aid benefits unduly used. The sum to be reimbursed shall be deemed set by the Administration on a provisional basis and shall be adjusted later in line with the final outcome of the criminal proceeding.

Neither shall the criminal proceedings paralyse the action to secure payment by the Public Administration, unless the Judge, at his own motion or at the request of a party, resolves the suspension thereof, provided a bond be constituted. If such a bond cannot be provided, in all or in part, the Judge may decide on the suspension with total or partial dispensation from constituting a bond, if he considers that the execution could entail irreparable damage or a damage that would be most difficult to repair.

7. The Judges and Courts of Law may impose on the offender under this Article a lesser penalty, in one or two degrees, provided that, before two months have elapsed from the judicial summons as an accused he were to effect the reimbursement mentioned in Section 5 and were to recognise judicially the facts. This shall be also applicable to the other participants in the criminal offence, other than the person obliged to effect the reimbursement and the offender, if they have actively collaborated in securing decisive



evidence to identify or apprehending the other persons responsible or in clarifying the criminal facts or to ascertaining the assets of the Social Security debtor or offender.

Article 308 bis

1. The suspension of the penalties imposed for any of the criminal offences outlined in this Title shall be governed by the provisions contained in Chapter III of Title III of Book I of this Code, supplemented by the following regulations:

1. The suspension of the prison sentence imposed shall also require compliance with the requirements regulated in Article 80, that the convict has settled his tax or Social Security debt, or that he has proceeded to reimburse the subsidies or aid unduly received or used.

This requirement shall be considered fulfilled when the convict undertakes to settle the tax debt, the debt due to the Social Security or to proceed to reimburse the subsidies or aid unduly received or used and the civil liabilities in accordance with his economic means and to facilitate the confiscation ordered, and that it is reasonable to expect that he shall comply with the above. The suspension shall not be granted if it has been demonstrated that the convict has provided inaccurate or insufficient information regarding his assets.

The ruling in which the Judge or Court of Law grants the suspension of the sentence shall be notified to the legal representative of the State, autonomous, local or provincial Tax Authorities, of the Social Security or of the Administration that granted the subvention or aid.

2. The Judge or Court of Law shall revoke the suspension and shall order the serving of the sentence, in addition to the cases outlined in Article 86, if the convict does not comply with his commitment to pay his tax or Social Security debt, or to reimburse the subventions and aid unduly received or used, or to pay his civil liabilities, provided that he has the economic means to do so, or if he provides inaccurate or insufficient information regarding his assets. In such cases, the Parole Board Judge may refuse to grant probation.

2. In the case outlined in Article 125, the Judge or Court of Law shall first hear the legal representative of the state, autonomous, local or provincial Tax Authorities, of the Social Security or of the Administration that granted the subvention or aid, in order to provide a report of the assets pertaining to the perpetrators of the criminal offence in which the actual economic means and patrimonial capacity of the perpetrators shall be analysed and which may include an instalment proposal in line with said capacity and with tax, Social Security or subvention regulations.

Article 309

(Repealed)

Article 310

Whoever is obliged by law to keep corporate accounting, books or tax records shall be punished with a sentence of imprisonment from five to seven months when:

a) He absolutely fails to fulfil that obligation under the direct assessment of the tax bases regime;



- b) He keeps different accounts that, related to the same activity and business year, conceal or simulate the true situation of the business;
- c) He has not recorded businesses, acts, operations or economic transactions in general, in the obligatory books, or has recorded them with figures different to the true ones;
- d) He has recorded fictitious accounting entries in the obligatory books.

The consideration as a criminal offence of the cases of fact referred to in Sections c) and d) above, shall require the tax returns to have been omitted, or for those submitted to provide a record of the false accounting and that the amount, by more or less, of the charges or payments omitted or forged exceeds, without arithmetic compensation between them, two hundred and forty thousand euros for each business year.

Article 310 bis

When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Title, it shall have the following penalties imposed thereon:

- a) Fine equivalent to or up four times the sum defrauded or unduly obtained, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding two years;
- b) Fine from double to up four times the sum swindled or unduly obtained, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- c) Fine of six months to one year, in the cases defined in Article 310.

In addition to the penalties stated, the offender shall be sentenced to loss of the possibility to obtain public subsidies or aid and of the entitlement to tax or Social Security benefits or incentives for a period from three to six years. The prohibition of entering into contracts with the Public administrations may also be imposed.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.



TITLE XV

On criminal offences against the rights of workers

Article 311

Punishment by imprisonment of six months to three years and a fine from six to twelve months shall be imposed on:

1. Whoever, by deceit or abuse of a victim's need, impose working or Social Security conditions on a worker employed by him that damage, suppress or restrict the rights the latter is recognised by legal provisions, collective bargaining agreements or individual contracts.
2. Whoever simultaneously employ more than one worker without notifying their incorporation to the relevant Social Security system or, in the event, without obtaining the relevant work authorisation, provided the number of workers involved is at least:
 - a) Twenty-five percent in firms or work centres occupying more than one hundred workers;
 - b) Fifty percent in firms or work centres occupying more than ten and not more than one hundred workers;
 - c) All of them in firms or work centres occupying more than five and less than ten workers.
3. Whoever, in the event of a business conveyance, with knowledge of the procedures described in the preceding Section, maintain such conditions imposed by another.
4. Should the conduct stated in the preceding Sections be carried out by means of violence or intimidation, the higher degree penalties shall be imposed.

Article 311 bis

A prison sentence of three to eighteen months or a fine of twelve to thirty months, unless otherwise punished with a more severe penalty in another provision of this Code, shall be imposed on those who:

- a) Repeatedly employ or provide employment to foreign citizens who do not have a work permit, or;
- b) Employ or provide employment to a minor who does not have a work permit.

Article 312

1. Punishment by imprisonment from two to five years and a fine from six to twelve months shall apply to those who unlawfully traffic with labour.
2. The same punishment shall be incurred by whoever recruits persons or leads them to leave their place of work by offering deceitful or false employment or working conditions and whoever employs foreign citizens without work permits under conditions that negatively affect, suppress or restrict the rights they are recognised by the legal provisions, collective bargaining agreements or individual contracts.

Article 313

Whoever were to bring about or favour emigration of any person to another country simulating a contract or placement, or using another similar deceit, shall be punished with the penalty foreseen in the preceding Article.

Article 314

Those who commit a serious discrimination in public or private employment, against any person due to his ideology, religion or belief, belonging to an ethnic group, race or nation, gender, sexual preference, family situation, illness or handicap, due to appointment as the legal or Trade Union representative of the workers, due to relationship to other workers at the company, or due to use of any of the official languages of the Spanish State, and who do not reinstate him to the situation of equality before the law after an administrative demand or punishment, compensating the financial damage arising therefrom, shall be punished with a sentence of imprisonment of six months to two years or a fine from twelve to twenty-four months.

Article 315

1. A prison sentence of six months to three years and a fine of six to twelve months shall be handed down to those who, by deceit or abuse of a situation of need, were to prevent or limit the exercise of Trade Union freedom or the right to strike.
2. Should the conduct described in the preceding Section be carried out by coercion, a prison sentence of one year and nine months to three years or a fine of eighteen to twenty-four months shall be imposed.
3. Those who, acting in a group or individually, although in collusion with another, coerce other persons to begin or continue a strike shall be punished with a prison sentence of one year and nine months to three years or with a fine of eighteen to twenty-four months.

Article 316

Those who, breaching the rules on labour risk prevention, being legally obliged, do not provide the necessary resources for the workers to carry out their activity with the appropriate health and safety measures, so that they seriously endanger their life, health or physical integrity, shall be punished with imprisonment of six months to three years and a fine from six to twelve months.

Article 317

When the criminal offence to which the preceding Article refers is committed due to gross negligence, it shall be punished with the lower degree punishment.

Article 318

When the deeds foreseen in the Articles of this Title are attributed to legal persons, the punishment set shall be imposed on the directors or service managers who were responsible for these and on whoever, being aware of and able to put these right, did not adopt measures to do so. In these cases, the judicial authority may also decree any one or number of measures foreseen in Article 129 of this Code.



TITLE XV BIS

Criminal offences against the rights of aliens

Article 318 *bis*

1. Whoever intentionally helps another person who is not a citizen of a Member State of the European Union to enter into Spanish territory or to transit through said territory in a manner that violates the laws on the entry and transit of aliens, shall be punished with a fine of three to twelve months or a prison sentence of three months to one year.

The deeds shall not be punished when the objective of the perpetrator is simply to provide humanitarian assistance to the person in question.

If the deeds are committed to obtain profit the penalty shall be imposed in its upper half.

2. Whoever intentionally helps, in order to obtain profit, another person who is not a citizen of a Member State of the European Union to remain in Spain, in a manner that violates the laws on the residency of aliens, shall be punished with a fine of three to twelve months or a prison sentence of three months to one year.

3. The deeds outlined in Section 1 of this Article shall be punished with a prison sentence of four to eight years when any of the following circumstances concurs:

- a) If the deeds are committed within a criminal organisation with the purpose of perpetrating such activities. In the case of managers, directors or those in charge of such organisations or associations, the upper half of the punishment shall be applied, which may be raised to the one immediately above it in degree;
- b) If the life of the individuals subject to the criminal offence is endangered, or if there is a risk of causing serious injuries.

4. The same penalties as in the preceding Paragraph, and also that of absolute barring from six to twelve years, shall be incurred by those who perpetrate the deeds availing themselves of their status as an authority, agent thereof or public officer.

5. If, pursuant to the terms established in Article 31 *bis*, a legal person is responsible for the criminal offences defined in this Title, a fine of two to five years shall be imposed, or that from three to five times the profit obtained if this amount proves higher.

Pursuant to the rules established in Article 66 *bis*, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

6. The Courts of Law, taking into account the seriousness of the deed and its circumstances, the conditions of the offender and the purpose he had intended, may impose the punishment lower by one degree to the relevant one stated.



TITLE XVI

On criminal offences concerning organisation of the territory and town planning, protection of the historic heritage and the environment

CHAPTER I

On criminal offences concerning organisation of the territory and town planning

Article 319

1. Prison sentences of one year and six months to four years, a fine of twelve to twenty-four months shall be imposed, except if the profit obtained from the criminal offence exceeds the resulting amount, in which case the fine shall be from one to three times the amount of that profit, and special barring from profession or trade for a term of one to four years, for promoters, builders or technical directors who carry out unauthorised town planning, construction or building works on land assigned to roadways, park zones, public property, or places that the legal or administrative regulations recognise landscape, ecological, artistic, historic or cultural value, or that have been deemed worthy for special protection for the same reasons.

2. A sentence of imprisonment shall be imposed from one to three years, a fine of twelve to twenty-four months, except if the profit obtained by the criminal offence were to exceed the resulting sum, in which case the fine shall be from one to three times the amount of that profit, and special barring from profession or trade for a term of one to four years, for promoters, builders or technical directors who carry out unauthorised town planning, construction or building works on land not zoned for urbanisation.

3. In any event, the Judges or Courts of Law may issue a reasoned order to demolish the works and restore the physical reality altered to its original state at the expense of the offender, without prejudice to the compensations due to third parties in good faith, and taking into account the circumstances, and having heard the competent Administration, the demolition shall be temporarily conditioned to the establishment of guarantees ensuring payment thereof. In all cases, confiscation of the gains obtained by the criminal offence shall be ordered, whatever transformations they may have undergone.

4. In the cases foreseen in this Article, when a legal person is responsible pursuant to the terms established in Article 31 bis of this Code, the punishment of a fine from one to three years shall be imposed, except if the profit obtained by the criminal offence exceeds the sum resulting, in which case the fine shall be two to four times the amount of that profit.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 320

1. An authority or public officer who, being aware of the injustice thereof, has advised favourably on planning instruments, projects for town planning, allotment division and subdivision, construction or building, or the granting of permits that violate the



regulations of territorial organisation or town planning in force, or who, during inspections, has silenced the breach of those regulations or has omitted carrying out the mandatory inspections, shall be punished with the penalty established in Article 404 of this Code and, moreover, with that of imprisonment for one year and six months to four years and that of a fine from twelve to twenty- four months.

2. The same penalties shall be imposed on the authority or public officer who, himself, or as a member of a collegiate body, has resolved or voted in favour of approval of the planning instruments, the town planning projects, allotment, sub-allotment, construction or building or the granting the permits referred to in the preceding Section, being aware of the injustice thereof.

CHAPTER II

On criminal offences against historical heritage assets

Article 321

Those who demolish or seriously alter buildings uniquely protected due to their historic, artistic, cultural or monumental interest shall be punished with imprisonment of six months to three years, a fine of twelve to twenty- four months and, in all cases, special barring from profession or trade for a term from one to five years.

In any event, the Judges or Courts of Law, on reasoned grounds, may order reconstruction or restoration of the works at the expense of the doer, without prejudice to the compensations due to third parties in good faith.

Article 322

1. An authority or public officer who, being aware of the injustice thereof, has favourably reported on projects to demolish or alter uniquely protected buildings, shall be punished, in addition to the punishment established in Article 404 of this Code, with that of imprisonment for six months to two years or a fine of twelve to twenty- four months.

2. The same penalties shall be applied to an authority or public officer who, himself or as a member of a collegiate body has resolved or voted in favour of the granting thereof despite being aware of the injustice thereof.

Article 323

1. Whoever causes damage to assets of historical, artistic, scientific, cultural or monumental value, as well as to archaeological, land and underwater sites shall be punished with a prison sentence of six months to three years or a fine of twelve to twenty-four months. Acts of plunder of the aforementioned sites shall be punished with the same penalty.

2. If particularly serious damage is caused or damage affecting assets whose historical, artistic, scientific, cultural or monumental value is particularly significant, a penalty of one degree higher to that indicated in the preceding Section may be imposed.

3. In all cases, the Judges or Courts of Law may order, at the expense of the perpetrator of the damage, adoption of measures aimed at restoring the damaged asset to the extent possible.

Article 324

Whoever, due to gross negligence, causes damage, in an amount exceeding four hundred euros, to an archive, registry, museum, library, teaching centre, scientific laboratory, similar institution or to assets of historical, artistic, scientific, cultural or monumental value, as well as to archaeological sites, shall be punished with a penalty of a fine from three to eighteen months, in view of the extent thereof.

CHAPTER III

On criminal offences against natural resources and the environment

Article 325

1. Whoever, breaking the laws or other provisions of a general nature that protect the environment, directly or indirectly causes or makes emissions, spillages, radiation, extractions or excavations, filling with earth, noises, vibrations, injections or deposits, in the atmosphere, the ground, the subsoil or the surface water, ground water or sea water, including the high seas, even those affecting cross border spaces, as well as the water catchment basins that, by themselves or in conjunction with others, cause or may cause significant damage to the quality of the air, soil, water, or to animals or plants shall be punished with a prison sentence of six months to two years, a fine of ten to fourteen months and special barring from his profession or trade for a period of one to two years.

2. If the aforementioned conduct, in itself or in conjunction with other such conducts, may seriously damage the balance of the natural systems, a prison sentence of two to five years and a fine of eight to twenty-four months shall be imposed, along with special barring from his profession or trade for a period of one to three years.

Should there be risk of serious damage to the health of persons, the prison sentence shall be imposed in its upper half and up to the highest degree.

Article 326

1. Whoever, breaching the laws or other general provisions, collects, transports, exploits, transforms, eliminates or recycles waste, or does not sufficiently control or monitor such activities, in a manner that causes or may cause significant damage to the quality of the air, soil, water, or to animals or plants, death or serious injury to persons, or that may seriously damage the balance of the natural systems, shall be punished with the penalties outlined in the preceding Article, in the respective cases.

2. Whoever, outside the case outlined in the preceding Section, transports a non-negligible quantity of waste, both in the case of one and various transportations that appear to be connected, in any of the cases outlined in European Union Law on the transport of waste, shall be punished with a prison sentence of three months to one year, or a fine of six to eighteen months and special barring from his profession or trade for a period of three months to one year.

**Article 326 bis**

Whoever, breaching the laws or other general provisions, carries out exploitation of installations where a hazardous activity is perpetrated, or where hazardous substances or preparations are stored or used, that cause or may cause material damage to the quality of the air, soil, water, or to animals or plants, death or serious injury to persons, or that may seriously damage the balance of the natural systems, shall be punished with the penalties outlined in Article 325, in the respective cases.

Article 327

The deeds outlined in the three preceding Articles shall be punished with a penalty of the higher degree, without prejudice to the penalties that may correspond pursuant to other provisions of this Code if, upon committing any of the deeds described in the preceding Article, any of the following circumstances concurs:

- a) If the industry or activity is operating unlawfully, without having obtained the requisite authorisation or administrative approval of its facilities;
- b) If the specific orders by the administrative authority on correction or suspension of the activities defined in the preceding Article have been disobeyed;
- c) If information on the environmental aspects thereof has been forged or concealed;
- d) If the inspection activity of the Administration has been hindered;
- e) If a risk of irreversible or catastrophic deterioration has ensued;
- f) If there has been unlawful extraction of water during a period of restrictions.

Article 328

If, pursuant to the terms established in Article 31 bis a legal person is responsible for the criminal offences established in this Chapter, it shall have the following penalties imposed thereon:

- a) Fine of one to three years, or two to four times the damage caused when this amount proves higher, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years;
- b) Fine of six months to two years, or two to three times the damage caused when this amount proves higher, in the rest of cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 329

1. An authority or public officer who, knowingly, has reported favourably on granting manifestly unlawful permits that authorise operation of the polluting industries or activities referred to in the preceding Articles, or who has silenced breach of laws or provisions of regulations of a general nature thereon during his inspections, or who has omitted the carrying out of the mandatory inspections, shall be punished with the penalty established in Article 404 of this Code and, moreover, with that of imprisonment from six months to three years and a fine from eight to twenty- four months.



2. The same penalties shall be applied to an authority or public officer who, himself or as a member of a collegiate body, may have resolved or voted in favour of such granting, being aware of the injustice thereof.

Article 330

Whoever seriously damages any of the elements of a protected natural space that were used to classify it as such, shall incur a sentence of imprisonment from one to four years and a fine of twelve to twenty- four months.

Article 331

The acts foreseen in this Chapter shall be punished as appropriate, by the lower degree punishment, in their respective cases, when committed by gross negligence.

CHAPTER IV

On criminal offences related to the flora, fauna and pets

Article 332

1. Whoever, breaching the laws or other general provisions, cuts, fells, tears up, harvests, acquires, possesses or destroys protected species of wild flora, or traffics with them, their parts, derivatives thereof or with their propagules, unless such conduct affects an insignificant amount of specimens and does not have significant consequences for the conservation status of the species, shall be punished with a prison sentence of six months to two years or a fine of eight to twenty-four months, and special barring from his profession or trade for a period of six months to two years.

The same penalty shall be imposed on those who, breaching the laws or other general provisions, destroy or seriously alter their habitat.

2. The penalty shall be imposed in its upper half in the case of species or sub-species at risk of extinction.

3. If the deeds are committed due to gross negligence, a prison sentence of three months to one year or a fine of four to eight months shall be imposed, along with special barring from profession or trade for a period of three months to two years.

Article 333

Whoever introduces non autochthonous species of flora or fauna so as to damage the biological balance, against the laws or provisions of a general nature that protect species of flora or fauna, shall be punished with a sentence of imprisonment from four months to two years or fine from eight to twenty- four months and, in all cases, special barring from profession or trade for a term from one to three years.

Article 334

1. A prison sentence of six months to two years or a fine of eight to twenty-four months and, in all events, special barring from profession or trade and from exercising the right to hunt or fish for a period of two to four years, shall be imposed on those who, breaching the laws or other general provisions:

- a) Hunt, fish, acquire, possess or destroy protected species of wild fauna;



- b) Traffic with them, their parts or derivatives thereof, or;
- c) Carry out activities that prevent or hinder their reproduction or migration.

The same penalty shall be imposed on those who, breaching the laws or other general provisions, destroy or seriously alter their habitat.

2. The penalty shall be imposed in its upper half in the case of species or sub-species at risk of extinction.

3. If the deeds are committed due to gross negligence, a prison sentence of three months to one year or a fine of four to eight months and, in all events, special barring from profession or trade and from exercising the right to hunt or fish for a period of three months to two years shall be imposed.

Article 335

1. Whoever hunts or fishes species other than those stated in the previous Article, when this is specifically prohibited by the specific rules on their hunting or fishing, shall be punished with a fine of eight to twelve months and special barring from exercising the right to hunt or fish for a term of two to five years.

2. Whoever hunts or fishes or participates in relevant shell fishing activities of species other than those indicated in the preceding Section on public or private land pertaining to others, subject to special hunting regime, without due permission by their owner, or in an area subject to a shellfish or fishing concession or authorisation without the necessary licence, shall be punished with a fine of four to eight months and special barring from exercising the right to hunt, fish or undertake shellfishing activities for a term of one to three years, in addition to the penalties that may befall him, as appropriate, for committing the criminal offence foreseen in Section 1 of this Article.

3. Should the preceding conduct cause serious damage to hunting property on an estate subject to a special hunting regime, or to the sustainability of resources in zones subject to fishing or shell fishing concession or authorisation, a prison sentence of six months to two years and special barring from exercising the right to hunt, fish and undertake shell fishing activities for a term of two to five years shall be imposed.

4. The punishment shall be imposed in its upper half when the conduct classified in this Article is perpetrated by groups of three or more persons using tackle or means that are prohibited by law or by-laws.

Article 336

Whoever, without being legally authorised, uses poison, explosive devices or other instruments or tackle of a similar destructive, non-selective effect on the fauna to hunt or fish, shall be punished with a sentence of imprisonment from four months to two years or fine from eight to twenty-four months and, in all cases, that of special barring from profession or trade and special barring from exercise of the right to hunt or fish for a term from one to three years. Should the damage caused be notoriously important, the upper half of the aforesaid sentence of imprisonment shall be imposed.



Article 337

1. A prison sentence of three months and one day to one year and special barring from carrying out a profession, trade or commerce related to animals and for the keeping of animals for the term of one year and one day to three years shall be imposed on those who, by any means or procedure, unfairly mistreat, causing injuries that seriously damages its health or by submitting it to sexual exploitation:

- a) A pet or tame animal;
- b) An animal that is usually domesticated;
- c) An animal that temporarily or permanently lives under human control, or;
- d) Any animal that does not live in the wild.

2. The penalties foreseen in the preceding Section shall be imposed in the upper half when any of the following circumstances concurs:

- a) If weapons, instruments, objects, means, methods or forms that specifically endanger the life of the animal are used;
- b) If excessive cruelty is involved;
- c) If the act causes the animal the loss or inability to use a sense, organ or limb;
- d) If the deeds are carried out in the presence of a minor.

3. If the deeds result in the death of the animal, a prison sentence of six to eighteen months and special barring from carrying out a profession, trade or commerce related to animals and for the keeping of animals for the term of two to four years shall be imposed.

4. Whoever, outside of the cases outlined in the preceding Sections of this Article, cruelly mistreats domestic animals or any other animals in shows that are not authorised by law, shall be punished with a fine of one to six months. Likewise, the Judge may impose special barring from carrying out a profession, trade or commerce related to animals and for the keeping of animals for the term of three months to one year.

Article 337 bis

Whoever abandons any of the animals outlined in Section 1 of the preceding Article under conditions that may endanger their life or integrity shall be punished with a fine of one to six months. Likewise, the Judge may impose special barring from carrying out a profession, trade or commerce related to animals and for the keeping of animals for the term of three months to one year.

CHAPTER V

Common provisions

Article 338

When the conduct defined in this Title affects any protected natural space, the penalties shall be imposed higher by one degree to those respectively foreseen.



Article 339

The Judges or Courts of Law shall order adoption, at the expense of the doer, of the necessary measures aimed at restoring the ecological balance disturbed, as well as any other precautionary measure required to protect the assets safeguarded under this Title.

Article 340

Should the perpetrator of any of the deeds defined in this Title have voluntarily proceeded to repair the damage caused, the Judges and Courts of Law shall impose the lower degree punishment of those respectively foreseen.

TITLE XVII

On criminal offences against collective safety

CHAPTER I

On criminal offences of catastrophic risk

SUBCHAPTER 1. On criminal offences related to nuclear energy and ionising radiations

Article 341

Whoever releases nuclear energy or radioactive elements that endanger the life or health of persons or their property, even though an explosion does not take place, shall be punished with a sentence of imprisonment from fifteen to twenty years, and special barring from public employment and office, profession or trade for a term of ten to twenty years.

Article 342

Whoever, without being included in the preceding Article, disturbs operation of a nuclear or radioactive facility, or alters the carrying out of activities in which materials or equipment producing ionizing radiation are used, creating a situation of serious hazard to life or health of persons, shall be punished with a sentence of imprisonment from four to ten years, and special barring from public employment and office, profession or trade for a term from six to ten years.

Article 343

1. Whoever, by tipping, emission or release into the air, the ground or water, of a quantity of materials or ionising radiation, or exposure to such radiation by any other means that endangers the life, integrity, health or assets of one or several persons, shall be punished with a sentence of imprisonment from six to twelve years and special barring from public employment and office, profession or trade for a term from six to ten years. The same punishment shall be imposed when, by means of such conduct, the quality of the air, the soil or water or animals or plants is endangered.

2. When, due to the conduct described in the preceding Section, in addition to the risk foreseen, a result of injury constituting a criminal offence is produced, whatever its seriousness, the Judges or Courts of Law shall only consider the most seriously penalised criminal offence, applying the upper half of the punishment.

3. When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Article, the punishment of a fine from two to five years shall be imposed thereon.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 344

The deeds foreseen in the preceding Articles shall be punished with the lower degree punishment, in their respective cases, when committed with gross negligence.

**Article 345**

1. Whoever, breaching the laws or other general provisions, acquires, possesses, traffics, provides, treats, transforms, uses, stores, transports or eliminates nuclear materials or other dangerous radioactive substances that cause or may cause material damage to air quality, soil quality or water quality or to animals or plants, shall be punished with a prison sentence of one to five years, a fine of six to eighteen months and special barring from profession or trade for a period of one to three years.
2. Whoever, without due authorisation, produces such materials or substances shall be punished with the higher degree penalty.
3. If the deeds outlined in the preceding Sections are committed due to gross negligence, a penalty one degree lower to those indicated shall be imposed.

SUBCHAPTER 2. On havoc**Article 346**

1. Those who, by causing explosions or using any other means with a similar destructive power, were to cause the destruction of airports, ports, stations, buildings, public premises, deposits containing flammable or explosive materials, means of communication, mass transport resources, or sinking or running a ship aground, flooding, explosion of a mine or industrial facility, tearing up the rails of a railway, maliciously changing the signals used in such service for the safety of transportation resources, blowing up a bridge, destroying public highways, damage to pipelines, serious disturbance of any kind or means of communication, disturbance or interruption of the water, electricity, oil or gas supply, or of any other fundamental natural resource, shall be punished with a prison sentence of ten to twenty years, if the havoc caused necessarily endangered the life or integrity of persons.
2. If such a danger does not arise, a prison sentence of four to eight years shall be imposed.
3. If, in addition to that hazard, loss of life, damage to physical integrity or the health of persons has ensued, the deeds shall be punished separately with the relevant punishment for each criminal offence committed.

Article 347

Whoever, due to gross negligence, were to cause havoc, shall be punished with a sentence of imprisonment of one to four years.

SUBCHAPTER 3. On other criminal offences of risk caused by explosives and other such agents**Article 348**

1. Those who, in manufacturing, handling, transporting, holding or marketing explosives, flammable or corrosive, toxic or asphyxiating substances, or any other materials, appliances or devices that may cause havoc, breach the established safety regulations, specifically endangering life, the physical integrity or health of persons, or the environment, shall be punished with a sentence of imprisonment of six months to



three years, a fine of twelve to twenty- four months and special barring from public employment and office, profession or trade for a term from six to twelve years. The same penalties shall be imposed on whoever unlawfully produces, imports, exports, commercialises or uses substances that destroy ozone.

2. Those responsible for surveillance, control and use of explosives that might cause havoc who, breaching the explosives regulations, have facilitated their effective loss or stealing, shall be punished with imprisonment of six months to three years, a fine of twelve to twenty- four months and special barring from public employment and office, profession or trade from six to twelve years.

3. In the cases defined in the preceding Sections, when a legal person is responsible for the deeds pursuant to the terms established in Article 31 bis of this Code, the punishment of a fine from one to three years shall be imposed, except if, having proven the damage caused, the amount thereof were greater, in which case the fine shall be two to four times the amount of that damage.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

The penalties established in the preceding Sections shall be imposed in the upper half in the case of executives, directors or managers of the company, firm, organisation or operation.

4. Punishment by imprisonment of six months to one year, a fine from six to twelve months and special barring from public employment and office, profession or trade for a term of three to six years shall be imposed on the managers of factories, workshops, means of transport, depots and other establishments related to explosives that may cause criminal damage, when any one or number of the following conducts takes place:

- a) Hindering inspection activity by the Authorities in matters of explosives safety;
- b) Forging or concealing relevant information on compliance with mandatory safety measures related to explosives from the Authorities;
- c) Disobeying specific orders by an Authority aimed at correcting serious anomalies detected in explosives safety matters.

Article 349

Those who breach the established safety measures in the handling, transport or possession of organisms, specifically endangering the life, physical integrity or health of persons or the environment, shall be punished with imprisonment of six months to two years, a fine from six to twelve months, and special barring from public employment and office, profession or trade for a term of three to six years.

Article 350

Without prejudice to what is set forth in Article 316, the penalties foreseen in the preceding Article shall be incurred by those who, when digging shafts or excavations, during construction or demolition of buildings, dams, channels or other similar works, or in their conservation, conditioning or maintenance, breach the established safety



regulations, failure to comply with which may cause catastrophic results, and that specifically endanger the life, physical integrity of persons or the environment.

CHAPTER II

On fires

SUBCHAPTER 1. On criminal offences of arson

Article 351

Those who cause a fire involving threat to the life or physical integrity of persons, shall be punished with a sentence of imprisonment from ten to twenty years. The Judges or Courts of Law may impose the lower degree punishment in view of the lesser extent of the danger caused and the other circumstances of the fact.

When there is no danger to the life or physical integrity of persons, the deeds shall be punished as damages as foreseen in Article 266 of this Code.

SUBCHAPTER 2. On forest fires

Article 352

Whoever sets woods or forests on fire shall be punished with imprisonment from one to five years and a fine of twelve to eighteen months.

If this has endangered the life or physical integrity of persons, the deed shall be punished as set forth in Article 351, imposing the punishment of a fine from twelve to twenty- four months in all cases.

Article 353

1. The deeds outlined in the preceding Article shall be punished with a prison sentence of three to six years and a fine of eighteen to twenty-four months if the fire is especially serious, according to whether any of the following circumstances concurs:

1. If it covers a considerably large area;
2. If it causes major or serious soil erosion effects;
3. If it significantly alters the conditions of animal or plant life or affect any protected natural space;
4. If the fire affects areas near to urban population centres or populated areas;
5. If the fire is caused at a time in which the weather or soil conditions significantly increase the risk of the fire spreading;
6. In all cases, if there is serious deterioration or destruction of the resources affected.

2. The same penalty shall also be imposed if the offender acts to obtain economic profit from the effects arising from the fire.



Article 354

1. Whoever sets woods or forests on fire without the fire there spreading, shall be punished with a sentence of imprisonment of six months to one year and a fine from six to twelve months.

2. The conduct foreseen in the preceding Section shall be exempt of punishment if the fire is not propagated by the proactive, voluntary action of the offender.

Article 355

In all the cases foreseen in this Subchapter, the Judges or Courts of Law may order that zoning classification of the land in areas affected by a forest fire may not be changed for a term of up to thirty years. They may also order limitation or suppression of uses to which the areas affected by the fire have been put, as well as governmental confiscation of the burned wood from the fire.

SUBCHAPTER 3. On fires in non- forest areas

Article 356

Whoever sets fire to planted areas in non-forest areas, seriously damaging the environment, shall be punished with a sentence of imprisonment of six months to two years and a fine from six to twenty- four months.

SUBCHAPTER 4. On arson of own property

Article 357

The arsonist of his own property shall be punished with a sentence of imprisonment of one to four years if fraud or damage to third parties is intended, if he has caused fraud or damage, if there is the hazard of propagation to a building, woods or plantations owned by others, or that may have seriously damaged the conditions of the wildlife, woods or natural environment.

SUBCHAPTER 5. Common provisions

Article 358

Whoever, due to gross negligence, were to cause any of the criminal offences of arson punished under the preceding Articles, shall be punished with the lower degree punishment, of those respectively foreseen for each case.

Article 358 bis

The provisions of Articles 338 to 340 shall also be applied to the criminal offences regulated in this Chapter.

CHAPTER III

On criminal offences against public health

Article 359

Whoever, without being duly authorised, were to prepare substances that are harmful to health, or chemical products that may cause havoc, or who dispatches, supplies or



trades in these, shall be punished with a sentence of imprisonment of six months to three years and a fine from six to twelve months, and special barring from profession or industry for a term of six months to two years.

Article 360

Whoever, being authorised to trade in the substances or products to which the preceding Article refers, dispatches or supplies them without complying with the formalities foreseen in the respective Laws and Regulations, shall be punished with the penalty of a fine from six to twelve months and barring from the profession or trade of six months to two years.

Article 361

Whoever manufactures, imports, exports, supplies, intermediates, commercialises, offers or puts on the market, or stores for such purposes, medicines, including those for human and veterinary use, as well as investigational medicines, without the necessary authorisation required by law, or healthcare products without the documents of compliance required by general provisions, or those that are damaged, expired or that do not comply with the technical requirements relating to their composition, stability and effectiveness, and in such a manner endangers the life or health of persons, shall be punished with a prison sentence of six months to three years, a fine of six to twelve months and special barring from his profession or trade for a period of six months to three years.

Article 361 *bis*

(Repealed)

Article 362

1. A prison sentence of six months to four years, a fine of six to eighteen months and special barring from profession or trade from one to three years shall be imposed on those who develop or produce:

- a) Medicines, including those for human and veterinary use, as well as investigational medicines; or an active substance or excipient of said medicine;
- b) A healthcare product, as well as the accessories, elements or materials that are essential for its integrity;

in a manner that misrepresents: its identity, including, where appropriate, the packaging and labelling, the expiry date, the name or composition of any of its components, or, where appropriate, the dosage thereof; its origin, including the manufacturer, the country of manufacture, the country of origin and the holder of the marketing authorisation or that of the documents of compliance; data related to compliance with legal requirements or demands, licences, documents of compliance or authorisations; or its background, including records and documents related to the channels of distribution employed, provided that it is intended for public consumption or for use by third parties, and endangers the life or health of persons.

2. The same penalties shall be imposed on those who alter, at the time of manufacture or preparation, or at a subsequent moment, the quantity, the dosage or the genuine

composition, as authorised or declared, of any of the medicines, excipients, healthcare products, accessories, elements or materials outlined in the preceding Section, in a manner that reduces their safety, effectiveness or quality, endangering the life or health of persons.

3. In extremely serious cases, the Judges or Courts of Law, taking into account the personal circumstances of the offender and those of the deed, may impose the penalties higher by one degree to those stated above.

Article 362 bis

Whoever imports, exports, advertises or publicises, offers, displays, sells, dispenses, dispatches, packages, supplies, including the intermediation, traffics, distributes or puts on the market, any of the medicines, active substances, excipients, healthcare products, accessories, elements or materials outlined in the preceding Article, , being aware of the falsification or alteration thereof, thus endangering the life or health of persons, shall be punished with a prison sentence of six months to four years, a fine of six to eighteen months and special barring from his profession or trade from one to three years.

The same penalties shall be imposed on those who acquire or store them with the purpose of using them for public consumption, for the consumption of third parties or any other use that may affect public health.

Article 362 ter

Whoever produces any false or mendacious document referring to any of the medicines, active substances, excipients, healthcare products, accessories, elements or materials outlined in Section 1 of Article 362, including their packaging, labelling and mode of use, to commit or facilitate the perpetration of any of the criminal offences foreseen in Article 362, shall be punished with a prison sentence of six months to two years, a fine of six to twelve months and special barring from his profession or trade for six months to two years.

Article 362 quater

Penalties of one degree higher to those outlined in Articles 361, 362, 362 bis or 362 ter shall be imposed if any of the following circumstances concurs upon committing the criminal offence:

1. If the culprit is an authority, civil servant, medical practitioner, healthcare professional, teacher, educator or physical or sports trainer, and acts while carrying out the duties of his office, profession or trade;
2. If the medicines, active substances, excipients, healthcare products, accessories, elements or materials outlined in Article 362:
 - a) Are offered through the mass media, or;
 - b) Are offered or provided to minors, persons with disabilities requiring special protection or especially vulnerable persons with respect to the product provided;
3. If the culprit belongs to a criminal organisation or group dedicated to committing such criminal offences;



4. If the acts are carried out in establishments open to the public by their directors or employees.

Article 362 *quinquies*

1. Those who, without therapeutic reason, prescribe, provide, dispense, supply, administer, offer or facilitate federated sportspersons who do not participate in competitions, non-federated sportspersons who carry out sport for leisure, or sportspersons who participate in competitions organised in Spain by sports organisations, prohibited substances or pharmaceutical groups, as well as non-regular methods, intended to increase their physical capacity or to modify the results of the competitions, that due to their content, repeated ingestion or other concurrent circumstances, endanger their life or health, shall be punished with a prison sentence of six months to two years, a fine of six to eighteen months and special barring from public employment and office, profession or trade, from two to five years.

2. The penalties foreseen in the preceding Section shall be imposed in the upper half should the criminal offence be committed when any of the following circumstances concurs:

1. If the victim is a minor;
2. If deceit or intimidation are used;
3. If the offender has availed himself of a relationship of work or professional superiority.

Article 362 *sexies*

The criminal offences foreseen in the preceding Article of this Chapter shall give rise to the confiscation of the substances and products outlined in Articles 359 and subsequent Articles, as well as the assets, means, instruments and gains pursuant to Articles 127 to 128.

Article 363

A sentence of imprisonment of one to four years, a fine from six to twelve months and special barring from profession, trade, industry or commerce for a term of three to six years shall be handed down to producers, distributors or traders who endanger the health of consumers:

1. Offering food products on the market with omission or alteration of the requisites established in the laws or regulations on expiry or composition;
2. Manufacturing or selling beverages or foodstuffs intended for public consumption that are damaging to health;
3. Trafficking with corrupted goods;
4. Preparing products whose use is not authorised and that are damaging to health, or trading with such;
5. Concealing or stealing items intended to be destroyed or disinfected, in order to trade with them.

Article 364

1. Whoever adulterates foodstuffs, substances or beverages intended for the food trade with additives or other unauthorised agents liable to cause damage to health of persons, shall be punished with the penalties of the preceding Article. If the convict is the owner or production manager of a food product factory, the punishment of special barring from profession, trade, industry or commerce from six to ten years shall also be imposed on him.

2. The same punishment shall be imposed on whoever carries out any of the following deeds:

1. Administering prohibited substances that generate risk to the health of persons, or in higher doses, or for purposes other than those authorised, to animals whose meat or produce is intended for human consumption;
2. Slaughtering cattle or assigning the produce whereof to human consumption while being aware that they have been administered the substances mentioned in the preceding Section;
3. Slaughtering the cattle that has undergone therapeutic treatment with the substances mentioned in Section 1;
4. Dispatching slaughtered cattle meat or produce for public consumption without complying with the regulatory waiting periods foreseen.

Article 365

A sentence of imprisonment from two to six years shall be imposed on whoever poisons or adulterates the drinking water or foodstuffs intended for public use or consumption by a group of persons with infectious or other substances that may be seriously dangerous to health.

Article 366

If, pursuant to the terms established in Article 31 bis a legal person is responsible for the criminal offences established in the preceding Articles of this Chapter, a fine of one to three years shall be imposed, or of two to five times the value of the substances and products outlined in Articles 359 and subsequent Articles, or of the gains obtained or that could have been obtained, whichever amount is higher.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 367

Should the deeds foreseen in all the preceding Articles be perpetrated due to gross negligence, the respective lower degree penalties shall be imposed.

Article 368

Those who carry out acts of cultivation, preparation or trafficking, or who otherwise favour or facilitate the unlawful consumption of toxic drugs, narcotics or psychotropic substances, or who possess them for those purposes, shall be punished with imprisonment from three to six years and a fine of one to three times the value of the drug the criminal offence concerns, if they are substances or products that cause



serious damage to health, and of imprisonment from one to three years and a fine from one to two times the amount in the remaining cases.

Notwithstanding what is set forth in the preceding Paragraph, the Courts of Law may impose a lower degree punishment to those stated in view of the scarce importance of the facts and the offender's personal circumstances. This power may not be made use of if any of the circumstances referred to in Articles 369 bis and 370 concurs.

Article 369

1. The penalties shall be imposed in one degree higher to those stated in the preceding Article, and a fine of one to four times the amount when any of the following circumstances concurs:

1. The offender is an authority, civil servant, medical practitioner, social worker, teacher or educator and acts while carrying out the duties of his office, profession or trade;
2. The offender participates in other organised activities, or those whose carrying out is facilitated by committing the criminal offence;
3. The deeds are perpetrated in establishments open to the public by those in charge or the employees thereof;
4. The substances to which the preceding Article refers are provided to persons under the age of eighteen years, to the mentally disabled persons requiring special protection or to individuals subject to detoxification or addiction treatment;
5. The quantity of the substances the deeds to which the preceding Article refers is notoriously large;
6. Such substances are adulterated, manipulated or mixed together or with others, increasing possible damage to health;
7. The deeds described in the preceding Article take place at teaching centres, at military centres, establishments or units, within prisons or at detoxification or addiction treatment centres, or in the surrounding areas thereof;
8. The offender uses violence or displays or uses weapons to commit the criminal offence

2. (Repealed)

Article 369 bis

When the deeds described in Article 368 have been carried out by those pertaining to a criminal organisation, prison sentences of nine to twelve years and a fine of one to four times the value of the drugs concerned shall be imposed, if they are substances and products that cause serious damage to health and of imprisonment for four years and six months to ten years and the same fine in the other cases.

The bosses, managers or directors of the organisation shall have the penalties higher by one degree to those stated in Section one imposed on them.

When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in the preceding two Articles, it shall have the following penalties imposed thereon:

- a) Fine from two to five years, or from three to five times the value of the drugs, when the resulting amount is higher, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- b) Fine from one to three years, or of two to four times the value of the drugs, when the resulting amount is higher, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding two years not included in the preceding Sub-Section.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 370

The punishment imposed shall be higher by one or two degrees to that stated in Article 368 when:

- 1. Persons under the age of eighteen years or the mentally disabled are used to commit those criminal offences;
- 2. They are the bosses, directors or managers of the organisations to whom circumstance 2 of Section 1 of Article 369 refers.
- 3. The deeds described in Article 368 are extremely serious.

Extreme seriousness is understood to concur in cases in which the quantity of the substances to which Article 368 refers notably exceeds that deemed a notorious amount, or when using ships, vessels or aircraft as the specific means of transport, or when perpetrating the conduct stated simulating international trading operations between companies, or in the case of international networks dedicated to such activities, or when three or more of the circumstances foreseen in Article 369.1 concur simultaneously.

In the cases of the preceding Sub-Section 2 and 3 the offenders shall also have a fine of one to three times the value of the drugs the criminal offence concerns imposed on them.

Article 371

1. Whoever manufactures, transports, distributes, trades or possesses equipment, materials or substances listed in Table I and Table II of the United Nations Convention, done at Vienna on 20th December 1988, against illegal traffic in narcotic drugs and psychotropic substances, and any other products added to the aforesaid Convention or that may be included in future Conventions ratified by Spain being aware that they shall be used for the unlawful cultivation, production or manufacture of toxic drugs, narcotics or psychotropic substances, or for those purposes, shall be punished with a sentence of imprisonment from three to six years and a fine of one to three times the value of the goods or items concerned.

2. The punishment stated shall be imposed in the upper half if the persons perpetrated the deeds described in preceding Section while belonging to an organisation dedicated to the ends stated therein, and the higher degree punishment in the case of bosses, directors or managers of those organisations or partnerships.



In such cases, the Judges or Courts of Law shall impose, in addition to the relevant penalties, that of special barring of the convict from practising his profession or industry for a term of three to six years, and the other measures foreseen in Article 369.2.

Article 372

Should the deeds foreseen in this Chapter be perpetrated by an entrepreneur, broker in the financial sector, medical practitioner, civil servant, social worker, teacher or educator, in the exercise of his office, profession or trade, in addition to the relevant punishment, he shall be handed down that of special barring from public employment and office, profession or trade, industry or commerce, of three to ten years. The punishment shall be imposed of absolute barring from ten to twenty years when such deeds are perpetrated by an authority or agent thereof, while carrying out the duties of his office. For these purposes, medical practitioners are construed to be doctors, psychologists, persons who hold higher educational health and veterinary qualifications, pharmacists and the employees thereof.

Article 373

Provocation, conspiracy and solicitation to commit the criminal offences foreseen in Articles 368 to 372 shall be punished with the penalty lower by one or two degrees to the relevant one, respectively, for the deeds foreseen in the preceding provisions.

Article 374

The criminal offences foreseen in the second Paragraph of Section 1 of Article 301 and in Articles 368 to 372, in addition to the relevant penalties to be imposed for the criminal offence committed, shall give rise to the confiscation of the toxic drugs, narcotics or psychotropic substances, the equipment, materials and substances mentioned in Article 371, as well the goods, means, instruments and gains therefrom, subject to what is set forth in Article 127 to 128 and the following special rules:

1. Once the judgement is final, destruction of the samples provided shall be carried out, or destruction of all the substances confiscated, should the competent judicial body have ordered their conservation;
2. The assets, means, instruments and gains definitively confiscated as the result of a court ruling and which cannot be utilised in meeting the civil liabilities resulting from the criminal offence or the court costs shall be wholly assigned to the State.

Article 375

Convictions by foreign Judges or Courts of Law for criminal offences of the same kind as foreseen in Articles 361 to 372 of this Chapter shall have the effects of recidivism, except if the criminal record has been cancelled, or might be cancelled under Spanish Law.

Article 376

In the cases foreseen in Articles 361 to 372, the Judges or Courts of Law, giving the reasons in their sentencing, may impose a lower punishment by one or two degrees to that stated by the law for the criminal offence concerned, as long as the subject has voluntarily abandoned his criminal activities and has actively collaborated with the

authorities or their agents either to prevent the criminal offence from taking place, or to obtain decisive proof for identification of capture of others who are responsible or to prevent actions or the furtherance of the organisations or associations to which they have belonged or with which they may have collaborated.

Likewise, in the cases foreseen in Articles 368 to 372, the Judges or Courts of Law may impose the punishment lower by one or two degrees upon the convict who, being addicted to drugs at the moment of committing the deeds, sufficiently accredits that he has successfully completed detoxification treatment, as long as the quantity of toxic drugs, narcotics or psychotropic substances was not of notorious importance or extreme seriousness.

Article 377

In order to determine the amount of the fines imposed pursuant to Articles 368 to 372, the value of the drugs the criminal offence involves, or the goods or items confiscated shall be the end price of the product or, as appropriate, the profit or gains obtained by the convict, or that he might have obtained.

Article 378

The payments made by the convict in relation to one or several of the criminal offences to which Articles 361 to 372 refer shall be applied in the following order:

1. To repairing the damage caused and compensation of damage;
2. To compensating the State for the amount of expenses it has incurred on account of the case;
3. To the fine;
4. To the costs of the specific or private prosecutor, if the judgement orders their payment;
5. To the other procedural costs, even those of defending the accused, without preference among the parties concerned.

CHAPTER IV

On criminal offences against road safety

Article 379

1. Whoever drives a motor vehicle or a moped at a speed that exceeds the speed permitted by law by sixty kilometres per hour in urban streets, or by eighty kilometres per hour on non-urban roads, shall be punished with a sentence of imprisonment from three to six months, or with that of a fine from six to twelve months, or with that of community service from thirty one to ninety days, and, in all cases, with that of deprivation of the right to drive motor vehicles and mopeds for a term exceeding one and up to four years.

2. The same penalties shall be applied to whoever drives a motor vehicle or moped under the influence of toxic drugs, narcotics, psychotropic substances or alcoholic beverages. In all cases, whoever drives with a rate of alcohol in expired air exceeding



0.60 milligrams per litre, or a rate of alcohol in the blood exceeding 1.2 grams per litre, shall be sentenced to those penalties.

Article 380

1. Whoever drives a motor vehicle or a moped with manifest recklessness and specifically endangers the life or integrity of persons shall be punished with imprisonment of six months to two years and deprivation of the right to drive motor vehicles and mopeds for a term exceeding one and up to six years.
2. For the purposes this provision, driving under the circumstances foreseen in Sections 1 and in the second sentence of Section 2 of the preceding Article shall be deemed manifestly reckless.

Article 381

1. Punishment by imprisonment from two to five years, a fine of twelve to twenty- four months and deprivation of the right to drive motor vehicles and mopeds during a period from six to ten years shall be handed down to whoever, manifestly disregarding the life of others, behaves as described in the preceding Article.
2. If the life or integrity of persons has not been specifically placed in danger, the penalties shall be of imprisonment from one to two years, a fine from six to twelve months and deprivation of the right to drive motor vehicles and mopeds for the term foreseen in the preceding Section.
3. (Repealed)

Article 382

If through the deeds penalised in Articles 379, 380 and 381, the doer were to cause, in addition to the risk prevented, a result amounting to a criminal offence, whatever its seriousness, the Judges or Courts of Law shall only consider the most seriously penalised criminal offence, applying the punishment in its upper half and, in all cases, ordering compensation of the civil liability that has been incurred.

Article 383

The driver who, when required to by a law-enforcement officer, refuses to submit to the legally established alcohol level tests, and those for the presence of toxic drugs, narcotics and psychotropic substances referred to in the preceding Articles, shall be punished with imprisonment of six months to one year and deprivation of the right to drive motor vehicles and mopeds for a term exceeding one and up to four years.

Article 384

Whoever drives a motor vehicle or moped in the cases loss of validity of his driving licence or permit due to loss of all the points legally assigned, shall be punished with a sentence of imprisonment from three to six months, or with that of a fine from twelve to twenty- four months, or with that of community service of thirty-one to ninety days.

The same punishment shall be imposed on whoever drives after precautionary or final removal of his driving licence or permit by court decision, and whoever drives a motor vehicle or moped without ever having obtained a driving licence or permit.



Article 385

Whoever causes a serious risk to traffic in any of the following manners shall be punished with a sentence of imprisonment of six months to two years or a fine of twelve to twenty- four months and community service from ten to forty days:

1. Placing unforeseeable obstacles on the roadway, spilling slippery or flammable substances or changing, stealing or cancelling out signs or by any other means;
2. Not re-establishing road safety if obliged to do so.

Article 385 bis

The motor vehicle or moped used in the deeds foreseen in this Chapter shall be deemed an instrument of the criminal offence for the purposes of Articles 127 and 128.

Article 385 ter

In the criminal offences foreseen in Articles 379, 383, 384 and 385, the Judge or Court of Law, may hand down a reasoned judgement that may lower a sentence of imprisonment by one degree in view of the lower extent of the risk caused and the other circumstances of fact.



TITLE XVIII

On forgery

CHAPTER I

On forgery of currency and tax stamps

Article 386

1. A prison sentence of eight to twelve years and a fine of one to ten times the apparent monetary value shall be handed down to:

1. Whoever alters the legal tender or forges money;
2. Whoever brings forged or altered money into the country or exports it;
3. Whoever transports, issues or distributes false or altered money with knowledge of its falsity.

2. If the forged money is put into circulation, the penalty shall be imposed in its upper half.

Possession, receipt or acquirement of forged currency for its issue, distribution or to put it into circulation shall be punished with the penalty lower by one or two degrees, in view of its value and the degree of collusion with the forger, counterfeiter, introducer or exporter.

3. Whoever, having received forged money in good faith, spends or passes it on after having realised it is forged shall be punished with a prison sentence of three to six months or a fine of six to twenty-four months. However, if the apparent value of the money does not exceed four hundred euros, a fine of one to three months shall be imposed.

4. Should the offender belong to a company, organisation or association, even if transitory in nature, dedicated to perpetrating such activities, the Judge or Court of Law may hand down any or several of the consequences foreseen in Article 129 of this Code.

5. If, pursuant to the stipulations of Article 31 bis, a legal entity is responsible for the preceding criminal offences, a fine from three to ten times the apparent value of the money shall be imposed.

Article 387

For the purposes of the preceding Article, money is construed to be the coinage and paper money of legal tender and that which is likely to be introduced as legal tender. The national currency of other countries of the European Union and of foreign currencies shall be equally considered.

Forged currency shall also be construed as that which, despite being made on legal premises and with legal materials, is done so by knowingly breaching the terms of issue imposed by the competent authority or when issued without the corresponding order.



Article 388

Judgement by a foreign court, handed down for a criminal offence of the same kind as those included in this Chapter, shall be equivalent to sentences by Spanish Judges or Courts of Law for the purposes of recidivism, except if the criminal record has been cancelled, or might have been pursuant to Spanish Law.

Article 389

Whoever forges or issues postal stamps or tax stamps in collusion with a forger, or imports them to Spain while aware of they are false, shall be punished with a sentence of imprisonment of six months to three years.

The acquirer in good faith of postal stamps or tax stamps who, aware that they are false, distributes or uses them shall be punished with a prison sentence of three to six months or a fine of six to twenty-four months. However, If the apparent amount of the stamps or tax stamps does not exceed 400 euros, a fine of one to three months shall be imposed.

CHAPTER II

On documentary forgery

SUBCHAPTER 1. On forgery of public, official and business documents and of the dispatches transmitted by telecommunications services

Article 390

1. Punishment by imprisonment from three to six years, a fine from six to twenty- four months and special barring for a term from two to six years, shall be handed down to an authority or public officer who, while carrying out the duties of office, commits forgery:

1. By altering any of the essential elements or requisites of a document;
2. Simulating all or part of a document, so as to lead to error concerning its authenticity;
3. Claiming intervention in an act by persons who were not party to it, or attributing those who intervened declarations or statements other than those they made;
4. Untruthful narration of the facts.

2. The same penalties as stated in the preceding Section shall apply to whoever is a responsible person in any religious confession and commits any of the conducts described in the preceding Section, regarding acts and documents that may have an effect on the status of persons or the civil order.

Article 391

An authority or public officer who, due to gross negligence, were to incur any of the forgeries described in the preceding Article or who causes another to commit them, shall be punished with the penalty of a fine from six to twelve months and suspension from public employment and office for a term of six months to one year.

**Article 392**

1. The private individual who were to commit any forgery described in the first Sub-Section of Section 1 of Article 390 shall be punished with imprisonment of six months to three years and a fine from six to twelve months.

2. The same penalties shall be imposed upon whoever, without having intervened in the forgery, were to trade in any way with a false identity document. A sentence of imprisonment shall be handed down of six months to one year and a fine of three to six months, to whoever knowingly uses a forged identity document.

This provision is applicable even if the forged identity document appears to belong to another State of the European Union or a third country, or that has been forged or acquired in another State of the European Union or in a third country, if it is used or traded in Spain.

Article 393

Whoever uses a forged document of the types described in the preceding Articles in a trial, or to harm another, knowing it is forged, shall be punished with the degree of punishment below that provided for forgers.

Article 394

1. An authority or public officer entrusted with the telecommunications service who supposes or forges a telegraphic dispatch, or another inherent to such services, shall incur a sentence of imprisonment of six months to three years and special barring for a term from two to six years.

2. Whoever, knowing it is forged, makes use of a false dispatch to damage another, shall be punished with the lower degree punishment to that set for forgers.

SUBCHAPTER 2. On forgery of private documents**Article 395**

Whoever, to damage another, were to commit any of the forgeries foreseen in the first three Sub-Paragraphs of Section of Article 390, shall be punished with a sentence of imprisonment of six months to two years.

Article 396

Whoever, knowing that it is false, were to produce or make use of a false document of those described in the preceding Article in a trial, or to damage another, shall incur the lower degree punishment to that set for the forgers.

SUBCHAPTER 3. On forgery of certificates**Article 397**

A medical practitioner who issues a forged certificate shall be punished with the penalty of a fine from three to twelve months.

Article 398

An authority or public officer who issues a false certification of scarce importance in legal matters shall be punished with the penalty of suspension of six months to two years.

This provision shall not be applicable to certificates referring to Social security or to the Exchequer.

Article 399

1. Whoever forges a certificate of those described in the preceding Articles shall be punished with the penalty of a fine from three to six months.

2. That same punishment shall be imposed on whoever knowingly uses the certification, as well as whoever, without having intervened in its forgery, trades with it in any way.

3. This provision is applicable even if the forged certificate appears to belong to another State of the European Union or a third country, or that has been forged or acquired in another State of the European Union or in a third country, if it is used in Spain.

SUBCHAPTER 4: On forgery of credit and debit cards and travellers' cheques

Article 399 bis

1. Whoever alters, copies, reproduces or in any other way forges credit or debit cards or travellers' cheques, shall be punished with a sentence of imprisonment from four to eight years. The punishment shall be imposed in the upper half if the forged items affect persons at large, or if the deeds are committed within the framework of a criminal organisation dedicated to such activities.

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the above criminal offences, the punishment of a fine from two to five years shall be imposed.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

2. Possessing forged credit or debit cards or travellers' cheques intended for distribution or trade shall be punished with the penalty set for forgery.

3. Whoever, without having intervened in the forgery, were to use forged credit or debit cards or travellers' cheques, to the detriment of another and being aware they are forged, shall be punished with a sentence of imprisonment from two to five years.

CHAPTER III General provisions

Article 400

The manufacture, receipt, obtainment or possession of tools, materials, instruments, substances, computer data or programs, devices, safety elements or other means



specifically used to commit the criminal offences described in the preceding Chapters, shall be punished with the penalty stated in each case for the offenders.

Article 400 bis

In the cases described in Articles 392, 393, 394, 396 and 399 of this Code, use of a forged document, dispatch, certification or identity document shall also be construed as the use of the relevant authentic documents, dispatches, certificates or identity documents if carried out by whoever is not authorised to do so.

CHAPTER IV

On identity fraud

Article 401

Whoever usurps the identity of another shall be punished with a sentence of imprisonment of six months to three years.

CHAPTER V

On impersonation of a public officer and unlawful practice of a profession

Article 402

Whoever unlawfully carries out deeds inherent to the duties of an authority or public officer, attributing himself official status, shall be punished with a sentence of imprisonment from one to three years.

Article 402 bis

Whoever, without authorisation, publically and unduly uses a uniform, outfit or badge attributing himself official capacity shall be punished with a fine of one to three months.

Article 403

1. Whoever perpetrates deeds inherent to a profession without holding the relevant academic qualification issued or recognised in Spain under the laws in force, shall incur a fine of twelve to twenty-four months. Should the professional activity carried out require an official qualification that accredits the necessary skills and legally entitles the person to practice, and he does not hold that qualification, a fine of six to twelve months shall be imposed.

2. A prison sentence of six months to two years shall be imposed if any of the following circumstances concurs:

- a) Should the offender also publicly claim the professional status covered by such qualification;
- b) Should the offender perform the acts outlined in the preceding Section on premises or in establishments open to the public that advertise services inherent to the profession.



TITLE XIX

On criminal offences against the public administration

CHAPTER I

Perverting the course of justice by civil servants and other injustice in the conduct thereof

Article 404

An authority or public officer who, being aware of the injustice thereof, were to hand down an arbitrary resolution in an administrative matter, shall be punished with special barring from public employment and office and from the right to stand for public office for a term of nine to fifteen years.

Article 405

An authority or public officer who, in exercise of his duties of office, and being aware of the unlawfulness thereof, were to propose, appoint or grant possession to hold office in a specific public post to any person without him fulfilling the legal requisites established for such purpose, shall be punished with a fine of three to eight months and suspension from public employment and office for a term of one to three years.

Article 406

The same punishment of a fine shall be imposed on whoever accepts the proposal, appointment or the taking possession mentioned in the preceding Section, knowing the person lacks the legally established requisites.

CHAPTER II

On abandoning one's post and omission of the duty to pursue criminal offences

Article 407

1. An authority or public officer who abandons his post in order not to prevent or not to pursue any of the criminal offences included in Titles XXI, XXII, XXIII and XXIV shall be punished with a sentence of imprisonment of one to four years and absolute barring from public employment and office for a term from six to ten years. If he abandoned in order not to prevent or not to pursue any other criminal offence, the punishment of special barring from public employment and office for a term from one to three years shall be imposed on him.

2. The same penalties shall be imposed, respectively, if the abandonment is intended so as not to execute the relevant penalties for those criminal offences imposed by the competent judicial authority.

Article 408

An authority or public officer who, failing in the obligations of his office, were to intentionally cease to promote persecution of the criminal offences that he or his officers obtain knowledge of, shall incur the punishment of special barring from public employment and office for a term of six months to two years.

**Article 409**

Authorities or civil servants who promote, direct or organise collective, manifestly unlawful abandonment of a public service, shall be penalised with the punishment of a fine from eight to twelve months and suspension from public employment and office for a term of six months to two years.

Authorities or civil servants who merely take part in collective or manifestly unlawful abandonment of an essential public service, with serious damage to it or to the community, shall be punished with the penalty of a fine from eight to twelve months.

CHAPTER III**On disobedience and failure to provide assistance****Article 410**

1. Authorities or civil servants who openly refuse to duly fulfil court resolutions, decisions or orders of a higher authority, handed down within the scope of their respective powers and complying with the legal formalities, shall be punished with a fine from three to twelve months and special barring from public employment and office for a term of six months to two years.

2. Notwithstanding what is set forth in preceding Section, no criminal liability shall be incurred by authorities or public officers due to not fulfilling an order that constitutes a manifest, clear and absolute breach of a provision of an Act of Parliament or of any other general provision.

Article 411

An authority or public officer who, having suspended execution of orders by his superiors for any reason other than that stated in Section 2 of the preceding Article, were to disobey them after the latter have not approved the suspension, shall incur the penalties of a fine of twelve to twenty- four months and special barring from public employment and office for a term from one to three years.

Article 412

1. The civil servant who, when required to by the competent authority, does not provide due assistance to the Judicial Administration or another public service, shall incur the penalties of a fine from three to twelve months, and suspension from public employment and office for a term of six months to two years.

2. If the person ordered is an authority, head or commander of a public force or a law enforcement officer, the penalties of a fine of twelve to eighteen months and suspension from public employment and office for a term of two to three years shall be imposed.

3. An authority or public officer who, when called on by a private individual to provide any assistance he is obliged to provide due to his office to prevent a criminal offence against the life of persons, abstains from providing it, shall be punished with the penalty of a fine from eighteen to twenty- four months and special barring from public employment and office for a term of three to six years.

If it is a criminal offence against the integrity, sexual freedom, health or liberty of persons, he shall be punished with the penalty of a fine from twelve to eighteen months and suspension from public employment and office from one to three years.

Should that call be to prevent any other criminal offence or another harm, he shall be punished with the penalty of a fine from three to twelve months and suspension from public employment and office for a term of six months to two years.

CHAPTER IV

On disloyalty in the custody of documents and on disclosing secrets

Article 413

An authority or public officer who knowingly steals, destroys, full or partially cancels or conceals documents the custody whereof is entrusted to him due to his office, shall incur a prison sentence of one to four years, a fine for seven to twenty- four months, and special barring from public employment and office for a term of three to six years.

Article 414

1. An authority or public officer who, due to his office, is entrusted the custody of documents to which the competent authority has restricted access, and who knowingly destroys or deactivates the means provided to prevent such access or consents the destruction or deactivation thereof, shall incur a sentence of imprisonment of six months to one year or fine from six to twenty- four months and, in all cases, special barring from public employment and office for a term from one to three years.

2. The individual who destroys or deactivates the means referred to in the preceding Section shall be punished with the penalty of a fine from six to eighteen months.

Article 415

An authority or public officer not included in preceding Section who, knowingly and without due authorisation, accesses or permits access to secret documents the custody whereof is entrusted to him due to his office, shall incur the punishment of a fine from six to twelve months, and special barring from public employment and office for a term from one to three years.

Article 416

Punishment by imprisonment or fine immediately below the ones respectively stated in the preceding three Articles shall be imposed on private individuals circumstantially charged with dispatch or custody of documents, commissioned by the Government or the authorities or civil servants to whom they have been entrusted due to their office, who behave as described therein.

Article 417

1. An authority or public officer who reveals secrets or information that come to his knowledge due to his position or office and that should not be disclosed, shall incur the punishment of a fine from twelve to eighteen months and special barring from public employment and office for a term from one to three years.



Should the disclosure referred to in the preceding Section cause serious damage to the public interest or to a third party, the punishment shall be imprisonment from one to three years, and special barring from public employment and office for a term of three to five years.

2. If the secrets of a private individual are involved, the penalty shall be those of imprisonment from two to four years, a fine of twelve to eighteen months, and suspension from public employment and office for a term from one to three years.

Article 418

A private individual who takes advantage of the inside information he may obtain from a civil servant or authority for himself or for a third party shall be punished with a fine of one to three times the profit obtained or facilitated and the loss of the possibility of obtaining public subsidies or aid and the forfeit of the right to tax or Social Security benefits and incentives for a period of one to three years. Should serious damage to the public interest or to a third party be caused, the punishment shall be a prison sentence of one to six years and the loss of the possibility of obtaining public subsidies or aid and to enjoy tax or Social Security benefits and incentives for a period of six to ten years.

CHAPTER V **On corruption**

Article 419

An authority or public officer who, to his own advantage or that of a third party, were to receive or solicit, personally or through an intermediary, handouts, favours or remunerations of any kind, or who were to accept an offer or promise to do so, while carrying out the duties of his office, in order to carry out an act contrary to the duties entrusted to him, or not to carry out these, or to unfairly delay those he must carry out, shall incur a prison sentence of three to six years, a fine of twelve to twenty-four months and special barring from public employment and office and from the right to stand for public office for a term of nine to twelve years, without prejudice to the relevant punishment for the deed perpetrated, omitted or delayed due to the remuneration or promise, if that constitutes a criminal offence.

Article 420

An authority or public officer who, to his own advantage or that of a third party, were to receive or solicit, personally or through an intermediary, handouts, favours or remuneration of any kind, or who were to accept an offer or promise to carry out an act inherent to his office, shall incur a prison sentence of two to four years, a fine of twelve to twenty-four months and special barring from public employment and office and from the right to stand for public office for a term of five to nine years.

Article 421

The penalties stated in the preceding Articles shall also be imposed if the handout, favour or remuneration were received or solicited by an authority or public officer, in the respective cases, as a reward for the conduct described in those Articles.

Article 422

An authority or public officer who, to his own advantage or that of a third party, were to accept, personally or through an intermediary, a handout or gift offered to him in view of his office or duty, shall incur a sentence of imprisonment of six months to one year and suspension from public employment and office from one to three years.

Article 423

The terms set forth in the preceding Articles shall also be applicable to juries, arbitrators, mediators, experts, administrators or receivers appointed by a court, bankruptcy administrators or any others acting carrying out a public duty.

Article 424

1. A private individual who offers or delivers a handout or remuneration of any kind to an authority, civil servant or person who participates in the exercise of public duties in order for the latter to carry out a deed that is against the duties inherent to his office, or an act inherent to his office, or in order for him not to carry it out, or to delay what he should carry out, or in consideration of his office or duty, shall be punished in the respective cases, with the same prison sentences and fine as the corrupt authority, officer or person.

2. Should a private individual deliver the handout or remuneration following solicitation by an authority, civil servant or person who participates in exercise of public duties, the same prison sentences and fine shall be imposed on him as on the former.

3. Should the deed achieved or intended by the authority or officer be related to procurement proceedings, subsidies or auctions called by public administrations or entities, penalties shall be handed down to the natural persons and, when appropriate, the company, partnership or organisation concerned, of barring to obtain public subsidies and aid, to enter into contracts with public sector institutions, entities or bodies and to enjoy tax and Social Security benefits or incentives for a term of five to ten years.

Article 425

If bribery takes place in a criminal case in favour of the accused, perpetrated by the spouse or other person bound by a similar stable emotional relation, or by any ascendant, descendent, biological or adopted sibling or similar of the same degree, the briber shall be subject to a sentence of imprisonment of six months to one year.

Article 426

Should a natural person who has coincidentally obtained a handout or other remuneration made by an authority or public officer report the fact to the authority whose duty is of proceeding to investigate the matter, before proceedings commence, as long as no more than two months have elapsed from the date of the deeds, he shall be exempt of punishment for the criminal offence of corruption.

Article 427

The terms set forth in the preceding Articles shall also be applicable if charges are brought against, or the deeds concerned affect:



- a) Any individual who holds a legislative, administrative or judicial position or employment in a country of the European Union or any other foreign country, either by appointment or election;
- b) Any individual who carries out a public function for a country of the European Union or any other foreign country, including a public body or public company, for the European Union or another international public organisation;
- c) Any public servant or agent of the European Union or international public organisation.

Article 427 *bis*

If, pursuant to the terms established in Article 31 *bis*, a legal person is responsible for the criminal offences defined in this Chapter, it shall have the following penalties imposed thereon:

- a) Fine of two to five years, or of three to five times the profit obtained when the resulting amount is higher, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding five years;
- b) Fine of one to three years, or of two to four times the profit obtained when the resulting amount is higher, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence of more than two years not included in the preceding Section;
- c) Fine of six months to two years, or of two to three times the profit obtained if the resulting amount is higher, in the rest of the cases.

Pursuant to the rules established in Article 66 *bis*, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

CHAPTER VI

On influence peddling

Article 428

A civil servant or authority who influences another public officer or authority, availing himself of the powers of his office or any other situation arising from his personal or hierarchical relation with the latter, or with any other officer or authority to attain a resolution that may directly or indirectly generate a financial benefit for himself or a third party, shall incur a prison sentence of six months to two years, a fine of one to two times the benefit intended or obtained and special barring from public employment and office and from the right to stand for public office for a term of five to nine years. If the intended benefit is obtained, these penalties shall be imposed in the upper half.

Article 429

Whoever influences a civil servant or authority taking advantage of any situation arising from his personal relation with him or with another public officer or authority to obtain a resolution that may directly or indirectly generate a financial benefit for him or for a third party, shall be punished with a prison sentence of six months to two years and a fine of one to two times the benefit intended or obtained, and of barring from contracting with the public sector, along with the loss of the possibility of obtaining

public subsidies or aid and receiving tax or Social Security benefits or incentives for a period of six to ten years. If the intended benefit is obtained, these penalties shall be imposed in the upper half.

Article 430

Those who, offering to behave in the manner described in the two preceding Articles, request handouts, presents or any other remuneration from third parties, or accept offers or promises, shall be punished with a prison sentence of six months to one year. If the criminal offence is committed by an authority or public officer, special barring from public employment and office and from the right to stand for public office for a term of one to four years shall also be imposed.

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Chapter, a fine of six months to two years shall be imposed.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 431

(Repealed)

CHAPTER VII

On embezzlement

Article 432

1. An authority or public officer who commits the criminal offence outlined in Article 252 on public assets, shall be punished with a prison sentence of two to six years and special barring from public employment and office and from the right to stand for public office for a term of six to ten years.

2. The same penalty shall be imposed upon an authority or public officer who commits the criminal offence outlined in Article 253 on public assets.

3. A prison sentence of four to eight years and absolute barring for a term of ten to twenty years shall be imposed if any of the following circumstances concurs with regards to the deeds outlined in the two preceding Sub-Paragraphs:

- a) If serious damage or obstruction is caused to the public service, or;
- b) If the value of the damage caused or the goods or assets misappropriated exceeds 50,000 euros.

If the value of the damage caused or the goods or assets misappropriated exceeds 250,000 euros, the penalty shall be imposed in its upper half and up to the highest degree.

Article 433

The deeds outlined in the preceding Article shall be punished with a prison sentence of one to two years and a fine of three months and one day to twelve months, and in all cases special barring from public employment and office and from the right to stand for



public office for a term of one to five years, if the damage caused or the value of the goods or assets misappropriated is less than 4,000 euros.

Article 433 bis

1. An authority or public officer who, in such a way that it could cause an economic loss to the public entity to which he reports and in those cases not covered by Article 390, were to falsify the accounts or the documents that ought to reflect the economic situation or the information contained therein, shall be punished with special barring from public employment or post for a period of one to ten years and with a fine from twelve to twenty-four months.

2. The same penalties shall be imposed on any authority or public officer who acting in such a way that it could causes an economic loss to the public entity to which he reports, were to provide third parties with misleading information on the economic situation thereof or some of the documents or information to which the preceding Section refers.

3. If the entity does suffer an economic loss, the penalties shall be imprisonment from one to four years, special barring from public employment or post for a period of three to ten years and with a fine from twelve to twenty-four months.

Article 434

If the culprit of any of the deeds outlined in this Chapter effectively and fully amends the damage caused to public assets, or if he actively collaborates with the authorities or its agents to secure decisive evidence enabling the identification or capture of those responsible or to fully clarify the events surrounding the criminal offence, the Judges or Courts of Law may impose a penalty that is one or two degrees lower on the perpetrator of the criminal offence.

Article 435

The provisions of this Chapter cover:

1. Those who are in charge of funds, revenue or assets of the Public Administrations for any reason;
2. Natural persons legally appointed as custodians of public funds or property;
3. The administrators or custodians of money or assets, embargoed, seized or deposited by the public authority, even though they belong to private owners.
4. Bankruptcy administrators, concerning the bankrupt estate or the economic interests of creditors. In particular, the interests of creditors shall be deemed to have been affected when the payment order of credits established by law is intentionally altered.

CHAPTER VIII

On fraud and unlawful taxation

Article 436

An authority or public officer who, acting due to his office in any act of the modes of public contracting, or in settlement of public properties or credit, comes to an

arrangement with the parties concerned or schemes in any other way to defraud any public institution, shall incur a prison sentence of two to six years and special barring from public employment and office and from standing for public office for a term of six to ten years. A private individual who has schemed with an authority or public officer shall have the same prison sentence imposed on him as the latter, as well as that of barring to obtain public subsidies and aid, for contracting with institutions, bodies or entities that form part of the public sector, and to take advantage of tax and Social Security rebates for a term of two to seven years.

Article 437

An authority or public officer who directly or indirectly demands undue fees, tariffs or fees, or those in an amount exceeding those legally set, shall be punished, without prejudice to the reimbursement he is obliged to carry out, with the penalties of a fine from six to twenty- four months and suspension from public employment and office for a term of six months to four years.

Article 438

An authority or public officer who, abusing his office, were to commit any criminal offence of swindling or misappropriation of Social Security benefits as outlined in Article 307 ter, shall incur the penalties respectively stated for these, in the upper half and up to the highest degree, and special barring from public employment and office and from standing for public office for a term from three to nine years, unless otherwise punished with a more severe penalty in another provision of this Code.

CHAPTER IX

**On prohibited negotiations and activities for civil servants
and on abuse when carrying out their official duties**

Article 439

An authority or public officer who, having to intervene, due to his office, in any kind of contract, matter, operation or activity, takes advantage of that circumstance to force or facilitate any kind of participation on his part, either direct or by intermediary, in such transactions or actions, shall incur a prison sentence of six months to two years, a fine of twelve to twenty-four months and special barring from public employment and office and from standing for public office for a term of two to seven years.

Article 440

Experts, arbitrators and executors who behave in the manner foreseen in the preceding Article, regarding assets and items in the appraisal, distribution or award whereof they have intervened, and guardians, carers or executors in relation to the properties of their pupils or the heirs to the estate, and bankruptcy administrators in relation to the assets and rights forming part of the bankrupt estate, shall be punished with a fine of twelve to twenty-four months and special barring from public employment and office, profession or trade, safekeeping, guardianship or care, as appropriate, for a term of three to six years, unless otherwise punished with a more severe penalty in another provision of this Code.

**Article 441**

An authority or public officer who, outside the cases allowed by the Laws or Regulations, personally or through an intermediary, carries out a professional activity or permanent or occasional advice, dependent on or in the service of private entities or individuals, in matters in which he must intervene or has intervened in due to his office, or in those that are processed, reported or resolved at the office or management centre where he is assigned or to which he reports, shall incur a fine of six to twelve months, and suspension from public employment and office for a term of two to five years.

Article 442

An authority or public officer who makes use of a secret he has knowledge of due to his position or office, or of inside information, in order to obtain financial benefit for himself or for a third party, shall incur a fine of one to three times the benefit intended, obtained or facilitated and special barring from public employment and office and from standing for public office for a term of two to four years. If he obtains the intended benefit, a prison sentence of one to three years and a fine of one to six times the benefit intended, obtained or facilitated shall be imposed, along with special barring from public employment and office and from standing for public office for a term of four to six years.

If serious damage to the public interests or to a third party is caused, the punishment shall be a prison sentence of one to six years, and special barring from public employment and office and from standing for public office for a term of nine to twelve years. For the purposes of this Article, inside information is construed to be all information of a specific nature that is obtained exclusively due to the position or public office, and that has not been notified, published or disclosed.

Article 443

1. An authority or public officer who solicits the sexual services of a person, for himself or spouse, or for another person with whom he is bound by a stable relation of a similar emotional nature, ascendant, descendant, biological or adopted sibling, or in-laws of the same degree, who has claims pending resolution by that officer, or concerning which the latter must issue a report or make query to his superior, shall be punished with a sentence of imprisonment from one to two years and absolute barring for a term from six to twelve years.

2. The officer of prisons or correctional or protection centres for minors who solicits the sexual services of a person in his safekeeping shall be punished with a sentence of imprisonment of one to four years and absolute barring for a term from six to twelve years.

3. The same penalties shall be incurred if the person solicited is an ascendant, descendent, biological or adoptive sibling, or in-laws of the same degree of the person under his safekeeping. He shall also incur these penalties if the person solicited is the spouse of a person he has under his safekeeping or who is linked thereto in a stable manner by a similar emotional relationship.



Article 444

The penalties foreseen in the preceding Article shall be imposed without prejudice to the relevant one for the criminal offences against sexual freedom effectively committed.

CHAPTER X

Common provision to the preceding Chapters

Article 445

Provocation, conspiracy and abetment to commit the criminal offences envisaged in this Title shall be punished with a penalty lower by one or two degrees, respectively.



TITLE XIX BIS (Repealed)

Article 445 bis
(Repealed)

TITLE XX On criminal offences against the Judicial Power

CHAPTER I On perverting the course of justice

Article 446

A Judge or Magistrate who knowingly hands down an unfair judgement or ruling shall be punished:

1. With a prison sentence of one to four years in the case of an unjust judgement against the accused in a criminal case for a serious or less serious criminal offence if the sentence has not yet been executed, and with the same punishment in its upper half and a fine of twelve to twenty-four months if it has been executed. In both cases, the punishment of absolute barring for a term of ten to twenty years shall also be imposed.
2. With the punishment of a fine of six to twelve months and special barring from public employment and office for a term of six to ten years, if an unfair sentence against an accused person is handed down in petty criminal offence proceedings.
3. With the punishment of a fine of twelve to twenty-four months and special barring from public employment and office for a term of ten to twenty years, if any other unfair judgement or ruling is handed down.

Article 447

A Judge or Magistrate who, due to gross negligence or inexcusable ignorance, hands down a manifestly unjust judgement or ruling shall incur the punishment of special barring from public employment and office for a term from two to six years.

Article 448

A Judge or Magistrate who refuses to judge, without alleging a legal reason, or under the pretext of obscurity, insufficiency or silence of the Law, shall be punished with the penalty of special barring from public employment and office for a term of six months to four years.

Article 449

1. The same punishment stated in the preceding Article shall be incurred by the Judge, Magistrate or Court Clerk found guilty of malicious delay in administering justice. Malicious delay shall be construed as that caused to achieve any unlawful end.

2. If the delay is due to an officer other than those mentioned in the preceding Section, the lower half of the punishment stated shall be imposed on him.

CHAPTER II

On omission of the duties to prevent criminal offences or to promote the persecution thereof

Article 450

1. Whoever is able, by his immediate intervention and without risk to himself or another, and does not prevent a criminal offence being committed that affects the life, integrity or health, freedom or sexual freedom of persons, shall be punished with a sentence of imprisonment of six months to two years if the criminal offence is against life, and that of a fine from six to twenty- four months in the other cases, except if the criminal offence not prevented is subject to an equal or lower punishment, in which case a lower degree punishment than that for the actual criminal offence shall be imposed.

2. The same penalties shall be incurred by whoever, being able to do so, does not resort to the authority or its agents in order for them to prevent a criminal offence of those foreseen in the preceding Section when informed that it is about to be, or is being committed.

CHAPTER III

On covering up

Article 451

Whoever has knowledge of a criminal offence committed and, without having intervened in it as a perpetrator, subsequently intervenes in its execution, in any of the following manners, shall be punished with a sentence of imprisonment of six months to three years:

1. Aiding the offenders or accomplices to benefit from the gains, product or price of the criminal offence, without intending personal profit;
2. Hiding, altering or destroying the evidence, effects or instruments of a criminal offence, to prevent it being discovered;
3. Aiding the suspected criminals to avoid investigation by the authority or its agents, or to escape search or capture, whenever any of the following circumstances concurs:
 - a) That the deed covered up amounts to treason, regicide, the murder of any of the King or Queen's ascendants or descendents, of the Queen Consort or the Consort of the Queen, the Regent or any other member of the Regency, of the Prince or Princess of Asturias, genocide, criminal offences against humanity, criminal offences against protected persons and assets in the event of armed conflict, rebellion, terrorism, murder, piracy, trafficking in human beings or trafficking in human organs;



- b) When the person abetting has acted in abuse of his public functions. In this case, in addition to the punishment of custodial sentence, that of special barring from public employment and office for a term of two to four years shall be imposed if the criminal offence concealed is less serious, and of absolute barring for a term from six to twelve years if it is serious.

Article 452

Under no circumstances whatsoever may a sentence of imprisonment be handed down that exceeds that set for the criminal offence covered up. Should the latter be subject to a punishment of another nature, the sentence of imprisonment shall be substituted by that of a fine from six to twenty- four months, except if the criminal offence concealed is assigned a punishment equal to or lower than this, in which case the offender shall have the punishment for the criminal offence in its lower half imposed.

Article 453

The provisions of this Chapter shall be applied even if the perpetrator thereof covered up cannot be held accountable or is personally exempt from punishment.

Article 454

If the abettor after the deed is the spouse or person to whom the offender is bound by a stable emotional relation of a similar nature, his ascendants, descendants, biological or adoptive siblings, or in-laws of the same degree, with the sole exception accessories after the fact included in Sub-Section 1 of Article 451 are exempt from the imposition of penalties.

CHAPTER IV

On arbitrary enforcement of one's own right

Article 455

1. Whoever, in order to enforce his own right, acting outside the legal channels, were to use violence, intimidation or force in matters, shall be punished with the penalty of a fine from six to twelve months.
2. A punishment higher in one degree shall be imposed if weapons or dangerous objects are used to threaten or commit violence.

CHAPTER V

On false accusation and reports and simulating criminal offences

Article 456

1. Those who accuse any person of deeds, with knowledge of the false nature thereof or with reckless disregard for the truth, that, were they true, would constitute a criminal infraction, if that accusation is made before an officer of the court or administration who has the duty to proceed to investigate, shall be punished:
 1. With a prison sentence of six months to two years and a fine of twelve to twenty-four months, if the accusation is of a serious criminal offence;



2. With the punishment of a fine of twelve to twenty-four months, if the accusation is of a less serious criminal offence;
3. With the punishment of a fine of three to six months, if the accusation is of a petty criminal offence.

2. Proceedings may not be brought against the person reporting or accusing other than after a final judgement, or also a final ruling, of dismissal or setting aside by the Judge or Court of Law that heard the arraignment. These shall act on their own motion against the reporter or accuser, as long as there is sufficient prima facie evidence in the main case of falsity of the accusation, without prejudice to the fact that they may also be prosecuted if reported by the victim thereof.

Article 457

Whoever pretends, before any of the officers stated in the preceding Section, that he is responsible for or the victim of a criminal violation or reports a non-existent one, causing procedural action, shall be punished with a fine from six to twelve months.

CHAPTER VI

On perjury

Article 458

1. A witness who does not tell the truth in his deposition in a court case shall be punished with imprisonment of six months to two years and a fine of three to six months.

2. If perjury is committed against the accused in a criminal case, the penalties shall be of imprisonment from one to three years and a fine from six to twelve months. If a conviction is handed down due to that deposition, the higher degree penalties shall be imposed.

3. The same penalties shall be imposed if the perjury takes place before International Courts of Law that, by virtue of treaties duly ratified under the Spanish Constitution, exercise powers deriving therefrom, or if committed in Spain on declaring by virtue of letters rogatory issued by a foreign court.

Article 459

The penalties set forth in the preceding Articles shall be imposed in the upper half on experts or interpreters who maliciously misconstrue the truth in their opinion or translation, who shall also be punished with the penalty of special barring from profession or trade, public employment and office, for a term from six to twelve years.

Article 460

Should the witness, expert or interpreter, without materially misconstruing the truth, alter it with hesitation, inexactness or by silencing relevant facts or data known to him, he shall be punished with the penalty of a fine from six to twelve months and, if appropriate, suspension from public employment and office, profession or trade, of six months to three years.

**Article 461**

1. Whoever were to knowingly produce false witnesses or misleading experts or interpreters, shall be punished with the same penalties as those established for them in the preceding Articles.

2. Should the offender of such a criminal offence be a solicitor, barrister, chartered labour consultant or representative of the Public Prosecutor, in their professional practice or duties of office, in each case the punishment in its upper half and that of special barring from public employment and office, profession or trade, for a term of two to four years, shall be imposed.

Article 462

Whoever, having committed perjury in a criminal case, retracts in a timely, due manner, declaring the truth in order for it to take effect before judgement is handed down in the proceedings concerned, shall be exempt of punishment. If a custodial sentence has been enforced as a consequence of the perjury, the lower degree penalties shall be imposed.

CHAPTER VII**On obstruction of justice and professional disloyalty****Article 463**

1. Whoever, if summoned in the legal manner, voluntarily fails to appear, without a just cause, before a court or tribunal in criminal proceedings with the accused in preventive custody, causing suspension of the oral trial, shall be punished with a sentence of imprisonment from three to six months or a fine from six to twenty- four months. The punishment of a fine from six to ten months shall be incurred by whoever, having been warned, does so for a second time in a criminal cause without the accused being in prison, whether or not a suspension has been caused.

2. Should the offender in this criminal offence be a solicitor, barrister or representative of the Public Prosecutor, in professional practice or in the duties of his office, the punishment in the upper half and that of special barring from public employment and office, profession or trade, for a term of two to four years, shall be imposed on him.

3. If the suspension takes place in the case of Section 1 of this Article, as a consequence of the judge, a member of the court or whoever is acting as court clerk, failing to appear, a sentence of imprisonment from three to six months or a fine from six to twenty- four months shall be imposed and, in all cases, special barring for a term of two to four years.

Article 464

1. Whoever, by means of violence or intimidation directly or indirectly attempts to influence the accuser, a party or the accused, solicitor, barrister, expert, interpreter or witness in proceedings, in order for him to change his behaviour in the proceedings, shall be punished with a sentence of imprisonment of one to four years and a fine from six to twenty- four months.

Should the perpetrator thereof achieve his objective, the punishment shall be imposed in its upper half.

2. The same penalties shall be imposed on whoever commits any deed contrary to life, integrity, liberty, sexual freedom or assets, in retaliation against the persons mentioned in the preceding Section, due to their action in the judicial proceedings, without prejudice to the relevant punishment for the criminal offence to which these amount.

Article 465

1. Whoever, when intervening in proceedings as a solicitor or barrister, abusing his duties, destroys, makes void or conceals documents or proceedings notified to him in that capacity shall be punished with a sentence of imprisonment of six months to two years, a fine for seven to twelve months and special barring from his profession, public employment and office of three to six years.

2. Should the deeds described in Section one of this Article be perpetrated by a private individual, the punishment shall be a fine of three to six months.

Article 466

1. A solicitor or barrister who discloses procedural actions declared secret by the judicial authority shall be punished with the penalties of fine of twelve to twenty- four months and special barring from employment, public office profession or trade for one to four years.

2. Should the disclosure of the proceedings declared secret be perpetrated by the Judge or a member of the Court of Law, representative of the Public Prosecutor, Court Clerk or any officer in the service of the Judicial Administration, the penalties foreseen in Article 417 in the upper half shall be imposed on him.

3. Should the conduct described in Section 1 be perpetrated by any other individual who has intervened in the proceedings the punishment shall be imposed in the lower half thereof.

Article 467

1. A solicitor or barrister who, having advised, defended or represented a person, defends or represents whoever has contrary interests in the same matter, without the consent of the former, shall be punished with the penalty of a fine from six to twelve months and special barring from his profession of two to four years.

2. A solicitor or barrister who, by deed or omission, manifestly damages the interests entrusted to him shall be punished with the penalties of a fine of twelve to twenty- four months and special barring from public employment or office, profession or trade of one to four years.

Should the deeds be perpetrated due to gross negligence, the penalties shall be imposed of a fine from six to twelve months and special barring from his profession of six months to two years.



CHAPTER VIII

On breach of sentence

Article 468

1. Those who breach their sentence of imprisonment, security measure, imprisonment, precautionary measure, driving ban or custody, shall be punished with a sentence of imprisonment of six months to one year if in custody, and with the punishment of a fine from twelve to twenty- four months in the other cases.

2. In all cases, a sentence of imprisonment of six months to one year, shall be imposed on those who breach a punishment of those set forth in Article 48 of this Code or a precautionary or security measure of the same kind imposed in criminal proceedings in which the victim is one of the persons referred to in Article 173.2, as well as those who breach probation measures.

3. Whoever disables or disrupts the normal operation of the technical devices installed to control the serving of sentences, security measures or precautionary measures, does not carry them with them or fails to carry out the required measures to maintain the correct operation thereof, shall be punished with a fine of six to twelve months.

Article 469

Convicts or prisoners who escape from the place where they are interned, using violence or intimidation against persons, force against property or taking part in an uprising, shall be punished with a sentence of imprisonment of six months to four years.

Article 470

1. The private individual who aids and abets escape by a convict, prisoner or detainee, either from the place where he is in custody, or in transport, shall be punished with a sentence of imprisonment of six months to one year and a fine of twelve to twenty- four months.

2. If violence or intimidation against persons, force against property or bribery are used for the purpose, the punishment shall be imprisonment from six months to four years.

3. If committed by any of the persons mentioned in Article 454, they shall be penalised with the punishment of a fine from three to six months, in which case the Judge or Court of Law may impose only the relevant penalties for the damage caused or the intimidation or violence exercised.

Article 471

A punishment higher in one degree shall be imposed, in the respective cases, if the offender is an officer in charge of driving or of the custody of the convict, prisoner or detainee. The officer shall also be punished with the penalty of special barring from public employment and office from six to ten years if the fugitive is convicted by final judgement, and with special barring from public employment and office of three to six years in the other cases.

CHAPTER IX

On criminal offences against the Judicial Administration of the International Criminal Court

Article 471 *bis*

1. A witness who intentionally commits perjury in his deposition before the International Criminal Court, being bound to tell the truth pursuant to the rules and regulations of procedure and evidence of that Court, shall be punished with imprisonment from six months to two years. Should the perjury be committed against the accused, the punishment shall be imprisonment from two to four years. Should a conviction be handed down as a consequence of the witness statement, the punishment of imprisonment from four to five years shall be imposed.

2. Whoever presents evidence before the International Criminal Court knowing that it is false or has been forged shall be punished with the penalties stated in the preceding Section of this Article.

3. Whoever intentionally destroys or alters evidence, or interferes with the procedures for giving evidence before the International Criminal Court, shall be punished with a sentence of imprisonment of six months to two years and a fine for seven to twelve months.

4. Whoever bribes a witness, obstructs his appearance or deposition before the International Criminal or interferes with them, shall be punished with a sentence of imprisonment of one to four years and a fine from six to twenty- four months.

5. Whoever obstructs an officer of the Court, bribes or intimidates him, to oblige or induce him not to carry out his duties or to do so unduly, shall be punished with imprisonment from one to four years and a fine from six to twenty- four months.

6. Whoever retaliates against an officer of the International Criminal Court due to the duties he or another officer has carried out shall be punished with a sentence of imprisonment of one to four years and a fine from six to twenty- four months.

The same punishment shall be incurred by whoever retaliates against a witness for his deposition before the Court.

7. Whoever solicits or accepts a bribe as an officer of the Court of Law and in relation to his official duties shall incur a sentence of imprisonment from two to five years and a fine of one to three times the value of the handout solicited or accepted.



TITLE XXI

On criminal offences against the Constitution

CHAPTER I

Rebellion

Article 472

A conviction for the criminal offence of rebellion shall be handed down to those who violently and publicly rise up for any of the following purposes:

1. To fully or partially repeal, suspend or amend the Constitution;
2. To fully or partially strip the King or Queen, the Regent or members of the Regency of all or part of the prerogatives and powers thereof, or to oblige them to execute an act contrary to their will;
3. To prevent freely holding elections to public offices;
4. To dissolve the Cortes, the Congress of Deputies, the Senate or any Legislative Assembly of an Autonomous Community, to prevent them from meeting, discussing or resolving, to force them to pass any resolution, or to strip them of any of the attributions or powers thereof.
5. To declare the independence of any part of the national territory;
6. To replace the Government of the Nation or the Governing Council of an Autonomous Community with another, or to use or exercise oneself, or to strip the Government or Governing Council of an Autonomous Community, or any of its members, of the powers thereof, or to prevent or limit the free exercise thereof, or to force any of them to carry out acts against their will;
7. To disaffect from obedience to the Government any armed force.

Article 473

1. Those who, inducing the rebels, have promoted or sustain the rebellion, and its ringleaders, shall be punished with a sentence of imprisonment from fifteen to twenty-five years and absolute barring for the same time; those who act as subaltern commanders, with that of imprisonment from ten to fifteen years and absolute barring from ten to fifteen years, and mere participants, with that of imprisonment from five to ten years and special barring from public employment and office for a term from six to ten years.

2. If weapons have been used, or if there has been combat between the rebellious force and the sectors loyal to the lawful authority, or when the rebellion has caused criminal damage to publicly or privately owned property, cutting off telegraphic and telephone lines, the airwaves, railways or any other kind of communications, with serious violence against persons, demanding contributions or diverting the public funds from their lawful investment, a sentence of imprisonment shall be handed down, respectively, of twenty- five to thirty years for the former and from fifteen to twenty- five years for the second, and from ten to fifteen years for the latter.

Article 474

When the rebellion has not been organised by known leaders, the persons assumed to be such shall be those who direct others or speak on their behalf, or those who sign documents issued on their behalf, or who perpetrate other similar deeds of command or representation.

Article 475

Those who persuade or lead troops or any other kind of armed force to commit the criminal offence of rebellion shall be convicted as rebels and punished with a sentence of imprisonment from five to ten years and absolute barring for a term from six to twelve years.

Should the rebellion take place, they shall be deemed promoters and shall suffer the punishment stated in Article 473.

Article 476

1. A serviceperson who does not use the means available to him to contain a rebellion by the forces under his command shall be punished with imprisonment from two to five years and absolute barring from six to ten years.

2. Servicepersons who, having knowledge of an attempt to commit a criminal offence of rebellion and do not immediately report this to their superiors, or authorities or officers who, due to his office, are obliged to pursue the criminal offence shall be punished with the same penalties foreseen in the preceding Section in the lower half thereof.

Article 477

Provocation, conspiracy and solicitation to commit rebellion shall be punished, in addition to the barring foreseen in the preceding Articles, with a sentence of imprisonment lower by one or two degrees to that of the relevant criminal offence.

Article 478

If whoever perpetrates any of the criminal offences foreseen in this Chapter is an authority, the punishment of barring foreseen in each case shall be substituted by that of absolute barring for a term from fifteen to twenty years, except if that circumstance is specifically included in the criminal classification concerned.

Article 479

After the rebellion becomes apparent, the governmental authority shall call on the rebels to immediately disperse and withdraw.

Should the rebels not immediately desist in their attitude immediately after being called to do so, the authority shall apply the force available to it to disperse them.

No call shall be required from the moment the rebels open fire.

Article 480

1. Whoever, being involved in a criminal offence of rebellion, discloses it in time to be able to avoid its consequences, shall be exempt of the punishment for it.



2. Those who are merely instrumental, who lay down their weapons before having used them, submitting to the lawful authorities, shall be subject to the lower degree sentence of imprisonment. The same punishment shall be imposed if the rebels disperse or submit to the lawful authority prior to the call or due to it.

Article 481

The specific criminal offences committed in a rebellion or due to it shall be punished, respectively, pursuant to the provisions of this Code.

Article 482

Authorities who have not resisted the rebellion shall be punished with the penalty of absolute barring from twelve to twenty years.

Article 483

Civil servants who continue to carry out their duties of office under the command of the rebels or who, failing acceptance of the resignation they may have tendered, abandon their post when there is the danger of rebellion, shall incur the punishment of special barring from public employment and office from six to twelve years.

Article 484

Those who accept employment from the rebels shall be punished with the penalty of absolute barring from six to twelve years.

CHAPTER II

On criminal offences against the Crown

Article 485

1. Whoever kills the King or Queen or the Prince or Princess of Asturias shall be punished with permanent, revisable imprisonment.

2. Whoever kills any of the ascendants or descendants of the King or Queen, the Queen consort or the Queen's Consort, the Regent or any member of the Regency, shall be punished with a prison sentence of twenty to twenty-five years, unless otherwise punished with a more severe penalty in another provision of this Code.

Should two or more aggravating circumstances concur in the criminal offence, a prison sentence of twenty-five to thirty years shall be imposed.

3. Attempt to commit these criminal offences shall be punished with the penalty lower by one degree.

Article 486

1. Whoever were to cause the King or Queen, or any of his ascendants or descendants, the Queen Consort or the Queen's Consort, the Regent or any member of the Regency, or the Prince or Princess of Asturias, bodily harm as foreseen in Article 149, shall be punished with a sentence of imprisonment from fifteen to twenty years.

If bodily harm foreseen in Article 150 is caused, this shall be punished with a sentence of imprisonment from eight to fifteen years.

2. Whoever were to cause them any other injury shall be punished with a sentence of imprisonment from four to eight years.

Article 487

Whoever deprives the King or Queen, or any of his ascendants or descendants, the Queen Consort or the Queen's Consort, the Regent or any member of the Regency, or the Prince or Princess of Asturias, of their personal liberty shall be punished with a sentence of imprisonment from fifteen to twenty years, except if the deeds are punished with a greater punishment in other provisions of this Code.

Article 488

Provocation, conspiracy and solicitation to commit the criminal offences foreseen in the preceding Articles shall be punished with the penalty lower by one or two degrees to those respectively foreseen.

Article 489

Whoever, by serious violence or intimidation, forces the persons mentioned in the preceding Articles to act against their will, shall be punished with a sentence of imprisonment from eight to twelve years.

In the case foreseen in the preceding Paragraph, if the violence or intimidation were not serious, the punishment imposed shall be lower by one degree.

Article 490

1. Whoever, by means of violence or intimidation, were to trespass on the dwelling of any of the persons mentioned in the preceding Articles shall be punished with a sentence of imprisonment from three to six years. If there is no violence or intimidation, the punishment shall be from two to four years.

2. Whoever seriously intimidates any of the persons mentioned in the preceding Section shall be punished with a sentence of imprisonment from three to six years, and with a sentence of imprisonment from one to three years if the threat is minor.

3. Whoever commits slander or defamation against the King or Queen or any of his ascendants or descendents, the Queen Consort or the Queen's Consort, the Regent or any member of the Regency, or the Prince or Princess of Asturias, while carrying out the duties of office or due to or on occasion thereof, shall be punished with a sentence of imprisonment of six months to two years if the slander or defamation are serious and with that of a fine of six to twelve months if not.

Article 491

1. Slander and defamations against any of the persons mentioned in the preceding Article, and outside the cases foreseen therein, shall be punished with the penalty of a fine from four to twenty months.

2. The punishment shall be imposed of a fine from six to twenty- four months upon whoever uses the image of the King or Queen or of any of his ascendants or descendents, or of the Queen Consort or the Queen's Consort, or the Regent or any



member of the Regency, or Prince or Princess of Asturias, in any way that may damage the prestige of the Crown.

CHAPTER III

On criminal offences against the Institutions of the State and the division of powers

SUBCHAPTER 1. Criminal offences against the institutions of the state

Article 492

Those who, on vacancy of the Throne or when the Incumbent is unable to exercise his authority, prevent the Cortes from meeting to appoint the Regency or guardian to the minor Incumbent, shall be punished with a sentence of imprisonment from ten to fifteen years and absolute barring for a term of ten to fifteen years, without prejudice to the punishment to which they may be subject for committing other more serious criminal offences.

Article 493

Those who, without public uprising, forcibly trespass on, use violence or intimidation at the seats of the Congress of Deputies, the Senate or at a Legislative Assembly of an Autonomous Community, if they are in session, shall be punished with a sentence of imprisonment of three to five years.

Article 494

Those who promote, direct or lead demonstrations or other kinds of meetings before the seats of the Congress of Deputies, of the Senate or a Legislative Assembly of an Autonomous Community, when in session, altering the normal operation thereof, shall incur a sentence of imprisonment of six months to one year or a fine of twelve to twenty- four months.

Article 495

1. Those who, without public uprising, bearing weapons or other dangerous instruments, attempt to enter the seats of the Congress of Deputies, the Senate or the Legislative Assembly of an Autonomous Community, to lodge personal or group petitions there, shall incur a sentence of imprisonment of three to five years.

2. The punishment foreseen in the preceding Section shall be applied in its upper half to whoever promotes, directs or leads the group.

Article 496

Whoever commits serious defamation against Parliament or a Legislative Assembly of an Autonomous Community, while in session, or any of its Commissions, in the public acts in which they represent these, shall be punished with the penalty of a fine from twelve to eighteen months.

Those charged with the defamations described in the preceding Section shall be exempt of punishment if the circumstances foreseen in Article 210 concur.

Article 497

1. Whoever, without being a member of the Congress of Deputies, the Senate or Legislative Assembly of an Autonomous Community, seriously disturbs the order of its sessions, shall incur a sentence of imprisonment of six months to one year.

2. If disturbance of the order of the sessions referred to in the preceding Section is not serious, the punishment of a fine from six to twelve months shall be imposed.

Article 498

Those who use force, violence, minor or serious intimidation of prevent a member of the Congress of Deputies, the Senate or of a Legislative Assembly of an Autonomous Community from attending its meetings, or by the same means limits free expression of his opinions or casting his vote, shall be punished with a sentence of imprisonment of three to five years.

Article 499

An authority or public officer who infringes the inviolability of Parliament or a Legislative Assembly of an Autonomous Community shall be punished with the penalties of special barring from public employment and office for a term of ten to twenty years, without prejudice to those that may befall him if the deed constitutes another more serious criminal offence.

Article 500

An authority or public officer who detains a Member of the Congress of Deputies or of the Senate or of a Legislative Assembly of an Autonomous Community outside the cases or without the requisites established by the laws in force, shall incur, as appropriate, the penalties foreseen in this Code, imposed in the upper half, and also that of special barring from public employment and office from six to twelve years.

Article 501

The judicial authority who indicts or prosecutes a member of the Cortes or of a Legislative Assembly of an Autonomous Community without the requisites established by the laws in force shall be punished with the penalty of special barring from public employment and office of ten to twenty years.

Article 502

1. Those who, having been summoned in the legal manner and under admonition, fail to appear before an investigation committee of Parliament or a Legislative Assembly of an Autonomous Community shall be convicted and punished as felons of disobedience. Should the accused be an authority or public officer, the punishment of suspension from public employment and office for a term of six months to two years shall also be imposed on him.

2. The same penalties shall be incurred by the authority or officer who hinders an investigation by the Ombudsman, Court of Auditors or equivalent bodies of the Autonomous Communities, refusing or unduly delaying submission of the reports they request or hindering their access to the administrative files or documentation required for that investigation.



3. Whoever is called before a parliamentary investigation commission and commits perjury under oath shall be punished with a sentence of imprisonment of six months to one year or fine from twelve to twenty- four months.

Article 503

A sentence of imprisonment of two to four years shall be incurred by:

1. Those who violently or threateningly trespass on the premises where the Council of Ministers or Governing Council of an Autonomous Community is in session;
2. Those who interfere or in any way hinder the liberty of the Government convened in Council, or of the members of a Government of an Autonomous Community, convening in Council, except if the deeds constitute another more serious criminal offence.

Article 504

1. The punishment of a fine from twelve to eighteen months shall be incurred by those who seriously slander, defame or threaten the Government of the Nation, the General Council of the Judiciary, the Constitutional Court, the Supreme Court, or the Governing Council or High Court of Justice of an Autonomous Community.

Whoever is found guilty of slander or defamation as set forth in the preceding Section shall be exempt of punishment if the circumstances foreseen, respectively, in Articles 207 and 210 of this Code concur.

A sentence of imprisonment shall be imposed of three to five years on those who use force, violence or intimidation to prevent the members of those bodies from attending the respective meetings thereof.

2. Those who seriously defame or threaten the Armed Forces, Classes or the Police and Security Forces, shall be punished with the penalty of a fine from twelve to eighteen months.

Whoever is found guilty of the defamations foreseen in the preceding Section shall be exempt of punishment if the circumstances described in Article 210 of this Code concur.

Article 505

1. Whoever, without being a member of the council of a local corporation, seriously disturbs the order of its plenary meetings, prevent access thereto, impede conducting the agenda foreseen, the passing of resolutions, or who cause disorders aimed at expressing support for armed gangs, terrorist organisations or groups, shall incur a sentence of imprisonment of six months to one year.

2. Whoever, availing himself of the existence of armed gangs, terrorist organisations or groups, commits slander, defamation, coercion or intimidation against the members of a local corporation shall be punished with the higher degree punishment than the relevant one for the criminal offence committed.

SUBCHAPTER 2. On usurpation of attributions

Article 506

An authority or public officer who, lacking the power to do so, hands down a general provision or suspends serving thereof, shall be punished with a sentence of imprisonment from one to three years, a fine from six to twelve months and special barring from public employment and office for a term from six to twelve years.

Article 506 bis

(Repealed)

Article 507

A Judge or Magistrate who claims for himself administrative powers that he lacks, or prevents lawful exercise thereof by whoever holds them, shall be punished with a sentence of imprisonment of six months to one year, a fine of three to six months and suspension from public employment and office for a term from one to three years.

Article 508

1. An authority or public officer who claims judicial powers for himself or prevents enforcement of a ruling handed down by the competent judicial authority shall be punished with imprisonment of six months to one year, a fine of three to eight months and suspension from public employment and office for a term from one to three years.

2. The administrative authority or officer or serviceperson who acts against the independence of Judges or Magistrates guaranteed by the Constitution, issuing them instructions, orders or demands related to cases or actions that are being heard by them, shall be punished with a sentence of imprisonment from one to two years, a fine from four to ten months and special barring from public employment and office for a term from two to six years.

Article 509

A Judge or Magistrate, authority or civil servant who, being legally required to inhibit himself, continues to proceed, without awaiting decision on the relevant jurisdictional conflict, except in the cases allowed by the Law, shall be punished with the penalty of a fine from three to ten months and special barring from public employment and office for a term of six months to one year.

CHAPTER IV

On criminal offences related to the exercise of fundamental public rights and liberties.

SUBCHAPTER 1. On the criminal offences committed when exercising the fundamental rights and public liberties guaranteed by the constitution

Article 510

1. A prison sentence of one to four years and a fine of six to twelve months shall be imposed on:



- a) Those who, directly or indirectly, foster, promote or incite hatred, hostility, discrimination or violence against a group, or part thereof, or against a certain person for belonging to such a group, for reasons of racism, anti-Semitism or for other reasons related to ideology, religion or beliefs, family circumstances, the fact that the members belong to an ethnicity, race or nation, national origin, gender, sexual orientation or identity, or due to gender, illness or disability;
- b) Those who produce, prepare, possess with the purpose of distributing, provide third parties access to, distribute, publish or sell documents or any other type of material or medium that, due to the content thereof, are liable to directly or indirectly foster, promote or incite hatred, hostility, discrimination or violence against a group, or part thereof, or against a certain person for belonging to such a group, for reasons of racism, anti-Semitism or for other reasons related to ideology, religion or beliefs, family circumstances, the fact that the members belong to an ethnicity, race or nation, national origin, gender, sexual orientation or identity, or due to gender, illness or disability;
- c) Those who publically deny, seriously trivialise or extol the crimes of genocide, crimes against humanity or against persons and property protected in the event of armed conflict, or who extol the perpetrators thereof, if committed against a group or part thereof, or against a certain person for belonging to such a group, for reasons of racism, anti-Semitism or for other reasons related to ideology, religion or beliefs, family circumstances, the fact that the members belong to an ethnicity, race or nation, national origin, gender, sexual orientation or identity, or due to gender, illness or disability, if such conduct promotes or encourages a climate of violence, hostility, hatred or discrimination against such individuals.

2. A prison sentence of six months to two years and a fine of six to twelve months shall be imposed on:

- a) Those who harm the dignity of persons through actions that entail humiliation, disregard or discredit of any of the groups outlined in the preceding Section, or of a part thereof, or against a certain person for belonging to such a group, for reasons of racism, anti-Semitism or for other reasons related to ideology, religion or beliefs, family circumstances, the fact that the members belong to an ethnicity, race or nation, national origin, gender, sexual orientation or identity, or due to gender, illness or disability, or who produce, prepare, possess with the purpose of distributing, provide third parties access to, distribute, publish or sell documents or any other type of material or medium that, due to the content thereof, are liable to harm the dignity of persons because they represent serious humiliation, disregard or discredit of any of the aforementioned groups, or part thereof, or of a certain person for belonging to such a group;
- b) Those who, through any form of public expression or distribution, extol or justify the criminal offences committed against a group, or part thereof, or against a certain person for belonging to such a group, for reasons of racism, anti-Semitism or for other reasons related to ideology, religion or beliefs, family circumstances, the fact that the members belong to an ethnicity, race or nation, national origin, gender, sexual orientation or identity, or due to gender, illness or disability, or those who have participated in its execution.

The deeds shall be punished with a prison sentence of one to four years and a fine of six to twelve months if such conduct promotes or encourages a climate of violence, hostility, hatred or discrimination against the aforementioned groups.

3. The penalties outlined in the previous Sections shall be imposed in the upper half if the deeds are committed via the social media, via the Internet or by using the information technologies in a manner that makes them accessible to a high number of persons.

4. If, in view of the specific circumstances, the criminal offences are likely to alter the public peace or provoke a serious sense of insecurity or fear among the members of the group, the penalty shall be imposed in its upper half and up to the highest degree.

5. In all cases, special barring from engaging in a profession or trade in education, in the field of teaching, sports and free time shall be imposed for a period of time greater than the prison sentence duly imposed in the judgement by between three and ten years, proportionally in view of the seriousness of the criminal offence, the number of criminal offences committed and the circumstances of the convict.

6. The Judge or Court of Law may order the destruction, deletion or deactivation of the books, files, documents, articles and any kind of medium subject to the criminal offence outlined in the preceding Articles or by means whereof it was committed. If the criminal offence is committed through information and communication technologies, removal of the content shall be ordered.

In the cases in which, through an Internet access portal or information society service, the content outlined in the preceding Section is distributed exclusively or predominantly, access shall be blocked and the interruption of such distribution shall be ordered.

Article 510 bis

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences included in the two preceding Articles, a fine of two to five years shall be imposed. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

In this case, the provisions of Sub-Paragraph 3 of Article 510 of the Penal Code shall also be applied.

Article 511

1. A prison sentence of six months to two years and a fine of twelve to twenty-four months and special barring from public employment and office for a term of one to three years shall be incurred by private individuals in charge of a public service who refuse a person a service to which he is entitled due to his ideology, religion or belief, belonging to an ethnic group or race, national origin, gender, sexual preference, family situation, illness or disability.

2. The same penalties shall be applicable if the deeds are committed against an association, foundation, society or corporation, or against the members thereof due to their ideology, religion or belief, or to the appurtenance of all or some of the members



thereof to an ethnic group or race, national origin, gender, sexual preference, family situation, illness or disability.

3. Civil servants who commit any of the deeds foreseen in this Article shall incur the same penalties in the upper half and that of special barring from public employment and office for a term of two to four years.

4. In all cases, special barring from engaging in a profession or trade in education, in the field of teaching, sports and free time shall be imposed for a period of time greater than the prison sentence duly imposed in the judgement by between one and three years, proportionally in view of the seriousness of the criminal offence and the circumstances of the convict.

Article 512

Those who, in the exercise of their professional or business activities, were to deny a person a service to which he is entitled due to his ideology, religion or belief, his belonging to an ethnic group, race or nation, his gender, sexual preference, family situation, illness or disability, shall incur the punishment of special barring from exercise of profession, trade, industry or commerce, and special barring from engaging in a profession or trade in education, in the field of teaching, sports and free time for a term of one to four years.

Article 513

Unlawful associations or demonstrations are punishable and those deemed to be such are:

1. Those held in order to commit a criminal offence;
2. Those attended by persons bearing weapons, explosive devices, blunt objects or any other dangerous item;

Article 514

1. The promoters or directors of any assembly or demonstration described under Section 1 of the preceding Article and those who, in relation to Section 2 thereof, have not attempted to prevent the circumstances mentioned therein by all the means available to them shall incur imprisonment from one to three years and a fine of twelve to twenty- four months. To these ends, the directors or promoters of an assembly or demonstration shall be deemed to be those who call or lead them.

2. Those attending an assembly or demonstration bearing weapons or other equally dangerous items shall be punished with a sentence of imprisonment from one to two years and a fine from six to twelve months. The Judges or Courts of Law, in view of the criminal records of the subject, circumstances of the case and characteristics of the weapon or instrument borne, may lower the punishment stated by one degree.

3. Persons who commit deeds of violence if an assembly or demonstration is held, against the authorities, their agents, persons or public or private properties, shall be punished with the penalty to which the relevant criminal offence is subject, in its upper half.

4. Those who prevent the lawful exercise of the freedom to assemble or demonstrate, or who seriously disturb the proceedings of a lawful assembly or demonstration shall be punished with a sentence of imprisonment of two to three years if the deeds are perpetrated with violence, and with a sentence of imprisonment from three to six months or a fine from six to twelve months if committed by imposition or any other unlawful procedure.

5. The promoters or directors of any assembly or demonstration who again call, hold or attempt to hold any assembly or demonstration that had previously been suspended or prohibited, provided they intend to subvert the constitutional order or to seriously alter the public peace, shall be punished with imprisonment of six months to one year and a fine from six to twelve months, without prejudice to the punishment to which they may be subject as appropriate, pursuant to the preceding Sections.

Article 515

Unlawful associations shall be punishable, the following being deemed as such:

1. Those whose purpose is to commit any criminal offence or that, having been constituted, encourage commission thereof;
2. Those that use violent means or alteration or control of personality to achieve their object, even if such an object is lawful;
3. Organisations of a paramilitary nature;
4. Those that, directly or indirectly, foster, promote or incite hatred, hostility, discrimination or violence against persons, groups or associations due to their ideology, religion or beliefs, or on the grounds that their members, or any one of their members, belong to an ethnicity, race or nation, or due to their gender, sexual preference, family situation, illness or disability.

Article 516

(Repealed)

Article 517

In the cases foreseen in Sections 1 and 3 to 6 of Article 515 the following penalties shall be imposed:

1. The founders, directors and chairpersons of associations, those of imprisonment from two to four years, a fine of twelve to twenty- four months and special barring from public employment and office for a term from six to twelve years.
2. Active members, those of imprisonment of one to three years and a fine of twelve to twenty- four months.

Article 518

Those who, through their financial aid or any other kind of aid, if important, favour the founding, organisation or activity of the associations described in Sections 1 and 3 to 6 of Article 515, shall incur a sentence of imprisonment from one to three years, a fine of twelve to twenty- four months, and barring from public employment and office for a term of one to four years.

**Article 519**

Provocation, conspiracy and solicitation to commit the criminal offence of criminal association shall be punished with the penalty lower by one or two degrees to the relevant one, respectively, for the deeds foreseen in the preceding Articles.

Article 520

The Judges or Courts of Law, in the cases foreseen in Article 515, shall order dissolution of the criminal association and, if appropriate, any other of the accessory consequences of Article 129 of this Code.

Article 521

In the criminal offence of criminal association, if the accused is an authority, agent thereof or public officer, in addition to the penalties stated, absolute barring from ten to fifteen years shall be imposed on him.

Article 521 *bis*

(Repealed)

SUBCHAPTER 2. On criminal offences against freedom of conscience, religious feelings and respect for the dead**Article 522**

The punishment of a fine from four to ten months shall be incurred by:

1. Those who, by means of violence, intimidation, force or any other unlawful imposition, prevent a member or members of a religious confession from carrying out the acts inherent to the belief they profess, or from attending these.
2. Those who, by the same means, force another or others to practice or to attend to acts of worship or rites, or to carry out acts that reveal whether or not they profess a religion, or to change the religion they profess.

Article 523

Whoever, by violence, intimidation, tumultuous deed or by imposition, were to prevent, interrupt or disturb the acts, functions, ceremonies or manifestations of religious confessions registered on the relevant public register at the Ministry of Justice and Internal Affairs, shall be punished with a sentence of imprisonment of six months to six years, if the deed were committed at the place of worship, and with that of a fine from four to ten months if perpetrated anywhere else.

Article 524

Whoever perpetrates profane acts that offend the feelings of a legally protected religious confession in a temple or place of worship, or at religious ceremonies, shall be punished with a sentence of imprisonment of six months to one year or a fine from twelve to twenty- four months.

Article 525

1. Whoever, in order to offend the feelings of the members of a religious confession, publicly disparages the dogmas, beliefs, rites or public ceremonies thereof, verbally or



in writing, or insult, also publicly, those who profess or practice these, shall incur the punishment of a fine from eight to twelve months.

2. The same penalties shall be incurred by those who publicly disparage, verbally or in writing, those who do not profess any religion or belief whatsoever.

Article 526

Whoever, lacking due respect for the memory of the dead, breaches tombs or sepulchres, desecrate a corpse or its ashes or, in order to outrage destroys, alters or damages the funerary urns, pantheons, headstones or niches, shall be punished with a sentence of imprisonment of three to five months or a fine from six to ten months.

SUBCHAPTER 3. On criminal offences against the duty to serve substitute social service

(Repealed)

Article 527

(Without content)

Article 528

(Repealed)

CHAPTER V

On criminal offences committed by civil servants against constitutional guarantees

SUBCHAPTER 1. On criminal offences committed by civil servants against individual liberties

Article 529

1. A Judge or Magistrate who delivers a criminal case to another authority or officer, either military or administrative, that unlawfully claims it, shall be punished with the penalty of special barring from public employment and office for a term of six months to two years.

2. If a detained person is also handed over, the higher degree punishment shall be imposed on him.

Article 530

An authority or public officer who, in the course of criminal proceedings, were to order, enforce or prolong any deprivation of freedom of a detainee, prisoner or convict, with breach of the terms or other constitutional or legal guarantees, shall be punished with the penalty of special barring from public employment and office for a term from four to eight years.

Article 531

An authority or public officer who, in the course of criminal proceedings, were to order, enforce or prolong the solitary confinement of a detainee, prisoner or convict, with breach of the terms or other constitutional or legal guarantees, shall be punished with



the penalty of special barring from public employment and office for a term from two to six years.

Article 532

Should the deeds described in the preceding two Articles be committed due to gross negligence, they shall be punished with the penalty of suspension from public employment and office for a term of six months to two years.

Article 533

Officers of penitentiary, correctional or protection centres for minors who impose undue punishment or privations on the detainees or inmates, or who treat them with unnecessary strictness, shall be punished with the penalty of special barring from public employment and office for a term from two to six years.

SUBCHAPTER 2. On criminal offences committed by civil servants against the inviolability of the home and other guarantees of privacy

Article 534

1. An authority or public officer who acts as follows, in the course of criminal proceedings and without respecting the constitutional or legal guarantees, shall be punished with the penalties of a fine from six to twelve months and special barring from public employment and office from two to six years:

1. Who enters a dwelling without the consent of the dweller;
2. Who searches the papers or documents of a person or belongings found in his dwelling, unless the owner has freely provided his consent.

If he does not return the papers, documents and belongings searched to their owner immediately after the search, the penalties shall be those of special barring from public employment and office from six to twelve years and a fine of twelve to twenty-four months, without prejudice to the punishment to which he may be subject for misappropriation.

2. An authority or public officer who, when lawfully searching papers, documents or belongings of a person, commits any unlawful humiliation or unnecessary damage to his belonging, shall be punished with the penalties foreseen for these deeds, imposed in the upper half, and also with the punishment of special barring from public employment and office for a term from two to six years.

Article 535

An authority or public officer who, in the course of criminal proceedings, intercepts any kind of private postal or telegraphic correspondence, in breach of the constitutional or legal guarantees, shall incur the punishment of special barring from public employment and office from two to six years.

Should he disclose or reveal the information obtained, the punishment shall be imposed of special barring, in its upper half, and also a fine from six to eighteen months.

Article 536

Such an authority, civil servant or agent thereof who, in the course of criminal proceedings, intercepts telecommunications or uses technical tapping devices to listen, transmit, record or play sound, image or any other communication signal, in breach of the constitutional or legal guarantees, shall incur the punishment of special barring from public employment and office for two to six years.

Should he disclose or reveal the information obtained, the penalties of special barring, in the upper half and also a fine from six to eighteen months shall be imposed.

SUBCHAPTER 3. On criminal offences committed by civil servants against other individual rights**Article 537**

An authority or public officer who prevents or hinders a detainee or prisoner in the exercise of his right to legal counsel, who attempts or favours his renunciation to such counsel, or does not immediately inform him of his rights and of the reasons for his arrest in an understandable way, shall be punished with the penalty of a fine from four to ten months and special barring from public employment and office of two to four years.

Article 538

An authority or public officer who establishes prior censorship or, outside the cases permitted by the Constitution and the Laws, seizes editions of books or newspapers or suspends their publication or the broadcast of any radio or television programme, shall incur the punishment of absolute barring from six to ten years.

Article 539

An authority or public officer who dissolves or suspends the activities of a legally constituted association without prior court order, or without a lawful cause to prevent it from holding its sessions, shall be punished with the penalty of special barring from public employment and office from eight to twelve years and a fine from six to twelve months.

Article 540

An authority or public officer who prohibits a peaceful meeting or dissolves it outside the cases specifically allowed by the laws shall be punished with the penalty of special barring from public employment and office from four to eight years and a fine from six to nine months.

Article 541

An authority or public officer who confiscates personal property outside the cases permitted and without fulfilling the legal requisites, shall incur the penalties and special barring from public employment and office of one to four years and a fine from six to twelve months.



Article 542

An authority or civil servant who knowingly prevents a person from exercising other civil rights recognised by the Constitution and the Laws shall incur the punishment of special barring from public employment and office for a term of one to four years.

CHAPTER VI
On offending Spain

Article 543

Verbal or written criminal offences or outrages, or those by action, against Spain, its Autonomous Communities or the symbols or emblems thereof, perpetrated with publicly, shall be punished with the penalty of a fine for seven to twelve months.

TITLE XXII

Criminal offences against public order

CHAPTER I

Sedition

Article 544

Conviction for sedition shall befall those who, without being included in the criminal offence of rebellion, public and tumultuously rise up to prevent, by force or outside the legal channels, application of the laws, or any authority, official corporation or public officer from lawful exercise of the duties thereof or implementation of the resolutions thereof, or of administrative or judicial resolutions.

Article 545

1. Those who have induced, sustained or directed the sedition or who appear as the main doers thereof, shall be punished with a sentence of imprisonment from eight to ten years, and with that ten to fifteen years if they are persons with the status of an authority. In both cases, absolute barring for the same term shall also be imposed.

2. Apart from those cases, a punishment from four to eight years' imprisonment and of special barring from public employment and office for a term from four to eight years shall be imposed.

Article 546

The terms set forth in Article 474 are applicable to the case of sedition when this has not been organised with known leaders.

Article 547

In the event of the sedition not having managed to seriously interfere with exercise of the public authority nor having caused commission of another criminal offence for which the Law prescribes serious penalties, the Judges or Courts of Law shall lower the penalties stated in this Chapter by one or two degrees.

Article 548

Provocation, conspiracy and solicitation of sedition shall be punished with the penalties lower by one or two degrees to those respectively foreseen, except if the sedition takes place, in which case it shall be punished with the penalty set forth in Section 1 of Article 545, and its perpetrators shall be deemed promoters.

Article 549

The provisions contained in Articles 479 to 484 are also applicable to the criminal offence of sedition.



CHAPTER II

On assaults on the Authority, its agents and civil servants, and on resistance and disobedience

Article 550

1. Those who attack or, with serious intimidation or violence, offer serious resistance to the Authority, its agents or public servants, while they are performing the duties of their office, or on occasion of such duties, shall be convicted of assault.

Attacks against teachers and medical practitioners who are civil servants whilst performing the duties of their office, or on occasion of such duties, shall in all cases be considered assault.

2. Assault shall be punished with a prison sentence of one to four years and a fine of three to six months if the attack is against an authority, and in any other case with a prison sentence of six months to three years.

3. Notwithstanding the provisions of the preceding Section, if the authority on which the attack was made is a member of the Government, the Cabinets of the Autonomous Regions, the Chamber of Deputies, the Senate or Legislative Assemblies of the Autonomous Regions, Local Authorities, the General Council of the Judiciary, a Magistrate of the Constitutional Court, a judge, magistrate or member of the Public Prosecution Service, a prison sentence of one to six years and a fine of six to twelve months shall be imposed.

Article 551

Penalties of one degree higher to those respectively foreseen in the preceding Article shall be imposed if any of the following circumstances concurs in the assault:

1. If weapons or other dangerous objects are used;
2. If the act of violence committed potentially endangers the life of persons or may cause serious injury. In particular, the cases of throwing blunt objects or flammable liquids, fire and the use of explosives are included;
3. If the authority, agent or public officer is attacked using a motor vehicle;
4. If the deeds are carried out during a riot, protest or collective incident within a prison.

Article 552

(Repealed)

Article 553

Provocation, conspiracy and solicitation of any of the criminal offences foreseen in the preceding Articles shall be punished with the penalty lower by one or two degrees to that for the relevant criminal offence.

Article 554

1. The deeds described in Articles 550 and 551 shall also be punished with the penalties outlined therein if they are committed against a member of the Armed Forces who, while in uniform, is providing a service legally entrusted to him.

2. The same penalties shall be imposed on those who, employing violence or intimidation, attack the persons who come to the aid of the authority, its agents or officers.

3. The penalties outlined in Articles 550 and 551 shall also be imposed upon those who attack, employ violence or seriously intimidate:

- a) Firemen, healthcare personnel or emergency responders who are acting in the event of an accident, public disaster or emergency situation, with the purpose of preventing them from carrying out their duties of office;
- b) Duly identified private security personnel, who are carrying out activities of private security in cooperation and under the command of the State Security Forces and Corps.

Article 555

(Repealed)

Article 556

1. Those who, without being included under Article 550, resist the authority or its agents, or seriously disobey them, while carrying out the duties of office, or duly identified private security personnel who are carrying out activities of private security in cooperation and under the command of the State Security Forces and Corps shall be punished with a prison sentence of three months to one year or a fine of six to eighteen months.

2. Those who lack due respect and consideration towards an authority, while carrying out the duties of office, shall be punished with a fine of one to three months.

CHAPTER III

On public disorders

Article 557

1. Those who, acting as a group or individually but with the support of such a group, disturb the public peace by perpetrating acts of violence against persons or things, or by threatening others to do so, shall be punished with a prison sentence of six months to three years.

These penalties shall be imposed without prejudice to those that could correspond to the specific acts of violence or threats carried out.

2. The same penalties shall be imposed on those who exercise upon the group or its individuals by inciting them to carry out the actions described in the preceding Section or by reinforcing their willingness to do so.

Article 557 bis

The deeds described in the preceding Article shall be punished with a prison sentence of one to six years if any of the following circumstances concurs:

- 1. If any of the individuals participating in the criminal offence is carrying a weapon or another dangerous instrument, or brandishes a simulated firearm;



2. If the act of violence committed potentially endangers the life of persons or may cause serious injury. In particular, the cases of throwing blunt objects or flammable liquids, fire and the use of explosives are included;
3. If the deeds are carried out during a demonstration or mass meeting, or on the occasion of any of them;
4. If acts of pillage are carried out;
5. If the offender avails himself of his status as an authority, agent or public officer thereof;
6. If the offender's face is concealed when carrying out the deeds, thus hindering identification of the perpetrator.

These penalties shall be imposed without prejudice to those that could correspond to the specific acts of violence, threats or pillage carried out.

Article 557 *ter*

1. Those who, acting as a group or individually but with the support of such a group, against the will of its owner, invade or occupy the domicile of a public or private legal person, a firm, office, establishment or premises, even if they are open to the public, and in this manner cause a significant disruption of the public peace and to the normal activity of the aforementioned places, shall be punished with a prison sentence of three to six months or a fine of six to twelve months, unless otherwise punished with a more severe penalty in another provision of this Code.

2. The deeds shall be punished with a penalty of the higher degree when circumstances 1, 3, 4 or 5 of Article 557 bis concur.

Article 558

Those who seriously disturb order at the hearing of a court or tribunal, at public acts inherent to any authority or corporation, of an electoral college, public office or establishment, educational centre, or when sports or cultural events are held, shall be punished with a sentence of imprisonment from three to six months or a fine from six to twelve months. In these cases, the punishment of barring to attend places, events or shows of the same kind for a term up to three years longer than a sentence of imprisonment imposed may be handed down.

Article 559

The distribution or public dissemination, by any means, of messages or slogans that incite the perpetration of any of the criminal offences related to disturbing the public order provided for in Article 557 bis of the Penal Code, or those that reinforce the decision to carry out such criminal offences, shall be punished with a prison sentence of three months to one year.

Article 560

1. Those who were to cause damage that interrupts, obstructs or destroys telecommunications lines or installations or postal correspondence, shall be punished with a sentence of imprisonment from one to five years.

2. The same punishment shall be incurred those who cause damage to railways or cause serious damage to railway traffic in any of the manners foreseen in Article 382.

3. The same punishment shall be imposed on those who damage the water, gas or electricity pipes or lines to inhabited areas, interrupting or seriously altering the supply or service thereof.

Article 561

Whoever falsely claims or simulates a situation of danger for the community or an accident as a result whereof it is necessary to provide aid to another, and in such a manner provokes the mobilisation of the police, assistance or rescue services, shall be punished with a prison sentence of three months and one day to one year or a fine of three to eighteen months.

CHAPTER IV

Common provision to the preceding Chapters

Article 562

Should the person committing any of the criminal offences stated in the preceding Chapters of this Title be an established authority, the punishment of barring that is foreseen in each case shall be substituted by that of absolute barring for a term of ten to fifteen years, except if that circumstance is specifically considered in the criminal definition concerned.

CHAPTER V

On owning, trafficking and deposit of weapons, ammunition or explosives

Article 563

Possessing prohibited weapons and those obtained by material alteration of the manufacturing features of regulated firearms shall be punished with a sentence of imprisonment from one to three years.

Article 564

1. Possessing regulated firearms while lacking the necessary licences or permits shall be punished:

1. With a sentence of imprisonment from one to two years for handguns;
2. With a sentence of imprisonment of six months to one year for long firearms;

2. The criminal offences defined in the preceding Section shall be punished, respectively, by prison sentences of two to three years and from one to two years, if any of the following circumstances concurs:

1. If the weapons lack factory marks or serial numbers, or have these altered or obliterated;
2. Which have been unlawfully imported into Spain;
3. Which have been transformed, modifying their original characteristics.

**Article 565**

The Judges or Courts of Law may lower the penalties stated in the preceding Articles by one degree, as long as the circumstances of the fact and of the offender prove the lack of intention to use the weapons for unlawful purposes.

Article 566

1. Those who manufacture or market arms or ammunition or set up depots for these that are not authorised by law or the competent authority shall be punished:

1. In the case of weapons or ammunition for warfare or chemical, biological or radiological weapons or anti-personnel mines or cluster munitions, with a prison sentence of five to ten years for the promoters and organisers, and with a prison sentence of three to five years for those who have co-operated in forming them;

2. In the case of regulated firearms or the ammunition for these, with a prison sentence of two to four years for the promoters and organisers, and a prison sentence of six months to two years for those who have co-operated in forming them;

3. The same penalties shall be applied, in the respective cases, to trafficking in weapons and ammunition for war or defence, in chemical, biological, nuclear or radiological weapons or anti-personnel mines or cluster munitions.

2. The penalties set forth in Sub-Section 1 of the preceding Section shall be imposed on those who develop or use chemical, biological, nuclear or radiological weapons or anti-personnel mines or cluster munitions, who commence military preparations to use them, or do not destroy them in breach of the international treaties or conventions to which Spain is a party.

Article 567

1. A depot of weapons for war is deemed to include manufacturing, trafficking or possession of any such weapons, regardless of the model or class thereof, even when they are in disassembled components. A depot of chemical, biological, nuclear or radiological weapons or anti-personnel mines or cluster munitions shall be deemed to include manufacturing, trafficking or possession thereof.

The firearms depot, in its aspect of trafficking, includes both acquisition as well as disposal.

2. Arms for warfare are deemed to be those determined as such in the provisions regulating national defence. Chemical, biological, nuclear or radiological weapons, anti-personnel mines or cluster munitions are deemed to be those defined as such in the international treaties or conventions to which Spain is a party.

Development of chemical, biological, nuclear or radiological weapons, anti-personnel mines or cluster munitions is construed to be any activity consisting of research or study of a scientific or technical nature aimed at creation of a new chemical, biological, nuclear or radiological weapon, anti-personnel mine or cluster munitions or modification of existing ones.

3. A depot of regulated firearms is deemed to include manufacturing, trading or gathering five or more of those weapons, even when they are in disassembled components.

4. Regarding ammunition, the Judges and Courts of Law, taking into account the quantity and class thereof, shall declare whether or not they constitute a depot for the purposes of this Chapter.

Article 568

Possession or having a depot of explosive, flammable, incendiary or asphyxiating substances or devices, as well as their manufacturing, trafficking or transport, or supply in any way not authorised by the laws or the competent authority, shall be punished with a sentence of imprisonment from four to eight years, for their promoters and organisers, and with a sentence of imprisonment of three to five years for those who have co-operated in forming them.

Article 569

Depots of arms, munitions or explosives established in name or on behalf of an association with criminal purposes shall lead to it being declared unlawful by the court and to its consequential dissolution.

Article 570

1. In the cases foreseen in this Chapter, the punishment of deprivation of the right to own and carry weapons for a term exceeding three years may be handed down in a sentence of imprisonment imposed.

2. Likewise, should the convict be authorised to manufacture or trade in any one or number of substances, arms and ammunition mentioned therein, in addition to the penalties stated, he shall also suffer special barring from exercise of his industry or trade for a term of twelve to twenty years.

CHAPTER VI

On criminal organisations and groups

Article 570 bis

1. Whoever promotes, constitutes, organises, co-ordinates or directs a criminal organisation shall be punished with a prison sentence of four to eight years, if it has the purpose or object of committing serious criminal offences, and with a prison sentence of three to six years in other cases; and whoever actively participates in the organisation, forms part thereof or co-operates financially or in any other way therein, shall be punished with a prison sentence of two to five years if its purpose is to commit serious criminal offences, and with a prison sentence of one to three years in other cases.

For the purposes of this Code, a criminal organisation is construed to be a group formed by more than two persons, on a stable basis or for an indefinite term, in collusion and co-ordination to distribute diverse tasks or duties in order to commit criminal offences.



2. The penalties foreseen in the preceding Section shall be imposed in the upper half if the organisation:

- a) is formed by a large number of persons;
- b) possesses weapons or dangerous instruments;
- c) has advanced technological resources for communication or transport that, due to the characteristics thereof, are especially fit to facilitate commission of the criminal offences or the impunity of the offenders.

Should two or more of those circumstances concur, the higher degree penalties shall be imposed.

3. The upper half of the penalties respectively foreseen in this Article shall be imposed if the criminal offences are against the life or integrity of persons, liberty, sexual freedom and indemnity, or involve trafficking in human beings.

Article 570 *ter*

1. Whoever constitutes, finances or forms a criminal group shall be punished:

- a) If the purpose of the group is to commit the criminal offences mentioned in Section 3 of the preceding Article, with a prison sentence of two to four years for one or more serious criminal offences and with a prison sentence of one to three years for less serious criminal offences;
- b) With a prison sentence of six months to two years if the purpose of the group is to commit any other serious criminal offence;
- c) With a prison sentence of three months to one year when the aim is to commit one or several less serious criminal offences not included in Section a) or reiterated commission of petty criminal offences.

For the purposes of this Code, a criminal group shall be construed as the collusion of more than two persons who, without fulfilling any or a number of the characteristics of a criminal organisation defined in the preceding Section, has the purpose or object of perpetrating criminal offences in collusion.

2. The penalties foreseen in the preceding Section shall be imposed in the upper half if the group:

- a) is formed by a large number of persons;
- b) has weapons or dangerous instruments;
- c) has advanced technological resources for communication or transport that, due to the characteristics thereof, are especially fit to facilitate commission of the criminal offences or the impunity of the offenders.

If two or more of those circumstances concur, the higher degree penalties shall be imposed.

Article 570 *quater*

1. In the cases foreseen in this Chapter and the following one, the Judges and Courts of Law shall order dissolution of the organisation or group and, if appropriate, any other of the consequences of Articles 33.7 and 129 of this Code.

2. Those responsible for the conduct described in the preceding two Articles, in addition to the penalties foreseen therein, shall be subject to that of special barring from all economic activities or legal transactions related to the activity of the criminal organisation or group, or to their deed within these, for a time exceeding that of the term of the custodial sentence imposed by six to twenty years, as appropriate, proportionally to the seriousness of the criminal offence, the number of those committed and the circumstances of the offender.

In all cases, when the conduct foreseen in those Articles is included under another provision of this Code, the terms set forth in rule 4 of Article 8 shall apply.

3. The provisions of this Chapter shall be applicable to all criminal organisations or groups that perpetrate any criminally relevant deed in Spain, even if they have been formed, are based or perpetrate the activity thereof abroad.

4. The Judges or Courts of Law, giving the reasons in their judgement, may impose a lower punishment by one or two degrees on the person responsible for any of the criminal offences foreseen in this Chapter, as long as the subject has voluntarily quit his criminal activities and has actively collaborated with the authorities or the agents thereof either to obtain decisive evidence for the identification or capture of others who are responsible or to prevent the activities or furtherance of the organisations or groups to which they have belonged or to prevent a criminal offence being committed within or through those organisations or groups.

CHAPTER VII

On terrorist organisations and groups and on criminal offences of terrorism

Section 1: On terrorist organisations and groups

Article 571

For the purposes of this Code, terrorist organisations or groups shall be deemed those groupings that, fulfilling the characteristics respectively established in the Second Paragraph of Section 1 of Article 570 and in the Second Paragraph of Section 1 of Article 570 ter, have the purpose or object committing any of the criminal offences foreseen in the following Section.

Article 572

1. Whoever promotes, forms, organises or directs a terrorist organisation or group shall be punished with imprisonment from eight to fourteen years and special barring from public employment and office for a term from eight to fifteen years.

2. Whoever actively participates in the organisation or group, or forms part thereof, shall be punished with imprisonment from six to twelve years and special barring from public employment and office for a term from six to fourteen years.

Section 2: On criminal offences of terrorism

Article 573

1. The commission of any serious criminal offence against the life or physical integrity, liberty, moral integrity, sexual freedom and indemnity, the heritage, natural resources



or the environment, public health, of catastrophic risk, arson, against the Crown, of attack with a weapon or the holding, trafficking and depositing of weapons, ammunition or explosives, foreseen in this Code, and the seizure of aircraft, ships or other means of collective transport of persons or goods, shall be deemed criminal offences of terrorism if they are carried out for any of the following purposes:

1. Subverting the constitutional order, or suppressing or seriously upsetting the functioning of the political institutions or the State's social or economic structures or of obliging the public authorities to carry out a deed or to abstain therefrom,
2. Gravely altering the public peace;
3. Seriously upsetting the functioning of an international organisation;
3. Provoking a state of terror amongst the population or part thereof.

2. The computer criminal offences defined in Articles 197 bis and 197 ter and 264 to 264 quarter shall also be deemed terrorist criminal offences if the deeds are committed for some of the purposes indicated in the preceding Section.

3. The other criminal offences defined in this Chapter shall also be deemed terrorist criminal offences.

Article 573 bis

1. The criminal offences of terrorism to which Section 1 of the preceding Article refers shall be punished with the following penalties:

1. Sentence of imprisonment of the maximum duration foreseen in this Code if the death of an individual ensues;
2. Sentence of imprisonment from twenty years to twenty-five years if, in cases of kidnapping or unlawful detention, the whereabouts of an individual are not provided;
3. Sentence of imprisonment from fifteen to twenty years if an abortion as defined in Article 144 follows or if the bodily harm defined in Articles 149,150,157 or 158 ensues or the kidnapping of an individual or the widespread damage or fire as foreseen in Articles 346 and 351, respectively, ensue.
4. Sentence en imprisonment from ten to fifteen years if any other bodily damage is caused or if an individual is unlawfully detained or is threatened or coerced.
5. And with the penalty foreseen for the criminal offence perpetrated in the upper half, even including the one higher in degree, if any of the criminal offences to which Section 1 of the preceding Article is involved.

2. The penalties shall be imposed in the upper half if the deeds are perpetrated against the persons mentioned in Section 3 of Article 550 or against members of the Police and Security Forces, the Armed Forces or public officials in the prison service.

Article 574

1. Depots of arms or ammunition or possession or storage of explosive, flammable, incendiary or asphyxiating substances or devices, or of the components thereof, as well as their manufacture, trafficking, transport or supply in any way, or merely placing or using those substances or the appropriate means or devices, shall be punished with

a sentence of imprisonment from eight to fifteen years when those acts are committed for any of the purposes described in Section 1 of Article 573.

2. The penalty of imprisonment from ten to twenty years shall be imposed if nuclear, radiological, chemical or biological weapons, substances or devices are involved or any other with a similar destructive capacity.

3. Whoever develops chemical or biological weapons or seizes, possesses, transports, provides to others or manipulates nuclear materials, radioactive elements or material or equipment producing ionizing radiation with the purposes described in Section 1, shall also be punished with a sentence of imprisonment from ten to twenty years.

Article 575

1. Whoever with the purpose of becoming skilled in carrying out any of the criminal offences defined in this Chapter were to receive military or combat indoctrination or training or in techniques to develop chemical or biological weapons, or to elaborate or prepare explosive, inflammable, incendiary or suffocating substances or devices or specifically directed at facilitating the commission of such criminal offences shall be punished with a sentence of imprisonment from two to five years.

2. The same punishment shall be imposed on whoever, with the same purpose of becoming skilled in the perpetration of any of the criminal offences described in this Chapter, carries out by himself any of the activities foreseen in the previous Section.

It shall be deemed that this criminal offence is committed by whoever, with the same purpose, habitually accedes one or more communication services accessible to the public online or to contents accessible via the Internet or to an electric communication service whose contents are directed at or are appropriate for inciting to joining a terrorist organisation or group or to collaborate with any of them or with the purposes thereof. The deeds shall be construed as committed in Spain if access to the contents thereto has been secured within Spanish territory.

Likewise, it shall be deemed that this criminal offence is committed by whoever, with the same purpose, acquires or has in his possession documents directed at or that, due to the content thereof, are appropriate to incite to join a terrorist organisation or group or to collaborate with any of them or with the purposes thereof.

3. The same penalty shall be imposed on whoever, for the same purpose, or to collaborate with a terrorist organisation or group or to perpetrate any of the criminal offences comprised within this Chapter, were to travel to or secure abode in a foreign territory controlled by a terrorist organisation or group.

Article 576

1. Whoever by any means, directly or indirectly, collects, acquires, possesses, uses, converts, conveys or carries out any activity with goods or securities intending them to be used, or knowing they shall be used, fully or partially to commit any of the criminal offences included in this Chapter or to deliver them to a terrorist organisation or group, shall be punished with a prison sentence of five to ten years and a fine from three to five months the value thereof.



2. Should the goods or securities actually be put at the disposal of the offender of the criminal offence of terrorism, the higher degree penalty may be imposed. Should they eventually be used to execute specific acts of terrorism, the deed shall be punished as co-perpetration or complicity, as appropriate.

3. In the case that the deed to which Section 1 refers has been carried out attacking the heritage or by extortion, documentary forgery or through the commission of any other criminal offence, the latter shall be punished with the higher degree penalties applicable, apart from imposing, in addition, the penalty foreseen in the preceding Sections.

4. Whoever, being specifically obliged by law to collaborate with the authorities in the prevention of terrorism financing activities, gives rise, due to gross negligence in the fulfilment of those obligations, to any of the conducts described in Section 1 not being detected or prevented, shall be punished with a penalty lower in one or two degrees to that foreseen herein.

5. If, pursuant to the terms established in Article 31 bis of this Code, a legal person is responsible for the criminal offences defined in this Article, it shall have the following penalties imposed thereon:

- a) Fine from two to five years, if the criminal offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;
- b) Fine from one to three years, if the criminal offence committed by a natural person has a punishment foreseen of more than two years' custodial sentence not included in the preceding Sub-Section.

Pursuant to the rules established in Article 66 bis of this Code, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

Article 577

1. A punishment by imprisonment from five to ten years and a fine of eighteen to twenty-four months shall be handed down to whoever carries out, procures or facilitates any deed of collaboration with the activities or purposes of a terrorist organisation or group or to commit any of the criminal offences comprised in the Chapter.

Deeds of collaboration include information on or surveillance of persons, property or installations; construction, conditioning, assignment or use of accommodation or storage facilities; concealment, hosting or transport of individuals related to terrorist organisations or groups; organisation of training practices or attending them, the provision of technological services and, in general, any other equivalent form of co-operation or assistance with the activities of terrorist organisations or groups or with persons to which the preceding Paragraph refers..

When the information or surveillance of persons mentioned in the preceding Paragraph endangers the life, physical integrity, liberty or property thereof, the punishment shall be imposed as foreseen in Section 1, in the upper half. Should any of these legal goods be affected the deed shall be punished as co-perpetration or complicity, as appropriate.

2 The penalties foreseen in the previous Section shall be imposed on whoever carries out the recruiting, indoctrination or training activities directed at or that, due to the contents thereof, are appropriate to incite joining a terrorist organisation or group or to perpetrate any of criminal offences comprised in this Chapter.

The penalties shall be imposed in the upper half and may even one degree higher, if the deeds foreseen in this Section have been directed at minors or persons with disabilities requiring special protection or at women trafficked with the purpose of converting them into spouses, partners or sex slaves of the perpetrators, in addition to imposing the penalties for the criminal offences against sexual freedom perpetrated.

3. If the collaboration with the activities or the purposes of a terrorist organisation or group or the perpetration of any of the criminal offences comprised in this Chapter has occurred due to gross diligence the penalty of six to eighteen months of imprisonment and a fine from six to twelve months shall be imposed.

Article 578

1. Public praise or justification of the criminal offences comprised in Articles 572 to 577 or of those who have participated in the perpetration thereof or the perpetration of deeds that involve discredit, disdain or humiliation of the victims of terrorist criminal offences or the relatives thereof shall be punished with a penalty of one to three years' imprisonment and a fine from twelve to eighteen months. The judge may also order in the sentence, during the period he may indicate, any or some of the prohibitions foreseen in Article 57.

2. The penalties foreseen in the previous Section shall be imposed in the upper half when the deeds have been carried out through the dissemination of services or contents accessible to the public through the media, the Internet, or electric communication media or using information technologies.

3. If the facts of the case, in the light of the circumstances, are capable of gravely altering the public peace or of generating a serious feeling of insecurity or fear in society or part thereof the penalty shall be imposed in the upper half and may be increased until the higher degree penalty.

4 The judge or court shall order the destruction, erasure or disablement of the books, archives, documents, articles or any other supporting material of the medium through which the criminal offence was committed. If perpetrated using information and communication technologies the withdrawal of the contents shall be ordered.

If the facts have been perpetrated through services or contents accessible via the Internet or electronic communication, the judge or court may order the providers of hosting services to withdraw the unlawful contents, for search engines to remove the links directing to them and to the providers of electronic communication services to impede access to the unlawful contents or services provided any of the following circumstances concurs:

- a) If the measure is proportionate in the light of the circumstances and of the importance of the information and necessary to avoid the dissemination thereof;



- b) If exclusively or mainly the contents to which the preceding Sections refer are disseminated.

5 The measures foreseen in the previous Section may also be ordered by the investigating judge as a precautionary measure during the investigation of the case.

Article 579

1. Whoever, through any medium, publicly disseminates messages or instructions whose purpose is to incite or that due to the contents thereof may incite the commission of any of the criminal offences comprised in this Chapter shall be punished with the penalty lower in one or two degrees to that foreseen for the relevant criminal offence.

2. The same penalty shall be imposed on whoever publicly or before several people, incites others to perpetrate any of the criminal offences of this Chapter, as well as on whoever solicits a person to commit any such a criminal offence.

3. The remaining deeds of provocation, conspiracy and proposition to commit any of the criminal offences foreseen in this Chapter shall be punished with the penalty lower in one or two degrees to the one established for the deeds foreseen in this Chapter.

4. In the cases foreseen in this Article, the judges and courts may adopt the measures foreseen in Sections 4 and 5 of the preceding Article.

Article 579 bis

1. Those responsible for the criminal offences foreseen in this Chapter, without prejudice to the relevant penalties under the preceding Articles, shall also be punished with the penalty of absolute barring and special barring from an educational profession or activity, in the teaching, sport and free time spheres, for a time exceeding that of the term of the custodial sentence duly imposed in the judgment by six to twenty years, proportionally in view of the seriousness of the criminal offences, the number committed and the circumstances of the criminal.

2. Those convicted to serious custodial sentences for one or more criminal offences included in this Chapter shall also have a measure of probation from five to ten years imposed, and one to five years if the sentence of imprisonment is less serious. Notwithstanding the foregoing, in the case of a single criminal offence that is not serious committed by a first time offender, the Court of Law may hand down the probation measure or not, in view of the lesser or greater dangerousness of the offender.

3. In the criminal offences foreseen in this Subchapter, the Judges and Courts of Law may impose, giving the reasons in the judgement, a punishment lower by one or two degrees to that set down for the criminal offence concerned, when the subject has voluntarily quitted his criminal activities and has appeared before the authorities to confess the deeds in which he has participated and has also collaborated actively with the authorities to prevent the criminal offence taking place or effectively aids the obtaining of decisive evidence to identify or capture the others who are responsible, or to prevent the activity or development of the terrorist organisations or groups to which he has belonged, or with which he has collaborated.



4 The Judges and Courts of Law may, giving the reasons, in the light of the specific circumstances, impose a penalty lesser in one or two degrees to those set out in this Chapter for the relevant criminal offence, if the deed is objectively of lesser importance, in view of the method employed or the result produced.

Article 580

In all criminal offences of terrorism, a conviction by a foreign judge or court shall be equivalent to judgements by Spanish judges or courts for the purposes of application of the aggravating circumstance of recidivism.



TITLE XXIII

On criminal offences of treason and against the peace or independence of the State and those referring to National Defence

CHAPTER I

Criminal offences of treason

Article 581

A Spaniard who induces a foreign power to declare war on Spain, or who makes arrangements with it to the same end, shall be punished with a sentence of imprisonment from fifteen to twenty years.

Article 582

A sentence of imprisonment from twelve to twenty years shall be handed down to:

1. Spaniards who facilitate the entry of the enemy to Spain, the taking of a town, military post, ship or aircraft of the State or quartermasters' or arms warehouses or depots;
2. Spaniards who persuade or encourage Spanish troops, or those serving Spain, to join the enemy ranks, or to desert from their flags while on campaign;
3. Spaniards who recruit persons or supply weapons or other means that are effective to wage war on Spain, under enemy flags.

Article 583

A sentence of imprisonment from twelve to twenty years shall be handed down to:

1. Spaniards who take up arms against their Fatherland under enemy flags. Whoever acts as a leader or promoter, or who has any command or established authority, shall have the higher degree punishment imposed.
2. A Spaniard who supplies enemy troops funds, weapons, vessels, aircraft, assets or intendancy munitions or weaponry, or other direct means that are effective to wage hostilities against Spain, or who favours progress by the armed forces in a manner not included in the preceding Article;
3. A Spaniard who supplies the enemy with plans of fortresses, buildings or land, documents or news that lead directly to the same end of hostilities against Spain, or to favour progress by the enemy forces;
4. Spaniards who, in wartime, prevent Spanish troops receiving the aid stated in Sub-Section 2 or the data and news indicated in Sub-Section 3 of this Article.

Article 584

A Spaniard who, in order to favour a foreign power, association or international organisation, obtains, forges, deactivates or discloses information classified as reserved or secret, liable to damage national security or national defence, shall be punished, as a traitor, with a sentence of imprisonment from six to twelve years.

Article 585

Provocation, conspiracy and solicitation for any of the criminal offences foreseen in the preceding Articles of this Chapter shall be punished with a sentence of imprisonment lower by one or two degrees to that for the relevant criminal offence.

Article 586

An alien resident in Spain who were to commit any of the criminal offences included in this Chapter shall be punished with the lower degree punishment to that set for them, except as established in Treaties or by International Law with reference to the staff of diplomatic missions, consular posts and international organisations.

Article 587

The penalties stated in the preceding Articles of this Chapter are applicable to those who commit the criminal offences defined therein against a power allied to Spain, in the event of campaigning against a common enemy.

Article 588

A sentence of imprisonment from fifteen to twenty years shall be handed down to members of the Government who, without complying what is set forth in the Constitution, declare war or sign a peace agreement.

CHAPTER II**Criminal offences that compromise the peace or independence of the State****Article 589**

Whoever publishes or executes any order, provision or document in Spain of a foreign Government that attacks the independence or security of the State, that opposes obeying its laws or causes them to be breached, shall be punished with a sentence of imprisonment from one to three years.

Article 590

1. Whoever, by unlawful deeds or those that are not duly authorised, provokes or gives rise to a declaration of war against Spain by another power, or exposes Spaniards to abuse or retaliation against their persons or assets, shall be punished with a sentence of imprisonment from eight to fifteen years if an authority or officer, and from four to eight if not.

2. Should war not be declared, nor the abuse or retaliation take place, the respective punishment immediately below that set shall be imposed.

Article 591

Whoever, during a war in which Spain does not intervene, perpetrates any deed that compromises the neutrality of the State or breaches the provisions published by the Government to maintain such neutrality, shall be punished with the same penalties as those stated in the preceding Article.

**Article 592**

1. Those who, in order to damage the authority of the State or compromise the dignity or vital interests of Spain, maintain intelligence or relations of any kind with foreign governments, with the agents thereof, or with foreign or international groups, bodies or associations, shall be punished with a sentence of imprisonment from four to eight years.

2. Whoever perpetrates the deeds listed in the preceding Section with the intention of provoking a war or rebellion shall be punished pursuant to Articles 581, 473 or 475 of this Code as appropriate.

Article 593

A sentence of imprisonment shall be imposed from eight to fifteen years upon whoever breaches a truce or armistice agreed between the Spanish Nation and another enemy one, or between the armed forces thereof.

Article 594

1. A Spaniard who, in time of war, were to communicate or circulate false news or rumours aimed at damaging the prestige of the State or the interests of the Nation, shall be punished with imprisonment of six months to two years.

2. The same penalties shall be incurred by any alien who perpetrates any of the deeds included in the preceding Section in Spanish territory.

Article 595

Whoever, without a legally granted authorisation, raises up troops in Spain to serve a foreign power, whatever the object proposed or the nation hostilities are intended against, shall be punished with a sentence of imprisonment from four to eight years.

Article 596

1. Whoever, in time of war and in order to compromise the peace, security or the independence of the State, were to correspond with an enemy country or one occupied by its troops, when the Government has prohibited this, shall be punished with a sentence of imprisonment from one to five years. If the correspondence provides warnings or news that may be taken advantage of by the enemy, a sentence of imprisonment from eight to fifteen years shall be imposed.

2. The same penalties shall be incurred by whoever commits the criminal offences included in this Article, even though addressing the correspondence through a friendly or neutral country to circumvent the Law.

3. Should the accused aim to serve the enemy with his warnings or news, he shall be deemed to fall under Sub-Paragraphs 3 or 4 of Article 583.

Article 597

A Spaniard or alien who, being present in Spain, enters, or attempts to enter a foreign country when this has been prohibited by the Government, shall be punished with the penalty of a fine from six to twelve months.

CHAPTER III

On disclosure and revealing secrets and information on National Defence

SUBCHAPTER 1. On disclosure and revealing secrets and information on national defence

(Repealed)

Article 598

Whoever, without intending to favour a foreign power, obtains, reveals, forges or erases information legally classified as reserved or secret, related to national security or national defence, or on the technical means or systems used by the Armed Forces or industries of military interest, shall be punished with a sentence of imprisonment of one to four years.

Article 599

The punishment established in the preceding Section shall be applied in the upper half if any of the following circumstances concurs:

1. If the doer is the custodian or has knowledge of the secret or information due to his office or post;
2. If the disclosure consists of publicising the secret or information in any social media or in a way that ensures its diffusion.

Article 600

1. Whoever, without specific authorisation, were to produce plans or documentation related to military zones, installations or materials that have restricted access and the knowledge whereof is protected and reserved by information with the legal classification of reserved or secret, shall be punished with a sentence of imprisonment of six months to three years.

2. The same punishment shall apply to whoever has objects, information legally classified as reserved, or secret in his possession, related to national security or defence, without complying with the provisions established in the laws in force.

Article 601

Whoever, due to his office, commission or service, has in his possession or has official knowledge of objects or information legally classified as reserved or secret, or of military interest, related to national security or national defence and, due to gross negligence, gives rise to these becoming known to an unauthorised person or divulged, published or made void, shall be punished with a sentence of imprisonment of six months to one year.

Article 602

Whoever discovers, infringes, reveals, steals or uses information legally classified as reserved or secret related to nuclear energy, shall be punished with a sentence of imprisonment of six months to three years, except if the deed has a more serious punishment set for it by Law.



Article 603

Whoever destroys, makes void, forges or opens correspondence or documentation legally classified as reserved or secret without authorisation, related to national defence and that he has in his possession due to his office or post, shall be punished with a sentence of imprisonment from two to five years and special barring from public employment and office for a term of three to six years.

**SUBCHAPTER 2. On criminal offences against the duty to
perpetrate military service**

(Repealed)

Article 604

(Without content)



TITLE XXIV

Criminal offences against the International Community

CHAPTER I

Criminal offences against International Law

Article 605

1. Whoever kills a foreign Head of State, or another person internationally protected by a Treaty who is in Spain, shall be punished with permanent, revisable imprisonment.

2. Whoever were to cause the bodily harm defined in Article 149 to the persons mentioned in the preceding Section, shall be punished with a sentence of imprisonment from fifteen to twenty years.

If bodily harm foreseen in Article 150 is caused, the perpetrator shall be punished with a sentence of imprisonment from eight to fifteen years, and from four to eight years if any other injury.

3. Any other criminal offence committed against persons mentioned in the preceding Sections, or against local officers, the private residence or the means of transport of those persons, shall be punished with the penalties established in this Code for the respective criminal offences, in the upper half.

Article 606

1. Whoever violates the personal immunity of the Head of State of another country, or that of another person internationally protected by a Treaty, shall be punished with a sentence of imprisonment of six months to three years.

2. If the criminal offences included in this Article and the previous one do not have a reciprocal punishment established in the laws of the country of origin of the persons offended, the offender shall have the punishment to which the criminal offence is subject imposed, pursuant to the provisions of this Code, as if the person offended does not have the official status mentioned in the preceding Section.

CHAPTER II

Criminal offences of genocide

Article 607

1. Those who, aiming to fully or partially exterminate a national, ethnic, racial, religious or specific group determined by the disability of its members, commit any of the following deeds, shall be punished:

1. With permanent, revisable imprisonment, if they were to kill any of its members;
2. With permanent, revisable imprisonment, if they were to sexually assault any of its members or cause the bodily harm foreseen in Article 149;



3. With a prison sentence of eight to fifteen years, if they were to subject the group or any of its members to conditions of existence that endanger the life or seriously affect the health thereof, or if the bodily harm foreseen in Article 150 is caused;
 4. With the same punishment, if forcible transportation of the group or its members is carried out, if they adopt any measure aimed at preventing the lifestyle or procreation thereof, or if they forcibly transfer individuals from one group to another;
 5. With a prison sentence of four to eight years, if they were to cause any injury other than that stated in Sub-Paragraphs 2 and 3 of this Section.
2. In all cases, special barring from engaging in a profession or trade in education, in the field of teaching, sports and free time shall be imposed for a period of time greater than the prison sentence duly imposed in the judgement by between three and five years, proportionally in view of the seriousness of the criminal offence and the circumstances of the convict.

CHAPTER II BIS

On criminal offences against humanity

Article 607 *bis*

1. Conviction for criminal offences against humanity shall befall whoever commits the deeds foreseen in the following Section as part of a widespread or systematic attack on the civil population or against part thereof.

In all cases, committing such deeds shall be deemed a criminal offence against humanity when:

1. Due to the victim pertaining to a group or community persecuted for political, racial, national, ethnic, cultural, religious or another kind of reasons, disability, or other motives universally recognised as unacceptable under International Law;
 2. In the context of an institutionalised regime of systematic oppression and domination of a racial group over one or more racial groups and with the intention of maintaining such a regime.
2. Those convicted of criminal offences against humanity shall be punished:
1. With permanent, revisable imprisonment if they cause the death of any person;
 2. With a sentence of imprisonment from twelve to fifteen years if they commit rape, and from four to six years' imprisonment if the deed were to consist of any other type of sexual assault;
 3. With a sentence of imprisonment from twelve to fifteen years if the bodily harm of Article 149 were to ensue and from eight to twelve years' imprisonment if persons are subjected to conditions of existence that endanger the life or seriously affect their health thereof, or when they are caused the bodily harm foreseen in Article 150. A sentence of imprisonment from four to eight years shall be applied if they commit the bodily harm of Article 147;

4. With a sentence of imprisonment from eight to twelve years if they deport or forcibly transport one or more persons from one State or place to another, by expulsion or other acts of coercion without authorised reasons;

5. With a sentence of imprisonment from six to eight years if they were to forcibly make pregnant any woman in order to modify the ethnic composition of the population, without prejudice to the relevant punishment, as appropriate, for other criminal offences;

6. With a prison sentence of twelve to fifteen years for the forced disappearance of persons. Forced disappearance shall be construed as the apprehension, detention or kidnapping or any other form of deprivation of liberty by State agents or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by refusing to recognise said deprivation of liberty or concealment of the situation or whereabouts of the missing person, placing such a person outside the protection of the law;

7. With a sentence of imprisonment from eight to twelve years if they were to arrest a person, depriving him of his liberty, with breach of the international rules on arrest.

The punishment shall be imposed at a lower degree when the arrest lasts less than fifteen days;

8. With the punishment from four to eight years' imprisonment if they commit serious torture of persons they have under the custody or control thereof and of imprisonment from two to six years if less serious. For the purposes of this Article, torture shall be construed as submitting a person to physical or mental suffering. The punishment foreseen in this Sub-Section shall be imposed without prejudice to the relevant penalties, as appropriate, for the violations of other rights of the victim;

9. With a sentence of imprisonment from four to eight years if they commit any of the conducts related to prostitution defined in Article 187.1, and with that of six to eight years in the cases foreseen in Article 188.1. The punishment shall be imposed from six to eight years on whomever transports persons from one place to another with the intent to sexually exploit them, using violence, intimidation or deceit, or abusing a situation of superiority or need or the vulnerability of the victim. If the conduct foreseen in the preceding Section and in Article 188.1 is committed against minors or the disabled, the higher degree penalties shall be imposed;

10. With a sentence of imprisonment from four to eight years if any person is subjected to slavery or kept in servitude. The punishment shall be applied without prejudice to the appropriate ones for the specific violations committed against the rights of persons. Slavery shall be construed as the situation of a person over whom another exercises, albeit *de facto*, all and some of the attributes of the right of property, such as buying, selling, lending or exchanging such person.

3. In all the cases foreseen in the preceding Article, special barring from engaging in a profession or trade in education, in the field of teaching, sports and free time shall also be imposed for a period of time greater than the prison sentence duly imposed in the



judgement by between three and five years, proportionally in view of the seriousness of the criminal offence and the circumstances of the convict.

CHAPTER III

On criminal offences against protected persons and assets in the event of armed conflict

Article 608

For the purposes of this Chapter, the following are intended as protected persons:

1. The wounded, the sick or shipwrecked, and the medical or religious personnel protected by the First and Second Geneva Conventions dated on 12th August 1949, or the First Additional Protocol dated on 8th June 1977;
2. Prisoners of war protected by the Third Geneva Convention dated on 12th August 1949 or the First Additional Protocol dated on 8th June 1977;
3. The civilian population and individual civilian protected by the Fourth Geneva Convention dated on 12th August 1949 and by the First Additional Protocol dated on 8th June 1977;
4. Non-combatants and the personnel of the Protecting Power and its Substitute protected by the Geneva Conventions dated on 12th August 1949 or by the First Additional Protocol dated on 8th June 1977.
5. Parliamentarians and the persons accompanying them, protected by the Second Convention of The Hague dated on 29th July 1899;
6. The United Nations and associated personnel, protected by the Convention on the Safety of United Nations and Associated Personnel, dated on 9th December 1994;
7. Any others with that status by virtue of the Second Additional Protocol dated 8th June 1977, or any other international treaties to which Spain is a party.

Article 609

Whoever, during an armed conflict, physically abuses or seriously endangers the life, health or integrity of any protected persona, subjects him to torture or inhumane treatment, including biological experiments, causes him serious suffering or subjects him to any medical act that is not in keeping with his state of health, nor according to the generally recognised medical standards that the Party responsible would apply to its own nationals not detained under similar medical circumstances, shall be punished with a sentence of imprisonment from four to eight years, without prejudice to the punishment that might be appropriate for the damaging results caused.

Article 610

Whoever, during an armed conflict, uses or orders methods or means of combat that are prohibited or intended to cause unnecessary suffering or superfluous harm, as well as those conceived to cause, or that can be reasonably be expected to cause extensive, lasting and serious damage to the natural environment, compromising the health or survival of the population, or who orders all-out war, shall be punished with a sentence

of imprisonment from ten to fifteen years, without prejudice to the relevant punishment for the results caused.

Article 611

Whoever perpetrates the following deeds during an armed conflict shall be punished with a sentence of imprisonment from ten to fifteen years, without prejudice to the relevant punishment for the results caused:

1. Conducts or orders indiscriminate or excessive attacks or makes the civil population the target of attacks, retaliation or deeds or threats of violence, the main purpose whereof is to strike fear therein;
2. Destroys or damages, breaching the rules of International Law applicable to armed conflicts, the non-military ships or aircraft of an adversary or neutral party, unnecessarily and without allowing time or without adopting the necessary measures to provide for the safety of persons and conservation of the ship's papers;
3. Forces a prisoner of war or a civilian to serve, in any way, in the Armed Forces of the adversary, or deprives him of his right to a due and impartial process of law;
4. Deports, forcibly transports, takes hostage or unlawfully detains or confines any protected person or uses him to protect certain military locations, zones or forces from an attack by the adversary;
5. Transports and settles population from the side occupying, directly or indirectly, in the occupied territory, to reside there permanently;
6. Perpetrates, orders the carrying out or maintains, with regard to any protected person, practices of racial segregation and other inhumane and degrading practices based on other distinctions of an unfavourable nature, that amount to an outrage against personal dignity;
7. Prevents or delays, without reason, the release or repatriation of prisoners of war or civilians;
8. Declares the rights and actions by the nationals of the adversary to be abolished, suspended or inadmissible before a Judge or Court of Law;
9. Attacks the sexual freedom of a protected person by committing deeds of rape, sexual slavery, induced or forced prostitution, forced pregnancy, forced sterilisation or any other kind of sexual assault.

Article 612

Whoever perpetrates the following deeds during an armed conflict shall be punished with a sentence of imprisonment of three to seven years, without prejudice to the relevant punishment for the results caused:

1. Knowingly violates the protection due to hospitals, installations, materiel, units and means for health transport, prisoner camps, sanitary and safety zones and locations, neutralised zones, locations for internment of the civil population, undefended locations and demilitarised zones, made known by the appropriate and distinctive signs;



2. deeds with violence against the medical or religious staff or those forming medical missions or aid organisations, or against the personnel authorised to use then signs and distinctive signals, established by the Geneva Conventions, pursuant to International Law;
3. Severely abuses, deprives or does not ensure the essential food or necessary medical assistance to any protected person, or subjects him to humiliating or degrading treatment, fails to inform him of his situation without justified delay, and in a comprehensible manner, imposes collective punishment for individual deeds, or infringes the requisites for accommodation of women and families, or for special of women and children established in the international treaties to which Spain is a party, and in particular, who recruits or enrolls persons under the age of eighteen or uses them to participate directly in the hostilities;
4. Unduly uses the protective or distinctive signs, emblems or signals established and recognised in the international treaties to which Spain is a party, especially the distinctive signs of the Red Cross, of the Red Crescent and the Red Crystal.
5. Unduly or perfidiously uses a flag, uniform, insignia or distinctive emblem of neutral States, of the United Nations or other States that are not parties to the conflict, or of the adversaries, during attacks or to cover, favour, protect or hinder military operations, except in the cases specifically foreseen in the international treaties to which Spain is a party;
6. Unduly or perfidiously uses the flag of parley or surrender to attack the inviolability or unduly retain the negotiator or any of the persons accompanying him, personnel of the Protecting Power or its Substitute, or a member of an International Fact Finding Commission;
7. Strips a corpse, the wounded, sick, shipwrecked, prisoner of war or interned civilian of his belongings;
8. Intentionally starves the civilian population as a means of warfare, depriving it of the indispensable resources for survival, including the deed of randomly obstructing aid supplies conducted pursuant to the Geneva Conventions and its Additional Protocols;
9. Violates a ceasefire, armistice, capitulation or another arrangement made with the adversary;
10. Intentionally attacks any member of the United Nations and associated personnel, or that participating in a peace or humanitarian aid mission pursuant to the United Nations Charter, as long as they are entitled to the protection granted to civilians or civil objects, pursuant to International Law on armed conflicts, or threaten them with such an attack to oblige a natural or legal person to carry out or abstain from carrying out any act.

Article 613

1. Whoever perpetrates or orders any of the following deeds during an armed conflict shall be punished with a sentence of imprisonment from four to six years:

- a) Attacks or targets cultural property or places of worship that are the cultural or spiritual heritage of persons as an object of reprisals or acts of hostility, as long as those assets or locations are not in the immediate vicinity of a military objective and are not used to support the military effort by the adversary and are duly marked;
- b) Makes undue use of the cultural property or places of worship referred to in Sub-Section a) to support military action;
- c) Appropriates on a large scale, robs, sacks or perpetrates acts of vandalism against the cultural property or places of worship referred to in Sub-Section a);
- d) Attacks or makes assets of a civil nature of the adversary a target for reprisals or acts of hostility, when this does not provide, under the circumstances of the case, a defined military advantage, or when those assets do not contribute effectively to the military action of the adversary;
- e) Attacks, destroys, removes or puts assets that are indispensable for survival of the civilian population out of service, except if the adversary uses those assets to directly support military action, or exclusively as a means of subsistence for members of its armed forces;
- f) Attacks or makes works or facilities that contain hazardous substances or energy the target of reprisals when such attacks might cause those substances to be released and thus cause major damage to the civilian population, except if those works or installations are used to support in a regular, significant and direct way military operations and those attacks are the only feasible way to end that support;
- g) Destroys, damages or seizes, without military need, items that do not belong to him, obliging another to hand them over or perpetrating any other deeds of pillage;
- h) Unduly or unnecessarily confiscates moveable personal or real property in the occupied territory or destroys non- military ships or aircraft and the cargo thereof, of an adversary or neutral party, or captures them in breach of the applicable international provisions on armed conflicts at sea;
- i) Attacks or carries out deeds of hostility against installations, material, units, private residences or vehicles of any member of the personnel stated in Section 10 of Article 612, or threatens to carry out such attacks or deeds of hostility to oblige a natural or legal person to carry out or to abstain from carrying out any deed.

2. If the reprisal, deed of hostility or undue use targets cultural property or places of worship under special protection, or those granted protection by virtue of special agreements, or buildings that are cultural property or places of worship under reinforced protection, or the immediate surroundings thereof, the higher degree penalty may be handed down.

In the other cases foreseen in the preceding Section of this Article, the higher degree punishment may be imposed when extensive, major destruction is caused to assets, works or facilities covered by these, or in cases of extreme severity.

**Article 614**

Whoever, during an armed conflict, perpetrates or orders any other violations or deeds contrary to the provisions of the international treaties to which Spain is a party and related to how hostilities are conducted, regulation of the means and methods of combat, protection of the wounded, the sick and shipwrecked, due treatment of prisoners of war, protection of civilians and protection of cultural property in the case of armed conflict, shall be punished with a sentence of imprisonment of six months to two years.

Article 614 bis

If any of the conducts set forth in this Chapter form part of a plan or policy or are committed on a major scale, the upper half of the respective penalties shall be applied.

CHAPTER IV**Common provisions****Article 615**

Provocation, conspiracy and solicitation to commit the criminal offences foreseen in the preceding Chapters of this Title shall be punished with the penalty lower by one or two degrees to which the actual criminal offence is subject.

Article 615 bis

1. The military authority or commanding officer, or whoever acts as such, who does not take the measures available to him to prevent the forces under his effective command or control committing any of the criminal offences included in Chapters II, II bis and III of this Title, shall be punished with the same penalty as the perpetrators.

2. Should the above conduct take place due to gross negligence, the punishment shall be the lower one by one or two degrees.

3. The military authority or commanding officer, or whoever acts as such, who does not take the measures available to him to pursue the criminal offences included in Chapters II, II bis and III of this Title committed by persons under his effective command or control shall be punished with the penalty lower by two degrees to that of the perpetrators.

4. The superior not included in the preceding Sections who, within the scope of his competence, does not adopt the measures available to him to avoid his subordinates committing any of the criminal offences included in Chapters II, II bis and III of this Title shall be punished with the same penalty as the perpetrators.

5. The superior who does not adopt the measures available to him for prosecution of the criminal offences included in Chapters II, II bis and III of this Title committed by his subordinates shall be punished with the penalty lower by two degrees to that of the offenders.

6. The civil servant or authority who, without behaving as foreseen in the preceding Sections, and failing in the duties of his office, ceases to promote prosecution of any of the criminal offences included in Chapters II, II bis and III of this Title that come to his



notice shall be punished with the penalty of special barring from public employment and office for a term from two to six years.

Article 616

Should any of the criminal offences included in the previous Chapters of this Title, except those foreseen in Article 614 and in Sections 2 and 6 of 615 bis, and in the preceding Title be committed by an authority or civil servant, in addition to the penalties stated therein, absolute barring for a term of ten to twenty years shall be imposed on him; if a private individual, the Judges and Courts of Law may order that of special barring from public employment and office for a term from one to ten years.

Article 616 bis

The terms set forth Article 20.7 of this Code shall not be applicable under any circumstance whatsoever to whoever obeys orders to commit or participate in the deeds included in Chapters II and II bis of this Title.

CHAPTER V

Criminal offence of piracy

Article 616 ter

Whoever, by violence, intimidation or deceit, seizes, damages or destroys an aircraft, ship or another kind of vessel or platform in the sea, or attacks persons, cargo or property found on board thereof, shall be convicted of the criminal offence of piracy with a sentence of imprisonment from ten to fifteen years.

In all cases, the punishment foreseen in this Article shall be imposed without prejudice to the relevant ones for the criminal offences committed.

Article 616 quater.

1. Whoever, in the prevention or persecution of the deeds foreseen in the preceding Article, resists or disobeys a warship or military aircraft or another ship or aircraft bearing clear signs that is identifiable as a ship or aircraft in the service of the Spanish State and that is authorised for such purposes, shall be punished with a sentence of imprisonment from one to three years.

2. Should force or violence be used in the conduct described above, the punishment of ten to fifteen years' imprisonment shall be imposed.

3. In all cases, the penalties foreseen in this Article shall be imposed without prejudice to the relevant ones for the criminal offences committed.

BOOK III
ON MISDEMEANOURS AND THE PENALTIES THEREOF

TITLE I

Misdemeanours against persons

Article 617 to 622

(Repealed)

TITLE II

Misdemeanours against property

Article 623 to 628

(Repealed)

TITLE III

Misdemeanours against the general interest

Article 629 to 632

(Repealed)

TITLE IV

Misdemeanours against public order

Article 633 to 637

(Repealed)

TITLE V

Common provisions for misdemeanours

Article 638 to 639

(Repealed)

Additional Provision One

If a person is declared exempt of criminal accountability due to any of the causes foreseen in Sections 1 and 3 of Article 20 of this Code arising, the Public Prosecutor shall request, if appropriate, for declaration of incapacity before the Civil Jurisdiction, except if this has already been previously resolved and, if appropriate, internment pursuant to the civil legislation.

Additional Provision Two

When a governmental authority has knowledge of the existence of a minor or person requiring special protection who is in a state of prostitution, whether voluntary or otherwise, but with the complicity of the persons exercising family, ethical-social or *de facto* authority over him, or who is lacking such, or should these have abandoned and not take charge of custody of him, it shall immediately report this to the public institution charged with protection of minors in the relevant territory, as well as to the Public Prosecutor, for them to act within the respective domains thereof.

Likewise, in the cases in which the Judge or Court of Law orders special barring from the exercise of parental rights, fostership, safekeeping, guardianship or care, or deprivation of parental rights, this shall immediately be notified to the public institution charged with protection of minors in the relevant territory, as well as to the Public Prosecutor, for them to act within the respective domains thereof.

Additional Provision Three

When, by report or claims by the offended part, criminal proceedings are commenced deeds constituting criminal offences foreseen and punishable under Articles 267 and 621 of this Code, all other parties affected by those deeds that consider themselves victims may appear in the criminal proceedings to be deemed a party thereto, whatever the amount of damages they claim.

Transitional Provision One

The criminal offences and misdemeanours committed up to the day this Code came into force shall be judged pursuant to the legal text and other special criminal laws that are hereby repealed. Once this Code comes into force, should the provisions hereof be more favourable to the convict, these shall be applied.

Transitional Provision Two

In order to determine which law is most favourable, the relevant punishment for the deed judged through application of the complete rules of one Code or another shall be taken into account. The provisions on redemption of penalties through work shall only be applicable to all convicts pursuant to the Code hereby repealed and they may not be taken advantage of by those to whom the provisions of this Code apply. The convict shall be heard in all cases.

Transitional Provision Three

Within the shortest possible time following publication of this new Criminal Code, the Directors of prisons shall submit the Judges or Courts of Law dealing with the enforcement the list of convicts interned in the Centre they direct and the provisional settlement of the sentence being served, stating the days the convict has redeemed for work and those who may redeem them in the future, as appropriate, pursuant to Article 100 of the repealed Criminal Code and complementary provisions.

Transitional Provision Four

The Judges or Courts of Law mentioned in the preceding Provision shall proceed, once they have received the preceding settlement of conviction, to notify the Public



Prosecutor, in order for him to report on whether it is appropriate to review the sentence and, in such an event, the terms of the review. Once the Public Prosecutor has given his report, they shall also proceed to hear the convict, notifying him of the terms of the review proposed, as well as informing the Solicitor who defended him at the trial, in order for him to state what he considers most favourable for the convict.

Transitional Provision Five

The General Council of the Judiciary, within the scope of the powers it is attributed by Article 98 of the Organic Act on the Judiciary, may appoint one or several of the Criminal Courts of Law or Sections of the High Provincial Courts exclusively to devote themselves to enforcement of criminal sentences to review the final judgements handed down before this Code came into force.

Those Judges or Courts of Law shall proceed to review final judgements and those sentences the convict is effectively serving, applying the most favourable provision construed strictly without taking into account judicial discretion possible in handing down sentence. In custodial sentences, this Code shall not be deemed more favourable when the term of the prior sentence imposed due to the deed and its circumstances may also be imposed pursuant to this new Code. Exceptionally, if this Code establishes provisions for a non-custodial punishment for the same criminal offence; in which case the sentence must be reviewed.

Sentences shall not be reviewed in which fulfilment of the punishment is suspended, without prejudice of doing so in the event of the suspension being revoked and prior to proceeding to effective fulfilment of the punishment suspended. The same rule shall be applied if the convict is on probation.

Nor shall sentences be reviewed in which, pursuant to the Code repealed and the new one, only the punishment of a fine is applicable.

Transitional Provision Six

Sentences shall not be reviewed in which the punishment has been executed or suspended, although other pronouncements of the ruling may be pending enforcement, as well as those that have been fully enforced, without prejudice to the fact that the Judge or Court of Law which has to take them into account in the future for the purposes of recidivism must previously examine whether the deed penalised therein has ceased to be a criminal offence or might attract a lower punishment than that imposed under this Code.

In cases of partial pardon, the sentences shall not be reviewed when the resulting punishment the convict is serving falls within a lower applicable framework established in this new Code.

Transitional Provision Seven

For the purposes of appreciating the aggravating circumstance of recidivism, the same Title of this Code shall be construed to include the criminal offences foreseen in the Code that is repealed and that have the same name and affect the legal right in the same way.

Transitional Provision Eight

In cases in which the punishment that may be applicable by application of this Code is one of weekend arrest, it shall be deemed, in order to value its comparative severity, that the duration of the custodial sentence be equivalent to two days for each weekend that is to be imposed. Should the punishment be one of a fine, it shall be deemed that each day of substitute detention that has been imposed, or that might be imposed by the Judge or Court of Law under the Code repealed shall be equivalent to two daily quotas of the fine under this Code.

Transitional Provision Nine

In the sentences handed down under the legislation repealed and that are not final due to an appeal being pending, the following rules shall be observed once the period of *vacatio legis* has elapsed:

- a) In the case of appeal, the parties may invoke and the Court of Law shall apply the provisions of the new Code on its own motion, when they are more favourable to the convict;
- b) In the case of a cassation appeal, even when not yet formalised, the appellant may define the legal criminal offences based on the provisions of this new Code;
- c) If, having filed the cassation appeal, this is being substantiated, this shall be returned to the appellant, on the Court's own motion or at the request of the party, for the term of eight days, in order to adapt the motives for cassation alleged to the provisions of this new Code, and the parties concerned, the Public Prosecutor and Magistrate presiding shall given time to scrutinise the appeal thus amended, continuing the formalities in the legal manner thereafter.

Transitional Provision Ten

Security measures that are being serving or pending, ordered pursuant to the Dangerousness and Social Reinstatement Act, or in application of Sections 1 and 3 of Article 8 or number 1 of Article 9 on the Criminal Code that is hereby repealed, shall be reviewed pursuant to the provisions of Title IV of Book I of this Code and the preceding rules.

In cases in which the maximum duration of the measure foreseen in this Code is lower than the time effectively served by those subject to it, the Judge or Court of Law shall declare that fulfilment completed and, if a custodial measure, order the inmate to be released immediately.

Transitional Provision Eleven

1. When special criminal or procedural laws are to be applied by the ordinary jurisdiction, the following substitutions are deemed to take place:

- a) The punishment of major incarceration, for that of a custodial sentence from fifteen to twenty years, with the clause of this being raised to a sentence of imprisonment from twenty to twenty- five years when two or more aggravating circumstances concur with the criminal offence.
- b) The punishment of minor incarceration, for that of a custodial sentence from eight to fifteen years.



- c) The punishment of major imprisonment, for that of a custodial sentence from three to eight years.
- d) The punishment of minor imprisonment, for that of a custodial sentence from six months to three years.
- e) The punishment of major detention, for that of detention from seven to fifteen weekends.
- f) The punishment by fine imposed in an amount exceeding one hundred thousand pesetas set for deeds punished as a criminal offence, for that of fine of three to ten months.
- g) The punishment by fine imposed in an amount less than one hundred thousand pesetas set for deeds punished as a criminal offence, for that of a fine from two to three months.
- h) The punishment by fine imposed for criminal deeds in an amount proportional to the gains obtained or the damage caused shall continue to be applied proportionally.
- i) The punishment of minor detention, for that of detention from one to six weekends.
- j) The punishment by fine set for deeds defined as a misdemeanour, for a fine from one to sixty days.
- k) The penalties depriving the convict of rights shall be imposed pursuant to the provisions and for the terms set in this Code.
- l) Any other punishment included among those abolished by this Code, for the punishment or security measure the Judge or Court of Law deems more similar and of equal or lower severity. Should such not exist, or if all are more serious, the imposition thereof shall be lifted.

2. In case of doubt, the convict shall be heard.

Transitional Provision Twelve

(Repealed)

Sole Repealing Provision

1. The following are hereby repealed:

- a) The consolidated text of the Criminal Code published by Decree 3096/1973, of 14th September, pursuant to the Act 44/1971, dated on 15th November, with its subsequent amendments, except for Articles 8.2, 9.3, Rule 1 of Article 20 with regard to Section 2 of Article 8, Section 2 of Article 22, 65, 417 bis and Additional Provisions One and Two of Organic Act 3/1989, dated 21st June;
- b) The Act, dated 17th March 1908, on parole, with its subsequent amendments and complementary provisions;
- c) Act 16/1970, dated 4th August, on Social Dangerousness and Reinstatement, with its subsequent amendments and complementary provisions;
- d) The Act dated 26th July 1878, on prohibition of dangerous practices carried out by minors;

- e) The substantive criminal provisions contained in the following special laws:
 Act dated 19th September 1896, for protection of insectivorous birds;
 Act dated 16th May 1902, on industrial property;
 Act dated 23rd July 1903, on begging by minors;
 Act dated 20th February 1942, on river fishing;
 Act dated 31st December 1946, on fishing with explosives;
 Act 1/1970, dated 4th April, on hunting. The criminal offences and misdemeanours foreseen in that Act, not contained in this Code, shall be deemed very serious administrative criminal offences, being punished with a fine of fifty thousand to five hundred thousand pesetas and withdrawal of the hunting licence, or entitlement to obtain one, for a term from two to five years.
- f) The following provisions:
 Article 256 of the Prison Regulations, approved by Royal Decree 1201/1981, of 8th May;
 Articles 65 to 73 of the Prisons Services Regulations, approved by Decree of 2nd February 1956;
 Articles 84 to 90 F) the Act 25/1964, dated 29th April, on Nuclear Energy;
 Article 54 of Act 33/1971, dated 21st July, on Emigration;
 Section 2 of Article 24 of Organic Act 2/1981, dated 6th April, on the Ombudsman;
 Article 2 of Organic Act 8/1984, dated 26th December, on the regime of appeals in the case of conscientious objection and its penal regime;
 Article 4 of Organic Act 5/1984, of 24th May, on Appearance before the Investigation Commissions of Congress of Deputies, the Senate or both Chambers;
 Articles 29 and 49 of Act 209/1964, dated 24th December, Penal and Procedural on Aviation;
 The terms «active and» of Article 137 of Organic Act 5/1985, dated 19th June, on the General Electoral Regime;
 Article 6 of the Act 57/1968, dated 27th July, on Receipt of Moneys Advanced for the Building and Sale of Homes.

2. All provisions that are incompatible with the provisions of this Code are also hereby repealed.

Final Provision One

The Criminal Procedure Act is hereby amended and shall henceforth be drafted as follows:

«Article 14. Three. For the cognisance and resolution of trials over less serious criminal offences, as well as for misdemeanours, whether or not they are incidental, with which the perpetrators of those criminal offences or others may be charged, when commission



of the misdemeanour or its evidence is related thereto, the Penal Judge of the district where the criminal offence was committed, or the Central Penal Judge where this falls within his remit.»

«Article 779. Without prejudice to the terms established in the other special proceedings, the procedure regulated under this Title shall be applied to the judgement of criminal offences punished with a sentence of imprisonment not exceeding nine years, or by any other penalties of a different nature, whether unique, joint or alternative, whatever the amount or duration thereof.»

Final Provision Two

Section 2 of Article 1 of Organic Act 10/1995, dated 23rd November, on the Jury, hereby amended and shall henceforth be drafted as follows:

«2. Within the field of the judicial proceedings to which the preceding Section refers, a Jury shall be competent to consider and hand down a verdict in the criminal offences defined in the following provisions of the criminal code:

- a) On manslaughter (Articles 138 to 140);
- b) On intimidation (Article 169.1);
- c) On failure in the duty to assist (Articles 195 and 196);
- d) On trespassing a dwelling (Articles 202 and 204);
- e) On forest fires (Articles 352 to 354);
- f) On disloyalty in the custody of documents (Articles 413 to 415);
- g) On corruption (Article 419 to 426);
- h) On influence peddling (Articles 428 to 430);
- i) On embezzlement (Articles 432 to 434);
- j) On fraud and unlawful taxation (Articles 436 to 438);
- k) On negotiations prohibited to civil servants (Articles 439 and 440);
- l) On disloyalty in the custody of prisoners (Article 471)».

Final Provision Three

1. Chapter VI of Act 35/1988, dated 22nd November, on Assisted Reproduction Techniques, is hereby amended and shall henceforth be drafted as follows:

1. Sub-Paragraphs a), k), l) and v) of Section 2.B) of Article 20 are hereby repealed;
2. The text of Sub-Section r) of Section 2. b) shall be replaced with the following: «transfer of human gametes or pre-embryos in the uterus of another animal species, or the reverse operation, as well as unauthorised fecundation between human and animal gametes».

2. Article 21 of Chapter VII of Act 35/1988, on Assisted Reproduction Techniques, shall become Article 24.

Final Provision Four

Organic Act 1/1982, dated 5th May, on Protection of the Right to Honour, Personal and Family Privacy and Personal Image, is hereby amended and shall be drafted as follows:

«Article 1.

2. The criminal nature of the intrusion shall not prevent recourse to the judicial protection proceedings foreseen in Article 9 of this Act. In any event, the criteria of this Act shall be applicable to determine the civil liability arising from the criminal offence»

«Article 7.

7. Charging with facts, or judgemental statements through actions or expressions that are in any way damaging to the dignity of another person, detracting from his fame or attacking his self-esteem.»

Final Provision Five

Additional Provision Two of Organic Act 6/1995, dated 29th June, is hereby amended and shall be drafted as follows:

«The exemption from criminal accountability established in the second Paragraphs of Articles 305, Section 4; 307, Section 3, and 308, Section 4, shall be equally applicable although the debts subject to regularisation are lower than the amounts established in those Articles.»

Final Provision Six

Title V of Book I of this Code, Articles 193, 212, 233.3 and 272, as well as Additional Provisions One and Two, Transitional Provision Twelve and Final Provisions One and Three shall have the status of an ordinary Act of Parliament.

Final Provision Seven

This Code shall come into force six months after its full publication in the «Official State Gazette» and it shall be applied to all punishable deeds committed after it coming into force.

Notwithstanding the foregoing, Article 19 hereof shall not be effective, until the Act that regulates criminal accountability of minors to which such provision refers comes into force.

By virtue thereof,

I hereby order all Spaniards, individuals persons and authorities, to abide by and to enforce this Organic Act.

At Madrid, this twenty- third day of November in the year nineteen ninety- five.

JUAN CARLOS R.

The President of the Government

FELIPE GONZÁLEZ MÁRQUEZ



GOBIERNO
DE ESPAÑA

MINISTERIO
DE JUSTICIA