

Law no. 4/2011

Of 1 July

Crimes of monopolisation and speculation

Criminalisation and punishment of unlawful activities against the economy has already been the object of administrative regulation in the form of administrative offences under Decree Law no. 23/2009 of 5 August. Following the evolvement of the national economic scenario, the need arises now to up-date the normative framework by introducing norms that specifically fight economic crime, thereby criminalising the typical conducts that are harmful to a harmonious economic development.

To this end, the criminalisation of conducts translating abuse of economic power, market control, or total or partial elimination of competition is hereby advocated. Criminalisation is also advocated for cases of agreements, adjustments or alliances among vendors aimed at the artificially establishing prices of goods below cost prices, manipulating sold quantities or exaggerating and inducing profits that are outside of the reality of the market.

The objective is to render more effective the punishing intervention of the State in the rationalisation of the distribution circuits and in the setting and control of prices in order to more effectively fight speculating practices, thereby avoiding restrictive commercial practices that have a negative impact on the prices.

As a matter of fact, by criminalising monopolisation and speculation, this law establishes a special regime for public crimes against the economy that are not provided for in the Criminal Code and that are intended to protect markets and consumers, legal goods deserving protection by a criminal law.

The National Parliament, pursuant to article 95.1 of the Constitution of the Republic, enacts the following to have the force of law:

Article 1

Object

This law establishes the regime for criminal liability for crimes of monopolisation and speculation.

Article 2

Essential goods

1. For the purposes of this law, the following shall be considered essential goods:
 - a) Basic food items
 - b) Basic building materials.

2. For the purposes of subparagraph a) of the preceding paragraph, the following shall be considered basic food items:
 - a) Rice;
 - b) Sugar;
 - c) Milk products;
 - d) Pasta and food flours;
 - e) Food oils;
 - f) Foods for children up to 3 years of age.

3. For the purposes of subparagraph b) of the preceding paragraph, the following shall be considered basic building materials:
 - a) Cement;
 - b) Concrete iron bars.

Article 3

Monopolising by the vendor

1. Any person who, under a manifest situation of scarcity of, or with prejudice to, the regular supply of the market of goods, commits any of the following facts:
 - a) Hiding stocks or storing them in places not shown to inspection authorities;
 - b) Refusing to sell them in accordance with normal practice of the respective business or making their selling conditional upon the purchasing of other goods belonging to the vendor or to third parties;

- c) Refusing or delaying their delivery where the respective supply has been ordered and accepted;
- d) Shutting the trading house or the place where the business is conducted with the objective of preventing the sale;
- e) Failing to remove the goods where the latter have been consigned to him/her and have entered the embarking, disembarking, warehousing or collection point within a period of 10 days, where they are goods subject to rationing or conditioned distribution, or within a period of time legally established by the relevant authority in case of any other goods,

shall be punished with a penalty of imprisonment of up to two years or fine.

2. Where such conduct refers to essential goods the penalty shall be aggravated by one-third of its limit.
3. Refusal to sell shall be considered justified in the following cases:
 - a) For meeting normal domestic or family supply needs of the producer or the vendor;
 - b) For meeting normal demands of agricultural, commercial or industrial exploration over the period required for renewing the stocks;
 - c) For meeting duly certified previously undertaken commitments.
4. Where there is negligence, the minimum and maximum limits of the penalty shall be reduced by half.
5. Refusal to sell in the following conditions shall not constitute an offence:
 - a) Where the quantities are likely to impair a fair share among the customers;

- b) Where the quantities are clearly disproportional to the normal consumption needs of the buyer or to the regular amounts of deliveries by the vendor;
 - c) For lack of capacity of the buyer to, considering the characteristics of the goods, ensure their resell under satisfactory technical conditions or keep an adequate after-sales assistance service;
 - d) Following a justified lack of confidence by the vendor as to the punctuality of payment by the buyer where the sell is made on a credit basis.
6. The attempt to commit such crime is punishable.
7. The court may order the forfeiture of goods to the State in case of sentencing for commission of malicious monopolisation.

Article 4 Monopolisation by the buyer

Any person who, without being a professional trader, in a situation of notorious scarcity of, or with prejudice to, the normal market supply, acquires essential goods in quantities manifestly disproportional to their supply needs or to the normal renovation of their reserves, shall be punished with an imprisonment sentence of up to 1 year or fine.

Article 5 Speculation

1. Any person who, as a way of promoting an artificial increase of prices:
- a) Sells goods or provides services at a price higher than the price permitted by the respective legal regime under which the same goods are regulated;
 - b) Sells goods or provides services at a price higher than the price contained in price tags, labels, signs or lists prepared by the vendor or the service provider;

- c) Undertakes a paid intervention or an artificial hiring of a new intermediary in the legal or normal distribution circuit, save where such intervention does not result in an increase of prices in the respective stage of the distribution circuit;
- d) Demands compensations not considered to be anticipated payment and which condition or favour the cession, use or availability of essential goods,

shall be punished with a penalty of imprisonment of up to three years or fine.

2. Where the facts have been committed with negligence, the penalty of imprisonment shall be of up to one year or fine.
3. The attempt to commit such crime is punished.
4. The court may order the forfeiture of goods for the State in case of sentencing for the commitment of the crime of speculation or, where such is not possible, the forfeiture of goods equivalent to the goods object of the crime in the possession of the offender.

Article 6

Consumer price

For the purposes of this law, in determining the retail sales price, the consumer final price shall be calculated without including possible aggravations of costs resulting from administrative fines and having an impact on the price.

Article 7

Liability of corporate bodies

1. The following principal penalties shall be imposed to corporate bodies for committing crimes provided for in this law:
 - a) Penalty of fine;
 - b) Judicial dissolution.

2. The penalty of fine shall be established at a minimum of twenty thousand American dollars.

Article 8

Subsidiary law

The provisions of the Criminal Code shall apply subsidiarily to the crimes provided for in this law.

Article 9

Revocatory norm

Articles 16, 17 and 18 of Decree Law no. 23/2009 of 5 August are hereby revoked.

Article 10

Entry into force

This law shall enter into force on the day after its publication.

Approved on 12 April 2011.

The President of the National Parliament *ad interim*

Vicente da Silva Guterres

Enacted on 18 May 2011.

For publication

The President of the Republic,

José Ramos-Horta