

PROVISIONS OF THE SPANISH CRIMINAL CODE CONCERNING INTERNATIONAL CRIMES. INTEGRATED TEXT CONTAINING THE AMENDMENTS INTRODUCED BY THE LEY ORGANICA 15/2003 IMPLEMENTING THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT

INTRODUCTION

When the new Criminal Code was being drafted, the Spanish Red Cross made proposals for the inclusion of provisions dealing with the punishment of war crimes. These proposals were then included in the current Spanish Criminal Code under the *Ley Orgánica* 10/1995 dated 23 November 1995, in the new Chapter entitled ‘Offences against Protected Persons and Property in the Event of Armed Conflict’ (Articles 608 - 614) for the protection under the criminal law of the victims of war, within Title XXIV “Offences against the International Community”.

Nevertheless, subsequently it proved necessary to amend the Chapter and title of the Criminal Code referred to above. The new international crimes established under the Statute of Rome (to which no statute of limitation applies), the protection afforded to United Nations’ personnel when carrying out peacekeeping and humanitarian missions, the prohibition on inhuman and indiscriminate weapons (such as biological and chemical weapons) or the strengthened protection of cultural property, are all steps in the right direction in international law that must be introduced into national legal systems.

Accordingly, the preamble to the *Ley Orgánica* 15/2003, dated 25 November 2003, amending the Spanish Criminal Code, justifies the new regulation of “*offences that bring our domestic legislation into line with the jurisdiction of the International Criminal Court*”. In addition, it introduces the following matters into Spanish law: the inapplicability of any statute of limitation to crimes against humanity and war crimes (this was already the situation for genocide), offences against the administration of justice of the International Criminal Court, the punishment of certain conduct related to chemical or biological weapons, and the definition of crimes against humanity.

Furthermore this amendment of the Spanish Criminal Code introduces other important provisions. Thus, it protects United Nations and associated personnel in the event of armed conflict, define as war crimes certain conduct already treated as such in the Statute of the International Criminal Court (such as the order to give no quarter, illegal deportation, settlements in occupied territory, attacks on health installations or means of transport, or attacks on humanitarian personnel), completes the defence of cultural property of particular relevance, in the event of armed conflict, states aggravating circumstances for certain offences, establishes the responsibility of superiors or regulates the inapplicability of any exemption with regard to cases of genocide or crimes against humanity.

The extensive amendments made to the Criminal Code of 1995 by the recent *Ley Orgánica* 15/2003 has led the Centre for the Study of International Humanitarian Law of the Spanish Red Cross to produce an integrated text stating those provisions that have

been amended or introduced. It therefore contains the provisions of the Spanish Criminal Code concerning international crimes. We mark in bold the provisions that have been amended or introduced by the Ley Organica 15/2003. This act shall enter into force on 1 October 2004.

Madrid, February 2004

FIRST BOOK

TITLE VII. THE PRESCRIPTION OF CRIMINAL RESPONSIBILITY AND ITS EFFECTS

CHAPTER I. CAUSES EXTINGUISHING CRIMINAL RESPONSIBILITY AND ITS EFFECTS

Article 131

1. ...
2. ...
3. ...
4. **Crimes against humanity and genocide and crimes against protected persons and property in the case of armed conflict shall not be subject to any statute of limitations.**

Article 133

1. ...
2. **Any sentence imposed for crimes against humanity and genocide and crimes against protected persons and property in the case of armed conflict shall not be subject to any statute of limitations.**

SECOND BOOK. OFFENCES AND SENTENCING

TITLE XX. OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE

**CHAPTER IX. OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE
OF THE INTERNATIONAL CRIMINAL COURT**

Article 471 Bis

- 1. Any witness who intentionally gives false testimony before the International Criminal Court, being under an obligation to tell the truth pursuant to the substantive provisions and Rules of Procedure and Evidence of that Court, shall be sentenced to six months to two years' imprisonment. If the false testimony is given against the accused, the sentence shall be two to four years' imprisonment. If, as a result of the testimony, a guilty verdict is reached, the sentence shall be four to five years' imprisonment.**
- 2. Anyone who gives evidence before the International Criminal Court knowing that it is false or has been forged shall be sentenced to a term of imprisonment as per the provisions of the preceding paragraph.**
- 3. Anyone who intentionally destroys or tampers with evidence, or interferes with the collection of evidence before the International Criminal Court shall be sentenced to six months to two years' imprisonment and fined an amount calculated on the basis of a standard rate multiplied by seven to twelve months.**
- 4. Anyone who corruptly influences a witness, obstructs his or her attendance or testimony before the International Criminal Court or interferes with the same shall be sentenced to one to four years' imprisonment and fined an amount calculated on the basis of a standard rate multiplied by six to twenty-four months.**
- 5. A sentence of between one and four years' imprisonment and a fine calculated on the basis of a standard rate multiplied by six to twenty-four months shall be imposed on anyone impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform his or her functions or to perform them improperly.**
- 6. Anyone who retaliates against an official of the International Criminal Court as a result of duties that such official or another official has performed shall be sentenced to a period of imprisonment of between one and four years and fined a amount calculated on the basis of a standard rate multiplied by six to twenty-four months.**

The same sentence will apply to whoever retaliates against a witness for giving testimony before the Court.

7. **Any official of the Court who solicits or accepts a bribe in connection with his or her official duties shall be sentenced to two to five years' imprisonment and be fined three times the value of the bribe that is solicited or accepted.**

TITLE XX11 PUBLIC ORDER OFFENCES

CHAPTER V. THE POSSESSING, SMUGGLING AND STOCKPILING OF WEAPONS, AMMUNITION, OR EXPLOSIVES, AND THE OFFENCES OF TERRORISM.

Article 566

1. Those who manufacture, market, or establish stockpiles of weapons or ammunition that are not authorised by the law or the competent authority shall be punished in the following manner:

1st With respect to weapons or ammunition of war, or chemical **or biological** weapons, promoters and organisers shall be sentenced to five to ten years' imprisonment, while those assisting them shall be sentenced to three to five years' imprisonment.

2nd With respect to regulated firearms or their ammunition, promoters and organisers shall be sentenced to two to four years' imprisonment, while those assisting them shall be sentenced to six months to two years' imprisonment.

3rd The sentence for smuggling weapons or ammunition of war or defence, or chemical **or biological** weapons, shall be the same as in the 1st paragraph of this Article.

2. The sentences set out in the 1st paragraph of this Article shall be imposed on those that develop or use chemical **or biological** weapons or initiate military preparation for their use.

Article 567

1. The manufacture, marketing, or possession of any weapons of war, regardless of the model or type, even when they are in disassembled pieces, is deemed to be a stockpile of such weapons. The manufacture, marketing, or possession of chemical **or biological** weapons will be deemed to be a stockpile thereof.

In the context of stockpiling, 'marketing' includes both the purchase and the sale of weapons.

2. Weapons of war are considered to be those so defined in the provisions regulating national defence. Chemical **or biological** weapons are considered to

be those defined as such in the international treaties or conventions of which Spain is a signatory.

The development of chemical **or biological** weapons means any activity consisting in the research or study of a scientific or technical nature whose objective is the creation of a new chemical or biological weapon or the modification of one that already exists.

3. The manufacture, marketing or possession of five or more regulated firearms shall be considered to be a stockpile thereof, even when they are in disassembled pieces.
4. As regards ammunition, judges and courts, bearing in mind the amount and type thereof, shall declare whether they amount to stockpiles for the purposes of this Chapter.

TITLE XXIV

Offences against the International Community

CHAPTER I

Human Rights Offences

Article 605

1. Anyone who kills in Spain the Head of a foreign State, or any other person protected internationally under a treaty, shall be sentenced to twenty to twenty-five years' imprisonment. If two or more aggravating circumstances exist in the commission of the crime the sentence shall be increased to twenty-five to thirty years' imprisonment.
2. Anyone causing any of the injuries set out in Article 149 to those persons referred to in the previous paragraph shall be sentenced to fifteen to twenty years' imprisonment.

If the injuries in question are contained in Article 150, the sentence shall be eight to fifteen years' imprisonment, and four to eight years' imprisonment in the case of any other injuries.

3. Any other offence committed against the persons mentioned in the above paragraphs, or against official premises, the private residence or the means of transport of such persons shall be punished in accordance with the sentences established in this Code for such offences, in the upper half of the applicable range of sentence.

Article 606

1. Whoever violates the personal immunity of the Head of any other State or any other person internationally protected under a Treaty shall be sentenced to six months to three years' imprisonment.
2. Where, the offences contained in this Article and in the previous Article, are not treated on a reciprocal basis by the law of the victim's country, the sentence imposed shall be that which the offence in question carries in accordance with the provisions of this Code as if the victim did not have the official status referred to in the previous paragraph.

CHAPTER II

Offences of genocide

Article 607

1. Those who carry out any of the following acts with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group shall be sentenced as follows:
 - 1st. To fifteen to twenty years' imprisonment, if they kill any of the members of the group.
 - If two or more aggravating circumstances exist the sentence shall be increased by one degree (*'la pena superior en grado'*).¹
 - 2nd. To fifteen to twenty years' imprisonment if they abuse sexually any of the members of the group, or cause any of the injuries contained in Article 149.
 - 3rd. To eight to fifteen years' imprisonment if they subject the group or any of its members to living conditions that endanger their life or damage gravely their health, or when they produce any of the injuries contained in Article 150.
 - 4th. To eight to fifteen years' imprisonment if they carry out forcible transfers of the group or its members, adopt any measure that tends to impede their way of life or reproduction, or transfer forcibly individuals from one group to another.
 - 5th. To four to eight years' imprisonment in the event of any injury other than those referred to in the 1st and 3rd paragraphs of this Article.
2. The diffusion by any means of ideas or doctrines that deny or justify the offences defined in the previous paragraph of this Article, or whose objective is

¹ *'La pena superior en grado'* is obtained by adding half of the maximum sentence for the offence in question to the original maximum. For example, if the maximum is 10 years, increasing it by one degree means adding 5 years, giving a new maximum of fifteen years.

to rehabilitate regimes or institutions that support practices that cause such offences shall be punishable with a term of imprisonment of one to two years.

CHAPTER II BIS

Crimes against humanity

Article 607 bis

- 1. Those who commit the offences set out below as part of a generalized or systematic attack against the whole or part of the civilian population shall be guilty of crimes against humanity.**

In any event, the commission of such offences shall be considered to be crimes against humanity:

1st. Where they take place because of membership of any identifiable group or collectivity on political, racial national, ethnic, cultural, religious, gender or other grounds universally recognized as impermissible under international law.

2nd. In the context of institutionalised oppression and systematic domination of one racial group over one or more racial groups and where it is intended to maintain this situation.

- 2. Those convicted of crimes against humanity shall be sentenced:**

1st. To fifteen to twenty years' imprisonment for the death of any person.

The sentence shall be increased by one degree if any of the circumstances referred to in Article 139 exist.

2nd. To twelve to fifteen years' imprisonment for the offence of rape, and four to six years' imprisonment for any other sexual assault.

3rd. To twelve to fifteen years' imprisonment as regards any of the injuries contained in Article 149, and to eight to twelve years' imprisonment if people are subjected to living conditions where their lives are endangered or if any of the injuries contained in Article 150 are caused. The sentence shall be four to eight years' imprisonment for causing any of the injuries contained in Article 147.

4th. To eight to twelve years' imprisonment for forcible deportation or transfer which is unauthorised under international law of one or more persons to another State or place, by way of expulsion or other coercive acts.

5th. To six to eight years' imprisonment for the forced pregnancy of any woman with the intent of affecting the ethnic composition of the population, which shall be in addition to any sentence imposed for other offences.

6th. To twelve to fifteen years' imprisonment for detaining any person and subsequently refusing to recognise such deprivation of physical liberty or give information on the fate or whereabouts of the detained person.

7th. To eight to twelve years' imprisonment for detaining another, depriving him of his physical liberty, in violation of the rules of international law. The sentence shall be reduced by one degree ('*la pena inferior en grado*')² when the detainment lasts for less than fifteen days.

8th. To four to eight years' imprisonment for grave torture of persons that were in their custody or control, and to two to six years' imprisonment for less serious cases.

For the purposes of this Article, torture shall mean subjecting people to physical or mental suffering.

Any sentence imposed for torture shall be in addition to any sentence imposed, where appropriate, for violation of the victim's other rights.

9th. To four to eight years' imprisonment for any offence relating to prostitution contained in Article 187.1, or six to eight years' imprisonment as regards those cases provided for in Article 188.1.

A sentence of six to eight years' imprisonment shall be imposed on those who transfer people from one place to another, for the purpose of their sexual exploitation, using violence, intimidation or deceit, or by abusing a situation of superiority, or the need or vulnerability of the victim.

When the offences referred to in the previous paragraph and Article 188.1 are committed against minors or the disabled, the sentence shall be increased by one degree.

10th. To four to eight years' imprisonment the offence of subjecting or maintaining anyone in a state of slavery. This sentence shall apply in addition to any sentences imposed for specific violations of an individual's human rights.

Slavery shall mean where one person exercises over another, including in a *de facto* manner, some or all property rights, such as buying, selling, lending, or bartering.

² '*La pena inferior en grado*' is half of the original minimum sentence. In this case, the original minimum is 8 years, so the new minimum would be 4 years.

CHAPTER III

Offences against Protected Persons and Property in the Event of Armed Conflict

Article 608

For the purposes of this Chapter, 'protected persons' shall have the following meaning:

1st. The wounded, the sick, the shipwrecked, and health and religious personnel, protected under the I and II Geneva Conventions dated 12 August 1949 or by Additional Protocol to the Geneva Conventions (Protocol I) dated 8 June 1977.

2nd. The prisoners of war protected by the III Geneva Convention dated 12 August 1949 or by Additional Protocol to the Geneva Conventions (Protocol I) dated 8 June 1977.

3rd. The civilian population and the civilian personnel protected by the IV Geneva Convention dated 12 August 1949 or by Additional Protocol to the Geneva Conventions (Protocol I) dated 8 June 1977.

4th. Non-combatants and personnel of the Protecting Power and its substitute protected by the Geneva Conventions dated 12 August 1949 or by Additional Protocol to the Geneva Conventions (Protocol I) dated 8 June 1977.

5th. Members of parliament and those accompanying them, protected by the II Convention of The Hague dated 29 July 1899.

6th. Personnel of the United Nations and associated personnel protected by the Convention on the Safety of United Nations and Associated Personnel of 9 November 1994.

7th. Any other person with that condition by virtue of Additional Protocol II dated 8 June 1977 or any other of the international Treaties of which Spain is a signatory.

Article 609

Anyone who, in the event of an armed conflict, mistreats or seriously endangers the life, health or integrity of any protected person, subjects him or her to torture or inhuman treatment, including biological experiments, wilfully causes him or her great suffering, or subjects him or her to any medical treatment that is inappropriate given the state of health of that person or is not in accordance with generally recognised medical principles that the Party responsible for the treatment would apply, in similar medical circumstances, to his own free national citizens, shall be sentenced to four to eight years' imprisonment, which shall be in addition to any sentence imposed for the resulting injuries.

Article 610

In the event of an armed conflict, anyone who uses or orders the use of methods or means of warfare that are prohibited, or whose objective purpose is to cause unnecessary suffering or additional harm, as well as those that are intended to cause, or can be reasonably expected to cause, widespread, long-lasting, and grave damage to the natural environment, affecting the health or survival of the population, **or orders there to be no quarter**, shall be sentenced to ten to fifteen years' imprisonment, which shall be in addition to any sentence imposed for the damage caused.

Article 611

In the event of an armed conflict, a sentence of ten to fifteen years' imprisonment, which shall be in addition to any sentence imposed for the damage or injury caused, shall be imposed on anyone who does any of the following:

1st. Carries out or orders the carrying out of indiscriminate or excessive attacks or makes the civilian population the target of attacks, retaliation or acts or threats of violence whose principal aim is to terrorise them.

2nd. Destroys or damages, violating the rules of international law applicable to armed conflicts, non-military ships or aircraft of an adversary or a neutral party unnecessarily and without warning and without taking the necessary measures to protect the security of personnel and the conservation of documentation on board.

3rd. Obliges a prisoner of war or civilian to serve in the forces of a hostile Power, or deprives him or her of the right to a fair and regular trial.

4th. Deports, transfers forcibly, takes hostage, or detains **or confines** illegally any protected person, **or uses such person to render certain points, areas or military forces immune from military operations.**

5th. Transfers and settles, **directly or indirectly**, into occupied territory the civilian population of the Occupying Power so that it resides there permanently.

6th. With regard to any protected person, carries out, orders the carrying out or maintains racial segregation policies and other inhuman and degrading practices based on other differences of an unfavourable nature that amount to an outrage upon human dignity.

7th. Unjustifiably prevents or delays the freeing or repatriation of prisoners of war or civilians.

Article 612

In the event of an armed conflict, a sentence of three to seven years' imprisonment, which shall be in addition to any sentence imposed for the

damage or injury caused, shall be imposed on anyone who does any of the following:

1st. Knowingly violates the protected status of **hospitals, health installations, material**, units and means of transport, prison camps, health and safety zones and areas, neutralized zones, places for imprisoning civilians, undefended areas and demilitarised areas, which are identifiable by the appropriate signs or emblems.

2nd. Uses violence on health or religious personnel or those that make up medical missions, or rescue workers, **or against personnel with the right to use the signs or emblems of the Geneva Conventions, in accordance with international law.**

3rd. Seriously injures, deprives of or fails to procure the necessary food or medical assistance for any protected person, or subjects him or her to degrading or humiliating treatment, fails to inform him or her, without justifiable delay and in a comprehensible manner, of his or her situation, imposes collective punishment for individual acts or violates the rules concerning the housing of women and families or concerning the special protection of women and children laid down in international treaties of which Spain is a signatory.

4th. Makes improper or treacherous use of distinctive or protective signs, emblems, or signs established and recognised in the international treaties of which Spain is a signatory, especially the emblems of the Red Cross and the Red Crescent.

5th. Makes improper or treacherous use of the distinctive flag, uniform, insignia, or emblem of neutral States, United Nations or other States that are not parties in the conflict or adversaries, during attacks or so as to cover, favour, protect, or obstruct military operations, except as regards the exceptions expressly laid down in the international treaties of which Spain is a signatory.

6th. Makes improper or treacherous use of the parliamentary flag or flag of surrender, attacks the inviolability or retains improperly any member of parliament or any person accompanying him or her, any personnel of the Protecting Power or its substitute, or any members of the International Fact-Finding Commission.

7th. Dispossesses the dead, the wounded, the sick, the shipwrecked, prisoners of war or imprisoned civilians, of their personal effects.

Article 613

1. In the event of an armed conflict, a sentence of four to six years' imprisonment shall be imposed on anyone who does, or orders to be done, any of the following:

a) Attacks, or makes the object of retaliation or acts of hostility, clearly recognisable cultural property or places of worship that form part of the cultural

or spiritual heritage of the population, and those that have been given protected status under special agreements, **or cultural property under reinforced protection**, causing widespread destruction, provided that such property is not situated in the immediate vicinity of military targets or is not being used to support the military effort of the adversary.

b) Attacks, or makes the object of retaliation, civil property of the adversary, causing its destruction, provided that in the circumstances of the case such property does not provide a definite military advantage or that such property does not contribute effectively to the military action of the adversary.

c) Attacks, destroys, steals or renders unusable property that is indispensable for the survival of the civilian population, except where the adversary uses such property in direct support of military action or exclusively as a means of subsistence for members of its armed forces.

d) Attacks, or makes the object of retaliation, places or installations that contain dangerous substances, where such attacks may lead to the escape of such substances and cause significant losses among the civilian population, except where such places or installations are used in regular, significant and direct support of military operations and such attacks are the only means of ending such support.

e) Destroys, damages or takes possession of, without any military need, objects that do not belong to him or her, obliges another to give up such objects or carries out any other act of pillage.

2. In the event that the offences concern cultural property under special protection or in particularly serious cases, the sentence may be increased by one degree.

Article 614

In the event of an armed conflict, anyone who carries out or orders the carrying out of any other violations or acts in breach of the international treaties of which Spain is a signatory, concerning the means of conducting hostilities, the protection of the wounded, sick and shipwrecked, the treatment of prisoners of war, the protection of civilians and the protection of cultural property in the event of armed conflict, shall be sentenced to six months to two years' imprisonment.

Article 614 bis

When any of the conduct referred to in this Chapter forms part of a plan or a policy or is committed on a large scale, the sentences imposed shall be in the upper half of the applicable range of sentence.

CHAPTER IV

General Provisions

Article 615

Procuring, conspiring in and soliciting the commission of the offences contained in this Title shall be punishable with a sentence of one or two degrees lower than that imposed for the full commission of the offence.

Article 615 bis

- 1. The authority or military commander or whoever effectively acts as a military commander who fails to adopt the measures within his or her control to avoid the commission of offences contained in Chapters II, II bis and III of this Title by forces under his or her effective command or control shall be sentenced in the same way as those actually committing the offences in question.**
- 2. If the conduct referred to in the previous paragraph was the result of recklessness the sentence shall be reduced by one or two degrees.**
- 3. The authority or military commander or whoever effectively acts as a military commander who fails to adopt the measures within his or her control to prosecute the offences contained in Chapters II, II bis and III of this Title by forces under his or her effective command or control shall be punished with a sentence of two degrees lower than that imposed on those actually committing the offence in question.**
- 4. Any superior not included in the above paragraphs who, within his or her effective sphere of responsibility, does not adopt those measures within his or her control to avoid the commission by his or her subordinates of offences contained in Chapters II, II bis and III of this Title shall be sentenced in the same way as those actually committing the offences in question.**
- 5. Any superior who does not adopt the measures within his or her control to prosecute the offences contained in Chapters II, II bis and III of this Title committed by subordinates shall be punished with a sentence of two degrees lower than that imposed on those actually committing the offence in question.**
- 6. Any civil servant or authority that, without engaging in conduct referred to in the previous paragraphs, failed, in breach of his or her obligations, to encourage the prosecution of any of the offences contained in Chapters II, II bis and III of this Title of which he or she has notice shall be disqualified from holding public office or employment for a period of between two and six years.**

Article 616

In the event that any of the offences included within this Title and in the previous Title is committed by an authority or civil servant, such person shall, in addition to the sentences stated for such offences, be disqualified from holding public office for a period of between ten and twenty years; if such offences were committed by a private individual, the judges or courts may disqualify such person from holding public office or employment for a period of between one and ten years.

Article 616 bis

Under no circumstances shall the provisions of Article 20.7 of this Code apply to those who follow orders to commit or participate in the situations referred to in Chapters II and II bis of this title.³

³ FIRST BOOK, FIRST TITLE OF THE CRIMINAL CODE. CHAPTER II. EXEMPTION FROM CRIMINAL RESPONSIBILITY.

Article 20. The following are exempt from criminal responsibility:

7th. Whoever acts in fulfilment of a duty or in the legitimate exercise of a right, office or position.