

PUBLIC
LAW

THE CRIME OF VIOLATION OF URBAN PLANNING RULES

On September 2 and 3, **Law no. 32/2010** and **Law no. 41/2010**, respectively, were published, creating **new types of crimes regarding urban planning and construction**.

Law no. 32/2010 added article 278-A to the Portuguese Criminal Code, creating the crime of “**Violation of urban planning rules**” according to which “*those who – conscious of the non-conformity of their behaviour vis-à-vis applicable urban-planning regulations – perform construction, reconstruction or enlargement works of immovable property, affecting public roads, land included in the National Ecological Reserve (REN), National Agricultural Reserve (RAN), a public domain or land which is especially protected by law, are punished with up to three years of imprisonment or fine*”.

However, according to paragraph 2 of the aforementioned article, **works of minor urbanistic relevance**, classified as such by law, **are not punishable**. These works are those foreseen in article 6-A of Legal Regime for Construction and Land Development (approved by Decree-Law no. 555/99, of December 16, with the amendments introduced by Decree-Law no. 26/2010, of March 30 and Law no. 28/2010, of

*Works of minor urbanistic
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September 2), and they are defined as **construction and demolition works which possess, by reason of their nature, dimension or location, a minor urbanistic impact**. Works of

minor urbanistic relevance are also those which, according to article 6-A, paragraph 1, subparagraph i), are classified as such by municipal regulations.

Also, **Law no. 32/2010** created, through article 382-A of the Criminal Code, the crime of “**Violation of urban planning rules by a public officer**” (“*funcionário*”), according to which “*public officers, who – conscious of the non-conformity of their behaviour vis-à-vis urban-planning regulations – inform or decide positively a licensing or authorization procedure or, within it, provide false information about the applicable laws or regulations, are punished with up to three years of imprisonment or fine*”.

*Crime of violation
of urban planning
rules by public official
and public officer*

These amendments to the Portuguese Criminal Code will come into force on March 1, 2011.

On the other hand, Law no. 41/2010 of September 3 amended Law no. 34/87 of July 16, concerning crimes by “**public officials**”¹ (“*titular de cargo político*”), by adding the new Article 18.º-A, also named “*Violation of urban planning rules*”, according to which **public officials, who – conscious of the non-conformity of their behaviour vis-à-vis urban-planning regulations – inform or decide positively a licensing or authorization procedure or, within it, provide false information about the applicable laws or regulations, are punished with up to three years of imprisonment or fine.**

In crimes in which the agent is a holder of a public office or a public officer, the imprisonment can go up to five years, should the construction that is subject to license or authorization affect **public roads, land included in the REN, RAN, public domain or land which is especially protected by law.**

Law no. 41/2010 will come into force on March 2, 2011.

¹ Under the terms of article 3 of Law no. 34/87, and for the purposes of the crimes in question, public officials are Mayors and Municipal Councillors.

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