

28 OF AUGUST, 2023

LAW N.º 38-A/2023, OF 2 AUGUST **PARDONS AND AMNESTIES FOR OFFENCES**

In the context of the World Youth Day, during which the Pope visited Portugal, Law n.º 38-A/2023, of 2 August, was published, establishing a pardon for sentences and an amnesty for offences.

Amnesty (or the Law of Forgetfulness, as the etymology of the word itself suggests) consists in the act by which the public authorities extinguish criminal or administrative offence proceedings brought against a person or, if the person has been convicted, cease the execution of the sentence or its effects within a certain period, appearing as a measure of benevolence from the public authorities. It is distinct from a **pardon**, the purpose of which is the total or partial cancellation of a specific penalty.

In Portugal, this is not the first time that this type of measure has been put into practice for the occasion of papal visits: in 1967, on the visit by Paul VI, and in 1982 and 1991, on the visits by John Paul II, laws were passed that were similar in content to the diploma now being analysed. However, during the last two visits, by John Paul II in 2000 and Benedict XVI in 2010, the practice was abandoned and has now been resumed with the visit of Pope Francis.

LAW N.º 38-A/2023, OF 2 AUGUST - KEY ISSUES

1. SCOPE OF THE DIPLOMA

The law covers crimes and administrative offences, as well as disciplinary and military offences, committed until **19th June of the present year** by young people aged between 16 and 30 (only in the case of crimes). Specifically, it establishes:

- **A 1-year pardon for all prison sentences of up to 8 years** - including sentences carried out under house arrest.
- **The pardon of fines of up to 120 (one hundred and twenty) days**, either as a principal penalty or as an alternative to imprisonment.
- **The pardon of substitution sentences**, apart from the suspension of the execution of a prison sentence subject to the fulfilment of duties or rules of conduct or accompanied by a probationary regime.
- **Forgiveness of accessory sanctions for administrative offences** where the maximum applicable fine does not exceed **€ 1,000.00 (one thousand euros)**.

- **Amnesty for crimes punishable by no more than 1 year in prison or 120 (one hundred and twenty) days fine.**
- **Amnesty for disciplinary offences (including military offences)** that do not constitute crimes not amnestied by this law and for which the applicable sanction does not exceed disciplinary suspension or imprisonment.

2. EXCEPTIONS

Those convicted of particularly aggravated crimes **are excluded from the pardon/amnesty** - namely the crimes of domestic violence, maltreatment, serious or aggravated offences against physical integrity, homicide, infanticide, abduction/kidnapping, crimes against sexual freedom and self-determination, organized crime, influence peddling, embezzlement, [...], money laundering, fraud to obtain grants or benefits or misuse of such funds, terrorism, among others.

In addition to such limitations, the law also **expressly excludes** certain beneficiaries from the amnesty/pardon, namely repeat offenders and perpetrators of offences committed under the influence of alcohol and drugs.

3. CIVIL LIABILITY / CONFISCATION

The pardon/amnesty established by the diploma in analysis does not extinguish the civil liability of the beneficiaries that arises from amnestied conducts – allowing injured parties to continue with any procedures to claim civil compensation for any wrongdoings -, nor does it stop the confiscation, by the State, of the proceeds or advantages obtained from the perpetration of the amnestied crime and of the instruments used to commit it.

The law will come into force on the 1st of September of 2023.

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